

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION

CHAPTER 1065
HOUSE BILL 1240

AN ACT TO MAKE CERTAIN CHANGES IN THE LAW REGARDING
FRAUDULENT DISPOSAL OF PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-114 reads as rewritten:

"§ 14-114. Fraudulent disposal of personal property on which there is a security interest.—(a) If any person, after executing a security agreement on personal property for a lawful purpose, shall make any disposition of any property embraced in such security agreement, with intent to ~~hinder, delay or~~ defeat the rights of the secured party, every person so offending and every person with a knowledge of the security interest buying any property embraced in which security agreement, and every person assisting, aiding or abetting the unlawful disposition of such property, with intent to ~~hinder, delay or~~ defeat the rights of any secured party in such security agreement, shall be guilty of a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500.00), imprisonment for not more than six months, or both. ~~In all indictments for violations of the provisions of this section it shall not be necessary to allege or prove the person to whom any sale or disposition of the property was made, but proof of the possession of the property embraced in such security agreement by the grantor thereof, after the execution of said security agreement, and while it is in force, the further proof of the fact that the sheriff or other officer charged with the execution of process cannot after due diligence find such property under process directed to him for its seizure, for the satisfaction of such security agreement, or that the secured party demanded the possession thereof of the grantor for the purpose of sale to foreclose said security agreement, after the right to such foreclosure had accrued, and that the grantor failed to produce, deliver or surrender the same to the secured party for that purpose, shall be prima facie proof of the fact of the disposition or sale of such property, by the grantor, with the intent to hinder, delay or defeat the rights of the secured party.~~"

"A person's refusal to turn over secured property to a secured party who is attempting to repossess the property without a judgment or order for possession shall not, by itself, be a violation of this section.

(b) Intent to commit the crime as set forth in subsection (a) may be presumed from proof of possession of the property embraced in such security agreement by the grantor thereof after execution of the security agreement, and while it is in force, the further proof of the fact that the sheriff or other officer charged with the execution of process cannot after due diligence find such property under process directed to him for its seizure, for the satisfaction of such security agreement. However, this presumption

may be rebutted by evidence that the property has, through no fault of the defendant, been stolen, lost, damaged beyond repair, or otherwise disposed of by the defendant without intent to defeat the rights of the secured party. ~~When there is conflicting evidence on intent the State shall have the burden of proof.~~

Sec. 2. G.S. 14-115 reads as rewritten:

"§ 14-115. Secreting property to hinder enforcement of lien or security interest.– Any person removing, exchanging or secreting any personal property on which a lien or security interest exists, after a judgment or order for possession for that property has been issued, with intent to prevent or hinder the enforcement of the lien or security interest, shall be guilty of a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500.00), imprisonment for not more than six months, or both."

Sec. 3. G.S. 14-168.4 is added to the General Statutes to read as follows:

"§ 14-168.4. Failing to return rented property on which there is purchase option.–

(a) It shall be a misdemeanor, punishable by a fine not to exceed five hundred dollars (\$500.00), imprisonment for not more than six months, or both, for any person to fail to return rented property with intent to defeat the rights of the owner, which is rented pursuant to a written rental agreement in which there is an option to purchase the property, after the date of termination provided in the agreement has occurred or, if the termination date is the occurrence of a specified event, then that such event has in fact occurred.

(b) Intent to commit the crime set forth in subsection (a) may be presumed from the following evidence:

- (1) Evidence that the defendant has disposed of the property, or has encumbered the property by allowing a security interest to be placed on the property or by delivering the property to a pawnbroker; or
- (2) Evidence that the defendant has refused to deliver the property to the sheriff or other officer charged with the execution of process directed to him for its seizure, after a judgment for possession of the property or a claim and delivery order for the property has been issued; or
- (3) Evidence that the defendant has moved the rented property out of state and has failed to notify the owner of the new location of the property.

However, this presumption may be rebutted by evidence from the defendant that he has no intent to defeat the rights of the owner of the property.

(c) Violations of this Article for failure to return rented property which is rented pursuant to a written rental agreement in which there is an option to purchase shall be prosecuted only under this section.

Sec. 4. This act shall become effective October 1, 1988.

In the General Assembly read three times and ratified this the 7th day of July, 1988.