

1 SB127  
2 173303-2  
3 By Senator Williams  
4 RFD: Judiciary  
5 First Read: 03-FEB-16

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4 ENGROSSED

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6  
7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

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11 To amend Section 13A-8-1 of the Code of Alabama  
12 1975, and to add Sections 13A-8-3.1 and 13A-8-3.2 to the Code  
13 of Alabama 1975; to define cargo theft and fifth wheel  
14 tampering; to provide penalties; and in connection therewith  
15 would have as its purpose or effect the requirement of a new  
16 or increased expenditure of local funds within the meaning of  
17 Amendment 621 of the Constitution of Alabama of 1901, now  
18 appearing as Section 111.05 of the Official Recompilation of  
19 the Constitution of Alabama of 1901, as amended.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

21 Section 1. Section 13A-8-1 of the Code of Alabama  
22 1975, is amended to read as follows:

23 "§13A-8-1.

24 "The following definitions are applicable in this  
25 article unless the context otherwise requires:

26 "(1) DECEPTION occurs when a person knowingly:

1            "a. Creates or confirms another's impression which  
2 is false and which the defendant does not believe to be true;  
3 or

4            "b. Fails to correct a false impression which the  
5 defendant previously has created or confirmed; or

6            "c. Fails to correct a false impression when the  
7 defendant is under a duty to do so; or

8            "d. Prevents another from acquiring information  
9 pertinent to the disposition of the property involved; or

10           "e. Sells or otherwise transfers or encumbers  
11 property, failing to disclose a lien, adverse claim, or other  
12 legal impediment to the enjoyment of the property when the  
13 defendant is under a duty to do so, whether that impediment is  
14 or is not valid, or is not a matter of official record; or

15           "f. Promises performance which the defendant does  
16 not intend to perform or knows will not be performed. Failure  
17 to perform, standing alone, however, is not proof that the  
18 defendant did not intend to perform.

19           "The term "deception" does not, however, include  
20 falsity as to matters having no pecuniary significance, or  
21 puffing by statements unlikely to deceive ordinary persons.  
22 "Puffing" means an exaggerated commendation of wares or  
23 services.

24           "(2) To "DEPRIVE ..." means:

25           "a. To withhold property or cause it to be withheld  
26 from a person permanently or for such period or under such

1 circumstances that all or a portion of its use or benefit  
2 would be lost to him or her; or

3 "b. To dispose of the property so as to make it  
4 unlikely that the owner would recover it; or

5 "c. To retain the property with intent to restore it  
6 to the owner only if the owner purchases or leases it back, or  
7 pays a reward or other compensation for its return; or

8 "d. To sell, give, pledge, or otherwise transfer any  
9 interest in the property; or

10 "e. To subject the property to the claim of a person  
11 other than the owner.

12 "(3) FIFTH WHEEL. Coupling between a trailer and a  
13 vehicle used for towing.

14 "~~(3)~~ (4) FINANCIAL INSTITUTION. A bank, insurance  
15 company, credit union, safety deposit company, savings and  
16 loan association, investment trust, or other organization held  
17 out to the public as a place of deposit of funds or medium of  
18 savings or collective investment.

19 "~~(4)~~ (5) FIREARM. A weapon from which a shot is  
20 discharged by gunpowder.

21 "~~(5)~~ (6) GOVERNMENT. The United States, any state or  
22 any county, municipality, or other political unit within  
23 territory belonging to the United States, or any department,  
24 agency, or subdivision of any of the foregoing, or any  
25 corporation or other association carrying out the functions of  
26 government, or any corporation or agency formed pursuant to  
27 interstate compact or international treaty.

1           "As used in this definition "state" includes any  
2 state, territory, or possession of the United States, the  
3 District of Columbia, and the Commonwealth of Puerto Rico.

4           "~~(6)~~ (7) OBTAINS. Such term means:

5           "a. In relation to property, to bring about a  
6 transfer or purported transfer of a legally recognized  
7 interest in the property, whether to the obtainer or another;  
8 or

9           "b. In relation to labor or service, to secure  
10 performance thereof.

11           "~~(7)~~ (8) OBTAINS OR EXERTS CONTROL or OBTAINS OR  
12 EXERTS UNAUTHORIZED CONTROL over property includes but is not  
13 necessarily limited to the taking, carrying away, or the sale,  
14 conveyance, or transfer of title to, or interest in, or  
15 possession of, property, and includes but is not necessarily  
16 limited to conduct heretofore defined or known as common law  
17 larceny by trespassory taking, common law larceny by trick,  
18 larceny by conversion, embezzlement, extortion, or obtaining  
19 property by false pretenses.

20           "~~(8)~~ (9) OWNER. A person, other than the defendant,  
21 who has possession of or any other interest in the property  
22 involved, even though that interest or possession is unlawful,  
23 and without whose consent the defendant has no authority to  
24 exert control over the property.

25           "A secured party, as defined in Section  
26 7-9A-102(a) (72), is not an owner in relation to a defendant  
27 who is a debtor, as defined in Section 7-9A-102(a) (28), in

1 respect of property in which the secured party has a security  
2 interest, as defined in Section 7-1-201(37).

3 "~~(9)~~(10) PROPELLED VEHICLE. Any propelled device in,  
4 upon, or by which any person or property is transported on  
5 land, water, or in the air, and such term includes motor  
6 vehicles, motorcycles, motorboats, aircraft, and any vessel  
7 propelled by machinery, whether or not that machinery is the  
8 principal source of propulsion.

9 "~~(10)~~(11) PROPERTY. Any money, tangible or  
10 intangible personal property, property (whether real or  
11 personal) the location of which can be changed (including  
12 things growing on, affixed to, or found in land and documents,  
13 although the rights represented hereby have no physical  
14 location), contract right, chose-in-action, interest in a  
15 claim to wealth, credit, or any other article or thing of  
16 value of any kind.

17 "Commodities of a public utility nature, such as  
18 gas, electricity, steam, and water, constitute property, but  
19 the supplying of such a commodity to premises from an outside  
20 source by means of wires, pipes, conduits, or other equipment  
21 shall be deemed a rendition of a service rather than a sale or  
22 delivery of property.

23 "~~(11)~~(12) RECEIVING. Such term includes, but is not  
24 limited to, acquiring possession, control, or title and taking  
25 a security interest in the property.

26 "~~(12)~~(13) STOLEN. Obtained by theft, theft by  
27 appropriating lost property, robbery, or extortion.

1                   "~~(13)~~(14) THREAT. A menace, however communicated,  
2 to:

3                   "a. Cause physical harm to the person threatened or  
4 to any other person; or

5                   "b. Cause damage to property; or

6                   "c. Subject the person threatened or any other  
7 person to physical confinement or restraint; or

8                   "d. Engage in other conduct constituting a crime; or

9                   "e. Accuse any person of a crime or cause criminal  
10 charges to be instituted against any person; or

11                   "f. Expose a secret or publicize an asserted fact,  
12 whether true or false, tending to subject any person to  
13 hatred, contempt, or ridicule; or

14                   "g. Reveal any information sought to be concealed by  
15 the person threatened; or

16                   "h. Testify or provide information or withhold  
17 testimony or information with respect to another's legal claim  
18 or defense; or

19                   "i. Take action as an official against anyone or  
20 anything, or withhold official action, or cause such action or  
21 withholding; or

22                   "j. Bring about or continue a strike, boycott, or  
23 other similar collective action to obtain property which is  
24 not demanded or received for the benefit of the group which  
25 the actor purports to represent; or

26                   "k. Do any other act which would not in itself  
27 substantially benefit the actor but which is calculated to

1 harm substantially another person with respect to his or her  
2 health, safety, business, calling, career, financial  
3 condition, reputation, or personal relationships.

4 "~~(14)~~(15) VALUE. The market value of the property at  
5 the time and place of the criminal act.

6 "Whether or not they have been issued or delivered,  
7 certain written instruments, not including those having a  
8 readily ascertainable market value such as some public and  
9 corporate bonds and securities shall be evaluated as follows:

10 "a. The value of an instrument constituting an  
11 evidence of debt, such as a check, draft, or promissory note,  
12 shall be deemed the amount due or collectible thereon or  
13 thereby, that figure ordinarily being the face amount of the  
14 indebtedness less any portion thereof which has been  
15 satisfied.

16 "b. The value of any other instrument that creates,  
17 releases, discharges, or otherwise affects any valuable legal  
18 right, privilege, or obligation shall be deemed the greatest  
19 amount of economic loss which the owner of the instrument  
20 might reasonably suffer by virtue of the loss of the  
21 instrument.

22 "When the value of property cannot be ascertained  
23 pursuant to the standards set forth above, its value shall be  
24 deemed to be an amount not exceeding five hundred dollars  
25 (\$500).

26 "Amounts involved in thefts committed pursuant to  
27 one scheme or course of conduct, whether from the same person



1 or several persons, may be aggregated in determining the grade  
2 of the offense; provided, that only one conviction may be had  
3 and only one sentence enforced for all thefts included in such  
4 aggregate."

5 Section 2. Sections 13A-8-3.1 and 13A-8-3.2 are  
6 added to the Code of Alabama 1975, to read as follows:

7 §13A-8-3.1.

8 (a) A person commits the crime of cargo theft if the  
9 person knowingly obtains or exerts unauthorized control over  
10 either of the following:

11 (1) A vehicle engaged in commercial transportation  
12 of cargo or an appurtenance thereto, including, without  
13 limitation, a trailer, semitrailer, container, railcar or  
14 other associated equipment, or the cargo being transported  
15 therein or thereon, which is the property of another, with the  
16 intention of depriving the other person of the property,  
17 regardless of the manner in which the property is taken or  
18 appropriated.

19 (2) A trailer, semitrailer, container, railcar or  
20 other associated equipment, or the cargo being transported  
21 therein or thereon, which is the property of another, with the  
22 intention of depriving the other person of the property,  
23 regardless of the manner in which the property is taken or  
24 appropriated.

25 (b) (1) Cargo theft that has a collective value in  
26 excess of ~~one million dollars (\$1,000,000)~~ one hundred  
27 thousand dollars (\$100,000) is a Class A felony.

1 (2) Cargo theft that has a collective value  
2 exceeding two thousand five hundred dollars (\$2,500), but not  
3 exceeding ~~one million dollars (\$1,000,000)~~ one hundred  
4 thousand dollars (\$100,000), is a Class B felony.

5 (3) Cargo theft that has a collective value  
6 exceeding ~~one thousand five hundred dollars (\$1,500)~~ five  
7 hundred dollars (\$500), but does not exceed two thousand five  
8 hundred dollars (\$2,500), is a Class C felony.

9 (4) Cargo theft that has a collective value of ~~one~~  
10 ~~thousand five hundred dollars (\$1,500)~~ five hundred dollars  
11 (\$500) or less, is a Class A misdemeanor.

12 (5) A person convicted of cargo theft may also be  
13 disqualified from driving a commercial motor vehicle for a  
14 period of one year for the first conviction and for life for  
15 the second or subsequent conviction, subject to possible  
16 reduction as provided in subsection (c) of Section 32-6-49.11.

17 §13A-8-3.2.

18 (a) A person commits the crime of fifth wheel  
19 tampering if the person, with the intent to commit cargo theft  
20 does either of the following:

21 (1) Modifies, alters, or attempts to alter a fifth  
22 wheel or the antitheft locking device attached.

23 (2) Sells, possesses, offers to sell, moves, or  
24 causes to be moved on the highways of this state a modified or  
25 altered fifth wheel.

26 (b) Fifth wheel tampering is a Class C felony.

1                   Section 3. Although this bill would have as its  
2                   purpose or effect the requirement of a new or increased  
3                   expenditure of local funds, the bill is excluded from further  
4                   requirements and application under Amendment 621, now  
5                   appearing as Section 111.05 of the Official Recompilation of  
6                   the Constitution of Alabama of 1901, as amended, because the  
7                   bill defines a new crime or amends the definition of an  
8                   existing crime.

9                   Section 4. This act shall become effective on the  
10                  first day of the third month following its passage and  
11                  approval by the Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate  
committee on Judiciary..... 03-FEB-16

Read for the second time and placed on the calen-  
dar 1 amendment..... 11-FEB-16

Read for the third time and passed as amended .... 16-FEB-16

Yeas 29  
Nays 1

Patrick Harris  
Secretary