

By the Committee on Criminal Justice; and Senator Baxley

591-02668-17

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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 prima facie
8 evidence of a violation; clarifying that certain
9 evidence of controlled substance manufacture in a
10 leased dwelling constitutes prima facie evidence of a
11 violation by an owner, lessor, sublessor, or a person
12 acting on behalf of such persons; clarifying that
13 specified circumstances create prima facie evidence of
14 theft of utility services for the purpose of
15 facilitating the manufacture of a controlled
16 substance; revising such circumstances; specifying the
17 types of damages that may be recovered in as civil
18 damages or restitution in a criminal case for damaging
19 property of a utility or for the theft of electricity
20 services; specifying the methods and bases used to
21 determine and assess damages in a civil action or
22 restitution in a criminal case for damaging property
23 of a utility or for the theft of electricity services;
24 making technical changes; amending s. 812.014, F.S.;
25 conforming provisions to changes made by the act;
26 providing an effective date.

27
28 Be It Enacted by the Legislature of the State of Florida:
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30 Section 1. Section 812.14, Florida Statutes, is amended to
31 read:

32 812.14 Trespass and larceny with relation to utility
33 fixtures; theft of utility services.—

34 (1) As used in this section, "utility" includes any person,
35 firm, corporation, association, or political subdivision,
36 whether private, municipal, county, or cooperative, which is
37 engaged in the sale, generation, provision, or delivery of gas,
38 electricity, heat, water, oil, sewer service, telephone service,
39 telegraph service, radio service, or telecommunication service.

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

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

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

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

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

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

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

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

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

82 (3) The presence on the property of and ~~in~~ the actual
83 possession by ~~of~~ a person of any device or alteration that
84 prevents ~~affects the diversion or use of the services of a~~
85 ~~utility so as to avoid~~ the registration of the ~~such~~ use of
86 services ~~by or on~~ a meter installed by the utility or that
87 avoids ~~so as to otherwise avoid~~ the reporting of the use of

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88 services ~~such service~~ for payment is prima facie evidence of the
89 violation of subsection (2) ~~this section~~ by such person.~~†~~

90 However, this presumption does not apply unless:

91 (a) The presence of the ~~such a~~ device or alteration can be
92 attributed only to a deliberate act in furtherance of an intent
93 to avoid payment for utility services;

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

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

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

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

109 (6) It is prima facie evidence that an owner, lessor, or
110 sublessor intended ~~It is prima facie evidence of a person's~~
111 ~~intent~~ 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~~

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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
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 ~~A person~~ who willfully
130 violates subsection (5) commits a misdemeanor of the first
131 degree, punishable as provided in s. 775.082 or s. 775.083.
132 Prosecution for a violation of subsection (5) does not preclude
133 prosecution for theft pursuant to subsection (8) or s. 812.014.

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

137 (9) It is prima facie evidence of a person's intent to
138 violate subsection (8) if:

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

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

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146 (c) The person knew or should have known of the presence of
147 the controlled substance and materials for manufacturing the
148 controlled substance in the dwelling or structure, regardless of
149 whether the person was involved in the manufacture of the
150 controlled substance.

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

155 (11) (a) For purposes of determining a defendant's liability
156 for civil damages under subsection (10) or criminal restitution
157 for the theft of electricity, the amount of civil damages or a
158 restitution order must include all of the following amounts:

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

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

164 3. The amount of unlawfully obtained electricity services.

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

173 1. The estimated start date of a theft may be based upon
174 one or more of the following:

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175 a. The date of an overload notification from a transformer,
176 or the tripping of a transformer, that the utility reasonably
177 believes was overloaded as a result of the theft of electricity.

178 b. The date the utility verified a substantive difference
179 between the amount of electricity used at a property and the
180 amount billed to the accountholder.

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

183 d. The date the utility or a law enforcement officer
184 observed or verified meter tampering.

185 e. The maturity of a cannabis crop found in a dwelling or
186 structure using unlawfully obtained electricity services the
187 utility or a law enforcement officer reasonably believes to have
188 been grown in the dwelling or structure.

189 f. The date the utility or a law enforcement agency
190 received a report of suspicious activity potentially indicating
191 the presence of the unlawful cultivation of cannabis in a
192 dwelling or structure or the date a law enforcement officer or
193 an employee or contractor of a utility observes such suspicious
194 activity.

195 g. The date when a utility observes a significant change in
196 metered energy usage.

197 h. The date when an account with the utility was opened for
198 a property that receives both metered and unlawfully obtained
199 electricity services.

200 i. Any other facts or data reasonably relied upon by
201 utilities to estimate the start date of a theft of electricity.

202 2. The estimated average daily or hourly use of the
203 electricity may be based upon any, or a combination, of the

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204 following:

205 a. The load imposed by the fixtures, appliances, or
206 equipment powered by unlawfully obtained electricity services.

207 b. Recordings by the utility of the amount of electricity
208 used by a property or the difference between the amount used and
209 the amount billed.

210 c. A comparison of the amount of electricity historically
211 used by the property and the amount billed while the property
212 was using unlawfully obtained electricity.

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

216 e. Any other facts or data reasonably relied upon by
217 utilities to estimate the amount of unlawfully obtained
218 electricity services.

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

231 (13) The amount of restitution that a defendant may be
232 ordered to pay is not limited by the monetary threshold of any

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233 criminal charge on which the restitution order is based.

234 (14)~~(11)~~ This section does not apply to licensed and
235 certified electrical contractors while such persons are
236 performing usual and ordinary service in accordance with
237 recognized standards.

238 Section 2. Paragraph (c) of subsection (2) of section
239 812.014, Florida Statutes, is amended to read:

240 812.014 Theft.—

241 (2)

242 (c) It is grand theft of the third degree and a felony of
243 the third degree, punishable as provided in s. 775.082, s.
244 775.083, or s. 775.084, if the property stolen is:

- 245 1. Valued at \$300 or more, but less than \$5,000.
- 246 2. Valued at \$5,000 or more, but less than \$10,000.
- 247 3. Valued at \$10,000 or more, but less than \$20,000.
- 248 4. A will, codicil, or other testamentary instrument.
- 249 5. A firearm.
- 250 6. A motor vehicle, except as provided in paragraph (a).
- 251 7. Any commercially farmed animal, including any animal of
252 the equine, bovine, or swine class or other grazing animal; a
253 bee colony of a registered beekeeper; and aquaculture species
254 raised at a certified aquaculture facility. If the property
255 stolen is aquaculture species raised at a certified aquaculture
256 facility, then a \$10,000 fine shall be imposed.
- 257 8. Any fire extinguisher.
- 258 9. Any amount of citrus fruit consisting of 2,000 or more
259 individual pieces of fruit.
- 260 10. Taken from a designated construction site identified by
261 the posting of a sign as provided for in s. 810.09(2)(d).

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262 11. Any stop sign.
263 12. Anhydrous ammonia.
264 13. Any amount of a controlled substance as defined in s.
265 893.02. Notwithstanding any other law, separate judgments and
266 sentences for theft of a controlled substance under this
267 subparagraph and for any applicable possession of controlled
268 substance offense under s. 893.13 or trafficking in controlled
269 substance offense under s. 893.135 may be imposed when all such
270 offenses involve the same amount or amounts of a controlled
271 substance.

272 14. Utility services, in a manner as specified in s.
273 812.14.

274
275 However, if the property is stolen within a county that is
276 subject to a state of emergency declared by the Governor under
277 chapter 252, the property is stolen after the declaration of
278 emergency is made, and the perpetration of the theft is
279 facilitated by conditions arising from the emergency, the
280 offender commits a felony of the second degree, punishable as
281 provided in s. 775.082, s. 775.083, or s. 775.084, if the
282 property is valued at \$5,000 or more, but less than \$10,000, as
283 provided under subparagraph 2., or if the property is valued at
284 \$10,000 or more, but less than \$20,000, as provided under
285 subparagraph 3. As used in this paragraph, the term "conditions
286 arising from the emergency" means civil unrest, power outages,
287 curfews, voluntary or mandatory evacuations, or a reduction in
288 the presence of or the response time for first responders or
289 homeland security personnel. For purposes of sentencing under
290 chapter 921, a felony offense that is reclassified under this

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291 paragraph is ranked one level above the ranking under s.

292 921.0022 or s. 921.0023 of the offense committed.

293 Section 3. This act shall take effect October 1, 2017.

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