

CHAMBER ACTION

1 The Criminal Justice Appropriations Committee recommends the
2 following:

3
4 **Council/Committee Substitute**

5 Remove the entire bill and insert:

6 A bill to be entitled

7 An act relating to electronic communication; requiring
8 certain governmental entities to post a notice on their
9 websites that electronic mail addresses sent to them are
10 subject to release to the public; amending s. 668.606,
11 F.S.; providing an exemption from criminal liability for
12 certain carriers and equipment providers whose equipment
13 transmits commercial electronic mail messages that violate
14 s. 668.603, F.S., which prohibits specified actions
15 relating to transmission of false or misleading
16 unsolicited commercial electronic mail messages; amending
17 s. 668.6075, F.S., and renumbering and amending subsection
18 (2) thereof as s. 668.610, F.S.; providing that remedies
19 and penalties under the Electronic Mail Communications Act
20 are cumulative; creating s. 668.608, F.S.; providing
21 criminal penalties for violations of s. 668.603, F.S.,
22 which prohibits specified actions relating to transmission
23 of false or misleading unsolicited commercial electronic

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24 mail messages; creating part IV of ch. 668, F.S.;

25 providing a short title; providing definitions;

26 prohibiting certain acts relating to fraudulent use or

27 possession of identifying information; authorizing civil

28 actions for violations; providing for injunctive relief

29 and damages; authorizing courts to increase awards of

30 actual damages under certain circumstances; providing for

31 recovery of attorney's fees and court costs; providing for

32 jurisdiction and venue; providing for deposit of certain

33 moneys received by the Attorney General into the Legal

34 Affairs Revolving Trust Fund; authorizing the Department

35 of Legal Affairs to adopt rules; providing for

36 nonapplication to certain entities' good faith handling of

37 identifying information; specifying the absence of

38 liability for certain actions taken to prevent certain

39 violations; providing applicability; providing an

40 effective date.

41

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

43

44 Section 1. Any agency, as defined in s. 119.011, Florida

45 Statutes, or legislative entity that operates a website and uses

46 electronic mail shall post the following statement in a

47 conspicuous location on its website:

48

49 Under Florida law, e-mail addresses are public records. If

50 you do not want your e-mail address released in response to

51 a public records request, do not send electronic mail to

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52 | this entity. Instead, contact this office by phone or in
53 | writing.

54 | Section 2. Subsection (2) of section 668.606, Florida
55 | Statutes, is amended to read:

56 | 668.606 Civil remedies; immunity.--

57 | (2) This part does not create a cause of action or provide
58 | for criminal charges against an interactive computer service,
59 | customer premise equipment provider, communications services
60 | provider ~~telephone company~~, or cable provider whose equipment is
61 | used to transport, handle, or retransmit a commercial electronic
62 | mail message that violates s. 668.603.

63 | Section 3. Section 668.6075, Florida Statutes, is amended,
64 | and subsection (2) of that section is renumbered as section
65 | 668.610, Florida Statutes, and amended to read:

66 | 668.6075 Unfair and deceptive trade practices ~~Violations~~
67 | ~~of s. 668.603.~~--

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

73 | 668.610 Cumulative remedies.--

74 | ~~(2)~~ The remedies and criminal penalties of this part are
75 | in addition to remedies and criminal penalties otherwise
76 | available for the same conduct under federal or state law.

77 | Section 4. Section 668.608, Florida Statutes, is created
78 | to read:

79 | 668.608 Criminal violations.--

80 (1) Except as provided in subsection (2), any person who
81 violates s. 668.603 commits a misdemeanor of the first degree,
82 punishable as provided in s. 775.082 or s. 775.083.

83 (2) Any person who violates s. 668.603 commits a felony of
84 the third degree, punishable as provided in s. 775.082, s.
85 775.083, or s. 775.084, if:

86 (a) The volume of commercial electronic mail messages
87 transmitted by the person exceeds 2,500 attempted recipients in
88 any 24-hour period;

89 (b) The volume of commercial electronic mail messages
90 transmitted by the person exceeds 25,000 attempted recipients in
91 any 30-day period;

92 (c) The volume of commercial electronic mail messages
93 transmitted by the person exceeds 250,000 attempted recipients
94 in any 1-year period;

95 (d) The revenue generated from a specific commercial
96 electronic mail message transmitted by the person exceeds
97 \$1,000;

98 (e) The total revenue generated from all commercial
99 electronic mail messages transmitted by the person to any
100 electronic mail message service provider or its subscribers
101 exceeds \$50,000;

102 (f) The person knowingly hires, employs, uses, or permits
103 any minor to assist in the transmission of a commercial
104 electronic mail message in violation of s. 668.603; or

105 (g) The person commits a violation otherwise punishable
106 under subsection (1) within a 5-year period after a previous
107 conviction under this section.

108 Section 5. Part IV of chapter 668, Florida Statutes,
109 consisting of sections 668.701, 668.702, 668.703, 668.704, and
110 668.705, Florida Statutes, is created to read:

112 PART IV

113 FRAUDULENT USE OR POSSESSION OF IDENTIFYING INFORMATION

114
115 668.701 Short title.--This part may be cited as the "Anti-
116 Phishing Act."

117 668.702 Definitions.--As used in this part, the term:

118 (1) "Department" means the Department of Legal Affairs.

119 (2) "Electronic mail address" has the same meaning as
120 provided in s. 668.602.

121 (3) "Electronic mail message" has the same meaning as
122 provided in s. 668.602.

123 (4) "Identifying information" has the same meaning as the
124 term "personal identification information" as defined in s.
125 817.568(1).

126 (5) "Internet domain name" has the same meaning as
127 provided in s. 668.602.

128 (6) "Web page" means a location that has a single uniform
129 resource locator (URL) with respect to the World Wide Web or
130 another location that can be accessed on the Internet.

131 668.703 Prohibited acts.--

132 (1) A person with an intent to engage in conduct involving
133 the fraudulent use or possession of another person's identifying
134 information may not represent oneself, directly or by
135 implication, to be another person without the authority or

136 approval of such other person through the use of a web page or
137 Internet domain name and use that web page, Internet domain
138 name, or a link to that web page or domain name or another site
139 on the Internet to induce, request, or solicit a resident of
140 this state to provide identifying information.

141 (2) A person with an intent to engage in conduct involving
142 the fraudulent use or possession of identifying information may
143 not send or cause to be sent to an electronic mail address held
144 by a resident of this state an electronic mail message that is
145 falsely represented as being sent by another person without the
146 authority or approval of such other person, refers or links the
147 recipient of the message to a web page, and directly or
148 indirectly induces, requests, or solicits the recipient of the
149 electronic mail message to provide identifying information.

150 668.704 Remedies.--

151 (1) The following persons may bring a civil action against
152 a person who violates this part:

153 (a) A person engaged in the business of providing Internet
154 access service to the public who is adversely affected by the
155 violation.

156 (b) A financial institution as defined in s. 655.005(1)
157 that is adversely affected by the violation.

158 (c) An owner of a web page, trademark, or service mark who
159 is adversely affected by the violation.

160 (d) The Attorney General.

161 (2) A person bringing an action under this section may:

162 (a) Obtain injunctive relief to restrain the violator from
163 continuing the violation.

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164 (b) Recover damages in an amount equal to the greater of:

165 1. Actual damages arising from the violation; or

166 2. The sum of \$5,000 for each violation of the same
167 nature.

168 (3) The court may increase an award of actual damages in
169 an action brought under this section to an amount not to exceed
170 three times the actual damages sustained if the court finds that
171 the violations have occurred with a frequency as to constitute a
172 pattern or practice.

173 (4) For purposes of this section, violations are of the
174 same nature if the violations consist of the same course of
175 conduct or action, regardless of the number of times the conduct
176 or action occurred.

177 (5) A plaintiff who prevails in an action filed under this
178 section is entitled to recover reasonable attorney's fees and
179 court costs.

180 (6) By committing a violation under this part, the
181 violator submits personally to the jurisdiction of the courts of
182 this state. This section does not preclude other methods of
183 obtaining jurisdiction over a person who commits a violation
184 under this part.

185 (7) An action under this part may be brought in any court
186 of competent jurisdiction to enforce such rights and to recover
187 damages as stated in this part.

188 (8) The venue for a civil action brought under this
189 section shall be the county in which the plaintiff resides or in
190 any county in which any part of the alleged violation of this
191 part took place, regardless of whether the defendant was ever

192 actually present in that county. A civil action filed under this
 193 section must be brought within 3 years after the violation
 194 occurred.

195 (9) The remedies available under this section are in
 196 addition to remedies otherwise available for the same conduct
 197 under federal or state law.

198 (10) Any moneys received by the Attorney General for
 199 attorney's fees and costs of investigation or litigation in
 200 proceedings brought under this section shall be deposited as
 201 received into the Legal Affairs Revolving Trust Fund.

202 (11) Any moneys received by the Attorney General that are
 203 not for attorney's fees and costs of investigation or litigation
 204 or used for reimbursing persons found under this part to be
 205 damaged shall accrue to the state and be deposited as received
 206 into the Legal Affairs Revolving Trust Fund.

207 (12) The Department of Legal Affairs may adopt rules
 208 pursuant to ss. 120.536(1) and 120.54 to implement the
 209 provisions of this part.

210 668.705 Exemptions.--

211 (1) This part does not apply to a telecommunications
 212 provider's or Internet service provider's good faith
 213 transmission or routing of, or intermediate temporary storing or
 214 caching of, identifying information.

215 (2) A provider of an interactive computer service is not
 216 liable under the laws of this state for removing or disabling
 217 access to content that resides on an Internet website or other
 218 online location controlled or operated by such provider if such

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219 | provider believes in good faith that the content is used to
220 | engage in a violation of this part.

221 | Section 6. This act shall take effect July 1, 2006, and
222 | shall apply to violations committed on or after that date.