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OFFICE OF THE GOVERNOR

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1984



ENROLLED

Committee Substitute for
SENATE BILL NO. 401

(By Mr. *Boettner & Mr. Nelson*)



PASSED *March 5,* 1984

In Effect *ninety days from* Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 401

(MR. BOETTNER AND MR. NELSON, *original sponsors*)

[Passed March 5, 1984; in effect ninety days from passage.]

AN ACT to amend and reenact section thirty-two, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to retaining possession of or removing personal property which is security for a claim without consent and with intent to defraud and providing criminal penalties; disposal, secreting or conversion of personal property subject to written lease without consent and with intent to defraud made a crime of larceny; providing for written notice; failure to return property within ten days of receipt of notice; prima facie evidence of intent to defraud; right of the lessor to immediate possession after expiration of the lease and written notice; and lessor not liable for certain damages incidental to reclaiming or taking possession of the leased property.

Be it enacted by the Legislature of West Virginia:

That section thirty-two, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-32. Removal out of county of property securing claim; penalties; fraudulent disposition of personal property in possession by virtue of lease; notice to return; failure to return; penalty; right to immediate possession.

1 (a) Any debtor under any security instrument conveying
2 personal property, who retains possession of such personal
3 property, and who, without the consent of the owner of the
4 claim secured by such security instrument, and with intent
5 to defraud, removes or causes to be removed any of the
6 property securing such claim out of the county where it is
7 situated at the time it became security for such claim or out
8 of a county to which it was removed by virtue of a former
9 consent of the owner of the claim under this section, or, with
10 intent to defraud, secretes or sells the same, or converts the
11 same to his own use, shall be guilty of a misdemeanor, and,
12 upon conviction, be fined not more than five hundred
13 dollars, or imprisoned not more than six months, or both, in
14 the discretion of the court.

15 (b) Any person in possession or control of any personal
16 property by virtue of or subject to a written lease who, with
17 intent to defraud and without written consent of the owner,
18 disposes of such property by sale or transfer, or secretes or
19 converts such property to his own use, or removes or causes
20 to be removed such property from the state shall be deemed
21 guilty of the larceny of such property.

22 In any prosecution under the provisions of this
23 subsection, written notice may be mailed by certified mail,
24 addressed to the lessee at the address of the lessee stated in
25 the lease, and served on the lessee within ten days of the
26 expiration of the lease, which notice shall state that the
27 lease has expired and that lessee has ten days from receipt
28 of such notice to return the leased property. Proof that the
29 lessee failed to return the property within ten days of
30 receiving such notice shall in any prosecution under this
31 subsection constitute prima facie evidence that the lessee
32 intended to defraud the owner.

33 Whenever the lessee is a resident of the county in which
34 the lease was contracted, the lessor, after written notice to
35 the lessee within ten days after the expiration of the lease,

36 has the right to immediate possession of the leased
37 property, without formal process to secure return and
38 possession of the leased property, if this can be done
39 without breach of the peace. The lessor is not liable to the
40 lessee for any damages for any action taken that is
41 reasonable, necessary and incidental to the reclaiming or
42 taking possession of the leased property.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James E. Holme
.....
Chairman Senate Committee

Donald Anello
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Edw. C. Wells
.....
Clerk of the Senate

Donald L. Dugg
.....
Clerk of the House of Delegates

Walter R. Wood
.....
President of the Senate

John M. Lee, Jr.
.....
Speaker House of Delegates

The within *is approved* this the *30*
day of *March*, 1984.

John D. Reynolds
.....
Governor

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