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SENATE BILL NO. 363

Offered January 20, 2000

A BILL to amend and reenact §§ 43-32, 43-33 and 43-34 of the Code of Virginia, relating to liens.

Patron—Colgan

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 43-32, 43-33 and 43-34 of the Code of Virginia are amended and reenacted as follows:**

§ 43-32. Lien of keeper of livery stable, garage, marina, etc.

A. Every keeper of a livery stable, hangar, tie-down, marina, *vehicle storage facility* or garage, and every person pasturing or keeping any horses or other animals, vehicles, boats, *trailers, recreational vehicles, aircraft, or harness*, shall have a lien upon such horses and other animals, vehicles, boats, *trailers, recreational vehicles, aircraft, and harness*, for the amount which may be due him for the keeping, supporting, and care thereof, until such amount is paid.

B. In the case of any boat, *trailer, recreational vehicle*, aircraft, or vehicle subject to a chattel mortgage, security agreement, deed of trust, or other instrument securing money, the keeper of the marina, hangar, tie-down, *vehicle storage facility* or garage shall have a lien thereon for his reasonable charges for storage under this section not to exceed ~~\$300~~ *\$1,000* and for alteration and repair under § 43-33 not to exceed ~~\$ 625~~ *\$3,000*. However, in the case of a storage lien, to obtain the priority for an amount in excess of \$150, the person asserting the lien shall give written notice by certified mail, return receipt requested, to any secured party of record at the Department of Motor Vehicles or the Department of Game and Inland Fisheries. If the secured party does not, within seven days of receipt of the notice, take or refuse redelivery to it or its designee, the lienor shall be entitled to priority for the full ~~\$300~~ *\$1,000*. *In addition, if the secured party does not respond by certified mail, return receipt requested, within seven days of receipt of notice and/or refuses to take redelivery to it or its designee, the secured party shall be deemed to have consented to the sale of the vehicle or watercraft and to have waived all rights, title, and interest in the vehicle or watercraft.* Notwithstanding a redelivery, the vehicle or watercraft shall be subject to subsection D.

C. In addition, any person furnishing services involving the towing and recovery of a boat, *trailer, recreational vehicle*, aircraft or vehicle, shall have a lien for all normal costs incident thereto, if the person asserting the lien gives written notice within ~~seven~~ *fifteen* days of receipt of the boat, *trailer, recreational vehicle*, aircraft or vehicle by certified mail, return receipt requested, to all secured parties of record at the Department of Motor Vehicles or the Department of Game and Inland Fisheries.

D. In addition, any keeper shall be entitled to a lien against any proceeds remaining after the satisfaction of all prior security interests or liens, and may retain possession of such property until such charges are paid. *Any lienholder who does not respond by certified mail, return receipt requested, within seven days of receipt of notice and/or refuses to take redelivery of the boat, trailer, recreational vehicle, aircraft, or vehicle shall be presumed to have no interest and to have waived all rights to any proceeds.*

E. Any lien created under this section shall not extend to any personal property which is not attached to or considered to be necessary for the proper operation of any motor vehicle, and it shall be the duty of any keeper of such personal property to promptly return it to the owner.

F. For the purposes of this section, in the case of a truck or combination of vehicles, the owner or in the case of a rented or leased vehicle, the lessee of the truck or tractor truck shall be liable for the costs of the towing, recovery, and storage of the cargo and of any trailer or semitrailer in the combination. Nothing in this subsection, however, shall bar the owner of the truck or tractor truck from subsequently seeking to recover from the owner of any trailer, semitrailer, or cargo all or any portion of these towing, recovery, and storage costs.

§ 43-33. Lien of mechanic for repairs.

Every mechanic, who ~~shall alter or repair~~ *alters or repairs* any article of personal property at the request of the owner of such property, shall have a lien thereon for his just and reasonable charges therefor and may retain possession of such property until such charges are paid.

And every mechanic, who ~~shall make~~ *makes* necessary alterations or repairs on any article of personal property which from its character requires the making of ordinary repairs thereto as a reasonable incident to its reasonable and customary use, at the request of any person legally in possession thereof under a reservation of title contract, chattel mortgage, deed of trust, or other instrument securing money, the person so in possession having authority to use such property, shall have a lien thereon for his just and reasonable charges therefor to the extent of ~~\$ 625~~ *\$3,000*. In addition, such

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SB363

60 mechanic shall be entitled to a lien against the proceeds, if any, remaining after the satisfaction of all
61 prior security interests or liens, and may retain possession of such property until such charges are paid.
62 In any action to enforce the lien hereby given all persons having an interest in the property sought to be
63 subjected shall be made parties defendant.

64 If the owner of the property held by the mechanic ~~shall desire~~ *desires* to obtain possession thereof,
65 he shall make the mechanic defendant in *any* proceeding ~~in the county or municipal court~~ to recover the
66 property.

67 The owner may give a bond payable to the court, in a penalty of the amount equal to the lien
68 claimed by the mechanic and court costs, with security to be approved by the clerk, and conditioned for
69 the performance of the final judgment of the court on the trial of the proceeding, and with a further
70 condition to the effect that, if upon the hearing, the judgment of the court ~~be is~~ that the lien of the
71 mechanic on such property, or any part thereof, be enforced, judgment may thereupon be entered against
72 the obligors on such bond for the amount due the mechanic and court costs, if assessed against the
73 owner, without further or other proceedings against them thereon. Upon giving of the bond, the property
74 shall be delivered to the owner.

75 § 43-34. Enforcement of liens acquired under §§ 43-31 through 43-33 and of liens of bailees.

76 Any person having a lien under §§ 43-31 through 43-33 and any bailee, except where otherwise
77 provided, having a lien as such at common law on personal property in his possession which he has no
78 power to sell for the satisfaction of the lien, if the debt for which the lien exists is not paid within ten
79 days after it is due and the value of the property affected by the lien does not exceed ~~\$3,000~~ \$7,000,
80 may sell such property or so much thereof as may be necessary, by public auction, for cash. The
81 proceeds shall be applied to the satisfaction of the debt and expenses of sale, and the surplus, if any,
82 shall be paid within thirty days of the sale to any lienholder, and then to the owner of the property. A
83 seller who fails to remit the surplus as provided shall be liable to the person entitled to the surplus in an
84 amount equal to twenty-five dollars for each day beyond thirty days that the failure continues.

85 Before making the sale, the seller shall advertise the time, place, and terms thereof in a public place.
86 In the case of property other than a motor vehicle required to be registered in Virginia having a value in
87 excess of \$600, ten days' prior notice shall be given to any secured party who has filed a financing
88 statement against the property, and written notice shall be given to the owner as hereinafter provided. If
89 the property is a motor vehicle required by the motor vehicle laws of Virginia to be registered, the
90 person having the lien shall ascertain from the Commissioner of the Department of Motor Vehicles
91 whether the certificate of title of the motor vehicle shows a lien thereon. If the certificate of title shows
92 a lien, the bailee proposing the sale of the motor vehicle shall notify the lienholder of record, by
93 certified mail, at the address on the certificate of title of the time and place of the proposed sale ten
94 days prior thereto. If the name of the owner cannot be ascertained, the name of "John Doe" shall be
95 substituted in any proceedings hereunder and no written notice as to him shall be required to be mailed.

96 If the value of the property is more than ~~\$3,000~~ \$7,000 but does not exceed \$15,000, the party having
97 the lien, after giving notice as herein provided, may apply by petition to any general district court of the
98 county or city wherein the property is, or, if the value of the property exceeds \$15,000, to the circuit
99 court of the county or city, for the sale of the property. If, on the hearing of the case on the petition, the
100 defense, if any made thereto, and such evidence as may be adduced by the parties respectively, the court
101 is satisfied that the debt and lien are established and the property should be sold to pay the debt, the
102 court shall order the sale to be made by the sheriff of the county or city. The sheriff shall make the
103 same and apply and dispose of the proceeds in the same manner as if the sale were made under a writ
104 of fieri facias.

105 If the owner of the property is a resident of this Commonwealth, any notice required by this section
106 may be served as provided in § 8.01-296 or, if the sale is to be made without resort to the courts, by
107 personal delivery or by certified or registered mail delivered to the present owner of the property to be
108 sold at his last known address at least ten days prior to the date of sale. If he is a nonresident or if his
109 address is unknown, notice may be served by posting a copy thereof in three public places in the county
110 or city wherein the property is located. For purposes of this section, a public place means a premises
111 owned by the Commonwealth, a political subdivision thereof or an agency of either which is open to the
112 general public.

113 If the property is a motor vehicle (i) for which neither the owner nor any other lienholder or secured
114 party can be determined by the Department of Motor Vehicles through a diligent search of its records,
115 (ii) manufactured for a model year at least six years prior to the current model year, and (iii) having a
116 value of no more than \$1,000 as determined by the provisions of § 8.01-419.1, a person having a lien
117 on such vehicle may, after showing proof that the vehicle has been in his continuous custody for at least
118 thirty days, apply for and receive from the Department of Motor Vehicles title to such vehicle, free of
119 all liens and claims of ownership of others, and proceed to sell or otherwise dispose of the vehicle.

120 Whenever a motor vehicle is sold hereunder, the Department of Motor Vehicles shall issue a
121 certificate of title and registration to the purchaser thereof upon his application containing the serial or

122 motor number of the vehicle purchased together with an affidavit of the lienholder that he has complied
123 with the provisions hereof, or by the sheriff conducting a sale that he has complied with said order.
124 Any garage keeper to whom a motor vehicle has been delivered pursuant to §§ 46.2-1209, 46.2-1213
125 or § 46.2-1215 may after thirty days from the date of delivery proceed under this section, provided that
126 action has not been taken pursuant to such sections for the sale of such motor vehicle.

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SB363