

CADRA Report January 15, 2015

To: Business Litigation Committee
Intellectual Property Law Committee
Computer and Technology Law Committee

Re: Computer Abuse and Data Recovery Act (CADRA) Legislative Report

Late in December, 2014, the enclosed version of CADRA was introduced by Sen. Dorothy Hukill from Daytona as Senate Bill SB 222. The companion is House Bill HB 175. In the House, the first stop is the House Civil Justice Committee. The Business Section lobbyists, Aimee Diaz and Greg Black, are trying to get the bill heard on February 4. The official start of the 2015 Legislative Session is on March 3, 2015 and is scheduled to end May 1, 2015.

The enclosed version of CADRA is structured differently from the version approved by the Business Law Section but does cover the same concepts approved by the various Committees.

The only suggested change to the present bill, SB 222, relates Section 668.804 Remedies, subsection (d): “Recover the misappropriated information, program or code and all copies thereof ~~of the misappropriated information~~ that are subject to the violation.”

Further comments and suggestions should be sent to Robert Kain.

/s/RobertKain
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Leader, CADRA Taskforce

By Senator Hukill

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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 to

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30 read:

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

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

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

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

40 668.802 Definitions.—As used in this part, the term:

41 (1) "Business" means any trade or business regardless of
42 its for-profit or not-for-profit status.

43 (2) "Computer" means an electronic, magnetic, optical,
44 electrochemical, or other high-speed data processing device that
45 performs logical, arithmetic, or storage functions and includes
46 any data storage facility, data storage device, or
47 communications facility directly related to or which operates in
48 conjunction with the device.

49 (3) "Harm" means any impairment to the integrity, access,
50 or availability of data, programs, systems, or information.

51 (4) "Loss" means any of the following:

52 (a) Any reasonable cost incurred by the owner, operator, or
53 lessee of a protected computer or the owner of stored
54 information, including the reasonable cost of conducting a
55 damage assessment for harm associated with the violation and the
56 reasonable cost for remediation efforts, such as restoring the
57 data, programs, systems, or information to the condition it was
58 in before the violation.

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59 (b) Economic damages.

60 (c) Lost profits.

61 (d) Consequential damages including the interruption of
 62 service.

63 (e) Profits earned by a violator as a result of the
 64 violation.

65 (5) "Protected computer" means a computer that is used in
 66 connection with the operation of a business and stores
 67 information, programs, or code in connection with the operation
 68 of the business in which the stored information, programs, or
 69 code can only be accessed by employing a technological access
 70 barrier.

71 (6) "Technological access barrier" means a password,
 72 security code, token, key fob, access device, or similar
 73 measure.

74 (7) "Traffic" means to sell, purchase, or deliver.

75 (8) "Without authorization" means circumvention of a
 76 technological access barrier on a protected computer without the
 77 express or implied permission of the owner, operator, or lessee
 78 of the computer or the express or implied permission of the
 79 owner of information stored in the protected computer, but the
 80 term does not include circumventing a technological measure that
 81 does not effectively control access to the protected computer or
 82 the information stored in the protected computer.

83 Section 4. Section 668.803, Florida Statutes, is created to
 84 read:

85 668.803 Prohibited acts.—A person who knowingly and with
 86 intent to cause harm or loss:

87 (1) Obtains information from a protected computer without

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88 authorization and, as a result, causes harm or loss;

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

92 (3) Traffics in any technological access barrier through
93 which access to a protected computer may be obtained without
94 authorization,

95
96 is liable to the extent provided in s. 668.804 in a civil action
97 to the owner, operator, or lessee of the protected computer, or
98 the owner of information stored in the protected computer who
99 uses the information in connection with the operation of a
100 business.

101 Section 5. Section 668.804, Florida Statutes, is created to
102 read:

103 668.804 Remedies.—

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

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

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

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

112 (d) Recover the misappropriated information and all copies
113 of the misappropriated information that are subject to the
114 violation.

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

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

120 (4) A final judgment or decree in favor of the state in any
121 criminal proceeding under chapter 815 shall estop the defendant
122 in any subsequent action brought pursuant to s. 668.803 as to
123 all matters as to which the judgment or decree would be an
124 estoppel as if the plaintiff had been a party in the previous
125 criminal action.

126 (5) A civil action filed under s. 668.803 must be commenced
127 within 3 years after the violation occurred or within 3 years
128 after the violation was discovered or should have been
129 discovered with due diligence.

130 Section 6. Section 668.805, Florida Statutes, is created to
131 read:

132 668.805 Exclusions.—This part does not prohibit any
133 lawfully authorized investigative, protective, or intelligence
134 activity of any law enforcement agency, regulatory agency, or
135 political subdivision of this state, any other state, the United
136 States, or any foreign country.

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