

By Senator Smith

14-1682-04

1 A bill to be entitled
2 An act relating to burglary; amending s.
3 810.015, F.S.; providing legislative findings
4 with respect to specified court decisions
5 concerning the offense of burglary; providing
6 special rules of statutory construction
7 applicable to the offense of burglary;
8 providing for retroactive operation; providing
9 an effective date.

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11 WHEREAS, the Legislature finds that the case of Delgado
12 v. State, 776 So. 2d 233 (Fla. 2000) was previously rejected
13 by the Legislature in section 810.015, Florida Statutes, and

14 WHEREAS, the Legislature finds that Delgado v. State,
15 776 So. 2d 233 (Fla. 2000) was unjust and unnecessarily
16 disruptive of the law of burglary, and

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

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

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

1 WHEREAS, the Legislature finds that the Florida Supreme
2 Court has no authority to add substantive elements to crimes,
3 notwithstanding the practice of other states' courts, other
4 states' legislatures, the Model Penal Code, the Model Penal
5 Code commentary, or "other scholars," and

6 WHEREAS, the Legislature finds that the Florida Supreme
7 Court has the authority and responsibility "to reconsider and
8 correct erroneous rulings in exceptional circumstances and
9 where reliance on the previous decision would result in
10 manifest injustice..." State v. Owens, 696 So. 2d 715, 720
11 (Fla. 1997), and

12 WHEREAS, the Legislature finds that the case of Delgado
13 v. State, 776 So. 2d 233 (Fla. 2000), results in decisions
14 that are manifestly unjust because it has caused the reversal
15 of convictions of individuals who were tried and convicted of
16 burglary, or felony murder based on burglary, under the
17 interpretation of the burglary statute approved by the
18 Legislature, in order to grant relief to undeserving
19 defendants under an interpretation of the burglary statute
20 expressly rejected by the Legislature, based solely on the
21 Florida Supreme Court's philosophical disagreement with the
22 policy decisions of the Legislature with respect to burglary,
23 and

24 WHEREAS, the Legislature finds that section 810.015,
25 Florida Statutes, was enacted to restore the law of burglary
26 to what it was on February 1, 2000, applying the case law
27 cited therein, NOW, THEREFORE,

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

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1 Section 1. Section 810.015, Florida Statutes, is
2 amended to read:

3 810.015 Legislative findings and intent; burglary.--

4 (1) The Legislature finds that the case of Delgado v.
5 State, 776 So. 2d 233 ~~Slip Opinion No. SC88638~~ (Fla. 2000) was
6 decided contrary to legislative intent and the case law of
7 this state relating to burglary prior to Delgado v. State. The
8 Legislature finds that in order for a burglary to occur, it is
9 not necessary for the licensed or invited person to remain in
10 the dwelling, structure, or conveyance surreptitiously.

11 (2) It is the intent of the Legislature that the
12 holding in Delgado v. State, 776 So. 2d 233 (Fla. 2000) ~~Slip~~
13 ~~Opinion No. SC88638~~ be nullified. It is further the intent of
14 the Legislature that s. 810.02(1)(a) be construed in
15 conformity with Raleigh v. State, 705 So. 2d 1324 (Fla. 1997);
16 Jimenez v. State, 703 So. 2d 437 (Fla. 1997); Robertson v.
17 State, 699 So. 2d 1343 (Fla. 1997); Routly v. State, 440 So.
18 2d 1257 (Fla. 1983); and Ray v. State, 522 So. 2d 963 (Fla.
19 3rd DCA, 1988). This subsection shall operate retroactively to
20 February 1, 2000.

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

24 (4) The Legislature finds that the cases of Floyd v.
25 State, 850 So. 2d 383 (Fla. 2002); Fitzpatrick v. State, 859
26 So. 2d 486 (Fla. 2002); and State v. Ruiz/State v. Braggs,
27 Slip Opinion Nos. SC02-389/SC02-524 were decided contrary to
28 the legislative intent expressed in this section. The
29 Legislature finds that these cases were decided in such a
30 manner as to give subsection (1) no effect. The February 1,
31 2000 date in subsection (2) does not refer to an arbitrary

1 date relating to the date offenses were committed, but to a
2 date before which the law relating to burglary was untainted
3 by Delgado v. State, 776 So. 2d 233 (Fla. 2000).

4 (5) The following special rules of construction apply
5 to this section:

6 (a) All subsections of this section shall be construed
7 to give effect to subsection (1);

8 (b) Notwithstanding s. 775.021(1), this section shall
9 be construed to give the interpretation of s. 810.02(1)(a)
10 announced in Delgado v. State, 776 So. 2d 233 (Fla. 2000), and
11 its progeny, no effect; and

12 (c) If any provision of this section is susceptible to
13 differing constructions, it shall be construed in such manner
14 as to approximate the law relating to burglary as if Delgado
15 v. State, 776 So. 2d 233 (Fla. 2000) was never issued.

16 (6) This section shall apply retroactively.

17 Section 2. Section 810.02, Florida Statutes, reads:
18 810.02 Burglary.--

19 (1)(a) For offenses committed on or before July 1,
20 2001, "burglary" means entering or remaining in a dwelling, a
21 structure, or a conveyance with the intent to commit an
22 offense therein, unless the premises are at the time open to
23 the public or the defendant is licensed or invited to enter or
24 remain.

25 (b) For offenses committed after July 1, 2001,
26 "burglary" means:

27 1. Entering a dwelling, a structure, or a conveyance
28 with the intent to commit an offense therein, unless the
29 premises are at the time open to the public or the defendant
30 is licensed or invited to enter; or

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

3 a. Surreptitiously, with the intent to commit an
4 offense therein;

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

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

9 (2) Burglary is a felony of the first degree,
10 punishable by imprisonment for a term of years not exceeding
11 life imprisonment or as provided in s. 775.082, s. 775.083, or
12 s. 775.084, if, in the course of committing the offense, the
13 offender:

14 (a) Makes an assault or battery upon any person; or

15 (b) Is or becomes armed within the dwelling,
16 structure, or conveyance, with explosives or a dangerous
17 weapon; or

18 (c) Enters an occupied or unoccupied dwelling or
19 structure, and:

20 1. Uses a motor vehicle as an instrumentality, other
21 than merely as a getaway vehicle, to assist in committing the
22 offense, and thereby damages the dwelling or structure; or

23 2. Causes damage to the dwelling or structure, or to
24 property within the dwelling or structure in excess of \$1,000.

25 (3) Burglary is a felony of the second degree,
26 punishable as provided in s. 775.082, s. 775.083, or s.
27 775.084, if, in the course of committing the offense, the
28 offender does not make an assault or battery and is not and
29 does not become armed with a dangerous weapon or explosive,
30 and the offender enters or remains in a:

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- 1 (a) Dwelling, and there is another person in the
2 dwelling at the time the offender enters or remains;
3 (b) Dwelling, and there is not another person in the
4 dwelling at the time the offender enters or remains;
5 (c) Structure, and there is another person in the
6 structure at the time the offender enters or remains; or
7 (d) Conveyance, and there is another person in the
8 conveyance at the time the offender enters or remains.
9 (4) Burglary is a felony of the third degree,
10 punishable as provided in s. 775.082, s. 775.083, or s.
11 775.084, if, in the course of committing the offense, the
12 offender does not make an assault or battery and is not and
13 does not become armed with a dangerous weapon or explosive,
14 and the offender enters or remains in a:
15 (a) Structure, and there is not another person in the
16 structure at the time the offender enters or remains; or
17 (b) Conveyance, and there is not another person in the
18 conveyance at the time the offender enters or remains.

19 Section 3. This act shall take effect upon becoming a
20 law.

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23 SENATE SUMMARY

24 Provides special rules of statutory construction with
25 respect to the burglary statute. Provides for
26 retroactive application.
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