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1 A bill to be entitled

2 An act relating to commercial relations; creating part III  
3 of ch. 668, F.S., relating to unsolicited commercial  
4 electronic mail; providing a popular name; providing  
5 legislative intent; providing definitions relating to  
6 unsolicited commercial electronic mail; prohibiting a  
7 person from initiating or assisting in the transmission of  
8 unsolicited commercial electronic mail under certain  
9 circumstances; prohibiting the distribution of software or  
10 any other system designed to falsify missing routing  
11 information identifying the point of origin or the  
12 transmission path of a commercial electronic mail message;  
13 authorizing interactive computer service providers to  
14 block unsolicited commercial electronic mail; authorizing  
15 the Department of Legal Affairs to enforce the act;  
16 authorizing the department and persons receiving or  
17 retransmitting unsolicited electronic mail to bring an  
18 action against persons transmitting that mail; providing  
19 for declaratory and injunctive relief, compensatory  
20 damages, and attorney's fees; declaring that persons  
21 outside this state are subject to the jurisdiction of this  
22 state's courts under specified circumstances; providing a  
23 statute-of-limitations period; providing that a violation  
24 of the act is an unfair and deceptive trade practice;  
25 providing for severability; providing an effective date.

26  
27 Be It Enacted by the Legislature of the State of Florida:  
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29 Section 1. Part III of chapter 668, Florida Statutes,  
 30 consisting of sections 668.60, 668.601, 668.602, 668.603,  
 31 668.604, 668.605, 668.606, and 668.6075, is created to read:

32 668.60 Popular name; application.--This part may be known  
 33 by the popular name the "Electronic Mail Communications Act."  
 34 Except as otherwise provided, this part applies to unsolicited  
 35 commercial electronic mail.

36 668.601 Legislative intent.--This part is intended to  
 37 promote the integrity of electronic commerce and shall be  
 38 construed liberally in order to protect the public and  
 39 legitimate businesses from deceptive and unsolicited commercial  
 40 electronic mail.

41 668.602 Definitions.--As used in this part, the term:

42 (1) "Affirmative consent" means that the recipient of  
 43 electronic mail expressly consented to receive the message  
 44 either in response to a clear and conspicuous request for the  
 45 recipient's consent or at the recipient's own initiative. A  
 46 recipient is deemed to have given affirmative consent if the  
 47 electronic mail message is from a person other than the person  
 48 to whom the recipient directly communicated consent if clear and  
 49 conspicuous notice was given to the recipient that the  
 50 recipient's electronic mail address could be transferred to  
 51 another person for the purpose of that person initiating the  
 52 transmission of a commercial electronic mail message to the  
 53 recipient.

54 (2) "Assist in the transmission" means to provide  
 55 substantial assistance or support that enables a person to  
 56 formulate, compose, send, originate, initiate, or transmit a  
 57 commercial electronic mail message when the person providing the

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58 assistance knows or has reason to know that the initiator of the  
 59 commercial electronic mail message is engaged in or intends to  
 60 engage in a practice that violates this chapter.

61 (3) "Commercial electronic mail message" means an  
 62 electronic mail message sent to promote the sale or lease of, or  
 63 investment in, property, goods, or services related to any trade  
 64 or commerce.

65 (4) "Department" means the Department of Legal Affairs.

66 (5) "Electronic mail address" means a destination,  
 67 commonly expressed as a string of characters, to which  
 68 electronic mail may be sent or delivered.

69 (6) "Electronic mail message" means an electronic message  
 70 or computer file that is transmitted between two or more  
 71 telecommunications devices; computers; computer networks,  
 72 regardless of whether the network is a local, regional, or  
 73 global network; or electronic devices capable of receiving  
 74 electronic messages, regardless of whether the message is  
 75 converted to hardcopy format after receipt, viewed upon  
 76 transmission, or stored for later retrieval.

77 (7) "Initiate the transmission" means the action taken by  
 78 the original sender with respect to a commercial electronic mail  
 79 message.

80 (8) "Interactive computer service" means any information  
 81 service, system, or access software provider that provides or  
 82 enables computer access by multiple users to a computer server,  
 83 including specifically, but not limited to, a service or system  
 84 that provides access to the Internet and the systems operated or  
 85 services offered by libraries or educational institutions.

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86       (9) "Internet domain name" means a globally unique,  
87 hierarchical reference to an Internet host or service, which is  
88 assigned through centralized Internet naming authorities, and  
89 which is comprised of a series of character strings separated by  
90 periods, with the right-most string specifying the top of the  
91 hierarchy.

92       (10) "Person" means any individual, group of individuals,  
93 firm, association, corporation, partnership, joint venture, sole  
94 proprietorship, or any other business entity.

95       (11) "Trade or commerce" means the advertising,  
96 soliciting, providing, offering, or distributing, whether by  
97 sale, rental, or otherwise, of any goods or service, or any  
98 property, whether tangible or intangible, or any other article,  
99 commodity, or thing of value, wherever situated.

100       (12) "Unsolicited commercial electronic mail message"  
101 means any commercial electronic mail message that is not a  
102 transactional or relationship message and is sent to a recipient  
103 without the recipient's prior affirmative or implied consent.

104       668.603 Prohibited activity.--A person may not:

105       (1) Initiate or assist in the transmission of an  
106 unsolicited commercial electronic mail message from a computer  
107 located in this state or to an electronic mail address that is  
108 held by a resident of this state which:

109       (a) Uses a third party's Internet domain name without  
110 permission of the third party;

111       (b) Contains falsified or missing routing information or  
112 otherwise misrepresents, falsifies, or obscures any information  
113 in identifying the point of origin or the transmission path of  
114 the unsolicited commercial electronic mail message; or

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115 (c) Contains false or misleading information in the  
 116 subject line.

117  
 118 A person is not initiating a transmission if the activity is  
 119 undertaken by an intervening interactive computer service or  
 120 wireless network that handles or retransmits a commercial  
 121 electronic mail message, unless the intervening interactive  
 122 computer service knows, or has reason to know, that the person  
 123 initiating the transmission is engaged, or intends to engage, in  
 124 any act or practice that violates this section.

125 (2) Distribute software or any other system designed to  
 126 falsify missing routing information identifying the point of  
 127 origin or the transmission path of the commercial electronic  
 128 mail message.

129 668.604 Blocking of commercial electronic mail by  
 130 interactive computer service.--

131 (1) An interactive computer service may, upon its own  
 132 initiative, block the receipt or transmission through its  
 133 service of any commercial electronic mail message that it  
 134 reasonably believes is, or will be sent, in violation of s.  
 135 668.603.

136 (2) An interactive computer service is not liable for any  
 137 action voluntarily taken in good faith to block the receipt or  
 138 transmission through its service of any commercial electronic  
 139 mail message that it reasonably believes is, or will be sent, in  
 140 violation of s. 668.603.

141 668.605 Confidentiality of intelligence or investigation  
 142 information.--This part does not contravene the provisions of s.

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143 501.2065, which provides for maintaining the confidential status  
 144 of certain information.

145 668.606 Remedies.--

146 (1) The department may bring an action for damages or for  
 147 declaratory or injunctive relief or may impose a civil penalty  
 148 as provided in this section. A cause of action, without regard  
 149 to any other remedy or relief to which a person is entitled,  
 150 including the right to seek declaratory and injunctive relief  
 151 against a person who initiates or assists in the transmission of  
 152 a commercial electronic mail message that violates, has  
 153 violated, or is otherwise likely to violate s. 668.603, is  
 154 available to:

155 (a) A person who receives an unsolicited commercial  
 156 electronic mail message; and

157 (b) An interactive computer service, telephone company, or  
 158 cable provider that handles or retransmits the commercial  
 159 electronic mail message.

160 (2) This part does not create a cause of action against an  
 161 interactive computer service, telephone company, or cable  
 162 provider whose equipment is used to transport, handle, or  
 163 retransmit a commercial electronic mail message that violates s.  
 164 668.603.

165 (3) A prevailing plaintiff in an action filed under this  
 166 part is entitled to:

167 (a) An injunction to enjoin future violations of s.  
 168 668.603.

169 (b) Compensatory damages equal to any actual damage proven  
 170 by the plaintiff to have resulted from the initiation of the  
 171 unsolicited commercial electronic mail message or liquidated

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172 damages of \$500 for each unsolicited commercial electronic mail  
 173 message that violates s. 668.603 when that message is sent by  
 174 the defendant:

- 175 1. To the plaintiff;
- 176 2. Through the plaintiff's interactive computer service;
- 177 or
- 178 3. To any consumer in this state, if the department is the  
 179 plaintiff.

180 (c) The plaintiff's attorney's fees and other litigation  
 181 costs reasonably incurred in connection with the action.

182 (4) Any person outside this state who initiates or assists  
 183 in the transmission of a commercial electronic mail message  
 184 received in this state which violates s. 668.603 and who knows,  
 185 or should have known, that the commercial electronic mail  
 186 message will be received in this state submits to the  
 187 jurisdiction of this state for purposes of this part.

188 (5) An action under this section must be commenced within  
 189 4 years following the date of any activity prohibited by s.  
 190 668.603.

191 668.6075 Violations of s. 668.603.--

192 (1) A violation of s. 668.603 shall be deemed an unfair  
 193 and deceptive trade practice within the meaning of part II of  
 194 chapter 501. In addition to any remedies or penalties set forth  
 195 in that part, a violator shall be subject to the penalties and  
 196 remedies provided for in this part.

197 (2) The remedies of this part are in addition to remedies  
 198 otherwise available for the same conduct under federal or state  
 199 law.

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200       Section 2. If any provision of this act or its application  
201 to any person or circumstance is held invalid, the invalidity  
202 does not affect other provisions or applications of this act  
203 which can be given effect without the invalid provision or  
204 application, and to this end the provisions of this act are  
205 severable.

206       Section 3. This act shall take effect July 1, 2004.