

1-1 By: Zaffirini S.B. No. 28
1-2 (In the Senate - Filed November 10, 2008; February 10, 2009,
1-3 read first time and referred to Committee on Business and Commerce;
1-4 April 2, 2009, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 9, Nays 0; April 2, 2009,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 28 By: Watson

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the use of a computer for an unauthorized purpose;
1-11 providing a civil penalty.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 324.002, Business & Commerce Code, as
1-14 effective April 1, 2009, is amended by adding Subdivisions (1-a)
1-15 and (9) to read as follows:

1-16 (1-a) "Botnet" means a collection of zombies.

1-17 (9) "Zombie" means a computer that, without the
1-18 knowledge and consent of the computer's owner or operator, has been
1-19 compromised to give access or control to a program or person other
1-20 than the computer's owner or operator.

1-21 SECTION 2. Subsection (a), Section 324.003, Business &
1-22 Commerce Code, as effective April 1, 2009, is amended to read as
1-23 follows:

1-24 (a) Section 324.052, other than Subdivision (1) of that
1-25 section, and Sections 324.053(4), ~~and~~ 324.054, and 324.055 do not
1-26 apply to a telecommunications carrier, cable operator, computer
1-27 hardware or software provider, or provider of information service
1-28 or interactive computer service that monitors or has interaction
1-29 with a subscriber's Internet or other network connection or service
1-30 or a protected computer for:

1-31 (1) a network or computer security purpose;

1-32 (2) diagnostics, technical support, or a repair
1-33 purpose;

1-34 (3) an authorized update of computer software or
1-35 system firmware;

1-36 (4) authorized remote system management; or

1-37 (5) detection or prevention of unauthorized use of or
1-38 fraudulent or other illegal activity in connection with a network,
1-39 service, or computer software, including scanning for and removing
1-40 software proscribed under this chapter.

1-41 SECTION 3. Section 324.005, Business & Commerce Code, as
1-42 effective April 1, 2009, is amended to read as follows:

1-43 Sec. 324.005. KNOWING VIOLATION. A person knowingly
1-44 violates Section 324.051, 324.052, ~~or~~ 324.053, or 324.055 if the
1-45 person:

1-46 (1) acts with actual knowledge of the facts that
1-47 constitute the violation; or

1-48 (2) consciously avoids information that would
1-49 establish actual knowledge of those facts.

1-50 SECTION 4. Subchapter B, Chapter 324, Business & Commerce
1-51 Code, as effective April 1, 2009, is amended by adding Section
1-52 324.055 to read as follows:

1-53 Sec. 324.055. UNAUTHORIZED CREATION, ACCESS TO, OR USE OF
1-54 ZOMBIES OR BOTNETS; PRIVATE ACTION. (a) A person other than the
1-55 owner or operator of the computer may not knowingly cause or offer
1-56 to cause a computer to become a zombie or part of a botnet.

1-57 (b) A person may not knowingly create, have created, use, or
1-58 offer to use a zombie or botnet:

1-59 (1) to send an unsolicited commercial electronic mail
1-60 message, as defined by Section 321.001;

1-61 (2) for an attack on a computer system or network that
1-62 causes a loss of service to users;

1-63 (3) to artificially add increments to a click counter

2-1 by automatically clicking on an advertisement on an Internet
2-2 website;
2-3 (4) to forward computer software designed to damage or
2-4 disrupt another computer or system;
2-5 (5) to collect personally identifiable information;
2-6 (6) to manipulate online polls or games; or
2-7 (7) for another purpose not authorized by the owner or
2-8 operator of the computer.
2-9 (c) A person may not:
2-10 (1) purchase, rent, or otherwise gain control of a
2-11 zombie or botnet created by another person; or
2-12 (2) sell, lease, offer for sale or lease, or otherwise
2-13 provide to another person access to or use of a zombie or botnet.
2-14 (d) A person may not provide substantial assistance or
2-15 support to another person knowing that the other person is engaged
2-16 in an act or practice that violates this section.
2-17 (e) Any of the following persons may bring a civil action
2-18 against a person who violates this section:
2-19 (1) a person in business as an Internet service
2-20 provider that is adversely affected by the violation;
2-21 (2) a business organization that has incurred a loss
2-22 or disruption of its business activities as a result of the
2-23 violation; or
2-24 (3) the attorney general.
2-25 (f) A person bringing an action under this section may
2-26 obtain:
2-27 (1) injunctive relief that restrains the violator from
2-28 continuing the violation;
2-29 (2) subject to Subsection (g), damages in an amount
2-30 equal to the greater of:
2-31 (A) actual damages arising from the violation;
2-32 (B) \$100,000 for each violation consisting of the
2-33 same course of conduct or action, regardless of the number of times
2-34 the conduct or act occurred; or
2-35 (C) \$100,000 for each zombie used to commit the
2-36 violation; or
2-37 (3) both injunctive relief and damages.
2-38 (g) The court may increase an award of damages, statutory or
2-39 otherwise, in an action brought under this section to an amount not
2-40 to exceed three times the applicable damages if the court finds that
2-41 the violation has reoccurred with sufficient frequency to
2-42 constitute a pattern or practice.
2-43 (h) A plaintiff who prevails in an action brought under this
2-44 section is entitled to recover court costs and reasonable
2-45 attorney's fees, reasonable fees of experts, and other reasonable
2-46 costs of litigation.
2-47 (i) A remedy authorized by this section is not exclusive but
2-48 is in addition to any other procedure or remedy provided for by
2-49 other statutory or common law.
2-50 (j) Nothing in this section may be construed to impose
2-51 liability on the following persons with respect to a violation of
2-52 this section committed by another person:
2-53 (1) an Internet service provider;
2-54 (2) a provider of interactive computer service, as
2-55 defined by Section 230, Communications Act of 1934 (47 U.S.C.
2-56 Section 230);
2-57 (3) a telecommunications provider, as defined by
2-58 Section 51.002, Utilities Code; or
2-59 (4) a video service provider or cable service
2-60 provider, as defined by Section 66.002, Utilities Code.
2-61 SECTION 5. Subsection (a), Section 324.101, Business &
2-62 Commerce Code, as effective April 1, 2009, is amended to read as
2-63 follows:
2-64 (a) Any of the following persons, if adversely affected by
2-65 the violation, may bring a civil action against a person who
2-66 violates a provision of this chapter other than Section 324.055:
2-67 (1) a provider of computer software;
2-68 (2) an owner of a web page or trademark;
2-69 (3) a telecommunications carrier;

3-1 (4) a cable operator; or
3-2 (5) an Internet service provider.

3-3 SECTION 6. The changes in law made by this Act apply only to
3-4 conduct that occurs on or after the effective date of this Act.
3-5 Conduct that occurs before the effective date of this Act is
3-6 governed by the law in effect at the time the conduct occurred, and
3-7 that law is continued in effect for that purpose.

3-8 SECTION 7. This Act takes effect September 1, 2009.

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