

FIRST REGULAR SESSION

HOUSE BILL NO. 89

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE PEARCE.

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STEPHEN S. DAVIS, Chief Clerk

0607L.011

AN ACT

To repeal sections 407.1095, 407.1098, 407.1101, and 407.1104, RSMo, and to enact in lieu thereof four 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Section A. Sections 407.1095, 407.1098, 407.1101, and 407.1104, RSMo, are repealed
2 and four new sections enacted in lieu thereof, to be known as sections 407.1095, 407.1098,
3 407.1101, and 407.1104, 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 has subscribed to **any** residential telephone
6 service [from a local exchange company], **including wireless telephone service**, or the other
7 persons living or residing with such person;

8 (3) "**Subscriber**", a **wireless business subscriber or a residential subscriber**;

9 (4) ["Telephone solicitation", any voice communication over a telephone line from a live
10 operator, through the use of ADAD equipment or by other means for the purpose of encouraging
11 the purchase or rental of, or investment in, property, goods or services, but does not include
12 communications] "**Telephone solicitation**", **any voice, telefacsimile, graphic imaging, or**
13 **data communication, including text messaging communications, for the purpose of**
14 **encouraging the purchase or rental of, or investment in, property, goods or services, but**

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 **does not include communications:**

16 (a) To any [residential] subscriber with that subscriber's prior express invitation or
17 permission;

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

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

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

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

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

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

34 **(5) "Wireless business subscriber", a person who, primarily for business use, has**
35 **subscribed to any wireless telephone service.**

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
3 notice to the attorney general, in accordance with rules promulgated pursuant to section 407.1101
4 of 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
3 receiving telephone solicitations. [The attorney general shall have such database in operation
4 no later than July 1, 2001.]

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

9 (1) Specify the methods by which each [residential] subscriber may give notice to the
10 attorney general or its contractor of his or her objection to receiving such solicitations or

11 revocation of such notice. There shall be no cost to the subscriber for joining the database;

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

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

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

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

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

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

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

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

37 7. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that
38 is created under the authority delegated in sections 407.1095 to 407.1110 shall become effective
39 only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if
40 applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and
41 if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review,
42 to delay the effective date or to disapprove and annul a rule are subsequently held
43 unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after
44 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, state clearly

3 the identity of the person or entity initiating the call.

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.