

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Civil Justice Committee</u>	<u>7 Y, 0 N</u>	<u>Blalock</u>	<u>Bond</u>
2) <u>Business Regulation Committee</u>	<u>16 Y, 0 N</u>	<u>Watson</u>	<u>Liepshutz</u>
3) <u>Justice Council</u>	<u>11 Y, 0 N, w/CS</u>	<u>Blalock</u>	<u>De La Paz</u>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

A person commits theft if he or she knowingly obtains or uses the property of another with intent to, either temporarily or permanently, deprive the other person of a right to the property.

This bill amends the theft statute to make the theft of property which has been deployed by a law enforcement officer a first degree felony. This bill ranks this offense in level 7 of the offense severity ranking chart of the Criminal Punishment Code. The lowest permissible sentence for the offense (for a person who has no prior record and has committed no additional offenses) will be 21 months in prison. The maximum sentence will be thirty years in prison. The bill also makes it 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.

Current law also 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 appears to have an increased fiscal impact on state government expenditures, and does not appear to have a fiscal impact on 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. This bill will also increase the lowest permissible sentence that can be imposed for the theft of property deployed by a law enforcement officer.

B. EFFECT OF PROPOSED CHANGES:

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.¹

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 semi-trailer 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 semi-trailer.

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."

Obtaining Property by Trick or False Representation

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.

¹ s. 775.082, F.S.

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.²

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".³ An exception to the exclusion was added in 2001.⁴ 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.⁵ 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.

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

Theft

This 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. 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.

This bill 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.⁶

Fifth Wheel

This bill 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

² 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.

³ See amendment at 1992 Senate Journal, page 461, February 27, 1992.

⁴ Chapter 2001-141, L.O.F.

⁵ 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.

⁶ *Id.*

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.

Obtaining Property by Trick or False Representation

This bill amends s. 812.155, F.S., to revise 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. All that the lessor must show is that the person knowingly abandoned or refused to redeliver the property. This bill also eliminates the status of certain acts or failure to act as "prima facie" evidence of fraudulent intent. This bill provides that these acts are evidence of "abandonment or refusal to deliver the property".

This bill also 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. 812.014, F.S. relating to theft of property deployed by a law enforcement officer.

Section 2 creates s. 812.0147, F.S. relating to unlawful possession or use of a fifth wheel.

Section 3 amends s. 812.155, F.S., to revise 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, and delete the exclusion related to lease-purchase agreements.

Section 4 amends s. 921.0022, F.S. to make corresponding changes to offense severity ranking chart of the Criminal Punishment Code.

Section 5 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:

The bill ranks the offense of theft of property deployed by a law enforcement officer in level 7 of the offense severity ranking chart. As a result, the lowest permissible sentence for a first time offender will be 21 months in prison. Under current law, the severity of the offense would depend on the value of the property. 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 bill could increase costs to the Department of Corrections by requiring jail time for a criminal infraction that did not lead to jail time before.

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

On March 22, 2006, the Justice Council adopted two amendments to this bill. The first amendment was a strike-all that made the following revisions:

- Provided that the theft of property which has been “deployed” by a law enforcement officer is a first-degree felony.
- Provided that the theft of a piece of property that has been deployed by a law enforcement officer is a Level 7 offense on the severity-ranking chart of the Criminal Punishment Code.
- Created 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 second amendment was an amendment to the strike-all which, amended s. 812.155, F.S., to revise 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 amendment also eliminated the status of certain acts or failure to act as "prima facie" evidence of fraudulent intent, and that these acts are evidence of "abandonment or refusal to deliver the property".

The bill was then reported favorably with a committee substitute.