

# HOUSE BILL REPORT

## ESB 5266

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**As Reported by House Committee On:**  
Judiciary

**Title:** An act relating to theft of rental property.

**Brief Description:** Concerning theft of rental property.

**Sponsors:** Senators O'Ban, Pedersen, Angel and Darneille.

**Brief History:**

**Committee Activity:**

Judiciary: 3/15/17, 3/23/17 [DPA].

**Brief Summary of Engrossed Bill  
(As Amended by Committee)**

- Provides that a person is guilty of theft of rental or leased property who holds personal property beyond the rental or lease period, without consent, and fails to return the property within 72-hours of proper notice, and further provides that it is not a defense that a person returned the property if that return is made after the end of the 72-hour period and the person fails to pay the applicable rental charge.
- Differentiates the level of seriousness based upon the amount of the applicable unpaid rental charge.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass as amended. Signed by 13 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Muri, Assistant Ranking Minority Member; Frame, Goodman, Graves, Haler, Hansen, Kirby, Klippert, Orwall and Shea.

**Staff:** Cece Clynch (786-7195).

**Background:**

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

A person is guilty of "theft of rental, leased, lease-purchased, or loaned property" if he or she with intent to deprive, wrongfully obtains, exerts unauthorized control over, or deceitfully gains control of personal property that is rented, leased, or loaned by written agreement from another person. This law is explicitly applicable to rental agreements that provide that the renter may return the property any time within the rental period and pay only for the time the renter actually retained the property, in addition to any minimum rental fee. It also applies to lease agreements, certain lease-purchase agreements, and vehicles loaned by motor vehicle dealers to prospective purchasers. It does not apply to rental or leasing of real property under the Residential Landlord-Tenant Act.

Intent to deprive an owner of his or her property may be presumed if the finder of fact finds either of the following:

1. The renter failed to return or make arrangements acceptable to the owner of the property or the owner's agent to return the property within 72 hours after receipt of proper notice following the due date of the agreement.
2. The renter, lessee, or borrower presented identification to the owner or the owner's agent that was materially false, fictitious, or not current with respect to name, address, place of employment, or other appropriate items.

"Proper notice" consists of a written demand by the owner or the owner's agent made after the due date of the rental, lease, lease-purchase, or loan period, mailed by certified or registered mail to the renter, lessee, or borrower at: the address the renter, lessee, or borrower gave when the contract was made; or, the renter, lessee, or borrower's last known address if later furnished in writing by the renter, lessee, borrower, or the agent of the renter, lessee, or borrower.

The crime may be deemed to have been committed either at the physical location where the written agreement for the rental, lease, lease-purchase, or loan of the property was executed or at the address where proper notice may be mailed to the renter, lessee, or borrower.

The classification for this crime is based upon the replacement value of the property. Theft of rental, leased, lease-purchased, or loaned property is a:

- seriousness level II, class B felony offense if the rental, leased, lease-purchased, or loaned property is valued at \$5,000 or more;
- seriousness level I, class C felony offense if the rental, leased, lease-purchased, or loaned property is valued at least \$750 but less than \$5,000; or
- gross misdemeanor offense if the rental, leased, lease-purchased, or loaned property is valued at less than \$750.

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### **Summary of Amended Bill:**

A person is guilty of theft of rental or leased property who, having control of personal property under a written rental or lease agreement, intentionally holds the property beyond the expiration of the rental or lease period without the effective consent of the owner of the property, depriving the owner of the property of its use in further rentals, and fails to return the property within 72-hours after receipt of proper notice. It is not a defense that the person

returned the personal property if the return was made after the end of the 72-hour period following receipt of proper notice and the person fails to pay the applicable rental charge for the property for the time that the person held it.

For purposes of this new provision governing theft of rental or leased property:

- Rental property agreements must contain a warning that failure to return property and pay all outstanding obligations according to the terms of the agreement may result in charges up to and including a gross misdemeanor.
- "Applicable rental charge" is determined pursuant to the late return provisions found in the written agreement. If the written agreement is silent with respect to this, "applicable rental charge" means a value equal to the terms of the written rental agreement prorated from the due date of the rental period through the receipt of the returned property.
- The amount of the unpaid applicable rental charge determines the seriousness level:
  - \$50 or more but less than \$250 is a class 1 civil infraction;
  - \$250 or more but less than \$750 is a misdemeanor; and
  - \$750 or more is a gross misdemeanor.
- Only rental and leased property agreements are covered. This new provision does not apply to lease-purchased property, rent to own property, medical equipment and motor vehicles.

#### **Amended Bill Compared to Engrossed Bill:**

The amendment makes the following additions and changes:

1. applies the new subsection only to written rental and lease agreements, rather than only to written rental agreements;
2. excludes rental or lease of medical equipment from the provisions of this new subsection;
3. adds a notice element such that a person is guilty of theft of rental or leased property who both:
  - a. intentionally holds the property beyond the expiration of the rental or lease period without consent, depriving the owner of the property in further rentals; and
  - b. fails to return the property within 72 hours after receipt of proper notice (and defines proper notice); and
4. inserts a reference to a subsection number so that it is clear that the subsection regarding presumption of "intent to deprive" only pertains to existing law which uses that phrase in the context of theft of rental, leased, lease-purchased, or loaned property.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) Some of the amendments that have been made here were brought forward in the context of the companion bill. This bill fills a gap in current law which some people have discovered. There are currently no consequences that follow return of rental property past the due date. While an owner may institute a collections action, people simply do not care because they have bad credit anyway. The situation can be analogized to shoplifting. If a person is caught shoplifting, he or she is charged with a crime even if the shoplifter is caught at the door and the items are returned. In this business of renting small and large equipment, the renter is required to show a driver's license but a credit check is not ordinarily done. Many times, the equipment is being rented because there is an emergency situation. This is a common sense law. Currently, if the equipment is not returned a letter is sent and eventually the equipment is returned but no payment is made and the business owner suffers loss. There are other similar laws that pertain to situations in which a person fails to pay for a cab, cable use, or shoplifted items. With business to business rentals, this situation of late return and no payment is seen less frequently, but it does occur. The law is in need of teeth. Even if a deposit is collected at the the time of the initial rental, this does not financially cover situations in which the equipment is only returned when it is long overdue. The deposit is not sufficient to cover the payment for the overdue period. There is no insurance available for this scenario.

(Opposed) None.

**Persons Testifying:** Tom McBride, American Rental Association; Victor Proulx, 410 Rentals; Michael McDaniel, Ideal Rent All; Bob Checca, All West Underground Inc.; and Mark Johnson, Washington Retail Association.

**Persons Signed In To Testify But Not Testifying:** None.