

# Enrolled House Bill 2311

Sponsored by Representative EVANS (at the request of Northwest Auto Trades Association) (Pre-session filed.)

CHAPTER .....

AN ACT

Relating to security for claims of lien in connection with work performed on motor vehicles; creating new provisions; amending ORS 87.152; and declaring an emergency.

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

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

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

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

(A) Is a franchised motor vehicle dealership, as defined in ORS 650.120 (5), **or a manufacturer, as defined in ORS 650.120, of the motor vehicle;**

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

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

*[(b) A person, other than a person that is described in paragraph (a)(A), (B) or (C) of this subsection, shall have in effect before making, altering, repairing, transporting, storing, performing services for, supplying materials for or performing labor in connection with a motor vehicle a valid surety bond in an amount not less than \$20,000.]*

**(b) A person, other than a person that is described in paragraph (a)(A), (B) or (C) of this subsection, shall have in effect a surety bond or irrevocable letter of credit in the amount of \$20,000 before, and shall maintain the surety bond or irrevocable letter of credit during, any period in which the person creates, attaches, asserts or claims a possessory lien on a motor vehicle after making, altering, repairing, transporting, storing, performing services for, supplying materials for or performing labor in connection with the motor vehicle.**

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

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

(B) A surety bond or irrevocable letter of credit described in paragraph (b) of this subsection must be:

(i) Executed to the State of Oregon;

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

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

(iv) Conditioned such as to compensate parties damaged as a result of a use of a possessory lien in connection with a misrepresentation, a fraud or a violation of a duty set forth in ORS 646A.480 to 646A.495.

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

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

(A) "Auction company" means an entity:

(i) That operates throughout the United States;

(ii) That holds a vehicle dealer certificate that the Department of Transportation issued or renewed under ORS 822.020 or 822.040, or a dismantler certificate that the department issued or renewed under ORS 822.110 or 822.125; and

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

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

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

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

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

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

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

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

(A) The greater of \$2,000 or an amount equivalent to twice the value of the motor vehicle, up to a maximum amount of \$20,000; and

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

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

(A) A judgment that:

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

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

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

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

**SECTION 2. The amendments to ORS 87.152 by section 1 of this 2021 Act apply to possessory liens that a person creates, attaches, asserts or claims on or after the operative date specified in section 3 (1) of this 2021 Act.**

**SECTION 3. (1) The amendments to ORS 87.152 by section 1 of this 2021 Act become operative on January 1, 2022.**

**(2) The Department of Transportation may adopt rules and take any other action before the operative date specified in subsection (1) of this section that is necessary to enable the department, on and after the operative date specified in subsection (1) of this section, to exercise all of the duties, functions and powers conferred on the department by the amendments to ORS 87.152 by section 1 of this 2021 Act.**

**SECTION 4. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.**

Passed by House March 15, 2021

Received by Governor:

Repassed by House June 2, 2021

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Approved:

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

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Kate Brown, Governor

Passed by Senate May 27, 2021

Filed in Office of Secretary of State:

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Peter Courtney, President of Senate

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Shemia Fagan, Secretary of State