

By the Committees on Communications, Energy, and Public Utilities; and Criminal Justice; and 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 prima facie  
8       evidence of a violation; clarifying that certain  
9       evidence of the manufacturing of a controlled  
10      substance in a leased dwelling constitutes prima facie  
11      evidence of a violation by an owner, lessor,  
12      sublessor; clarifying that specified circumstances  
13      create prima facie evidence of theft of utility  
14      services for the purpose of facilitating the  
15      manufacture of a controlled substance; revising such  
16      circumstances; specifying the types of damages that  
17      may be recovered as civil damages or restitution in a  
18      criminal case for damaging property of a utility or  
19      for the theft of electricity services; specifying the  
20      methods and bases used to determine and assess damages  
21      in a civil action or restitution in a criminal case  
22      for damaging property of a utility or for the theft of  
23      electricity services; providing an effective date.

24  
25 Be It Enacted by the Legislature of the State of Florida:

26  
27       Section 1. Section 812.14, Florida Statutes, is amended to  
28 read:

29       812.14 Trespass and larceny with relation to utility

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30 fixtures; theft of utility services.-

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

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

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

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

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

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

56 (e) ~~(b)~~ Connect ~~Make~~ or cause a to be made ~~any~~ connection  
 57 with a ~~any~~ wire, main, service pipe or other pipes, appliance,  
 58 or appurtenance in a ~~such~~ manner that uses ~~as to use~~, without

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59 the consent of the utility, any service or any electricity, gas,  
60 or water; ~~or to~~

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

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

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

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

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

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

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

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

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

106 (6) It is prima facie evidence that an owner, lessor, or  
107 sublessor intended ~~It is prima facie evidence of a person's~~  
108 ~~intent~~ to violate subsection (5) if:

109 (a) A controlled substance and materials for manufacturing  
110 the controlled substance intended for sale or distribution to  
111 another were found in a dwelling or structure;

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

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117 cultivation; and

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

126 (7) An owner, lessor, or sublessor ~~A person~~ who willfully  
127 violates subsection (5) commits a misdemeanor of the first  
128 degree, punishable as provided in s. 775.082 or s. 775.083.  
129 Prosecution for a violation of subsection (5) does not preclude  
130 prosecution for theft pursuant to subsection (8) or s. 812.014.

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

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

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

140 (b) A controlled substance and materials for manufacturing  
141 the controlled substance were found in the dwelling or  
142 structure; and

143 (c) The person knew or should have known of the presence of  
144 the controlled substance and materials for manufacturing the  
145 controlled substance in the dwelling or structure, regardless of

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146 whether the person was involved in the manufacture of the  
147 controlled substance.

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

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

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

158 2. Reasonable costs for the use of specialized equipment to  
159 investigate or calculate the amount of unlawfully obtained  
160 electricity services, including reasonable labor costs.

161 3. The amount of unlawfully obtained electricity services.

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

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

172 a. The date of an overload notification from a transformer,  
173 or the tripping of a transformer, which the utility reasonably  
174 believes was overloaded as a result of the theft of electricity.

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175 b. The date the utility verified a substantive difference  
176 between the amount of electricity used at a property and the  
177 amount billed to the account holder.

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

180 d. The date the utility or a law enforcement officer  
181 observed or verified meter tampering.

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

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

192 g. The date when a utility observed a significant change in  
193 metered energy usage.

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

197 i. Any other fact or data reasonably relied upon by the  
198 utility to estimate the start date of a theft of electricity.

199 2. The estimated average daily or hourly use of the  
200 electricity may be based upon any, or a combination, of the  
201 following:

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

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204 b. Recordings by the utility of the amount of electricity  
205 used by a property or the difference between the amount used and  
206 the amount billed.

207 c. A comparison of the amount of electricity historically  
208 used by the property and the amount billed while the property  
209 was using unlawfully obtained electricity.

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

213 e. Any other fact or data reasonably relied upon by  
214 utilities to estimate the amount of unlawfully obtained  
215 electricity services.

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

228 (13) The amount of restitution that a defendant may be  
229 ordered to pay is not limited by the monetary threshold of any  
230 criminal charge on which the restitution order is based.

231 (14) ~~(11)~~ This section does not apply to licensed and  
232 certified electrical contractors while such persons are

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233 performing usual and ordinary service in accordance with  
234 recognized standards.

235 Section 2. This act shall take effect October 1, 2017.

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