

SB1653



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

SB1653

Introduced 2/20/2015, by Sen. Steve Stadelman

SYNOPSIS AS INTRODUCED:

625 ILCS 5/3-114

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

Amends the Illinois Vehicle Code. Makes a technical change in a Section concerning transfer by operation of law.

LRB099 08562 RJF 28721 b

A BILL FOR

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 ~~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

1 deliver to the Secretary of State, within 120 days, the last
2 certificate of title, if available, the documentation required
3 under the provisions of the Probate Act of 1975, and an
4 application for certificate of title. The Small Estate
5 Affidavit form shall be furnished by the Secretary of State.
6 The transfer may be to the transferee or to the nominee of the
7 transferee.

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

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

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

6 (f) Repossession with assignment of title. In all cases
7 wherein a lienholder has repossessed a vehicle by other than
8 judicial process and holds it for resale under a security
9 agreement, and the owner of record has executed an assignment
10 of the existing certificate of title after default, the
11 lienholder may proceed to sell or otherwise dispose of the
12 vehicle as authorized under the Uniform Commercial Code. Upon
13 selling the vehicle to another person, the lienholder need not
14 send the certificate of title to the Secretary of State, but
15 shall promptly and within 20 days mail or deliver to the
16 purchaser as transferee the existing certificate of title for
17 the repossessed vehicle, reflecting the release of the
18 lienholder's security interest in the vehicle. The application
19 for a certificate of title made by the purchaser shall comply
20 with subsection (a) of Section 3-104 and be accompanied by the
21 existing certificate of title for the repossessed vehicle. The
22 lienholder shall execute the assignment and warranty of title
23 showing the name and address of the purchaser in the spaces
24 provided therefor on the certificate of title or as the
25 Secretary of State prescribes. The lienholder shall complete
26 the assignment of title in the certificate of title to reflect

1 the transfer of the vehicle to the lienholder and also a
2 reassignment to reflect the transfer from the lienholder to the
3 purchaser. For this purpose, the lienholder is specifically
4 authorized to complete and execute the space reserved in the
5 certificate of title for a dealer reassignment,
6 notwithstanding that the lienholder is not a licensed dealer.
7 Nothing herein shall be construed to mean that the lienholder
8 is taking title to the repossessed vehicle for purposes of
9 liability for retailer occupation, vehicle use, or other tax
10 with respect to the proceeds from the repossession sale.
11 Delivery of the existing certificate of title to the purchaser
12 shall be deemed disclosure to the purchaser of the owner of the
13 vehicle.

14 (f-5) Repossession without assignment of title. Subject to
15 subsection (f-30), in all cases wherein a lienholder has
16 repossessed a vehicle by other than judicial process and holds
17 it for resale under a security agreement, and the owner of
18 record has not executed an assignment of the existing
19 certificate of title, the lienholder shall comply with the
20 following provisions:

21 (1) Prior to sale, the lienholder shall deliver or mail
22 to the owner at the owner's last known address and to any
23 other lienholder of record, a notice of redemption setting
24 forth the following information: (i) the name of the owner
25 of record and in bold type at or near the top of the notice
26 a statement that the owner's vehicle was repossessed on a

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

19 (2) With respect to the repossession of a vehicle used
20 primarily for personal, family, or household purposes, the
21 lienholder shall also deliver or mail to the owner at the
22 owner's last known address an affidavit of defense. The
23 affidavit of defense shall accompany the notice of
24 redemption required in subdivision (f-5)(1) of this
25 Section. The affidavit of defense shall (i) identify the
26 lienholder, owner, and the vehicle; (ii) provide space for

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

14 (3) Upon selling the vehicle to another person, the
15 lienholder need not send the certificate of title to the
16 Secretary of State, but shall promptly and within 20 days
17 mail or deliver to the purchaser as transferee (i) the
18 existing certificate of title for the repossessed vehicle,
19 reflecting the release of the lienholder's security
20 interest in the vehicle; and (ii) an affidavit of
21 repossession made by or on behalf of the lienholder which
22 provides the following information: that the vehicle was
23 repossessed, a description of the vehicle sufficient to
24 identify it, whether the vehicle has been damaged in excess
25 of 33 1/3% of its fair market value as required under
26 subdivision (b)(3) of Section 3-117.1, that the owner and

1 any other lienholder of record were given the notice
2 required in subdivision (f-5)(1) of this Section, that the
3 owner of record was given the affidavit of defense required
4 in subdivision (f-5)(2) of this Section, that the interest
5 of the owner was lawfully terminated or sold pursuant to
6 the terms of the security agreement, and the purchaser's
7 name and address. If the vehicle is damaged in excess of 33
8 1/3% of its fair market value, the lienholder shall make
9 application for a salvage certificate under Section
10 3-117.1 and transfer the vehicle to a person eligible to
11 receive assignments of salvage certificates identified in
12 Section 3-118.

13 (4) The application for a certificate of title made by
14 the purchaser shall comply with subsection (a) of Section
15 3-104 and be accompanied by the affidavit of repossession
16 furnished by the lienholder and the existing certificate of
17 title for the repossessed vehicle. The lienholder shall
18 execute the assignment and warranty of title showing the
19 name and address of the purchaser in the spaces provided
20 therefor on the certificate of title or as the Secretary of
21 State prescribes. The lienholder shall complete the
22 assignment of title in the certificate of title to reflect
23 the transfer of the vehicle to the lienholder and also a
24 reassignment to reflect the transfer from the lienholder to
25 the purchaser. For this purpose, the lienholder is
26 specifically authorized to execute the assignment on

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

23 (5) Neither the lienholder nor the owner shall file
24 with the Office of the Secretary of State the notice of
25 redemption or affidavit of defense described in
26 subdivisions (f-5)(1) and (f-5)(2) of this Section. The

1 Office of the Secretary of State shall not determine the
2 merits of an owner's affidavit of defense, nor consider any
3 allegations or assertions regarding the validity or
4 invalidity of a lienholder's claim to the vehicle or an
5 owner's asserted defenses to the repossession action.

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

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

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

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

1 Commercial Code.

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

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

26 (f-10) Repossession by judicial process. In all cases

1 wherein a lienholder has repossessed a vehicle by judicial
2 process and holds it for resale under a security agreement,
3 order for replevin, or other court order establishing the
4 lienholder's right to possession of the vehicle, the lienholder
5 may proceed to sell or otherwise dispose of the vehicle as
6 authorized under the Uniform Commercial Code or the court
7 order. Upon selling the vehicle to another person, the
8 lienholder need not send the certificate of title to the
9 Secretary of State, but shall promptly and within 20 days mail
10 or deliver to the purchaser as transferee (i) the existing
11 certificate of title for the repossessed vehicle reflecting the
12 release of the lienholder's security interest in the vehicle;
13 (ii) a certified copy of the court order; and (iii) a bill of
14 sale identifying the new owner's name and address and the year,
15 make, model, and vehicle identification number of the vehicle.
16 The application for a certificate of title made by the
17 purchaser shall comply with subsection (a) of Section 3-104 and
18 be accompanied by the certified copy of the court order
19 furnished by the lienholder and the existing certificate of
20 title for the repossessed vehicle. The lienholder shall execute
21 the assignment and warranty of title showing the name and
22 address of the purchaser in the spaces provided therefor on the
23 certificate of title or as the Secretary of State prescribes.
24 The lienholder shall complete the assignment of title in the
25 certificate of title to reflect the transfer of the vehicle to
26 the lienholder and also a reassignment to reflect the transfer

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

24 (f-15) The Secretary of State shall not issue a certificate
25 of title to a purchaser under subsection (f), (f-5), or (f-10)
26 of this Section, unless the person from whom the vehicle has

1 been repossessed by the lienholder is shown to be the last
2 registered owner of the motor vehicle. The Secretary of State
3 may provide by rule for the standards to be followed by a
4 lienholder in assigning and transferring certificates of title
5 with respect to repossessed vehicles.

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

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

1 certificate of title.

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

4 (1) the lienholder may proceed to sell or otherwise
5 dispose of the vehicle as authorized by the Bankruptcy Code
6 and the Uniform Commercial Code;

7 (2) the notice of redemption, affidavit of defense, and
8 notice of reinstatement otherwise required to be sent by
9 the lienholder to the owner of record or other lienholder
10 of record under this Section are not required to be
11 delivered or mailed;

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

20 (4) the affidavit of repossession that is required
21 under subdivision (f-5)(3) shall contain a notation of
22 "bankruptcy" where the affidavit requires the date of the
23 mailing or delivery of the notice of redemption. The
24 notation of "bankruptcy" means the lienholder makes no
25 sworn representations regarding the mailing or delivery of
26 the notice of redemption or affidavit of defense or

1 lienholder's compliance with the requirements that
2 otherwise apply to the notices listed in this subsection
3 (f-30), and makes no sworn representation that the
4 lienholder assumes liability or costs for any litigation
5 that may arise from the issuance of a certificate of title
6 based on the excluded representations;

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

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

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

23 (h) The Secretary of State may decline to process any
24 application for a transfer of an interest in a vehicle
25 hereunder if any fees or taxes due under this Act from the
26 transferor or the transferee have not been paid upon reasonable

1 notice and demand.

2 (i) The Secretary of State shall not be held civilly or
3 criminally liable to any person because any purported
4 transferor may not have had the power or authority to make a
5 transfer of any interest in any vehicle or because a
6 certificate of title issued in error is subsequently used to
7 commit a fraudulent act.

8 (Source: P.A. 94-411, eff. 1-1-06.)