

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 177 Cargo Theft

SPONSOR(S): Cretul

TIED BILLS: **IDEN./SIM. BILLS:** SB 138

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice (Sub)	6 Y, 0 N	Kramer	De La Paz
2) Public Safety & Crime Prevention			
3) Public Safety Appropriations (Sub)			
4) Appropriations			
5)			

SUMMARY ANALYSIS

HB 177 changes the ranking of offenses related to cargo theft in the offense severity ranking chart of the Criminal Punishment Code. As a result, the lowest permissible sentence for the theft of cargo worth less than \$50,000 will increase from any non-state prison sanction (such as probation or county jail) to 21 months in prison, while the lowest permissible sentence for the theft of cargo worth \$50,000 or more will increase from 21 months to 34 months in prison. The maximum sentences for these offenses are not be affected by the bill and are 15 years and 30 years respectively.

The Subcommittee on Criminal Justice adopted a strike-all amendment. In addition to the provisions discussed above, the amendment requires a driver or other person responsible for a semitrailer which is used in commerce, who allows the semitrailer to be parked unattended without being attached to a motor vehicle, on public or private property where the public is an invitee, to ensure that the semitrailer is secured by a locking device that prohibits the unauthorized movement of the semitrailer. A violation of this provision is a moving violation.

The amendment also provides that a semitrailer which is found without the required locking device may be towed to a secure facility by a commercial towing service acting at the direction of a law enforcement officer. The owner or carrier operating the semitrailer will be responsible for specified towing fees. The amendment also makes it a second degree felony to alter the "fifth wheel" on a commercial vehicle with the intent to use the fifth wheel to commit or attempt to commit a theft.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives .

STORAGE NAME h0177a.ps.doc

DATE February 4, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

The bill requires the use of kingpin locking devices on semitrailers in certain circumstances which may be seen as failing to expand individual freedom.

B. EFFECT OF PROPOSED CHANGES:

Sentencing: The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. A defendant’s sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; the injury to the victim; additional offenses that the defendant committed at the time of the primary offense; the defendant’s prior record and other aggravating factors. Offenses are ranked in the “offense severity ranking chart” from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense as determined by the legislature. The points are added in order to determine the “lowest permissible sentence” for the offense. This is the minimum sentence that a judge may impose.¹ The permissible sentence for an offense ranges from the calculated lowest permissible sentence to the statutory maximum for the primary offense. The statutory maximum sentence for a first degree felony is thirty years, for a second degree felony is fifteen years and for a third degree felony is five years. s. 775.082, F.S.

Cargo Theft: Section 812.014, F.S. provides that a person commits 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 the use of the property.

If the property stolen is cargo valued at \$50,000 or more that has entered the stream of interstate or intrastate commerce from the shipper’s loading platform to the consignee’s receiving dock, the offense is a first degree felony, ranked in level 7 of the offense severity ranking chart of the Criminal Punishment Code. If the cargo is valued at less than \$50,000, the offense is a second degree felony, ranked in level 6 of the offense severity ranking chart of the Criminal Punishment Code.

HB 177 increases the ranking of the cargo theft offenses in the offense severity ranking chart. The offense of cargo theft valued at less than \$50,000 which is currently ranked in level 6, will now be ranked in level 7. This will result in the lowest permissible sentence for a first time offender increasing from any non-state prison sanction (such as county jail or probation) to 21 months in prison. The offense of cargo theft valued at more than \$50,000, which is currently ranked in level 7, will now be

¹ According to s. 921.0026(1), F.S. downward departure from the lowest permissible sentence is prohibited unless “there are circumstances or factors that reasonably justify the downward departure.” In other words, a judge is not permitted to impose a sentence below the lowest permissible sentence unless the judge makes specific findings justifying the downward departure.

ranked in level 8. This will result in the lowest permissible sentence for a first time offender increasing from 21 to 34 months in prison.

C. SECTION DIRECTORY:

Section 1. Reenacts s. 812.014, F.S.

Section 2. Amends s. 921.0022, F.S. to modify offense severity ranking chart of the Criminal Punishment Code.

Section 3. Provides effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference has not met to consider the prison bed impact of this bill on the Department of Corrections. During the 2003 session, the conference determined that SB 2336 which is similar to HB 177 would have an insignificant impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

See above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The Subcommittee on Criminal Justice adopted a strike-all amendment. In addition to the provisions contained in the original bill, the amendment requires a driver or other person responsible for a semitrailer which is used in commerce, who allows the semitrailer to be parked unattended without being attached to a motor vehicle, on public or private property where the public is an invitee, to ensure that the semitrailer is secured by a locking device that prohibits the unauthorized movement of the semitrailer. This type of locking device is often referred to as a "kingpin" locking device because it slides and locks over a semitrailer's kingpin to prevent the trailer from being connected to the fifth wheel of a truck tractor. A violation of this provision is a moving violation.

The amendment also provides that a semitrailer which is found without the required locking device may be towed to a secure facility by a commercial towing service acting at the direction of a law enforcement officer. The owner or carrier operating the semitrailer will be responsible for specified towing fees. The amendment also makes it a second degree felony to alter a "fifth wheel" on a heavy commercial vehicle with the intent to use the fifth wheel to commit or attempt to commit a theft