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**COMMITTEE ON  
HOMELAND SECURITY  
& PUBLIC SAFETY**

**COMMITTEE MEETING**

**WEDNESDAY, MARCH 5, 2008**

**9:00 a.m. – 9:45 a.m.**

**ROOM**

**Reed Hall**

**(102 House Office Building)**

**(MEETING PACKET)**







# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

Speaker Marco Rubio

### Committee on Homeland Security & Public Safety

**Start Date and Time:** Wednesday, March 05, 2008 09:00 am

**End Date and Time:** Wednesday, March 05, 2008 09:45 am

**Location:** Reed Hall (102 HOB)

**Duration:** 0.75 hrs

#### Consideration of the following bill(s):

HB 225 Telephone Caller Identification by Kiar  
HB 321 Murder of Law Enforcement Officers by Snyder  
HB 537 Offense of Voyeurism by Dorworth  
HB 789 Surveyors and Mappers by Kendrick  
HB 799 Theft of Copper or Other Nonferrous Metals by Adams

**NOTICE FINALIZED on 03/03/2008 16:08 by SPT**





# **The Florida House of Representatives**

**Safety & Security Council**

**Committee on Homeland Security & Public Safety**

**Marco Rubio  
Speaker**

**Sandra Adams  
Chair**

## **AGENDA**

**Wednesday, March 5, 2008**

**9:00 a.m. – 9:45 a.m.**

**Reed Hall (102 House Office Building)**

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- I. Opening remarks by Chair Adams**
- II. Roll call by Sonja Thompson, CAA**
- III. Consideration of the following bill(s):**
  - HB 225—Telephone Caller Identification by Kiar**
  - HB 321—Murder of Law Enforcement Officers by Snyder**
  - HB 537—Offense of Voyeurism by Dorworth**
  - HB 789—Surveyors and Mappers by Kendrick**
  - HB 799—Theft of Copper or Other Nonferrous Metals by Adams**
- IV. Closing Remarks**
- V. Meeting Adjourned**
- VI. Closing Remarks**

**Marco Rubio  
Speaker**

**Sandra Adams  
Chair**









HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 225 Telephone Caller Identification

SPONSOR(S): Kiar and others

TIED BILLS: IDEN./SIM. BILLS: SB 694

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Homeland Security & Public Safety		Padgett <i>AP</i>	Kramer <i>JK</i>
2) Safety & Security Council			
3) Policy & Budget Council			
4)			
5)			

SUMMARY ANALYSIS

HB 225 creates s. 817.487, F.S., which provides that a person may not enter false information into a caller identification system with the intent to deceive, defraud, or mislead the call recipient. Additionally, the bill provides that a person may not make a telephone call knowing that false information was entered into the caller identification system with the intent to deceive, defraud, or mislead the recipient of the call. This section would not apply to the blocking of caller ID information, or to law enforcement agencies, or Federal intelligence agencies.

The bill provides that these offenses are first degree misdemeanors.

In addition, the bill provides that if the telephone call using false telephone caller information was placed during the commission of a crime or facilitated a crime, the underlying criminal offense is reclassified to the next higher degree. For the purposes of sentencing, any offense that is reclassified under this section is to be ranked one level above the current ranking specified in the offense severity ranking chart.

In addition to criminal penalties, HB 225 specifies that a violation of this section is also an unlawful trade practice under Ch. 501, Part II, F.S. Thus, a person who violates this section could also be subject to injunctions, fines, and civil penalties.

The bill takes effect on October 1, 2008 and has an indeterminate fiscal impact.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Promote Personal Responsibility:** The bill provides for criminal penalties if a person enters false information into a telephone caller identification system with the intent to mislead or defraud the recipient of the call. The bill also provides for enhanced penalties for the underlying criminal offense if the misleading information was used to further a crime.

#### B. EFFECT OF PROPOSED CHANGES:

##### Present Situation

Caller identification (ID) "spoofing" is the practice of changing the telephone number that appears on the call recipient's caller ID to disguise the identity of the person making the telephone call. There are several spoofing websites that allow a person the ability to change the information that appears on the call recipient's caller ID<sup>1</sup>. The sites charge a fee in exchange for the ability to alter the information on a caller ID.

Spoofing technology can be used for legitimate purposes. These include:

- Businesses use spoofing to display an employee's work telephone number when the employee is using another phone, such as a cell phone
- Federal, State, and local law enforcement use spoofing for various investigative purposes
- Domestic violence shelters use spoofing to conceal the location of the shelter
- Bounty hunters and private investigators use spoofing technology to track individuals

Spoofing can be used for fraudulent or undesirable purposes as well. Examples include:

- Bomb threats
- Phone Phishing, which is the practice of acquiring personal information over the telephone by posing as a trusted business or organization
- Wire transfer fraud
- Prank calls

Section 501.059, F.S. addresses the requirements for telephone solicitation calls. Section 501.059(7), F.S. requires all telephone solicitors to allow the correct name and telephone number of the solicitor to appear on the caller ID of the call recipient. Violations of this statute are subject to civil penalties and/or injunctive relief, in an amount not to exceed \$10,000 per violation.

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<sup>1</sup> See [www.spoofcard.com](http://www.spoofcard.com), [www.telespoof.com](http://www.telespoof.com), [www.phonegangster.com](http://www.phonegangster.com), [teltechcorp.com](http://teltechcorp.com)

## Proposed Changes

HB 225 provides that a person may not enter<sup>2</sup> false information<sup>3</sup> into a telephone caller identification system<sup>4</sup> with the intent to deceive, defraud, or mislead the call recipient. Additionally, the bill provides that the caller<sup>5</sup> may not make a telephone call<sup>6</sup> knowing that false information was entered into the caller identification system with the intent to deceive, defraud, or mislead the recipient of the call. The bill does not apply to:

- The blocking of caller identification information
- Any law enforcement agency
- Any Federal intelligence or security agency

A person who violates this section commits a first degree misdemeanor<sup>7</sup>.

In addition, HB 225 provides that if the telephone call using false telephone caller information was made during the commission of a crime or assisted in furthering a crime, the underlying offense would be reclassified as follows:

- A second degree misdemeanor would be reclassified to a first degree misdemeanor
- A first degree misdemeanor would be reclassified as a third degree felony
- A third degree felony would be reclassified as a second degree felony
- A second degree felony would be reclassified as a first degree felony
- A first degree felony would be reclassified as a life felony

For purposes of sentencing, a first degree misdemeanor that is reclassified is ranked in level 2 of the offense severity ranking chart. For all felony offenses that are reclassified, the offense level is ranked one level above the level of the underlying offense in the offense severity ranking chart<sup>8</sup>.

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<sup>2</sup> The bill provides the term “‘enter’ means to input data by whatever means into a computer or telephone system.”

<sup>3</sup> The bill provides the term “‘false information’ means data that misrepresents the identity of the caller to the recipient of the call; however, when a person making an authorized call on behalf of another person inserts the name telephone number, or name and telephone number of the person on whose behalf the call is being made, such information shall not be deemed false information.”

<sup>4</sup> The bill provides that “‘telephone caller identification system’ means a listing of a caller’s name, telephone number, or name and telephone number that is shown to the recipient of a call when it is received.”

<sup>5</sup> The bill provides that “‘caller’ means a person who places a call, whether by telephone, over a telephone line, or on a computer.”

<sup>6</sup> The bill provides the term “‘call’ means any type of telephone call made using a plain old telephone service (POTS), wireless cellular telephone service, or voice-over-Internet protocol (VoIP) service that has the capability of accessing users on a public switched telephone network or a successor network.”

<sup>7</sup> A first degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine. ss. 775.082, 775.083, F.S.

<sup>8</sup> See ss. 921.0022, 921.0023, F.S.

The bill also provides that a violation of this section is also a violation of Ch. 501, Part II, F.S., relating to deceptive and unfair trade practices. Ch. 501 provides various remedies the State of Florida can pursue including injunctions, fines<sup>9</sup>, and civil actions to recover actual damages. It also allows private citizens to recover damages and seek injunctions against a person who violates Ch. 501, F.S.

**C. SECTION DIRECTORY:**

Section 1 Cites the bill as the Caller ID Anti-spoofing Act.

Section 2 Creates s. 817.487, F.S. relating to telephone caller identification systems.

Section 3 Provides effective date of October 1, 2008.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

The Criminal Justice Impact Conference met on January 17, 2008 and determined that the bill will have an indeterminate impact on prison beds.

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<sup>9</sup> The fine may not exceed \$15,000 for each violation in which the victim is 60 years of age or older or \$10,000 for all other violations. ss. 501.2075, 501.2077, F.S.

### **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:**

None.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

#### **D. STATEMENT OF THE SPONSOR**

No statement submitted.

### **IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**





1                                   A bill to be entitled  
 2           An act relating to telephone caller identification;  
 3           providing a short title; creating s. 817.487, F.S.;  
 4           prohibiting entering false information into a telephone  
 5           caller identification system with the intent to deceive,  
 6           defraud, or mislead; prohibiting placing a call knowing  
 7           that false information was entered into the telephone  
 8           caller identification system; providing definitions;  
 9           providing exceptions; providing for enhancement of  
 10          penalties when a violation is committed during the  
 11          commission of a criminal offense or when a violation  
 12          facilitates a criminal offense; providing for application  
 13          to sentencing and gain-time eligibility; providing  
 14          penalties; providing that a violation is an unlawful trade  
 15          practice under specified provisions; providing an  
 16          effective date.

17  
 18 Be It Enacted by the Legislature of the State of Florida:

19  
 20           Section 1. This act may be cited as the "Caller ID Anti-  
 21 spoofing Act."

22           Section 2. Section 817.487, Florida Statutes, is created  
 23 to read:

24           817.487 Telephone caller identification systems.--

25           (1) As used in this section:

26           (a) "Call" means any type of telephone call made using a  
 27 plain old telephone service (POTS), wireless cellular telephone  
 28 service, or voice-over-Internet protocol (VoIP) service that has

29 the capability of accessing users on the public switched  
 30 telephone network or a successor network.

31 (b) "Caller" means a person who places a call, whether by  
 32 telephone, over a telephone line, or on a computer.

33 (c) "Enter" means to input data by whatever means into a  
 34 computer or telephone system.

35 (d) "False information" means data that misrepresents the  
 36 identity of the caller to the recipient of a call; however, when  
 37 a person making an authorized call on behalf of another person  
 38 inserts the name, telephone number, or name and telephone number  
 39 of the person on whose behalf the call is being made, such  
 40 information shall not be deemed false information.

41 (e) "Telephone caller identification system" means a  
 42 listing of a caller's name, telephone number, or name and  
 43 telephone number that is shown to a recipient of a call when it  
 44 is received.

45 (2) A person may not enter false information into a  
 46 telephone caller identification system with the intent to  
 47 deceive, defraud, or mislead the recipient of a call.

48 (3) A person may not place a call knowing that false  
 49 information was entered into the telephone caller identification  
 50 system with the intent to deceive, defraud, or mislead the  
 51 recipient of the call.

52 (4) This section shall not apply to:

53 (a) The blocking of caller identification information.

54 (b) Any law enforcement agency of the federal, state,  
 55 county, or municipal government.

56 (c) Any intelligence or security agency of the Federal  
57 Government.

58 (5) (a) The felony or misdemeanor degree of any criminal  
59 offense shall be reclassified by the court to the next higher  
60 degree as provided in this subsection if the offender violated  
61 subsection (2) or subsection (3) during the commission of the  
62 criminal offense or if the court finds that a violation by the  
63 offender of subsection (2) or subsection (3) facilitated or  
64 furthered the criminal offense. The reclassification shall be as  
65 follows:

66 1. In the case of a misdemeanor of the second degree, the  
67 offense is reclassified as a misdemeanor of the first degree.

68 2. In the case of a misdemeanor of the first degree, the  
69 offense is reclassified as a felony of the third degree.

70 3. In the case of a felony of the third degree, the  
71 offense is reclassified as a felony of the second degree.

72 4. In the case of a felony of the second degree, the  
73 offense is reclassified as a felony of the first degree.

74 5. In the case of a felony of the first degree or a felony  
75 of the first degree punishable by a term of imprisonment not  
76 exceeding life, the offense is reclassified as a life felony.

77 (b) For purposes of sentencing under chapter 921 and  
78 determining incentive gain-time eligibility under chapter 944,  
79 the following offense severity ranking levels apply:

80 1. An offense that is a misdemeanor of the first degree  
81 and that is reclassified under this subsection as a felony of  
82 the third degree is ranked in level 2 of the offense severity  
83 ranking chart.

84        2. A felony offense that is reclassified under this  
 85 subsection is ranked one level above the ranking specified in s.  
 86 921.0022 or s. 921.0023 for the offense committed.

87        (6) (a) Any person who violates subsection (2) or  
 88 subsection (3) commits a misdemeanor of the first degree,  
 89 punishable as provided in s. 775.082 or s. 775.083.

90        (b) Any violation of subsection (2) or subsection (3)  
 91 constitutes an unlawful trade practice under part II of chapter  
 92 501 and, in addition to any remedies or penalties set forth in  
 93 this section, is subject to any remedies or penalties available  
 94 for a violation of that part.

95        Section 3. This act shall take effect October 1, 2008.





**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 321                      **Murder of Law Enforcement Officers**

**SPONSOR(S):** Snyder and others

**TIED BILLS:**                                      **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Homeland Security &amp; Public Safety</u>	_____	Cunningham <i>SUC</i>	Kramer <i>JK</i>
2) <u>Safety &amp; Security Council</u>	_____	_____	_____
3) <u>Policy &amp; Budget Council</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

**SUMMARY ANALYSIS**

Currently, the Law Enforcement Protection Act provides penalty enhancements for violent offenses committed against law enforcement officers, correctional officers, state attorneys, assistant state attorneys, justices, or judges.

HB 321 creates s. 782.065, F.S., which provides that a person who commits or attempts to commit murder in the first, second, or third degree, or attempted felony murder, where the victim of the offense was a law enforcement officer, part-time law enforcement officer, or auxiliary law enforcement officer, engaged in the lawful performance of a legal duty shall, if the death sentence is not imposed, be sentenced to a minimum mandatory term of imprisonment for life without eligibility for release.

On January 17, 2008, the Criminal Justice Impact Conference determined that this bill would have an insignificant prison bed impact.

This bill takes effect October 1, 2008.

**FULL ANALYSIS**  
**SUBSTANTIVE ANALYSIS**

**A. HOUSE PRINCIPLES ANALYSIS:**

Promote Person Responsibility – This bill creates s. 782.065, F.S., which provides minimum mandatory penalties for persons who commit or attempt to commit murder in the first, second, or third degree, or attempted felony murder, where the victim of the offense was a law enforcement officer, part-time law enforcement officer, or auxiliary law enforcement officer, engaged in the lawful performance of a legal duty.

**B. EFFECT OF PROPOSED CHANGES:**

The Law Enforcement Protection Act<sup>1</sup> (Act), when read in conjunction with the Criminal Punishment Code, provides penalty enhancements for violent offenses<sup>2</sup> committed against law enforcement officers, correctional officers, state attorneys, assistant state attorneys, justices, or judges. The following chart illustrates the permissible sentence ranges for violent offenses committed against law enforcement officers pursuant to the Act's penalty enhancements.

OFFENSE	PENALTY RANGE
1st Degree Murder	Life without eligibility for release
2nd Degree Murder	
s. 782.04(2)	53.875 years - life
s. 782.04(3)	50.125 years - life
3rd Degree Murder	22.5 years
Attempted 1st Degree Murder	12.625 years - 30 years
Attempted 2nd Degree Murder	
s. 782.04(2)	9.75 years - 15 years
s. 782.04(3)	7.5 years - 15 years
Attempted Felony Murder	
s. 782.051(1)	12.625 years - life
s. 782.051(2)	9.8125 years - 30 years
s. 782.051(3)	7 - 15 years

*Effect of the Bill*

HB 321 creates s. 782.065, F.S., which provides minimum mandatory penalties for certain crimes against law enforcement officers. Specifically, the bill provides that notwithstanding the Act, a person who commits or attempts to commit murder in the first, second, or third degree, or attempted felony murder, where the victim of the offense was a law enforcement officer (LEO), part-time LEO, or auxiliary LEO, engaged in the lawful performance of a legal duty shall, if the death sentence is not imposed, be sentenced to a minimum mandatory term of imprisonment for life without eligibility for release. Thus, the penalty for every crime listed in the above chart would be life without eligibility for release.

**C. SECTION DIRECTORY:**

**Section 1.** Creates s. 782.065, F.S., relating to murder; law enforcement officer.

**Section 2.** This bill takes effect October 1, 2008.

<sup>1</sup> s. 775.0823, F.S.

<sup>2</sup> The violent offenses include: murder in the first degree, attempted murder in the first degree, attempted felony murder, murder in the second degree, attempted murder in the second degree, murder in the third degree, attempted murder in the third degree, manslaughter during the commission of a crime, kidnapping, aggravated battery, and aggravated assault.



## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

See "Fiscal Comments."

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

See "Fiscal Comments."

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

On January 17, 2008, the Criminal Justice Impact Conference determined that this bill would have an insignificant prison bed impact.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

This 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:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### D. STATEMENT OF THE SPONSOR

This bill, should it become law, will send a clear message and provide a deterrent to those who willingly attempt to murder a law enforcement officer in Florida. It is incumbent upon us as a legislative body to protect, as much as possible, those who protect us.

## IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES



HB 321

2008

1                                   A bill to be entitled  
 2           An act relating to murder of law enforcement officers;  
 3           creating s. 782.065, F.S.; providing a minimum mandatory  
 4           sentence for certain offenses; providing an effective  
 5           date.

6  
 7   Be It Enacted by the Legislature of the State of Florida:

8  
 9           Section 1. Section 782.065, Florida Statutes, is created  
 10          to read:

11           782.065   Murder; law enforcement officer.--Notwithstanding  
 12          s. 775.0823, a person who commits or attempts to commit murder  
 13          in the first, second, or third degree as described in s. 782.04,  
 14          or attempted felony murder as described in s. 782.051, where the  
 15          victim of the offense was a law enforcement officer, part-time  
 16          law enforcement officer, or auxiliary law enforcement officer,  
 17          as those terms are defined in s. 943.10, engaged in the lawful  
 18          performance of a legal duty shall, if the death sentence is not  
 19          imposed, be sentenced to a minimum mandatory term of  
 20          imprisonment for life without eligibility for release.

21           Section 2. This act shall take effect October 1, 2008.







HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 537 Offense of Voyeurism

SPONSOR(S): Dorworth and others

TIED BILLS: IDEN./SIM. BILLS: SB 328

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Homeland Security &amp; Public Safety</u>	_____	Padgett <i>[Signature]</i>	Kramer <i>[Signature]</i>
2) <u>Safety &amp; Security Council</u>	_____	_____	_____
3) <u>Policy &amp; Budget Council</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Currently, s. 810.145, F.S. provides that a person who commits the offense of video voyeurism commits a first degree misdemeanor. If a person commits the offense of video voyeurism and has a prior conviction for video voyeurism, the person commits a third degree felony.

HB 537 amends s. 810.145, F.S., to create two new video voyeurism offenses. The bill makes video voyeurism a third degree felony in cases where the offender is 18 years of age or older and commits video voyeurism against:

- A child under 16 when the offender is responsible for the welfare of the victim
- A student at a K-12 school or private school at which the offender is employed

The bill also provides that the penalties for a violation of this subsection increase to a second degree felony if the offender has a prior conviction for video voyeurism.

The bill provides an effective date of June 1, 2008.

The Criminal Justice Impact Conference has not yet met to determine the prison bed impact of this bill. However, during the 2007 session, CJIC determined that SB 2534, which was identical to this bill, would have an insignificant prison bed impact.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility: This bill increases criminal penalties for video voyeurism if the offender is at least 18 years old, responsible for the welfare of a child under 16, and commits video voyeurism against that child. Also, the bill increases the criminal penalties for video voyeurism if the person who commits the offense is over 18, employed at a school, and commits video voyeurism against a victim who is a student at that school. The bill also increases criminal penalties if a person commits this offense and has a previous conviction for video voyeurism.

#### B. EFFECT OF PROPOSED CHANGES:

##### Present Situation

Currently, s. 810.145, F.S. provides that a person commits video voyeurism by:

- Intentionally using or installing an imaging device to secretly view, broadcast, or record a person who is dressing, undressing, or privately exposing the body, at a place and time when that person has a reasonable expectation of privacy, for the offender's own amusement, entertainment, sexual arousal, gratification, or profit or for the purpose of degrading or abusing another person.
- Intentionally permitting the use or installation of an imaging device to secretly view, broadcast, or record a person as stated above, but for the amusement entertainment, sexual arousal, gratification, or profit of another person.
- Intentionally using an imaging device to secretly view, broadcast, or record under or through another person's clothing in order to view that person's body or undergarments, for the amusement, entertainment, sexual arousal, gratification, or profit or for the purpose of degrading or abusing another person.

Section 810.145, F.S., also includes the offenses of video voyeurism dissemination and commercial video voyeurism dissemination for distributing a video or image with knowledge or reason to believe that it was created as a result of video voyeurism.

The statute includes exceptions to ensure that it does not criminalize law enforcement surveillance; video security systems, provided that written notice of the system is posted; or video surveillance systems which are clearly and immediately obvious. Also, the statute provides an exception for internet providers who do not exercise control over user content.

A violation of the provisions of s. 810.145, F.S. is a first degree misdemeanor, punishable by up to one year in jail and a \$1,000 fine. If an offender has previously been convicted or adjudicated delinquent for any violation of this section, the penalty is enhanced to a third degree felony, punishable by up to 5 years imprisonment and a \$5,000 fine.



## Proposed Changes

HB 537 amends s. 810.145, F.S. to create two new video voyeurism offenses which are third degree felonies, punishable by up to 5 years imprisonment and a \$5,000 fine. The bill requires proof of all elements of video voyeurism as currently defined in s. 810.145, F.S., plus additional elements which would result in the increased penalty.

The new s. 810.145(8)(a) F.S., creates a third degree felony if the offender commits video voyeurism and:

- The offender is 18 years of age or older,
- The victim is under 16, and
- The offender is responsible for the welfare of the victim.

The bill provides that the new offense may be proven regardless of whether the offender knew or had reason to know the age of the victim.

The new s. 810.145(8)(b), F.S., creates a third degree felony if the offender commits video voyeurism and:

- The offender is 18 years of age or older,
- The offender is employed at a K-12 school or private school, and
- The victim is a student of the school.

The bill also provides that if a person has previously been convicted or adjudicated delinquent of any form of video voyeurism, a violation of the new offenses in HB 537 would be punished as a second degree felony.

The new offenses created are not ranked in the offense severity ranking chart<sup>1</sup>. Sections 810.145(a) and (b) would default to a Level 1. Section 810.145(c) would default to a Level 4.

### C. SECTION DIRECTORY:

Section 1 Amends s. 810.145, F.S., relating to video voyeurism.

Section 2 Provides effective date of July 1, 2008.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

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<sup>1</sup> Section 921.0022, F.S.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference met on February 26, 2008 and determined this bill would have an insignificant prison bed impact.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This 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:

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**D. STATEMENT OF THE SPONSOR**

No statement submitted.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**



1                                   A bill to be entitled  
 2           An act relating to the offense of voyeurism; amending s.  
 3           810.145, F.S.; providing that it is a third-degree felony  
 4           for certain persons who are responsible for the welfare of  
 5           a child younger than 16 years of age to commit the offense  
 6           of video voyeurism, video voyeurism dissemination, or  
 7           commercial video voyeurism dissemination against that  
 8           child; providing criminal penalties; providing that it is  
 9           a third-degree felony for a person employed at a school to  
 10          commit the offense of video voyeurism, video voyeurism  
 11          dissemination, or commercial video voyeurism dissemination  
 12          against a student of the school; providing criminal  
 13          penalties; providing that it is a second-degree felony for  
 14          a person who was previously convicted of or adjudicated  
 15          delinquent for video voyeurism, video voyeurism  
 16          dissemination, or commercial video voyeurism dissemination  
 17          to commit any such third-degree felony against a child  
 18          younger than 16 years of age or a student; providing  
 19          criminal penalties; providing an effective date.

20  
 21 Be It Enacted by the Legislature of the State of Florida:

22  
 23           Section 1. Subsection (6) of section 810.145, Florida  
 24           Statutes, is amended, present subsection (8) of that section is  
 25           redesignated as subsection (9), and a new subsection (8) is  
 26           added to that section, to read:

27           810.145 Video voyeurism.--  
 28           (6) Except as provided in subsections ~~subsection~~ (7) and

29 (8), a person who violates this section commits a misdemeanor of  
 30 the first degree, punishable as provided in s. 775.082 or s.  
 31 775.083.

32 (8) (a) A person 18 years of age or older who is  
 33 responsible for the welfare of a child younger than 16 years of  
 34 age, regardless of whether the person knows or has reason to  
 35 know the age of the child, and who commits an offense under this  
 36 section against that child commits a felony of the third degree,  
 37 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

38 (b) A person 18 years of age or older who is employed at a  
 39 private school as defined in s. 1002.01 or a school as defined  
 40 in s. 1003.01 and who commits an offense under this section  
 41 against a student of the school or private school commits a  
 42 felony of the third degree, punishable as provided in s.  
 43 775.082, s. 775.083, or s. 775.084.

44 (c) A person who violates this subsection and who has  
 45 previously been convicted of or adjudicated delinquent for any  
 46 violation of this section commits a felony of the second degree,  
 47 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

48 Section 2. This act shall take effect July 1, 2008.









HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 789 Surveyors and Mappers

SPONSOR(S): Kendrick

TIED BILLS: IDEN./SIM. BILLS: SB 2054

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Homeland Security &amp; Public Safety</u>	_____	Padgett 	Kramer 
2) <u>Safety &amp; Security Council</u>	_____	_____	_____
3) <u>Policy &amp; Budget Council</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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SUMMARY ANALYSIS

HB 789 amends s. 472.029, F.S. to create criminal penalties for surveyors and mappers who damage fences on agricultural land. The bill provides that surveyors, mappers, or their employees commit a first degree misdemeanor for a first violation of the newly created offense, and a third degree felony for second or subsequent violations. The bill also provides that surveyors, mappers, or their employees commit a third degree felony if the damaged fence was used to contain animals. Additionally, the bill provides a court may require full compensation to the owner of the fence for all direct and indirect damages or losses caused by a violation of any of the newly created offenses.

The bill has an effective date of October 1, 2008.

The Criminal Justice Impact Conference (CJIC) has not met to determine the prison bed impact of this bill. The bill creates two third degree felony offenses which are not ranked in the Offense Severity Ranking Chart and will therefore default to a level one ranking. Typically, when bills create unranked third degree felony offenses, CJIC predicts that they will have an insignificant prison bed impact on the Department of Corrections.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Promote Personal Responsibility:** The bill creates a first degree misdemeanor if a surveyor or mapper who is legally authorized to enter private property damages a fence on agricultural lands. The bill also creates a third degree felony if the fence that was damaged was used to contain animals.

#### B. EFFECT OF PROPOSED CHANGES:

##### Current Situation

Section 810.115, F.S. prohibits a person from willfully and maliciously breaking down, marring, injuring, defacing, cutting, or creating an opening, gap, interruption, or break in a fence that encloses land that does not belong to the person. A person commits a first degree misdemeanor<sup>1</sup> for a first violation of this section, and a third degree felony<sup>2</sup> for second or subsequent violations. Section 810.115, F.S. also provides that a person commits a third degree felony if the damaged fence was used to contain animals. Additionally, s. 810.115, F.S. provides the court may require full compensation to the owner of the fence for all direct and indirect damages caused by a violation of this Section.

Surveyors and mappers are responsible for measuring and mapping the Earth's surface. Surveyors establish land, airspace, and water boundaries; write land descriptions for deeds and other legal documents; and measure the elevation and topography of the Earth's surface.<sup>3</sup> Mappers collect and analyze information from surveys and record the geographic information on a map.<sup>4</sup> Surveyors and mappers are regulated by the Department of Business and Professional Regulation ("Department") and the Board of Professional Surveyors and Mappers ("Board").<sup>5</sup> The Board certifies a surveyor or mapper is qualified to be licensed by the Department, monitors continuing education requirements, and commences disciplinary proceedings.<sup>6</sup>

Section 472.029, F.S. provides authorization for surveyors, mappers, and their employees to enter onto private property for purposes related to making surveys and maps and that this entry does not constitute trespass. Additionally, s. 472.029, F.S. prohibits surveyors, mappers, and their employees from destroying, injuring, damaging, or moving physical improvements on private property without the consent of the landowner. However, there is no criminal penalty that results from a violation of this

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<sup>1</sup> A first degree misdemeanor is punishable by up to 1 year in jail and a \$1,000 fine. Sections 775.082, 775.083, F.S.

<sup>2</sup> A third degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine.

<sup>3</sup> Section 472.005(3), F.S. See also <http://www.bls.gov/oco/ocos040.htm>

<sup>4</sup> Id.

<sup>5</sup> Section 472.007, F.S.

<sup>6</sup> Sections 472.013, 472.015, 472.017, 472.033, F.S.

statute. If a surveyor or mapper damages physical improvements on private property, the disciplinary action is limited to a review by the Board of Professional Surveyors and Mappers, who may impose penalties such as fines, revocation or suspension of a surveying or mapping license, or a reprimand.<sup>7</sup>

### Proposed Changes

HB 789 amends s. 472.029, F.S. to create criminal penalties for surveyors and mappers authorized to enter private property under s. 472.029(1) who willfully break down, mar, injure, deface, cut, or create an opening, gap, interruption, or break in a fence on agricultural lands<sup>8</sup>. The criminal penalties are identical to those for all other persons who damage fences, currently outlined in s. 810.115, F.S. (see above). The bill provides that surveyors, mappers, or their employees commit a first degree misdemeanor for a first violation of the newly created offense, and a third degree felony for second or subsequent violations. The bill also provides that surveyors, mappers, or their employees commit a third degree felony if the damaged fence was used to contain animals. Additionally, the bill provides the court may require full compensation to the owner of the fence for all direct and indirect damages or losses caused by a violation of any of the newly created offenses.<sup>9</sup>

The third degree felonies created by this bill are not ranked in the Offense Severity Ranking Chart<sup>10</sup>. For sentencing purposes, an unranked third degree felony defaults to a Level 1 offense.<sup>11</sup>

The bill has an effective date of October 1, 2008.

#### C. SECTION DIRECTORY:

Section 1 Amends s. 472.029, F.S., relating to the authorization of surveyors and mappers to enter private property.

Section 2 Provides an effective date of October 1, 2008.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:  
None.

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<sup>7</sup> Section 472.033, F.S.

<sup>8</sup> This term is defined in accordance with s. 193.461, F.S.

<sup>9</sup> See s. 775.089, F.S.

<sup>10</sup> Section 921.0022, F.S.

<sup>11</sup> Section 921.0023, F.S.

- 2. Expenditures:  
See fiscal comments.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

- 1. Revenues:  
None.

- 2. Expenditures:  
None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

The Criminal Justice Impact Conference (CJIC) has not met to determine the prison bed impact of this bill. The bill creates two third degree felony offenses which are not ranked in the Offense Severity Ranking Chart and will therefore default to a level one ranking. Typically, when bills create unranked third degree felony offenses, CJIC predicts that they will have an insignificant prison bed impact on the Department of Corrections.

**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:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**D. STATEMENT OF THE SPONSOR**

No statement submitted.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**



1                                   A bill to be entitled  
 2           An act relating to surveyors and mappers; amending s.  
 3           472.029, F.S.; prohibiting surveyors and mappers and their  
 4           subordinates from breaking or injuring fences on  
 5           agricultural land; providing penalties; providing for  
 6           restitution for damages or losses; providing an effective  
 7           date.

8

9   Be It Enacted by the Legislature of the State of Florida:

10

11           Section 1. Subsection (3) is added to section 472.029,  
 12           Florida Statutes, to read:

13           472.029 Authorization to enter lands of third parties;  
 14           conditions.--

15           (3) BREAKING OR INJURING FENCES ON AGRICULTURAL LAND.--

16           (a) Any person authorized to enter lands pursuant to  
 17           subsection (1) who willfully breaks down, mars, injures,  
 18           defaces, cuts, or otherwise creates or causes to be created an  
 19           opening, gap, interruption, or break in any fence, or any part  
 20           thereof, belonging to or enclosing land not his or her own, or  
 21           whoever causes to be broken down, marred, injured, defaced, or  
 22           cut any fence belonging to or enclosing land not his or her own,  
 23           commits a misdemeanor of the first degree, punishable as  
 24           provided in s. 775.082 or s. 775.083. A person who commits a  
 25           second or subsequent offense under this subsection commits a  
 26           felony of the third degree, punishable as provided in s.  
 27           775.082, s. 775.083, or s. 775.084.

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28           (b) If an offender breaks or injures a fence as provided  
 29 in paragraph (a) and the fence or any part thereof is used to  
 30 contain animals at the time of the offense, the offender commits  
 31 a felony of the third degree, punishable as provided in s.  
 32 775.082, s. 775.083, or s. 775.084.

33           (c) The court may require full compensation to the owner  
 34 of the damaged fence for any and all damages or losses resulting  
 35 directly or indirectly from the act or commission pursuant to s.  
 36 775.089.

37           (d) This subsection applies only to land classified as  
 38 agricultural pursuant to s. 193.461.

39           Section 2. This act shall take effect October 1, 2008.









## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility/Maintain Public Security: The bill creates s. 812.145, F.S. which provides a person commits a first degree felony if the person steals copper or other nonferrous metals from a utility or communications service provider and the theft causes damage or interrupts service.

#### B. EFFECT OF PROPOSED CHANGES:

##### Current Situation

Recently, there has been an increase in media reports of metal theft (specifically copper) from utilities, construction sites, citrus groves, air conditioner units, cell phone towers, and even a report of copper theft from an Amtrak locomotive. The reports state that thieves take the stolen metal to a secondary metals recycler and sell the metal for cash. Currently, scrap copper wire sells for up to \$3.19 per pound<sup>1</sup>.

The degrees of punishment under the current theft statute are primarily based upon the dollar value of the stolen property.<sup>2</sup> There are specific circumstances in which the dollar value threshold amounts which qualify for a higher level of punishment are altered or eliminated if a certain type of property<sup>3</sup> is stolen or if certain conditions occur related to the theft<sup>4</sup>. One of these circumstances provides that if a person causes damage to property in excess of \$1,000 during the course of the grand theft, the person commits a first degree felony. Under current Florida law, there is no distinction between the theft of copper and nonferrous metals from a utility and the theft of all other property.<sup>5</sup> As a result, absent one of the exceptions, the criminal penalties for theft of copper and nonferrous metals from a utility would be based on dollar value threshold amounts.

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<sup>1</sup> <http://www.scrapindex.com/metal/copper> (as of February 19, 2008).

<sup>2</sup> See generally, s. 821.012, F.S. If the stolen property is valued at \$100,000 or more, the offense is a first degree felony. If the stolen property is valued at between \$20,000 and \$100,00, the offense is a second degree felony. If the stolen property is valued at between \$300 and \$20,000, the offense is a third degree felony. If the stolen property is valued between \$100 and \$300, the offense is a first degree misdemeanor. If the stolen property is under \$100, the offense is a second degree misdemeanor.

<sup>3</sup> E.g. firearms, a will, a fire extinguisher, citrus fruit, a stop sign, emergency medical equipment, law enforcement equipment, etc.

<sup>4</sup> E.g. theft during a state of emergency, use of a motor vehicle, damage to property during the course of the theft, theft of cargo in interstate commerce, etc.

<sup>5</sup> Section 812.014, F.S.

Regarding utilities, s. 812.14, F.S. currently provides that a person commits a first degree misdemeanor<sup>6</sup> if the person willfully alters, tampers with, injures, or knowingly suffers to be injured any meter, meter seal, pipe, conduit, wire, line, cable, transformer, or other apparatus or device belonging to a utility service as to cause loss or damage. There is no requirement that the damage cause an interruption in service. Although the theft of utility lines appears to be punishable as a misdemeanor under 812.14, F.S., the main focus of s. 812.14, F.S. is the theft of utility services via unauthorized use and the damage caused by the unauthorized use rather than actual theft or damage of the utility lines themselves.

### Proposed Changes

The bill creates s. 812.145, F.S. which provides that a person who knowingly and intentionally takes copper or other nonferrous metals<sup>7</sup> from a utility<sup>8</sup> or communications services provider<sup>9</sup> commits a first degree felony if the theft:

- Damages the facilities of a utility or communications services provider, or
- Interrupts or interferes with utility service<sup>10</sup> or communications services<sup>11</sup>, or
- Interferes with the ability of a utility service or communications services provider to provide service

The bill does not provide for a minimum dollar value threshold to make the theft of copper and other nonferrous metals punishable as a first degree felony when service is interrupted. Thus, all thefts which fall into this category are automatically punishable as first degree felonies.

A first degree felony is punishable by up to 30 years in prison and a \$10,000 fine<sup>12</sup>. The bill does not provide a ranking level for the newly created offense on the Offense Severity Ranking Chart<sup>13</sup>. Per Florida law, an unranked first degree felony defaults to a level 7 offense for purposes of sentencing.<sup>14</sup>

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<sup>6</sup> Punishable by up to one year in jail and a \$1,000 fine. Sections 775.082, 775.083, F.S.

<sup>7</sup> The bill defines "copper or other nonferrous metals" as, "metals not containing significant quantities of iron or steel, including, without limitation, copper, copper alloy, copper utility or communications service wire, brass, aluminum, bronze, lead, zinc, nickel, and alloys thereof."

<sup>8</sup> Utility is defined by the bill as having the same meaning as in s. 812.14, F.S.; "any person, firm, corporation, association, or political subdivision, whether private, municipal, county, or cooperative, which is engaged in the sale, generation, provision, or delivery of gas, electricity, heat, water, oil, sewer service, telephone service, telegraph service, radio service, or telecommunication service."

<sup>9</sup> The bill defines "communications services provider" as "any person, firm, corporation, or political subdivision, whether private, municipal, county, or cooperative, which is engaged in the sale, generation, provision, or delivery of communications services."

<sup>10</sup> The bill defines "utility service" as electricity for light, heat, or power and natural or manufactured gas for light, heat, or power, including the transportation, delivery, transmission, and distribution of electricity or natural or manufactured gas."

<sup>11</sup> The bill defines "communications services" as "the transmission, conveyance, or routing of voice, data, audio, or video, or any other information or signals, including cable services, to a point, or between among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the client for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added."

C. SECTION DIRECTORY:

Section 1 Creates s. 812.145, F.S., relating to the theft of copper and nonferrous metals.

Section 2 Provides and effective date of October 1, 2008.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference met on February 26, 2008 and determined this bill would have an insignificant prison bed impact.

**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.

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<sup>12</sup> Sections 775.082, 775.083, 775.084, F.S.

<sup>13</sup> Section 921.0022, F.S.

<sup>14</sup> Section 921.0023(3), F.S.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**D. STATEMENT OF THE SPONSOR**

No statement submitted.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**





1                                   A bill to be entitled  
 2           An act relating to the theft of copper or other nonferrous  
 3           metals; creating s. 812.145, F.S.; providing definitions;  
 4           providing that it is a felony of the first degree to  
 5           knowingly and intentionally take copper or other  
 6           nonferrous metal from a utility or communications services  
 7           provider, thereby causing damage to the facilities of a  
 8           utility or communications services provider or  
 9           interrupting or interfering with utility or communications  
 10          services; providing criminal penalties; providing an  
 11          effective date.

12  
 13 Be It Enacted by the Legislature of the State of Florida:

14  
 15           Section 1. Section 812.145, Florida Statutes, is created  
 16          to read:

17           812.145 Theft of copper or other nonferrous metals.--

18           (1) As used in this section, the terms:

19           (a) "Communications services" means the transmission,  
 20          conveyance, or routing of voice, data, audio, video, or any  
 21          other information or signals, including cable services, to a  
 22          point, or between or among points, by or through any electronic,  
 23          radio, satellite, cable, optical, microwave, or other medium or  
 24          method now in existence or hereafter devised, regardless of the  
 25          protocol used for such transmission or conveyance. The term  
 26          includes such transmission, conveyance, or routing in which  
 27          computer processing applications are used to act on the form,  
 28          code, or protocol of the content for purposes of transmission,

29 conveyance, or routing without regard to whether such service is  
 30 referred to as voice-over-Internet-protocol services or is  
 31 classified by the Federal Communications Commission as enhanced  
 32 or value-added.

33 (b) "Communications services provider" includes any  
 34 person, firm, corporation, or political subdivision, whether  
 35 private, municipal, county, or cooperative, which is engaged in  
 36 the sale, generation, provision, or delivery of communications  
 37 services.

38 (c) "Copper or other nonferrous metals" means metals not  
 39 containing significant quantities of iron or steel, including,  
 40 without limitation, copper, copper alloy, copper utility or  
 41 communications service wire, brass, aluminum, bronze, lead,  
 42 zinc, nickel, and alloys thereof.

43 (d) "Utility" has the same meaning as in s. 812.14.

44 (e) "Utility service" means electricity for light, heat,  
 45 or power and natural or manufactured gas for light, heat, or  
 46 power, including the transportation, delivery, transmission, and  
 47 distribution of electricity or natural or manufactured gas.

48 (2) A person who knowingly and intentionally takes copper  
 49 or other nonferrous metals from a utility or communications  
 50 services provider, thereby causing damage to the facilities of a  
 51 utility or communications services provider, interrupting or  
 52 interfering with utility service or communications services, or  
 53 interfering with the ability of a utility or communications  
 54 services provider to provide service, commits a felony of the  
 55 first degree, punishable as provided in s. 775.082, s. 775.083,  
 56 or s. 775.084.

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Section 2. This act shall take effect October 1, 2008.

