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

722

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

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:

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

S 165.00 Misapplication of property.

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

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

(b) he OR SHE intentionally refuses to return personal property valued in excess of one hundred dollars to the owner pursuant to the terms of the rental agreement provided that the owner shall have made a written demand for the return of such personal property in person or by certified mail at an address indicated in the rental agreement and he OR SHE intentionally refuses to return such personal property for a period of thirty days after such demand has been received or should reasonably have been received by him OR HER. Such written demand shall state: (i) the date and time at which the personal property was to have been returned under the rental agreement; (ii) that the owner does not consent to the continued withholding or retaining of such personal property and demands its return; and (iii) that the continued withholding or retaining of the property may constitute a class A misdemeanor punishable 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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of imprisonment for a period of up to one year or by both such fine and imprisonment.

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

(I) "OWNER" SHALL INCLUDE ANY PERSON, PARTNERSHIP, FIRM, ASSOCIATION, OR CORPORATION ENGAGED IN THE BUSINESS OF RENTING PERSONAL PROPERTY FOR PROFIT;

(II) "PERSONAL PROPERTY" SHALL INCLUDE BUT NOT BE LIMITED TO TANGIBLE CHATTELS USED FOR PERSONAL, HOUSEHOLD, OR BUSINESS PURPOSES BUT SHALL NOT INCLUDE MOTOR VEHICLES; AND

(III) "RENTAL AGREEMENT" SHALL MEAN THE TOTAL LEGAL OBLIGATION THAT RESULTS FROM A WRITTEN RENTAL CONTRACT BETWEEN A PERSON AND THE OWNER FOR THE RENTAL OF PERSONAL PROPERTY.

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

3. In any prosecution under paragraph (b) of subdivision one of this section, it is a defense that at the time the prosecution was commenced, (a) the owner had recovered possession of the personal property and suffered no material economic loss as a result of the unlawful retention; or (b) the defendant is unable to return such personal property because it has been accidentally destroyed or stolen; or (c) the owner failed to comply with the provisions of section three hundred ninety-nine-w of the general business law AS ADDED BY CHAPTER THREE HUNDRED SEVENTY-TWO OF THE LAWS OF NINETEEN HUNDRED NINETY-FIVE.

4. THIS SECTION SHALL NOT APPLY TO PROPERTY SUBJECT TO A RENTAL-PURCHASE AGREEMENT. A "RENTAL-PURCHASE AGREEMENT" MEANS AN AGREEMENT FOR THE USE OF MERCHANDISE BY A CONSUMER FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES, FOR AN INITIAL PERIOD OF FOUR MONTHS OR LESS, THAT IS RENEWABLE WITH EACH PAYMENT AFTER THE INITIAL PERIOD AND THAT PERMITS THE LESSEE TO BECOME THE OWNER OF THE PROPERTY.

Misapplication of property is a class A misdemeanor.

S 2. This act shall take effect immediately.