

By Senator Garcia

40-1167A-04

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

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29 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Part III of chapter 668, Florida Statutes,
2 consisting of sections 668.60, 668.601, 668.602, 668.603,
3 668.604, 668.605, 668.606, and 668.6075, is created to read:

4 668.60 Short title; application.--This part may be
5 cited as the "Electronic Mail Communications Act." Except as
6 otherwise provided, this part applies to unsolicited
7 commercial electronic mail.

8 668.601 Legislative intent.--This part is intended to
9 promote the integrity of electronic commerce and shall be
10 construed liberally in order to protect the public and
11 legitimate businesses from deceptive and unsolicited
12 commercial electronic mail.

13 668.602 Definitions.--As used in this part, the term:

14 (1) "Affirmative consent" means that the recipient of
15 electronic mail expressly consented to receive the message
16 either in response to a clear and conspicuous request for the
17 recipient's consent or at the recipient's own initiative. A
18 recipient is deemed to have given affirmative consent if the
19 electronic mail message is from a person other than the person
20 to whom the recipient directly communicated consent if clear
21 and conspicuous notice was given to the recipient that the
22 recipient's electronic mail address could be transferred to
23 another person for the purpose of that person initiating the
24 transmission of a commercial electronic mail message to the
25 recipient.

26 (2) "Assist in the transmission" means to provide
27 substantial assistance or support that enables a person to
28 formulate, compose, send, originate, initiate, or transmit a
29 commercial electronic mail message.

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

1 or investment in, property, goods, or services related to any
2 trade or commerce.

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

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

8 (6) "Electronic mail message" means an electronic
9 message or computer file that is transmitted between two or
10 more telecommunications devices; computers; computer networks,
11 regardless of whether the network is a local, regional, or
12 global network; or electronic devices capable of receiving
13 electronic messages, regardless of whether the message is
14 converted to hardcopy format after receipt, viewed upon
15 transmission, or stored for later retrieval.

16 (7) "Initiate the transmission" means the action taken
17 by the original sender with respect to a commercial electronic
18 mail message.

19 (8) "Interactive computer service" means any
20 information service, system, or access software provider that
21 provides or enables computer access by multiple users to a
22 computer server, including specifically, but without
23 limitation, a service or system that provides access to the
24 Internet and the systems operated or services offered by
25 libraries or educational institutions.

26 (9) "Internet domain name" means a globally unique,
27 hierarchical reference to an Internet host or service, which
28 is assigned through centralized Internet naming authorities,
29 and which is comprised of a series of character strings
30 separated by periods, with the right-most string specifying
31 the top of the hierarchy.

1 (10) "Trade or commerce" means the advertising,
2 soliciting, providing, offering, or distributing, whether by
3 sale, rental, or otherwise, of any goods or service, or any
4 property, whether tangible or intangible, or any other
5 article, commodity, or thing of value, wherever situated.

6 (11) "Unsolicited commercial electronic mail message"
7 means any commercial electronic mail message that is sent to a
8 recipient without the recipient's affirmative consent. The
9 term does not include a transactional or relationship message.

10 668.603 Prohibited activity.--A person may not:

11 (1) Initiate the transmission of an unsolicited
12 commercial electronic mail message from a computer located in
13 this state or to an electronic mail address that is held by a
14 resident of this state which:

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

17 (b) Contains falsified or missing routing information
18 or otherwise misrepresents, falsifies, or obscures any
19 information in identifying the point of origin or the
20 transmission path of the unsolicited commercial electronic
21 mail message; or

22 (c) Contains false or misleading information in the
23 subject line.

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25 A person is not initiating a transmission if the activity is
26 undertaken by an intervening interactive computer service or
27 wireless network that handles or retransmits a commercial
28 electronic mail message, unless the intervening interactive
29 computer service knows, or has reason to know, that the person
30 initiating the transmission is engaged, or intends to engage,
31 in any act or practice that violates this section.

1 (2) Assist in the transmission of an unsolicited
2 commercial electronic mail message when the person providing
3 the assistance knows, or has reason to know, that the
4 initiator of the commercial electronic mail message is engaged
5 in or intends to engage in a practice that violates this
6 section.

7 (3) Distribute software or any other system designed
8 to falsify missing routing information identifying the point
9 of origin or the transmission path of the commercial
10 electronic mail message.

11 668.604 Blocking of commercial electronic mail by
12 interactive computer service.--

13 (1) An interactive computer service may, upon its own
14 initiative, block the receipt or transmission through its
15 service of any commercial electronic mail message that it
16 reasonably believes is, or will be sent, in violation of s.
17 668.603.

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

23 668.605 Confidentiality of intelligence or
24 investigation information.--This part does not contravene the
25 provisions of s. 501.2065, which provides for maintaining the
26 confidential status of certain information.

27 668.606 Remedies.--

28 (1) The department may bring an action for damages or
29 for declaratory or injunctive relief or may impose a civil
30 penalty as provided in this section. A cause of action,
31 without regard to any other remedy or relief to which a person

1 is entitled, including the right to seek declaratory and
2 injunctive relief against a person who initiates or assists in
3 the transmission of a commercial electronic mail message that
4 violates, has violated, or is otherwise likely to violate s.
5 668.603, is available to:

6 (a) A person who receives an unsolicited commercial
7 electronic mail message; and

8 (b) An interactive computer service, telephone
9 company, or cable provider that handles or retransmits the
10 commercial electronic mail message.

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

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

18 (a) An injunction to enjoin future violations of s.
19 668.603.

20 (b) Compensatory damages equal to any actual damage
21 proven by the plaintiff to have resulted from the initiation
22 of the unsolicited commercial electronic mail message or
23 liquidated damages of \$500 for each unsolicited commercial
24 electronic mail message that violates s. 668.603 when that
25 message is sent by the defendant:

26 1. To the plaintiff;

27 2. Through the plaintiff's interactive computer
28 service; or

29 3. To any consumer in this state, if the department is
30 the plaintiff.

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

4 (4) Any person outside this state who initiates or
5 assists in the transmission of a commercial electronic mail
6 message received in this state which violates s. 668.603 and
7 who knows, or should have known, that the commercial
8 electronic mail message will be received in this state submits
9 to the jurisdiction of this state for purposes of this part.

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

13 668.6075 Violations of s. 668.603.--

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

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

22 Section 2. If any provision of this act or its
23 application to any person or circumstance is held invalid, the
24 invalidity does not affect other provisions or applications of
25 this act which can be given effect without the invalid
26 provision or application, and to this end the provisions of
27 this act are severable.

28 Section 3. This act shall take effect July 1, 2004.
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SENATE SUMMARY

Creates part III of chapter 668, F.S. Makes it unlawful to initiate or assist in the initiation of unsolicited commercial electronic mail under certain circumstances. Authorizes interactive computer service providers to block unsolicited commercial electronic mail. Designates the Department of Legal Affairs to enforce the act. Authorizes the department or affected residents to file suit against persons transmitting unsolicited commercial electronic mail. Provides for declaratory and injunctive relief, compensatory damages, and attorney's fees. Provides that persons outside this state are subject to the jurisdiction of this state's courts under specified circumstances. Provides a statute of limitations.