

By: Zaffirini

S.B. No. 28

Substitute the following for S.B. No. 28:

By: Eissler

C.S.S.B. No. 28

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the use of a computer for an unauthorized purpose.

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

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

7 (1-a) "Botnet" means a collection of two or more  
8 zombies.

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

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

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

22 (1) a network or computer security purpose;

23 (2) diagnostics, technical support, or a repair  
24 purpose;

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

3 (4) authorized remote system management; or

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

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

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

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

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

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

20 Sec. 324.055. UNAUTHORIZED CREATION OF, ACCESS TO, OR USE  
21 OF ZOMBIES OR BOTNETS; PRIVATE ACTION. (a) In this section:

22 (1) "Internet service provider" means a person  
23 providing connectivity to the Internet or another wide area  
24 network.

25 (2) "Person" has the meaning assigned by Section  
26 311.005, Government Code.

27 (b) A person who is not the owner or operator of the computer

1 may not knowingly cause or offer to cause a computer to become a  
2 zombie or part of a botnet.

3 (c) A person may not knowingly create, have created, use, or  
4 offer to use a zombie or botnet to:

5 (1) send an unsolicited commercial electronic mail  
6 message, as defined by Section 321.001;

7 (2) send a signal to a computer system or network that  
8 causes a loss of service to users;

9 (3) send data from a computer without authorization by  
10 the owner or operator of the computer;

11 (4) forward computer software designed to damage or  
12 disrupt another computer or system;

13 (5) collect personally identifiable information; or

14 (6) perform an act for another purpose not authorized  
15 by the owner or operator of the computer.

16 (d) A person may not:

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

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

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

23 (1) a person who is acting as an Internet service  
24 provider and whose network is used to commit a violation under this  
25 section;

26 (2) a person who has incurred a loss or disruption of  
27 the conduct of the person's business, including for-profit or

1 not-for-profit activities, as a result of the violation; or

2 (3) the attorney general, subject to Subsection (g).

3 (f) A person bringing an action under this section may, for  
4 each violation:

5 (1) seek injunctive relief to restrain a violator from  
6 continuing the violation;

7 (2) subject to Subsection (h), recover damages in an  
8 amount equal to the greater of:

9 (A) actual damages arising from the violation; or

10 (B) \$100,000 for each zombie used to commit the  
11 violation; or

12 (3) obtain both injunctive relief and damages.

13 (g) The attorney general may seek only injunctive relief and  
14 actual damages under Subsection (f), except in those instances in  
15 which the attorney general represents a governmental entity.

16 (h) The court may increase an award of damages, statutory or  
17 otherwise, in an action brought under this section to an amount not  
18 to exceed three times the applicable damages if the court finds that  
19 the violations have occurred with such a frequency as to constitute  
20 a pattern or practice.

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

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

1        (k) Nothing in this section may be construed to impose  
2 liability on the following persons with respect to a violation of  
3 this section committed by another person:

4            (1) an Internet service provider;

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

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

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

12        SECTION 5. Section 324.101(a), Business & Commerce Code, as  
13 effective April 1, 2009, is amended to read as 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 Section 324.051, 324.052, 324.053, or 324.054 [~~this~~  
17 ~~chapter~~]:

18            (1) a provider of computer software;

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

20            (3) a telecommunications carrier;

21            (4) a cable operator; or

22            (5) an Internet service provider.

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

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