

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Painter	Sumner
2) Justice Appropriations Subcommittee	9 Y, 1 N	Smith	Gusky
3) Judiciary Committee	13 Y, 0 N	Painter	Poche

SUMMARY ANALYSIS

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

- Obtaining any personal property or equipment by trick, deceit, or fraudulent or willful false representation;
- Hiring or leasing personal property or equipment with intent to defraud; and
- Knowingly abandoning or refusing to return hired or leased personal property or equipment at the conclusion of the rental period where the failure to return such property or equipment is done without the consent of the person leasing such property or equipment.

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

The offense of taking, hiring, or obtaining by fraudulent means the property of another is a second degree misdemeanor if the value of the property is less than \$300, or is a third degree felony if the value of the property is \$300 or more.

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

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

The Criminal Justice Impact Conference met on February 12, 2018, and determined the bill would insignificantly decrease the need for prison beds. The bill has an indeterminate impact on local governments by potentially increasing the need for local jail beds.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

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

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

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

Depending on the property value taken, the offense is either a second degree misdemeanor or a third degree felony. If the value of the property is under \$300, the offense is a second degree misdemeanor.⁴ If the property is valued at \$300 or more, then the offense is a third degree felony.⁵

There are approximately 15 people in prison and 662 people on probation with the Department of Corrections for violations of offenses related to hiring, leasing, or obtaining personal property or equipment with the intent to defraud.⁶

The threshold value has remained \$300 since the creation of the original statute in 1992.⁷

Rental Purchase Agreements and Lease Agreements

Rental Purchase Agreements

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

RPAs do not require a down payment or credit check, and provide lessees with immediate access to household goods for a weekly or monthly payment. RPAs attract individuals who cannot afford a cash purchase, may be unable to qualify for traditional credit, or who want a product right away without the need to pay the full purchase price.⁸ Merchants in the rent-to-own industry typically offer high cost,

¹ S. 812.155(1), F.S.

² S. 812.155(2), F.S.

³ S. 812.155(3), F.S.

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

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

⁶ Email from Department of Corrections for inmate populations as of 01/19/2018, January 23, 2018 (on file with Judiciary Committee).

⁷ Ch. 92-79, Laws of Fla.

⁸ Federal Trade Commission, Press Release, *FTC Testifies on Consumer Protection and the Rent-to-Own Industry*, available at: <https://www.ftc.gov/news-events/press-releases/2011/07/ftc-testifies-consumer-protection-rent-own-industry> (last visited February 14, 2018).

durable, household items such as furniture, appliances, or automobile wheels and tires.⁹ The final purchase price of the rent-to-own merchandise is often much greater than the price of the same item bought outright from a retail store or financed over time.¹⁰

Florida's "Rental-Purchase Agreement Act" (Act) outlines the structure and requirements for an RPA.¹¹ An RPA allows for the use of personal property by a natural person primarily for personal, family, or household purposes for an initial period for 4 months or less.¹² These agreements automatically renew with each payment after the initial period and allow the lessee to acquire ownership of the property.¹³ The Act details the form, notices, and information required in the RPA in addition to prohibited provisions, the requirement for reinstatement,¹⁴ and a list of agreements that are not considered RPAs.¹⁵ The Act allows for civil remedies for damages that relate to the rental-purchase agreement by:

- Allowing the lessee to recover from the lessor, or counterclaim in an action brought by that lessor, an amount equal to the greater of actual damages or 25 percent of the total cost to acquire ownership, plus attorney's fees and court costs;¹⁶ and
- Providing for the payment of reasonable attorney fees incurred in the course of collection, and for court costs.¹⁷

However, an RPA agreement may not allow the lessor to unlawfully enter the lessee's premises or permit any breach of the peace in the repossession of the property.¹⁸

Lease Agreements

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

Legislative History

When s. 812.155, F.S., was enacted in 1992, the Legislature exempted RPAs entirely from the criminal statute.¹⁹ The Legislature amended the law in 2001 to narrow the exclusion to only those RPAs in which the lessor did not retain title to the personal property throughout the period of the rental-purchase agreement.²⁰ In 2006, the Legislature removed the exclusion for RPAs altogether, allowing prosecution

⁹ See generally, Rent-A-Center, <http://rentacenter.com/>; Aaron's, <http://www.aarons.com/>; Rent-A-Wheel, <http://www.rentawheel.com/How-it-Works>; RnR Tire Express, <http://www.rnrwheels.com/>.

¹⁰ Supra, FN 12.

¹¹ Part X of Ch. 559, F.S.

¹² S. 559.9232, F.S.

¹³ Id.

¹⁴ S. 559.9235, F.S., Reinstatement.—

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

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

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

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

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

¹⁵ SS. 559.9232(2) and 559.9233, F.S.

¹⁶ S. 559.9239, F.S.

¹⁷ S. 559.9237, F.S.

¹⁸ S. 559.9234(2), F.S.

¹⁹ Ch. 92-79, L.O.F.

²⁰ Ch. 2001-141, L.O.F.

under the criminal statute for failure to return leased property.²¹ The removal of the exclusion of RPAs entirely was made due to confusion caused by the 2001 change, namely that the 2001 narrowed exclusion appeared to render the RPA exclusion meaningless.²²

Effect of Proposed Changes

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

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

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

B. SECTION DIRECTORY:

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

Section 2: Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference met on February 12, 2018, and determined the bill would insignificantly²³ reduce the need for prison beds.²⁴

Per DOC, in FY 16-17, there were 359 offenders sentenced for these offenses, and 12 of these offenders were sentenced to prison. It is not known how many offenders sentenced to prison for these offenses fell between the \$300 and \$750 thresholds.²⁵

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

²¹ Ch. 2006-51, L.O.F.

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

²³ An "insignificant" impact means a change in the need of prison beds by ten or fewer beds.

²⁴ The Office of Economic and Demographic Research, *CS/HB 1309 – Fraudulently Obtaining or Retaining Personal Property or Equipment*, Criminal Justice Impact Conference, February 12, 2018.

²⁵ *Id.*

2. Expenditures:

The bill raises the monetary thresholds for the second degree misdemeanor and third degree felony offenses related to hiring, leasing or obtaining personal property or equipment. Penalties that would potentially carry prison time may now carry jail time. The bill has an indeterminate impact on local governments by potentially increasing the need for local jail beds.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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

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