



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill will increase the lowest permissible sentence that can be imposed for the theft of a semitrailer that is deployed by a law enforcement officer.

Promote personal responsibility: The bill increases the sanction for potentially injurious behavior.

#### B. EFFECT OF PROPOSED CHANGES:

*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.

The bill amends the theft statute to make theft of a semitrailer which was deployed by a law enforcement officer a first degree felony. Theft of a semitrailer deployed by a law enforcement officer will be treated in the same manner as property valued at \$100,000 or more. Under current law, the severity of the offense would depend on the value of the property – this bill would treat the theft of any semitrailer which was deployed by a law enforcement officer in the same manner, regardless of value. HB 995 ranks the offense in level 7 of the offense severity ranking chart<sup>1</sup> and as a result, the lowest permissible sentence for the offense (for a first offender who has committed no additional offenses) will be 21 months in prison.

*Altered fifth wheel:* The bill creates s. 812.0147, F.S. which makes it a second degree felony to modify, alter, or attempt to alter, and if altered, to sell, possess, offer for sale, move, or cause to be moved onto the highways of this state a fifth wheel, with the intent to use the altered fifth wheel to commit or attempt to commit theft. The provision only applies to a fifth wheel on a semitrailer.

*Unlawful taking of leased personal property:* Section 812.155, F.S., prohibits hiring, leasing, or obtaining personal property or equipment with the intent to defraud. It also prohibits failing to return hired or leased personal property or equipment. Depending upon the value of the property, the prohibited acts are either a second degree misdemeanor, punishable by up to 60 days jail time and a \$500 fine, or a third degree felony, punishable by up to 5 years incarceration and a \$1,000 fine.

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<sup>1</sup> The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. A defendant's sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; the injury to the victim; additional offenses that the defendant committed at the time of the primary offense; the defendant's prior record and other aggravating factors. Offenses are ranked in the "offense severity ranking chart" from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense as determined by the legislature. The points are added in order to determine the "lowest permissible sentence" for the offense. This is the minimum sentence that a judge may impose. The permissible sentence for an offense ranges from the calculated lowest permissible sentence to the statutory maximum for the primary offense. The statutory maximum sentence for a first degree felony is thirty years, for a second degree felony is fifteen years and for a third degree felony is five years. s. 775.082, F.S.

The statute provides that a certain act (or failure to act) is prima facie evidence of fraudulent intent. Prima facie means, generally, sufficient evidence. The acts from which prima facie evidence of fraudulent intent may be found are:

- Obtaining the property or equipment under false pretenses;
- Absconding without payment;
- Removing or attempting to remove the property or equipment from the county without the express written consent of the lessor;
- Failure to redeliver the property or equipment after notice of demand for its return; and
- Failure to pay any amount due which is incurred as the result of the failure to redeliver the property or equipment.

Requirements for proper notice of demand for return of rented property or equipment are set forth in subsections (4), (5) and (6) of s. 812.155, F.S. Subsection (6) specifically requires, as a prerequisite to prosecution under s. 812.155, F.S., that the following statement be contained in the rental agreement and be initialed by the lessee: "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 section 812.155, Florida Statutes." s. 812.155(6), F.S.

Subsection (7) of s. 812.155, F.S., provides as follows:

"(7) Exclusion of rental-purchase agreements.—This section does 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 unless the rental store retains title to the personal property or equipment throughout the rental-purchase agreement period."

The last phrase of that subsection – "unless the rental store retains title to the personal property or equipment throughout the rental-purchase agreement period," was inserted in 2001. ch. 2001-141, L.O.F.

This bill deletes subsection (7) in its entirety from s. 812.155, F.S. This would allow for prosecutions in rental-purchase arrangements where there is fraud, trick, or false representation by the lessee.

#### 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. deleting language relating to rental-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. Reenacts s. 985.227, F.S. for the purpose of incorporating the amendment to section 812.014, F.S. by reference.

Section 6. Provides effective date of July 1, 2005.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference has not met to consider the prison bed impact of this bill on the Department of Corrections. The bill ranks the offense of theft of a semitrailer 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 semitrailer with the intent to use the fifth wheel to commit theft.

### 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Criminal Justice Committee adopted three amendments. The first two amendments clarified that the provisions relating to altering a fifth wheel and theft of property deployed by a law enforcement officer pertain to a semitrailer. The third amendment added the language relating to rental-purchase property discussed above.