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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/19/2009	.	
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The Committee on Commerce (Rich) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 815.03, Florida Statutes, is amended to  
read:

815.03 Definitions.—As used in this chapter, unless the  
context clearly indicates otherwise:

(1) "Access" means to approach, instruct, communicate with,  
store data in, retrieve data from, or otherwise make use of any  
resources of a computer, computer system, or computer network.

(2) "Cause to be copied" means to distribute or transfer



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13 computer software or any component thereof. The term does not  
14 include:

15 (a) Transmission, routing, provision of intermediate  
16 temporary storage, or caching of software;

17 (b) A storage or hosting medium, such as a compact disk,  
18 website, or computer server through which the software was  
19 distributed by a third party; or

20 (c) An information-location tool, such as a directory,  
21 index, reference, pointer, or hypertext link, through which the  
22 user of the computer locates software.

23 (3)-~~(2)~~ "Computer" means an internally programmed, automatic  
24 device that performs data processing.

25 (4)-~~(3)~~ "Computer contaminant" means any set of computer  
26 instructions designed to modify, damage, destroy, record, or  
27 transmit information within a computer, computer system, or  
28 computer network without the intent or permission of the owner  
29 of the information. The term includes, but is not limited to, a  
30 group of computer instructions commonly called viruses or worms  
31 which are self-replicating or self-propagating and which are  
32 designed to contaminate other computer programs or computer  
33 data; consume computer resources; modify, destroy, record, or  
34 transmit data; or in some other fashion usurp the normal  
35 operation of the computer, computer system, or computer network.

36 (5)-~~(4)~~ "Computer network" means any system that provides  
37 communications between one or more computer systems and its  
38 input or output devices, including, but not limited to, display  
39 terminals and printers that are connected by telecommunication  
40 facilities.

41 (6)-~~(5)~~ "Computer program or computer software" means a set



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42 of instructions or statements and related data which, when  
43 executed in actual or modified form, cause a computer, computer  
44 system, or computer network to perform specified functions.

45 (7)~~(6)~~ "Computer services" include, but are not limited to,  
46 computer time; data processing or storage functions; or other  
47 uses of a computer, computer system, or computer network.

48 (8)~~(7)~~ "Computer system" means a device or collection of  
49 devices, including support devices, one or more of which contain  
50 computer programs, electronic instructions, or input data and  
51 output data, and which perform functions, including, but not  
52 limited to, logic, arithmetic, data storage, retrieval,  
53 communication, or control. The term does not include calculators  
54 that are not programmable and that are not capable of being used  
55 in conjunction with external files.

56 (9) "Computer virus" means a computer program or other set  
57 of instructions that is designed to degrade the performance of  
58 or disable a computer or computer network and is designed to  
59 have the ability to replicate itself on other computers or  
60 computer networks without the authorization of the owners of  
61 those computers or computer networks.

62 (10) "Damage" means any significant impairment to the  
63 integrity or availability of data, software, a system, or  
64 information.

65 (11)~~(8)~~ "Data" means a representation of information,  
66 knowledge, facts, concepts, computer software, computer  
67 programs, or instructions. Data may be in any form, in storage  
68 media or stored in the memory of the computer, or in transit or  
69 presented on a display device.

70 (12) "Deceptive" means any of the following:



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- 71           (a) A materially false or fraudulent statement.
- 72           (b) A statement or description that intentionally omits or  
73 misrepresents material information in order to deceive an owner  
74 or operator of a computer.
- 75           (c) A material failure to provide a notice to an owner or  
76 operator regarding the installation or execution of computer  
77 software for the purpose of deceiving the owner or operator.
- 78           (13) "Execute," when used with respect to computer  
79 software, means the performance of the functions or the carrying  
80 out of the instructions of the computer software.
- 81           (14)-(9) "Financial instrument" means any check, draft,  
82 money order, certificate of deposit, letter of credit, bill of  
83 exchange, credit card, or marketable security.
- 84           (15)-(10) "Intellectual property" means data, including  
85 programs.
- 86           (16) "Internet" means the global information system that is  
87 logically linked together by a globally unique address space  
88 based on the Internet protocol (IP), or its subsequent  
89 extensions, and that is able to support communications using the  
90 transmission control protocol/Internet protocol (TCP/IP) suite,  
91 or its subsequent extensions, or other IP-compatible protocols,  
92 and that provides, uses, or makes accessible, publicly or  
93 privately, high-level services layered on the communications and  
94 related infrastructure described in this chapter.
- 95           (17) "Owner or operator" means the owner or lessee of a  
96 computer, or a person using such computer with the owner or  
97 lessee's authorization, but does not include a person who owned  
98 a computer before the first retail sale of the computer.
- 99           (18) "Message" means a graphical, text, voice, or audible



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100 communication presented to an authorized user of a computer.

101 (19) "Person" means any individual, partnership,  
102 corporation, limited liability company, or other organization,  
103 or any combination thereof.

104 (20) "Personally identifiable information" means any of the  
105 following information if it allows the entity holding the  
106 information to identify the owner or operator of a computer:

107 (a) The first name or first initial in combination with the  
108 last name.

109 (b) A home or other physical address including street name.

110 (c) Personal identification code in conjunction with a  
111 password required to access an identified account, other than a  
112 password, personal identification number, or other  
113 identification number transmitted by an authorized user to the  
114 issuer of the account or its agent.

115 (d) Social security number, tax identification number,  
116 driver's license number, passport number, or any other  
117 government-issued identification number.

118 (e) Account balance, bank account number, or credit card  
119 numbers, overdraft history, or payment history that personally  
120 identifies an owner or operator of a computer.

121 (21)-~~(11)~~ "Property" means anything of value as defined in  
122 s. 812.011 and includes, but is not limited to, financial  
123 instruments, information, including electronically produced data  
124 and computer software and programs in either machine-readable or  
125 human-readable form, and any other tangible or intangible item  
126 of value.

127 Section 2. Section 815.051, Florida Statutes, is created to  
128 read:



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129           815.051 Prohibitions; use of software.—A person who is not  
130 an owner or operator of a computer may not cause computer  
131 software to be copied on a computer knowingly or with conscious  
132 avoidance of actual knowledge or willfully, and without  
133 authorization, or to use such software to do any of the  
134 following:

135           (1) Modify, through deceptive means, settings of a computer  
136 which control any of the following:

137           (a) The webpage that appears when an owner or operator  
138 launches an Internet browser or similar computer software used  
139 to access and navigate the Internet.

140           (b) The default provider or web proxy that an owner or  
141 operator uses to access or search the Internet.

142           (c) An owner's or an operator's list of bookmarks used to  
143 access web pages.

144           (2) Collect, through deceptive means, personally  
145 identifiable information through any of the following means:

146           (a) The use of a keystroke-logging function that records  
147 all or substantially all keystrokes made by an owner or operator  
148 of a computer and transfers that information from the computer  
149 to another person.

150           (b) In a manner that correlates personally identifiable  
151 information with data regarding all or substantially all of the  
152 websites visited by an owner or operator, other than websites  
153 operated by the person providing the software, if the computer  
154 software was installed in a manner designed to conceal from all  
155 authorized users of the computer the fact that the software is  
156 being installed.

157           (c) By extracting from the hard drive of an owner's or an



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158 operator's computer, an owner's or an operator's social security  
159 number, tax identification number, driver's license number,  
160 passport number, any other government-issued identification  
161 number, account balances, bank account numbers or credit card  
162 numbers, or overdraft history for a purpose unrelated to any of  
163 the purposes of the software or service described to an  
164 authorized user.

165 (3) Prevent, through deceptive means, an owner's or an  
166 operator's reasonable efforts to block the installation of or  
167 execution of, or to disable, computer software by causing  
168 computer software that the owner or operator has properly  
169 removed or disabled to automatically reinstall or reactivate on  
170 the computer without the authorization of an authorized user.

171 (4) Deceptively misrepresent that computer software will be  
172 uninstalled or disabled by an owner's or an operator's action.

173 (5) Through deceptive means, remove, disable, or render  
174 inoperative security, antispyware, or antivirus computer  
175 software installed on an owner's or an operator's computer.

176 (6) Enable the use of an owner's or an operator's computer  
177 to do any of the following:

178 (a) Access or use a modem or Internet service for the  
179 purpose of causing damage to an owner's or an operator's  
180 computer or causing an owner or operator, or a third party  
181 affected by such conduct, to incur financial charges for a  
182 service that the owner or operator did not authorize.

183 (b) Open multiple, sequential, or stand-alone messages in  
184 an owner's or an operator's computer without the authorization  
185 of an owner or operator and with knowledge that a reasonable  
186 computer user could not close the messages without turning off



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187 the computer or closing the software application in which the  
188 messages appear; however, this paragraph does not apply to  
189 communications originated by the computer's operating system,  
190 originated by a software application that the user chooses to  
191 activate, originated by a service provider that the user chooses  
192 to use, or presented for any of the purposes described in s.  
193 815.06(6).

194 (c) Transmit or relay commercial electronic mail or a  
195 computer virus from the computer, if the transmission or  
196 relaying is initiated by a person other than the authorized user  
197 and without the authorization of an authorized user.

198 (7) Use deceptive means to modify any of the following  
199 settings related the computer's access to, or use of, the  
200 Internet:

201 (a) Settings that protect information about an owner or  
202 operator for the purpose of obtaining personally identifiable  
203 information of the owner or operator.

204 (b) Security settings for the purpose of causing damage to  
205 a computer.

206 (c) Settings that protect the computer from the uses  
207 identified in subsection (6).

208 (8) Use deceptive means to prevent, without the  
209 authorization of an owner or operator, an owner's or an  
210 operator's reasonable efforts to block the installation of, or  
211 to disable, computer software by doing any of the following:

212 (a) Presenting the owner or operator with an option to  
213 decline installation of computer software with knowledge that,  
214 when the option is selected by the authorized user, the  
215 installation nevertheless proceeds.





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216 (b) Falsely representing that computer software has been  
217 disabled.

218 (c) Requiring in a deceptive manner the user to access the  
219 Internet to remove the software with knowledge or reckless  
220 disregard of the fact that the software frequently operates in a  
221 manner that prevents the user from accessing the Internet.

222 (d) Changing the name, location, or other designation  
223 information of the software for the purpose of preventing an  
224 authorized user from locating the software in order to remove  
225 it.

226 (e) Using randomized or deceptive filenames, directory  
227 folders, formats, or registry entries for the purpose of  
228 avoiding detection and removal of the software by an authorized  
229 user.

230 (f) Causing the installation of software in a particular  
231 computer directory or computer memory for the purpose of evading  
232 authorized users' attempts to remove the software from the  
233 computer.

234 (g) Requiring, without the authority of the owner of the  
235 computer, that an authorized user obtain a special code or  
236 download software from a third party in order to uninstall the  
237 software.

238 Section 3. Section 815.053, Florida Statutes, is created to  
239 read:

240 815.053 Other prohibitions.—A person who is not an owner or  
241 operator of a computer may not do any of the following with  
242 regard to the computer:

243 (1) Induce an owner or operator to install a computer  
244 software component onto the owner's or operator's computer by



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245 deceptively misrepresenting that installing computer software is  
246 necessary for security or privacy reasons or in order to open,  
247 view, or play a particular type of content.

248 (2) Using deceptive means to cause the execution of a  
249 computer software component with the intent of causing the  
250 computer to use such component in a manner that violates any  
251 other provision of this chapter.

252 Section 4. Section 815.055, Florida Statutes, is created to  
253 read:

254 815.055 Exceptions.—

255 (1) Sections 815.051 and 815.053 do not apply to the  
256 monitoring of, or interaction with, an owner's or an operator's  
257 Internet or other network connection, service, or computer by a  
258 telecommunications carrier, cable operator, computer hardware or  
259 software provider, or provider of information service or  
260 interactive computer service for purposes of network or computer  
261 security, diagnostics, technical support, maintenance, repair,  
262 network management, authorized updates of computer software or  
263 system firmware, authorized remote system management, or  
264 detection or prevention of the unauthorized use of, or  
265 fraudulent or other illegal activities in connection with, a  
266 network, service, or computer software, including scanning for  
267 and removing computer software proscribed under this chapter.

268 (2) This section does not provide a defense to liability  
269 under the common law or any other state or federal law, and may  
270 not be construed to be an affirmative grant of authority to  
271 engage in any of the activities listed in this section.

272 (3) This section does not impose liability on any  
273 communications service providers as defined in s. 202.11(2),



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274 commercial mobile service providers, or providers of information  
275 services, including, but not limited to, Internet access service  
276 providers and hosting service providers, if they provide the  
277 transmission, storage, or caching of electronic communications  
278 or messages of others or provide other related  
279 telecommunications, commercial mobile radio service, or  
280 information services used by others in violation of this  
281 chapter. This exemption from liability is consistent with and in  
282 addition to any liability exemption provided under 47 U.S.C. s.  
283 230.

284 (4) This section does not prohibit or criminalize the use  
285 of software by parents or guardians to monitor Internet or  
286 computer usage of their minor children.

287 Section 5. Section 815.06, Florida Statutes, is amended to  
288 read:

289 815.06 Offenses against computer users.—

290 (1) Whoever willfully, knowingly, and without  
291 authorization:

292 (a) Accesses or causes to be accessed any computer,  
293 computer system, or computer network;

294 (b) Disrupts or denies or causes the denial of computer  
295 system services to an authorized user of such computer system  
296 services, which, in whole or part, is owned by, under contract  
297 to, or operated for, on behalf of, or in conjunction with  
298 another;

299 (c) Destroys, takes, injures, or damages equipment or  
300 supplies used or intended to be used in a computer, computer  
301 system, or computer network;

302 (d) Destroys, injures, or damages any computer, computer



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303 system, or computer network; ~~or~~  
304 (e) Violates s. 815.051 or s. 815.053; or  
305 (f)~~(e)~~ Introduces any computer contaminant into any  
306 computer, computer system, or computer network,  
307  
308 commits an offense against computer users.  
309 (2) (a) Except as provided in paragraphs (b) and (c),  
310 whoever violates subsection (1) commits a felony of the third  
311 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
312 775.084.  
313 (b) Whoever violates subsection (1) and:  
314 1. Damages a computer, computer equipment, computer  
315 supplies, a computer system, or a computer network, and the  
316 monetary damage or loss incurred as a result of the violation is  
317 \$5,000 or greater;  
318 2. Commits the offense for the purpose of devising or  
319 executing any scheme or artifice to defraud or obtain property;  
320 or  
321 3. Interrupts or impairs a governmental operation or public  
322 communication, transportation, or supply of water, gas, or other  
323 public service,  
324  
325 commits a felony of the second degree, punishable as provided in  
326 s. 775.082, s. 775.083, or s. 775.084.  
327 (c) Whoever violates subsection (1) and the violation  
328 endangers human life commits a felony of the first degree,  
329 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.  
330 (3) Whoever willfully, knowingly, and without authorization  
331 modifies equipment or supplies used or intended to be used in a



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332 computer, computer system, or computer network commits a  
333 misdemeanor of the first degree, punishable as provided in s.  
334 775.082 or s. 775.083.

335 (4) The Department of Legal Affairs or a state attorney may  
336 file a civil action on behalf of the people of this state for  
337 injunctive relief against any person or group violating  
338 subsection (1) to restrain the prohibited activity. The court  
339 may award court costs and reasonable attorney's fees to the  
340 prevailing party. The court may also impose a civil penalty that  
341 may not exceed \$10,000 for each violation of subsection (1), and  
342 the total penalties may not exceed \$1 million per defendant.

343 (5)~~(4)~~ (a) In addition to any other civil remedy available,  
344 the owner or lessee of the computer, computer system, computer  
345 network, computer program, computer equipment, computer  
346 supplies, or computer data may bring a civil action against any  
347 person convicted under this section for compensatory damages.

348 (b) In any action brought under this subsection, the court  
349 may award reasonable attorney's fees to the prevailing party.

350 (6)~~(5)~~ Any computer, computer system, computer network,  
351 computer software, or computer data owned by a defendant which  
352 is used during the commission of any violation of this section  
353 or any computer owned by the defendant which is used as a  
354 repository for the storage of software or data obtained in  
355 violation of this section is subject to forfeiture as provided  
356 under ss. 932.701-932.704.

357 (7)~~(6)~~ This section does not apply to any person who  
358 accesses his or her employer's computer system, computer  
359 network, computer program, or computer data when acting within  
360 the scope of his or her lawful employment.



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361           ~~(8)-(7)~~ For purposes of bringing a civil or criminal action  
362 under this section, a person who causes, by any means, the  
363 access to a computer, computer system, or computer network in  
364 one jurisdiction from another jurisdiction is deemed to have  
365 personally accessed the computer, computer system, or computer  
366 network in both jurisdictions.

367           (9) This section does not prohibit a private litigant from  
368 filing a civil action for damages arising under this section.

369           Section 5. This act shall take effect July 1, 2009.

370

371

372 ===== T I T L E   A M E N D M E N T =====

373 And the title is amended as follows:

374           Delete everything before the enacting clause  
375 and insert:

376

377

378                           A bill to be entitled  
379           An act relating to offenses against computer users;  
380           amending s. 815.03, F.S.; defining terms for purposes  
381           of the Florida Computer Crimes Act; creating s.  
382           815.051, F.S.; providing that a person who is not an  
383           owner or operator of a computer may not cause computer  
384           software to be copied on a computer knowingly or with  
385           conscious avoidance of actual knowledge or willfully,  
386           and without authorization, to undertake specified  
387           actions to a computer; creating s. 815.053, F.S.;;  
388           prohibiting a person who is not an owner or operator  
389           of a computer from inducing an owner or operator to  
          install a computer software component onto the owner's



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390 or operator's computer by deceptively misrepresenting  
391 that installing computer software is necessary for  
392 security or privacy reasons or by using deceptive  
393 means to cause the execution of a computer software  
394 component with the intent of causing the computer to  
395 use the component in a harmful manner; creating s.  
396 815.055, F.S.; providing exceptions; amending s.  
397 815.06, F.S.; providing that a violation of the act is  
398 a felony of the third degree; providing criminal  
399 penalties; providing enhanced criminal penalties under  
400 certain circumstances; authorizing the Department of  
401 Legal Affairs or a state attorney to file a civil  
402 action for injunctive relief against any person or  
403 group to restrain prohibited activities; authorizing a  
404 court to award court costs and attorney's fees to the  
405 prevailing party; permitting a court to impose a civil  
406 penalty not to exceed a stated amount for each offense  
407 against computer users; providing for civil actions by  
408 private litigants; providing an effective date.