

SUBJECT: Shortening certain time periods establishing a theft-of-service offense

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Keel, Riddle, Ellis, Hodge, Talton

0 nays

4 absent — Denny, Dunnam, P. Moreno, Pena

WITNESSES: For — Leon Kothmann, Texas Rental Association; Brian Schaeffer, Texas Association of Campground Owners

Against — None

BACKGROUND: Penal Code, sec. 31.04 establishes an offense for theft of service. Committing theft of service requires engaging in certain actions, such as intentionally or knowingly securing the service by deception, threat, or false token, with intent to avoid payment. The offense presumes intent to avoid payment if:

- the offender leaves without paying or refuses to pay for the service in circumstances where payment is ordinarily made immediately upon rendering of the service, as in hotels, campgrounds, recreational vehicle parks, restaurants, and comparable establishments;
- the offender fails to return the property held under a rental agreement or fails to make payment under a service agreement within 10 days after receiving notice demanding return; or
- the offender returns property after the expiration of a rental agreement and fails to pay the applicable rental charge for the property within 10 days after the date on which the offender received notice demanding payment.

Depending on the value of the service, the offense ranges from a class C misdemeanor (maximum fine of \$500) if the value of the service stolen is less than \$20, to a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000) for a service worth more than \$200,000.

HB 275  
House Research Organization  
page 2

**DIGEST:** HB 275 would presume intent to avoid payment under Penal Code, sec. 31.04, theft of service offense, if the offender failed to:

- make a payment under a service agreement within 10 days of receiving notice demanding payment, or
- return property held under a rental agreement within five days of receiving notice demanding payment for property worth under \$1,500, or within three days for property worth \$1,500 or more.

The bill would take effect September 1, 2003.

**SUPPORTERS SAY:** HB 275 would allow earlier prosecution of theft of service for rental property. The rental industry, consisting largely of small businesses, has experienced a major problem with theft of service over the past two years. The majority of the problem has been with construction equipment, which can be extremely expensive, often costing tens of thousands of dollars. This unrecovered equipment has driven up costs for many small rental businesses.

Shortening the time period after notification to three or five days depending on the value of the equipment would increase the likelihood of recovery. Under current law, an offender has 10 days before he or she can be prosecuted for theft of service. This time period is too long, allowing offenders plenty of time to run. Moreover, many renters know the system. They use the equipment past the return date and drop it off the night before the 10-day deadline to avoid triggering a theft-of-service offense. The bill would shorten the time period to allow prosecutors to go after offenders sooner and help rental companies reduce losses from unrecovered equipment.

**OPPONENTS SAY:** By shortening the time period for presuming intent for the theft of service offense, this bill would reduce the opportunity for the owner of the property and the renter to resolve a situation on their own, outside of the courts. More cases would end up in court that otherwise could have been resolved.

The bill would not make a fine enough distinction concerning the value of the property. For instance, a renter who failed to return a videotape worth a few dollars and then forgot to return the movie within five days of receiving notification could end up facing an arrest warrant. The bill should make a clearer distinction between expensive rental equipment and smaller items.

**NOTES:**

The identical companion bill, SB 380 by Armbrister, was reported favorably, without amendment by the Senate Criminal Justice Committee on April 25.