

By: Zaffirini

S.B. No. 28

A BILL TO BE ENTITLED

AN ACT

relating to the use of a computer for an unauthorized purpose;  
providing a civil penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 324.002, Business & Commerce Code, as  
effective April 1, 2009, is amended by adding Subdivisions (1-a)  
and (9) to read as follows:

(1-a) "Botnet" means a collection of zombies.

(9) "Zombie" means a computer that, without the  
knowledge and consent of the computer's owner or operator, has been  
compromised to give access or control to a program or person other  
than the computer's owner or operator.

SECTION 2. Subsection (a), Section 324.003, Business &  
Commerce Code, as effective April 1, 2009, is amended to read as  
follows:

(a) Section 324.052, other than Subdivision (1) of that  
section, and Sections 324.053(4), ~~and~~ 324.054, and 324.055 do not  
apply to a telecommunications carrier, cable operator, computer  
hardware or software provider, or provider of information service  
or interactive computer service that monitors or has interaction  
with a subscriber's Internet or other network connection or service  
or a protected computer for:

(1) a network or computer security purpose;

(2) diagnostics, technical support, or a repair

1 purpose;

2 (3) an authorized update of computer software or  
3 system firmware;

4 (4) authorized remote system management; or

5 (5) detection or prevention of unauthorized use of or  
6 fraudulent or other illegal activity in connection with a network,  
7 service, or computer software, including scanning for and removing  
8 software proscribed under this chapter.

9 SECTION 3. Section 324.005, Business & Commerce Code, as  
10 effective April 1, 2009, is amended to read as follows:

11 Sec. 324.005. KNOWING VIOLATION. A person knowingly  
12 violates Section 324.051, 324.052, [~~or~~] 324.053, or 324.055 if the  
13 person:

14 (1) acts with actual knowledge of the facts that  
15 constitute the violation; or

16 (2) consciously avoids information that would  
17 establish actual knowledge of those facts.

18 SECTION 4. Subchapter B, Chapter 324, Business & Commerce  
19 Code, as effective April 1, 2009, is amended by adding Section  
20 324.055 to read as follows:

21 Sec. 324.055. UNAUTHORIZED CREATION, ACCESS TO, OR USE OF  
22 ZOMBIES OR BOTNETS; PRIVATE ACTION. (a) A person other than the  
23 owner or operator of the computer may not knowingly cause or offer  
24 to cause a computer to become a zombie or part of a botnet.

25 (b) A person may not knowingly create, have created, use, or  
26 offer to use a zombie or botnet:

27 (1) to send an unsolicited commercial electronic mail

1 message, as defined by Section 321.001;

2 (2) for an attack on a computer system or network that  
3 causes a loss of service to users;

4 (3) to artificially add increments to a click counter  
5 by automatically clicking on an advertisement on an Internet  
6 website;

7 (4) to forward computer software designed to damage or  
8 disrupt another computer or system;

9 (5) to collect personally identifiable information;

10 (6) to manipulate online polls or games; or

11 (7) for another purpose not authorized by the owner or  
12 operator of the computer.

13 (c) A person may not:

14 (1) purchase, rent, or otherwise gain control of a  
15 zombie or botnet created by another person; or

16 (2) sell, lease, offer for sale or lease, or otherwise  
17 provide to another person access to or use of a zombie or botnet.

18 (d) A person may not provide substantial assistance or  
19 support to another person knowing that the other person is engaged  
20 in an act or practice that violates this section.

21 (e) Any of the following persons may bring a civil action  
22 against a person who violates this section:

23 (1) a person in business as an Internet service  
24 provider that is adversely affected by the violation;

25 (2) a business organization that has incurred a loss  
26 or disruption of its business activities as a result of the  
27 violation; or

1           (3) the attorney general.

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

4           (1) injunctive relief that restrains the violator from  
5 continuing the violation;

6           (2) subject to Subsection (g), damages in an amount  
7 equal to the greater of:

8                   (A) actual damages arising from the violation;

9                   (B) \$100,000 for each violation consisting of the  
10 same course of conduct or action, regardless of the number of times  
11 the conduct or act occurred; or

12                   (C) \$100,000 for each zombie used to commit the  
13 violation; or

14           (3) both injunctive relief and damages.

15           (g) The court may increase an award of damages, statutory or  
16 otherwise, in an action brought under this section to an amount not  
17 to exceed three times the applicable damages if the court finds that  
18 the violation has reoccurred with sufficient frequency to  
19 constitute a pattern or practice.

20           (h) A plaintiff who prevails in an action brought under this  
21 section is entitled to recover court costs and reasonable  
22 attorney's fees, reasonable fees of experts, and other reasonable  
23 costs of litigation.

24           (i) A remedy authorized by this section is not exclusive but  
25 is in addition to any other procedure or remedy provided for by  
26 other statutory or common law.

27           (j) Nothing in this section may be construed to impose

1 liability on the following persons with respect to a violation of  
2 this section committed by another person:

3 (1) an Internet service provider;

4 (2) a provider of interactive computer service, as  
5 defined by Section 230, Communications Act of 1934 (47 U.S.C.  
6 Section 230);

7 (3) a telecommunications provider, as defined by  
8 Section 51.002, Utilities Code; or

9 (4) a video service provider or cable service  
10 provider, as defined by Section 66.002, Utilities Code.

11 SECTION 5. Subsection (a), Section 324.101, Business &  
12 Commerce Code, as effective April 1, 2009, is amended to read as  
13 follows:

14 (a) Any of the following persons, if adversely affected by  
15 the violation, may bring a civil action against a person who  
16 violates a provision of this chapter other than Section 324.055:

17 (1) a provider of computer software;

18 (2) an owner of a web page or trademark;

19 (3) a telecommunications carrier;

20 (4) a cable operator; or

21 (5) an Internet service provider.

22 SECTION 6. The changes in law made by this Act apply only to  
23 conduct that occurs on or after the effective date of this Act.  
24 Conduct that occurs before the effective date of this Act is  
25 governed by the law in effect at the time the conduct occurred, and  
26 that law is continued in effect for that purpose.

27 SECTION 7. This Act takes effect September 1, 2009.