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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/21/2017	.	
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The Committee on Criminal Justice (Baxley) recommended the following:

1 **Senate Substitute for Amendment (319480) (with title**
2 **amendment)**

3
4 Delete everything after the enacting clause
5 and insert:

6 Section 1. Section 812.14, Florida Statutes, is amended to
7 read:

8 812.14 Trespass and larceny with relation to utility
9 fixtures; theft of utility services.—

10 (1) As used in this section, "utility" includes any person,



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11 firm, corporation, association, or political subdivision,
12 whether private, municipal, county, or cooperative, which is
13 engaged in the sale, generation, provision, or delivery of gas,
14 electricity, heat, water, oil, sewer service, telephone service,
15 telegraph service, radio service, or telecommunication service.

16 (2) A person may not ~~It is unlawful to~~:

17 (a) Willfully alter, tamper with, damage ~~injure~~, or
18 knowingly allow damage to a ~~suffer to be injured~~ any meter,
19 meter seal, pipe, conduit, wire, line, cable, transformer,
20 amplifier, or other apparatus or device belonging to a utility
21 line service in such a manner as to cause loss or damage or to
22 prevent any meter installed for registering electricity, gas, or
23 water from registering the quantity which otherwise would pass
24 through the same; ~~to~~

25 (b) Alter the index or break the seal of any such meter; ~~in~~
26 ~~any way to~~

27 (c) Hinder or interfere in any way with the proper action
28 or accurate ~~just~~ registration of any such meter or device; ~~or~~

29 (d) Knowingly ~~to~~ use, waste, or allow ~~suffer~~ the waste, by
30 any means, of electricity, ~~or~~ gas, or water passing through any
31 such meter, wire, pipe, or fitting, or other appliance or
32 appurtenance connected with or belonging to any such utility,
33 after the ~~such~~ meter, wire, pipe, or fitting, or other appliance
34 or appurtenance has been tampered with, injured, or altered; ~~or~~

35 (e) ~~(b)~~ Connect ~~Make~~ or cause a ~~to be made~~ any connection
36 with a ~~any~~ wire, main, service pipe or other pipes, appliance,
37 or appurtenance in a ~~such~~ manner that uses ~~as to use~~, without
38 the consent of the utility, any service or any electricity, gas,
39 or water; ~~or to~~



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40 (f) Cause a utility, without its consent, to supply any to
41 ~~be supplied any~~ service or electricity, gas, or water ~~from a~~
42 ~~utility to any person, firm, or corporation or any lamp, burner,~~
43 ~~orifice, faucet, or other outlet whatsoever,~~ without reporting
44 the such service ~~being reported~~ for payment; ~~or~~

45 (g) Cause, without the consent of a utility, such
46 electricity, gas, or water to bypass ~~passing through~~ a meter
47 provided by the utility and ~~used for measuring and registering~~
48 ~~the quantity of electricity, gas, or water passing through the~~
49 ~~same; or-~~

50 (h) (e) Use or receive the direct benefit from the use of a
51 utility knowing, or under such circumstances that as would
52 induce a reasonable person to believe, that the such direct
53 benefits have resulted from any tampering with, altering of, or
54 injury to any connection, wire, conductor, meter, pipe, conduit,
55 line, cable, transformer, amplifier, or other apparatus or
56 device owned, operated, or controlled by such utility, for the
57 purpose of avoiding payment.

58 (3) The presence on the property of and in the actual
59 possession by ~~of~~ a person of any device or alteration that
60 prevents ~~affects the diversion or use of the services of a~~
61 ~~utility so as to avoid~~ the registration of the such use of
62 services by ~~or on~~ a meter installed by the utility or that
63 avoids ~~so as to otherwise avoid~~ the reporting of the use of
64 services ~~such service~~ for payment is prima facie evidence of the
65 violation of subsection (2) ~~this section~~ by such person. ~~†~~

66 However, this presumption does not apply unless:

67 (a) The presence of the such a device or alteration can be
68 attributed only to a deliberate act in furtherance of an intent



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69 to avoid payment for utility services;

70 (b) The person charged has received the direct benefit of
71 the reduction of the cost of the ~~such~~ utility services; and

72 (c) The customer or recipient of the utility services has
73 received the direct benefit of the ~~such~~ utility service for at
74 least one full billing cycle.

75 (4) A person who willfully violates subsection (2)
76 ~~paragraph (2) (a), paragraph (2) (b), or paragraph (2) (c)~~ commits
77 grand theft, punishable as provided in s. 812.014.

78 (5) ~~It is unlawful for~~ A person or entity that owns,
79 leases, or subleases a property may not ~~to~~ permit a tenant or
80 occupant to use utility services knowing, or under such
81 circumstances as would induce a reasonable person to believe,
82 that such utility services have been connected in violation of
83 subsection (2) ~~paragraph (2) (a), paragraph (2) (b), or paragraph~~
84 ~~(2) (c)~~.

85 (6) It is prima facie evidence that an owner, lessor, or
86 sublessor intended ~~It is prima facie evidence of a person's~~
87 ~~intent~~ to violate subsection (5) if:

88 (a) A controlled substance and materials for manufacturing
89 the controlled substance intended for sale or distribution to
90 another were found in a dwelling or structure;

91 (b) The dwelling or structure was ~~has been~~ visibly modified
92 to accommodate the use of equipment to grow cannabis ~~marijuana~~
93 indoors, including, but not limited to, the installation of
94 equipment to provide additional air conditioning, equipment to
95 provide high-wattage lighting, or equipment for hydroponic
96 cultivation; and

97 (c) The person or entity that owned, leased, or subleased



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98 the dwelling or structure knew of, or did so under such
99 circumstances as would induce a reasonable person to believe in,
100 the presence of a controlled substance and materials for
101 manufacturing a controlled substance in the dwelling or
102 structure, regardless of whether the person or entity was
103 involved in the manufacture or sale of a controlled substance or
104 was in actual possession of the dwelling or structure.

105 (7) An owner, lessor, or sublessor ~~A person~~ who willfully
106 violates subsection (5) commits a misdemeanor of the first
107 degree, punishable as provided in s. 775.082 or s. 775.083.
108 Prosecution for a violation of subsection (5) does not preclude
109 prosecution for theft pursuant to subsection (8) or s. 812.014.

110 (8) Theft of utility services for the purpose of
111 facilitating the manufacture of a controlled substance is grand
112 theft, punishable as provided in s. 812.014.

113 (9) It is prima facie evidence of a person's intent to
114 violate subsection (8) if:

115 (a) The person committed theft of utility services
116 resulting in a dwelling, as defined in s. 810.011, or a
117 structure, as defined in s. 810.011, receiving unauthorized
118 access to utility services;

119 (b) A controlled substance and materials for manufacturing
120 the controlled substance were found in the dwelling or
121 structure; and

122 (c) The person knew or should have known of the presence of
123 the controlled substance and materials for manufacturing the
124 controlled substance in the dwelling or structure, regardless of
125 whether the person was involved in the manufacture of the
126 controlled substance.



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127 (10) Whoever is found in a civil action to have violated
128 this section is liable to the utility involved in an amount
129 equal to 3 times the amount of services unlawfully obtained or
130 \$3,000, whichever is greater.

131 (11) (a) For purposes of determining a defendant's liability
132 for civil damages under subsection (10) or criminal restitution
133 for the theft of electricity, the amount of civil damages or a
134 restitution order must include all of the following amounts:

135 1. The costs to repair or replace damaged property owned by
136 a utility, including reasonable labor costs.

137 2. Reasonable costs for the use of specialized equipment to
138 investigate or calculate the amount of unlawfully obtained
139 electricity services, including reasonable labor costs.

140 3. The amount of unlawfully obtained electricity services.

141 (b) A prima facie showing of the amount of unlawfully
142 obtained electricity services may be based on any methodology
143 reasonably relied upon by utilities to estimate such losses. The
144 methodology may consider the estimated start date of the theft
145 and the estimated daily or hourly use of electricity. Once a
146 prima facie showing has been made, the burden shifts to the
147 defendant to demonstrate that the loss is other than that
148 claimed by the utility.

149 1. The estimated start date of a theft may be based upon
150 one or more of the following:

151 a. The date of an overload notification from a transformer,
152 or the tripping of a transformer, that the utility reasonably
153 believes was overloaded as a result of the theft of electricity.

154 b. The date the utility verified a substantive difference
155 between the amount of electricity used at a property and the



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- 156 amount billed to the accountholder.
- 157 c. The date the utility or a law enforcement officer
158 located a tap or other device bypassing a meter.
- 159 d. The date the utility or a law enforcement officer
160 observed or verified meter tampering.
- 161 e. The maturity of a cannabis crop found in a dwelling or
162 structure using unlawfully obtained electricity services the
163 utility or a law enforcement officer reasonably believes to have
164 been grown in the dwelling or structure.
- 165 f. The date the utility or a law enforcement agency
166 received a report of suspicious activity potentially indicating
167 the presence of the unlawful cultivation of cannabis in a
168 dwelling or structure or the date a law enforcement officer or
169 an employee or contractor of a utility observes such suspicious
170 activity.
- 171 g. The date when a utility observes a significant change in
172 metered energy usage.
- 173 h. The date when an account with the utility was opened for
174 a property that receives both metered and unlawfully obtained
175 electricity services.
- 176 i. Any other facts or data reasonably relied upon by
177 utilities to estimate the start date of a theft of electricity.
- 178 2. The estimated average daily or hourly use of the
179 electricity may be based upon any, or a combination, of the
180 following:
- 181 a. The load imposed by the fixtures, appliances, or
182 equipment powered by unlawfully obtained electricity services.
- 183 b. Recordings by the utility of the amount of electricity
184 used by a property or the difference between the amount used and



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185 the amount billed.

186 c. A comparison of the amount of electricity historically
187 used by the property and the amount billed while the property
188 was using unlawfully obtained electricity.

189 d. A reasonable analysis of a meter that was altered or
190 tampered with to prevent the creation of an accurate record of
191 the amount of electricity obtained.

192 e. Any other facts or data reasonably relied upon by
193 utilities to estimate the amount of unlawfully obtained
194 electricity services.

195 (12) A court order requiring a defendant to pay restitution
196 for damages to the property of a utility or for the theft of
197 electricity need only be based on a conviction for a criminal
198 offense that is causally connected to the damages or losses and
199 bears a significant relationship to those damages or losses. A
200 conviction for a violation of this section is not a prerequisite
201 for a restitution order. Criminal offenses that bear a
202 significant relationship and are causally connected to a
203 violation of this section include, but are not limited to,
204 offenses relating to the unlawful cultivation of cannabis in a
205 dwelling or structure if the theft of electricity was used to
206 facilitate the growth of the cannabis.

207 (13) The amount of restitution that a defendant may be
208 ordered to pay is not limited by the monetary threshold of any
209 criminal charge on which the restitution order is based.

210 (14) ~~(11)~~ This section does not apply to licensed and
211 certified electrical contractors while such persons are
212 performing usual and ordinary service in accordance with
213 recognized standards.



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214 Section 2. Paragraph (c) of subsection (2) of section
215 812.014, Florida Statutes, is amended to read:

216 812.014 Theft.—

217 (2)

218 (c) It is grand theft of the third degree and a felony of
219 the third degree, punishable as provided in s. 775.082, s.
220 775.083, or s. 775.084, if the property stolen is:

221 1. Valued at \$300 or more, but less than \$5,000.

222 2. Valued at \$5,000 or more, but less than \$10,000.

223 3. Valued at \$10,000 or more, but less than \$20,000.

224 4. A will, codicil, or other testamentary instrument.

225 5. A firearm.

226 6. A motor vehicle, except as provided in paragraph (a).

227 7. Any commercially farmed animal, including any animal of
228 the equine, bovine, or swine class or other grazing animal; a
229 bee colony of a registered beekeeper; and aquaculture species
230 raised at a certified aquaculture facility. If the property
231 stolen is aquaculture species raised at a certified aquaculture
232 facility, then a \$10,000 fine shall be imposed.

233 8. Any fire extinguisher.

234 9. Any amount of citrus fruit consisting of 2,000 or more
235 individual pieces of fruit.

236 10. Taken from a designated construction site identified by
237 the posting of a sign as provided for in s. 810.09(2)(d).

238 11. Any stop sign.

239 12. Anhydrous ammonia.

240 13. Any amount of a controlled substance as defined in s.
241 893.02. Notwithstanding any other law, separate judgments and
242 sentences for theft of a controlled substance under this



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243 subparagraph and for any applicable possession of controlled
244 substance offense under s. 893.13 or trafficking in controlled
245 substance offense under s. 893.135 may be imposed when all such
246 offenses involve the same amount or amounts of a controlled
247 substance.

248 14. Utility services, in a manner as specified in s.
249 812.14.

250

251 However, if the property is stolen within a county that is
252 subject to a state of emergency declared by the Governor under
253 chapter 252, the property is stolen after the declaration of
254 emergency is made, and the perpetration of the theft is
255 facilitated by conditions arising from the emergency, the
256 offender commits a felony of the second degree, punishable as
257 provided in s. 775.082, s. 775.083, or s. 775.084, if the
258 property is valued at \$5,000 or more, but less than \$10,000, as
259 provided under subparagraph 2., or if the property is valued at
260 \$10,000 or more, but less than \$20,000, as provided under
261 subparagraph 3. As used in this paragraph, the term "conditions
262 arising from the emergency" means civil unrest, power outages,
263 curfews, voluntary or mandatory evacuations, or a reduction in
264 the presence of or the response time for first responders or
265 homeland security personnel. For purposes of sentencing under
266 chapter 921, a felony offense that is reclassified under this
267 paragraph is ranked one level above the ranking under s.
268 921.0022 or s. 921.0023 of the offense committed.

269 Section 3. This act shall take effect October 1, 2017.

270

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



272 And the title is amended as follows:

273 Delete everything before the enacting clause
274 and insert:

275 A bill to be entitled
276 An act relating to the unlawful acquisition of utility
277 services; amending s. 812.14, F.S.; revising the
278 elements that constitute theft of utilities;
279 clarifying that the presence of certain devices and
280 alterations on the property of, and the actual
281 possession by, a person constitutes prima facie
282 evidence of a violation; clarifying that certain
283 evidence of controlled substance manufacture in a
284 leased dwelling constitutes prima facie evidence of a
285 violation by an owner, lessor, sublessor, or a person
286 acting on behalf of such persons; clarifying that
287 specified circumstances create prima facie evidence of
288 theft of utility services for the purpose of
289 facilitating the manufacture of a controlled
290 substance; revising such circumstances; specifying the
291 types of damages that may be recovered in as civil
292 damages or restitution in a criminal case for damaging
293 property of a utility or for the theft of electricity
294 services; specifying the methods and bases used to
295 determine and assess damages in a civil action or
296 restitution in a criminal case for damaging property
297 of a utility or for the theft of electricity services;
298 making technical changes; amending s. 812.014, F.S.;
299 conforming provisions to changes made by the act;
300 providing an effective date.