

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input 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 type="checkbox"/> | N/A <input checked="" 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 places the responsibility on dealers in used property in cases in which the property contains conspicuous ownership information identifying the name and phone number of the owner to contact the owner or local law enforcement agency to confirm that the property is not stolen, in order to avoid an inference that the dealer knew that the property was stolen.

B. EFFECT OF PROPOSED CHANGES:

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:

1. Deprive the other person of a right to the property or a benefit from the property or
2. Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property. ¹

Dealing in stolen property: Section 812.019, F.S. provides that any person who traffics² in, or endeavors to traffic in, property that he or she knows or should know was stolen commits a second degree felony. Any person who initiates, organizes, plans, finances, directs, manages or supervises the theft of property and traffics in such stolen property commits a first degree felony.

An offender can be charged, when appropriate, with theft and dealing in stolen property in connection with the same property but cannot be convicted of both offenses. s. 812.025, F.S.

Possession of altered property: Section 812.016, F.S. provides that any dealer in property who knew or should have known that identifying features, such as serial numbers and permanently affixed labels, of property in his or her possession had been removed or altered without the consent of the manufacturer, commits a first degree misdemeanor.

Leased property: The theft statute provides that failure to comply with the terms of a lease when the term of the lease is for one year or longer shall not constitute a theft unless demand for the return of the property leased has been made in writing and the leasee has failed to return the property within seven days of the receipt of the demand for return of the property. s. 812.014(4), F.S.

Inferences: Section 812.022, F.S. provides several inferences relating to evidence of theft or dealing in stolen property as follows:

¹ Section 812.012, F.S. contains definitions of the terms "obtains or uses", "property". The section also defines the term "property of another" to mean "property in which a person has an interest upon which another person is not privileged to infringe without consent, whether or not the other person also has an interest in the property."

² Section 812.012(8), F.S. contains a definition of the term "traffic".

1. Proof that a person presented false or outdated identification in connection with the leasing of personal property or failed to return leased property within 72 hours of the termination of the leasing agreement, unless satisfactorily explained, gives rise to an inference that the property was obtained or is used with intent to commit theft.
2. Proof of possession of recently stolen property, unless satisfactorily explained, gives rise to an inference that the person in possession of the property knew or should have known that the property had been stolen.
3. Proof of the purchase or sale of stolen property at a price substantially below the fair market value, unless satisfactorily explained, gives rise to an inference that the person buying or selling the property knew or should have known that the property had been stolen.
4. Proof of the purchase or sale of stolen property by a dealer in property, out of the regular course of business or without the usual indicia of ownership other than mere possession, unless satisfactorily explained, gives rise to an inference that the person buying or selling the property knew or should have known that it had been stolen.

The term "dealer in property" is defined to mean "any person in the business of buying and selling property." s. 812.012(2), F.S.

In Edwards v. State, 381 So.2d 696 (Fla. 1980), the court considered whether the inference relating to proof of possession of recently stolen property violated a defendant's due process rights. The court held that "[s]ince there is a rational connection between the fact proven (the defendant possessed stolen goods) and the fact presumed (the defendant knew the goods were stolen), the inference created by section 812.022(2) does not violate [a defendant's] due process rights."

Effect of HB 599: HB 599 amends section 812.022, F.S. to provide that proof of possession of stolen property, by a dealer who regularly deals in used property, gives rise to the inference that the person accepting the property knew or should have known that the property was stolen, if the property contains conspicuous ownership information identifying the name and phone number of the owner.

The bill provides that the inference does not arise if the dealer contacts the owner identified on the used property or the appropriate law enforcement agency and confirms that the property has not been stolen prior to accepting the property from the offeror. The bill provides that an accurate written record maintained by the dealer containing the date, time, number called and the name of the person who confirmed that the property was not stolen, is sufficient documentation for a dealer to avoid the inference created by the bill.

C. SECTION DIRECTORY:

Section 1. Amends s. 812.002, F.S. to create inference relating to stolen property.

Section 2. Provides effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a fiscal impact on dealers in used property who may be forced to take additional steps to ensure that property that contains conspicuous ownership information, is not stolen before the dealer obtains the property, in order to avoid the inference created by this bill.

D. FISCAL COMMENTS:

None.

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:

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The following comments are relevant to the bill as filed and are addressed in the amendment that was recommended by the Subcommittee on Criminal Justice:

The bill creates an inference which is relevant to dealers who regularly deal in used property. The term "dealer in property" is currently defined in chapter 812 to mean "any person in the business of buying and selling property." It appears that the group of businesses affected by the inference contained in the bill would be more limited than the those included in the definition of "dealer in property" because it would only include businesses who regularly deal in "used property". The term "used property" is not defined in the bill or elsewhere in the chapter.

It is not clear whether this definition would apply to what are commonly known as "thrift stores". The bill does not require that the dealer purchase the property in order for the inference to apply, only that they "accept" the property. As a result, this bill may have an impact on businesses that rely on donations for business.

The inference contained in this bill would apparently apply to businesses that deal in property of minimal value such as used book stores. For example, a used book store owner may be required to

attempt to determine whether a book has been stolen if the book is affixed with the name and phone number of the owner in order to avoid any inference that the owner knew the property was stolen.

The inference created by the bill can be avoided if the dealer contacts the owner identified on the uses property or the appropriate law enforcement agency prior to accepting the property from the offeror and confirms that the property has not been stolen. However, for a variety of reasons, it will not always be possible for a dealer to actually contact the owner identified on the property based on a name and telephone number. It appears that the inference could still arise even if the dealer makes a concerted effort to contact the owner identified on the property and is unsuccessful if it later turns out that the property is stolen. Presumably, if the dealer is not able to contact the owner, they would have to contact local law enforcement. The bill states that the inference is avoided if the dealer contacts the appropriate law enforcement agency and confirms that the property has not been stolen. In reality, a law enforcement agency will not be able to confirm that property is not stolen. At best, they will be able to confirm that the property has not been reported stolen in their jurisdiction. In areas in which there are multiple law enforcement agencies in an area, contacting one agency may be of limited assistance in confirming whether property is stolen.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The Subcommittee on Criminal Justice recommended the adoption of an amendment which alters the ways in which the dealer in used property can avoid the inference created by the bill. If the name and phone number are for a business that rents property, the dealer avoids the inference by contacting such business, prior to accepting the property, to verify that the property was not stolen from the business. If the name and number are not for a business than rents property, the dealer avoids the inference by contacting the local law enforcement agency where the dealer is located to verify that the property has not been stolen. Under the amendment, an accurate written record, which contains the date, time, number called, and name and place of employment of the person who verified that the property was not stolen, is sufficient evidence to avoid the inference.

The amendment also provides that the inference created by the bill does not apply to:

1. Nonprofit, tax exempt organizations that accept donations and do not purchase used property.
2. Printed or recorded materials, computer software, videos and video games, or used sports equipment that does not contain a serial number.
3. A dealer that implements, in a continuous and consistent manner, a program for identification and return of stolen property that meet several specified criteria.