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Place On Calendar

HOUSE FILE

448

BY COMMITTEE ON COMMERCE AND
REGULATION

(SUCCESSOR TO HF 324)

Passed House, Date 3/23/99 (P. 792) Passed Senate, Date 4/20/99 (P. 1220)
Vote: Ayes 96 Nays 0 Vote: Ayes 50 Nays 0
Approved May 26, 1999

A BILL FOR

1 An Act prohibiting the transmission of electronic mail which
2 includes advertisements in certain circumstances and providing
3 for monetary damages, criminal penalties, and other remedies.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 448

1 Section 1. NEW SECTION. 714D.1 RESTRICTIONS ON USE OF
2 ELECTRONIC MAIL -- DAMAGES -- EXCEPTIONS.

3 1. For purposes of this section, unless the context
4 otherwise requires:

5 a. "Advertisement" means the same as defined in section
6 714.16, subsection 1.

7 b. "Computer" means an electronic device that performs
8 logical, arithmetical, and memory functions by manipulations
9 of electronic or magnetic impulses, and includes all input,
10 output, processing, storage, and communication facilities
11 which are connected or related to the computer, including a
12 computer network. As used in this paragraph, "computer"
13 includes any central processing unit, front-end processing
14 unit, miniprocessor, or microprocessor, and related peripheral
15 equipment such as data storage devices, document scanners,
16 data entry terminal controllers, and data terminal equipment
17 and systems for computer networks.

18 c. "Computer network" means a set of related, remotely
19 connected devices and communication facilities, including two
20 or more computers with capability to transmit data among them
21 through communication facilities.

22 d. "Electronic mail" means a message, file, data, or other
23 electronic information that is transmitted through a local,
24 regional, or global network, regardless of whether the
25 message, file, data, or other electronic information is
26 viewed, stored for retrieval at some future time, printed, or
27 filtered or screened by a computer program that is designed or
28 intended to filter or screen such message, file, data, or
29 other electronic information.

30 e. "Interactive computer service" means an information
31 service, system, or access software provider that provides or
32 enables computer access by multiple users to a computer
33 server, including specifically a service, system, or provider
34 that provides access to the internet, and such systems
35 operated or services offered by a library or an educational

1 institution.

2 f. "Recipient" means a person who receives electronic
3 mail.

4 2. a. A person shall not transmit or cause to be
5 transmitted to a recipient an item of electronic mail that
6 includes an advertisement unless any of the following applies:

7 (1) The person has a preexisting business or personal
8 relationship with the recipient.

9 (2) The recipient has expressly consented to receive the
10 item of electronic mail from the person.

11 (3) The electronic mail is readily identifiable as a
12 promotional advertisement, or contains a clear and conspicuous
13 statement indicating that an item of the electronic mail is an
14 advertisement, and clearly and conspicuously includes both of
15 the following:

16 (a) The legal name, complete address, and electronic mail
17 address of the person transmitting the electronic mail.

18 (b) A notice that the recipient may decline to receive
19 additional electronic mail that includes an advertisement from
20 the person transmitting the electronic mail and the procedures
21 for declining such electronic mail.

22 b. A person shall not transmit or cause to be transmitted
23 to a recipient an item of electronic mail that includes false
24 or misleading information in the subject line of the
25 electronic mail.

26 3. A person who transmits or causes to be transmitted
27 electronic mail in violation of subsection 2 is liable to the
28 recipient for monetary damages in an amount equal to any
29 actual damages caused by such transmittal, or five hundred
30 dollars, whichever is greater. In addition to the monetary
31 damages, the recipient is also entitled to costs and
32 reasonable attorney fees.

33 4. In addition to any other remedy under this section, a
34 recipient may also petition the district court for an
35 injunction to prohibit the person from transmitting to the

1 recipient any other electronic mail that includes an
2 advertisement.

3 5. This section does not apply to either of the following:

4 a. A person who provides users with access to a computer
5 network, and as part of that service, transmits electronic
6 mail on behalf of those users, unless such person transmits
7 electronic mail that includes an advertisement which the
8 person prepared or caused to be prepared.

9 b. Electronic mail which is accessed by a recipient
10 voluntarily including, but not limited to, electronic mail
11 accessed by the recipient from an electronic bulletin board.

12 6. An interactive computer service is not liable under
13 this section for an action voluntarily taken in good faith to
14 block or prevent the receipt or transmission through its
15 service of any commercial electronic mail which is reasonably
16 believed to be in violation of subsection 2.

17 Sec. 2. NEW SECTION. 714D.2 PROVIDING FALSE INFORMATION
18 ON POINT OF ORIGIN OR ROUTING.

19 1. A person shall not initiate a communication for
20 delivery of an advertisement, as defined in section 714.16,
21 subsection 1, that contains false information as to the point
22 of origin or routing of the communication.

23 2. a. A person who unknowingly commits an act in
24 violation of subsection 1, commits a serious misdemeanor and
25 is subject to a fine of at least two hundred fifty dollars but
26 not to exceed one thousand five hundred dollars.

27 b. A person who knowingly commits an act in violation of
28 subsection 1 commits an aggravated misdemeanor.

29 3. For purposes of this section, "communication" means
30 electronic information that is transmitted over the internet
31 or a similar public computer network.

32 Sec. 3. NEW SECTION. 714D.3 CIVIL ENFORCEMENT.

33 1. A violation of section 714D.1, subsection 2, or section
34 714D.2, subsection 1, is a violation of section 714.16,
35 subsection 2, paragraph "a". All the powers conferred upon

1 the attorney general to accomplish the objectives and carry
2 out the duties prescribed pursuant to section 714.16 are also
3 conferred upon the attorney general to enforce sections 714D.1
4 and 714D.2, including, but not limited to the power to issue
5 subpoenas, adopt rules which shall have the force of law, and
6 seek injunctive relief and civil penalties.

7 2. In seeking reimbursement pursuant to section 714.16,
8 subsection 7, from a person who has committed a violation of
9 section 714D.1, subsection 2, or section 714D.2, subsection 1,
10 the attorney general may seek an order from the court that the
11 person pay to the attorney general on behalf of consumers the
12 amounts for which the person would be liable under section
13 714D.1, subsection 3, for each consumer who has a cause of
14 action pursuant to section 714D.1, subsection 3. Section
15 714.16, as it relates to consumer reimbursement, shall apply
16 to consumer reimbursement pursuant to this section.

17 Sec. 4. LEGISLATIVE FINDINGS -- STUDY REQUEST.

18 1. The general assembly finds that the volume of
19 commercial electronic mail is growing, and that consumer
20 complaints concerning commercial electronic mail are likely to
21 increase. It is the intent of the general assembly to provide
22 relief from the unsolicited receipt of such electronic mail by
23 prohibiting the sending of commercial electronic mail
24 messages, except in certain circumstances, without the
25 recipient's permission. It is also the intent of the general
26 assembly to prohibit electronic mail which contains untrue or
27 misleading information.

28 2. The legislative council is requested to create an
29 interim committee to study the technical, legal, and cost
30 issues implicated in the use of electronic mail for commercial
31 purposes. The interim committee should review the actions of
32 other states pertaining to the regulation of electronic mail.
33 The interim committee should make any necessary
34 recommendations to the general assembly regarding the
35 regulation of commercial electronic mail messages.

EXPLANATION

1
2 This bill creates new Code section 714D.1 and prohibits a
3 person from transmitting or causing to be transmitted
4 electronic mail that includes an advertisement unless the
5 person has a preexisting business or personal relationship
6 with the recipient; the recipient has expressly consented to
7 receive the item of electronic mail from the person; or the
8 electronic mail is readily identifiable as a promotional
9 advertisement, or contains a clear and conspicuous statement
10 indicating that the item is an advertisement, and clearly and
11 conspicuously includes the legal name, complete address, and
12 electronic mail address of the person transmitting the
13 electronic mail, and a notice that the recipient may decline
14 to receive additional electronic mail that includes an
15 advertisement from the person transmitting the electronic
16 mail.

17 The bill provides that a person who transmits or causes to
18 be transmitted electronic mail in violation of this new
19 section is liable to the recipient for monetary damages in an
20 amount equal to any actual damages caused by such transmittal,
21 or \$500, whichever is greater. In addition to the monetary
22 damages, the recipient is also entitled to reasonable attorney
23 fees and costs, and may petition the district court for an
24 injunction to prohibit the sender from transmitting to the
25 recipient any other item of electronic mail which includes an
26 advertisement.

27 The bill provides that an interactive computer service is
28 not liable for an action voluntarily taken in good faith to
29 block or prevent the receipt or transmission through its
30 service of any commercial electronic mail which is reasonably
31 believed to be in violation of the bill.

32 The bill creates new Code section 714D.2 and prohibits a
33 person from initiating a communication for delivery of an
34 advertisement that contains false information as to the point
35 of origin or routing of the communication. A person who

1 unknowingly violates this provision commits a serious
2 misdemeanor, and is subject to a fine of at least \$250 but not
3 to exceed \$1,500. A person who knowingly violates this
4 provision commits an aggravated misdemeanor and is subject to
5 imprisonment not to exceed two years and a fine of at least
6 \$500 but not to exceed \$5,000.

7 The bill creates new Code section 714D.3, which provides
8 that certain violations of the new Code chapter are also
9 violations of Code section 714.16, defining consumer frauds.
10 The attorney general is granted authority to enforce new Code
11 sections 714D.1 and 714D.2, including the power to issue
12 subpoenas, seek injunctive relief and civil penalties, and
13 seek reimbursement on behalf of consumers.

14 The bill also requests the legislative council to create an
15 interim committee to study the technical, legal, and cost
16 issues implicated in the use of electronic mail for commercial
17 purposes, and to make appropriate recommendations to the
18 general assembly regarding the regulation of commercial
19 electronic mail messages.

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HOUSE FILE 448

H-1126

- 1 Amend House File 448 as follows:
- 2 1. Page 1, by striking lines 5 and 6 and
- 3 inserting the following:
- 4 "a. "Advertisement" means an electronic mail
- 5 message sent to a computer for the purpose of
- 6 promoting real property, goods, or services for sale
- 7 or lease."
- 8 2. Page 1, by striking lines 23 through 29 and
- 9 inserting the following: "electronic information that
- 10 is addressed to a recipient for delivery using an
- 11 internet computer network."
- 12 3. Page 1, line 33, by striking the words
- 13 "service, system, or provider" and inserting the
- 14 following: "service or system".
- 15 4. Page 2, by striking lines 4 through 6 and
- 16 inserting the following:
- 17 "2. a. A person shall not use an interactive
- 18 computer service to send an unsolicited advertisement
- 19 directly to another person by electronic mail without
- 20 obtaining the prior consent of each person who is to
- 21 receive the advertisement unless one of the following
- 22 applies:"
- 23 5. Page 2, lines 11 and 12, by striking the words
- 24 "a promotional" and inserting the following: "an".
- 25 6. Page 2, line 21, by inserting after the word
- 26 "mail." the following: "At a minimum, such procedures
- 27 shall include providing an electronic mail address
- 28 readily identifiable in the promotional advertising to
- 29 which the recipient may send a request for declining
- 30 such electronic mail."
- 31 7. Page 3, line 6, by inserting after the word
- 32 "person" the following: "knowingly".
- 33 8. Page 3, by striking lines 9 and 10 and
- 34 inserting the following:
- 35 "b. Electronic mail which is".
- 36 9. Page 3, by striking lines 19 through 22 and
- 37 inserting the following:
- 38 "1. A person shall not initiate electronic mail
- 39 containing an advertisement that falsely states its
- 40 point of origin or routing."
- 41 10. Page 3, by striking lines 23 through 27, and
- 42 inserting the following:
- 43 "2. A person who intentionally commits an act in
- 44 violation of".
- 45 11. Page 3, by striking lines 29 through 31.
- 46 12. Page 4, lines 12 and 13, by striking the
- 47 words and figures "under section 714D.1, subsection
- 48 3,".
- 49 13. Page 4, by striking lines 17 through 35.

A.

B

By RANTS of Woodbury

H-1126 FILED MARCH 18, 1999

A - adopted
B - Withdrawn 3/23/99

(P. 791)

3/23/99 Commerce
5-4/1/99 Do Pass

HOUSE FILE 448
BY COMMITTEE ON COMMERCE AND
REGULATION

(SUCCESSOR TO HF 324)

(As Amended and Passed by the House, March 23, 1999)

Passed House, Date ^(P.1514) 4/21/99 Passed Senate, Date ^(P.1220) 4/20/99
Vote: Ayes 94 Nays 0 Vote: Ayes 50 Nays 0
Approved May 26, 1999

A BILL FOR

1 An Act prohibiting the transmission of electronic mail which
2 includes advertisements in certain circumstances and providing
3 for monetary damages, criminal penalties, and other remedies.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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House Amendments _____

Deleted Language *

HF 448

1 Section 1. NEW SECTION. 714D.1 RESTRICTIONS ON USE OF
2 ELECTRONIC MAIL -- DAMAGES -- EXCEPTIONS.

3 1. For purposes of this section, unless the context
4 otherwise requires:

5 a. "Advertisement" means an electronic mail message sent
6 to a computer for the purpose of promoting real property,
7 goods, or services for sale or lease.

8 b. "Computer" means an electronic device that performs
9 logical, arithmetical, and memory functions by manipulations
10 of electronic or magnetic impulses, and includes all input,
11 output, processing, storage, and communication facilities
12 which are connected or related to the computer, including a
13 computer network. As used in this paragraph, "computer"
14 includes any central processing unit, front-end processing
15 unit, miniprocessor, or microprocessor, and related peripheral
16 equipment such as data storage devices, document scanners,
17 data entry terminal controllers, and data terminal equipment
18 and systems for computer networks.

19 c. "Computer network" means a set of related, remotely
20 connected devices and communication facilities, including two
21 or more computers with capability to transmit data among them
22 through communication facilities.

23 d. "Electronic mail" means a message, file, data, or other
24 electronic information that is addressed to a recipient for
25 delivery using an internet computer network.

26 e. "Interactive computer service" means an information
27 service, system, or access software provider that provides or
28 enables computer access by multiple users to a computer
29 server, including specifically a service or system that
30 provides access to the internet, and such systems operated or
31 services offered by a library or an educational institution.

32 f. "Recipient" means a person who receives electronic
33 mail.

34 2. a. A person shall not use an interactive computer
35 service to send an unsolicited advertisement directly to

1 another person by electronic mail without obtaining the prior
2 consent of each person who is to receive the advertisement
3 unless one of the following applies:

4 (1) The person has a preexisting business or personal
5 relationship with the recipient.

6 (2) The recipient has expressly consented to receive the
7 item of electronic mail from the person.

8 (3) The electronic mail is readily identifiable as an
9 advertisement, or contains a clear and conspicuous statement
10 indicating that an item of the electronic mail is an
11 advertisement, and clearly and conspicuously includes both of
12 the following:

13 (a) The legal name, complete address, and electronic mail
14 address of the person transmitting the electronic mail.

15 (b) A notice that the recipient may decline to receive
16 additional electronic mail that includes an advertisement from
17 the person transmitting the electronic mail and the procedures
18 for declining such electronic mail. At a minimum, such
19 procedures shall include providing an electronic mail address
20 readily identifiable in the promotional advertising to which
21 the recipient may send a request for declining such electronic
22 mail.

23 b. A person shall not transmit or cause to be transmitted
24 to a recipient an item of electronic mail that includes false
25 or misleading information in the subject line of the
26 electronic mail.

27 3. A person who transmits or causes to be transmitted
28 electronic mail in violation of subsection 2 is liable to the
29 recipient for monetary damages in an amount equal to any
30 actual damages caused by such transmittal, or five hundred
31 dollars, whichever is greater. In addition to the monetary
32 damages, the recipient is also entitled to costs and
33 reasonable attorney fees.

34 4. In addition to any other remedy under this section, a
35 recipient may also petition the district court for an

1 injunction to prohibit the person from transmitting to the
2 recipient any other electronic mail that includes an
3 advertisement.

4 5. This section does not apply to either of the following:

5 a. A person who provides users with access to a computer
6 network, and as part of that service, transmits electronic
7 mail on behalf of those users, unless such person knowingly
8 transmits electronic mail that includes an advertisement which
9 the person prepared or caused to be prepared.

10 b. Electronic mail which is accessed by the recipient from
11 an electronic bulletin board.

12 6. An interactive computer service is not liable under
13 this section for an action voluntarily taken in good faith to
14 block or prevent the receipt or transmission through its
15 service of any commercial electronic mail which is reasonably
16 believed to be in violation of subsection 2.

17 Sec. 2. NEW SECTION. 714D.2 PROVIDING FALSE INFORMATION
18 ON POINT OF ORIGIN OR ROUTING.

19 1. A person shall not initiate electronic mail containing
20 an advertisement that falsely states its point of origin or
21 routing.

22 2. A person who intentionally commits an act in violation
23 of subsection 1 commits an aggravated misdemeanor.

* 24 Sec. 3. NEW SECTION. 714D.3 CIVIL ENFORCEMENT.

25 1. A violation of section 714D.1, subsection 2, or section
26 714D.2, subsection 1, is a violation of section 714.16,
27 subsection 2, paragraph "a". All the powers conferred upon
28 the attorney general to accomplish the objectives and carry
29 out the duties prescribed pursuant to section 714.16 are also
30 conferred upon the attorney general to enforce sections 714D.1
31 and 714D.2, including, but not limited to the power to issue
32 subpoenas, adopt rules which shall have the force of law, and
33 seek injunctive relief and civil penalties.

34 2. In seeking reimbursement pursuant to section 714.16,
35 subsection 7, from a person who has committed a violation of

1 section 714D.1, subsection 2, or section 714D.2, subsection 1,
2 the attorney general may seek an order from the court that the
3 person pay to the attorney general on behalf of consumers the
4 amounts for which the person would be liable under section
5 714D.1, subsection 3, for each consumer who has a cause of
6 action pursuant to section 714D.1, subsection 3. Section
7 714.16, as it relates to consumer reimbursement, shall apply
8 to consumer reimbursement pursuant to this section.

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HOUSE FILE 448

3439

Amend House File 448, as amended, passed, and reprinted by the House, as follows:

1. By striking everything after the enacting clause and inserting the following:

"Section 1. NEW SECTION. 714D.1 RESTRICTIONS ON USE OF ELECTRONIC MAIL -- DAMAGES -- EXCEPTIONS.

1. DEFINITIONS. For purposes of this section, unless the context otherwise requires:

a. "Advertisement" means an electronic mail message sent to a computer for the purpose of promoting real property, goods, or services for sale, lease, barter, or auction.

b. "Computer" means an electronic device that performs logical, arithmetical, and memory functions by manipulations of electronic or magnetic impulses, and includes all input, output, processing, storage, and communication facilities which are connected or related to the computer, including a computer network. As used in this paragraph, "computer" includes any central processing unit, front-end processing unit, miniprocessor, or microprocessor, and related peripheral equipment such as data storage devices, document scanners, data entry terminal controllers, and data terminal equipment and systems for computer networks.

c. "Computer network" means a set of related, remotely connected devices and communication facilities, including two or more computers with capability to transmit data among them through communication facilities.

d. "Electronic mail" means an electronic message, file, data, or other electronic information that is transmitted using an internet or intranet computer network to one or more persons.

e. "Interactive computer service" means an 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 a library or an educational institution.

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

g. "Recipient" means a person who receives electronic mail.

2. PROHIBITED ACTS. It is unlawful for a person

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Page 2

1 to use an interactive computer service to initiate the
2 sending of bulk electronic mail that the sender knows,
3 or has reason to know, violates any of the following:

4 a. Uses the name of a third party in the return
5 address field without permission of the third party.

6 b. Misrepresents any information in identifying
7 the point of origin of the transmission path of the
8 electronic mail.

9 c. Does not contain information identifying the
10 point of origin or the transmission path of the
11 electronic mail message.

12 d. With respect to an unsolicited advertisement,
13 does not, at a minimum, provide an electronic mail
14 address readily identifiable in the advertisement to
15 which the recipient may send a request for declining
16 such electronic mail.

17 e. Demonstrates a pattern of sending unsolicited
18 advertisements to a recipient who has sent the person
19 a request for declining such electronic mail following
20 a reasonable time, which in no event shall be more
21 than five business days, after the receipt by the
22 person of such request.

23 3. CIVIL DAMAGES.

24 a. (1) Except as provided in paragraph "b", a
25 person who is injured in person or property as a
26 result of a violation of this section may bring an
27 action to recover damages. Such damages shall
28 include, but are not limited to, actual damages
29 including lost profits.

30 (2) Notwithstanding subparagraph (1), a person who
31 transmits or causes to be transmitted electronic mail
32 in violation of subsection 2 is liable to the
33 recipient of the electronic mail for monetary damages
34 in an amount equal to any actual damages, including
35 lost profits, caused by such transmittal. The
36 recipient, in lieu of actual damages, may elect to
37 recover from the person transmitting or causing to be
38 transmitted such electronic mail the greater of ten
39 dollars for each bulk electronic mail message
40 transmitted to the recipient in violation of this
41 section, or five hundred dollars. In addition to the
42 monetary damages, the recipient is also entitled to
43 costs and reasonable attorney fees.

44 b. (1) Notwithstanding paragraph "a", if the
45 person injured is an interactive computer service and
46 such injury arises from a person who transmits bulk
47 electronic mail without authority, such service may
48 recover actual damages, attorney fees, and costs.
49 Such service, in lieu of recovering actual damages,
50 may also elect to recover the greater of ten dollars

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Page 3

for each unsolicited bulk electronic mail message transmitted in violation of this section, or twenty-five thousand dollars.

(2) For purposes of this paragraph, a person is "without authority" when the person has no right or permission of the owner to use a computer, or the person uses the computer in a manner which exceeds the person's right or permission; or the person uses a computer, a computer network, or the computer services or an interactive computer service to transmit unsolicited bulk electronic mail in contravention of the authority granted by or in violation of the policies set by the interactive computer service to the extent the person has received actual notice of such policies. Transmission of electronic mail from an organization or similar entity to the members of such organization or similar entity shall not be deemed to be unsolicited bulk electronic mail.

c. In an action brought under this chapter, a court shall preserve the secrecy of an alleged trade secret by reasonable means, including but not limited to granting protective orders in connection with discovery proceedings, holding in-camera hearings, sealing the records of the action, and ordering a person involved in the litigation not to disclose an alleged trade secret without prior court approval.

d. This section shall not be construed to limit any person's right to pursue any additional civil remedy otherwise allowed by law.

4. INJUNCTION. In addition to any other remedy under this section, a recipient may also petition the district court for an injunction to prohibit the person from transmitting to the recipient any other electronic mail that includes an advertisement.

5. JURISDICTION. Transmitting or causing the transmission of unsolicited bulk electronic mail to or through an interactive computer service's computer network located in this state shall constitute an act in this state. When jurisdiction over a person is based solely upon this section, only a cause of action arising from acts enumerated in this section may be asserted against that person. However, this chapter does not limit, restrict, or otherwise affect the jurisdiction of any court of this state over foreign corporations which are subject to service of process pursuant to any other statute, or the jurisdiction of any court of this state over a person for engaging in acts which result in jurisdiction under this section.

6. EXCEPTIONS.

a. This section does not apply to any of the

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Page 4

1 following:

2 (1) A person who provides users with access to a
3 computer network, and as part of that service,
4 transmits electronic mail on behalf of those users,
5 unless such person knowingly transmits electronic mail
6 that includes an advertisement which the person
7 prepared or caused to be prepared.

8 (2) A person who provides users with access to a
9 computer network, and as part of that service,
10 transmits electronic mail on behalf of those users,
11 unless such person transmits electronic mail on behalf
12 of those users which the person knows, or should have
13 known was transmitted in violation of subsection 2.

14 (3) Electronic mail which is accessed by the
15 recipient from an electronic bulletin board.

16 (4) A person who provides users with access at no
17 charge to electronic mail, including receiving and
18 transmitting such electronic mail, and as a condition
19 of providing such access requires such users to
20 receive unsolicited advertisements.

21 b. An interactive computer service is not liable
22 under this section for an action voluntarily taken in
23 good faith to block or prevent the receipt or
24 transmission through its service of any commercial
25 electronic mail which is reasonably believed to be in
26 violation of subsection 2.

27 Sec. 2. NEW SECTION. 714D.2 CIVIL ENFORCEMENT.

28 1. A violation of section 714D.1, subsection 2, is
29 a violation of section 714.16, subsection 2, paragraph
30 "a". All the powers conferred upon the attorney
31 general to accomplish the objectives and carry out the
32 duties prescribed pursuant to section 714.16 are also
33 conferred upon the attorney general to enforce section
34 714D.1, including, but not limited to the power to
35 issue subpoenas, adopt rules which shall have the
36 force of law, and seek injunctive relief and civil
37 penalties.

38 2. In seeking reimbursement pursuant to section
39 714.16, subsection 7, from a person who has committed
40 a violation of section 714D.1, subsection 2, the
41 attorney general may seek an order from the court that
42 the person pay to the attorney general on behalf of
43 consumers the amounts for which the person would be
44 liable under section 714D.1, subsection 3, for each
45 consumer who has a cause of action pursuant to section
46 714D.1, subsection 3. Section 714.16, as it relates
47 to consumer reimbursement, shall apply to consumer
48 reimbursement pursuant to this section."

By JOE BOLKCOM
JOHN W. JENSEN

S-3439 FILED APRIL 19, 1999

*Adopted
4-20-99
(p. 1270)*

SENATE AMENDMENT TO HOUSE FILE 448

H-1720

1 Amend House File 448, as amended, passed, and
2 reprinted by the House, as follows:

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13 b. "Computer" means an electronic device that
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15 by manipulations of electronic or magnetic impulses,
16 and includes all input, output, processing, storage,
17 and communication facilities which are connected or
18 related to the computer, including a computer network.
19 As used in this paragraph, "computer" includes any
20 central processing unit, front-end processing unit,
21 miniprocessor, or microprocessor, and related
22 peripheral equipment such as data storage devices,
23 document scanners, data entry terminal controllers,
24 and data terminal equipment and systems for computer
25 networks.

26 c. "Computer network" means a set of related,
27 remotely connected devices and communication
28 facilities, including two or more computers with
29 capability to transmit data among them through
30 communication facilities.

31 d. "Electronic mail" means an electronic message,
32 file, data, or other electronic information that is
33 transmitted using an internet or intranet computer
34 network to one or more persons.

35 e. "Interactive computer service" means an
36 information service, system, or access software
37 provider that provides or enables computer access by
38 multiple users to a computer server, including
39 specifically a service or system that provides access
40 to the internet, and such systems operated or services
41 offered by a library or an educational institution.

42 f. "Internet domain name" means a globally unique,
43 hierarchical reference to an internet host or service,
44 assigned through a centralized internet naming
45 authority, comprising a series of character strings
46 separated by periods, with the right-most string
47 specifying the top of the hierarchy.

48 g. "Recipient" means a person who receives
49 electronic mail.

50 2. PROHIBITED ACTS. It is unlawful for a person

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1 to use an interactive computer service to initiate the
2 sending of bulk electronic mail that the sender knows,
3 or has reason to know, violates any of the following:

4 a. Uses the name of a third party in the return
5 address field without permission of the third party.

6 b. Misrepresents any information in identifying
7 the point of origin of the transmission path of the
8 electronic mail.

9 c. Does not contain information identifying the
10 point of origin or the transmission path of the
11 electronic mail message.

12 d. With respect to an unsolicited advertisement,
13 does not, at a minimum, provide an electronic mail
14 address readily identifiable in the advertisement to
15 which the recipient may send a request for declining
16 such electronic mail.

17 e. Demonstrates a pattern of sending unsolicited
18 advertisements to a recipient who has sent the person
19 a request for declining such electronic mail following
20 a reasonable time, which in no event shall be more
21 than five business days, after the receipt by the
22 person of such request.

23 3. CIVIL DAMAGES.

24 a. (1) Except as provided in paragraph "b", a
25 person who is injured in person or property as a
26 result of a violation of this section may bring an
27 action to recover damages. Such damages shall
28 include, but are not limited to, actual damages
29 including lost profits.

30 (2) Notwithstanding subparagraph (1), a person who
31 transmits or causes to be transmitted electronic mail
32 in violation of subsection 2 is liable to the
33 recipient of the electronic mail for monetary damages
34 in an amount equal to any actual damages, including
35 lost profits, caused by such transmittal. The
36 recipient, in lieu of actual damages, may elect to
37 recover from the person transmitting or causing to be
38 transmitted such electronic mail the greater of ten
39 dollars for each bulk electronic mail message
40 transmitted to the recipient in violation of this
41 section, or five hundred dollars. In addition to the
42 monetary damages, the recipient is also entitled to
43 costs and reasonable attorney fees.

44 b. (1) Notwithstanding paragraph "a", if the
45 person injured is an interactive computer service and
46 such injury arises from a person who transmits bulk
47 electronic mail without authority, such service may
48 recover actual damages, attorney fees, and costs.
49 Such service, in lieu of recovering actual damages,
50 may also elect to recover the greater of ten dollars

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for each unsolicited bulk electronic mail message transmitted in violation of this section, or twenty-five thousand dollars.

(2) For purposes of this paragraph, a person is "without authority" when the person has no right or permission of the owner to use a computer, or the person uses the computer in a manner which exceeds the person's right or permission; or the person uses a computer, a computer network, or the computer services or an interactive computer service to transmit unsolicited bulk electronic mail in contravention of the authority granted by or in violation of the policies set by the interactive computer service to the extent the person has received actual notice of such policies. Transmission of electronic mail from an organization or similar entity to the members of such organization or similar entity shall not be deemed to be unsolicited bulk electronic mail.

c. In an action brought under this chapter, a court shall preserve the secrecy of an alleged trade secret by reasonable means, including but not limited to granting protective orders in connection with discovery proceedings, holding in-camera hearings, sealing the records of the action, and ordering a person involved in the litigation not to disclose an alleged trade secret without prior court approval.

d. This section shall not be construed to limit any person's right to pursue any additional civil remedy otherwise allowed by law.

4. INJUNCTION. In addition to any other remedy under this section, a recipient may also petition the district court for an injunction to prohibit the person from transmitting to the recipient any other electronic mail that includes an advertisement.

5. JURISDICTION. Transmitting or causing the transmission of unsolicited bulk electronic mail to or through an interactive computer service's computer network located in this state shall constitute an act in this state. When jurisdiction over a person is based solely upon this section, only a cause of action arising from acts enumerated in this section may be asserted against that person. However, this chapter does not limit, restrict, or otherwise affect the jurisdiction of any court of this state over foreign corporations which are subject to service of process pursuant to any other statute, or the jurisdiction of any court of this state over a person for engaging in acts which result in jurisdiction under this section.

6. EXCEPTIONS.

a. This section does not apply to any of the

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1 following:

2 (1) A person who provides users with access to a
3 computer network, and as part of that service,
4 transmits electronic mail on behalf of those users,
5 unless such person knowingly transmits electronic mail
6 that includes an advertisement which the person
7 prepared or caused to be prepared.

8 (2) A person who provides users with access to a
9 computer network, and as part of that service,
10 transmits electronic mail on behalf of those users,
11 unless such person transmits electronic mail on behalf
12 of those users which the person knows, or should have
13 known was transmitted in violation of subsection 2.

14 (3) Electronic mail which is accessed by the
15 recipient from an electronic bulletin board.

16 (4) A person who provides users with access at no
17 charge to electronic mail, including receiving and
18 transmitting such electronic mail, and as a condition
19 of providing such access requires such users to
20 receive unsolicited advertisements.

21 b. An interactive computer service is not liable
22 under this section for an action voluntarily taken in
23 good faith to block or prevent the receipt or
24 transmission through its service of any commercial
25 electronic mail which is reasonably believed to be in
26 violation of subsection 2.

27 Sec. 2. NEW SECTION. 714D.2 CIVIL ENFORCEMENT.

28 1. A violation of section 714D.1, subsection 2, is
29 a violation of section 714.16, subsection 2, paragraph
30 "a". All the powers conferred upon the attorney
31 general to accomplish the objectives and carry out the
32 duties prescribed pursuant to section 714.16 are also
33 conferred upon the attorney general to enforce section
34 714D.1, including, but not limited to the power to
35 issue subpoenas, adopt rules which shall have the
36 force of law, and seek injunctive relief and civil
37 penalties.

38 2. In seeking reimbursement pursuant to section
39 714.16, subsection 7, from a person who has committed
40 a violation of section 714D.1, subsection 2, the
41 attorney general may seek an order from the court that
42 the person pay to the attorney general on behalf of
43 consumers the amounts for which the person would be
44 liable under section 714D.1, subsection 3, for each
45 consumer who has a cause of action pursuant to section
46 714D.1, subsection 3. Section 714.16, as it relates
47 to consumer reimbursement, shall apply to consumer
48 reimbursement pursuant to this section."

RECEIVED FROM THE SENATE

H-1720 FILED APRIL 20, 1999

House Concurred
4/21/99
(P.1513)

AN ACT

PROHIBITING THE TRANSMISSION OF ELECTRONIC MAIL WHICH INCLUDES ADVERTISEMENTS IN CERTAIN CIRCUMSTANCES AND PROVIDING FOR MONETARY DAMAGES, CRIMINAL PENALTIES, AND OTHER REMEDIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. 714D.1 RESTRICTIONS ON USE OF ELECTRONIC MAIL -- DAMAGES -- EXCEPTIONS.

1. DEFINITIONS. For purposes of this section, unless the context otherwise requires:

a. "Advertisement" means an electronic mail message sent to a computer for the purpose of promoting real property, goods, or services for sale, lease, barter, or auction.

b. "Computer" means an electronic device that performs logical, arithmetical, and memory functions by manipulations of electronic or magnetic impulses, and includes all input, output, processing, storage, and communication facilities which are connected or related to the computer, including a computer network. As used in this paragraph, "computer" includes any central processing unit, front-end processing unit, miniprocessor, or microprocessor, and related peripheral equipment such as data storage devices, document scanners, data entry terminal controllers, and data terminal equipment and systems for computer networks.

c. "Computer network" means a set of related, remotely connected devices and communication facilities, including two or more computers with capability to transmit data among them through communication facilities.

d. "Electronic mail" means an electronic message, file, data, or other electronic information that is transmitted using an internet or intranet computer network to one or more persons.

e. "Interactive computer service" means an 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 a library or an educational institution.

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

g. "Recipient" means a person who receives electronic mail.

2. PROHIBITED ACTS. It is unlawful for a person to use an interactive computer service to initiate the sending of bulk electronic mail that the sender knows, or has reason to know, violates any of the following:

a. Uses the name of a third party in the return address field without permission of the third party.

b. Misrepresents any information in identifying the point of origin of the transmission path of the electronic mail.

c. Does not contain information identifying the point of origin or the transmission path of the electronic mail message.

d. With respect to an unsolicited advertisement, does not, at a minimum, provide an electronic mail address readily identifiable in the advertisement to which the recipient may send a request for declining such electronic mail.

e. Demonstrates a pattern of sending unsolicited advertisements to a recipient who has sent the person a request for declining such electronic mail following a reasonable time, which in no event shall be more than five business days, after the receipt by the person of such request.

3. CIVIL DAMAGES.

a. (1) Except as provided in paragraph "b", a person who is injured in person or property as a result of a violation of this section may bring an action to recover damages. Such damages shall include, but are not limited to, actual damages including lost profits.

(2) Notwithstanding subparagraph (1), a person who transmits or causes to be transmitted electronic mail in violation of subsection 2 is liable to the recipient of the electronic mail for monetary damages in an amount equal to any actual damages, including lost profits, caused by such transmittal. The recipient, in lieu of actual damages, may elect to recover from the person transmitting or causing to be transmitted such electronic mail the greater of ten dollars for each bulk electronic mail message transmitted to the recipient in violation of this section, or five hundred dollars. In addition to the monetary damages, the recipient is also entitled to costs and reasonable attorney fees.

b. (1) Notwithstanding paragraph "a", if the person injured is an interactive computer service and such injury arises from a person who transmits bulk electronic mail without authority, such service may recover actual damages, attorney fees, and costs. Such service, in lieu of recovering actual damages, may also elect to recover the greater of ten dollars for each unsolicited bulk electronic mail message transmitted in violation of this section, or twenty-five thousand dollars.

(2) For purposes of this paragraph, a person is "without authority" when the person has no right or permission of the owner to use a computer, or the person uses the computer in a manner which exceeds the person's right or permission; or the person uses a computer, a computer network, or the computer services or an interactive computer service to transmit unsolicited bulk electronic mail in contravention of the authority granted by or in violation of the policies set by the interactive computer service to the extent the person has

received actual notice of such policies. Transmission of electronic mail from an organization or similar entity to the members of such organization or similar entity shall not be deemed to be unsolicited bulk electronic mail.

c. In an action brought under this chapter, a court shall preserve the secrecy of an alleged trade secret by reasonable means, including but not limited to granting protective orders in connection with discovery proceedings, holding in-camera hearings, sealing the records of the action, and ordering a person involved in the litigation not to disclose an alleged trade secret without prior court approval.

d. This section shall not be construed to limit any person's right to pursue any additional civil remedy otherwise allowed by law.

4. INJUNCTION. In addition to any other remedy under this section, a recipient may also petition the district court for an injunction to prohibit the person from transmitting to the recipient any other electronic mail that includes an advertisement.

5. JURISDICTION. Transmitting or causing the transmission of unsolicited bulk electronic mail to or through an interactive computer service's computer network located in this state shall constitute an act in this state. When jurisdiction over a person is based solely upon this section, only a cause of action arising from acts enumerated in this section may be asserted against that person. However, this chapter does not limit, restrict, or otherwise affect the jurisdiction of any court of this state over foreign corporations which are subject to service of process pursuant to any other statute, or the jurisdiction of any court of this state over a person for engaging in acts which result in jurisdiction under this section.

6. EXCEPTIONS.

a. This section does not apply to any of the following:

(1) A person who provides users with access to a computer network, and as part of that service, transmits electronic mail on behalf of those users, unless such person knowingly transmits electronic mail that includes an advertisement which the person prepared or caused to be prepared.

(2) A person who provides users with access to a computer network, and as part of that service, transmits electronic mail on behalf of those users, unless such person transmits electronic mail on behalf of those users which the person knows, or should have known was transmitted in violation of subsection 2.

(3) Electronic mail which is accessed by the recipient from an electronic bulletin board.

(4) A person who provides users with access at no charge to electronic mail, including receiving and transmitting such electronic mail, and as a condition of providing such access requires such users to receive unsolicited advertisements.

b. An interactive computer service is not liable under this section for an action voluntarily taken in good faith to block or prevent the receipt or transmission through its service of any commercial electronic mail which is reasonably believed to be in violation of subsection 2.

Sec. 2. NEW SECTION. 714D.2 CIVIL ENFORCEMENT.

1. A violation of section 714D.1, subsection 2, is a violation of section 714.16, subsection 2, paragraph "a". All the powers conferred upon the attorney general to accomplish the objectives and carry out the duties prescribed pursuant to section 714.16 are also conferred upon the attorney general to enforce section 714D.1, including, but not limited to the power to issue subpoenas, adopt rules which shall have the force of law, and seek injunctive relief and civil penalties.

2. In seeking reimbursement pursuant to section 714.16, subsection 7, from a person who has committed a violation of section 714D.1, subsection 2, the attorney general may seek an order from the court that the person pay to the attorney

general on behalf of consumers the amounts for which the person would be liable under section 714D.1, subsection 3, for each consumer who has a cause of action pursuant to section 714D.1, subsection 3. Section 714.16, as it relates to consumer reimbursement, shall apply to consumer reimbursement pursuant to this section.

BRENT SIEGRIST
Speaker of the House

MARY E. KRAMER
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 448, Seventy-eighth General Assembly.

ELIZABETH ISAACSON
Chief Clerk of the House

Approved *May 26*, 1999

THOMAS J. VILSACK
Governor