

DATE: May 17, 1977

COMMITTEE ACTION: 1. Fav. w/CS  
2. 5-10-77

UPDATED

SENATE

STAFF ANALYSIS AND ECONOMIC STATEMENT  
Judiciary-Criminal Comm. (Bilenky)

2. \_\_\_\_\_

3. \_\_\_\_\_

~~Amended~~ CS Attached x

Bill No. and Sponsor:  
SB 1431 Judiciary-Criminal Committee

Subject: Florida Anti-Fencing Act

REFERENCES: Judiciary-Criminal

I. BILL SUMMARY:

The bill is patterned after the model theft and anti-fencing act. The bill repeals the larceny statutes substituting the model theft act. Grades of theft are provided: grand theft of the first degree is a second degree felony when the value of the property taken was \$20,000 or more; grand theft of the second degree is a third degree felony when the value of the property stolen is more than \$100 but less than \$20,000; and petit theft remains a second degree misdemeanor if the value of the property stolen was less than \$100. The bill defines dealer, obtains or uses, property, property of another, services, stolen property, value, traffic, and enterprise. In addition, the bill provides criminal penalties for the possession of altered property. The bill makes it a crime to traffic in stolen property and makes it a more severe crime to initiate, organize, plan, finance, direct, manage or supervise a theft and traffic in stolen property. The bill states that proof of possession gives rise to an inference that the person in possession knew or should have known that the property was stolen. Proof of purchase of property at substantially less than the fair market value gives rise to an inference that the person buying the property knew or should have known that the property was stolen. Proof of purchase of stolen property out of the regular course of business gives rise to an inference that the dealer knew or should have known that the property was stolen. The bill precludes defenses which are either existing law or proposed as the law for Florida. The bill provides for a fine. There are additional civil remedies provided for in the bill consistent with those available to injured parties in the RICO Act. The bill expands the statewide grand jury authority to include this act and expands the permissive subject matter to include wiretapping for these crimes.

II. PURPOSE:

A. Present Situation:

Sections 817.18, 817.235, and 817.24 are very limited statutes dealing with the alteration of an identification mark for the purpose of defrauding another person. Section 812.031 provides for receiving stolen property and provides a penalty. Sections 812.011, 812.021, 812.031 and 812.071 are the general larceny statutes.

B. Effect on Present Situation:

The bill repeals the common law crimes of larceny and substitutes the statutory crimes of theft. Theft is graded in the bill: grand theft of the first degree if the value of the property stolen was \$20,000 or more is a felony of the second degree; grand theft of the second degree if the value of the property stolen was valued at \$100 or more but less than \$20,000; and petit theft if the value of the property taken was less than \$100 remains a second degree misdemeanor.

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The bill provides a general possession of altered property section consistent with yet broader than existing statutes.

The bill creates two new classes of crime: the first trafficking in stolen property, and the second and more severe crime, theft and trafficking in stolen property. The bill codifies existing law with respect to evidence of dealing in stolen property and precludes certain defenses. The bill provides for a fine and civil remedies, and provides for the rights of innocent parties.

The bill expands the jurisdiction of the statewide grand jury to include investigations of these crimes.

III. ECONOMIC CONSIDERATIONS:

Economic Impact: YES: X NO: \_\_\_\_\_

Clearly there is an economic impact associated with the creation of a new class or classes of criminal behavior and the imposition of severe criminal sanctions but this staff is unable to project or ascertain what these costs will be.

IV. COMMENTS:

None.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR SENATE BILL 1431

The committee substitute repeals the larceny statutes substituting in their place the model theft act. Everyday language is substituted for old common law language to define the offense.

The substitute grades theft into grand theft of the first degree if the property stolen was worth \$20,000 or more; grand theft of the second degree if property stolen was worth \$100 or more but less than \$20,000; and petit theft if the property stolen was worth less than \$100.

Definitions of "obtains or uses, property, property of another, services, stolen property, and value" are added.

Committee on Judiciary-Criminal

  
~~XXXXXXXXXXXX~~ Staff Director

C14(4-74) (File 2 copies with Committee Substitutes)

Theft and Stolen Property

Senate Bill 1431 repeals several sections of the larceny statutes, substituting a version of the model theft and anti-fencing act. Theft is graded in accordance with the value and type of property stolen: theft of property valued at \$20,000 or more is grand theft of the first degree and a second degree felony; theft of specified property or of property valued at \$100 or more, but less than \$20,000, is grand theft of the second degree and a third degree felony; and petit theft remains a second degree misdemeanor if the value of the stolen property is less than \$100. The bill provides a criminal penalty for possession of altered property by a dealer. Dealing in stolen property is prohibited. It is a felony of the second degree to traffic in stolen property and a felony of the first degree to initiate, organize, plan, finance, manage, or supervise a theft and traffic in stolen property. Proof of elements of the offense of theft or dealing in stolen property gives rise to inferences of intent to commit theft or of knowledge that the property had been stolen. Theft and dealing in stolen property may be charged in a single indictment under proper circumstances. The bill precludes certain defenses. Provisions are made for a supplemental fine and for civil remedies. The subject matter jurisdiction of the statewide grand jury is expanded to include violations of the provisions of this act, and any such violation is made a proper subject upon which to base an authorization to wiretap.

Summary of HB 2149 Relating to Stolen Property

HB 2149 is an adaptation of the Model Theft and Fencing Act as proposed by G. Robert Blakey and Michael Goldsmith in their exhaustive study on stolen property found in the Michigan Law Review. That article focuses on the receivers of stolen property as the central figure in theft activities.

Creates the Florida Fencing Control Act.

Provides a first degree misdemeanor penalty for possession of property which has been altered to remove, erase, or deface the serial number or other identifying mark.

Provides a second degree felony penalty for a person who traffics in or attempts to traffic in stolen property. Provides a third degree felony penalty for a person who organizes or initiates a theft and who traffics in or attempts to traffic in stolen property.

Provides that certain proof of purchase or sale of stolen property gives rise to an inference that the person buying or selling or in possession of such property was aware that it might have been stolen.

Provides restriction on certain defenses to a prosecution.

Provides that persons violating chapter 812, F.S., may be sentenced to pay a fine, determined through a court hearing. Provides for civil remedies and damages, including injunctive relief.

Repeals current provisions relating to receiving stolen property and removal of identifying marks on property to conform to the act.

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(2) At page 2, line 28, the term "stolen property" has been substituted for the terms "steal" or "stolen" to include any property that has been the subject of any criminally wrongful taking (which includes larceny or robbery).

(3) At page 2, line 31, "dealer in property" is defined (new definition).

(4) At page 3, line 2, "obtains or uses" is defined as the necessary requirement of control over stolen property to trigger operation of the proscription against dealing in stolen property (new definition).

(5) At page 3, line 11, "traffic" is defined (new definition).

Section 2 of the bill creates sections 812.20 - 812.27, Florida Statutes, which is intended to proscribe the redistribution of stolen goods.

(1) Section 812.21, at page 3, line 19 prohibits the possession of altered property under the following circumstances: (a) by prohibiting the altering of any serial number or other mark of identification placed on any item of property by the manufacturer or owner thereof without authorization; (b) by prohibiting the possession of such altered property by a dealer in property, and (c) by prohibiting the knowing possession of such altered property by any other person. (Subsections (1) and (3) are essentially a restatement of section 817.235, Florida Statutes, Subsection (2) is an adaptation of the Model Theft and Fencing Act).

(2) Section 812.22, at page 4, line 14 prohibits dealing in stolen property (as distinguished from the current law which prohibits the receiving of stolen property in section 812.031, Florida Statutes). Those persons who traffic in stolen property, or attempt to do so, would be subject to a penalty of a felony of the third degree. Those persons who plan or initiate the theft and traffic in stolen property, or attempt to do so, would be subject to a penalty of a felony of the third degree.

(3) Section 812.23, at page 4, line 30, establishes a number of permissible evidentiary inferences.

(4) Section 812.24, at page 5, line 15, restricts certain defenses in prosecutions under the fencing controlling act.

(5) Section 812.25, at page 5, line 28, provides for an alternative criminal fine to be imposed not to exceed twice the gross value gained or twice the gross loss caused whichever is greater. (consistent with existing law at section 775.083 (1) (f), Florida Statutes)

(6) Section 812.26, at page 6, line 26, provides for additional civil remedies for violation of the fencing control act, specifically: (a) injunction and (b) treble damages (similar, in part, with existing law at section 812.031, Florida Statutes, 1976 Supplement)

Section 3 repeals section 812.031, Florida Statutes, 1976 Supplement, the existing provision relating to receiving stolen property.

Section 4 repeals section 817.235, Florida Statutes, which has been incorporated into section 812.21 as proposed by this bill.

Section 5 provides an effective date of October 1, 1977 for the purpose of providing adequate notice to police, prosecutors, the defense bar and judiciary.