

SECOND REGULAR SESSION

SENATE BILL NO. 754

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR BURLISON.

3762S.011

ADRIANE D. CROUSE, Secretary

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
2 407.1104, RSMo, are repealed and five new sections enacted in
3 lieu thereof, to be known as sections 407.1095, 407.1098,
4 407.1101, 407.1104, and 407.1115, to read as follows:

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

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

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

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

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

20 [(2)] (4) "Residential subscriber", a person who, for
21 [primarily] personal and familial use, has subscribed to
22 residential telephone service, wireless service or similar
23 service, or the other persons living or residing with such
24 person;

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

26 (6) "Telemarketer", the same as defined in section
27 407.1070;

28 [(3)] (7) "Telephone solicitation", any voice,
29 facsimile, short messaging service (SMS), or multimedia
30 messaging service (MMS), for the purpose of encouraging the
31 purchase or rental of, or investment in, property, goods or
32 services, but does not include communications:

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

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

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

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

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

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

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

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

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

8 2. The attorney general shall promulgate rules and
9 regulations governing the establishment of a state no-call
10 database as he or she deems necessary and appropriate to
11 fully implement the provisions of sections 407.1095 to

12 407.1110. The rules and regulations shall include those
13 which:

14 (1) Specify the methods by which each **business**
15 **subscriber or** residential subscriber may give notice to the
16 attorney general or its contractor of his or her objection
17 to receiving such solicitations or revocation of such
18 notice. There shall be no cost to the subscriber for
19 joining the database;

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

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

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

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

34 [(5)] (6) Specify such other matters relating to the
35 database that the attorney general deems desirable.

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

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

49 5. In April, July, October and January of each year,
50 the attorney general shall be encouraged to obtain
51 subscription listings of **business subscribers and**
52 residential subscribers in this state who have arranged to
53 be included on any national do-not-call list and add those
54 telephone numbers to the state do-not-call list.

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

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

407.1104. 1. Any person or entity who makes a
2 telephone solicitation to any **business subscriber or**
3 residential subscriber in this state shall, at the beginning

4 of such solicitation, state clearly the identity of the
5 person or entity initiating the solicitation.

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

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

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

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

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

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

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

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

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

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

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

38 5. This section shall not apply to:

39 (1) The blocking of caller identification information;

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

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

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

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

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

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

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

56 6. The recipient of any call in which the caller uses
57 false caller identification information shall have standing

58 to recover actual and punitive damages against the caller.
59 Punitive damages shall be in an amount determined by the
60 court but not to exceed five thousand dollars per call.
61 Call recipients may bring action under this section as
62 members of a class. The attorney general may initiate legal
63 proceedings or intervene in legal proceedings on behalf of
64 call recipients and, if the caller is found guilty, shall
65 recover all costs of the investigation and prosecution of
66 the action.

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