



CHAMBER ACTION

The Committee on Business Regulation recommends the following:

**Committee Substitute**

Remove the entire bill and insert:

A bill to be entitled

An act relating to electronic messages; creating s. 668.20, F.S.; defining "commercial electronic mail message," "electronic mail," "electronic mail service provider," "established business relationship," and "unsolicited commercial electronic mail message"; creating s. 668.21, F.S.; prohibiting transmission of commercial electronic mail messages under certain conditions; creating s. 668.22, F.S.; providing for civil relief and damages; providing an effective date.

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

Section 1. Section 668.20, Florida Statutes, is created to read:

668.20 Commercial electronic mail message; definitions.--

As used in ss. 668.20, 668.21, and 668.22, the term:

(1) "Commercial electronic mail message" means an electronic mail message sent for the purpose of encouraging the



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29 purchase or rental of, or investment in, property, goods, or  
30 services.

31 (2) "Electronic mail" means an electronic message or  
32 computer file containing an image of a message that is  
33 transmitted between two or more computer or electronic terminals  
34 and includes electronic messages that are transmitted within or  
35 between computer networks.

36 (3) "Electronic mail service provider" means any person  
37 who:

38 (a) Is an intermediary in sending or receiving electronic  
39 mail; and

40 (b) Provides to end users of electronic mail services the  
41 ability to send or receive electronic mail.

42 (4) "Established business relationship" means a prior or  
43 existing relationship formed by a voluntary communication  
44 between a person or entity and the recipient, with or without an  
45 exchange of consideration, on the basis of an inquiry,  
46 application, purchase, or use by the recipient regarding  
47 products or services offered by such person or entity.

48 (5) "Unsolicited commercial electronic mail message" means  
49 a commercial electronic mail message sent without the consent of  
50 the recipient by a person with whom the recipient does not have  
51 an established business relationship. "Unsolicited commercial  
52 electronic mail message" does not include electronic mail  
53 messages the sender of which:

54 (a) Is an organization using electronic mail to  
55 communicate exclusively with its members;



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- 56        (b) Is an organization using electronic mail to  
57 communicate exclusively with its employees or contractors;  
58        (c) Has the consent of the recipient; or  
59        (d) Has an established business relationship with the  
60 recipient.

61        Section 2. Section 668.21, Florida Statutes, is created to  
62 read:

63        668.21 Commercial electronic mail message; prohibitions.--

64        (1) No person shall transmit a commercial electronic mail  
65 message that:

66        (a) Falsifies electronic mail transmission information or  
67 other routing information for the unsolicited commercial  
68 electronic message; or

69        (b) Contains false or misleading information in the  
70 subject line.

71        (2) No person shall send a commercial electronic mail  
72 message using a third party's internet address or domain name,  
73 without the third party's consent, for the purpose of  
74 transmitting electronic mail in a way that makes it appear that  
75 the third party was the sender of such mail.

76        (3) No person shall send an unsolicited commercial  
77 electronic mail message without using the exact characters  
78 "ADV:" as the first four characters in the subject line of such  
79 message.

80        (4) No person shall send an unsolicited commercial  
81 electronic mail message without providing a mechanism that  
82 allows recipients to easily and at no cost remove themselves



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83 from the sender's electronic mail address lists so that they are  
84 not included in future mailings.

85 Section 3. Section 668.22, Florida Statutes, is created to  
86 read:

87 668.22 Commercial electronic mail message; civil relief;  
88 damages.--

89 (1) Any person whose property or person is injured by  
90 reason of a violation of any provision of s. 668.21 may recover  
91 for any damages sustained and the costs of suit. Without  
92 limiting the generality of the term, "damages" shall include  
93 loss of profits.

94 (2) If the injury arises from the transmission of  
95 unsolicited or commercial electronic mail messages, the injured  
96 person, other than an electronic mail service provider, may also  
97 recover attorney's fees and costs and may elect, in lieu of  
98 actual damages, to recover the lesser of \$10 for each and every  
99 unsolicited commercial electronic mail message transmitted in  
100 violation of s. 668.21 or \$500 per day. The injured person shall  
101 not have a cause of action against the electronic mail service  
102 provider, which merely transmits the unsolicited commercial  
103 electronic mail message over its computer network.

104 (3) If the injury arises from the transmission of  
105 unsolicited or commercial electronic mail messages, an injured  
106 electronic mail service provider may also recover attorney's  
107 fees and costs and may elect, in lieu of actual damages, to  
108 recover the greater of \$10 for each and every unsolicited  
109 commercial electronic mail message transmitted in violation of  
110 s. 668.21 or \$500 per day.



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111 (4) At the request of any party to an action brought  
112 pursuant to this section, the court may, in its discretion,  
113 conduct all legal proceedings in such a way as to protect the  
114 secrecy and security of the computer, computer network, computer  
115 data, computer program, and computer software involved in order  
116 to prevent possible recurrence of the same or a similar act by  
117 another person and to protect any trade secrets of any party.

118 (5) An electronic mail service provider does not violate  
119 s. 668.21, and the injured party shall not have a cause of  
120 action against an electronic mail service provider, due to the  
121 fact that the electronic mail service provider:

122 (a) Is an intermediary between the sender and recipient in  
123 the transmission of an electronic mail message that violates s.  
124 668.21;

125 (b) Provides transmission of unsolicited commercial  
126 electronic mail messages over the provider's computer network or  
127 facilities; or

128 (c) Takes voluntarily action in good faith to block the  
129 receipt or transmission through its service of any electronic  
130 mail advertisements that it believes is or will be sent in  
131 violation of s. 668.21.

132 Section 4. This act shall take effect July 1, 2003.