

FIRST REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 640

93RD GENERAL ASSEMBLY

Reported from the Committee on Utilities April 4, 2005 with recommendation that House Committee Substitute for House Bill No. 640 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

Reported from the Committee on Rules April 6, 2005 with recommendation that House Committee Substitute for House Bill No. 640 Do Pass with no time limit for debate.

Taken up for Perfection April 20, 2005. House Committee Substitute for House Bill No. 640 ordered Perfected and printed.

STEPHEN S. DAVIS, Chief Clerk

1534L.02P

AN ACT

To repeal section 407.1135, RSMo, and to enact in lieu thereof six 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Section A. Section 407.1135, RSMo, is repealed and six new sections enacted in lieu thereof, to be known as sections 407.1135, 407.1144, 407.1148, 407.1170, 407.1173, and 407.1174, to read as follows:

407.1135. As used in sections 407.1135 to [407.1141] **407.1174**, the following words and phrases mean:

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

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

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

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.

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;**

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, or is designed to**
25 **result by a subscriber of that solicitation, including commercial electronic mail received by a**
26 **subscriber which was sent by 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. This term does not include the act of initiating a commercial electronic mail**
33 **message through a third party agent or contractor unless the header or registration**
34 **information at issue is materially false with respect to both the third party and the person**
35 **on whose behalf it is sending the electronic mail message;**

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

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

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

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

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

50 [(5)] (12) "Subscriber", any person, corporation, partnership, or other entity who has
51 subscribed to an interactive computer service and has been designated with one or more
52 electronic mail addresses;

53 [(6)] (13) "Unsolicited commercial electronic mail", a commercial electronic mail
54 message sent without the consent of the recipient, by a person with whom the recipient does not
55 have an established business relationship, other than:

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

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

61 (c) A commercial electronic mail message sent to a subscriber that was in an established
62 business relationship with the sender, including a parent or subsidiary business organization of
63 the sender that shares the same brand name, within the previous twenty-four months unless the
64 recipient requests to be removed from the entity's electronic mail list in accordance with section
65 407.1123;

66 (d) A commercial electronic mail communication sent to a subscriber from an original
67 sender which is a bank, farm credit service, or credit union shall not be considered unsolicited
68 commercial electronic mail for purposes of sections 407.1135 to [407.1141] **407.1174**;

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

71 (f) A commercial electronic mail message from the original sender that is indirectly
72 received by a subscriber when another subscriber voluntarily forwards that communication
73 without the knowledge of the original sender and without any consideration provided by the
74 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 an unsolicited commercial electronic mail message from or to a
3 computer in this 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:**

- 7 (a) The identity of the actual registrant;
- 8 (b) For five or more electronic mail accounts or online user accounts or two or more
- 9 domain names; and
- 10 (c) Initiates the transmission of multiple commercial electronic mail messages from
- 11 one or more of those accounts or domain names; or
- 12 (3) Misrepresents the right to use five or more Internet protocol addresses and
- 13 initiates the transmission of multiple commercial electronic mail messages from one or
- 14 more of those addresses.

15 2. Any person who violates the provisions of this section or section 407.1148 is

16 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 unsolicited commercial electronic mail messages if such person knowingly:**

- 3 (1) Uses information that materially falsifies:
- 4 (a) The identity of one or more of the actual registrant;
- 5 (b) Registers for twenty or more electronic mail accounts or online user accounts
- 6 or ten or more domain names; and
- 7 (c) Initiates or conspires to initiate the transmission of multiple commercial
- 8 electronic mail messages from one or more of the accounts or domain names;
- 9 (2) Materially falsifies and initiates more than two hundred fifty commercial
- 10 electronic mail messages during any twenty-four-hour period, two thousand five hundred
- 11 commercial electronic mail messages during any thirty-day period, or twenty-five thousand
- 12 commercial electronic mail messages during any one-year period;
- 13 (3) Commits any offense pursuant to section 407.1144 resulting in a loss to the
- 14 victim or victims of the violation of five hundred dollars or more, or the aggregate value
- 15 of the property or services obtained by the person as a result of the violation is five
- 16 hundred dollars or more;
- 17 (4) Assists in any violation of section 407.1144 by providing or selecting any
- 18 electronic mail addresses to which the commercial electronic mail messages were
- 19 transmitted, if the person knew that the electronic mail addresses of the recipients were
- 20 obtained using an automated means from an Internet web site or proprietary online service
- 21 operated by another person, and that web site or online service included, at the time the
- 22 electronic mail addresses were obtained, a notice stating that the operator of that web site
- 23 or online service will not transfer addresses maintained by that web site or online service
- 24 to any other party for the purposes of initiating the transmission of, or enabling others to
- 25 initiate the transmission of, electronic mail messages;

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

30 2. Aggravated fraudulent transmission of electronic mail messages is a class C
31 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.

407.1174. If a person sends unsolicited commercial electronic mail or maintains a
2 database for the purpose of sending unsolicited commercial electronic mail, the person
3 shall provide a procedure that allows recipients, at no cost to the recipients, to do both of
4 the following:

5 (1) Remove themselves from the sender's electronic mail address lists so the
6 recipients are not included in future electronic mailings from the sender. The sender shall
7 have three business days to remove the recipient's electronic mail address from the sender's
8 electronic mail address lists so the recipients are not included in future electronic mailings
9 from the sender; and

10 (2) Restrict the future sale or transfer of the recipient's electronic mail address
11 information to another person or organization for the purpose of sending commercial
12 electronic mail.