

SECOND REGULAR SESSION

SENATE BILL NO. 762

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATORS GRAHAM, GREEN, WILSON, CALLAHAN, BARNITZ, COLEMAN AND DAYS.

Pre-filed December 15, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

3804S.011

AN ACT

To amend chapter 407, RSMo, by adding thereto four new sections relating to a Missouri no-mail list, with an effective date for a certain section.

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

Section A. Chapter 407, RSMo, is amended by adding thereto four new
2 sections, to be known as sections 407.1164, 407.1167, 407.1170, and 407.1173, to
3 read as follows:

**407.1164. As used in sections 407.1164 to 407.1173, the following
2 terms mean:**

3 (1) "Bulk business information", information, including addresses,
4 telephone numbers, and names of officers, directors, members,
5 incorporators, organizers, managers, and other principals related to
6 and required in the filings submitted to the secretary of state by
7 business entities under chapters 347, 351, 354, 355, 356, 358, 359, and
8 417, RSMo, obtained from the secretary of state, through an authorized
9 computer account, in any bulk or multiple-listing database or data
10 extract format, whether electronic or otherwise;

11 (2) "Business", any corporation, including any professional
12 corporation, not-for-profit corporation, or other corporation
13 incorporated under Missouri law or authorized to do business in this
14 state, limited liability company, partnership, limited partnership,
15 venture doing business under a fictitious name, or other entity that
16 comes into existence by or submits a statutorily required filing to the
17 secretary of state;

18 (3) "Participant", a business that has notified the secretary of
19 state, in the manner prescribed by sections 407.1164 to 407.1173, of its
20 objection to receiving mail solicitation at an address or addresses

21 specified by such business or person;

22 (4) "Mail solicitation", any written or printed communication
23 sent, delivered, or received via the United States mail service for the
24 purpose of encouraging the purchase or rental of, or investment in,
25 property, goods, or services, but does not include communications:

26 (a) To any participant with that participant's prior express
27 invitation or permission;

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

31 (c) By or on behalf of any entity organized under Chapter
32 501(c)(3) of the United States Internal Revenue Code, while such entity
33 is engaged in fund-raising to support the charitable purpose for which
34 the entity was established;

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

407.1167. 1. No person or entity shall use bulk business
2 information to mail or deliver, or cause to be mailed or delivered, any
3 mail solicitation to the mailing address or addresses of any participant
4 who has given notice to the secretary of state, in accordance with rules
5 promulgated under section 407.1170, of such participant's objection to
6 receiving mail solicitations.

7 2. This section shall become effective on July 1, 2007.

407.1170. 1. The secretary of state shall establish and provide for
2 the operation of a database to compile a list of mailing addresses of
3 participants who object to receiving mail solicitations. The secretary
4 of state shall have such database in operation no later than July 1,
5 2007.

6 2. No later than January 1, 2007, the secretary of state shall
7 promulgate rules and regulations governing the establishment of a
8 state no-mail database as he or she deems necessary and appropriate
9 to implement fully the provisions of sections 407.1164 to 407.1173. The
10 rules and regulations shall include those that:

11 (1) Specify the methods by which each participant may give
12 notice to the secretary of state or its contractor of its objection to
13 receiving such solicitations, or revocation of such notice. There shall
14 be no cost to the participant for joining the database;

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

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

19 (4) Specify the methods by which any person or entity desiring
20 to make mail solicitations will obtain access to the database as required
21 to avoid mailing or delivering mail solicitations to the addresses of
22 participants included in the database, including the cost assessed to the
23 person or entity for access to the database;

24 (5) Specify such other matters relating to the database that the
25 secretary of state deems desirable.

26 Any rule or portion of a rule, as that term is defined in section 536.010,
27 RSMo, that is created under the authority delegated in this section
28 shall become effective only if it complies with and is subject to all of
29 the provisions of chapter 536, RSMo, and, if applicable, section 536.028,
30 RSMo. This section and chapter 536, RSMo, are nonseverable and if any
31 of the powers vested with the general assembly pursuant to chapter
32 536, RSMo, to review, to delay the effective date, or to disapprove and
33 annul a rule are subsequently held unconstitutional, then the grant of
34 rulemaking authority and any rule proposed or adopted after August
35 28, 2006, shall be invalid and void.

36 3. Information contained in the database established under this
37 section shall be used only for the purpose of compliance with this
38 section and section 407.1167 or in a proceeding or action under section
39 407.1173. Such information shall not be considered a public record
40 under chapter 610, RSMo.

41 4. The secretary of state may utilize moneys appropriated from
42 general revenue and moneys appropriated from the secretary of state's
43 technology trust fund account established in section 28.160, RSMo, for
44 the purposes of establishing and operating the state no-mail database.

 407.1173. 1. The secretary of state shall refer all known or
2 suspected violations of section 407.1167 to the attorney general for the
3 initiation of proceedings.

4 2. The attorney general may initiate proceedings relating to a
5 knowing violation or attempted knowing violation of section
6 407.1167. Such proceedings may seek, without limitation, an injunction,
7 a civil penalty up to a maximum of five thousand dollars for each
8 knowing violation, and additional relief in any court of competent
9 jurisdiction. The attorney general may issue investigative demands,
10 issue subpoenas, administer oaths, and conduct hearings in the course
11 of investigating a violation of section 407.1167.

12 3. Any person who has received more than one mail solicitation
13 within any twelve-month period by or on behalf of the same person or
14 entity in violation of section 407.1167 may either:

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

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

19 (3) Bring both such actions.

20 4. It shall be a defense in any action or proceeding brought
21 under this section that the defendant has established and implemented,
22 with due care, reasonable practices and procedures to effectively
23 prevent mail solicitations in violation of section 407.1167.

24 5. No action or proceeding may be brought under this section:

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

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

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

35 7. The remedies, duties, prohibitions, and penalties of sections
36 407.1164 to 407.1173 are not exclusive and are in addition to all other
37 causes of action, remedies, and penalties provided by law.

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