

Florida State University College of Law

Scholarship Repository

Staff Analyses & Legislative Documents

Florida Legislative Documents

1998

Session Law 98-214

Florida Senate & House of Representatives

Follow this and additional works at: <https://ir.law.fsu.edu/staff-analysis>



Part of the Law Commons

Recommended Citation

.

This Article is brought to you for free and open access by the Florida Legislative Documents at Scholarship Repository. It has been accepted for inclusion in Staff Analyses & Legislative Documents by an authorized administrator of Scholarship Repository. For more information, please contact efarrell@law.fsu.edu.

Am's to HB 1317 (8-2-97)

| | | | |
|-----|--------|----------------------------|---------|
| 4 | 142151 | ARGENZIANO (SEAF) | 4/7/98 |
| | 402111 | " " | 4/15/98 |
| (2) | 464775 | CRIM JUST APPROP'S (SEAF) | 3/27/98 |
| (3) | 631529 | ARGENZIANO (Am. to Am.) | 4/2/98 |
| (1) | 812087 | CRIME + PUNISHMENT (Am. 1) | 4/17/97 |

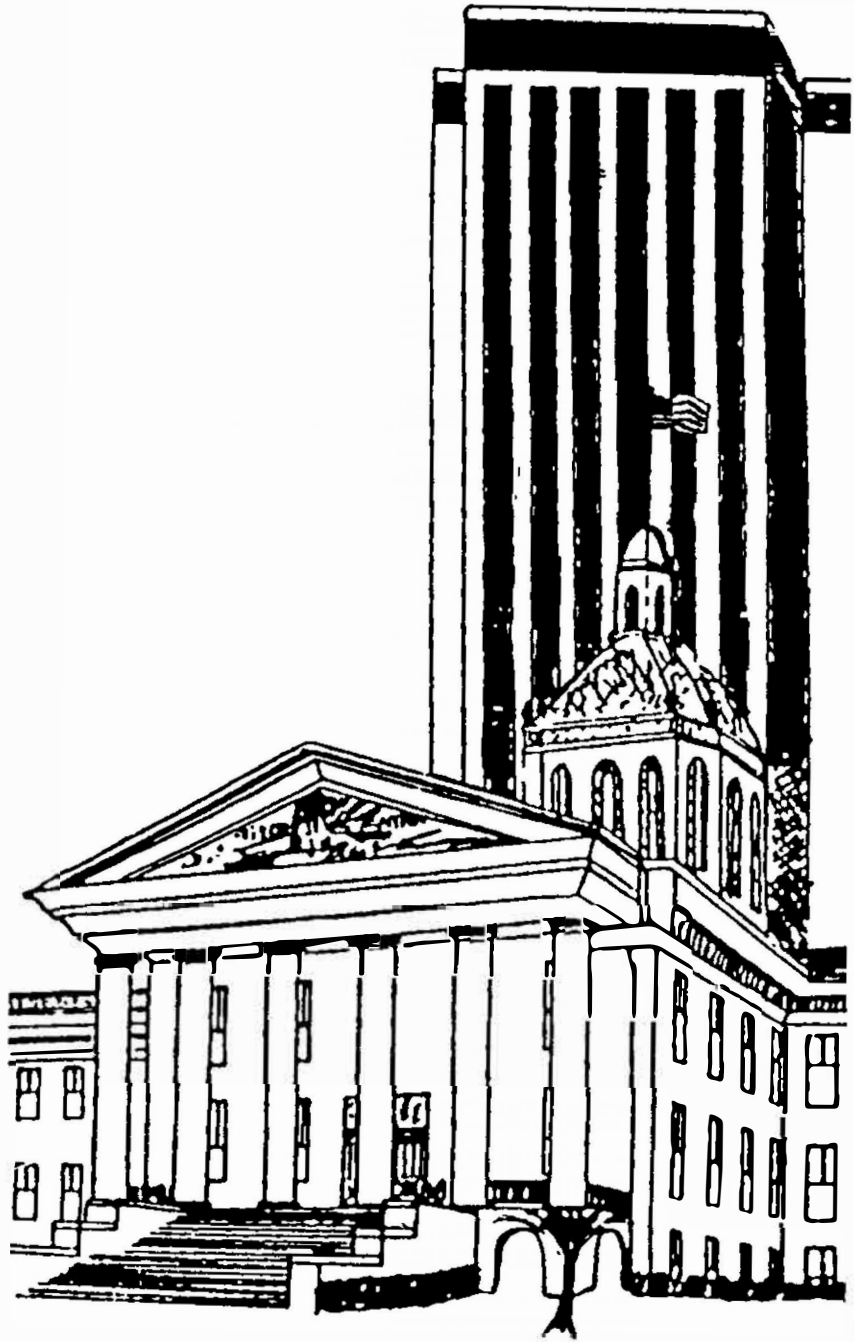
SEE 98214, PDF FOR ADDITIONAL DOCUMENTS

- ① ABOUT AMENDMENTS
- ② H. CRIME + PUNISHMENT SA OF HB 1317, 4/17/97
- ③ H. CRIM JUSTICE APPROP'S SA OF HB 1317, 3/26/98
- ④ HB 1317 1ST ENROLLMENT.

FLORIDA LEGISLATURE

FINAL LEGISLATIVE BILL INFORMATION “CITATOR”

*1998 Regular Session
1997 Special Session A*



prepared by:

**LEGISLATIVE INFORMATION SERVICES DIVISION
OFFICE OF LEGISLATIVE SERVICES
Claude Pepper Building, Room 704
111 West Madison Street
Tallahassee, Florida 32399-1400
Telephone (850) 488-4371**

HISTORY OF HOUSE BILLS

H 1311 (CONTINUED)

03/18/98 SENATE In Messages
 03/19/98 SENATE Received, referred to Banking and Insurance, Ways and Means -SJ 00237
 05/01/98 SENATE Died in Committee on Banking and Insurance

H 1313 GENERAL BILLCampaign Financing/Expenditures

04/14/97 HOUSE Withdrawn from further consideration/Compare Bill(s) passed, refer to CS/HB 461 (Ch 97-13) -HJ 00535

H 1315 LOCAL BILLOrange Co/Ranger Drainage District

05/30/97 Became Law without Governor's Signature, Chapter No 97-355

H 1317 GENERAL BILL/1ST ENG by Argenziano; (CO-SPONSORS) Culp; Crow; Heyman; Putnam; Dockery; Merchant; Crist (Similar CS/S 10287)

Fraudulent Practices, prohibits possession or advertisement for sale of certain equipment designed & primarily useful for unauthorized reception of cable system communications, provides penalties, prescribes acts that constitute prima facie evidence of intent to defraud, provides authorized means for demand for return, requires notice on rental agreements, provides penalties Amends 812 15, 155 Effective Date 10/01/1998

03/10/97 HOUSE Filed
 03/11/97 HOUSE Introduced -HJ 00174
 03/24/97 HOUSE Referred to Crime & Punishment (JC), Criminal Justice Appropriations -HJ 00323
 04/09/97 HOUSE On Committee agenda—Crime & Punishment (JC), 04/15/97, 4 00 pm, 21-HOB
 04/15/97 HOUSE Comm Action Unanimously Favorable with 1 amendment(s) by Crime & Punishment (JC) -HJ 00657
 04/17/97 HOUSE Now in Criminal Justice Appropriations -HJ 00657
 05/02/97 HOUSE Carried over to 1998 Session pursuant to House Rule 96, In House Committee on Criminal Justice Appropriations
 03/03/98 HOUSE CARRIED OVER, Referred to Criminal Justice Appropriations
 03/20/98 HOUSE On Committee agenda—Criminal Justice Appropriations, 03/26/98, 9 30 am, 314-HOB
 03/26/98 HOUSE Comm Action Unanimously Favorable with 1 amendment(s) by Criminal Justice Appropriations -HJ 00388
 03/30/98 HOUSE Pending Consent Calendar -HJ 00388
 04/02/98 HOUSE Available for Consent Calendar
 04/09/98 HOUSE Placed on Justice Council Calendar -HJ 00521
 04/21/98 HOUSE Read second time -HJ 00758, Amendment(s) failed -HJ 00758, Amendment(s) adopted -HJ 00759
 04/22/98 HOUSE Read third time -HJ 00979, Passed as amended, YEAS 116 NAYS 0 -HJ 00980
 04/22/98 SENATE In Messages
 04/23/98 SENATE Received, referred to Commerce and Economic Opportunities, Judiciary -SJ 00872
 05/01/98 SENATE Withdrawn from Commerce and Economic Opportunities, Judiciary -SJ 01737, Substituted for CS/SB 1028 -SJ 01737, Read second and third times -SJ 01737, Passed, YEAS 35 NAYS 1 -SJ 01737
 05/01/98 HOUSE Ordered enrolled
 05/08/98 Signed by Officers and presented to Governor
 05/24/98 Became Law without Governor's Signature, Chapter No 98-214

H 1319 GENERAL BILLCourt Funding/County Article V TF

05/30/97 Became Law without Governor's Signature, Chapter No 97-235, See also SB 902 (Ch 97-64)

H 1321 GENERAL BILLWater Resources Development

05/02/97 HOUSE Original bill laid on Table, refer to combined CS/HB 715 (Ch 97-160)

H 1323 GENERAL BILLWater Protection

05/30/97 Became Law without Governor's Signature, Chapter No 97-236, See also HB 1073 (Ch 97-222), CS/CS/SB 1306 (Ch 97-277)

H 1325 GENERAL BILLPostsecondary Education Expense

04/25/97 HOUSE Laid on Table, Iden./Sim./Compare Bill(s) passed, refer to CS/SB 398 (Ch 97-282) -HJ 00932

H 1327 GENERAL BILLStudent Grant & Loan Program

02/17/98 HOUSE Withdrawn from further consideration

H 1329 GENERAL BILL/CS by Law Enforcement & Public Safety (JC); Roberts-Burke, (CO-SPONSORS) Casey, Chestnut; Smith (Similar CS/S 0562, Compare S 0122)**H 1329 (CONTINUED)**

Medical Examiners, specifies certain circumstances under which medical examiner may be suspended restricts to certain purposes examinations, investigations, & autopsies medical examiners are required or authorized to make or have performed, requires notification of & approval by next of kin for medical examiner to retain or furnish any body part of deceased person for research or certain other purposes, etc Amends 406 06, 075, 11 Effective Date 07/01/1998

03/11/97 HOUSE Filed
 03/13/97 HOUSE Introduced -HJ 00191
 05/02/97 HOUSE Carried over to 1998 Session pursuant to House Rule 96, Introduced, not referred
 03/03/98 HOUSE CARRIED OVER, Introduced
 04/08/98 HOUSE Referred to Law Enforcement & Public Safety (JC) -HJ 00498
 04/14/98 HOUSE On Committee agenda—Law Enforcement & Public Safety (JC), 04/14/98, 1 30 pm, 314-HOB, Comm Action -Unanimously CS by Law Enforcement & Public Safety (JC) -HJ 00742
 04/20/98 HOUSE CS read first time on 04/20/98 -HJ 00739, Pending Consent Calendar -HJ 00742
 04/23/98 HOUSE Available for Consent Calendar
 04/24/98 HOUSE Placed on Consent Calendar, Read second time -HJ 01301
 04/28/98 HOUSE Read third time -HJ 01461, CS passed, YEAS 116 NAYS 0 -HJ 01461
 04/28/98 SENATE In Messages
 05/01/98 SENATE Received, referred to Criminal Justice -SJ 01815, Immediately withdrawn from Criminal Justice -SJ 01636, Substituted for CS/SB 562 -SJ 01636, Read second and third times -SJ 01636, CS passed, YEAS 38 NAYS 0 -SJ 01636
 05/01/98 HOUSE Ordered enrolled -HJ 02400
 05/12/98 Signed by Officers and presented to Governor
 05/28/98 Became Law without Governor's Signature, Chapter No 98-253

H 1331 GENERAL BILL by Roberts-Burke

Legal Assistance for Accused Persons, amends provision re determination of indigency of accused person & reenacts certain provisions to incorporate said amendment, specifies purposes for such determination, provides for payment to clerk of court of application fee of up to \$40 in connection with affidavit asserting indigency, provides for mandatory assessment against certain defendants of attorney's fees & costs for public defender assistance, etc Amends 27 52, 56, 215 22, reenacts FS Effective Date 10/01/1997

03/11/97 HOUSE Filed
 03/13/97 HOUSE Introduced -HJ 00191
 04/03/97 HOUSE Referred to Crime & Punishment (JC), Finance & Taxation (FRC), Criminal Justice Appropriations -HJ 00432
 04/09/97 HOUSE On Committee agenda—Crime & Punishment (JC), 04/15/97, 4 00 pm, 21-HOB
 04/15/97 HOUSE Comm Action Unanimously Favorable by Crime & Punishment (JC) -HJ 00658
 04/17/97 HOUSE Now in Finance & Taxation (FRC) -HJ 00658
 05/02/97 HOUSE Carried over to 1998 Session pursuant to House Rule 96, In House Committee on Finance & Taxation (FRC)
 03/03/98 HOUSE CARRIED OVER, Referred to Finance & Taxation (FRC), Criminal Justice Appropriations
 03/06/98 HOUSE Withdrawn from Finance & Taxation (FRC), Criminal Justice Appropriations, Withdrawn from further consideration/Compare Bill(s) passed, refer to SB 1906 (Ch 97-107) -HJ 00127

H 1333 GENERAL BILLCounty Article V TF/Supreme Court

04/25/97 HOUSE Laid on Table, Iden./Sim./Compare Bill(s) passed, refer to SB 902 (Ch 97-64), See also CS/HB 1319 (Ch 97-235) -HJ 00953

H 1335 JOINT RESOLUTION/1ST ENG by Finance & Taxation (FRC); Starks; (CO-SPONSORS) Arnall, Fassano, Hill; Silver; Brown; Kelly; Lynn; Mackey; Morrison; Culp; Harrington (Similar S 0324)

Taxes/Tangible Personal Property, constitutional amendment to allow exemption from ad valorem taxation by general law of all tangible personal property in county held by one owner up to total value of \$5,000, adjusted for inflation, unless value of property qualified for exemption held by owner exceeds exemption amount, etc Amends s 3, Art VII, creates s 22, Art XII

03/11/97 HOUSE Filed
 03/13/97 HOUSE Introduced -HJ 00191
 03/24/97 HOUSE Referred to Community Affairs (GRC), General Government Appropriations -HJ 00323
 03/31/97 HOUSE On Committee agenda—Community Affairs (GRC), 04/04/97, 10 00 am, Morris Hall
 04/04/97 HOUSE Comm Action Unanimously Favorable by Community Affairs (GRC) -HJ 00495
 04/08/97 HOUSE Now in General Government Appropriations -HJ 00495

HISTORY OF SENATE BILLS

S 1016 (CONTINUED)

- 02/12/98 SENATE Referred to Judiciary, Community Affairs, Ways and Means
 03/03/98 SENATE Introduced, referred to Judiciary, Community Affairs, Ways and Means—SJ 00064
 05/01/98 SENATE Died in Committee on Judiciary

S 1018 GENERAL BILL by Gutman (Similar CS/H 1355)

- Corporate Income Tax/Historic Bldgs, authorizes credit against such tax equal to percentage of costs of rehabilitation of historic building used for commercial purposes, requires certification that property was used for commercial purpose, provides for carryover of credit, provides eligibility requirements for historic buildings & improvements thereto, requires resolution by local government, provides order of credits against tax, etc Creates 220 185, amends 220 02 Effective Date 01/01/1999
 02/06/98 SENATE Prefiled
 02/12/98 SENATE Referred to Ways and Means Subcommittee E (Finance and Tax), Ways and Means, Community Affairs, Commerce and Economic Opportunities
 03/03/98 SENATE Introduced, referred to Ways and Means Subcommittee E (Finance and Tax), Ways and Means, Community Affairs, Commerce and Economic Opportunities—SJ 00064
 04/02/98 SENATE On Subcommittee agenda—Ways and Means Subcommittee E (Finance and Tax), 04/07/98, 12 15 pm, Room—B(LL-42)
 04/07/98 SENATE Subcommittee Recommendation CS by Ways and Means Subcommittee E (Finance and Tax)—SJ 00408, Now in Ways and Means—SJ 00408
 05/01/98 SENATE Died in Committee on Ways and Means

S 1020 GENERAL BILL by Ostalkiewicz (Similar CS/1ST ENG/H 0879, H 3621)

- Agency Accountability Act, creates said act, provides for liability upon agency that has made determination affecting substantial interests of party based on grossly negligent assessment of material facts, under specified circumstances, provides for agency liability for actual damages & attorney's fees incurred by party suffering financial harm as result of determination, provides for waiver of sovereign immunity, specifies applicability Creates 120 571 Effective Date 07/01/1998
 02/06/98 SENATE Prefiled
 02/12/98 SENATE Referred to Governmental Reform and Oversight, Judiciary
 03/03/98 SENATE Introduced, referred to Governmental Reform and Oversight, Judiciary—SJ 00064
 04/02/98 SENATE On Committee agenda—Governmental Reform and Oversight, 04/07/98, 2 00 pm, Room—309C
 04/07/98 SENATE Comm Action Unfavorable by Governmental Reform and Oversight, laid on Table—SJ 00407

S 1022 JOINT RESOLUTION by Ostalkiewicz

- Justices & Judges/Terms of Office, constitutional amendment to limit supreme court justices, district court of appeal judges, & circuit judges to no more than 2 consecutive 6-year terms, & county court judges to no more than 3 consecutive 4-year terms Amends s 10, Art V
 02/06/98 SENATE Prefiled
 02/12/98 SENATE Referred to Judiciary, Executive Business, Ethics and Elections, Rules and Calendar
 03/03/98 SENATE Introduced, referred to Judiciary, Executive Business, Ethics and Elections, Rules and Calendar—SJ 00064, On Committee agenda—Judiciary, 03/05/98, 9 00 am, Room—309C—Not considered
 03/16/98 SENATE On Committee agenda—Judiciary, 03/19/98, 10 30 am, Room—309C—Temporarily postponed
 05/01/98 SENATE Died in Committee on Judiciary

S 1024 GENERAL BILL/CS/CS/1ST ENG by Criminal Justice; Children, Families and Seniors; Hargrett (Similar CS/H 4229, Compare 3RD ENG/H 1019, CS/2ND ENG/H 3883, 1ST ENG/H 4187, CS/S 2170)

- Abuse/False Reports, authorizes CFS Dept to provide identity of person reporting adult abuse, neglect, or exploitation to law enforcement agency, provides for investigation by local law enforcement agencies of possible false reports, provides for CFS Dept to report annually to Legislature number of reports referred to law enforcement agencies for investigation of possible false reports, etc Amends 415 107, 111, 1113, 513, 5131 Effective Date 07/01/1998
 02/06/98 SENATE Prefiled
 02/12/98 SENATE Referred to Children, Families and Seniors, Criminal Justice, Ways and Means
 03/03/98 SENATE Introduced, referred to Children, Families and Seniors, Criminal Justice, Ways and Means—SJ 00064
 03/13/98 SENATE On Committee agenda—Children, Families and Seniors, 03/18/98, 9 00 am, Room—A(LL-37)

S 1024 (CONTINUED)

- 03/19/98 SENATE Comm Action CS by Children, Families and Seniors—SJ 00268 CS read first time on 03/20/98—SJ 00269
 03/20/98 SENATE Now in Criminal Justice—SJ 00268
 03/26/98 SENATE On Committee agenda—Criminal Justice, 03/31/98, 1 30 pm, Room—A(LL-37)
 03/31/98 SENATE Comm Action CS/CS by Criminal Justice—SJ 00375, CS read first time on 04/02/98—SJ 00379
 04/01/98 SENATE Withdrawn from—Ways and Means—SJ 00324
 04/02/98 SENATE Placed on Calendar—SJ 00375
 04/22/98 SENATE Placed on Special Order Calendar—SJ 00813
 04/23/98 SENATE Placed on Special Order Calendar—SJ 00813, Read second time—SJ 00834, Amendment(s) adopted—SJ 00834, Ordered engrossed—SJ 00834
 04/24/98 SENATE Read third time—SJ 00880, CS passed as amended, YEAS 38 NAYS 0—SJ 00880, Immediately certified—SJ 00880
 04/24/98 HOUSE In Messages
 04/27/98 HOUSE Received—HJ 01406, In Justice Council, pending ranking—HJ 01406
 04/28/98 HOUSE Substituted for CS/HB 4229—HJ 01475, Read second and third times—HJ 01475, CS passed, YEAS 119 NAYS 0—HJ 01475
 04/28/98 SENATE Ordered enrolled—SJ 01097
 05/06/98 Signed by Officers and presented to Governor
 05/22/98 Became Law without Governor's Signature, Chapter No 98—111, See also HB 1019 (Ch 98—403), HB 4167 (Ch 98—182)

S 1026 GENERAL BILL by Williams (Similar H 3751, Compare H 3935, S 1422)

- Workers' Compensation, provides that fee schedules adopted under Workers' Compensation provision are maximum fees allowed under workers' compensation managed care arrangement, specifies circumstances under which additional fee may be paid to health care provider as part of risk-sharing arrangement, revises requirements for AHCA in adopting practice parameters, prohibits agency from adopting rules that give preference to any type of organization, etc Amends 440 13, 134 Effective Date 07/01/1998
 02/06/98 SENATE Prefiled
 02/12/98 SENATE Referred to Banking and Insurance, Ways and Means
 03/03/98 SENATE Introduced, referred to Banking and Insurance, Ways and Means—SJ 00065
 05/01/98 SENATE Died in Committee on Banking and Insurance

S 1028 GENERAL BILL/CS by Commerce and Economic Opportunities; Gutman (Similar 1ST ENG/H 1317)

- Fraudulent Practices, prohibits possession or advertisement for sale of certain equipment designed & primarily useful for unauthorized reception of cable system communications, provides penalties, prescribes acts that constitute prima facie evidence of intent to defraud, provides authorized means for demand for return, requires notice on rental agreements, provides penalties Amends 812 15, 155 Effective Date Upon becoming law
 02/06/98 SENATE Prefiled
 02/12/98 SENATE Referred to Commerce and Economic Opportunities, Judiciary
 03/03/98 SENATE Introduced, referred to Commerce and Economic Opportunities, Judiciary—SJ 00065
 03/06/98 SENATE On Committee agenda—Commerce and Economic Opportunities, 03/12/98, 9 00 am, Room—EL—Temporarily postponed
 04/08/98 SENATE On Committee agenda—Commerce and Economic Opportunities, 04/13/98, 2 00 pm, Room—EL
 04/13/98 SENATE Comm Action CS by Commerce and Economic Opportunities—SJ 00479, CS read first time on 04/15/98—SJ 00481
 04/15/98 SENATE Now in Judiciary—SJ 00479
 04/21/98 SENATE Withdrawn from Judiciary—SJ 00538, Placed on Calendar
 04/27/98 SENATE Placed on Special Order Calendar—SJ 00982
 04/28/98 SENATE Placed on Special Order Calendar—SJ 00982, —SJ 01092
 04/29/98 SENATE Placed on Special Order Calendar—SJ 01092
 04/30/98 SENATE Placed on Special Order Calendar—SJ 01222, —SJ 01522
 05/01/98 SENATE Placed on Special Order Calendar—SJ 01522, —SJ 01808, Read second time—SJ 01737, Amendment(s) adopted—SJ 01737, House Bill substituted—SJ 01737, Laid on Table, Iden./Sim./Compare Bill(s) passed, refer to HB 1317 (Ch 98—214)

S 1030 GENERAL BILL by Horne

- Legislation/Impact on Families, requires consideration of impact of legislation & rulemaking on families, requires impact statements Creates 11 074 amends 120 54 Effective Date 10/01/1998
 02/06/98 SENATE Prefiled

By Representatives Argenziano, Culp, Crow, Heyman, Putnam
and Dockery

1 A bill to be entitled
2 An act relating to offenses involving intent to
3 defraud persons who hire or lease personal
4 property or equipment; amending s. 812.155,
5 F.S., relating to the offenses of obtaining
6 personal property or equipment by trick or
7 false representation, hiring or leasing with
8 intent to defraud, and failure to redeliver
9 hired or leased personal property; removing
10 provisions relating to the inference of
11 fraudulent intent for purposes of prosecution
12 of such offenses; providing that certain acts
13 involving obtaining equipment under false
14 pretenses, absconding without payment, or
15 removing or attempting to remove property
16 without express written consent constitute
17 prima facie evidence of such fraudulent intent;
18 specifying circumstances under which failure
19 upon demand to redeliver property or equipment
20 or to pay amounts due for full rental period,
21 including certain damage costs, constitutes
22 such fraudulent intent; providing an effective
23 date.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. Section 812.155, Florida Statutes, is
28 amended to read:

29 812.155 Hiring, leasing, or obtaining personal
30 property or equipment with the intent to defraud; failing to
31

1 return hired or leased personal property or equipment; rules
2 of evidence.--

3 (1) OBTAINING BY TRICK, FALSE REPRESENTATION,
4 ETC.--Whoever, with the intent to defraud the owner or any
5 person lawfully possessing any personal property or equipment,
6 obtains the custody of such personal property or equipment by
7 trick, deceit, or fraudulent or willful false representation
8 shall be guilty of a misdemeanor of the second degree,
9 punishable as provided in s. 775.082 or s. 775.083, unless the
10 value of the personal property or equipment is of a value of
11 \$300 or more; in that event the violation constitutes a felony
12 of the third degree, punishable as provided in s. 775.082, s.
13 775.083, or s. 775.084.

14 (2) HIRING OR LEASING WITH THE INTENT TO
15 DEFRAUD.--Whoever, with intent to defraud the owner or any
16 person lawfully possessing any personal property or equipment
17 of the rental thereof, hires or leases said personal property
18 or equipment from such owner or such owner's agents or any
19 person in lawful possession thereof shall, upon conviction, be
20 guilty of a misdemeanor of the second degree, punishable as
21 provided in s. 775.082 or s. 775.083, unless the value of the
22 personal property or equipment is of a value of \$300 or more;
23 in that event the violation constitutes a felony of the third
24 degree, punishable as provided in s. 775.082, s. 775.083, or
25 s. 775.084.

26 (3) FAILURE TO REDELIVER HIRED OR LEASED PERSONAL
27 PROPERTY.--Whoever, after hiring or leasing any personal
28 property or equipment under an agreement to redeliver the same
29 to the person letting such personal property or equipment or
30 his agent at the termination of the period for which it was
31 let, shall, without the consent of such person or persons and

1 with the intent to defraud, abandon or willfully refuse to
2 redeliver such personal property or equipment as agreed,
3 shall, upon conviction, be guilty of a misdemeanor of the
4 second degree, punishable as provided in s. 775.082 or s.
5 775.083, unless the value of the personal property or
6 equipment is of a value of \$300 or more; in that event the
7 violation constitutes a felony of the third degree, punishable
8 as provided in s. 775.082, s. 775.083, or s. 775.084.

9 (4) EVIDENCE OF FRAUDULENT INTENT.--

10 (a) In prosecutions under this section, obtaining
11 ~~fraudulent intent may be inferred from proof that~~ the property
12 or equipment under ~~was obtained by~~ false pretenses; by
13 absconding without payment or offering to pay any outstanding
14 balance; or ~~by surreptitiously~~ removing or attempting to
15 remove the property or equipment from the county, without the
16 express written consent of the lessor, shall be prima facie
17 evidence of such fraudulent intent.

18 (b) In prosecutions under subsection (3), failure to
19 redeliver the property or equipment upon demand made in person
20 or by certified mail shall be prima facie evidence of such
21 fraudulent intent.

22 (c) In prosecutions under subsection (2), failure to
23 pay any amounts due for the full rental period, including
24 reasonable costs for damage to the property or equipment, upon
25 demand made in person or by certified mail shall be prima
26 facie evidence of such fraudulent intent.

27 ~~(b) Fraudulent intent may be inferred from proof of~~
28 ~~the failure to make payment or redeliver upon demand made~~
29 ~~either in person or by certified mail. This inference may be~~
30 ~~made only when there is no dispute as to the amount owed.~~

31

1 (5) EXCLUSION OF RENTAL-PURCHASE AGREEMENTS.--This
2 section does not apply to personal property or equipment that
3 is the subject of a rental-purchase agreement that permits the
4 lessee to acquire ownership of the personal property or
5 equipment.

6 Section 2. This act shall take effect October 1, 1997.

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

HOUSE SUMMARY

Revises provisions relating to intent to commit the offenses of obtaining personal property or equipment by trick or false representation, hiring or leasing with intent to defraud, and failure to redeliver hired or leased personal property. Removes provisions relating to the inference of fraudulent intent for purposes of prosecution of such offenses. Provides that certain acts involving obtaining equipment under false pretenses, absconding without payment, or removing or attempting to remove property without express written consent constitute prima facie evidence of such fraudulent intent. Specifies circumstances under which failure upon demand to redeliver property or equipment or to pay amounts due for full rental period, including certain damage costs, constitutes such fraudulent intent.

STORAGE NAME: h1317.cp
DATE: April 13, 1997

HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
BILL RESEARCH & ECONOMIC IMPACT STATEMENT

BILL #: HB 1317
RELATING TO: Fraud against people who lease property
SPONSOR(S): Representatives Argenziano, Culp, Crow, Heyman, Putnam, and Dockery
STATUTE(S) AFFECTED: Section 812.155, F.S.
COMPANION BILL(S): CS/SB 170
ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) CRIME AND PUNISHMENT
(2) CRIMINAL JUSTICE APPROPRIATIONS
(3)
(4)
(5)

I. SUMMARY:

The bill makes the law relating to failure to return rental property, and leasing with intent to defraud more strict. A prosecutor may currently use the following evidentiary device provided by section 812.155(4) to prove the fraudulent intent of an accused:

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.

In the place of this inference the following paragraphs are added to the section to create a new presumption to help the prosecutor prove intent to defraud:

(b) In prosecutions under subsection (3), failure to redeliver the property or equipment upon demand made in person or by certified mail shall be prima facie evidence of such fraudulent intent.

(c) In prosecutions under subsection (2), failure to pay any amounts due for the full rental period, including reasonable costs for damage to the property or equipment, upon demand made in person or by certified mail shall be prima facie evidence of such fraudulent intent.

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

The Florida Supreme Court has held that a statute may not mandate that certain facts, such as failure to redeliver property, give rise to "prima facie evidence." A jury would have to be instructed that the facts may or would be considered prima facie evidence. In other words, the word "shall" as used in this bill has been interpreted in similar situations to mean may or would.

II. SUBSTANTIVE RESEARCH:

A PRESENT SITUATION:

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) 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) makes it illegal to hire or lease property *with the intent to defraud*.

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

Fraudulent Intent

Section 812.155(4) provides that fraudulent intent may be inferred from proof that the property was obtained in one of the following ways:

- 1 By false pretenses;
2. By absconding without payment or offering to pay any outstanding balance; or
3. By surreptitiously removing or attempting to remove the property or equipment from the county, without the express written consent of the lessor.

Subsection (4) also contains the following inference relating to the failure to return leased property:

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.

Theft

Florida has a very broad theft statute, 812.014, F.S., which also covers many of the acts prohibited by section 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, section 812.155, F.S.

B. EFFECT OF PROPOSED CHANGES:

The bill deletes paragraph (b) of section 812.155(4) which states:

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.

In the place of paragraph (b) the following paragraphs are added to the section to create a new presumption to help the prosecutor prove intent to defraud:

(b) In prosecutions under subsection (3), failure to redeliver the property or equipment upon demand made in person or by certified mail shall be prima facie evidence of such fraudulent intent.

(c) In prosecutions under subsection (2), failure to pay any amounts due for the full rental period, including reasonable costs for damage to the property or equipment, upon demand made in person or by certified mail shall be prima facie evidence of such fraudulent intent.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

No

(2) what is the cost of such responsibility at the new level/agency?

No.

(3) how is the new agency accountable to the people governed?

No.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No

3 Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

Not Applicable.

(2) Who makes the decisions?

Not Applicable.

(3) Are private alternatives permitted?

Not Applicable.

(4) Are families required to participate in a program?

Not Applicable.

(5) Are families penalized for not participating in a program?

Not Applicable.

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

Not Applicable.

(2) service providers?

Not applicable

(3) government employees/agencies?

Not Applicable

D. SECTION-BY-SECTION RESEARCH:

Section 1: Changes the presumptions relating to defrauding the owner of leased property. See EFFECT OF PROPOSED CHANGES.

Section 2: Provides an effective date.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

STORAGE NAME: h1317.cp

DATE: April 13, 1997

PAGE 7

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

4. Total Revenues and Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See Fiscal Comments.

2. Direct Private Sector Benefits:

There may be some benefits if defrauding owners of leased property is deterred.

3. Effects on Competition, Private Enterprise and Employment Markets:

See Fiscal Comments.

D. FISCAL COMMENTS:

While the bill does not create any new crimes or increase penalties, there could be a small impact if the bill makes it easier to prosecute rental property fraud. To the extent that more people are convicted and sentenced to prison, jail, or supervision, there will be increased costs to State and local government.

The Criminal Justice Estimating Conference estimates that the bill will have no impact on prison populations.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Criminal laws are exempt from the provisions of Article VII, Section 18 of the Florida Constitution. The bill contains no other mandates.

B. REDUCTION OF REVENUE RAISING AUTHORITY.

The bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES.

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

There have been some cases that raised the issue of whether presumptions improperly shift the burden of proof to the defendant. The leading Florida case, Rolle v. State, 560 So. 2d 1154 (Fla. 1990), discusses this issue in the context of the DUI statute. The Statute prohibiting DUI had a provision, section 316.1934(2), F.S. (1985), which establishes the following presumption:

If there was at that time 0.10 percent or more by weight of alcohol in the person's blood, that fact shall be prima facie evidence that the person was under the influence of alcoholic beverage....

A majority of the Florida Supreme Court Justices found the following jury instruction based on the DUI statute to be constitutional:

If you find from the evidence that the Defendant had a blood alcohol level of .10 percent or more, that evidence would be sufficient by itself to establish that the Defendant was under the influence of alcohol to the extent that his normal faculties were impaired. However, such evidence may be contradicted or rebutted by other evidence.

The majority held that the instruction created a permissive inference, however, two Justices disagreed and argued in a concurring opinion that:

A reasonable juror could have felt compelled to conclude that the breath tests were adequate to prove legal impairment unless, Rolle [the defendant] persuaded the jury that the presumption was unwarranted, thus improperly shifting the burden of proof

It would appear that a stronger inference than the one given above would not be allowed by the courts, and even instruction given is somewhat controversial.

STORAGE NAME: h1317.cp

DATE: April 13, 1997

PAGE 10

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by.

Legislative Research Director:

J. Willis Renuart

J. Willis Renuart

Journals
of the
Florida
House of Representatives

Volume II



Continuation of Regular Session, 1998

April 21 through April 29, 1998

The Journals with indices are available on the
Internet at [http //www leg state fl us/](http://www.leg.state.fl.us/)



Printed on Recycled Paper

insert

Section 1 *Short title—This act shall be known as the "Kelly Johnson Act"*

And the title is amended as follows

On page 1, line 3, after responses,

insert creating the "Kelly Johnson Act",

Rep Ziebarth moved the adoption of the amendment, which was adopted

Representative(s) Ziebarth offered the following

Amendment 2—On page 3, line 4,
remove from the bill Subsection

and insert in lieu thereof
Effective January 1, 1999, subsection

Rep Ziebarth moved the adoption of the amendment, which was adopted

Under Rule 127, the bill was referred to the Engrossing Clerk

On motion by Rep Livingston, CS/HB 3245 was temporarily postponed under Rule 147, the second reading nullified, and its position on the Calendar retained

HB 1317—A bill to be entitled An act relating to offenses involving intent to defraud persons who hire or lease personal property or equipment, amending s 812 155, F.S. relating to the offenses of obtaining personal property or equipment by trick or false representation, hiring or leasing with intent to defraud, and failure to redeliver hired or leased personal property, removing provisions relating to the inference of fraudulent intent for purposes of prosecution of such offenses, providing that certain acts involving obtaining equipment under false pretenses, absconding without payment, or removing or attempting to remove property without express written consent constitute prima facie evidence of such fraudulent intent, specifying circumstances under which failure upon demand to redeliver property or equipment or to pay amounts due for full rental period, including certain damage costs, constitutes such fraudulent intent, providing an effective date

—was read the second time by title

The Committee on Crime & Punishment offered the following

Amendment 1 (with title amendment)—On page 3, line(s) 10-26,
remove from the bill all of said lines

and insert

(a) In prosecutions under this section, ~~obtaining fraudulent intent may be inferred from proof that the property or equipment under was obtained by false pretenses, by absconding without payment or offering to pay any outstanding balance, or by surreptitiously removing or attempting to remove the property or equipment from the county, without the express written consent of the lessor, shall be prima facie evidence of such fraudulent intent~~

(b) In prosecutions under subsection (3), failure to redeliver the property or equipment upon demand made in person or by certified mail shall be prima facie evidence of such fraudulent intent

(c) In prosecutions under subsection (3), failure to pay any amounts due for the full rental period, including reasonable costs for damage to the property or equipment not to exceed the cost of repair or replacement, whichever is less, upon demand made in person or by certified mail shall be prima facie evidence of such fraudulent intent

And the title is amended as follows

On page 1, line(s) 21,

after "costs" insert not to exceed cost for replacement

Rep Argenziano moved the adoption of the amendment, which failed of adoption

The Committee on Criminal Justice Appropriations offered the following

Amendment 2 (with title amendment)—
Remove from the bill Everything after the enacting clause

and insert in lieu thereof

Section 1 Subsection (3) of section 812 15, Florida Statutes is amended to read

812 15 Unauthorized reception of cable television services, penalties —

(3)(a) Any person who willfully violates this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s 775 082 or s 775 083

(b) Any person who willfully and for purposes of direct or indirect commercial advantage violates this section shall be guilty of a felony of the third degree, punishable as provided in s 775 082, s 775 083, or s 775 084

(c) Any person who, without authorization from a cable system, possesses equipment, knowing that such equipment may be primarily used or designed to receive communications services offered by that cable system, commits a misdemeanor of the first degree, punishable as provided in s 775 082 or s 775 083

(d) Any person who places an advertisement in a printed publication, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement is to promote the sale of equipment prohibited under paragraph (c), commits a misdemeanor of the first degree, punishable as provided in s 775 082 or s 775 083

Section 2 Section 812 155, Florida Statutes, is amended to read

812 155 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 —

(1) OBTAINING BY TRICK, FALSE REPRESENTATION, ETC — Whoever, with the intent to defraud the owner or any person lawfully possessing any personal property or equipment, obtains the custody of such personal property or equipment by trick, deceit, or fraudulent or willful false representation shall be guilty of a misdemeanor of the second degree, punishable as provided in s 775 082 or s 775 083, unless the value of the personal property or equipment is of a value of \$300 or more, in that event the violation constitutes a felony of the third degree, punishable as provided in s 775 082, s 775 083, or s 775 084

(2) HIRING OR LEASING WITH THE INTENT TO DEFRAUD — Whoever, with intent to defraud the owner or any person lawfully possessing any personal property or equipment of the rental thereof, hires or leases said personal property or equipment from such owner or such owner's agents or any person in lawful possession thereof shall, upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided in s 775 082 or s 775 083, unless the value of the personal property or equipment is of a value of \$300 or more, in that event the violation constitutes a felony of the third degree, punishable as provided in s 775 082, s 775 083, or s 775 084

(3) FAILURE TO REDELIVER HIRED OR LEASED PERSONAL PROPERTY —Whoever after hiring or leasing any personal property or equipment under an agreement to redeliver the same to the person letting such personal property or equipment or his or her agent at the termination of the period for which it was let, shall, without the consent of such person or persons and with the intent to defraud, abandon or willfully refuse to redeliver such personal property or equipment as agreed, shall, upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided in s 775 082 or s 775 083, unless the value of the personal property or equipment is of a value of \$300 or more,

in that event the violation constitutes a felony of the third degree, punishable as provided in s 775 082, s 775 083, or s 775 084

(4) EVIDENCE OF FRAUDULENT INTENT —

(a) In prosecutions under this section, ~~obtaining fraudulent intent may be inferred from proof that the property or equipment under was obtained by~~ false pretenses, by absconding without payment or offering to pay any outstanding balance, or ~~by surreptitiously~~ removing or attempting to remove the property or equipment from the county, without the express written consent of the lessor is prima facie evidence of fraudulent intent

(b) In a prosecution under subsection (3), failure to redeliver the property or equipment upon demand is prima facie evidence of 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~~

(c) In a prosecution under subsection (3), failure to pay any amount due under the agreement upon demand is prima facie evidence of fraudulent intent 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

(5) DEMAND FOR RETURN — Demand for return of overdue property or equipment and for payment of amounts due may be made in person, by hand delivery, or by certified mail, return receipt requested, addressed to the last known address of the lessee

(6) NOTICE REQUIRED — As a prerequisite to prosecution under this section, 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 section 812 155, Florida Statutes

(7)(5) 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

Section 3 This act shall take effect October 1 of the year in which enacted

And the title is amended as follows
remove from the title of the bill the entire title

and insert in lieu thereof A bill to be entitled An act relating to offenses involving personal property or equipment, amending s 812 15, FS, prohibiting the possession or advertisement for sale of certain equipment designed or used to receive cable system communications under specified circumstances, providing penalties, amending s 812 155, FS, prescribing acts that constitute prima facie evidence of intent to defraud, providing authorized means for demand for return, requiring notice on rental agreements, providing penalties, providing an effective date

Rep Argenziano moved the adoption of the amendment, which failed of adoption

Representative Argenziano offered the following

Amendment 3 (with title amendment) —

Remove from the bill Everything after the enacting clause

and insert in lieu thereof

Section 1 Subsection (3) of section 812 15, Florida Statutes is amended to read

812 15 Unauthorized reception of cable television services, penalties —

(3)(a) Any person who willfully violates this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s 775 082 or s 775 083

(b) Any person who willfully and for purposes of direct or indirect commercial advantage violates this section shall be guilty of a felony of the third degree, punishable as provided in s 775 082, s 775 083, or s 775 084

(c) Any person who intentionally possesses equipment, knowing or having reason to know that the design of such equipment renders it primarily useful for the purpose of the unauthorized reception of any communications service offered over a cable system, shall be guilty of a misdemeanor of the first degree, punishable as provided in s 775 082 or s 775 083

(d) It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement that, in whole or in part, promotes the sale of equipment, if the person placing the advertisement knows or has reason to know that the equipment is designed to be primarily useful for the unauthorized reception of any communications service offered over a cable system Any person who violates this paragraph shall be guilty of a misdemeanor of the first degree, punishable as provided in s 775 082 or s 775 083

Section 2 Section 812 155, Florida Statutes, is amended to read

812 155 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 —

(1) OBTAINING BY TRICK, FALSE REPRESENTATION, ETC — Whoever, with the intent to defraud the owner or any person lawfully possessing any personal property or equipment, obtains the custody of such personal property or equipment by trick, deceit, or fraudulent or willful false representation shall be guilty of a misdemeanor of the second degree, punishable as provided in s 775 082 or s 775 083, unless the value of the personal property or equipment is of a value of \$300 or more, in that event the violation constitutes a felony of the third degree, punishable as provided in s 775 082, s 775 083, or s 775 084

(2) HIRING OR LEASING WITH THE INTENT TO DEFRAUD — Whoever, with intent to defraud the owner or any person lawfully possessing any personal property or equipment of the rental thereof, hires or leases said personal property or equipment from such owner or such owner's agents or any person in lawful possession thereof shall, upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided in s 775 082 or s 775 083, unless the value of the personal property or equipment is of a value of \$300 or more, in that event the violation constitutes a felony of the third degree, punishable as provided in s 775 082, s 775 083, or s 775 084

(3) FAILURE TO REDELIVER HIRED OR LEASED PERSONAL PROPERTY — Whoever, after hiring or leasing any personal property or equipment under an agreement to redeliver the same to the person letting such personal property or equipment or his or her agent at the termination of the period for which it was let, shall, without the consent of such person or persons and with the intent to defraud, abandon or willfully refuse to redeliver such personal property or equipment as agreed shall, upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided in s 775 082 or s 775 083, unless the value of the personal property or equipment is of a value of \$300 or more, in that event the violation constitutes a felony of the third degree, punishable as provided in s 775 082, s 775 083, or s 775 084

(4) EVIDENCE OF FRAUDULENT INTENT —

(a) In prosecutions under this section, ~~obtaining fraudulent intent may be inferred from proof that the property or equipment under was obtained by~~ false pretenses ~~by~~ absconding without payment or offering to pay an outstanding balance, or ~~by surreptitiously~~ removing or attempting to remove the property or equipment from the county-

without the express written consent of the lessor, is prima facie evidence of fraudulent intent

(b) In a prosecution under subsection (3), failure to redeliver the property or equipment within 5 days after receipt of, or within 5 days after return receipt from, the certified mailing of the demand for return is prima facie evidence of fraudulent intent. Notice mailed by certified mail, return receipt requested, to the address given by the renter at the time of rental shall be deemed sufficient and equivalent to notice having been received by the renter, should the notice be returned undelivered. ~~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.~~

(c) In a prosecution under subsection (3), 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 prima facie evidence of fraudulent intent. 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.

(5) DEMAND FOR RETURN—Demand for return of overdue property or equipment and for payment of amounts due may 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.

(6) NOTICE REQUIRED—As a prerequisite to prosecution under this section, 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 the statement 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 section 812.155, Florida Statutes.

(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.

Section 3 This act shall take effect October 1 of the year in which enacted.

And the title is amended as follows
remove from the title of the bill the entire title

and insert in lieu thereof A bill to be entitled An act relating to obtaining personal property or certain services illegally, amending s. 812.15, F.S., prohibiting the possession or advertisement for sale of certain equipment designed and primarily useful for unauthorized reception of cable system communications, providing penalties, amending s. 812.155, F.S., prescribing acts that constitute prima facie evidence of intent to defraud, providing authorized means for demand for return, requiring notice on rental agreements, providing penalties, providing an effective date.

Rep. Argenziano moved the adoption of the amendment, which was adopted.

Under Rule 127, the bill was referred to the Engrossing Clerk.

Conference Committee Report on HB 4201

In compliance with Article III, Section 19(d) and Joint Rule 2, the necessary 72-hour waiting period having expired on motion by Rep. Garcia, the House took up the following Report of the Conference Committee on HB 4201:

The Honorable Daniel Webster
Speaker, House of Representatives

The Honorable Toni Jennings
President of the Senate

Dear Presiding Officers:

Your Conference Committee on the disagreeing votes of the two Houses on the Senate amendments to House Bill 4201, same being:

An act making appropriations, providing moneys for the annual period beginning July 1, 1998, and ending June 30, 1999, to pay salaries, and other expenses, capital outlay - buildings, and other improvements, and for other specified purposes of the various agencies of state government, providing an effective date.

having met, and after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

- 1 That the Senate recede from its amendment 1.
- 2 That the House of Representatives and the Senate adopt the Conference Committee amendments attached hereto, and by reference made a part of this report.

Rodolfo Garcia, Jr., Chair
Bruno Barreiro
Janegule Boyd
Rudy Bradley
Cynthia Chestnut
Scott Clemons
Lee Constantine
Tom Feeney
Mark Flanagan
Lars A. Hafner
Dennis L. Jones
James E. "Jim" King, Jr.
Carlos Lacasa
Alfred Lawson, Jr.
Carl Littlefield
Ralph Livingston
Willie F. Logan
Joseph R. Mackey
Kendrick Meek
Jerry Melvin
Sharon J. Merchant
Luis C. Morse
Bill Posey
Ken Pruitt
Alzo J. Reddick
Buzz Ritchie
Beryl Roberts-Burke
Debby P. Sanderson
Kelley R. Smith
Bill Sublette
J. Alex Villalobos
Tom Warner
Debbie Wasserman Schultz
Stephen R. Wise
Managers on the part of the
House of Representatives

Donald C. Sullivan, Chair
W. G. "Bill" Bankhead
Charlie Bronson
Ginny Brown-Waite
Locke Burt
Roberto Casas
W. D. Childers
Charlie W. Clary III
Anna P. Cowin
Charlie Crist
Mario Diaz Balart
Fred R. Dudley
Buddy Dyer
John A. Grant
Alberto Gutman
James Hargrett
Katherine Harris
Betty S. Hulzendorf
Jim Horne
George G. Kirkpatrick
Patsy Kurth
Jack Latvala
Tom Lee
John M. McKay
Matthew J. Meadows
William G. Myers, M.D.
Thomas C. Rossin
Jim Scott
Ron Silver
Pat Thomas
Charles Williams

Conference Committee Amendment 1 (with title amendment)—On page 1, line 1, delete everything and insert

A bill to be entitled

An act making appropriations, providing moneys for the annual period beginning July 1, 1998, and ending June 30, 1999, to pay salaries, and other expenses, capital outlay - buildings, and other improvements, and for other specified purposes of the various agencies of State government, providing an effective date.

Managers on the part of the
Senate

STORAGE NAME: h1317z.cp
DATE: May 13, 1998

****FINAL ACTION****
****SEE FINAL ACTION STATUS SECTION****

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
CRIME AND PUNISHMENT
FINAL BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1317

RELATING TO: Fraud against people who lease property

SPONSOR(S): Representatives Argenziano, Culp, Crow, Heyman, Putnam, and Dockery

STATUTE(S) AFFECTED: Section 812.155, F.S.

COMPANION BILL(S): CS/SB 170

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME AND PUNISHMENT YEAS 8 NAYS 0
- (2) CRIMINAL JUSTICE APPROPRIATIONS YEAS 8 NAYS 0
- (3)
- (4)
- (5)

I. FINAL ACTION STATUS:

Chapter Law # 98-214

II. SUMMARY:

The Bill makes it a first degree misdemeanor to knowingly possess or advertise equipment that is designed or used for the unauthorized reception of any communications service offered over a cable system.

The Bill also makes it easier to prove fraudulent intent for failure to return rental or leased property. Currently, Section 812.155(4), F.S. provides that fraudulent intent may be inferred from failure to make payment or redelivery of the rental property upon demand made by the owner of the property or it may be inferred if the property is taken without consent or under false pretenses. In the place of these inferences the bill creates the following evidentiary presumptions:

- There is prima facie evidence of fraudulent intent if the property is obtained under false pretenses; by absconding without payment; or by removing or attempting to remove the property without the written consent of the owner.
- There is prima facie evidence of fraudulent intent if property is not redelivered within 5 days after return receipt from a certified mailing of the demand for return of the property. The bill does not require that the person renting or leasing the property receive notice of the demand so long as the demand is sent by certified mail to the address provided by the person renting or leasing the property. This provision only applies after the rental period has expired.
- There is prima facie evidence of fraudulent intent for failure to pay any amount due which is incurred as the result of the failure to redeliver property after the rental period expires. The amount due includes money for the time period during which the property was not returned, and the costs of repairing or replacing any damaged property.

III. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Cable Services

Section 812.15 makes it a first degree misdemeanor to receive cable services without authority, and it is a third degree felony to assist in the reception of cable services for commercial advantage. However, there is not a law that prohibits the possession or advertisement of equipment that is designed or used for the unauthorized reception of cable services.

Prima Facie Evidence

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) 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) makes it illegal to hire or lease property *with the intent to defraud*.

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

Fraudulent Intent

Section 812.155(4) provides that fraudulent intent may be inferred from proof that the property was obtained in one of the following ways:

1. By false pretenses;
2. By absconding without payment or offering to pay any outstanding balance;
or
3. By surreptitiously removing or attempting to remove the property or equipment from the county, without the express written consent of the lessor.

Subsection (4) also contains the following inference relating to the failure to return leased property:

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.

Theft

Florida has a very broad theft statute, 812.014, F.S., which also covers many of the acts prohibited by section 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, section 812.155, F.S.

B. EFFECT OF PROPOSED CHANGES:

The Bill makes it a first degree misdemeanor to knowingly possess or advertise equipment that is designed or used for the unauthorized reception of any communications service offered over a cable system.

The Bill also makes it easier to prove fraudulent intent for failure to return rental or leased property. Currently, Section 812.155(4), F.S. provides that fraudulent intent may be inferred from failure to make payment or redelivery of the rental property upon demand made by the owner of the property or it may be inferred if the property is taken without consent or under false pretenses. In the place of these inferences the bill creates the following evidentiary presumptions:

- There is prima facie evidence of fraudulent intent if the property is obtained under false pretenses; by absconding without payment; or by removing or attempting to remove the property without the written consent of the owner.
- There is prima facie evidence of fraudulent intent if property is not redelivered within 5 days after return receipt from a certified mailing of the demand for return of the property. The bill does not require that the person renting or leasing the property receive notice of the demand so long as the demand is sent by certified mail to the address provided by the person renting or leasing the property. This provision only applies after the rental period has expired.
- There is prima facie evidence of fraudulent intent for failure to pay any amount due which is incurred as the result of the failure to redeliver property after the rental period expires. The amount due includes money for the time period during which the property was not returned, and the costs of repairing or replacing any damaged property.

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.

The Bill further provides that the above three ways to demonstrate a prima facie case may only be used by a prosecutor if the person renting or leasing the property initials a statement in the agreement explaining that the "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."

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly

(1) any authority to make rules or adjudicate disputes?

No

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

No.

(2) what is the cost of such responsibility at the new level/agency?

No.

(3) how is the new agency accountable to the people governed?

No.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

Not Applicable.

(2) Who makes the decisions?

Not Applicable.

(3) Are private alternatives permitted?

Not Applicable.

(4) Are families required to participate in a program?

Not Applicable

(5) Are families penalized for not participating in a program?

Not Applicable

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

Not Applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not Applicable.

D. SECTION-BY-SECTION RESEARCH:

Section 1: Changes the presumptions relating to defrauding the owner of leased property. See EFFECT OF PROPOSED CHANGES.

Section 2: Provides an effective date.

IV. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

4. Total Revenues and Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See Fiscal Comments.

2. Direct Private Sector Benefits:

There may be some benefits if defrauding owners of leased property is deterred.

3. Effects on Competition, Private Enterprise and Employment Markets:

See Fiscal Comments.

D. FISCAL COMMENTS:

While the bill does not create any new crimes or increase penalties, there could be a small impact if the bill makes it easier to prosecute rental property fraud. To the extent that more people are convicted and sentenced to prison, jail, or supervision, there will be increased costs to State and local government.

The Criminal Justice Estimating Conference estimates that the bill will have no impact on prison populations.

V. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Criminal laws are exempt from the provisions of Article VII, Section 18 of the Florida Constitution. The bill contains no other mandates.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

VI. COMMENTS:

Notice of Presumptions

In order for a prosecutor to use the presumptions permitted by the bill the person renting or leasing the property must initial the following statement in the contract:

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.

While this statement is not clear as to whether both the failure to return property and the failure to pay are necessary to have prima facie evidence of intent to defraud, both would be necessary to use the statute creating the presumption of prima facie evidence of intent to defraud for late returned property

Legality of Presumption

There have been some cases that raised the issue of whether presumptions improperly shift the burden of proof to the defendant. The leading Florida case, Rolle v. State, 560 So. 2d 1154 (Fla. 1990), discusses this issue in the context of the DUI statute. The Statute prohibiting DUI had a provision, section 316.1934(2), F.S (1985), which establishes the following presumption:

If there was at that time 0.10 percent or more by weight of alcohol in the person's blood, that fact shall be prima facie evidence that the person was under the influence of alcoholic beverage....

A majority of the Florida Supreme Court Justices found the following jury instruction based on the DUI statute to be constitutional:

If you find from the evidence that the Defendant had a blood alcohol level of .10 percent or more, that evidence would be sufficient by itself to establish that the Defendant was under the influence of alcohol to the extent that his normal faculties were impaired. However, such evidence may be contradicted or rebutted by other evidence.

The majority held that the instruction created a permissive inference, and therefore did not unconstitutionally shift the burden to the defendant. However, two Justices disagreed and argued in a concurring opinion that:

A reasonable juror could have felt compelled to conclude that the breath tests were adequate to prove legal impairment unless, Rolle [the defendant] persuaded the jury that the presumption was unwarranted, thus improperly shifting the burden of proof.

STORAGE NAME: h1317z.cp

DATE: May 13, 1998

PAGE 10

VII AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The bill was amended on the floor of the House to make technical changes and require the advisement to be provided to a person leasing or renting the property.

VIII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

Legislative Research Director:

J. Willis Renuart

J. Willis Renuart

AS REVISED BY THE COMMITTEE ON CRIMINAL JUSTICE APPROPRIATIONS:

Prepared by:

Legislative Research Director:

James P. DeBeaugrine

James P. DeBeaugrine

FINAL RESEARCH PREPARED BY COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

Legislative Research Director:

J. Willis Renuart

J. Willis Renuart

By Senator Gutman

34-738-98

1 A bill to be entitled
2 An act relating to hiring, leasing, or
3 obtaining personal property or equipment with
4 intent to defraud; amending s. 812.155, F.S.;
5 prescribing acts that constitute prima facie
6 evidence of intent to defraud; providing
7 authorized means for demand for return;
8 requiring notice on rental agreements;
9 providing penalties; providing an effective
10 date.

11

12 Be It Enacted by the Legislature of the State of Florida:

13

14 Section 1. Section 812.155, Florida Statutes, is
15 amended to read:16 812.155 Hiring, leasing, or obtaining personal
17 property or equipment with the intent to defraud; failing to
18 return hired or leased personal property or equipment; rules
19 of evidence.--20 (1) OBTAINING BY TRICK, FALSE REPRESENTATION,
21 ETC.--Whoever, with the intent to defraud the owner or any
22 person lawfully possessing any personal property or equipment,
23 obtains the custody of such personal property or equipment by
24 trick, deceit, or fraudulent or willful false representation
25 shall be guilty of a misdemeanor of the second degree,
26 punishable as provided in s. 775.082 or s. 775.083, unless the
27 value of the personal property or equipment is of a value of
28 \$300 or more; in that event the violation constitutes a felony
29 of the third degree, punishable as provided in s. 775.082, s.
30 775.083, or s. 775.084.

31

1 (2) HIRING OR LEASING WITH THE INTENT TO
2 DEFRAUD.--Whoever, with intent to defraud the owner or any
3 person lawfully possessing any personal property or equipment
4 of the rental thereof, hires or leases said personal property
5 or equipment from such owner or such owner's agents or any
6 person in lawful possession thereof shall, upon conviction, be
7 guilty of a misdemeanor of the second degree, punishable as
8 provided in s. 775.082 or s. 775.083, unless the value of the
9 personal property or equipment is of a value of \$300 or more;
10 in that event the violation constitutes a felony of the third
11 degree, punishable as provided in s. 775.082, s. 775.083, or
12 s. 775.084.

13 (3) FAILURE TO REDELIVER HIRED OR LEASED PERSONAL
14 PROPERTY.--Whoever, after hiring or leasing any personal
15 property or equipment under an agreement to redeliver the same
16 to the person letting such personal property or equipment or
17 his or her agent at the termination of the period for which it
18 was let, shall, without the consent of such person or persons
19 and with the intent to defraud, abandon or willfully refuse to
20 redeliver such personal property or equipment as agreed,
21 shall, upon conviction, be guilty of a misdemeanor of the
22 second degree, punishable as provided in s. 775.082 or s.
23 775.083, unless the value of the personal property or
24 equipment is of a value of \$300 or more; in that event the
25 violation constitutes a felony of the third degree, punishable
26 as provided in s. 775.082, s. 775.083, or s. 775.084.

27 (4) EVIDENCE OF FRAUDULENT INTENT.--

28 (a) In prosecutions under this section, obtaining
29 ~~fraudulent intent may be inferred from proof that~~ the property
30 or equipment under ~~was obtained by~~ false pretenses; by
31 absconding without payment or offering to pay any outstanding

1 balance; or by ~~surreptitiously~~ removing or attempting to
2 remove the property or equipment from the county, without the
3 express written consent of the lessor is prima facie evidence
4 of fraudulent intent.

5 (b) In a prosecution under subsection (3), failure to
6 redeliver the property or equipment upon demand is prima facie
7 evidence of fraudulent intent ~~Fraudulent intent may be~~
8 ~~inferred from proof of the failure to make payment or~~
9 ~~redeliver upon demand made either in person or by certified~~
10 ~~mail. This inference may be made only when there is no~~
11 ~~dispute as to the amount owed.~~

12 (c) In a prosecution under subsection (3), failure to
13 pay any amount due under the agreement upon demand is prima
14 facie evidence of fraudulent intent. Amounts due under a
15 rental agreement include unpaid rental for the time period
16 during which the property or equipment was not returned and
17 include the cost of repairing or replacing the property or
18 equipment if it has been damaged, whichever is less.

19 (5) DEMAND FOR RETURN.--Demand for return of overdue
20 property or equipment and for payment of amounts due may be
21 made in person, by hand delivery, or by certified mail, return
22 receipt requested, addressed to the last known address of the
23 lessee.

24 (6) NOTICE REQUIRED.--As a prerequisite to prosecution
25 under this section, the following statement must be contained
26 in the agreement under which the owner or person lawfully
27 possessing the property or equipment has relinquished its
28 custody or in an addendum to that agreement and it must be
29 initialed by the person hiring or leasing the rental property
30 or equipment:

31

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

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.

~~(7)(5)~~ 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.

Section 2. This act shall take effect upon becoming a law.

SENATE SUMMARY

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. Provides that demand may be made in person, by hand delivery, or by mail. Requires notice to be included in rental agreements.

By the Committee on Commerce and Economic Opportunities and
Senator Gutman

310-2109-98

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

A bill to be entitled
An act relating to obtaining personal property
or certain services illegally; amending s.
812.15, F.S.; prohibiting the possession or
advertisement for sale of certain equipment
designed and primarily useful for unauthorized
reception of cable system communications;
providing penalties; amending s. 812.155, F.S.;
prescribing acts that constitute prima facie
evidence of intent to defraud; providing
authorized means for demand for return;
requiring notice on rental agreements;
providing penalties; providing an effective
date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (3) of section 812.15, Florida
Statutes, is amended to read:

812.15 Unauthorized reception of cable television
services; penalties.--

(3)(a) Any person who willfully violates this section
shall be guilty of a misdemeanor of the first degree,
punishable as provided in s. 775.082 or s. 775.083.

(b) Any person who willfully and for purposes of
direct or indirect commercial advantage violates this section
shall be guilty of a felony of the third degree, punishable as
provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Any person who intentionally possesses equipment,
knowing or having reason to know that the design of such
equipment renders it primarily useful for the purpose of the

1 unauthorized reception of any communications service offered
2 over a cable system, shall be guilty of a misdemeanor of the
3 first degree, punishable as provided in s. 775.082 or s.
4 775.083.

5 (d) It is unlawful for any person to place in any
6 newspaper, magazine, handbill, or other publication any
7 advertisement that, in whole or in part, promotes the sale of
8 equipment if the person placing the advertisement knows or has
9 reason to know that the equipment is designed to be primarily
10 useful for the unauthorized reception of any communications
11 service offered over a cable system. Any person who violates
12 this subsection shall be guilty of a misdemeanor of the first
13 degree, punishable as provided in s. 775.082 or s. 775.083.

14 Section 2. Section 812.155, Florida Statutes, is
15 amended to read:

16 812.155 Hiring, leasing, or obtaining personal
17 property or equipment with the intent to defraud; failing to
18 return hired or leased personal property or equipment; rules
19 of evidence.--

20 (1) OBTAINING BY TRICK, FALSE REPRESENTATION,
21 ETC.--Whoever, with the intent to defraud the owner or any
22 person lawfully possessing any personal property or equipment,
23 obtains the custody of such personal property or equipment by
24 trick, deceit, or fraudulent or willful false representation
25 shall be guilty of a misdemeanor of the second degree,
26 punishable as provided in s. 775.082 or s. 775.083, unless the
27 value of the personal property or equipment is of a value of
28 \$300 or more; in that event the violation constitutes a felony
29 of the third degree, punishable as provided in s. 775.082, s.
30 775.083, or s. 775.084.

31

1 (2) HIRING OR LEASING WITH THE INTENT TO
2 DEFRAUD.--Whoever, with intent to defraud the owner or any
3 person lawfully possessing any personal property or equipment
4 of the rental thereof, hires or leases said personal property
5 or equipment from such owner or such owner's agents or any
6 person in lawful possession thereof shall, upon conviction, be
7 guilty of a misdemeanor of the second degree, punishable as
8 provided in s. 775.082 or s. 775.083, unless the value of the
9 personal property or equipment is of a value of \$300 or more;
10 in that event the violation constitutes a felony of the third
11 degree, punishable as provided in s. 775.082, s. 775.083, or
12 s. 775.084.

13 (3) FAILURE TO REDELIVER HIRED OR LEASED PERSONAL
14 PROPERTY.--Whoever, after hiring or leasing any personal
15 property or equipment under an agreement to redeliver the same
16 to the person letting such personal property or equipment or
17 his or her agent at the termination of the period for which it
18 was let, shall, without the consent of such person or persons
19 and with the intent to defraud, abandon or willfully refuse to
20 redeliver such personal property or equipment as agreed,
21 shall, upon conviction, be guilty of a misdemeanor of the
22 second degree, punishable as provided in s. 775.082 or s.
23 775.083, unless the value of the personal property or
24 equipment is of a value of \$300 or more; in that event the
25 violation constitutes a felony of the third degree, punishable
26 as provided in s. 775.082, s. 775.083, or s. 775.084.

27 (4) EVIDENCE OF FRAUDULENT INTENT.--

28 (a) In prosecutions under this section, obtaining
29 ~~fraudulent intent may be inferred from proof that~~ the property
30 or equipment under ~~was obtained by~~ false pretenses; by
31 ~~absconding without payment or offering to pay any outstanding~~

1 ~~balance;~~ or by surreptitiously removing or attempting to
2 remove the property or equipment from the county, without the
3 express written consent of the lessor is prima facie evidence
4 of fraudulent intent.

5 (b) In a prosecution under subsection (3), failure to
6 redeliver the property or equipment within 5 days after
7 receipt or within 5 days after return receipt from the
8 certified mailing of the demand for return, whichever is
9 shorter, is prima facie evidence of fraudulent intent
10 ~~Fraudulent intent may be inferred from proof of the failure to~~
11 ~~make payment or redeliver upon demand made either in person or~~
12 ~~by certified mail. This inference may be made only when there~~
13 ~~is no dispute as to the amount owed.~~

14 (c) In a prosecution under subsection (3), failure to
15 pay any amount due that is incurred as a result of the failure
16 to redeliver property after the rental period expires and
17 after the demand for return is made, is prima facie evidence
18 of fraudulent intent. Amounts due include unpaid rental for
19 the time period during which the property or equipment was not
20 returned and include the lesser of the cost of repairing or
21 replacing the property or equipment if it has been damaged.

22 (5) DEMAND FOR RETURN.--Demand for return of overdue
23 property or equipment and for payment of amounts due may be
24 made in person, by hand delivery, or by certified mail, return
25 receipt requested, addressed to the lessee's address shown in
26 the rental contract.

27 (6) NOTICE REQUIRED.--As a prerequisite to prosecution
28 under this section, the following statement must be contained
29 in the agreement under which the owner or person lawfully
30 possessing the property or equipment has relinquished its
31 custody or in an addendum to that agreement and it must be

1 initialed by the person hiring or leasing the rental property
2 or equipment:

3 Failure to return rental property or equipment
4 upon expiration of the rental period and
5 failure to pay all amounts due (including costs
6 for damage to the property or equipment) are
7 prima facie evidence of intent to defraud,
8 punishable in accordance with section 812.155,
9 Florida Statutes.

10 (7)(5) EXCLUSION OF RENTAL-PURCHASE AGREEMENTS.--This
11 section does not apply to personal property or equipment that
12 is the subject of a rental-purchase agreement that permits the
13 lessee to acquire ownership of the personal property or
14 equipment.

15 Section 3. This act shall take effect upon becoming a
16 law.

17
18 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
19 COMMITTEE SUBSTITUTE FOR
20 Senate Bill 1028

21 The committee substitute differs from the bill in the
22 following ways:

23 --Provides that anyone who intentionally possesses
24 television cable equipment, that allows the person to
25 receive unauthorized reception of any communications
26 services or promotes the advertising of the sale of such
27 equipment, is guilty of a first degree misdemeanor;

28 --Includes in the deletion of terms "offering to pay any
29 outstanding balance" which makes the mere fact of removal
30 or attempted removal of the property or equipment prima
31 facie evidence of fraudulent intent; and

--Extends by two days, the time by which a person is to
redeliver property or equipment after receipt of the
demand for return while shortening, by five days, the
time by which a person is to redeliver property or
equipment after return of receipt of the mailing of the
demand for return.

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.