

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 2104

SPONSOR: Senator Crist

SUBJECT: Hiring or Leasing with Intent to Defraud

DATE: April 3, 2001

REVISED: 04/04/01

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Birnholz</u>	<u>Maclure</u>	<u>CM</u>	<u>Fav/1 amendment</u>
2.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
3.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
4.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
5.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
6.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>

## I. Summary:

A person who obtains personal property or equipment from a business via a rental-purchase (“rent-to-own”) agreement cannot be criminally prosecuted under s. 812.155, F.S., (hiring, leasing, or obtaining of personal property or equipment with the intent to defraud) even if he or she fails to honor the agreement and does not return the goods to the business. This bill amends s. 812.155(7), F.S., to narrow the scope of the exclusion from criminal prosecution for hiring or leasing with intent to defraud. Property that is the subject of a rental-purchase agreement and for which the rental store retains title to the property throughout the rental-purchase agreement period will no longer be excluded from the provisions of s. 812.155, F.S.

This bill substantially amends section 812.155, Florida Statutes.

## II. Present Situation:

A person who obtains personal property or equipment from a business via a rental-purchase (“rent-to-own”) agreement cannot be criminally prosecuted under s. 812.155, F.S., (hiring, leasing, or obtaining of personal property or equipment with the intent to defraud) even if he or she fails to honor the agreement and does not return the goods to the business. According to the Florida Rental Dealers Association, this exclusion is a significant industry problem because it allows customers to pawn or abscond with property without being subject to criminal penalty.

### Current Law

Chapter 812, F.S., relates to theft, robbery, and related crimes. Section 812.155, F.S., addresses hiring, leasing, or obtaining personal property or equipment with the intent to defraud.

The first three subsections of s. 812.155, F.S., delineate criminal offenses regarding the fraudulent hiring, leasing, or obtaining of personal 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 redeliver hired or leased property. Penalties for offenses in ss. 812.155(1)-(3), F.S., include misdemeanors of the second degree for goods valued under \$300 and felonies of the third degree for goods valued at \$300 or more.

Section 812.155(4), F.S., provides that, in prosecutions under this section, the following represent prima facie evidence of fraudulent intent: obtaining the property under false pretenses, absconding without payment, or removing or attempting to remove the property from the county without the express written consent of the lessor. Subsection (4) further specifies that, in prosecutions under subsection (3), the following represent prima facie evidence of fraudulent intent: failure to redeliver the property within five days after receipt of, or within five days after return receipt from, the certified mailing of the demand for return, or 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.

Section 812.155(7), F.S., excludes personal property from these provisions if the property is subject to a rental-purchase agreement that allows the lessee to acquire ownership of the property.

### **III. Effect of Proposed Changes:**

This bill amends s. 812.155(7), F.S., to narrow the scope of the exclusion provided under this subsection. Property that is the subject of a rental-purchase agreement and for which the rental store retains title to the “property” throughout the rental-purchase agreement period will now be subject to the provisions of s. 812.155, F.S. (hiring, leasing, or obtaining of personal property or equipment with the intent to defraud).<sup>1</sup> A person who obtains personal property from a business via a rental-purchase (“rent-to-own”) agreement, under which the rental store retains title to the property, will be criminally prosecutable if he or she fails to honor the agreement and does not return the goods to the business.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

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<sup>1</sup> The use of the term “property” is inconsistent with the use of the term “personal property and equipment” elsewhere in the section. See the “Technical Deficiencies” section of this analysis.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to the Florida Rental Dealers Association, this bill will help alleviate a significant industry problem because customers will no longer be able to pawn or abscond with rental-purchase property without being subject to criminal penalty.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

The use of the term “property” on page 1, line 26, of this bill is inconsistent with the use of the term “personal property and equipment” elsewhere in s. 812.155, F.S.

**VII. Related Issues:**

None.

**VIII. Amendments:**

#1 by Commerce & Economic Opportunities:

Changes the term “property” to “personal property or equipment” to conform with existing language in s. 812.155, F.S.