

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u>      </u>	(Y/N)
ADOPTED AS AMENDED	<u>      </u>	(Y/N)
ADOPTED W/O OBJECTION	<u>      </u>	(Y/N)
FAILED TO ADOPT	<u>      </u>	(Y/N)
WITHDRAWN	<u>      </u>	(Y/N)
OTHER	<u>      </u>	

1 Committee/Subcommittee hearing bill: Judiciary Committee  
 2 Representative Spano offered the following:

**Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:

6 Section 1. The Division of Law Revision and Information is  
 7 directed to create part V of chapter 668, Florida Statutes,  
 8 consisting of ss. 668.801-668.806, Florida Statutes, to be  
 9 entitled the "Computer Abuse and Data Recovery Act."

10 Section 2. Section 668.801, Florida Statutes, is created  
 11 to read:

12 668.801 Short title.—This part may be cited as the  
 13 "Computer Abuse and Data Recovery Act."

14 Section 3. Section 668.802, Florida Statutes, is created  
 15 to read:

16 668.802 Purpose.—This part shall be liberally construed to  
 17 safeguard an owner, operator, or lessee of a protected computer,

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18 or an owner of information stored in a protected computer, from  
19 harm or loss caused by unauthorized access to such computer.

20 Section 4. Section 668.803, Florida Statutes, is created  
21 to read:

22 668.803 Definitions.—As used in this part, the term:

23 (1) (a) "Authorized user" means, with respect to a  
24 protected computer:

25 1. A director, officer, or employee of the owner,  
26 operator, or lessee of the computer or the owner of information  
27 stored in the computer.

28 2. A third-party agent, contractor, consultant, or  
29 employee of the owner, operator, or lessee of the computer or  
30 the owner of information stored in the protected computer if the  
31 third-party agent, contractor, consultant, or employee is  
32 granted access to the protected computer by the owner, operator,  
33 or lessee of the protected computer or by the owner of  
34 information stored in such protected computer in the form of a  
35 technological access barrier.

36 (b) If the owner, operator, or lessee of the computer or  
37 the owner of information stored in the protected computer  
38 provides a third-party agent, contractor, consultant, or  
39 employee with a technological access barrier within the scope of  
40 his or her employment, the owner, operator, or lessee of the  
41 computer or the owner of information stored in the protected  
42 computer gives express permission to the third-party agent,  
43 contractor, consultant, or employee to use the technological

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44 access barrier and establishes the third-party agent,  
45 contractor, consultant, or employee as an authorized user. Such  
46 permission, however, is terminated upon cessation of his or her  
47 employment.

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

50 (3) "Computer" means an electronic, magnetic, optical,  
51 electrochemical, or other high-speed data processing device that  
52 performs logical, arithmetic, or storage functions and includes  
53 any data storage facility, data storage device, or  
54 communications facility directly related to or which operates in  
55 conjunction with the device.

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

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

59 (a) Any reasonable cost incurred by the owner, operator,  
60 or lessee of a protected computer or the owner of stored  
61 information, including the reasonable cost of conducting a  
62 damage assessment for harm associated with the violation and the  
63 reasonable cost for remediation efforts, such as restoring the  
64 data, programs, systems, or information to the condition it was  
65 in before the violation.

66 (b) Economic damages.

67 (c) Lost profits.

68 (d) Consequential damages including the interruption of  
69 service.

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70 (e) Profits earned by a violator as a result of the  
71 violation.

72 (6) "Protected computer" means a computer that is used in  
73 connection with the operation of a business and stores  
74 information, programs, or code in connection with the operation  
75 of the business in which the stored information, programs, or  
76 code can only be accessed by employing a technological access  
77 barrier.

78 (7) "Technological access barrier" means a password,  
79 security code, token, key fob, access device, or similar  
80 measure.

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

82 (9) "Without authorization" means access to a protected  
83 computer by:

84 (a) A person who is not an authorized user;

85 (b) A person who has stolen a technological access barrier  
86 of an authorized user; or

87 (c) A person circumventing a technological access barrier  
88 on a protected computer without the express or implied  
89 permission of the owner, operator, or lessee of the protected  
90 computer or the express or implied permission of the owner of  
91 information stored in the protected computer. The term does not  
92 include circumventing a technological access barrier that does  
93 not effectively control access to the protected computer or the  
94 information stored in the protected computer.

95 Section 5. Section 668.804, Florida Statutes, is created

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96 to read:

97 668.804 Prohibited acts.—A person who knowingly and with  
98 intent to cause harm or loss:

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

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

104 (3) Traffics in any technological access barrier through  
105 which access to a protected computer may be obtained without  
106 authorization,

107  
108 is liable to the extent provided in s. 668.805 in a civil action  
109 to the owner, operator, or lessee of the protected computer, or  
110 the owner of information stored in the protected computer who  
111 uses the information in connection with the operation of a  
112 business.

113 Section 6. Section 668.805, Florida Statutes, is created  
114 to read:

115 668.805 Remedies.—

116 (1) A person who brings a civil action for a violation  
117 under s. 668.804 may:

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

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

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122 (c) Obtain injunctive or other equitable relief from the  
123 court to prevent a future violation of s. 668.804.

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

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

128 (3) The remedies available for a violation of s. 668.804  
129 are in addition to remedies otherwise available for the same  
130 conduct under federal or state law.

131 (4) A final judgment or decree in favor of the state in  
132 any criminal proceeding under chapter 815 shall estop the  
133 defendant in any subsequent action brought pursuant to s.  
134 668.804 as to all matters as to which the judgment or decree  
135 would be an estoppel as if the plaintiff had been a party in the  
136 previous criminal action.

137 (5) A civil action filed under s. 668.804 must be  
138 commenced within 3 years after the violation occurred or within  
139 3 years after the violation was discovered or should have been  
140 discovered with due diligence.

141 Section 7. Section 668.806, Florida Statutes, is created  
142 to read:

143 668.806 Exclusions.—

144 (1) This part does not prohibit any lawfully authorized  
145 investigative, protective, or intelligence activity of any law  
146 enforcement agency, regulatory agency, or political subdivision  
147 of this state, any other state, the United States, or any

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148 foreign country.

149 (2) This part may not be construed to impose liability on  
150 any provider of an interactive computer service as defined in 47  
151 U.S.C. 230(f), of an information service as defined in 47 U.S.C.  
152 153, or of a communications service as defined in s. 202.11, if  
153 the provider provides the transmission, storage, or caching of  
154 electronic communications or messages of a person other than the  
155 provider, related telecommunications or commercial mobile radio  
156 services, or content provided by a person other than the  
157 provider.

158 Section 8. This act shall take effect October 1, 2015.

160 -----  
161 **T I T L E A M E N D M E N T**

162 Remove everything before the enacting clause and insert:  
163 An act relating to electronic commerce; providing a directive to  
164 the Division of Law Revision and Information; creating the  
165 "Computer Abuse and Data Recovery Act"; creating s. 668.801,  
166 F.S.; providing a short title; creating s. 668.802, F.S.;  
167 providing a statement of purpose; creating s. 668.803, F.S.;  
168 defining terms; creating s. 668.804, F.S.; prohibiting a person  
169 from intentionally committing specified acts without  
170 authorization with respect to a protected computer; providing  
171 penalties for a violation; creating s. 668.805, F.S.; specifying  
172 remedies for civil actions brought by persons affected by a  
173 violation; providing that specified criminal judgments or

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174 decrees against a defendant act as estoppel as to certain  
175 matters in specified civil actions; providing that specified  
176 civil actions must be filed within certain periods of time;  
177 creating s. 668.806, F.S.; providing that the act does not  
178 prohibit specified activity by certain governmental agencies or  
179 impose liability on certain technology service providers;  
180 providing an effective date.