

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; providing that a provider of
12 Internet access service is not required to
13 undertake certain actions with regard to
14 electronic mail; providing that acts that are
15 otherwise unlawful are not rendered lawful;
16 authorizing the Department of Legal Affairs to
17 enforce the act; authorizing the department and
18 persons receiving or retransmitting unsolicited
19 electronic mail to bring an action against
20 persons transmitting that mail; providing for
21 declaratory and injunctive relief, compensatory
22 damages, and attorney's fees; declaring that
23 persons outside this state are subject to the
24 jurisdiction of this state's courts under
25 specified circumstances; providing a
26 statute-of-limitations period; providing that a
27 violation of the act is an unfair and deceptive
28 trade practice; providing for severability;
29 providing an effective date.

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31 Be It Enacted by the Legislature of the State of Florida:

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 known by the popular name of the "Electronic Mail
6 Communications Act." Except as otherwise provided, this part
7 applies to unsolicited 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 when the person providing
30 the assistance knows or has reason to know that the initiator
31 of the commercial electronic mail message is engaged in or

1 intends to engage in a practice that violates this chapter.
2 "Assist in the transmission" does not include:
3 (a) Actions that constitute routine conveyance of such
4 message; or
5 (b) Activities of any entity related to the design,
6 manufacture, or distribution of any technology, product, or
7 component that has a commercially significant use other than
8 to violate or circumvent this part.
9 (3) "Commercial electronic mail message" means an
10 electronic mail message sent to promote the sale or lease of,
11 or investment in, property, goods, or services related to any
12 trade or commerce. This includes any electronic mail message
13 that may interfere with any trade or commerce, including
14 messages that contain computer viruses.
15 (4) "Computer virus" means a computer program that is
16 designed to replicate itself or affect another program or file
17 in the computer by attaching a copy of the program or other
18 set of instructions to one or more computer programs or files
19 without the consent of the owner or lawful user. The term
20 includes, but is not limited to, programs that are designed to
21 contaminate other computer programs; compromise computer
22 security; consumer computer resources; modify, destroy,
23 record, or transmit data; or disrupt the normal operation of
24 the computer, computer system, or computer network. The term
25 also includes, but is not limited to, programs that are
26 designed to use a computer without the knowledge and consent
27 of the owner or authorized user and to send large quantities
28 of data to a targeted computer network without the consent of
29 the network for the purpose of degrading the targeted
30 computer's or network's performance or for the purpose of
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1 denying access through the network to the targeted computer or
2 network.

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

5 (6) "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 (7) "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 (8) "Initiate the transmission" means the action taken
17 by the original sender with respect to a commercial electronic
18 mail message.

19 (9) "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 not limited to, a
23 service or system that provides access to the Internet and the
24 systems operated or services offered by libraries or
25 educational institutions.

26 (10) "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 (11) "Person" means any individual, group of
2 individuals, firm, association, corporation, partnership,
3 joint venture, sole proprietorship, or any other business
4 entity.

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

12 (13) "Trade or commerce" means the advertising,
13 soliciting, providing, offering, or distributing, whether by
14 sale, rental, or otherwise, of any goods or service, or any
15 property, whether tangible or intangible, or any other
16 article, commodity, or thing of value, wherever situated.

17 (14) "Unsolicited commercial electronic mail message"
18 means any commercial electronic mail message that is not a
19 transactional or relationship message and is sent to a
20 recipient without the recipient's affirmative or implied
21 consent.

22 668.603 Prohibited activity.--A person may not:

23 (1) Initiate or assist in the transmission of an
24 unsolicited commercial electronic mail message from a computer
25 located in this state or to an electronic mail address that is
26 held by a resident of this state which:

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

29 (b) Contains falsified or missing routing information
30 or otherwise misrepresents, falsifies, or obscures any
31 information in identifying the point of origin or the

1 transmission path of the unsolicited commercial electronic
2 mail message;

3 (c) Contains false or misleading information in the
4 subject line; or

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

13 (2) Distribute software or any other system designed
14 to falsify missing routing information identifying the point
15 of origin or the transmission path of the commercial
16 electronic mail message.

17 668.604 Blocking of commercial electronic mail by
18 interactive computer service.--This part does not:

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

22 (2) Prevent or limit, in any way, a provider of
23 Internet access service from adopting a policy regarding
24 commercial or other electronic mail, including a policy of
25 declining to transmit certain types of electronic mail
26 messages, or from enforcing such policy through technical
27 means, through contract, or pursuant to any remedy available
28 under any other provision of law; or

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

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1 668.605 Confidentiality of intelligence or
2 investigation information.--This part does not contravene the
3 provisions of s. 501.2065, which provides for maintaining the
4 confidential status of certain information.

5 668.606 Remedies.--

6 (1) The department may bring an action for damages or
7 for declaratory or injunctive relief or may impose a civil
8 penalty as provided in this section. A cause of action,
9 without regard to any other remedy or relief to which a person
10 is entitled, including the right to seek declaratory and
11 injunctive relief against a person who initiates or assists in
12 the transmission of a commercial electronic mail message that
13 violates, has violated, or is otherwise likely to violate s.
14 668.603, is available to an interactive computer service,
15 telephone company, or cable provider that handles or
16 retransmits the commercial electronic mail message.

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

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

24 (a) An injunction to enjoin future violations of s.
25 668.603.

26 (b) Compensatory damages equal to any actual damage
27 proven by the plaintiff to have resulted from the initiation
28 of the unsolicited commercial electronic mail message or
29 liquidated damages of \$500 for each unsolicited commercial
30 electronic mail message that violates s. 668.603 when that
31 message is sent by the defendant:

- 1 1. To the plaintiff;
2 2. Through the plaintiff's interactive computer
3 service; or
4 3. To any consumer in this state, if the department is
5 the plaintiff.

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

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

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

18 668.6075 Violations of s. 668.603.--

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

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

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

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