

Bill No. SB 2574

Amendment No. 1 Barcode 763466

CHAMBER ACTION

Senate

House

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The Committee on Judiciary recommended the following amendment  
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**Senate Amendment (with title amendment)**

On page 2, line 4, through  
page 5, line 22, delete those lines

and insert:

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

668.60 Short title; application.--This part may be  
known by the popular name of the "Electronic Mail  
Communications Act." Except as otherwise provided, this part  
applies to unsolicited commercial electronic mail.

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

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

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1       (1) "Affirmative consent" means that the recipient of  
2 electronic mail expressly consented to receive the message  
3 either in response to a clear and conspicuous request for the  
4 recipient's consent or at the recipient's own initiative. A  
5 recipient is deemed to have given affirmative consent if the  
6 electronic mail message is from a person other than the person  
7 to whom the recipient directly communicated consent if clear  
8 and conspicuous notice was given to the recipient that the  
9 recipient's electronic mail address could be transferred to  
10 another person for the purpose of that person initiating the  
11 transmission of a commercial electronic mail message to the  
12 recipient.

13       (2) "Assist in the transmission" means to provide  
14 substantial assistance or support that enables a person to  
15 formulate, compose, send, originate, initiate, or transmit a  
16 commercial electronic mail message when the person providing  
17 the assistance knows or has reason to know that the initiator  
18 of the commercial electronic mail message is engaged in or  
19 intends to engage in a practice that violates this chapter.

20 "Assist in the transmission" does not include:

21       (a) Actions that constitute routine conveyance of such  
22 message; or

23       (b) Activities of any entity related to the design,  
24 manufacture, or distribution of any technology, product, or  
25 component that has a commercially significant use other than  
26 to violate or circumvent this part.

27       (3) "Commercial electronic mail message" means an  
28 electronic mail message sent to promote the sale or lease of,  
29 or investment in, property, goods, or services related to any  
30 trade or commerce. This includes any electronic mail message  
31 that may interfere with any trade or commerce, including

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1 messages that contain computer viruses.

2       (4) "Computer virus" means an unwanted computer  
3 program or other set of instructions inserted into a  
4 computer's memory, operating system, or program which is  
5 specifically constructed with the ability to replicate itself  
6 or to affect the other program or files in the computer by  
7 attaching a copy of the unwanted program or other set of  
8 instructions to one or more computer programs or files.

9       (5) "Department" means the Department of Legal  
10 Affairs.

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

14       (7) "Electronic mail message" means an electronic  
15 message or computer file that is transmitted between two or  
16 more telecommunications devices; computers; computer networks,  
17 regardless of whether the network is a local, regional, or  
18 global network; or electronic devices capable of receiving  
19 electronic messages, regardless of whether the message is  
20 converted to hardcopy format after receipt, viewed upon  
21 transmission, or stored for later retrieval.

22       (8) "Initiate the transmission" means the action taken  
23 by the original sender with respect to a commercial electronic  
24 mail message.

25       (9) "Interactive computer service" means any  
26 information service, system, or access software provider that  
27 provides or enables computer access by multiple users to a  
28 computer server, including specifically, but not limited to, a  
29 service or system that provides access to the Internet and the  
30 systems operated or services offered by libraries or  
31 educational institutions.

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1       (10) "Internet domain name" means a globally unique,  
2 hierarchical reference to an Internet host or service, which  
3 is assigned through centralized Internet naming authorities  
4 and which is comprised of a series of character strings  
5 separated by periods, with the right-most string specifying  
6 the top of the hierarchy.

7       (11) "Person" means any individual, group of  
8 individuals, firm, association, corporation, partnership,  
9 joint venture, sole proprietorship, or any other business  
10 entity.

11       (12) "Routine conveyance" means the transmission,  
12 routing, relaying, handling, or storing, through an automatic  
13 technical process, of an electronic mail message for which  
14 another person has identified the recipients or provided the  
15 recipient addresses. This does not include any routine  
16 conveyance which is deliberately intended to assist persons in  
17 violating this part.

18       (13) "Trade or commerce" means the advertising,  
19 soliciting, providing, offering, or distributing, whether by  
20 sale, rental, or otherwise, of any goods or service, or any  
21 property, whether tangible or intangible, or any other  
22 article, commodity, or thing of value, wherever situated.

23       (14) "Unsolicited commercial electronic mail message"  
24 means any commercial electronic mail message that is not a  
25 transactional or relationship message and is sent to a  
26 recipient without the recipient's affirmative or implied  
27 consent.

28       668.603 Prohibited activity.--A person may not:

29       (1) Initiate or assist in the transmission of an  
30 unsolicited commercial electronic mail message from a computer  
31 located in this state or to an electronic mail address that is

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1 held by a resident of this state which:

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

4 (b) Contains falsified or missing routing information  
5 or otherwise misrepresents, falsifies, or obscures any  
6 information in identifying the point of origin or the  
7 transmission path of the unsolicited commercial electronic  
8 mail message;

9 (c) Contains false or misleading information in the  
10 subject line; or

11 (d) Contains false or deceptive information in the  
12 body of the message which is designed and intended to cause  
13 damage to the receiving device of an addressee or of another  
14 recipient of the message. However, this section does not apply  
15 to electronic mail messages resulting from or created by a  
16 computer virus which are sent or retransmitted from a computer  
17 or other electronic device without the sender's knowledge or  
18 consent.

19 (2) Distribute software or any other system designed  
20 to falsify missing routing information identifying the point  
21 of origin or the transmission path of the commercial  
22 electronic mail message.

23 668.604 Blocking of commercial electronic mail by  
24 interactive computer service.--This part does not:

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

28 (2) Prevent or limit, in any way, a provider of  
29 Internet access service from adopting a policy regarding  
30 commercial or other electronic mail, including a policy of  
31 declining to transmit certain types of electronic mail

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1 messages, or from enforcing such policy through technical  
2 means, through contract, or pursuant to any remedy available  
3 under any other provision of law; or

4 (3) Render lawful any policy or action that is  
5 unlawful under any other provision of law.

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8 ===== T I T L E A M E N D M E N T =====

9 And the title is amended as follows:

10 On page 1, lines 11 through 13, delete those lines

11

12 and insert:

13 circumstances; providing that a provider of  
14 Internet access service is not required to  
15 undertake certain actions with regard to  
16 electronic mail; providing that acts that are  
17 otherwise unlawful are not rendered lawful;  
18 authorizing the

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