

**A-Engrossed**  
**House Bill 4103**

Ordered by the House February 14  
Including House Amendments dated February 14

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Consumer Protection and Government Efficiency)

**SUMMARY**

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

*[Provides that lien claimant that fails to give notice to person that has security interest in chattel sold to foreclose lien is liable for sum of purchase to buyer that purchased chattel at foreclosure sale if buyer takes chattel subject to security interest. Provides that buyer may bring action at law to recover sum and that prevailing party in action may recover reasonable attorney fees.]*

*[Requires person that brings action at law against lien claimant to notify lien claimant before action and, if laws of this state require certificate of title for chattel subject to foreclosure, to notify Department of Transportation. Provides that if person provides notice, court shall stay foreclosure sale and department may not transfer certificate of title.]*

*[Requires lien claimant to provide department with certain records and copy of notice provided to persons with security interest before selling vehicle or offering vehicle for sale in order to foreclose possessory lien.]*

**Provides that lien claimant's failure to give notice of foreclosure sale to lien debtor with interest in, or to person with security interest in, chattel for which Department of Transportation, State Marine Board or Oregon Department of Aviation requires certificate of title or certificate of registration is unlawful practice under Unlawful Trade Practices Act. Requires lien claimant to include with notice copy of invoice, work or repair order, authorization for towing, official form to authorize law enforcement agency to impound chattel or other record or document that is basis for lien.**

Becomes operative January 1, 2015.

Declares emergency, effective on passage.

**A BILL FOR AN ACT**

1  
2 Relating to possessory liens; creating new provisions; amending ORS 87.192, 87.196 and 646.608; and  
3 declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 87.192 is amended to read:

6 87.192. (1)(a) Before a lien claimant forecloses **by sale** a lien created [by] **under** ORS 87.152 to  
7 87.162 [by sale], the lien claimant shall give notice of the foreclosure sale to the lien debtor by first  
8 class mail with certificate of mailing, registered mail or certified mail sent to the lien debtor at the  
9 lien debtor's last-known address. The lien claimant shall give notice of the foreclosure sale to the  
10 lien debtor:

11 [(a)] **(A)** Except as otherwise provided in this [subsection] **paragraph**, at least 30 days before the  
12 foreclosure sale.

13 [(b)] **(B)** If the lien is for the cost of removing, towing or [storage of] **storing** a vehicle that [is  
14 appraised at a value of \$500 or less by] a person who holds a certificate issued under ORS 819.480  
15 **has appraised at a value of \$1,000 or less**, at least 15 days before the foreclosure sale.

16 [(c) If the lien is for the cost of removing, towing or storage of a vehicle that is appraised at a value  
17 of \$1,000 or less but more than \$500 by a person who holds a certificate issued under ORS 819.480,

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [italic and bracketed] is existing law to be omitted. New sections are in **boldfaced** type.

1 *at least 15 days before the foreclosure sale.]*

2 *[(d) If the lien is for the cost of removing, towing or storage of a vehicle that is appraised at a*  
3 *value of more than \$1,000 by a person who holds a certificate issued under ORS 819.480, at least 30*  
4 *days before the foreclosure sale.]*

5 **(b) If the chattel to be sold at a foreclosure sale is chattel for which the Department of**  
6 **Transportation has issued a certificate of title under ORS 803.045, for which the State Marine**  
7 **Board requires a certificate of title under ORS 830.810 or for which the Oregon Department**  
8 **of Aviation requires a certificate of registration under ORS 837.040, the lien claimant shall**  
9 **include with the notice described in paragraph (a) of this subsection a copy of an invoice,**  
10 **work or repair order, authorization for towing, official form that authorizes a law enforce-**  
11 **ment agency to impound the chattel or any other record or document that is evidence of the**  
12 **basis for the lien.**

13 **(c) A lien claimant's failure to give a lien debtor notice in accordance with this section**  
14 **concerning a foreclosure sale for chattel described in paragraph (b) of this subsection is an**  
15 **unlawful practice under ORS 646.608.**

16 (2) The lien claimant shall give public notice of the foreclosure sale by posting notice of *[it]* **the**  
17 **foreclosure sale** in a public place at or near the front door of the county courthouse of the county  
18 in which the sale is to be held and, except as provided in paragraph (b) of this subsection, in a  
19 public place at the location where the lien claimant obtained possession of the chattel to be sold  
20 from the lien debtor. The following apply to notice under this subsection:

21 (a) **The lien claimant shall give** notice under this subsection *[must be given no]* **not** later than  
22 the time required for notice to a lien debtor under subsection (1) of this section.

23 (b) This subsection does not require **the lien claimant to post** *[posting of]* notice at the location  
24 where **the lien claimant obtained** the chattel *[was obtained]* if the chattel is a *[vehicle required to*  
25 *obtain a certificate of title issued under ORS chapter 803]* **chattel for which the Department of**  
26 **Transportation has issued a certificate of title under ORS 803.045, for which the State Marine**  
27 **Board requires a certificate of title under ORS 830.810 or for which the Oregon Department**  
28 **of Aviation requires a certificate of registration under ORS 837.040.**

29 (3) If the chattel to be sold at a foreclosure sale is something other than an abandoned vehicle  
30 and has a fair market value of \$1,000 or more, or if the chattel to be sold is an abandoned vehicle  
31 and has a fair market value of \$2,500 or more, the lien claimant, in addition to the notice required  
32 by subsection (2) of this section, shall have a notice of foreclosure sale printed once a week for two  
33 successive weeks in a daily or weekly newspaper, as defined in ORS 193.010, published in the county  
34 in which the sale is held or, if there is none, in a daily or weekly newspaper, as defined in ORS  
35 193.010, generally circulated in the county in which the sale is held.

36 (4) The notice of foreclosure sale required under this section *[shall]* **must** contain a particular  
37 description of the property to be sold, the name of the owner or reputed owner *[thereof]* **of the**  
38 **property**, the amount due on the lien, the time and the place of the sale and the name of the person  
39 foreclosing the lien.

40 **SECTION 2.** ORS 87.196 is amended to read:

41 87.196. (1)(a) A lien claimant *[who]* **that** forecloses **by sale** a lien created *[by]* **under** ORS 87.152  
42 to 87.162 *[by sale]* shall give notice of the foreclosure sale by first class, registered or certified mail.  
43 The following apply:

44 *[(a)]* **(A)** *[Notice shall be given]* **The lien claimant shall give notice** to all persons *[with a se-*  
45 *curity interest in the chattel to be sold who]* **that** have filed a financing statement *[perfecting that*

1 *security interest*] in the office of the Secretary of State, or in the office of the appropriate county  
 2 officer of the county in which the sale is held, **to perfect a security interest in the chattel to**  
 3 **be sold.**

4 [(b)] **(B)** Notwithstanding [*paragraph (a) of this subsection*] **subparagraph (A) of this para-**  
 5 **graph**, if the chattel to be sold at the foreclosure sale is a chattel, other than part of the motor  
 6 vehicle inventory of a dealer issued a vehicle dealer certificate under ORS 822.020, for which [*a*  
 7 *certificate of title is required by the laws of this state, notice need only be given to persons who the*  
 8 *certificate of title indicates have a security interest or lien in the chattel*] **the Department of Trans-**  
 9 **portation has issued a certificate of title under ORS 803.045, for which the State Marine**  
 10 **Board requires a certificate of title under ORS 830.810 or for which the Oregon Department**  
 11 **of Aviation requires a certificate of registration under ORS 837.040, the lien claimant needs**  
 12 **to give notice only to persons that the certificate of title or certificate of registration indi-**  
 13 **cates have a security interest or lien in the chattel.**

14 [(c)] **(C)** [*Notice*] **The lien claimant shall give notice** under this [*subsection shall be given*]  
 15 **paragraph** at least 30 days [*prior to*] **before** the foreclosure sale. *However, if the lien is claimed,*  
 16 **but if the lien claimant claims a lien** under ORS 87.152, the lien claimant shall give the notice  
 17 required by this subsection:

18 [(A)] **(i)** Not later than the 20th day after the date on which the storage charges begin;

19 [(B)] **(ii)** [*If no storage charges are imposed,*] Not later than the 30th day after the date on which  
 20 the services provided are completed[;], **if no storage charges are imposed; or**

21 [(C)] **(iii)** At least 15 days [*prior to*] **before** the foreclosure sale if the lien is for the cost of re-  
 22 moving, towing or [*storage of*] **storing** a vehicle that [*is appraised at a value of \$1,000 or less but*  
 23 *more than \$500 by*] a person who holds a certificate issued under ORS 819.480 **has appraised at a**  
 24 **value of \$1,000 or less.** [; *and*]

25 [(D)] *At least 15 days prior to the foreclosure sale if the lien is for the cost of removing, towing or*  
 26 *storage of a vehicle that is appraised at a value of \$500 or less by a person who holds a certificate*  
 27 *issued under ORS 819.480.*

28 **(b) A lien claimant that gives notice of a foreclosure sale for chattel described in para-**  
 29 **graph (a)(B) of this subsection shall include with the notice a copy of an invoice, work or**  
 30 **repair order, authorization for towing, official form that authorizes a law enforcement**  
 31 **agency to impound the chattel or any other record or document that is evidence of the basis**  
 32 **for the lien.**

33 **(c) A lien claimant's failure to give the notice required under this subsection to a person**  
 34 **that is entitled to notice under paragraph (a)(B) of this subsection is an unlawful practice**  
 35 **under ORS 646.608.**

36 (2) A person notified under subsection (1) of this section may discharge the lien and preserve  
 37 the person's security interest in the chattel by paying the lien claimant the amount of the lien claim  
 38 and reasonable expenses **the person** actually [*incurred*] **incurs** in foreclosing the lien claim. If the  
 39 person does not [*so*] discharge the lien before the day of the foreclosure sale, the **foreclosure sale**  
 40 **extinguishes the** person's security interest in the chattel [*is extinguished on the day the foreclosure*  
 41 *sale is completed*].

42 [(3)] *If the chattel to be sold at a foreclosure sale is a chattel for which a certificate of title is re-*  
 43 *quired by the laws of this state and if the lien claimant does not notify a person as required by this*  
 44 *section, the chattel remains subject to that security interest or lien and the buyer of the chattel at a*  
 45 *foreclosure sale held under ORS 87.142 to 87.490 or 87.700 to 87.736 takes the chattel subject to the*

1 *security interest or lien.]*

2 [(4)] (3) If a lien claimant does not **give notice in accordance with subsection (1) of this**  
 3 **section** [*notify a person, other than a person indicated on a certificate of title as a secured party or*  
 4 *lienholder, who*] **to a person that** claims a security interest or lien on the chattel sold at a fore-  
 5 closure sale [*as required by subsection (1) of this section*], **other than a person that is entitled to**  
 6 **notice under subsection (1)(a)(B) of this section**, the lien claimant is liable to [*that*] **the** person  
 7 for a sum equal to the fair market value of the chattel sold at the foreclosure sale or the amount  
 8 due [*that*] **to the** person under the security agreement or lien at the time of the foreclosure sale,  
 9 whichever amount is less. The secured party or other lien claimant may recover [*that*] **the** sum by  
 10 an action at law.

11 **SECTION 3.** ORS 646.608 is amended to read:

12 646.608. (1) A person engages in an unlawful practice if in the course of the person's business,  
 13 vocation or occupation the person does any of the following:

14 (a) Passes off real estate, goods or services as the real estate, goods or services of another.

15 (b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, ap-  
 16 proval, or certification of real estate, goods or services.

17 (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or asso-  
 18 ciation with, or certification by, another.

19 (d) Uses deceptive representations or designations of geographic origin in connection with real  
 20 estate, goods or services.

21 (e) Represents that real estate, goods or services have sponsorship, approval, characteristics,  
 22 ingredients, uses, benefits, quantities or qualities that the real estate, goods or services do not have  
 23 or that a person has a sponsorship, approval, status, qualification, affiliation, or connection that the  
 24 person does not have.

25 (f) Represents that real estate or goods are original or new if the real estate or goods are de-  
 26 teriorated, altered, reconditioned, reclaimed, used or secondhand.

27 (g) Represents that real estate, goods or services are of a particular standard, quality, or grade,  
 28 or that real estate or goods are of a particular style or model, if the real estate, goods or services  
 29 are of another.

30 (h) Disparages the real estate, goods, services, property or business of a customer or another  
 31 by false or misleading representations of fact.

32 (i) Advertises real estate, goods or services with intent not to provide the real estate, goods or  
 33 services as advertised, or with intent not to supply reasonably expectable public demand, unless the  
 34 advertisement discloses a limitation of quantity.

35 (j) Makes false or misleading representations of fact concerning the reasons for, existence of,  
 36 or amounts of price reductions.

37 (k) Makes false or misleading representations concerning credit availability or the nature of the  
 38 transaction or obligation incurred.

39 (L) Makes false or misleading representations relating to commissions or other compensation to  
 40 be paid in exchange for permitting real estate, goods or services to be used for model or demon-  
 41 stration purposes or in exchange for submitting names of potential customers.

42 (m) Performs service on or dismantles any goods or real estate if the owner or apparent owner  
 43 of the goods or real estate does not authorize the service or dismantling.

44 (n) Solicits potential customers by telephone or door to door as a seller unless the person pro-  
 45 vides the information required under ORS 646.611.

1 (o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give  
2 a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of  
3 the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or  
4 otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate,  
5 discount or other value is contingent upon an event occurring after the time the customer enters  
6 into the transaction.

7 (p) Makes any false or misleading statement about a prize, contest or promotion used to publi-  
8 cize a product, business or service.

9 (q) Promises to deliver real estate, goods or services within a certain period of time with intent  
10 not to deliver the real estate, goods or services as promised.

11 (r) Organizes or induces or attempts to induce membership in a pyramid club.

12 (s) Makes false or misleading representations of fact concerning the offering price of, or the  
13 person's cost for real estate, goods or services.

14 (t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any  
15 known material defect or material nonconformity.

16 (u) Engages in any other unfair or deceptive conduct in trade or commerce.

17 (v) Violates any of the provisions relating to auction sales, consignment sales, auctioneers,  
18 consignees or auction marts under ORS 698.640, whether in a commercial or noncommercial situ-  
19 ation.

20 (w) Manufactures mercury fever thermometers.

21 (x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal  
22 law, or is:

23 (A) Prescribed by a person licensed under ORS chapter 677; and

24 (B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and  
25 on the proper cleanup of mercury should breakage occur.

26 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to  
27 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be  
28 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the  
29 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-  
30 graph, "thermostat" means a device commonly used to sense and, through electrical communication  
31 with heating, cooling or ventilation equipment, control room temperature.

32 (z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains  
33 mercury light switches.

34 (aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.

35 (bb) Violates ORS 646A.070 (1).

36 (cc) Violates any requirement of ORS 646A.030 to 646A.040.

37 (dd) Violates the provisions of ORS 128.801 to 128.898.

38 (ee) Violates ORS 646.883 or 646.885.

39 (ff) Violates ORS 646.569.

40 (gg) Violates the provisions of ORS 646A.142.

41 (hh) Violates ORS 646A.360.

42 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.

43 (jj) Violates ORS 646.563.

44 (kk) Violates ORS 759.690 or any rule adopted pursuant thereto.

45 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant

- 1 thereto.
- 2 (mm) Violates ORS 646A.210 or 646A.214.
- 3 (nn) Violates any provision of ORS 646A.124 to 646A.134.
- 4 (oo) Violates ORS 646A.095.
- 5 (pp) Violates ORS 822.046.
- 6 (qq) Violates ORS 128.001.
- 7 (rr) Violates ORS 646A.800 (2) to (4).
- 8 (ss) Violates ORS 646A.090 (2) to (4).
- 9 (tt) Violates ORS 87.686.
- 10 (uu) Violates ORS 646A.803.
- 11 (vv) Violates ORS 646A.362.
- 12 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
- 13 (xx) Violates ORS 180.440 (1) or 180.486 (1).
- 14 (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
- 15 (zz) Violates ORS 87.007 (2) or (3).
- 16 (aaa) Violates ORS 92.405 (1), (2) or (3).
- 17 (bbb) Engages in an unlawful practice under ORS 646.648.
- 18 (ccc) Violates ORS 646A.365.
- 19 (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
- 20 (eee) Sells a gift card in violation of ORS 646A.276.
- 21 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
- 22 (ggg) Violates ORS 646A.430 to 646A.450.
- 23 (hhh) Violates a provision of ORS 744.318 to 744.384.
- 24 (iii) Violates a provision of ORS 646A.702 to 646A.720.
- 25 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-  
26 scribed in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the  
27 subject of the violation.
- 28 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
- 29 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50  
30 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
- 31 (mmm) Violates a provision of ORS 646A.480 to 646A.495.
- 32 (nnn) Violates ORS 646A.082.
- 33 (ooo) Violates ORS 646.647.
- 34 (ppp) Violates ORS 646A.115.
- 35 (qqq) Violates a provision of ORS 646A.405.
- 36 (rrr) Violates ORS 646A.092.
- 37 (sss) Violates a provision of ORS 646.644.
- 38 (ttt) Violates a provision of ORS 646A.295.
- 39 (uuu) Violates ORS 646A.564.
- 40 (vvv) Engages in the business of, or acts in the capacity of, an immigration consultant, as de-  
41 fined in ORS 9.280, in this state and for compensation, unless federal law authorizes the person to  
42 do so or unless the person is an active member of the Oregon State Bar.
- 43 (www) Violates ORS 702.012, 702.029, 702.032 or 702.054.
- 44 (xxx) Violates ORS 646A.806.
- 45 **(yyy) Violates ORS 87.192 (1) or 87.196 (1).**

1 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-  
2 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.

3 (3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney  
4 need not prove competition between the parties or actual confusion or misunderstanding.

5 (4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-  
6 torney General has first established a rule in accordance with the provisions of ORS chapter 183  
7 declaring the conduct to be unfair or deceptive in trade or commerce.

8 (5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is brought  
9 under subsection (1)(xx) of this section by a person other than a prosecuting attorney, relief is lim-  
10 ited to an injunction and the prevailing party may be awarded reasonable attorney fees.

11 **SECTION 4. (1) The amendments to ORS 87.192, 87.196 and 646.608 by sections 1, 2 and 3**  
12 **of this 2014 Act become operative January 1, 2015.**

13 **(2) The Director of Transportation, the State Marine Board and the Director of the**  
14 **Oregon Department of Aviation may take any action before the operative date specified in**  
15 **subsection (1) of this section that is necessary to enable the director or the board to exer-**  
16 **cise, on and after the operative date specified in subsection (1) of this section, all of the du-**  
17 **ties, functions and powers conferred on the director or the board by the amendments to ORS**  
18 **87.192, 87.196 and 646.608 by sections 1, 2 and 3 of this 2014 Act.**

19 **SECTION 5. This 2014 Act being necessary for the immediate preservation of the public**  
20 **peace, health and safety, an emergency is declared to exist, and this 2014 Act takes effect**  
21 **on its passage.**

22