

ACT 256

S.B. NO. 3134

A Bill for an Act Relating to Theft of Utility Services.

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

SECTION 1. The legislature finds that the theft of utility services has a significant impact on the community. The legislature also finds that utility services theft creates potentially hazardous conditions such as electrical burns to persons. Furthermore, utility services theft diverts utility revenues, which in turn decreases or results in a loss of revenue to the State and increases costs for consumers.

Therefore, the legislature finds that it is necessary to prosecute utility services theft cases and to deter the theft of utility services in the future. This should result in an increase in city and state tax revenue, safer delivery of utility services to customers, and a benefit to all ratepayers.

Accordingly, the purpose of this Act is to define the criminal act of theft of utility services.

SECTION 2. Chapter 708, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§708- Theft of utility services. (1) For purposes of this section:

“Customer” means the person in whose name the utility service is provided.

“Divert” means to change the intended course or path of utility services without the authorization or consent of the utility.

“Person” means any individual, partnership, firm, association, corporation, or other legal entity.

“Reconnection” means the reconnection of utility service by a customer or other person after service has been lawfully disconnected by the utility.

“Utility” means any public utility as defined in section 269-1, that provides electricity, gas, or water services.

“Utility service” means the provision of electricity, gas, water, or any other service provided by the utility for compensation.

(2) A person commits the offense of theft of utility services if the person, with intent to obtain utility services for the person’s own or another’s use without paying the full lawful charge therefor, or with intent to deprive any utility of any part of the full lawful charge for utility services it provides, commits, authorizes, solicits, aids, or abets any of the following:

- (a) Diverts, or causes to be diverted utility services, by any means whatsoever;
- (b) Prevents any utility meter, or other device used in determining the charge for utility services, from accurately performing its measuring function;
- (c) Makes or causes to be made any connection or reconnection with property owned or used by the utility to provide utility services, without the authorization or consent of the utility; or
- (d) Uses or receives the direct benefit of all or a portion of utility services with knowledge or reason to believe that a diversion, prevention of accurate measuring function, or unauthorized connection existed at the time of use or that the use or receipt was otherwise without the authorization or consent of the utility.

(3) In any prosecution under this section, the presence of any of the following objects, circumstances, or conditions on premises controlled by the customer, or by the person using or receiving the direct benefit of all or a portion of utility services obtained in violation of this section, shall create a rebuttable presumption that the customer or person intended to and did violate this section:

- (a) Any instrument, apparatus, or device primarily designed to be used to obtain utility services without paying the full lawful charge therefor; or
- (b) Any meter that has been diverted or prevented from accurately performing its measuring function so as to cause no measurement or inaccurate measurement of utility services.

(4) A person commits the offense of theft of utility services in the first degree in cases where the theft:

- (a) Accrues to the benefit of any commercial trade or business, including any commercial trade or business operating in a residence, home, or dwelling;
- (b) Is obtained through the services of a person hired to commit the theft of utility services; in which event, both the person hired and the person responsible for the hiring shall be punished under this section as a class C felony; or
- (c) Accrues to the benefit of a residence, home, or dwelling where the value of the theft of utility services exceeds \$300.

Theft of utility services in the first degree is a class C felony, and shall be sentenced in accordance with chapter 706, except that for a first offense the court shall impose a minimum sentence of a fine of at least \$1000 or two times the value of the theft, whichever is greater.

(5) A person commits theft of utility services in the second degree if the person commits theft of utility services other than as provided in section 708- (4). Theft of utility services in the second degree is a misdemeanor and shall be sentenced in accordance with chapter 706, except that for a first offense the court shall impose a minimum sentence of a fine of \$500, with an increase of \$500 for each succeeding conviction under section 708- (5)."

SECTION 3. Section 708-827, Hawaii Revised Statutes, is amended to read as follows:

"§708-827 Criminal tampering in the second degree. (1) A person commits the offense of criminal tampering in the second degree if the person intentionally[: (a) Tamper] tampers with property of another person, without the other person's consent, with intent to cause substantial inconvenience to that person or to another[: or

(b) Tamper or makes connection with property of a utility without its consent].

(2) Criminal tampering in the second degree is a petty misdemeanor.’’

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 6. This Act shall take effect upon its approval.

(Approved June 18, 1996.)

Note

1. Edited pursuant to HRS §23G-16.5.