

SECOND REGULAR SESSION

HOUSE BILL NO. 1652

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE PRATT.

4441L. 011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 407.1095, 407.1098, 407.1101, 407.1104, 407.1107, and 407.1110, RSMo, and to enact in lieu thereof five new sections relating to telephone calls.

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

Section A. Sections 407.1095, 407.1098, 407.1101, 407.1104, 407.1107, and 407.1110, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 407.1095, 407.1098, 407.1101, 407.1104, and 407.1107, to read as follows:

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

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

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

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

(c) **When the message is preceded by a live operator who obtains the subscriber's consent before the message is delivered;**

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

(e) **From school districts to students, parents, or employees;**

(f) **From employers to employees regarding employment-related matters;**

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.

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

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

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

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

29 [(2)] (4) "Residential subscriber", a person who, **for primarily personal and familial**
30 **use**, has subscribed to residential telephone service [from a local exchange company] , **wireless**
31 **service or similar service**, or the other persons living or residing with such person;

32 [(3)] (5) "Telephone solicitation", any voice [communication over a telephone line from
33 a live operator, through the use of ADAD equipment or by other means] , **facsimile, graphic**
34 **imaging, or data communication, including text messaging communications**, for the purpose
35 of encouraging the purchase or rental of, or investment in, property, goods or services, but does
36 not include communications:

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

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

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

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

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

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

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

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

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

407.1101. 1. The attorney general shall establish and provide for the operation of a
2 database to compile a list of telephone numbers of residential subscribers who object to receiving
3 telephone solicitations **and automated calls**. [The attorney general shall have such database in
4 operation no later than July 1, 2001.] **Such list is not intended to include any telephone
5 number primarily used for business or commercial purposes.**

6 2. [No later than January 1, 2001,] The attorney general shall promulgate rules and
7 regulations governing the establishment of a state no-call database as he or she deems necessary
8 and appropriate to fully implement the provisions of sections 407.1095 to 407.1110. The rules
9 and regulations shall include those which:

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

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

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

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

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

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

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

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

35 6. The attorney general may utilize moneys appropriated from general revenue and
36 moneys appropriated from the merchandising practices revolving fund established in section
37 407.140 for the purposes of establishing and operating the state no-call database.

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

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

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

7 **3. No person or entity shall call a residential subscriber using an automatic dialing**
8 **announcing device unless the device is designed and operated to disconnect within ten**
9 **seconds after the subscriber terminates the telephone call.**

 407.1107. 1. The attorney general may initiate proceedings relating to a knowing
2 violation or threatened knowing violation of section 407.1098 or 407.1104. Such proceedings
3 may 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 jurisdiction.
5 The attorney general may issue investigative demands, issue subpoenas, administer oaths and
6 conduct hearings in the course of investigating a violation of section 407.1098 or 407.1104.

7 2. In addition to the penalties provided in subsection 1 of this section, any person or
8 entity that violates section 407.1104 shall be subject to all penalties, remedies and procedures

9 provided in sections 407.010 to 407.130. The remedies available in this section are cumulative
10 and in addition to any other remedies available by law.

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

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

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

18 (3) Bring both such actions.

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

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

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

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

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

31 7. The remedies, duties, prohibitions and penalties of sections 407.1095 to [407.1104]
32 **407.1107** are not exclusive and are in addition to all other causes of action, remedies and
33 penalties provided by law.

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

36 9. [Section 407.1104 and this section shall take effect on July 1, 2001.] **When a**
37 **residential subscriber does not answer an automated call, it shall not be considered a**
38 **violation of section 407.1098 or 407.1104 for the automated message to be left on such**
39 **residential subscriber's answering machine or voice mail message system, provided such**
40 **automated message is preceded by an announcement of such message by the live operator.**

2 [407.1110. The attorney general shall establish an advisory group
3 composed of government entities, local telecommunications companies,
4 businesses, and senior citizen and other community advocates to compile and
5 promote a list of educational literature to help consumers understand their options
with regard to telephone solicitations. The attorney general shall work with local

6 exchange telecommunications companies to disseminate to their residential
7 subscribers information about the availability of and instructions about how to
8 request educational literature from the attorney general. The attorney general
9 may enter into agreements with those companies for the purpose of dissemination
10 of the educational literature. The attorney general shall include on his or her
11 Internet website information that informs residential subscribers of their rights
12 to be placed on a no-call list and the various methods, including notice to the
13 attorney general, of placing their names on this no-call list. The attorney general
14 shall have this literature developed for dissemination to the public no later than
15 January 1, 2001.]

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