

# 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: SB 158

SPONSOR: Senator Lynn

SUBJECT: Theft

DATE: April 20, 2005

REVISED: 01/11/06

|    | ANALYST         | STAFF DIRECTOR | REFERENCE | ACTION                 |
|----|-----------------|----------------|-----------|------------------------|
| 1. | <u>Erickson</u> | <u>Cannon</u>  | <u>CJ</u> | <u>Fav/1 amendment</u> |
| 2. | <u></u>         | <u></u>        | <u>TR</u> | <u></u>                |
| 3. | <u></u>         | <u></u>        | <u>CM</u> | <u></u>                |
| 4. | <u></u>         | <u></u>        | <u>JA</u> | <u></u>                |
| 5. | <u></u>         | <u></u>        | <u></u>   | <u></u>                |
| 6. | <u></u>         | <u></u>        | <u></u>   | <u></u>                |

## Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

### I. Summary:

Senate Bill 158 amends the theft statute to provide that the theft of property that has been deployed by a law enforcement officer is a first-degree felony. The bill treats the theft of a piece of property of any value that 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 bill ranks this offense in Level 7 of the offense severity-ranking chart of the Criminal Punishment Code.<sup>1</sup> The bill also provides that 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. Finally, the bill deletes s. 812.155(7), F.S., which 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 by failing to return the property to the lessee, unless the lessee retains the title to the property throughout the rental purchase agreement period.

This bill substantially amends sections 812.014, 812.155 and 921.0022, and creates section 812.0147, Florida Statutes.

<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 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, 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, 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(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(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 by failing 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 that the theft of property which has been “deployed” by a law enforcement officer is a first degree felony. The bill treats the theft of a piece of property of any value that has been deployed by a law enforcement officer in the same manner as the theft of other property valued at \$100,000 or more.

**Section 2.** Creates s. 812.0147, F.S., which provides that 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 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.

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

**Section 3.** Amends s. 921.0022, F.S., to rank the theft of a piece of property that has been 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>3</sup>

**Section 4.** 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.

**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.

C. Government Sector Impact:

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

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<sup>3</sup> *Id.*

The maximum penalty is 30-years imprisonment. The bill 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 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:**

The bill amends s. 812.014, F.S., to provide that the theft of property which has been “deployed” by a law enforcement officer is a first degree felony.

One of the meanings of the term “deploy” is “to put into use or action.”<sup>4</sup> Presumably, this offense is intended to address the situation in which a law enforcement officer uses a decoy semitrailer in a sting operation to apprehend cargo thieves. However, the bill places no limiting construction on property that 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. Staff recommends replacing the words “or has been deployed by a law enforcement” with the words “or is a semitrailer which was deployed by a law enforcement officer.” The recommended wording was added by amendment to House legislation last year (HB 995) that is almost identical to the current bill.

The bill also creates s. 812.0147, F.S., which provides that 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.

The term “commercial motor vehicle” is defined in s. 320.01(26), F.S., as “any vehicle which is not owned or operated by a governmental entity, which uses special fuel or motor fuel on the public highways, and which has a gross vehicle weight of 26,001 pounds or more, or has three or more axles regardless of weight, or is used in combination when the weight of such combination exceeds 26,001 pounds gross vehicle weight.” Since there is no definition of the term “heavy commercial motor vehicle” in the Florida Statutes, it is uncertain if the word “heavy” is really intended to modify the term “commercial motor vehicle” or if the terms “heavy commercial motor vehicle” and “commercial motor vehicle” are synonymous. If the terms are synonymous, than the modifier “heavy” should be deleted; if the terms are not synonymous, than the term “heavy commercial motor vehicle” should be defined so as to distinguish it from the term “commercial motor vehicle.”

## **VII. Related Issues:**

None.

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

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<sup>4</sup> The American Heritage Dictionary of the English Language (4th Edition).

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## VIII. Summary of Amendments:

### **Barcode 813078 by Criminal Justice:**

The amendment revises the new theft offense created by the bill so that it relates only to the theft of a semitrailer deployed by a law enforcement officer; makes conforming changes to language in the sentencing ranking chart that describes this new theft offense; and replaces the term “heavy commercial vehicle,” which is not defined in law, with the term “commercial motor vehicle,” which is defined in law.

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