

1 SENATE BILL NO. 83

2 INTRODUCED BY B. HOVEN

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING SPECIAL LIEN LAWS; ALLOWING A
 5 NONPOSSESSORY SPECIAL LIEN ON IMPLEMENTS OF HUSBANDRY, CONSTRUCTION EQUIPMENT,
 6 ~~WHEELED OFF-ROAD VEHICLES~~ FORESTRY EQUIPMENT, AND MOTORIZED LAWN CARE AND
 7 LANDSCAPING EQUIPMENT; PROVIDING FOR ENFORCEMENT OF NONPOSSESSORY SPECIAL LIENS;
 8 AND AMENDING SECTIONS 71-3-1201 AND 71-3-1203, MCA."

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

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12 **Section 1.** Section 71-3-1201, MCA, is amended to read:

13 **"71-3-1201. Liens for service -- towing and storage lien -- extension of lien to certain personal**
 14 **property contained in motor vehicle that is subject to lien -- nonpossessory special liens.** (1) If there is
 15 an express or implied contract for collecting, processing, packaging, or storing embryos or semen from
 16 livestock, a reproductive technology business to whom embryos or semen is entrusted and who still has
 17 possession has a lien upon the embryos or semen for the amount due for collecting, processing, packaging, or
 18 storing the embryos or semen and may retain possession of the embryos or semen until the sum due is paid.

19 (2) (a) A person who, while lawfully in possession of an article of personal property, renders any
 20 service to the owner or lawful claimant of the article by labor or skill employed for the making, repairing,
 21 protection, improvement, safekeeping, carriage, towing, or storage of the article or tows or stores the article as
 22 directed under authority of law has a special lien on the article. ~~The~~ Except as provided in subsection (2)(c), the
 23 lien is dependent on possession and is for the compensation, if any, that is due to the person from the owner or
 24 lawful claimant for the service and for material, if any, furnished in connection with the service. If the service is
 25 towing or storage, the lien is for the reasonable cost of the towing or storage.

26 (b) Any personal property that is in a motor vehicle that is subject to a lien as provided in subsection
 27 (2)(a) is also subject to the lien, except for the following:

28 (i) food items;

- 1 (ii) perishable goods;
 2 (iii) prescription items;
 3 (iv) operators' licenses and other identifying documents;
 4 (v) cash, credit cards, debit cards, checks, or checkbooks;
 5 (vi) personal records, legal records, and business records;
 6 (vii) child safety items; and
 7 (viii) wallets, purses, bags, or other containers that contain the items listed in subsections (2)(b)(iv)
 8 through (2)(b)(vi).

9 (c) A special lien is not dependent on possession if the person asserting the lien gives the owner or
 10 the owner's agent, or attaches to the article, a document identifying the article and its owner, the services
 11 performed, the cost of those services, the cost to the owner of any parts, accessories, or equipment installed,
 12 and the signature and contact information of the person asserting the nonpossessory special lien. THE PERSON
 13 DESIRING TO ASSERT A SPECIAL LIEN UPON THE PROPERTY MUST ALSO FILE A FINANCING STATEMENT IN THE OFFICE
 14 DESIGNATED FOR FILING AS PROVIDED IN 30-9A-501. A nonpossessory special lien may be asserted on:

- 15 (i) implements of husbandry as defined in 61-1-101;
 16 (ii) construction equipment as defined in 61-10-102;
 17 ~~(iii) wheeled off-road vehicles of every kind; and~~
 18 ~~(iv) (III) motorized lawncare and landscaping equipment; AND~~
 19 (IV) FORESTRY EQUIPMENT.

20 (D) THE SPECIAL LIEN CREATED UNDER SUBSECTION (2)(C) MAY NOT TAKE PRECEDENCE OVER PERFECTED
 21 SECURITY INTERESTS UNDER THE UNIFORM COMMERCIAL CODE--SECURED TRANSACTIONS OR OTHER RECORDED LIENS
 22 ON THE PROPERTY INVOLVED UNLESS, WITHIN 30 DAYS FROM THE TIME OF THE COMPLETION OF THE SERVICE, REPAIR,
 23 OR IMPROVEMENT OF THE PROPERTY, THE PERSON DESIRING TO ASSERT A SPECIAL LIEN UPON THE PROPERTY GIVES
 24 NOTICE IN WRITING TO THE SECURED PARTY OR OTHER LIENHOLDER STATING THE INTENTION TO ASSERT A SPECIAL LIEN
 25 ON THE PROPERTY UNDER THE TERMS OF SUBSECTION (2)(C) AND STATING THE NATURE AND APPROXIMATE AMOUNT OF
 26 THE WORK PERFORMED OR OTHER SERVICES FURNISHED AND THE COST OF ANY PARTS, ACCESSORIES, OR EQUIPMENT
 27 INSTALLED. SERVICE MAY BE MADE EITHER BY PERSONAL SERVICE OR BY MAILING BY REGISTERED OR CERTIFIED MAIL A
 28 COPY OF THE NOTICE TO THE SECURED PARTY OR OTHER LIENHOLDER AT THE LAST-KNOWN POST-OFFICE ADDRESS.

1 SERVICE MUST BE CONSIDERED COMPLETE UPON THE DEPOSIT OF THE NOTICE IN THE POST OFFICE. "

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3 **Section 2.** Section 71-3-1203, MCA, is amended to read:

4 **"71-3-1203. Enforcement of lien -- sale.** If payment for work, labor, or services performed or feed or
5 material furnished is not made within 30 days after the performance of the work, labor, or services or furnishing
6 of the feed or material, the lienor under the provisions of this part may enforce the lien in the following manner:

7 (1) The lienor may file a lien enforcement action in the district court of the county in which the:

8 (a) contract between the lienor and the owner of the property was entered into;

9 (b) owner resided at the time the lien enforcement action commenced; or

10 (c) property is located.

11 (2) When a claim is made under this section for a lien other than a nonpossessory special lien, an
12 affidavit must be made by the lienor claiming the property or by someone on the lienor's behalf, stating:

13 (a) the facts that the lienor performed a service for the property owner entitling the lienor to a lien on
14 the owner's property pursuant to 71-3-1201;

15 (b) that the service described in subsection (2)(a) was performed at the written or verbal request of
16 the owner or owner's agent;

17 (c) a particular property upon which the lien is claimed; and

18 (d) an itemized list of the charges that are due and unpaid under the lien.

19 (3) When a claim is made under this section for a nonpossessory special lien, the lienor shall submit
20 to the court:

21 (a) a copy of the document required by 71-3-1201(2)(c); and

22 (b) a statement of the charges that are due and unpaid under the lien.

23 ~~(3)(4)~~ (a) If satisfactory, the court shall order the owner of the property to show cause why the
24 property should not be sold pursuant to the procedures in this section. The order must include the date and
25 time for a hearing. The hearing may not be held more than 20 working days after the date of the issuance of the
26 order.

27 (b) The court order provided for in subsection ~~(3)(a)~~ (4)(a) must be served pursuant to the Montana
28 Rules of Civil Procedure on the owner at least 5 days before the hearing date.

