

SECOND REGULAR SESSION

HOUSE BILL NO. 1228

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES JOHNSON (90), SELBY, CARNAHAN, HARDING, COLEMAN,
WILLOUGHBY, LADD BAKER, HARLAN AND BYRD (Co-sponsors).

Pre-filed December 13, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

2930L.01I

AN ACT

To repeal section 407.1095, RSMo, and to enact in lieu thereof one new section relating to the amendment of definitions regarding the telemarketing no-call list to further protect consumers, with an emergency clause.

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

Section A. Section 407.1095, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 407.1095, to read as follows:

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

(1) **"ADAD", an automatic dialing and announcing device which is any 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 so selected or dialed;**

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

(3) **"Consumer", a natural person who purchases, may purchase, or is solicited for purchase of merchandise or an investment opportunity by a telemarketer through telemarketing;**

(4) **"Established business relationship", a prior or existing relationship formed by a voluntary two-way communication between a seller or telemarketer and a consumer with or without an exchange of consideration, on the basis of an inquiry, application, purchase, or transaction by the consumer regarding products or services offered by such seller or**

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

16 **telemarketer, which relationship has not been previously terminated by either party;**

17 [(2)] (5) "Residential subscriber", a person who has subscribed to residential telephone
18 service from a local exchange company or the other persons living or residing with such person;

19 (6) "Seller", any person who, in connection with a telemarketing transaction,
20 provides, offers to provide, or arranges for others to provide merchandise to the consumer
21 in exchange for consideration;

22 (7) "Telemarketer", any person, or any recorded, computer-generated,
23 electronically generated, or other voice communication of any kind, who, in connection
24 with telemarketing, initiates or receives telephone calls to or from a consumer. A
25 telemarketer includes, but is not limited to, any such person that is an owner, operator,
26 officer, director, or partner to the management activities of a business;

27 [(3)] (8) "Telephone solicitation", any voice communication over a telephone line from
28 a live operator, through the use of ADAD equipment or by other means for the purpose of
29 encouraging the purchase or rental of, or investment in, property, goods or services, but does not
30 include communications:

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

33 (b) By or on behalf of any person or entity with whom a residential subscriber has [had
34 a business contact within the past one hundred eighty days or a current] **an established** business
35 **relationship** or personal relationship; **or**

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

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

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

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

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

Section B. Because immediate action is necessary to strengthen, protect and clarify the
2 protections available to the telemarketing consumers of this state, section A of this act is deemed
3 necessary for the immediate preservation of the public health, welfare, peace and safety, and is

4 hereby declared to be an emergency act within the meaning of the constitution, and section A of
5 this act shall be in full force and effect upon its passage and approval.