

By the Committee on Criminal Justice; and Senator Smith

307-2445-04

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

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

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

810.015 Legislative findings and intent; burglary.--

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

(2) It is the intent of the Legislature that the
holding in Delgado v. State, 776 So. 2d 233 (Fla. 2000) ~~Slip
Opinion No. SC88638~~ be nullified. It is further the intent of
the Legislature that s. 810.02(1)(a) be construed in
conformity with Raleigh v. State, 705 So. 2d 1324 (Fla. 1997);
Jimenez v. State, 703 So. 2d 437 (Fla. 1997); Robertson v.
State, 699 So. 2d 1343 (Fla. 1997); Routly v. State, 440 So.
2d 1257 (Fla. 1983); and Ray v. State, 522 So. 2d 963 (Fla.

1 3rd DCA, 1988). This subsection shall operate retroactively to
2 February 1, 2000.

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

6 (4) The Legislature finds that the cases of Floyd v.
7 State, 850 So. 2d 383 (Fla. 2002); Fitzpatrick v. State, 859
8 So. 2d 486 (Fla. 2002); and State v. Ruiz/State v. Braggs,
9 Slip Opinion Nos. SC02-389/SC02-524 were decided contrary to
10 the legislative intent expressed in this section. The
11 Legislature finds that these cases were decided in such a
12 manner as to give subsection (1) no effect. The February 1,
13 2000 date in subsection (2) does not refer to an arbitrary
14 date relating to the date offenses were committed, but to a
15 date before which the law relating to burglary was untainted
16 by Delgado v. State, 776 So. 2d 233 (Fla. 2000).

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

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

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

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

29 (6) This section shall apply retroactively.

30 Section 2. Section 810.02, Florida Statutes, reads:

31 810.02 Burglary.--

1 (1)(a) For offenses committed on or before July 1,
2 2001, "burglary" means entering or remaining in a dwelling, a
3 structure, or a conveyance with the intent to commit an
4 offense therein, unless the premises are at the time open to
5 the public or the defendant is licensed or invited to enter or
6 remain.

7 (b) For offenses committed after July 1, 2001,
8 "burglary" means:

9 1. Entering a dwelling, a structure, or a conveyance
10 with the intent to commit an offense therein, unless the
11 premises are at the time open to the public or the defendant
12 is licensed or invited to enter; or

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

15 a. Surreptitiously, with the intent to commit an
16 offense therein;

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

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

21 (2) Burglary is a felony of the first degree,
22 punishable by imprisonment for a term of years not exceeding
23 life imprisonment or as provided in s. 775.082, s. 775.083, or
24 s. 775.084, if, in the course of committing the offense, the
25 offender:

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

27 (b) Is or becomes armed within the dwelling,
28 structure, or conveyance, with explosives or a dangerous
29 weapon; or

30 (c) Enters an occupied or unoccupied dwelling or
31 structure, and:

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

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

6 (3) Burglary is a felony of the second degree,
7 punishable as provided in s. 775.082, s. 775.083, or s.
8 775.084, if, in the course of committing the offense, the
9 offender does not make an assault or battery and is not and
10 does not become armed with a dangerous weapon or explosive,
11 and the offender enters or remains in a:

12 (a) Dwelling, and there is another person in the
13 dwelling at the time the offender enters or remains;

14 (b) Dwelling, and there is not another person in the
15 dwelling at the time the offender enters or remains;

16 (c) Structure, and there is another person in the
17 structure at the time the offender enters or remains; or

18 (d) Conveyance, and there is another person in the
19 conveyance at the time the offender enters or remains.

20 (4) Burglary is a felony of the third degree,
21 punishable as provided in s. 775.082, s. 775.083, or s.
22 775.084, if, in the course of committing the offense, the
23 offender does not make an assault or battery and is not and
24 does not become armed with a dangerous weapon or explosive,
25 and the offender enters or remains in a:

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

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

30 Section 3. This act shall take effect upon becoming a
31 law.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 2856

Deletes a preamble ("Whereas" clauses).