

HB 1807, Engrossed 1

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

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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, NOW, THEREFORE;

53
 54 Be It Enacted by the Legislature of the State of Florida:

55
 56 Section 1. Section 810.015, Florida Statutes, is amended
 57 to read:

58 810.015 Legislative findings and intent; burglary.--

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

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

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

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

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

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

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

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

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

101 (6) This section shall apply retroactively.

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