

HOUSE SUMMARY OF SENATE AMENDMENTS

HB 74

2019 Regular Session

Terry Landry

CRIME: Provides relative to computer-related crimes committed against the state

Synopsis of Senate Amendments

1. Makes technical changes.
2. Requires the district attorney to authorize a public sale or auction of forfeited property and specifies how the proceeds of the public sale or auction are to be distributed.
3. Adds certain exemptions to proposed law provisions regarding forfeiture and sale for the following:
 - (a) Property that was stolen or if the possessor of the property was not the owner and the owner did not know that the personal property was being used in the violation of proposed law.
 - (b) When a spouse, co-owner, or interest holder in the property establishes certain factors by sworn affidavit.
 - (c) Property of an internet service provider.
 - (d) Property subject to a lien, security interest, or mortgage recorded prior to the date of the offense.

Digest of Bill as Finally Passed by Senate

Proposed law creates the crime of trespass against state computers and defines it as knowingly accessing a computer owned, operated, or utilized by the state of La., its contractors, or its political subdivisions without authorization, or exceeding authorized access, when it is done for any of the following purposes:

- (1) To obtain information that has been determined to require protection against unauthorized disclosure.
- (2) To transmit or threaten to transmit information that has been determined to require protection against unauthorized disclosure.
- (3) To initiate a denial of service attack or to introduce malicious or destructive software that negatively affects the computers.

Proposed law provides the following penalties for the crime of trespass against state computers:

- (1) For a first offense, when the offense involves the activity defined in Paragraph (1) above: a fine of not more than \$3,000, imprisonment, with or without hard labor, for not more than 3 years, or both.
- (2) For a first offense, when the offense involves the activities defined in Paragraphs (2) and (3) above: a fine of not more than \$5,000, imprisonment, with or without hard labor, for not more than 3 years, or both.
- (3) For any second or subsequent offense: a fine of not more than \$10,000,

imprisonment, with or without hard labor, for not more than 5 years, or both.

In addition to the penalties listed, proposed law provides that the person convicted of a crime of trespass against state computers shall also be subject to forfeiture of any movable property used or intended to be used to commit the crime and any property which constitutes or is derived from proceeds traceable to any violation of trespass to state computers.

Proposed law provides that the district attorney shall authorize a public sale or public auction of the seized property to be conducted by a licensed auctioneer, without appraisal. Proposed law further provides that the proceeds of the public sale or public auction shall pay the cost of the sale or auction, court costs, and fees related to the seizure and storage of the property. Proposed law further provides that any remaining proceeds shall be distributed as follows:

- (1) 30% to the seizing agency in an equitable manner.
- (2) 20% to the prosecuting agency.
- (3) 20% to the criminal court fund of the parish in which the offender was prosecuted.
- (4) 30% to the public defender in the jurisdiction in which the offender was prosecuted.

Proposed law provides an exemption from forfeiture and sale for property that was stolen or if the possessor of the property was not the owner and the owner did not know that the personal property was being used in the violation of proposed law.

Proposed law further provides that property subject to forfeiture pursuant to proposed law provisions shall be exempt from forfeiture and sale when a spouse, co-owner, or interest holder in the property establishes the following by sworn affidavit executed before a notary public:

- (1) That he had no knowledge of the commission of the criminal conduct and could not have reasonably known of the conduct.
- (2) That he did not consent to the use of the property in the commission of the criminal conduct.
- (3) That he owns an interest in the property otherwise subject to forfeiture.

Proposed law provides that the property of the internet service provider shall be exempt from forfeiture.

Proposed law also provides that any seized property shall be exempt from sale if the property is subject to a lien, security interest, or mortgage recorded prior to the date of the offense, and if the applicable fees related to the property's seizure and storage are paid by a holder of a valid lien, security interest, or mortgage.

Present law provides definitions for computer-related crimes.

Proposed law expands the present law list of definitions pertaining to computer-related crimes by including a definition of "internet-connected device".

(Amends R.S. 14:73.1(12), (13), and (14); Adds R.S. 14:73.1(15) and 73.11)