

- SUBJECT:** Expanding the definition of theft of service
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 5 ayes — Hinojosa, Keel, Talton, Garcia, Shields
0 nays
4 absent — Dunnam, Green, Kitchen, Martinez Fischer
- SENATE VOTE:** On final passage, April 11 — voice vote
- WITNESSES:** (*On House companion bill, HB 878:*)
For — Scott Joslove, Texas Hotel and Motel Association; *Registered but did not testify:* J. D. Granger, Tarrant County District Attorney’s Office; Mindy Montford McCracken, Travis County District Attorney’s Office; Paul Serff, Texas Travel Industry Association; Livia Liu
Against — None
- BACKGROUND:** Penal Code, sec. 31.04 makes it an offense to steal services. The penalty ranges from a Class C misdemeanor (punishable by a maximum fine of \$500) for theft of a service worth less than \$20 to a first-degree felony (punishable by life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000) for theft of a service worth \$200,000 or more.
- A person commits theft of service if, with the intent of avoiding paying for a service that he or she knows is provided only for compensation, the person:
- ! intentionally or knowingly secures the service by deception, threat, or “false token” (defined by *Black’s Law Dictionary*, fifth ed., as a false document or sign of the existence of a fact used for the purpose of fraud or a device used to obtain money by false pretenses);
 - ! intentionally or knowingly diverts another person’s services for the offender’s own or a third party’s benefit when neither the offender nor the third party is entitled to those services (for example, by tapping into a neighbor’s cable television line); or

- ! holds property that the offender controls under a written rental agreement past the expiration of the rental period without the property owner's consent.

Intent to avoid payment is presumed if:

- ! the person left without paying for the service or expressly refused to pay for the service in a place where payments ordinarily are made when the service is rendered, such as hotels or restaurants;
- ! the person failed to return rented property within 10 days after receiving notice demanding return; or
- ! the person returned rented property after the expiration of the rental agreement and failed to pay the applicable rental charge within 10 days after the date when the person received notice demanding payment.

For purposes of prosecuting an offense for failure to return rental property within 10 days of receiving notice demanding its return, the notice must be in writing and sent to the address listed by the person on the rental agreement by registered or certified mail with return receipt requested, or by telegram with report of delivery requested.

DIGEST:

SB 437 would expand the definition of theft of service to include intentionally or knowingly securing the performance of a service by agreeing to provide compensation and then failing to make payment after the service is rendered and after receiving notice demanding payment. Intent to avoid payment would be presumed if the person failed to make payment under a service agreement within 10 days after receiving notice demanding return of the property. The notice would have to be in writing and would have to be sent to the address listed by the person on the service or rental agreement by registered or certified mail with return receipt requested, or by telegram with report of delivery requested.

This bill would take effect September 1, 2001, and would apply only to offenses committed on or after that date.

**SUPPORTERS
SAY:**

SB 437 would protect service providers that accept a deposit for a service, render it, and then cannot collect the balance due from the customer. For example, hoteliers are experiencing the problem of guests who pay a deposit

for a one-night stay, then extend their stay for additional days and leave in the middle of the night without paying for the additional days. To prove theft of service in these cases, the person must have shown intent to steal the service at the time it was rendered. Prosecutors have interpreted the law to mean that the guest must have refused to pay up front. However, when they make up-front deposits, these people cannot be prosecuted, and the hotel cannot have the person held criminally liable for refusing to pay. This bill would help any business that renders a service to a person who fails to make payment despite having agreed in advance to provide compensation.

SB 437 would hold accountable people who agree to pay for services from hotels and other businesses and then refuse to pay after receiving the service. Although these businesses have remedies in civil court, people who steal services often do not take their liability seriously. If they could be held criminally accountable, much like those who leave restaurants without paying, these people would be more likely to repay their debts to businesses.

The bill would protect consumers by providing that they be notified in writing and have a chance to repay the debt before being charged with an offense. The 10-day written notice provision would be the same as the one applying to theft by check.

**OPPONENTS
SAY:**

SB 437 is unnecessary because hotels and other service providers already have civil remedies when customers do not make payment in full. If hotel guests leave without paying for several nights of their stay, the hotel can sue them for payment.

NOTES:

The House companion bill, HB 878 by Allen, was reported favorably as substituted by the House Criminal Jurisprudence Committee on April 10.