

FIRST REGULAR SESSION

# HOUSE BILL NO. 640

## 93RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES PEARCE (Sponsor), PAGE, LeVOTA, McGHEE, WETER,  
MEADOWS, BROWN (30), MUNZLINGER, KRAUS, BROWN (50), DARROUGH,  
JOLLY, AND FRASER (Co-sponsors).

Read 1<sup>st</sup> time February 24, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

1534L>011

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### AN ACT

To repeal section 407.1135, RSMo, and to enact in lieu thereof 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Section A. Section 407.1135, RSMo, is repealed and five new sections enacted in lieu  
2 thereof, to be known as sections 407.1135, 407.1144, 407.1148, 407.1170, and 407.1173, to read  
3 as follows:

407.1135. As used in sections 407.1135 to [407.1141] **407.1173**, the following words  
2 and phrases mean:

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

5 (2) "**Domain name**", any alphanumeric designation that is registered with or  
6 assigned by any domain name registrar, domain name registry, or other domain name  
7 registration authority as part of an electronic address on the Internet;

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

10 (4) "**Electronic mail service provider**", any person, including an Internet service  
11 provider, that is an intermediary in sending and receiving electronic mail and that provides  
12 to the public electronic mail accounts or online user accounts from which electronic mail  
13 may be sent;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14            [(3)] (5) "Established business relationship", an existing relationship formed by a  
15 voluntary communication between a person or entity and the recipient with or without an  
16 exchange of consideration, on the basis of an inquiry, application, purchase, or use by the  
17 recipient regarding products or services offered by such person or entity;

18            (6) **"Header information", the source, destination, and routing information**  
19 **attached to an electronic mail message, including the originating domain name, the**  
20 **originating address, and technical information that authenticates the sender of an**  
21 **electronic mail message for computer network security or computer network management**  
22 **purposes;**

23            [(4)] (7) "Initiate the transmission **or initiate**", the action by the original sender of an  
24 unsolicited commercial electronic mail solicitation that results in receipt by a subscriber of that  
25 solicitation, including commercial electronic mail received by a subscriber which was sent by  
26 a third party at the request of or direction of the original sender;

27            (8) **"Materially falsify", to alter or conceal in a manner designed to impair the**  
28 **ability of a recipient of an electronic mail message, an electronic mail service provider**  
29 **processing an electronic mail message on behalf of a recipient, a person alleging a violation**  
30 **of this section, or a law enforcement agency, to identify, locate, or respond to the person**  
31 **that initiated the electronic mail message or to investigate an alleged violation of this**  
32 **section;**

33            (9) **"Multiple", more than ten commercial electronic mail messages initiated during**  
34 **a twenty-four-hour period, more than one hundred commercial electronic mail messages**  
35 **initiated during a thirty-day period, or more than one thousand commercial electronic mail**  
36 **messages initiated during a one-year period;**

37            (10) **"Recipient", a person who receives a commercial electronic mail message at**  
38 **any one of the following receiving addresses:**

39            (a) **A receiving address furnished by an electronic mail service provider that bills**  
40 **for furnishing and maintaining that receiving address to a mailing address within this**  
41 **state;**

42            (b) **A receiving address ordinarily accessed from a computer located within this**  
43 **state or by a person domiciled within this state;**

44            (11) **"Routine conveyance", the transmission, routing, relaying, handling, or**  
45 **storing, through an automated technical process, of an electronic mail message for which**  
46 **another person has identified the recipients or provided the recipient address;**

47            [(5)] (12) "Subscriber", any person, corporation, partnership, or other entity who has  
48 subscribed to an interactive computer service and has been designated with one or more  
49 electronic mail addresses;

50           **(13) "Transactional or relationship message", an electronic mail message the**  
51 **primary purpose of which is to do any of the following:**

52           **(a) Facilitate, complete, or confirm a commercial transaction that the recipient has**  
53 **previously agreed to enter into with the sender;**

54           **(b) Provide warranty information, product recall information, or safety or security**  
55 **information with respect to a commercial product or service used or purchased by the**  
56 **recipient;**

57           **(c) Provide notification concerning a change in the terms or features of a change**  
58 **in the recipient's standing or status with respect to or at regular periodic intervals, account**  
59 **balance information or other type of account statement with respect to a subscription**  
60 **membership account, loan, or comparable ongoing commercial relationship involving the**  
61 **ongoing purchase or use by the recipient of products or services offered by the sender;**

62           **(d) Provide information directly related to an employment relationship or related**  
63 **benefit plan in which the recipient is currently involved, participating, or enrolled;**

64           **(e) Deliver goods or services, including product updates or upgrades that the**  
65 **recipient is entitled to receive under the terms of a transaction that the recipient has**  
66 **previously agreed to enter into with the sender;**

67           **[(6)] (14) "Unsolicited commercial electronic mail", a commercial electronic mail**  
68 **message sent without the consent of the recipient, by a person with whom the recipient does not**  
69 **have an established business relationship, other than:**

70           **(a) A commercial electronic mail message responding to an inquiry from a subscriber**  
71 **who has requested further information and provided a commercial electronic mail address;**

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

75           **(c) A commercial electronic mail message sent to a subscriber that was in an established**  
76 **business relationship with the sender, including a parent or subsidiary business organization of**  
77 **the sender that shares the same brand name, within the previous twenty-four months unless the**  
78 **recipient requests to be removed from the entity's electronic mail list in accordance with section**  
79 **407.1123;**

80           **(d) A commercial electronic mail communication sent to a subscriber from an original**  
81 **sender which is a bank, farm credit service, or credit union shall not be considered unsolicited**  
82 **commercial electronic mail for purposes of sections 407.1135 to 407.1141;**

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

85           **(f) A commercial electronic mail message from the original sender that is indirectly**

86 received by a subscriber when another subscriber voluntarily forwards that communication  
87 without the knowledge of the original sender and without any consideration provided by the  
88 original sender to the subscriber forwarding the communication.

**407.1144. 1. A person violates the provisions of this section if such person initiates  
2 the transmission of a commercial electronic mail message from or to a computer in this  
3 state and such person knowingly:**

4 **(1) Materially falsifies header information in multiple commercial electronic mail  
5 messages;**

6 **(2) Registers using information that materially falsifies the identity of the actual  
7 registrant, for five or more electronic mail accounts or online user accounts or two or more  
8 domain names and initiates the transmission of multiple commercial electronic mail  
9 messages from one or more of those accounts or domain names; or**

10 **(3) Misrepresents the right to use five or more Internet protocol addresses and  
11 initiates the transmission of multiple commercial electronic mail messages from one or  
12 more of those addresses.**

13 **2. Any person who violates the provisions of this section or section 407.1148 is  
14 subject to the penalties and remedies set out in sections 407.020 to 407.140.**

**407.1148. 1. A person commits the crime of aggravated fraudulent transmission  
2 of multiple commercial electronic mail messages if such person knowingly:**

3 **(1) Uses information that materially falsifies the identity of one or more of the  
4 actual registrant, registers for twenty or more electronic mail accounts or online user  
5 accounts or ten or more domain names, and initiates or conspires to initiate the  
6 transmission of multiple commercial electronic mail messages from one or more of the  
7 accounts or domain names;**

8 **(2) Initiates more than two hundred fifty commercial electronic mail messages  
9 during any twenty-four-hour period, two thousand five hundred commercial electronic  
10 mail messages during any thirty-day period, or twenty-five thousand commercial electronic  
11 mail messages during any one-year period;**

12 **(3) Commits any offense pursuant to section 407.1144 resulting in a loss to the  
13 victim or victims of the violation of five hundred dollars or more, or the aggregate value  
14 of the property or services obtained by the person as a result of the violation is five  
15 hundred dollars or more;**

16 **(4) Assists in any violation of section 407.1144 by providing or selecting any  
17 electronic mail addresses to which the commercial electronic mail messages were  
18 transmitted, if the person knew that the electronic mail addresses of the recipients were  
19 obtained using an automated means from an Internet web site or proprietary online service**

20 operated by another person, and that web site or online service included, at the time the  
21 electronic mail addresses were obtained, a notice stating that the operator of that web site  
22 or online service will not transfer addresses maintained by that web site or online service  
23 to any other party for the purposes of initiating the transmission of, or enabling others to  
24 initiate the transmission of, electronic mail messages;

25 (5) Assists in any violation of section 407.1144 by providing or selecting any  
26 electronic mail addresses of the recipients obtained using an automated means that  
27 generates possible electronic mail addresses by randomly combining names, letters, or  
28 numbers.

29 2. Aggravated fraudulent transmission of electronic mail messages is a class C  
30 felony.

407.1170. 1. The attorney general, or any electronic mail service provider that is  
2 injured by a violation of section 407.1144 or 407.1148, may bring a civil action seeking  
3 relief from any person alleged to have violated either section. The civil action may be  
4 commenced at any time within two years of the date after the last act that forms the basis  
5 for the civil action.

6 2. In a civil action brought by the attorney general under this section, the court may  
7 award temporary, preliminary, or permanent injunctive relief. The court may also impose  
8 a civil penalty against the offender, as the court considers just, in an amount that is the  
9 lesser of twenty-five thousand dollars for each day a violation occurs, or not less than two  
10 dollars but not more than eight dollars for each commercial electronic mail message  
11 initiated in violation of section 407.1144 or 407.1148. If a person is found to have  
12 committed multiple violations under section 407.1144 or 407.1148 the court shall assess a  
13 separate civil penalty for each violation.

14 3. In a civil action brought by an electronic mail service provider under subsection  
15 1 of this section for a violation of this section, the court may award temporary,  
16 preliminary, or permanent injunctive relief, and may also award damages in an amount  
17 equal to the greater of the following:

18 (1) The sum of the actual damages incurred by the electronic mail service provider  
19 as a result of a violation of this section, plus any assets of the offender that are attributable  
20 to a violation of this section and attorney fees;

21 (2) Statutory damages, as the court considers just, in an amount that is the lesser  
22 of twenty-five thousand dollars for each day a violation occurs, or not less than two dollars  
23 but not more than eight dollars for each commercial electronic mail message initiated in  
24 violation of this section.

25 4. In assessing damages awarded under this section, the court may consider

26 whether the offender has established and implemented, with due care, commercially  
27 reasonable practices and procedures designed to effectively prevent the violation.

28       **5. Any equipment, software, or other technology of a person who violates this**  
29 **section that is used or intended to be used to violate section 407.1144 or 407.1148, and any**  
30 **real or personal property that constitutes or is traceable to the proceeds obtained from**  
31 **violation of this section is contraband and is subject to seizure and forfeiture under section**  
32 **513.607, RSMo.**

**407.1173. Nothing in sections 407.1144 to 407.1173 shall be construed:**

2       **(1) To require an electronic mail service provider to block, transmit, route, relay,**  
3 **handle, or store certain types of commercial electronic mail messages;**

4       **(2) To prevent or limit, in any way, an electronic mail service provider from**  
5 **adopting a policy regarding commercial electronic mail, including a policy of declining to**  
6 **transmit certain types of commercial electronic mail messages, or from enforcing such**  
7 **policy through technical means, through contract, or pursuant to any remedy available**  
8 **under any other federal, state, or local criminal or civil law.**