

By the Committee on Criminal Justice; and Senator Crist

591-1893-06

1                                   A bill to be entitled  
2           An act relating to the unlawful taking of  
3           personal property or equipment; amending s.  
4           812.155, F.S.; deleting requirement to prove  
5           fraudulent intent to withhold personal property  
6           or equipment; providing that failure to return  
7           rental property within a specified time is  
8           evidence of abandonment or refusal to redeliver  
9           the property; deleting a provision specifying  
10          that the prohibition against obtaining personal  
11          property or equipment with intent to defraud  
12          does not apply to a rental-purchase agreement  
13          unless the rental store retains title to the  
14          property or equipment throughout the period of  
15          the rental-purchase agreement; providing an  
16          effective date.

17  
18 Be It Enacted by the Legislature of the State of Florida:

19  
20           Section 1. Section 812.155, Florida Statutes, is  
21 amended to read:

22           812.155 Hiring, leasing, or obtaining personal  
23 property or equipment with the intent to defraud; failing to  
24 return hired or leased personal property or equipment; rules  
25 of evidence.--

26           (1) OBTAINING BY TRICK, FALSE REPRESENTATION,  
27 ETC.--Whoever, with the intent to defraud the owner or any  
28 person lawfully possessing any personal property or equipment,  
29 obtains the custody of such personal property or equipment by  
30 trick, deceit, or fraudulent or willful false representation  
31 shall be guilty of a misdemeanor of the second degree,

1 | punishable as provided in s. 775.082 or s. 775.083, unless the  
2 | value of the personal property or equipment is of a value of  
3 | \$300 or more; in that event the violation constitutes a felony  
4 | of the third degree, punishable as provided in s. 775.082, s.  
5 | 775.083, or s. 775.084.

6 |         (2) HIRING OR LEASING WITH THE INTENT TO  
7 | DEFRAUD.--Whoever, with intent to defraud the owner or any  
8 | person lawfully possessing any personal property or equipment  
9 | of the rental thereof, hires or leases the said personal  
10 | property or equipment from the such owner or the such owner's  
11 | agents or any person in lawful possession thereof shall, upon  
12 | conviction, be guilty of a misdemeanor of the second degree,  
13 | punishable as provided in s. 775.082 or s. 775.083, unless the  
14 | value of the personal property or equipment is of a value of  
15 | \$300 or more; in that event the violation constitutes a felony  
16 | of the third degree, punishable as provided in s. 775.082, s.  
17 | 775.083, or s. 775.084.

18 |         (3) FAILURE TO REDELIVER HIRED OR LEASED PERSONAL  
19 | PROPERTY.--Whoever, after hiring or leasing any personal  
20 | property or equipment under an agreement to redeliver the same  
21 | to the person letting such personal property or equipment or  
22 | his or her agent at the termination of the period for which it  
23 | was let, shall, without the consent of such person or persons  
24 | knowingly ~~and with the intent to defraud,~~ abandon or ~~willfully~~  
25 | refuse to redeliver the such personal property or equipment as  
26 | agreed, shall, upon conviction, be guilty of a misdemeanor of  
27 | the second degree, punishable as provided in s. 775.082 or s.  
28 | 775.083, unless the value of the personal property or  
29 | equipment is of a value of \$300 or more; in that event the  
30 | violation constitutes a felony of the third degree, punishable  
31 | as provided in s. 775.082, s. 775.083, or s. 775.084.

1           (4) EVIDENCE ~~OF FRAUDULENT INTENT~~.--

2           (a) In prosecutions under this section, obtaining the  
3 property or equipment under false pretenses; absconding  
4 without payment; or removing or attempting to remove the  
5 property or equipment from the county without the express  
6 written consent of the lessor, is ~~prima facie~~ evidence of  
7 fraudulent intent.

8           (b) In a prosecution under subsection (3), failure to  
9 redeliver the property or equipment within 5 days after  
10 receipt of, or within 5 days after return receipt from, the  
11 certified mailing of the demand for return is ~~prima facie~~  
12 evidence of abandonment or refusal to redeliver the property  
13 ~~fraudulent intent~~. Notice mailed by certified mail, return  
14 receipt requested, to the address given by the renter at the  
15 time of rental shall be deemed sufficient and equivalent to  
16 notice having been received by the renter, should the notice  
17 be returned undelivered.

18           (c) In a prosecution under subsection (3), failure to  
19 pay any amount due which is incurred as the result of the  
20 failure to redeliver property after the rental period expires,  
21 and after the demand for return is made, is ~~prima facie~~  
22 evidence of abandonment or refusal to redeliver the property  
23 ~~fraudulent intent~~. Amounts due include unpaid rental for the  
24 time period during which the property or equipment was not  
25 returned and include the lesser of the cost of repairing or  
26 replacing the property or equipment if it has been damaged.

27           (5) DEMAND FOR RETURN.--Demand for return of overdue  
28 property or equipment and for payment of amounts due may be  
29 made in person, by hand delivery, or by certified mail, return  
30 receipt requested, addressed to the lessee's address shown in  
31 the rental contract.

1           (6) NOTICE REQUIRED.--As a prerequisite to prosecution  
2 under this section, the following statement must be contained  
3 in the agreement under which the owner or person lawfully  
4 possessing the property or equipment has relinquished its  
5 custody, or in an addendum to that agreement, and the  
6 statement must be initialed by the person hiring or leasing  
7 the rental property or equipment:

8  
9 Failure to return rental property or equipment upon expiration  
10 of the rental period and failure to pay all amounts due  
11 (including costs for damage to the property or equipment) are  
12 ~~prima facie~~ evidence of abandonment or refusal to redeliver  
13 the property intent to defraud, punishable in accordance with  
14 section 812.155, Florida Statutes.

15           ~~(7) EXCLUSION OF RENTAL PURCHASE AGREEMENTS. This~~  
16 ~~section does not apply to personal property or equipment that~~  
17 ~~is the subject of a rental purchase agreement that permits the~~  
18 ~~lessee to acquire ownership of the personal property or~~  
19 ~~equipment unless the rental store retains title to the~~  
20 ~~personal property or equipment throughout the rental purchase~~  
21 ~~agreement period.~~

22           Section 2. This act shall take effect July 1, 2006.

23  
24           STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
25                                COMMITTEE SUBSTITUTE FOR  
26                                Senate Bill 1328

27 The bill eliminates the necessity of proving fraudulent intent  
28 to obtain a conviction under circumstances where the lessor  
29 fails to redeliver the property or equipment after notice of  
30 demand for its return or fails to pay any amount due which is  
31 incurred as the result of the failure to redeliver the  
property or equipment.