

By the Committee on Criminal Justice; and Senator Joyner

591-03004-09

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1 A bill to be entitled
2 An act relating to theft; amending s. 812.014, F.S.;
3 increasing the minimum amount of value attributed to
4 certain emergency medical equipment and law
5 enforcement equipment for the theft to reach the
6 threshold for a second-degree felony; increasing the
7 minimum value attributed to certain property for the
8 theft to reach the threshold for a third-degree
9 felony; authorizing a law enforcement officer who has
10 probable cause to believe that a defendant has
11 committed retail theft to issue a notice to appear in
12 lieu of arresting the defendant under certain
13 circumstances; authorizing a state attorney to
14 establish a retail-theft diversion program for the
15 purpose of diverting defendants from criminal
16 prosecution if the defendant meets certain criteria;
17 providing eligibility criteria for participating in a
18 retail-theft diversion program; requiring the state
19 attorney to mail a notice to appear to a defendant
20 upon referral to a diversion program; setting forth
21 the conditions that each participant in the retail-
22 theft diversion program must complete; providing that
23 a defendant may be prosecuted for the retail theft if
24 all conditions in the diversion program are not
25 fulfilled; authorizing a state attorney to collect a
26 fee from each participant in the program; setting a
27 limit on the fee for each defendant; amending s.
28 812.015, F.S.; increasing the value attributed to
29 property taken during the commission of retail theft

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30 to reach the threshold amount for a third-degree
31 felony offense; providing an effective date.

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

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35 Section 1. Subsection (2) of section 812.014, Florida
36 Statutes, is amended, and paragraphs (e) and (f) are added to
37 subsection (3) of that section, to read:

38 812.014 Theft.—

39 (2)(a)1. If the property stolen is valued at \$100,000 or
40 more or is a semitrailer that was deployed by a law enforcement
41 officer; or

42 2. If the property stolen is cargo valued at \$50,000 or
43 more that has entered the stream of interstate or intrastate
44 commerce from the shipper's loading platform to the consignee's
45 receiving dock; or

46 3. If the offender commits any grand theft and:

47 a. In the course of committing the offense the offender
48 uses a motor vehicle as an instrumentality, other than merely as
49 a getaway vehicle, to assist in committing the offense and
50 thereby damages the real property of another; or

51 b. In the course of committing the offense the offender
52 causes damage to the real or personal property of another in
53 excess of \$1,000,

54
55 the offender commits grand theft in the first degree, punishable
56 as a felony of the first degree, as provided in s. 775.082, s.
57 775.083, or s. 775.084.

58 (b)1. If the property stolen is valued at \$20,000 or more,

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59 but less than \$100,000;

60 2. The property stolen is cargo valued at less than \$50,000
61 that has entered the stream of interstate or intrastate commerce
62 from the shipper's loading platform to the consignee's receiving
63 dock;

64 3. The property stolen is emergency medical equipment,
65 valued at \$600 ~~\$300~~ or more, that is taken from a facility
66 licensed under chapter 395 or from an aircraft or vehicle
67 permitted under chapter 401; or

68 4. The property stolen is law enforcement equipment, valued
69 at \$600 ~~\$300~~ or more, that is taken from an authorized emergency
70 vehicle, as defined in s. 316.003,

71
72 the offender commits grand theft in the second degree,
73 punishable as a felony of the second degree, as provided in s.
74 775.082, s. 775.083, or s. 775.084. Emergency medical equipment
75 means mechanical or electronic apparatus used to provide
76 emergency services and care as defined in s. 395.002(9) or to
77 treat medical emergencies. Law enforcement equipment means any
78 property, device, or apparatus used by any law enforcement
79 officer as defined in s. 943.10 in the officer's official
80 business. However, if the property is stolen within a county
81 that is subject to a state of emergency declared by the Governor
82 under chapter 252, the theft is committed after the declaration
83 of emergency is made, and the perpetration of the theft is
84 facilitated by conditions arising from the emergency, the theft
85 is a felony of the first degree, punishable as provided in s.
86 775.082, s. 775.083, or s. 775.084. As used in this paragraph,
87 the term "conditions arising from the emergency" means civil

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88 unrest, power outages, curfews, voluntary or mandatory
89 evacuations, or a reduction in the presence of or response time
90 for first responders or homeland security personnel. For
91 purposes of sentencing under chapter 921, a felony offense that
92 is reclassified under this paragraph is ranked one level above
93 the ranking under s. 921.0022 or s. 921.0023 of the offense
94 committed.

95 (c) It is grand theft of the third degree and a felony of
96 the third degree, punishable as provided in s. 775.082, s.
97 775.083, or s. 775.084, if the property stolen is:

- 98 1. Valued at \$600 ~~\$300~~ or more, but less than \$5,000.
- 99 2. Valued at \$5,000 or more, but less than \$10,000.
- 100 3. Valued at \$10,000 or more, but less than \$20,000.
- 101 4. A will, codicil, or other testamentary instrument.
- 102 5. A firearm.
- 103 6. A motor vehicle, except as provided in paragraph (a).
- 104 7. Any commercially farmed animal, including any animal of
105 the equine, bovine, or swine class, or other grazing animal, and
106 including aquaculture species raised at a certified aquaculture
107 facility. If the property stolen is aquaculture species raised
108 at a certified aquaculture facility, then a \$10,000 fine shall
109 be imposed.
- 110 8. Any fire extinguisher.
- 111 9. Any amount of citrus fruit consisting of 2,000 or more
112 individual pieces of fruit.
- 113 10. Taken from a designated construction site identified by
114 the posting of a sign as provided for in s. 810.09(2)(d).
- 115 11. Any stop sign.
- 116 12. Anhydrous ammonia.

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118 However, if the property is stolen within a county that is
119 subject to a state of emergency declared by the Governor under
120 chapter 252, the property is stolen after the declaration of
121 emergency is made, and the perpetration of the theft is
122 facilitated by conditions arising from the emergency, the
123 offender commits a felony of the second degree, punishable as
124 provided in s. 775.082, s. 775.083, or s. 775.084, if the
125 property is valued at \$5,000 or more, but less than \$10,000, as
126 provided under subparagraph 2., or if the property is valued at
127 \$10,000 or more, but less than \$20,000, as provided under
128 subparagraph 3. As used in this paragraph, the term "conditions
129 arising from the emergency" means civil unrest, power outages,
130 curfews, voluntary or mandatory evacuations, or a reduction in
131 the presence of or the response time for first responders or
132 homeland security personnel. For purposes of sentencing under
133 chapter 921, a felony offense that is reclassified under this
134 paragraph is ranked one level above the ranking under s.
135 921.0022 or s. 921.0023 of the offense committed.

136 (d) It is grand theft of the third degree and a felony of
137 the third degree, punishable as provided in s. 775.082, s.
138 775.083, or s. 775.084, if the property stolen is valued at \$300
139 ~~\$100~~ or more, but less than \$600 ~~\$300~~, and is taken from a
140 dwelling as defined in s. 810.011(2) or from the unenclosed
141 curtilage of a dwelling pursuant to s. 810.09(1).

142 (e) Except as provided in paragraph (d), if the property
143 stolen is valued at \$100 or more, but less than \$600 ~~\$300~~, the
144 offender commits petit theft of the first degree, punishable as
145 a misdemeanor of the first degree, as provided in s. 775.082 or

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146 s. 775.083.

147 (3)

148 (e) If a law enforcement officer has probable cause to
149 believe that a defendant has committed retail theft as defined
150 in s. 812.015(1), the officer may issue a notice to appear in
151 lieu of arresting the defendant if the aggregate value of the
152 merchandise stolen is less than \$600 and the defendant has no
153 previous criminal convictions or juvenile adjudications. The
154 officer may, under his or her lawful authority, detain the
155 defendant until such time as the defendant's identity and
156 criminal or juvenile history have been provided to the officer
157 for purposes of making an informed decision regarding issuing
158 the notice to appear in lieu of arrest.

159 (f) A state attorney may establish a retail-theft diversion
160 program in the state attorney's office or by using an
161 independent contractor for the purpose of diverting from
162 prosecution defendants who meet the criteria set forth in
163 paragraph (e). However, establishing and operating a diversion
164 program does not affect the authority of the state attorney to
165 prosecute any defendant for committing retail theft.

166 1. Upon receipt of a complaint or notice to appear alleging
167 the crime of retail theft, a state attorney who operates a
168 retail-theft diversion program shall determine whether the
169 defendant is appropriate for referral to the retail-theft
170 diversion program. In making such determination, the state
171 attorney shall consider:

172 a. The value of the merchandise stolen in the retail theft;
173 b. The existence of other pending complaints or criminal
174 charges against the defendant;

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175 c. The strength of the evidence of the retail theft; and

176 d. Victim input.

177 2. Upon referral of the defendant to the retail-theft
178 diversion program, the state attorney shall mail a copy of the
179 notice to appear to the defendant. The notice must contain all
180 of the following:

181 a. The date and location of the alleged retail-theft
182 offense.

183 b. The date before which the defendant must contact the
184 retail-theft diversion program office concerning the notice to
185 appear.

186 c. A statement of the maximum penalty for the retail-theft
187 offense.

188 3. If the state attorney permits the defendant to enter the
189 retail-theft diversion program, the state attorney shall enter
190 into a written agreement with the defendant to divert him or her
191 from prosecution for retail theft. The diversion agreement must
192 include all of the following conditions, which must be accepted
193 by the defendant:

194 a. Attendance and proof of completion of a program designed
195 to assist, educate, and prevent future unlawful conduct by the
196 defendant;

197 b. Full restitution, if any is established, of the value of
198 the retail theft;

199 c. Full payment of fees due under subparagraph 5.; and

200 d. A knowing and intelligent waiver of the defendant's
201 right to a speedy trial for the period of his or her diversion.

202 4. Any defendant who does not fulfill all conditions in the
203 diversion program may be prosecuted for the crime of retail

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204 theft.

205 5. To fund the retail-theft diversion program, the state
206 attorney may collect a fee from each participating defendant.

207 The fee for each defendant may not exceed:

208 a. Twenty-five dollars, if the value of the stolen
209 merchandise does not exceed \$50.

210 b. Thirty dollars, if the value of the stolen merchandise
211 is more than \$50 but does not exceed \$100.

212 c. Forty dollars, if the value of the stolen merchandise is
213 more than \$100 but does not exceed \$600.

214 Section 2. Subsection (8) of section 812.015, Florida
215 Statutes is amended to read:

216 812.015 Retail and farm theft; transit fare evasion;
217 mandatory fine; alternative punishment; detention and arrest;
218 exemption from liability for false arrest; resisting arrest;
219 penalties.—

220 (8) Except as provided in subsection (9), a person who
221 commits retail theft commits a felony of the third degree,
222 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
223 if the property stolen is valued at \$600 ~~\$300~~ or more, and the
224 person:

225 (a) Individually, or in concert with one or more other
226 persons, coordinates the activities of one or more individuals
227 in committing the offense, in which case the amount of each
228 individual theft is aggregated to determine the value of the
229 property stolen;

230 (b) Commits theft from more than one location within a 48-
231 hour period, in which case the amount of each individual theft
232 is aggregated to determine the value of the property stolen;

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233 (c) Acts in concert with one or more other individuals
234 within one or more establishments to distract the merchant,
235 merchant's employee, or law enforcement officer in order to
236 carry out the offense, or acts in other ways to coordinate
237 efforts to carry out the offense; or

238 (d) Commits the offense through the purchase of merchandise
239 in a package or box that contains merchandise other than, or in
240 addition to, the merchandise purported to be contained in the
241 package or box.

242 Section 3. This act shall take effect October 1, 2009.