

FIRST REGULAR SESSION

HOUSE BILL NO. 834

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SKAGGS.

Read 1st time March 17, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

0061L.011

AN ACT

To amend chapter 407, RSMo, by adding thereto four new sections relating to commercial solicitations, with an effective date.

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

Section A. Chapter 407, RSMo, is amended by adding thereto four new sections, to be known as sections 407.1158, 407.1159, 407.1160, and 407.1162, to read as follows:

407.1158. As used in sections 407.1158 to 407.1162 the followings terms mean:

(1) **"Resident", any person having a mailing address in the state;**

(2) **"Solicitation", any communication via mail for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, but does not include communications:**

(a) **To any resident with that resident's prior express invitation or permission;**

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

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

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

a. **Subject to such authority, the entity is required to maintain a license, permit or**

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.

17 certificate to sell or provide the merchandise being offered through correspondence; and

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

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

407.1159. No person or entity shall cause to be mailed any solicitation to the mailing
2 address of any resident of this state who has given notice to the attorney general, in
3 accordance with rules promulgated under section 407.1160 of such resident's objection to
4 receiving solicitations.

407.1160. 1. The attorney general shall establish and provide for the operation of
2 a database to compile a list of mailing addresses of residents who object to receiving
3 solicitations. The attorney general shall have such database in operation no later than July
4 1, 2006.

5 **2.** No later than January 1, 2006, the attorney general shall promulgate rules and
6 regulations governing the establishment of a state no-mail database as he or she deems
7 necessary and appropriate to fully implement the provisions of sections 407.1158 to
8 407.1162. The rules and regulations shall include those which:

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

12 (2) Specify the length of time for which a notice of objection shall be effective and
13 the effect of a change of mailing address on such notice;

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

16 (4) Specify the methods by which any person or entity desiring to make solicitations
17 will obtain access to the database as required to avoid sending mail to the mailing address
18 of residents included in the database, including the cost assessed to that person or entity
19 for access to the database;

20 (5) Specify such other matters relating to the database that the attorney general
21 deems desirable.

22 **3.** Information contained in the database established under this section shall be
23 used only for the purpose of compliance with section 407.1159 and this section or in a
24 proceeding or action under section 407.1162. Such information shall not be considered a
25 public record under chapter 610, RSMo.

26 **5. In January, April, July, and October of each year, the attorney general shall be**
27 **encouraged to obtain subscription listings of consumers in this state who have arranged**
28 **to be included on any national no-mail list and add those names to the state no-mail list.**

29 **6. The attorney general may utilize moneys appropriated from general revenue and**
30 **moneys appropriated from the merchandising practices revolving fund established in**
31 **section 407.140 for the purposes of establishing and operating the state no-mail database.**

32 **7. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,**
33 **that is created under the authority delegated in sections 407.1158 to 407.1162 shall become**
34 **effective only if it complies with and is subject to all of the provisions of chapter 536,**
35 **RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are**
36 **nonseverable and if any of the powers vested with the general assembly under chapter 536,**
37 **RSMo, to review, to delay the effective date, or to disapprove and annul a rule are**
38 **subsequently held unconstitutional, then the grant of rulemaking authority and any rule**
39 **proposed or adopted after August 28, 2005, shall be invalid and void.**

407.1162. 1. The attorney general may initiate proceedings relating to a knowing
2 **violation or threatened knowing violation of section 407.1159. Such proceedings may**
3 **include, without limitation, an injunction, a civil penalty up to a maximum of five thousand**
4 **dollars for each knowing violation and additional relief in any court of competent**
5 **jurisdiction. The attorney general may issue investigative demands, issue subpoenas,**
6 **administer oaths, and conduct hearings in the course of investigating a violation of section**
7 **407.1159.**

8 **2. The remedies available in this section are cumulative and in addition to any other**
9 **remedies available by law.**

10 **3. Any person who has received more than one solicitation within any twelve-month**
11 **period by or on behalf of the same person or entity in violation of section 407.1159 may**
12 **either:**

13 **(1) Bring an action to enjoin such violation;**

14 **(2) Bring an action to recover for actual monetary loss from such knowing violation**
15 **or to receive up to five thousand dollars in damages for each such knowing violation,**
16 **whichever is greater; or**

17 **(3) Bring both such actions.**

18 **4. It shall be a defense in any action or proceeding brought under this section that**
19 **the defendant has established and implemented, with due care, reasonable practices and**
20 **procedures to effectively prevent solicitations in violation of section 407.1159.**

21 **5. No action or proceeding may be brought under this section:**

22 **(1) More than two years after the person bringing the action knew or should have**

23 **known of the occurrence of the alleged violation; or**

24 **(2) More than two years after the termination of any proceeding or action arising**
25 **out of the same violation or violations by the state of Missouri, whichever is later.**

26 **6. A court of this state may exercise personal jurisdiction over any nonresident or**
27 **his or her executor or administrator as to an action or proceeding authorized by this**
28 **section in the manner otherwise provided by law.**

29 **7. The remedies, duties, prohibitions and penalties of sections 407.1158 to 407.1162**
30 **are not exclusive and are in addition to all other causes of action, remedies and penalties**
31 **provided by law.**

Section B. Sections 407.1159 and 407.1162 shall become effective on July 1, 2006.