

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: April 15, 1998 Revised: _____

Subject: Hiring, Leasing, or Obtaining Personal Property

| | <u>Analyst</u> | <u>Staff Director</u> | <u>Reference</u> | <u>Action</u> |
|----|----------------|-----------------------|------------------|---------------------|
| 1. | <u>Givens</u> | <u>Austin</u> | <u>CM</u> | <u>Favorable/CS</u> |
| 2. | _____ | _____ | <u>JU</u> | <u>Withdrawn</u> |
| 3. | _____ | _____ | _____ | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |

I. Summary:

The committee substitute provides that any person who intentionally possesses cable television equipment, which allows them to receive unauthorized reception of any communications services or promotes the advertising of the sale of such equipment, is guilty of a first-degree misdemeanor. The bill also provides that in a prosecution for failure to redeliver hired or leased personal property or equipment, failure to redeliver the property on demand and failure to pay amounts due on demand are prima facie evidence of intent to defraud. This bill also provides that demand may be made in person, by hand, delivery, or by mail and requires that a notice be included in rental agreements.

The committee substitute amends sections 812.15 and 812.155, of the Florida Statutes.

II. Present Situation:

Unauthorized Reception of Cable Television Services

Section 812.15(3), F.S., provides that any person who willfully violates the provisions of s. 812.15, F.S., relating to unauthorized receptions of cable television services, is guilty of a first-degree misdemeanor punishable by a term of imprisonment not to exceed one year and pay a fine not to exceed \$1,000. This section makes any person who willfully and for purposes of direct or indirect commercial advantage violates this section is guilty of a felony of the third-degree punishable by a term of imprisonment not to exceed 30 years and pay a fine not to exceed \$10,000.

Prima Facie Evidence

Prima facie evidence is evidence which, if not contradicted, is sufficient to sustain a judgement. In practical terms, when the prosecution has established a prima facie showing on each element of an offense, the defense will not succeed on a motion to dismiss the case.

There are currently a number of statutes that create a presumption whereby proof of a certain fact “shall be prima facie evidence” of an element of a crime. To prevent the burden of proof from being shifted to the accused, the Florida Supreme Court has interpreted the phrase “shall be prima facie evidence” as establishing a permissive inference or presumption. *Rolle v. State*, 560 So.2d 1154 (Fla. 1990). In other words, the “shall” must be read as a “may” or a “would” when the jury is instructed.

Leasing Property with Intent to Defraud and Failure to Redeliver Leased Property

Section 812.155(1), F.S., makes it illegal for anyone with *intent to defraud* to obtain property by trick, deceit, or fraudulent or willful false representation.

Section 812.155(2), F.S., makes it illegal to hire or lease property *with the intent to defraud*.

Section 812.155(3), F.S., makes it illegal for a person *with intent to defraud* to abandon, or willfully refuse to deliver hired or leased property.

Section 812.155(4), F.S., provides that fraudulent intent may be inferred from proof that the property was obtained by; false pretenses; absconding without payment or offering to pay any outstanding balance; or surreptitiously removing or attempting to remove the property or equipment from the county, without the express written consent of the lessor. Subsection (4) also provides that fraudulent intent may be inferred from proof of the failure to make payment or redeliver upon demand made either in person or by certified mail. This inference may be made only when there is no dispute as to the amount owed. The requirement that there be no dispute as to the amount owed limits the utility of this last inference.

Section 812.155(5), F.S., provides that the provisions described in the present situation of this analysis do not apply to personal property or equipment that is the subject of a rental purchase agreement that permits the lessee to acquire ownership of the personal property or equipment.

Theft

Florida has a very broad theft statute, s. 812.014, F.S., which also covers many of the acts prohibited by s. 812.155, F.S. The definition of theft includes to knowingly obtain or use the property of another with the intent to temporarily or permanently deprive the lawful owner of the property.

Since the theft statute does not require proof of intent to defraud, it is often easier to prove theft than the specific law relating to leased property, s. 812.155, F.S.

III. Effect of Proposed Changes:

Section 812.15(3), F.S., is amended to provide that any person who intentionally possesses cable television equipment, which allows them to receive unauthorized reception of any communications services offered over a cable system is guilty of a first-degree misdemeanor. The section is also amended to provide that it is unlawful for any person to promote the advertisement of the sale of equipment, if the person advertising knows that the equipment is designed to be primarily useful for the unauthorized reception of any communications service offered over a cable system. Violators of this subsection are deemed guilty of a first-degree misdemeanor.

Section 812.155, F.S., is amended to clarify existing law and provides three additional means for the state to establish a case relating to hiring, or obtaining property with intent to defraud. First, the deletion of the terms “offering to pay any outstanding balance” and “surreptitiously” makes the mere fact of removal or attempted removal of the property or equipment prima facie evidence of fraudulent intent, and second, evidence of failure to redeliver property or equipment, or to pay any amount due on rental property for the full rental period, as well as any cost or replacement or repair, upon demand made in person, by hand delivery or by certified mail with proof of receipt, is prima facie evidence of such intent regardless of whether the parties agree on the amount owed. The committee substitute also deletes the current provision that the inference of fraudulent intent may be made only when there is no dispute as to the amount owed. The section is amended to clarify that amounts due under a rental agreement include unpaid rental for the time period during which the property or equipment was not returned and include the cost of repairing or replacing the property or equipment if it has been damaged, whichever is less.

The committee also provides that the demand for return of overdue property or equipment and for payment of amounts due may be made in person, by hand, or by certified mail, with return receipt requested and addressed to the last known address of the lessee.

The committee substitute further requires that as a prerequisite to prosecution under the provisions of the bill, the following statement must be contained in the agreement under which the owner or person lawfully possessing the property or equipment has relinquished its custody, or in an addendum to that agreement, and it must be initialed by the person hiring or leasing the rental property or equipment:

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 prima facie evidence of intent to defraud, punishable in accordance with s. 812.155, F. S.

The committee substitute provides that this act shall take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Minimal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.