

**PROPOSED AMENDMENTS TO
HOUSE BILL 4103**

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

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

5 **“SECTION 1. Section 2 of this 2014 Act is added to and made a part**
6 **of ORS 87.152 to 87.212.**

7 **“SECTION 2. (1)(a) A lien debtor that owns chattel for which the**
8 **Department of Transportation has issued a certificate of title under**
9 **ORS 803.045, for which the State Marine Board requires a certificate**
10 **of title under ORS 830.810 or for which the Oregon Department of**
11 **Aviation requires a certificate of registration under ORS 837.040, or a**
12 **person that claims a lien or security interest that is indicated on the**
13 **certificate of title or certificate of registration, may bring an action**
14 **to enjoin a foreclosure sale for the chattel at any time after receiving**
15 **notice of the foreclosure sale under ORS 87.192 or 87.196 and before the**
16 **date of the foreclosure sale. A plaintiff shall bring the action in the**
17 **circuit court of the county in which the lien claimant holds the chattel**
18 **under a claim of lien created under ORS 87.152. The plaintiff shall al-**
19 **lege in the complaint that the lien debtor did not agree to the charges**
20 **that are the basis for the lien, or that the amount of the charges is**
21 **not reasonable, and shall make a prima facie showing that supports**
22 **the plaintiff’s allegations.**

1 “(b) A court shall enjoin the foreclosure sale unless the court de-
2 termines that the plaintiff has not made a prima facie showing of a
3 reasonable basis for disputing the validity or reasonableness of the
4 charges.

5 “(c) The court may dissolve an injunction granted under this sub-
6 section only after the plaintiff and the defendant in the action file with
7 the court a written and jointly signed settlement agreement that sets
8 forth the terms under which the lien claimant will release the lien or
9 under which the foreclosure may proceed.

10 “(d) In granting an injunction under this subsection, the court is
11 not subject to ORCP 79 or 83.

12 “(2)(a) A plaintiff that receives an order granting an injunction
13 under subsection (1) of this section may notify the Department of
14 Transportation, the State Marine Board or the Oregon Department of
15 Aviation and request that the appropriate department or board prevent
16 any transfer of a certificate of title or certificate of registration for
17 the chattel that is subject to the injunction.

18 “(b) Any person may notify the Department of Transportation, the
19 State Marine Board or the Oregon Department of Aviation of a court
20 order that dissolves an injunction granted under subsection (1) of this
21 section.

22 “(c) The Department of Transportation, the State Marine Board and
23 the Oregon Department of Aviation by rule shall specify the form and
24 contents of the notices described in paragraphs (a) and (b) of this
25 subsection and may provide a method for submitting the notice elec-
26 tronically. A rule adopted under this paragraph must require the no-
27 tice to include a signed true copy of the court order that grants or that
28 dissolves the injunction.

29 “(3)(a) After receiving notice of an injunction under subsection (2)
30 of this section, the Department of Transportation, the State Marine

1 **Board and the Oregon Department of Aviation may not transfer a**
2 **certificate of title or certificate of registration for chattel that is sub-**
3 **ject to an injunction granted under subsection (1) of this section until**
4 **the department or the board receives notice of an order that dissolves**
5 **the injunction.**

6 “(b) Notwithstanding the prohibition set forth in paragraph (a) of
7 this subsection, the Department of Transportation, the State Marine
8 Board and the Oregon Department of Aviation are not liable to any
9 person for transferring a certificate of title or certificate of registra-
10 tion.

11 “SECTION 3. ORS 87.192 is amended to read:

12 “87.192. (1)(a) Before a lien claimant forecloses **by sale** a lien created
13 [by] **under** ORS 87.152 to 87.162 [by sale], the lien claimant shall give notice
14 of the foreclosure sale to the lien debtor by first class mail with certificate
15 of mailing, registered mail or certified mail sent to the lien debtor at the lien
16 debtor’s last-known address. The lien claimant shall give notice of the fore-
17 closure sale to the lien debtor:

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

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

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

28 “[d] *If the lien is for the cost of removing, towing or storage of a vehicle*
29 *that is appraised at a value of more than \$1,000 by a person who holds a cer-*
30 *tificate issued under ORS 819.480, at least 30 days before the foreclosure*

1 *sale.*]

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

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

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

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

26 “(b) This subsection does not require **the lien claimant to post** [*posting*
27 *of*] notice at the location where **the lien claimant obtained** the chattel
28 [*was obtained*] if the chattel is a [*vehicle required to obtain a certificate of*
29 *title issued under ORS chapter 803*] **chattel for which the Department of**
30 **Transportation has issued a certificate of title under ORS 803.045, for**

1 **which the State Marine Board requires a certificate of title under ORS**
2 **830.810 or for which the Oregon Department of Aviation requires a**
3 **certificate of registration under ORS 837.040.**

4 “(3) If the chattel to be sold at a foreclosure sale is something other than
5 an abandoned vehicle and has a fair market value of \$1,000 or more, or if the
6 chattel to be sold is an abandoned vehicle and has a fair market value of
7 \$2,500 or more, the lien claimant, in addition to the notice required by sub-
8 section (2) of this section, shall have a notice of foreclosure sale printed once
9 a week for two successive weeks in a daily or weekly newspaper, as defined
10 in ORS 193.010, published in the county in which the sale is held or, if there
11 is none, in a daily or weekly newspaper, as defined in ORS 193.010, generally
12 circulated in the county in which the sale is held.

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

18 **“SECTION 4.** ORS 87.196 is amended to read:

19 “87.196. (1)(a) A lien claimant [*who*] **that** forecloses **by sale** a lien created
20 [*by*] **under** ORS 87.152 to 87.162 [*by sale*] shall give notice of the foreclosure
21 sale by first class, registered or certified mail. The following apply:

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

28 “[*b*] (B) Notwithstanding [*paragraph (a) of this subsection*] **subpara-**
29 **graph (A) of this paragraph**, if the chattel to be sold at the foreclosure
30 sale is a chattel, other than part of the motor vehicle inventory of a dealer

1 issued a vehicle dealer certificate under ORS 822.020, for which [*a certificate*
2 *of title is required by the laws of this state, notice need only be given to per-*
3 *sons who the certificate of title indicates have a security interest or lien in the*
4 *chattel*] **the Department of Transportation has issued a certificate of**
5 **title under ORS 803.045, for which the State Marine Board requires a**
6 **certificate of title under ORS 830.810 or for which the Oregon Depart-**
7 **ment of Aviation requires a certificate of registration under ORS**
8 **837.040, the lien claimant needs to give notice only to persons that the**
9 **certificate of title or certificate of registration indicates have a secu-**
10 **urity interest or lien in the chattel.**

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

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

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

21 “[C)] (iii) At least 15 days [*prior to*] **before** the foreclosure sale if the
22 lien is for the cost of removing, towing or [*storage of*] **storing** a vehicle that
23 [*is appraised at a value of \$1,000 or less but more than \$500 by*] a person who
24 holds a certificate issued under ORS 819.480 **has appraised at a value of**
25 **\$1,000 or less.** [; *and*]

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

29 “(b) **A lien claimant that gives notice of a foreclosure sale for**
30 **chattel described in paragraph (a)(B) of this subsection shall include**

1 **with the notice a copy of an invoice, work or repair order, authori-**
2 **zation for towing, official form that authorizes a law enforcement**
3 **agency to impound the chattel or any other record or document that**
4 **is evidence of the basis for the lien.**

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

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

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

21 **“[(4)] (3) If a lien claimant does not **give notice in accordance with****
22 **subsection (1) of this section [notify a person, other than a person indicated**
23 **on a certificate of title as a secured party or lienholder, who] **to a person that****
24 **claims a security interest or lien on the chattel sold at a foreclosure sale**
25 **[as required by subsection (1) of this section], **other than a person that is****
26 **entitled to notice under subsection (1)(a)(B) of this section, the lien**
27 **claimant is liable to [that] **the** person for a sum equal to the fair market**
28 **value of the chattel sold at the foreclosure sale or the amount due [that] **to****
29 ****the** person under the security agreement or lien at the time of the foreclo-**
30 **sure sale, whichever amount is less. The secured party or other lien claimant**

1 may recover [*that*] **the** sum by an action at law.

2 **“SECTION 5.** ORS 646.608 is amended to read:

3 “646.608. (1) A person engages in an unlawful practice if in the course of
4 the person’s business, vocation or occupation the person does any of the
5 following:

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

8 “(b) Causes likelihood of confusion or of misunderstanding as to the
9 source, sponsorship, approval, or certification of real estate, goods or ser-
10 vices.

11 “(c) Causes likelihood of confusion or of misunderstanding as to affil-
12 iation, connection, or association with, or certification by, another.

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

15 “(e) Represents that real estate, goods or services have sponsorship, ap-
16 proval, characteristics, ingredients, uses, benefits, quantities or qualities that
17 the real estate, goods or services do not have or that a person has a spon-
18 sorship, approval, status, qualification, affiliation, or connection that the
19 person does not have.

20 “(f) Represents that real estate or goods are original or new if the real
21 estate or goods are deteriorated, altered, reconditioned, reclaimed, used or
22 secondhand.

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

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

28 “(i) Advertises real estate, goods or services with intent not to provide
29 the real estate, goods or services as advertised, or with intent not to supply
30 reasonably expectable public demand, unless the advertisement discloses a

1 limitation of quantity.

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

4 “(k) Makes false or misleading representations concerning credit avail-
5 ability or the nature of the transaction or obligation incurred.

6 “(L) Makes false or misleading representations relating to commissions
7 or other compensation to be paid in exchange for permitting real estate,
8 goods or services to be used for model or demonstration purposes or in ex-
9 change for submitting names of potential customers.

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

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

15 “(o) In a sale, rental or other disposition of real estate, goods or services,
16 gives or offers to give a rebate or discount or otherwise pays or offers to pay
17 value to the customer in consideration of the customer giving to the person
18 the names of prospective purchasers, lessees, or borrowers, or otherwise
19 aiding the person in making a sale, lease, or loan to another person, if
20 earning the rebate, discount or other value is contingent upon an event oc-
21 ccurring after the time the customer enters into the transaction.

22 “(p) Makes any false or misleading statement about a prize, contest or
23 promotion used to publicize a product, business or service.

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

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

29 “(s) Makes false or misleading representations of fact concerning the of-
30 fering price of, or the person’s cost for real estate, goods or services.

1 “(t) Concurrent with tender or delivery of any real estate, goods or ser-
2 vices fails to disclose any known material defect or material nonconformity.

3 “(u) Engages in any other unfair or deceptive conduct in trade or com-
4 merce.

5 “(v) Violates any of the provisions relating to auction sales, consignment
6 sales, auctioneers, consignees or auction marts under ORS 698.640, whether
7 in a commercial or noncommercial situation.

8 “(w) Manufactures mercury fever thermometers.

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

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

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

15 “(y) Sells a thermostat that contains mercury unless the thermostat is
16 labeled in a manner to inform the purchaser that mercury is present in the
17 thermostat and that the thermostat may not be disposed of until the mercury
18 is removed, reused, recycled or otherwise managed to ensure that the mer-
19 cury does not become part of the solid waste stream or wastewater. For
20 purposes of this paragraph, ‘thermostat’ means a device commonly used to
21 sense and, through electrical communication with heating, cooling or venti-
22 lation equipment, control room temperature.

23 “(z) Sells or offers for sale a motor vehicle manufactured after January
24 1, 2006, that contains mercury light switches.

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

26 “(bb) Violates ORS 646A.070 (1).

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

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

29 “(ee) Violates ORS 646.883 or 646.885.

30 “(ff) Violates ORS 646.569.

1 “(gg) Violates the provisions of ORS 646A.142.
2 “(hh) Violates ORS 646A.360.
3 “(ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
4 “(jj) Violates ORS 646.563.
5 “(kk) Violates ORS 759.690 or any rule adopted pursuant thereto.
6 “(LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any
7 rule adopted pursuant thereto.
8 “(mm) Violates ORS 646A.210 or 646A.214.
9 “(nn) Violates any provision of ORS 646A.124 to 646A.134.
10 “(oo) Violates ORS 646A.095.
11 “(pp) Violates ORS 822.046.
12 “(qq) Violates ORS 128.001.
13 “(rr) Violates ORS 646A.800 (2) to (4).
14 “(ss) Violates ORS 646A.090 (2) to (4).
15 “(tt) Violates ORS 87.686.
16 “(uu) Violates ORS 646A.803.
17 “(vv) Violates ORS 646A.362.
18 “(ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or
19 646A.054.
20 “(xx) Violates ORS 180.440 (1) or 180.486 (1).
21 “(yy) Commits the offense of acting as a vehicle dealer without a certif-
22 icate under ORS 822.005.
23 “(zz) Violates ORS 87.007 (2) or (3).
24 “(aaa) Violates ORS 92.405 (1), (2) or (3).
25 “(bbb) Engages in an unlawful practice under ORS 646.648.
26 “(ccc) Violates ORS 646A.365.
27 “(ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
28 “(eee) Sells a gift card in violation of ORS 646A.276.
29 “(fff) Violates ORS 646A.102, 646A.106 or 646A.108.
30 “(ggg) Violates ORS 646A.430 to 646A.450.

1 “(hhh) Violates a provision of ORS 744.318 to 744.384.
2 “(iii) Violates a provision of ORS 646A.702 to 646A.720.
3 “(jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning
4 or declaration described in ORS 646A.530 is issued for the children’s product,
5 as defined in ORS 646A.525, that is the subject of the violation.
6 “(kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662,
7 697.682, 697.692 or 697.707.
8 “(LLL) Violates the consumer protection provisions of the
9 Servicemembers Civil Relief Act, 50 U.S.C. App. 501 et seq., as in effect on
10 January 1, 2010.
11 “(mmm) Violates a provision of ORS 646A.480 to 646A.495.
12 “(nnn) Violates ORS 646A.082.
13 “(ooo) Violates ORS 646.647.
14 “(ppp) Violates ORS 646A.115.
15 “(qqq) Violates a provision of ORS 646A.405.
16 “(rrr) Violates ORS 646A.092.
17 “(sss) Violates a provision of ORS 646.644.
18 “(ttt) Violates a provision of ORS 646A.295.
19 “(uuu) Violates ORS 646A.564.
20 “(vvv) Engages in the business of, or acts in the capacity of, an immi-
21 gration consultant, as defined in ORS 9.280, in this state and for compen-
22 sation, unless federal law authorizes the person to do so or unless the person
23 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
28 may be any manifestation of any assertion by words or conduct, including,
29 but not limited to, a failure to disclose a fact.
30 “(3) In order to prevail in an action or suit under ORS 646.605 to 646.652,

1 a prosecuting attorney need not prove competition between the parties or
2 actual confusion or misunderstanding.

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

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

11 **“SECTION 6. (1) Section 2 of this 2014 Act and the amendments to**
12 **ORS 87.192, 87.196 and 646.608 by sections 3, 4 and 5 of this 2014 Act**
13 **become operative January 1, 2015.**

14 **“(2) The Director of Transportation, the State Marine Board and the**
15 **Director of the Oregon Department of Aviation may take any action**
16 **before the operative date specified in subsection (1) of this section that**
17 **is necessary to enable the director or the board to exercise, on and**
18 **after the operative date specified in subsection (1) of this section, all**
19 **of the duties, functions and powers conferred on the director or the**
20 **board by section 2 of this 2014 Act and the amendments to ORS 87.192,**
21 **87.196 and 646.608 by sections 3, 4 and 5 of this 2014 Act.**

22 **“SECTION 7. This 2014 Act being necessary for the immediate**
23 **preservation of the public peace, health and safety, an emergency is**
24 **declared to exist, and this 2014 Act takes effect on its passage.”.**

25