



Rep. Jay C. Hoffman

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09400HB2217ham001

LRB094 03345 DRH 44353 a

1 AMENDMENT TO HOUSE BILL 2217

2 AMENDMENT NO. _____. Amend House Bill 2217 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Vehicle Code is amended by
5 changing 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

1 certificate of title, if available, the documentation required
2 under the provisions of the Probate Act of 1975, and an
3 application for certificate of title. The Small Estate
4 Affidavit form shall be furnished by the Secretary of State.
5 The transfer may be to the transferee or to the nominee of the
6 transferee.

7 (c) If the interest of an owner in a vehicle passes to
8 another under other provisions of the Probate Act of 1975, as
9 amended, and the transfer is made by a representative or
10 guardian, such transferee shall promptly mail or deliver to the
11 Secretary of State, the last certificate of title, if
12 available, and a certified copy of the letters of office or
13 guardianship, and an application for certificate of title. Such
14 application shall be made before the estate is closed. The
15 transfer may be to the transferee or to the nominee of the
16 transferee.

17 (d) If the interest of an owner in joint tenancy passes to
18 the other joint tenant with survivorship rights as provided by
19 law, the transferee shall promptly mail or deliver to the
20 Secretary of State, the last certificate of title, if
21 available, proof of death of the one joint tenant and
22 survivorship of the surviving joint tenant, and an application
23 for certificate of title. Such application shall be made within
24 120 days after the death of the joint tenant. The transfer may
25 be to the transferee or to the nominee of the transferee.

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

31 (f) Repossession with assignment of title. In all cases
32 wherein a lienholder has repossessed a vehicle by other than
33 judicial process and holds it for resale under a security
34 agreement, and the owner of record has executed an assignment

1 of the existing certificate of title after default, the
2 lienholder may proceed to sell or otherwise dispose of the
3 vehicle as authorized under the Uniform Commercial Code. Upon
4 selling the vehicle to another person, the lienholder need not
5 send the certificate of title to the Secretary of State, but
6 shall promptly and within 20 days mail or deliver to the
7 purchaser as transferee the existing certificate of title for
8 the repossessed vehicle, reflecting the release of the
9 lienholder's security interest in the vehicle. The application
10 for a certificate of title made by the purchaser shall comply
11 with subsection (a) of Section 3-104 and be accompanied by the
12 existing certificate of title for the repossessed vehicle. The
13 lienholder shall execute the assignment and warranty of title
14 showing the name and address of the purchaser in the spaces
15 provided therefor on the certificate of title or as the
16 Secretary of State prescribes. The lienholder shall complete
17 the assignment of title in the certificate of title to reflect
18 the transfer of the vehicle to the lienholder and also a
19 reassignment to reflect the transfer from the lienholder to the
20 purchaser. For this purpose, the lienholder is specifically
21 authorized to complete and execute the space reserved in the
22 certificate of title for a dealer reassignment,
23 notwithstanding that the lienholder is not a licensed dealer.
24 Nothing herein shall be construed to mean that the lienholder
25 is taking title to the repossessed vehicle for purposes of
26 liability for retailer occupation, vehicle use, or other tax
27 with respect to the proceeds from the repossession sale.
28 Delivery of the existing certificate of title to the purchaser
29 shall be deemed disclosure to the purchaser of the owner of the
30 vehicle.

31 (f-5) Repossession without assignment of title. In all
32 cases wherein a lienholder has repossessed a vehicle by other
33 than judicial process and holds it for resale under a security
34 agreement, and the owner of record has not executed an

1 assignment of the existing certificate of title, the lienholder
2 shall comply with the following provisions:

3 (1) Prior to sale, the lienholder shall deliver or
4 mail, by certified or registered mail, to the owner at the
5 owner's last known address and to any other lienholder of
6 record, a notice of redemption setting forth the following
7 information: (i) the name of the owner of record and in
8 bold type at or near the top of the notice a statement that
9 the owner's vehicle was repossessed on a specified date for
10 failure to make payments on the loan (or other reason),
11 (ii) a description of the vehicle subject to the lien
12 sufficient to identify it, (iii) the right of the owner to
13 redeem the vehicle, (iv) the lienholder's intent to sell or
14 otherwise dispose of the vehicle after the expiration of 21
15 days from the date of mailing or delivery of the notice,
16 and (v) the name, address, and telephone number of the
17 lienholder from whom information may be obtained
18 concerning the amount due to redeem the vehicle and from
19 whom the vehicle may be redeemed under Section 9-623 of the
20 Uniform Commercial Code. At the lienholder's option, the
21 information required to be set forth in this notice of
22 redemption may be made a part of or accompany the
23 notification of sale or other disposition required under
24 Section 9-611 of the Uniform Commercial Code, but none of
25 the information required by this notice shall be construed
26 to impose any requirement under Article 9 of the Uniform
27 Commercial Code.

28 (2) With respect to the repossession of a vehicle used
29 primarily for personal, family, or household purposes, the
30 lienholder shall also deliver or mail to the owner at the
31 owner's last known address an affidavit of defense. The
32 affidavit of defense shall accompany the notice of
33 redemption required in subdivision (f-5)(1) of this
34 Section. The affidavit of defense shall (i) identify the

1 lienholder, owner, and the vehicle; (ii) provide space for
2 the owner to state the defense claimed by the owner; and
3 (iii) include an acknowledgment by the owner that the owner
4 may be liable to the lienholder for fees, charges, and
5 costs incurred by the lienholder in establishing the
6 insufficiency or invalidity of the owner's defense. To stop
7 the transfer of title, the affidavit of defense must be
8 received by the lienholder no later than 21 days after the
9 date of mailing or delivery of the notice required in
10 subdivision (f-5)(1) of this Section. If the lienholder
11 receives the affidavit from the owner in a timely manner,
12 the lienholder must apply to a court of competent
13 jurisdiction to determine if the lienholder is entitled to
14 possession of the vehicle.

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

1 1/3% of its fair market value, the lienholder shall make
2 application for a salvage certificate under Section
3 3-117.1 and transfer the vehicle to a person eligible to
4 receive assignments of salvage certificates identified in
5 Section 3-118.

6 (4) The application for a certificate of title made by
7 the purchaser shall comply with subsection (a) of Section
8 3-104 and be accompanied by the affidavit of repossession
9 furnished by the lienholder and the existing certificate of
10 title for the repossessed vehicle. The lienholder shall
11 execute the assignment and warranty of title showing the
12 name and address of the purchaser in the spaces provided
13 therefor on the certificate of title or as the Secretary of
14 State prescribes. The lienholder shall complete the
15 assignment of title in the certificate of title to reflect
16 the transfer of the vehicle to the lienholder and also a
17 reassignment to reflect the transfer from the lienholder to
18 the purchaser. For this purpose, the lienholder is
19 specifically authorized to execute the assignment on
20 behalf of the owner as seller if the owner has not done so
21 and to complete and execute the space reserved in the
22 certificate of title for a dealer reassignment,
23 notwithstanding that the lienholder is not a licensed
24 dealer. Nothing herein shall be construed to mean that the
25 lienholder is taking title to the repossessed vehicle for
26 purposes of liability for retailer occupation, vehicle
27 use, or other tax with respect to the proceeds from the
28 repossession sale. Delivery of the existing certificate of
29 title to the purchaser shall be deemed disclosure to the
30 purchaser of the owner of the vehicle. In the event the
31 lienholder does not hold the certificate of title for the
32 repossessed vehicle, the lienholder shall make application
33 for and may obtain a new certificate of title in the name
34 of the lienholder upon furnishing information satisfactory

1 to the Secretary of State. Upon receiving the new
2 certificate of title, the lienholder may proceed with the
3 sale described in subdivision (f-5)(3), except that upon
4 selling the vehicle the lienholder shall promptly and
5 within 20 days mail or deliver to the purchaser the new
6 certificate of title reflecting the assignment and
7 transfer of title to the purchaser.

8 (5) Neither the lienholder nor the owner shall file
9 with the Office of the Secretary of State the notice of
10 redemption or affidavit of defense described in
11 subdivisions (f-5)(1) and (f-5)(2) of this Section. The
12 Office of the Secretary of State shall not determine the
13 merits of an owner's affidavit of defense, nor consider any
14 allegations or assertions regarding the validity or
15 invalidity of a lienholder's claim to the vehicle or an
16 owner's asserted defenses to the repossession action.

17 (6) A lienholder who has repossessed a vehicle under
18 this subsection (f-5) may not remove the vehicle from this
19 State until after the expiration of 21 days from the date
20 of the mailing or delivery of the notice of redemption.

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

22 (1) If, at the time of repossession by a lienholder
23 that is seeking to transfer title pursuant to subsection
24 (f-5), the owner has paid an amount equal to 30% or more of
25 the deferred payment price or total of payments due, the
26 owner may, within 21 days of the date of repossession,
27 reinstate the contract or loan agreement and recover the
28 vehicle from the lienholder by tendering in a lump sum (i)
29 the total of all unpaid amounts, including any unpaid
30 delinquency or deferral charges due at the date of
31 reinstatement, without acceleration; and (ii) performance
32 necessary to cure any default other than nonpayment of the
33 amounts due; and (iii) all reasonable costs and fees
34 incurred by the lienholder in retaking, holding, and

1 preparing the vehicle for disposition and in arranging for
2 the sale of the vehicle. Reasonable costs and fees incurred
3 by the lienholder include without limitation repossession
4 and storage expenses and, if authorized by the contract or
5 loan agreement, reasonable attorneys' fees and collection
6 agency charges.

7 (2) Tender of payment and performance pursuant to this
8 limited right of reinstatement restores to the owner his
9 rights under the contract or loan agreement as though no
10 default had occurred. The owner has the right to reinstate
11 the contract or loan agreement and recover the vehicle from
12 the lienholder only once under this subsection. The
13 lienholder may, in the lienholder's sole discretion,
14 extend the period during which the owner may reinstate the
15 contract or loan agreement and recover the vehicle beyond
16 the 21 days allowed under this subsection, and the
17 extension shall not subject the lienholder to liability to
18 the owner under the laws of this State.

19 (3) The lienholder shall deliver or mail written notice
20 to the owner at the owner's last known address, within 3
21 business days of the date of repossession, of the owner's
22 right to reinstate the contract or loan agreement and
23 recover the vehicle pursuant to the limited right of
24 reinstatement described in this subsection. At the
25 lienholder's option, the information required to be set
26 forth in this notice of reinstatement may be made part of
27 or accompany the notice of redemption required in
28 subdivision (f-5)(1) of this Section and the notification
29 of sale or other disposition required under Section 9-611
30 of the Uniform Commercial Code, but none of the information
31 required by this notice of reinstatement shall be construed
32 to impose any requirement under Article 9 of the Uniform
33 Commercial Code.

34 (4) The reinstatement period, if applicable, and the

1 redemption period described in subdivision (f-5)(1) of
2 this Section, shall run concurrently if the information
3 required to be set forth in the notice of reinstatement is
4 part of or accompanies the notice of redemption. In any
5 event, the 21 day redemption period described in
6 subdivision (f-5)(1) of this Section shall commence on the
7 date of mailing or delivery to the owner of the information
8 required to be set forth in the notice of redemption, and
9 the 21 day reinstatement period described in this
10 subdivision, if applicable, shall commence on the date of
11 mailing or delivery to the owner of the information
12 required to be set forth in the notice of reinstatement.

13 (5) The Office of the Secretary of State shall not
14 determine the merits of an owner's claim of right to
15 reinstatement, nor consider any allegations or assertions
16 regarding the validity or invalidity of a lienholder's
17 claim to the vehicle or an owner's asserted right to
18 reinstatement. Where a lienholder is subject to licensing
19 and regulatory supervision by the State of Illinois, the
20 lienholder shall be subject to all of the powers and
21 authority of the lienholder's primary State regulator to
22 enforce compliance with the procedures set forth in this
23 subsection (f-7).

24 (f-10) Repossession by judicial process. In all cases
25 wherein a lienholder has repossessed a vehicle by judicial
26 process and holds it for resale under a security agreement,
27 order for replevin, or other court order establishing the
28 lienholder's right to possession of the vehicle, the lienholder
29 may proceed to sell or otherwise dispose of the vehicle as
30 authorized under the Uniform Commercial Code or the court
31 order. Upon selling the vehicle to another person, the
32 lienholder need not send the certificate of title to the
33 Secretary of State, but shall promptly and within 20 days mail
34 or deliver to the purchaser as transferee (i) the existing

1 certificate of title for the repossessed vehicle reflecting the
2 release of the lienholder's security interest in the vehicle;
3 (ii) a certified copy of the court order; and (iii) a bill of
4 sale identifying the new owner's name and address and the year,
5 make, model, and vehicle identification number of the vehicle.
6 The application for a certificate of title made by the
7 purchaser shall comply with subsection (a) of Section 3-104 and
8 be accompanied by the certified copy of the court order
9 furnished by the lienholder and the existing certificate of
10 title for the repossessed vehicle. The lienholder shall execute
11 the assignment and warranty of title showing the name and
12 address of the purchaser in the spaces provided therefor on the
13 certificate of title or as the Secretary of State prescribes.
14 The lienholder shall complete the assignment of title in the
15 certificate of title to reflect the transfer of the vehicle to
16 the lienholder and also a reassignment to reflect the transfer
17 from the lienholder to the purchaser. For this purpose, the
18 lienholder is specifically authorized to execute the
19 assignment on behalf of the owner as seller if the owner has
20 not done so and to complete and execute the space reserved in
21 the certificate of title for a dealer reassignment,
22 notwithstanding that the lienholder is not a licensed dealer.
23 Nothing herein shall be construed to mean that the lienholder
24 is taking title to the repossessed vehicle for purposes of
25 liability for retailer occupation, vehicle use, or other tax
26 with respect to the proceeds from the repossession sale.
27 Delivery of the existing certificate of title to the purchaser
28 shall be deemed disclosure to the purchaser of the owner of the
29 vehicle. In the event the lienholder does not hold the
30 certificate of title for the repossessed vehicle, the
31 lienholder shall make application for and may obtain a new
32 certificate of title in the name of the lienholder upon
33 furnishing information satisfactory to the Secretary of State.
34 Upon receiving the new certificate of title, the lienholder may

1 proceed with the sale described in this subsection, except that
2 upon selling the vehicle the lienholder shall promptly and
3 within 20 days mail or deliver to the purchaser the new
4 certificate of title reflecting the assignment and transfer of
5 title to the purchaser.

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

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

28 (f-25) If the interest of an owner in a mobile home, as
29 defined in the Mobile Home Local Services Tax Act, passes to
30 another under the provisions of the Mobile Home Local Services
31 Tax Enforcement Act, the transferee shall promptly mail or
32 deliver to the Secretary of State (i) the last certificate of
33 title, if available, (ii) a certified copy of the court order
34 ordering the transfer of title, and (iii) an application for

1 certificate of title.

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

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

17 (i) The Secretary of State shall not be held civilly or
18 criminally liable to any person because any purported
19 transferor may not have had the power or authority to make a
20 transfer of any interest in any vehicle or because a
21 certificate of title issued in error is subsequently used to
22 commit a fraudulent act.

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