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## CRIMES AND OFFENSES Offenses Involving Theft: Provide for Presumption of Intent to Convert Rented or Leased Personal Property After a Certain Term; Change Venue Requirements

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## CRIMES AND OFFENSES

### *Offenses Involving Theft: Provide for Presumption of Intent to Convert Rented or Leased Personal Property After a Certain Term; Change Venue Requirements*

CODE SECTIONS: O.C.G.A. §§ 16-8-4, -11, 16-12-2, 49-5-12  
(amended)  
BILL NUMBER: HB 1358  
ACT NUMBER: 963  
SUMMARY: The Act creates a presumption of intent to convert rented or leased personal property if the renter or lessee, upon formal request by the owner, does not return the property within a specified period of time. Additionally, the Act changes the venue requirements by providing for venue in the county where the rent or lease agreement was signed.  
EFFECTIVE DATE: July 1, 1994

#### *History*

The practice of renting personal property, ranging from furniture to heavy equipment, has become a prevalent means of obtaining necessary items in today's society.<sup>1</sup> However, along with the growth of this practice has come the problem of people leasing or renting personal property and then failing to return it or pay the monthly charges.<sup>2</sup>

Previously, in order to convict a person who failed to return rented or leased personal property for conversion, prosecutors were forced to prove the person took the equipment with the intent to convert it to their own use.<sup>3</sup> There was no presumption of intent to convert in former Code section 16-8-4,<sup>4</sup> making convictions for this offense virtually impossible.<sup>5</sup>

Additionally, previous Code section 16-8-11 did not provide for venue where the agreement was signed, but rather established venue where the personal property was located.<sup>6</sup> To establish venue where the agreement was signed, the courts required the prosecution to prove the

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1. Telephone Interview with Rep. Denny Dobbs, House District No. 92 (Apr. 4, 1994) [hereinafter Dobbs Interview].

2. *Id.*

3. See *Baker v. State*, 218 S.E.2d 171 (Ga. Ct. App. 1971).

4. 1988 Ga. Laws 763 (codified at O.C.G.A. § 16-8-4 (1992)).

5. Dobbs Interview, *supra* note 1.

6. 1972 Ga. Laws 841 (codified at O.C.G.A. § 16-8-11 (1992)).

person renting the equipment intended to convert the property at the time the agreement was signed.<sup>7</sup> Consequently, owners were often forced to travel long distances to prosecute violators of the Code section.<sup>8</sup>

Business owners leasing or renting personal property lobbied to amend Code section 16-8-4 to provide a presumption of intent to convert and to amend Code section 16-8-4 to provide venue where the agreement was signed.<sup>9</sup> As a result of these efforts, HB 1358 was introduced.

### *HB 1358*

The purpose of the Act is to provide a presumption, after a specified term, of intent to convert rented or leased personal property and to provide venue where the accused signed the agreement.<sup>10</sup> The Act amends Code section 16-8-4 by adding a new subsection.<sup>11</sup> The Act first defines "personal property" as any property "having a replacement cost value greater than \$100.00, including late fees and penalties."<sup>12</sup> Further, it creates a presumption of intent to convert leased or rented property where a person fails to return the property within five days after receiving a letter demanding return.<sup>13</sup> The Act also amends Code section 16-8-11 and provides that, for prosecution under Code section 16-8-4, "the crime shall also be considered to have been committed in the county in which the accused signed the rental agreement."<sup>14</sup>

After being introduced on the House floor, the bill was sent to the House Judiciary Committee.<sup>15</sup> The Committee drafted a substitute bill that provided that the property must have a fair market value greater than \$100 for the presumption to occur.<sup>16</sup> This change was made to limit prosecutions under the Code section.<sup>17</sup> The Committee also changed the specified period to create a presumption of intention to convert from seventy-two hours to five days, arguing that five days is a more realistic time period to expect return of the property.<sup>18</sup> The

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7. *Price v. State*, 45 S.E.2d 283, 287 (Ga. Ct. App. 1947). Thus, O.C.G.A. § 16-8-4(c) relaxes the burden on prosecutors attempting to establish intent to convert. O.C.G.A. § 16-8-4(c) (Supp. 1994).

8. Dobbs Interview, *supra* note 1.

9. *Id.*

10. *Id.*

11. O.C.G.A. § 16-8-4(c) (Supp. 1994).

12. *Id.* § 16-8-4(c)(1) (Supp. 1994).

13. *Id.* § 16-8-4(c)(2) (Supp. 1994).

14. *Id.* § 16-8-11 (Supp. 1994).

15. Final Composite Status Sheet, Mar. 16, 1994.

16. HB 1358 (HCS), 1994 Ga. Gen. Assem.

17. Dobbs Interview, *supra* note 1.

18. *Id.*; HB 1358 (HCS), 1994 Ga. Gen. Assem.

Committee substitute was sent back to the House.<sup>19</sup> The bill was then amended on the House floor by striking the language "fair market value" and substituting in its place the phrase "replacement cost."<sup>20</sup> In addition, another floor amendment added the language "including any late fees and penalties" after "\$100."<sup>21</sup> The House passed the bill as amended and sent it to the Senate.

The Senate sent the bill to the Senate Judiciary Committee which amended the bill by changing the time period from five days to ten days.<sup>22</sup> The Committee expressed concern that five days might not provide sufficient time to return the property in some circumstances.<sup>23</sup> The Committee argued that more time should be provided to avoid prosecuting young people, such as college students renting furniture, who simply forget to return rented or leased property.<sup>24</sup> The bill was sent to the Senate as amended by the Committee.

The Senate returned the time period to five days and attached two riders<sup>25</sup> by floor substitute.<sup>26</sup> The first rider was an amendment to Code section 16-12-2 which creates an offense for smoking on the property of any day-care facility during hours of operation.<sup>27</sup> The second rider amends Code section 49-5-12, providing that owners or operators of day-care facilities must post signs prohibiting smoking.<sup>28</sup>

This substitute bill, as amended, containing the five-day provision, was the final version passed by the General Assembly.<sup>29</sup>

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19. Final Composite Status Sheet, Mar. 16, 1994.

20. Compare HB 1358 (HCS), 1994 Ga. Gen. Assem. with HB 1358 (HFA), 1994 Ga. Gen. Assem.

21. *Id.*

22. Compare HB 1358 (HCS), 1994 Ga. Gen. Assem. with HB 1358 (SCA), 1994 Ga. Gen. Assem.

23. Dobbs Interview, *supra* note 1.

24. *Id.*

25. *Id.* A "rider" is defined as "a new and unrelated enactment or provision attached to appropriation bills in the legislature." 37A WORDS & PHRASES 350 (1950).

26. HB 1358 (SFS), 1994 Ga. Gen. Assem.

27. *Id.* § 16-12-2(a)(4) (Supp. 1994).

28. *Id.* § 49-5-12(b)(7.1) (Supp. 1994).

29. See O.C.G.A. §§ 16-8-4(c), -11 (Supp. 1994); *id.* § 16-12-2(a)(4) (Supp. 1994); *id.* § 49-5-12(b)(7.1) (Supp. 1994).