

B-Engrossed
House Bill 4103

Ordered by the Senate February 25
Including House Amendments dated February 14 and Senate Amendments
dated February 25

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'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.*] **entitles lien debtor to bring action against lien claimant for market value of chattel at time of foreclosure sale, plus attorney fees, or entitles person with security interest in chattel to bring action against lien claimant for market value of chattel at time of foreclosure sale or amount due person under security agreement or lien at time of foreclosure sale, whichever is less, plus attorney fees.**

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 and 87.196; and declar-
3 ing 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,*
18 *at least 15 days before the foreclosure sale.*]

19 [(d) *If the lien is for the cost of removing, towing or storage of a vehicle that is appraised at a*
20 *value of more than \$1,000 by a person who holds a certificate issued under ORS 819.480, at least 30*

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 *days before the foreclosure sale.]*

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

10 (c) **If a lien claimant fails to give notice in accordance with this subsection to a lien**
11 **debtor concerning chattel described in paragraph (b) of this subsection, the lien claimant is**
12 **liable to the lien debtor for a sum equal to the fair market value of the chattel sold at the**
13 **foreclosure sale. The lien debtor may bring an action to recover the sum and reasonable at-**
14 **torney fees.**

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

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

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

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

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

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

40 87.196. (1)(a) A lien claimant *[who]* **that** forecloses **by sale** a lien created *[by]* **under** ORS 87.152
41 to 87.162 *[by sale]* shall give notice of the foreclosure sale by first class, registered or certified mail.
42 The following apply:

43 *[(a)]* **(A)** *[Notice shall be given]* **The lien claimant shall give notice** to all persons *[with a se-*
44 *curity interest in the chattel to be sold who]* **that** have filed a financing statement *[perfecting that*
45 *security interest]* in the office of the Secretary of State, or in the office of the appropriate county

1 officer of the county in which the sale is held, **to perfect a security interest in the chattel to**
2 **be sold.**

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

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

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

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

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

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

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

32 **(2) A person who is entitled to receive notice under subsection (1) of this section may**
33 **discharge the lien and preserve the person's security interest in the chattel by paying the**
34 **lien claimant the amount of the lien claim and reasonable expenses the person actually in-**
35 **currs in foreclosing the lien claim. If the person does not discharge the lien before the day**
36 **of the foreclosure sale, the foreclosure sale extinguishes the person's security interest in the**
37 **chattel even if the person does not receive notice under subsection (1) of this section.**

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

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

1 *foreclosure sale held under ORS 87.142 to 87.490 or 87.700 to 87.736 takes the chattel subject to the*
2 *security interest or lien.]*

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

11 **SECTION 3. (1) The amendments to ORS 87.192 and 87.196 by sections 1 and 2 of this 2014**
12 **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 and 87.196 by sections 1 and 2 of this 2014 Act.**

19 **SECTION 4. 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.**