

FIRST REGULAR SESSION
[PERFECTED]
HOUSE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 228
92ND GENERAL ASSEMBLY

Taken up for Perfection March 11, 2003.

House Substitute for House Committee Substitute for House Bill No. 228 ordered Perfected and printed, as amended.

STEPHEN S. DAVIS, Chief Clerk

0539L.07P

AN ACT

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

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) "Commercial electronic mail", an electronic mail message sent for the purpose
4 of encouraging the purchase or rental of, or investment in, property, goods, or services;

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

7 (3) "Initiate the transmission", the action by the original sender of an unsolicited
8 electronic mail solicitation that results in receipt by a subscriber of that solicitation,
9 including electronic mail received by a subscriber which was sent by a third party at the
10 request of or direction of the original sender;

11 (4) "Ongoing business relationship", shall include:

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

14 (b) Electronic mail sent on the basis of an ongoing business relationship that has

15 not been terminated by the subscriber by requesting removal from the business's electronic
16 mail list. For the purpose of removal from the business's electronic mail list, the business
17 entity shall provide a means of removal from the entity's electronic mail list in accordance
18 with section 407.1123; or

19 (c) Electronic mail from a separate legal entity with which a subscriber has an
20 established business relationship on the basis that the entity shares the brand name and
21 the subscriber, and has not otherwise instructed the entity cease further unsolicited
22 electronic mail in accordance with section 407.1123;

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

26 (6) "Unsolicited commercial electronic mail", a commercial electronic mail message
27 sent without the consent of the recipient, by a person with whom the recipient does not
28 have an ongoing business relationship, other than:

29 (a) An electronic mail message responding to an inquiry from a subscriber who has
30 requested further information and provided an electronic e-mail address;

31 (b) An electronic mail message initiated by a person licensed by the state of
32 Missouri to carry out a trade, occupation, or profession who is setting or attempting to set
33 an appointment for actions related to that licensed trade, occupation, or profession;

34 (c) An electronic mail message sent to a subscriber that was in a direct business
35 relationship, not including the parent or subsidiary business organization of the
36 subscriber, with the sender within the previous twelve months;

37 (d) An electronic mail communication to a subscriber from an original sender
38 which is a bank, farm credit service, or credit union shall not be considered unsolicited
39 electronic mail for purposes of section 407.1135 to 407.1147.

40 (e) An electronic mail message that is sent to a subscriber from an original sender
41 who has a personal relationship with the subscriber; or

42 (f) An electronic mail message from the original sender that is indirectly received
43 by a subscriber when another subscriber voluntarily forwards that communication without
44 the knowledge of the original sender and without any consideration provided by the
45 original sender to the subscriber forwarding the communication.

2 407.1138. No person or entity shall, after January 1, 2005, initiate the transmission
3 of any unsolicited electronic mail to any subscriber in this state who has given notice to the
4 attorney general, in accordance with rules promulgated pursuant to section 407.1141, of
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
11 the purposes of establishing and operating the state database.

12 4. Any entity that obtains the database from the attorney general pursuant to
13 subsection 1 of this section may distribute the database to its employees or any independent
14 contractor for use in the independent contractor's business, provided that the independent
15 contractor is regularly associated with the entity and is engaged in the same or similar
16 business as the entity.

17 5. The attorney general shall notify a web site operator of a pornography site or
18 sites residing on the web site operator's server after a review by the attorney general
19 determining the identified site or sites contain child pornography as defined in section
20 573.010, RSMo. For the purpose of this subsection, the attorney general shall notify in
21 writing the person designated by the web site operator to receive such notice, or, in the
22 absence of a designation by the web site operator, the chief legal officer of the web site
23 operator, or, in the absence of a chief legal officer, the executive officer of the web site
24 operator. If the web site operator takes action to remove the alleged pornography from
25 its servers after receiving such notice, it shall be immune from suit for its decision to do so.
26 If the web site operator does not promptly remove the alleged pornography, the attorney
27 general may seek a judicial determination that the material is pornography and an order
28 requiring its removal from the web site operator's server within thirty days of the issuance
29 of the order. Failure to remove pornography in response to such an order shall be
30 punished as contempt of court and subject to criminal penalties as set out in sections
31 573.025 and 573.035, RSMo.

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

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

407.1144. 1. Any person or entity who initiates the transmission of any electronic

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

6 2. It shall be a violation of this section for any person that sends an unsolicited
7 commercial electronic mail message to fail to use the exact characters "ADV:" as the first
8 four characters in the subject line of the unsolicited commercial electronic mail message.

9 3. It shall be a violation of this section for any person that sends an unsolicited
10 commercial electronic mail message that contains adult material or references a website
11 that contains adult material to fail to use the exact characters "XXX:" as the first four
12 characters in the subject line of the unsolicited commercial electronic mail message that
13 contains adult material.

407.1147. 1. The attorney general may initiate proceedings relating to a knowing
2 violation or threatened knowing violation of sections 407.1135 to 407.1147. Such
3 proceedings may include an injunction, a civil penalty up to a maximum of five thousand
4 dollars for each knowing violation, not to exceed twenty-five thousand dollars per day, in
5 any court of competent jurisdiction. The attorney general may issue investigative
6 demands, issue subpoenas, administer oaths, and conduct hearings in the course of
7 investigating a violation of sections 407.1135 to 407.1147.

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

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

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

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

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

21 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 electronic mail service provider shall be liable for violations of sections

25 **407.1138 or 407.1144 due to the fact that the provider:**

26 **(1) Is an intermediary between the sender and recipient in the transmission of**
27 **commercial electronic mail that violates sections 407.1138 and 407.1144; or**

28 **(2) Provides transmission of unsolicited commercial electronic mail over the**
29 **provider's computer network or facilities; or**

30 **(3) Takes any voluntary action in good faith to block the receipt or transmission**
31 **through its service of any electronic mail messages that it believes is, or will be, sent in**
32 **violation of sections 407.1135 to 407.1147, so long as the provider promptly notified the**
33 **attorney general of any commercial electronic mail message that it believes are being sent**
34 **in violation of such sections.**