

GENERAL ASSEMBLY OF NORTH CAROLINA  
1985 SESSION

CHAPTER 655  
HOUSE BILL 1082

AN ACT TO ALLOW A BOND TO RELEASE A POSSESSORY LIEN AND TO  
ALLOW A SPECIAL PROCEEDING FOR DISPOSAL OF ABANDONED  
MOTOR VEHICLES SUBJECT TO SUCH LIENS.

The General Assembly of North Carolina enacts:

**Section 1.** G.S. 7A-210 is amended by rewriting the last sentence as follows:

"The seeking of the ancillary remedy of claim and delivery or an order from the clerk of superior court for the relinquishment of property subject to a lien pursuant to G.S. 44A-4(a) does not prevent a action otherwise qualifying as a small claim under this Article from so qualifying."

**Sec. 2.** G.S. 7A-243(3) is amended by adding the following new sentence after the first sentence:

"Where the owner or legal possessor of property seeks recovery of property on which a lien is asserted pursuant to G.S. 44A-4(a) the amount in controversy is that portion of the asserted lien which is disputed."

**Sec. 3.** G.S. 7A-231 is amended by rewriting the first sentence as follows:

"The provisional and incidental remedies of claim and delivery, subpoena duces tecum, production of documents and orders for the relinquishment of property subject to a possessory lien pursuant to G.S. 44A-4(a) are obtainable in small claims actions."

**Sec. 4.** G.S. 44A-4(a) is amended by deleting the words "or posts bond for double such amount" from the second sentence in the second paragraph and by adding at the end of the second paragraph the following:

"The request for immediate possession may be made in the complaint, which shall also set forth the amount of the asserted lien and the portion thereof which is not in dispute, if any. If within three days after service of the summons and complaint, as the number of days is computed in G.S. 1A-1, Rule 6, the lienor does not file a contrary statement of the amount of the lien at the time of the filing of the complaint, the amount set forth in the complaint shall be deemed to be the amount of the asserted lien. The clerk may at any time disburse to the lienor that portion of the cash bond, which the plaintiff says in his complaint is not in dispute, upon application of the lienor. The magistrate or judge shall direct appropriate disbursement of the disputed or undisbursed portion of the bond in the judgment of the court. In the event an action by the owner pursuant to this section is heard in district or superior court, the substantially prevailing party in such court may be awarded a reasonable attorney's fee in the discretion of the judge."

**Sec. 5.** G.S. 44A-4(b)(1) is amended by adding at the end the following language:

"If the Division notifies the lienor that the registered or certified mail notice has been returned as undeliverable, the lienor may institute a special proceeding in the court where the vehicle is being held, for authorization to sell that vehicle. In such a proceeding a lienor may include more than one vehicle, but the proceeds of the sale of each shall be subject only to valid claims against that vehicle, and any excess proceeds of the sale shall escheat to the State and be paid immediately to the treasurer for disposition pursuant to Chapter 116B of the General Statutes. A vehicle owner or possessor claiming an interest in such proceeds shall have a right of action under G.S. 116B-38.

The application to the clerk in such a special proceeding shall contain the notice of sale information set out in subsection (f) hereof. If the application is in proper form the clerk shall enter an order authorizing the sale on a date not less than 14 days therefrom, and the lienor shall cause the application and order to be sent immediately by first-class mail pursuant to G.S. 1A-1, Rule 5, to each person the Division has mailed notice to previously. Following the authorized sale the lienor shall file with the clerk a report in the form of an affidavit, stating that two or more bona fide bids on the vehicle were received, the names, addresses and bids of the bidders, and a statement of the disposition of the sale proceeds. The clerk then shall enter an order directing the Division to transfer title accordingly.

If prior to the sale the owner or legal possessor contests the sale or lien in a writing filed with the clerk, the proceeding shall be handled in accordance with G.S. 1-399."

**Sec. 6.** The Administrative Office of the Courts with the advice and assistance of the Attorney General shall prepare forms appropriate and necessary to meet the purposes of this act.

**Sec. 7.** This act shall become effective January 1, 1986.

In the General Assembly read three times and ratified, this the 8<sup>th</sup> day of July, 1985.