

NORTH CAROLINA GENERAL ASSEMBLY
1975 SESSION

CHAPTER 438
HOUSE BILL 421

AN ACT TO AMEND G.S. 44A-4 AND G.S. 20-77 TO PROVIDE NOTICE AND
OPPORTUNITY FOR HEARING PRIOR TO LIEN SALES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 44A-4 is hereby amended to read as follows:

"(a) Enforcement by sale. If the charges for which the lien is claimed under this Article remain unpaid or unsatisfied for 30 days following the maturity of the obligation to pay any such charges, the lienor may enforce the lien by public or private sale as provided in this section. The lienor may bring an action on the debt in any court of competent jurisdiction at any time following maturity of the obligation. Failure of the lienor to bring such action within a 180-day period following the commencement of storage shall constitute a waiver of any right to collect storage charges which accrue after such period.

The owner or person with whom the lienor dealt may at any time following the maturity of the obligation bring an action in any court of competent jurisdiction as by law provided. If in any such action the owner or other party requests immediate possession of the property and pays the amount of the lien asserted into the clerk of the court in which such action is pending or posts bond for double such amount, the clerk shall issue an order to the lienor to relinquish possession of the property to the owner or other party.

(b) Notice and hearing. (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 Department of Motor Vehicles that a lien is asserted and sale is proposed and shall remit to the department a fee of two dollars (\$2.00). The Department 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. 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 the lien. The notice shall inform the recipient that the recipient has the right to a judicial hearing at which time a determination will be made as to the validity of the lien prior to a sale taking place. The notice shall further state that the recipient has a period of 10 days from the date of receipt in which to notify the department by registered or certified mail, return receipt requested, that a hearing is desired and that if the recipient wishes to contest the sale of his property pursuant to such lien, the recipient should notify the department that a hearing is desired and the department shall notify lienor. The notice shall state the required information in simplified terms and shall contain a form whereby the recipient may notify the department that a hearing is desired by the return of such form to the department. Failure of the recipient to notify the department within 10 days of the receipt of such notice that a hearing is desired shall be deemed a waiver of the right to a hearing prior to sale of the property against which the lien is asserted, the department shall notify the lienor, and the lienor may proceed to enforce the lien by public or private sale as provided in this section and the department shall transfer title to the property pursuant to such sale. If the department is notified within the 10-day period provided

above that a hearing is desired prior to sale, the lien may be enforced by sale as provided in this section and the department will transfer title only pursuant to the order of a court of competent jurisdiction.

(2) If the property upon which the lien is claimed is other than a motor vehicle required to be registered, the lienor following the expiration of the 30-day period provided by subsection (a) shall issue notice to the person having legal title to the property, if reasonably ascertainable, and to the person with whom the lienor dealt if different by registered or certified mail, return receipt requested. 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 the lien. The notice shall inform the recipient that the recipient has the right to a judicial hearing at which time a determination will be made as to the validity of the lien prior to a sale taking place. The notice shall further state that the recipient has a period of 10 days from the date of receipt in which to notify the lienor by registered or certified mail, return receipt requested, that a hearing is desired and that if the recipient wishes to contest the sale of his property pursuant to such lien, the recipient should notify the lienor that a hearing is desired. The notice shall state the required information in simplified terms and shall contain a form whereby the recipient may notify the lienor that a hearing is desired by the return of such form to the lienor. Failure of the recipient to notify the lienor within 10 days of the receipt of such notice that a hearing is desired shall be deemed a waiver of the right to a hearing prior to sale of the property against which the lien is asserted and the lienor may proceed to enforce the lien by public or private sale as provided in this section. If the lienor is notified within the 10-day period provided above that a hearing is desired prior to sale, the lien may be enforced by sale as provided in this section only pursuant to the order of a court of competent jurisdiction.

(c) Private sale. Sale by private sale may be made in any manner that is commercially reasonable. Not less than 30 days prior to the date of the proposed private sale, the lienor shall cause notice to be mailed, as provided in subsection (f) hereof, to the person having legal title to the property, if reasonably ascertainable, to the person with whom the lienor dealt if different, and to each secured party or other person claiming an interest in the property who is actually known to the lienor or can be reasonably ascertained. Notices provided pursuant to subsection (b) hereof shall be sufficient for these purposes if such notices contain the information required by subsection (f) hereof. The lienor shall not purchase, directly or indirectly, the property at private sale and such a sale to the lienor shall be voidable.

(d) Request for public sale. If an owner, the person with whom the lienor dealt, any secured party, or other person claiming an interest in the property notifies the lienor prior to the date upon or after which the sale by private sale is proposed to be made, that public sale is requested, sale by private sale shall not be made. After request for public sale is received, notice of public sale must be given as if no notice of sale by private sale had been given.

(e) Public sale. (1) Not less than 20 days prior to sale by public sale the lienor:

- a. Shall cause notice to be mailed to the person having legal title to the property if reasonably ascertainable, to the person with whom the lienor dealt if different, and to each secured party or other person claiming an interest in the property who is actually known to the lienor or can be reasonably ascertained, provided that notices provided pursuant to subsection (b) hereof shall be sufficient for these purposes if such notices contain the information required by subsection (f) hereof; and
- b. Shall advertise the sale by posting a copy of the notice of sale at the courthouse door in the county where the sale is to be held and by publishing notice of sale once per week for two consecutive weeks in a newspaper of general circulation in the same county.

- (2) A public sale must be held on a day other than Sunday and between the hours of 10:00 a.m. and 4:00 p.m.:
- a. In any county where any part of the contract giving rise to the lien was performed, or
 - b. In the county where the obligation secured by the lien was contracted for.
- (3) A lienor may purchase at public sale.
- (f) Notice of sale. The notice of sale shall include:
- (1) The name and address of the lienor;
 - (2) The name of the person having legal title to the property if such person can be reasonably ascertained and the name of the person with whom the lienor dealt;
 - (3) A description of the property;
 - (4) The amount due for which the lien is claimed;
 - (5) The place of the sale;
 - (6) If a private sale the date upon or after which the sale is proposed to be made, or if a public sale the date and hour when the sale is to be held.

(g) Damages for noncompliance. If the lienor fails to comply substantially with any of the provisions of this section, the lienor shall be liable to the person having legal title to the property or any other party injured by such noncompliance in the sum of one hundred dollars (\$100.00), together with a reasonable attorney's fee as awarded by the court. Damages provided by this section shall be in addition to actual damages to which any party is otherwise entitled."

Sec. 2. G.S. 20-77 is hereby amended by deleting the second paragraph of subsection (d) and inserting in lieu thereof the following: "Any vehicle which remains unclaimed after report is made to the Department may be sold by such operator or landowner in accordance with the provisions relating to the enforcement of liens and the application of proceeds of sale of Article 1 of Chapter 44A."

Sec. 3. G.S. 20-137.10 is hereby amended by deleting subsection (b), by redesignating the present subsection (c) as subsection (b) and by amending the first sentence of the present subsection (c) (new subsection (b)), to read as follows:

"The tag shall serve as the only notice that if the vehicle is not removed within five days from the date reflected on the tag, that it will be removed to a designated place to be sold.", and by redesignating the present subsection (d) as subsection (c), and by inserting a new subsection (d), to read as follows:

"(d) If the value of the vehicle is determined to be less than one hundred dollars (\$100.00), and if the identity of the last registered owner cannot be determined or if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identification and addresses of any lienholders, no notice in addition to that required by subsection (a) hereof shall be required prior to sale."

Sec. 4. This act shall become effective upon ratification.

In the General Assembly read three times and ratified, this the 29th day of May, 1975.