

House Bill 4112

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Transportation and Economic Development)

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**.

Requires tax collector of county in which real property is located to assign property tax lien to assignee if tax collector receives written authorization from property owner and payment of taxes and fee from assignee.

Authorizes owner and assignee to enter into agreement for payment by owner of taxes paid to tax collector by assignee, interest, transaction and other costs. Authorizes assignee to foreclose assigned lien if owner defaults on agreement. Requires court entering judgment of foreclosure and sale to enter order transferring deed to assignee. Requires two-year redemption period after judgment of foreclosure. Limits entitlement of assignee to amounts provided for in lien assignment agreement upon sale of real property. Requires excess proceeds after satisfaction of all claims to be paid to former owner.

Requires assignee in property tax lien assignment transaction to be licensed by Department of Consumer and Business Services under consumer finance statutes.

Becomes operative on January 1, 2015.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to the assignment of property tax liens; creating new provisions; amending ORS 725.010,
3 725.045 and 725.505; and prescribing an effective date.

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

5 **SECTION 1. Sections 2 to 7 of this 2014 Act are added to and made a part of ORS chapter**
6 **311.**

7 **SECTION 2. (1) As used in sections 2 to 7 of this 2014 Act, "assignee" or "property tax**
8 **lien assignee" means any person as defined in ORS 311.605 that is duly registered under**
9 **sections 12 to 15 of this 2014 Act and includes all successors in interest to an assignee.**

10 **(2)(a) The tax collector of the county in which real property is located shall assign a lien**
11 **arising under ORS 311.405 against the real property if the tax collector receives:**

12 **(A) Written authorization to assign the lien from the owner of the real property;**

13 **(B) Payment in the amount of the lien as determined under ORS 311.405 (8); and**

14 **(C) A processing fee of \$75 in the case of assignment of a lien for taxes that have been**
15 **delinquent one year or less or \$25 in the case of assignment of a lien for taxes that have been**
16 **delinquent for more than one year.**

17 **(b) The Department of Consumer and Business Services may prescribe by rule a notice**
18 **that must be provided to the owner of real property by the tax collector before the written**
19 **authorization from the owner required under paragraph (a) of this subsection is effective.**
20 **The notice must inform the owner of the homestead property tax deferral program under**
21 **ORS 311.666 to 311.701.**

22 **(3) Upon receipt of the written authorization, payment and fee under subsection (2) of**
23 **this section, the tax collector shall:**

24 **(a) Issue to the assignee a document acknowledging the assignment that states 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 amount of the payment in satisfaction of the lien, the amount of the fee, a legal description
 2 and the parcel numbers of the real property and the name and mailing address of the
 3 assignee; and

4 (b) Note the payment of the lien on the tax roll.

5 (4) Assignment of a tax lien under this section does not affect the priority of the lien
 6 under ORS 311.405.

7 (5)(a) A copy of the document acknowledging the assignment issued pursuant to sub-
 8 section (3)(a) of this section, when recorded with the county clerk of the county in which the
 9 real property is located, is prima facie evidence of the valid assignment and priority of the
 10 property tax lien assigned pursuant to this section.

11 (b) An assignee is not entitled to payments otherwise required under an agreement en-
 12 tered into pursuant to section 3 of this 2014 Act unless the assignee records the document
 13 acknowledging the assignment under this subsection.

14 **SECTION 3.** (1) The owner of real property subject to a property lien assigned pursuant
 15 to section 2 of this 2014 Act and the assignee may enter into an agreement for payment by
 16 the owner of the following amounts:

17 (a) The amount paid by the assignee under section 2 (2)(a)(B) of this 2014 Act.

18 (b) All transaction costs of the assignment reasonably and necessarily incurred by the
 19 assignee, in an amount not to exceed \$400 if the real property is the owner's homestead as
 20 defined in ORS 310.800.

21 (c) Interest at a rate not to exceed the rate charged under ORS 311.505 (2), computed on
 22 amounts payable under paragraphs (a) and (b) of this subsection.

23 (d) Any costs reasonably and necessarily incurred by the assignee to enforce, collect on
 24 or release the agreement or the assigned lien. Costs described in this paragraph include, but
 25 are not limited to, attorney fees and costs incurred in foreclosure if the owner does not re-
 26 deem the assigned lien or otherwise fails to perform in accordance with the agreement. Costs
 27 described in this paragraph do not include the ordinary internal costs of operating the
 28 assignee's business.

29 (2) If additional taxes become delinquent on real property subject to an agreement en-
 30 tered into pursuant to this section while the assigned tax lien that is the subject of the
 31 agreement remains unsatisfied by the owner of the property, the tax collector shall assign
 32 the lien for the additional taxes to the assignee if the tax collector receives:

33 (a) Written authorization to assign the lien from the owner of the real property;

34 (b) Payment in the amount of the lien for the additional taxes as determined under ORS
 35 311.405 (8); and

36 (c) The processing fee required under section 2 (2)(a)(C) of this 2014 Act.

37 **SECTION 4.** (1)(a) If the owner of real property that is the subject of an agreement en-
 38 tered into with an assignee pursuant to section 3 of this 2014 Act defaults on the agreement,
 39 the assignee may foreclose the property tax lien in the same manner as provided in ORS
 40 chapter 88.

41 (b) Notwithstanding paragraph (a) of this subsection, an action to foreclose may not be
 42 brought prior to the date on which the real property would have been subject to foreclosure
 43 pursuant to ORS 312.010 had the taxes not been paid by the assignee and remained delin-
 44 quent.

45 (2)(a) At least 60 days before bringing an action to foreclose an assigned lien under this

1 section, the assignee must provide notice to the holder of a recorded mortgage lien against
2 the subject property.

3 (b) The assignee may not recover from the owner a fee in connection with a foreclosure
4 action brought under this section if the fee is incurred within 30 days of the date of the no-
5 tice required under paragraph (a) of this subsection.

6 (c) Upon receipt of the notice, the holder or servicer of the recorded mortgage lien may
7 obtain a release of the assigned lien by paying the assignee the amounts due under the
8 agreement entered into under section 3 of this 2014 Act.

9 (3) A court entering a judgment of foreclosure and sale with respect to the real property
10 shall also enter an order transferring the deed to the real property to the assignee and shall
11 note in the order that the real property is subject to section 5 of this 2014 Act.

12 **SECTION 5. (1) Real property subject to an assigned lien foreclosed by an assignee under**
13 **section 4 of this 2014 Act shall be held by the assignee:**

14 (a) For two years following the date of the judgment of foreclosure; or

15 (b) Until the property is redeemed, if earlier.

16 (2) During the two-year redemption period, the real property may be redeemed, by pay-
17 ment of the full amount of the judgment of foreclosure, including interest from the date of
18 entry of the judgment at the rate provided for in the agreement entered into under section
19 3 of this 2014 Act, by:

20 (a) Any person having an interest in the real property on the date of the judgment of
21 foreclosure;

22 (b) Any heir or devisee of a person described in paragraph (a) of this subsection;

23 (c) Any person holding a lien of record on the real property; or

24 (d) Any municipal corporation having a lien on the property.

25 (3)(a) If the real property is not redeemed within the two-year redemption period, all
26 rights of redemption with respect to the real property described in the deed terminate.

27 (b) No return or confirmation of the sale of the real property to the assignee or the ex-
28 ecution of the deed is required.

29 (4)(a) Except as provided in paragraph (b) of this subsection, the sale of the real property
30 to the assignee or a third party on foreclosure for delinquent taxes does not affect the right
31 of the former owner to possession of the real property during the two-year redemption pe-
32 riod.

33 (b) If the former owner or anyone acting under the permission or control of the former
34 owner commits waste of the real property:

35 (A) The right to possession of the real property is forfeited to the assignee; and

36 (B) The commission of waste is punishable as provided under ORS 312.990.

37 (5) Notwithstanding subsection (4) of this section, all rights of redemption to the real
38 property shall be terminated by order of the court that entered the judgment of foreclosure
39 and sale if the assignee files a motion showing that:

40 (a) The right to possession of the real property is forfeitable under subsection (4)(b) of
41 this section; or

42 (b) The real property:

43 (A) Is not occupied for a period of at least six consecutive months by the owner or any
44 person or entity that appears in the records of the county to have a lien or other interest
45 in the real property; and

1 (B) Has suffered a substantial depreciation in value or is likely to suffer a substantial
2 depreciation in value if not occupied.

3 (6)(a) Any real property of which the rights of redemption have been terminated pursuant
4 to subsection (3) or (5) of this section is subject to ORS 18.995.

5 (b) Notwithstanding paragraph (a) of this subsection, an assignee is not responsible for
6 compliance with ORS 18.995 before 30 days after the assignee has acquired the right to pos-
7 session of the real property under subsection (3) or (5) of this section.

8 **SECTION 6.** (1) Upon sale of real property subject to foreclosure under section 4 of this
9 2014 Act:

10 (a) An assignee is not entitled to payment of any amounts with respect to the real
11 property in excess of the amounts provided for in the agreement entered into by the assignee
12 and the former owner of the real property under section 3 of this 2014 Act.

13 (b) Proceeds from the sale must be used to satisfy all property tax liens arising under
14 ORS 311.405 regardless of whether a lien is held by the county in which the property is lo-
15 cated or by an assignee pursuant to section 2 of this 2014 Act.

16 (2)(a) If the proceeds from the sale described in subsection (1) of this section are insuf-
17 ficient to satisfy all property tax liens, the proceeds shall be distributed in the proportion
18 that a lienholder's total amount of property tax liens against the property bears to the total
19 amount of all holders' property tax liens against the property.

20 (b) If the proceeds from the sale are in excess of the amounts owing to the assignee
21 under the agreement entered into by the assignee and the former owner of the real property
22 under section 3 of this 2014 Act and to other holders of property tax liens arising under ORS
23 311.405, the excess proceeds shall be distributed in full satisfaction of valid claims to the
24 proceeds in order of the priority of the claims.

25 (3) Any proceeds remaining after full satisfaction of all claims under subsections (1) and
26 (2) of this section shall be paid to the former owner of the real property.

27 **SECTION 7.** An assignee that receives full satisfaction of the amounts due in connection
28 with an assigned lien shall:

29 (1) Prepare and cause to be recorded a release of the tax lien with the county clerk of
30 the county in which the real property is located.

31 (2) Provide written notification of the release of the tax lien to the property owner and
32 the tax collector of the county in which the real property is located.

33 **SECTION 8.** ORS 725.010 is amended to read:

34 725.010. As used in this chapter:

35 (1)(a) "Broker or facilitator" means a person that conducts a business in which, for a fee or
36 consideration, the person:

37 (A) Processes, receives or accepts for delivery to a lender an application for a consumer finance
38 loan, individually or in conjunction or cooperation with another person;

39 (B) Accepts and delivers to a lender all or most of the proceeds of a payment made in con-
40 nection with a consumer finance loan; or

41 (C) Assists in making a consumer finance loan in a material capacity other than as a lender.

42 (b) "Broker or facilitator" does not include a mortgage broker, as that term is defined in ORS
43 86A.100, a mortgage loan originator, as that term is defined in ORS 86A.200, or an employee of a
44 licensee.

45 (2) "Consumer" means, with respect to a property tax lien assignment transaction under

1 **sections 2 to 7 of this 2014 Act, an owner of real property that enters into an agreement**
 2 **pursuant to section 3 of this 2014 Act with an assignee as defined in section 2 of this 2014**
 3 **Act.**

4 [(2)] (3) “Consumer finance loan” means a loan or line of credit that is unsecured or secured
 5 by personal or real property and that has periodic payments and terms longer than 60 days.

6 [(3)] (4) “Licensee” means a person licensed under this chapter.

7 **(5) “Property tax lien assignment transaction” means a transaction entered into pursu-**
 8 **ant to sections 2 to 7 of this 2014 Act between a consumer and an assignee as defined in**
 9 **section 2 of this 2014 Act.**

10 **SECTION 9.** ORS 725.045 is amended to read:

11 725.045. (1) Except as provided in ORS 82.010, 82.020 and 82.025, a person may not conduct a
 12 business in which the person makes a consumer finance loan of \$50,000 or less or acts as an agent,
 13 broker or facilitator for a person that makes a consumer finance loan of \$50,000 or less **or enters**
 14 **into property tax lien assignment transactions under sections 2 to 7 of this 2014 Act** unless
 15 the person first obtains a license under this chapter.

16 (2) This section does not apply to a person that does not collect a fee or consideration in con-
 17 nection with a consumer finance loan or an application for a consumer finance loan and that:

18 (a) Does not interact directly with a borrower or consumer;

19 (b) Acts solely as an intermediary between the borrower or consumer and a lender or a person
 20 that conducts business as a broker or facilitator for a consumer finance loan;

21 (c) Transmits information, electronically or otherwise, concerning the borrower or consumer to
 22 a lender or a person that conducts business as a broker or facilitator for a consumer finance loan;
 23 or

24 (d) Prepares, issues or delivers a negotiable instrument to a lender or a person that conducts
 25 business as a broker or facilitator for a consumer finance loan for subsequent delivery to a borrower
 26 or consumer.

27 **SECTION 10.** ORS 725.505 is amended to read:

28 725.505. (1)(a) In accordance with ORS chapter 183, the Director of the Department of Consumer
 29 and Business Services may adopt rules for the purposes of protecting borrowers and consumers,
 30 providing clarity to licensees and lenders and otherwise carrying out and enforcing this chapter.
 31 The rules may include, but are not limited to, provisions that establish loan forms, terms, charges
 32 and fees.

33 **(b) Rules adopted by the department under this section that apply to property tax lien**
 34 **assignment transactions entered into under sections 2 to 7 of this 2014 Act may differ from**
 35 **rules adopted by the Department of Consumer and Business Services that apply to consumer**
 36 **finance loan transactions.**

37 (2) In addition to the notice requirements of ORS chapter 183, before the director adopts a rule,
 38 the director shall submit a copy of the rule to each licensee.

39 **SECTION 11.** **Sections 12 to 15 of this 2014 Act are added to and made a part of ORS**
 40 **chapter 725.**

41 **SECTION 12.** (1) **In addition to the requirements for obtaining a license under ORS**
 42 **725.140, a licensee engaging in property tax lien assignment transactions must file with the**
 43 **Director of the Department of Consumer and Business Services and continuously maintain**
 44 **a bond executed by the applicant as obligor, together with a surety company authorized to**
 45 **do business in this state as surety.**

1 (2)(a) The surety bond shall be in an amount equal to the total amount of property tax
2 liens assigned to the licensee engaged in property tax lien assignment transactions in this
3 state, as determined by the director by rule, or in a minimum amount that the director
4 specifies.

5 (b) The bond must be executed to the State of Oregon and for the use of the state and
6 of any person who may have a cause of action against the obligor of the bond or the letter
7 of credit issuer arising from a property tax lien assignment transaction.

8 (c) The bond shall be conditioned that the obligor will faithfully conform to and abide by
9 the provisions of sections 2 to 7 and 12 to 15 of this 2014 Act and all rules adopted by the
10 director under ORS 725.505 and will pay to the state and to any person any moneys that may
11 become due or owing to the state or the person from the obligor under the provisions of ORS
12 725.045 and sections 2 to 7 and 12 to 15 of this 2014 Act.

13 (d) A bond filed under this section shall remain in effect for at least six years after the
14 licensee ceases to engage in property tax lien assignment transactions.

15 (e) No later than six years after a licensee ceases to be required to maintain a bond un-
16 der this section, the person may apply to the director for release of the bond. Unless the
17 director determines that claims are pending against the person under subsection (3) of this
18 section, the director shall release the surety bond or letter of credit.

19 (3)(a) If any aggrieved person recovers judgment from a licensee engaged in property tax
20 lien assignment transactions due to the licensee's misconduct related to a property tax lien
21 assignment transaction or violation of any provision of ORS 725.045 or sections 2 to 7 and
22 12 to 15 of this 2014 Act, the person may, after the return unsatisfied either in whole or in
23 part of any execution issued upon the judgment, maintain an action for the person's own use
24 upon the bond of the licensee in any court having jurisdiction of the amount claimed.

25 (b) The director shall furnish to anyone making request a certified copy of any bond filed
26 with the director under this section. The certified copy is prima facie evidence in any court
27 that the bond or letter of credit was duly executed and delivered by each licensee engaged
28 in property tax lien assignment transactions whose name appears on the bond or letter of
29 credit.

30 (4) The aggregate liability of the surety under the bond for claims against the bond may
31 not exceed the penal sum of the bond no matter how many years the bond is in force. No
32 extension by continuation certificate, reinstatement, reissue or renewal of the bond may in-
33 crease the liability of the surety.

34 **SECTION 13.** A property tax lien assignment transaction entered into and executed by
35 an assignee in conformance with sections 2 to 7 and 12 to 15 of this 2014 Act and ORS 725.010
36 and 725.045 and rules adopted by the Department of Consumer and Business Services appli-
37 cable to property tax lien assignment transactions shall not be construed to create a con-
38 sumer credit transaction for purposes of federal law or a mortgage loan.

39 **SECTION 14.** Notwithstanding ORS 725.340, a licensee engaged in property tax lien as-
40 signment transactions may not charge, contract for or receive in connection with a property
41 tax lien assignment transaction payments, interest, costs, fees or other charges in excess
42 of the amounts or rates, as applicable, provided for in section 3 of this 2014 Act.

43 **SECTION 15.** (1) The provisions of this chapter applicable to property tax lien assignment
44 transactions are exclusive, and no political subdivision or agency of this state may require
45 any registration, license or fee for any property tax lien assignee duly registered under this

1 **chapter.**

2 **(2) Nothing in this section limits the authority of any political subdivision to levy and**
3 **collect a general and nondiscriminatory license or registration fee upon all businesses in the**
4 **political subdivision or to levy a fee for processing a property tax lien assignment as au-**
5 **thorized under section 2 of this 2014 Act.**

6 **SECTION 16. (1) Sections 1 to 7 and 11 to 15 of this 2014 Act and the amendments to ORS**
7 **725.010, 725.045 and 725.505 by sections 8 to 10 of this 2014 Act become operative on January**
8 **1, 2015.**

9 **(2) The Director of the Department of Consumer and Business Services and county offi-**
10 **cers may take any action before the operative date specified in subsection (1) of this section**
11 **that is necessary to enable the provisions of sections 2 to 7 and 12 to 15 of this 2014 Act and**
12 **the amendments to ORS 725.010, 725.045 and 725.505 by sections 8 to 10 of this 2014 Act to**
13 **become operative on the date specified in subsection (1) of this section.**

14 **SECTION 17. This 2014 Act takes effect on the 91st day after the date on which the 2014**
15 **regular session of the Seventy-seventh Legislative Assembly adjourns sine die.**

16