

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 801
94TH GENERAL ASSEMBLY

Reported from the Committee on Commerce, Energy and the Environment, May 3, 2007, with recommendation that the Senate Committee Substitute do pass.

1988S.02C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 392.410, 407.1095, 407.1098, 407.1101, 407.1104, and 407.1107, RSMo, and to enact in lieu thereof nine new sections relating to telecommunications.

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

Section A. Sections 392.410, 407.1095, 407.1098, 407.1101, 407.1104, and
2 407.1107, RSMo, are repealed and nine new sections enacted in lieu thereof, to
3 be known as sections 392.410, 407.1095, 407.1098, 407.1101, 407.1104, 407.1107,
4 407.1108, 1, and 2, to read as follows:

392.410. 1. A telecommunications company not possessing a certificate
2 of public convenience and necessity from the commission at the time this section
3 goes into effect shall have not more than ninety days in which to apply for a
4 certificate of service authority from the commission pursuant to this chapter
5 unless a company holds a state charter issued in or prior to the year 1913 which
6 charter authorizes a company to engage in the telephone business. No
7 telecommunications company not exempt from this subsection shall transact any
8 business in this state until it shall have obtained a certificate of service authority
9 from the commission pursuant to the provisions of this chapter, except that any
10 telecommunications company which is providing telecommunications service on
11 September 28, 1987, and which has not been granted or denied a certificate of
12 public convenience and necessity prior to September 28, 1987, may continue to
13 provide that service exempt from all other requirements of this chapter until a
14 certificate of service authority is granted or denied by the commission so long as
15 the telecommunications company applies for a certificate of service authority

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

16 within ninety days from September 28, 1987.

17 2. No telecommunications company offering or providing, or seeking to
18 offer or provide, any interexchange telecommunications service shall do so until
19 it has applied for and received a certificate of interexchange service authority
20 pursuant to the provisions of subsection 1 of this section. No telecommunications
21 company offering or providing, or seeking to offer or provide, any local exchange
22 telecommunications service shall do so until it has applied for and received a
23 certificate of local exchange service authority pursuant to the provisions of section
24 392.420.

25 3. No certificate of service authority issued by the commission shall be
26 construed as granting a monopoly or exclusive privilege, immunity or
27 franchise. The issuance of a certificate of service authority to any
28 telecommunications company shall not preclude the commission from issuing
29 additional certificates of service authority to another telecommunications
30 company providing the same or equivalent service or serving the same
31 geographical area or customers as any previously certified company, except to the
32 extent otherwise provided by section 392.450.

33 4. Any certificate of public convenience and necessity granted by the
34 commission to a telecommunications company prior to September 28, 1987, shall
35 remain in full force and effect unless modified by the commission, and such
36 companies need not apply for a certificate of service authority in order to continue
37 offering or providing service to the extent authorized in such certificate of public
38 convenience and necessity. Any such carrier, however, prior to substantially
39 altering the nature or scope of services provided under a certificate of public
40 convenience and necessity, or adding or expanding services beyond the authority
41 contained in such certificate, shall apply for a certificate of service authority for
42 such alterations or additions pursuant to the provisions of this section.

43 5. The commission may review and modify the terms of any certificate of
44 public convenience and necessity issued to a telecommunications company prior
45 to September 28, 1987, in order to ensure its conformity with the requirements
46 and policies of this chapter. Any certificate of service authority may be altered
47 or modified by the commission after notice and hearing, upon its own motion or
48 upon application of the person or company affected. Unless exercised within a
49 period of one year from the issuance thereof, authority conferred by a certificate
50 of service authority or a certificate of public convenience and necessity shall be
51 null and void.

52 6. The commission may issue a temporary certificate which shall remain
53 in force not to exceed one year to assure maintenance of adequate service or to
54 serve particular customers, without notice and hearing, pending the
55 determination of an application for a certificate.

56 7. No political subdivision of this state shall provide or offer for sale,
57 either to the public or to a telecommunications provider, a telecommunications
58 service or telecommunications facility used to provide a telecommunications
59 service for which a certificate of service authority is required pursuant to this
60 section. Nothing in this subsection shall be construed to restrict a political
61 subdivision from allowing the nondiscriminatory use of its rights-of-way including
62 its poles, conduits, ducts and similar support structures by telecommunications
63 providers or from providing to telecommunications providers, within the
64 geographic area in which it lawfully operates as a municipal utility,
65 telecommunications services or telecommunications facilities on a
66 nondiscriminatory, competitively neutral basis, and at a price which covers cost,
67 including imputed costs that the political subdivision would incur if it were a for-
68 profit business. Nothing in this subsection shall restrict a political subdivision
69 from providing telecommunications services or facilities:

- 70 (1) For its own use;
71 (2) For 911, E-911 or other emergency services;
72 (3) For medical or educational purposes;
73 (4) To students by an educational institution; or
74 (5) Internet-type services.

75 [The provisions of this subsection shall expire on August 28, 2007.]

76 8. The public service commission shall annually study the economic
77 impact of the provisions of this section and prepare and submit a report to the
78 general assembly by December thirty-first of each year.

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

3 (1) **"Automated call", any prerecorded or synthesized voice**
4 **message resulting from the use of an automatic dialing-announcing**
5 **device but does not include communication:**

6 **(a) To any residential subscriber with that subscriber's prior**
7 **express invitation or permission;**

8 **(b) By or on behalf of any person or entity with whom a**
9 **residential subscriber has had a business contact within the past one**

10 **hundred eighty days or a current business or personal relationship;**

11 **(c) When the message is preceded by a live operator who**
12 **announces the automated message to be delivered;**

13 **(d) From a public safety agency or other entity notifying a**
14 **person of an emergency. Such calls may include Amber alert**
15 **notification issued under section 210.1012, RSMo; or**

16 **(e) From a telecommunications company, as defined in section**
17 **386.020, RSMo, or the directory publisher affiliates of any such**
18 **company, calling solely for the purpose of verifying the delivery of**
19 **products or services that were provided at no charge to the residential**
20 **subscriber;**

21 **(f) From a person or entity requesting the residential**
22 **subscriber's personal opinion regarding a public policy matter, political**
23 **candidate, or issue before the voters or which may come before the**
24 **voters, where the request for an opinion is made for a bona fide**
25 **information-gathering purpose;**

26 **(2) "Automatic dialing-announcing device", a device that selects**
27 **and dials telephone numbers and that, working alone or in conjunction**
28 **with other equipment, disseminates a prerecorded or synthesized voice**
29 **message to the telephone number called;**

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

33 **(4) "Political solicitation", any voice communication from a live**
34 **operator or through the use of an automatic dialing-announcing device**
35 **for the purpose of promoting, advertising, or campaigning for or**
36 **against a political candidate or political issue;**

37 **[(2)] (5) "Residential subscriber", a person who has subscribed to any**
38 **residential telephone service [from a local exchange company], wireless service**
39 **or similar service, that is used primarily for personal and familial use,**
40 **or the other persons living or residing with such person;**

41 **[(3)] (6) "Telephone solicitation", any voice [communication over a**
42 **telephone line from a live operator, through the use of ADAD equipment or by**
43 **other means], facsimile, graphic imaging, or data communication,**
44 **including text messaging communications, for the purpose of encouraging**
45 **the purchase or rental of, or investment in, property, goods or services, but does**
46 **not include communications:**

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

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

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

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

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

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

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

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

6 [2. This section shall take effect on July 1, 2001.]

407.1101. 1. The attorney general shall establish and provide for the
2 operation of a database to compile a list of telephone numbers of residential
3 subscribers who object to receiving telephone solicitations **and automated**
4 **calls**. [The attorney general shall have such database in operation no later than
5 July 1, 2001.]

6 2. [No later than January 1, 2001,] The attorney general shall promulgate
7 rules and regulations governing the establishment of a state no-call database as
8 he or she deems necessary and appropriate to fully implement the provisions of

9 sections 407.1095 to 407.1110. The rules and regulations shall include those
10 which:

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

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

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

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

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

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

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

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

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

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

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

 2. No person or entity who makes a telephone solicitation [to the
6 telephone line of a residential subscriber] **or automated call** in this state shall
7 knowingly use any method to block or otherwise circumvent [such] **any**
8 subscriber's use of a caller identification service.

 407.1107. 1. The attorney general may initiate proceedings relating to a
2 knowing violation or threatened knowing violation of section 407.1098 or
3 407.1104. Such proceedings may include, without limitation, an injunction, a civil
4 penalty up to a maximum of five thousand dollars for each knowing violation and
5 additional relief in any court of competent jurisdiction. The attorney general may
6 issue investigative demands, issue subpoenas, administer oaths and conduct
7 hearings in the course of investigating a violation of section 407.1098 or 407.1104.

 2. In addition to the penalties provided in subsection 1 of this section, any
9 person or entity that violates section 407.1104 shall be subject to all penalties,
10 remedies and procedures provided in sections 407.010 to 407.130. The remedies
11 available in this section are cumulative and in addition to any other remedies
12 available by law.

 3. Any person who has received more than one telephone solicitation **or**
14 **automated call** within any twelve-month period by or on behalf of the same
15 person or entity in violation of section 407.1098 or 407.1104 may either:

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

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

20 (3) Bring both such actions.

21 4. It shall be a defense in any action or proceeding brought pursuant to
22 this section that the defendant has established and implemented, with due care,
23 reasonable practices and procedures to effectively prevent telephone solicitations
24 **or automated calls** in violation of section 407.1098 or 407.1104.

25 5. No action or proceeding may be brought pursuant to this section:

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

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

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

34 7. The remedies, duties, prohibitions and penalties of sections 407.1095
35 to [407.1104] **407.1107** are not exclusive and are in addition to all other causes
36 of action, remedies and penalties provided by law.

37 8. No provider of telephone caller identification service shall be held liable
38 for violations of section 407.1098 or 407.1104 committed by other persons or
39 entities.

40 9. [Section 407.1104 and this section shall take effect on July 1, 2001.]
41 **When a residential subscriber does not answer a call defined in**
42 **paragraph (c) of subdivision (1) of section 407.1095, it shall not be**
43 **considered a violation of section 407.1098 or 407.1104 for the automated**
44 **message to be left on such residential subscriber's answering machine**
45 **or voice mail message system, provided such automated message is**
46 **preceded by an announcement of such message by the live operator.**

407.1108. 1. Any person or entity making a political solicitation
2 **to any residential subscriber in this state shall clearly state who paid**
3 **for the solicitation by using the words "This message is paid for by"**
4 **followed by the proper identification of the sponsor.**

5 (1) **In regard to any political solicitation paid for by a candidate,**
6 **as defined in section 130.011, RSMo, from the candidate's personal**
7 **funds, it shall be sufficient identification to state the first and last**
8 **name by which the candidate is known.**

9 (2) **In regard to any political solicitation paid for by a committee,**

10 it shall be sufficient identification to state the name of the committee
11 as required to be registered by subsection 5 of section 130.021, RSMo,
12 and the name and title of the committee treasurer serving at the time
13 the solicitation is made, and the political affiliation of the committee,
14 if any.

15 (3) In regard to any political solicitation paid for by a
16 corporation or other business entity, labor organization, or any other
17 organization not defined to be a committee by subdivision (7) of section
18 130.011, RSMo, and not organized especially for influencing one or more
19 elections, it shall be sufficient identification to state the name of the
20 entity.

21 (4) In regard to any solicitation paid for by an individual or
22 individuals, it shall be sufficient identification to state the name of the
23 individual or individuals.

24 2. No person or entity shall accept for the making of a political
25 solicitation or make such solicitation until the solicitation meets the
26 requirements of this section. Such person or entity shall maintain a
27 record of the name and address of the person or entity who purchased
28 or requested such services and the amount paid for such services. The
29 record required by this subsection shall be kept for a period of two
30 years after the date upon which payment was received for such
31 services.

32 3. Notwithstanding the provisions of sections 105.955 and 105.957,
33 RSMo, to the contrary, any residential subscriber who receives a
34 political solicitation in violation of this section may file a complaint
35 with the Missouri ethics commission. The Missouri ethics commission
36 shall address any complaint filed under this section in the same
37 manner as it addresses violations of subsection 8 of section 130.031,
38 RSMo.

39 4. Any committee making a political solicitation under the
40 provisions of this section shall be registered with the Missouri ethics
41 commission.

42 5. Any entity described in subdivision (3) of subsection 1 of this
43 section making an automated political solicitation, as defined in section
44 407.1095, RSMo, the cost of which individually or in aggregate exceeds
45 five hundred dollars, shall register with the secretary of state and the
46 Missouri ethics commission prior to making any automated political

47 solicitation. Any solicitation by the entity shall additionally state who
48 engaged the organization to make such solicitation.

Section 1. In addition to any other information provided to a
2 candidate at the time such candidate files for an elective office with the
3 secretary of state, the secretary of state shall provide a summary of the
4 provisions of section 407.1108 to the candidate.

Section 2. Any entity making a radio advertisement that is made
2 for the purpose of promoting, advertising, or campaigning for or
3 against a political candidate or political issue that gives out the phone
4 number of an elected official and requests that listeners contact the
5 official by telephone shall register with the Missouri ethics commission
6 and shall disclose the identity of the entity or person paying for such
7 advertisement.

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