

FIRST REGULAR SESSION  
[TRULY AGREED TO AND FINALLY PASSED]  
CONFERENCE COMMITTEE SUBSTITUTE FOR  
SENATE COMMITTEE SUBSTITUTE FOR  
HOUSE SUBSTITUTE FOR  
HOUSE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NO. 228**  
**92ND GENERAL ASSEMBLY**

0539L.14T

2003

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**AN ACT**

To amend chapter 407, RSMo, by adding thereto four 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 four new sections, to be  
2 known as sections 407.1135, 407.1144, 407.1147, and 573.052, 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 commercial electronic mail may be sent or delivered;

7 (3) "Established business relationship", an existing relationship formed by a  
8 voluntary communication between a person or entity and the recipient with or without an  
9 exchange of consideration, on the basis of an inquiry, application, purchase, or use by the  
10 recipient regarding products or services offered by such person or entity;

11 (4) "Initiate the transmission", the action by the original sender of an unsolicited  
12 commercial electronic mail solicitation that results in receipt by a subscriber of that  
13 solicitation, including commercial electronic mail received by a subscriber which was sent  
14 by a third party at the request of or direction of the original sender;

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

18 (6) "Unsolicited commercial electronic mail", a commercial electronic mail message  
19 sent without the consent of the recipient, by a person with whom the recipient does not  
20 have an established business relationship, other than:

21 (a) A commercial electronic mail message responding to an inquiry from a  
22 subscriber who has requested further information and provided a commercial electronic  
23 mail address;

24 (b) A commercial electronic mail message initiated by a person licensed by the state  
25 of Missouri to carry out a trade, occupation, or profession who is setting or attempting to  
26 set an appointment for actions related to that licensed trade, occupation, or profession;

27 (c) A commercial electronic mail message sent to a subscriber that was in an  
28 established business relationship with the sender, including a parent or subsidiary business  
29 organization of the sender that shares the same brand name, within the previous twenty-  
30 four months unless the recipient requests to be removed from the entity's electronic mail  
31 list in accordance with section 407.1123;

32 (d) A commercial electronic mail communication sent to a subscriber from an  
33 original sender which is a bank, farm credit service, or credit union shall not be considered  
34 unsolicited commercial electronic mail for purposes of section 407.1135 to 407.1147;

35 (e) A commercial electronic mail message that is sent to a subscriber from an  
36 original sender who has a personal relationship with the subscriber; or

37 (f) A commercial electronic mail message from the original sender that is indirectly  
38 received by a subscriber when another subscriber voluntarily forwards that  
39 communication without the knowledge of the original sender and without any

40 consideration provided by the original sender to the subscriber forwarding the  
41 communication.

407.1144. 1. It shall be a violation of this section for any person or entity who  
2 initiates the transmission of any commercial electronic mail message to any subscriber in  
3 this state to provide a false identity or false or misleading information in the subject line.

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

7 3. It shall be a violation of this section for any person that sends an unsolicited  
8 commercial electronic mail message that contains obscene material as defined in section  
9 573.010, RSMo, or references a web site that contains obscene material to fail to use the  
10 exact characters "ADV:ADLT" as the first eight characters in the subject line of the  
11 unsolicited commercial electronic mail message that contains obscene material.

12 4. It shall be a violation of this section to initiate the transmission of any unsolicited  
13 commercial electronic mail to a subscriber in this state who has notified a sender not to  
14 initiate the transmission of any further unsolicited commercial electronic mail. For  
15 purposes of this subsection, a subscriber is deemed to have notified a sender not to initiate  
16 the transmission of any further unsolicited commercial electronic mail if the subscriber:

17 (1) Replies to a sender at the valid sender-operated return electronic mail address  
18 or the sender's toll-free telephone number with directions not to initiate the transmission  
19 of any further unsolicited commercial electronic mail as provided in section 407.1123; or

20 (2) Otherwise gives actual notice to a sender not to initiate the transmission of  
21 further unsolicited commercial electronic mail; or

22 (3) Notifies the attorney general if a sender fails to provide a toll-free telephone  
23 number or valid sender-operated return electronic mail address as required by section  
24 407.1123.

25 5. The attorney general shall promulgate rules and regulations as he or she deems  
26 necessary and appropriate to fully implement the provisions of sections 407.1135 to  
27 407.1147.

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

7 2. In addition to the penalties provided in subsection 1 of this section, any person

8 or entity that violates sections 407.1135 to 407.1147 shall be subject to all penalties,  
9 remedies and procedures provided in sections 407.010 to 407.130. The remedies available  
10 in this section are cumulative and in addition to any other remedies available by law. Any  
11 civil penalties recovered pursuant to this section shall be credited to the merchandising  
12 practices revolving fund.

13 3. It shall be a defense in any action or proceeding brought pursuant to this section  
14 that the defendant has established and implemented, with due care, reasonable practices  
15 and procedures to effectively prevent the transmission of unsolicited commercial electronic  
16 mail messages in violation of section 407.1144.

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

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

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

22 5. A court of this state may exercise personal jurisdiction over any nonresident or  
23 his or her executor or administrator as to an action or proceeding authorized by this  
24 section in the manner otherwise provided by law.

25 6. No telecommunications utility, electronic mail service provider, or internet  
26 service provider shall be liable for violations of section 407.1144 when:

27 (1) It is an intermediary between the sender and recipient in the transmission of an  
28 email that violates sections 407.1135 to 407.1147; or

29 (2) It provides transmission of unsolicited commercial electronic mail messages over  
30 the provider's computer network or facilities; or

31 (3) It voluntarily takes action in good faith to block the receipt or transmission  
32 through its service of any electronic mail advertisements that it believes are, or will be, sent  
33 in violation of sections 407.1135 to 407.1147.

573.052. Upon receipt of any information that child pornography as defined in  
2 section 573.010 is contained on a web site, the attorney general shall investigate such  
3 information. If the attorney general has probable cause to believe the web site contains  
4 child pornography, the attorney general shall notify a web site operator of any child  
5 pornography site residing on that web site operator's server, in writing. If the web site  
6 operator promptly, but in no event longer than five days after receiving notice, removes  
7 the alleged pornography from its server, and so long as the web site operator is not the  
8 purveyor of such child pornography, it shall be immune from civil liability. If the web site  
9 operator does not promptly remove the alleged pornography, the attorney general may  
10 seek an injunction pursuant to section 573.070 to remove the child pornography site from

- 11 **the web site operator's server. This section shall not be construed to create any defense to**
- 12 **any criminal charges brought pursuant to this chapter or chapter 568, RSMo.**