

FILED MAR 14 2005

SENATE FILE 361  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1241)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to the criminal offense of theft of leased or  
2 rented personal property and making penalties applicable.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 361

1 Section 1. Section 714.1, subsection 2, Code 2005, is  
2 amended to read as follows:

3 2. Misappropriates property which the person has in trust,  
4 or property of another which the person has in the person's  
5 possession or control, whether such possession or control is  
6 lawful or unlawful, by using or disposing of it in a manner  
7 which is inconsistent with or a denial of the trust or of the  
8 owner's rights in such property, or conceals found property,  
9 or appropriates such property to the person's own use, when  
10 the owner of such property is known to the person. ~~Failure~~  
11 Except as provided in section 714.4A, failure by a bailee or  
12 lessee of personal property to return the property within  
13 seventy-two hours after a time specified in a written  
14 agreement of ~~lease-or~~ bailment shall be evidence of  
15 misappropriation.

16 Sec. 2. NEW SECTION. 714.4A THEFT OF LEASED OR RENTED  
17 PERSONAL PROPERTY -- EVIDENCE.

18 1. The fact that a person who has leased or rented  
19 personal property of another willfully fails to return or make  
20 arrangements acceptable with the lessor or owner to return the  
21 personal property to the lessor or owner within one hundred  
22 twenty hours after proper notice following expiration or  
23 termination of the lease or rental agreement, or willfully  
24 conceals the property from the lessor or owner, or sells,  
25 pawns, loans, abandons, or gives away the leased or rented  
26 property, is material evidence of intent to deprive the lessor  
27 or owner of the use and possession of the personal property.

28 2. The fact that a person obtains possession of personal  
29 property subject to a lease or rental agreement by means of  
30 deception, including but not limited to furnishing a false  
31 name, address, place of employment, or other identification to  
32 the owner, is evidence that possession was obtained with  
33 intent to deprive the lessor or owner of the use and  
34 possession of the personal property.

35 3. Unless otherwise agreed to in writing, for the purpose

1 of determining whether a theft as described in this section  
2 has occurred, personal property which is the subject of a  
3 lease or rental agreement providing the option to buy the  
4 personal property is owned by the owner until such time as the  
5 owner endorses the sale and transfer of ownership of the  
6 leased or rented property to the lessee or renter.

7 4. This section applies to all forms of leases and rental  
8 agreements concerning personal property, including but not  
9 limited to contracts providing the consumer options to buy the  
10 leased or rented personal property, lease-purchase agreements,  
11 and rent-to-own contracts.

12 5. For purposes of this section, "proper notice" means a  
13 written confirmation of the expiration or termination of the  
14 lease or rental agreement sent to the lessee or renter by  
15 certified or restricted certified mail to the last known  
16 address of the lessee or renter. The notice shall be  
17 considered effective on the date of the mailing of the notice  
18 regardless of whether or not the lessee or renter signs a  
19 receipt for the notice.

20 EXPLANATION

21 This bill provides evidentiary rules for the criminal  
22 offense of theft of personal property that is leased or  
23 rented. The bill provides that willfully failing to return or  
24 making acceptable arrangements to return personal property  
25 within 120 hours after proper notice following expiration or  
26 termination of the lease or rental agreement is material  
27 evidence of intent to deprive of use and possessions. The  
28 bill provides that the willful concealment, or the sale,  
29 pawning, loan, abandonment, or giving away of the leased or  
30 rented personal property is material evidence of intent to  
31 deprive of use and possession. Obtaining possession of  
32 personal property by means of deception is also made evidence  
33 of intent to deprive of use and possession.

34 The owner of the personal property is deemed to be the  
35 owner of property until the owner has endorsed the sale and

1 transfer of ownership or unless there has been a written  
2 agreement to the contrary. The bill's provisions apply to all  
3 forms of leases and rental agreements concerning personal  
4 property. Proper notice is defined as written notice sent by  
5 certified or restricted certified mail to the last known  
6 address of the lessee or renter regardless of whether or not  
7 the lessee or renter signs a receipt for the notice.

8 The penalties in Code section 714.2 apply to theft of  
9 leased or rented personal property. Theft of property  
10 exceeding \$10,000 in value is a class "C" felony. Theft of  
11 property exceeding \$1,000 but not more than \$10,000 in value  
12 is a class "D" felony. Theft of property exceeding \$500 but  
13 not more than \$1,000 in value is an aggravated misdemeanor.  
14 Theft of property exceeding \$200 but not more than \$500 in  
15 value is a serious misdemeanor. Theft of property with a  
16 value of \$200 or less is a simple misdemeanor.

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**Fiscal Services Division**  
**Legislative Services Agency**  
**Fiscal Note**

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SF 361 - Moveable Property Theft (LSB 1059 SV)

Analyst: Beth Lenstra (Phone: (515) 281-6301) (beth.lenstra@legis.state.ia.us)

Fiscal Note Version - New

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**Description**

Senate File 361 clarifies existing law regarding failure to return leased or rented property after expiration of the lease, or after receiving notice to return the property. Current law provides a graduated system of penalties for theft, ranging from a simple misdemeanor to a Class C felony, depending on the value of the property.

**Background**

1. According to the Justice Data Warehouse, there were 19,420 charges for theft in calendar year 2003. Of the total, 6,338 charges were dismissed or acquitted. It is not known whether any of the charges were for leased or rented personal property.
2. Average State cost for a simple misdemeanor conviction ranges from \$14 to \$270. The dismissal/acquittal rate is 30.0%.
3. Average State cost for a serious misdemeanor conviction ranges from \$101 to \$4,100. The dismissal/acquittal rate is 27.0%.
4. Average State cost for an aggravated misdemeanor conviction ranges from \$1,100 to \$5,700. The dismissal/acquittal rate is 27.0%.
5. Average State cost for a Class D felony conviction ranges from \$2,800 to \$12,000. The dismissal/acquittal rate is 43.0%.
6. Average State cost for a Class C felony conviction ranges from \$3,100 to \$23,000. The dismissal/acquittal rate is 39.0%.
7. The cost for a conviction of a serious or aggravated misdemeanor or a Class D or C felony will be incurred over multiple fiscal years as the offender serves time in the correctional system. The costs stated above include the Judicial Branch holding a trial; indigent defense; and supervision while on probation, prison, or parole, if applicable.

**Assumptions**

1. The law will become effective July 1, 2005. A lag effect of six months is assumed, from the law's effective date to the date of first entry of affected offenders into the correctional system.
2. By clarifying existing law, SF 361 may decrease the dismissal/acquittal rate, thereby increasing the number of convictions for theft of rented or leased property. The number of additional convictions under SF 361 cannot be estimated due to a lack of data.

**Correctional Impact**

There is a potential for additional convictions under SF 361. That number cannot be estimated due to a lack of data. However, it is anticipated that there will not be a significant number of new convictions. Therefore, the correctional impact is not expected to be significant.

**Fiscal Impact**

The Fiscal impact of SF 361 cannot be determined due to insufficient information. However, the fiscal impact is not anticipated to be significant.

**Sources**

Department of Human Rights, Criminal and Juvenile Justice Planning Division  
Department of Corrections  
State Public Defender's Office  
Judicial Branch

/s/ Holly M. Lyons

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March 14, 2005

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The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Fiscal Services Division, Legislative Services Agency to members of the Legislature upon request.

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Zawn co-chair  
Kreiman co-chair  
Miller  
Dvorsky

Succeeded By  
S/ HF 361

SSB# 1241  
Judiciary

SENATE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON JUDICIARY  
BILL BY CO-CHAIRPERSONS  
KREIMAN and MILLER)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
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19 personal property of another willfully fails to return or make  
20 arrangements acceptable with the lessor or owner to return the  
21 personal property to the lessor or owner within seventy-two  
22 hours after proper notice following expiration or termination  
23 of the lease or rental agreement, or willfully conceals the  
24 property from the lessor or owner, or sells, pawns, loans,  
25 abandons, or gives away the leased or rented property, is  
26 material evidence of intent to deprive the lessor or owner of  
27 the use and possession of the personal property.

28 2. If the personal property leased or rented is a motor  
29 vehicle, this section shall not apply if return of the motor  
30 vehicle is made more difficult or expensive by a defect in  
31 such vehicle which renders the vehicle inoperable, if the  
32 lessee or renter notifies the lessor or owner of the location  
33 of such vehicle and such defect prior to the expiration of the  
34 lease or rental agreement.

35 3. The fact that a person obtains possession of personal

1 property subject to a lease or rental agreement by means of  
2 deception, including but not limited to furnishing a false  
3 name, address, place of employment, or other identification to  
4 the owner, is evidence that possession was obtained with  
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24 considered effective on the date of the mailing of the notice  
25 regardless of whether or not the lessee or renter signs a  
26 receipt for the notice.

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#### EXPLANATION

28 This bill provides evidentiary rules for the criminal  
29 offense of theft of personal property that is leased or  
30 rented. The bill provides that willfully failing to return or  
31 making acceptable arrangements to return personal property  
32 within 72 hours after proper notice following expiration or  
33 termination of the lease or rental agreement is material  
34 evidence of intent to deprive of use and possessions. The  
35 bill provides that the willful concealment, or the sale,

1 pawning, loan, abandonment, or giving away of the leased or  
2 rented personal property is material evidence of intent to  
3 deprive of use and possession.

4 The bill provides that the provision does not apply if the  
5 personal property that is leased or rented is a motor vehicle  
6 if the reason the vehicle is not timely returned is due to a  
7 defect in the vehicle making the vehicle inoperable and the  
8 lessee or renter has given notice of the defect to the lessor  
9 or owner prior to the expiration of the lease or rental  
10 agreement. Obtaining possession of personal property by means  
11 of deception is also made evidence of intent to deprive of use  
12 and possession.

13 The owner of the personal property is deemed to be the  
14 owner of property until the owner has endorsed the sale and  
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