

CHAMBER ACTION

1 The Committee on Judiciary recommends the following:

2
3 **Committee Substitute**

4 Remove the entire bill and insert:

5
6 A bill to be entitled
7 An act relating to commercial relations; creating part III
8 of ch. 668, F.S., relating to unsolicited commercial
9 electronic mail; providing a popular name; providing
10 legislative intent; providing definitions relating to
11 unsolicited commercial electronic mail; prohibiting a
12 person from initiating or assisting in the transmission of
13 unsolicited commercial electronic mail under certain
14 circumstances; prohibiting the distribution of software or
15 any other system designed to falsify missing routing
16 information identifying the point of origin or the
17 transmission path of a commercial electronic mail message;
18 providing construction of the act with respect to
19 blocking, transmission, routing, relaying, handling, and
20 storing of certain types of electronic mail messages by
21 providers of Internet access service, the adoption of
22 policies regarding commercial or other electronic mail by
23 such providers, and policies that are unlawful under other

HB 1363

2004
CS

24 provisions of law; authorizing the Department of Legal
 25 Affairs to enforce the act; authorizing the department and
 26 persons receiving or retransmitting unsolicited electronic
 27 mail to bring an action against persons transmitting that
 28 mail; providing for declaratory and injunctive relief,
 29 compensatory damages, and attorney's fees; declaring that
 30 persons outside this state are subject to the jurisdiction
 31 of this state's courts under specified circumstances;
 32 providing a statute-of-limitations period; providing that
 33 a violation of the act is an unfair and deceptive trade
 34 practice; providing for severability; providing an
 35 effective date.

36
 37 Be It Enacted by the Legislature of the State of Florida:

38
 39 Section 1. Part III of chapter 668, Florida Statutes,
 40 consisting of sections 668.60, 668.601, 668.602, 668.603,
 41 668.604, 668.605, 668.606, and 668.6075, is created to read:

42 668.60 Popular name; application.--This part may be known
 43 by the popular name the "Electronic Mail Communications Act."
 44 Except as otherwise provided, this part applies to unsolicited
 45 commercial electronic mail.

46 668.601 Legislative intent.--This part is intended to
 47 promote the integrity of electronic commerce and shall be
 48 construed liberally in order to protect the public and
 49 legitimate businesses from deceptive and unsolicited commercial
 50 electronic mail.

51 668.602 Definitions.--As used in this part, the term:

52 (1) "Affirmative consent" means that the recipient of
 53 electronic mail expressly consented to receive the message
 54 either in response to a clear and conspicuous request for the
 55 recipient's consent or at the recipient's own initiative. A
 56 recipient is deemed to have given affirmative consent if the
 57 electronic mail message is from a person other than the person
 58 to whom the recipient directly communicated consent if clear and
 59 conspicuous notice was given to the recipient that the
 60 recipient's electronic mail address could be transferred to
 61 another person for the purpose of that person initiating the
 62 transmission of a commercial electronic mail message to the
 63 recipient.

64 (2) "Assist in the transmission" means to provide
 65 substantial assistance or support that enables a person to
 66 formulate, compose, send, originate, initiate, or transmit a
 67 commercial electronic mail message when the person providing the
 68 assistance knows or has reason to know that the initiator of the
 69 commercial electronic mail message is engaged in or intends to
 70 engage in a practice that violates this chapter. "Assist in the
 71 transmission" does not include:

72 (a) Actions that constitute routine conveyance of such
 73 message; or

74 (b) Activities of any entity related to the design,
 75 manufacture, or distribution of any technology, product, or
 76 component that has a commercially significant use other than to
 77 violate or circumvent this statute.

78 (3) "Commercial electronic mail message" means an
 79 electronic mail message sent to promote the sale or lease of, or

80 investment in, property, goods, or services related to any trade
 81 or commerce. This includes any electronic mail message which may
 82 interfere with any trade or commerce, including messages which
 83 contain computer viruses.

84 (4) "Computer virus" means an unwanted computer program or
 85 other set of instructions inserted into a computer's memory,
 86 operating system, or program that is specifically constructed
 87 with the ability to replicate itself or to affect the other
 88 programs or files in the computer by attaching a copy of the
 89 unwanted program or other set of instructions to one or more
 90 computer programs or files.

91 (5) "Department" means the Department of Legal Affairs.

92 (6) "Electronic mail address" means a destination,
 93 commonly expressed as a string of characters, to which
 94 electronic mail may be sent or delivered.

95 (7) "Electronic mail message" means an electronic message
 96 or computer file that is transmitted between two or more
 97 telecommunications devices; computers; computer networks,
 98 regardless of whether the network is a local, regional, or
 99 global network; or electronic devices capable of receiving
 100 electronic messages, regardless of whether the message is
 101 converted to hardcopy format after receipt, viewed upon
 102 transmission, or stored for later retrieval.

103 (8) "Initiate the transmission" means the action taken by
 104 the original sender with respect to a commercial electronic mail
 105 message.

106 (9) "Interactive computer service" means any information
 107 service, system, or access software provider that provides or

HB 1363

2004
CS

108 enables computer access by multiple users to a computer server,
109 including specifically, but not limited to, a service or system
110 that provides access to the Internet and the systems operated or
111 services offered by libraries or educational institutions.

112 (10) "Internet domain name" means a globally unique,
113 hierarchical reference to an Internet host or service, which is
114 assigned through centralized Internet naming authorities, and
115 which is comprised of a series of character strings separated by
116 periods, with the right-most string specifying the top of the
117 hierarchy.

118 (11) "Person" means any individual, group of individuals,
119 firm, association, corporation, partnership, joint venture, sole
120 proprietorship, or any other business entity.

121 (12) "Routine conveyance" means the transmission, routing,
122 relaying, handling, or storing, through an automatic technical
123 process, of an electronic mail message for which another person
124 has identified the recipients or provided the recipient
125 addresses. This does not include any "routine conveyance" which
126 is deliberately intended to assist persons in violating this
127 part.

128 (13) "Trade or commerce" means the advertising,
129 soliciting, providing, offering, or distributing, whether by
130 sale, rental, or otherwise, of any goods or service, or any
131 property, whether tangible or intangible, or any other article,
132 commodity, or thing of value, wherever situated.

133 (14) "Unsolicited commercial electronic mail message"
134 means any commercial electronic mail message that is not a

HB 1363

2004
CS

135 transactional or relationship message and is sent to a recipient
 136 without the recipient's prior affirmative or implied consent.

137 668.603 Prohibited activity.--A person may not:

138 (1) Initiate or assist in the transmission of an
 139 unsolicited commercial electronic mail message from a computer
 140 located in this state or to an electronic mail address that is
 141 held by a resident of this state which:

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

144 (b) Contains falsified or missing routing information or
 145 otherwise misrepresents, falsifies, or obscures any information
 146 in identifying the point of origin or the transmission path of
 147 the unsolicited commercial electronic mail message;

148 (c) Contains false or misleading information in the
 149 subject line; or

150 (d) Contains false or deceptive information in the body of
 151 the message which is designed and intended to cause damage to
 152 the recipient's receiving device and the receiving devices of
 153 others receiving the message. However, this section does not
 154 apply to electronic mail messages resulting from or created by a
 155 computer virus and which are sent or retransmitted from a
 156 computer or other electronic device without the sender's
 157 knowledge or consent.

158 (2) Distribute software or any other system designed to
 159 falsify missing routing information identifying the point of
 160 origin or the transmission path of the commercial electronic
 161 mail message.

HB 1363

2004
CS

162 668.604 Blocking of commercial electronic mail by
 163 interactive computer service.--Nothing in this part shall be
 164 construed to:

165 (1) Require a provider of Internet access service to
 166 block, transmit, route, relay, handle, or store certain types of
 167 electronic mail messages;

168 (2) Prevent or limit, in any way, a provider of Internet
 169 access service from adopting a policy regarding commercial or
 170 other electronic mail, including a policy of declining to
 171 transmit certain types of electronic mail messages, or from
 172 enforcing such policy through technical means, through contract,
 173 or pursuant to any remedy available under any other provision of
 174 federal, state, or local criminal or civil law; or

175 (3) Render lawful any policy regarding commercial or other
 176 electronic mail that is unlawful under any other provision of
 177 law.

178 668.605 Confidentiality of intelligence or investigation
 179 information.--This part does not contravene the provisions of s.
 180 501.2065, which provides for maintaining the confidential status
 181 of certain information.

182 668.606 Remedies.--

183 (1) The department may bring an action for damages or for
 184 declaratory or injunctive relief or may impose a civil penalty
 185 as provided in this section. A cause of action, without regard
 186 to any other remedy or relief to which a person is entitled,
 187 including the right to seek declaratory and injunctive relief
 188 against a person who initiates or assists in the transmission of
 189 a commercial electronic mail message that violates, has

HB 1363

2004
CS

190 violated, or is otherwise likely to violate s. 668.603, is
 191 available to:

192 (a) A person who receives an unsolicited commercial
 193 electronic mail message; and

194 (b) An interactive computer service, telephone company, or
 195 cable provider that handles or retransmits the commercial
 196 electronic mail message.

197 (2) This part does not create a cause of action against an
 198 interactive computer service, telephone company, or cable
 199 provider whose equipment is used to transport, handle, or
 200 retransmit a commercial electronic mail message that violates s.
 201 668.603.

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

204 (a) An injunction to enjoin future violations of s.
 205 668.603.

206 (b) Compensatory damages equal to any actual damage proven
 207 by the plaintiff to have resulted from the initiation of the
 208 unsolicited commercial electronic mail message or liquidated
 209 damages of \$500 for each unsolicited commercial electronic mail
 210 message that violates s. 668.603 when that message is sent by
 211 the defendant:

212 1. To the plaintiff;

213 2. Through the plaintiff's interactive computer service;
 214 or

215 3. To any consumer in this state, if the department is the
 216 plaintiff.

HB 1363

2004
CS

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

219 (4) Any person outside this state who initiates or assists
 220 in the transmission of a commercial electronic mail message
 221 received in this state which violates s. 668.603 and who knows,
 222 or should have known, that the commercial electronic mail
 223 message will be received in this state submits to the
 224 jurisdiction of this state for purposes of this part.

225 (5) An action under this section must be commenced within
 226 4 years following the date of any activity prohibited by s.
 227 668.603.

228 668.6075 Violations of s. 668.603.--

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

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

237 Section 2. If any provision of this act or its application
 238 to any person or circumstance is held invalid, the invalidity
 239 does not affect other provisions or applications of this act
 240 which can be given effect without the invalid provision or
 241 application, and to this end the provisions of this act are
 242 severable.

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