

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 1011
SENATE BILL 1618

AN ACT TO MAKE RELEASING OF MOTOR VEHICLES UNLAWFUL.

The General Assembly of North Carolina enacts:

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

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

(a) As used in this section:

- (1) 'Buyer' means a purchaser of a motor vehicle under the terms of a retail installment contract. 'Buyer' shall include any co-buyer on the retail installment contract.
- (2) 'Lease' means an agreement between a lessor and a lessee whereby the lessee obtains the possession and use of a motor vehicle for the period of time, for the purposes, and for the consideration set forth in the agreement whether or not the agreement includes an option to purchase the motor vehicle; provided, however, 'lease' shall not include a residential rental agreement of a manufactured home which is subject to Chapter 42 of the General Statutes.
- (3) 'Lessor' means any person who in the regular course of business or as a part of regular business activity leases motor vehicles under motor vehicle lease agreements, purchases motor vehicle lease agreements, or any sales finance company that purchases motor vehicle lease agreements.
- (4) 'Lessee' means a person who obtains possession and use of a motor vehicle through a motor vehicle lease agreement. 'Lessee' shall include any co-lessee listed on the motor vehicle lease agreement.
- (5) 'Person' means an individual, partnership, corporation, association or any other group however organized.
- (6) 'Security interest' means an interest in personal property that secures performance of an obligation.
- (7) 'Secured party' means a lender, seller, or other person in whose favor there is a security interest, including a person to whom accounts or retail installment sales contracts have been sold.
- (8) 'Sublease' means an agreement whether written or oral:
 - a. To transfer to a third party possession of a motor vehicle which is and will, while in that third party's possession, remain the

- subject of a security interest which secures performance of a retail installment contract or consumer loan; or
- b. To transfer or assign to a third party any of the buyer's rights, interests, or obligations under the retail installment contract or consumer loan; or
 - c. To transfer to a third party possession of a motor vehicle which is and will, while in the third party's possession, remain the subject of a motor vehicle lease agreement; or
 - d. To transfer or assign to a third party any of the lessee's or buyer's rights, interests, or obligations under the motor vehicle lease agreement.
- (9) 'Sublease arranger' means a person who engages in the business of inducing by any means buyers and lessees to enter into subleases as sublessors and inducing third parties to enter into subleases as sublessees, however such contracts may be called. 'Sublease arranger' does not include the publisher, owner, agent or employee of a newspaper, periodical, radio station, television station, cable-television system or other advertising medium which disseminates any advertisement or promotion of any act governed by this section.
- (10) 'Third party' means a person other than the buyer or the lessee of the vehicle.
- (11) 'Transfer' means to transfer possession of a motor vehicle by means of a sale, loan assumption, lease, sublease, or lease assignment.
- (b) A sublease arranger commits an offense if the sublease arranger arranges a sublease of a motor vehicle and:
- (1) Does not first obtain written authorization for the sublease from the vehicle's secured party or lessor; or
 - (2) Accepts a fee without having first obtained written authorization for the sublease from the vehicle's secured party or lessor; or
 - (3) Does not disclose the location of the vehicle on the request of the vehicle's buyer, lessee, secured party, or lessor; or
 - (4) Does not provide to the third party new, accurate disclosures under the Consumer Credit Protection Act, 15 U.S.C. Section 1601, et seq.; or
 - (5) Does not provide oral and written notice to the buyer or lessee that he will not be released from liability; or
 - (6) Does not ensure that all rights under warranties and service contracts regarding the motor vehicle transfer to the third party, unless a pro rata rebate for any unexpired coverage is applied to reduce the third party's cost under the sublease; or
 - (7) Does not take reasonable steps to ensure that the third party is financially able to assume the payment obligations of the buyer or lessee according to the terms of the lease agreement, retail installment contract, or consumer loan.

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

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

(e) All other offenses under subsection (b) of this section are misdemeanors under G.S. 14-3(a). Each failure to disclose the location of the vehicle under subdivision (b)(3) shall constitute a separate offense.

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

- (1) Three times the amount of any actual damages or fifteen hundred dollars (\$1500.00), whichever is greater;
- (2) Equitable relief, including a temporary restraining order, a preliminary or permanent injunction, or restitution of money or property;
- (3) Reasonable attorney fees and costs; and
- (4) Any other relief which the court deems just.

The rights and remedies provided by this section are in addition to any other rights and remedies provided by law.

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

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

In the General Assembly read three times and ratified this the 26th day of July, 1990.