

Committee Substitute for  
Committee Substitute for Senate Bill No. 80

An act relating to electronic mail; requiring certain governmental entities to post a notice on their websites that electronic mail addresses sent to them are subject to release to the public; amending s. 668.606, F.S.; providing an exemption from criminal liability for certain carriers whose equipment transmits commercial electronic mail messages that violate s. 668.603, F.S., which prohibits specified actions relating to transmission of false or misleading unsolicited commercial electronic mail messages; amending s. 668.6075, F.S., and renumbering and amending subsection (2) thereof as s. 668.610, F.S.; providing that remedies and penalties under the Electronic Mail Communications Act are cumulative; creating s. 668.608, F.S.; providing criminal penalties for violations of s. 668.603, F.S., which prohibits specified actions relating to transmission of false or misleading unsolicited commercial electronic mail messages; providing applicability; creating part IV of ch. 668, F.S.; providing a short title; providing definitions; prohibiting certain acts relating to fraudulent use or possession of identifying information; authorizing civil actions for violations; providing for injunctive relief and damages; authorizing courts to increase awards of actual damages under certain circumstances; providing for recovery of attorney's fees and court costs; providing for jurisdiction and venue; providing for deposit of certain moneys received by the Attorney General into the Legal Affairs Revolving Trust Fund; authorizing the Department of Legal Affairs to adopt rules; providing for nonapplication to certain entities' good faith handling of identifying information; specifying the absence of liability for certain actions taken to prevent certain violations; providing an effective date.

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

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

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

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

668.606 Civil remedies; service provider immunity.—

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

cable provider whose equipment is used to transport, handle, or retransmit a commercial electronic mail message that violates s. 668.603.

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

668.6075 Unfair and deceptive trade practices ~~Violations of s. 668.603.~~—

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

668.610 Cumulative remedies.—

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

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

668.608 Criminal violations.—

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

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

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

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

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

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

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

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

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

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 the term “personal identification information” as defined in s. 817.568(1).

(5) “Internet domain name” has the same meaning as provided in s. 668.602.

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

668.703 Prohibited acts.—

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

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

668.704 Remedies.—

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

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

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

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

(d) The Attorney General.

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

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

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

1. Actual damages arising from the violation; or

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

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

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

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

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

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

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

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

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

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

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

668.705 Exemptions.—

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

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

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

Approved by the Governor June 20, 2006.

Filed in Office Secretary of State June 20, 2006.