

SECOND REGULAR SESSION

# SENATE BILL NO. 606

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHMITT.

Read 1st time January 5, 2012, and ordered printed.

TERRY L. SPIELER, Secretary.

4994S.011

## AN ACT

To repeal sections 407.1095, 407.1098, 407.1101, 407.1104, and 407.1107, 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Section A. Sections 407.1095, 407.1098, 407.1101, 407.1104, and 407.1107, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 407.1095, 407.1098, 407.1101, 407.1104, and 407.1107, to read as follows: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 this bill is not enacted and is intended to be omitted in the law.

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

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

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

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

36 [(2)] (4) "Residential subscriber", a person who, **for primarily personal**  
37 **and familial use**, has subscribed to residential telephone service [from a local  
38 exchange company], **wireless service or similar service**, or the other persons  
39 living or residing with such person;

40 [(3)] (5) "Telephone solicitation", any voice [communication over a  
41 telephone line from a live operator, through the use of ADAD equipment or by  
42 other means], **facsimile, graphic imaging, or data communication,**  
43 **including text messaging communications**, for the purpose of encouraging  
44 the purchase or rental of, or investment in, property, goods or services, but does  
45 not include communications:

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

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

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

55 the voice communication;

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

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

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

63 (e) By a natural person responding to a referral, or working from his or  
64 her primary residence, or a person licensed by the state of Missouri to carry out  
65 a trade, occupation or profession who is setting or attempting to set an  
66 appointment for actions relating to that licensed trade, occupation or profession  
67 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 [to the telephone line of] **or automated call to** 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.] **Such list is not intended to include any telephone number**  
6 **primarily used for business or commercial purposes.**

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

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

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

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

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

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

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

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

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

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

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

54 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**.

5 2. No person or entity who makes a telephone solicitation **or automated**  
6 **call** to [the telephone line of] a residential subscriber 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.

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

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.

8 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.

13 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.**

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