

SUBJECT: Additional notice requirements for possessory liens on motor vehicles

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 9 ayes — Kuempel, Thompson, Chisum, Geren, Gutierrez, Hamilton, Jones, Menendez, Quintanilla

0 nays

WITNESSES: For — Blake Ingram, Texas Independent Automobile Dealers Association; Betsy Price, Tax Assessor-Collector Association; (*Registered, but did not testify*: Robert Blankenship, Texas Auto Center LP; Jeff Martin, Texas Independent Automobile Dealers Association; Brent Rhodes, Fiesta Motors)

Against — None

BACKGROUND: A mechanic's possessory lien is a security interest in the title to property for the benefit of those who have supplied labor or materials that improve the property. Under Property Code, ch. 70, a holder of a mechanic's lien on a motor vehicle has a superior property claim to the vehicle over the holder of another type of lien on the vehicle and the vehicle's owner.

In situations involving unpaid repairs or improvements to a motor vehicle, a holder of a mechanic's lien who has had the vehicle for 30 days after the repairs were charged must give written notice of the mechanic's lien to the vehicle's last known registered owner and each lienholder on the title. The notice must be sent by certified mail with return receipt requested and must include the amount of the charges and a request for payment. If payment is not received before the 31st day after notice was mailed, the holder may sell the motor vehicle at a public sale and apply the proceeds to the charges.

Criminal actors have exploited a loophole in the notice requirement to acquire fraudulently title to a motor vehicle. The fraud involves a person or organization that falsely claims to hold a mechanic's lien and files a fraudulent "notice" containing false information (or no information at all) to the owner and lienholders of record, who often sign the return receipt

without first checking to see if the notice is valid. After the expiration of the 30-day period following the mailing of the notice, the person committing the fraud will request an application for title to the motor vehicle from a tax assessor and present the fraudulently acquired return receipt as “proof” that notice was given. Upon acquiring title, the criminal actor usually will sell the vehicle at a public auction and pocket the proceedings.

As defined by Transportation Code, ch. 501, “motor vehicle” means any motor driven or propelled vehicle required to be registered under state law.

DIGEST:

CSHB 1631 would require a holder of a mechanic’s possessory lien for unpaid repairs on a motor vehicle in the holder’s possession to include certain additional information in the written notice required by law to the vehicle’s owner and lienholders of record. The notice would have to include:

- the physical address of the real property where the holder of the mechanic’s lien repaired the motor vehicle;
- the legal name of the person that holds the mechanic’s lien;
- either the taxpayer identification number or employer number of the person that holds the mechanic’s lien; and
- a signed copy of the work order that authorized the repairs on the motor vehicle.

In the event that a holder of a mechanic’s lien gave a notice that did not contain the required information, CSHB 1631 would make a lien recorded on the motor vehicle’s certificate of title superior to the mechanic’s lien.

CSHB 1631 would require a holder of a mechanic’s lien who gave proper notice to make commercially reasonable efforts to allow a motor vehicle’s owner and each lienholder of record to inspect or arrange an inspection of the vehicle to confirm that repairs were made.

CSHB 1631 would create a new criminal offense for a person who knowingly provided false or misleading information in a notice required under the bill. An offense would be a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000).

The new notice requirements of CSHB 1631 would not apply to a person licensed as a franchised motor vehicle dealer under Occupations Code, ch. 2301.

CSHB 1631 would apply only to a mechanic's lien on a motor vehicle possessed by the holder on or after the bill's September 1, 2009, effective date.

NOTES:

The committee substitute specifically excluded licensed franchised motor vehicle dealers from the new notice requirements, while the original bill did not. The committee substitute would apply only to a motor vehicle, while the original bill would have applied to motorboats, vessels, and outboard motors in addition to motor vehicles.

The companion bill, SB 543 by Carona, passed the Senate by 31-0 on April 2 on the Local and Uncontested Calendar and was reported favorably, as substituted, by the House Licensing and Administrative Procedures Committee on April 29, making it eligible to be considered in lieu of HB 1631.