

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1632
93RD GENERAL ASSEMBLY

Reported from the Committee on Commerce, Energy and the Environment, April 27, 2006, with recommendation that the Senate Committee Substitute do pass.

4830S.08C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 407.413, 407.1095, 407.1098, 407.1101, 407.1104, and 570.223, RSMo, and to enact in lieu thereof eight new sections relating to telephone communication, with penalty provisions and an emergency clause for certain sections.

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

Section A. Sections 407.413, 407.1095, 407.1098, 407.1101, 407.1104, and 570.223, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 407.413, 407.1095, 407.1098, 407.1101, 407.1104, 570.222, 570.223, and 1, to read as follows:

407.413. 1. If more than one franchise for the same brand or brands of intoxicating liquor is granted to different wholesalers in this state, it is a violation of sections 407.400 to 407.420 for any supplier to discriminate between the wholesalers with respect to any of the terms, provisions, and conditions of these franchises.

2. Notwithstanding the terms, provisions and conditions of any franchise, no supplier shall unilaterally terminate or refuse to continue or change substantially the condition of any franchise with the wholesaler unless the supplier has first established good cause for such termination, noncontinuance or change.

3. Any wholesaler may bring an action in a court of competent jurisdiction against a supplier for violation of any of the provisions of this section and may recover damages sustained by such wholesaler together with the costs of the

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

14 action and reasonable attorney's fees.

15 4. In any action brought by a wholesaler against a supplier for
16 termination, noncontinuance or substantial change in violation of the provisions
17 of this section, it is a complete defense for the supplier to prove that the
18 termination, noncontinuance or change was done in good faith and for good cause.

19 5. As used in this section, "good faith" is the duty of each party to any
20 franchise and all officers, employees or agents thereof to act in a fair and
21 equitable manner towards each other, and "good cause" means the following:

22 (1) Failure by the wholesaler to comply substantially with the provisions
23 of an agreement or understanding with the supplier, which provisions are both
24 essential and reasonable;

25 (2) Use of bad faith or failure to observe reasonable commercial standards
26 of fair dealing in the trade; or

27 (3) Revocation or suspension for more than thirty-one days of a beer
28 wholesaler's federal basic permit or of any state or local license required of a beer
29 wholesaler for the normal operation of its business.

30 6. As to brewers and beer wholesalers, the provisions of this section shall
31 only apply to agreements entered into on or after August 28, 1998, and to
32 agreements which are renewed or substantially amended on or after August 28,
33 1998. As used in the preceding sentence, "substantially amended" means a
34 written amendment that materially alters the fundamental business relationship
35 between brewer and wholesaler. "Substantially amended" does not include
36 changes or amendments that are contemplated in writing by the parties to an
37 agreement.

38 **7. For purposes of subsections 8 and 9 of this section, "brand"**
39 **refers to any word, name, group of letters, symbols, or combination**
40 **thereof, that is adopted and used by a brewer or importer to identify**
41 **a specific beer product and to distinguish that beer product from**
42 **another beer product, and "brand extension" is any brand that**
43 **incorporates all or a substantial part of the unique features of a**
44 **preexisting brand of the same brewer or importer and which relied to**
45 **a significant extent on the goodwill associated with that preexisting**
46 **brand.**

47 **8. A brewer or importer who assigns a brand extension to a**
48 **wholesaler shall offer to assign the brand extension to the wholesaler**
49 **to whom the brewer or importer granted the exclusive sales territory**

50 to the brand from which the brand extension resulted. This
51 requirement does not apply to assignments of brand extensions to
52 wholesalers that were made by a brewer or importer before August 28,
53 2006.

54 9. In the event that before August 28, 2006, a brewer or importer
55 had assigned a brand extension to a wholesaler who was not the
56 appointed wholesaler for the brand from which the brand extension
57 was made, then additional brand extensions shall be offered to be
58 assigned to the wholesaler who had the brand.

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

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

6 (2) "Residential subscriber", a person who has subscribed to **any**
7 residential telephone service [from a local exchange company], **including**
8 **wireless telephone service**, or the other persons living or residing with such
9 person;

10 (3) "**Subscriber, wireless business subscriber, facsimile**
11 **subscriber, or residential subscriber;**

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

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

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

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

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

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

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

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

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

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

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

407.1101. 1. The attorney general shall establish and provide for the
2 operation of a database to compile a list of telephone numbers of [residential]
3 subscribers who object to receiving telephone solicitations. [The attorney general
4 shall have such database in operation no later than July 1, 2001.]

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

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

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

16 (3) Specify the methods by which such objections and revocations shall be

17 collected and added to the database;

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

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

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

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

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

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

43 7. Any rule or portion of a rule, as that term is defined in section 536.010,
44 RSMo, that is created under the authority delegated in sections 407.1095 to
45 407.1110 shall become effective only if it complies with and is subject to all of the
46 provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This
47 section and chapter 536, RSMo, are nonseverable and if any of the powers vested
48 with the general assembly pursuant to chapter 536, RSMo, to review, to delay the
49 effective date or to disapprove and annul a rule are subsequently held
50 unconstitutional, then the grant of rulemaking authority and any rule proposed
51 or adopted after August 28, 2000, shall be invalid and void.

407.1104. 1. Any person or entity who makes a telephone solicitation to

2 [the telephone line of] any [residential] subscriber in this state shall, at the
3 beginning of such [call] **solicitation**, state clearly the identity of the person or
4 entity initiating the [call] **solicitation**.

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

570.222. 1. As used in this section the following terms shall
2 mean:

3 (1) "Procure", in regard to a telephone record means to obtain by
4 any means, whether electronically, in writing, or in oral form, with or
5 without consideration;

6 (2) "Telecommunications carrier", any corporation providing
7 telecommunications service as defined in section 386.020, RSMo. For
8 purposes of this section only, the definition of telecommunications
9 carrier includes a commercial mobile radio service provider defined in
10 47 U.S.C. 332(d);

11 (3) "Telephone record", any information retained by a
12 telecommunications carrier that relates to the telephone numbers
13 dialed by the customer or the incoming numbers of calls directed to a
14 customer, or other data related to such calls typically contained on a
15 customer telephone bill such as the time the call started and ended, the
16 duration of calls, the time of day calls were made and any charges
17 applied. For purposes of this section any information collected and
18 retained by or on behalf of customers utilizing Caller I.D., or other
19 similar technology, does not constitute a telephone record.

20 2. A person commits the crime of obtaining, receiving, or selling
21 a telephone record without consent of the customer if such person:

22 (1) Knowingly procures, attempts to procure, solicits, or
23 conspires with another to procure, a telephone record of any resident
24 of this state without the authorization of the customer to whom the
25 record pertains; or

26 (2) By fraudulent, deceptive, or false means:

27 (a) Knowingly sells, or attempts to sell, a telephone record of any
28 resident of this state without the authorization of the customer to
29 whom the record pertains; or

30 (b) Receives a telephone record of any resident of this state

31 knowing that such record has been obtained without the authorization
32 of the customer to whom the record pertains or by fraudulent,
33 deceptive, or false means.

34 3. Obtaining, receiving, or selling a telephone record without
35 consent of the customer is a felony punishable as follows:

36 (1) A fine of not less than five hundred dollars nor more than one
37 thousand dollars or imprisonment for not more than two years, or both
38 such fine and imprisonment if the violation of subsection 2 of this
39 section involves a single telephone record of a resident of this state;

40 (2) A fine of not less than one thousand dollars nor more than
41 five thousand dollars or imprisonment for not more than five years, or
42 both such fine and imprisonment if the violation of subsection 2 of this
43 section involves two to ten telephone records of a resident of this state;

44 (3) A fine of not less than five thousand dollars and not more
45 than ten thousand dollars or imprisonment for not more than ten years,
46 or both such fine and imprisonment if the violation of subsection 2 of
47 this section involves more than ten telephone records of a resident of
48 this state.

49 4. No provision of this section shall be construed so as to prevent
50 any action by a law enforcement agency or state agency with
51 jurisdiction over telecommunications companies as defined in section
52 386.020, RSMo, or any officer, employee, or agent of such agency, to
53 obtain telephone records in connection with the performance of the
54 official duties of the agency.

55 5. No provision of this section shall be construed to prohibit a
56 telecommunications carrier from obtaining, using, disclosing, or
57 permitting access to any telephone record, either directly or indirectly
58 through its agents:

59 (1) As otherwise authorized by law;

60 (2) With the lawful consent of the customer or subscriber;

61 (3) As may be necessarily incident to the rendition of the service
62 or to the protection of the rights or property of the provider of that
63 service, or to protect users of those services and other carriers from
64 fraudulent, abusive, or unlawful use of, or subscription to, such
65 services;

66 (4) To a governmental entity, if the telecommunications carrier
67 reasonably believes that an emergency involving immediate danger of

68 death or serious physical injury to any person justifies disclosure of the
69 information; or

70 (5) To the National Center for Missing and Exploited Children,
71 in connection with a report submitted thereto under Section 227 of the
72 Victims of Child Abuse Act of 1990;

73 (6) No provision of this section shall apply to or expand upon the
74 obligations and duties of any telephone company, its agents, employees
75 or contractors to protect telephone records beyond those otherwise
76 established by federal or state law, including but not limited to
77 provisions governing Customer Proprietary Network Information in
78 section 222 of the Communications Act of 1934, as amended, 47 U.S.C.
79 222 and regulations promulgated thereunder.

80 6. In a civil action, a customer or telecommunications carrier or
81 both whose telephone records were procured, sold, or received in
82 violation of subsection 2 of this section may recover from the person or
83 entity that violated subsection 2 of this section such relief as may be
84 appropriate including, but not limited to, the following:

85 (1) Such preliminary and other equitable or declaratory relief as
86 may be appropriate;

87 (2) Damages as described in subsection 7 of this section; and

88 (3) Reasonable attorney fees and other litigation costs
89 reasonably incurred.

90 7. The court may assess as damages in a civil action under this
91 section the sum of the actual damages suffered by the plaintiff and any
92 profits made by the violator as a result of the violation, but in no case
93 shall a person entitled to recover receive less than the sum of one
94 thousand dollars. The court may assess as punitive damages an amount
95 not to exceed ten times the amount awarded for actual damages and
96 illicit profit. In the case of a successful action to enforce liability
97 under this section, the court may assess costs of the action, together
98 with reasonable attorney fees determined by the court.

99 8. A civil action under this section may not be commenced later
100 than two years after the date upon which the claimant first discovered
101 or had a reasonable opportunity to discover the violation.

102 9. Telecommunications carriers that maintain telephone records
103 of a resident of this state shall establish reasonable procedures to
104 protect against unauthorized or fraudulent disclosure of such records

105 **which could result in substantial harm or inconvenience to any**
106 **customer. For purposes of this section, a telecommunications carrier's**
107 **procedures shall be deemed reasonable if the telecommunications**
108 **carrier complies with the provisions governing Customer Proprietary**
109 **Network Information in section 222 of the Communications Act of 1934,**
110 **as amended, 47 U.S.C. 222 and regulations promulgated thereunder.**

111 **10. No private right of action is authorized under subsection 9**
112 **of this section.**

113 **11. No provision of this section shall apply to a**
114 **telecommunications carrier, its agents and representatives or agents or**
115 **representatives, who reasonably and in good faith acts under**
116 **subsection 5 or 9 of this section, notwithstanding any later**
117 **determination that such action was not in fact authorized.**

570.223. 1. A person commits the crime of identity theft if he or she
2 knowingly and with the intent to deceive or defraud obtains, possesses, transfers,
3 uses, or attempts to obtain, transfer or use, one or more means of identification
4 not lawfully issued for his or her use.

5 2. The term "means of identification" as used in this section includes, but
6 is not limited to, the following:

- 7 (1) Social Security numbers;
- 8 (2) Drivers license numbers;
- 9 (3) Checking account numbers;
- 10 (4) Savings account numbers;
- 11 (5) Credit card numbers;
- 12 (6) Debit card numbers;
- 13 (7) Personal identification (PIN) code;
- 14 (8) Electronic identification numbers;
- 15 (9) Digital signatures;
- 16 (10) Any other numbers or information that can be used to access a
17 person's financial resources;
- 18 (11) Biometric data;
- 19 (12) Fingerprints;
- 20 (13) Passwords;
- 21 (14) Parent's legal surname prior to marriage;
- 22 (15) Passports; [or]
- 23 (16) Birth certificates; **or**

24 **(17) Telephone record as defined in section 570.222.**

25 3. A person found guilty of identity theft shall be punished as follows:

26 (1) Identity theft or attempted identity theft which does not result in the
27 theft or appropriation of credit, money, goods, services, or other property is a
28 class B misdemeanor;

29 (2) Identity theft which results in the theft or appropriation of credit,
30 money, goods, services, or other property not exceeding five hundred dollars in
31 value is a class A misdemeanor;

32 (3) Identity theft which results in the theft or appropriation of credit,
33 money, goods, services, or other property exceeding five hundred dollars and not
34 exceeding five thousand dollars in value is a class C felony;

35 (4) Identity theft which results in the theft or appropriation of credit,
36 money, goods, services, or other property exceeding five thousand dollars and not
37 exceeding fifty thousand dollars in value is a class B felony;

38 (5) Identity theft which results in the theft or appropriation of credit,
39 money, goods, services, or other property exceeding fifty thousand dollars in value
40 is a class A felony.

41 4. In addition to the provisions of subsection 3 of this section, the court
42 may order that the defendant make restitution to any victim of the
43 offense. Restitution may include payment for any costs, including attorney fees,
44 incurred by the victim:

45 (1) In clearing the credit history or credit rating of the victim; and

46 (2) In connection with any civil or administrative proceeding to satisfy any
47 debt, lien, or other obligation of the victim arising from the actions of the
48 defendant.

49 5. In addition to the criminal penalties in subsections 3 and 4 of this
50 section, any person who commits an act made unlawful by subsection 1 of this
51 section shall be liable to the person to whom the identifying information belonged
52 for civil damages of up to five thousand dollars for each incident, or three times
53 the amount of actual damages, whichever amount is greater. A person damaged
54 as set forth in subsection 1 of this section may also institute a civil action to
55 enjoin and restrain future acts that would constitute a violation of subsection 1
56 of this section. The court, in an action brought under this subsection, may award
57 reasonable attorneys' fees to the plaintiff.

58 6. If the identifying information of a deceased person is used in a manner
59 made unlawful by subsection 1 of this section, the deceased person's estate shall

60 have the right to recover damages pursuant to subsection 5 of this section.

61 7. Civil actions under this section must be brought within five years from
62 the date on which the identity of the wrongdoer was discovered or reasonably
63 should have been discovered.

64 8. Civil action pursuant to this section does not depend on whether a
65 criminal prosecution has been or will be instituted for the acts that are the
66 subject of the civil action. The rights and remedies provided by this section are
67 in addition to any other rights and remedies provided by law.

68 9. This section and section 570.224 shall not apply to the following
69 activities:

70 (1) A person obtains the identity of another person to misrepresent his or
71 her age for the sole purpose of obtaining alcoholic beverages, tobacco, going to a
72 gaming establishment, or another privilege denied to minors. Nothing in this
73 subdivision shall affect the provisions of subsection 10 of this section;

74 (2) A person obtains means of identification or information in the course
75 of a bona fide consumer or commercial transaction;

76 (3) A person exercises, in good faith, a security interest or right of offset
77 by a creditor or financial institution;

78 (4) A person complies, in good faith, with any warrant, court order, levy,
79 garnishment, attachment, or other judicial or administrative order, decree, or
80 directive, when any party is required to do so;

81 (5) A person is otherwise authorized by law to engage in the conduct that
82 is the subject of the prosecution.

83 10. Any person who obtains, transfers, or uses any means of identification
84 for the purpose of manufacturing and providing or selling a false identification
85 card to a person under the age of twenty-one for the purpose of purchasing or
86 obtaining alcohol shall be guilty of a class A misdemeanor.

87 11. Notwithstanding the provisions of subdivision (1) or (2) of subsection
88 3 of this section, every person who has previously pled guilty to or been found
89 guilty of identity theft or attempted identity theft, and who subsequently pleads
90 guilty to or is found guilty of identity theft or attempted identity theft of credit,
91 money, goods, services, or other property not exceeding five hundred dollars in
92 value is guilty of a class D felony and shall be punished accordingly.

93 12. The value of property or services is its highest value by any
94 reasonable standard at the time the identity theft is committed. Any reasonable
95 standard includes, but is not limited to, market value within the community,

96 actual value, or replacement value.

97 13. If credit, property, or services are obtained by two or more acts from
98 the same person or location, or from different persons by two or more acts which
99 occur in approximately the same location or time period so that the identity thefts
100 are attributable to a single scheme, plan, or conspiracy, the acts may be
101 considered as a single identity theft and the value may be the total value of all
102 credit, property, and services involved.

**Section 1. Upon the written request of a subscriber, a wireless
2 telephone provider shall not transmit the wireless phone records of the
3 subscriber via electronic mail or facsimile. Such provider shall only
4 transmit such records through United States mail to the billing address
5 of the subscriber or make such records available through a password-
6 protected website that utilizes secure socket layer or similar
7 encryption during the session.**

Section B. Because of the need to protect the consumers of the state of
2 Missouri, the enactment of sections 570.222 and 570.223 of this act is deemed
3 necessary for the immediate preservation of the public health, welfare, peace and
4 safety, and is hereby declared to be an emergency act within the meaning of the
5 constitution, and the enactment of sections 570.222 and 570.223 of this act shall
6 be in full force and effect upon its passage and approval.

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