

SECOND REGULAR SESSION

# SENATE BILL NO. 742

89TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR MAXWELL.

Read 1st time January 15, 1998, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

S3066.011

## AN ACT

To amend chapter 407, RSMo, relating to telephone solicitations, and to enact in lieu thereof five new sections relating to the same subject, with penalty provisions.

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

Section A. Chapter 407, RSMo, is amended by adding thereto five new sections, to be known as sections 407.684, 407.686, 407.688, 407.690 and 407.692, to read as follows:

**407.684. As used in sections 407.684 to 407.690, the following terms shall mean:**

**(1) "Established business relationship", a prior or existing relationship formed by a voluntary two-way communication between a person and a residential or business telephone subscriber, with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the subscriber regarding products or services offered by the person, which relationship has not been previously terminated by either party;**

**(2) "Telephone solicitation", a telephone call or message using an automatic dialing-announcing device for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services which call or message is transmitted to any person, but not including any call or message:**

**(a) To any person with the person's prior express invitation or permission;**  
**(b) By any person with whom the caller has an established business relationship;**  
**(c) By a not-for-profit corporation which is exempt from federal income tax liability under section 501(c)(3) of the Internal Revenue Code of 1986, as amended; or**  
**(d) For a commercial purpose but which does not include the transmission of an unsolicited advertisement;**

**(3) "Unsolicited advertisement", any material advertising the commercial availability or quality of any property, goods or services which is transmitted to any**

**person without that person's prior express invitation or permission.**

**407.686. 1. No person shall make a telephone solicitation to a residential telephone line before 8:00 a.m. or between 5:00 p.m. and 6:00 p.m. or after 10:00 p.m. at the location of the person called.**

**2. No person shall make a telephone solicitation unless the caller has instituted procedures satisfying the requirements of section 407.699 for maintaining a list of telephone subscribers who do not wish to receive telephone solicitations made by or on behalf of the caller.**

**3. No person shall make a telephone solicitation in contradiction to the procedures established under section 407.688.**

**407.688. 1. The procedures instituted pursuant to section 407.686 shall meet the following minimum standards:**

- (1) A written policy, available upon demand, for maintaining a do-not-call list;**
- (2) Personnel engaged in any aspect of telephone solicitation shall be informed of the existence of and trained in the use of the do-not-call list.**

**2. If a person making a telephone solicitation, or on whose behalf a solicitation is made, receives a request from a residential or business telephone subscriber not to receive calls from that person, the person shall record the request and place the subscriber's name and telephone number on the do-not-call list at the time the request is made. If the requests are recorded or maintained by someone other than the person on whose behalf the solicitation is made, the person on whose behalf the solicitation is made shall be liable for any failure to honor the do-not-call request. A person making telephone solicitations shall obtain a telephone subscriber's prior express consent to share the telephone subscriber's request not to be called with, or to forward such request to, someone other than the person on whose behalf a telephone solicitation is made or an affiliated entity.**

**3. In the absence of a specific request by a telephone subscriber to the contrary, a residential or business telephone subscriber's do-not-call request shall apply to the particular person making the call or on whose behalf a call is made and will not apply to affiliated entities unless the telephone subscriber reasonably would expect them to be included given the identification of the caller and the product being advertised.**

**407.690. 1. Upon written complaint and supporting affidavit that an applicable law or rule has been or is being violated, the public service commission shall seek a cease and desist order and an injunction to prevent and restrain suspected violations of sections 407.684 to 407.690. Such action shall be brought at the request of the commission by the attorney general or the prosecuting attorney of the county in which the violation occurred.**

**2. Any person who violates a requirement of section 407.684 or 407.688 shall be**

**guilty of an infraction.**

**407.692. 1. No telecommunications company shall initiate any service or contractual relationship with any residential or small commercial customer without the customer's specific and personal agreement to accept the service or to switch to a different telecommunications company.**

**2. (1) If a customer seeks to make a change in their telecommunications company by directly calling the new telecommunications company to make a change, such change shall be valid without further verification, provided that a telecommunications company or its agent shall not avoid any otherwise applicable verification requirement in subdivision (2) of this subsection in a call initiated by the telecommunications company or its agent by asking a customer to contact the telecommunications company directly to make a change. A telecommunications company that receives an inbound call from an applicant or customer seeking to change their telecommunications company shall retain a record of such contact for one year. The record maintained by the telecommunications company shall record the date of the subscriber's request, the name of the person requesting the service, the name of the subscriber's previous telecommunications company and the name of the telecommunications company's representative who handled the call. This record shall be available, upon request, to the customer, a third party acting with the consent of the customer, or the public service commission.**

**(2) For sales of local exchange and interexchange telecommunications services or change of telecommunications company other than in the circumstances described in subdivision (1) of this subsection, the customer's decision to change to a different telecommunications company shall be confirmed in accordance with one of the following procedures:**

**(a) A customer's telecommunications company may be changed as a result of an independent third party verification of the customer's oral agreement to the change if the verification procedure is undertaken in a location physically separate from the telecommunications company or its telemarketing representative, and the record of the verification that confirms the change contains verification data personal to the customer, such as birth date or social security number;**

**(b) A customer's telecommunications company may be changed once the new telecommunications company has obtained the customer's electronic authorization, placed from the telephone number or numbers for which the service is to be changed, that confirms the information described in subdivision (3) of this subsection to confirm the authorization. A telecommunications company that confirms changes electronically shall establish one or more toll-free telephone numbers used exclusively for that purpose, and calls to these numbers shall connect a customer to a voice response unit**

**or similar mechanism that records the required information, including questions and responses, regarding the change of providers and that automatically records the originating automatic number identification;**

**(c) A customer's telecommunications company may be changed when the new telecommunications company has obtained the subscriber's written authorization on a letter of agency that explains what occurs when a customer's telephone company is changed. The letter of agency shall be a separate document and its sole purpose shall be to authorize a change of the customer's telecommunications company, inform the customer of any charges associated with the change and the identity of the telecommunications line that will be changed if the customer signs and returns the form to request the change. A letter of agency shall not be combined or used in conjunction with any promotion or other gift. A check shall not operate as a letter of agency. The letter of agency shall be clearly legible with clear and unambiguous language and contain, at a minimum, the information required in subdivision (3) of this subsection. The letter of agency shall inform the customer that no change will take place without the customer's signature;**

**(3) Whenever a change of telecommunications company is confirmed pursuant to paragraph (a) or (b) of subdivision (2) of this subsection, the telecommunications company shall provide an information package to the customer within three business days which contains the following information:**

**(a) A statement that the information package is being sent to confirm an order placed by the customer within the previous week;**

**(b) The identity and type of service provided by the customer's current telecommunications company;**

**(c) The name of the new telecommunications company;**

**(d) A description of all the terms, conditions and services that will be provided to the customer as a result of the change;**

**(e) The name of the person who authorized the change;**

**(f) The name, address and telephone number of the customer and the telecommunications company that solicited the change;**

**(g) A letter of agency and a postpaid envelope seeking the customer's written authorization to confirm the change in telecommunications company; and**

**(h) The address and telephone number of the public service commission's contact agent for consumer complaints.**

**3. If a customer denies authorizing a change in telecommunications service provider, the burden shall be on the telecommunications company to provide evidence that demonstrates compliance with the provisions of this section.**

**4. In addition to any other penalties that may be imposed by law, any**

**telecommunications company that violates the provisions of subsection 1 or 2 of this section and attempts to collect or collects charges for the provision of any telecommunications service from a customer shall be liable to the telecommunications service provider previously selected by the customer in an amount equal to all charges paid by such customer or owed by such customer after the violation.**

**5. A customer shall not be liable for payment of any charge for any calls charged by a telecommunications company which calls result from a change of telecommunications service in violation of this section. The public service commission may order all payments made by the customer during the unauthorized service period to be promptly refunded to the customer.**

**6. Other provisions of this section to the contrary notwithstanding, if the public service commission finds a pattern or practice of violation of this section by a telecommunications company, the public service commission may require the telecommunications company to obtain a signed letter of agency from every new customer, for a period of time established by the public service commission not to exceed two years.**

**7. If a telecommunications company is found by the public service commission to have forged or otherwise falsified the signature of any customer, the public service commission may revoke the telecommunications company's certification pursuant to chapters 386 and 392, RSMo, to provide telecommunications services in this state.**

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