

# Zombies and Botnets

The Act defines a computer “zombie” as 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.” It defines a “botnet” as a “collection of two or more zombies.” The Act prohibits people from creating or using zombies and botnets to perform actions such as damaging other computers or collecting personal information about computer users. It permits Internet service providers and people who have suffered losses because of violations of the Act to bring civil actions against people who violate the Act.

Submitted as:

Texas

[SB 28](#)

Status: Enacted into law in 2009.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act to Address Computer Zombies  
2 and Botnets.”

3

4           Section 2. [*Definitions.*] As used in this Act:

5           (1) “Botnet” means a collection of two or more zombies.

6           (2) “Internet service provider” means a person providing connectivity to the Internet or  
7 another wide area network.

8           (3) “Person” has the meaning defined in [insert citation].

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

12

13           Section 3. [*Unauthorized Creation of, Access to, or Use of Zombies or Botnets; Private*  
14 *Action.*]

15           (A) A person who is not the owner or operator of the computer may not knowingly cause  
16 or offer to cause a computer to become a zombie or part of a botnet.

17           (B) A person may not knowingly create, have created, use, or offer to use a zombie or  
18 botnet to:

19                   (1) send an unsolicited commercial electronic mail message, as defined by [insert  
20 citation];

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

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

25                   (4) forward computer software designed to damage or disrupt another computer or  
26 system;

27                   (5) collect personally identifiable information; or

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

30 (C) A person may not:

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

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

35 (D) The following persons may bring a civil action against a person who violates this  
36 section of this Act:

37 (1) a person who is acting as an Internet Service Provider and whose network is  
38 used to commit a violation under this section; or

39 (2) a person who has incurred a loss or disruption of the conduct of the person's  
40 business, including for-profit or not-for-profit activities, as a result of the violation.

41 (E) A person bringing an action under this section may, for each violation:

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

43 (2) subject to Subsection (F), recover damages in an amount equal to the greater  
44 of:

45 (a) actual damages arising from the violation; or

46 (b) [\$100,000] for each zombie used to commit the violation; or

47 (c) obtain both injunctive relief and damages.

48 (F) The court may increase an award of damages, statutory or otherwise, in an action  
49 brought under this section to an amount not to exceed three times the applicable damages if the  
50 court finds that the violations have occurred with such a frequency as to constitute a pattern or  
51 practice.

52 (G) A plaintiff who prevails in an action brought under this section is entitled to recover  
53 court costs and reasonable attorney's fees, reasonable fees of experts, and other reasonable costs  
54 of litigation.

55 (H) A remedy authorized by this section is not exclusive but is in addition to any other  
56 procedure or remedy provided for by other statutory or common law.

57 (I) Nothing in this section may be construed to impose liability on the following persons  
58 with respect to a violation of this section committed by another person:

59 (1) an Internet Service Provider;

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

62 (3) a telecommunications provider, as defined by [insert citation]; or

63 (4) a video service provider or cable service provider, as defined by [insert  
64 citation].

65

66 Section 4. [*Knowing Violations.*] A person knowingly violates [insert citations] or this  
67 Act if the person:

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

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

70

71 Section 5. [*Severability.*] [Insert severability clause.]

72

73 Section 6. [*Repealer.*] [Insert repealer clause.]

74

75 Section 7. [*Effective Date.*] [Insert effective date.]