

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 an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. The Division of Law Revision and Information is
26 directed to create part V of chapter 668, Florida Statutes,

27 consisting of ss. 668.801-668.805, Florida Statutes, to be
28 entitled the "Computer Abuse and Data Recovery Act."

29 Section 2. Section 668.801, Florida Statutes, is created
30 to read:

31 668.801 Purpose.—This part shall be construed liberally
32 to:

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

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

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

41 668.802 Definitions.—As used in this part, the term:

42 (1) "Authorized user" means, with respect to a protected
43 computer:

44 (a) A director, officer, or employee of the owner,
45 operator, or lessee of such computer or the owner of information
46 stored in such computer; or

47 (b) Such owner's third-party agent, contractor, or
48 consultant, or any respective employee of such third-party
49 agent, contractor, or consultant,

50
51 provided that such person has been granted access to the
52 protected computer by the owner, operator, or lessee of such

53 computer or the owner of information stored in such computer in
54 the form of a technological access barrier. An employer provides
55 explicit permission to an employee by providing the employee
56 with a technological access barrier within the scope of the
57 employee's employment. Such permission is deemed terminated upon
58 cessation of the employee's employment.

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

61 (3) "Computer" means an electronic, magnetic, optical,
62 electrochemical, or other high-speed data processing device that
63 performs logical, arithmetic, or storage functions and includes
64 any data storage facility, data storage device, or
65 communications facility directly related to or which operates in
66 conjunction with the device.

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

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

70 (a) Any reasonable cost incurred by the owner, operator,
71 or lessee of a protected computer or the owner of stored
72 information, including the reasonable cost of conducting a
73 damage assessment for harm associated with the violation and the
74 reasonable cost for remediation efforts, such as restoring the
75 data, programs, systems, or information to the condition it was
76 in before the violation.

77 (b) Economic damages.

78 (c) Lost profits.

79 (d) Consequential damages including the interruption of
80 service.

81 (e) Profits earned by a violator as a result of the
82 violation.

83 (6) "Protected computer" means a computer that is used in
84 connection with the operation of a business and stores
85 information, programs, or code in connection with the operation
86 of the business in which the stored information, programs, or
87 code can only be accessed by employing a technological access
88 barrier.

89 (7) "Technological access barrier" means a password,
90 security code, token, key fob, access device, or similar
91 measure.

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

93 (9) "Without authorization" means access to a protected
94 computer by any of the following:

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

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

98 (c) A person circumventing a technological access barrier
99 on a protected computer without the express or implied
100 permission of the owner, operator, or lessee of the protected
101 computer or the express or implied permission of the owner of
102 information stored in the protected computer. For purposes of
103 this paragraph, the term does not include circumventing a
104 technological measure that does not effectively control access

105 to the protected computer or the information stored in the
 106 protected computer.

107 Section 4. Section 668.803, Florida Statutes, is created
 108 to read:

109 668.803 Prohibited acts.—A person who knowingly and with
 110 intent to cause harm or loss:

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

113 (2) Causes the transmission of a program, code, or command
 114 from a protected computer without authorization and, as a result
 115 of the transmission, causes harm or loss; or

116 (3) Traffics in any technological access barrier through
 117 which access to a protected computer may be obtained without
 118 authorization,

119
 120 is liable to the extent provided in s. 668.804 in a civil action
 121 to the owner, operator, or lessee of the protected computer, or
 122 the owner of information stored in the protected computer who
 123 uses the information in connection with the operation of a
 124 business.

125 Section 5. Section 668.804, Florida Statutes, is created
 126 to read:

127 668.804 Remedies.—

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

130 (a) Recover actual damages, including the person's lost

131 profits and economic damages.

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

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

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

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

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

143 (4) A final judgment or decree in favor of the state in
144 any criminal proceeding under chapter 815 shall estop the
145 defendant in any subsequent action brought pursuant to s.
146 668.803 as to all matters as to which the judgment or decree
147 would be an estoppel as if the plaintiff had been a party in the
148 previous criminal action.

149 (5) A civil action filed under s. 668.803 must be
150 commenced within 3 years after the violation occurred or within
151 3 years after the violation was discovered or should have been
152 discovered with due diligence.

153 Section 6. Section 668.805, Florida Statutes, is created
154 to read:

155 668.805 Exclusions.—This part does not prohibit any
156 lawfully authorized investigative, protective, or intelligence

CS/CS/HB 175

2015

157 activity of any law enforcement agency, regulatory agency, or
158 political subdivision of this state, any other state, the United
159 States, or any foreign country.

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