

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

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8 SYNOPSIS: This bill creates new crimes for theft of  
9 cargo in commercial transportation and fifth wheel  
10 tampering and would provide penalties.

11 Amendment 621 of the Constitution of Alabama  
12 of 1901, now appearing as Section 111.05 of the  
13 Official Recompilation of the Constitution of  
14 Alabama of 1901, as amended, prohibits a general  
15 law whose purpose or effect would be to require a  
16 new or increased expenditure of local funds from  
17 becoming effective with regard to a local  
18 governmental entity without enactment by a 2/3 vote  
19 unless: it comes within one of a number of  
20 specified exceptions; it is approved by the  
21 affected entity; or the Legislature appropriates  
22 funds, or provides a local source of revenue, to  
23 the entity for the purpose.

24 The purpose or effect of this bill would be  
25 to require a new or increased expenditure of local  
26 funds within the meaning of the amendment. However,  
27 the bill does not require approval of a local

1 governmental entity or enactment by a 2/3 vote to  
2 become effective because it comes within one of the  
3 specified exceptions contained in the amendment.  
4

5 A BILL  
6 TO BE ENTITLED  
7 AN ACT  
8

9 To amend Section 13A-8-1 of the Code of Alabama  
10 1975, and to add Sections 13A-8-3.1 and 13A-8-3.2 to the Code  
11 of Alabama 1975; to define cargo theft and fifth wheel  
12 tampering; to provide penalties; and in connection therewith  
13 would have as its purpose or effect the requirement of a new  
14 or increased expenditure of local funds within the meaning of  
15 Amendment 621 of the Constitution of Alabama of 1901, now  
16 appearing as Section 111.05 of the Official Recompilation of  
17 the Constitution of Alabama of 1901, as amended.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19 Section 1. Section 13A-8-1 of the Code of Alabama  
20 1975, is amended to read as follows:

21 "§13A-8-1.

22 "The following definitions are applicable in this  
23 article unless the context otherwise requires:

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

25 "a. Creates or confirms another's impression which  
26 is false and which the defendant does not believe to be true;  
27 or

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

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

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

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

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

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

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

22           "a. To withhold property or cause it to be withheld  
23 from a person permanently or for such period or under such  
24 circumstances that all or a portion of its use or benefit  
25 would be lost to him or her; or

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

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

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

6            "e. To subject the property to the claim of a person  
7 other than the owner.

8            "(3) FIFTH WHEEL. A device designed to be mounted on  
9 a truck tractor or similar towing vehicle, including, but not  
10 limited to, a converter dolly, which interfaces with and  
11 couples to the upper assembly of a semitrailer.

12            "~~(3)~~ (4) FINANCIAL INSTITUTION. A bank, insurance  
13 company, credit union, safety deposit company, savings and  
14 loan association, investment trust, or other organization held  
15 out to the public as a place of deposit of funds or medium of  
16 savings or collective investment.

17            "~~(4)~~ (5) FIREARM. A weapon from which a shot is  
18 discharged by gunpowder.

19            "~~(5)~~ (6) GOVERNMENT. The United States, any state or  
20 any county, municipality, or other political unit within  
21 territory belonging to the United States, or any department,  
22 agency, or subdivision of any of the foregoing, or any  
23 corporation or other association carrying out the functions of  
24 government, or any corporation or agency formed pursuant to  
25 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) is a Class A  
27 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), is a Class B  
4           felony.

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

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