

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 1393
Judiciary II Committee Substitute Adopted 7/10/90

Short Title: Releasing/Loan Assumption Regulated.

(Public)

Sponsors:

Referred to:

May 25, 1990

1 A BILL TO BE ENTITLED
2 AN ACT TO REGULATE MOTOR VEHICLE SUBLEASING AND LOAN
3 ASSUMPTION ARRANGING.

4 The General Assembly of North Carolina enacts:

5 Section 1. Chapter 20 of the General Statutes is amended by adding the
6 following new section:

7 **"§ 20-106.2. Sublease and loan assumption arranging regulated.**

8 (a) As used in this section:

9 (1) 'Buyer' means a purchaser of a motor vehicle under the terms of a
10 retail installment contract. 'Buyer' shall include any co-buyer on the
11 retail installment contract.

12 (2) 'Lease' means an agreement between a lessor and a lessee whereby the
13 lessee obtains the possession and use of a motor vehicle for the period
14 of time, for the purposes, and for the consideration set forth in the
15 agreement whether or not the agreement includes an option to
16 purchase the motor vehicle; provided, however, 'lease' shall not
17 include a residential rental agreement of a manufactured home which
18 is subject to Chapter 42 of the General Statutes.

19 (3) 'Lessor' means any person who in the regular course of business or as
20 a part of regular business activity leases motor vehicles under motor
21 vehicle lease agreements, purchases motor vehicle lease agreements,
22 or any sales finance company that purchases motor vehicle lease
23 agreements.

- 1 (4) 'Lessee' means a person who obtains possession and use of a motor
2 vehicle through a motor vehicle lease agreement. 'Lessee' shall
3 include any co-lessee listed on the motor vehicle lease agreement.
- 4 (5) 'Person' means an individual, partnership, corporation, association or
5 any other group however organized.
- 6 (6) 'Security interest' means an interest in personal property that secures
7 performance of an obligation.
- 8 (7) 'Secured party' means a lender, seller, or other person in whose favor
9 there is a security interest, including a person to whom accounts or
10 retail installment sales contracts have been sold.
- 11 (8) 'Sublease' means an agreement whether written or oral:
12 a. To transfer to a third party possession of a motor vehicle which
13 is and will, while in that third party's possession, remain the
14 subject of a security interest which secures performance of a
15 retail installment contract or consumer loan; or
16 b. To transfer or assign to a third party any of the buyer's rights,
17 interests, or obligations under the retail installment contract or
18 consumer loan; or
19 c. To transfer to a third party possession of a motor vehicle which
20 is and will, while in the third party's possession, remain the
21 subject of a motor vehicle lease agreement; or
22 d. To transfer or assign to a third party any of the lessee's or
23 buyer's rights, interests, or obligations under the motor vehicle
24 lease agreement.
- 25 (9) 'Sublease arranger' means a person who engages in the business of
26 inducing by any means buyers and lessees to enter into subleases as
27 sublessors and inducing third parties to enter into subleases as
28 sublessees, however such contracts may be called. 'Sublease arranger'
29 does not include the publisher, owner, agent or employee of a
30 newspaper, periodical, radio station, television station, cable-television
31 system or other advertising medium which disseminates any
32 advertisement or promotion of any act governed by this section.
- 33 (10) 'Third party' means a person other than the buyer or the lessee of the
34 vehicle.
- 35 (11) 'Transfer' means to transfer possession of a motor vehicle by means of
36 a sale, loan assumption, lease, sublease, or lease assignment.
- 37 (b) A sublease arranger commits an offense if the sublease arranger arranges a
38 sublease of a motor vehicle and:
- 39 (1) Does not first obtain written authorization for the sublease from the
40 vehicle's secured party or lessor; or
- 41 (2) Accepts a fee without having first obtained written authorization for
42 the sublease from the vehicle's secured party or lessor; or
- 43 (3) Does not disclose the location of the vehicle on the request of the
44 vehicle's buyer, lessee, secured party, or lessor.

1 (c) It is a defense to prosecution under subdivision (b)(1) of this section that
2 the entire indebtedness secured by or owed under the security interest or lease is paid or
3 satisfied in full not later than the 30th day after the date that the transfer was made.

4 (d) It is not a defense to prosecution under subsection (b) of this section that
5 the motor vehicle's buyer or lessee, secured party or lessor has violated a contract
6 creating a security interest or lease in the motor vehicle, nor may any sublease arranger
7 shift to the lessee, buyer or third party the arranger's duty under subdivision (b)(1) or
8 (b)(2) to obtain prior written authorization for formation of a sublease.

9 (e) An offense under subdivision (b)(1) or (b)(2) of this section is a Class J
10 felony.

11 (f) An offense under subdivision (b)(3) of this section is a misdemeanor under
12 G.S. 14-3(a). Each failure to disclose the location of the vehicle under this subdivision
13 shall constitute a separate offense.

14 (g) Any buyer, lessee, sublessee, secured party or lessor injured or damaged by
15 reason of any act in violation of this section, whether or not there is a conviction for the
16 violation, may file a civil action to recover damages based on the violation with the
17 following available remedies:

18 (1) Actual damages;

19 (2) Equitable relief, including a temporary restraining order, a preliminary
20 or permanent injunction, or restitution of money or property;

21 (3) Reasonable attorney fees and costs; and

22 (4) Any other relief which the court deems just.

23 If actual damages are determined by the trier of fact, treble the amount of
24 damages fixed by the verdict shall be awarded by the court. The rights and remedies
25 provided by this section are in addition to any other rights and remedies provided by
26 law.

27 (h) This section and G.S. 14-114 and G.S. 14-115 are mutually exclusive and
28 prosecution under those sections shall not preclude criminal prosecution or civil action
29 under this section."

30 Sec. 2. This act shall become effective October 1, 1990.