

House Bill 2524
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Sections 31.04(b), (c), and (d), Penal Code, are amended to read as follows:

(b) For purposes of this section, intent to avoid payment is presumed if:

(1) the actor absconded without paying for the service or expressly refused 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;

(2) the actor failed to make payment under a service agreement within 10 days after receiving notice demanding payment;

(3) the actor returns property held under a rental agreement after the expiration of the rental agreement and fails to pay the applicable rental charge for the property within 10 days after the date on which the actor received notice demanding payment; or

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

(A) within five days after receiving notice demanding return, if the property is valued at less than \$2,500; ~~or~~

(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.

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SECTION 1. Section 31.04, Penal Code, is amended by amending Subsections (b), (c), (d), and (d-1) and adding Subsections (d-2), (d-3), (d-4), and (d-5) to read as follows:

(b) For purposes of this section, intent to avoid payment is presumed if any of the following occurs:

(1) the actor absconded without paying for the service or expressly refused 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;

(2) the actor failed to make payment under a service agreement within 10 days after receiving notice demanding payment;

(3) the actor returns property held under a rental agreement after the expiration of the rental agreement and fails to pay the applicable rental charge for the property within 10 days after the date on which the actor received notice demanding payment; ~~or~~

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

(A) within five days after receiving notice demanding return, if the property is valued at less than \$2,500; ~~or~~

(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

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(c) For purposes of Subsections (a)(4), (b)(2), and (b)(4), notice must ~~shall~~ be:

(1) ~~notice~~ in writing;

(2) [7] sent by:

(A) registered or certified mail with return receipt requested; or

(B) commercial delivery service with proof of receipt by the actor; ~~[or by telegram with report of delivery requested,]~~ and

(3) sent ~~[addressed]~~ to the actor using the actor's mailing ~~[at his]~~ address shown on the rental agreement or service agreement.

(d) If written notice is given in accordance with Subsection (c), it is presumed that the notice was received not ~~no~~ later than two ~~five~~ days after the notice ~~it~~ was sent.

SECTION 2. Section 31.04, Penal Code, is amended by amending Subsection (d-1) and adding Subsections (d-2) and (d-3) to read as follows:

(d-1) For purposes of Subsection (a)(2), 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

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

(c) For purposes of Subsections (a)(4), (b)(2), ~~[and]~~ (b)(4), and (b)(5), notice must ~~shall~~ be:

(1) ~~notice~~ in writing;

(2) [7] sent by:

(A) registered or certified mail with return receipt requested; or

(B) commercial delivery service; ~~[or by telegram with report of delivery requested,]~~ and

(3) sent ~~[addressed]~~ to the actor using the actor's mailing ~~[at his]~~ address shown on the rental agreement or service agreement.

(d) Except as otherwise provided by this subsection, if ~~if~~ written notice is given in accordance with Subsection (c), it is presumed that the notice was received not ~~no~~ later than two ~~five~~ days after the notice ~~it~~ was sent. For purposes of Subsections (b)(4)(A) and (B) and (b)(5), 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. [FA1(1)]

(d-1) For purposes of Subsection (a)(2), 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

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to the benefit of any person who is not entitled to the property.

(d-2) For purposes of Subsection (a)(3), 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) For purposes of Subsection (a)(4):

(1) if the compensation is or was to be paid on a periodic basis, the intent to avoid payment for a service may be formed at any time during or before a pay period; and

(2) the partial payment of wages alone is not sufficient evidence to negate the actor's intent to avoid payment for a service.

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to the benefit of any person who is not entitled to the property.

(d-2) For purposes of Subsection (a)(3), 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) For purposes of Subsection (a)(4):

(1) if the compensation is or was to be paid on a periodic basis, the intent to avoid payment for a service may be formed at any time during or before a pay period; ~~and~~ [FA1(2)]

(2) the partial payment of wages alone is not sufficient evidence to negate the actor's intent to avoid payment for a service; and

(3) the term "service" does not include leasing personal property under an agreement described by Subsections (d-2)(1)-(3). [FA1(3)]

(d-4) 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) may 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) For purposes of Subsection (b)(5), "business day" means a day other than Sunday or a state or federal holiday.

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SECTION 3. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. 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 4. This Act takes effect September 1, 2019.

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SECTION 2. Same as House version.

SECTION 3. Same as House version.

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