

# SENATE BILL NO. 1297

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR LEWIS.

4561S.011

KRISTINA MARTIN, Secretary

## AN ACT

To repeal sections 407.1095, 407.1098, 407.1101, 407.1104, 407.1107, and 407.1110, RSMo, and to enact in lieu thereof six new sections relating to telephone solicitations to businesses.

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

Section A. Sections 407.1095, 407.1098, 407.1101, 2 407.1104, 407.1107, and 407.1110, RSMo, are repealed and six 3 new sections enacted in lieu thereof, to be known as sections 4 407.1095, 407.1098, 407.1101, 407.1104, 407.1107, and 407.1110, 5 to read as follows: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 business which, primarily**  
4 **for business use, has subscribed to business telephone**  
5 **service, wireless service, or similar service;**

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

9 [(2)] (3) "Residential subscriber", a person who, for  
10 primarily personal and familial use, has subscribed to  
11 residential telephone service, wireless service or similar  
12 service, or the other persons living or residing with such  
13 person;

14 [(3)] (4) "Telephone solicitation", any voice,  
15 facsimile, short messaging service (SMS), or multimedia

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

16 messaging service (MMS), for the purpose of encouraging the  
17 purchase or rental of, or investment in, property, goods or  
18 services, but does not include communications:

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

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

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

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

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

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

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

407.1098. No person or entity shall make or cause to  
2 be made any telephone solicitation to any residential  
3 subscriber **or any business subscriber** in this state who has  
4 given notice to the attorney general, in accordance with  
5 rules promulgated pursuant to section 407.1101 of such  
6 subscriber's objection 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 residential subscribers **and business**  
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 residential  
15 subscriber **or business 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 the methods by which any person or entity  
26 desiring to make telephone solicitations will obtain access

27 to the database as required to avoid calling the telephone  
28 numbers of residential subscribers **or business subscribers**  
29 included in the database, including the cost assessed to  
30 that person or entity for access to the database;

31 (5) Specify such other matters relating to the  
32 database that the attorney general deems desirable.

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

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

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

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

57 7. Any rule or portion of a rule, as that term is  
58 defined in section 536.010, that is created under the

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

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

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

407.1107. 1. The attorney general may initiate  
2 proceedings relating to a knowing violation or threatened  
3 knowing violation of section 407.1098 or 407.1104. Such  
4 proceedings may include, without limitation, an injunction,  
5 a civil penalty up to a maximum of five thousand dollars for  
6 each knowing violation and additional relief in any court of  
7 competent jurisdiction. The attorney general may issue  
8 investigative demands, issue subpoenas, administer oaths and  
9 conduct hearings in the course of investigating a violation  
10 of section 407.1098 or 407.1104.

11 2. In addition to the penalties provided in subsection  
12 1 of this section, any person or entity that violates

13 section 407.1104 shall be subject to all penalties, remedies  
14 and procedures provided in sections 407.010 to 407.130. The  
15 remedies available in this section are cumulative and in  
16 addition to any other remedies available by law.

17 3. Any person **or business** who has received more than  
18 one telephone solicitation within any twelve-month period by  
19 or on behalf of the same person or entity in violation of  
20 section 407.1098 or 407.1104 may either:

21 (1) Bring an action to enjoin such violation;

22 (2) Bring an action to recover for actual monetary  
23 loss from such knowing violation or to receive up to five  
24 thousand dollars in damages for each such knowing violation,  
25 whichever is greater; or

26 (3) Bring both such actions.

27 4. It shall be a defense in any action or proceeding  
28 brought pursuant to this section that the defendant has  
29 established and implemented, with due care, reasonable  
30 practices and procedures to effectively prevent telephone  
31 solicitations in violation of section 407.1098 or 407.1104.

32 5. No action or proceeding may be brought pursuant to  
33 this section:

34 (1) More than two years after the person **or business**  
35 bringing the action knew or should have known of the  
36 occurrence of the alleged violation; or

37 (2) More than two years after the termination of any  
38 proceeding or action arising out of the same violation or  
39 violations by the state of Missouri, whichever is later.

40 6. A court of this state may exercise personal  
41 jurisdiction over any nonresident or his or her executor or  
42 administrator as to an action or proceeding authorized by  
43 this section in the manner otherwise provided by law.

44           7. The remedies, duties, prohibitions and penalties of  
45 sections 407.1095 to 407.1107 are not exclusive and are in  
46 addition to all other causes of action, remedies and  
47 penalties provided by law.

48           8. No provider of telephone caller identification  
49 service shall be held liable for violations of section  
50 407.1098 or 407.1104 committed by other persons or entities.

          407.1110. The attorney general shall establish an  
2 advisory group composed of government entities, local  
3 telecommunications companies, businesses, and senior citizen  
4 and other community advocates to compile and promote a list  
5 of educational literature to help consumers understand their  
6 options with regard to telephone solicitations. The  
7 attorney general shall work with local exchange  
8 telecommunications companies to disseminate to their  
9 residential subscribers **and business subscribers** information  
10 about the availability of and instructions about how to  
11 request educational literature from the attorney general.  
12 The attorney general may enter into agreements with those  
13 companies for the purpose of dissemination of the  
14 educational literature. The attorney general shall include  
15 on his or her internet website information that informs  
16 residential subscribers **and business subscribers** of their  
17 rights to be placed on a no-call list and the various  
18 methods, including notice to the attorney general, of  
19 placing their names on this no-call list. The attorney  
20 general shall have this literature developed for  
21 dissemination to the public no later than January 1, [2001]  
22 **2027.**

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