

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/SB 180

SPONSOR: Judiciary and Criminal Justice Committees and Senator Silver

SUBJECT: Computer Crimes

DATE: April 24, 2001 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Gardner</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	<u>Matthews</u>	<u>Johnson</u>	<u>JU</u>	<u>Favorable/CS</u>
3.	_____	_____	<u>APJ</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

The CS/CS/SB 180 substantially revises chapter of 815, F.S., to address the issue of criminal activity by persons who knowingly destroy, interfere or otherwise damage computer operations or equipment of other persons, organizations, business and financial entities and governmental agencies, as follows:

- Define several terms relevant to computer activity;
- Creates or revises several categories of felony offenses associated with the destruction or interference with computers, computer systems or computer networks, including the introduction of computer viruses;
- Provides a civil cause of action to the owner or lessee of computers, computer systems, or computer networks or any component thereof for recovery of compensable damages and provides for recovery of attorney's fees to the prevailing party;
- Requires forfeiture of property in association with the commission of computer crimes;
- Expands the jurisdictional purview of the Office of Statewide Prosecution to include computer crimes violations under chapter 815, F.S.; and
- Expands the subject-matter jurisdiction of statewide grand jury to include inquiries and return indictments for computer and computer-related crimes under chapter 815, F.S.

This bill amends the following sections of the Florida Statutes: 815.03, 815.06, 16.56, and 905.34. This bill repeals s. 815.05, F.S.

## II. Present Situation:

### Florida Computer Crimes Act of 1978

In 1978, the Legislature found that: computer-related crime was a growing problem in the business and government sectors; the potential for losses could be far greater than in traditional

white collar crimes, especially in the financial community; and there is a need for specific law to address computer crimes. It enacted the “Florida Computer Crimes Act.” *See* ch. 78-92, L.O.F., ch. 815, F.S. Few substantive changes have been made to chapter 815, F.S. The statute was written before the advent of the personal computer when virtually all computers were main frames used by government or large businesses and before the broad accessibility of the Internet and availability of personal computers.

Chapter 815, F.S., defines a number of computer terms including “computer,” “computer program,” “computer system,” “computer network,” and “property.” *See* s. 815.03, F.S. There is no definition or mention of the Internet, a personal computer, e-mail, or the World Wide Web in ch. 815, F.S. There are three categories of felony offenses for computer activity under chapter 815, F.S.:

- Offenses against intellectual property—Section 815.04, F.S., prohibits offenses against “intellectual property” which s. 815.03(1), F.S., defines as data, including programs. The statutes prohibit damaging or altering data or programs. This is third degree felony offense unless the offense is done to defraud or unlawfully obtain property, in which case it is punished as a second degree felony.
- Offenses against computer equipment or supplies— Section 815.05, F.S., prohibits offenses against computer equipment that cause damage to the actual computer. If the damage is less than \$200, the offense is a misdemeanor. If the damage is between \$200 and \$1000, the offense is a third degree felony. If the damage is over \$1000, the offense is a second degree felony.
- Offenses against computer users --Section 815.06, F.S., prohibits offenses against computer users, which cause the authorized user to be denied computer service. This is a third degree felony offense unless done to defraud or unlawfully obtain property, in which case it is punished as a second degree felony.

All three of the offenses have similar language that prohibits a person from “willfully, knowingly, and without authorization” accessing a computer or computer system, stealing or damaging computer related property, financial instruments, or other computer data.

Section 815.07, F.S., provides that the laws in ch. 815, F.S., are not to be construed so as to prevent law enforcement from using other criminal laws to punish computer-related crimes where possible.

### **Applicable Statutes for Criminal Prosecution of Computer Crimes**

According to the supervisor of the computer crimes division for the Department of Law Enforcement, several other statutes can be applied to many computer related crimes. Most of the crimes that are described in ch. 815, F.S., could be punished as some form of theft (ss. 812.014-812.081, F.S.), embezzlement (s.655.0322, F.S.), fraud (ch. 817, F.S.), or criminal mischief (s. 806.13, F.S.). The facts showing an offense was a computer-related crime do not require the state to prosecute the offense as a violation of ch. 815, F.S. The Computer Pornography and Child Exploitation Prevention Act of 1986 prohibits the use of a computer or the Internet to lure a child into sexual conduct. *See* s.847.0135, F.S. The statute prohibits collecting or sharing information about children with the intent to facilitate sexual conduct with a minor. The statute

expresses that it is also illegal to possess, transmit, sell, or otherwise distribute a visual depiction of a child in sexual conduct. The offense is punished as a third degree felony. Section 847.0135(4), F.S., prohibits operating a computer on-line service and knowingly allowing others to violate this section. A violation of this section is punished as a misdemeanor, with a possible \$2000 fine.

The Department of Law Enforcement has an office dedicated to the investigation of computer crimes. The office includes a supervisor, 2 agents, 2 analysts, a systems administrator and a trainer/researcher. This office has jurisdiction over the entire state and assists local law enforcement as needed. According to the supervisor, a few of the larger counties and municipalities have some training and expertise in investigation of computer-related crimes. Most local law enforcement agencies will call on the Department of Law Enforcement to take the lead in these investigations. In some cases, the FBI or other federal agencies will conduct investigations, as many computer-related crimes are of an interstate nature.

### III. Effect of Proposed Changes:

The CS/CS for SB 180 substantially revises chapter 815, F.S., to create and revise existing computer and computer-related crime offenses as follows:

**Section 1** amends s. 815.03, F.S., to revise the definitions applicable to the chapter for the terms, “computer network,” “computer program or computer software,” “computer services,” “computer system.” It creates definitions for “computer contaminant,” and “data.” Existing definitions for “access,” “computer,” “financial instrument,” “intellectual property,” and “property” remain unchanged.

**Section 2** repeals s. 815.05, F.S., relating to criminal offenses against computer equipment and supplies.

**Section 3** amends s. 815.06, F.S., to revise the scheme of criminal offenses against computer users, including the creation of new criminal offenses. Whoever willfully, knowingly, and without authorization engages in the following activities commits a:

- 1<sup>st</sup> degree misdemeanor offense<sup>1</sup> for modifying equipment or supplies used or intended to be used in a computer, computer system or computer network.
- 3<sup>rd</sup> degree felony offense<sup>2</sup> for accessing any computer, computer system or computer network, disrupting any computer system services in whole or in part, or destroying or otherwise damaging computer equipment or supplies commits a 3<sup>rd</sup> degree felony offense;
- 2<sup>nd</sup> degree felony offense<sup>3</sup> for violating subsection (1) and

<sup>1</sup>The first degree misdemeanor offense is punishable by a term of imprisonment up to 1 year (s.775.082, F.S. , and by a fine up to \$1,000 (s.775.083, F.S.)

<sup>2</sup> Third degree felony offenses are punishable by a term of imprisonment up to 5 years (s. 775.082, F.S.), by a fine up to \$5,000 (s. 775.083, F.S.), and by prosecution as a habitual felony offense (s. 775.084, F.S.), and by an order to complete public service (s. 775.091, F.S.).

<sup>3</sup>Second degree felony offenses are punishable by a term of imprisonment up to 15 years (s.775.082, F.S.), by a fine up to \$10,000 (s.775.083, F.S.), and by prosecution as a habitual felony offense (s. 775.084, F.S.).

- damaging the computer, computer system, or computer network resulting in damage of \$5,000 or more,
- committing the offense for the purpose of fraud, or
- interrupting or impairing governmental operations including public communication, transportation, or supply or water, gas or other public service
- 1<sup>st</sup> degree felony offense<sup>4</sup> for violating subsection (1) and endangering human life.

Subsection 4 of this section creates a civil cause of action for any owner or lessee of a computer, computer system, computer network, computer equipment, or computer supplies for compensatory damages. The court may also award attorney's fees to the prevailing party.

Subsection 5 provides for the forfeiture of any computer, computer system or computer network, computer software, or computer data owned by the defendant which was used for the criminal activity.

Subsection 6 excludes the application of this section to persons acting within the scope of his or her employment when accessing an employer's computer system, computer network, computer program, or computer data.

Subsection 7 provides a person who causes, by any means, access to a computer, computer system, or computer network from one jurisdiction to another is deemed to have personally accessed the computer, computer system, or computer network in both jurisdictions.

**Section 4** expands the jurisdictional authority of the Office of Statewide Prosecution to investigate and prosecute violations of chapter 815, F.S.

**Section 5** expands the subject matter jurisdiction of the statewide grand jury to inquire and return indictments related to violations of chapter 815, F.S.

**Section 6** provides for an effective date of July 1, 2001.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

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<sup>4</sup> First degree felony offenses are punishable by a term of imprisonment up to 30 years (s.775.082, F.S.), by a fine up to \$10,000, and by prosecution as a habitual felony offense (s. 775.084, F.S.).

**V. Economic Impact and Fiscal Note:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

The Criminal Justice Estimating Conference has not review the CS/CS/SB 180 for impact. It is possible that all of the crimes described in this bill could be prosecuted and punished under existing criminal statutes.

**VI. Technical Deficiencies:**

The bill provides that the 1<sup>st</sup> degree misdemeanor offense is punishable as provided in s. 775.084, F.S. However, s. 775.084, F.S., relates only to felony offenses and habitual offender enhancement which would not be applicable.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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