

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: Criminal Justice Committee

BILL: CS/SB 1328

INTRODUCER: Criminal Justice Committee and Senator Crist

SUBJECT: Unlawful Taking of Leased Personal Property

DATE: March 16, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Fav/CS
2.	_____	_____	CM	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Section 812.155(7), F.S., excludes personal property or equipment that 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. This bill eliminates that exclusion from current law.

This bill substantially amends section 812.155, Florida Statutes.

II. Present Situation:

Section 812.155, F.S., prohibits hiring, leasing, or obtaining personal property or equipment with the intent to defraud. It also prohibits failing to return hired or leased personal property or equipment. Depending upon the value of the property, the prohibited acts are either a second degree misdemeanor, punishable by up to 60 days jail time and a \$500 fine, or a third degree felony, punishable by up to 5 years incarceration and a \$1,000 fine.

The statute provides that a certain act (or failure to act) is prima facie evidence of fraudulent intent. Prima facie means, generally, sufficient evidence. The acts from which prima facie evidence of fraudulent intent may be found are:

- Obtaining the property or equipment under false pretenses;
- Absconding without payment;
- Removing or attempting to remove the property or equipment from the county without the express written consent of the lessor;

- Failure to redeliver the property or equipment after notice of demand for its return; and
- Failure to pay any amount due which is incurred as the result of the failure to redeliver the property or equipment.

Requirements for proper notice of demand for return of rented property or equipment are set forth in subsections (4), (5) and (6) of s. 812.155, F.S. Subsection (6) specifically requires, as a prerequisite to prosecution under s. 812.155, F.S., that the following statement be contained in the rental agreement and be initialed by the lessee: “Failure to return rental property or equipment upon expiration of the rental period and failure to pay all amounts due (including costs for damage to the property or equipment) are prima facie evidence of intent to defraud, punishable in accordance with section 812.155, Florida Statutes.” s. 812.155(6), F.S.

Subsection (7) of s. 812.155, F.S., provides as follows:

“(7) Exclusion of rental-purchase agreements.—This section does not apply to personal property or equipment that is the subject of a rental-purchase agreement that permits the lessee to acquire ownership of the personal property or equipment unless the rental store retains title to the personal property or equipment throughout the rental-purchase agreement period.”

The last phrase of that subsection – “unless the rental store retains title to the personal property or equipment throughout the rental-purchase agreement period,” was inserted in 2001. ch. 2001-141, L.O.F.

III. Effect of Proposed Changes:

This bill deletes subsection (7) in its entirety from s. 812.155, F.S. This would allow for prosecutions in rental-purchase arrangements where there is fraud, trick, or false representation by the lessee, and eliminate some confusion over the requirement that the lessor retain “title,” as “title” does not usually accompany personal property or equipment.

The bill also changes the elements of the crime of Failure to Redeliver Hired or Leased Personal Property by eliminating the necessity of proving fraudulent intent in cases where a person fails to redeliver the rented property or equipment. The bill also eliminates the status of certain acts or failure to act as “prima facie” evidence of fraudulent intent.

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:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

VIII. Summary of Amendments:

None.

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