

SECOND REGULAR SESSION

HOUSE BILL NO. 1331

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES BAKER (25) (Sponsor), KUESSNER, OXFORD, MEADOWS, WOOD, FLOOK, WITTE, YAEGER, DARROUGH, JONES, WOOD, WALLACE, BEAN, CURLS, ROORDA, AULL, RUCKER, HUBBARD, WRIGHT-JONES, SKAGGS, SHOEMYER, SCHOEMEHL, KRAUS, WETER, NOLTE, PARSON, McGHEE, DEEKEN, BOGETTO, BAKER (123), LeVOTA AND SMITH (14) (Co-sponsors).

Read 1st time January 11, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

3719L.011

AN ACT

To amend chapter 407, RSMo, by adding thereto four new sections relating to a no-mail list for businesses.

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 407.1145, 407.1147, 407.1149, and 407.1151, to read as follows:

407.1145. 1. As used in sections 407.1145 to 407.1151, the following terms mean:

- (1) **"Bulk business information", information, including addresses, telephone numbers, and names of officers, directors, members, incorporators, organizers, managers, and other principals, related to and required in the filings submitted to the secretary of state by business entities under chapters 347, 351, 354, 355, 356, 358, 359, and 417, RSMo, obtained from the secretary of state through an authorized computer account in any bulk or multiple-listing database or data extract format, whether electronic or otherwise;**
- (2) **"Business", any corporation, including any professional corporation, not-for-profit corporation or other corporation incorporated under Missouri law or authorized to do business in this state, limited liability company, partnership, limited partnership, venture doing business under a fictitious name, or other entity which comes into existence by or submits a statutorily required filing to the secretary of state;**

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.

13 (3) "Mail solicitation", any written or printed communication sent, delivered
14 and/or received via the United States mail service for the purpose of encouraging the
15 purchase or rental of or investment in property, goods, or services, but does not include
16 communications:

17 (a) To any participant with such participant's prior express invitation or
18 permission;

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

22 (c) By or on behalf of any entity organized under Chapter 501(c)(3) of the Internal
23 Revenue Code of 1986, as amended, while such entity is engaged in fundraising to support
24 the charitable purpose for which the entity was established;

25 (d) Sent or mailed by a natural person responding to a referral or working from
26 his or her primary residence, or a person licensed by the state of Missouri to carry out a
27 trade, occupation, or profession who is setting or attempting to set an appointment for
28 actions relating to such licensed trade, occupation, or profession within the state or
29 counties contiguous to the state;

30 (4) "Participant", a business which has notified the secretary of state, in a manner
31 prescribed by sections 407.1145 to 407.1151, of its objection to receiving mail solicitation
32 at an address or addresses specified by such business.

 407.1147. Beginning July 1, 2007, no person or entity shall use bulk business
2 information to mail or deliver, or cause to be mailed or delivered, any mail solicitation to
3 the mailing address or addresses of any participant who has given notice to the secretary
4 of state, in accordance with rules promulgated under section 407.1149, of such
5 participant's objection to receiving mail solicitation.

 407.1149. 1. By July 1, 2007, the secretary of state shall establish and provide for
2 the operation of a database to compile a list of mailing addresses of participants who object
3 to receiving mail solicitations. Participants shall be included in the database at no cost.

4 2. No later than January 1, 2007, the secretary of state shall promulgate rules
5 governing the establishment of a state no-mail database as the secretary deems necessary
6 and appropriate to fully implement the provisions of sections 407.1145 to 407.1151. Such
7 rules shall specify:

8 (1) The methods by which each participant may give notice to the secretary of state
9 or its contractor of its objection to receiving such solicitations or revocation of such notice;

10 (2) The length of time for which a notice of objection shall be effective and the
11 effect of a change of address on such notice;

12 (3) The methods by which such objections and revocations shall be collected and
13 added to the database;

14 (4) The methods by which any person or entity desiring to make mail solicitations
15 will obtain access to the database as required to avoid mailing or delivering mail
16 solicitations to the addresses of participants included in the database, including the cost
17 assessed to such person or entity for access to the database;

18 (5) Such other matters relating to the database that the secretary of state deems
19 desirable.

20 3. Information contained in the database established under this section shall be
21 used only for the purpose of compliance with this section and section 407.1147, or in a
22 proceeding or action under section 407.1151. Such information shall not be considered a
23 public record under chapter 610, RSMo.

24 4. The secretary of state may utilize moneys appropriated from general revenue
25 and from the secretary of state's technology trust fund account established in section
26 28.160, RSMo, for the purposes of establishing and operating the state no-mail database.

 407.1151. 1. The secretary of state shall refer all known or suspected violations of
2 section 407.1147 to the attorney general for the initiation of proceedings.

3 2. The attorney general may initiate proceedings relating to a knowing violation or
4 threatened knowing violation of section 407.1147. Such proceedings may include, without
5 limitation, an injunction, a civil penalty up to a maximum of five thousand dollars for each
6 knowing violation, and additional relief in any court of competent jurisdiction. The
7 attorney general may issue investigative demands, issue subpoenas, administer oaths, and
8 conduct hearings in the course of investigating a violation of section 407.1147.

9 3. Any participant who has received more than one mail solicitation within any
10 twelve-month period by or on behalf of the same person or entity in violation of section
11 407.1147 may either:

12 (1) Bring an action to enjoin such violation;

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

16 (3) Bring both such actions.

17 4. It shall be a defense to any action or proceeding brought under this section that
18 the defendant has established and implemented, with due care, reasonable practices and
19 procedures to effectively prevent mail solicitations in violation of section 407.1147.

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

21 **(1) More than two years after the person bringing the action knew or should have**
22 **known of the occurrence of the alleged violation; or**

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

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

28 **7. The remedies, duties, prohibitions, and penalties in sections 407.1145 to 407.1151**
29 **are not exclusive and are in addition to all other causes of action, remedies, and penalties**
30 **provided by law.**

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