

By the Committees on Judiciary; Communications, Energy, and Public Utilities; and Commerce and Tourism; and Senator Hukill

590-03273-15

2015222c3

1 A bill to be entitled
2 An act relating to electronic commerce; providing a
3 directive to the Division of Law Revision and
4 Information; creating the "Computer Abuse and Data
5 Recovery Act"; creating s. 668.801, F.S.; providing a
6 statement of purpose; creating s. 668.802, F.S.;
7 defining terms; creating s. 668.803, F.S.; prohibiting
8 a person from intentionally committing specified acts
9 without authorization with respect to a protected
10 computer; providing penalties for a violation;
11 creating s. 668.804, F.S.; specifying remedies for
12 civil actions brought by persons affected by a
13 violation; providing that specified criminal judgments
14 or decrees against a defendant act as estoppel as to
15 certain matters in specified civil actions; providing
16 that specified civil actions must be filed within
17 certain periods of time; creating s. 668.805, F.S.;
18 providing that the act does not prohibit specified
19 activity by certain state, federal, and foreign law
20 enforcement agencies, regulatory agencies, and
21 political subdivisions; providing that the act does
22 not impose liability on specified providers in certain
23 circumstances; providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. The Division of Law Revision and Information is
28 directed to create part V of chapter 668, Florida Statutes,
29 consisting of ss. 668.801-668.805, Florida Statutes, to be

590-03273-15

2015222c3

30 entitled the "Computer Abuse and Data Recovery Act."

31 Section 2. Section 668.801, Florida Statutes, is created to
32 read:

33 668.801 Purpose.—This part shall be construed liberally to:

34 (1) Safeguard an owner, operator, or lessee of a protected
35 computer used in the operation of a business from harm or loss
36 caused by unauthorized access to such computer.

37 (2) Safeguard an owner of information stored in a protected
38 computer used in the operation of a business from harm or loss
39 caused by unauthorized access to such computer.

40 Section 3. Section 668.802, Florida Statutes, is created to
41 read:

42 668.802 Definitions.—As used in this part, the term:

43 (1) "Authorized user" means, with respect to a protected
44 computer: a director, officer, employee, third-party agent,
45 contractor, or consultant of the owner, operator, or lessee of
46 the computer or the owner of information stored in the protected
47 computer if the director, officer, employee, third-party agent,
48 contractor, or consultant is granted access to the protected
49 computer by the owner, operator, or lessee of the protected
50 computer or by the owner of information stored in such protected
51 computer through a technological access barrier.

52
53 If the owner, operator, or lessee of the protected computer or
54 the owner of information stored in the protected computer
55 provides a director, officer, employee, third-party agent,
56 contractor, or consultant with a technological access barrier
57 within the scope of his or her employment, the owner, operator,
58 or lessee of the computer or the owner of information stored in

590-03273-15

2015222c3

59 the protected computer gives explicit permission to the
60 director, officer, employee, third-party agent, contractor, or
61 consultant to use the technological access barrier and
62 establishes the director, officer, employee, third-party agent,
63 contractor, or consultant as an authorized user. Such
64 permission, however, is terminated upon cessation of his or her
65 employment.

66 (2) "Business" means any trade or business regardless of
67 its for-profit or not-for-profit status.

68 (3) "Computer" means an electronic, magnetic, optical,
69 electrochemical, or other high-speed data processing device that
70 performs logical, arithmetic, or storage functions and includes
71 any data storage facility, data storage device, or
72 communications facility directly related to, or operating in
73 conjunction with, the device.

74 (4) "Harm" means any impairment to the integrity, access,
75 or availability of data, programs, systems, or information.

76 (5) "Loss" means any of the following:

77 (a) Any reasonable cost incurred by the owner, operator, or
78 lessee of a protected computer or the owner of stored
79 information, including the reasonable cost of conducting a
80 damage assessment for harm associated with the violation and the
81 reasonable cost for remediation efforts, such as restoring the
82 data, programs, systems, or information to the condition it was
83 in before the violation.

84 (b) Economic damages.

85 (c) Lost profits.

86 (d) Consequential damages, including the interruption of
87 service.

590-03273-15

2015222c3

88 (e) Profits earned by a violator as a result of the
89 violation.

90 (6) "Protected computer" means a computer that is used in
91 connection with the operation of a business and stores
92 information, programs, or code in connection with the operation
93 of the business in which the stored information, programs, or
94 code can be accessed only by employing a technological access
95 barrier.

96 (7) "Technological access barrier" means a password,
97 security code, token, key fob, access device, or similar
98 measure.

99 (8) "Traffic" means to sell, purchase, or deliver.

100 (9) "Without authorization" means access to a protected
101 computer by a person who:

102 (a) Is not an authorized user;

103 (b) Has stolen a technological access barrier of an
104 authorized user; or

105 (c) Circumvents a technological access barrier on a
106 protected computer without the express or implied permission of
107 the owner, operator, or lessee of the computer or the express or
108 implied permission of the owner of information stored in the
109 protected computer. The term does not include circumventing a
110 technological measure that does not effectively control access
111 to the protected computer or the information stored in the
112 protected computer.

113 Section 4. Section 668.803, Florida Statutes, is created to
114 read:

115 668.803 Prohibited acts.—A person who knowingly and with
116 intent to cause harm or loss:

590-03273-15

2015222c3

117 (1) Obtains information from a protected computer without
118 authorization and, as a result, causes harm or loss;

119 (2) Causes the transmission of a program, code, or command
120 to a protected computer without authorization and, as a result
121 of the transmission, causes harm or loss; or

122 (3) Traffics in any technological access barrier through
123 which access to a protected computer may be obtained without
124 authorization,

125
126 is liable to the extent provided in s. 668.804 in a civil action
127 to the owner, operator, or lessee of the protected computer, or
128 the owner of information stored in the protected computer who
129 uses the information in connection with the operation of a
130 business.

131 Section 5. Section 668.804, Florida Statutes, is created to
132 read:

133 668.804 Remedies.-

134 (1) A person who brings a civil action for a violation
135 under s. 668.803 may:

136 (a) Recover actual damages, including the person's lost
137 profits and economic damages.

138 (b) Recover the violator's profits that are not included in
139 the computation of actual damages under paragraph (a).

140 (c) Obtain injunctive or other equitable relief from the
141 court to prevent a future violation of s. 668.803.

142 (d) Recover the misappropriated information, program, or
143 code, and all copies thereof, that are subject to the violation.

144 (2) A court shall award reasonable attorney fees to the
145 prevailing party in any action arising under this part.

590-03273-15

2015222c3

146 (3) The remedies available for a violation of s. 668.803
147 are in addition to remedies otherwise available for the same
148 conduct under federal or state law.

149 (4) A final judgment or decree in favor of the state in any
150 criminal proceeding under chapter 815 shall estop the defendant
151 in any subsequent action brought pursuant to s. 668.803 as to
152 all matters as to which the judgment or decree would be an
153 estoppel as if the plaintiff had been a party in the previous
154 criminal action.

155 (5) A civil action filed under s. 668.803 must be commenced
156 within 3 years after the violation occurred or within 3 years
157 after the violation was discovered or should have been
158 discovered with due diligence.

159 Section 6. Section 668.805, Florida Statutes, is created to
160 read:

161 668.805 Exclusions.—This part does not prohibit any
162 lawfully authorized investigative, protective, or intelligence
163 activity of any law enforcement agency, regulatory agency, or
164 political subdivision of this state, any other state, the United
165 States, or any foreign country. This part may not be construed
166 to impose liability on any provider of an interactive computer
167 service as defined in 47 U.S.C. 230(f), of an information
168 service as defined in 47 U.S.C. 153, or of a communications
169 service as defined in s. 202.11, if the provider provides the
170 transmission, storage, or caching of electronic communications
171 or messages of a person other than the provider, related
172 telecommunications or commercial mobile radio services, or
173 content provided by a person other than the provider.

174 Section 7. This act shall take effect October 1, 2015.