

STATE OF NEW YORK

971

2017-2018 Regular Sessions

IN ASSEMBLY

January 10, 2017

Introduced by M. of A. GANTT -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to prohibiting criminal prosecution under certain rental-purchase agreements

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 165.00 of the penal law, as amended by chapter 372
2 of the laws of 1995, is amended to read as follows:

3 § 165.00 Misapplication of property.

4 1. A person is guilty of misapplication of property when, knowingly
5 possessing personal property of another pursuant to an agreement that
6 the same will be returned to the owner at a future time,

7 (a) he or she loans, leases, pledges, pawns or otherwise encumbers
8 such property without the consent of the owner thereof in such manner as
9 to create a risk that the owner will not be able to recover it or will
10 suffer pecuniary loss; or

11 (b) he or she intentionally refuses to return personal property valued
12 in excess of one hundred dollars to the owner pursuant to the terms of
13 the rental agreement provided that the owner shall have made a written
14 demand for the return of such personal property in person or by certi-
15 fied mail at an address indicated in the rental agreement and he or she
16 intentionally refuses to return such personal property for a period of
17 thirty days after such demand has been received or should reasonably
18 have been received by him or her. Such written demand shall state: (i)
19 the date and time at which the personal property was to have been
20 returned under the rental agreement; (ii) that the owner does not
21 consent to the continued withholding or retaining of such personal prop-
22 erty and demands its return; and (iii) that the continued withholding or
23 retaining of the property may constitute a class A misdemeanor punisha-
24 ble by a fine of up to one thousand dollars or by a sentence to a term

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 of imprisonment for a period of up to one year or by both such fine and
2 imprisonment.

3 (c) as used in paragraph (b) of this subdivision and in subdivision
4 three of this section, the terms owner, personal property, and rental
5 agreement shall be defined as [~~in subdivision one of section three~~
6 ~~hundred ninety-nine-w of the general business law.~~] follows:

7 (i) "owner" shall include any person, partnership, firm, association,
8 or corporation engaged in the business of renting personal property for
9 profit;

10 (ii) "personal property" shall include but not be limited to tangible
11 chattels used for personal, household, or business purposes but shall
12 not include motor vehicles; and

13 (iii) "rental agreement" shall mean the total legal obligation that
14 results from a written rental contract between a person and the owner
15 for the rental of personal property.

16 2. In any prosecution under paragraph (a) of subdivision one of this
17 section, it is a defense that, at the time the prosecution was
18 commenced, (a) the defendant had recovered possession of the property,
19 unencumbered as a result of the unlawful disposition, and (b) the owner
20 had suffered no material economic loss as a result of the unlawful
21 disposition.

22 3. In any prosecution under paragraph (b) of subdivision one of this
23 section, it is a defense that at the time the prosecution was commenced,
24 (a) the owner had recovered possession of the personal property and
25 suffered no material economic loss as a result of the unlawful
26 retention; or (b) the defendant is unable to return such personal prop-
27 erty because it has been accidentally destroyed or stolen; or (c) the
28 owner failed to comply with the provisions of section three hundred
29 ninety-nine-w of the general business law as added by chapter three
30 hundred seventy-two of the laws of nineteen hundred ninety-five.

31 4. This section shall not apply to property subject to a rental-pur-
32 chase agreement. A "rental-purchase agreement" means an agreement for
33 the use of merchandise by a consumer for personal, family, or household
34 purposes, for an initial period of four months or less, that is renewa-
35 ble with each payment after the initial period and that permits the
36 lessee to become the owner of the property.

37 Misapplication of property is a class A misdemeanor.

38 § 2. This act shall take effect immediately.