

By Senator Villalobos

37-833-01

See HB

1 A bill to be entitled
2 An act relating to burglary; creating s.
3 810.015, F.S.; providing legislative findings
4 and intent; providing for retroactive
5 operation; amending s. 810.02, F.S.; revising
6 the definition of burglary; reenacting s.
7 943.325(1)(a), F.S.; providing an effective
8 date.

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

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12 Section 1. Section 810.015, Florida Statutes, is
13 created to read:

14 810.015 Legislative findings and intent; burglary.--

15 (1) The Legislature finds that the case of Delgado v.
16 State, Slip Opinion No. SC88638 (Fla. 2000) was decided
17 contrary to legislative intent and the case law of this state
18 relating to burglary prior to Delgado v. State. The
19 Legislature finds that in order for a burglary to occur, it is
20 not necessary for the licensed or invited person to remain in
21 the dwelling, structure, or conveyance surreptitiously.

22 (2) It is the intent of the Legislature that the
23 holding in Delgado v. State, Slip Opinion No. SC88638 be
24 nullified. It is further the intent of the Legislature that s.
25 810.02(1)(a) be construed in conformity with Raleigh v. State,
26 705 So.2d 1324(Fla. 1997); Jimenez v. State, 703 So.2d
27 437(Fla. 1997); Robertson v. State, 699 So.2d 1343(Fla. 1997);
28 Routly v. State, 440 So.2d 1257(Fla. 1983); and Ray v. State,
29 522 So.2d 963(Fla. 3rd DCA, 1988). This subsection shall
30 operate retroactively to February 1, 2000.

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1 (3) It is further the intent of the Legislature that
2 consent remain as affirmative defense to burglary and that the
3 lack of consent may be proven by circumstantial evidence.

4 Section 2. Section 810.02, Florida Statutes, is
5 amended to read:

6 810.02 Burglary.--

7 (1)(a) For offenses committed on or before July 1,
8 2001, "burglary" means entering or remaining in a dwelling, a
9 structure, or a conveyance with the intent to commit an
10 offense therein, unless the premises are at the time open to
11 the public or the defendant is licensed or invited to enter or
12 remain.

13 (b) For offenses committed after July 1, 2001,
14 "burglary" means:

15 1. Entering a dwelling, a structure, or a conveyance
16 with the intent to commit an offense therein, unless the
17 premises are at the time open to the public or the defendant
18 is licensed or invited to enter; or

19 2. Notwithstanding a licensed or invited entry,
20 remaining in a dwelling, structure, or conveyance:

21 a. Surreptitiously, with the intent to commit an
22 offense therein;

23 b. After permission to remain therein has been
24 withdrawn, with the intent to commit an offense therein; or

25 c. To commit or attempt to commit a forcible felony,
26 as defined in s. 776.08.

27 (2) Burglary is a felony of the first degree,
28 punishable by imprisonment for a term of years not exceeding
29 life imprisonment or as provided in s. 775.082, s. 775.083, or
30 s. 775.084, if, in the course of committing the offense, the
31 offender:

- 1 (a) Makes an assault or battery upon any person; or
2 (b) Is or becomes armed within the dwelling,
3 structure, or conveyance, with explosives or a dangerous
4 weapon; or
5 (c) Enters an occupied or unoccupied dwelling or
6 structure, and:
7 1. Uses a motor vehicle as an instrumentality, other
8 than merely as a getaway vehicle, to assist in committing the
9 offense, and thereby damages the dwelling or structure; or
10 2. Causes damage to the dwelling or structure, or to
11 property within the dwelling or structure in excess of \$1,000.
12 (3) Burglary is a felony of the second degree,
13 punishable as provided in s. 775.082, s. 775.083, or s.
14 775.084, if, in the course of committing the offense, the
15 offender does not make an assault or battery and is not and
16 does not become armed with a dangerous weapon or explosive,
17 and the offender enters or remains in a:
18 (a) Dwelling, and there is another person in the
19 dwelling at the time the offender enters or remains;
20 (b) Dwelling, and there is not another person in the
21 dwelling at the time the offender enters or remains;
22 (c) Structure, and there is another person in the
23 structure at the time the offender enters or remains; or
24 (d) Conveyance, and there is another person in the
25 conveyance at the time the offender enters or remains.
26 (4) Burglary is a felony of the third degree,
27 punishable as provided in s. 775.082, s. 775.083, or s.
28 775.084, if, in the course of committing the offense, the
29 offender does not make an assault or battery and is not and
30 does not become armed with a dangerous weapon or explosive,
31 and the offender enters or remains in a:

1 (a) Structure, and there is not another person in the
2 structure at the time the offender enters or remains; or

3 (b) Conveyance, and there is not another person in the
4 conveyance at the time the offender enters or remains.

5 Section 3. For the purposes of incorporating the
6 amendment to section 810.02, Florida Statutes, in references
7 thereto, paragraph (a) of subsection (1) of section 943.325,
8 Florida Statutes, is reenacted to read:

9 943.325 Blood specimen testing for DNA analysis.--

10 (1)(a) Any person who is convicted or was previously
11 convicted in this state for any offense or attempted offense
12 defined in chapter 794, chapter 800, s. 782.04, s. 784.045, s.
13 810.02, s. 812.133, or s. 812.135 and who is either:

14 1. Still incarcerated, or

15 2. No longer incarcerated but is within the confines
16 of the legal state boundaries and is on probation, community
17 control, parole, conditional release, control release, or any
18 other court-ordered supervision,

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20 shall be required to submit two specimens of blood to a
21 Department of Law Enforcement designated testing facility as
22 directed by the department.

23 Section 4. This act shall take effect upon becoming a
24 law.

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LEGISLATIVE SUMMARY

Revises the definition and criteria of burglary to correct a court opinion determined to be contrary to legislative intent and prior Florida case law. Retains the current definition of burglary for offenses committed on or before July 1, 2001, and revises the definition for offenses committed after July 1, 2001, to clarify the distinction between merely entering a dwelling, structure, or conveyance with intent to commit an offense and remaining, surreptitiously or after permission to remain has been withdrawn, to commit an offense, or to commit a forcible felony.