

House Bill 4103

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 **as introduced**.

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.

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 87.196 and 822.093; and de-
3 claring an emergency.

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

5 **SECTION 1.** ORS 87.196 is amended to read:

6 87.196. (1) A lien claimant [*who*] **that** forecloses **by sale** a lien created by ORS 87.152 to 87.162
7 [*by sale*] shall give notice of the foreclosure sale by first class, registered or certified mail. The fol-
8 lowing apply:

9 (a) [*Notice shall be given*] **The lien claimant shall give notice** to all persons [*with a security*
10 *interest in the chattel to be sold who*] **that** have filed a financing statement [*perfecting that security*
11 *interest*] in the office of the Secretary of State, or in the office of the appropriate county officer of
12 the county in which the sale is held, **to perfect a security interest in the chattel to be sold.**

13 (b) Notwithstanding paragraph (a) of this subsection, if the chattel to be sold at the foreclosure
14 sale is a chattel, other than part of the motor vehicle inventory of a dealer issued a vehicle dealer
15 certificate under ORS 822.020, for which **the laws of this state require** a certificate of title [*is*
16 *required by the laws of this state, notice need only be given to*], **the lien claimant needs to give**
17 **notice only to** persons [*who*] **that** the certificate of title indicates have a security interest or lien
18 in the chattel.

19 (c) [*Notice*] **The lien claimant shall give notice** under this subsection [*shall be given*] at least
20 30 days [*prior to*] **before** the foreclosure sale. [*However, if the lien is claimed*], **but if the lien**
21 **claimant claims a lien** under ORS 87.152, the lien claimant shall give the notice required by this
22 subsection:

23 (A) Not later than the 20th day after the date on which the storage charges begin;

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

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 services provided are completed, **if no storage charges are imposed;**

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

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

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

13 (3)(a) If the chattel to be sold at a foreclosure sale is a chattel for which **the laws of this state**
 14 **require** a certificate of title [*is required by the laws of this state*] and if the lien claimant does not
 15 notify a person as required by this section, the chattel remains subject to [*that*] **the** security interest
 16 or lien and the buyer of the chattel at a foreclosure sale held under ORS 87.142 to 87.490 or 87.700
 17 to 87.736 takes the chattel subject to the security interest or lien.

18 (b) **If the buyer of chattel at a foreclosure sale described in paragraph (a) of this sub-**
 19 **section takes the chattel subject to a security interest because the lien claimant failed to**
 20 **give a notice required under this section or provided false information with respect to the**
 21 **chattel that induced the buyer to purchase the chattel, the lien claimant is liable to the**
 22 **buyer for the sum that the buyer paid for the chattel at the foreclosure sale. The buyer may**
 23 **recover the sum from the lien claimant by an action at law.**

24 (4) If a lien claimant does not notify a person, other than a person indicated on a certificate of
 25 title as a secured party or lienholder, [*who*] **that** claims a security interest or lien on the chattel
 26 sold at a foreclosure sale as required by subsection (1) of this section, the lien claimant is liable to
 27 [*that*] **the** person for a sum equal to the fair market value of the chattel sold at the foreclosure sale
 28 or the amount due [*that*] **the** person under the security agreement or lien at the time of the fore-
 29 closure sale, whichever amount is less. The secured party or other lien claimant may recover
 30 [*that*] **the** sum by an action at law.

31 (5)(a) **Before a person brings an action at law against a lien claimant under subsection**
 32 **(3)(b) or (4) of this section, the person shall notify:**

33 (A) **The lien claimant; and**

34 (B) **The Department of Transportation, if the chattel to be sold at the foreclosure sale**
 35 **is a chattel, other than part of the motor vehicle inventory of a dealer issued a vehicle dealer**
 36 **certificate under ORS 822.020, for which the laws of this state require a certificate of title.**

37 (b) **If a person gives the notice required under paragraph (a) of this subsection:**

38 (A) **The court shall stay a foreclosure sale for chattel that is subject to this section**
 39 **pending the outcome of the action brought under this section; and**

40 (B) **The department may not transfer a certificate of title for chattel that is subject to**
 41 **this section pending the outcome of the action brought under this section.**

42 (c) **A person that prevails in an action at law under this section may recover reasonable**
 43 **attorney fees.**

44 **SECTION 2.** ORS 822.093 is amended to read:

45 822.093. (1)(a) Notwithstanding ORS 822.015 (1)(L) or (m), a lien claimant who sells **a vehicle**

1 or offers a **vehicle** for sale [*vehicles being sold*] **in order** to foreclose a possessory [*liens*] **lien**, or
 2 sells or offers for sale [*vehicles*] a **vehicle** acquired through a possessory [*liens*] **lien**, shall keep re-
 3 cords sufficient to establish that all vehicles **the lien claimant sells or offers** [*being sold or*
 4 *offered*] for sale were acquired by the lien claimant as the result of a possessory lien.

5 **(b) Not less than seven days before selling a vehicle or offering a vehicle for sale in order**
 6 **to foreclose a possessory lien, the lien claimant shall deliver to the Department of Trans-**
 7 **portation:**

8 **(A) Records the lien claimant has** kept in accordance with this subsection [*must be made*
 9 *available to the Department of Transportation on request*] **for each vehicle the lien claimant in-**
 10 **tends to sell or offer for sale; and**

11 **(B) A copy of the notice the lien claimant sends under ORS 87.196 to other lien claimants**
 12 **or persons that have a security interest in the vehicle.**

13 (2) The department may adopt such rules as are necessary to carry out the provisions of this
 14 section, including but not limited to rules that:

15 (a) Specify the form in which the records must be kept, how the records must be maintained and
 16 the period for which they must be retained.

17 (b) Specify how the **lien claimant shall deliver to the department the records and the copy**
 18 **of the notice required under subsection (1)(b)(B) of this section** [*will be provided to the depart-*
 19 *ment if requested*].

20 (c) Specify how lien claimants will notify the department when vehicles are sold to foreclose
 21 possessory liens and when vehicles acquired through possessory liens are sold.

22 (3) **The department shall adopt** rules [*adopted*] under this section [*shall be developed*] in con-
 23 sultation with representatives of [*those*] lien claimants [*who*] **that** may be affected by this section,
 24 including but not limited to towing business operators.

25 (4) The department may impose a civil penalty, in an amount not to exceed \$1,000 for each vi-
 26 olation, against any person [*who*] **that** violates this section or any rules [*adopted by*] the department
 27 **adopts** under this section. **The department shall impose** civil penalties [*shall be imposed*] as pro-
 28 vided in ORS 183.745.

29 **SECTION 3. (1) The amendments to ORS 87.196 and 822.093 by sections 1 and 2 of this**
 30 **2014 Act become operative January 1, 2015.**

31 **(2) The Director of Transportation may take any action before the operative date speci-**
 32 **fied in subsection (1) of this section that is necessary to enable the director to exercise, on**
 33 **and after the operative date specified in subsection (1) of this section, all of the duties,**
 34 **functions and powers conferred on the director by the amendments to ORS 87.196 and 822.093**
 35 **by sections 1 and 2 of this 2014 Act.**

36 **SECTION 4. This 2014 Act being necessary for the immediate preservation of the public**
 37 **peace, health and safety, an emergency is declared to exist, and this 2014 Act takes effect**
 38 **on its passage.**