

FIRST REGULAR SESSION

HOUSE BILL NO. 831

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES HOUGHTON (Sponsor), REDMON, SMITH (71), CAUTHORN, KLIPPENSTEIN, JOHNSON, LAIR, KORMAN, ASBURY, HIGDON, LEACH, SCHARNHORST, BROWN (116), OXFORD, POLLOCK, TILLEY, LONG AND SCHIEFFER (Co-sponsors).

1919L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 407, RSMo, by adding thereto three new sections relating to direct mail marketing.

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

Section A. Chapter 407, RSMo, is amended by adding thereto three new sections, to be known as sections 407.2100, 407.2105, and 407.2110, to read as follows:

407.2100. This act shall be known and may be cited as the "Do-Not-Offer Statewide Registry Act".

407.2105. 1. As used in this section, the following terms shall mean:

(1) "Customer", any natural person who is age seventy or older, a resident of this state and who is or may be required to pay for or to exchange consideration for goods and services offered through direct mail marketing;

(2) "Direct mail marketer", any person who, for financial profit or commercial purposes in connection with direct mail marketing, mails solicitations for the sale of goods or services to a customer when the customer is in this state or any person who directly controls or supervises the conduct of a direct mail marketer. For the purposes of this section, "commercial purposes" shall mean the sale or offer for sale of goods or services. Direct mail marketer shall include, but not be limited to, a credit card company which engages in the issuance of any credit card, credit plate, charge plate, courtesy card, or other identification card or device which may be used to obtain a cash advance or a loan or credit or to purchase or lease property or services on the credit of the issuer or of the

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14 holder; and shall not include a debit card issued by a bank for the transfer, deposit and
15 withdrawal of funds to and from a customer's bank account;

16 (3) "Direct mail marketing", any mailing which contains solicitations for the sale
17 of goods or services and is directed to a customer at his or her residence within this state
18 by personal delivery;

19 (4) "Doing business in this state", mailing or causing to be mailed any direct mail
20 marketing solicitation delivered to a residence by means of personal delivery from a
21 location in this state or from a location outside of this state to a customer residing in this
22 state;

23 (5) "Goods and services", any goods and services, and shall include any real
24 property or any tangible personal property or services of any kind;

25 (6) "Person", any natural person, association, partnership, firm, limited liability
26 company, corporation and its affiliates or subsidiaries or other business entity;

27 (7) "Unsolicited direct mail marketing", any direct mail marketing mailing other
28 than a mailing:

29 (a) To any customer with that customer's prior express invitation or permission;

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

33 (c) By or on behalf of an entity organized under Chapter 501(c)(3) of the United
34 States Internal Revenue Code of 1986, as amended, while such entity is engaged in
35 fundraising to support the charitable purpose for which the entity was established
36 provided that a bona fide member of such exempt organization makes the contact;

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

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

41 b. The entity is required by law or rule to develop and maintain a do-not-offer
42 statewide registry database;

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

48 2. The attorney general shall establish and provide for the operation of a database
49 to compile a list of addresses, post office boxes, or other locations of mail delivery of

50 customers who object to receiving direct mail marketing. The attorney general shall have
51 such database in operation no later than July 1, 2012.

52 **3. No later than January 1, 2012, the attorney general shall promulgate rules and**
53 **regulations governing the establishment of a do-not-offer statewide registry database as**
54 **he or she deems necessary and appropriate to fully implement the provisions of sections**
55 **407.2100 to 407.2110. The rules and regulations shall include those which:**

56 **(1) Specify the methods by which each customer may give notice to the attorney**
57 **general or its contractor of his or her objection to receiving such direct mail marketing or**
58 **revocation of such notice. There shall be no cost to the customer for joining the database;**

59 **(2) Specify the length of time for which a notice of objection shall be effective and**
60 **the effect of a change of address on such notice;**

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

63 **(4) Specify the methods by which any person or entity desiring to send direct mail**
64 **marketing will obtain access to the database as required to avoid sending direct mail**
65 **marketing to customers included in the database, including the cost assessed to that person**
66 **or entity for access to the database;**

67 **(5) Specify such other matters relating to the database that the attorney general**
68 **deems desirable.**

69 **4. If the Federal Communications Commission establishes a single national**
70 **database of addresses of customers who object to receiving direct mail marketing, the**
71 **attorney general shall include that part of such single national database that relates to**
72 **Missouri in the database established under this section.**

73 **5. Information contained in the database established pursuant to this section shall**
74 **be used only for the purpose of compliance with section 407.2100 and this section or in a**
75 **proceeding or action under section 407.2110. Such information shall not be considered a**
76 **public record under chapter 610.**

77 **6. In April, July, October, and January of each year, the attorney general shall be**
78 **encouraged to obtain subscription listings of customers in this state who have arranged to**
79 **be included on any national no-direct mail marketing list and add those names to the do-**
80 **not-offer statewide registry.**

81 **7. The attorney general may utilize moneys appropriated from general revenue and**
82 **moneys appropriated from the merchandising practices revolving fund established in**
83 **section 407.140 for the purposes of establishing and operating the do-not-offer statewide**
84 **database.**

85 **8. Any rule or portion of a rule, as that term is defined in section 536.010 that is**
86 **created under the authority delegated in sections 407.2100 to 407.2110 shall become**
87 **effective only if it complies with and is subject to all of the provisions of chapter 536, and,**
88 **if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of**
89 **the powers vested with the general assembly pursuant to chapter 536, to review, to delay**
90 **the effective date, or to disapprove and annul a rule are subsequently held**
91 **unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted**
92 **after August 28, 2011, shall be invalid and void.**

407.2110. 1. The attorney general may initiate proceedings relating to a knowing
2 **violation or threatened knowing violation of sections 407.2100 to 407.2110. Such**
3 **proceedings may include, without limitation, an injunction, a civil penalty up to a**
4 **maximum of five thousand dollars for each knowing violation and additional relief in any**
5 **court of competent jurisdiction. The attorney general may issue investigative demands,**
6 **issue subpoenas, administer oaths and conduct hearings in the course of investigating a**
7 **violation of section 407.1098 or 407.1104.**

8 **2. Any person who has received more than one direct mail marketing solicitation**
9 **within any twelve-month period by or on behalf of the same person or entity in violation**
10 **of sections 407.2100 to 407.2110 may either:**

11 **(1) Bring an action to enjoin such violation;**

12 **(2) Bring an action to recover for actual monetary loss from such knowing violation**
13 **or to receive up to five thousand dollars in damages for each such knowing violation,**
14 **whichever is greater; or**

15 **(3) Bring both such actions.**

16 **3. It shall be a defense in any action or proceeding brought pursuant to this section**
17 **that the defendant has established and implemented, with due care, reasonable practices**
18 **and procedures to effectively prevent direct mail marketing solicitations in violation of**
19 **sections 407.2100 to 407.2110.**

20 **4. No action or proceeding may be brought under to this section:**

21 **(1) More than two years after the person bringing the action knew or should have**
22 **known of the occurrence of the alleged violation; or**

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

25 **5. A court of this state may exercise personal jurisdiction over any nonresident or**
26 **his or her executor or administrator as to an action or proceeding authorized by this**
27 **section in the manner otherwise provided by law.**

28 **6. The remedies, duties, prohibitions, and penalties of sections 407.2100 to 407.2110**
29 **are not exclusive and are in addition to all other causes of action, remedies and penalties**
30 **provided by law.**

31 **7. No provider of direct mail marketing service shall be held liable for violations**
32 **of sections 407.2100 to 407.2110 committed by other persons or entities.**

33 **8. Sections 407.2100 and 407.2105 and this section shall take effect on July 1, 2012.**