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SENATE BILL NO. 296

Offered January 14, 2004

Prefiled January 14, 2004

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~~ *is 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 ~~\$100~~ \$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

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

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

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

§ 46.2-1600. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

"Repaired vehicle" means any salvage vehicle that has had repairs less than the amount necessary to 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.