

SUBJECT: Repossession of motor vehicles for repair charges

COMMITTEE: Business and Industry — favorable, with amendment

VOTE: 9 ayes — Brimer, Brady, Corte, Crabb, Eiland, Giddings, Janek, Rhodes, Solomons  
0 nays

WITNESSES: For — Larry Cernosek, Texas Towing and Storage Association; Russell Turbeville, Harris County District Attorney's Office; Tom Smith, Public Citizen  
Against — None  
On — Pamela Perkins, Attorney General's Office

BACKGROUND: A mechanic who repairs a vehicle, motorboat, vessel or outdoor motor and does not receive payment may seize and hold the article if the customer has signed a notice stating that the article can be repossessed because of nonpayment. The customer is required to pay the reasonable fair market value of costs of repossession as a condition for reclaiming the article.  
  
If a customer pays a mechanic with a bad check (insufficient funds) the mechanic may continue to hold the item, and is prohibited from *selling* the check to a repossession service. Such a sale constitutes a Class B misdemeanor by the seller.

DIGEST: CSHB 1227 would make a repossession company's acceptance of a bad check or money order to a mechanic a Class B misdemeanor and prohibit mechanics from *transferring* such checks or money orders. The offense would apply not only to checks returned because of insufficient funds but to checks drawn on nonexistent or closed accounts.  
  
CSHB 1227 would also require that motor vehicles repossessed in connection with a mechanic's lien be delivered and remain at either the place where the vehicle was repaired or to a state-licensed vehicle storage

facility until they are lawfully returned to their owners or lienholders or is otherwise lawfully disposed of.

The bill would take effect September 1, 1995.

**SUPPORTERS  
SAY:**

CSHB 1227 would allow the state to crack down on some unscrupulous repossession companies that are gouging motor vehicle owners. Under current law an auto mechanic can transfer a bad check to a repossession company. After notice the repossession company can sell the vehicle, pay the repair debt to the mechanic and then try to extract outrageous amounts as "repossession costs" from the vehicle's former owner, subtracting those costs from whatever amount is left over. Mechanics are entitled to hold the vehicle or other item being repaired if they receive a bad check in payment, but the bad check should not then be used to take advantage of the owner. To further discourage this practice, CSHB 1227 would allow prosecution not only of a mechanic who transfers a bad check or money order to a third party, but of the person who performs repossession services under these circumstances.

CSHB 1227 would also protect a vehicle's owner by requiring that the vehicle be stored in a place to which the owner would have access.

Criminal penalties are needed to deter this fraudulent action. By the time the owner of the vehicle brings a civil action to challenge unreasonable repossession charges, the vehicle may be long gone. CSHB 1227 would simply plug a loophole in existing law to ensure that those whose vehicle is legitimately held by a mechanic due to a bad check will not lose the vehicle forever because the check is fraudulently transferred to a repossession company.

**OPPONENTS  
SAY:**

Rather than impose criminal charges on repossession businesses, it would be more appropriate for vehicle owners who dispute repossession charges to settle such issues in the civil courts.

**NOTES:**

The substitute changes the term "other written order of payment" to "money order." It also prevents a mechanic from transferring a bad check or money order to a third party and prevents a repossession company from accepting such a bad check or money order. The original only prevented a mechanic

from transferring a bad check or other written order of payment to a reposessor.