



HB 1211

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1 A bill to be entitled

2 An act relating to electronic messages; providing
3 definitions; prohibiting a person from transmitting,
4 conspiring to transmit, or assisting in transmitting a
5 commercial electronic mail message from a computer within
6 the state to a resident of the state if that message uses
7 an Internet domain name without permission, misrepresents
8 the point of origin of the message, or contains false or
9 misleading information; specifying circumstances under
10 which a person has knowledge that the intended recipient
11 of a message is a resident of this state; providing for
12 injunctive or other equitable relief for a violation of
13 the act; authorizing the court to award damages;
14 authorizing a computer service to block the receipt or
15 transmission of a message upon reasonable belief that the
16 message is or will be sent in violation of the act;
17 providing immunity from liability for such action;
18 providing an effective date.

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20 WHEREAS, the Legislature finds that the volume of
21 unsolicited electronic mail has grown exponentially in the past
22 year as individuals and organizations have discovered that they
23 are able to send electronic advertisements to hundreds of
24 thousands of Internet users at virtually no cost, and

25 WHEREAS, unsolicited commercial electronic mail messages
26 constitute the majority of unsolicited electronic mail, and
27 unsolicited commercial electronic mail messages often impose an
28 out-of-pocket monetary cost on recipients who cannot refuse such
29 messages and who incur incremental fees for time spent accessing
30 and reviewing each message, and



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31 WHEREAS, to the recipient, an unsolicited commercial
32 electronic mail message is often indistinguishable from other
33 electronic mail messages and the unsolicited messages thus
34 diminish the utility of the electronic mail service because
35 users must sort through unwanted advertisements to obtain those
36 messages they wish to receive, and

37 WHEREAS, unsolicited commercial electronic mail messages
38 cannot be effectively blocked and thus, invade the privacy of
39 recipients, and this invasion of privacy is exacerbated for
40 recipients whose electronic mail service issues an alert for
41 each message received, resulting in repeated disruption of
42 computer use, and

43 WHEREAS, advertisers may reach electronic mail users by
44 less-intrusive means that do not impose the cost of unwanted
45 advertisements on recipients and that do not interfere with
46 recipients' ability to use electronic mail service, and
47 advertisers may also continue to use electronic mail as a low-
48 cost method of reaching a wide audience if their mailings are
49 solicited, and

50 WHEREAS, unsolicited electronic mail sent in bulk often
51 imposes significant monetary costs on interactive computer
52 services, businesses, and educational and nonprofit
53 organizations because they must divert a significant portion of
54 limited computing resources to processing and storing these
55 messages and to responding to complaints by recipients, and

56 WHEREAS, unsolicited electronic mail is increasingly
57 diminishing the quality of service provided to customers of
58 interactive computer services and is harming the business
59 operations of interactive computer services, NOW, THEREFORE,

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61 Be It Enacted by the Legislature of the State of Florida:

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63 Section 1. Electronic mail containing unauthorized domain
64 name or false or misleading information prohibited; penalties.--

65 (1) As used in this section, the term:

66 (a) "Assist the transmission" means actions taken by a
67 person to provide substantial assistance or support that enables
68 a person to formulate, compose, send, originate, initiate, or
69 transmit a commercial electronic mail message when the person
70 providing the assistance knows or consciously avoids knowing
71 that the initiator of the commercial electronic mail message is
72 engaged, or intends to engage, in any practice that violates
73 laws protecting consumers.

74 (b) "Commercial electronic mail message" means an
75 electronic mail message sent for the purpose of promoting real
76 property, goods, or services for sale or lease. The term does
77 not mean an electronic mail message to which an interactive
78 computer service provider has attached an advertisement in
79 exchange for free use of an electronic mail account if the
80 sender has agreed to such an arrangement.

81 (c) "Electronic mail address" means a destination,
82 commonly expressed as a string of characters, to which
83 electronic mail may be sent or delivered.

84 (d) "Initiate the transmission" means the action by the
85 original sender of an electronic mail message, not the action by
86 any intervening interactive computer service that may handle or
87 retransmit the message, unless the intervening interactive
88 computer service assists in the transmission of an electronic
89 mail message when it knows, or consciously avoids knowing, that
90 the person initiating the transmission is engaged, or intends to



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91 engage, in any act or practice that violates laws protecting
92 consumers.

93 (e) "Interactive computer service" means any information
94 service, system, or access software provider that provides or
95 enables computer access by multiple users to a computer server,
96 including a service or system that provides access to the
97 Internet and similar systems operated or services offered by
98 libraries or educational institutions.

99 (f) "Internet domain name" means the globally unique,
100 hierarchical reference to an Internet host or service which is
101 assigned through a naming authority and which consists of a
102 series of character strings separated by periods.

103 (g) "Person" means an individual, corporation,
104 partnership, or association.

105 (2)(a) A person may not transmit, conspire with another to
106 transmit, or assist in transmitting a commercial electronic mail
107 message from a computer located in this state to an electronic
108 mail address that the sender knows, or has reason to know, is
109 held by a resident of this state if the commercial electronic
110 mail message:

111 1. Uses a third party's Internet domain name without the
112 permission of the third party or which otherwise misrepresents
113 or obscures any information in identifying the point of origin
114 or the transmission path of a commercial electronic mail
115 message; or

116 2. Contains false or misleading information in the subject
117 line.

118 (b) For purposes of this subsection, a person knows that
119 the intended recipient of a commercial electronic mail message
120 is a resident of this state if that information is available



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121 upon request from the registrant of the Internet domain name
122 contained in the recipient's electronic mail address.

123 (3) In addition to any other remedy provided by law, a
124 person may bring an action for appropriate injunctive or other
125 equitable relief for a violation of subsection (2). The court
126 may award damages of:

127 (a) Five hundred dollars to the recipient of a commercial
128 electronic mail message who suffers damage as a result of a
129 violation of subsection (2) or the court may award actual
130 damages, whichever is greater.

131 (b) One thousand dollars to an interactive computer
132 service that suffers damage as a result of a violation of
133 subsection (2) or the court may award actual damages, whichever
134 is greater.

135 (4)(a) An interactive computer service may, upon its own
136 initiative, block the receipt or transmission through its
137 service of any commercial electronic mail message that it
138 reasonably believes is, or will be, sent in violation of
139 subsection (2).

140 (b) An interactive computer service may not be held liable
141 for any action voluntarily taken in good faith to block the
142 receipt or transmission through its service of any commercial
143 electronic mail message that it reasonably believes is, or will
144 be, sent in violation of subsection (2).

145 Section 2. This act shall take effect July 1, 2003.