

By Senator Posey

24-1887-04

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; prohibiting 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 act, 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 the 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 (6) "Unsolicited commercial electronic mail message"
25 does not 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 (4).

3 Section 2. Prohibitions.--

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

23 (4) It is a violation of this act for any person that
24 sends an unsolicited commercial electronic mail message to
25 fail to provide a mechanism allowing recipients to easily and
26 at no cost remove themselves from the sender's electronic mail
27 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 act may recover

1 any damages sustained and the costs of the suit. Without
2 limiting the generality of the term, "damages" includes loss
3 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 act, or \$25,000 per day. The
11 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 act,
21 or \$25,000 per day.

22 (4) At the request of any party to an action brought
23 under this act, the court may conduct all legal proceedings in
24 a way that protects the secrecy and security of the computer,
25 computer network, computer data, computer program, and
26 computer software involved in order to prevent possible
27 recurrence of the same or a similar act by another person and
28 to protect any trade secrets of any party.

29 (5) An electronic mail service provider does not
30 violate this act and the injured party does not have a cause
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1 of action against an electronic mail service provider due to
2 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 act; 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 act.

12 Section 4. This act shall take effect July 1, 2004.

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15 SENATE SUMMARY

16 Prohibits a person from transmitting a commercial
17 electronic mail message that uses a third party's
18 Internet domain name without permission or a message that
19 contains false or misleading information. Prohibits a
20 person from transmitting an unsolicited commercial
21 electronic mail message without the use of the characters
22 "ADV:" in the subject line or without providing a
23 mechanism allowing recipients to easily remove themselves
24 from the sender's electronic mailing address list at no
25 cost. Provides damages and an award for attorney's fees
26 and costs to an injured party for violation of the act.
27 Provides the electronic mail service provider immunity
28 from liability. Provides an injured electronic mail
29 service provider an award of attorney's fees and costs,
30 and in lieu of actual damages, if the provider so
31 chooses, the greater of \$10 for each unsolicited
commercial electronic mail message transmitted or \$25,000
per day. (See bill for details.)