

By Senator Campbell

32-261-03

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

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

30 WHEREAS, unsolicited commercial electronic mail
31 messages constitute the majority of unsolicited electronic

1 mail, and unsolicited commercial electronic mail messages
2 often impose an out-of-pocket monetary cost on recipients who
3 cannot refuse such messages and who incur incremental fees for
4 time spent accessing and reviewing each message, and

5 WHEREAS, to the recipient, an unsolicited commercial
6 electronic mail message is often indistinguishable from other
7 electronic mail messages and the unsolicited messages thus
8 diminish the utility of the electronic mail service because
9 users must sort through unwanted advertisements to obtain
10 those messages they wish to receive, and

11 WHEREAS, unsolicited commercial electronic mail
12 messages cannot be effectively blocked and thus, invade the
13 privacy of recipients, and this invasion of privacy is
14 exacerbated for recipients whose electronic mail service
15 issues an alert for each message received, resulting in
16 repeated disruption of computer use, and

17 WHEREAS, advertisers may reach electronic mail users by
18 less-intrusive means that do not impose the cost of unwanted
19 advertisements on recipients and that do not interfere with
20 recipients' ability to use electronic mail service, and
21 advertisers may also continue to use electronic mail as a
22 low-cost method of reaching a wide audience if their mailings
23 are solicited, and

24 WHEREAS, unsolicited electronic mail sent in bulk often
25 imposes significant monetary costs on interactive computer
26 services, businesses, and educational and nonprofit
27 organizations because they must divert a significant portion
28 of limited computing resources to processing and storing these
29 messages and to responding to complaints by recipients, and

30 WHEREAS, unsolicited electronic mail is increasingly
31 diminishing the quality of service provided to customers of

1 interactive computer services and is harming the business
2 operations of interactive computer services, NOW, THEREFORE,

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

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6 Section 1. Electronic mail containing unauthorized
7 domain name or false or misleading information prohibited;
8 penalties.--

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

10 (a) "Assist the transmission" means actions taken by a
11 person to provide substantial assistance or support that
12 enables a person to formulate, compose, send, originate,
13 initiate, or transmit a commercial electronic mail message
14 when the person providing the assistance knows or consciously
15 avoids knowing that the initiator of the commercial electronic
16 mail message is engaged, or intends to engage, in any practice
17 that violates laws protecting consumers.

18 (b) "Commercial electronic mail message" means an
19 electronic mail message sent for the purpose of promoting real
20 property, goods, or services for sale or lease. The term does
21 not mean an electronic mail message to which an interactive
22 computer service provider has attached an advertisement in
23 exchange for free use of an electronic mail account if the
24 sender has agreed to such an arrangement.

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

28 (d) "Initiate the transmission" means the action by
29 the original sender of an electronic mail message, not the
30 action by any intervening interactive computer service that
31 may handle or retransmit the message, unless the intervening

1 interactive computer service assists in the transmission of an
2 electronic mail message when it knows, or consciously avoids
3 knowing, that the person initiating the transmission is
4 engaged, or intends to engage, in any act or practice that
5 violates laws protecting consumers.

6 (e) "Interactive computer service" means any
7 information service, system, or access software provider that
8 provides or enables computer access by multiple users to a
9 computer server, including a service or system that provides
10 access to the Internet and similar systems operated or
11 services offered by libraries or educational institutions.

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

16 (g) "Person" means an individual, corporation,
17 partnership, or association.

18 (2)(a) A person may not transmit, conspire with
19 another to transmit, or assist in transmitting a commercial
20 electronic mail message from a computer located in this state
21 to an electronic mail address that the sender knows, or has
22 reason to know, is held by a resident of this state if the
23 commercial electronic mail message:

24 1. Uses a third party's Internet domain name without
25 the permission of the third party or which otherwise
26 misrepresents or obscures any information in identifying the
27 point of origin or the transmission path of a commercial
28 electronic mail message; or

29 2. Contains false or misleading information in the
30 subject line.

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1 (b) For purposes of this subsection, a person knows
2 that the intended recipient of a commercial electronic mail
3 message is a resident of this state if that information is
4 available upon request from the registrant of the Internet
5 domain name contained in the recipient's electronic mail
6 address.

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

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

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

19 (4)(a) An interactive computer service may, upon its
20 own initiative, block the receipt or transmission through its
21 service of any commercial electronic mail message that it
22 reasonably believes is, or will be, sent in violation of
23 subsection (2).

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

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

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SENATE SUMMARY

Prohibits a person from transmitting, conspiring to transmit, or assisting in transmitting a commercial electronic mail message from a computer within the state to a resident of the state if that message uses third party's Internet domain name without permission, misrepresents the point of origin of the message, or contains false or misleading information on the subject line. Provides for injunctive or other equitable relief. Authorizes the court to award damages. Provides that a computer service may block the receipt or transmission of a message upon reasonable belief that the message is or will be sent in violation of the act. (See bill for details.)