

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
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HOUSE BILL NO. 228

92ND GENERAL ASSEMBLY

Reported from the Committee on Commerce and the Environment, May 1, 2003, with recommendation that the Senate Committee Substitute do pass.

0539S.11C

TERRY L. SPIELER, Secretary.

AN ACT

To amend chapter 407, RSMo, by adding thereto four 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 four new sections,
2 to be 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
2 and phrases mean:**

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

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

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

14 (4) "Initiate the transmission", the action by the original sender of an
15 unsolicited commercial electronic mail solicitation that results in receipt by

16 a subscriber of that solicitation, including commercial electronic mail
17 received by a subscriber which was sent by a third party at the request of or
18 direction of the original sender;

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

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

26 (a) A commercial electronic mail message responding to an inquiry
27 from a subscriber who has requested further information and provided a
28 commercial electronic mail address;

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

33 (c) A commercial electronic mail message sent to a subscriber that was
34 in a direct business relationship with the sender, including a parent or
35 subsidiary business organization of the sender, within the previous thirty-six
36 months unless the recipient requests to be removed from the entity's
37 electronic mail list in accordance with section 407.1123;

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

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

45 (f) A commercial electronic mail message from the original sender that
46 is indirectly received by a subscriber when another subscriber voluntarily
47 forwards that communication without the knowledge of the original sender
48 and without any consideration provided by the original sender to the
49 subscriber forwarding the communication.

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

4 **misleading information in the subject line.**

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

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

407.1147. 1. The attorney general may initiate proceedings relating to
2 **a knowing violation of sections 407.1135 to 407.1147. Such proceedings may**
3 **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**
5 **per day, in any court of competent jurisdiction. The attorney general may**
6 **issue investigative demands, issue subpoenas, administer oaths, and conduct**
7 **hearings in the course of investigating a violation of sections 407.1135 to**
8 **407.1147.**

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

14 **3. No action or proceeding may be brought pursuant to this section:**

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

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

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

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

- 27 **(1) Another person or entity initiates the transmission of that message;**
28 **or**
29 **(2) It is an intermediary between the sender and recipient in the**
30 **transmission of an email that violates this section; or**
31 **(3) It provides transmission of unsolicited commercial electronic mail**
32 **messages over the provider's computer network or facilities; or**
33 **(4) It voluntarily takes action in good faith to block the receipt or**
34 **transmission through its service of any electronic mail advertisements that**
35 **it believes is, or will be, sent in violation of sections 407.1135 to 407.1147.**

573.052. Upon receipt of any information that child pornography as
2 **defined in section 573.010 is contained on a website, the attorney general**
3 **shall investigate such information. If the attorney general has probable cause**
4 **to believe the web site contains child pornography, the attorney general shall**
5 **notify a web site operator of any child pornography site residing on that web**
6 **site operator's server, in writing. If the web site operator promptly, but in no**
7 **event longer than five days after receiving notice, removes the alleged**
8 **pornography from its server, and so long as the web site operator is not the**
9 **purveyor of such child pornography, it shall be immune from civil liability. If**
10 **the web site operator does not promptly remove the alleged pornography, the**
11 **attorney general may seek an injunction pursuant to section 573.070 to**
12 **remove the child pornography site from the web site operator's server. This**
13 **section shall not be construed to create any defense to any criminal charges**
14 **brought pursuant to this chapter or chapter 568, RSMo.**