

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999
4

As Engrossed: H3/24/99

A Bill

HOUSE BILL 2215

5 By: Representative Wilkins
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7

For An Act To Be Entitled

9 "AN ACT TO REQUIRE HOLDERS OF LIENS ON MOTOR VEHICLES
10 TO RELEASE SUCH LIENS OR ENCUMBRANCES AND DELIVER
11 CERTIFICATE OF TITLE TO THE PERSON OR ENTITY WHO
12 SATISFIES SUCH LIEN OR ENCUMBRANCE WITHIN FIFTEEN
13 (15) DAYS AFTER SATISFACTION OF THE LIEN OR
14 ENCUMBRANCE THROUGH RECEIPT OF PAYMENT IN FULL; AN ACT
15 TO REQUIRE A CAR DEALER TO DELIVER TO A PURCHASER THE
16 CERTIFICATE OF TITLE TO THE MOTOR VEHICLE PURCHASER
17 WITHIN THE TIME FRAMES SET OUT IN THE ACT; TO PROVIDE
18 REMEDIES FOR THE FAILURE OF THE LIENHOLDER OR CAR
19 DEALER TO COMPLY WITH THE ACT; AND FOR OTHER
20 PURPOSES. "
21

Subtitle

22 "AN ACT TO REQUIRE THE RELEASE OF LIENS
23 AND ENCUMBRANCES ON MOTOR VEHICLES AND
24 DELIVERY OF TITLE WITHIN 15 DAYS OF
25 RECEIPT OF PAYMENT IN FULL, AND TO
26 REQUIRE PROMPT DELIVERY OF THE TITLE TO
27 THE PURCHASER OF THE MOTOR VEHICLE. "
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31 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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33 SECTION 1. Short Title.

34 This act may be cited as the "Motor Vehicle Lien Release and Title
35 Delivery Act."
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1 SECTION 2. Legislative Findings and Intent.

2 The purpose of this act is to require banks and other lending
3 institutions to release any lien or encumbrance on motor vehicles, for which
4 the certificate of title is in the lienholders' possession, upon satisfaction
5 of such lien or encumbrance by receipt of payment in full. The release of
6 liens and encumbrances and the forwarding of the certificate of title are not
7 being performed in a prompt manner. This leaves motor vehicle dealers, who
8 accept encumbered vehicles as trade-ins on purchases and then pay off the lien
9 or encumbrance, with unmarketable motor vehicles in their inventory until the
10 lienholders eventually release such liens or encumbrances and forward the
11 certificate of title to the motor vehicle dealer. Even though the motor
12 vehicles are unmarketable without a title, many car dealers nonetheless sell
13 these motor vehicles, and deliver possession to the purchaser, but are unable
14 to deliver the title within the time frame set out by law requiring the
15 purchasers to register the motor vehicle. When the purchaser is unable to
16 register the motor vehicle, the motor vehicles are quite often operated on the
17 highways of this state without registration, and without insurance. In
18 addition, the department of motor vehicles must maintain extensive title
19 suspense files because purchasers are unable to provide department of motor
20 vehicles with a title to the purchased car so that a new title can be issued
21 in the purchaser's name. Finally, since the gross receipts tax due upon the
22 sale is generally collected at the time the car is registered, this State is
23 deprived of these revenues while the car remains unregistered.

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25 SECTION 3. The provisions of this act shall not apply to titles issued
26 for manufactured homes or mobile homes.

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28 SECTION 4. *Arkansas Code 27-14-909 is amended to read as follows:*

29 *"27-14-909. Release of lien by lienholder - Disclosure of information.*

30 *(a) For purposes of this section, a lien or encumbrance shall be*
31 *satisfied when the lienholder receives payment in full. Upon the satisfaction*
32 *of a ~~security interest in~~ any lien or encumbrance on a vehicle for which the*
33 *certificate of title is in the possession of the lienholder, ~~he~~ such*
34 *lienholder shall, within ten (10) business days after ~~demand~~ receipt of*
35 *payment in full by certified funds and, ~~in any event,~~ within thirty (30)*
36 *business days after receipt of payment in full by non-certified funds, execute*

1 a release of ~~his security interest~~ such lien or encumbrance in the space
 2 provided therefor on the certificate of title, or as the office prescribes,
 3 and mail or deliver the certificate and release to the next lienholder named
 4 therein or, if none, to the owner or any person who delivers to the lienholder
 5 an authorization from the owner to receive the certificate. Certified funds
 6 for purposes of this Act shall mean cashier's checks, or certified checks as
 7 defined in § 4-3-409(d).

8 (b) Upon the satisfaction of a ~~security interest in~~ lien or encumbrance
 9 on a vehicle for which the certificate of title is in the possession of a
 10 prior lienholder, the lienholder whose ~~security interest~~ lien or encumbrance
 11 is satisfied payed in full shall, within ten (10) business days after ~~demand~~
 12 receipt of payment in full by certified funds, and, ~~in any event,~~ within
 13 thirty (30) business days after receipt of payment in full by non-certified
 14 funds, execute a release in the form the office prescribes and deliver the
 15 release to the owner or any person who delivers to the lienholder an
 16 authorization from the owner to receive it.

17 (c) This section shall not be construed to apply to manufactured housing
 18 or mobile homes.

19 ~~(e)(d)~~ A lienholder named in a certificate of title shall, upon written
 20 request of the owner or of another lienholder named on the certificate,
 21 disclose any pertinent information as to his security agreement and the
 22 indebtedness secured by it.

23 (e) Any lienholder who fails to comply with this section shall pay to
 24 the person or persons satisfying the lien or encumbrance twenty-five dollars
 25 (\$25.00) for the first five (5) business days after expiration of the time
 26 period prescribed in this section, and such payment shall double for each five
 27 (5) days thereafter in which there is continued noncompliance, up to a maximum
 28 of five hundred dollars (\$500) for each lien. If delivery of the certificate
 29 of title is by mail, the delivery date is the date of the postmark for
 30 purposes of this subsection."

31
 32 SECTION 5. Delivery of Car Title to Purchaser.

33 (a) All motor vehicle dealers, including those defined in Arkansas
 34 Code Section 23-112-103 and 23-112-602 shall comply with the following
 35 requirements regarding the delivery of title to motor vehicles sold by such
 36 motor vehicle dealers:

1 (1) If the motor vehicle in question is not subject to an
2 existing lien to be released pursuant to section 3 of this Act, the motor
3 vehicle dealer shall deliver an appropriately executed certificate of title to
4 the purchaser at the time of the delivery of possession of the motor vehicle
5 to the purchaser.

6 (2) If the motor vehicle in question is subject to an existing
7 lien which has not been released prior to the date of the sale to and delivery
8 of possession to the purchaser, the motor vehicle dealer shall deliver an
9 appropriately executed title to the purchaser within thirty (30) days of the
10 date of the sale and delivery of possession of the vehicle to the purchaser.

11 (b) If a motor vehicle dealer fails to comply with subsection (a) of
12 this section, the purchaser, after thirty (30) days from the date of the sale
13 and delivery of possession to the purchaser and prior to the delivery to the
14 purchaser of an appropriately executed title, shall have an unconditional
15 right to rescind the sale transaction.

16 (c) Upon rescission of the transaction under subsection (b) of this
17 section:

18 (1) The dealer shall promptly, and within ten (10) working days
19 from receipt of written notice of rescission, refund all consideration
20 received, less a reasonable offset for physical damage sustained to the
21 vehicle while under the possession of the transferee, reasonable wear and tear
22 excepted;

23 (2) The transferee shall tender the motor vehicle to the
24 transferor at the time of receiving his refund.

25 (d) It shall be an affirmative defense to the purchaser's claim for
26 refund, and any subsequent action for a refund based upon this section, that
27 the dealer has, prior to the sale to the purchaser, fully satisfied any
28 existing lien or encumbrance upon the motor vehicle, and that the dealer's
29 failure to deliver title to the purchaser is due solely to the fact that the
30 lienholder has failed to timely release the lien and deliver the title as
31 required by section (3) of this act.

32 (e) If a dealer fails to timely comply with subsection(c) of this
33 section, the purchaser may seek cancellation, a full refund, any consequential
34 damages, and reasonable attorney's fees, in a court of competent jurisdiction.

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36 SECTION 6. All provisions of this act of a general and permanent nature

1 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
2 Revision Commission shall incorporate the same in the Code.

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4 SECTION 7. If any provision of this act or the application thereof to
5 any person or circumstance is held invalid, such invalidity shall not affect
6 other provisions or applications of the act which can be given effect without
7 the invalid provision or application, and to this end the provisions of this
8 act are declared to be severable.

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10 SECTION 8. All laws and parts of laws in conflict with this act are
11 hereby repealed.

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13 SECTION 9. EMERGENCY CLAUSE. It is hereby found and determined by the
14 Eighty-second General Assembly that the failure of lienholders to release
15 liens and encumbrances on motor vehicles in a timely manner after satisfaction
16 of such liens or encumbrances is injurious to the motor vehicle dealers of
17 this state and interrupts the flow of commerce in this state; that there is
18 currently no statutory provision to require lienholders to release liens or
19 encumbrances on motor vehicles in a timely manner upon satisfaction of such
20 lien or encumbrance by payment in full; and that until lienholders are
21 required to release liens or encumbrances on motor vehicles in a timely
22 manner, the motor vehicle dealers of this state will continue to be injured.
23 Therefore, an emergency is declared to exist and this act being immediately
24 necessary for the preservation of the public peace, health and safety shall
25 become effective on the date of its approval by the Governor. If the bill is
26 neither approved nor vetoed by the Governor, it shall become effective on the
27 expiration of the period of time during which the Governor may veto the bill.
28 If the bill is vetoed by the Governor and the veto is overridden, it shall
29 become effective on the date the last house overrides the veto.

30 /s/ Wilkins
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