

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 119

AN ACT

To repeal sections 407.1095, 407.1098, 407.1101, and 407.1104, RSMo, and to enact in lieu thereof five new sections relating to telecommunication practices, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 407.1095, 407.1098, 407.1101, and 407.1104, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 407.1095, 407.1098, 407.1101, 407.1104, and 407.1115, to read as follows:

407.1095. As used in sections 407.1095 to 407.1110, the following words and phrases mean:

(1) "Business subscriber", a person or entity that, for business use, has subscribed to telephone service, wireless service, or other similar service;

(2) "Call spoofing", the practice of failing to transmit or cause to be transmitted the true telephone number, and, when made available by the telemarketer's carrier, the name of the telemarketer, to any caller identification service in use by a recipient of a telemarketing call; provided that the name of the seller or charitable organization on behalf of which a telemarketing call is placed, and the seller's or charitable organization's telephone number, which is answered during regular business hours, may be substituted for the name and phone number used in, or billed for, making the call;

(3) "Caller identification service", a type of telephone service which permits telephone subscribers to see the telephone number of incoming telephone calls;

[(2)] (4) "Residential subscriber", a person who, for [primarily] personal and familial use, has subscribed to residential telephone service, wireless service or similar service, or the other persons living or residing with such person;

(5) "Seller", the same meaning as defined in section 407.1070;

(6) "Telemarketer", the same as defined in section 407.1070;

[(3)] (7) "Telephone solicitation", any voice, facsimile, short messaging service (SMS), or multimedia messaging service (MMS), for the purpose of encouraging the purchase or rental of, or investment in, property, goods or services, but does not include communications:

(a) To any business subscriber or residential subscriber with that subscriber's prior express invitation or permission;

(b) By or on behalf of any person or entity with whom a business subscriber or residential subscriber has had a business contact within the past one hundred eighty days or a current business or personal relationship;

(c) By or on behalf of an entity organized pursuant to Chapter 501 (c) (3) of the United States Internal Revenue Code, while such entity is engaged in fund-raising to support the charitable purpose for which the entity was established provided that a bona fide member of such exempt organization makes the voice communication;

(d) By or on behalf of any entity over which a federal agency has regulatory authority to the extent that:

a. Subject to such authority, the entity is required to maintain a license, permit or certificate to sell or provide the merchandise being offered through telemarketing; and

b. The entity is required by law or rule to develop and maintain a no-call list;

(e) By a natural person responding to a referral, or working from his or her primary residence, or a person licensed by the state of Missouri to carry out a trade, occupation or profession who is setting or attempting to set an appointment for actions relating to that licensed trade, occupation or profession within the state or counties contiguous to the state.

407.1098. No person or entity shall make or cause to be made any telephone solicitation, including via call spoofing, to any business subscriber or residential subscriber in this state who has given notice to the attorney general, in accordance with rules promulgated pursuant to section 407.1101 of such subscriber's objection to receiving telephone solicitations.

407.1101. 1. The attorney general shall establish and provide for the operation of a database to compile a list of telephone numbers of business subscribers and residential subscribers who object to receiving telephone solicitations. [Such list is not intended to include any telephone number primarily used for business or commercial purposes.]

2. The attorney general shall promulgate rules and regulations governing the establishment of a state no-call database as he or she deems necessary and appropriate to fully implement the provisions of sections 407.1095 to 407.1110. The rules and regulations shall include those which:

(1) Specify the methods by which each business subscriber or residential subscriber may give notice to the attorney general or its contractor of his or her objection to receiving such solicitations or revocation of such

notice. There shall be no cost to the subscriber for joining the database;

(2) Specify the length of time for which a notice of objection shall be effective and the effect of a change of telephone number on such notice;

(3) Specify the methods by which such objections and revocations shall be collected and added to the database;

(4) Specify that once a person gives notice of objection, the person shall not have to renew his or her objection;

(5) Specify the methods by which any person or entity desiring to make telephone solicitations will obtain access to the database as required to avoid calling the telephone numbers of business subscribers or residential subscribers included in the database, including the cost assessed to that person or entity for access to the database; and

~~[(5)]~~ (6) Specify such other matters relating to the database that the attorney general deems desirable.

3. If the Federal Communications Commission establishes a single national database of telephone numbers of subscribers who object to receiving telephone solicitations pursuant to 47 U.S.C. Section 227(c)(3), the attorney general shall include that part of such single national database that relates to Missouri in the database established pursuant to this section.

4. Information contained in the database established pursuant to this section shall be used only for the purpose of compliance with section 407.1098 and this section or in a proceeding or action pursuant to section 407.1107. Such information shall not be considered a public record pursuant to chapter 610.

5. In April, July, October and January of each year, the attorney general shall be encouraged to obtain

subscription listings of business subscribers and residential subscribers in this state who have arranged to be included on any national do-not-call list and add those telephone numbers to the state do-not-call list.

6. The attorney general may utilize moneys appropriated from general revenue and moneys appropriated from the merchandising practices revolving fund established in section 407.140 for the purposes of establishing and operating the state no-call database.

7. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in sections 407.1095 to 407.1110 shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2000, shall be invalid and void.

407.1104. 1. Any person or entity who makes a telephone solicitation to any business subscriber or residential subscriber in this state shall, at the beginning of such solicitation, state clearly the identity of the person or entity initiating the solicitation.

2. No person or entity who makes a telephone solicitation to a business subscriber or residential subscriber in this state shall knowingly use any method, including call spoofing, to block or otherwise circumvent any subscriber's use of a caller identification service.

407.1115. 1. This section shall be known and may be cited as the "Caller ID Anti-Spoofing Act".

2. As used in this section, the following terms mean:

(1) "Call", any telephone call, facsimile, or text message made using a public switched telephone network, wireless cellular telephone service, or voice-over-internet protocol (VoIP) service that has the capability of accessing users on the public switched telephone network or a successor network;

(2) "Caller", a person or entity who places a call, facsimile, or text message, whether by phone or computer;

(3) "Caller identification information", information provided by a caller identification service regarding the telephone number or other origination information of a call or facsimile transmission made using a telecommunications service or an interconnected VoIP service or of a text message sent using a text-messaging service;

(4) "Caller identification service", any service or device designed to provide the user of the service or device with the telephone number or other origination information of a call or facsimile transmission made using a telecommunications service or an interconnected VoIP service or of a text message sent using a text messaging service. "Caller identification service" includes automatic number identification services.

3. A caller commits the offense of caller identification spoofing if the caller:

(1) Enters or causes to be entered false information into a caller identification service with the intent to deceive, defraud, or mislead the recipient of a call to obtain anything of value; or

(2) Places a call knowing that false information was entered into the caller identification service with the intent to deceive, defraud, or mislead the recipient of the call.

4. The offense of unlawful caller identification spoofing shall be a class E felony.

5. This section shall not apply to:

(1) The blocking of caller identification information;

(2) Any law enforcement agency of the federal, state, county, or municipal government;

(3) Any intelligence or security agency of the federal government; or

(4) A communications service provider, including a telecommunications, broadband, or voice-over-internet service provider that:

(a) Acts in the communications service provider's capacity as an intermediary for the transmission of telephone service between the caller and the recipient;

(b) Provides or configures a service or service feature as requested by the customer;

(c) Acts in a manner that is authorized or required by applicable law; or

(d) Engages in other conduct that is necessary to provide service.

6. The recipient of any call in which the caller uses false caller identification information shall have standing to recover actual and punitive damages against the caller.

Punitive damages shall be in an amount determined by the court but not to exceed five thousand dollars per call.

Call recipients may bring action under this section as members of a class. The attorney general may initiate legal proceedings or intervene in legal proceedings on behalf of call recipients and, if the caller is found guilty, shall recover all costs of the investigation and prosecution of the action.