

SENATE BILL REPORT

ESB 5266

As Amended by House, April 11, 2017

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: Law & Justice: 1/24/17, 2/01/17 [DP].

Floor Activity:

Passed Senate: 3/01/17, 47-2.

Passed House: 4/11/17, 98-0.

Brief Summary of Engrossed Bill

- Charges persons who intentionally hold personal property beyond the expiration period as guilty of theft of property.
- Establishes that these persons may not claim a defense of returned property when they fail to pay applicable rental charges.
- Determines an applicable rental charge by specified late return provisions in the written rental agreement, or by the rental rate in the agreement prorated from the due date to the receipt of the returned property.
- Requires written warnings that failure to return property and pay all outstanding obligations may result in charges up to a gross misdemeanor.
- Applies only to rental property, and does not apply to leased property, lease purchased property, rent to own property, and motor vehicles.
- Imposes penalties up to a gross misdemeanor based on the outstanding obligation owed.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Angel, Darneille, Frockt and Wilson.

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.

Staff: Tim Ford (786-7423)

Background: A person commits the crime of theft of rental, leased, leased-purchased, or loaned personal property where, with intent to deprive the owner, the person uses deception to wrongfully obtain or exert unauthorized control over personal property that is rented, leased, or loaned by written agreement. Intent to deprive the owner is presumed when the person fails to return the property within 72 hours after receipt of proper notice demanding the return of the property, or when the renter presented identification to the owner that was materially false, fictitious, or not current with respect to name, address, place of employment, or other appropriate items.

Proper notice is a written demand for return of the property made by the owner after the due date of the rental, lease, or loan period. The owner must mail the proper notice by certified or registered mail to the person at the address the person gave when the contract was made or the last known address. The replacement value of the property wrongfully obtained must be used in determining the amount involved in the theft of rental, leased, lease-purchased, or loaned property.

Theft of rental, leased, lease-purchased, or loaned property is penalized as follows:

- Class B felony if the property is valued at \$5,000 or more;
- Class C felony if the property is valued at \$750 or more but less than \$5,000; and
- gross misdemeanor if the property is valued at less than \$750.

The crime does not apply to rental or leasing of real property under the Residential Landlord-Tenant Act.

Summary of Engrossed Bill: A person who intentionally holds personal property under a written rental agreement beyond the expiration period is guilty of theft of rental property. It is not a defense that the person returned the property after the expiration date on the written agreement when the person fails to pay the applicable rental charge for the property for the time the person held the property. The new crime of theft of rental property applies only to rental property, and does not apply to leased property, lease purchased property, rent to own property, and motor vehicles.

Rental property agreements must contain a warning that failure to return property and pay all outstanding obligations may result in charges up to a gross misdemeanor.

An applicable rental charge is determined by specified late return provisions in the written rental agreement, or where there are no specified provisions, by the rental rate in the agreement prorated from the due date to the receipt of the returned property.

Theft of rental property is a gross misdemeanor if the value of the outstanding obligation is \$750 or more; a misdemeanor if the value of the outstanding obligation is \$250 or more but less than \$750; and a Class 1 civil infraction if the value of the outstanding obligation is \$50 or more but less than \$250.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: For very small businesses, often family owned businesses, the costs of not having the property leased to others can be a substantial cost where the renter doesn't pay or return the property. The affirmative defense in the bill does require that the renter pay what is due for keeping for the rented equipment, and not just return the rented equipment. The American Rental Association (ARA) is an international trade association for owners of equipment rental businesses, and manufacturers and suppliers of equipment sold to rental industry. The ARA represents the rent to rent business for long and short term rentals. It is not rental cars, homes, property, or the rent to own business. We have 9700 members in 50 states and 30 countries, and expect an industry size of about \$49 billion in 2017. Since the downturn of the economy in 2008, lots of contractors used to buy equipment but now rent. There are 225 rental businesses in Washington for a total of \$1.2 billion last year. They rent construction equipment, tools, and party and special event equipment.

I own a small rental equipment company with about ten employees. I hope the bill serves as a deterrent. The small claims process is not a deterrent. The renters may have no assets and with the fees to collect and the amount of time to serve the renter, it is just too costly. This bill is not designed to throw grandma in jail because she is two days late in returning equipment. We have to enforce this, and in some cases we have already turned a matter over to the police for stolen property. But we have to submit a demand letter before filing a police report. The bad guys have figured out that if after a demand letter is sent, they then return the equipment; the police will not enforce the law even though the renter has not paid. Equipment was rented, a large loader, and the owner couldn't contact the renter; they sent a demand letter and finally got the equipment back five months late; they didn't collect any money and the equipment was trashed. A lot of renters don't care about bad credit but they care about going to jail.

Other states have passed this type of law in Virginia, Florida, Missouri, Texas, Ohio, Illinois, and similar legislation is pending in Idaho.

CON: This bill eliminates an affirmative defense which will then disproportionately effect poor people. The business model for some businesses is to go after the riskiest clients. Those clients have bad credit history, can only give very small payments or may have evictions or judgments against them. They rent them furniture or tools. The client may intend to satisfy the contract but if they lose their job or are evicted, then they cannot make payments and are unable to return the equipment. By eliminating the affirmative defense, it will effect the people who don't have the money to pay the fees. If there was a grace period then it might help those who don't have the money to pay the fees. With a demand letter, people who are evicted may not receive the letter. This makes the state a collection agency. Last year there were only nine convictions in Washington for theft of rental equipment.

Persons Testifying: PRO: Senator Steve O'Ban, Prime Sponsor; Tom McBride, American Rental Association; Alysia Ryan, American Rental Association; Michael McDaniel, Ideal Rent-All; Victor Proulx, 410 Rentals; Mark Johnson, WA Retail Association.

CON: Laura Shaver, WA Association of Criminal Defense Lawyers, WA Defenders Association.

Persons Signed In To Testify But Not Testifying: No one.

EFFECT OF HOUSE AMENDMENT(S):

- Applies the new subsection only to written rental and lease agreements, rather than only to written rental agreements.
- Excludes rental or lease of medical equipment from the provisions of this new subsection.
- Adds a notice element such that a person is guilty of theft of rental or leased property who both: (1) 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 (2) fails to return the property within 72 hours after receipt of proper notice—and defines proper notice.
- 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.