

CHAPTER 2014-208

Committee Substitute for Committee Substitute for Committee Substitute for House Bill No. 641

An act relating to computer crimes; amending s. 721.071, F.S.; conforming a cross-reference; amending s. 815.02, F.S.; revising legislative findings; amending s. 815.03, F.S.; revising and providing definitions; amending s. 815.04, F.S.; providing that a person who willfully, knowingly, and without authorization introduces a computer contaminant to a specified device or modifies, renders unavailable, or destroys data, programs, or supporting documentation residing or existing internal or external to a specified device commits an offense against intellectual property; providing that a person who willfully, knowingly, and without authorization discloses or takes data, programs, or supporting documentation that is a trade secret or is confidential as provided by law residing or existing internal or external to an electronic device commits an offense against intellectual property; providing criminal penalties; amending s. 815.06, F.S.; defining the term “user”; providing that a person who willfully, knowingly, and without authorization accesses an electronic device, disrupts the ability to transmit data to or from a user of a computer, computer system, computer network, or electronic device, damages an electronic device or equipment or supplies used by an electronic device, introduces a computer contaminant into an electronic device, or engages in the audio or video surveillance of an individual by accessing a computer, computer system, computer network, or electronic device commits an offense against users of computers, computer systems, computer networks, or electronic devices; providing criminal penalties; providing exceptions; providing that the Florida Computer Crimes Act does not impose liability on certain providers of specified services; creating s. 815.061, F.S.; defining the term “public utility”; prohibiting a person from willfully, knowingly, and without authorization engaging in specified activities against a computer, computer system, computer network, or electronic device owned, operated, or used by a public utility; providing criminal penalties; amending s. 921.0022, F.S.; conforming provisions of the offense severity ranking chart to changes made by the act; providing an effective date.

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

Section 1. Subsection (1) of section 721.071, Florida Statutes, is amended to read:

721.071 Trade secrets.—

(1) If a developer or any other person filing material with the division pursuant to this chapter expects the division to keep the material confidential on grounds that the material constitutes a trade secret, as that term is defined in s. 812.081, the developer or other person shall file the material together with an affidavit of confidentiality. “Filed material” for

purposes of this section shall mean material that is filed with the division with the expectation that the material will be kept confidential and that is accompanied by an affidavit of confidentiality. Filed material that is trade secret information includes, but is not limited to, service contracts relating to the operation of reservation systems and those items and matters described in s. 815.04(3) ~~815.04(3)(a)~~.

Section 2. Present subsection (4) of section 815.02, Florida Statutes, is redesignated as subsection (5), and a new subsection (4) is added to that section, to read:

815.02 Legislative intent.—The Legislature finds and declares that:

(4) 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 3. 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) “Computer” means an internally programmed, automatic device that performs data processing.

(3) “Computer contaminant” means any set of computer instructions designed to modify, damage, destroy, record, or transmit information within a computer, computer system, or computer network without the intent or permission of the owner of the information. The term includes, but is not limited to, a group of computer instructions, commonly called viruses or worms, which are self-replicating or self-propagating and which are designed to contaminate other computer programs or computer data; consume computer resources; modify, destroy, record, or transmit data; or in some other fashion usurp or interfere with the normal operation of the computer, computer system, or computer network.

(4) “Computer network” means a system that provides a medium for communication between one or more computer systems or electronic devices, including communication with an input or output device such as a display terminal, printer, or other electronic equipment that is connected to the computer systems or electronic devices by physical or wireless telecommunication facilities ~~any system that provides communications between one or more computer systems and its input or output devices, including, but not limited to, display terminals and printers that are connected by telecommunication facilities.~~

(5) “Computer program or computer software” means a set of instructions or statements and related data which, when executed in actual or modified form, cause a computer, computer system, or computer network to perform specified functions.

(6) “Computer services” include, but are not limited to, computer time; data processing or storage functions; or other uses of a computer, computer system, or computer network.

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

(8) “Data” means a representation of information, knowledge, facts, concepts, computer software, computer programs, or instructions. Data may be in any form, in storage media or stored in the memory of the computer, or in transit or presented on a display device.

(9) “Electronic device” means a device or a portion of a device that is designed for and capable of communicating across a computer network with other computers or devices for the purpose of transmitting, receiving, or storing data, including, but not limited to, a cellular telephone, tablet, or other portable device designed for and capable of communicating with or across a computer network and that is actually used for such purpose.

~~(10)~~(9) “Financial instrument” means any check, draft, money order, certificate of deposit, letter of credit, bill of exchange, credit card, or marketable security.

~~(11)~~(10) “Intellectual property” means data, including programs.

~~(12)~~(11) “Property” means anything of value as defined in s. 812.012 and includes, but is not limited to, financial instruments, information, including electronically produced data and computer software and programs in either machine-readable or human-readable form, and any other tangible or intangible item of value.

Section 4. Section 815.04, Florida Statutes, is amended to read:

815.04 Offenses against intellectual property; public records exemption.

(1) A person who ~~Whoever~~ willfully, knowingly, and without authorization introduces a computer contaminant or modifies or renders unavailable data, programs, or supporting documentation residing or existing internal or external to a computer, computer system, ~~or computer network,~~ or electronic device commits an offense against intellectual property.

(2) A person who ~~Whoever~~ willfully, knowingly, and without authorization destroys data, programs, or supporting documentation residing or existing internal or external to a computer, computer system, ~~or~~ computer network, or electronic device commits an offense against intellectual property.

(3)~~(a)~~ Data, programs, or supporting documentation which is a trade secret as defined in s. 812.081 which resides or exists internal or external to a computer, computer system, or computer network which is held by an agency as defined in chapter 119 is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(4)~~(b)~~ A person who ~~Whoever~~ willfully, knowingly, and without authorization discloses or takes data, programs, or supporting documentation that which is a trade secret as defined in s. 812.081 or is confidential as provided by law residing or existing internal or external to a computer, computer system, ~~or~~ computer network, or electronic device commits an offense against intellectual property.

~~(5)~~(4)(a) Except as otherwise provided in this subsection, an offense against intellectual property is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) If the offense is committed for the purpose of devising or executing any scheme or artifice to defraud or to obtain any property, ~~then the person commits~~ offender is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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

815.06 Offenses against computer users of computers, computer systems, computer networks, and electronic devices.—

(1) As used in this section, the term “user” means a person with the authority to operate or maintain a computer, computer system, computer network, or electronic device.

(2) A person commits an offense against users of computers, computer systems, computer networks, or electronic devices if he or she ~~Whoever~~ willfully, knowingly, and without authorization:

(a) Accesses or causes to be accessed any computer, computer system, or computer network, or electronic device with knowledge that such access is unauthorized;

(b) Disrupts or denies or causes the denial of the ability to transmit data ~~computer system services to or from~~ an authorized user of a computer, such computer system, computer network, or electronic device ~~services, which, in whole or in part, is owned by, under contract to, or operated for, on behalf of, or in conjunction with another;~~

(c) Destroys, takes, injures, or damages equipment or supplies used or intended to be used in a computer, computer system, ~~or computer network,~~ or electronic device;

(d) Destroys, injures, or damages any computer, computer system, ~~or computer network,~~ or electronic device; ~~or~~

(e) Introduces any computer contaminant into any computer, computer system, ~~or computer network,~~ or electronic device; ~~or~~

(f) Engages in audio or video surveillance of an individual 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

~~commits an offense against computer users.~~

~~(3)(2)(a)~~ Except as provided in paragraphs (b) and (c), a person who ~~whoever~~ violates subsection (2) (1) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A person commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if he or she ~~Whoever~~ violates subsection (2) (1) and:

1. Damages a computer, computer equipment or supplies, ~~computer supplies,~~ a computer system, or a computer network; and the ~~monetary damage or loss incurred as a result of the violation is at least \$5,000 or greater;~~

2. Commits the offense for the purpose of devising or executing any scheme or artifice to defraud or obtain property; ~~or~~

3. Interrupts or impairs a governmental operation or public communication, transportation, or supply of water, gas, or other public service; or

4. 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,

~~commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

(c) A person who ~~Whoever~~ violates subsection (2) (1) and the violation endangers human life commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the violation:

1. Endangers human life; ~~or~~

2. 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.

~~(4)(3)~~ A person who ~~Whoever~~ willfully, knowingly, and without authorization modifies equipment or supplies used or intended to be used in a computer, computer system, ~~or computer network, or electronic device~~ commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

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

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

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

~~(7)(6)~~ This section does not apply to a ~~any~~ person who:

(a) Acts pursuant to a search warrant or to an exception to a search warrant authorized by law;

(b) Acts within the scope of his or her lawful employment; or

(c) Performs authorized security operations of a government or business ~~Accesses his or her employer's computer system, computer network, computer program, or computer data when acting within the scope of his or her lawful employment.~~

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

(9) This chapter does not impose liability on a provider of an interactive computer service as defined in 47 U.S.C. 230(f), information service as defined in 47 U.S.C. 153, or communications service as defined in s. 202.11 that provides the transmission, storage, or caching of electronic communications or messages of others; other related telecommunications or commercial mobile radio service; or content provided by another person.

Section 6. Section 815.061, Florida Statutes, is created to read:

815.061 Offenses against public utilities.—

(1) As used in this section, the term “public utility” includes:

(a) A public utility or electric utility as defined in s. 366.02.

(b) A utility as defined in s. 367.021.

(c) A natural gas transmission company as defined in s. 368.103.

(d) A 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.

(e) A separate legal entity created under s. 163.01 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.

(2) A person may not willfully, knowingly, and without authorization:

(a) Gain access to a computer, computer system, computer network, or electronic device owned, operated, or used by a public utility while knowing that such access is unauthorized.

(b) Physically tamper with, insert a computer contaminant into, or otherwise transmit commands or electronic communications to a computer, computer system, computer network, or electronic device that causes a disruption in any service delivered by a public utility.

(3)(a) A person who violates paragraph (2)(a) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A person who violates paragraph (2)(b) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 7. Paragraphs (a) and (c) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(a) LEVEL 1

Florida Statute	Felony Degree	Description
24.118(3)(a)	3rd	Counterfeit or altered state lottery ticket.
212.054(2)(b)	3rd	Discretionary sales surtax; limitations, administration, and collection.
212.15(2)(b)	3rd	Failure to remit sales taxes, amount greater than \$300 but less than \$20,000.
316.1935(1)	3rd	Fleeing or attempting to elude law enforcement officer.
319.30(5)	3rd	Sell, exchange, give away certificate of title or identification number plate.
319.35(1)(a)	3rd	Tamper, adjust, change, etc., an odometer.
320.26(1)(a)	3rd	Counterfeit, manufacture, or sell registration license plates or validation stickers.
322.212 (1)(a)-(c)	3rd	Possession of forged, stolen, counterfeit, or unlawfully issued driver's license; possession of simulated identification.
322.212(4)	3rd	Supply or aid in supplying unauthorized driver's license or identification card.
322.212(5)(a)	3rd	False application for driver's license or identification card.
414.39(2)	3rd	Unauthorized use, possession, forgery, or alteration of food assistance program, Medicaid ID, value greater than \$200.
414.39(3)(a)	3rd	Fraudulent misappropriation of public assistance funds by employee/official, value more than \$200.
443.071(1)	3rd	False statement or representation to obtain or increase reemployment assistance benefits.
509.151(1)	3rd	Defraud an innkeeper, food or lodging value greater than \$300.
517.302(1)	3rd	Violation of the Florida Securities and Investor Protection Act.
562.27(1)	3rd	Possess still or still apparatus.
713.69	3rd	Tenant removes property upon which lien has accrued, value more than \$50.

Florida Statute	Felony Degree	Description
812.014(3)(c)	3rd	Petit theft (3rd conviction); theft of any property not specified in subsection (2).
812.081(2)	3rd	Unlawfully makes or causes to be made a reproduction of a trade secret.
815.04(5)(4)(a)	3rd	Offense against intellectual property (i.e., computer programs, data).
817.52(2)	3rd	Hiring with intent to defraud, motor vehicle services.
817.569(2)	3rd	Use of public record or public records information to facilitate commission of a felony.
826.01	3rd	Bigamy.
828.122(3)	3rd	Fighting or baiting animals.
831.04(1)	3rd	Any erasure, alteration, etc., of any replacement deed, map, plat, or other document listed in s. 92.28.
831.31(1)(a)	3rd	Sell, deliver, or possess counterfeit controlled substances, all but s. 893.03(5) drugs.
832.041(1)	3rd	Stopping payment with intent to defraud \$150 or more.
832.05(2)(b) & (4)(c)	3rd	Knowing, making, issuing worthless checks \$150 or more or obtaining property in return for worthless check \$150 or more.
838.15(2)	3rd	Commercial bribe receiving.
838.16	3rd	Commercial bribery.
843.18	3rd	Fleeing by boat to elude a law enforcement officer.
847.011(1)(a)	3rd	Sell, distribute, etc., obscene, lewd, etc., material (2nd conviction).
849.01	3rd	Keeping gambling house.
849.09(1)(a)-(d)	3rd	Lottery; set up, promote, etc., or assist therein, conduct or advertise drawing for prizes, or dispose of property or money by means of lottery.

Florida Statute	Felony Degree	Description
849.23	3rd	Gambling-related machines; “common offender” as to property rights.
849.25(2)	3rd	Engaging in bookmaking.
860.08	3rd	Interfere with a railroad signal.
860.13(1)(a)	3rd	Operate aircraft while under the influence.
893.13(2)(a)2.	3rd	Purchase of cannabis.
893.13(6)(a)	3rd	Possession of cannabis (more than 20 grams).
934.03(1)(a)	3rd	Intercepts, or procures any other person to intercept, any wire or oral communication.

(c) LEVEL 3

Florida Statute	Felony Degree	Description
119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
327.35(2)(b)	3rd	Felony BUI.

Florida Statute	Felony Degree	Description
328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
376.302(5)	3rd	Fraud related to reimbursement for clean-up expenses under the Inland Protection Trust Fund.
379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
379.2431 (1)(e)6.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
400.9935(4)	3rd	Operating a clinic without a license or filing false license application or other required information.
440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.
626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
697.08	3rd	Equity skimming.
790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
796.05(1)	3rd	Live on earnings of a prostitute.

Florida Statute	Felony Degree	Description
806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in fire-fighting.
806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
812.0145(2)(c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
815.04(5)(4)(b)	2nd	Computer offense devised to defraud or obtain property.
817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
817.233	3rd	Burning to defraud insurer.
817.234 (8)(b)-(c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
817.234(11)(a)	3rd	Insurance fraud; property value less than \$20,000.
817.236	3rd	Filing a false motor vehicle insurance application.
817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
817.413(2)	3rd	Sale of used goods as new.
817.505(4)	3rd	Patient brokering.
828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.

Florida Statute	Felony Degree	Description
831.29	2nd	Possession of instruments for counterfeiting drivers' licenses or identification cards.
838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
843.19	3rd	Injure, disable, or kill police dog or horse.
860.15(3)	3rd	Overcharging for repairs and parts.
870.01(2)	3rd	Riot; inciting or encouraging.
893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of university.
893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of public housing facility.
893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.

Florida Statute	Felony Degree	Description
893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.
893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.
893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
944.47 (1)(a)1.-2.	3rd	Introduce contraband to correctional facility.
944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).

Section 8. This act shall take effect October 1, 2014.

Approved by the Governor June 20, 2014.

Filed in Office Secretary of State June 20, 2014.