

SECOND REGULAR SESSION

# SENATE BILL NO. 613

93RD GENERAL ASSEMBLY

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INTRODUCED BY SENATORS ENGLER AND CROWELL.

Pre-filed December 1, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

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## AN ACT

To repeal sections 407.1095, 407.1098, 407.1101, and 407.1104, RSMo, and to enact in lieu thereof four new sections relating to the telemarketing no-call list.

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

Section A. Sections 407.1095, 407.1098, 407.1101, and 407.1104, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 407.1095, 407.1098, 407.1101, and 407.1104, to read as follows:

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

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

(2) "Facsimile subscriber", a resident or business who has subscribed to facsimile service;

(3) "Residential subscriber", a person who has subscribed to any residential telephone service [from a local exchange company], including wireless telephone service, or the other persons living or residing with such person;

~~(3)~~ (4) "Subscriber", a facsimile subscriber, wireless business subscriber, or a residential subscriber;

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

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

19 communications:

20 (a) To any [residential] subscriber with that subscriber's prior express  
21 invitation or permission;

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

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

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

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

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

37 (e) By a natural person responding to a referral, or working from his or  
38 her primary residence, or a person licensed by the state of Missouri to carry out  
39 a trade, occupation or profession who is setting or attempting to set an  
40 appointment for actions relating to that licensed trade, occupation or profession  
41 within the state or counties contiguous to the state;

42 **(6) "Wireless business subscriber", a person who, primarily for**  
43 **business use, has subscribed to any wireless telephone service.**

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

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. [The attorney general  
4 shall have such database in operation no later than July 1, 2001.]

5 2. [No later than January 1, 2001,] The attorney general shall

6 promulgate rules and regulations governing the establishment of a state no-call  
7 database as he or she deems necessary and appropriate to fully implement the  
8 provisions of sections 407.1095 to 407.1110. The rules and regulations shall  
9 include those which:

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

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

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

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

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

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

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

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

39 6. The attorney general may utilize moneys appropriated from general  
40 revenue and moneys appropriated from the merchandising practices revolving  
41 fund established in section 407.140 for the purposes of establishing and operating

42 the state no-call database.

43 7. Any rule or portion of a rule, as that term is defined in section 536.010,  
44 RSMo, that is created under the authority delegated in sections 407.1095 to  
45 407.1110 shall become effective only if it complies with and is subject to all of the  
46 provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This  
47 section and chapter 536, RSMo, are nonseverable and if any of the powers vested  
48 with the general assembly pursuant to chapter 536, RSMo, to review, to delay the  
49 effective date or to disapprove and annul a rule are subsequently held  
50 unconstitutional, then the grant of rulemaking authority and any rule proposed  
51 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, state clearly the identity of the person or entity initiating  
4 the call.

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

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