

STORAGE NAME: h1049.hcc.doc
DATE: April 18, 2001

HOUSE OF REPRESENTATIVES
COUNCIL FOR HEALTHY COMMUNITIES
ANALYSIS

BILL #: HB 1049
RELATING TO: Cargo Theft
SPONSOR(S): Representative(s) Betancourt

TIED BILL(S):

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

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 9 NAYS 0
 - (2) ECONOMIC DEVELOPMENT AND INTERNATIONAL TRADE YEAS 9 NAYS 0
 - (3) COUNCIL FOR HEALTHY COMMUNITIES YEAS 15 NAYS 0
 - (4)
 - (5)
-

I. SUMMARY:

House Bill 1049 defines the word "cargo" with regard to theft and assigns criminal penalties for the theft of cargo at certain values.

The bill amends and conforms certain statutes.

The bill provides for an effective date of October 1, 2001.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. PRESENT SITUATION:

Chapter 812 of the Florida Statutes relates to “Theft, Robbery, and Related Crimes.” The act of theft is assigned different criminal penalties based on the value of the stolen property.

- *Grand theft of the first degree* (punishable as a first degree felony) is committed when:
 - 1) the stolen property is valued at \$100,000 or more, or
 - 2) a motor vehicle is used during the course of the theft as an instrumentality to assist in committing the theft and results in damages to the real property of another, or
 - 3) the offender causes damage to the real or personal property of another in excess of \$1,000 during the theft.
- *Grand theft of the second degree* (punishable as a second degree felony) is committed when the stolen property is valued at more than \$20,000 but less than \$100,000.
- *Grand theft of the third degree* (punishable as a third degree felony) is committed when the stolen property meets one of several characteristics listed in section 812.014(2)(c), F.S., including a monetary value that is more than \$300 but less than \$20,000. Grand theft of the third degree also includes automobile theft.

Despite the different degrees of theft, the Florida Statutes do not define cargo, nor do they address the issue of theft of cargo. Because the statutes do not recognize cargo theft, the true impact of such theft is not currently captured. For example, when someone steals a tractor-trailer (or even just the trailer), the theft is categorized as a motor vehicle theft rather than a property theft because the stolen property either included the tractor or was contained in the trailer (both of which are defined as motor vehicles by § 320.01, F.S.).

Cargo theft involving trucks and tractor-trailers is on the rise in Florida.¹ As the result of a local Miami-Dade task force that focuses solely on cargo crime in the Miami area, instances of such crime have moved away from the ports of Miami and to the roads and interstates that crisscross Florida. The “cities of Fort Pierce, Ocala, and Orlando – major interstate junctions with numerous truck stops – are experiencing growing numbers of cargo crimes at truck stops.”² According to

¹ World City Business, “Task Force: Local cargo crime shifting to other regions.” Volume 3, Number 16, December 2000.

² World City Business, “Task Force: Local cargo crime shifting to other regions.” Volume 3, Number 16, December 2000.

Sergeant Tommy Bibb with the Marion County Sheriff's Office, many times thieves will do surveillance and "stake out" certain truck stops or fuel stops. If a truck driver leaves his entire rig, or even leaves only the trailer, the thieves have the capabilities to steal the truck and/or trailer within minutes. Research from the Florida Highway Patrol, Bureau of Investigations, indicates there were 327 incidents of reported cargo theft in Florida in calendar year 2000, the result of which was a financial loss of more than \$35 million dollars.

C. EFFECT OF PROPOSED CHANGES:

House Bill 1049 defines the word "cargo," with respect to theft, as "partial or entire shipments, containers, or cartons of property which are contained in or on a trailer, motortruck, aircraft, vessel, warehouse, freight station, freight consolidation facility, or air navigation facility."

The bill adds theft of cargo to the crime of first degree grand theft when the cargo is valued at \$50,000 or more and has entered the stream of interstate or intrastate commerce from the shipper's loading platform to the consignee's receiving dock. Such a theft will be punishable by a 1st degree felony and will receive a Level 7 ranking on Offense Severity Ranking Chart of the Criminal Punishment Code. The range of punishment for this offense under the Punishment Code is 21 months to 30 years in prison. The bill also adds theft of cargo to the crime of second degree grand theft when the cargo is valued at less than \$50,000 and has entered the stream of interstate or intrastate commerce from the shipper's loading platform to the consignee's receiving dock. Such a theft will be punishable by a 2nd degree felony and will receive a Level 6 ranking on the Offense Severity Ranking Chart of the Criminal Punishment Code. The range of punishment for this offense is any non-state prison sanction to 15 years imprisonment. The bill also specifies a minimum mandatory prison sentence of 3 years or more for second or subsequent convictions of the theft of cargo.

It should be noted that the bill does not offer a minimum threshold value with regard to cargo theft. For example, if a person steals \$20 worth of cargo, he or she will still be charged with a second-degree felony, punishable by up to a 15-year prison sentence, simply because the value of the stolen cargo falls into the "less than \$50,000" category.

The theft of cargo can only occur when the cargo is in the "stream" of commerce. However, the bill does not offer a definition of "stream of commerce." Therefore, the situation may arise in the future where the courts will have to offer their interpretation of the "stream of commerce" phrase.³

The bill makes two technical changes. It conforms subsection 10 of section 550.6305, F.S., to reflect changes made by the bill, and the bill also reenacts subsection 2 of section 538.23 (relating to secondhand dealers) to incorporate changes made by the bill.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. This section makes a technical change to conform a statutory reference to the changes that are made by the bill.

Section 2. This section defines the word "cargo" as "partial or entire shipments, containers, or cartons of property which are contained in or on a trailer, motortruck, aircraft, vessel, warehouse,

³ In the dissenting opinion of Asahi Metal Industry Co. v. Superior Court of California, Solano County, 107 S.Ct. 1026, Justice Brennan wrote that the stream of commerce "refers not to unpredictable currents or eddies, but to the regular and anticipated flow of products from manufacture to distribution to retail sale."

freight station, freight consolidation facility, or air navigation facility.” This section also renumbers the subsections of section 812.012 (definitions).

Section 3. This section adds stolen cargo to the current crime of theft. Stolen cargo which is valued at more than \$50,000 and has entered the stream of interstate or intrastate commerce from the shipper’s loading platform to the consignee’s receiving dock, is considered grand theft of the 1st degree and is punishable as a felony of the first degree. If the cargo is worth less than \$50,000, and meets the same “commerce” requirements mentioned above, the theft of such cargo shall be considered grand theft of the second degree, punishable as a felony of the 2nd degree.

This section also requires that offenders who are convicted of such cargo theft on two or subsequent occasions are to receive minimum mandatory prison sentences of no less than three years.

Section 4. This section adds the crime of cargo theft, based on the value of the cargo, to the Offense Severity Ranking Chart of Florida’s Criminal Punishment Code.

Section 5. This section reenacts a subsection of statute for the purposes of incorporating the changes made by the bill.

Section 6. This section provides an effective date of October 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Creating a specific penalty for cargo theft may decrease the fear and occurrence of such a problem, therefore encouraging more inter- and intrastate cargo traffic in various counties.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Creating a specific penalty for cargo theft may decrease the occurrence of such problems, therefore resulting in a savings to various trucking and shipping companies who could be victims of the crime of cargo theft.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference concluded, on April 9, 2001, that this bill will have an indeterminate fiscal impact, with only a minimal prison bed impact on the Department of Corrections. The bill creates penalties for the theft of cargo. Depending on the value of the cargo stolen, the penalty is either a first or second-degree felony. There is no option for a third-degree felony.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

It should be noted that the bill does not offer a minimum threshold value with regard to cargo theft. For example, if a person steals \$20 worth of cargo, he or she will still be charged with a second-degree felony, punishable by up to a 15-year prison sentence, simply because the value of the stolen cargo falls into the "less than \$50,000" category.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

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David De La Paz

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AS REVISED BY THE COMMITTEE ON ECONOMIC DEVELOPMENT AND INTERNATIONAL
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AS FURTHER REVISED BY THE COUNCIL FOR HEALTHY COMMUNITIES:

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