

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: SB 732

INTRODUCER: Senator Powell

SUBJECT: Theft from Nonprofit Organizations

DATE: February 26, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wyant</u>	<u>Stokes</u>	<u>CJ</u>	Favorable
2.	<u>Wyant</u>	<u>Yeatman</u>	<u>FP</u>	Favorable

I. Summary:

SB 732 creates s. 812.0146, F.S., to reclassify theft offenses from nonprofit organizations. Whenever a person is charged with committing theft from an organization that he or she knows or has reason to believe is a nonprofit organization that is qualified as charitable under s. 501(c)(3) of the Internal Revenue Code, the crime of theft is reclassified based on the value of the property taken. If the funds, assets, or property involved in the theft is valued at:

- \$50,000 or more, the offender commits a first degree felony.
- \$10,000 or more, but less than \$50,000, the offender commits a second degree felony.
- \$300 or more, but less than \$10,000, the offender commits a third degree felony.

The bill requires a person who is convicted of theft of more than \$1,000 from an organization that he or she knows or has reason to believe is a nonprofit organization that is qualified as charitable under s. 501(c)(3) of the Internal Revenue Code, to make restitution to the victim of such offense and to perform up to 500 hours of community service in addition to any other fine or sentence imposed.

The bill may have an indeterminate fiscal impact on the Department of Corrections (DOC). See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2024.

II. Present Situation:

Nonprofit Organizations

In accordance with s. 501(c)(3) of the Internal Revenue Code, nonprofit organizations are organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, educational, or other specified purposes and none of its earnings may inure to any private shareholder or individual. In addition, it may not be an action organization, i.e., it may

not attempt to influence legislation as a substantial part of its activities and may not participate in any campaign activity for or against political candidates. These organizations are commonly referred to as charitable organizations.¹

Theft

Section 812.014, F.S., provides that a person commits a theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to either temporarily or permanently:

- Deprive the other person of a right to the property or a benefit from the property; or
- Appropriate the property to his or her own use or to the use of any person not entitled to use the property.²

Second degree petit theft, a second degree misdemeanor,³ is theft of property valued at less than \$100.⁴ First degree petit theft, a first degree misdemeanor,⁵ is theft of property valued at \$100 or more but less than \$750.⁶ Second degree petit theft incurs greater penalties if there is a prior theft conviction: it is a first degree misdemeanor if there is one prior conviction,⁷ and a third degree felony if there are two or more prior convictions.⁸

Generally, a person commits a third degree felony⁹ crime of grand theft if the property stolen is valued at \$750 or more, but less than \$20,000.¹⁰ If the property stolen is \$20,000 or more, but less than \$100,000, the offender commits a second degree felony,¹¹¹² and if the property stolen is \$100,000 or more, the offender commits a first degree felony.¹³¹⁴ Other items listed under this section such as the theft of a firearm or a motor vehicle may also constitute grand theft.¹⁵

¹ See Internal Revenue Service, *Exemption Requirements –501(c)(3) Organizations*, available at: <https://www.irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-501c3-organizations> (Last visited January 8, 2024).

² Section 812.014(1), F.S.

³ A second degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days and a fine of up to \$500. Sections 775.082 and 775.083, F.S.

⁴ Section 812.014(3)(a), F.S.

⁵ A first degree misdemeanor is punishable by a term of imprisonment not exceeding 1 year and a fine of up to \$1,000. Sections 775.082 and 775.083, F.S.

⁶ Section 812.014(2)(e), F.S.

⁷ Section 812.014(3)(b), F.S.

⁸ Section 812.014(3)(c), F.S.

⁹ A third degree felony is generally punishable by not more than 5 years in state prison and a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S.

¹⁰ Section 812.014(2)(c)1.-3., F.S.

¹¹ Section 812.014(2)(b), F.S.

¹² A second degree felony is generally punishable by not more than 15 years in state prison and a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S.

¹³ Section 812.014(2)(a)1., F.S.

¹⁴ A first degree felony is generally punishable by not more than 30 years in state prison and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

¹⁵ Section 812.014(2)(c), F.S.

Reclassification

Florida currently has various statutes that reclassify criminal offenses under specified circumstances. Generally, criminal laws provide for reclassification to the next highest degree. Reclassifying an offense has the effect of increasing the maximum sentence that can be imposed for an offense. The maximum sentence that can be imposed for a criminal offense is generally based on the degree of the misdemeanor or felony:

- Sixty days in a county jail for a second degree misdemeanor;
- One year in a county jail for a first degree misdemeanor;
- Five years in state prison for a third degree felony;
- Fifteen years in state prison for a second degree felony; and
- Generally, 30 years in state prison for a first degree felony.¹⁶

Certain theft offenses are reclassified to the next higher degree offense if the person committing the offense has previous convictions. A third degree felony retail theft offense is reclassified to a second degree felony if the person has a previous retail theft conviction in violation of s 812.015(8), F.S.¹⁷

Reclassification under s. 812.0145, F.S., is similar to the reclassification provided in the bill for theft from a qualified charitable organization. Section 812.0145, F.S., reclassifies theft offenses when the victim is 65 years of age or older. Whenever a person is charged with committing theft from a person 65 years of age or older, when he or she knows or has reason to believe that the victim was 65 years of age or older, the crime of theft is reclassified based on the value of the property taken. If the funds, assets, or property involved in the theft is valued at:

- \$50,000 or more, the offender commits a first degree felony.
- \$10,000 or more, but less than \$50,000, the offender commits a second degree felony.
- \$300 or more, but less than \$10,000, the offender commits a third degree felony.¹⁸

A person who is convicted of theft of more than \$1,000, from a person who is 65 years of age or older, is required to make restitution to the victim of such offense and to perform up to 500 hours of community service work in addition to any fine or sentence imposed and must not be in lieu thereof.¹⁹

III. Effect of Proposed Changes:

The bill creates s. 812.0146, F.S., to reclassify theft offenses from nonprofit organizations. Whenever a person is charged with committing theft from an organization that he or she knows or has reason to believe is a nonprofit organization that is qualified as charitable under s. 501(c)(3) of the Internal Revenue Code, the crime of theft is reclassified based on the value of the property taken. If the funds, assets, or property involved in the theft is valued at:

- \$50,000 or more, the offender commits a first degree felony.

¹⁶ Section 775.082, F.S. Fines may also be imposed, and those fines escalate based on the degree of the offense. Section 775.083, F.S., provides the following maximum fines; \$500 for a second degree misdemeanor; \$1,000 for a first degree misdemeanor; \$5,000 for a third degree felony; and \$10,000 for a second degree felony and a first degree felony.

¹⁷ Section 812.015(9)(a), F.S.

¹⁸ Section 812.0145(2)(a-c), F.S.

¹⁹ Section 812.0145(1), F.S.

- \$10,000 or more, but less than \$50,000, the offender commits a second degree felony.
- \$300 or more, but less than \$10,000, the offender commits a third degree felony.

A person who is convicted of theft of more than \$1,000 from an organization that he or she knows or has reason to believe is a nonprofit organization that is qualified as charitable under s. 501(c)(3) of the Internal Revenue Code, is required to make restitution to the victim of such offense and to perform up to 500 hours of community service in addition to any other fine or sentence imposed.

The bill is effective October 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill may have a positive indeterminate prison bed impact due to an increased number of offenders receiving enhanced sentences under this section.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 812.0146 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.