

FIRST REGULAR SESSION

HOUSE BILL NO. 839

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE ROWLAND.

1786H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 407.1095 and 407.1107, RSMo, and to enact in lieu thereof three new sections relating to the telemarketing no-call list.

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

Section A. Sections 407.1095 and 407.1107, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 407.1095, 407.1100, and 407.1107, to read as follows:

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

(1) **“Automatic dialing announcing device”, a device or system of devices which are used, whether alone or in conjunction with other equipment, for the purposes of automatically selecting or dialing telephone numbers and disseminating recorded messages to the numbers selected or dialed;**

(2) **“Caller”, a person, corporation, firm, partnership, association, or legal or commercial entity who contacts or attempts to contact a subscriber in this state by using a live operator or an automatic dialing announcing device;**

(3) **“Caller identification service”, a type of telephone service which permits telephone subscribers to see the telephone number of incoming telephone calls;**

~~(2)~~ (4) **“Residential subscriber”, a person who, for primarily personal and familial use, has subscribed to any residential telephone service, wireless service or similar service, or the other persons living or residing with such person;**

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

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

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

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

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

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

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

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

**407.1100. 1. A caller shall not use an automatic dialing announcing device in
2 making any telephone call to a residential subscriber unless:**

3 **(1) The subscriber has knowingly or voluntarily requested, consented to, permitted,
4 or authorized receipt of the message; or**

5 **(2) The message is immediately preceded by:**

6 **(a) The name of the business, firm, organization, association, partnership, or entity
7 for which the message is being made;**

8 **(b) The purpose of the message and whether it intends to solicit payment or
9 commitment of funds;**

10 **(c) If applicable, the identity or kinds of goods or service the message is promoting;
11 and**

12 **(d) An option to terminate the call and remove the subscriber from the calling list.**

13 **2. A caller shall not use an automatic dialing announcing device unless the device
14 is designed and operated to disconnect within ten seconds after the subscriber terminates
15 the telephone call.**

16 **3. The provisions of this section shall not apply to:**

17 **(1) Telephone calls from school districts to students, parents, or employees;**

18 **(2) Telephone calls to subscribers with whom the caller has a current business or**
19 **personal relationship; or**

20 **(3) Telephone calls advising employees of work schedules.**

 407.1107. 1. The attorney general may initiate proceedings relating to a knowing
2 violation or threatened knowing violation of section 407.1098, **407.1100**, or 407.1104. Such
3 proceedings may include, without limitation, an injunction, a civil penalty up to a maximum of
4 five thousand dollars for each knowing violation and additional relief in any court of competent
5 jurisdiction. The attorney general may issue investigative demands, issue subpoenas, administer
6 oaths and conduct hearings in the course of investigating a violation of section 407.1098,
7 **407.1100**, or 407.1104.

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

12 3. Any person who has received more than one telephone solicitation within any
13 twelve-month period by or on behalf of the same person or entity in violation of section
14 407.1098, **407.1100**, or 407.1104 may either:

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

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

19 (3) Bring both such actions.

20 4. It shall be a defense in any action or proceeding brought pursuant to this section that
21 the defendant has established and implemented, with due care, reasonable practices and
22 procedures to effectively prevent telephone solicitations in violation of section 407.1098,
23 **407.1100**, or 407.1104.

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

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

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

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

32 7. The remedies, duties, prohibitions and penalties of sections 407.1095 to 407.1107 are
33 not exclusive and are in addition to all other causes of action, remedies and penalties provided
34 by law.

35 8. No provider of telephone caller identification service shall be held liable for violations
36 of section 407.1098, **407.1100**, or 407.1104 committed by other persons or entities.

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