

By Senator Campbell

32-214-04

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; prohibits 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 an injured
18 electronic mail service provider an award of
19 attorney's fees and costs, and in lieu of
20 actual damages, if the provider so chooses, the
21 greater of \$10 for each unsolicited commercial
22 electronic mail message transmitted or \$25,000
23 per day; providing the electronic mail service
24 provider immunity from liability; providing an
25 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 such 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 "Unsolicited commercial electronic mail message" does not
25 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 pursuant to this act, the court may conduct all legal
24 proceedings in a way that protects the secrecy and security of
25 the computer, computer network, computer data, computer
26 program, and computer software involved in order to prevent a
27 possible recurrence of the same or a similar act by another
28 person and 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 from a computer if that message
18 uses a third party's Internet domain name without
19 permission, misrepresents the point of origin of the
20 message, or contains false or misleading information on
21 the subject line. Prohibits a person from transmitting
22 an unsolicited commercial electronic mail message without
23 the use of the characters "ADV:" in the subject line or
24 without providing a mechanism allowing recipients to
25 easily remove themselves from the sender's electronic
26 mailing address list at no cost. Provides for damages and
27 an award for attorney's fees and costs to an injured
28 party for violation of the act. Provides the electronic
29 mail service provider immunity from liability. Provides
30 an injured electronic mail service provider an award of
31 attorney's fees and costs, and in lieu of actual damages,
if the provider so chooses, the greater of \$10 for each
unsolicited commercial electronic mail message
transmitted or \$25,000 per day. (See bill for details.)