

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 594
96TH GENERAL ASSEMBLY

4112L.02C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 301.221, 407.1095, 407.1098, 407.1101, 407.1104, and 407.1107, RSMo, and to enact in lieu thereof eight new sections relating to utilities.

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

Section A. Sections 301.221, 407.1095, 407.1098, 407.1101, 407.1104, and 407.1107, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 301.221, 392.415, 392.602, 407.1095, 407.1098, 407.1101, 407.1104, and 407.1107, to read as follows:

301.221. 1. The department shall file each application received by it with the required fee, and when satisfied that the applicant, if an individual, or each of the partners or principal officers of the applicant, if a partnership or a corporation, is of good moral character and that the applicant, so far as can be ascertained, has complied and will comply with the provisions of sections 301.217 to 301.229 and the laws of this state relating to registration of and certificates of title of vehicles, shall issue to the applicant a license to carry on and conduct the kind of businesses, enumerated in section 301.218, specified in the application at the address therein specified, until the next license renewal date.

2. When the application is being made for licensure as a salvage dealer, the applicant shall obtain a certification by a uniformed member or authorized or designated employee of the Missouri state highway patrol stationed in the troop area in which the applicant's place of business is located; except, that in counties of the first classification, certification may be performed by an officer of a metropolitan police department when the applicant's established place of business of salvage is in the metropolitan area where the certifying metropolitan police officer is employed. An applicant shall have a bona fide established place of business which

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 shall include a permanent enclosed building or structure, either owned in fee or leased and
17 actually occupied as a place of business by the applicant for:

- 18 (1) Selling used parts of or used accessories for vehicles; or
- 19 (2) Salvaging, wrecking or dismantling vehicles for resale of the parts thereof; or
- 20 (3) Rebuilding and repairing wrecked or dismantled vehicles; or
- 21 (4) Processing scrapped vehicles or vehicle parts.

22 3. The applicant's place of business shall be a place wherein the public may contact the
23 owner or operator, in person or by telephone, **including wireless telephone service**, at any
24 reasonable time, and wherein shall be kept and maintained the books, records, files, tools,
25 equipment and other matters required and necessary to conduct the business.

26 4. The application shall include a photograph, not to exceed eight inches by ten inches,
27 showing the building and business premises and shall accompany the initial application but will
28 not be required for subsequent renewals unless substantial changes have been made to the
29 building or business premises.

**392.415. 1. Upon request, a telecommunications carrier or commercial mobile
2 service provider as identified in 47 U.S.C. Section 332(d)(1) and 47 CFR Parts 22 or 24
3 shall provide call location information concerning the user of a telecommunications service
4 or a wireless communications service, in an emergency situation to a law enforcement
5 official or agency in order to respond to a call for emergency service by a subscriber,
6 customer, or user of such service, or to provide caller location information (or do a ping
7 locate) in an emergency situation that involves danger of death or serious physical injury
8 to any person where disclosure of communications relating to the emergency is required
9 without delay.**

10 **2. No cause of action shall lie in any court of law against any telecommunications
11 carrier or telecommunications service or commercial mobile service provider, or against
12 any telecommunications service or wireless communications service, or its officers,
13 employees, agents, or other specified persons, for providing any information, facilities, or
14 assistance to a law enforcement official or agency in accordance with the terms of this
15 section. Notwithstanding any other provision of law, nothing in this section prohibits a
16 telecommunications carrier or commercial mobile service provider from establishing
17 protocols by which such carrier or provider could voluntarily disclose call location
18 information.**

**392.602. 1. In order to promote, encourage, and facilitate the deployment of
2 electrical smart grid technologies, broadband communications and other similar advanced
3 technologies to benefit citizens in rural areas of the state of Missouri, telecommunications
4 and broadband service providers and rural electric cooperatives may attach, maintain, and**

5 operate their equipment providing such services on a telecommunications transmission or
6 rural electric cooperative distribution system owner's poles under the terms and conditions
7 specified in this section. No attachments shall be made without a written agreement
8 between the pole owner and the attaching entity. For purposes of this section,
9 "broadband" shall mean those types of technologies capable of providing high speed
10 internet access, as defined by the Federal Communications Commission, and shall include
11 but not be limited to digital subscriber line, cable modem, fiber optics, fixed wireless,
12 mobile or cellular broadband, broadband over power lines, and WiMax technologies.
13 Unless otherwise defined herein, this section shall be interpreted in a manner consistent
14 with the applicable Federal Communications Commission's rules for pole and conduit
15 attachments, and nothing in this section shall be construed as conferring any jurisdiction
16 or authority of the commission to regulate either the rates, terms, or conditions for
17 attachments or assert any jurisdiction or regulation over pole attachments under Section
18 224 of the Communications Act of 1934, as amended. The provisions of this section, except
19 for subsections 6, 8, and 9 shall apply to cable television providers and others transmitting
20 information by wire, radio, optical cable, electronic impulses, wireless technology, or other
21 means that are not capable of providing broadband, and in the case of such providers, the
22 law in effect prior to August 28, 2012, governing easements shall continue to apply.

23 2. Attaching entities shall inform the pole owner on whose system any equipment
24 is to be attached of its intent to attach and the specific location of the attachment prior to
25 attaching any such equipment. Unless otherwise agreed, the pole owner shall respond
26 within fifteen business days of the attaching party's notice, except in cases where the pole
27 owner is engaged in large-scale, emergency repairs or disaster response efforts, as to
28 whether the attachment may be made without modifications to the pole, or whether
29 additional requirements must be met prior to allowing the attachment in order to ensure
30 system safety, reliability, and pole integrity. All attachments shall be made in accordance
31 with safety and reliability codes applicable to the pole owner's telecommunications
32 transmission or rural electric cooperative distribution system as may be promulgated by
33 any governmental agency or instrumentality of appropriate jurisdiction. If an attaching
34 entity causes damages to, or improperly attaches equipment, such that it jeopardizes the
35 safety, integrity, reliability, or creates replacement issues with respect to the
36 telecommunications transmission or rural electric cooperative distribution system owner's
37 pole or system, the attaching entity shall, at a minimum, pay to the pole owner the
38 reasonable costs for any repairs or modification that are necessary to ensure the safe,
39 reliable, and effective operation of the telecommunications transmission or rural electric
40 cooperative distribution system and the attached equipment. In case of a conflict that

41 cannot otherwise be addressed through necessary make ready work, repairs, or pole
42 replacements, to be paid for by the attaching entity whose pole attachment or pole
43 attachment request is responsible for same, the continued reliability and safety of the pole
44 owner's telecommunications transmission or rural electric cooperative distribution system
45 shall have priority over the attachments. If an attachment is made without proper notice
46 to the pole owner, the parties may determine the penalty fee that shall be paid in addition
47 to the past-due pole attachment fee for each such attachment. If the parties cannot agree
48 on a reasonable penalty fee, the penalty for unauthorized attachments made after August
49 28, 2012, shall equal twenty-five percent of the pole attachment fee for a maximum period
50 of twelve months. Notwithstanding any provision in this subsection, any existing contract
51 provisions for pole attachment penalties shall remain in full force and effect until such
52 contract expires.

53 **3. The telecommunications transmission or rural electric cooperative distribution**
54 **system pole owner shall be entitled to a reasonable rate for permitting attachments to its**
55 **telecommunications transmission or rural electric cooperative distribution system poles.**
56 **Any pole attachment fee charged by a pole owner shall be agreed to between the parties**
57 **and shall be assessed on a per-pole basis. Such pole attachment fees shall not exceed the**
58 **reasonable costs to the pole owner's system attributable to the attachments based on the**
59 **current costs of such equipment calculated in a manner similar to the Federal**
60 **Communications Commission rules for pole and conduit attachments. In addition, if the**
61 **pole owner can provide competent evidence of additional cost-based inefficiencies in the**
62 **maintenance of its system due solely to the presence of the attached equipment, the pole**
63 **owner may increase the pole attachment fee by a corresponding reasonable amount in the**
64 **event that such costs are not paid to the pole owner through the operation of some other**
65 **provision of the agreement between the pole owner and the attaching party.**
66 **Notwithstanding the foregoing, any existing contracts for pole attachments shall remain**
67 **in full force and effect until such contracts expire. At the expiration of the term of an**
68 **existing contract, the pole attachment fee in the new agreement shall not be subject to any**
69 **increase greater than ten percent per year over any previously established pole attachment**
70 **fee, provided however, that if the pole owner can provide competent evidence that the**
71 **previously established pole attachment fee was set at fifty percent or more below the pole**
72 **owner's cost, the pole attachment fee in the new agreement then shall not be subject to an**
73 **increase greater than twenty percent per year over any previously established pole**
74 **attachment fee. In either case, the pole attachment fee in the new agreement shall not**
75 **exceed the pole owner's reasonable costs calculated in the manner specified in this**
76 **subsection.**

77 **4. If the parties cannot agree on a reasonable pole attachment fee, either party may**
78 **demand nonbinding mediation. If mediation is unsuccessful in producing an agreement,**
79 **the pole owner shall set the pole attachment fee under the limits set forth in subsection 3**
80 **of this section. If the attaching entity believes the pole attachment fee exceeds the**
81 **standards provided in this section, it may file a petition in the circuit court of any county**
82 **in which the pole owner maintains an office for the conduct of its business. The circuit**
83 **court shall have the right to hear evidence presented by the parties as to the use being**
84 **made by the attaching entity and as to the relevant costs and determine the pole attachment**
85 **fee to be paid for such attachments under the limits set forth in subsection 3 of this section.**

86 **5. If the pole owner files a suit to collect any moneys for pole attachments that it**
87 **believes is due and owing to the pole owner based on the terms of an agreement between**
88 **the pole owner and the attaching entity and the court determines that an amount is due**
89 **and owing to the pole owner, the pole owner may recover the amount owed for the pole**
90 **attachments, any interest and penalties on such amount, and reasonable attorney fees as**
91 **determined by a court of competent jurisdiction. Prior to filing any collection action, the**
92 **pole owner shall provide forty-five days' notice to the attaching entity that an amount is**
93 **owed and that the pole owner will file a collection action if payment is not made in full with**
94 **the notice period. Nothing in this section precludes the pole owner from pursuing any**
95 **available legal remedy or damages against an attaching entity that does not have a written**
96 **agreement for such attachments with the pole owner.**

97 **6. For all easements and right-of-way interests acquired prior to August 28, 2006,**
98 **provided the pole attachment or the replacement of existing lines or operating equipment**
99 **does not result in an additional unreasonable burden on or a diminution in value of the**
100 **property owner's property, no pole owner shall be required to secure by additional**
101 **consent, contract, or agreement or by condemnation the right to permit the attachment or**
102 **the replacement of lines or operating equipment of telecommunications service providers**
103 **or rural electric cooperatives upon the telecommunications transmission or rural electric**
104 **cooperative system owner's poles and related real property or easements from an owner**
105 **of property upon which a pole owner's telecommunications transmission or rural electric**
106 **cooperative system is located. Unless otherwise expressly prohibited in a recorded**
107 **easement or other legally binding document, the pole owner's authority to reasonably**
108 **permit such an attachment or to replace existing lines or operating equipment shall be**
109 **deemed to be consistent with and not beyond the scope of the principal, intended and**
110 **authorized use of the pole owner's poles, related real property or easements.**

111 **7. Nothing in this section shall be construed to deny a property owner reasonable**
112 **compensation for any increased interference with or a diminution in fair market value of**

113 the property owner's property directly resulting from any pole attachment or the
114 replacement of existing lines or operating equipment authorized under this section. If after
115 good faith negotiations the parties cannot agree on the amount of such reasonable
116 compensation, a property owner may file a claim for compensation for the use of lines,
117 wires, cable, poles, or other structures and for compensation related to the attachment or
118 the replacement of existing lines or operating equipment of telecommunications and
119 broadband service providers or rural electric cooperatives. In any such proceeding the
120 amount of damages, if any, shall be limited to an amount sufficient to compensate the
121 property owner for the diminution in fair market value of the property or the increased
122 interference with the owner's use of the property, if any, caused by any new or additional
123 physical attachments to or the replacement of lines or operating equipment of the
124 telecommunications transmission or rural electric cooperative system. Evidence of
125 revenues or profits derived by telecommunications service providers or rural electric
126 cooperatives from providing the services specified in subsection 1 of this section is not
127 admissible in any proceeding by the property owner to recover damages.

128 **8. In addition to the compensation provided for in subsection 7 of this section, a**
129 **landowner may request to receive from a rural electric cooperative pole owner a one-time**
130 **payment of five hundred dollars per mile prorated for the distance the attached line crosses**
131 **the landowner's property with a minimum payment of one hundred dollars per parcel**
132 **under the following circumstances:**

133 **(1) The rural electric cooperative's easement or right-of-way interest was acquired**
134 **prior to August 28, 2006, and does not expressly prohibit use of the rural electric**
135 **cooperative's facilities for broadband or similar communications use; and**

136 **(2) The size of the rural electric cooperative's transmission line located on the**
137 **landowner's property is 34.5 kilovolts or above and has broadband communications**
138 **facilities that are a part thereof or attached thereto; and**

139 **(3) The parties agree, or a court of competent jurisdiction has determined, that the**
140 **rural electric cooperative's then-existing easement or right-of-way interest does not permit**
141 **the attachment of broadband communications facilities or the use of electric facilities on**
142 **the easement or right-of-way interest for broadband communications purposes; and**

143 **(4) the landowner grants in writing an easement to the rural electric cooperative,**
144 **fully binding on the landowner's successors and assigns until abandoned by the rural**
145 **electric cooperative, that authorizes the use of the rural electric cooperative's electric**
146 **facilities for broadband communications purposes; and**

147 **(5) the landowner makes application for payment in writing to the cooperative**
148 **within one year of the effective date of this section if the broadband communications**

149 facilities were installed prior thereto, or if the broadband facilities were installed after the
150 effective date of this section, within one year of the initial installation of the broadband
151 communications facilities.

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153 The payment fixed hereunder, combined with any amounts calculated under subsection
154 7 of this section if any, shall be presumed to be the total amount owed for the use of the
155 electric easements or right-of-way interests for broadband communications purposes. This
156 presumption may only be rebutted by competent evidence that the broadband
157 communications use has caused an additional diminution in fair market value of the
158 landowner's property or additional interference with the owner's use of the property as
159 provided for under subsection 7 of this section.

160 **9. Nothing in this section shall be construed to deny a property owner reasonable**
161 **compensation for physical damages to the property owner's property directly resulting**
162 **from any pole attachment or the replacement of lines or operating equipment authorized**
163 **under this section. If after good faith negotiations the parties cannot agree on the amount**
164 **of such reasonable compensation, an owner of property upon which telecommunications**
165 **transmission or rural electric cooperative system owner's pole is located may file a petition**
166 **in the circuit court of the county in which the property is situated for the recovery for**
167 **physical property direct damages related to the attachment of the operating equipment of**
168 **an attaching entity and any other compensation to which such owner might be entitled.**

169 **10. Section 523.283 shall continue to govern and apply to all easements or**
170 **right-of-way interests acquired after August 28, 2006. Nothing in this section shall be**
171 **construed to abrogate or conflict with the provisions of chapter 523, nor to otherwise**
172 **confer the power of eminent domain on any entity not granted such power prior to August**
173 **28, 2012, nor to prevent a landowner from voluntarily entering into any agreement with**
174 **any other entity for use of the landowner's property provided that such agreement is**
175 **subordinate to and does not conflict with the property rights and uses authorized in any**
176 **easement or right-of-way interest previously granted by the landowner or by the**
177 **landowner's predecessors in interest.**

178 **11. Notwithstanding the provisions of section 1.140 to the contrary, the provisions**
179 **of this section are nonseverable, and if any provision is for any reason held to be invalid,**
180 **such decision shall invalidate all of the remaining provisions of this section.**

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

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

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

8 (3) "Telephone solicitation", any voice [communication over a telephone line from a live
9 operator, through the use of ADAD equipment or by other means] , **facsimile, short messaging**
10 **service (SMS), or multimedia messaging service (MMS) communications**, for the purpose
11 of encouraging the purchase or rental of, or investment in, property, goods or services, but does
12 not include communications:

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

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

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

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

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

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

27 (e) By a natural person responding to a referral, or working from his or her primary
28 residence, or a person licensed by the state of Missouri to carry out a trade, occupation or
29 profession who is setting or attempting to set an appointment for actions relating to that licensed
30 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.

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. [The attorney general shall have such database in operation no later than
4 July 1, 2001.] **Such list is not intended to include any telephone number primarily used for**
5 **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 or
12 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 will obtain access to the database as required to avoid calling the telephone numbers
19 of residential subscribers included in the database, including the cost assessed to that person or
20 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.

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, that is created
39 under the authority delegated in sections 407.1095 to 407.1110 shall become effective only if it
40 complies with and is subject to all of the provisions of chapter 536 and, if applicable, section
41 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the

42 general assembly pursuant to chapter 536 to review, to delay the effective date or to disapprove
43 and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority
44 and any rule proposed or adopted after 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 in this state shall knowingly use any method to block or otherwise
6 circumvent [such] **any** subscriber's use of a caller identification service.

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 within any
12 twelve-month period by or on behalf of the same person or entity in violation of section
13 407.1098 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 in violation of section 407.1098 or
22 407.1104.

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.]

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