

FIRST REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NO. 228**  
**92ND GENERAL ASSEMBLY**

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Reported from the Committee on Job Creation and Economic Development, February 12, 2003, with recommendation that the House Committee Substitute for House Bill No. 228 Do Pass.

STEPHEN S. DAVIS, Chief Clerk

0539L.05C

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**AN ACT**

To amend chapter 407, RSMo, by adding thereto five new sections relating to unsolicited commercial electronic mail, with penalty provisions.

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

Section A. Chapter 407, RSMo, is amended by adding thereto five new sections, to be  
2 known as sections 407.1135, 407.1138, 407.1141, 407.1144, and 407.1147, to read as follows:

**407.1135. As used in sections 407.1135 to 407.1147, the following words and phrases**  
2 **mean:**

3       (1) "Electronic mail address", a destination, commonly expressed as a sequence of  
4 characters, to which electronic mail may be sent or delivered;

5       (2) "Initiate the transmission", the action by the original sender of an unsolicited  
6 electronic mail solicitation that results in receipt by a subscriber of that solicitation,  
7 including electronic mail received by a subscriber and sent to a third party at the request  
8 of or direction of the original sender;

9       (3) "Ongoing business relationship", shall include:

10       (a) Electronic mail in response to an inquiry where the subscriber has requested  
11 further information from the business and has provided an e-mail address;

12       (b) Electronic mail sent on the basis of an ongoing business relationship that has  
13 not been terminated by the subscriber by requesting removal from the business's electronic  
14 mail list. For the purpose of removal from the business's electronic mail list, the business  
15 entity shall provide a means of removal from the entity's electronic mail list in accordance  
16 with section 407.1123; or

17       (c) Electronic mail from a separate legal entity with which a subscriber has an

18 established business relationship on the basis that the entity shares the brand name and  
19 the subscriber, and has not otherwise instructed the entity cease further unsolicited  
20 electronic mail in accordance with section 407.1123;

21 (4) "Subscriber", any person, corporation, partnership, or other entity who has  
22 subscribed to an interactive computer service and has been designated with one or more  
23 electronic mail addresses;

24 (5) "Unsolicited electronic mail", any communication through an interactive  
25 computer service for the purpose of advertising for or encouraging the purchase or rental  
26 of, or investment in, property, goods or services, including any message soliciting a  
27 recipient to complete such prohibited communications, other than a communication  
28 responding to an electronic mail message initiated by the subscriber. An electronic mail  
29 communication to a subscriber that has an ongoing business relationship with the sender  
30 or from a person licensed by the state of Missouri to carry out a trade, occupation, or  
31 profession who is setting or attempting to set an appointment for actions related to that  
32 licensed trade, occupation, or profession shall not be considered unsolicited electronic mail  
33 for purposes of sections 407.1135 to 407.1147. An electronic mail communication to a  
34 subscriber that was in a direct business relationship, not including the parent or subsidiary  
35 business organization of the subscriber, with the sender within the previous twelve months  
36 shall not be considered unsolicited electronic mail for purposes of sections 407.1135 to  
37 407.1147.

407.1138. No person or entity shall, after January 1, 2005, initiate the transmission  
2 of any unsolicited electronic mail to any subscriber in this state who has given notice to the  
3 attorney general, in accordance with rules promulgated pursuant to section 407.1141, of  
4 such subscriber's objection to receiving unsolicited electronic mail.

407.1141. 1. The attorney general shall establish and provide for the operation of  
2 a state database to compile a list of electronic mail addresses of subscribers who object to  
3 receiving unsolicited electronic mail. The attorney general shall have such database in  
4 operation no later than January 1, 2005.

5 2. Information contained in the database established pursuant to this section shall  
6 be used only for the purpose of compliance with this section or in a proceeding or action  
7 pursuant to sections 407.1135 to 407.1147. Such information shall not be considered a  
8 public record pursuant to chapter 610, RSMo.

9 3. The general assembly may appropriate moneys from appropriate funds  
10 including the merchandising practices revolving fund established in section 407.140 for the  
11 purposes of establishing and operating the state database.

12 4. The attorney general shall notify any Internet service provider of any report

13 received by him or her that a subscriber of that Internet service provider has determined  
14 that access to a child pornography site or sites is available through that provider. The  
15 Internet service provider shall be allowed a period not greater than six months in which  
16 to block access to such site or sites. Failure to block access within such period shall be a  
17 violation pursuant to section 407.1147.

18 5. No later than July 1, 2004, the attorney general shall promulgate rules governing  
19 the establishment and administration of a state database as necessary and appropriate to  
20 fully implement the provisions of sections 407.1135 to 407.1147.

21 6. No rule or portion of a rule promulgated pursuant to the authority of this section  
22 shall become effective unless it has been promulgated pursuant to chapter 536, RSMo.

2 407.1144. Any person or entity who initiates the transmission of any electronic mail  
3 message to any subscriber in this state for the purpose of encouraging the purchase or  
4 rental of, or investment in, property, goods or services, other than a communication  
5 responding to an electronic mail message initiated by the subscriber, shall, at the beginning  
6 of such message, clearly state the identity of the person or entity initiating the transmission.

7 407.1147. 1. The attorney general may initiate proceedings relating to a knowing  
8 violation or threatened knowing violation of sections 407.1135 to 407.1147. Such  
9 proceedings may include, without limitation, an injunction, a civil penalty up to a  
10 maximum of five thousand dollars for each knowing violation and additional relief in any  
11 court of competent jurisdiction. The attorney general may issue investigative demands,  
12 issue subpoenas, administer oaths, and conduct hearings in the course of investigating a  
13 violation of sections 407.1135 to 407.1147.

14 2. In addition to the penalties provided in subsection 1 of this section, any person  
15 or entity that violates sections 407.1135 to 407.1147 shall be subject to all penalties,  
16 remedies and procedures provided in sections 407.010 to 407.130. The remedies available  
17 in this section are cumulative and in addition to any other remedies available by law.

18 3. It shall be a defense in any action or proceeding brought pursuant to this section  
19 that the defendant has established and implemented, with due care, reasonable practices  
20 and procedures to effectively prevent the transmission of unsolicited electronic mail  
21 messages in violation of section 407.1138.

2 4. No action or proceeding may be brought pursuant to this section:

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

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

7 5. A court of this state may exercise personal jurisdiction over any nonresident or

22 his or her executor or administrator as to an action or proceeding authorized by this  
23 section in the manner otherwise provided by law.

24         6. No telecommunications utility or Internet service provider that carries an  
25 unsolicited electronic mail message over its network shall be held liable for violations of  
26 section 407.1138 or 407.1144 when another person or entity initiates the transmission of  
27 that message.