

CHAPTER 2017-145

Committee Substitute for House Bill No. 879

An act relating to the unlawful acquisition of utility services; amending s. 812.14, F.S.; revising the elements that constitute theft of utilities; clarifying that the presence of certain devices and alterations on the property of, and the actual possession by, a person constitutes prima facie evidence of a violation; clarifying that certain evidence of the manufacturing of a controlled substance in a leased dwelling constitutes prima facie evidence of a violation by an owner, lessor, sublessor; clarifying that specified circumstances create prima facie evidence of theft of utility services for the purpose of facilitating the manufacture of a controlled substance; revising such circumstances; specifying the types of damages that may be recovered as civil damages or restitution in a criminal case for damaging property of a utility or for the theft of electricity services; specifying the methods and bases used to determine and assess damages in a civil action or restitution in a criminal case for damaging property of a utility or for the theft of electricity services; providing an effective date.

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

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~~

(d) Knowingly ~~to~~ use, waste, or allow ~~suffer~~ the waste of, by any means, ~~of~~ electricity, ~~or~~ gas, or water passing through any such meter, wire, pipe, or fitting, or other appliance or appurtenance connected with or belonging to

any such utility, after the such meter, wire, pipe, or fitting, or other appliance or appurtenance has been tampered with, injured, or altered;:-

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

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

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

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

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

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

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

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

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

~~(5) It is unlawful for~~ A person or entity that owns, leases, or subleases a property may not ~~to~~ permit a tenant or occupant to use utility services knowing, or under such circumstances as would induce a reasonable person

to believe, that such utility services have been connected in violation of subsection (2) ~~paragraph (2)(a), paragraph (2)(b), or paragraph (2)(c).~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. The amount of unlawfully obtained electricity services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Approved by the Governor June 23, 2017.

Filed in Office Secretary of State June 23, 2017.