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Short Title: Expand Notice for Certain Liens.

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Referred to:

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A BILL TO BE ENTITLED
AN ACT TO PROVIDE NOTICE TO EACH SECURED PARTY OR OTHER
PERSON CLAIMING AN INTEREST IN A MOTOR VEHICLE OR VESSEL,
WHEN THE HOLDER OF A LIEN SEEKS TO ENFORCE THE LIEN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 44A-1 reads as rewritten:

"§ 44A-1. Definitions.

As used in this ~~Article~~ Article:

- (1) 'Legal possessor' means
 - a. Any person entrusted with possession of personal property by an owner thereof, or
 - b. Any person in possession of personal property and entitled thereto by operation of law.
- (2) 'Lienor' means any person entitled to a lien under this Article.
- (2a) 'Motor Vehicle' has the meaning provided in G.S. 20-4.01.
- (3) 'Owner' means
 - a. Any person having legal title to the property, or
 - b. A lessee of the person having legal title, or
 - c. A debtor entrusted with possession of the property by a secured party, or
 - d. A secured party entitled to possession, or

1 e. Any person entrusted with possession of the property by his
2 employer or principal who is an owner under any of the above.

3 (4) 'Secured party' means a person holding a security interest.

4 (5) 'Security interest' means any interest in personal property which
5 interest is subject to the provisions of Article 9 of the Uniform
6 Commercial Code, or any other interest intended to create security in
7 real or personal property.

8 (6) 'Vessel' has the meaning provided in G.S. 75A-2."

9 Sec. 2. G.S. 44A-3, as amended by Chapter 344 of the 1991 Session Laws,
10 reads as rewritten:

11 **"§ 44A-3. When lien arises and terminates.**

12 (a) Liens conferred under this Article arise only when the lienor acquires
13 possession of the property and terminate and become unenforceable when the lienor
14 voluntarily relinquishes the possession of the property upon which a lien might be
15 claimed, or when an owner, his agent, a legal possessor, or any other person having a
16 security or other interest in the property tenders prior to sale the amount secured by the
17 lien plus reasonable storage, boarding and other expenses incurred by the lienor. The
18 reacquisition of possession of property voluntarily relinquished shall not reinstate the
19 lien. Liens conferred under this Article do not terminate when the lienor involuntarily
20 relinquishes the possession of the property.

21 ~~(b) Notwithstanding the provisions of subsection (a) of this section, liens~~
22 ~~conferred under G.S. 44A-2(d) shall not terminate when the lienor involuntarily~~
23 ~~relinquishes the possession of the motor vehicle, motorboat, watercraft of any kind, or~~
24 ~~boat trailer."~~

25 Sec. 3. G.S. 44A-4(b) reads as rewritten:

26 "(b) Notice and Hearings. –

27 (1) If the property upon which the lien is claimed is a motor vehicle that is
28 required to be registered, the lienor following the expiration of the 30-
29 day period provided by subsection (a) shall give notice to the Division
30 of Motor Vehicles that a lien is asserted and sale is proposed and shall
31 remit to the Division a fee of ~~four dollars (\$4.00)~~ ten dollars (\$10.00).
32 The Division of Motor Vehicles shall issue notice by registered or
33 certified mail, return receipt requested, to the person having legal title
34 to the property, if reasonably ascertainable, ~~and to the person with~~
35 ~~whom the lienor dealt if different.~~ different, and to each secured party
36 and other person claiming an interest in the property who is actually
37 known to the Division or who can be reasonably ascertained. ~~Such~~ The
38 notice shall state that a lien has been asserted against specific property
39 and shall identify the lienor, the date that the lien arose, the general
40 nature of the services performed and materials used or sold for which
41 the lien is asserted, the amount of the lien, and that the lienor intends
42 to sell the property in satisfaction of the lien. The notice shall inform
43 the recipient that the recipient has the right to a judicial hearing at
44 which time a determination will be made as to the validity of the lien

1 prior to a sale taking place. The notice shall further state that the
2 recipient has a period of 10 days from the date of receipt in which to
3 notify the Division by registered or certified mail, return receipt
4 requested, that a hearing is desired and that if the recipient wishes to
5 contest the sale of his property pursuant to such lien, the recipient
6 should notify the Division that a hearing is desired and the Division
7 shall notify lienor. The notice shall state the required information in
8 simplified terms and shall contain a form whereby the recipient may
9 notify the Division that a hearing is desired by the return of such form
10 to the Division. Failure of the recipient to notify the Division within 10
11 days of the receipt of such notice that a hearing is desired shall be
12 deemed a waiver of the right to a hearing prior to the sale of the
13 property against which the lien is asserted, the Division shall notify the
14 lienor, and the lienor may proceed to enforce the lien by public or
15 private sale as provided in this section and the Division shall transfer
16 title to the property pursuant to such sale. If the Division is notified
17 within the 10-day period provided above that a hearing is desired prior
18 to sale, the lien may be enforced by sale as provided in this section and
19 the Division will transfer title only pursuant to the order of a court of
20 competent jurisdiction.

21 If the Division notifies the lienor that the registered or certified mail
22 notice has been returned as undeliverable, the lienor may institute a
23 special proceeding in the county where the vehicle is being held, for
24 authorization to sell that vehicle. In such a proceeding a lienor may
25 include more than one vehicle, but the proceeds of the sale of each
26 shall be subject only to valid claims against that vehicle, and any
27 excess proceeds of the sale shall escheat to the State and be paid
28 immediately to the treasurer for disposition pursuant to Chapter 116B
29 of the General Statutes. A vehicle owner or possessor claiming an
30 interest in such proceeds shall have a right of action under G.S. 116B-
31 38.

32 The application to the clerk in such a special proceeding shall
33 contain the notice of sale information set out in subsection (f) hereof.
34 If the application is in proper form the clerk shall enter an order
35 authorizing the sale on a date not less than 14 days therefrom, and the
36 lienor shall cause the application and order to be sent immediately by
37 first-class mail pursuant to G.S. 1A-1, Rule 5, to each person to whom
38 the Division has mailed notice to previously pursuant to this
39 subsection. Following the authorized sale the lienor shall file with the
40 clerk a report in the form of an affidavit, stating that two or more bona
41 fide bids on the vehicle were received, the names, addresses and bids
42 of the bidders, and a statement of the disposition of the sale proceeds.
43 The clerk then shall enter an order directing the Division to transfer
44 title accordingly.

1 If prior to the sale the owner or legal possessor contests the sale or
2 lien in a writing filed with the clerk, the proceeding shall be handled in
3 accordance with G.S. 1-399.

- 4 (2) If the property upon which the lien is claimed is other than a motor
5 vehicle required to be registered, the lienor following the expiration of
6 the 30-day period provided by subsection (a) shall issue notice to the
7 person having legal title to the property, if reasonably ascertainable,
8 and to the person with whom the lienor dealt if different by registered
9 or certified mail, return receipt requested. Such notice shall state that a
10 lien has been asserted against specific property and shall identify the
11 lienor, the date that the lien arose, the general nature of the services
12 performed and materials used or sold for which the lien is asserted, the
13 amount of the lien, and that the lienor intends to sell the property in
14 satisfaction of the lien. The notice shall inform the recipient that the
15 recipient has the right to a judicial hearing at which time a
16 determination will be made as to the validity of the lien prior to a sale
17 taking place. The notice shall further state that the recipient has a
18 period of 10 days from the date of receipt in which to notify the lienor
19 by registered or certified mail, return receipt requested, that a hearing
20 is desired and that if the recipient wishes to contest the sale of his
21 property pursuant to such lien, the recipient should notify the lienor
22 that a hearing is desired. The notice shall state the required information
23 in simplified terms and shall contain a form whereby the recipient may
24 notify the lienor that a hearing is desired by the return of such form to
25 the lienor. Failure of the recipient to notify the lienor within 10 days of
26 the receipt of such notice that a hearing is desired shall be deemed a
27 waiver of the right to a hearing prior to sale of the property against
28 which the lien is asserted and the lienor may proceed to enforce the
29 lien by public or private sale as provided in this section. If the lienor is
30 notified within the 10-day period provided above that a hearing is
31 desired prior to sale, the lien may be enforced by sale as provided in
32 this section only pursuant to the order of a court of competent
33 jurisdiction."

34 Sec. 4. G.S. 44A-6.1, as enacted by Chapter 344 of the 1991 Session Laws,
35 reads as rewritten:

36 "**§ 44A-6.1. Action to regain possession of a motor ~~vehicle, motorboat, watercraft of~~
37 ~~any kind, or boat trailer.~~ vehicle or vessel.**

38 (a) When the lienor involuntarily relinquishes possession of the property and the
39 property upon which the lien is claimed is a motor ~~vehicle, vehicle or vessel,~~ the lienor
40 may institute an action to regain possession of the ~~motor vehicle, motorboat, watercraft of~~
41 ~~any kind, or boat trailer~~ motor vehicle or vessel in small claims court any time following
42 the lienor's involuntary loss of possession and following maturity of the obligation to
43 pay charges. The lienor shall serve a copy of the summons and the complaint pursuant
44 to G.S. 1A-1, Rule 4, on each secured party claiming an interest in the vehicle or vessel.

1 For purposes of this section, involuntary relinquishment of possession includes only
2 those situations where the owner or other party takes possession of the ~~motor vehicle,~~
3 ~~motorboat, watercraft of any kind, or boat trailer~~ motor vehicle or vessel without the lienor's
4 permission or without judicial process. If in ~~such~~ the court action the owner or other
5 party retains possession of the ~~motor vehicle, motorboat, watercraft of any kind, or boat~~
6 ~~trailer, he~~ motor vehicle or vessel, the owner or other party shall pay the amount of the
7 lien asserted as bond into the clerk of the court in which ~~such~~ the action is pending.

8 If within three days after service of the summons and complaint, as the number of
9 days is computed in G.S. 1A-1, Rule 6, neither the defendant ~~does not file nor~~ a secured
10 party claiming an interest in the vehicle or vessel files a contrary statement of the
11 amount of the lien at the time of the filing of the complaint, the amount set forth in the
12 complaint shall be deemed to be the amount of the asserted lien. The clerk may at any
13 time disburse to the lienor that portion of the cash bond which is not in dispute, upon
14 application of the lienor. The magistrate shall:

15 (1) Direct appropriate disbursement of the disputed or undisbursed portion
16 of the bond; and

17 (2) Direct appropriate possession of the motor vehicle or vessel if, in the
18 judgment of the court, the plaintiff has a valid right to a lien.

19 (b) Either party to an action pursuant to subsection (a) of this section may appeal
20 to district court for a trial **de novo**."

21 Sec. 5. Sections 1, 2, and 4 of this act become effective October 1, 1991.
22 Section 3 of this act is effective upon ratification and applies to any lien on a motor
23 vehicle pursuant to Article 1 of Chapter 44A of the General Statutes that arises on or
24 after that date. The remainder of this act is effective upon ratification.