

**SUBJECT:** Partial payment not negating intent for theft of service offense

**COMMITTEE:** Criminal Jurisprudence — favorable, without amendment

**VOTE:** 8 ayes — Gallego, Hartnett, Aliseda, Burkett, Carter, Christian, Rodriguez, Zedler

0 nays

1 absent — Y. Davis

**WITNESSES:** For — Emily Timm, Workers Defense Project; (*Registered, but did not testify*: Tom Archer, Homeowners of Texas; Bill Beardall, The Equal Justice Center; B.J. Lee; Rick Levy, Texas AFL-CIO; Emily Shelton, Texas Impact)

Against — None

**BACKGROUND:** Penal Code, sec. 31.04 includes among its definitions of “theft of service” intentionally securing the performance of work by agreeing to provide compensation and then failing to make payment after the work is performed and payment has been demanded. Intent to avoid payment is presumed under numerous circumstances, including when the person failed to make payment under a service agreement within 10 days after receiving notice demanding payment.

Theft of service offenses are punishable by varying degrees depending on the value of the service stolen, from a class C misdemeanor (maximum fine of \$500) if 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) if the value of the service stolen is \$200,000 or more.

**DIGEST:** HB 2196 would specify that a person committed theft of service if he or she failed to make “full” payment for a service after intentionally securing the service. For purposes of intent, HB 2196 would specify that if the compensation was to be paid on a periodic basis, then the intent to avoid payment for a service could be formed at any time during or before a pay period. The partial payment of wages alone would not be sufficient evidence to negate the person’s intent to avoid payment for a service.

The bill would take effect September 1, 2011, and would apply only to offenses committed on or after that date.

**SUPPORTERS  
SAY:**

Partial payments do not indicate a person's intention to make full payment, and HB 2196 would clarify this point so that prosecutors would be able to make cases against unscrupulous employers who do not pay their workers and hurt Texas families. Wage theft in Texas is common; about 20 percent of construction workers and 50 percent of day laborers have been victims of this despicable crime.

Unfortunately, these unscrupulous employers try to evade prosecution by paying a minimal amount early in the construction job, but then they never pay again. When confronted, they typically imply that they will pay soon, so the worker continues to work. Hardworking individuals cannot afford to feed their families if they are not paid, and responsible businesses cannot compete with businesses that do not pay their workers.

If there is intent to pay from the beginning, but there is a dispute about the time that was worked or the correct amount to be paid, then the issue would clearly not be a criminal matter and would not fall under this statute. The worker still could raise those issues with the Texas Workforce Commission.

**OPPONENTS  
SAY:**

HB 2196 would address an issue that could really be a civil dispute between an employer and employee and should not be criminalized. It would be too difficult to tell if there was a glitch with payroll or a dispute about the actual time worked to draw any conclusions about intent.

**NOTES:**

The companion bill, SB 1024 by Rodriguez, passed the Senate by 31-0 on April 26 and was referred to the House Criminal Jurisprudence Committee on April 28.