

HB 1307 – Department of Agriculture and Consumer Services (Identical SB 1150)

This bill creates s. 812.0151, F.S., adding multiple felonies for retail fuel theft. First, the bill adds an **unranked, 3rd degree felony (Level 1 by default)** for “any person who...intentionally breaches, causes to be breached, or gains access without authorization to any internal portion of a retail fuel dispenser.” It also adds an **unranked, 2nd degree felony (Level 4 by default)** for a person who “tampers with, manipulates, removes, replaces, or interrupts any mechanical or electronic component located within a retail fuel dispenser for the purpose of devising or executing any scheme or artifice to defraud or obtain property.” Furthermore, an **unranked, 3rd degree felony (Level 1 by default)** is added for a person who “uses any form of electronic communication from a device such as a wireless remote, computer, or other device which alters, tricks, or manipulates a retail fuel dispenser.” An **unranked, 2nd degree felony (Level 4 by default)** is added for someone who “possesses, uses, or installs any device constructed for the purpose of fraudulently altering, manipulating, or interrupting a retail fuel dispenser from standard operation or impeding the retail fuel dispenser’s functionality while violating” the felony where a device is used to manipulate a retail fuel dispenser. This bill then adds an **unranked, 3rd degree felony (Level 1 by default)** for someone who “obtains fuel as a result of a violation of this section” and an **unranked, 3rd degree felony (Level 1 by default)** for someone who “aids, abets, or assists in a violation of this section.” An **unranked, 3rd degree felony (Level 1 by default)** is added for someone who “has in his or her possession any item used to hold fuel which was not fitted to a vehicle or conveyance at the time of manufacture with the intent to use such item, or allow such item to be used, in a violation of this section.” Furthermore, “any person who modifies a vehicle’s factory installed fuel tank for the purpose of committing, attempting to commit, or aiding, abetting, or assisting someone in a violation of this section commits an **unranked, 3rd degree felony (Level 1 by default)**.”

In FY 18-19, the incarceration rate for a Level 1, 3rd degree felony was 9.1%, and in FY 19-20 the incarceration rate was 8.2%. In FY 20-21, the incarceration rate for a Level 1, 3rd degree felony was 7.5%, and in FY 21-22 the incarceration rate was 8.6%. In FY 18-19, the incarceration rate for a Level 4, 2nd degree felony was 28.7%, and in FY 19-20 the incarceration rate was 27.3%. In FY 20-21, the incarceration rate for a Level 4, 2nd degree felony was 23.8%, and in FY 21-22 the incarceration rate was 29.7%.

While these felonies are newly created, other felonies currently exist where fuel theft offenses might be prosecuted, such as retail theft, grand theft, petit theft, and accessory after the fact. Per DOC, there were 40 new commitments to prison in FY 18-19 for retail theft offenses, and 23 new commitments in FY 19-20. There were 22 new commitments in FY 20-21, and 14 new commitments in FY 21-22. For grand theft, there were 1,511 new commitments in FY 18-19, and 1,069 new commitments in FY 19-20. In FY 20-21, there were 698 new commitments, and in FY 21-22, there were 785 new commitments. While a large proportion of the grand theft commitments include a third conviction for petit theft, there are also a large number of misdemeanor petit theft convictions each year for those on their first or second conviction. Per FDLE, in FY 21-22, there were

9,524 guilty/convicted charges and 2,939 adjudication withheld charges. These misdemeanors could be elevated to felonies under this new language, though it is not known how many of these involved the theft of fuel. Finally, the aiding and abetting parts of this new language could potentially be under the current accessory after the fact felonies, where there were 41 new commitments in FY 18-19, and 36 new commitments in FY 19-20. In FY 20-21 there were 26 new commitments, and there were 38 new commitments in FY 21-22. Per FDLE, for misdemeanor accessory after the fact, there was one guilty/convicted charge and 2 adjudication withheld charges in FY 21-22.

Although there is potential overlap between current felonies and the new felonies described above, this new language introduces several unique felonies, and the pool of potential offenders is not known. Given that there is no data currently available for retail fuel theft, the impact of this new language on the prison population cannot be quantified.

CONFERENCE ADOPTED ESTIMATE: Positive Indeterminate

Requested by: House & Senate