

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 177 w/CS 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	17 Y, 0 N w/CS	Kramer	De La Paz
3) Public Safety Appropriations (Sub)			
4) Appropriations			
5)			

SUMMARY ANALYSIS

HB 177, with committee substitute, 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 36 months in prison, while the lowest permissible sentence for the theft of cargo worth \$50,000 or more will increase from 21 months to 48 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 bill also amends the theft statute to make the theft of a semitrailer which was deployed by a law enforcement agency, a first degree felony. The lowest permissible sentence for the offense will be 48 months in prison. The maximum sentence is thirty years in prison.

The bill 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.

The bill also creates the Statewide Study Commission on Cargo Theft and Trucking Security which will be comprised of representatives of the trucking industry and law enforcement as well as a member of the Senate and a member of the House of Representatives. The commission will be staffed by the Office of Motor Carrier Compliance in the Department of Transportation and is required to make findings and recommendations by January 1, 2005.

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

STORAGE NAME: h0177b.ps.doc

DATE: April 14, 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:

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. If the property stolen is cargo valued at less than \$50,000, the offense is a second degree felony. The term “cargo” is defined to mean “partial or entire shipments, containers, or cartons of property which are contained in or on trailer, motortruck, aircraft, vessel, warehouse, freight station, freight consolidation facility, or air navigation facility.”¹

HB 177 increases the ranking of the cargo theft offenses in the offense severity ranking chart.² The offense of cargo theft valued at less than \$50,000 which is currently ranked in level 6, will now be ranked in level 8. 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 36 months in prison. The offense of cargo theft valued at more than \$50,000, which is currently ranked in level 7, will now be ranked in level 8. This will result in the lowest permissible sentence for a first time offender increasing from 21 to 48 months in prison.

¹ s. 812.012(1), F.S.

² 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. 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.

The bill also amends the theft statute to make theft of a semitrailer³ which was deployed by a law enforcement agency (usually as a decoy in a cargo theft investigation) a first degree felony. Under current law, the severity of the offense would depend on the value of the semitrailer. HB 177 ranks the offense in level 9 of the offense severity ranking chart and as a result, the lowest permissible sentence for the offense will be 48 months in prison.

Altered Fifth Wheel: The bill creates s. 812.0147, F.S. which makes it a second degree felony to modify, alter, or attempt to alter, or if altered, to sell, possess, offer for sale, move, or cause to be moved onto the highways of this state a fifth wheel, with the intent to use the altered fifth wheel to commit or attempt to commit theft. The provision only applies to a fifth wheel on a truck tractor.

Study Commission: The bill provides for the creation of the Statewide Study Commission on Cargo Theft and Trucking Security. The commission is assigned to the Department of Transportation and will be staffed by the Office of Motor Carrier Compliance. The commission consists of eight members, as follows: a member of the trucking industry in this state who is not a member of the Florida Trucking Association or the American Trucking Association who shall be appointed by the Governor; a member of the Senate appointed by the Senate President; a member of the House of Representatives appointed by the Speaker; the Director of the Office of Motor Carrier Compliance in the Department of Transportation or the director's designee; the President of the Florida Sheriff's Association or the president's designee; the head of the Tactical Operations Multi-Agency Cargo Anti-Theft Task Force or his or her designee; and the president of the Florida Retail Federation or the president's designee.

Commission members must be appointed by May 1, 2004 and must convene by June 1, 2004. Meetings must be held in the state and be open to the public. Members of the commission will serve without compensation but are entitled to receive reimbursement for travel and per diem expenses as provided in statute. The commission is required to examine issues related to cargo theft and trucking security and make findings and recommendations on matters including, but not limited to:

1. The scope and breadth of the cargo theft problem in this state.
2. The costs and benefits of mandating that security devices be installed on certain vehicles; the parameters of such a potential mandate; and the potential effects of any such mandate on the efficient flow of commerce in this state.
3. The use of technological advances to protect cargo shipments.
4. Recommended language for legislation addressing cargo theft and trucking security, if necessary for consideration by the Legislature.
5. Best practices regarding trucking security which are used by industry and other private-sector entities and by public-sector entities.

The commission is required to make findings and recommendations and submit them to the Governor, President of the Senate and Speaker of the House of Representatives by January 1, 2005.

C. SECTION DIRECTORY:

Section 1. Creates Statewide Study Commission on Cargo Theft and Trucking Security.

Section 2. Amends s. 812.014, F.S., relating to theft.

Section 3. Creates s. 812.0147, F.S., relating to unlawful possession or use of a fifth wheel.

Section 4. Amends s. 921.0022, F.S. to modify offense severity ranking chart of the Criminal Punishment Code.

³ The term "semitrailer" is defined in s. 316.003, F.S. as "any vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon, or is carried by, another vehicle."

Section 5. Reenacts s. 409.910, F.S. for the purpose of incorporating the amendment made by the bill to section 812.014, F.S.

Section 6. Reenacts s. 538.23, F.S. for the purpose of incorporating the amendment made by the bill to s. 812.014, F.S.

Section 7. Reenacts s. 985.227, F.S. for the purpose of incorporating the amendment made by the bill to s. 812.014, F.S.

Section 8. 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 considered the prison bed impact of this bill with the committee substitute on the Department of Corrections. The bill increases the ranking of cargo theft offenses. Theft of less than 50,000 worth of cargo is increased from level 6 to level 8 in the ranking chart. As a result, the lowest permissible sentence for the offense will increase from any non-state prison sanction (such as probation or county jail) to 36 months in prison. Theft of more than \$50,000 worth of cargo is increased from level 7 to level 9 in the ranking chart. As a result, the lowest permissible sentence for the offense will increase from 21 months in prison to 48 months in prison. Further, the bill ranks the offense of theft of a semitrailer that has been deployed by law enforcement in level 9 of the offense severity ranking chart. As a result, the lowest permissible sentence for the offense will be 48 months in prison.

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

Subcommittee on Criminal Justice: The Subcommittee on Criminal Justice recommended the adoption of a strike-all amendment. In addition to the provisions contained in the original bill, the amendment required the use of a kingpin locking device on a semitrailer in certain circumstances and allowed a vehicle to be towed at the direction of a law enforcement officer. The amendment also made it a second degree felony to alter a "fifth wheel" with the intent to use the fifth wheel to commit a theft

Committee on Public Safety & Crime Prevention: The Committee on Public Safety & Crime Prevention adopted a substitute amendment and an amendment to the substitute. The substitute amendment did not contain the provisions relating to a kingpin locking device which were contained in the amendment recommended by the subcommittee. The bill amended the offense severity ranking chart of the Criminal Punishment Code to provide for increased penalties for cargo theft. The amendment created a statewide study commission related to cargo theft and trucking security discussed in the bill analysis above. The amendment to the substitute amendment altered the membership of the study commission.