

# 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.)

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Prepared By: Commerce and Consumer Services Committee

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BILL: CS/CS/SB 1328

INTRODUCER: Committee on Commerce and Consumer Services, Criminal Justice Committee and Senator Crist

SUBJECT: Unlawful Taking of Personal Property

DATE: March 28, 2006

REVISED: \_\_\_\_\_

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

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## I. Summary:

This committee substitute for the CS/SB 1328 (CS) amends the theft statute to make the theft of a semitrailer deployed by a law enforcement officer a first-degree felony. The CS treats the theft of a semitrailer of any value 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 7 of the offense severity-ranking chart of the Criminal Punishment Code.<sup>1</sup> The CS also makes it a second-degree felony to alter the “fifth wheel” on a “commercial motor vehicle” with the intent to use the fifth wheel to commit or attempt to commit a theft.

The CS amends s. 817.155, F.S., by changing the elements of the crime of “Failure to Redeliver Hired or Leased Personal Property” by eliminating the necessity to prove fraudulent intent in cases where a person fails to redeliver the rented property or equipment. The CS also eliminates the prima facie evidence of fraudulent intent inference that may be drawn from the failure to redeliver property. Finally, the CS deletes s. 812.155(7), F.S., which excludes rental-purchase agreements from s. 812.155, F.S. This deletion allows for prosecutions in rental-purchase arrangements where there is fraud, trickery, or false representation by the lessee regardless of whether title is retained by the lessor.

This CS substantially amends sections 812.014, 812.155 and 921.0022, creates section 812.0147, and reenacts s. 985.227, Florida Statutes.

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<sup>1</sup> 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 1 (least severe) to Level 10 (most severe) and are assigned points based on the severity of the offense as determined by the Legislature.

## 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 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.<sup>2</sup>

### **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, according to the definition of “tractor trailer,” the “fifth wheel” appears to be a device for coupling the tractor-trailer and the semitrailer.

Section 320.01(1)(b)8., F.S., 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, F.S., creates a theft offense related to hiring, leasing, or obtaining personal property or equipment with the intent to defraud.

Subsection (1) makes it a crime to obtain any personal property by trick, deceit, or fraudulent or willful false representation. Subsection (2) makes it a crime to hire or lease personal property with intent to defraud. Subsection (3) makes it a crime to fail to return rented personal property at the conclusion of the rental period if such failure to return is done with the intent to defraud, abandon, or willfully refuse to return the property. Subsections (4) and (5) provide conditions and evidentiary presumptions by which a court may infer a lessee intended to defraud the lessor should the lessee fail to timely return the leased personal property or equipment.

The offense is a first-degree misdemeanor if it involves property valued at less than \$300, and is a third-degree felony if the property is valued at \$300 or more.<sup>3</sup>

When first enacted, the law contained an exclusion which provided that the criminal offenses in s. 812.155, F.S., would not apply to a "rental-purchase agreement that permits the lessee to

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<sup>2</sup> Section 775.082, F.S.

<sup>3</sup> A first degree misdemeanor is punishable by a fine of up to \$1,000 and imprisonment of up to one year. A third degree felony is punishable by a fine of up to \$5,000 and imprisonment of up to five years. See ss. 775.082 and 775.083, F.S. The third degree felonies in this section are not ranked in the Offense Severity Ranking Chart, and thus default to a level 1 offense. See s 921.0023, F.S.

acquire ownership of the personal property or equipment".<sup>4</sup> An exception to this exclusion outlined by s. 812.155(7), F.S., was added in 2001.<sup>5</sup> 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 property with intent to defraud or by failing to return the property to the lessee, unless the lessee retains title to the property throughout the rental purchase agreement period. Therefore, fraudulently obtaining property may be prosecuted under s. 812.155, F.S., despite the exclusion, if the "rental store retains title to the personal property or equipment throughout the rental-purchase agreement period."

### III. Effect of Proposed Changes:

**Section 1** of the CS amends s. 812.014, F.S., to make the theft of a semitrailer deployed by a law enforcement officer a first degree felony. The CS treats the theft of a semitrailer of any value deployed by a law enforcement officer in the same manner as the theft of other property valued at \$100,000 or more.

**Section 2** of the CS creates s. 812.0147, F.S., which makes altering the "fifth wheel" on a "commercial motor vehicle" with the intent to use the fifth wheel to commit or attempt to commit a theft, a second-degree felony. This offense is unranked, so it will default to a Level 4 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** of the CS amends s. 812.155, F.S., in several respects. First, the CS makes minor technical changes to replace the words "said" and "such" with the word "the" in s. 812.155(2), F.S. The CS then eliminates the necessity to prove fraudulent intent for the crime of "failure to redeliver hired or leased property" as described in s. 812.155(3), F.S. Under current statute, a person who does not return property after the rental period has expired without the consent of the owner and with the intent to defraud, abandon or willfully refuse to redeliver is guilty of a second degree misdemeanor. The CS eliminates the need to prove the fraudulent intent currently required by the statute.

Currently, s. 812.155(4), F.S., specifies certain circumstances which constitute prima facie evidence of fraudulent intent in a property lease. Those circumstances are as follows:

- a) Obtaining the property or equipment under false pretenses; absconding without payment; or removing or attempting to remove the property or equipment from the county without the express written consent of the lessor;
- b) Failure to redeliver property or equipment within 5 days after receipt of, or within 5 days after return receipt from, the certified mailing of the demand for return; and
- c) Failure to pay any amount due which is incurred as the result of the failure to redeliver property after the rental period expires and after the demand for return is made.

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<sup>4</sup> See amendment at 1992 Senate Journal, page 461, February 27, 1992.

<sup>5</sup> Chapter 2001-141, L.O.F.

Under the CS, these circumstances no longer constitute prima facie evidence of fraudulent intent. Instead, the circumstances under paragraph (a) constitute evidence, rather than prima facie evidence, of fraudulent intent and the circumstances under paragraphs (b) and (c) constitute evidence of abandonment or refusal to redeliver the property rather than prima facie evidence of fraudulent intent.

This section of the CS also deletes s. 812.155(7), F.S., which excludes rental-purchase agreements from s. 812.155, F.S. This deletion allows for prosecutions in rental-purchase arrangements where there is fraud, trickery, or false representation by the lessee regardless of whether title is retained by the lessor.

**Section 4** amends s. 921.0022, F.S., to rank the theft of a semitrailer deployed by a law enforcement officer in Level 7 of 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.<sup>6</sup>

**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, 2006.

#### **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.

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<sup>6</sup> Section 775.082, F.S..

**C. Government Sector Impact:**

The Criminal Justice Impact Conference has not yet met to consider the prison bed impact of this CS on the Department of Corrections. The CS ranks the offense of theft of a semitrailer deployed by a law enforcement officer in Level 7 of the offense severity ranking chart. Under current law, the severity of the offense depends 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 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 4 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:**

None.

**VII. Related Issues:**

None.



## **VIII. Summary of Amendments:**

None.

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

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