

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 364

INTRODUCER: Communications, Energy, and Public Utilities and Senator Brandes

SUBJECT: Computer Crimes

DATE: February 11, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Telotte/Wiehle</u>	<u>Caldwell</u>	<u>CU</u>	Fav/CS
2.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	Pre-meeting
3.	_____	_____	<u>ACJ</u>	_____
4.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 364 recognizes that advancements in technology have led to an increase in computer related crimes while greatly extending their reach. The bill addresses this increase in computer crimes by updating and expanding terminology used to define these crimes and creating additional offenses.

Three crimes are added to “offenses against users of computer networks and electronic devices”¹ including:

- Audio and 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 device²;
- Intentionally interrupting the transmittal of data to or from, or gaining unauthorized access to a computer, computer system, computer network, or electronic device belonging to a mode of public or private transit;³ and

¹ s. 815.06, F.S.

² Punishable as a third degree felony which could result in 5 years imprisonment and a \$5,000 fine. ss. 775.082, 775.083, F.S.

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

- Disrupting 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.⁴

“Offenses against public utilities” are created in the bill and two additional crimes are created, including:

- Gaining 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, a third degree felony; and
- Physically tampering with, inserting software into, or otherwise transmitting 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, a second degree felony.

II. Present Situation:

Offenses against intellectual property

A person commits an offense against intellectual property, punishable as a third degree felony, if he does one of the following:

- willfully, knowingly, and without authorization modifies or destroys data, programs, or supporting documentation residing or existing internal or external to a computer, computer system, or computer network; or
- willfully, knowingly, and without authorization discloses or takes data, programs, or supporting documentation which is a trade secret as defined in s. 812.081, F.S., or is confidential as provided by law residing or existing internal or external to a computer, computer system, or computer network.

If the offense is committed for the purpose of devising or executing any scheme or artifice to defraud or to obtain any property, the offense is elevated to a second degree felony.

Offenses against computer users

It is an offense against computer users, punishable as a third degree felony, to willfully, knowingly, and without authorization:

- Access or cause to be accessed any computer, computer system, or computer network; or
- Disrupt or deny or cause 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; or
- Destroy, take, injure, or damage equipment or supplies used or intended to be used in a computer, computer system, or computer network; or
- Destroy, injure, or damage any computer, computer system, or computer network; or

⁴ A first degree felony punishable by up to 30 years imprisonment and a fine of \$10,000. ss. 775.082, 775.083, F.S.

- Introduce any computer contaminant into any computer, computer system, or computer network.

It is a second degree felony to commit an offense against computer users and additionally do any of the following:

- Damage a computer, computer equipment, 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;
- Commit an offense for the purpose of devising or executing any scheme or artifice to defraud or obtain property; or
- Interrupt or impair a governmental operation or public communication, transportation, or supply of water, gas, or other public service.

Committing an offense against computer users in any manner which endangers a human life is punishable as a first degree felony.

III. Effect of Proposed Changes:

Section 1 amends s. 815.02, F.S., to add a statement of legislative intent to recognize “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.”

Section 2 expands s. 815.03, F.S., to define the term “electronic devices” and include the devices in the definition of a “computer network.” A computer network is 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 system or electronic devices by physical or wireless telecommunication facilities.

An “electronic device” is defined by the bill as 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. These changes allow for devices other than the standard computer to be considered capable of being used to commit an offense.

Section 3 amends s. 815.04, F.S., to include the term “electronic devices” in the existing definition of offenses against intellectual property.

SB 366, a linked bill, amends the existing public records exemption regarding trade secrets in s. 815.04, F.S., and takes effect the same day as SB 364 if the bill is passed during the same legislative session and it becomes law.

Section 4 amends s. 815.06, F.S., and renames these offenses “offenses against users of computer networks and electronic devices.”

The definition of the term “person” is expanded for use in this section, to include:

- An individual;
- A partnership, corporation, association, or other entity doing business in this state, or an officer, agent, or employee of such 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.

The bill creates a new third degree felony where a person willfully, knowingly, and without authorization engages in audio or video surveillance of an individual without the 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.

Additionally, if a person commits an offense against users of computer networks and electronic devices and 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., it is punishable as a second degree felony.

The bill also provides that if a person commits an offense against users of a computer network and electronic devices and 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 it is punishable as a first degree felony.

This section (s. 815.06, F.S., as amended by the bill) does not apply to a person who has acted pursuant to a search warrant or to an exception to a search warrant authorized by law or when acting within the scope of his or her employment.

Section 5 creates s. 815.061, F.S., to define offenses against public utilities.

The term "public utility" in this section means:

- each public utility and electric utility as those terms are defined in s. 366.02, F.S.;
- each water and wastewater utility as defined in s. 367.021, F.S.;
- each natural gas transmission company as defined in s. 368.103, F.S.;
- each person, corporation, partnership, association, public agency, municipality, cooperative, gas district, or other legal entity and their lessees, trustees, or receivers, now or hereafter owning, operating, managing, or controlling gas transmission or distribution facilities or any other facility supplying or storing natural or manufactured gas or liquefied gas with air admixture or any similar gaseous substances by pipeline to or for the public within this state; and
- any separate legal entity created under s. 163.01, F.S., and composed of any of the entities described in this subsection for the purpose of providing utility services in this state, including wholesale power and electric transmission services.

A person may not willfully, knowingly, and without authorization:

- Gain access to a computer network or other defined device owned, operated, or used by a public utility while knowing that such access is unauthorized, which is punishable as a third degree felony; or
- Physically tamper with, insert software into, or otherwise transmit commands or electronic communications to a computer, computer system, computer network, or electronic device which causes a disruption in any service delivered by a public utility, which is punishable as a second degree felony.

Technical and conforming changes are made throughout the bill.

Section 6 states that the bill takes effect October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may provide better protection against economic loss to owners and users of computers, computer systems, and electronic devices.

C. Government Sector Impact:

The bill may result in additional arrests, prosecutions, and jail or prison sentences. The Criminal Justice Impact Conference has not yet considered the bill to determine the potential for a prison bed impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 815.02, 815.03, 815.04, and 815.06. This bill creates section 815.061 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Communications, Energy, and Public Utilities on February 04, 2014:

The CS/SB 364 provides that the term “public utility” is not limited to the definition found in s. 366.02, F.S., but also includes additional types of utilities such as water and wastewater utilities, natural gas pipelines, natural gas storage, and supply facilities, or utilities under the direction of a governmental owned authority (Facilities that serve a public purpose and are necessary for the security and wellbeing of the public).

- B. **Amendments:**

None.