



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
HB0947

Introduced 2/2/2005, by Rep. Jay C. Hoffman

SYNOPSIS AS INTRODUCED:

625 ILCS 5/3-114

from Ch. 95 1/2, par. 3-114

Amends the Illinois Vehicle Code provision regarding the transfer of title to a vehicle by operation of law. Establishes procedures to be followed if the vehicle is the subject of a bankruptcy proceeding or discharge. Provides that certain requirements of the provision do not apply to bankruptcy proceedings or orders.

LRB094 06720 DRH 36819 b

1 AN ACT concerning transportation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Vehicle Code is amended by changing
5 Section 3-114 as follows:

6 (625 ILCS 5/3-114) (from Ch. 95 1/2, par. 3-114)

7 Sec. 3-114. Transfer by operation of law.

8 (a) If the interest of an owner in a vehicle passes to
9 another other than by voluntary transfer, the transferee shall,
10 except as provided in paragraph (b), promptly mail or deliver
11 within 20 days to the Secretary of State the last certificate
12 of title, if available, proof of the transfer, and his
13 application for a new certificate in the form the Secretary of
14 State prescribes. It shall be unlawful for any person having
15 possession of a certificate of title for a motor vehicle,
16 semi-trailer, or house car by reason of his having a lien or
17 encumbrance on such vehicle, to fail or refuse to deliver such
18 certificate to the owner, upon the satisfaction or discharge of
19 the lien or encumbrance, indicated upon such certificate of
20 title.

21 (b) If the interest of an owner in a vehicle passes to
22 another under the provisions of the Small Estates provisions of
23 the Probate Act of 1975 the transferee shall promptly mail or
24 deliver to the Secretary of State, within 120 days, the last
25 certificate of title, if available, the documentation required
26 under the provisions of the Probate Act of 1975, and an
27 application for certificate of title. The Small Estate
28 Affidavit form shall be furnished by the Secretary of State.
29 The transfer may be to the transferee or to the nominee of the
30 transferee.

31 (c) If the interest of an owner in a vehicle passes to
32 another under other provisions of the Probate Act of 1975, as

1 amended, and the transfer is made by a representative or
2 guardian, such transferee shall promptly mail or deliver to the
3 Secretary of State, the last certificate of title, if
4 available, and a certified copy of the letters of office or
5 guardianship, and an application for certificate of title. Such
6 application shall be made before the estate is closed. The
7 transfer may be to the transferee or to the nominee of the
8 transferee.

9 (d) If the interest of an owner in joint tenancy passes to
10 the other joint tenant with survivorship rights as provided by
11 law, the transferee shall promptly mail or deliver to the
12 Secretary of State, the last certificate of title, if
13 available, proof of death of the one joint tenant and
14 survivorship of the surviving joint tenant, and an application
15 for certificate of title. Such application shall be made within
16 120 days after the death of the joint tenant. The transfer may
17 be to the transferee or to the nominee of the transferee.

18 (e) The Secretary of State shall transfer a decedent's
19 vehicle title to any legatee, representative or heir of the
20 decedent who submits to the Secretary a death certificate and
21 an affidavit by an attorney at law on the letterhead stationery
22 of the attorney at law stating the facts of the transfer.

23 (f) Repossession with assignment of title. In all cases
24 wherein a lienholder has repossessed a vehicle by other than
25 judicial process and holds it for resale under a security
26 agreement, and the owner of record has executed an assignment
27 of the existing certificate of title after default, the
28 lienholder may proceed to sell or otherwise dispose of the
29 vehicle as authorized under the Uniform Commercial Code. Upon
30 selling the vehicle to another person, the lienholder need not
31 send the certificate of title to the Secretary of State, but
32 shall promptly and within 20 days mail or deliver to the
33 purchaser as transferee the existing certificate of title for
34 the repossessed vehicle, reflecting the release of the
35 lienholder's security interest in the vehicle. The application
36 for a certificate of title made by the purchaser shall comply

1 with subsection (a) of Section 3-104 and be accompanied by the
2 existing certificate of title for the repossessed vehicle. The
3 lienholder shall execute the assignment and warranty of title
4 showing the name and address of the purchaser in the spaces
5 provided therefor on the certificate of title or as the
6 Secretary of State prescribes. The lienholder shall complete
7 the assignment of title in the certificate of title to reflect
8 the transfer of the vehicle to the lienholder and also a
9 reassignment to reflect the transfer from the lienholder to the
10 purchaser. For this purpose, the lienholder is specifically
11 authorized to complete and execute the space reserved in the
12 certificate of title for a dealer reassignment,
13 notwithstanding that the lienholder is not a licensed dealer.
14 Nothing herein shall be construed to mean that the lienholder
15 is taking title to the repossessed vehicle for purposes of
16 liability for retailer occupation, vehicle use, or other tax
17 with respect to the proceeds from the repossession sale.
18 Delivery of the existing certificate of title to the purchaser
19 shall be deemed disclosure to the purchaser of the owner of the
20 vehicle.

21 (f-5) Repossession without assignment of title. Subject to
22 subsection (f-30), in ~~in~~ all cases wherein a lienholder has
23 repossessed a vehicle by other than judicial process and holds
24 it for resale under a security agreement, and the owner of
25 record has not executed an assignment of the existing
26 certificate of title, the lienholder shall comply with the
27 following provisions:

28 (1) Prior to sale, the lienholder shall deliver or mail
29 to the owner at the owner's last known address and to any
30 other lienholder of record, a notice of redemption setting
31 forth the following information: (i) the name of the owner
32 of record and in bold type at or near the top of the notice
33 a statement that the owner's vehicle was repossessed on a
34 specified date for failure to make payments on the loan (or
35 other reason), (ii) a description of the vehicle subject to
36 the lien sufficient to identify it, (iii) the right of the

1 owner to redeem the vehicle, (iv) the lienholder's intent
2 to sell or otherwise dispose of the vehicle after the
3 expiration of 21 days from the date of mailing or delivery
4 of the notice, and (v) the name, address, and telephone
5 number of the lienholder from whom information may be
6 obtained concerning the amount due to redeem the vehicle
7 and from whom the vehicle may be redeemed under Section
8 9-623 of the Uniform Commercial Code. At the lienholder's
9 option, the information required to be set forth in this
10 notice of redemption may be made a part of or accompany the
11 notification of sale or other disposition required under
12 Section 9-611 of the Uniform Commercial Code, but none of
13 the information required by this notice shall be construed
14 to impose any requirement under Article 9 of the Uniform
15 Commercial Code.

16 (2) With respect to the repossession of a vehicle used
17 primarily for personal, family, or household purposes, the
18 lienholder shall also deliver or mail to the owner at the
19 owner's last known address an affidavit of defense. The
20 affidavit of defense shall accompany the notice of
21 redemption required in subdivision (f-5)(1) of this
22 Section. The affidavit of defense shall (i) identify the
23 lienholder, owner, and the vehicle; (ii) provide space for
24 the owner to state the defense claimed by the owner; and
25 (iii) include an acknowledgment by the owner that the owner
26 may be liable to the lienholder for fees, charges, and
27 costs incurred by the lienholder in establishing the
28 insufficiency or invalidity of the owner's defense. To stop
29 the transfer of title, the affidavit of defense must be
30 received by the lienholder no later than 21 days after the
31 date of mailing or delivery of the notice required in
32 subdivision (f-5)(1) of this Section. If the lienholder
33 receives the affidavit from the owner in a timely manner,
34 the lienholder must apply to a court of competent
35 jurisdiction to determine if the lienholder is entitled to
36 possession of the vehicle.

1 (3) Upon selling the vehicle to another person, the
2 lienholder need not send the certificate of title to the
3 Secretary of State, but shall promptly and within 20 days
4 mail or deliver to the purchaser as transferee (i) the
5 existing certificate of title for the repossessed vehicle,
6 reflecting the release of the lienholder's security
7 interest in the vehicle; and (ii) an affidavit of
8 repossession made by or on behalf of the lienholder which
9 provides the following information: that the vehicle was
10 repossessed, a description of the vehicle sufficient to
11 identify it, whether the vehicle has been damaged in excess
12 of 33 1/3% of its fair market value as required under
13 subdivision (b) (3) of Section 3-117.1, that the owner and
14 any other lienholder of record were given the notice
15 required in subdivision (f-5) (1) of this Section, that the
16 owner of record was given the affidavit of defense required
17 in subdivision (f-5) (2) of this Section, that the interest
18 of the owner was lawfully terminated or sold pursuant to
19 the terms of the security agreement, and the purchaser's
20 name and address. If the vehicle is damaged in excess of 33
21 1/3% of its fair market value, the lienholder shall make
22 application for a salvage certificate under Section
23 3-117.1 and transfer the vehicle to a person eligible to
24 receive assignments of salvage certificates identified in
25 Section 3-118.

26 (4) The application for a certificate of title made by
27 the purchaser shall comply with subsection (a) of Section
28 3-104 and be accompanied by the affidavit of repossession
29 furnished by the lienholder and the existing certificate of
30 title for the repossessed vehicle. The lienholder shall
31 execute the assignment and warranty of title showing the
32 name and address of the purchaser in the spaces provided
33 therefor on the certificate of title or as the Secretary of
34 State prescribes. The lienholder shall complete the
35 assignment of title in the certificate of title to reflect
36 the transfer of the vehicle to the lienholder and also a

1 reassignment to reflect the transfer from the lienholder to
2 the purchaser. For this purpose, the lienholder is
3 specifically authorized to execute the assignment on
4 behalf of the owner as seller if the owner has not done so
5 and to complete and execute the space reserved in the
6 certificate of title for a dealer reassignment,
7 notwithstanding that the lienholder is not a licensed
8 dealer. Nothing herein shall be construed to mean that the
9 lienholder is taking title to the repossessed vehicle for
10 purposes of liability for retailer occupation, vehicle
11 use, or other tax with respect to the proceeds from the
12 repossession sale. Delivery of the existing certificate of
13 title to the purchaser shall be deemed disclosure to the
14 purchaser of the owner of the vehicle. In the event the
15 lienholder does not hold the certificate of title for the
16 repossessed vehicle, the lienholder shall make application
17 for and may obtain a new certificate of title in the name
18 of the lienholder upon furnishing information satisfactory
19 to the Secretary of State. Upon receiving the new
20 certificate of title, the lienholder may proceed with the
21 sale described in subdivision (f-5)(3), except that upon
22 selling the vehicle the lienholder shall promptly and
23 within 20 days mail or deliver to the purchaser the new
24 certificate of title reflecting the assignment and
25 transfer of title to the purchaser.

26 (5) Neither the lienholder nor the owner shall file
27 with the Office of the Secretary of State the notice of
28 redemption or affidavit of defense described in
29 subdivisions (f-5)(1) and (f-5)(2) of this Section. The
30 Office of the Secretary of State shall not determine the
31 merits of an owner's affidavit of defense, nor consider any
32 allegations or assertions regarding the validity or
33 invalidity of a lienholder's claim to the vehicle or an
34 owner's asserted defenses to the repossession action.

35 (f-7) Notice of reinstatement in certain cases.

36 (1) Subject to subsection (f-30), if ~~if~~, at the time of

1 repossession by a lienholder that is seeking to transfer
2 title pursuant to subsection (f-5), the owner has paid an
3 amount equal to 30% or more of the deferred payment price
4 or total of payments due, the owner may, within 21 days of
5 the date of repossession, reinstate the contract or loan
6 agreement and recover the vehicle from the lienholder by
7 tendering in a lump sum (i) the total of all unpaid
8 amounts, including any unpaid delinquency or deferral
9 charges due at the date of reinstatement, without
10 acceleration; and (ii) performance necessary to cure any
11 default other than nonpayment of the amounts due; and (iii)
12 all reasonable costs and fees incurred by the lienholder in
13 retaking, holding, and preparing the vehicle for
14 disposition and in arranging for the sale of the vehicle.
15 Reasonable costs and fees incurred by the lienholder
16 include without limitation repossession and storage
17 expenses and, if authorized by the contract or loan
18 agreement, reasonable attorneys' fees and collection
19 agency charges.

20 (2) Tender of payment and performance pursuant to this
21 limited right of reinstatement restores to the owner his
22 rights under the contract or loan agreement as though no
23 default had occurred. The owner has the right to reinstate
24 the contract or loan agreement and recover the vehicle from
25 the lienholder only once under this subsection. The
26 lienholder may, in the lienholder's sole discretion,
27 extend the period during which the owner may reinstate the
28 contract or loan agreement and recover the vehicle beyond
29 the 21 days allowed under this subsection, and the
30 extension shall not subject the lienholder to liability to
31 the owner under the laws of this State.

32 (3) The lienholder shall deliver or mail written notice
33 to the owner at the owner's last known address, within 3
34 business days of the date of repossession, of the owner's
35 right to reinstate the contract or loan agreement and
36 recover the vehicle pursuant to the limited right of

1 reinstatement described in this subsection. At the
2 lienholder's option, the information required to be set
3 forth in this notice of reinstatement may be made part of
4 or accompany the notice of redemption required in
5 subdivision (f-5)(1) of this Section and the notification
6 of sale or other disposition required under Section 9-611
7 of the Uniform Commercial Code, but none of the information
8 required by this notice of reinstatement shall be construed
9 to impose any requirement under Article 9 of the Uniform
10 Commercial Code.

11 (4) The reinstatement period, if applicable, and the
12 redemption period described in subdivision (f-5)(1) of
13 this Section, shall run concurrently if the information
14 required to be set forth in the notice of reinstatement is
15 part of or accompanies the notice of redemption. In any
16 event, the 21 day redemption period described in
17 subdivision (f-5)(1) of this Section shall commence on the
18 date of mailing or delivery to the owner of the information
19 required to be set forth in the notice of redemption, and
20 the 21 day reinstatement period described in this
21 subdivision, if applicable, shall commence on the date of
22 mailing or delivery to the owner of the information
23 required to be set forth in the notice of reinstatement.

24 (5) The Office of the Secretary of State shall not
25 determine the merits of an owner's claim of right to
26 reinstatement, nor consider any allegations or assertions
27 regarding the validity or invalidity of a lienholder's
28 claim to the vehicle or an owner's asserted right to
29 reinstatement. Where a lienholder is subject to licensing
30 and regulatory supervision by the State of Illinois, the
31 lienholder shall be subject to all of the powers and
32 authority of the lienholder's primary State regulator to
33 enforce compliance with the procedures set forth in this
34 subsection (f-7).

35 (f-10) Repossession by judicial process. In all cases
36 wherein a lienholder has repossessed a vehicle by judicial

1 process and holds it for resale under a security agreement,
2 order for replevin, or other court order establishing the
3 lienholder's right to possession of the vehicle, the lienholder
4 may proceed to sell or otherwise dispose of the vehicle as
5 authorized under the Uniform Commercial Code or the court
6 order. Upon selling the vehicle to another person, the
7 lienholder need not send the certificate of title to the
8 Secretary of State, but shall promptly and within 20 days mail
9 or deliver to the purchaser as transferee (i) the existing
10 certificate of title for the repossessed vehicle reflecting the
11 release of the lienholder's security interest in the vehicle;
12 (ii) a certified copy of the court order; and (iii) a bill of
13 sale identifying the new owner's name and address and the year,
14 make, model, and vehicle identification number of the vehicle.
15 The application for a certificate of title made by the
16 purchaser shall comply with subsection (a) of Section 3-104 and
17 be accompanied by the certified copy of the court order
18 furnished by the lienholder and the existing certificate of
19 title for the repossessed vehicle. The lienholder shall execute
20 the assignment and warranty of title showing the name and
21 address of the purchaser in the spaces provided therefor on the
22 certificate of title or as the Secretary of State prescribes.
23 The lienholder shall complete the assignment of title in the
24 certificate of title to reflect the transfer of the vehicle to
25 the lienholder and also a reassignment to reflect the transfer
26 from the lienholder to the purchaser. For this purpose, the
27 lienholder is specifically authorized to execute the
28 assignment on behalf of the owner as seller if the owner has
29 not done so and to complete and execute the space reserved in
30 the certificate of title for a dealer reassignment,
31 notwithstanding that the lienholder is not a licensed dealer.
32 Nothing herein shall be construed to mean that the lienholder
33 is taking title to the repossessed vehicle for purposes of
34 liability for retailer occupation, vehicle use, or other tax
35 with respect to the proceeds from the repossession sale.
36 Delivery of the existing certificate of title to the purchaser

1 shall be deemed disclosure to the purchaser of the owner of the
2 vehicle. In the event the lienholder does not hold the
3 certificate of title for the repossessed vehicle, the
4 lienholder shall make application for and may obtain a new
5 certificate of title in the name of the lienholder upon
6 furnishing information satisfactory to the Secretary of State.
7 Upon receiving the new certificate of title, the lienholder may
8 proceed with the sale described in this subsection, except that
9 upon selling the vehicle the lienholder shall promptly and
10 within 20 days mail or deliver to the purchaser the new
11 certificate of title reflecting the assignment and transfer of
12 title to the purchaser.

13 (f-15) The Secretary of State shall not issue a certificate
14 of title to a purchaser under subsection (f), (f-5), or (f-10)
15 of this Section, unless the person from whom the vehicle has
16 been repossessed by the lienholder is shown to be the last
17 registered owner of the motor vehicle. The Secretary of State
18 may provide by rule for the standards to be followed by a
19 lienholder in assigning and transferring certificates of title
20 with respect to repossessed vehicles.

21 (f-20) If applying for a salvage certificate or a junking
22 certificate, the lienholder shall within 20 days make an
23 application to the Secretary of State for a salvage certificate
24 or a junking certificate, as set forth in this Code. The
25 Secretary of State shall not issue a salvage certificate or a
26 junking certificate to such lienholder unless the person from
27 whom such vehicle has been repossessed is shown to be the last
28 registered owner of such motor vehicle and such lienholder
29 establishes to the satisfaction of the Secretary of State that
30 he is entitled to such salvage certificate or junking
31 certificate. The Secretary of State may provide by rule for the
32 standards to be followed by a lienholder in order to obtain a
33 salvage certificate or junking certificate for a repossessed
34 vehicle.

35 (f-25) If the interest of an owner in a mobile home, as
36 defined in the Mobile Home Local Services Tax Act, passes to

1 another under the provisions of the Mobile Home Local Services
2 Tax Enforcement Act, the transferee shall promptly mail or
3 deliver to the Secretary of State (i) the last certificate of
4 title, if available, (ii) a certified copy of the court order
5 ordering the transfer of title, and (iii) an application for
6 certificate of title.

7 (f-30) Bankruptcy. If the repossessed vehicle is the
8 subject of a bankruptcy proceeding or discharge:

9 (1) the lienholder may proceed to sell or otherwise
10 dispose of the vehicle as authorized by the Bankruptcy Code
11 and the Uniform Commercial Code;

12 (2) the notice of redemption, affidavit of defense, and
13 notice of reinstatement otherwise required to be sent by
14 the lienholder to the owner of record or other lienholder
15 of record under this Section are not required to be
16 delivered or mailed;

17 (3) the requirement to delay disposition of the vehicle
18 for 21 days, (i) from the mailing or delivery of the notice
19 of redemption under subdivision (f-5)(1) of this Section,
20 (ii) from the mailing or delivery of the affidavit of
21 defense under subdivision (f-5)(2) of this Section, or
22 (iii) from the date of repossession when the owner is
23 entitled to a notice of reinstatement under subsection
24 (f-7) of this Section, does not apply;

25 (4) the affidavit of repossession that is required
26 under subdivision (f-5)(3) shall contain a notation of
27 "bankruptcy" where the affidavit requires the date of the
28 mailing or delivery of the notice of redemption. The
29 notation of "bankruptcy" means the lienholder makes no
30 sworn representations regarding the mailing or delivery of
31 the notice of redemption or affidavit of defense or
32 lienholder's compliance with the requirements that
33 otherwise apply to the notices listed in this subsection
34 (f-30), and makes no sworn representation that the
35 lienholder assumes liability or costs for any litigation
36 that may arise from the issuance of a certificate of title

1 based on the excluded representations;

2 (5) the right of redemption, the right to assert a
3 defense to the transfer of title, and reinstatement rights
4 under this Section do not apply; and

5 (6) references to judicial process and court orders in
6 subsection (f-10) of this Section do not include bankruptcy
7 proceedings or orders.

8 (g) A person holding a certificate of title whose interest
9 in the vehicle has been extinguished or transferred other than
10 by voluntary transfer shall mail or deliver the certificate,
11 within 20 days upon request of the Secretary of State. The
12 delivery of the certificate pursuant to the request of the
13 Secretary of State does not affect the rights of the person
14 surrendering the certificate, and the action of the Secretary
15 of State in issuing a new certificate of title as provided
16 herein is not conclusive upon the rights of an owner or
17 lienholder named in the old certificate.

18 (h) The Secretary of State may decline to process any
19 application for a transfer of an interest in a vehicle
20 hereunder if any fees or taxes due under this Act from the
21 transferor or the transferee have not been paid upon reasonable
22 notice and demand.

23 (i) The Secretary of State shall not be held civilly or
24 criminally liable to any person because any purported
25 transferor may not have had the power or authority to make a
26 transfer of any interest in any vehicle or because a
27 certificate of title issued in error is subsequently used to
28 commit a fraudulent act.

29 (Source: P.A. 91-893, eff. 7-1-01; 92-807, eff. 1-1-03.)