

# MISSOURI

Sections 407.1120 through 407.1132 of the *Missouri Revised Statutes* govern the transmission of unsolicited commercial electronic mail. Those code sections:

- Require a sender to provide a mechanism by which a recipient can ask not to be contacted;
- Make it illegal to help another person commit a violation;
- Entitle a recipient or service provider to sue a violator for damages; and
- Classify a violation as an unfair trade practice.

Sections 407.1135 through 407.1141 of the *Missouri Revised Statutes* also govern the transmission of unsolicited commercial electronic mail. Those code sections:

- Forbid a sender to give a false identity in, or put misleading information in the subject line of, an email sent to a Missouri resident;
- Require the sender to put a label in the subject line of an email containing advertising or obscene material;
- Forbid the sending of email to a person who has asked not to be contacted;
- Authorize the Attorney General to file suit seeking civil penalties and an injunction against future violations; and
- Classify a violation as an unfair trade practice.

## **Mo. Ann. Stat.**

### **§407.1120. Definitions Pertaining to Commercial Electronic Mail**

As used in §§407.1120 to 407.1132, the following terms mean:

- (1) "Assist the transmission", actions taken by a person to provide substantial assistance or support which enables any person to formulate, compose, send, originate, initiate or transmit a commercial electronic mail message;
- (2) "Commercial electronic mail message", an electronic mail message sent for the purpose of promoting real property, goods or services for sale or lease. Commercial electronic mail message does not include:
  - (2)(a) An electronic mail message to which an interactive computer service provider has attached an advertisement in exchange for free use of an electronic mail account, when the user has agreed to such an arrangement;
  - (2)(b) An electronic mail message between persons with a prior business relationship; or
  - (2)(c) An electronic mail message between persons with a personal relationship;
- (3) "Electronic mail address", a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered;
- (4) "Initiate the transmission", the action by the original sender of an electronic mail message, but not the action by any intervening interactive computer service that may handle or retransmit the message, unless such intervening interactive computer service assists in the transmission of an electronic mail message when it knows, or consciously avoids knowing, that the person initiating the transmission is engaged, or intends to engage, in any act or practice that violates §§407.1120 to 407.1132;

(5) "Interactive computer service", any information service, system or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions;

(6) "Internet domain name", a globally unique, hierarchical reference to an Internet host or service, assigned through centralized Internet naming authorities, comprising a series of character strings separated by periods, with the right-most string specifying the top of the hierarchy.

*Created by Senate Bill 763, Laws of 2000, §A, effective August 28, 2000.*

#### **§407.1123. Unsolicited Commercial Electronic Mail**

1. No person or entity conducting business in this state shall electronically mail (e-mail) or cause to be e-mailed, documents consisting of advertising material for the lease, sale, rental, gift offer or other disposition of any realty, goods, services or extensions of credit without a toll-free telephone number or valid sender operated return e-mail address that the recipient of the unsolicited documents may call or e-mail to notify the sender not to e-mail any further unsolicited documents.

2. It is an unlawful merchandising practice pursuant to §407.020 to assist in the transmission of an unsolicited commercial electronic mail message when the person providing the assistance knows, or consciously avoids knowing, that the initiator of the commercial electronic mail message is engaged, or intends to engage, in any act or practice that violates §§407.1120 to 407.1132.

3. As used in this section, the phrase "assist or initiate the transmission" does not include or refer to the transmission of any commercial electronic mail message by a telecommunications utility or Internet service provider to the extent that the telecommunications utility or Internet service provider merely carries such transmission over its network.

*Created by Senate Bill 763, Laws of 2000, §A, effective August 28, 2000.*

#### **§407.1126. Violation Classified as Unfair Trade Practice**

It is an unlawful merchandising practice pursuant to §407.020 *[which generally prohibits fraud or deception in connection with sales or advertising]* to violate the provisions of §§407.1120 to 407.1132.

*Created by Senate Bill 763, Laws of 2000, §A, effective August 28, 2000.*

#### **§407.1129. Recipient's and Service Provider's Remedies**

1. Damages to the recipient of a commercial electronic mail message sent in violation of §§407.1120 to 407.1132 are \$500, or actual damages, whichever is greater.

2. Damages to an interactive computer service resulting from a violation of §§407.1120 to 407.1132 are \$1,000, or actual damages, whichever is greater.

*Created by Senate Bill 763, Laws of 2000, §A, effective August 28, 2000.*

### **§407.1132. Service Provider's Rights; Federal Preemption**

1. An interactive computer service may, upon its own initiative, block the receipt or transmission through its service of any commercial electronic mail that it reasonably believes is, or will be, sent in violation of §§407.1120 to 407.1132.
2. No interactive computer service may be held liable for any action voluntarily taken in good faith to block the receipt or transmission through its service of any commercial electronic mail which it reasonably believes is, or will be, sent in violation of §§407.1120 to 407.1132.
3. §§407.1120 to 407.1132 shall be of no force and effect on and after the date that federal law is enacted that prohibits or otherwise regulates the transmission of unsolicited commercial electronic mail messages.

*Created by Senate Bill 763, Laws of 2000, §A, effective August 28, 2000.*

### **§407.1135. Definitions Pertaining to Electronic Mail**

As used in §§407.1135 to 407.1141, 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) "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 consideration, on the basis of an inquiry, application, purchase, or use by the recipient regarding products or services offered by such person or entity;
- (4) "Initiate the transmission", the action by the original sender of an unsolicited commercial electronic mail solicitation that results in receipt by a subscriber of that solicitation, including commercial electronic mail received by a subscriber which was sent by a third party at the request of or direction of the original sender;
- (5) "Subscriber", any person, corporation, partnership, or other entity who has subscribed to an interactive computer service and has been designated with one or more electronic mail addresses;
- (6) "Unsolicited commercial electronic mail", a commercial electronic mail message sent without the consent of the recipient, by a person with whom the recipient does not have an established business relationship, other than:
  - (6)(a) A commercial electronic mail message responding to an inquiry from a subscriber who has requested further information and provided a commercial electronic mail address;
  - (6)(b) A commercial electronic mail message initiated by a person licensed by the state of Missouri to carry out a trade, occupation, or profession who is setting or attempting to set an appointment for actions related to that licensed trade, occupation, or profession;
  - (6)(c) A commercial electronic mail message sent to a subscriber that was in an established business relationship with the sender, including a parent or subsidiary business organization of the sender that shares the same brand

name, within the previous 24 months unless the recipient requests to be removed from the entity's electronic mail list in accordance with §407.1123;

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

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

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

*Created by House Bill 228, §A, Laws of 2003, effective August 28, 2003.*

### **§407.1138. Prohibited Practices Involving Commercial Electronic Mail**

1. It shall be a violation of this section for any person or entity who initiates the transmission of any commercial electronic mail message to any subscriber in this state to provide a false identity or false or misleading information in the subject line.
2. It shall be a violation of this section for any person that sends an unsolicited commercial electronic mail message to fail to use the exact characters "ADV:" as the first four characters in the subject line of the unsolicited commercial electronic mail message.
3. It shall be a violation of this section for any person that sends an unsolicited commercial electronic mail message that contains obscene material as defined in §573.010, or references a web site that contains obscene material to fail to use the exact characters "ADV:ADLT" as the first eight characters in the subject line of the unsolicited commercial electronic mail message that contains obscene material.
4. It shall be a violation of this section to initiate the transmission of any unsolicited commercial electronic mail to a subscriber in this state who has notified a sender not to initiate the transmission of any further unsolicited commercial electronic mail. For purposes of this subsection, a subscriber is deemed to have notified a sender not to initiate the transmission of any further unsolicited commercial electronic mail if the subscriber:
  - 4.(1) Replies to a sender at the valid sender-operated return electronic mail address or the sender's toll-free telephone number with directions not to initiate the transmission of any further unsolicited commercial electronic mail as provided in §407.1123; or
  - 4.(2) Otherwise gives actual notice to a sender not to initiate the transmission of further unsolicited commercial electronic mail; or
  - 4.(3) Notifies the attorney general if a sender fails to provide a toll-free telephone number or valid sender-operated return electronic mail address as required by §407.1123.
5. The attorney general shall promulgate rules and regulations as he or she deems necessary and appropriate to fully implement the provisions of §§407.1135 to 407.1141.

*Created by House Bill 228, §A, Laws of 2003, effective August 28, 2003.*

### **§407.1141. Action by Attorney General; Violations Classified as Unfair Trade**

## **Practices; Defenses to Liability**

1. The attorney general may initiate proceedings relating to a knowing violation of §§407.1135 to 407.1141. Such proceedings may include an injunction, a civil penalty up to a maximum of \$5,000 for each knowing violation, not to exceed \$25,000 per day, in any court of competent jurisdiction. The attorney general may issue investigative demands, issue subpoenas, administer oaths, and conduct hearings in the course of investigating a violation of §§407.1135 to 407.1141.

2. In addition to the penalties provided in subsection (1) of this section, any person or entity that violates §§407.1135 to 407.1141 shall be subject to all penalties, remedies and procedures provided in §§407.010 to 407.130 [*which govern unfair and deceptive trade practices*]. The remedies available in this section are cumulative and in addition to any other remedies available by law. Any civil penalties recovered pursuant to this section shall be credited to the merchandising practices revolving fund.

3. It shall be a defense in any action or proceeding brought pursuant to this section that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent the transmission of unsolicited commercial electronic mail messages in violation of §407.1138.

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

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

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

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

6. No telecommunications utility, electronic mail service provider, or Internet service provider shall be liable for violations of §407.1138 when:

6.(1) It is an intermediary between the sender and recipient in the transmission of an e-mail that violates §§407.1135 to 407.1141; or

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

6.(3) It voluntarily takes action in good faith to block the receipt or transmission through its service of any electronic mail advertisements that it believes are, or will be, sent in violation of §§407.1135 to 407.1141.

*Created by House Bill 228, §A, Laws of 2003, effective August 28, 2003.*