

STORAGE NAME: h1587a.cpcs.doc

DATE: April 12, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME PREVENTION, CORRECTIONS, & SAFETY
ANALYSIS**

BILL #: HB 1587

RELATING TO: Personal Property

SPONSOR(S): Representative(s) Baxley

TIED BILL(S):

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

- (1) CRIME PREVENTION, CORRECTIONS, & SAFETY YEAS 5 NAYS 0
- (2) JUDICIAL OVERSIGHT
- (3) COUNCIL FOR HEALTHY COMMUNITIES
- (4)
- (5)

I. SUMMARY:

A person who obtains personal property or equipment from a business via a rental-purchase ("rent-to-own") agreement cannot be criminally prosecuted under s. 812.155, F.S., (hiring, leasing, or obtaining of personal property or equipment with the intent to defraud) even if he or she fails to honor the agreement and does not return the goods to the business. This bill amends s. 812.155(7), F.S., to narrow the scope of the exclusion from criminal prosecution for hiring or leasing with intent to defraud. Property that is the subject of a rental-purchase agreement and for which the rental store retains title to the property throughout the rental-purchase agreement period will no longer be excluded from the provisions of s. 812.155, F.S.

This bill substantially amends section 812.155, Florida Statutes.

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 type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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:

A person who obtains personal property or equipment from a business via a rental-purchase ("rent-to-own") agreement cannot be criminally prosecuted under s. 812.155, F.S., (hiring, leasing, or obtaining of personal property or equipment with the intent to defraud) even if he or she fails to honor the agreement and does not return the goods to the business. According to the Florida Rental Dealers Association, this exclusion is a significant industry problem because it allows customers to pawn or abscond with property without being subject to criminal penalty.

Current Law

Chapter 812, F.S., relates to theft, robbery, and related crimes. Section 812.155, F.S., addresses hiring, leasing, or obtaining personal property or equipment with the intent to defraud.

The first three subsections of s. 812.155, F.S., delineate criminal offenses regarding the fraudulent hiring, leasing, or obtaining of personal property. Section 812.155(1), F.S., 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), F.S., makes it illegal to hire or lease property with the intent to defraud. Section 812.155(3), F.S., makes it illegal for a person with intent to defraud to abandon or willfully refuse to redeliver hired or leased property. Penalties for offenses in ss. 812.155(1)-(3), F.S., include misdemeanors of the second degree for goods valued under \$300 and felonies of the third degree for goods valued at \$300 or more.

Section 812.155(4), F.S., provides that, in prosecutions under this section, the following represent prima facie evidence of fraudulent intent: obtaining the property under false pretenses, absconding without payment, or removing or attempting to remove the property from the county without the express written consent of the lessor. Subsection (4) further specifies that, in prosecutions under subsection (3), the following represent prima facie

evidence of fraudulent intent: failure to redeliver the property within five days after receipt of, or within five days after return receipt from, the certified mailing of the demand for return, or failure to pay any amount due which is incurred as the result of the failure to redeliver property after the rental period expires and after the demand for return is made.

Section 812.155(7), F.S., excludes personal property from these provisions if the property is subject to a rental-purchase agreement that allows the lessee to acquire ownership of the property.

C. EFFECT OF PROPOSED CHANGES:

This bill amends s. 812.155(7), F.S., to narrow the scope of the exclusion provided under this subsection. Property that is the subject of a rental-purchase agreement and for which the rental store retains title to the "property" throughout the rental-purchase agreement period would be subject to the provisions of s. 812.155, F.S, (hiring, leasing, or obtaining of personal property or equipment with the intent to defraud).¹ A person who obtains personal property from a business via a rental-purchase ("rent-to-own") agreement, under which the rental store retains title to the property, would be criminally liable if he or she fails to honor the agreement and does not return the goods to the business.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

¹ The use of the term "property" is inconsistent with the use of the term "personal property and equipment" elsewhere in the section. See the "Other Comments" section of this analysis.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to the Florida Rental Dealers Association, this bill will help alleviate a significant industry problem because customers will no longer be able to pawn or abscond with rental-purchase property without being subject to criminal penalty.

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

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

N/A

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

The use of the term "property" on page 1, line 26, of this bill is inconsistent with the use of the term "personal property and equipment" elsewhere in s. 812.155, F.S.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

STORAGE NAME: h1587a.cpcs.doc

DATE: April 12, 2001

PAGE: 5

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS, & SAFETY:

Prepared by:

Staff Director:

Allen Mortham, Jr.

David DeLaPaz