

1 A bill to be entitled
 2 An act relating to fraudulent use or possession of
 3 identifying information; creating part IV of ch. 668,
 4 F.S.; providing a short title; providing definitions;
 5 prohibiting certain acts relating to fraudulent use or
 6 possession of identifying information; authorizing civil
 7 actions for violations; providing for injunctive relief
 8 and damages; authorizing courts to increase awards of
 9 actual damages under certain circumstances; providing for
 10 recovery of attorney's fees and court costs; providing for
 11 jurisdiction and venue; providing for deposit of certain
 12 moneys received by the Attorney General into the Legal
 13 Affairs Revolving Trust Fund; authorizing the Department
 14 of Legal Affairs to adopt rules; providing for
 15 nonapplication to certain entities' good faith handling of
 16 identifying information; specifying the absence of
 17 liability for certain actions taken to prevent certain
 18 violations; providing an effective date.

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

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 22 Section 1. Part IV of chapter 668, Florida Statutes,
 23 consisting of sections 668.701, 668.702, 668.703, 668.704, and
 24 668.705, Florida Statutes, is created to read:

25 PART IV

26 FRAUDULENT USE OR POSSESSION OF IDENTIFYING INFORMATION

27 668.701 Short title.--This part may be cited as the "Anti-
 28 Phishing Act."

29 668.702 Definitions.--As used in this part, the term:

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

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

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

35 (4) "Identifying information" has the same meaning as the
 36 term "personal identification information" as defined in s.
 37 817.568(1).

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

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

43 668.703 Prohibited acts.--

44 (1) A person with an intent to engage in conduct involving
 45 the fraudulent use or possession of another person's identifying
 46 information may not represent oneself, directly or by
 47 implication, to be another person without the authority or
 48 approval of such other person through the use of a web page or
 49 Internet domain name and use that web page, Internet domain
 50 name, or a link to that web page or domain name or another site
 51 on the Internet to induce, request, or solicit a resident of
 52 this state to provide identifying information.

53 (2) A person with an intent to engage in conduct involving
 54 the fraudulent use or possession of identifying information may
 55 not send or cause to be sent to an electronic mail address held
 56 by a resident of this state an electronic mail message that is

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57 falsely represented as being sent by another person without the
58 authority or approval of such other person, refers or links the
59 recipient of the message to a web page, and directly or
60 indirectly induces, requests, or solicits the recipient of the
61 electronic mail message to provide identifying information.

62 668.704 Remedies.--

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

65 (a) A person engaged in the business of providing Internet
66 access service to the public who is adversely affected by the
67 violation.

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

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

72 (d) The Attorney General.

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

74 (a) Seek injunctive relief to restrain the violator from
75 continuing the violation.

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

77 1. Actual damages arising from the violation; or

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

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

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85 (4) For purposes of this section, violations are of the
86 same nature if the violations consist of the same course of
87 conduct or action, regardless of the number of times the conduct
88 or action occurred.

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

92 (6) By committing a violation under this part, the
93 violator submits personally to the jurisdiction of the courts of
94 this state. This section does not preclude other methods of
95 obtaining jurisdiction over a person who commits a violation
96 under this part.

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

100 (8) The venue for a civil action brought under this
101 section shall be the county in which the plaintiff resides or in
102 any county in which any part of the alleged violation under this
103 part took place, regardless of whether the defendant was ever
104 actually present in that county. A civil action filed under this
105 section must be brought within 3 years after the violation
106 occurred.

107 (9) The remedies available under this section are in
108 addition to remedies otherwise available for the same conduct
109 under federal or state law.

110 (10) Any moneys received by the Attorney General for
111 attorney's fees and costs of investigation or litigation in
112 proceedings brought under this section shall be deposited as

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113 received into the Legal Affairs Revolving Trust Fund.

114 (11) Any moneys received by the Attorney General which are
 115 not for attorney's fees and costs of investigation or litigation
 116 or used for reimbursing persons found under this part to be
 117 damaged shall accrue to the state and be deposited as received
 118 into the Legal Affairs Revolving Trust Fund.

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

122 668.705 Exemptions.--

123 (1) This part does not apply to a telecommunications
 124 provider's or Internet service provider's good faith
 125 transmission or routing of, or intermediate temporary storing or
 126 caching of, identifying information.

127 (2) A provider of an interactive computer service is not
 128 liable under the laws of this state for removing or disabling
 129 access to content that resides on an Internet website or other
 130 online location controlled or operated by such provider if such
 131 provider believes in good faith that the content is used to
 132 engage in a violation of this part.

133 Section 2. This act shall take effect July 1, 2006.