CHAPTER 13

Regulation of the Subleasing and Loan Assumption of Motor Vehicles

**SECTION 37‑13‑10.** Definitions.

 As used in this chapter:

 (1) “Buyer” means a purchaser of a motor vehicle under the terms of a retail installment contract. It includes a co‑buyer on the retail installment contract.

 (2) “Lease” means an agreement between a lessor and lessee where 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. However, “lease” does not include a residential rental agreement of a manufactured home subject to Chapter 40, Title 27.

 (3) “Lessor” means a person who in the regular course of business or as a part of regular business activity leases motor vehicles under motor vehicle lease agreements or purchases motor vehicle lease agreements or a 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.

 (5) “Person” means an individual, a partnership, a corporation, an association, or 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, a 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 to transfer:

 (a) to a third party possession of a motor vehicle which is and, while in that third party’s possession, remains the subject of a security interest which secures performance of a retail installment contract or consumer loan;

 (b) or assign to a third party any of the buyer’s rights, interests, or obligations under the retail installment contract or consumer loan;

 (c) to a third party possession of a motor vehicle which is and, while in the third party’s possession, remains the subject of a motor vehicle lease agreement; or

 (d) 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 or sublessees, however these contracts are called.

 (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 sale, loan assumption, lease, sublease, or lease assignment.

HISTORY: 1991 Act No. 132, Section 1.

**SECTION 37‑13‑20.** Unlawful acts.

 A sublease arranger commits an offense if the sublease arranger arranges a sublease of a motor vehicle and:

 (1) first does not obtain written authorization for the sublease from the vehicle’s secured party or lessor;

 (2) accepts a fee without first having obtained written authorization for the sublease from the vehicle’s secured party or lessor;

 (3) accepts a fee in excess of the amount allowed by regulations promulgated pursuant to this chapter;

 (4) does not disclose the location of the vehicle on the request of the vehicle’s buyer, lessee, secured party, or lessor;

 (5) does not provide to the third party new, accurate disclosures under the Consumer Protection Act, 15 U.S.C. Section 1601, et seq.;

 (6) does not provide oral and written notice to the buyer or lessee that he is not released from liability;

 (7) 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 unexpired coverage is applied to reduce the third party’s cost under the sublease;

 (8) 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; or

 (9) violates a regulation promulgated by the South Carolina Department of Consumer Affairs pursuant to this chapter.

HISTORY: 1991 Act No. 132, Section 1.

**SECTION 37‑13‑30.** Violation by other person not a defense to prosecution of sublease arranger; sublease arranger may not shift duties.

 It is not a defense to prosecution under Section 37‑13‑20 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 a sublease arranger shift to the lessee, buyer, or third party the arranger’s duty under Section 37‑13‑20(1) or (2) to obtain prior written authorization for formation of sublease.

HISTORY: 1991 Act No. 132, Section 1.

**SECTION 37‑13‑40.** Civil penalties for violation of chapter; remedies.

 A buyer, lessee, sublessee, secured party, or lessor injured or damaged by an act in violation of this chapter or regulations promulgated pursuant to it, 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 actual damages or fifteen hundred dollars, 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 other relief the court considers just.

HISTORY: 1991 Act No. 132, Section 1.

**SECTION 37‑13‑50.** Criminal penalties for violations of chapter.

 A person who violates this chapter or regulations promulgated pursuant to it is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than three years, or both.

HISTORY: 1991 Act No. 132, Section 1; 1993 Act No. 184 Section 208.

**SECTION 37‑13‑60.** Promulgation of regulations by Department of Consumer Affairs.

 The Department of Consumer Affairs may promulgate regulations governing:

 (1) the conduct of the business of sublease arranging;

 (2) licensing requirements of sublease arrangers;

 (3) forms for use by sublease arrangers;

 (4) maximum fees and charges which may be charged by sublease arrangers;

 (5) performance bond or other guaranty requirements from sublease arrangers;

 (6) notification requirements to interested parties notifying them of a sublease under this chapter.

HISTORY: 1991 Act No. 132, Section 1.

**SECTION 37‑13‑70.** Education of public and enforcement of chapter by Department of Consumer Affairs.

 Consistent with this chapter, the Department of Consumer Affairs may use all powers in Chapter 6 of this title to educate the public and enforce this chapter subject to the duties imposed on the department in Chapter 6.

HISTORY: 1991 Act No. 132, Section 1.

**SECTION 37‑13‑80.** Promulgation of regulations as to licensing requirements; licensing fee.

 If the Department of Consumer Affairs promulgates regulations on licensing requirements under this chapter, it may require payment of a licensing fee from each applicant for each location not to exceed two hundred fifty dollars a year.

HISTORY: 1991 Act No. 132, Section 1.

**SECTION 37‑13‑90.** Rights and remedies in addition to other rights and remedies.

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

HISTORY: 1991 Act No. 132, Section 1.