

STORAGE NAME: h1317a.cp
DATE: April 17, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1317

RELATING TO: Fraud against people who lease property

SPONSOR(S): Representatives Argenziano, Culp, Crow, Heyman, Putnam, and Dockery

STATUTE(S) AFFECTED: Section 812.155, F.S.

COMPANION BILL(S): CS/SB 170

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME AND PUNISHMENT YEAS 8 NAYS 0
- (2) CRIMINAL JUSTICE APPROPRIATIONS
- (3)
- (4)
- (5)

I. SUMMARY:

The bill makes the law relating to failure to return rental property, and leasing with intent to defraud more strict. A prosecutor may currently use the following evidentiary device provided by section 812.155(4) to prove the fraudulent intent of an accused:

Fraudulent intent may be inferred from proof of the failure to make payment or redeliver upon demand made either in person or by certified mail. This inference may be made only when there is no dispute as to the amount.

In the place of this inference the following paragraphs are added to the section to create a new presumption to help the prosecutor prove intent to defraud:

(b) In prosecutions under subsection (3), failure to redeliver the property or equipment upon demand made in person or by certified mail shall be prima facie evidence of such fraudulent intent.

(c) In prosecutions under subsection (2), failure to pay any amounts due for the full rental period, including reasonable costs for damage to the property or equipment, upon demand made in person or by certified mail shall be prima facie evidence of such fraudulent intent.

Prima facie evidence is evidence which, if not contradicted, is sufficient to sustain a judgement. In practical terms, when the prosecution has established a prima facie showing on each element of an offense, the defense will not succeed on a motion to dismiss the case.

The Florida Supreme Court has held that a statute may not mandate that certain facts, such as failure to redeliver property, give rise to "prima facie evidence." A jury would have to be instructed that the facts may or would be considered prima facie evidence. In other words, the word "shall" as used in this bill has been interpreted in similar situations to mean may or would.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Prima Facie Evidence

Prima facie evidence is evidence which, if not contradicted, is sufficient to sustain a judgement. In practical terms, when the prosecution has established a prima facie showing on each element of an offense, the defense will not succeed on a motion to dismiss the case.

There are currently a number of statutes that create a presumption whereby proof of a certain fact "shall be prima facie evidence" of an element of a crime. To prevent the burden of proof from being shifted to the accused, the Florida Supreme Court has interpreted the phrase "shall be prima facie evidence" as establishing a permissive inference or presumption. Rolle v. State, 560 So. 2d 1154 (Fla. 1990). In other words, the "shall" must be read as a "may" or a "would" when the jury is instructed.

Leasing Property with Intent to Defraud and Failure to Redeliver Leased Property

Section 812.155(1) makes it illegal for anyone with *intent to defraud* to obtain property by trick, deceit, or fraudulent or willful false representation.

Section 812.155(2) makes it illegal to hire or lease property *with the intent to defraud*.

Section 812.155(3) makes it illegal for a person *with intent to defraud* to abandon, or willfully refuse to deliver hired or leased property.

Fraudulent Intent

Section 812.155(4) provides that fraudulent intent may be inferred from proof that the property was obtained in one of the following ways:

1. By false pretenses;
2. By absconding without payment or offering to pay any outstanding balance; or
3. By surreptitiously removing or attempting to remove the property or equipment from the county, without the express written consent of the lessor.

Subsection (4) also contains the following inference relating to the failure to return leased property:

Fraudulent intent may be inferred from proof of the failure to make payment or redeliver upon demand made either in person or by certified mail. This inference may be made only when there is no dispute as to the amount owed.

The requirement that there be no dispute as to the amount owed limits the utility of this last inference.

Theft

Florida has a very broad theft statute, 812.014, F.S., which also covers many of the acts prohibited by section 812.155, F.S. The definition of theft includes to knowingly obtain or use the property of another with the intent to temporarily or permanently deprive the lawful owner of the property.

Since the theft statute does not require proof of intent to defraud, it is often easier to prove theft than the specific law relating to leased property, section 812.155, F.S.

B. EFFECT OF PROPOSED CHANGES:

The bill deletes paragraph (b) of section 812.155(4) which states:

Fraudulent intent may be inferred from proof of the failure to make payment or redeliver upon demand made either in person or by certified mail. This inference may be made only when there is no dispute as to the amount.

In the place of paragraph (b) the following paragraphs are added to the section to create a new presumption to help the prosecutor prove intent to defraud:

(b) In prosecutions under subsection (3), failure to redeliver the property or equipment upon demand made in person or by certified mail shall be prima facie evidence of such fraudulent intent.

(c) In prosecutions under subsection (2), failure to pay any amounts due for the full rental period, including reasonable costs for damage to the property or equipment, upon demand made in person or by certified mail shall be prima facie evidence of such fraudulent intent.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

No.

(2) what is the cost of such responsibility at the new level/agency?

No.

(3) how is the new agency accountable to the people governed?

No.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

Not Applicable.

- (2) Who makes the decisions?

Not Applicable.

- (3) Are private alternatives permitted?

Not Applicable.

- (4) Are families required to participate in a program?

Not Applicable.

(5) Are families penalized for not participating in a program?

Not Applicable.

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

Not Applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not Applicable.

D. SECTION-BY-SECTION RESEARCH:

Section 1: Changes the presumptions relating to defrauding the owner of leased property. See EFFECT OF PROPOSED CHANGES.

Section 2: Provides an effective date.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

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3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

4. Total Revenues and Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See Fiscal Comments.

2. Direct Private Sector Benefits:

There may be some benefits if defrauding owners of leased property is deterred.

3. Effects on Competition, Private Enterprise and Employment Markets:

See Fiscal Comments.

D. FISCAL COMMENTS:

While the bill does not create any new crimes or increase penalties, there could be a small impact if the bill makes it easier to prosecute rental property fraud. To the extent that more people are convicted and sentenced to prison, jail, or supervision, there will be increased costs to State and local government.

The Criminal Justice Estimating Conference estimates that the bill will have no impact on prison populations.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Criminal laws are exempt from the provisions of Article VII, Section 18 of the Florida Constitution. The bill contains no other mandates.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

There have been some cases that raised the issue of whether presumptions improperly shift the burden of proof to the defendant. The leading Florida case, Rolle v. State, 560 So. 2d 1154 (Fla. 1990), discusses this issue in the context of the DUI statute. The Statute prohibiting DUI had a provision, section 316.1934(2), F.S. (1985), which establishes the following presumption:

If there was at that time 0.10 percent or more by weight of alcohol in the person's blood, that fact shall be prima facie evidence that the person was under the influence of alcoholic beverage....

A majority of the Florida Supreme Court Justices found the following jury instruction based on the DUI statute to be constitutional:

If you find from the evidence that the Defendant had a blood alcohol level of .10 percent or more, that evidence would be sufficient by itself to establish that the Defendant was under the influence of alcohol to the extent that his normal faculties were impaired. However, such evidence may be contradicted or rebutted by other evidence.

The majority held that the instruction created a permissive inference, however, two Justices disagreed and argued in a concurring opinion that:

A reasonable juror could have felt compelled to conclude that the breath tests were adequate to prove legal impairment unless, Rolle [the defendant] persuaded the jury that the presumption was unwarranted, thus improperly shifting the burden of proof.

It would appear that a stronger inference than the one given above would not be allowed by the courts, and even instruction given is somewhat controversial.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Crime and Punishment Committee adopted an amendment that made three changes to the original bill:

1. The phrase "or offering to pay" is removed from paragraph (4)(a). Therefore, absconding without payment regardless of whether a person offered to pay for property will give rise to prima facie evidence of fraudulent intent.
2. The presumption created by paragraph (4)(b) is made to apply to failure to redeliver leased property and not to leasing property with intent to defraud.
3. Paragraph (4)(c) is amended so that the presumption may not be invoked if a person pays the amount due for the rental period and pays either any damages to the rented property or the cost of replacement.

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

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