

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 641 Computer Crimes

SPONSOR(S): La Rosa

TIED BILLS: HB 643 **IDEN./SIM. BILLS:** CS/SB 364

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Jones	Cunningham
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Chapter 815, F.S., entitled the "Florida Computer Crimes Act," was created in 1978 in recognition of growing computer-related crime. The chapter establishes legislative intent, and a variety of computer-related offenses and definitions

The bill adds legislative intent language that recognizes that the proliferation of new technologies impact computer-related crimes. To this end, the bill amends the definition of computer network and creates a definition of the term *electronic device*, which means "a device that is capable of communicating across a computer network with other computers or devices for the purpose of transmitting, receiving, or storing data."

The bill also:

- Creates new computer-related offenses and expands the application of various existing computer-related crimes to include electronic devices;
- Creates an exception to computer-related offenses by specifying they do not apply to persons who act pursuant to a search warrant, an exception to a search warrant, or when acting within the scope of his or her employment;
- Expands the entities that can bring a civil action against persons convicted of computer-related offenses by including owners and lessees of electronic devices; and
- Adds electronic devices to the list of items subject to forfeiture if used in computer-related offenses.

The bill also creates new second and third degree felony offenses relating to public utilities.

The bill may have a negative prison and jail bed impact because it expands existing offenses in ss. 815.04 and 815.06, F.S. and creates new first and second degree felony offenses relating to public utilities.

The bill is effective October 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Florida Computer Crime Act

Chapter 815, F.S., entitled the “Florida Computer Crimes Act,” was created in 1978¹ in recognition of growing computer-related crime. The chapter establishes legislative intent, and a variety of computer-related offenses and definitions.

Legislative Intent

Currently, s. 815.02, F.S., provides that the Legislature finds and declares that:

- Computer-related crime is a growing problem in government as well as in the private sector;
- Computer-related crime occurs at great cost to the public since losses for each incident of computer crime tend to be far greater than the losses associated with each incident of other white collar crime;
- The opportunities for computer-related crimes in financial institutions, government programs, government records, and other business enterprises through the introduction of fraudulent records into a computer system, the unauthorized use of computer facilities, the alteration or destruction of computerized information or files, and the stealing of financial instruments, data, and other assets are great; and
- While various forms of computer crime might possibly be the subject of criminal charges based on other provisions of law, it is appropriate and desirable that a supplemental and additional statute be provided which proscribes various forms of computer abuse.

Effect of the Bill

The bill amends s. 815.02, F.S., to add additional legislative intent language, which states that:

- The proliferation of new technology has led to the integration of computer systems in most sectors of the marketplace through the creation of computer networks, greatly extending the reach of computer crime.

Definitions

Section 815.03, F.S., provides numerous definitions that apply to ch. 815, F.S. For example, s. 815.03(4), F.S., defines *computer network* to mean “any system that provides communications between one or more computer systems and its input or output devices, including, but not limited to, display terminals and printers that are connected by telecommunication facilities.”

Effect of the Bill

The bill amends the definition of *computer network* to mean “a system that provides a medium for communication between one or more computer systems or electronic devices, including communication with an input or output device such as a display terminal, printer, or other electronic equipment that is connected to the computer systems or electronic devices by physical or wireless telecommunication facilities.”

The bill creates a definition of the term *electronic device*, which means “a device that is capable of communicating across a computer network with other computers or devices for the purpose of transmitting, receiving, or storing data.”

Offenses Against Intellectual Property

Section 815.04(1) and (2), F.S., make it a third degree felony² for a person to:

- (1) Willfully, knowingly, and without authorization modify data, programs, or supporting documentation residing or existing internal or external to a computer, computer system, or computer network; or

¹ Chapter 78-92, L.O.F.

² A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

- (2) Willfully, knowingly, and without authorization destroy data, programs, or supporting documentation residing or existing internal or external to a computer, computer system, or computer network.

It is a second degree felony³ if any of the above offenses are committed for the purpose of devising or executing any scheme or artifice to defraud or to obtain any property.

Effect of the Bill

The bill expands the application of s. 815.04(1) and (2), F.S., by prohibiting a person from modifying or destroying data, etc. located on a computer, computer system, computer network, *or an electronic device*.

Offenses Against Computer Users

Criminal Penalties

Section 815.06(1), F.S., makes it a third degree felony for a person to willfully, knowingly, and without authorization:

- (a) Access or cause to be accessed any computer, computer system, or computer network;
- (b) Disrupt or deny or cause the denial of computer system services to an authorized user of such computer system services, which, in whole or part, is owned by, under contract to, or operated for, on behalf of, or in conjunction with another;
- (c) Destroy, take, injure, or damage equipment or supplies used or intended to be used in a computer, computer system, or computer network;
- (d) Destroy, injure, or damage any computer, computer system, or computer network; or
- (e) Introduce any computer contaminant into any computer, computer system, or computer network.

It is a second degree felony if a person violates subsection (1) and the person:

- Damages a computer, computer equipment, computer supplies, a computer system, or a computer network, and the monetary damage or loss incurred as a result of the violation is \$5,000 or greater;
- Commits the offense for the purpose of devising or executing any scheme or artifice to defraud or obtain property; or
- Interrupts or impairs a governmental operation or public communication, transportation, or supply of water, gas, or other public service.⁴

It is a first degree felony⁵ if a person violates subsection (1) and the violation endangers human life.⁶

Section 815.06(3), F.S., makes it a first degree misdemeanor⁷ for a person to willfully, knowingly, and without authorization modify equipment or supplies used or intended to be used in a computer, computer system, or computer network.

None of the criminal penalties apply to a person who accesses his or her employer's computer system, computer network, computer program, or computer data when acting within the scope of his or her lawful employment.⁸

Civil Remedies and Forfeiture

Currently, the owner or lessee of the computer, computer system, computer network, computer program, computer equipment, computer supplies, or computer data is authorized to bring a civil action

³ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

⁴ Section 815.06(2)(b), F.S.

⁵ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

⁶ Section 815.06(2)(c), F.S.

⁷ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

⁸ Section 815.06(6), F.S.

against any person convicted under s. 815.06, F.S., for compensatory damages.⁹ In such actions, the court may award reasonable attorney's fees to the prevailing party.¹⁰

For purpose of determining where a civil (or criminal) action may be brought, s. 816.06(7), F.S., specifies that in instances where a person causes the access to a computer, computer system, or computer network in one jurisdiction from another jurisdiction, the person is deemed to have personally accessed the computer, computer system, or computer network in both jurisdictions.

Additionally, any computer, computer system, computer network, computer software, or computer data owned by a defendant which is used during the commission of any violation s. 815.06, F.S., or any computer owned by a defendant which is used as a repository for the storage of software or data obtained in violation of s. 815.06, F.S., is subject to forfeiture as provided under ss. 932.701-932.704, F.S.¹¹

Effect of the Bill

Criminal Penalties

The bill renumbers s. 815.06(1), F.S., to s. 815.06(2), F.S., and expands the application of the statute to include electronic devices and to include additional prohibited acts. Specifically, the bill:

- Amends paragraph (a) to prohibit a person from accessing, or causing to be accessed, any computer, computer system, computer network, or *electronic device*, with knowledge that the access is unauthorized;
- Amends paragraph (b) to prohibit a person from disrupting or denying or causing the denial of *the ability to transmit data* to or from an authorized user of a computer system or computer network services;
- Amends paragraphs (c) and (d) to include *electronic devices* in the list of property a person is prohibited from destroying, taking, injuring, or damaging;
- Amends paragraph (e) to include *electronic devices* in the list of property a person is prohibited from introducing contaminants into; and
- Creates paragraph (f) which prohibits a person from willfully, knowingly, and without authorization engaging in audio or video surveillance of an individual without that individual's knowledge by accessing any inherent feature or component of a computer, computer system, computer network, or electronic device, including accessing the data or information of a computer, computer system, computer network, or electronic device that is stored by a third party.

The bill also expands the instances in which the penalty for violating s. 815.06, F.S., is increased to a second degree felony. Specifically, the bill makes it a second degree felony if a person commits any of the above-described acts and the person:

- Intentionally interrupts the transmittal of data to or from, or gains unauthorized access to, a computer, computer system, computer network, or electronic device belonging to any mode of public or private transit, as defined in s. 341.031, F.S.

The bill also adds another instance in which the penalty for violating s. 815.06, F.S., is increased to a first degree felony. Specifically, the bill makes it a first degree felony if a person commits any of the above-described acts and the violation disrupts a computer, computer system, computer network, or electronic device that affects medical equipment used in the direct administration of medical care or treatment to a person.

The bill broadens the application of the misdemeanor offense by prohibiting persons from modifying equipment or supplies used or intended to be used in a computer, computer system, computer network, or *electronic device*.

The bill broadens the current exception by specifying that the offenses in s. 815.06, F.S., do not apply to a person who accesses his or her employer's computer system, computer network, computer

⁹ Section 815.06(4), F.S.

¹⁰ *Id.*

¹¹ Section 815.06(5), F.S.

program, computer data, or *electronic device* when acting within the scope of his or her lawful employment. The bill also creates an additional exception for persons who act pursuant to a search warrant, an exception to a search warrant, or when acting within the scope of his or her employment.

The bill defines the term person as:

- An individual;
- A partnership, corporation, association, or other entity doing business in this state, or an officer, agent, or employee of such an entity; or
- An officer, employee, or agent of the state or a county, municipality, special district, or other political subdivision whether executive, judicial, or legislative, including, but not limited to, a department, division, bureau, commission, authority, district, or agency thereof.

Civil Remedies and Forfeiture

The bill expands the entities that can bring a civil action against persons convicted of s. 815.06, F.S., by including owners and lessees of *electronic devices*.

For purpose of determining where a civil (or criminal) action may be brought, the bill specifies that in instances where a person causes the access to a computer, computer system, computer network, or *electronic device* in one jurisdiction from another jurisdiction, the person is deemed to have personally accessed the computer, computer system, computer network, or *electronic device* in both jurisdictions.

The bill adds *electronic devices* to the list of items subject to forfeiture if used in a violation of s. 815.06, F.S.

Offenses Against Public Utilities.

Currently, ch. 815, F.S., does not include any offenses relating to public utilities.

Effect of the Bill

The bill creates s. 815.061, F.S., to make it a third degree felony for a person to willfully, knowingly, and without authorization gain access to a computer, computer system, computer network, or electronic device owned, operated, or used by a public utility while knowing that such access is unauthorized.

The bill makes it a second degree felony for a person to physically tamper with, insert software into, or otherwise transmit commands or electronic communications to a computer, computer system, computer network, or electronic device which cause a disruption in any service delivered by a public utility.

The bill defines term *public utility*, in accordance with s. 366.02, F.S., to include every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity or gas (natural, manufactured, or similar gaseous substance) to or for the public within this state.¹²

B. SECTION DIRECTORY:

Section 1. Amends s. 815.02, F.S., relating to legislative intent.

Section 2. Amends s. 815.03, F.S., relating to definitions.

Section 3. Amends s. 815.04, F.S., relating to offenses against intellectual property; public records exemption.

¹² Section 366.02, F.S., provides that the term public utility does not include: either a cooperative now or hereafter organized and existing under the Rural Electric Cooperative Law of the state; a municipality or any agency thereof; any dependent or independent special natural gas district; any natural gas transmission pipeline company making only sales or transportation delivery of natural gas at wholesale and to direct industrial consumers; any entity selling or arranging for sales of natural gas which neither owns nor operates natural gas transmission or distribution facilities within the state; or a person supplying liquefied petroleum gas, in either liquid or gaseous form, irrespective of the method of distribution or delivery, or owning or operating facilities beyond the outlet of a meter through which natural gas is supplied for compression and delivery into motor vehicle fuel tanks or other transportation containers, unless such person also supplies electricity or manufactured or natural gas.

Section 4. Amends s. 815.06, F.S., relating to offenses against computer users.

Section 5. Creates s. 815.061, F.S., relating to offenses against public utilities.

Section 6. Provides an effective date of October 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The Criminal Justice Impact Conference has not yet met to determine the prison bed impact of the bill. However, the bill may have a negative prison bed impact on the Department of Corrections because the bill:

- Expands existing first, second, and third degree felony offenses in ss. 815.04 and 815.06, F.S.; and
- Creates new first and second degree felony offenses relating to public utilities.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill may have a jail bed impact in that it broadens the application of the first degree misdemeanor offense in s. 815.06, F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create the need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

- 1) Line 158: The new language only uses the term “he” when referring to a person committing the offense. The language should be “he or she.”
- 2) Line 133: The bill amends s. 815.04(1) and (2), F.S., to include an *electronic device* as a storage location. It appears that this change should also be made to subsection (3) of the statute.
- 3) Line 165: The reference to “such” computer system is no longer accurate and should be changed to refer to “a” computer system.
- 4) Lines 183-186: The bill creates a new exception to the criminal offenses in s. 815.06, F.S. This provision should be included in s. 815.06(7), F.S., which currently contains such exceptions.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES