

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1309 Fraudulently Obtaining or Retaining Personal Property or Equipment
SPONSOR(S): Criminal Justice Subcommittee; Alexander
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Painter	Sumner
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Florida law prohibits the taking, leasing, hiring, or obtaining by fraudulent means the property of another person. The statute establishes three ways in which an individual can commit this offense:

- Obtaining any personal property or equipment by trick, deceit, or fraudulent or willful false representation;
- Hiring or leasing personal property or equipment with intent to defraud; and
- Knowingly abandoning or refusing to return hired or leased 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 leasing such property or equipment.

The statute does not distinguish between a rental purchase agreement and a lease agreement when a person knowingly abandons or refuses to return hired or leased personal property. A rental purchase agreement is described as a short-term lease of property that transfers ownership of that property to the renter at the end of the agreement. A lease agreement does not transfer ownership of property but requires the return of property at a certain time, as dictated by the terms of the agreement.

Depending on the property value taken, the offense of taking, hiring, or obtaining by fraudulent means the property of another is either a second degree misdemeanor or a third degree felony. It is a second degree misdemeanor if the value of the property taken is less than \$300. It is a third degree felony if the property taken is valued at \$300 or more. The \$300 thresholds were added in 1992 and have not been amended since that time.

CS/HB 1309 increases the threshold amounts for the felony offenses related to hiring, leasing, or obtaining personal property or equipment with the intent to defraud from \$300 to \$750.

The bill also excludes rental purchase agreements from criminal sanctions imposed under the statute prohibiting failure to return hired or leased personal property. Such agreements remain eligible for civil actions based on a breach of the agreement.

The bill may have an indeterminate negative impact on state government by reducing the need for prison beds. It may have an indeterminate positive impact on local government by increasing the need for jail beds.

The bill provides an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Property Crimes and Dollar Thresholds

Since 2000, 37 states have increased the threshold dollar amounts for felony theft crimes.¹ The majority of states (30) and the District of Columbia set a \$1,000-or-greater property value threshold for felony grand theft. Fifteen states have thresholds between \$500 and \$950, and five states, including Florida, have thresholds below \$500.²

Opponents of raising the felony theft threshold argue that increasing the threshold will incentivize offenders to steal higher value amounts.³ A study by the Pew Charitable Trusts evaluated 23 states that changed felony theft thresholds between 2001 and 2011 and found:

- Raising the felony theft threshold had no impact on the states' overall property crime or larceny rates.
- States that increased thresholds reported roughly the same average decrease in crime as the 27 states that did not.
- The amount of a state's felony theft threshold was not correlated with the state's property crime and larceny rates.⁴

Offenses Related to the Hiring, Leasing, or Obtaining Personal Property or Equipment

Section 812.155, F.S., establishes criminal offenses related to individuals obtaining property by fraudulent means. The statute specifies three ways in which the offense can be committed:

- Obtaining any personal property or equipment by trick, deceit, or fraudulent or willful false representation,⁵
- Hiring or leasing personal property or equipment with intent to defraud,⁶ and
- Knowingly abandoning or refusing to return hired or leased 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 leasing such property or equipment.⁷

Depending on the property value taken, the offense is either a second degree misdemeanor or a third degree felony. If the value of the property is under \$300, the offense is a second degree misdemeanor.⁸ If the property is valued at \$300 or more, then the offense is a third degree felony.⁹

There are approximately 15 people in prison in the state for violations of offenses related to hiring, leasing, or obtaining personal property or equipment with the intent to defraud.¹⁰ There are

¹ Pew Charitable Trusts, *The Effects of Changing State Theft Penalties* (February 2016), available at http://www.pewtrusts.org/~media/assets/2016/02/the_effects_of_changing_state_theft_penalties.pdf?la=en (last visited January 26, 2018).

² Id.

³ Lauren Krisai, *Stuck in the 80s: Time for Reform of Florida's Felony Theft Threshold*, The Journal of the James Madison Institute, Spring 2017, <https://www.jamesmadison.org/publications/detail/stuck-in-the-80s> (last visited January 26, 2018).

⁴ Supra, FN 20.

⁵ S. 812.155(1), F.S.

⁶ S. 812.155(2), F.S.

⁷ S. 812.155(3), F.S.

⁸ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. SS. 775.082(4)(b) and 775.083(1)(e), F.S.

⁹ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. SS. 775.082(3)(e) and 775.083(1)(c), F.S.

¹⁰ Email from Department of Corrections for inmate populations as of 01/19/2018, January 23, 2018 (on file with House Criminal Justice Subcommittee).

approximately 662 people on probation with the Department of Corrections for offenses related to hiring, leasing, or obtaining personal property or equipment with the intent to defraud.¹¹

Lease Agreements and Rental Purchase Agreements

Rental Purchase Agreements

In a rental purchase agreement (RPA), the consumer (lessee) agrees to a self-renewing short-term lease to rent an item with the option to purchase from a merchant (lessor). The lessee is not obligated to extend the lease beyond the current monthly or weekly period. If the agreement is not renewed, the item may simply be returned. Typically, the lessee may choose to purchase the item by either continuing to pay rent for a period of time agreed to in the RPA or by early payment of a specified portion of the remaining lease payments.

RPAs do not require a down payment or credit check, and provide lessees with immediate access to household goods for a weekly or monthly payment. RPAs attract individuals who cannot afford a cash purchase, may be unable to qualify for traditional credit, or who want a product right away without the need to pay the full purchase price.¹² Merchants in the rent-to-own industry typically offer high cost, durable, household items such as furniture, household appliances, or automobile wheels and tires.¹³ The final purchase price of the rent-to-own merchandise is often much greater than the price of the same item bought outright from a retail store or financed over time.¹⁴

Florida's "Rental-Purchase Agreement Act" (Act) outlines the structure and requirements for an RPA.¹⁵ An RPA allows for the use of personal property by a natural person primarily for personal, family, or household purposes for an initial period for 4 months or less.¹⁶ These agreements automatically renew with each payment after the initial period and allow the lessee to acquire ownership of the property.¹⁷ The Act details the form, notices, and information required in the RPA in addition to prohibited provisions, the requirement for reinstatement,¹⁸ and a list of agreements that are not considered RPAs.¹⁹ The Act allows for civil remedies for damages that relate to the rental-purchase agreement by:

- Allowing the lessee to recover from the lessor, or counterclaim in an action brought by that lessor, an amount equal to the greater of actual damages or 25 percent of the total cost to acquire ownership, plus attorney's fees and court costs;²⁰ and
- Providing for the payment of reasonable attorney fees incurred in the course of collection, and for court costs.²¹

¹¹ Id.

¹² Federal Trade Commission, Press Release, *FTC Testifies on Consumer Protection and the Rent-to-Own Industry*, available at: <https://www.ftc.gov/news-events/press-releases/2011/07/ftc-testifies-consumer-protection-rent-own-industry> (last visited January 29, 2018).

¹³ See generally, Rent-A-Center, <http://rentacenter.com/>; Aaron's, <http://www.aarons.com/>; Rent-A-Wheel, <http://www.rentawheel.com/How-it-Works>; RnR Tire Express, <http://www.rnrwheels.com/>.

¹⁴ Supra, FN 12.

¹⁵ Part X of Ch. 559, F.S.

¹⁶ S. 559.9232, F.S.

¹⁷ Id.

¹⁸ S. 559.9235, F.S., Reinstatement.—

(1) A lessee who fails to make timely rental payments has the right to reinstate the original rental-purchase agreement without losing any rights or options previously acquired under the rental-purchase agreement, if:

(a) The lessee promptly surrenders the rental property to the lessor or its agent upon request; and

(b) The lessee tenders the reinstatement fees within 60 days after the expiration of the last rental period for which the lessee made a timely payment.

(2) Before reinstating the rental-purchase agreement, a lessor may require a lessee to pay unpaid rental payments, including any rental renewal charges incurred, a reinstatement fee of not more than \$5, and a delivery charge if redelivery of the rental property is necessary.

(3) If reinstatement occurs pursuant to this section, the lessor shall provide the lessee with the same personal property rented by the lessee prior to the reinstatement or with substitute personal property of comparable quality and condition. If substitute personal property is provided, the lessor must provide new disclosures to the lessee, including all of the information required by s. [559.9233](#).

¹⁹ SS. 559.9232(2) and 559.9233, F.S.

²⁰ S. 559.9239, F.S.

However, an RPA agreement may not allow the lessor to unlawfully enter the lessee's premises or permit any breach of the peace in the repossession of the property.²²

Lease Agreements

A lease agreement does not transfer ownership of property. Rather, the agreement requires the return of property at a certain time, as dictated by the terms of the agreement. In a lease agreement, the lessor retains title to the property throughout the duration of the agreement. There is no underlying option to purchase the property and the lessee agrees to return it at a specific time.

Legislative History

When s. 812.155, F.S., was enacted in 1992, the Legislature exempted RPAs entirely from the criminal statute.²³ The Legislature amended the law in 2001 to narrow the exclusion to only those RPAs in which the lessor did not retain title to the personal property throughout the period of the rental-purchase agreement.²⁴ In 2006, the Legislature removed the exclusion for RPAs altogether, allowing prosecution under the criminal statute for failure to return leased property.²⁵ The removal of the exclusion of RPAs entirely was made due to confusion caused by the 2001 change, namely that the 2001 narrowed exclusion appeared to render the RPA exclusion meaningless.²⁶

Effect of Proposed Changes

CS/HB 1309 increases the threshold amounts from \$300 to \$750 for felony offenses related to the hiring, leasing or obtaining personal property or equipment. Any violation of s. 812.155, F.S., in which the property is valued at less than \$750, will be a second-degree misdemeanor punishable by up to sixty days in jail. If the property is valued at \$750 or more, the offense is a third degree felony punishable by up to five years in prison.

The bill also excludes rental purchase agreements from criminal sanctions imposed under the statute prohibiting failure to return hired or leased personal property. Lessors may still pursue civil remedies for any wrongdoings, but the offense would no longer be criminal.

The bill provides an effective date of July 1, 2018.

B. SECTION DIRECTORY:

Section 1: Amending 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, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

²¹ S. 559.9237, F.S.

²² S. 559.9234(2), F.S.

²³ Ch. 92-79, L.O.F.

²⁴ Ch. 2001-141, L.O.F.

²⁵ Ch. 2006-51, L.O.F.

²⁶ House of Representatives Staff Analysis of CS/HB 73 (2006), p. 3, March 22, 2006.

2. Expenditures:

The bill may have an indeterminate negative impact by reducing the need for prison beds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill raises the thresholds for felonies and misdemeanors. Penalties that would carry prison time, may now only carry potential jail time. Therefore, the bill may have an indeterminate positive impact on jails by increasing the need for jail beds.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The 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:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 29, 2018, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment excluded rental purchase agreements from criminal sanctions imposed under the statute prohibiting failure to return hired or leased personal property

The analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.