

SECOND REGULAR SESSION

HOUSE BILL NO. 2658

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE COSTLOW.

6199H.01I

JOSEPH ENGLER, Chief Clerk

AN ACT

To repeal sections 407.1095, 407.1098, 407.1101, and 407.1104, RSMo, and to enact in lieu thereof five new sections relating to electronic communications, with penalty provisions.

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Section A. Sections 407.1095, 407.1098, 407.1101, and 407.1104, RSMo, are 2 repealed and five new sections enacted in lieu thereof, to be known as sections 407.1095, 3 407.1098, 407.1101, 407.1104, and 407.1115, to read as follows:

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

(1) "Call spoofing", the practice by a calling party or any caller identification 3 service of knowingly transmitting misleading or inaccurate caller identification 4 information with the intent to defraud, cause harm, harass, or wrongfully obtain 5 anything of value;

(2) "Caller identification service", a type of telephone service which permits 7 telephone subscribers to see the telephone number of incoming telephone calls;

[(2) "Residential subscriber", a person who, for primarily personal and familial use, 9 has subscribed to residential telephone service, wireless service or similar service, or the other 10 persons living or residing with such person;]

(3) "Reassigned number database", a database created and maintained by the 12 Federal Communications Commission that identifies whether a telephone number has 13 been reassigned;

(4) "Seller", the same as defined in section 407.1070;

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.

16 **(5) "Telemarketer", the same as defined in section 407.1070;**

17 **(6) "Telephone solicitation", any voice, facsimile, short messaging service (SMS), or**
18 **multimedia messaging service (MMS), for the purpose of encouraging the purchase or rental**
19 **of, or investment in, property, goods or services, or soliciting donations of moneys,**
20 **property, goods, or services, but does not include communications:**

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

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

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

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

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

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

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

39 **(7) "Telephone subscriber", any person or entity who has subscribed to**
40 **telephone service, wireless service, or similar service. "Telephone subscriber" includes**
41 **other persons who are living with, residing with, or are employed by such person.**

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

6 2. **A telemarketer shall use the Federal Communications Commission's**
7 **reassigned number database. Any number that is positively identified within the**
8 **reassigned number database as a reassigned number shall invalidate any previous**
9 **business relationship or exclusive dealings the telemarketer had with the number that**
10 **has been reassigned.**

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] telephone** subscribers who
3 object to receiving telephone solicitations. Such list is not intended to include any telephone
4 number primarily used for business or commercial purposes.

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

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

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

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

17 (4) **Specify that once a person gives notice of objection, the person shall not have
18 to renew his or her objection;**

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

23 [§5] (6) Specify such other matters relating to the database that the attorney general
24 deems desirable.

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

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

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

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

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

407.1104. 1. Any person or entity who makes a telephone solicitation to any
2 ~~residential~~ telephone subscriber in this state shall, at the beginning of such solicitation, state
3 clearly the identity of the person or entity initiating the solicitation.

4 2. No person or entity who makes a telephone solicitation to a ~~residential~~ telephone
5 subscriber in this state shall knowingly use any method, **including call spoofing**, to block or
6 otherwise circumvent any subscriber's use of a caller identification service.

407.1115. 1. **This section shall be known and may be cited as the "Caller ID
2 Anti-Spoofing Act".**

3 2. **As used in this section, the following terms mean:**

4 (1) **"Call"**, any telephone call, facsimile, or text message, including Short
5 Message Service (SMS), Multimedia Messaging Service (MMS), or any other similar
6 message service, made using a public switched telephone network, wireless cellular
7 telephone service, or voice-over-internet protocol (VoIP) service that has the capability
8 of accessing users on the public switched telephone network or a successor network;

9 (2) **"Caller"**, a person or entity who places a call, facsimile, or text message,
10 whether by phone or computer;

11 (3) **"Caller identification information"**, information provided by a caller
12 identification service regarding the telephone number or other origination information
13 of a call or facsimile transmission made using a telecommunications service or an
14 interconnected VoIP service or of a text message sent using a text messaging service;

15 (4) **"Caller identification service"**, any service or device designed to provide the
16 user of the service or device with the telephone number or other origination information
17 of a call or facsimile transmission made using a telecommunications service or an
18 interconnected VoIP service or of a text message sent using a text messaging service.
19 **"Caller identification service"** includes automatic number identification services.

20 3. A caller commits the offense of caller identification spoofing if the caller:

21 **(1) Enters or causes to be entered false information into a caller identification**
22 **service with the malicious intent to deceive, defraud, or mislead the recipient of a call; or**

23 **(2) Places a call knowing that false information was entered into the caller**
24 **identification service with the intent to deceive, defraud, or mislead the recipient of the**
25 **call.**

26 **4. The first offense of caller identification spoofing shall be a class C**
27 **misdemeanor. The second and any subsequent offense shall be a class A misdemeanor.**

28 **5. This section shall not apply to:**

29 **(1) The blocking of caller identification information;**

30 **(2) Any law enforcement agency of the federal, state, county, or municipal**
31 **government;**

32 **(3) Any intelligence or security agency of the federal government; or**

33 **(4) A communications service provider, including a telecommunications,**
34 **broadband, or voice-over-internet service provider, that:**

35 **(a) Acts in the communications service provider's capacity as an intermediary**
36 **for the transmission of telephone service between the caller and the recipient;**

37 **(b) Provides or configures a service or service feature as requested by the**
38 **customer;**

39 **(c) Acts in a manner that is authorized or required by applicable law; or**

40 **(d) Engages in other conduct that is necessary to provide service.**

41 **6. The recipient of any call in which the caller uses false caller identification**
42 **information shall have standing to recover actual and punitive damages against the**
43 **caller. Punitive damages shall be in an amount determined by the court but not to**
44 **exceed five thousand dollars per call. Call recipients may bring action under this section**
45 **as members of a class. The attorney general may initiate legal proceedings or intervene**
46 **in legal proceedings on behalf of call recipients and, if the caller is found guilty, shall**
47 **recover all costs of the investigation and prosecution of the action.**

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