

SECOND REGULAR SESSION

HOUSE BILL NO. 2372

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES HARRIS (23) (Sponsor), GEORGE, DARROUGH,
OXFORD AND MEINERS (Co-sponsors).

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D. ADAM CRUMBLISS, Chief Clerk

5436L.01I

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.

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Section A. Section 407.1135, RSMo, is repealed and five new sections enacted in lieu thereof, to be known as sections 407.1135, 407.1185, 407.1188, 407.1191, and 407.1194, to read as follows:

407.1135. As used in sections 407.1135 to 407.1141 **and 407.1185 to 407.1194**, 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) "Electronic mail address", a destination, commonly expressed as a sequence of characters, to which commercial electronic mail may be sent or delivered;

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

(4) "Established business relationship", an existing relationship formed by a voluntary communication between a person or entity and the recipient with or without an exchange of

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.

13 consideration, on the basis of an inquiry, application, purchase, or use by the recipient regarding
14 products or services offered by such person or entity;

15 [(4)] (5) "Initiate the transmission **or initiate**", the action by the original sender of an
16 unsolicited commercial electronic mail solicitation that results in receipt, **or is designed to**
17 **result** by a subscriber of that solicitation, including commercial electronic mail received by a
18 subscriber which was sent by a third party at the request of or direction of the original sender;

19 (6) "**Recipient**", a person who receives a commercial electronic mail message at any
20 **one of the following receiving addresses:**

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

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

26 [(5)] (7) "Subscriber", any person, corporation, partnership, or other entity who has
27 subscribed to an interactive computer service and has been designated with one or more
28 electronic mail addresses;

29 [(6)] (8) "Unsolicited commercial electronic mail", a commercial electronic mail
30 message sent without the consent of the recipient, by a person with whom the recipient does not
31 have an established business relationship, other than:

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

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

37 (c) A commercial electronic mail message sent to a subscriber that was in an established
38 business relationship with the sender, including a parent or subsidiary business organization of
39 the sender that shares the same brand name, within the previous twenty-four months unless the
40 recipient requests to be removed from the entity's electronic mail list in accordance with section
41 407.1123;

42 (d) A commercial electronic mail communication sent to a subscriber from an original
43 sender which is a bank, farm credit service, or credit union shall not be considered unsolicited
44 commercial electronic mail for purposes of sections 407.1135 to 407.1141 **and 407.1185 to**
45 **407.1194;**

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

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

407.1185. 1. A person is guilty of a class A misdemeanor if he or she:

2 (1) Uses a computer or computer network with the intent to falsify or forge
3 electronic mail transmission information or other routing information in any manner in
4 connection with the transmission of unsolicited commercial electronic mail through or into
5 the computer network of an electronic mail service provider or its subscribers; or

6 (2) Knowingly sells, gives, or otherwise distributes or possesses with the intent to
7 sell, give, or distribute software that:

8 (a) Is primarily designed or produced for the purpose of facilitating or enabling the
9 falsification of electronic mail transmission information or other routing information;

10 (b) Has only limited commercially significant purpose or use other than to facilitate
11 or enable the falsification of electronic mail transmission information or other routing
12 information; or

13 (c) Is marketed by that person acting alone or with another for use in facilitating
14 or enabling the falsification of electronic mail transmission information or other routing
15 information.

16 2. A person commits the crime of aggravated fraudulent transmission of unsolicited
17 commercial electronic mail messages if such person:

18 (1) Violates the provisions of subsection 1 of this section; and

19 (2) The volume of unsolicited commercial electronic mail messages transmitted
20 exceeded ten thousand attempted recipients in any twenty-four-hour period, one hundred
21 thousand attempted recipients in any thirty-day period, or one million attempted recipients
22 in any one-year period; or

23 (3) The revenue generated from a specific unsolicited commercial electronic mail
24 message transmission exceeded one thousand dollars or the total revenue generated from
25 all unsolicited commercial electronic mail messages transmitted to any electronic mail
26 service provider exceeded fifty thousand dollars.

27 3. Aggravated fraudulent transmission of electronic mail messages is a class C
28 felony.

29 4. A person is guilty of a class C felony if he or she knowingly hires, employs, uses,
30 or permits any minor to assist in the transmission of unsolicited commercial electronic mail
31 messages in violation of subsection 1 or 2 of this section.

407.1188. 1. The attorney general, or any electronic mail service provider that is injured by a violation of section 407.1185, may bring a civil action seeking relief from any person alleged to have violated such section. The civil action may be commenced at any time within two years of the date after the last act that forms the basis for the civil action.

2. In a civil action brought by the attorney general under this section, the court may award temporary, preliminary, or permanent injunctive relief. The court may also impose a civil penalty against the offender, as the court considers just, in an amount that is the lesser of twenty-five thousand dollars for each day a violation occurs, or not less than two dollars but not more than eight dollars for each commercial electronic mail message initiated in violation of section 407.1185. If a person is found to have committed more than one violation under section 407.1185, the court shall assess a separate civil penalty for each violation.

3. In a civil action brought by an electronic mail service provider under subsection 1 of this section for a violation of section 407.1185, the court may award temporary, preliminary, or permanent injunctive relief, and may also award damages in an amount equal to the greater of the following:

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

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

4. In assessing damages awarded under this section, the court may consider whether the offender has established and implemented, with due care, commercially reasonable practices and procedures designed to effectively prevent the violation.

5. Any equipment, software, or other technology of a person who violates this section that is used or intended to be used to violate section 407.1185, and any real or personal property that constitutes or is traceable to the proceeds obtained from violation of this section is contraband and is subject to seizure and forfeiture under section 513.607, RSMo.

407.1191. Nothing in sections 407.1185 to 407.1194 shall be construed:

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

(2) To prevent or limit, in any way, an electronic mail service provider from 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 under any remedy available under
8 any other federal, state, or local criminal or civil law.

407.1194. 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.

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