

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Transportation Committee

BILL: CS/SB 1100

SPONSOR: Transportation Committee and Senator Lynn

SUBJECT: Theft

DATE: April 20, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
2.	<u>Evans</u>	<u>Meyer</u>	<u>TR</u>	<u>Fav/CS</u>
3.	_____	_____	<u>JA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This Committee Substitute (CS) amends the theft statute to provide the theft of property, which has been deployed by a law enforcement officer, is a first-degree felony. The CS treats the theft of a piece of property of any value which has been deployed by a law enforcement officer in the same manner as the theft of other property valued at \$100,000 or more. The CS ranks this offense in level seven on the offense severity-ranking chart of the Criminal Punishment Code.¹ The CS also provides it is a second-degree felony to alter the “fifth wheel” on a heavy commercial motor vehicle with the intent to use the fifth wheel to commit or attempt to commit a theft. Additionally this CS deletes s. 812.155(7), F.S., which excluded prosecution in rental-purchase arrangements where there was fraud, trickery, or false representation by the lessee.

This CS substantially amends sections 812.014, 812.155 and 921.0022, and creates section 812.0147 of the Florida Statutes.

II. Present Situation:

Theft

Section 812.014, F.S., provides 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

¹ The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. 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 use of the property. If the property stolen is valued at \$100,000 or more, or is cargo valued at \$50,000 or more, the offense is a first-degree felony, punishable by up to thirty years in prison.²

Fifth Wheel

Section 320.01(11), F.S., refers to a “fifth wheel” in the definition of “tractor trailer,” which means “a motor vehicle which has four or more wheels and is designed and equipped with a fifth wheel for the primary purpose of drawing a semitrailer which is attached or coupled thereto by means of such fifth wheel and which has no provision for carrying loads independently.”

Therefore, insofar as the definition of “tractor trailer,” the fifth wheel appears to be a device for coupling the tractor-trailer and the semitrailer.

Section 320.01(b)(8), F.S., also defines a fifth-wheel trailer, as a vehicular unit mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, of such size or weight as not to require a special highway movement permit, of gross trailer area not to exceed 400 square feet in the setup mode, and designed to be towed by a motorized vehicle which contains a towing mechanism mounted above or forward of the tow vehicle's rear axle.

Rental Purchase Agreement

Section 812.155(7), F.S., excludes personal property or equipment, which is the subject of a rental purchase agreement, from the prohibition against obtaining such property with intent to defraud or failure to return the property to the lessee, unless the lessee retains the title to the property throughout the rental purchase agreement period.

III. Effect of Proposed Changes:

Section 1. Amends s. 812.014, F.S., to provide the theft of property which has been “deployed” by a law enforcement officer is a first degree felony. The CS would treat the theft of a piece of property of any value which has been deployed by a law enforcement officer in the same manner as the theft of other property valued at \$100,000 or more.

One of the meanings of the term “deploy” is “to put into use or action.”³ Presumably, this offense is intended to address the situation in which a law enforcement officer uses cargo to apprehend cargo thieves or follow a trail to the people in charge of fencing operations,⁴ and also the situation in which law enforcement officers set out a decoy truck with a tracking device, which, if stolen, can be tracked to determine where the truck is going and, ultimately, lead to the apprehension of those involved in the theft.⁵ However, the CS places no limiting construction on “property which has been deployed by a law enforcement officer so the offense may cover the theft of property put into use by a law enforcement officer in any law enforcement sting operation, or in any other context or for any reason.

Section 2. Creates s. 812.0147, F.S., which provides it is a second-degree felony to alter the “fifth wheel” on a heavy commercial motor vehicle with the intent to use the fifth wheel to commit or attempt to commit a theft. This offense is unranked, so it will default to a level 4

² S. 775.082, F.S.

³ The American Heritage Dictionary of the English Language (4th Edition).

⁴ “It’s a Crime.” *Viewpoint*, v. 24, No. 2 (1999), American Association of Insurance Services.

⁵ “Cargo Theft Bust.” WCJB TV 20 News (<http://www.wcjb.com/news.asp?id=9339>)

ranking pursuant to s. 921.0023, F.S. The lowest permissible sentence for the offense (if the offender has no prior criminal history or additional offense) is a non-prison sanction. The maximum penalty is 15-years imprisonment.

Section 3. Amends s. 921.0022, F.S., to rank this offense in level seven category on the offense severity-ranking chart of the Criminal Punishment Code. The lowest permissible sentence for the offense (if the offender has no prior criminal history or additional offense) is approximately 21 months in prison, absent mitigation. The maximum penalty is 30-years imprisonment.⁶

Section 4. Deletes s. 812.155(7), F.S., which excluded rental-purchase agreements from s. 812.155, F.S. This would allow for prosecution in rental-purchase arrangements where there is fraud, trickery, or false representation by the lessee.

Section 5. Reenacts s. 985.227, F.S. for the purpose of incorporating the amendment to s. 812.014, F.S. by reference.

Section 6. Provides an effective date of July 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference has not met to consider the prison bed impact of this CS on the Department of Corrections. The CS ranks the offense of theft of property

⁶ S. 775.082, F.S.

deployed by a law enforcement officer in level seven of the offense severity ranking chart. Under current law, the severity of the offense would depend on the value of the property. The lowest permissible sentence for the offense (if the offender has no prior criminal history or additional offense) is approximately 21 months in prison, absent mitigation. The maximum penalty is 30-years imprisonment. The CS also creates a second-degree felony offense for altering a fifth wheel on a heavy commercial motor vehicle with the intent to use the fifth wheel to commit theft. This offense is unranked, so it will default to a level four ranking pursuant to s. 921.0023, F.S. The lowest permissible sentence for the offense (if the offender has no prior criminal history or additional offense) is a non-prison sanction. The maximum penalty is 15-years imprisonment.

VI. Technical Deficiencies:

The term “commercial motor vehicle” is defined in ch. 320, F.S., but there is no definition of the term “heavy commercial motor vehicle” contained in Florida Statutes. The term should be defined or language should be provided which makes it clear as to what vehicles are covered by the term.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
