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COMMERCE, REGULATION & LABOR

HOUSE FILE 463  
BY RANTS

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act regulating the transmission of commercial electronic mail  
2 messages involving multiple messages, false routing  
3 information, false registration information, and unauthorized  
4 computer access, and providing remedies and penalties.

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

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HF 463

1 Section 1. NEW SECTION. 716A.1 DEFINITIONS.

2 As used in this chapter unless the context otherwise  
3 requires:

4 1. "Commercial electronic mail message" means any  
5 electronic mail message having the primary purpose of the  
6 commercial advertisement or promotion of a commercial product  
7 or service, including content on an internet website operated  
8 for a commercial purpose, but does not include a transactional  
9 or relationship message. The inclusion in an electronic mail  
10 message of a reference to a commercial entity or a link to the  
11 website of a commercial entity does not, by itself, cause that  
12 electronic mail message to be treated as a commercial  
13 electronic mail message for the purpose of this section, if  
14 the contents or circumstances of the electronic mail message  
15 indicate a primary purpose other than commercial advertisement  
16 or promotion of a commercial product or service.

17 2. "Computer" means the same as defined in section 702.1A.

18 3. "Computer network" means the same as defined in section  
19 702.1A.

20 4. "Computer system" means the same as defined in section  
21 702.1A.

22 5. "Domain name" means any alphanumeric designation that  
23 is registered with or assigned by any domain name registrar,  
24 domain name registry, or other domain name registration  
25 authority as part of an electronic address on the internet.

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

30 7. "Electronic mail service provider" means any person,  
31 including an internet service provider, that is an  
32 intermediary in sending and receiving electronic mail and that  
33 provides to the public electronic mail accounts or online user  
34 accounts from which electronic mail may be sent and received.

35 8. "Header information" means the source, destination, and

1 routing information attached to an electronic mail message,  
2 including the originating domain name, the originating  
3 address, and technical information that authenticates the  
4 sender of an electronic mail message for computer network  
5 security or computer network management purposes.

6 9. "Initiate the transmission" means to originate or  
7 transmit a commercial electronic mail message or to procure  
8 the origination or transmission of that message, regardless of  
9 whether the message reaches its intended recipients, but does  
10 not include actions that constitute routine conveyance of such  
11 message.

12 10. "Internet" has the same meaning as in section 4.1.

13 11. "Internet protocol address" means the string of  
14 numbers by which locations on the internet are identified by  
15 routers or other computers connected to the internet.

16 12. "Materially falsify" means to alter or conceal in a  
17 manner that would impair the ability of a recipient of an  
18 electronic mail message, an electronic mail service provider  
19 processing an electronic mail message on behalf of a  
20 recipient, a person alleging a violation of this chapter, or a  
21 law enforcement agency to identify, locate, or respond to the  
22 person that initiated the electronic mail message or to  
23 investigate an alleged violation of this chapter.

24 13. "Multiple" means more than ten commercial electronic  
25 mail messages during a twenty-four-hour period, more than one  
26 hundred commercial electronic mail messages during a thirty-  
27 day period, or more than one thousand commercial electronic  
28 mail messages during a one-year period.

29 14. "Originating address" means the string of characters  
30 used to specify the source of any electronic mail message.

31 15. "Receiving address" means a unique string of  
32 characters used to specify a recipient.

33 16. "Recipient" means a person who receives a commercial  
34 electronic mail message at any one of the following receiving  
35 addresses:

1 a. That is furnished by an electronic mail service  
2 provider that bills for furnishing and maintaining that  
3 receiving address to a mailing address within this state.

4 b. That is ordinarily accessed from a computer located  
5 within this state or by a person domiciled within this state.

6 c. Any other receiving address with respect to which this  
7 section can be imposed consistent with the Constitution of the  
8 United States.

9 17. "Routine conveyance" means the transmission, routing,  
10 relaying, handling, or storing, through an automated technical  
11 process, of an electronic mail message for which another  
12 person has identified the recipients or provided the recipient  
13 addresses.

14 18. "Transactional or relationship message" means an  
15 electronic mail message the primary purpose of which is to do  
16 any of the following:

17 a. Facilitate, complete, or confirm a commercial  
18 transaction that the recipient has previously agreed to enter  
19 into with the sender.

20 b. Provide warranty information, product recall  
21 information, or safety or security information with respect to  
22 a commercial product or service used or purchased by the  
23 recipient.

24 c. Provide notification concerning a change in the terms  
25 or features of; a change in the recipient's standing or status  
26 with respect to; or, at regular periodic intervals, account  
27 balance information or other type of account statement with  
28 respect to, a subscription, membership, account, loan, or  
29 comparable ongoing commercial relationship involving the  
30 ongoing purchase or use by the recipient of products or  
31 services offered by the sender.

32 d. Provide information directly related to an employment  
33 relationship or related benefit plan in which the recipient is  
34 currently involved, participating, or enrolled.

35 e. Deliver goods or services, including product updates or

1 upgrades, that the recipient is entitled to receive under the  
2 terms of a transaction that the recipient has previously  
3 agreed to enter into with the sender.

4 Sec. 2. NEW SECTION. 716A.2 PROHIBITED ACTS --  
5 PENALTIES.

6 1. It is unlawful for a person, with regard to commercial  
7 electronic mail messages sent from or to a computer in this  
8 state, to knowingly violate any of the following:

9 a. Use a computer to relay or retransmit multiple  
10 commercial electronic mail messages, with the intent to  
11 deceive or mislead recipients or any electronic mail service  
12 provider, as to the origin of those messages.

13 b. Materially falsify header information in multiple  
14 commercial electronic mail messages and purposely initiate the  
15 transmission of those messages.

16 c. Register, using information that materially falsifies  
17 the identity of the actual registrant, five or more electronic  
18 mail accounts or online user accounts or two or more domain  
19 names and purposely initiate the transmission of multiple  
20 commercial electronic mail messages from one, or any  
21 combination, of those accounts or domain names.

22 d. Falsely represent the right to use five or more  
23 internet protocol addresses, and purposely initiate the  
24 transmission of multiple commercial electronic mail messages  
25 from those addresses.

26 2. a. A person who violates subsection 1 is guilty of  
27 illegally transmitting multiple commercial electronic mail  
28 messages. Except as otherwise provided in paragraph "b",  
29 illegally transmitting multiple commercial electronic mail  
30 messages is a class "D" felony.

31 b. Illegally transmitting multiple commercial electronic  
32 mail messages is a class "C" felony if any of the following  
33 occur:

34 (1) Regarding a violation of subsection 1, paragraph "c",  
35 the offender, using information that materially falsifies the

1 identity of the actual registrant, knowingly registers twenty  
2 or more electronic mail accounts or online user accounts or  
3 ten or more domain names, and purposely initiates, or  
4 conspires to initiate, the transmission of multiple commercial  
5 electronic mail messages from the accounts or domain names.

6 (2) Regarding any violation of subsection 1, the volume of  
7 commercial electronic mail messages the person transmits in  
8 committing the violation exceeds two hundred fifty during any  
9 twenty-four-hour period, two thousand five hundred during any  
10 thirty-day period, or twenty-five thousand during any one-  
11 year period.

12 (3) Regarding any violation of subsection 1, during any  
13 one-year period the aggregate loss to the victim or victims of  
14 the violation is five hundred dollars or more, or during any  
15 one-year period the aggregate value of the property or  
16 services obtained by the person as a result of the violation  
17 is five hundred dollars or more.

18 (4) Regarding any violation of subsection 1, the person  
19 commits the violation with three or more other persons with  
20 respect to whom the person was the organizer or leader of the  
21 activity that resulted in the violation.

22 (5) Regarding any violation of subsection 1, the person  
23 knowingly assists in the violation through the provision or  
24 selection of electronic mail addresses to which the commercial  
25 electronic mail message is transmitted, if the person knows  
26 that the electronic mail addresses of the recipients were  
27 obtained using an automated means from an internet website or  
28 proprietary online service operated by another person, and  
29 that website or online service included, at the time the  
30 electronic mail addresses were obtained, a notice stating that  
31 the operator of that website or online service will not  
32 transfer addresses maintained by that website or online  
33 service to any other party for the purpose of initiating the  
34 transmission of, or enabling others to initiate the  
35 transmission of, electronic mail messages.

1 (6) Regarding any violation of subsection 1, the person  
2 knowingly assists in the violation through the provision or  
3 selection of electronic mail addresses of the recipients  
4 obtained using an automated means that generates possible  
5 electronic mail addresses by combining names, letters, or  
6 numbers into numerous permutations.

7 3. Illegally transmitting multiple commercial electronic  
8 mail messages and unauthorized computer access in violation of  
9 this section are class "B" felonies if the offender has been  
10 previously convicted of a violation of this chapter, or a  
11 violation of a law of another state or federal law regarding  
12 the transmission of electronic mail messages or unauthorized  
13 access to a computer, or if the person commits the violation  
14 of this section in the furtherance of a felony.

15 4. A person, with regard to commercial electronic mail  
16 messages sent from or to a computer in this state, shall not  
17 knowingly access a computer without authorization and  
18 purposely initiate the transmission of multiple commercial  
19 electronic mail messages from or through the computer. Except  
20 as otherwise provided in subsection 3, a violation of this  
21 subsection is a violation of section 716.6B.

22 Sec. 3. NEW SECTION. 716A.3 CIVIL ENFORCEMENT.

23 1. a. The attorney general or an electronic mail service  
24 provider that is injured by a violation of this chapter may  
25 bring a civil action seeking relief from a person whose  
26 conduct violated this chapter. The civil action may be  
27 commenced at any time within one year of the date of the act  
28 that is the basis of the civil action.

29 b. In a civil action brought by the attorney general  
30 pursuant to this subsection, the court may award injunctive  
31 relief and attorney fees. The court also may impose a civil  
32 penalty against the offender in an amount that is the lesser  
33 of twenty-five thousand dollars for each day a violation  
34 occurs, or not less than two dollars but not more than eight  
35 dollars for each commercial electronic mail message initiated

1 in violation of this chapter. Civil penalties collected by  
2 the attorney general pursuant to this paragraph shall be  
3 deposited in the general fund of the state.

4 c. In a civil action brought by an electronic mail service  
5 provider pursuant to this subsection, the court may award  
6 injunctive relief, attorney fees, and damages in an amount  
7 equal to the greater of the following:

8 (1) The sum of the actual damages incurred by the  
9 electronic mail service provider as a result of a violation of  
10 this chapter, including any receipts of the offender that are  
11 attributable to a violation of this chapter.

12 (2) Liquidated damages in an amount that is the lesser of  
13 twenty-five thousand dollars for each day a violation occurs,  
14 or not less than two dollars but not more than eight dollars  
15 for each commercial electronic mail message initiated in  
16 violation of this chapter.

17 d. In assessing damages awarded under paragraph "c", the  
18 court may consider whether the offender has established and  
19 implemented commercially reasonable practices and procedures  
20 designed to effectively prevent such violations, or whether  
21 the violation occurred despite commercially reasonable efforts  
22 to maintain the practices and procedures established.

23 2. Any equipment, software, or other technology of a  
24 person who violates this chapter that is used or intended to  
25 be used in the commission of a violation of this chapter, and  
26 any real or personal property that constitutes or is traceable  
27 to the gross proceeds obtained from the commission of a  
28 violation of this chapter, is subject to seizure and  
29 forfeiture pursuant to chapter 809A.

30 3. The attorney general may bring a civil action, pursuant  
31 to the federal CAN-SPAM Act of 2003, 15 U.S.C. § 7701 et seq.,  
32 on behalf of the residents of the state in a federal district  
33 court that has jurisdiction for a violation of the federal  
34 CAN-SPAM Act of 2003, but the attorney general shall not bring  
35 a civil action under both this subsection and subsection 1.

1 If a federal court dismisses a civil action brought under this  
2 subsection for reasons other than upon the merits, a civil  
3 action may be brought under subsection 1.

4 Sec. 4. NEW SECTION. 716A.4 CONSTRUCTION OF CHAPTER.

5 This chapter shall not be construed to do any of the  
6 following:

7 1. To require an electronic mail service provider to  
8 block, transmit, route, relay, handle, or store certain types  
9 of electronic mail messages.

10 2. To prevent or limit, in any way, an electronic mail  
11 service provider from adopting a policy regarding electronic  
12 mail, including a policy of declining to transmit certain  
13 types of electronic mail messages, or from enforcing such  
14 policy through technical means, through contract, or pursuant  
15 to any remedy available under any other federal, state, or  
16 local criminal or civil law.

17 3. To render lawful any policy adopted under this chapter  
18 that is unlawful under any other law.

19 Sec. 5. Chapter 714E, Code 2005, is repealed.

20 EXPLANATION

21 This bill relates to the transmission of electronic mail  
22 messages, including establishing restrictions on the  
23 transmission of multiple commercial electronic mail messages,  
24 falsifying routing information, falsifying registration  
25 information for electronic mail user accounts and internet  
26 protocol addresses, and prohibiting unauthorized access to a  
27 computer for transmitting multiple electronic mail messages.

28 The bill creates the crime of illegal transmission of  
29 multiple commercial electronic mail messages which is  
30 punishable as a class "D" felony for a person who uses a  
31 computer to send multiple commercial electronic mail messages  
32 with the intent to deceive the recipient as to the origin of  
33 the messages; for a person who falsifies the source,  
34 destination, and routing information attached to an electronic  
35 mail message; for a person who registers five or more

1 electronic mail accounts using information that falsifies the  
2 identity of the registrant and transmits multiple mail  
3 messages from those accounts; and for a person who falsely  
4 represents the right to use five or more internet protocol  
5 addresses and transmits multiple electronic mail messages from  
6 those addresses. A class "D" felony is punishable by  
7 confinement for no more than five years and a fine of at least  
8 \$750 but not more than \$7,500.

9 Violations regarding the transmission of multiple  
10 electronic mail messages may be upgraded to a class "C" felony  
11 if an offender registered for 20 or more electronic mail  
12 accounts or 10 or more domain names and transmits multiple  
13 electronic mail messages; if the number of electronic mail  
14 messages transmitted is more than 250 during any 24-hour  
15 period or 2,500 during any 30-day period or 25,000 during any  
16 one-year period; if during any one-year period the total loss  
17 of the victim is \$500 or more; if the violation was committed  
18 with three or more people and the offender was the leader of  
19 the violation; if the victims were selected through automated  
20 means from a website or from a proprietary website which  
21 stated it would not transfer addresses to any other party; and  
22 if electronic mail addresses were obtained through an  
23 automated process of generating possible electronic mail  
24 addresses. A class "C" felony is punishable by confinement  
25 for no more than 10 years and a fine of at least \$1,000 but  
26 not more than \$10,000.

27 Violations regarding the transmission of multiple  
28 electronic mail messages may be upgraded to a class "B" felony  
29 if the offender has been previously convicted of an unlawful  
30 transmission of multiple electronic mail messages in this  
31 state or of a similar violation in another state or against  
32 federal law, or if the violation occurred in furtherance of a  
33 felony. A class "B" felony is punishable by confinement for  
34 no more than 25 years.

35 The bill provides that knowingly accessing a computer

1 without authorization to initiate the transmission of multiple  
2 electronic mail messages is a violation of Code section 716.6B  
3 and subject to the penalties thereunder.

4 The bill provides for civil enforcement for violations by  
5 the attorney general of this state or by an electronic mail  
6 service provider injured by the violation. Actions for civil  
7 enforcement must be brought within one year from the date of  
8 the violation. The attorney general may seek injunctive  
9 relief, attorney fees, and civil penalties in the amount of  
10 \$25,000 for each day a violation occurs or an amount not less  
11 than \$2 but not more than \$8 for each electronic mail message  
12 initiated in violation of new Code chapter 716A, whichever is  
13 lesser. In a civil action brought by an electronic mail  
14 service provider, the court may award injunctive relief,  
15 attorney fees, and damages equaling the greater of the amount  
16 of actual damages incurred as a result of the violation  
17 including the offender's receipts resulting from the  
18 violation, or liquidated damages of \$25,000 for each day a  
19 violation occurs or an amount not less than \$2 but not more  
20 than \$8 for each electronic mail message initiated in  
21 violation of new Code chapter 716A. In actions brought by an  
22 electronic mail service provider, the court may consider  
23 whether the offender uses commercially reasonable practices  
24 and procedures designed to effectively prevent such violations  
25 or if the violation occurred despite the offender having such  
26 reasonable practices and procedures.

27 The bill provides that the attorney general may also  
28 initiate a civil action under the provisions of the federal  
29 CAN-SPAM Act of 2003, unless the attorney general has brought  
30 an action under new Code chapter 716A.

31 The bill provides that any equipment, software, or other  
32 technology of an offender that is used in the commission of  
33 the violation, including any proceeds from commission of the  
34 violation, is subject to seizure and forfeiture.

35 The bill repeals Code chapter 714E, relating to

1 restrictions on use of electronic mail transmissions and the  
2 civil enforcement of those restrictions.

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