

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 73 Unlawful Taking of Personal Property or Equipment
SPONSOR(S): Farkas
TIED BILLS: None IDEN./SIM. BILLS: SB 1328

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Rows include Civil Justice Committee, Business Regulation Committee, Justice Council, and empty rows for items 4 and 5.

SUMMARY ANALYSIS

Current law provides that it is a criminal offense to:

- Obtain property or equipment by trick or false representation with the intent to defraud the lawful owner;
Hire or lease property or equipment with the intent to defraud the lawful owner; and
Abandon or refuse to redeliver hired or leased property at the termination of the agreed upon time period with the intent to defraud the lawful owner.

However, this offense may not be prosecuted if the agreement between the lessor and lessee is a rental-purchase agreement, unless the lessor holds title to the personal property or equipment throughout the agreement.

This bill removes the exclusion regarding rental-purchase agreements, and the related exception to the exclusion regarding title to the personal property or equipment.

This bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility -- This bill may expand the scope of s. 812.155, F.S. and thereby increase the number of persons that are subject to criminal penalties for failure to return leased personal property or equipment.

B. EFFECT OF PROPOSED CHANGES:

Background

Chapter 812, F.S., contains theft crimes. 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) provides that it is a crime to obtain any personal property by trick, deceit, or fraudulent or willful false representation. Subsection (2) provides it is a crime to hire or lease personal property with intent to defraud. Subsection (3) provides that it is 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 that 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.¹

When first enacted, the law contained an exclusion which provided that the criminal offenses at s. 812.155, F.S., would not apply to a "rental-purchase agreement that permits the lessee to acquire ownership of the personal property or equipment".² An exception to the exclusion was added in 2001.³ The exception provides that the exclusion does not apply, and thus a person may be prosecuted under s. 812.155, F.S., if the "rental store retains title to the personal property or equipment throughout the rental-purchase agreement period."

The current law is unclear in several respects. It is unclear what the term "rental store" means and what persons or entities it includes, as the term is not defined by statute. As the rental store must retain title throughout the agreement period in order to preserve the store's ability to prosecute a lessee who fails to return personal property or equipment, it appears that a rental store cannot sell or assign the right to collect the payments due under the agreement.⁴ Finally, as it is not common for a rental store to sell or assign the right to collect the lease payments, it appears that the exception may, in practice, render the exclusion meaningless in all but a few cases.

¹ 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.

² See amendment at 1992 Senate Journal, page 461, February 27, 1992.

³ Chapter 2001-141, L.O.F.

⁴ Sale or assignment of the right to collect payments would, in the case of a rental-purchase agreement, also involve transferring title of the personal property or equipment to the entity entitled to collect the payments. This type of transaction is sometimes referred to as selling the commercial paper. There is no apparent public policy consideration for limiting or restricting the sale of commercial paper by a rental store.

In criminal law, every element of the offense must be proven beyond a reasonable doubt. As to s. 812.155, F.S., elements of the offense that the prosecution must prove include: that the agreement between the lessor and the lessee/defendant was not a rental-purchase agreement or, if it is, that the rental store retains title to the personal property or equipment throughout the rental-purchase agreement period. In practice, the exclusion and the exception can create confusion as they require the prosecutor to prove the absence of a fact.

Effect of Bill

This bill amends s. 812.155, F.S., to delete the exclusion related to rental purchase agreements. Thus, a lessee may be prosecuted for failure to return leased property or equipment regardless of whether the agreement between the parties was a rental-purchase agreement, and regardless of whether the lessor retains title to the personal property or equipment throughout the rental-purchase agreement period.

C. SECTION DIRECTORY:

Section 1 amends s. 812.155, F.S., to delete the exclusion related to lease-purchase agreements.

Section 2 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Article I, s. 10, of the Florida Constitution provides that “[n]o bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed.” This bill as drafted may apply to a rental purchase agreement effective prior to the effective date of the bill. It is possible that courts will limit application of this bill to rental-purchase agreements made on or after the effective date of the bill.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill has an effective date of July 1, 2006. Traditionally, general bills and bills affecting state revenues have an effective date of July 1, 2006, to correspond to the state's fiscal year. Bills affecting the criminal law traditionally have an effective date of October 1, 2006.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.