

NORTH CAROLINA GENERAL ASSEMBLY
1967 SESSION

CHAPTER 1029
HOUSE BILL 908

1 AN ACT TO AMEND THE LAWS RELATING TO POSSESSORY LIENS ON PERSONAL
2 PROPERTY.

3
4 The General Assembly of North Carolina do enact:

5 **Section 1.** A new Chapter is inserted in the General Statutes, to read as follows:

6 **"CHAPTER 44A**

7 **"Statutory Liens and Charges**

8 "Article 1

9 "Possessory Liens on Personal Property

10 **"G. S. 44A-1. Definitions.** As used in this Article

- 11 (1) 'Legal possessor' means
12 a. Any person entrusted with possession of personal property by an
13 owner thereof, or
14 b. Any person in possession of personal property and entitled thereto by
15 operation of law.
16 (2) 'Lienor' means any person entitled to a lien under this Article.
17 (3) 'Owner' means
18 a. Any person having legal title to the property, or
19 b. A lessee of the person having legal title, or
20 c. A debtor entrusted with possession of the property by a secured
21 party, or
22 d. A secured party entitled to possession, or
23 e. Any person entrusted with possession of the property by his
24 employer or principal who is an owner under any of the above.
25 (4) 'Security interest' means any interest in personal property which interest is
26 subject to the provisions of Article 9 of the Uniform Commercial Code, or
27 any other interest intended to create security in real or personal property.
28 (5) 'Secured party' means a person holding a security interest.

29 **"§ 44A-2. Persons Entitled to Lien on Personal Property.** (a) Any person who alters,
30 repairs, services, treats, or improves personal property in the ordinary course of his business
31 pursuant to an express or implied contract with an owner or legal possessor of the personal
32 property has a lien upon the property. The amount of the lien shall be the lesser of

- 33 (1) The reasonable charges for the services and materials; or
34 (2) The contract price; or
35 (3) One hundred dollars (\$100.00) if the lienor has dealt with a legal possessor
36 who is not an owner.

37 This lien shall have priority over perfected and unperfected security interests.

38 "(b) Any person engaged in the business of operating a hotel, motel, or boarding house
39 has a lien upon all baggage, vehicles and other personal property brought upon his premises by
40 a guest or boarder who is an owner thereof to the extent of reasonable charges for the room,
41 accommodations and other items or services furnished at the request of the guest or boarder.
42 This lien shall not have priority over any security interest in the property which is perfected at
43 the time the guest or boarder brings the property to said hotel, motel or boarding house.

1 "(c) Any person engaged in the business of boarding animals has a lien on the animals
2 boarded for reasonable charges for such boarding which are contracted for with an owner or
3 legal possessor of the animal and which become due and payable within 90 days preceding the
4 mailing of notice of sale provided for in § 44A-4. This lien shall have priority over perfected
5 and unperfected security interests.

6 "**§ 44A-3. When Lien Arises and Terminates.** Liens conferred under this Article arise only
7 when the lienor acquires possession of the property and terminate and become unenforceable
8 when the lienor voluntarily relinquishes the possession of the property upon which a lien might
9 be claimed, or when an owner, his agent, a legal possessor or any other person having a
10 security or other interest in the property tenders prior to sale the amount secured by the lien
11 plus reasonable storage, boarding and other expenses incurred by the lienor. The reacquisition
12 of possession of property voluntarily relinquished shall not reinstate the lien.

13 "**§ 44A-4. Enforcement of Lien.** (a) Enforcement by Sale. If the charges for which the lien is
14 claimed under this Article remain unpaid or unsatisfied for 30 days following the maturity of
15 the obligation to pay any such charges, the lienor may enforce the lien by public or private sale
16 as provided in this Section.

17 "(b) Private Sale. Sale by private sale may be made in any manner that is commercially
18 reasonable. Not less than 20 days prior to the date of the proposed private sale, the lienor shall
19 cause notice to be mailed, as provided in subsection (e) hereof, to the person having legal title
20 to the property, or if such person cannot be reasonably ascertained, to the person with whom
21 the lienor dealt, and to each secured party or other person claiming an interest in the property,
22 who is actually known to the lienor, by registered or certified mail. The lienor shall not
23 purchase, directly or indirectly, the property at private sale and such a sale to the lienor shall be
24 voidable.

25 "(c) Request for Public Sale. If an owner, any secured party, or other person claiming an
26 interest in the property notifies the lienor, prior to the date upon or after which the sale by
27 private sale is proposed to be made, that public sale is requested, sale by private sale shall not
28 be made. After request for public sale is received, notice of public sale must be given as if no
29 notice of sale by private sale had been given.

30 "(d) Public Sale. (1) Not less than 20 days prior to sale by public sale the lienor

31 a. Shall cause notice to be mailed, as provided in subsection (e) hereof,
32 to the person having legal title to the property, or if such person
33 cannot be reasonably ascertained, the person with whom the lienor
34 dealt, and to each secured party or other person claiming an interest
35 in the property, who is actually known to the lienor, by registered or
36 certified mail; and

37 b. Shall advertise the sale by posting a copy of the notice of sale at the
38 courthouse door in the county where the sale is to be held and by
39 publishing notice of sale once per week for two consecutive weeks in
40 a newspaper of general circulation in the same county.

41 (2) A public sale must be held on a day other than Sunday and between the
42 hours of 10:00 a.m. and 4:00 p.m.:

43 a. In any county where any part of the contract giving rise to the lien
44 was performed, or

45 b. In the county where the obligation secured by the lien was contracted
46 for.

47 (3) A lienor may purchase at public sale.

48 "(e) Notice of Sale. (1) The notice of sale shall include:

49 a. The name and address of the lienor.

- b. The name of the person having legal title to the property, or if such person cannot be reasonably ascertained, the name of the person with whom the lienor dealt.
- c. A description of the property.
- d. The amount due for which the lien is claimed.
- e. The place of the sale.
- f. If a private sale the date upon or after which the sale is proposed to be made, or if a public sale the date and hour when the sale is to be held.

(2) Notice of sale required to be mailed shall be mailed to the address furnished to the lienor, or if no address has been furnished, to the last known address of the person entitled to the notice. If no address is known or reasonably ascertainable, it shall not be necessary to mail the notice.

"(f) Notice to Commissioner of Motor Vehicles. If the property upon which the lien is claimed is a motor vehicle that is required to be registered, the lienor shall send a copy of the notice of sale to the Commissioner of Motor Vehicles as required by G.S. 20-114(c).

"(g) Damages for Noncompliance. If the lienor fails to comply substantially with any of the provisions of this Section, the lienor shall be liable to the person having legal title to the property in the sum of one hundred dollars (\$100.00), together with a reasonable attorney's fees as awarded by the court. Damages provided by this Section shall be in addition to actual damages to which any party is otherwise entitled.

"G.S. 44A-5. Proceeds of Sale. The proceeds of the sale shall be applied as follows:

- (1) Payment of reasonable expenses incurred in connection with the sale. Expenses of sale include but are not limited to reasonable storage and boarding expenses after giving notice of sale.
- (2) Payment of the obligation secured by the lien.
- (3) Any surplus shall be paid to the person entitled thereto.

"G.S. 44A-6. Title of Purchaser. A purchaser for value at a properly conducted sale, and a purchaser for value without constructive notice of a defect in the sale who is not the lienor or an agent of the lienor, acquires title to the property free of any interests over which the lienor was entitled to priority."

Sec. 2. The following Articles and Sections of the General Statutes are hereby repealed:

- Chapter 44, Article 3
- Chapter 44, Article 5
- Chapter 44, Article 6
- Chapter 44, Article 7
- Chapter 44, G.S. 44-2
- Chapter 44, G.S. 44-3
- Chapter 44, G.S. 44-4
- Chapter 44, G.S. 44-5

Sec. 3. All laws and clauses of laws in conflict with this Act are hereby repealed.

Sec. 4. This Act shall become effective at midnight, June 30, 1967.

In the General Assembly read three times and ratified, this the 30th day of June, 1967.