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SENATE BILL NO. 296

Offered January 14, 2004

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A BILL to amend and reenact §§ 43-32, 46.2-649.1, 46.2-1231, 46.2-1600, 46.2-1601, and 46.2-1607 of the Code of Virginia, relating to mechanics' liens; towing.

Patron—O'Brien

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 43-32, 46.2-649.1, 46.2-1231, 46.2-1600, 46.2-1601, and 46.2-1607 of the Code of Virginia is 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, or garage, and every person pasturing or keeping any horses or other animals, vehicles, boats, aircraft, or harness, shall have a lien upon such horses and other animals, vehicles, boats, aircraft, and harness, for the amount which may be lawfully due him for the towing, keeping, supporting, and care thereof, until such amount is paid.

B. In the case of any boat, 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, or garage shall have a lien thereon for his reasonable charges for storage under this section not to exceed \$300 and for alteration and repair under § 43-33 not to exceed \$625. 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 and as provided in § 46.2-1231. 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. 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, storage, and release of a boat, aircraft or vehicle, shall have a lien for all normal costs incident thereto, if the person asserting the lien gives written notice within seven days of receipt of the boat, 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.

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.

§ 46.2-649.1. Registration of tow trucks; fees.

A. For the purposes of this section, "tow truck" means a motor vehicle for hire (i) designed to lift, pull, or carry another vehicle by means of a hoist or other mechanical apparatus and (ii) having a manufacturer's gross vehicle weight rating of at least 10,000 pounds. The term "tow truck" also includes vehicles designed with a ramp on wheels and a hydraulic lift with a capacity to haul or tow another vehicle, commonly referred to as "rollbacks." The term "tow truck" does not include any "automobile or watercraft transporter," "stinger-steered automobile or watercraft transporter," or "tractor truck" as those terms are defined in § 46.2-100.

B. No tow truck registered under this section shall be subject to registration under the international registration plan or subject to any other state registration requirements under this chapter. Registration under this section shall not prohibit the use of "rollbacks" to transport storage sheds, similar structures, or other cargoes.

C. Vehicles registered under this section shall be subject to the following annual fees, based upon their manufacturer's gross vehicle weight ratings:

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59	less than 15,000 pounds	\$100
60	15,000 to 22,999 pounds	\$200
61	23,000 to 29,499 pounds	\$300
62	more than 29,499 pounds	\$400

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64 D. Motor vehicles having manufacturer's gross vehicle weight ratings of at least 7,000 but less than  
 65 10,000 pounds that otherwise would meet the definition of "tow truck" under subsection A of this  
 66 section may, until January 1, 2000, be registered under this section as long as (i) the vehicle is  
 67 continuously registered under this section and (ii) the title to the vehicle is not transferred to another  
 68 owner prior to that time.

69 E. No vehicle shall be registered under this section unless there is in force as to such vehicle at the  
 70 time of its registration commercial liability insurance coverage for those classes of insurance defined in  
 71 §§ 38.2-117 and 38.2-118 in the amount of at least \$750,000.

72 § 46.2-1231. Ticketing, removal, or immobilization of trespassing vehicles by owner or operator of  
 73 parking or other lot or building; charges.

74 A. The owner, operator, or lessee of any parking lot, parking area, or parking space in a parking lot  
 75 or area or any part of a parking lot or area, or of any other lot or building, including any county, city,  
 76 or town, or authorized agent of the person having control of such premises may have any vehicle  
 77 occupying the lot, area, space, or building without the permission of its owner, operator, lessee, or  
 78 authorized agent of the one having the control of the premises, removed by towing or otherwise to a  
 79 licensed garage for storage until called for by the owner or his agent if there are posted at all entrances  
 80 to the parking lot or area signs clearly and conspicuously disclosing that such vehicle, ~~if parked without~~  
 81 ~~permission,~~ will be removed, towed, or immobilized. *If such signs have not been posted, it shall be*  
 82 *unlawful to remove, tow, or immobilize a vehicle as provided in this subsection and any violation of this*  
 83 *provision shall constitute a traffic infraction punishable by a fine of not more than \$200.* The  
 84 requirements of this section relating to the posting of signs by an owner, operator, or lessee of any  
 85 parking lot, parking area or space shall not apply to localities in which the local governing body has  
 86 adopted an ordinance pursuant to § 46.2-1232.

87 B. Whenever a trespassing vehicle is removed or towed as permitted by this section, notice of this  
 88 action shall forthwith be given by the tow truck operator to the State Police or the local  
 89 law-enforcement agency of the jurisdiction from which the vehicle was towed. *Any such notice shall*  
 90 *include, at a minimum, the make, model, color, license plate number, and vehicle identification number*  
 91 *of the towed or removed vehicle, the name of the driver of the vehicle used to perform the removal or*  
 92 *towing, the name of the business whose agent or employee performed the removal or towing, the name*  
 93 *of the person who requested that the vehicle be removed or towed, and the location where the removed*  
 94 *or towed vehicle will be stored and may be reclaimed. The business whose agent or employee performed*  
 95 *the removal or towing shall retain the information contained in any such notice for at least two years.* It  
 96 shall be unlawful to fail to report such tow as required by this section and violation of the reporting  
 97 requirement of this section shall constitute a traffic infraction punishable by a fine of not more than  
 98 ~~\$400~~ \$200. Such failure to report shall limit the amount which may be charged for the storage and  
 99 safekeeping of the towed vehicle to an amount no greater than that charged for one day of storage and  
 100 safekeeping. If the vehicle is removed and stored *in conformity with the provisions of this section,* the  
 101 vehicle owner may be charged and the vehicle may be held for a reasonable fee for the removal and  
 102 storage.

103 C. All businesses engaged in towing vehicles without the consent of their owners shall prominently  
 104 display (i) at their main place of business, (ii) *at all storage lots,* and ~~(ii)~~ (iii) at any other location  
 105 where towed vehicles may be reclaimed a comprehensive list of all their fees for towing, recovery, and  
 106 storage services, or the basis of such charges. This requirement to display a list of fees may also be  
 107 satisfied by providing, when the towed vehicle is reclaimed, a written list of such fees, either as part of  
 108 a receipt or separately, to the person who reclaims the vehicle. Charges in excess of those posted shall  
 109 not be collectable from any motor vehicle owner whose vehicle is towed, recovered, or stored without  
 110 his consent.

111 D. Notwithstanding the foregoing provisions of this section, if the owner or representative or agent of  
 112 the owner of the trespassing vehicle is present and removes the trespassing vehicle from the premises  
 113 before it is actually towed, the trespassing vehicle shall not be towed, but the owner or representative or  
 114 agent of the owner of the trespassing vehicle shall be liable for a reasonable fee, not to exceed \$25 or  
 115 such other limit as the governing body of the county, city, or town may set by ordinance, in lieu of  
 116 towing.

117 E. In lieu of having a trespassing vehicle removed by towing or otherwise, the owner, operator,  
 118 lessee or authorized agent of the premises on which the trespassing vehicle is parked may cause the  
 119 vehicle to be immobilized by a boot or other device that prevents a vehicle from being moved by

120 preventing a wheel from turning, provided that the boot or other device does not damage the vehicle or  
 121 wheel. The charge for the removal of any boot or device shall not exceed \$25 or such other limit as the  
 122 governing body of the county, city, or town may set by ordinance. In lieu of having the vehicle  
 123 removed by towing or otherwise, or in lieu of causing the vehicle to be immobilized, the owner,  
 124 operator, lessee or authorized agent of the premises on which the trespassing vehicle is parked may  
 125 cause to have an authorized local government official or law-enforcement officer issue, on the premises,  
 126 a notice of the violation of a parking ordinance or regulation created pursuant to § 46.2-1220 or  
 127 § 46.2-1221 to the registered owner of the vehicle.

128 *F. Any person who suffers any loss as the result of any violation of this section may institute an*  
 129 *action to recover his actual damages or \$1,000, whichever is greater. If the court finds that the*  
 130 *violation was willful, it may award damages in an amount not to exceed treble the actual damages or*  
 131 *\$1,500, whichever is greater. Notwithstanding any contrary provision of law, any successful plaintiff in*  
 132 *any such action shall also be awarded reasonable attorney's fees and court costs.*

133 *G. This section shall not apply to police, fire, or public health vehicles or where a vehicle, because*  
 134 *of a wreck or other emergency, is parked or left temporarily on the property of another. The governing*  
 135 *body of every county, city, and town may by ordinance set limits on fees and charges provided for in*  
 136 *this section.*

137 § 46.2-1600. Definitions.

138 The following words, terms, and phrases when used in this chapter shall have the meaning ascribed  
 139 to them in this section, except where the context indicates otherwise:

140 "Actual cash value," as applied to a vehicle, means the retail cash value of the vehicle prior to  
 141 damage as determined, using recognized evaluation sources, either (i) by an insurance company  
 142 responsible for paying a claim or (ii) if no insurance company is responsible therefor, by the  
 143 Department.

144 "Current salvage value," as applied to a vehicle, means (i) the salvage value of the vehicle, as  
 145 determined by the insurer responsible for paying the claim or (ii) if no insurance company is responsible  
 146 therefor, 25 percent of the actual cash value.

147 "Demolisher" means any person whose business is to crush, flatten, or otherwise reduce a vehicle to  
 148 a state where it can no longer be considered a vehicle.

149 "Diminished value compensation" means the amount of compensation that an insurance company  
 150 pays to a third party vehicle owner, in addition to the cost of repairs, for the reduced value of a vehicle  
 151 due to damage.

152 "Independent appraisal firm" means any business providing cost estimates for the repair of damaged  
 153 motor vehicles for insurance purposes and having all required business licenses and zoning approvals.  
 154 This term shall not include insurance companies that provide the same service, nor shall any such entity  
 155 be a rebuilder or affiliated with a rebuilder.

156 "Late model vehicle" means the current-year model of a vehicle and the six preceding model years,  
 157 or any vehicle whose actual cash value is determined to have been at least \$7,500 prior to being  
 158 damaged.

159 "Licensee" means any person who is licensed or is required to be licensed under this chapter.

160 "Major component" means any one of the following subassemblies of a motor vehicle: (i) front clip  
 161 assembly, consisting of the fenders, grille, hood, bumper, and related parts; (ii) engine; (iii) transmission;  
 162 (iv) rear clip assembly, consisting of the quarter panels, floor panels, trunk lid, bumper, and related  
 163 parts; (v) frame; (vi) air bags; and (vii) any door that displays a vehicle identification number.

164 "Nonrepairable certificate" means a document of ownership issued by the Department for any  
 165 nonrepairable vehicle upon surrender or cancellation of the vehicle's title and registration or salvage  
 166 certificate.

167 "Nonrepairable vehicle" means (i) any late model vehicle that has been damaged and whose  
 168 estimated cost of repair exceeds 90 percent of its actual cash value prior to damage, or (ii) any vehicle  
 169 which has been determined to be nonrepairable by its insurer or owner, and for which a nonrepairable  
 170 certificate has been issued or applied for, or (iii) any other vehicle which has been damaged, is  
 171 inoperable, and has no value except for use as parts and scrap metal.

172 "Rebuilder" means any person who acquires and repairs, for use on the public highways, two or  
 173 more salvage vehicles within a 12 -month period.

174 "Rebuilt vehicle" means (i) any salvage vehicle that has been damaged as a result of collision, fire,  
 175 flood, accident, trespass, or any other occurrence and has been repaired and the estimated cost of repair  
 176 exceeded 75 percent of its actual cash value, for use on the public highways or (ii) any late model  
 177 vehicle which has been repaired and the estimated cost of repair exceeded 75 percent of its actual cash  
 178 value, excluding the cost to repair damage to the engine, transmission, or drive axle assembly.

179 "Repaired vehicle" means any salvage vehicle that has had repairs less than the amount necessary to  
 180 make it a rebuilt vehicle.

181 "Salvage certificate" means a document of ownership issued by the Department for any salvage  
182 vehicle upon surrender or cancellation of the vehicle's title and registration.

183 "Salvage dealer" means any person who acquires any vehicle for the purpose of reselling any parts  
184 thereof.

185 "Salvage pool" means any person providing a storage service for salvage vehicles or nonrepairable  
186 vehicles who either displays the vehicles for resale or solicits bids for the sale of salvage vehicles or  
187 nonrepairable vehicles, but this definition shall not apply to an insurance company which stores and  
188 displays fewer than 100 salvage vehicles and nonrepairable vehicles in one location; however, any two  
189 or more insurance companies who display salvage and nonrepairable vehicles for resale, using the same  
190 facilities, shall be considered a salvage pool.

191 "Salvage vehicle" means (i) any late model vehicle which has been (a) acquired by an insurance  
192 company as a part of the claims process other than a stolen vehicle or (b) damaged as a result of  
193 collision, fire, flood, accident, trespass, or any other occurrence to such an extent that its estimated cost  
194 of repair, excluding charges for towing, storage, and temporary replacement/rental vehicle or payment  
195 for diminished value compensation, would exceed its actual cash value less its current salvage value; (ii)  
196 any recovered stolen vehicle acquired by an insurance company as a part of the claims process, whose  
197 estimated cost of repair exceeds 75 percent of its actual cash value; or (iii) any other vehicle which is  
198 determined to be a salvage vehicle by its owner or an insurance company by applying for a salvage  
199 certificate for the vehicle, provided that such vehicle is not a nonrepairable vehicle.

200 "Scrap metal processor" means any person who is engaged in the business of processing vehicles into  
201 scrap for remelting purposes who, from a fixed location, utilizes machinery and equipment for  
202 processing and manufacturing ferrous and nonferrous metallic scrap into prepared grades, and whose  
203 principal product is metallic scrap.

204 "*Towing operator*" means any person who is in the business of using a motor vehicle for hire to lift,  
205 pull, or carry another vehicle by means of a hoist or other mechanical apparatus.

206 "Vehicle removal operator" means any person who acquires a vehicle for the purpose of reselling it  
207 to a demolisher, scrap metal processor, or salvage dealer

208 § 46.2-1601. Licensing of dealers of salvage vehicles; fees.

209 It shall be unlawful for any person to engage in business in the Commonwealth as a demolisher,  
210 rebuilder, salvage dealer, salvage pool, *towing operator*, or vehicle removal operator without first  
211 acquiring a license issued by the Commissioner for each such business at each location. The fee for the  
212 first such license issued or renewed under this chapter shall be \$100 per license year or part thereof.  
213 The fee for each additional license issued or renewed under this chapter for the same location shall be  
214 \$25 per license year or part thereof. However, no fee shall be charged for supplemental locations of a  
215 business located within 500 yards of the licensed location. No license shall be issued or renewed for any  
216 person unless the licensed business contains at least 600 square feet of enclosed space and is shown to  
217 be in compliance with all applicable zoning ordinances. Nothing in this section shall authorize any  
218 person to act as a motor vehicle dealer or salesperson without being licensed under Chapter 15 of this  
219 title and meeting all requirements imposed by such chapter.

220 The Commissioner may offer an optional multiyear license for any license set forth in this section.  
221 When such option is offered and chosen by the licensee, all fees due at the time of licensing shall be  
222 multiplied by the number of years for which the license will be issued.

223 On due notice and hearing, the Commissioner may suspend or revoke any license issued under this  
224 chapter for any violation of any provision of this chapter or a violation of § 46.2-1074 or § 46.2-1075.  
225 Suspension or revocation shall only be imposed on the specific business found to be in violation.

226 § 46.2-1607. Inspection of records and examination of inventory.

227 The Commissioner or any person authorized by the Commissioner or any law-enforcement officer,  
228 during the usual business hours, may examine any records, books, papers, or other documents required  
229 to be maintained by this chapter, and may examine any vehicle or component part of any vehicle  
230 located in the yard, garage, or storage area of any salvage dealer, rebuilder, demolisher, salvage pool,  
231 scrap metal processor, *towing operator*, or vehicle removal operator to ensure compliance with this  
232 chapter.