

By Senator Baxley

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1 A bill to be entitled
2 An act relating to the unlawful acquisition of utility
3 services; amending s. 812.14, F.S.; revising the
4 elements that constitute theft of utilities;
5 clarifying that the presence of certain devices and
6 alterations on the property of, and the actual
7 possession by, a person constitutes a permissive
8 inference of a violation; clarifying that certain
9 evidence of controlled substance manufacture in a
10 leased dwelling constitutes a permissive inference of
11 a violation by an owner, lessor, sublessor, or a
12 person acting on behalf of such persons; clarifying
13 that specified circumstances create a permissive
14 inference of theft of utility services for the purpose
15 of facilitating the manufacture of a controlled
16 substance; revising such circumstances; specifying the
17 types of damages that may be recovered in a civil
18 action or as restitution in a criminal case for
19 damaging property of a utility or for the theft or
20 diversion of electric services; specifying the methods
21 and bases used to determine and assess such damages;
22 making technical changes; amending s. 812.014, F.S.;
23 conforming provisions to changes made by the act;
24 providing an effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:

27
28 Section 1. Section 812.14, Florida Statutes, is amended to
29 read:

30 812.14 Trespass and larceny with relation to utility
31 fixtures; theft of utility services.—

32 (1) As used in this section, "utility" includes any person,

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33 firm, corporation, association, or political subdivision,
 34 whether private, municipal, county, or cooperative, which is
 35 engaged in the sale, generation, provision, or delivery of gas,
 36 electricity, heat, water, oil, sewer service, telephone service,
 37 telegraph service, radio service, or telecommunication service.

38 (2) A person may not ~~It is unlawful to~~:

39 (a) Willfully alter, tamper with, damage ~~injure~~, or
 40 knowingly allow damage to a ~~suffer to be injured~~ any meter,
 41 meter seal, pipe, conduit, wire, line, cable, transformer,
 42 amplifier, or other apparatus or device belonging to a utility
 43 line service in such a manner as to cause loss or damage or to
 44 prevent any meter installed for registering electricity, gas, or
 45 water from registering the quantity which otherwise would pass
 46 through the same; ~~to~~

47 (b) Alter the index or break the seal of any such meter; ~~in~~
 48 ~~any way to~~

49 (c) Hinder or interfere in any way with the proper action
 50 or accurate ~~just~~ registration of any such meter or device; ~~or~~

51 (d) Knowingly ~~to~~ use, waste, or allow ~~suffer~~ the waste, by
 52 any means, of electricity, ~~or~~ gas, or water passing through any
 53 such meter, wire, pipe, or fitting, or other appliance or
 54 appurtenance connected with or belonging to any such utility,
 55 after the ~~such~~ meter, wire, pipe, or fitting, or other appliance
 56 or appurtenance has been tampered with, injured, or altered; ~~or~~

57 (e) ~~(b)~~ Connect ~~Make~~ or cause a ~~to be made~~ any connection
 58 with a ~~any~~ wire, main, service pipe or other pipes, appliance,
 59 or appurtenance in a ~~such~~ manner that uses ~~as to use~~, without
 60 the consent of the utility, any service or any electricity, gas,
 61 or water; ~~or to~~

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62 (f) Cause a utility, without its consent, to supply any to
 63 ~~be supplied any~~ service or electricity, gas, or water ~~from a~~
 64 ~~utility to any person, firm, or corporation or any lamp, burner,~~
 65 ~~orifice, faucet, or other outlet whatsoever,~~ without reporting
 66 the such service being reported for payment; or

67 (g) Cause, without the consent of a utility, such
 68 ~~electricity, gas, or water to bypass passing through a meter~~
 69 ~~provided by the utility and used for measuring and registering~~
 70 ~~the quantity of electricity, gas, or water passing through the~~
 71 ~~same; or-~~

72 (h) (e) Use or receive the direct benefit from the use of a
 73 ~~utility knowing, or under such circumstances that as would~~
 74 ~~induce a reasonable person to believe, that the such direct~~
 75 ~~benefits have resulted from any tampering with, altering of, or~~
 76 ~~injury to any connection, wire, conductor, meter, pipe, conduit,~~
 77 ~~line, cable, transformer, amplifier, or other apparatus or~~
 78 ~~device owned, operated, or controlled by such utility, for the~~
 79 ~~purpose of avoiding payment.~~

80 (3) The presence on the property of and in the actual
 81 ~~possession by of~~ a person of any device or alteration that
 82 prevents ~~affects the diversion or use of the services of a~~
 83 ~~utility so as to avoid~~ the registration of the such use of
 84 services by ~~or on~~ a meter installed by the utility or that
 85 avoids ~~so as to otherwise avoid~~ the reporting of the use of
 86 services such service for payment creates a permissive inference
 87 ~~is prima facie evidence of the violation of subsection (2) this~~
 88 ~~section by such person.~~ However, this inference presumption
 89 ~~does not apply unless:~~

90 (a) The presence of the such a device or alteration can be

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91 attributed only to a deliberate act in furtherance of an intent
92 to avoid payment for utility services;

93 (b) The person charged has received the direct benefit of
94 the reduction of the cost of the ~~such~~ utility services; and

95 (c) The customer or recipient of the utility services has
96 received the direct benefit of the ~~such~~ utility service for at
97 least one full billing cycle.

98 (4) A person who willfully violates subsection (2)
99 ~~paragraph (2)(a), paragraph (2)(b), or paragraph (2)(c)~~ commits
100 grand theft, punishable as provided in s. 812.014.

101 (5) ~~It is unlawful for~~ A person or entity that owns,
102 leases, or subleases a property may not ~~to~~ permit a tenant or
103 occupant to use utility services knowing, or under such
104 circumstances as would induce a reasonable person to believe,
105 that such utility services have been connected in violation of
106 subsection (2) ~~paragraph (2)(a), paragraph (2)(b), or paragraph~~
107 ~~(2)(c)~~.

108 (6) There exists a permissive inference that an owner,
109 lessor, or sublessor, or a person acting on behalf of such
110 person, intended ~~It is prima facie evidence of a person's intent~~
111 to violate subsection (5) if:

112 (a) A controlled substance and materials for manufacturing
113 the controlled substance intended for sale or distribution to
114 another were found in a dwelling or structure;

115 (b) The dwelling or structure was ~~has been~~ visibly modified
116 to accommodate the use of equipment to grow cannabis ~~marijuana~~
117 indoors, including, but not limited to, the installation of
118 equipment to provide additional air conditioning, equipment to
119 provide high-wattage lighting, or equipment for hydroponic

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120 cultivation; and

121 (c) The person or entity that owned, leased, or subleased
122 the dwelling or structure knew of, or did so under such
123 circumstances as would induce a reasonable person to believe in,
124 the presence of a controlled substance and materials for
125 manufacturing a controlled substance in the dwelling or
126 structure, regardless of whether the person or entity was
127 involved in the manufacture or sale of a controlled substance or
128 was in actual possession of the dwelling or structure.

129 (7) An owner, lessor, or sublessor, or a person acting on
130 behalf of such person, A person who willfully violates
131 subsection (5) commits a misdemeanor of the first degree,
132 punishable as provided in s. 775.082 or s. 775.083. Prosecution
133 for a violation of subsection (5) does not preclude prosecution
134 for theft pursuant to subsection (8) or s. 812.014.

135 (8) Theft of utility services for the purpose of
136 facilitating the manufacture of a controlled substance is theft,
137 punishable as provided in s. 812.014.

138 (9) A permissive inference ~~It is Prima facie evidence~~ of a
139 person's intent to violate subsection (8) exists if:

140 (a) The person committed theft of utility services
141 resulting in a dwelling, as defined in s. 810.011, or a
142 structure, as defined in s. 810.011, receiving unauthorized
143 access to utility services;

144 (b) A controlled substance and materials for manufacturing
145 the controlled substance were found in the dwelling or
146 structure; and

147 (c) The person knew or should have known of the presence of
148 the controlled substance and materials for manufacturing the

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149 controlled substance in the dwelling or structure, regardless of
150 whether the person was involved in the manufacture of the
151 controlled substance.

152 (10) Whoever is found in a civil action to have violated
153 this section is liable to the utility involved in an amount
154 equal to 3 times the amount of services unlawfully obtained or
155 \$3,000, whichever is greater.

156 (11) (a) For purposes of determining a defendant's liability
157 for civil damages or criminal restitution for the theft or
158 diversion of electricity, the amount of civil damages or a
159 restitution order must include all of the following amounts:

160 1. The costs to repair or replace damaged property owned by
161 a utility, including reasonable labor costs.

162 2. Reasonable costs for the use of specialized equipment to
163 investigate or calculate the amount of unlawfully obtained
164 electric services, including reasonable labor costs.

165 3. The amount of any applicable taxes.

166 4. The amount of unlawfully obtained electric services.

167 (b) A prima facie showing of the amount of unlawfully
168 obtained electric services may be based on any methodology
169 reasonably relied upon by utilities to estimate such losses. The
170 methodology may consider the estimated start date of the theft
171 or diversion and the estimated daily or hourly use of
172 electricity. Once a prima facie showing has been made, the
173 burden shifts to the defendant to demonstrate that the loss is
174 other than that claimed by the utility.

175 1. The estimated start date of a theft or diversion may be
176 based upon one or more of the following:

177 a. The date of an overload notification from a transformer,

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178 or the tripping of a transformer, that the utility reasonably
179 believes was overloaded as a result of the theft or diversion of
180 electricity.

181 b. The date the utility verified a substantive difference
182 between the amount of electricity used at a property and the
183 amount billed to the accountholder.

184 c. The date the utility or a law enforcement officer
185 located a tap or other device bypassing a meter.

186 d. The date the utility or a law enforcement officer
187 observed or verified meter tampering.

188 e. The maturity of a cannabis crop found in a grow house or
189 other structure using unlawfully obtained electric services or
190 the number of cannabis crops the utility or a law enforcement
191 officer reasonably believes to have been grown in the grow house
192 or other structure.

193 f. The date the utility or a law enforcement agency
194 received a report of suspicious activity potentially indicating
195 the presence of the unlawful cultivation of cannabis in a grow
196 house or other structure or when a law enforcement officer or an
197 employee or contractor of a utility observes such suspicious
198 activity.

199 g. The date when a utility observes a significant change in
200 metered energy usage.

201 h. The date when an account with the utility was opened for
202 a property that receives both metered and unlawfully obtained
203 electric services.

204 i. Any other facts or data reasonably relied upon by
205 utilities to estimate the start date of a theft or diversion of
206 electricity.

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207 2. The estimated average daily or hourly use of the
208 electricity may be based upon any, or a combination, of the
209 following:

210 a. The load imposed by the fixtures, appliances, or
211 equipment powered by unlawfully obtained electric services.

212 b. Recordings by the utility of the amount of electricity
213 used by a property or the difference between the amount used and
214 the amount billed.

215 c. A comparison of the amount of electricity historically
216 used by the property and the amount billed while the property
217 was using unlawfully obtained electricity.

218 d. A reasonable analysis of a meter that was altered or
219 tampered with to prevent the creation of an accurate record of
220 the amount of electricity obtained.

221 e. Any other facts or data reasonably relied upon by
222 utilities to estimate the amount of unlawfully obtained electric
223 services.

224 (c) A court order requiring a defendant to pay restitution
225 for damages to the property of a utility or for the theft or
226 diversion of electricity need only be based on a criminal
227 offense that is causally connected to the damages or losses and
228 bears a significant relationship to those damages or losses. A
229 conviction for a violation of this section is not a prerequisite
230 to a restitution order. Criminal offenses that bear a
231 significant relationship and are causally connected to a
232 violation of this section include, but are not limited to,
233 offenses relating to the unlawful cultivation of cannabis in a
234 grow house or other structure if the theft or diversion of
235 electricity was used to facilitate the growth of the cannabis.

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236 (d) The amount of restitution that a defendant may be
237 ordered to pay is not limited by the monetary threshold of any
238 criminal charge on which the restitution order is based.

239 (12)~~(11)~~ This section does not apply to licensed and
240 certified electrical contractors while such persons are
241 performing usual and ordinary service in accordance with
242 recognized standards.

243 Section 2. Paragraph (c) of subsection (2) of section
244 812.014, Florida Statutes, is amended to read:

245 812.014 Theft.—

246 (2)

247 (c) It is grand theft of the third degree and a felony of
248 the third degree, punishable as provided in s. 775.082, s.
249 775.083, or s. 775.084, if the property stolen is:

- 250 1. Valued at \$300 or more, but less than \$5,000.
- 251 2. Valued at \$5,000 or more, but less than \$10,000.
- 252 3. Valued at \$10,000 or more, but less than \$20,000.
- 253 4. A will, codicil, or other testamentary instrument.
- 254 5. A firearm.
- 255 6. A motor vehicle, except as provided in paragraph (a).
- 256 7. Any commercially farmed animal, including any animal of
257 the equine, bovine, or swine class or other grazing animal; a
258 bee colony of a registered beekeeper; and aquaculture species
259 raised at a certified aquaculture facility. If the property
260 stolen is aquaculture species raised at a certified aquaculture
261 facility, then a \$10,000 fine shall be imposed.
- 262 8. Any fire extinguisher.
- 263 9. Any amount of citrus fruit consisting of 2,000 or more
264 individual pieces of fruit.

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265 10. Taken from a designated construction site identified by
266 the posting of a sign as provided for in s. 810.09(2)(d).

267 11. Any stop sign.

268 12. Anhydrous ammonia.

269 13. Any amount of a controlled substance as defined in s.
270 893.02. Notwithstanding any other law, separate judgments and
271 sentences for theft of a controlled substance under this
272 subparagraph and for any applicable possession of controlled
273 substance offense under s. 893.13 or trafficking in controlled
274 substance offense under s. 893.135 may be imposed when all such
275 offenses involve the same amount or amounts of a controlled
276 substance.

277 14. Utility services, in a manner as specified in s.
278 812.14.

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280 However, if the property is stolen within a county that is
281 subject to a state of emergency declared by the Governor under
282 chapter 252, the property is stolen after the declaration of
283 emergency is made, and the perpetration of the theft is
284 facilitated by conditions arising from the emergency, the
285 offender commits a felony of the second degree, punishable as
286 provided in s. 775.082, s. 775.083, or s. 775.084, if the
287 property is valued at \$5,000 or more, but less than \$10,000, as
288 provided under subparagraph 2., or if the property is valued at
289 \$10,000 or more, but less than \$20,000, as provided under
290 subparagraph 3. As used in this paragraph, the term "conditions
291 arising from the emergency" means civil unrest, power outages,
292 curfews, voluntary or mandatory evacuations, or a reduction in
293 the presence of or the response time for first responders or

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294 homeland security personnel. For purposes of sentencing under
295 chapter 921, a felony offense that is reclassified under this
296 paragraph is ranked one level above the ranking under s.
297 921.0022 or s. 921.0023 of the offense committed.

298 Section 3. This act shall take effect July 1, 2017.