

Bill No. CS for CS for SB 80

Barcode 723788

	CHAMBER ACTION	
<u>Senate</u>		<u>House</u>

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Senator Aronberg moved the following amendment:

Senate Amendment (with title amendment)

On page 3, line 31,

insert:

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

PART IV

FRAUDULENT USE OR POSSESSION OF IDENTIFYING INFORMATION

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

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

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

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

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

(4) "Identifying information" has the same meaning as

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1 the term "personal identification information" as defined in
2 s. 817.568(1).

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

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

8 668.703 Prohibited acts.--

9 (1) A person with an intent to engage in conduct
10 involving the fraudulent use or possession of another person's
11 identifying information may not represent oneself, directly or
12 by implication, to be another person without the authority or
13 approval of such other person through the use of a web page or
14 Internet domain name and use that web page, Internet domain
15 name, or a link to that web page or domain name or another
16 site on the Internet to induce, request, or solicit a resident
17 of this state to provide identifying information.

18 (2) A person with an intent to engage in conduct
19 involving the fraudulent use or possession of identifying
20 information may not send or cause to be sent to an electronic
21 mail address held by a resident of this state an electronic
22 mail message that is falsely represented as being sent by
23 another person without the authority or approval of such other
24 person, refers or links the recipient of the message to a web
25 page, and directly or indirectly induces, requests, or
26 solicits the recipient of the electronic mail message to
27 provide identifying information.

28 668.704 Remedies.--

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

31 (a) A person engaged in the business of providing

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1 Internet access service to the public who is adversely
2 affected by the violation.

3 (b) A financial institution as defined in s.
4 655.005(1) that is adversely affected by the violation.

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

7 (d) The Attorney General.

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

10 (a) Seek injunctive relief to restrain the violator
11 from continuing the violation.

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

- 14 1. Actual damages arising from the violation; or
- 15 2. The sum of \$5,000 for each violation of the same
16 nature.

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

22 (4) For purposes of this section, violations are of
23 the same nature if the violations consist of the same course
24 of conduct or action, regardless of the number of times the
25 conduct or action occurred.

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

29 (6) By committing a violation under this part, the
30 violator submits personally to the jurisdiction of the courts
31 of this state. This section does not preclude other methods of

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1 obtaining jurisdiction over a person who commits a violation
2 under this part.

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

6 (8) The venue for a civil action brought under this
7 section shall be the county in which the plaintiff resides or
8 in any county in which any part of the alleged violation under
9 this part took place, regardless of whether the defendant was
10 ever actually present in that county. A civil action filed
11 under this section must be brought within 3 years after the
12 violation occurred.

13 (9) The remedies available under this section are in
14 addition to remedies otherwise available for the same conduct
15 under federal or state law.

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

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

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

28 668.705 Exemptions.--

29 (1) This part does not apply to a telecommunications
30 provider's or Internet service provider's good faith
31 transmission or routing of, or intermediate temporary storing

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1 or caching of, identifying information.

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

8

9 (Redesignate subsequent sections.)

10

11

12 ===== T I T L E A M E N D M E N T =====

13 And the title is amended as follows:

14 On page 1, line 23, after the semicolon,

15

16 insert:

17 creating part IV of ch. 668, F.S.; providing a
18 short title; providing definitions; prohibiting
19 certain acts relating to fraudulent use or
20 possession of identifying information;
21 authorizing civil actions for violations;
22 providing for injunctive relief and damages;
23 authorizing courts to increase awards of actual
24 damages under certain circumstances; providing
25 for recovery of attorney's fees and court
26 costs; providing for jurisdiction and venue;
27 providing for deposit of certain moneys
28 received by the Attorney General into the Legal
29 Affairs Revolving Trust Fund; authorizing the
30 Department of Legal Affairs to adopt rules;
31 providing for nonapplication to certain

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1 entities' good faith handling of identifying
2 information; specifying the absence of
3 liability for certain actions taken to prevent
4 certain violations;
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