

A Primer on E-Commerce Law in Florida

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Over the years, Florida has enacted legislation governing electronic commerce. This article will provide an overview of Florida's electronic commerce statutes that are set forth in Florida Statutes Chapter 668, which address electronic signatures, electronic transactions, e-mail communications, and phishing.

Electronic Signatures

Florida's Electronic Signature Act of 1996 is codified at Florida Statutes sections 668.001 through 668.006. The purposes of this Act include enhancing "public confidence in the use of electronic signatures," minimizing "fraud in electronic commerce," and fostering "the development of electronic commerce."¹ The Florida Supreme Court has noted that this legislation "indicates an increasing acceptance of this alternative signature form."²

An "electronic signature" is defined as: "any letters, characters, or symbols, manifested by electronic or similar means, executed or adopted by a party with an intent to authenticate a writing."³ "A writing is electronically signed if an electronic signature is logically associated with such writing."⁴ The Act provides that, "unless otherwise provided by law, an electronic signature may be used to sign a writing and shall have the same force and effect as a written signature." This provision has been relied upon to find that an e-mail exchange between parties constitutes a "writing signed by the parties" as required to satisfy the statute of frauds.⁵ While the use and acceptance of electronic signatures has expanded, it is, of course, not without limitation and simply typing "/s/" followed by a name on a document does not constitute an electronic signature.⁶

Electronic Transactions

In 2000, Florida adopted the Uniform Electronic Transaction Act, which is codified at Fla. Stat. §668.50 and which was promulgated "to provide a legal framework for the use of electronic signatures and records in government or business transactions."⁷ Pursuant to Fla. Stat. §668.50(3), the Act generally applies to

"electronic records and electronic signatures relating to a transaction"⁸ when the conduct and surrounding circumstances indicated that each party to the transaction agreed to conduct the transaction by electronic means.⁹ Most importantly, the Act provides legal recognition to electronic records, electronic signatures and electronic contracts¹⁰ and precludes denial of legal effect or enforceability solely for the reason that a record or signature is in electronic form or solely because an electronic record was used in the formation of a contract.¹¹

E-Mail Communications

Unsolicited commercial e-mail is governed by the Electronic Mail Communications Act.¹² This Act is designed to "promote the integrity of electronic commerce" and is to be interpreted in a manner that protects "the public and legitimate businesses from deceptive and unsolicited commercial electronic mail."¹³

The key provisions of the Act prohibit certain unsolicited commercial e-mails from a computer located within Florida or to the e-mail address of a Florida resident that: (a) Uses a third party's internet domain name without permission of the third party; (b) Contains falsified or missing routing information or otherwise misrepresents, falsifies, or obscures any information in identifying the point of origin or the transmission path of the any unsolicited commercial electronic mail message; (c) Contains false or misleading information in the subject line; or (d) Contains false or deceptive information in the body of the message which is designed and intended to cause damages to the receiving device of an addressee or of another recipient of the message.¹⁴

Upon a violation of the Act, the Department of Legal Affairs can bring an action for damages, declaratory relief, or injunctive relief.¹⁵ The Department can also impose civil penalties pursuant to Florida's Deceptive and Unfair Trade Practices Act.¹⁶ Causes of action are also available to "an interactive computer ser-

vice, telephone company, or cable provider that handles or retransmits" the e-mail.¹⁷ In a civil action, a prevailing plaintiff may be awarded injunctive relief, actual damages or liquidated damages of \$500 for each e-mail, and attorney's fees and litigation costs.¹⁸ The Act further provides a basis to confer personal jurisdiction over a person who sends an e-mail that violates the Act from outside of Florida that is received in Florida.¹⁹

A violation of the Act also constitutes a first-degree misdemeanor.²⁰ If, however, the number of e-mails or the revenue generated from the e-mails exceed statutory thresholds, the violation may constitute a third-degree felony.²¹ The violation may also constitute a felony if a minor assists with the transmission of the e-mail or if the sender violates the Act within five years after being convicted for another violation of the Act.²² These remedies and penalties are in addition to any other remedies and penalties available under other federal and state laws.²³

Phishing

Finally, Florida's Act is set forth in Florida Statutes sections 668.701 through 668.705. This Act prohibits a person from obtaining a Florida resident's identifying information by representing himself to be another person through the use of a web page or internet domain name or by way of an e-mail that falsely represents that it has been sent by another person that refers or links the recipient of the e-mail to a webpage.²⁴

The Act provides remedies to those in the business of providing internet access service to the public, financial institutions, owners of web pages, trademarks or service marks, and the Attorney General.²⁵ Those who are not members of the categories of people identified in the Act do not have standing to bring a claim under the Act.²⁶ The available remedies include actual damages or \$5,000 for each violation (which amounts can be increased based upon the frequency of the violations) and an award of attorney's fees and court costs.²⁷ Among other things, to establish a

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claim under the Act, a plaintiff must prove that the defendant collected the personal information identified in the Act from a Florida resident.²⁸ A person who commits a violation of the Act submits himself or herself to personal jurisdiction in Florida.²⁹

Conclusion

Florida has developed and continues to expand legislation that governs electronic commerce. From a business perspective and a legal perspective, it is imperative that companies that conduct business in Florida or with Florida residents stay abreast of Florida e-commerce laws.

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(Endnotes)

- 1 Fla. Stat. §668.002.
- 2 *Haire v. Florida Department of Agriculture and Consumer Services*, 870 So.2d 774, 790 (Fla. 2004) (approving of practice of “issuing magistrate … signing warrants with an electronic signature”).
- 3 Fla. Stat. §668.003(4).
- 4 Fla. Stat. §668.003(4).
- 5 *U.S. Distributors, Inc. v. Block*, No. 09-21635-CIV, 2009 WL 3295099, *5 (S.D. Fla. Oct. 13, 2009).
- 6 *Toca v. State of Florida*, 834 So.2d 204, 206 n.4 (Fla. 2d DCA 2002).
- 7 See Website for National Conference of State Legislatures: www.ncsl.org/issues-research/telecom/uniform-electronic-transactions-acts.aspx.
- 8 See also *State of Florida v. Shore*, 41 So.3d 966, 968 n.2 (Fla. 2010).
- 9 Fla. Stat. §688.50(5)(b).
- 10 Fla. Stat. §688.50(7).
- 11 *Id.*
- 12 Fla. Stat. §§688.60 – 688.608.
- 13 Fla. Stat. §§688.60, 688.601.
- 14 Fla. Stat. §668.603(1). Subsection (d) “does not apply to electronic mail messages resulting from or created by a computer virus which are sent or retransmitted from a computer or other electronic device without the sender’s knowledge or consent.” Fla. Stat. §668.603(1)(d).
- 15 Fla. Stat. §668.606(1).
- 16 Fla. Stat. §§668.606(1), 668.6075.
- 17 Fla. Stat. §668.606(1).
- 18 Fla. Stat. §668.606(3).
- 19 Fla. Stat. §668.606(4).
- 20 Fla. Stat. §668.608(1).
- 21 Fla. Stat. §668.608(2)(a)-(e).
- 22 Fla. Stat. §668.608(2)(f)-(g).
- 23 Fla. Stat. §668.610.
- 24 Fla. Stat. §668.703.
- 25 Fla. Stat. §668.704(1).
- 26 See *Stagl v. Gromicko*, No. 3:07-cv-967-J-32-TEM, 2009 WL 997193, *3 (M.D. Fla. April 14, 2009).
- 27 Fla. Stat. §668.704(2)-(5).
- 28 See *Pensacola Motor Sales v. Eastern Shore Toyota, LLC*, No. 3:09-cv-571-RS-MD, 2010 WL 4809355 (N.D. Fla. Nov. 19, 2010).
- 29 Fla. Stat. §668.704(6).

Bidding For Good

Another new event that your Association of Corporate Counsel South Florida Chapter is trying this year is an online auction that will support our organization as well as other nonprofit organizations. As part of our 3 Platinum Sponsorship packets offered to law firms this year, each Sponsor was given the opportunity to designate a charitable recipient that would receive a portion of proceeds from the auction held for the Sponsors’ respective events. To date, Fox Rothschild, LLP has selected Habitat for Humanity of South Palm Beach County (www.hfhboca.org) and Katz Barron Squitiero Faust has selected Educate Tomorrow, Corp. (www.educatetomorrow.org) to be the charitable recipients. Instead of the traditional silent auctions as chapter functions, this year we decided to use BiddingForGood, an online fundraising auction portal that connects fundraisers, cause-conscious shoppers, and

socially responsible businesses. It offers products and services as well as “experiences” such as vacation packages and tickets to events. We will have several of these online auctions throughout the year and will change the items each auction.

To make this new venture successful for our chapter and the selected charitable recipients, **we need your help!** There are several ways in which you can help. First, log onto www.biddingforgood.com/ACCA-SFL now and see the beautiful, high quality artwork currently available for purchase. You’ll be surprised at the low prices of art by such famed artists as Romero Britto, Erté, Wyland, Howard Behrens, Edna Hibel, and Douglas Hofmann. We also have some fabulous trips available. We are adding items call the time, so visit our auction site frequently. You will be notified at the start of each new auction.

Next, we need you to donate products or services from your company that we can sell. Your company will receive recognition on this national auction site, and demonstrate its support for ACCA-SFL and the charitable beneficiaries. Here are some ideas of what your company can provide: sporting event tickets (donate your company’s suite, or seats); restaurant certificates (great way to publicize your venue), office equipment, jewelry, electronics, auto services, celebrity memorabilia, vacations, spa services or products, household products, furniture, wine/alcohol, business services, house services (decorator services, alarm service, architectural services), music/movies/books, and designer clothes, handbags, or eyewear. You get the idea. There is something every company can donate, and we **need** it all. If your company does not want to join in our

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