

SECOND REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 1549

96TH GENERAL ASSEMBLY

5444L.03P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 407.1095, 407.1098, 407.1101, 407.1104, and 407.1107, RSMo, and to enact in lieu thereof five new sections relating to the no-call list.

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

Section A. Sections 407.1095, 407.1098, 407.1101, 407.1104, and 407.1107, RSMo, are
2 repealed and five new sections enacted in lieu thereof, to be known as sections 407.1095,
3 407.1098, 407.1101, 407.1104, and 407.1107, to read as follows:

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

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

5 (2) "Residential subscriber", a person who, **for primarily personal and familial use,**
6 has subscribed to residential telephone service [from a local exchange company] , **wireless**
7 **service or similar service,** or the other persons living or residing with such person;

8 (3) "Telephone solicitation", any voice [communication over a telephone line from a live
9 operator, through the use of ADAD equipment or by other means] , **facsimile, short messaging**
10 **service (SMS), or multimedia messaging service (MMS),** for the purpose of encouraging the
11 purchase or rental of, or investment in, property, goods or services, but does not include
12 communications:

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

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.

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

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

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

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

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

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

407.1098. [1.] No person or entity shall make or cause to be made any telephone
2 solicitation to [the telephone line of] any residential subscriber in this state who has given notice
3 to the attorney general, in accordance with rules promulgated pursuant to section 407.1101 of
4 such subscriber's objection to receiving telephone solicitations.

5 [2. This section shall take effect on July 1, 2001.]

407.1101. 1. The attorney general shall establish and provide for the operation of a
2 database to compile a list of telephone numbers of residential subscribers who object to receiving
3 telephone solicitations. [The attorney general shall have such database in operation no later than
4 July 1, 2001.] **Such list is not intended to include any telephone number primarily used for
5 business or commercial purposes.**

6 2. [No later than January 1, 2001,] The attorney general shall promulgate rules and
7 regulations governing the establishment of a state no-call database as he or she deems necessary
8 and appropriate to fully implement the provisions of sections 407.1095 to 407.1110. The rules
9 and regulations shall include those which:

10 (1) Specify the methods by which each residential subscriber may give notice to the
11 attorney general or its contractor of his or her objection to receiving such solicitations or
12 revocation of such notice. There shall be no cost to the subscriber for joining the database;

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

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

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

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

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

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

31 5. In April, July, October and January of each year, the attorney general shall be
32 encouraged to obtain subscription listings of [consumers] **residential subscribers** in this state
33 who have arranged to be included on any national do-not-call list and add those [names]
34 **telephone numbers** to the state do-not-call list.

35 6. The attorney general may utilize moneys appropriated from general revenue and
36 moneys appropriated from the merchandising practices revolving fund established in section
37 407.140 for the purposes of establishing and operating the state no-call database.

38 7. Any rule or portion of a rule, as that term is defined in section 536.010, that is created
39 under the authority delegated in sections 407.1095 to 407.1110 shall become effective only if it
40 complies with and is subject to all of the provisions of chapter 536 and, if applicable, section
41 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the
42 general assembly pursuant to chapter 536 to review, to delay the effective date or to disapprove
43 and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority
44 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 [the telephone
2 line of] any residential subscriber in this state shall, at the beginning of such [call] **solicitation**,
3 state clearly the identity of the person or entity initiating the [call] **solicitation**.

4 2. No person or entity who makes a telephone solicitation to [the telephone line of] a
5 residential subscriber in this state shall knowingly use any method to block or otherwise
6 circumvent [such] **any** subscriber's use of a caller identification service.

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

2. In addition to the penalties provided in subsection 1 of this section, any person or entity that violates section 407.1104 shall be subject to all penalties, remedies and procedures provided in sections 407.010 to 407.130. The remedies available in this section are cumulative and in addition to any other remedies available by law.

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

(1) Bring an action to enjoin such violation;

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

(3) Bring both such actions.

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

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

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

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

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

7. The remedies, duties, prohibitions and penalties of sections 407.1095 to [407.1104] **407.1107** are not exclusive and are in addition to all other causes of action, remedies and penalties provided by law.

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

[9. Section 407.1104 and this section shall take effect on July 1, 2001.]

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