

CHAPTER 98-214

House Bill No. 1317

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 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 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 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)(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.

Became a law without the Governor's approval May 24, 1998.

Filed in Office Secretary of State May 22, 1998.