**5266.E AMH JUDI H2426.4 - NOT FOR FLOOR USE**

**ESB 5266** - H COMM AMD

By Committee on Judiciary

**ADOPTED 04/11/2017**

Strike everything after the enacting clause and insert the following:

"**Sec.**  RCW 9A.56.096 and 2012 c 30 s 1 are each amended to read as follows:

(1) A person who, with intent to deprive the owner or owner's agent, wrongfully obtains, or exerts unauthorized control over, or by color or aid of deception gains control of personal property that is rented, leased, or loaned by written agreement to the person, is guilty of theft of rental, leased, lease-purchased, or loaned property.

(2)(a) 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 seventy-two hours after receipt of proper notice.

(b) As used in this subsection (2), "proper notice" consists of a written demand by the owner or the owner's agent made after the due date of the rental or lease period, mailed by certified or registered mail to the renter or lessee at: (i) The address the renter or lessee gave when the contract was made; or (ii) the renter's or lessee's last known address if later furnished in writing by the renter or lessee or the agent of the renter or lessee.

(c) It is not a defense that the person returned the personal property held under a rental or lease agreement if the return was made after the end of the seventy-two 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 the personal property.

(d) Rental and leased property agreements must contain a warning that failure to return property and pay all outstanding obligations pursuant to the terms of the agreement may result in charges up to and including a gross misdemeanor. For purposes of this subsection, applicable rental charge is determined pursuant to the late return provisions in the written agreement; however, if the written agreement contains no late return provisions, applicable rental charge means a value equal to the terms of the written rental or lease agreement prorated from the due date of the rental or lease period through the receipt of the returned property.

(e) This subsection (2) applies only to rental and leased property agreements, and does not apply to lease-purchased property, rent to own property, medical equipment, and motor vehicles.

(3) The finder of fact may presume intent to deprive under subsection (1) of this section if the finder of fact finds either of the following:

(a) That the person who rented or leased the property failed to return or make arrangements acceptable to the owner of the property or the owner's agent to return the property to the owner or the owner's agent within seventy-two hours after receipt of proper notice following the due date of the rental, lease, lease-purchase, or loan agreement; or

(b) That 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.

((~~(3)~~)) (4) As used in subsection ((~~(2)~~)) (3) of this section, "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: (a) The address the renter, lessee, or borrower gave when the contract was made; or (b) 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.

((~~(4)~~)) (5) The replacement value of the property obtained must be utilized in determining the amount involved in the theft of rental, leased, lease-purchased, or loaned property.

((~~(5)~~)) (6)(a) Theft of rental, leased, lease-purchased, or loaned property is a class B felony if the rental, leased, lease-purchased, or loaned property is valued at five thousand dollars or more.

(b) Theft of rental, leased, lease-purchased, or loaned property is a class C felony if the rental, leased, lease-purchased, or loaned property is valued at seven hundred fifty dollars or more but less than five thousand dollars.

(c) Theft of rental, leased, lease-purchased, or loaned property is a gross misdemeanor if the rental, leased, lease-purchased, or loaned property is valued at less than seven hundred fifty dollars.

(d)(i)(A) Theft of rental or leased property under subsection (2) of this section is a gross misdemeanor if the outstanding obligation is valued at seven hundred fifty dollars or more;

(B) Theft of rental or leased property under subsection (2) of this section is a misdemeanor if the outstanding obligation is valued at two hundred fifty dollars or more but less than seven hundred fifty dollars;

(C) Theft of rental or leased property under subsection (2) of this section is a class 1 civil infraction if the outstanding obligation is valued at fifty dollars or more but less than two hundred fifty dollars.

(ii) This subsection (6)(d) applies only to rental and leased property, and does not apply to lease-purchased property, rent to own property, medical equipment, and motor vehicles.

((~~(6)~~)) (7) The crime of theft of rental, leased, lease-purchased, or loaned property 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 under subsection (1) of this section, or at the address where proper notice may be mailed to the renter, lessee, or borrower under subsection ((~~(3)~~)) (4) of this section.

((~~(7)~~)) (8) This section applies 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, to lease agreements, to lease-purchase agreements as defined under RCW 63.19.010, and to vehicles loaned to prospective purchasers borrowing a vehicle by written agreement from a motor vehicle dealer licensed under chapter 46.70 RCW. This section does not apply to rental or leasing of real property under the residential landlord-tenant act, chapter 59.18 RCW."

Correct the title.

EFFECT: (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);

(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.