

Senate Bill No. 2574

An act relating to commercial relations; creating part III of ch. 668, F.S., relating to unsolicited commercial electronic mail; providing a short title; providing legislative intent; providing definitions relating to unsolicited commercial electronic mail; prohibiting a person from initiating or assisting in the initiation of unsolicited commercial electronic mail under certain circumstances; providing that a provider of Internet access service is not required to undertake certain actions with regard to electronic mail; providing that acts that are otherwise unlawful are not rendered lawful; authorizing the Department of Legal Affairs to enforce the act; authorizing the department and persons receiving or retransmitting unsolicited electronic mail to bring an action against persons transmitting that mail; providing for declaratory and injunctive relief, compensatory damages, and attorney's fees; declaring that persons outside this state are subject to the jurisdiction of this state's courts under specified circumstances; providing a statute-of-limitations period; providing that a violation of the act is an unfair and deceptive trade practice; providing for severability; providing an effective date.

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

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:

(1) “Affirmative consent” means that the recipient of electronic mail expressly consented to receive the message either in response to a clear and conspicuous request for the recipient’s consent or at the recipient’s own initiative. A recipient is deemed to have given affirmative consent if the electronic mail message is from a person other than the person to whom the recipient directly communicated consent if clear and conspicuous notice was given to the recipient that the recipient’s electronic mail address could be transferred to another person for the purpose of that person initiating the transmission of a commercial electronic mail message to the recipient.

(2) “Assist in the transmission” means to provide substantial assistance or support that enables a person to formulate, compose, send, originate,

initiate, or transmit a commercial electronic mail message when the person providing the assistance knows or has reason to know that the initiator of the commercial electronic mail message is engaged in or intends to engage in a practice that violates this chapter. "Assist in the transmission" does not include:

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

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

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

(4) "Computer virus" means a computer program that is designed to replicate itself or affect another program or file in the computer by attaching a copy of the program or other set of instructions to one or more computer programs or files without the consent of the owner or lawful user. The term includes, but is not limited to, programs that are designed to contaminate other computer programs; compromise computer security; consumer computer resources; modify, destroy, record, or transmit data; or disrupt the normal operation of the computer, computer system, or computer network. The term also includes, but is not limited to, programs that are designed to use a computer without the knowledge and consent of the owner or authorized user and to send large quantities of data to a targeted computer network without the consent of the network for the purpose of degrading the targeted computer's or network's performance or for the purpose of denying access through the network to the targeted computer or network.

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

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

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

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

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

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

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

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

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

(14) “Unsolicited commercial electronic mail message” means any commercial electronic mail message that is not a transactional or relationship message and is sent to a recipient without the recipient’s affirmative or implied consent.

668.603 Prohibited activity.—A person may not:

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

(a) Uses a third party’s Internet domain name without permission of the third party;

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

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

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

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

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

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

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

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

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

668.606 Remedies.—

(1) The department may bring an action for damages or for declaratory or injunctive relief or may impose a civil penalty as provided in s. 668.6075. A cause of action, without regard to any other remedy or relief to which a person is entitled, including the right to seek declaratory and injunctive relief against a person who initiates or assists in the transmission of a commercial electronic mail message that violates, has violated, or is otherwise likely to violate s. 668.603, is also available to an interactive computer service, telephone company, or cable provider that handles or retransmits the commercial electronic mail message.

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

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

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

(b) Compensatory damages equal to any actual damage proven by the plaintiff to have resulted from the initiation of the unsolicited commercial electronic mail message or liquidated damages of \$500 for each unsolicited commercial electronic mail message that violates s. 668.603.

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

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

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

668.6075 Violations of s. 668.603.—

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

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

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

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

Approved by the Governor May 25, 2004.

Filed in Office Secretary of State May 25, 2004.