

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 685

Short Title: Expand Notice for Lien on Car.

(Public)

Sponsors: Senator Sands.

Referred to: Judiciary II.

April 18, 1991

A BILL TO BE ENTITLED

AN ACT TO PROVIDE NOTICE TO EACH SECURED PARTY OR OTHER PERSON CLAIMING AN INTEREST IN A MOTOR VEHICLE, WHEN THE HOLDER OF A LIEN ASSERTS HIS LIEN AND PROPOSES SALE OF THE MOTOR VEHICLE TO SATISFY THE LIEN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 44A-4(b) reads as rewritten:

"(b) Notice and Hearings. -

(1) If the property upon which the lien is claimed is a motor vehicle that is required to be registered, the lienor following the expiration of the 30-day period provided by subsection (a) shall give notice to the Division of Motor Vehicles that a lien is asserted and sale is proposed and shall remit to the Division a fee of four dollars (\$4.00). The Division of Motor Vehicles shall issue notice by registered or certified mail, return receipt requested, to the person having legal title to the property, if reasonably ascertainable, and to the person with whom the lienor dealt if ~~different~~ different, and to each secured party or other person claiming an interest in the property who is actually known to the Division from the certificate of title or otherwise or who can be reasonably ascertained. Such notice shall state that a lien has been asserted against specific property and shall identify the lienor, the date that the lien arose, the general nature of the services performed and materials used or sold for which the lien is asserted, the amount of the lien, and that the lienor intends to sell the property in satisfaction of

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

23 If the Division notifies the lienor that the registered or certified mail
24 notice has been returned as undeliverable, the lienor may institute a
25 special proceeding in the county where the vehicle is being held, for
26 authorization to sell that vehicle. In such a proceeding a lienor may
27 include more than one vehicle, but the proceeds of the sale of each
28 shall be subject only to valid claims against that vehicle, and any
29 excess proceeds of the sale shall escheat to the State and be paid
30 immediately to the treasurer for disposition pursuant to Chapter 116B
31 of the General Statutes. A vehicle owner or possessor claiming an
32 interest in such proceeds shall have a right of action under G.S. 116B-
33 38.

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

1 The clerk then shall enter an order directing the Division to transfer
2 title accordingly.

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

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

36 Sec. 2. This act is effective upon ratification and applies to any lien on a
37 motor vehicle pursuant to Article 1 of Chapter 44A of the General Statutes that arises on
38 or after that date.