

BILL ANALYSIS

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C.S.H.B. 2524
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Criminal Justice
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Texas' Theft of Service Statute has proven cumbersome for industry and, in limited instances, potentially abusive for consumers.

C.S.H.B. 2524 amends the Penal Code to specify that the intent to steal a service is presumed when a person fails to return property valued between \$2,500 and \$10,000 held under a rental agreement within three days after receiving a notice demanding return for such property. C.S.H.B. 2524 further establishes that such intent is presumed if the actor fails to return property within two days after receiving notice demanding return for property valued at \$10,000 or more. C.S.H.B. 2524 authorizes the delivery of a notice demanding payment or return of property to be made by commercial delivery service such as Federal Express, United Parcel Service, or others. C.S.H.B. 2524 also revises the date on which it is presumed that written notice sent by registered or certified mail or commercial delivery service is delivered by changing that date from five days after the notice was sent to two days after the notice was sent.

Finally, as amended, C.S.H.B. 2524 clarifies that the disposition of personal or household property, held under a written rental agreement, in violation of such an agreement is the diversion of services to another who is not entitled to such services, and a crime.

C.S.H.B. 2524 further clarifies that an individual renting household or personal property under a written rental agreement cannot be prosecuted unless the property is sold or disposed of, or unless the person fraudulently or deceptively entered into the agreement.

C.S.H.B. 2524 amends current law relating to the prosecution of the criminal offense of theft of service.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 31.04, Penal Code, by amending Subsections (b), (c), (d), and (d-1) and adding Subsections (d-2), (d-3), (d-4), and (d-5), as follows:

(b) Provides that, for purposes of this section (Theft of Service), intent to avoid payment is presumed if any of the following occurs:

(1) and (2) makes no changes to these subdivisions;

(3) makes a nonsubstantive change to this subdivision;

(4) the actor failed to return the property held under a rental agreement:

(A) makes a nonsubstantive changes to this paragraph;

(B) within three days after receiving notice demanding return, if the property is valued at \$2,500 or more but less than \$10,000; or

(C) within two days after receiving notice demanding return, if the property is valued at \$10,000 or more; or

(5) the actor:

(A) failed to return the property held under an agreement described by Subsections (d-2)(1)–(3) within five business days after receiving notice demanding return; and

(B) has made fewer than three complete payments under the agreement.

(c) Makes nonsubstantive changes to this subsection. Requires the notice, for purposes of Subsections (a)(4) (relating to providing that a person commits theft of service if, with intent to avoid payment for service that the actual service is provided only for compensation, the actor intentionally or knowingly secures the performance of the service by agreeing to provide compensation and, after the service is rendered, fails to make full payment, after receiving notice demanding payment), (b)(2), (b)(4), and (b)(5), to be:

(1) in writing, rather than notice in writing;

(2) sent by:

(A) creates this paragraph from existing text and makes a nonsubstantive change; or

(B) commercial delivery service, rather than or by telegram with report of delivery requested; and

(C) sent to the actor using the actor's mailing address shown on the rental agreement or service agreement, rather than addressed to the actor at his address shown on the rental agreement or service agreement.

(d) Provides that, except as otherwise provided by this subsection, if written notice is given in accordance with Subsection (c), it is presumed that the notice was received not later than two days after the notice was sent, rather than providing that, if written notice is given in accordance with Subsection (c), it is presumed that the notice was received no later than five days after it was sent. Provides that, for purposes of Subsections (b)(4)(A) and (B), if written notice is given in accordance with Subsection (c), it is presumed that the notice was received not later than five days after the notice was sent.

(d-1) Provides that, for purposes of Subsection (a)(2) (relating to providing that a person commits theft of service if, with intent to avoid payment for service that the actor knows is provided only for compensation having control over the disposition of services of another to which the actor is not entitled, the actor intentionally or knowingly diverts the other's services to the actor's own benefit or to the benefit of another not entitled to the services), the diversion of services to the benefit of a person who is not entitled to those services includes the disposition of personal property by an actor having control of the property under an agreement described by Subsections (d-2)(1)–(3), if the actor disposes of the property in violation of the terms of the agreement and to the benefit of any person who is not entitled to the property.

(d-2) Provides that, for purposes of Subsection (a)(3) (relating to providing that a person commits theft of service if, with intent to avoid payment for service that the actor knows is provided only for compensation having control of personal property under a written rental agreement, the actor holds the property beyond the expiration of the rental period without the effective consent of the owner of the property, thereby depriving the owner of

the property of its use in further rentals), the term "written rental agreement" does not include an agreement that:

(1) permits an individual to use personal property for personal, family, or household purposes for an initial rental period;

(2) is automatically renewable with each payment after the initial rental period; and

(3) permits the individual to become the owner of the property.

(d-3) Creates this subsection from existing text and makes no further changes.

(d-4) Authorizes a presumption established under Subsection (b) involving a defendant's failure to return property held under an agreement described by Subsections (d-2)(1)–(3) to be refuted if the defendant shows that the defendant:

(1) intended to return the property; and

(2) was unable to return the property.

(d-5) Defines "business day" for purposes of Subsection (b)(5).

SECTION 2. Makes application of this Act prospective. Provides that, for purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 3. Effective date: September 1, 2019.