



To: Senator Floyd Prozanski , Chair, Senate Judiciary Committee
Members of the Committee

Feb 15, 2018

OVDA will not object to HB 4087A because we do not want to hold up the necessary protection for consumers, our customers, on fraudulent liens, primarily by non-regulated industries. Unfortunately, they don't have the ability to sue under UTPA and have to underwrite attorney costs themselves, so they effectively cannot get help in a cost effective way unless the loss is large.

However, we want to stress, the dealer industry is not unregulated, and should not have been included in this legislation. There is very little reason we are included as it is just not something many of the dealers do, and the ones who do are careful not to do it fraudulently. They have too much to lose, and they have investigators at DMV who will quickly stop such activities.

Here are two recent comments by DMV staff that reflect this.

"In Business Regulation, we rarely see dealers who are submitting title documents with possessory liens due to a customer not paying for vehicle repairs. Most of the dealer related liens we see (not including dealers with tow businesses) are dealers simply in need of an ownership document. They've lost the title, never obtained a title from the customer making a trade-in, don't want to pay their flooring loan, trying to "wash" a brand off the title, etc., and are trying to use the certificate of possessory lien foreclosure as an ownership document, or to obtain a new title from DMV."

The second statement by DMV:

If a certificate of possessory lien foreclosure is submitted to DMV as part of a title transaction, a dealer is listed as the lien claimant, and the lien form is determined to be suspect, DMV has the option of investigating the transaction and inspecting the dealer/lien claimant's records to determine if the dealer/lien claimant has committed any violation of ORS/OAR. If violations are confirmed, DMV would make a determination as to whether to pursue administrative action against the dealer for violations committed while acting as a dealer, as a lien claimant, or both.

The most common violations we find a dealer violates in relation to possessory liens are:

- ORS 822.045(1)(c) – Fail to maintain proper records
- OAR 735-150-0110(20) – Knowingly making a false statement of material fact on a DMV document
- OAR 735-150-0120(1) – Gives DMV the authority to impose sanctions against a dealer when the dealer had violated any provision of the Oregon Vehicle Code or Rules adopted by DMV

The violations we have regulatory authority for, relating to lien claimants, are:

- ORS 822.093(1) – Fail to maintain proper lien claimant records
- OAR 735-150-0250 - Fail to maintain proper lien claimant records

All of the aforementioned violations are punishable by up to a \$1,000 civil penalty per violation.

DMV also can close a dealership if they are a threat to the public health and Safety, although this is rarely used.

OVDA and OPSA would like to propose a fix for this situation for the 2019 session that would modify the current \$50,000 bond, which OVDA sponsored legislation for in 2017, to allow a claim on fraudulent liens so dealer would not have to have two bonds, when surely one bond should suffice.

We would also have some idea by then of how many of these fraudulent transactions there have been for the dealer industry as opposed to the two unregulated industries that are affected. Right now the numbers are a guess of the numbers.

Respectfully,

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