

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 729 Hiring, Leasing, or Obtaining Personal Property or Equipment with Intent to Defraud

**SPONSOR(S):** Judiciary Committee; Criminal Justice Subcommittee; Pilon and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 1276

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	15 Y, 0 N, As CS	Krol	Cunningham
2) Judiciary Committee	15 Y, 0 N, As CS	Krol	Havlicak

### SUMMARY ANALYSIS

Section 812.155, F.S., prohibits a person from:

- (1) Obtaining any personal property or equipment by trick, deceit, or fraudulent or willful false representation.
- (2) Hiring or leasing personal property or equipment with intent to defraud.
- (3) Knowingly abandoning or refusing to redeliver rented personal property or equipment at the conclusion of the rental period where the failure to return such property or equipment is done without the consent of the person letting such property or equipment.

The statute also provides the following evidentiary examples relating to the above offenses:

- Failure to redeliver the property or equipment within 5 days after receipt of, or within 5 days after return receipt from, the certified letter of the demand for return is evidence of abandonment or refusal to redeliver the property or equipment.
- Failure to pay any amount due which is incurred as the result of the failure to redeliver property after the rental period expires and after the demand for return is made is evidence of abandonment or refusal to redeliver the property.

Property or equipment owners can make a demand for the return of overdue property or equipment and for payment of amounts due. Currently, this demand must be made in person, by hand delivery, or by certified mail, return receipt requested, addressed to the lessee's address in the rental contract.

The bill:

- Makes the above-listed statutory evidentiary examples *prima facie evidence* of abandonment or refusal to redeliver the property or equipment (rather than simply *evidence*).
- Provides the demand for return of such property or equipment can be sent by a courier service with tracking capabilities.
- Prohibits possession of the personal property or equipment by a third party from being used as a defense for failure to return the property unless the lessee can provide documentation to demonstrate that the property or equipment was obtained without the lessee's consent.
- Makes minor changes to the statute to improve its organization and readability.
- Entitles the lessor of any vehicle that is not returned at the conclusion of the lease and that meets the requirements of s. 812.155, F.S., to report the vehicle as stolen to law enforcement and have the vehicle listed as a stolen vehicle on any local or national registries, such as FCIC/NCIC.

The bill appears to have no fiscal impact and is effective July 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Offense Related to the Hiring, Leasing, or Obtaining Personal Property or Equipment**

Section 812.155, F.S., contains criminal offenses related to hiring, leasing, or obtaining personal property or equipment with the intent to defraud. These offenses prohibit a person from:

- (1) Obtaining any personal property or equipment by trick, deceit, or fraudulent or willful false representation.<sup>1</sup>
- (2) Hiring or leasing personal property or equipment with intent to defraud.<sup>2</sup>
- (3) Knowingly abandoning or refusing to redeliver rented personal property or equipment at the conclusion of the rental period where the failure to return such property or equipment is done without the consent of the person letting such property or equipment.<sup>3</sup>

The offenses described above are second degree misdemeanors<sup>4</sup> if the offense involves property valued at less than \$300, or third degree felonies<sup>5</sup> if the property is valued at \$300 or more.

Section 812.155(5), F.S., specifies that property or equipment owners can make a demand for the return of overdue property or equipment and for payment of amounts due. Currently, this demand must be made in person, by hand delivery, or by certified mail, return receipt requested, addressed to the lessee's address in the rental contract.

##### *Effect of the Bill*

The bill allows the demand for the return of overdue property or equipment and for payments of amounts due to be made by courier service with tracking capabilities.

The bill also makes minor changes to the language in s. 812.155(1), (2), and (3), F.S., to improve the statute's organization and readability.

##### **Statutory Evidentiary Examples**

Section 812.155, F.S., sets forth various evidentiary provisions relating to the above described offenses. For example, paragraph (4)(a) provides the following examples as evidence of fraudulent intent:

- Obtaining the property or equipment under false pretenses;
- Absconding without payment; or
- Removing or attempting to remove the property or equipment from the county without the express written consent of the lessor.<sup>6</sup>

Paragraphs (4)(b) and (c) provide the following examples as evidence of abandonment or refusal to redeliver the property or equipment at the conclusion of the rental period:

- (b) Failure to redeliver the property or equipment within 5 days after receipt of, or within 5 days after return receipt from, the certified mailing<sup>7</sup> of the demand for return.<sup>8</sup>
- (c) Failure to pay any amount due<sup>9</sup> which is incurred as the result of the failure to redeliver property after the rental period expires, and after the demand for return is made.<sup>10</sup>

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<sup>1</sup> Section 812.155(1), F.S.

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

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

<sup>4</sup> A second degree misdemeanor is punishable by a fine of up to \$500 and imprisonment of up to 60 days. Sections 775.082 and 775.083, F.S.

<sup>5</sup> A third degree felony is punishable by a fine of up to \$5,000 and imprisonment of up to five years. Sections 775.082 and 775.083, F.S.

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

<sup>7</sup> Notice mailed by certified mail, return receipt requested, to the address given by the renter at the time of rental is deemed sufficient and equivalent to notice having been received by the renter, should the notice be returned undelivered. Section 812.155(4)(b), F.S.

<sup>8</sup> Section 812.155(4)(b), F.S.

### *Effect of the Bill*

The bill makes paragraphs (4)(b) and (c) evidentiary examples *prima facie evidence* of abandonment or refusal to redeliver the property or equipment (rather than simply *evidence* of abandonment or refusal to redeliver the property or equipment). The bill allows the demand for return, described above, to be by courier service with tracking capability.

The bill also provides that a lessee may not use possession of the personal property or equipment by a third party as a defense to failure to return such property unless the lessee can provide the court or property owner with documentation to demonstrate that the property or equipment was obtained without the lessee's consent.

### **Reporting a Hired Vehicle as Stolen**

Currently, Florida law does not specify how or when a leased vehicle can be reported as stolen, nor is there a statewide standard law enforcement procedure.<sup>11</sup> However, the Florida Sheriff's Association's model policy on the subject is described below.

Before reporting a hired vehicle as stolen, law enforcement must first receive several documents, as suggested by the State Attorney's Office:

- Legible copies of the rental agreement, both front and backsides.
- An affidavit on the failure to redeliver a hired vehicle, which should contain:
  - The reportee's ability to identify the subject, or a statement that they looked at the subject's photo identification, and if possible, a photocopy of the subject's drivers license.
  - A statement that no extensions to the rental agreement were given at any time and indicate the attempts made by the rental company to recover the vehicle such as: telephone calls, personal visits, and certified notifications.
- A certified or registered letter should have been sent to the last known address of the subject, requesting that the vehicle be returned or the case will be turned over to a law enforcement agency.<sup>12</sup>

At the time of reporting, the vehicle should be at least 5 days overdue.<sup>13</sup> The reporting law enforcement officer will provide all pertinent information to the Sheriff's Judicial Process Unit for entry into the Florida Crime Information Center (FCIC),<sup>14</sup> the National Crime Information Center (NCIC),<sup>15</sup> and appropriate bulletins will be issued subsequent to the completion of the affidavit.<sup>16</sup>

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<sup>9</sup> Amounts due include unpaid rental for the time period during which the property or equipment was not returned and include the lesser of the cost of repairing or replacing the property or equipment if it has been damaged. Section 812.155(4)(c), F.S.

<sup>10</sup> Section 812.155(4)(c), F.S.

<sup>11</sup> E-mail from Steve Casey, Florida Sheriff's Association. January 6, 2012. (On file with subcommittee staff).

<sup>12</sup> Brevard County Sheriff's Office Policy/Procedure 500.68 Stolen Vehicle Investigations. Last revised on July 26, 2010.

<sup>13</sup> *Id.*

<sup>14</sup> The Florida Crime Information Center (FCIC) is an electronic database of crime data managed by the Florida Department of Law Enforcement (FDLE). It contains Florida stolen property information as reported to FDLE by law enforcement agencies through the state. "The Florida Crime Information Center." FDLE Stolen Vehicles Search.

<http://pas.fdle.state.fl.us/pas/item/displayVehicleSearch.a> (last accessed on January 9, 2012).

<sup>15</sup> The National Crime Information Center (NCIC) is an electronic clearinghouse of crime data that can be tapped into by virtually every criminal justice agency nationwide, 24 hours a day, 365 days a year. NCIC is managed by the FBI and federal, state, local, and tribal criminal justice agencies. NCIC helps law enforcement officers recover stolen property. "National Crime Information Center." Federal Bureau of Investigation. <http://www.fbi.gov/about-us/cjis/ncic> (last accessed on January 9, 2012).

<sup>16</sup> *Supra* note 12.

### *Effect of the Bill*

The bill entitles the lessor of any vehicle that is not returned at the conclusion of the lease and that meets the requirements of s. 812.155, F.S., to:

- Report the vehicle as stolen to law enforcement.
- Have the vehicle listed as a stolen vehicle on any local or national registries, such as FCIC/NCIC.

#### B. SECTION DIRECTORY:

Section 1. Amends s. 812.155, F.S., relating to hiring, leasing, or obtaining personal property or equipment with the intent to defraud; failing to return hired or leased personal property or equipment; rules of evidence.

Section 2. Provides an effective date of July 1, 2012.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The bill does not appear to have any impact on state revenues.

##### 2. Expenditures:

The bill does not appear to have any impact on state expenditures.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

##### 2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill entitles a lessor to report a vehicle that is not returned as stolen to law enforcement who must then list the vehicle as stolen on any local or national registries. This may result in the recovery of more stolen vehicles.

#### D. FISCAL COMMENTS:

None.

## **III. COMMENTS**

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

##### 2. Other:

In 2005, the evidentiary examples contained in s. 812.155(4)(b), F.S., were considered to be “prima facie evidence of fraudulent intent.” That year, in *State v. Rygwelski*, Florida’s 2<sup>nd</sup> District Court of

Appeal upheld the statute finding that the term “prima facie evidence” created a permissive inference rather than an unconstitutional mandatory presumption.<sup>17,18</sup>

**B. RULE-MAKING AUTHORITY:**

The bill does not appear to create a need for rulemaking or rulemaking authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 12, 2012, the Criminal Justice Subcommittee approved one amendment and reported the bill favorably as a committee substitute. The amendment:

- Makes the evidentiary examples listed in s. 812.155(4), F.S., *prima facie evidence* of fraudulent intent.
- Provides that it is considered prima facie evidence of abandonment of refusal to redeliver property or equipment within 5 days *after* receiving the demand from delivery by courier service with tracking capabilities or by certified mail, return receipt requested.

On February 8, 2012, the Judiciary Committee approved one strike all amendment and reported the bill favorably as a committee substitute. The amendment:

- Removes the *prima facie* specification to the evidentiary example listed in s. 812.155(4)(a), F.S.
- Provides that third party possession may be used as a defense if the lessee can provide the court or property owner with documentation to demonstrate that the property or equipment was obtained without the lessee's consent.
- Provides an effective date of July 1, 2012.

The analysis is drafted to the committee substitute as passed by the Judiciary Committee.

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<sup>17</sup> *State v. Rygwelski*, 899 So.2d 498 (Fla. 2<sup>nd</sup> DCA 2005). Also see, *State v. Higsby*, 899 So.2d 1269 (Fla. 2<sup>nd</sup> DCA 2005).

<sup>18</sup> In 2006, the Legislature removed the term “prima facie evidence of fraudulent intent” from s. 812.155(4)(b) and (c), F.S., and replaced it with “evidence of abandonment or refusal to redeliver the property or equipment.” “Prima facie” was also removed from s. 812.155(a), F.S., however, the term “fraudulent intent” remained in statute. Chapter 2006-51, L.O.F.