

1 A bill to be entitled
2 An act relating to electronic mail; requiring
3 certain governmental entities to post a notice
4 on their websites that electronic mail
5 addresses sent to them are subject to release
6 to the public; amending s. 668.606, F.S.;
7 providing an exemption from criminal liability
8 for certain carriers whose equipment transmits
9 commercial electronic mail messages that
10 violate s. 668.603, F.S., which prohibits
11 specified actions relating to transmission of
12 false or misleading unsolicited commercial
13 electronic mail messages; amending s. 668.6075,
14 F.S., and renumbering and amending subsection
15 (2) thereof as s. 668.610, F.S.; providing that
16 remedies and penalties under the Electronic
17 Mail Communications Act are cumulative;
18 creating s. 668.608, F.S.; providing criminal
19 penalties for violations of s. 668.603, F.S.,
20 which prohibits specified actions relating to
21 transmission of false or misleading unsolicited
22 commercial electronic mail messages; providing
23 applicability; creating part IV of ch. 668,
24 F.S.; providing a short title; providing
25 definitions; prohibiting certain acts relating
26 to fraudulent use or possession of identifying
27 information; authorizing civil actions for
28 violations; providing for injunctive relief and
29 damages; authorizing courts to increase awards
30 of actual damages under certain circumstances;
31 providing for recovery of attorney's fees and

1 court costs; providing for jurisdiction and
2 venue; providing for deposit of certain moneys
3 received by the Attorney General into the Legal
4 Affairs Revolving Trust Fund; authorizing the
5 Department of Legal Affairs to adopt rules;
6 providing for nonapplication to certain
7 entities' good faith handling of identifying
8 information; specifying the absence of
9 liability for certain actions taken to prevent
10 certain violations; providing an effective
11 date.

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

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15 Section 1. Any agency, as defined in s. 119.011,
16 Florida Statutes, or legislative entity that operates a
17 website and uses electronic mail shall post the following
18 statement in a conspicuous location on its website:

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20 Under Florida law, e-mail addresses are public
21 records. If you do not want your e-mail address
22 released in response to a public-records
23 request, do not send electronic mail to this
24 entity. Instead, contact this office by phone
25 or in writing.

26 Section 2. Subsection (2) of section 668.606, Florida
27 Statutes, is amended to read:

28 668.606 Civil remedies; service provider immunity.--

29 (2) This part does not create a cause of action or
30 provide for criminal charges against an interactive computer
31 service, customer premise equipment provider, communications

1 ~~service provider telephone company~~, or cable provider whose
 2 equipment is used to transport, handle, or retransmit a
 3 commercial electronic mail message that violates s. 668.603.

4 Section 3. Section 668.6075, Florida Statutes, is
 5 amended, and subsection (2) of that section is renumbered as
 6 section 668.610, Florida Statutes, and amended to read:

7 668.6075 Unfair and deceptive trade practices
 8 ~~Violations of s. 668.603.--~~

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

14 668.610 Cumulative remedies.--

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

18 Section 4. Section 668.608, Florida Statutes, is
 19 created to read:

20 668.608 Criminal violations.--

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

24 (2) Any person who violates s. 668.603 commits a
 25 felony of the third degree, punishable as provided in s.
 26 775.082, s. 775.083, or s. 775.084, if:

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

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

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

7 (d) The revenue generated from a specific commercial
8 electronic mail message transmitted by the person exceeds
9 \$1,000;

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

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

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

21 Section 5. Part IV of chapter 668, Florida Statutes,
22 consisting of sections 668.701, 668.702, 668.703, 668.704, and
23 668.705, Florida Statutes, is created to read:

24 PART IV

25 FRAUDULENT USE OR POSSESSION OF IDENTIFYING INFORMATION

26 668.701 Short title.--This part may be cited as the
27 "Anti-Phishing Act."

28 668.702 Definitions.--As used in this part, the term:

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

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

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

5 (4) "Identifying information" has the same meaning as
6 the term "personal identification information" as defined in
7 s. 817.568(1).

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

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

13 668.703 Prohibited acts.--

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

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

3 668.704 Remedies.--

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

6 (a) A person engaged in the business of providing
7 Internet access service to the public who is adversely
8 affected by the violation.

9 (b) A financial institution as defined in s.
10 655.005(1) that is adversely affected by the violation.

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

13 (d) The Attorney General.

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

16 (a) Seek injunctive relief to restrain the violator
17 from continuing the violation.

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

20 1. Actual damages arising from the violation; or

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

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

28 (4) For purposes of this section, violations are of
29 the same nature if the violations consist of the same course
30 of conduct or action, regardless of the number of times the
31 conduct or action occurred.

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

4 (6) By committing a violation under this part, the
5 violator submits personally to the jurisdiction of the courts
6 of this state. This section does not preclude other methods of
7 obtaining jurisdiction over a person who commits a violation
8 under this part.

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

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

19 (9) The remedies available under this section are in
20 addition to remedies otherwise available for the same conduct
21 under federal or state law.

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

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

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

4 668.705 Exemptions.--

5 (1) This part does not apply to a telecommunications
6 provider's or Internet service provider's good faith
7 transmission or routing of, or intermediate temporary storing
8 or caching of, identifying information.

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

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

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