

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

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

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

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

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

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

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

"The term "deception" does not, however, include falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons."

"Puffing" means an exaggerated commendation of wares or services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"A secured party, as defined in Section 7-9A-102(a)(72), is not an owner in relation to a defendant 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.

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

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

"b. Cause damage to property; or

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

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

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

"f. Expose a secret or publicize an asserted fact,

whether true or false, tending to subject any person to hatred, contempt, or ridicule; or

"g. Reveal any information sought to be concealed by
a threatened; or

"h. Testify or provide information or withhold

testimony or information with respect to another's legal claim or defense; or

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

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

"k. Do any other act which would not in itself 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.

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

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

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

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

§13A-8-3.2.

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

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

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

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

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

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