

By: González of Dallas

H.B. No. 4434

A BILL TO BE ENTITLED

1 AN ACT
2 relating to an exception to prosecution for the criminal offense of
3 theft of service.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

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

10 (1) the actor absconded without paying for the service
11 or expressly refused to pay for the service in circumstances where
12 payment is ordinarily made immediately upon rendering of the
13 service, as in hotels, campgrounds, recreational vehicle parks,
14 restaurants, and comparable establishments;

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

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

22 (4) the actor failed to return the property held under
23 a rental agreement, including a rental-purchase agreement:

24 (A) within five days after receiving notice

1 demanding return, if the property is valued at less than \$2,500;

2 (B) within three days after receiving notice
3 demanding return, if the property is valued at \$2,500 or more but
4 less than \$10,000; or

5 (C) within two days after receiving notice
6 demanding return, if the property is valued at \$10,000 or more; or

7 (5) the actor:

8 (A) failed to return the property held under a
9 rental-purchase agreement [~~an agreement described by Subsections~~
10 ~~(d-2)(1)-(3)] within five business days after receiving notice
11 demanding return; and~~

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

14 (d-1) For purposes of Subsection (a)(2), the diversion of
15 services to the benefit of a person who is not entitled to those
16 services includes the disposition of personal property by an actor
17 having control of the property under a rental-purchase agreement
18 [~~an agreement described by Subsections (d-2)(1)-(3)]~~, if the actor
19 disposes of the property in violation of the terms of the agreement
20 and to the benefit of any person who is not entitled to the
21 property.

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

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

26 (2) the partial payment of wages alone is not
27 sufficient evidence to negate the actor's intent to avoid payment

1 for a service; and

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

5 (d-4) A presumption established under Subsection (b)
6 involving a defendant's failure to return property held under a
7 rental-purchase agreement [~~an agreement described by Subsections~~
8 ~~(d-2)(1)-(3)~~] may be refuted if the defendant shows that the
9 defendant:

10 (1) intended to return the property; and

11 (2) was unable to return the property.

12 (h) It is an exception to the application of Subsection
13 (a)(3) that the written rental agreement described by that
14 subsection is a rental-purchase agreement.

15 SECTION 2. Subsection (d-2), Section 31.04, Penal Code, is
16 redesignated as Subsection (i), Section 31.04, Penal Code, and
17 amended to read as follows:

18 (i) In this section, "rental-purchase agreement" means
19 [~~(d-2) For purposes of Subsection (a)(3), the term "written rental~~
20 ~~agreement" does not include~~] an agreement that:

21 (1) permits an individual to use personal property for
22 personal, family, or household purposes for an initial rental
23 period;

24 (2) is automatically renewable with each payment after
25 the initial rental period; and

26 (3) permits the individual to become the owner of the
27 property.

1 SECTION 3. The changes in law made by this Act apply only to
2 an offense committed on or after the effective date of this Act. An
3 offense committed before the effective date of this Act is governed
4 by the law in effect on the date the offense was committed, and the
5 former law is continued in effect for that purpose. For purposes of
6 this section, an offense was committed before the effective date of
7 this Act if any element of the offense occurred before that date.

8 SECTION 4. This Act takes effect September 1, 2021.