

House Bill 4058

Sponsored by Representatives NEARMAN, EVANS, Senator RILEY (at the request of Northwest Auto Trades Association) (Pre-session filed.)

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**.

Specifies conditions for requiring, issuing and maintaining in effect surety bond or irrevocable letter of credit for person that creates, attaches, asserts or claims lien in connection with making, altering, repairing, transporting, storing, performing services, supplying materials or performing labor in connection with motor vehicle.

Becomes operative on July 1, 2020.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to security for claims of lien in connection with work performed on motor vehicles; creat-
3 ing new provisions; amending ORS 87.152; and declaring an emergency.

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

5 **SECTION 1.** ORS 87.152 is amended to read:

6 87.152. (1) Except as provided in subsections (2) and (3) of this section, a person that makes,
7 alters, repairs, transports, stores, pastures, cares for, provides services for, supplies materials for
8 or performs labor on a chattel at the request of the owner or lawful possessor of the chattel has a
9 lien on the chattel in the possession of the person for the reasonable or agreed charges for labor,
10 materials or services of the person, and the person may retain possession of the chattel until the
11 charges are paid.

12 (2)(a) Except as provided in subsection (3) of this section, a person may not create, attach, assert
13 or claim a possessory lien on a motor vehicle, as defined in ORS 801.360, unless the person performs
14 a service that complies with ORS 646A.480 to 646A.495 and that involves making, altering, repairing,
15 transporting, storing, providing services for, supplying material for or performing labor in con-
16 nection with the motor vehicle and the person:

17 (A) Is a franchised motor vehicle dealership, as defined in ORS 650.120 (5);

18 (B) Holds a towing business certificate that the Department of Transportation issued under ORS
19 822.205, provided that the person creates, attaches, asserts or claims a possessory lien only for
20 transporting or storing the motor vehicle; or

21 (C) Creates, attaches, asserts or claims the lien against an abandoned motor vehicle.

22 (b) A person, other than a person that is described in paragraph (a)(A), (B) or (C) of this sub-
23 section, shall have in effect before, **and shall maintain in effect at all times while**, making, al-
24 tering, repairing, transporting, storing, performing services for, supplying materials for or
25 performing labor in connection with a motor vehicle, a valid surety bond **or an irrevocable letter**
26 **of credit** in an amount not less than \$20,000.

27 **(c)(A) The surety bond and the irrevocable letter of credit described in paragraph (b) of**
28 **this subsection must be issued, respectively, by a corporate surety that is authorized to**

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 **transact business in this state and by an insured institution, as defined in ORS 706.008. The**
 2 **corporate surety or the insured institution, as appropriate, shall notify the Department of**
 3 **Transportation of any cancellation of the surety bond or irrevocable letter of credit. The**
 4 **corporate surety remains liable under the surety bond and the insured institution remains**
 5 **obligated under the irrevocable letter of credit until the department receives the notice or**
 6 **until the date of cancellation specified in the notice, whichever is later.**

7 **(B) A surety bond or irrevocable letter of credit described in paragraph (b) of this sub-**
 8 **section must be:**

9 **(i) Executed to the State of Oregon;**

10 **(ii) Approved by the Attorney General as to form;**

11 **(iii) Filed with and held by the department; and**

12 **(iv) Conditioned such that the person identified in paragraph (b) of this subsection as**
 13 **subject to the requirement to have in effect the surety bond or irrevocable letter of credit**
 14 **must conduct business without fraud or a fraudulent representation and without violating a**
 15 **provision of ORS 646A.480 to 646A.495.**

16 **(C) The person described in paragraph (b) of this subsection as subject to the require-**
 17 **ment to have in effect a surety bond or irrevocable letter of credit must certify in writing**
 18 **to the department each year that the surety bond or irrevocable letter of credit remains in**
 19 **effect. If another person obtains a recovery against the surety bond or irrevocable letter of**
 20 **credit, the person shall file with the department not later than three business days after the**
 21 **date of the recovery a new surety bond or irrevocable letter of credit in the amount specified**
 22 **in paragraph (b) of this subsection.**

23 (3)(a) As used in this subsection:

24 (A) "Auction company" means an entity:

25 (i) That operates throughout the United States;

26 (ii) That holds a vehicle dealer certificate that the Department of Transportation issued or re-
 27 newed under ORS 822.020 or 822.040, or a dismantler certificate that the department issued or re-
 28 newed under ORS 822.110 or 822.125; and

29 (iii) The primary activity of which, in this state, consists of disposing of totaled motor vehicles.

30 (B) "Motor vehicle" has the meaning given that term in ORS 801.360.

31 (b) An auction company has a lien on a motor vehicle that the auction company possesses and
 32 stored on premises the auction company owns or controls. The auction company may title the motor
 33 vehicle in the name of:

34 (A) The auction company, if the motor vehicle has remained unclaimed on the auction company's
 35 premises for more than 30 days;

36 (B) The insurance company that directed the auction company to take possession of the motor
 37 vehicle; or

38 (C) An organization with an exemption from taxation under section 501(c)(3) of the Internal
 39 Revenue Code that directed the auction company to take possession of the motor vehicle.

40 (c) ORS 87.166 and 87.172 to 87.212 do not apply to chattel that is subject to this subsection.

41 (4)(a) The owner of a motor vehicle may bring an action to recover from a person that refuses,
 42 at the owner's demand and without a valid possessory lien created and attached as provided in
 43 subsection (2) or (3) of this section, to release the owner's motor vehicle or restore to the owner title
 44 to the owner's motor vehicle if the person changed the title:

45 (A) The greater of \$2,000 or an amount equivalent to twice the value of the motor vehicle, up

1 to a maximum amount of \$20,000; and

2 (B) The owner's reasonable costs and attorney fees.

3 (b) In addition to the recovery described in paragraph (a) of this subsection, the owner may
4 obtain:

5 (A) A judgment that:

6 (i) Directs the Department of Transportation to restore title to the motor vehicle to the owner
7 and to invalidate the title the person obtained; or

8 (ii) Extinguishes the person's interest in the motor vehicle and directs the department to issue
9 title in the name of the plaintiff in the action;

10 (B) A judgment that declares that the person's lien is invalid if the person obtained title to the
11 motor vehicle without complying with this section; and

12 (C) Reimbursement for any fees the owner pays to the department to reissue the title.

13 **SECTION 2. The amendments to ORS 87.152 by section 1 of this 2020 Act apply to**
14 **possessory liens that a person creates, attaches, asserts or claims on or after the operative**
15 **date specified in section 3 (1) of this 2020 Act.**

16 **SECTION 3. (1) The amendments to ORS 87.152 by section 1 of this 2020 Act become op-**
17 **erative on July 1, 2020.**

18 **(2) The Department of Transportation may adopt rules and take any other action before**
19 **the operative date specified in subsection (1) of this section that is necessary to enable the**
20 **department, on and after the operative date specified in subsection (1) of this section, to**
21 **exercise all of the duties, functions and powers conferred on the department by the amend-**
22 **ments to ORS 87.152 by section 1 of this 2020 Act.**

23 **SECTION 4. This 2020 Act being necessary for the immediate preservation of the public**
24 **peace, health and safety, an emergency is declared to exist, and this 2020 Act takes effect**
25 **on its passage.**