

SECOND REGULAR SESSION

HOUSE BILL NO. 2145

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES ZIMMERMAN (Sponsor), LeVOTA, HOLSMAN, GEORGE, DAUS, PORTWOOD, YATES, NANCE, GRILL, ROORDA, WHORTON, NORR, CUNNINGHAM (86), SCHNEIDER, DONNELLY, KRAUS, DARROUGH, OXFORD, MEINERS AND SCHIEFFER (Co-sponsors).

Read 1st time February 14, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

5061L.01I

AN ACT

To repeal sections 407.1070, 407.1095, 407.1098, 407.1101, 407.1104, 407.1107, and 407.1110, RSMo, and to enact in lieu thereof eight new sections relating to telemarketing.

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

Section A. Sections 407.1070, 407.1095, 407.1098, 407.1101, 407.1104, 407.1107, and
2 407.1110, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as
3 sections 407.1070, 407.1074, 407.1095, 407.1098, 407.1100, 407.1101, 407.1104, and 407.1107,
4 to read as follows:

407.1070. As used in sections 407.1070 to 407.1085, the following terms shall mean:

2 (1) "Advertisement", as defined in section 407.010;

3 (2) "**Automatic dialing announcing device**" or "**ADAD**", a device or system of
4 devices which is used, whether alone or in conjunction with other equipment, for the
5 purposes of automatically selecting or dialing telephone numbers and disseminating
6 recorded messages to the numbers selected or dialed;

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

10 (4) "Caller identification service", a type of telephone service which permits telephone
11 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 [(3)] (5) "Consumer", a natural person who purchases, may purchase or is solicited for
13 purchase of merchandise or an investment opportunity by a telemarketer through telemarketing;

14 [(4)] (6) "Established business relationship", a prior or existing relationship formed by
15 a voluntary two-way communication between a seller or telemarketer and a consumer with or
16 without an exchange of consideration, on the basis of an inquiry, application, purchase or
17 transaction by the consumer regarding products or services offered by such seller or telemarketer,
18 which relationship has not been previously terminated by either party;

19 [(5)] (7) "Fictitious name", any name, other than the legal name, used by a seller or
20 telemarketer;

21 [(6)] (8) "Investment opportunity", anything tangible or intangible that is offered for sale,
22 sold or traded based wholly or in part on representations, either express or implied, about past,
23 present or future income, profit or appreciation;

24 [(7)] (9) "Material aspect or element", any factor likely to significantly influence the
25 consumer's choice of, or conduct regarding, merchandise;

26 [(8)] (10) "Merchandise", any objects, wares, goods, commodities, intangibles, real estate
27 or services; except that merchandise shall not include any services, goods or memberships given
28 to a contributor by an entity, organized pursuant to Chapter 501(c)(3) of the United States
29 Internal Revenue Code, while such entity is engaged in fund-raising to support the charitable
30 purpose for which the entity was established provided that a bona fide member of such exempt
31 organization makes the voice communication;

32 [(9)] (11) "Prize", anything offered or purportedly offered or given or purportedly given
33 to a consumer by chance. For purposes of this definition, chance exists if a consumer is
34 guaranteed to receive anything of value and, at the time of the offer or purported offer, the
35 telemarketer does not identify the specific item that the consumer will receive;

36 [(10)] (12) "Promptly", at the beginning of any call initiated by a telemarketer to a
37 consumer;

38 (13) **"Residential subscriber", a person who has subscribed to any residential**
39 **telephone service, including wireless telephone service, or the other persons living or**
40 **residing with such person;**

41 [(11)] (14) "Seller", any person who, in connection with a telemarketing transaction,
42 provides, offers to provide, or arranges for others to provide merchandise to the consumer in
43 exchange for consideration;

44 (15) **"Subscriber", a residential subscriber;**

45 [(12)] (16) "Telemarketer", any person, or any recorded, computer-generated,
46 electronically generated or other voice communication of any kind, who, in connection with
47 telemarketing, initiates or receives telephone calls to or from a consumer. A telemarketer

48 includes, but is not limited to, any such person that is an owner, operator, officer, director or
49 partner to the management activities of a business;

50 [(13)] (17) "Telemarketing", a plan, program or campaign which is conducted to induce
51 the purchase or lease of merchandise by use of one or more telephones and which involves more
52 than one telephone call.

**407.1074. A caller shall not use an automatic dialing announcing device unless the
2 device is designed and operated to disconnect within ten seconds after the subscriber
3 terminates the telephone call.**

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

3 (1) "Automatic dialing announcing device" or "ADAD", a device or system of
4 devices which is used, whether alone or in conjunction with other equipment, for the
5 purposes of automatically selecting or dialing telephone numbers and disseminating
6 recorded messages to the numbers selected or dialed;

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

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

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**, or
14 the other persons living or residing with such person;

15 [(3)] (5) "Subscriber", a residential subscriber;

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

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

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

27 (c) By or on behalf of an entity organized pursuant to Chapter 501(c)(3) of the United
28 States Internal Revenue Code, while such entity is engaged in fund-raising to support the

29 charitable purpose for which the entity was established [provided that a bona fide member of
30 such exempt organization makes the voice communication;

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

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

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

36 (e) By a natural person responding to a referral, or working from his or her primary
37 residence, or a person licensed by the state of Missouri to carry out a trade, occupation or
38 profession who is setting or attempting to set an appointment for actions relating to that licensed
39 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
2 making any telephone call to a residential subscriber who has provided notice to the
3 attorney general of such subscriber's objection to receiving telephone solicitations.**

4 **2. (1) If subsection 1 of this section is held invalid by a court of competent
5 jurisdiction for any reason, then a caller shall not use an automatic dialing announcing
6 device in making any telephone call to a residential subscriber who has provided notice to
7 the attorney general of such subscriber's objection to receiving telephone solicitations
8 unless:**

9 **(a) The subscriber has knowingly or voluntarily requested, consented to, permitted,
10 or authorized receipt of the message; or**

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

14 **a. The name of the business, firm, organization, association, partnership, or entity
15 for which the message is being made;**

16 **b. The purpose of the message and whether it intends to solicit payment or
17 commitment of funds; and**

18 **c. If applicable, the identity or kinds of goods or service the message is promoting;**

19 **(2) The provisions of this subsection shall not apply to:**

20 **(a) Telephone calls from school districts to students, parents, or employees;**

21 **(b) Telephone calls to subscribers with whom the caller has a current business or**
22 **personal relationship; or**

23 **(c) Telephone calls advising employees of work schedules.**

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] **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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