

HOUSE BILL NO. 731

INTRODUCED BY V. SMALL-EASTMAN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO PAYMENT FOR REPOSSESSION AND LIENS ON CAR LOANS; PROVIDING FOR PAYMENT TO THE BORROWER OF EXCESS PROCEEDS FROM THE SALE OF A REPOSSESSED VEHICLE OR VESSEL; CLARIFYING ACCESS TO VEHICLE OR VESSEL RECORDS UPON REPOSSESSION; CLARIFYING THE STATUS OF THE DEALER AND THE ORIGINAL BORROWER FOR THE PAYMENT OF A LIEN ON MOTOR VEHICLES TRADED OR CONSIGNED; AND AMENDING SECTIONS 61-3-103, 61-3-221, 61-4-104, AND 61-4-110, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Conditions for secured party's disposal of repossessed motor vehicle

-- access to information. (1) (a) Subject to the requirements of Title 30, chapter 9A, and 61-3-103, a holder of a secured note, chattel mortgage, or conditional sales contract shall, upon a default of the borrower and the sale or transfer for a fee of a repossessed motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile, deduct any proceeds of the sale in excess of the amount owed on the loan and the reasonable costs of repossession and pay to the borrower the remainder, subject to subsection (1)(b).

(b) The amount paid to the original borrower under subsection (1)(a) may not be more than the remaining amount due on the note, chattel mortgage, or conditional sales contract.

(2) (a) The holder of the secured note, chattel mortgage, or conditional sales contract shall, at the request of the borrower who defaulted on the secured note, chattel mortgage, or conditional sales contract, provide to the borrower who defaulted the financial information related to the resale or subsequent transfer of the repossessed motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile.

(b) The financial information provided under subsection (2)(a) may not include personal information as defined in 61-11-503.

Section 2. Section 61-3-103, MCA, is amended to read:

"61-3-103. Filing of security interests -- perfection -- rights -- procedure -- fees. (1) (a) Except as provided in subsection (2), the department, its authorized agent, or a county treasurer shall, upon payment of the

fee required by subsection (8), enter a voluntary security interest or lien against the electronic record of title for a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile upon receipt of a written acknowledgment by a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile owner of a voluntary security interest or lien on a form required by the department. The entry may be made if:

(i) the person is applying for a certificate of title and the manufacturer's certificate of origin or a certificate of title is being surrendered; or

(ii) a transfer of ownership is not sought.

(b) After the voluntary security interest or lien has been entered on the electronic record of title for the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile, the department, its authorized agent, or a county treasurer shall issue a transaction summary receipt to the owner and, if requested, to the secured party or lienholder, showing the date that the security interest or lien was perfected.

(c) A voluntary security interest or lien is perfected on the date that the department, its authorized agent, or a county treasurer receives the written acknowledgment of the voluntary security interest or lien from the owner of the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile.

(d) Unless a person applying for a certificate of title requests issuance of a certificate of title under 61-3-201, the department may not record a voluntary security interest or lien on the face of a certificate of title.

(2) A security interest in a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile held as inventory by a dealer licensed under Title 23, chapter 2, part 5, 6, or 8, or chapter 4 of this title must be perfected in accordance with Title 30, chapter 9A.

(3) Whenever a security interest or lien is filed against the electronic record of title for a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile that is subject to two security interests previously perfected under this section and the applicant has requested issuance of a certificate of title under 61-3-201, the department shall endorse on the face of the certificate of title, "NOTICE. This vehicle is subject to additional security interests on file with the Department of Justice." Other information regarding the additional security interests is not required to be endorsed on the certificate.

(4) (a) Upon default under a chattel mortgage or conditional sales contract covering a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of motor

vehicles, trailers, semitrailers, pole trailers, campers, motorboats, personal watercraft, sailboats, or snowmobiles, all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable except that deposits must be made with the department.

(b) (i) Financial information required under [section 1(2)] and disposition of the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile related to the default or the attachment described in subsection (4)(a) must be retained by the mortgagee, vendor, or department, as applicable, and provided, upon request, to the borrower who defaulted on the chattel mortgage or conditional sales contract or whose property was attached as provided in 27-18-413, 27-18-414, or 27-18-804.

(ii) The department may, by rule, provide the period for which the information must be retained and determine a reasonable fee for providing the information.

(5) A secured party or lienholder who has a perfected security interest in a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile and who fails to file a satisfaction of the security interest or lien within 21 days after receiving final payment is required to pay the department \$25 for each day that the secured party or lienholder fails to file the satisfaction.

(6) Within 24 hours after receiving notice of any involuntary liens or attachments against the record of any motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile registered in this state, the department shall mail to the owner or any secured party or lienholder of record a notice showing the name and address of the lien claimant, the amount of the lien, the date of execution of the lien, and, in the case of attachment, the full title of the court and the action and the names of the attorneys for the plaintiff and attaching creditor.

(7) (a) This section does not prevent a secured party or lienholder from assigning the secured party's or lienholder's interest in a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile, for which a certificate of title is issued under this chapter, to any other person without the consent of and without affecting the interest of the holder of the certificate of title.

(b) If a secured party assigns all or part of the party's interest in a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile for which a certificate of title is issued under this chapter, the secured party assigning the interest shall file a copy of the assignment with the department and the department shall record the assignment in the department's records. If requested by a borrower who defaults or whose property is attached, as provided in subsection (4)(a), the department shall provide information as required in subsection (4)(b) to the borrower on the assignment under this subsection (7).

(8) (a) A fee must be paid to the department to file any security interest or other lien against a motor

vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile. The fee covers the cost of entering and, upon the subsequent satisfaction or release, of removing the security interest or lien from the electronic record of title.

(b) Beginning January 1, 2002, and ending June 30, 2011, the fee is \$8. Of the \$8 fee, \$4 must be deposited in the state general fund in accordance with 15-1-504. The remaining \$4 must be forwarded to the state for deposit in the motor vehicle information technology system account provided for in 61-3-550.

(c) Beginning July 1, 2011, the fee is \$4 and must be deposited in the state general fund.

(9) A fee of \$10 must be paid to the department by a vehicle owner if, following satisfaction or release of a security interest and its removal from the department's records, the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile owner requests issuance of a new certificate of title without the security interest or lien shown on the face of the title. The \$10 fee must be deposited in the motor vehicle information technology system account provided for in 61-3-550. (Subsection (9) terminates June 30, 2013--sec. 15, Ch. 562, L. 2003.)"

Section 3. Section 61-3-221, MCA, is amended to read:

"61-3-221. Involuntary transfer. (1) (a) An involuntary transfer of title to or any interest in a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile may occur by operation of law through inheritance, devise, bequest, order in bankruptcy or insolvency, execution sale, or repossession upon default in the performance of the terms of a lease, executory sales contract, or security agreement or in any other manner other than by voluntary act of the person whose title or interest is transferred. Upon the involuntary transfer, the executor, administrator, receiver, trustee, sheriff, secured party, or other representative or successor in interest of the person whose interest is transferred shall send to the department:

(i) an application for a certificate of title; and

(ii) a verified or certified statement of the transfer of interest or a transfer statement, as defined in 30-9A-619.

(b) The statement of transfer of interest must state the reason for the involuntary transfer, the interest transferred, the name of the person to whom the interest is to be transferred, the process or procedure creating the transfer, and other information requested by the department. A transfer statement submitted under this section must meet the requirements of 30-9A-619. Evidence and instruments that are required by law in order to effect a transfer of legal or equitable title to or an interest in chattels must be submitted with the statement.

(c) Except as provided in subsection (2), if the department determines that the transfer is regular and

that all legal requirements have been complied with, the department shall send notice of the intended transfer to the owner, conditional sales vendor, lessor, mortgagee, and other lienholder, as shown in the department's records. Deposit in the U.S. mail of the notice, postage prepaid, addressed to the person at the respective address shown in the department's records satisfies the notice required by this section. Not less than 5 days after sending the notice, the department shall issue a new certificate of title to the transferee.

(2) (a) Except as provided in subsection (2)(b), if an interest in a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile that is not registered in this state is involuntarily transferred to a person in this state, the person to whom the interest is transferred shall follow the procedure provided in subsection (1).

(b) In lieu of the statement required in subsection (1), the department may accept an affidavit of repossession as executed by the person seeking the involuntary transfer.

(3) The department is not required to send notice for a transfer of interest occurring under subsection (2).

(4) Information provided by the department under subsection (1) or obtained by the department under subsection (2)(b) must be provided, upon request, to the person who involuntarily transferred the certificate of title within the limits provided in [section 1]."

Section 4. Section 61-4-104, MCA, is amended to read:

"61-4-104. Record of purchase or sale -- access to information. (1) (a) A dealer or wholesaler licensed under 61-4-101 shall keep a book or record of the purchases, sales or exchanges, or receipts for the purpose of sale of used vehicles and a description of the vehicles, together with the date of purchase, sale, or consignment and the name and address of:

(i) the person from whom the dealer or wholesaler acquired the vehicle's ownership or, if consigned, possessory interest in the vehicle;

(ii) the person to whom the dealer or wholesaler assigned the vehicle; and

(iii) a secured party with a perfected security interest in the vehicle to which the dealer or wholesaler's interest is subordinate, if any.

(b) The vehicle description must also include the vehicle identification number and engine number, if any, and must include a statement that a number has been obliterated, defaced, or changed if that has occurred. In the case of a trailer, semitrailer, pole trailer, or special mobile equipment, the record must include the manufacturer's number and other numbers or identification marks that appear on the trailer, semitrailer, pole

trailer, or special mobile equipment.

(2) The dealer or wholesaler must also have an assigned certificate of ownership or certificate of title from the owner of the motor vehicle to the dealer or wholesaler from the time the motor vehicle is delivered to the dealer or wholesaler until it has been disposed of by the dealer or wholesaler. It is a violation of this part for a dealer or wholesaler to fail to take assignment of all certificates of ownership, certificates of title, or manufacturer's certificates of origin for motor vehicles acquired by the licensee or to fail to assign the certificate of ownership, certificate of title, or manufacturer's certificate of origin for motor vehicles sold.

(3) All records required to be kept in accordance with this section, in addition to the required retention of odometer disclosure information under 61-3-206(4), must be physically located and maintained within the building referred to in 61-4-101. An authorized representative of the department, upon presentation of the representative's credentials, may inspect and have access to and copy any records required under this chapter.

(4) (a) Except as provided in subsection (4)(b), a dealer or wholesaler that repossesses a motor vehicle on the default of a chattel mortgage or conditional sales contract and resells that motor vehicle shall, upon request of the person who has defaulted on the chattel mortgage or conditional sales contract and the payment of a fee for actual copying costs, provide a copy of the financial records associated with the motor vehicle to the person who defaulted for the purposes of determining information on the resale price of the repossessed motor vehicle and the proceeds due from the resale, as provided in [section 1].

(b) The information provided under subsection (4)(a) may not include personal information, as defined in 61-11-503, of the buyer, dealer, or wholesaler."

Section 5. Section 61-4-110, MCA, is amended to read:

"61-4-110. Obligation of dealer to pay off liens on motor vehicles accepted in trade or consignment -- duties of dealer and secured party. (1) (a) If a dealer accepts a motor vehicle in trade from a retail customer as part of the sale of another motor vehicle and there is an outstanding loan balance owing on the traded motor vehicle, the dealer shall remit payment to the secured party to whom the balance on the traded motor vehicle is owed in an amount sufficient to satisfy the perfected security interest on the traded motor vehicle by the earlier of the following dates:

(i) 21 days from the date of acceptance of the motor vehicle in trade; or

(ii) 15 days from the date of the receipt by the dealer of payment in full from the sale of the traded motor vehicle.

(b) If a dealer accepts a motor vehicle from an owner for sale upon consignment and there is an

outstanding loan balance owing on the consigned motor vehicle, the dealer shall remit payment to the secured party to whom the balance on the consigned motor vehicle is owed in an amount sufficient to satisfy the perfected security interest on the consigned motor vehicle within 15 days from the date of the receipt by the dealer of payment in full for sale of the consigned motor vehicle.

(2) If a dealer who has accepted a motor vehicle in trade or on consignment under subsection (1) fails to pay the secured party in full, the secured party becomes a secured creditor in relation to the dealer. The secured party's relationship to the original motor vehicle owner is severed.

~~(2)~~(3) A secured party who has been paid in full by a dealer in accordance with the terms of this section shall forward to the department a properly executed release within:

(a) 15 business days after the business day on which the funds are received when the funds are in cash, cashier's check, certified check, teller's check, or other certified source of funds;

(b) 18 business days after the business day on which the funds are received when the funds are in the form of a check drawn on a local originating depository institution; or

(c) 21 business days after the business day on which the funds are received when the funds are in the form of a check drawn on a nonlocal originating depository institution.

~~(3)~~(4) For purposes of this section, "business day" means a weekday, excluding any weekday upon which a legal holiday falls."

NEW SECTION. Section 6. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 61, and the provisions of Title 61 apply to [section 1].

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