

HOUSE AMENDMENTS TO HOUSE BILL 4103

By COMMITTEE ON CONSUMER PROTECTION AND GOVERNMENT EFFICIENCY

February 14

1 On page 1 of the printed bill, line 2, after the second semicolon delete the rest of the line and
2 line 3 and insert “amending ORS 87.192, 87.196 and 646.608; and declaring an emergency.”.

3 Delete lines 5 through 24 and delete pages 2 and 3 and insert:

4 “**SECTION 1.** ORS 87.192 is amended to read:

5 “87.192. (1)(a) Before a lien claimant forecloses **by sale** a lien created [by] **under** ORS 87.152
6 to 87.162 [by sale], the lien claimant shall give notice of the foreclosure sale to the lien debtor by
7 first class mail with certificate of mailing, registered mail or certified mail sent to the lien debtor
8 at the lien debtor’s last-known address. The lien claimant shall give notice of the foreclosure sale
9 to the lien debtor:

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

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

15 “[c] *If the lien is for the cost of removing, towing or storage of a vehicle that is appraised at a*
16 *value of \$1,000 or less but more than \$500 by a person who holds a certificate issued under ORS*
17 *819.480, at least 15 days before the foreclosure sale.*]

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

21 “(b) **If the chattel to be sold at a foreclosure sale is chattel for which the Department**
22 **of Transportation has issued a certificate of title under ORS 803.045, for which the State**
23 **Marine Board requires a certificate of title under ORS 830.810 or for which the Oregon De-**
24 **partment of Aviation requires a certificate of registration under ORS 837.040, the lien**
25 **claimant shall include with the notice described in paragraph (a) of this subsection a copy**
26 **of an invoice, work or repair order, authorization for towing, official form that authorizes a**
27 **law enforcement agency to impound the chattel or any other record or document that is**
28 **evidence of the basis for the lien.**

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

32 “(2) The lien claimant shall give public notice of the foreclosure sale by posting notice of [it]
33 **the foreclosure sale** in a public place at or near the front door of the county courthouse of the
34 county in which the sale is to be held and, except as provided in paragraph (b) of this subsection,
35 in a public place at the location where the lien claimant obtained possession of the chattel to be

1 sold from the lien debtor. The following apply to notice under this subsection:

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

4 “(b) This subsection does not require **the lien claimant to post** [*posting of*] notice at the lo-
5 cation where **the lien claimant obtained** the chattel [*was obtained*] if the chattel is a [*vehicle re-*
6 *quired to obtain a certificate of title issued under ORS chapter 803*] **chattel for which the**
7 **Department of Transportation has issued a certificate of title under ORS 803.045, for which**
8 **the State Marine Board requires a certificate of title under ORS 830.810 or for which the**
9 **Oregon Department of Aviation requires a certificate of registration under ORS 837.040.**

10 “(3) If the chattel to be sold at a foreclosure sale is something other than an abandoned vehicle
11 and has a fair market value of \$1,000 or more, or if the chattel to be sold is an abandoned vehicle
12 and has a fair market value of \$2,500 or more, the lien claimant, in addition to the notice required
13 by subsection (2) of this section, shall have a notice of foreclosure sale printed once a week for two
14 successive weeks in a daily or weekly newspaper, as defined in ORS 193.010, published in the county
15 in which the sale is held or, if there is none, in a daily or weekly newspaper, as defined in ORS
16 193.010, generally circulated in the county in which the sale is held.

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

21 “**SECTION 2.** ORS 87.196 is amended to read:

22 “87.196. (1)(a) A lien claimant [*who*] **that** forecloses **by sale** a lien created [*by*] **under** ORS
23 87.152 to 87.162 [*by sale*] shall give notice of the foreclosure sale by first class, registered or certi-
24 fied mail. The following apply:

25 “[*(a)*] **(A)** [*Notice shall be given*] **The lien claimant shall give notice** to all persons [*with a se-*
26 *curity interest in the chattel to be sold who*] **that** have filed a financing statement [*perfecting that*
27 *security interest*] in the office of the Secretary of State, or in the office of the appropriate county
28 officer of the county in which the sale is held, **to perfect a security interest in the chattel to**
29 **be sold.**

30 “[*(b)*] **(B)** Notwithstanding [*paragraph (a) of this subsection*] **subparagraph (A) of this para-**
31 **graph**, if the chattel to be sold at the foreclosure sale is a chattel, other than part of the motor
32 vehicle inventory of a dealer issued a vehicle dealer certificate under ORS 822.020, for which [*a*
33 *certificate of title is required by the laws of this state, notice need only be given to persons who the*
34 *certificate of title indicates have a security interest or lien in the chattel*] **the Department of Trans-**
35 **portation has issued a certificate of title under ORS 803.045, for which the State Marine**
36 **Board requires a certificate of title under ORS 830.810 or for which the Oregon Department**
37 **of Aviation requires a certificate of registration under ORS 837.040, the lien claimant needs**
38 **to give notice only to persons that the certificate of title or certificate of registration indi-**
39 **cates have a security interest or lien in the chattel.**

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

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

45 “[*(B)*] **(ii)** [*If no storage charges are imposed,*] Not later than the 30th day after the date on

1 which the services provided are completed[;], **if no storage charges are imposed; or**

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

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

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

14 “**(c)** A lien claimant’s failure to give the notice required under this subsection to a person
15 **that is entitled to notice under paragraph (a)(B) of this subsection is an unlawful practice**
16 **under ORS 646.608.**

17 “(2) A person notified under subsection (1) of this section may discharge the lien and preserve
18 the person’s security interest in the chattel by paying the lien claimant the amount of the lien claim
19 and reasonable expenses **the person** actually [*incurred*] **incurs** in foreclosing the lien claim. If the
20 person does not [*so*] discharge the lien before the day of the foreclosure sale, the **foreclosure sale**
21 **extinguishes the** person’s security interest in the chattel [*is extinguished on the day the foreclosure*
22 *sale is completed*].

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

28 “[*(4)*] **(3)** If a lien claimant does not **give notice in accordance with subsection (1) of this**
29 **section** [*notify a person, other than a person indicated on a certificate of title as a secured party or*
30 *lienholder, who*] **to a person that** claims a security interest or lien on the chattel sold at a fore-
31 closure sale [*as required by subsection (1) of this section*], **other than a person that is entitled to**
32 **notice under subsection (1)(a)(B) of this section,** the lien claimant is liable to [*that*] **the** person
33 for a sum equal to the fair market value of the chattel sold at the foreclosure sale or the amount
34 due [*that*] **to the** person under the security agreement or lien at the time of the foreclosure sale,
35 whichever amount is less. The secured party or other lien claimant may recover [*that*] **the** sum by
36 an action at law.

37 “**SECTION 3.** ORS 646.608 is amended to read:

38 “646.608. (1) A person engages in an unlawful practice if in the course of the person’s business,
39 vocation or occupation the person does any of the following:

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

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

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

45 “(d) Uses deceptive representations or designations of geographic origin in connection with real

1 estate, goods or services.

2 “(e) Represents that real estate, goods or services have sponsorship, approval, characteristics,
3 ingredients, uses, benefits, quantities or qualities that the real estate, goods or services do not have
4 or that a person has a sponsorship, approval, status, qualification, affiliation, or connection that the
5 person does not have.

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

8 “(g) Represents that real estate, goods or services are of a particular standard, quality, or grade,
9 or that real estate or goods are of a particular style or model, if the real estate, goods or services
10 are of another.

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

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

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

18 “(k) Makes false or misleading representations concerning credit availability or the nature of
19 the transaction or obligation incurred.

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

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

25 “(n) Solicits potential customers by telephone or door to door as a seller unless the person
26 provides the information required under ORS 646.611.

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

33 “(p) Makes any false or misleading statement about a prize, contest or promotion used to pub-
34 licize a product, business or service.

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

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

38 “(s) Makes false or misleading representations of fact concerning the offering price of, or the
39 person’s cost for real estate, goods or services.

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

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

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

1 “(w) Manufactures mercury fever thermometers.

2 “(x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal
3 law, or is:

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

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

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

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

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

16 “(bb) Violates ORS 646A.070 (1).

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

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

19 “(ee) Violates ORS 646.883 or 646.885.

20 “(ff) Violates ORS 646.569.

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

22 “(hh) Violates ORS 646A.360.

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

24 “(jj) Violates ORS 646.563.

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

26 “(LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
27 thereto.

28 “(mm) Violates ORS 646A.210 or 646A.214.

29 “(nn) Violates any provision of ORS 646A.124 to 646A.134.

30 “(oo) Violates ORS 646A.095.

31 “(pp) Violates ORS 822.046.

32 “(qq) Violates ORS 128.001.

33 “(rr) Violates ORS 646A.800 (2) to (4).

34 “(ss) Violates ORS 646A.090 (2) to (4).

35 “(tt) Violates ORS 87.686.

36 “(uu) Violates ORS 646A.803.

37 “(vv) Violates ORS 646A.362.

38 “(ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.

39 “(xx) Violates ORS 180.440 (1) or 180.486 (1).

40 “(yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.

41 “(zz) Violates ORS 87.007 (2) or (3).

42 “(aaa) Violates ORS 92.405 (1), (2) or (3).

43 “(bbb) Engages in an unlawful practice under ORS 646.648.

44 “(ccc) Violates ORS 646A.365.

45 “(ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.

1 “(eee) Sells a gift card in violation of ORS 646A.276.
2 “(fff) Violates ORS 646A.102, 646A.106 or 646A.108.
3 “(ggg) Violates ORS 646A.430 to 646A.450.
4 “(hhh) Violates a provision of ORS 744.318 to 744.384.
5 “(iii) Violates a provision of ORS 646A.702 to 646A.720.
6 “(jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-
7 scribed in ORS 646A.530 is issued for the children’s product, as defined in ORS 646A.525, that is the
8 subject of the violation.
9 “(kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
10 “(LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50
11 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
12 “(mmm) Violates a provision of ORS 646A.480 to 646A.495.
13 “(nnn) Violates ORS 646A.082.
14 “(ooo) Violates ORS 646.647.
15 “(ppp) Violates ORS 646A.115.
16 “(qqq) Violates a provision of ORS 646A.405.
17 “(rrr) Violates ORS 646A.092.
18 “(sss) Violates a provision of ORS 646.644.
19 “(ttt) Violates a provision of ORS 646A.295.
20 “(uuu) Violates ORS 646A.564.
21 “(vvv) Engages in the business of, or acts in the capacity of, an immigration consultant, as de-
22 fined in ORS 9.280, in this state and for compensation, unless federal law authorizes the person to
23 do so or unless the person is an active member of the Oregon State Bar.
24 “(www) Violates ORS 702.012, 702.029, 702.032 or 702.054.
25 “(xxx) Violates ORS 646A.806.
26 “(yyy) **Violates ORS 87.192 (1) or 87.196 (1).**
27 “(2) A representation under subsection (1) of this section or ORS 646.607 may be any manifes-
28 tation of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.
29 “(3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney
30 need not prove competition between the parties or actual confusion or misunderstanding.
31 “(4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-
32 torney General has first established a rule in accordance with the provisions of ORS chapter 183
33 declaring the conduct to be unfair or deceptive in trade or commerce.
34 “(5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is
35 brought under subsection (1)(xx) of this section by a person other than a prosecuting attorney, relief
36 is limited to an injunction and the prevailing party may be awarded reasonable attorney fees.
37 “**SECTION 4. (1) The amendments to ORS 87.192, 87.196 and 646.608 by sections 1, 2 and**
38 **3 of this 2014 Act become operative January 1, 2015.**
39 “**(2) The Director of Transportation, the State Marine Board and the Director of the**
40 **Oregon Department of Aviation may take any action before the operative date specified in**
41 **subsection (1) of this section that is necessary to enable the director or the board to exer-**
42 **cise, on and after the operative date specified in subsection (1) of this section, all of the du-**
43 **ties, functions and powers conferred on the director or the board by the amendments to ORS**
44 **87.192, 87.196 and 646.608 by sections 1, 2 and 3 of this 2014 Act.**
45 “**SECTION 5. This 2014 Act being necessary for the immediate preservation of the public**

1 **peace, health and safety, an emergency is declared to exist, and this 2014 Act takes effect**
2 **on its passage.”**

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