# STATE OF NEW YORK

122

2019-2020 Regular Sessions

# IN ASSEMBLY

(Prefiled)

January 9, 2019

Introduced by M. of A. BUCHWALD, D'URSO, GALEF, MONTESANO, DICKENS, LAVINE, LAWRENCE, CROUCH, RAIA, MORINELLO, RIVERA -- Multi-Sponsored by -- M. of A. ABBATE -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to misapplication of construction rental equipment and theft of services

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 165.03 to read as follows:

§ 165.03 Misapplication of construction rental equipment.

1. A person is guilty of misapplication of construction rental equipment when, knowingly possessing construction rental equipment 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 valued in excess of one thousand dollars 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 such property valued in excess of one thousand 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 equipment in person or by certified mail at an address indicated in the rental agreement and he or she intentionally refuses to return such equipment for a period of ten days after such demand has been received or should reasonably have been received. Such written demand shall state: (i) the date and time at which the equipment was to have been returned under the rental agreement; (ii) that the owner does not consent to the continued withholding or retaining of such equipment and demands its return; and (iii) that the contin-

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

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ued withholding or retaining of the equipment may constitute a class E felony punishable by a fine of up to two thousand dollars or by a sentence to a term of imprisonment for a period of up to one year or by both such fine and imprisonment.

2. As used in this section, the terms owner and rental agreement shall be defined as in subdivision one 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. The term construction rental equipment shall mean any equipment or tools generally used in the construction trade and rented to an individual or business under such terms as are agreed upon in writing by the parties to such agreement.

3. 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 equipment within the time specified in the original rental agreement or any amendment thereto, 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.

4. 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 equipment and suffered no economic loss as a result of the unlawful retention, or (b) 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.

Misapplication of construction rental equipment is a class E felony.

§ 2. Section 165.15 of the penal law is amended by adding a new subdivision 13 to read as follows:

13. Obtaining or having control over commercial construction rental equipment of another person or entity pursuant to a rental agreement, he or she fails to return such equipment to the owner thereof on the date specified for return in such rental agreement.

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