

By the Committees on Judiciary; and Criminal Justice; and
Senators Dean and Aronberg

590-02381-09

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1 A bill to be entitled
2 An act relating to the unlawful use of utility
3 services; amending s. 812.14, F.S.; providing that a
4 rebuttable presumption of a person's or entity's
5 intent to unlawfully use utility services exists under
6 certain circumstances; providing penalties; providing
7 that theft of utility services for the purpose of
8 manufacturing a controlled substance is a third-degree
9 felony; providing that prosecution of theft of utility
10 services for the purpose of manufacturing a controlled
11 substance is in lieu of prosecution for theft pursuant
12 to s. 812.014, F.S.; providing for prima facie
13 evidence of intent to commit theft of utility services
14 for the purpose of manufacturing a controlled
15 substance; providing an effective date.

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

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19 Section 1. Section 812.14, Florida Statutes, is amended to
20 read:

21 812.14 Trespass and larceny with relation to utility
22 fixtures; theft of utility services.-

23 (1) As used in this section, "utility" includes any person,
24 firm, corporation, association, or political subdivision,
25 whether private, municipal, county, or cooperative, which is
26 engaged in the sale, generation, provision, or delivery of gas,
27 electricity, heat, water, oil, sewer service, telephone service,
28 telegraph service, radio service, or telecommunication service.

29 (2) It is unlawful to:

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30 (a) Willfully alter, tamper with, injure, or knowingly
31 suffer to be injured any meter, meter seal, pipe, conduit, wire,
32 line, cable, transformer, amplifier, or other apparatus or
33 device belonging to a utility line service in such a manner as
34 to cause loss or damage or to prevent any meter installed for
35 registering electricity, gas, or water from registering the
36 quantity which otherwise would pass through the same; ~~or~~ to
37 alter the index or break the seal of any such meter; ~~or~~ in any
38 way to hinder or interfere with the proper action or just
39 registration of any such meter or device; or knowingly to use,
40 waste, or suffer the waste, by any means, of electricity or gas
41 or water passing through any such meter, wire, pipe, or fitting,
42 or other appliance or appurtenance connected with or belonging
43 to any such utility, after such meter, wire, pipe or fitting, or
44 other appliance or appurtenance has been tampered with, injured,
45 or altered.

46 (b) Make or cause to be made any connection with any wire,
47 main, service pipe or other pipes, appliance, or appurtenance in
48 such manner as to use, without the consent of the utility, any
49 service or any electricity, gas, or water, or to cause to be
50 supplied any service or electricity, gas, or water from a
51 utility to any person, firm, or corporation or any lamp, burner,
52 orifice, faucet, or other outlet whatsoever, without such
53 service being reported for payment or such electricity, gas, or
54 water passing through a meter provided by the utility and used
55 for measuring and registering the quantity of electricity, gas,
56 or water passing through the same.

57 (c) Use or receive the direct benefit from the use of a
58 utility knowing, or under such circumstances as would induce a

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59 reasonable person to believe, that such direct benefits have
60 resulted from any tampering with, altering of, or injury to any
61 connection, wire, conductor, meter, pipe, conduit, line, cable,
62 transformer, amplifier, or other apparatus or device owned,
63 operated, or controlled by such utility, for the purpose of
64 avoiding payment.

65 (3) The presence on property in the actual possession of a
66 person of any device or alteration that ~~which~~ affects the
67 diversion or use of the services of a utility so as to avoid the
68 registration of such use by or on a meter installed by the
69 utility or so as to otherwise avoid the reporting of use of such
70 service for payment is ~~shall be~~ prima facie evidence of the
71 violation of this section by such person; however, this
72 presumption does ~~shall~~ not apply unless:

73 (a) The presence of such a device or alteration can be
74 attributed only to a deliberate act in furtherance of an intent
75 to avoid payment for utility services;

76 (b) The person charged has received the direct benefit of
77 the reduction of the cost of such utility services; and

78 (c) The customer or recipient of the utility services has
79 received the direct benefit of such utility service for at least
80 one full billing cycle.

81 (4) A rebuttable presumption of a person's or entity's
82 intent to violate paragraph (2) (b) exists if:

83 (a) A controlled substance and materials for manufacturing
84 the controlled substance intended for sale or distribution to
85 another were found in a structure or dwelling;

86 (b) Materials or equipment for manufacturing the controlled
87 substance have been in the structure or dwelling for at least 1

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88 year;

89 (c) The dwelling or structure has been visibly modified to
90 accommodate the use of equipment to grow marijuana indoors,
91 including, but not limited to, the installation of equipment to
92 provide additional air conditioning, equipment to provide high-
93 wattage lighting, or equipment for hydroponic cultivation; and

94 (d) The person or entity who owned, leased, or subleased
95 the structure or dwelling knew or should have known, through the
96 exercise of due diligence, of the presence of the controlled
97 substance and materials for manufacturing the controlled
98 substance in the structure or dwelling, regardless of whether
99 the person or entity was involved in the manufacture or sale of
100 the controlled substance or was in actual possession of the
101 structure or dwelling.

102 (5)~~(4)~~ Any person who willfully violates paragraph (2) (a)
103 or paragraph (2) (c) commits ~~this section shall be guilty of a~~
104 misdemeanor of the first degree, punishable as provided in s.
105 775.082 or s. 775.083. Any person who willfully violates
106 paragraph (2) (b) commits a felony of the third degree,
107 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
108 Prosecution of a violation of subsection (2) does not preclude
109 prosecution of theft under subsection (6) or s. 812.014.

110 (6) Theft of utility services for the purpose of
111 facilitating the manufacture of a controlled substance is a
112 felony of the third degree, punishable as provided in s.
113 775.082, s. 775.083, or s. 775.084.

114 (7) It is prima facie evidence of a person's intent to
115 violate subsection (6) if:

116 (a) The person committed theft of utility services

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117 resulting in a structure, as defined in s. 810.011, or a
118 dwelling, as defined in s. 810.011, receiving unauthorized
119 access to utility services;

120 (b) A controlled substance and materials for manufacturing
121 the controlled substance were found in the structure or
122 dwelling; and

123 (c) The person knew of the presence of the controlled
124 substance and materials for manufacturing the controlled
125 substance in the structure or dwelling, regardless of whether
126 the person was involved in the manufacture of the controlled
127 substance.

128 (8)~~(5)~~ Whoever is found in a civil action to have violated
129 the provisions of this section is hereof shall be liable to the
130 utility involved in an amount equal to 3 times the amount of
131 services unlawfully obtained or \$1,000, whichever is greater.

132 (9)~~(6)~~ Nothing in This section does not act shall be
133 ~~construed to~~ apply to licensed and certified electrical
134 contractors while performing usual and ordinary service in
135 accordance with recognized standards.

136 Section 2. This act shall take effect October 1, 2009.