

SECOND REGULAR SESSION

HOUSE BILL NO. 2226

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MAYER.

Read 1st time March 15, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

5088L.02I

AN ACT

To repeal section 407.1076, RSMo, and to enact in lieu thereof one new section relating to unsolicited facsimiles.

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

Section A. Section 407.1076, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 407.1076, to read as follows:

407.1076. It is an unlawful telemarketing act or practice for any seller or telemarketer to engage in the following conduct:

- (1) Misrepresent any material fact required pursuant to section 407.1073. It is a defense to this subdivision if a seller or telemarketer shows, by a preponderance of the evidence, that the misrepresentation resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error, and no civil penalties shall be imposed if this defense is met;
- (2) Threaten, intimidate or use profane or obscene language;
- (3) Cause the telephone to ring or engage any consumer in telephone conversation repeatedly or continuously in a manner a reasonable consumer would deem to be annoying, abusive or harassing;
- (4) Knowingly and willfully initiate a telemarketing call to a consumer, **knowingly send any facsimile transmission to any business owner unless a previous contact or relationship has been established between the person or business sending the transmission and the intended recipient of the transmission**, or transfer or make available to others for telemarketing purposes a consumer's telephone number when that consumer has stated previously that he or she does not wish to receive solicitation calls by or on behalf of the seller unless such request has been rescinded;

- 19 (5) Engage in telemarketing to a consumer's residence at any time other than between
20 8:00 a.m. and 9:00 p.m. local time at the called consumer's location;
- 21 (6) Request or receive payment in advance to remove derogatory information from or
22 improve a consumer's credit history, credit record or credit rating;
- 23 (7) Request or receive payment in advance from a consumer to recover or otherwise aid
24 in the return of money or any other item lost by the consumer in a prior telemarketing
25 transaction, except that this provision shall not apply to services provided by a licensed attorney;
- 26 (8) Obtain or submit for payment a check, draft or other form of negotiable paper drawn
27 on a consumer's checking, savings, share or similar account without the consumer's express
28 written or oral authorization. Such authorization shall be deemed verifiable if any of the
29 following means are employed:
- 30 (a) Express written authorization by the consumer, which may include the consumer's
31 signature on the negotiable instrument;
- 32 (b) Express oral authorization which is tape-recorded and made available upon request
33 to the consumer's bank and which evidences clearly both the consumer's authorization of
34 payment for the merchandise that is the subject of the sales offer and the consumer's receipt of
35 all of the following information:
- 36 a. The date of the draft or drafts;
- 37 b. The amount of the draft or drafts;
- 38 c. The payor's name;
- 39 d. The number of draft payments;
- 40 e. A telephone number for consumer inquiry that is answered during normal business
41 hours; and
- 42 f. The date of the consumer's oral authorization; or
- 43 (c) Written confirmation of the transaction, sent to the consumer prior to submission for
44 payment of the consumer's check, draft or other form of negotiable paper, which shall include:
- 45 a. All of the information contained in paragraph (b) of this subdivision; and
- 46 b. The procedures by which the consumer can obtain a refund from the seller or
47 telemarketer in the event that the confirmation is inaccurate;
- 48 (9) Procure the services of any professional delivery, courier or other pick-up service to
49 obtain immediate receipt or possession of a consumer's payment, unless the merchandise or
50 investment opportunity is delivered with the opportunity to inspect before any payment is
51 collected;
- 52 (10) Knowingly provide assistance or support to any telemarketer when that person
53 knows or consciously avoids knowing that the telemarketer is engaged in any act in violation of
54 sections 407.1070 to 407.1085; or

55 (11) Knowingly utilize any method to block or otherwise circumvent a consumer's use
56 of a caller identification service.