

SECOND REGULAR SESSION

HOUSE BILL NO. 1582

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES PEARCE (Sponsor), LeVOTA, FISHER, NANCE, PORTWOOD, BRUNS, GRILL, YATES, ROORDA, CUNNINGHAM (86), DUSENBERG, AULL, LOEHNER, McGHEE, HARRIS (110), DARROUGH, RUESTMAN, WHORTON AND BIVINS (Co-sponsors).

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D. ADAM CRUMBLISS, Chief Clerk

3895L.01I

AN ACT

To repeal sections 407.1095, 407.1098, 407.1101, 407.1104, 407.1107, and 407.1110, RSMo, and to enact in lieu thereof six 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Section A. Sections 407.1095, 407.1098, 407.1101, 407.1104, 407.1107, and 407.1110, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 407.1095, 407.1098, 407.1100, 407.1101, 407.1104, and 407.1107, to read as follows:

407.1095. As used in sections 407.1095 to [407.1110] **407.1107**, the following words and phrases mean:

(1) "Automatic dialing announcing device" or "ADAD", a device or system of devices which is 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;

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.

12 [(2)] (4) "Residential subscriber", a person who has subscribed to **any** residential
13 telephone service [from a local exchange company] , **including wireless telephone service**
14 **primarily for personal and familial use**, or the other persons living or residing with such
15 person;

16 [(3)] (5) "**Subscriber**", a **residential subscriber**;

17 (6) "Telephone solicitation", any voice [communication over a telephone line from a live
18 operator, through the use of ADAD equipment or by other means for the purpose of encouraging
19 the purchase or rental of, or investment in, property, goods or services, but does not include
20 communications] , **telefacsimile, graphic imaging, or data communication, including text**
21 **messaging communications for the purpose of encouraging the purchase or rental of, or**
22 **investment in, property, goods or services, but does not include communications:**

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

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

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

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

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

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

37 (e) By a natural person responding to a referral, or working from his or her primary
38 residence, or a person licensed by the state of Missouri to carry out a trade, occupation or
39 profession who is setting or attempting to set an appointment for actions relating to that licensed
40 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
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.]

407.1100. 1. A caller shall not use an automatic dialing announcing device in making any telephone call to a residential subscriber who has provided notice to the attorney general of such subscriber's objection to receiving telephone solicitations unless:

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

(2) The message is immediately preceded by a live operator who obtains the subscriber's consent before the message is delivered and where the operator at the beginning of the message discloses:

(a) The name of the business, firm, organization, association, partnership, or entity for which the message is being made, including, if applicable, the political candidate or candidates whom the message is being made in support of or in opposition to;

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

(c) If applicable, the identity or kinds of goods or service the message is promoting.

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

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

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

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

(3) Telephone calls from a telecommunications company, as defined in section 386.020, RSMo, or the directory publisher affiliates of any such company, calling solely for the purposes of verifying the delivery of products or services that were provided at no charge to the residential subscriber;

(4) Telephone calls from a person or entity requesting the residential subscriber's personal opinion regarding a public policy matter, political candidate, or issue before the voters or which may come before the voters, where the request for an opinion is made for a bona fide information-gathering purpose;

(5) Telephone calls advising employees of work schedules; or

(6) Telephone calls from a public safety agency or other entity notifying a person of an emergency. Such calls may include Amber alert notification issued under section 210.1012, RSMo.

407.1101. 1. The attorney general shall establish and provide for the operation of a 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] **407.1107**.
8 The rules 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] **407.1107** shall

39 become effective only if it complies with and is subject to all of the provisions of chapter 536,
40 RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are
41 nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536,
42 RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently
43 held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted
44 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, 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.

407.1107. 1. The attorney general may initiate proceedings relating to a knowing
2 violation or threatened knowing violation of [section 407.1098 or 407.1104] **sections 407.1095**
3 **to 407.1107**. Such proceedings may include, without limitation, an injunction, a civil penalty
4 up to a 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, issue
6 subpoenas, administer oaths and conduct hearings in the course of investigating a violation of
7 [section 407.1098 or 407.1104] **sections 407.1095 to 407.1107**.

8 2. In addition to the penalties provided in subsection 1 of this section, any person or
9 entity that violates [section 407.1104] **sections 407.1095 to 407.1107** shall be subject to all
10 penalties, remedies and procedures provided in sections 407.010 to 407.130. The remedies
11 available in this section are cumulative and in addition to any other remedies available by law.

12 3. Any person who has received more than one telephone solicitation **or call** within any
13 twelve-month period by or on behalf of the same person or entity in violation of [section
14 407.1098 or 407.1104] **sections 407.1095 to 407.1107** 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 or
23 407.1104] **sections 407.1095 to 407.1107**.

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 [407.1104]
33 **407.1107** are not exclusive and are in addition to all other causes of action, remedies and
34 penalties provided by law.

35 8. No provider of telephone caller identification service shall be held liable for violations
36 of [section 407.1098 or 407.1104] **sections 407.1095 to 407.1107** committed by other persons
37 or entities.

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

2 [407.1110. The attorney general shall establish an advisory group
3 composed of government entities, local telecommunications companies,
4 businesses, and senior citizen and other community advocates to compile and
5 promote a list of educational literature to help consumers understand their options
6 with regard to telephone solicitations. The attorney general shall work with local
7 exchange telecommunications companies to disseminate to their residential
8 subscribers information about the availability of and instructions about how to
9 request educational literature from the attorney general. The attorney general
10 may enter into agreements with those companies for the purpose of dissemination
11 of the educational literature. The attorney general shall include on his or her
12 Internet web site information that informs residential subscribers of their rights
13 to be placed on a no-call list and the various methods, including notice to the
14 attorney general, of placing their names on this no-call list. The attorney general
15 shall have this literature developed for dissemination to the public no later than
January 1, 2001.]

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