

ACT 203

H.B. NO. 1388

A Bill for an Act Relating to Motor Carriers.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 271, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§271- Motor carrier lien. (a) In addition to the lien provided by section 490:7-307, a carrier has a lien on freight in its possession for the total amount owed the carrier by the shipper for freightage, charges for services and advances due on freight previously delivered upon the promise of the shipper to pay freightage, charges and advances, as provided in this section.

(b) The lien provided by this section shall not arise:

- (1) Unless the carrier has given the shipper and the consignee 10 days notice in writing, that failure to pay billed charges may result in a lien on future shipments; or
- (2) As to any freight which consists of perishable goods; or
- (3) As to any freight, the freight charges for which have been prepaid by the consignee or the intended recipient; or
- (4) As to any freight, if the applicable charges were paid to a third party legally obligated to remit the payment to the carrier but the amount due has not been received by the carrier; or
- (5) As to any property legally owned by anyone other than the debtor, or as to which the current identity of the owner is unknown.

(c) Except as otherwise provided in this section, the notice and sale provisions of section 490:7-308, shall apply to the sale of property subject to a lien provided by this section.

(d) No sale of property subject to a lien provided by this section may take place for at least 35 days from the date that possession of the property is delivered to the carrier but the notice period set forth in section 490:7-308 may run concurrently with the 35-day period provided by this subdivision. In addition to the notices required by section 490:7-308, the lienholder, at least 10 days prior to any sale of the property, shall notify the shipper and the consignee of the property, and each secured party having a perfected security interest in the property, of the date, time and place of the intended sale. This notice shall include the names of both the shipper and the consignee and shall describe the property to be sold.

(e) Any perfected security interest in the property is prior to the lien provided by this section. No sale of the property may be concluded if the amount bid at the sale is not at least equal to the total amount of all outstanding obligations secured by a perfected security interest in the property. If the minimum bid required for the sale of property pursuant to this subdivision is not received, the lienholder shall promptly release the property to the legal owner upon payment of the current amount for freightage, charges for services and advances due for shipment of that property, not including amounts due on freight previously delivered.

The proceeds of the sale shall be applied as follows:

- (1) First, to secured parties having a perfected security interest, in the amounts to which they are respectively entitled.
- (2) Second, to the discharge of the lien provided by this section.
- (3) The remainder, if any, to the legal owner of the property.

In the event of any violation by the lienholder of any provision of this subdivision the lienholder shall be liable to any secured party for all damages sustained by the secured party as a result thereof plus all expenses reasonably and necessarily incurred in the enforcement of the secured party's rights, including reasonable attorney's fees and costs of suit.

(f) The shipper shall be liable to the consignee for any damage which results from the failure of the property to reach the consignee as scheduled due to the carrier's proper exercise of its lien rights pursuant to this section.

(g) The carrier shall be liable to the consignee for any damage which results from the failure of the property to reach the consignee as scheduled due to the carrier's violation or misuse of any lien obtained under this section. The measure of damages shall be determined as set forth in section 490:2-713."

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect on July 1, 1987.

(Approved May 27, 1986.)

Note

1. Edited pursuant to HRS §23G-16.5.