

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/SB 1276

INTRODUCER: Criminal Justice Committee and Senator Latvala

SUBJECT: Hiring, Leasing, or Obtaining Personal Property or Equipment with Intent to Defraud

DATE: February 17, 2012      REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|---------|----------------|-----------|------------------|
| 1. | Cellon  | Cannon         | CJ        | <b>Fav/CS</b>    |
| 2. | Irwin   | Cibula         | JU        | <b>Favorable</b> |
| 3. |         |                | BI        |                  |
| 4. |         |                |           |                  |
| 5. |         |                |           |                  |
| 6. |         |                |           |                  |

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

The bill amends s. 812.155, F.S., to revise provisions subjecting a person to criminal prosecution for failing to return rental property or equipment. Specifically, the bill:

- Authorizes a courier service with tracking capability to be used as an additional method that satisfies the requirement to deliver a demand for the return for overdue rental property or equipment before criminal prosecution;
- Increases the evidentiary value of certain acts of misconduct in a criminal prosecution for failing to return the rental property or equipment;
- Prohibits a lessee from using the possession of rental property or equipment by a third party as a defense to criminal prosecution, unless the lessee provides documentation that the third party obtained the property or equipment without the consent of the lessee; and
- Provides that, so long as the property owner has fulfilled the requirements of s. 812.155, F.S., he or she may report a rented vehicle as stolen and have it listed on any local or national registry of stolen vehicles.

This bill substantially amends section 812.155, Florida Statutes.

## II. Present Situation:

Section 812.155, F.S., specifies acts constituting three theft-related crimes: obtaining personal property or equipment by trick, deceit, or fraudulent or willful false representation; hiring or leasing personal property or equipment with the intent to defraud; and failing to redeliver hired or leased personal property or equipment. Depending upon the value of the property, the crimes are punishable as either a second degree misdemeanor or a third degree felony.<sup>1</sup>

Section 812.155(1), F.S., prohibits a person from obtaining custody of personal property or equipment, with the intent to defraud the owner, whether through trickery, deceit, or fraudulent or willful false representation. Section 812.155(2), F.S., prohibits a person from hiring or leasing personal property with the intent to defraud the owner of the rent payable for the possession or use of the property. Paragraph (4)(a) of the statute provides that evidence of fraudulent intent may be proven by showing that a person obtained the property under false pretenses; absconded without payment; or by removing or attempting to remove the property from the county without the owner's permission.<sup>2</sup>

In order for there to be a prosecution for the conduct prohibited by s. 812.155, F.S., the rental agreement (or an addendum to the agreement) must contain the following statement and the statement must be initialed by the person hiring or leasing the property:

Failure to return rental property or equipment upon expiration of the rental period and failure to pay all amounts due (including costs for damage to the property or equipment) are evidence of abandonment or refusal to redeliver the property, punishable in accordance with section 812.155, Florida Statutes.<sup>3</sup>

Section 812.155(3), F.S., specifically prohibits a person from knowingly abandoning or refusing to return the leased personal property or equipment to the owner (or his or her agent), as agreed, at the end of the rental period. As a prerequisite to prosecution, the statute requires a demand for return of the property to be made in person, by hand delivery, or by certified mail, return receipt requested, addressed to the lessee's address shown in the rental contract.<sup>4</sup>

The statute provides that evidence of abandonment or refusal to redeliver rental property includes failing to redeliver the property or equipment within 5 days after the delivery of a demand for the return of the property or equipment.<sup>5</sup> Such evidence also includes failing to pay rent for the use of the property or equipment after the rental period or failing to pay the costs to repair or replace damaged equipment.<sup>6</sup>

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<sup>1</sup> The crimes set forth in subsections (1)-(3) are misdemeanors of the second degree, punishable by up to 60 days incarceration and a \$500 fine, if the value of the item is less than \$300. If the value of the item is \$300 or more, the crimes are third degree felonies, punishable by up to 5 years incarceration and a \$1,000 fine. *See* s. 812.155(1)-(3), F.S.

<sup>2</sup> Section 812.155(4)(a), F.S.

<sup>3</sup> Section 812.155(6), F.S.

<sup>4</sup> Section 812.155(5), F.S.

<sup>5</sup> Section 812.155(4)(b), F.S.

<sup>6</sup> Section 812.155(4)(c), F.S.

### III. Effect of Proposed Changes:

The bill provides an additional method by which the owner or agent of the owner of leased personal property or equipment may deliver a demand for the return of the property or equipment. Subsection (4) of s. 812.155, F.S., is amended by the bill to allow the demand to be delivered by a courier service with tracking capability to the address of the lessee as it appears on the rental contract.

The bill adds a subsection to provide that possession of personal property or equipment by a third party is not a defense for failure to return the property unless the lessee provides documentation to the owner or the court showing that the third party obtained the property without the consent of the lessor.

The bill creates a permissive inference<sup>7</sup> in paragraphs (4)(b) and (c) of s. 812.155, F.S., which would give certain types of evidence of abandonment or refusal to return the personal property or equipment greater weight than it has under the current statute.

Specifically, under existing law, the failure to redeliver property or equipment within 5 days after the delivery of the demand or the failure to pay certain amounts due is “evidence” of abandonment or refusal to redeliver the property or equipment. Under the bill, such conduct is “prima facie evidence”<sup>8</sup> of abandonment or refusal to redeliver the property or equipment.

The bill provides that, so long as the property owner has fulfilled the requirements of s. 812.155, F.S., he or she may report a rented vehicle as stolen and have it listed on any local or national registry of stolen vehicles.

The bill also makes organizational and stylistic changes to subsections (1)-(3) of s. 812.155, F.S. These changes are not substantive in nature.

This bill takes effect on July 1, 2012.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

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<sup>7</sup> A permissive inference is “a presumption that a trier of fact is free to accept or reject from a given set of facts.” BLACK’S LAW DICTIONARY (9th ed. 2009).

<sup>8</sup> Prima facie evidence is “[s]ufficient to establish a fact or raise a presumption unless disproved or rebutted.” BLACK’S LAW DICTIONARY (9th ed. 2009).

**D. Other Constitutional Issues:**

A permissive inference may impermissibly shift the burden of proof of the elements of an offense from the prosecution, where it normally lies in a criminal trial, to the defense. This could give rise to a constitutional claim based on the Due Process Clause.

As pointed out in the *Rygwelski* case, when the Florida Supreme Court applies the U.S. Supreme Court framework regarding permissive inferences and mandatory presumptions, it has construed mandatory statutory language as creating a permissive inference numerous times.<sup>9</sup>

For example, in *State v. Kahler*, 232 So. 2d 166 (Fla.1970), the court reviewed a statute providing that possession of an improperly labeled drug was prima facie evidence that such possession was unlawful. The Court opined that “[c]onstitutional guarantees are not violated as long as there is a rational connection between the fact proven and the ultimate fact presumed and reasonable opportunity is afforded to rebut the presumption.”<sup>10</sup> The court further stated that statutory language providing that proof of one fact is prima facie evidence of another fact does not relieve the state of its burden of proof.<sup>11</sup>

According to the *Rygwelski* court’s reading of *Kahler*, “*Kahler* establishes that such language creates only a permissive inference (an evidentiary device that does not relieve the State of its burden).”<sup>12</sup>

The meaning and application of a provision from s. 812.155, F.S. (2005), was at issue in the *Rygwelski* case. The statutory language at that time stated that the failure to redeliver property within five days after receipt of, or within five days after return receipt from, the certified mailing of the demand for return “is prima facie evidence of fraudulent intent.”<sup>13</sup> The court found that the language created a permissive inference according to existing Florida precedent like the *Kahler* case mentioned above.<sup>14</sup>

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The amendments made to s. 812.155, F.S., are likely to result in a quicker and more positive resolution of criminal cases for owners of leased or hired personal property or equipment.

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<sup>9</sup> *State v. Rygwelski*, 899 So. 2d 498, 502 (Fla. 2nd DCA 2005).

<sup>10</sup> *State v. Kahler*, 232 So. 2d 166, 168 (Fla.1970).

<sup>11</sup> *Id.*

<sup>12</sup> *Rygwelski*, 899 So. 2d at 502.

<sup>13</sup> Section 812.155(4)(b), F.S. (2005).

<sup>14</sup> *Rygwelski*, 899 So. 2d at 504 (Fla. 2nd DCA 2005). *See also State v. Higby*, 899 So. 2d 1269 (Fla. 2nd DCA 2005) and *Smith v. State*, 9 So. 3d 702 (Fla. 2nd DCA 2009).

**C. Government Sector Impact:**

The bill does not create any new criminal offenses. Although the amendments made by the bill could result in a greater number of prosecutions under s. 812.155, F.S., that end in convictions, it is unlikely that there would be a prison bed impact as the felony offenses in the statute are unranked third degree felonies.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill inconsistently replaced the word “redeliver” in existing law with “return” in s. 812.155, F.S. The Legislature may wish to replace all instances of “redeliver” with “return.”

The bill provides that the possession of rental property by a third party does not alleviate the lessee of the responsibility to return the property, unless the lessee provides “documentation” to the court or property owner which demonstrates that the property was obtained without the lessee’s consent. The bill does not specify what documentation is sufficient to alleviate the lessee’s responsibility to return the property. The Legislature may wish to revise the bill to clarify that the lessee must provide the property owner or the court with documentation that the lessee reported the property as stolen to a law enforcement agency.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Criminal Justice on January 25, 2012:**

- Deletes the language that created a rebuttable presumption of abandonment or refusal to return rented property or equipment if the property was not returned to the owner within 5 days of notice having been sent to the lessee by the methods specified in the bill. The bill now creates a permissive inference (prima facie evidence) where the property is not returned within 5 days of notice having been delivered, or of the certified mail delivery being shown to have failed by return receipt. The amended bill also eliminates the rebuttable presumption of abandonment or refusal to return the property where the lessee fails to pay any amount due which is incurred after the rental period has expired. The rebuttable presumption is replaced with the prima facie evidence standard.
- Eliminates the defense that the lessee is not in possession of the property where the lessee provides documentation to the owner or the court that the property or equipment was obtained without the lessee’s consent.
- Provides that if the lessor has fulfilled the requirements of the statute, he or she may report an unreturned vehicle as a stolen vehicle to law enforcement authorities.

B. Amendments:

None.

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

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