

## CHAMBER ACTION

1 The Committee on Appropriations recommends the following:

2  
3 **Committee Substitute**

4 Remove the entire bill and insert:

5  
6 A bill to be entitled

7 An act relating to commercial relations; creating part III  
8 of ch. 668, F.S., relating to unsolicited commercial  
9 electronic mail; providing a popular name; providing  
10 legislative intent; providing definitions relating to  
11 unsolicited commercial electronic mail; prohibiting a  
12 person from initiating or assisting in the transmission of  
13 unsolicited commercial electronic mail under certain  
14 circumstances; prohibiting the distribution of software or  
15 any other system designed to falsify missing routing  
16 information identifying the point of origin or the  
17 transmission path of a commercial electronic mail message;  
18 providing construction of the act with respect to  
19 blocking, transmission, routing, relaying, handling, and  
20 storing of certain types of electronic mail messages by  
21 providers of Internet access service, the adoption of  
22 policies regarding commercial or other electronic mail by  
23 such providers, and policies that are unlawful under other

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24 provisions of law; authorizing the Department of Legal  
25 Affairs to enforce the act; authorizing the department and  
26 an interactive computer service, telephone company, or  
27 cable provider that handles or retransmits unsolicited  
28 electronic mail to bring an action against persons  
29 transmitting that mail; providing for declaratory and  
30 injunctive relief, compensatory damages, and attorney's  
31 fees; declaring that persons outside this state are  
32 subject to the jurisdiction of this state's courts under  
33 specified circumstances; providing a statute-of-  
34 limitations period; providing that a violation of the act  
35 is an unfair and deceptive trade practice; providing for  
36 severability; providing an effective date.

37

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

39

40 Section 1. Part III of chapter 668, Florida Statutes,  
41 consisting of sections 668.60, 668.601, 668.602, 668.603,  
42 668.604, 668.605, 668.606, and 668.6075, is created to read:

43 668.60 Popular name; application.--This part may be known  
44 by the popular name the "Electronic Mail Communications Act."  
45 Except as otherwise provided, this part applies to unsolicited  
46 commercial electronic mail.

47 668.601 Legislative intent.--This part is intended to  
48 promote the integrity of electronic commerce and shall be  
49 construed liberally in order to protect the public and  
50 legitimate businesses from deceptive and unsolicited commercial  
51 electronic mail.

52 668.602 Definitions.--As used in this part, the term:  
53 (1) "Affirmative consent" means that the recipient of  
54 electronic mail expressly consented to receive the message  
55 either in response to a clear and conspicuous request for the  
56 recipient's consent or at the recipient's own initiative. A  
57 recipient is deemed to have given affirmative consent if the  
58 electronic mail message is from a person other than the person  
59 to whom the recipient directly communicated consent if clear and  
60 conspicuous notice was given to the recipient that the  
61 recipient's electronic mail address could be transferred to  
62 another person for the purpose of that person initiating the  
63 transmission of a commercial electronic mail message to the  
64 recipient.

65 (2) "Assist in the transmission" means to provide  
66 substantial assistance or support that enables a person to  
67 formulate, compose, send, originate, initiate, or transmit a  
68 commercial electronic mail message when the person providing the  
69 assistance knows or has reason to know that the initiator of the  
70 commercial electronic mail message is engaged in or intends to  
71 engage in a practice that violates this chapter. "Assist in the  
72 transmission" does not include:

73 (a) Actions that constitute routine conveyance of such  
74 message; or

75 (b) Activities of any entity related to the design,  
76 manufacture, or distribution of any technology, product, or  
77 component that has a commercially significant use other than to  
78 violate or circumvent this statute.

79        (3) "Commercial electronic mail message" means an  
80 electronic mail message sent to promote the sale or lease of, or  
81 investment in, property, goods, or services related to any trade  
82 or commerce. This includes any electronic mail message which may  
83 interfere with any trade or commerce, including messages which  
84 contain computer viruses.

85        (4) "Computer virus" means a computer program that is  
86 designed to replicate itself or affect another program or file  
87 in the computer by attaching a copy of the program or other set  
88 of instructions to one or more computer programs or files  
89 without the consent of the owner or lawful user. "Computer  
90 virus" includes, but is not limited to, programs that are  
91 designed to contaminate other computer programs; compromise  
92 computer security; consume computer resources; modify, destroy,  
93 record, or transmit data; or disrupt the normal operation of the  
94 computer, computer system, or computer network. "Computer virus"  
95 also includes, but is not limited to, programs that are designed  
96 to use a computer without the knowledge and consent of the owner  
97 or authorized user and to send large quantities of data to a  
98 targeted computer network without their consent for the purpose  
99 of degrading the targeted computer's or network's performance or  
100 for the purpose of denying access through the network to the  
101 targeted computer or network.

102        (5) "Department" means the Department of Legal Affairs.

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

106        (7) "Electronic mail message" means an electronic message  
107 or computer file that is transmitted between two or more  
108 telecommunications devices; computers; computer networks,  
109 regardless of whether the network is a local, regional, or  
110 global network; or electronic devices capable of receiving  
111 electronic messages, regardless of whether the message is  
112 converted to hardcopy format after receipt, viewed upon  
113 transmission, or stored for later retrieval.

114        (8) "Initiate the transmission" means the action taken by  
115 the original sender with respect to a commercial electronic mail  
116 message.

117        (9) "Interactive computer service" means any information  
118 service, system, or access software provider that provides or  
119 enables computer access by multiple users to a computer server,  
120 including specifically, but not limited to, a service or system  
121 that provides access to the Internet and the systems operated or  
122 services offered by libraries or educational institutions.

123        (10) "Internet domain name" means a globally unique,  
124 hierarchical reference to an Internet host or service, which is  
125 assigned through centralized Internet naming authorities, and  
126 which is comprised of a series of character strings separated by  
127 periods, with the right-most string specifying the top of the  
128 hierarchy.

129        (11) "Person" means any individual, group of individuals,  
130 firm, association, corporation, partnership, joint venture, sole  
131 proprietorship, or any other business entity.

132        (12) "Routine conveyance" means the transmission, routing,  
133 relaying, handling, or storing, through an automatic technical

134 process, of an electronic mail message for which another person  
 135 has identified the recipients or provided the recipient  
 136 addresses. This does not include any "routine conveyance" which  
 137 is deliberately intended to assist persons in violating this  
 138 part.

139 (13) "Trade or commerce" means the advertising,  
 140 soliciting, providing, offering, or distributing, whether by  
 141 sale, rental, or otherwise, of any goods or service, or any  
 142 property, whether tangible or intangible, or any other article,  
 143 commodity, or thing of value, wherever situated.

144 (14) "Unsolicited commercial electronic mail message"  
 145 means any commercial electronic mail message that is not a  
 146 transactional or relationship message and is sent to a recipient  
 147 without the recipient's prior affirmative or implied consent.

148 668.603 Prohibited activity.--A person may not:

149 (1) Initiate or assist in the transmission of an  
 150 unsolicited commercial electronic mail message from a computer  
 151 located in this state or to an electronic mail address that is  
 152 held by a resident of this state which:

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

155 (b) Contains falsified or missing routing information or  
 156 otherwise misrepresents, falsifies, or obscures any information  
 157 in identifying the point of origin or the transmission path of  
 158 the unsolicited commercial electronic mail message;

159 (c) Contains false or misleading information in the  
 160 subject line; or

161        (d) Contains false or deceptive information in the body of  
 162 the message which is designed and intended to cause damage to  
 163 the recipient's receiving device and the receiving devices of  
 164 others receiving the message. However, this section does not  
 165 apply to electronic mail messages resulting from or created by a  
 166 computer virus and which are sent or retransmitted from a  
 167 computer or other electronic device without the sender's  
 168 knowledge or consent.

169        (2) Distribute software or any other system designed to  
 170 falsify missing routing information identifying the point of  
 171 origin or the transmission path of the commercial electronic  
 172 mail message.

173        668.604 Blocking of commercial electronic mail by  
 174 interactive computer service.--Nothing in this part shall be  
 175 construed to:

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

179        (2) Prevent or limit, in any way, a provider of Internet  
 180 access service from adopting a policy regarding commercial or  
 181 other electronic mail, including a policy of declining to  
 182 transmit certain types of electronic mail messages, or from  
 183 enforcing such policy through technical means, through contract,  
 184 or pursuant to any remedy available under any other provision of  
 185 federal, state, or local criminal or civil law; or

186        (3) Render lawful any policy regarding commercial or other  
 187 electronic mail that is unlawful under any other provision of  
 188 law.

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189       668.605 Confidentiality of intelligence or investigation  
 190 information.--This part does not contravene the provisions of s.  
 191 501.2065, which provides for maintaining the confidential status  
 192 of certain information.

193       668.606 Remedies.--

194       (1) The department may bring an action for damages or for  
 195 declaratory or injunctive relief or may impose a civil penalty  
 196 as provided in this section. A cause of action, without regard  
 197 to any other remedy or relief to which a person is entitled,  
 198 including the right to seek declaratory and injunctive relief  
 199 against a person who initiates or assists in the transmission of  
 200 a commercial electronic mail message that violates, has  
 201 violated, or is otherwise likely to violate s. 668.603, is  
 202 available to an interactive computer service, telephone company,  
 203 or cable provider that handles or retransmits the commercial  
 204 electronic mail message.

205       (2) This part does not create a cause of action against an  
 206 interactive computer service, telephone company, or cable  
 207 provider whose equipment is used to transport, handle, or  
 208 retransmit a commercial electronic mail message that violates s.  
 209 668.603.

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

212       (a) An injunction to enjoin future violations of s.  
 213 668.603.

214       (b) Compensatory damages equal to any actual damage proven  
 215 by the plaintiff to have resulted from the initiation of the  
 216 unsolicited commercial electronic mail message or liquidated



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217 damages of \$500 for each unsolicited commercial electronic mail  
 218 message that violates s. 668.603 when that message is sent by  
 219 the defendant:

220 1. To the plaintiff;

221 2. Through the plaintiff's interactive computer service;

222 or

223 3. To any consumer in this state, if the department is the  
 224 plaintiff.

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

227 (4) Any person outside this state who initiates or assists  
 228 in the transmission of a commercial electronic mail message  
 229 received in this state which violates s. 668.603 and who knows,  
 230 or should have known, that the commercial electronic mail  
 231 message will be received in this state submits to the  
 232 jurisdiction of this state for purposes of this part.

233 (5) An action under this section must be commenced within  
 234 4 years following the date of any activity prohibited by s.  
 235 668.603.

236 668.6075 Violations of s. 668.603.--

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

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

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245           Section 2. If any provision of this act or its application  
246 to any person or circumstance is held invalid, the invalidity  
247 does not affect other provisions or applications of this act  
248 which can be given effect without the invalid provision or  
249 application, and to this end the provisions of this act are  
250 severable.

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