

VIRGINIA ACTS OF ASSEMBLY -- 2005 SESSION

CHAPTER 59

An Act to amend and reenact §§ 58.1-3941 and 58.1-3942 of the Code of Virginia, relating to highway vehicles that may be distrained for unpaid taxes, levies, or other charges.

[H 1667]

Approved March 20, 2005

Be it enacted by the General Assembly of Virginia:

- 1. That §§ 58.1-3941 and 58.1-3942 of the Code of Virginia are amended and reenacted as follows:**
§ 58.1-3941. What may be distrained for taxes.

Any goods or chattels, money and bank notes in the county, city or town belonging to the person or estate assessed with taxes, levies or other charges collected by the treasurer may be distrained therefor by the treasurer, sheriff, constable or collector. Property subject to levy or distress for taxes shall be liable to levy or distress in the hands of any person for taxes, penalties and interest thereon, except that any highway vehicle as defined in ~~§ 58.1-2101~~ *herein* purchased by a bona fide purchaser for value shall not be liable to levy or distress for such taxes unless the purchaser knew at the time of purchase that the taxes had been specifically assessed against such vehicle.

Property on which taxes were specifically assessed, whether assessed per item or in bulk shall be subject to distress after it passes into the hands of a bona fide purchaser for value.

As used in this section, "highway vehicle" means any vehicle operated, or intended to be operated, on a highway. The term shall not include: (i) farm machinery, including farm machinery designed for off-road use but capable of movement on roads at low speeds; (ii) a vehicle operated on rails; (iii) machinery designed principally for off-road use; (iv) self-propelled equipment manufactured for a specific off-road purpose, which is used on a job site and the movement of which on any highway is incidental to the purpose for which it was designed and manufactured; or (v) a vehicle operated on the highway and exempt from registration requirements pursuant to §§ 46.2-663 through 46.2-667 and 46.2-669 through 46.2-683.

§ 58.1-3942. Security interests no bar to distress.

A. No security interest in goods or chattels shall prevent the same from being distrained and sold for taxes or levies assessed thereon, no matter in whose possession they may be found.

B. Prior to such sale for distress, the treasurer, sheriff, constable or collector, or other party conducting the sale shall give notice to any secured party of record as his name and address shall appear on the records of the Department of Motor Vehicles, the Department of Game and Inland Fisheries, the State Corporation Commission, or in the office of the clerk of any circuit court where the debtor has resided to the knowledge of the party to whom the tax is owing during a one-year period prior to the sale. Notice shall also be given to any secured party of whom the party to whom the tax is owing shall have knowledge.

C. A security interest perfected prior to any distraint for taxes shall have priority over all taxes, except those specifically assessed either per item or in bulk against the goods and chattels so assessed. Taxes specifically assessed either per item or in bulk against goods and chattels shall constitute a lien against the property so assessed and shall have priority over all security interests. For purposes of this section, a merchant's capital tax shall be deemed to be specifically assessed against all inventory in the merchant's possession at the time of distraint, or at the time such inventory is repossessed by the holder of a security interest therein. For purposes of this section, taxes specifically assessed in bulk means an assessment against the specific class of property distrained.

D. The title conveyed to the purchaser of goods and chattels at a sale for taxes specifically assessed either per item or in bulk against such goods and chattels distrained shall be free of all claims of any creditor, including the claims of any secured party of record, provided that notice was given to such creditor as required by subsection B. The person conducting the sale shall apply the proceeds of the sale first to unpaid taxes and then the claims of secured parties of record, in the order of their priority, before delivering any sum remaining to the person or estate assessed with taxes.

E. Notwithstanding any provision of this section to the contrary, no highway vehicle as defined in ~~§ 58.1-2101~~ *58.1-3941* purchased by a bona fide purchaser for value from the person or estate assessed with taxes shall be liable to levy or distress for such taxes unless the purchaser knew at the time of purchase that the taxes had been specifically assessed against such vehicle.