

2013-2014 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

January 9, 2013

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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     S 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 certified  
15    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 property  
22    and demands its return; and (iii) that the continued withholding or  
23    retaining of the property may constitute a class A misdemeanor punishable  
24    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 S 2. This act shall take effect immediately.