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CS/HB 879

2017 Legislature

1
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:

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

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

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

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

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

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

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

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51 (d) Knowingly ~~to~~ use, waste, or allow ~~suffer~~ the waste of,
 52 by any means, ~~of~~ electricity, ~~or~~ gas, or water passing through
 53 any 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;~~;~~

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~~

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; or ~~and used for measuring and~~
 70 ~~registering the quantity of electricity, gas, or water passing~~
 71 ~~through the same.~~

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

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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 is prima facie evidence of the
 87 | violation of subsection (2) ~~this section~~ by such person.†

88 | However, this presumption does not apply unless:

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

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

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

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

100 | (5) ~~It is unlawful for~~ A person or entity that owns,

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

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

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

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

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

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126 | was in actual possession of the dwelling or structure.

127 | (7) An owner, lessor, or sublessor ~~A person~~ who willfully
128 | violates subsection (5) commits a misdemeanor of the first
129 | degree, punishable as provided in s. 775.082 or s. 775.083.

130 | Prosecution for a violation of subsection (5) does not preclude
131 | prosecution for theft pursuant to subsection (8) or s. 812.014.

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

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

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

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

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

149 | (10) Whoever is found in a civil action to have violated
150 | this section is liable to the utility involved in an amount

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151 equal to 3 times the amount of services unlawfully obtained or
 152 \$3,000, whichever is greater.

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

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

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

163 3. The amount of unlawfully obtained electricity services.

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

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

174 a. The date of an overload notification from a
 175 transformer, or the tripping of a transformer, which the utility

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176 reasonably believes was overloaded as a result of the theft of
 177 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 account holder.

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 observed such suspicious
 194 activity.

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

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

200 i. Any other fact or data reasonably relied upon by the

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201 utility 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
 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 fact 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
 220 restitution for damages to the property of a utility or for the
 221 theft of electricity need only be based on a conviction for a
 222 criminal offense that is causally connected to the damages or
 223 losses and bears a significant relationship to those damages or
 224 losses. A conviction for a violation of this section is not a
 225 prerequisite for a restitution order. Criminal offenses that

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226 | bear a 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
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. This act shall take effect October 1, 2017.