

Computer Abuse and Data Recovery Act (“CADRA”)(June 13, 2014)

Electronic Commerce

Part V: Computer Abuse and Data Recovery Act

668.801 Short Title.

This part may be cited as the "Computer Abuse and Data Recovery Act."

668.802 Purposes.

The provisions of this part shall be construed liberally to promote the following policies:

- (a) To protect owners operators and leasees of computers used in the operation of a business from harm or losses caused by unauthorized access to said computers.
- (b) To protect the owner of information stored in protected computers used in the operation of a business from harm or losses caused by unauthorized access to said computers

668.803 Prohibited Acts.

Whoever knowingly and with intent to cause harm or loss—

- (a) obtains information from a protected computer without authorization and as a result thereof causes a harm or loss;
- (b) causes the transmission of a program, code, or command without authorization to a protected computer, and as a result of such transmission, causes a harm or loss; or
- (c) traffics in any password, security code or token, key fob, access device or similar information or device through which access to a protected computer may be obtained without authorization;

shall be liable in a civil action to: (i) the owner of the information who uses the information in connection with the operation of a business in connection with the protected computer, or (ii) the owner, operator or lessee of the protected computer.

668.804 Remedies.

- (a) A person bringing an action under section 668.803 for a violation may:
 - (1) recover his or her actual damages, including lost profits, and losses;
 - (2) recover the violator's profits that are not taken into account in computing actual damages and losses under section 668.804(a)(1);¹ and

¹ See FUTSA, Chapter 688.004(1).

(3) seek injunctive or other equitable relief from the court to: (i) to prevent a violation of section 668.803, or (ii) recover the original and all copies of the information which is subject to the violation.

(b) In any action arising under this Act, the court may award reasonable attorney's fees to the prevailing party according to the circumstances of the case ²

(c) The remedies available for a violation of section 668.803 are in addition to remedies otherwise available for the same conduct under federal or state law.

(d) A final judgment or decree rendered in favor of the state in any criminal proceeding concerning the conduct of the defendant which forms the basis for any criminal proceeding under chapter 815, shall estop the defendant in any action brought pursuant to section 668.803 as to all matters as to which such judgment or decree would be an estoppel as if the plaintiff had been a party in the criminal action.

(e) [Need guidance from the Legislative Comm re how and where does this limitation of action clause go in the Fla. Stat., for example Fla. Stat. 95.11] A civil action filed under section 668.803 shall be commenced within three years of the time the violation occurred or within three years of the time the violation was discovered or should have been discovered with the exercise of due diligence.

668.805 Definitions.

As used in this chapter, the term:

(a) "Computer" means an electronic, magnetic, optical, electrochemical, or other high speed data processing device performing logical, arithmetic, or storage functions, and includes any data storage facility, data storage device or communications facility directly related to or operating in conjunction with such device.

(b) "Protected computer" means a computer used in connection with the operation of a business and storing information, programs or code used in connection with the operation of a business in which said information, programs or code can only be accessed through a technological access barrier such as a password, security code or token, key fob, access device, or similar measure.

(c) "Without authorization" means to circumvent a technological access barrier³ to a

² Judges have complained that they have no guidance to determine and award of fees. The IP Comm points to similar language in the Fla. Trademark Act, 495.141(1).

³ The phrase "technological access barrier" is derived from the Digital Millennium Copyright Act ("DMCA"), 17 U.S.C. § 1201(a)(2)(A), which prohibits, in relevant part, the trafficking of any technology that "is primarily designed or produced for the purpose of circumventing a technological measure that effectively controls access to a work protected [by copyright]." *United States v. Reichert*, 747 F.3d 445 (6th Cir. 2014); see also *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 387 F.3d 522 (6th Cir. 2004); *Murphy v. Millennium Radio Group LLC*, 650 F.3d 295, 300 (3d Cir. 2011); and *MDY Indus., LLC v. Blizzard Entm't, Inc.*, 2011 U.S. App. LEXIS 3428 (9th Cir. Ariz. Feb. 17,

protected computer without the express or implied permission of the owner, operator or lessee of the computer to access the computer, but does not include circumventing a technological measure that does not effectively control access to a protected computer.

(d) "Harm" means any impairment to the integrity, access or availability of data, a program, a system, or information;

(e) "Loss" means any reasonable cost to the owner of information stored in a protected computer or the owner, operator or lessee of a protected computer, including the reasonable cost of responding to the violation, conducting a damage assessment for harm associated with the violation, and remediation efforts including restoring the data, program, system, or information to its condition prior to the violation, and includes economic damages, lost profits, and consequential damages incurred because of interruption of service, and includes profits derived from a violation;

(f) "Traffics" means to sell, purchase or deliver; and ⁴

(g) "Business" includes any trade or business without regard to its profit or nonprofit status.

668.806 Exclusions.

This part does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the State of Florida, a State, or a political subdivision of the State.

2011); *Quad Knopf, Inc. v. South Valley Biology Consulting, LLC*, 2014 U.S. Dist. LEXIS 46985, 7-9 (E.D. Cal. Apr. 3, 2014)(discussing the difference between the federal Computer Fraud and Abuse Act ("CFAA") and the DMCA); *Integral Dev. Corp. v. Tolat*, 2013 U.S. Dist. LEXIS 153705, 10-12 (N.D. Cal. Oct. 25, 2013); and *Wentworth-Douglass Hosp. v. Young & Novis P.A.*, 2012 DNH 112 (D.N.H. 2012). Also, legislation has been proposed to amend the CFAA to define "access without authorization" as "to circumvent technological access barriers to a computer, file, or data without the express or implied permission of the owner or operator of the computer to access the computer, file, or data, but does not include circumventing a technological measure that does not effectively control access to a computer, file, or data." Initially proposed by Orin Kerr, a professor at the George Washington University Law School and a former federal prosecutor, then amended by the Electronic Freedom Foundation.

⁴ A "person" is defined in Fla Stat. 1.01(3). Several BizLit commentators and judges requested a definition of "trafficking". Definition taken from Fla. Stat. 893.135, "Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking." "Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, in excess of 25 pounds of cannabis, ..." Fla. Stat. 893.135(1)(a).