

HB 1807

2004

1 A bill to be entitled

2 An act relating to burglary; amending s. 810.015, F.S.;
3 providing legislative findings and intent, providing for
4 special rules of statutory construction; providing
5 retroactive applicability; providing an effective date.
6

7 WHEREAS, the Legislature finds that the holding in the
8 case of Delgado v. State, 776 So.2d 233 (Fla. 2000) was
9 previously rejected by the Legislature in s. 810.015, F.S., and

10 WHEREAS, the Legislature finds that Delgado v. State, 776
11 So.2d 233 (Fla. 2000) was unjust and unnecessarily disruptive
12 of the law of burglary, and

13 WHEREAS, the Legislature declared its intention in Chapter
14 2001-58, Laws of Florida, that the holding of Delgado v. State,
15 776 So.2d 233 (Fla. 2000) be nullified, and

16 WHEREAS, the Legislature finds that the continued
17 application of the holding of Delgado v. State, 776 So.2d 233
18 (Fla. 2000), unnecessarily perpetuates the manifest injustice
19 of its holding to other cases, and

20 WHEREAS, the Legislature finds that contrary to the
21 representation by the majority in Delgado v. State, 776 So.2d
22 233 (Fla. 2000), the State of New York does not restrict its
23 "remaining in" burglaries exclusively to those in which the
24 defendant remains "surreptitiously" and that the two cases cited
25 in Delgado v. State, 776 So.2d 233 (Fla. 2000) by the majority
26 do not judicially insert such a requirement into the New York
27 statute, and

28 WHEREAS, the Legislature finds that the Florida Supreme
29 Court has no authority to add substantive elements to crimes

HB 1807

2004

30 notwithstanding the practice of other states' courts, other
31 states' legislatures, the Model Penal Code, the Model Penal
32 Code commentary, or "other scholars", and

33 WHEREAS, the Legislature finds that the Florida Supreme
34 Court has the authority and responsibility "to reconsider and
35 correct erroneous rulings in exceptional circumstances and
36 where reliance on the previous decision would result in
37 manifest injustice. . ." State v. Owens, 696 So.2d 715, 720
38 (Fla. 1997), and

39 WHEREAS, the Legislature finds that the case of Delgado v.
40 State, 776 So.2d 233 (Fla. 2000), results in decisions which
41 are manifestly unjust because it has caused the reversal of
42 convictions of individuals who were tried and convicted of
43 burglary, or felony murder based on burglary, under the
44 interpretation of the burglary statute approved by the
45 Legislature, in order to grant relief to undeserving defendants
46 under an interpretation of the burglary statute expressly
47 rejected by the Legislature, based solely on the Florida
48 Supreme Court's philosophical disagreement with the policy
49 decision of the Legislature with respect to burglary, and

50 WHEREAS, the Legislature finds that s. 810.015, F.S. was
51 written to restore the law of burglary to what it was on
52 February 1, 2000, applying the case law cited therein, NOW,
53 THEREFORE;

54
55 Be It Enacted by the Legislature of the State of Florida:

56
57 Section 1. Section 810.015, Florida Statutes, is amended
58 to read:

HB 1807

2004

59 810.015 Legislative findings and intent; burglary.--

60 (1) The Legislature finds that the case of *Delgado v.*
61 *State*, 776 So.2d 233(Fla. 2000), ~~Slip Opinion No. SC88638~~ was
62 decided contrary to legislative intent and the case law of this
63 state relating to burglary prior to *Delgado v. State*. The
64 Legislature finds that in order for a burglary to occur, it is
65 not necessary for the licensed or invited person to remain in
66 the dwelling, structure, or conveyance surreptitiously.

67 (2) It is the intent of the Legislature that the holding
68 in *Delgado v. State*, 776 So.2d 233 (Fla. 2000) ~~Slip Opinion No.~~
69 ~~SC88638~~ be nullified. It is further the intent of the
70 Legislature that s. 810.02(1)(a) be construed in conformity with
71 *Raleigh v. State*, 705 So. 2d 1324 (Fla. 1997); *Jimenez v. State*,
72 703 So. 2d 437 (Fla. 1997); *Robertson v. State*, 699 So. 2d 1343
73 (Fla. 1997); *Routly v. State*, 440 So. 2d 1257 (Fla. 1983); and
74 *Ray v. State*, 522 So. 2d 963 (Fla. 3rd DCA, 1988). This
75 subsection shall operate retroactively to February 1, 2000.

76 (3) It is further the intent of the Legislature that
77 consent remain an affirmative defense to burglary and that the
78 lack of consent may be proven by circumstantial evidence.

79 (4) The Legislature finds that the cases of *Floyd v.*
80 *State*, 850 So.2d 383 (Fla. 2002); *Fitzpatrick v. State*, 859
81 *So.2d 486 (Fla. 2002); and *State v. Ruiz/State v. Braggs*, Slip*
82 *Opinion No.s SC02-389/SC02-524* were decided contrary to the
83 Legislative intent expressed in this section. The Legislature
84 finds that these cases were decided in such a manner as to give
85 subsection (1) no effect. The February 1, 2000 date reflected in
86 subsection (2) does not refer to an arbitrary date relating to
87 the date offenses were committed, but to a date before which the

HB 1807

2004

88 law relating to burglary was untainted by Delgado v. State, 776
 89 So.2d 233(Fla. 2000).

90 (5) The Legislature provides the following special rules
 91 of construction to apply to this section:

92 (a) All subsections in this section shall be construed to
 93 give effect to subsection (1);

94 (b) Notwithstanding s. 775.021(1), this section shall be
 95 construed to give the interpretation of the burglary statute
 96 announced in Delgado v. State, 776 So.2d 233(Fla. 2000), and its
 97 progeny, no effect; and

98 (c) If language in this section is susceptible to
 99 differing constructions, it shall be construed in such manner as
 100 to approximate the law relating to burglary as if Delgado v.
 101 State, 776 So.2d 233(Fla. 2000) was never issued.

102 (6) This section shall apply retroactively.

103 Section 2. This act shall take effect upon becoming a law.