

HOUSE BILL NO. 769

Introduced: 02/12/83

Referred to Committee on Judiciary: 02/12/83

Hearing: 2/18/83

Died in Committee

1 ~~House~~ BILL NO. 769
2 INTRODUCED BY Wesley Christian, Acting
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A LIEN AGAINST
5 A MOTOR VEHICLE FOR THE VALUE OF ANY PARTS FURNISHED FOR THE
6 MOTOR VEHICLE AND FOR ANY WORK OR LABOR PERFORMED ON THE
7 MOTOR VEHICLE; AMENDING SECTIONS 61-3-103 AND 71-3-124,
8 MCA."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 NEW SECTION. Section 1. Who may have lien. Every
12 person performing work or labor on or furnishing parts for a
13 motor vehicle, upon complying with the provisions of
14 [sections 1 through 4], has a lien on that motor vehicle.

15 NEW SECTION. Section 2. How to perfect lien. A person
16 wishing to avail himself of the benefit of [sections 1
17 through 4] must file a verified statement with the division
18 of motor vehicles. The statement must be filed within 30
19 days of completion of the work or labor on the motor vehicle
20 or within 30 days of furnishing parts for the motor vehicle
21 and must contain the following information:

22 (1) the name and address of the person performing the
23 work or labor or furnishing the parts;

24 (2) the date the work or labor was performed or the
25 parts were furnished;

1 (3) a description of the work or labor performed or
2 the parts furnished;

3 (4) the amount due and owing;

4 (5) a description of the motor vehicle, including the
5 year built, the serial number, and the license plate number;
6 and

7 (6) the name and address of the person who requested
8 that the work or labor be performed or the parts supplied.

9 NEW SECTION. Section 3. Acknowledgment of
10 satisfaction of lien -- penalty. When an indebtedness which
11 is a lien upon a motor vehicle is paid or otherwise
12 satisfied, the lienholder shall notify the division of motor
13 vehicles that the debt upon which the lien is based has been
14 extinguished. A lienholder who fails to remove a lien when
15 the underlying indebtedness has been satisfied is liable to
16 any person injured by such failure for damages, plus costs
17 and attorney fees.

18 NEW SECTION. Section 4. Notice of intent to
19 foreclose. (1) A person intending to foreclose a lien
20 secured under [sections 1 through 4] shall give a written
21 notice to the owner of the motor vehicle that is subject to
22 the lien and all other persons with a security interest
23 therein, including other lienholders. The notice must state
24 that, in not less than 10 days from the date of the written
25 notice, he will institute proceedings for the foreclosure of

his lien.

(2) The lien notice required by subsection (1) must be given by certified mail and directed to the address of the owner and other secured parties as it appears in the records maintained by the division of motor vehicles. The return of the foreclosure sale must be accompanied by proof that such notice was given.

Section 5. Section 61-3-103, MCA, is amended to read:

"61-3-103. Filing of security interests, rights, procedure, fees. (1) No security interest in a motor vehicle shall be valid as against creditors, subsequent purchasers, or encumbrancers unless the security agreement or other lien instrument that creates the security interest or a true copy thereof certified by a notary public has been filed with the division as provided in this section. The division shall not file any security agreement or other lien instrument unless it is accompanied by the certificate of ownership of the vehicle encumbered, except in the sale of a new motor vehicle by a duly licensed dealer or in the case of a lien filed under [sections 1 through 4]. The division shall file the security agreement, lien instrument, or its certified copy by entering upon its records the name and address of the secured party together with the amount of the security interest and, except as provided in subsection (2), shall endorse the same information upon the face of the

certificate of ownership. If a lien filed under [sections 1 through 4] is not accompanied by a certificate of ownership, the division shall issue a new certificate of ownership, thereby canceling the original and any duplicate certificate of ownership. The newly issued certificate must be treated as if it accompanied the lien instrument. The division shall mail a statement certifying to the filing of a security agreement or lien instrument to the all secured party parties and mail the certificate of ownership to the owner at the address given on the certificate. The owner of a motor vehicle is the person entitled to operate and possess such motor vehicle.

(2) Whenever a security agreement or lien instrument is filed against a motor vehicle that is subject to two security interests previously perfected by filing under this section, the division shall endorse on the face of the certificate of ownership, "NOTICE. This motor vehicle is subject to additional security interests on file with the Division of Motor Vehicles." No other information regarding such additional security interests need be endorsed on the certificate.

(3) Satisfactions or statements of release filed with the division under this chapter shall be retained by it for a period of 8 years after receipt, after which they may be destroyed. Security agreements and other lien instruments

1 filed with the division, and all renewals and assignments
2 thereof, shall be retained by it for a period of 8 years
3 after the maturity date stated in the security agreement,
4 lien instrument, or renewal, or if no maturity date is
5 therein stated, for a period of 13 years after receipt,
6 after which they may be destroyed.

7 (4) The filing of a security agreement or other lien
8 instrument or copy thereof, as herein provided, perfects a
9 security interest which has attached under the document
10 filed. Filing of a security agreement or other lien
11 instrument constitutes constructive notice to subsequent
12 purchasers or encumbrancers, from the time of filing, of the
13 existence of the security interest created by the document
14 filed.

15 (5) Upon default under a chattel mortgage or
16 conditional sales contract covering a motor vehicle, the
17 mortgagee or vendor has the same remedies as in the case of
18 other personal property. In case of attachment of motor
19 vehicles all the provisions of 27-18-413, 27-18-414, and
20 27-18-804 shall be applicable except that deposits must be
21 made with the division.

22 (6) A conditional sales vendor or chattel mortgagee or
23 assignee who fails to file a satisfaction of a chattel
24 mortgage, assignment, or conditional sales contract within
25 15 days after receiving final payment shall be required to

1 pay the division the sum of \$1 for each day thereafter that
2 he fails to file such satisfaction.

3 (7) Upon receipt of any liens, or notice of liens
4 dependent on possession, or attachments, etc., against the
5 record of any motor vehicle registered in this state, the
6 division shall within 24 hours mail to the owner,
7 conditional sale vendor, mortgagees, or assignees of any
8 thereof a notice showing the name and address of the lien
9 claimant, amount of the liens, date of execution of lien, and
10 in the case of attachment the full title of the court and
11 the action and the name of the attorneys for the plaintiff
12 and/or attaching creditor.

13 (8) It shall not be necessary to refile with the
14 division any instruments on file in the offices of the
15 county clerk and recorders at the time this law takes
16 effect.

17 (9) A fee of \$3 shall be paid to the division to file
18 any security agreement or other lien instrument against a
19 motor vehicle. The \$3 fee shall include and cover the cost
20 of filing a satisfaction or release of the security interest
21 and also the cost of entering such satisfaction or release
22 on the records of the division and deleting the endorsement
23 of the security interest from the face of the certificate of
24 ownership. A fee of \$3 shall be paid the division for
25 issuing a certified copy of a security agreement or other

lien instrument on file in the office of the division, or for filing an assignment of any instrument on file with the division. All fees provided for in this section shall be deposited by the division in the motor vehicle recording account of the earmarked revenue fund."

Section 6. Section 71-3-124, MCA, is amended to read:

"71-3-124. Filing costs and attorneys' fees to be recovered on foreclosure of liens. In an action to foreclose any of the liens provided for by parts 3, 4, 5, 6, 8, or 10, or ~~sections 1 through 4~~ of this chapter, the court must allow as costs the money paid for filing and recording the lien and a reasonable attorney's fee in the district and supreme courts, and such costs and attorneys' fees must be allowed to each claimant whose lien is established, and such reasonable attorneys' fees must be allowed to the defendant against whose property a lien is claimed, if such lien be not established."

~~NEW SECTION.~~ Section 7. Codification Instruction.

Sections 1 through 4 are intended to be codified as an integral part of Title 71, chapter 3, and the provisions of Title 71, chapter 3, apply to sections 1 through 4.

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