

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Commerce and Consumer Services Committee

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BILL: CS/CS/SB 80

INTRODUCER: Commerce and Consumer Services Committee, Communications and Public Utilities Committee and Senator Aronberg

SUBJECT: False or Misleading Electronic Mail

DATE: March 22, 2006

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wiehle</u>	<u>Caldwell</u>	<u>CU</u>	<u>Fav/CS</u>
2.	<u>Earlywine</u>	<u>Cooper</u>	<u>CM</u>	<u>Fav/CS</u>
3.	_____	_____	<u>CJ</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

The committee substitute for committee substitute:

- Requires that all agencies and legislative entities that operate a website and use electronic mail post a statement on the website that e-mails to those agencies and entities are public record, including the e-mail addresses contained therein;
- Amends s. 668.606, F.S., to provide immunity from criminal prosecution to an interactive computer service, customer premises equipment provider, communications services provider, or cable provider whose equipment is used to transport, handle, or retransmit a commercial electronic mail message;
- Amends s. 668.6075, F.S., to provide that the new criminal penalties are in addition to remedies and criminal penalties otherwise available under federal or state law; and
- Creates s. 668.608, F.S., to provide that sending an unsolicited false or misleading commercial electronic mail is generally a misdemeanor of the first degree but is a felony in the third degree under specified circumstances.

The committee substitute for committee substitute substantially amends ss. 668.606 and 668.6075 of the Florida Statutes. It also creates sections 668.608, 668.610, and an unnumbered section of the Florida Statutes.

## II. Present Situation:

In 2003, Congress passed the “Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003” or the “CAN-SPAM Act of 2003.”

In 2004, the Florida Legislature addressed the issue of unsolicited commercial electronic mail in passing the “Electronic Mail Communications Act,” ch. 668, Part III, F.S.

Section 668.603, F.S., makes it unlawful for any person to:

- 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:
  - Uses a third party’s Internet domain name without permission of the third party;
  - 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;
  - Contains false or misleading information in the subject line; or
  - 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.
- 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.

Section 668.606, F.S., provides remedies for violations of s. 668.603, F.S., all civil in nature. Under this section, the Department of Legal Affairs may bring an action for damages or for declaratory or injunctive relief or, as s. 668.075, F.S., provides that a violation of s. 668.603, F.S., is also a violation of the unfair and deceptive trade practice act, ch. 501, Part II, F.S., the department may impose a civil penalty under that act. Additionally, an interactive computer service, telephone company, or cable provider that handles or retransmits the commercial electronic mail message may bring a cause of action. A prevailing plaintiff in such an action is entitled to an injunction to enjoin future violations of s. 668.603, F.S., 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, F.S., and attorney’s fees and other litigation costs reasonably incurred in connection with the action.

Section 668.606, F.S., also provides that the Electronic Mail Communications Act does not create a cause of action against 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, F.S.

Section 119.011(2), F.S., defines “agency” as any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or

private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

### III. Effect of Proposed Changes:

The committee substitute for committee substitute requires that all agencies (as defined in s. 119.011, F.S.) and legislative entities that operate a website and use electronic mail post a statement on the website that e-mails to those agencies and entities are public record, including the e-mail addresses contained therein.

The committee substitute for committee substitute also amends s. 668.606, F.S. Currently, this section states that the act does not create a civil penalty against specified entities. The committee substitute for committee substitute adds to this a statement that the act does not provide for criminal charges against those entities. Finally, the committee substitute for committee substitute amends the list of specified entities, deleting “telephone company” and adding “customer premise equipment provider” and “communications services provider.”

The committee substitute for committee substitute splits out existing subsection 668.6075(2), F.S., and designates it as new section 668.610, F.S., to provide for cumulative remedies, adding to the existing statement that the remedies of the Electronic Mail Communications Act are in addition to remedies available for the same conduct under federal or other state law a statement that the new criminal penalty provisions are similarly cumulative to other law.

The committee substitute for committee substitute creates s. 668.608, F.S., to provide criminal penalties for a violation of s. 668.603, F.S. The new section provides that any person who violates s. 668.603, F.S., commits a misdemeanor of the first degree; however, the violation is a felony of the third degree if:

- The volume of commercial electronic mail messages transmitted by the person exceeds 2,500 attempted recipients in any 24-hour period;
- The volume of commercial electronic mail messages transmitted by the person exceeds 25,000 attempted recipients in any 30-day period;
- The volume of commercial electronic mail messages transmitted by the person exceeds 250,000 attempted recipients in any 1-year period;
- The revenue generated from a specific commercial electronic mail message transmitted by the person exceeds \$1,000;
- The total revenue generated from all commercial electronic mail messages transmitted by the person to any electronic mail message service provider or its subscribers exceeds \$50,000;
- The person knowingly hires, employs, uses, or permits any minor to assist in the transmission of a commercial electronic mail message in violation of s. 668.603, F.S.; or
- The person commits a violation otherwise punishable under subsection (1) within a 5-year period after a previous conviction under this section.

The committee substitute for committee substitute takes effect July 1, 2006, and applies to violations committed on or after that date.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

To the extent that the committee substitute for committee substitute reduces the amount of unsolicited commercial email sent and received, it will save recipients the time and expense of processing these emails.

## C. Government Sector Impact:

The committee substitute for committee substitute requires state agencies and legislative entities to place a statement on their websites that emails are public records. There may be costs associated with reprogramming the websites.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

## **VIII. Summary of Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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