

GENERAL ASSEMBLY OF NORTH CAROLINA
1991 SESSION

CHAPTER 731
SENATE BILL 685

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
 - e. Any person entrusted with possession of the property by his employer or principal who is an owner under any of the above.
- (4) 'Secured party' means a person holding a security interest.
- (5) 'Security interest' means any interest in personal property which interest is subject to the provisions of Article 9 of the Uniform Commercial Code, or any other interest intended to create security in real or personal property.
- (6) 'Vessel' has the meaning provided in G.S. 75A-2."

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

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

(a) Liens conferred under this Article arise only when the lienor acquires possession of the property and terminate and become unenforceable when the lienor voluntarily relinquishes the possession of the property upon which a lien might be claimed, or when an owner, his agent, a legal possessor, or any other person having a

security or other interest in the property tenders prior to sale the amount secured by the lien plus reasonable storage, boarding and other expenses incurred by the lienor. The reacquisition of possession of property voluntarily relinquished shall not reinstate the lien. Liens conferred under this Article do not terminate when the lienor involuntarily relinquishes the possession of the property.

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

Sec. 3. 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)~~ ten dollars (\$10.00). 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 and other person claiming an interest in the property who is actually known to the Division or who can be reasonably ascertained. ~~Such~~ ~~The~~ 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 Division 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 Division that a hearing is desired and the Division shall notify lienor. The notice shall state the required information in simplified terms and shall contain a form whereby the recipient may notify the Division that a hearing is desired by the return of such form to the Division. Failure of the recipient to notify the Division 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 the sale of the property against which the lien is asserted, the Division 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 Division shall transfer

title to the property pursuant to such sale. If the Division 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 Division will transfer title only pursuant to the order of a court of competent jurisdiction.

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

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

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

- (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."

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

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

(a) When the lienor involuntarily relinquishes possession of the property and the property upon which the lien is claimed is a motor ~~vehicle, vehicle or vessel,~~ the lienor may institute an action to regain possession of the ~~motor vehicle, motorboat, watercraft of any kind, or boat trailer~~ motor vehicle or vessel in small claims court any time following the lienor's involuntary loss of possession and following maturity of the obligation to pay charges. The lienor shall serve a copy of the summons and the complaint pursuant to G.S. 1A-1, Rule 4, on each secured party claiming an interest in the vehicle or vessel. For purposes of this section, involuntary relinquishment of possession includes only those situations where the owner or other party takes possession of the ~~motor vehicle, motorboat, watercraft of any kind, or boat trailer~~ motor vehicle or vessel without the lienor's permission or without judicial process. If in such the court action the owner or other party retains possession of the ~~motor vehicle, motorboat, watercraft of any kind, or boat trailer,~~ he motor vehicle or vessel, the owner or other party shall pay the amount of the lien asserted as bond into the clerk of the court in which ~~such the~~ action is pending.

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

- (1) Direct appropriate disbursement of the disputed or undisbursed portion of the bond; and
- (2) Direct appropriate possession of the motor vehicle or vessel if, in the judgment of the court, the plaintiff has a valid right to a lien.

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

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

In the General Assembly read three times and ratified this the 16th day of July, 1991.

James C. Gardner
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives