S T A T E O F N E W Y O R K

472

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sen. NOZZOLIO -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to the criminality of theft of rental property or equipment

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The penal law is amended by adding a new section 190.87 to read as follows:

S 190.87 CRIMINAL THEFT OF RENTAL PROPERTY OR EQUIPMENT VALUED AT LESS THAN FIVE HUNDRED DOLLARS.

1. A PERSON IS GUILTY OF CRIMINAL THEFT OF RENTAL PROPERTY OR EQUIPMENT VALUED AT LESS THAN FIVE HUNDRED DOLLARS WHEN HE OR SHE KNOWINGLY:

(A) OBTAINS CUSTODY OF PERSONAL PROPERTY OR EQUIPMENT BY TRICK, DECEIT, FRAUD OR WILLFUL FALSE REPRESENTATION WITH INTENT TO DEFRAUD THE OWNER OR ANY PERSON IN LAWFUL POSSESSION OF THE PERSONAL PROPERTY OR EQUIPMENT;

(B) HIRES OR LEASES PERSONAL PROPERTY OR EQUIPMENT FROM ANY PERSON WHO IS IN LAWFUL POSSESSION OF THE PERSONAL PROPERTY OR EQUIPMENT WITH THE INTENT TO DEFRAUD SUCH PERSON OF THE RENTAL DUE UNDER THE RENTAL AGREEMENT;

(C) ABANDONS OR WILLFULLY REFUSES TO REDELIVER PERSONAL PROPERTY AS REQUIRED UNDER A RENTAL AGREEMENT WITHOUT THE CONSENT OF THE LESSOR OR THE LESSOR'S AGENT, WITH INTENT TO DEFRAUD THE LESSOR OR THE LESSOR'S AGENT.

2. UNDER THIS SECTION, THE FOLLOWING ACTS ARE CONSIDERED PRIMA FACIE EVIDENCE OF FRAUDULENT INTENT:

(A) OBTAINING THE PROPERTY OR EQUIPMENT UNDER FALSE PRETENSES;

(B) ABSCONDING WITHOUT PAYMENT;

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

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(C) REMOVING OR ATTEMPTING TO REMOVE THE PROPERTY OR EQUIPMENT FROM THE COUNTY WITHOUT THE EXPRESS WRITTEN CONSENT OF THE LESSOR OR LESSOR'S AGENT; OR

(D) FAILING TO PAY ANY AMOUNT DUE WHICH HAS INCURRED AS THE RESULT OF FAILURE TO REDELIVER PROPERTY OR EQUIPMENT AFTER THE RENTAL PERIOD EXPIRES. AMOUNTS DUE MAY INCLUDE UNPAID RENTAL FEES FOR THE TIME PERIOD EXCEEDING THE RENTAL PERIOD EXPIRATION DATE AND THE COST OF REPAIRING OR REPLACING THE PROPERTY OR EQUIPMENT WHICHEVER IS THE LESSER AMOUNT, AS NECESSARY, IF SUCH PROPERTY OR EQUIPMENT HAS BEEN DAMAGED OR NOT RETURNED.

3. THE LESSOR OR THE LESSOR'S AGENT MAY DEMAND FOR THE RETURN OF OVER-DUE PROPERTY OR EQUIPMENT AND FOR PAYMENT OF AMOUNTS DUE, INCLUDING ANY AMOUNT DUE AS A RESULT OF THE FAILURE TO REDELIVER PROPERTY WHEN THE RENTAL PERIOD EXPIRED.

(A) UPON DEMAND OF SUCH PROPERTY OR EQUIPMENT, THE LESSEE SHALL HAVE FIVE DAYS TO RETURN SUCH PROPERTY OR EQUIPMENT TO THE LESSOR AND SHALL PAY FOR THE ADDITIONAL COST OF POSSESSING SUCH PROPERTY OR EQUIPMENT BEYOND THE RENTAL PERIOD EXPIRATION DATE.

(B) DEMAND FOR RETURN OF OVERDUE PROPERTY OR EQUIPMENT AND FOR PAYMENTS OF AMOUNTS DUE MAY BE MADE IN PERSON, BY HAND DELIVERY, OR BY CERTIFIED MAIL WITH A RETURN RECEIPT REQUESTED TO THE LESSEE'S ADDRESS SHOWN ON THE RENTAL CONTRACT. IF MAILED NOTICE IS RETURNED UNDELIVERED AFTER SUCH NOTICE HAS BEEN MAILED TO THE ADDRESS GIVEN BY THE LESSEE AT THE TIME OF RENTAL, IT SHALL BE DEEMED EQUIVALENT TO A RETURN RECEIPT FROM THE LESSEE.

(C) FAILURE TO RETURN SUCH PROPERTY OR EQUIPMENT OR PAY FOR THE ADDI-TIONAL COST OF POSSESSING SUCH PROPERTY OR EQUIPMENT WITHIN SUCH FIVE DAY PERIOD SHALL BE CONSIDERED PRIMA FACIE EVIDENCE OF FRAUD.

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S 2. The penal law is amended by adding a new section 190.88 to read as follows:

S 190.88 CRIMINAL THEFT OF RENTAL PROPERTY OR EQUIPMENT VALUED AT FIVE HUNDRED DOLLARS OR MORE.

1. A PERSON IS GUILTY OF CRIMINAL THEFT OF RENTAL PROPERTY OR EQUIP-MENT VALUED AT FIVE HUNDRED DOLLARS OR MORE WHEN HE OR SHE KNOWINGLY:

(A) OBTAINS CUSTODY OF PERSONAL PROPERTY OR EQUIPMENT BY TRICK, DECEIT, FRAUD OR WILLFUL FALSE REPRESENTATION WITH INTENT TO DEFRAUD THE OWNER OR ANY PERSON IN LAWFUL POSSESSION OF THE PERSONAL PROPERTY OR EQUIPMENT;

(B) HIRES OR LEASES PERSONAL PROPERTY OR EQUIPMENT FROM ANY PERSON WHO IS IN LAWFUL POSSESSION OF THE PERSONAL PROPERTY OR EQUIPMENT WITH THE INTENT TO DEFRAUD SUCH PERSON OF THE RENTAL DUE UNDER THE RENTAL AGREE-MENT;

(C) ABANDONS OR WILLFULLY REFUSES TO REDELIVER PERSONAL PROPERTY AS REQUIRED UNDER A RENTAL AGREEMENT WITHOUT THE CONSENT OF THE LESSOR OR THE LESSOR'S AGENT, WITH INTENT TO DEFRAUD THE LESSOR OR THE LESSOR'S AGENT.

2. UNDER THIS SECTION, THE FOLLOWING ACTS ARE CONSIDERED PRIMA FACIE EVIDENCE OF FRAUDULENT INTENT:

(A) OBTAINING THE PROPERTY OR EQUIPMENT UNDER FALSE PRETENSES;

(B) ABSCONDING WITHOUT PAYMENT;

(C) REMOVING OR ATTEMPTING TO REMOVE THE PROPERTY OR EQUIPMENT FROM THE COUNTY WITHOUT THE EXPRESS WRITTEN CONSENT OF THE LESSOR OR LESSOR'S AGENT; OR

(D) FAILING TO PAY ANY AMOUNT DUE WHICH HAS INCURRED AS THE RESULT OF FAILURE TO REDELIVER PROPERTY OR EQUIPMENT AFTER THE RENTAL PERIOD EXPIRES. AMOUNTS DUE MAY INCLUDE UNPAID RENTAL FEES FOR THE TIME PERIOD EXCEEDING THE RENTAL PERIOD EXPIRATION DATE AND THE COST OF REPAIRING OR REPLACING THE PROPERTY OR EQUIPMENT WHICHEVER IS THE LESSER AMOUNT, AS NECESSARY, IF SUCH PROPERTY OR EQUIPMENT HAS BEEN DAMAGED OR NOT RETURNED.

3. THE LESSOR OR THE LESSOR'S AGENT MAY DEMAND FOR THE RETURN OF OVER-DUE PROPERTY OR EQUIPMENT AND FOR PAYMENT OF AMOUNTS DUE, INCLUDING ANY AMOUNT DUE AS A RESULT OF THE FAILURE TO REDELIVER PROPERTY WHEN THE RENTAL PERIOD EXPIRED.

(A) UPON DEMAND OF SUCH PROPERTY OR EQUIPMENT, THE LESSEE SHALL HAVE FIVE DAYS TO RETURN SUCH PROPERTY OR EQUIPMENT TO THE LESSOR AND SHALL PAY FOR THE ADDITIONAL COST OF POSSESSING SUCH PROPERTY OR EQUIPMENT BEYOND THE RENTAL PERIOD EXPIRATION DATE.

(B) DEMAND FOR RETURN OF OVERDUE PROPERTY OR EQUIPMENT AND FOR PAYMENTS OF AMOUNTS DUE MAY BE MADE IN PERSON, BY HAND DELIVERY, OR BY CERTIFIED MAIL WITH A RETURN RECEIPT REQUESTED TO THE LESSEE'S ADDRESS SHOWN ON THE RENTAL CONTRACT. IF MAILED NOTICE IS RETURNED UNDELIVERED AFTER SUCH NOTICE HAS BEEN MAILED TO THE ADDRESS GIVEN BY THE LESSEE AT THE TIME OF RENTAL, IT SHALL BE DEEMED EQUIVALENT TO A RETURN RECEIPT FROM THE LESSEE.

(C) FAILURE TO RETURN SUCH PROPERTY OR EQUIPMENT OR PAY FOR THE ADDI-TIONAL COST OF POSSESSING SUCH PROPERTY OR EQUIPMENT WITHIN SUCH FIVE DAY PERIOD SHALL BE CONSIDERED PRIMA FACIE EVIDENCE OF FRAUD.

CRIMINAL THEFT OF RENTAL PROPERTY OR EQUIPMENT VALUED AT FIVE HUNDRED DOLLARS OR MORE IS A CLASS E FELONY.

S 3. This act shall take effect on the thirtieth day after it shall have become a law.