

By the Committee on Communication and Public Utilities; and
Senators Campbell, Siplin, Cowin, Margolis, Miller and Posey

319-2244-03

1 A bill to be entitled
2 An act relating to commercial electronic
3 messages; providing definitions; prohibiting a
4 person from transmitting a commercial
5 electronic mail message that uses a third
6 party's Internet domain name without permission
7 or a message that contains false or misleading
8 information; prohibits a person from
9 transmitting an unsolicited commercial
10 electronic mail message without the use of the
11 characters "ADV:" in the subject line or
12 without providing a mechanism allowing
13 recipients to easily remove themselves from the
14 sender's electronic mailing address list at no
15 cost; providing damages and an award for
16 attorney's fees and costs to an injured party
17 for violation of the act; providing the
18 electronic mail service provider immunity from
19 liability; providing an injured electronic mail
20 service provider an award of attorney's fees
21 and costs, and in lieu of actual damages, if
22 the provider so chooses, the greater of \$10 for
23 each unsolicited commercial electronic mail
24 message transmitted or \$25,000 per day;
25 providing an effective date.

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

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29 Section 1. Definitions.--As used in this section, the
30 term:
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1 (1) "Commercial electronic mail message" means an
2 electronic mail message sent for the purpose of encouraging
3 the purchase or rental of, or investment in, property, goods,
4 or services.

5 (2) "Electronic mail" means an electronic message or
6 computer file containing an image of a message that is
7 transmitted between two or more computer or electronic
8 terminals and includes electronic messages that are
9 transmitted within or between computer networks.

10 (3) "Electronic mail service provider" means any
11 person who is an intermediary in sending or receiving
12 electronic mail and provides to end-users of electronic mail
13 services the ability to send or receive electronic mail.

14 (4) "Established business relationship" means a prior
15 or existing relationship formed by a voluntary communication
16 between a person or entity and the recipient with or without
17 an exchange of consideration, on the basis of an inquiry,
18 application, purchase, or use by the recipient regarding
19 products or services offered by such person or entity.

20 (5) "Unsolicited commercial electronic mail message"
21 means a commercial electronic mail message sent without the
22 consent of the recipient by a person with whom the recipient
23 does not have an established business relationship.

24 "Unsolicited commerce electronic mail message" does not
25 include electronic mail messages if the sender:

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

28 (b) Is an organization using electronic mail to
29 communicate exclusively with its employees or contractors, or
30 both;

31 (c) Has the consent of the recipient; or

1 (d) Has an established business relationship with the
2 recipient, as defined in subsection (1).

3 Section 2. Prohibitions.--

4 (1) It is a violation of this section for any person
5 to transmit a commercial electronic mail message that:

6 (a) Falsifies electronic mail transmission information
7 or other routing information for the unsolicited commercial
8 electronic message; or

9 (b) Contains false or misleading information in the
10 subject lines.

11 (2) It is a violation of this section for any person
12 that sends a commercial electronic mail message to use a third
13 party's Internet address or domain name without the third
14 party's consent for the purpose of transmitting electronic
15 mail in a way that makes it appear that the third party was
16 the sender of such mail.

17 (3) It is a violation of this section for any person
18 that sends an unsolicited commercial electronic mail message
19 to fail to use the exact characters "ADV:" (the capital
20 letters "A," "D," and "V," in that order, followed immediately
21 by a colon) as the first four characters in the subject line
22 of an unsolicited commercial electronic mail message.

23 (4) It is a violation of this section for any person
24 that sends an unsolicited commercial electronic mail message
25 to fail to provide a mechanism allowing recipients to easily
26 and at no cost remove themselves from the sender's electronic
27 mail address lists so that they are not included in future
28 mailings.

29 Section 3. Civil relief; damages.--

30 (1) Any person whose property or person is injured by
31 reason of a violation of any provision of this section may

1 recover any damages sustained and the costs of the suit.

2 Without limiting the generality of the term, "damages"

3 includes loss of profits.

4 (2) If the injury arises from the transmission of

5 unsolicited or commercial electronic mail messages, the

6 injured person, other than an electronic mail service

7 provider, may also recover attorney's fees and costs, and may

8 elect, in lieu of actual damages, to recover the lesser of \$10

9 for each unsolicited commercial electronic mail message

10 transmitted in violation of this section, or \$25,000 per day.

11 The injured person does not have a cause of action against the

12 electronic mail service provider that merely transmits the

13 unsolicited commercial electronic mail message over its

14 computer network.

15 (3) If the injury arises from the transmission of

16 unsolicited or commercial electronic mail messages, an injured

17 electronic mail service provider may also recover attorney's

18 fees and costs, and may elect, in lieu of actual damages, to

19 recover the greater of \$10 for each unsolicited commercial

20 electronic mail message transmitted in violation of this

21 section, or \$25,000 per day.

22 (4) At the request of any party to an action brought

23 pursuant to this section, the court may conduct all legal

24 proceedings in a way that protects the secrecy and security of

25 the computer, computer network, computer data, computer

26 program, and computer software involved in order to prevent

27 possible recurrence of the same or a similar act by another

28 person and to protect any trade secrets of any party.

29 (5) An electronic mail service provider does not

30 violate this section and the injured party does not have a

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1 cause of action against an electronic mail service provider
2 due to the fact that the provider:
3 (a) Is an intermediary between the sender and the
4 recipient in the transmission of a commercial electronic mail
5 message that violates this section; or
6 (b) Provides transmission of unsolicited commercial
7 electronic mail messages over the provider's computer network
8 or facilities or voluntarily takes action in good faith to
9 block the receipt or transmission through its service of any
10 electronic mail advertisements that it believes is, or will be
11 sent, in violation of this section.

12 Section 4. This act shall take effect July 1, 2003.
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 SB 438
4 The Committee Substitute for SB 438:
5 -Deletes the whereas clauses;
6 -Revises the definitions;
7 -Revises provision on unlawful acts to make it unlawful, in an
8 unsolicited commercial email, to fail to use the exact
9 characters "ADV:" as the first four characters in the subject
10 line and to fail to provide a mechanism allowing recipients to
11 easily and at no cost remove themselves from the sender's
12 address lists so they are not included in future mailings.
13 -Revises provisions on damages to allow any person injured by
14 a violation to recover damages, including lost profits,
15 together with costs of the suit, or in lieu of actual damages,
16 a person other than an email service provider may recover the
17 lesser of \$10 for each unsolicited commercial email
18 transmitted in violation of these provisions or \$25,000 per
19 day and an injured email service provider may recover the
20 greater of \$10 for each unsolicited commercial email
21 transmitted in violation of these provisions or \$25,000 per
22 day.
23 -Provides that at the request of any party, a court may
24 conduct all proceedings in a way that protects the security
25 and secrecy of computers, networks, data, and so forth so as
26 to prevent recurrence of the violation and to protect trade
27 secrets.
28 -Provides that an email service provider does not violate
29 these provisions and that an injured party has no cause of
30 action against the email service provider because the provider
31 is an intermediary between the recipient and the sender of an
32 email that violates these provisions, because the service
33 provider provides transmission of unsolicited commercial
34 emails over its network, or because the service provider
35 facilitates or voluntarily and in good faith takes action to
36 block the receipt or transmission through its system of any
37 email it believes is or will be in violation of these
38 provisions.