

093548604

HOUSE BILL NO. 2164

Offered January 14, 2009

Prefiled January 14, 2009

A BILL to amend and reenact §§ 43-32, 43-33, 43-34, 46.2-633, 46.2-640, 46.2-1200, 46.2-1202, 46.2-1206, 46.2-1600, 55-417, 55-418, and 55-419 of the Code of Virginia, to amend the Code of Virginia by adding sections numbered 46.2-1202.1 and 46.2-1202.2, and to repeal §§ 46.2-1204 and 46.2-1208 of the Code of Virginia, relating to mechanics' liens and acquisition and disposal of abandoned vehicles.

Patron—Lohr

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 43-32, 43-33, 43-34, 46.2-633, 46.2-640, 46.2-1200, 46.2-1202, 46.2-1206, 46.2-1600, 55-417, 55-418, and 55-419 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 46.2-1202.1 and 46.2-1202.2 as follows:

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

A. Every keeper of a livery stable, hangar, tie-down, ~~or 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 due him for the towing, storage, recovery, keeping, supporting, and care thereof, until such amount is paid.

B. In the case of any boat, ~~or aircraft; or vehicle~~ subject to a chattel mortgage, security agreement, deed of trust, or other instrument securing money, the keeper of the marina, hangar, ~~or tie-down; or garage~~ shall have a lien thereon for his reasonable charges for storage under this section not to exceed \$500 and for alteration and repair under § 43-33 not to exceed \$800. However, in the case of a storage lien, to obtain the priority for an amount in excess of \$300, the person asserting the lien shall make a reasonable attempt to notify any secured party of record at the ~~Department of Motor Vehicles or the~~ Department of Game and Inland Fisheries by telephonic means and 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 within seven business days of taking possession of the boat, ~~or aircraft or vehicle.~~ If the secured party does not, within seven business 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 amount of storage charges, not to exceed \$500. 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, ~~or 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, ~~or 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 return it to the owner if the owner claims the items prior to auction.

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 any article of personal property, *except motor vehicles as defined in § 46.2-100*, 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 necessary alterations or repairs on any article of personal

INTRODUCED

HB2164

59 property which from its character requires the making of ordinary repairs thereto as a reasonable
60 incident to its reasonable and customary use, at the request of any person legally in possession thereof
61 under a reservation of title contract, chattel mortgage, deed of trust, or other instrument securing money,
62 the person so in possession having authority to use such property, shall have a lien thereon for his just
63 and reasonable charges therefor to the extent of \$800. In addition, such mechanic shall be entitled to a
64 lien against the proceeds, if any, remaining after the satisfaction of all prior security interests or liens,
65 and may retain possession of such property until such charges are paid. In any action to enforce the lien
66 hereby given all persons having an interest in the property sought to be subjected shall be made parties
67 defendant.

68 If the owner of the property held by the mechanic shall desire to obtain possession thereof, he shall
69 make the mechanic defendant in proceeding in the county or municipal court to recover the property.

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

78 § 43-34. Enforcement of liens acquired under §§ 43-31 through 43-33 and of liens of bailees.

79 ~~Any~~ Except motor vehicles as defined in § 46.2-100, any person having a lien under §§ 43-31
80 through 43-33 and any bailee, except where otherwise provided, having a lien as such at common law
81 on personal property in his possession which he has no power to sell for the satisfaction of the lien, if
82 the debt for which the lien exists is not paid within 10 days after it is due and the value of the property
83 affected by the lien does not exceed \$7,500, may sell such property or so much thereof as may be
84 necessary, by public auction, for cash. The proceeds shall be applied to the satisfaction of the debt and
85 expenses of sale, and the surplus, if any, shall be paid within 30 days of the sale to any lienholder, and
86 then to the owner of the property. A seller who fails to remit the surplus as provided shall be liable to
87 the person entitled to the surplus in an amount equal to \$50 for each day beyond 30 days that the
88 failure continues.

89 Before making the sale, the seller shall advertise the time, place, and terms thereof in a public place.
90 In the case of property other than a motor vehicle required to be registered in Virginia having a value in
91 excess of \$600, 10 days' prior notice shall be given to any secured party who has filed a financing
92 statement against the property, and written notice shall be given to the owner as hereinafter provided. If
93 the property is a motor vehicle required by the motor vehicle laws of Virginia to be registered, the
94 person having the lien shall ascertain from the Commissioner of the Department of Motor Vehicles
95 whether the certificate of title of the motor vehicle shows a lien thereon. If the certificate of title shows
96 a lien, the bailee proposing the sale of the motor vehicle shall notify the lienholder of record, by
97 certified mail, at the address on the certificate of title of the time and place of the proposed sale 10 days
98 prior thereto. If the name of the owner cannot be ascertained, the name of "John Doe" shall be
99 substituted in any proceedings hereunder and no written notice as to him shall be required to be mailed.
100 Whenever a vehicle is shown by the Department of Motor Vehicles records to be owned by a person
101 who has indicated that he is on active military duty or service, the Department shall include such
102 information in response to requests for vehicle information pursuant to the requirements of this chapter.

103 If the value of the property is more than \$7,500 but does not exceed \$15,000, the party having the
104 lien, after giving notice as herein provided, may apply by petition to any general district court of the
105 county or city wherein the property is, or, if the value of the property exceeds \$15,000, to the circuit
106 court of the county or city, for the sale of the property. If, on the hearing of the case on the petition, the
107 defense, if any made thereto, and such evidence as may be adduced by the parties respectively, the court
108 is satisfied that the debt and lien are established and the property should be sold to pay the debt, the
109 court shall order the sale to be made by the sheriff of the county or city. The sheriff shall make the
110 same and apply and dispose of the proceeds in the same manner as if the sale were made under a writ
111 of fieri facias.

112 If the owner of the property is a resident of this Commonwealth, any notice required by this section
113 may be served as provided in § 8.01-296 or, if the sale is to be made without resort to the courts, by
114 personal delivery or by certified or registered mail delivered to the present owner of the property to be
115 sold at his last known address at least 10 days prior to the date of sale. If he is a nonresident or if his
116 address is unknown, notice may be served by posting a copy thereof in three public places in the county
117 or city wherein the property is located. For purposes of this section, a public place means a premises
118 owned by the Commonwealth, a political subdivision thereof or an agency of either which is open to the
119 general public.

120 If the property is a motor vehicle (i) for which neither the owner nor any other lienholder or secured

party can be determined by the Department of Motor Vehicles through a diligent search of its records, (ii) manufactured for a model year at least six years prior to the current model year, and (iii) having a value of no more than \$3,000 as determined by the provisions of § 8.01-419.1, a person having a lien on such vehicle may, after showing proof that the vehicle has been in his continuous custody for at least 30 days, apply for and receive from the Department of Motor Vehicles title or a nonrepairable certificate to such vehicle, free of all liens and claims of ownership of others, and proceed to sell or otherwise dispose of the vehicle.

Whenever a motor vehicle is sold hereunder, the Department of Motor Vehicles shall issue a certificate of title and registration or a nonrepairable certificate to the purchaser thereof upon his application containing the serial or motor number of the vehicle purchased together with an affidavit of the lienholder that he has complied with the provisions hereof, or by the sheriff conducting a sale that he has complied with said order.

Any garage keeper to whom a motor vehicle has been delivered pursuant to § 46.2-1209, 46.2-1213 or 46.2-1215 may after 30 days from the date of delivery proceed under this section, provided that action has not been taken pursuant to such sections for the sale of such motor vehicle.

Notwithstanding any provisions to the contrary, any person having a lien under § 43-32 or 43-33 shall comply with the provisions of the federal Servicemembers Civil Relief Act (50 U.S.C. app. 501 et seq.) when disposing of a vehicle owned by a member of the military duty or service.

§ 46.2-633. Transfer of title by operation of law.

A. Except as otherwise provided in § 46.2-615 in the event of the transfer by operation of law of the title or interest of an owner in and to a motor vehicle, trailer, or semitrailer registered under the provisions of this chapter to anyone as legatee or distributee or as surviving joint owner or by an order in bankruptcy or insolvency, execution sale, sales as provided for in § 43-34 § 46.2-1202.2, repossession on default in the performing of the terms of a lease or executory sales contract or of any written agreement ratified or incorporated in a decree or order of a court of record, or otherwise than by the voluntary act of the person whose title or interest is so transferred, the transferee or his legal representative shall apply to the Department for a certificate of title, giving the name and address of the person entitled to it, and accompany his application with the registration card and certificate of title previously issued for the motor vehicle, trailer, or semitrailer, if available, together with whatever instruments or documents of authority, or certified copies of them, are required by law to evidence or effect a transfer of title or interest in or to chattels in the case. The Department shall cancel the registration of the motor vehicle, trailer, or semitrailer and issue a new certificate of title to the person entitled to it.

B. Notwithstanding the provisions of subsection A, if a title is presented from a state other than the Commonwealth, the Department shall, upon presentation of the title and a form prescribed by the Commissioner attesting to the lawful repossession of the vehicle and the intent to offer the vehicle for sale in the Commonwealth, issue a new certificate of title to the person entitled to it and request the state in which the vehicle is titled to cancel the title. Nothing in this subsection, however, shall be construed to require the presentation of a title from a state other than the Commonwealth if the vehicle is not required to be titled by the laws of that other state.

§ 46.2-640. Priority of security interests shown on certificates of title.

The security interests, except security interests in motor vehicles, trailers and semitrailers which are inventory held for sale and are perfected under §§ 8.9A-401 through 8.9A-527, shown upon such certificates of title issued by the Department pursuant to applications for same shall have priority over any other liens or security interests against such motor vehicle, trailer, or semitrailer, however created and recorded. The foregoing provisions of this section shall not apply to liens for taxes as provided in § 58.1-3942, liens of keepers of garages to the extent given by § 43-32 § 46.2-1202.1 and liens of mechanics for repairs to the extent given by § 43-33 § 46.2-1202.2 if the requirements therefor exist, provided the garage keeper or mechanic furnishes the holder of any recorded lien who may request it with an itemized sworn statement of the storage charges, work done, and materials supplied for which the lien is claimed.

§ 46.2-1200. Definitions.

As used in this article:

"Abandoned motor vehicle" means a motor vehicle, trailer, or semitrailer or ~~part~~ *major component* of a motor vehicle, ~~trailer, or semitrailer~~ that:

1. Is ~~inoperable and is left unattended on public property, other than an interstate highway or primary highway, for more than forty-eight hours in violation of a state law or local ordinance, or~~

2. Has ~~remained illegally on public property for more than forty-eight hours, or~~ 3. 2. Has remained for more than forty-eight hours on private property without the consent of the property's owner, regardless of whether it was brought onto the private property with the consent of the owner or person in control of the private property, or 4. 3. Is ~~inoperable, left unattended, or both, on an interstate~~

182 highway, or

183 5. Is inoperable, left unattended, or both, on the shoulder of a primary highway

184 "Inoperable abandoned motor vehicle" means an abandoned motor vehicle which is inoperable and
185 whose fair market value, as determined by the locality's official responsible for assessing motor vehicles
186 under § 58.1-3503, is less than the cost of its restoration to an operable condition, or

187 4. Has remained unclaimed in a garage for more than 10 days or for more than 10 days beyond the
188 period the motor vehicle was to remain on the premises pursuant to a contract, or

189 5. Has remained unclaimed in a self-service storage unit under the provisions of Chapter 23
190 (§ 55-416 et seq.) of Title 55.

191 "Garage" means any commercial parking place, motor vehicle storage facility, or establishment for
192 the servicing, repair, maintenance, or sale of motor vehicles whether or not the vehicle had been
193 brought to that location with the consent of the owner or person in control of the premises.

194 "Garage keeper" means the operator of a garage.

195 "Major component" shall have the meaning ascribed by § 46.2-1600.

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

200 "Vehicle removal certificate" means a transferable document issued by the Department for any
201 abandoned motor vehicle that authorizes the removal and destruction of the vehicle.

202 § 46.2-1202. Search for owner and secured party; notice.

203 Any locality or its authorized agent that takes an abandoned motor vehicle into custody shall, within
204 fifteen days, by registered or certified mail, return receipt requested, notify the owner of record of the
205 motor vehicle and all persons having security interests in the vehicle of record, that it has been taken
206 into custody. The notice shall (i) state the year, make, model, and serial number of the abandoned motor
207 vehicle; (ii) set forth the location of the facility where it is being held; and (iii) inform the owner and
208 any persons having security interests of their right to reclaim it within fifteen days after the date of the
209 notice after payment of all towing, preservation, and storage charges resulting from placing the vehicle
210 in custody. The notice shall state that the failure of the owner or persons having security interests to
211 reclaim the vehicle within the time provided shall constitute (i) a waiver by the owner and all persons
212 having any security interests of all right, title, and interest in the vehicle and (ii) consent to the sale of
213 the abandoned motor vehicle at a public auction.

214 If records of the Department contain no address for the owner or no address of any person shown by
215 the Department's records to have a security interest, or if the identity and addresses of the owner and all
216 persons having security interests cannot be determined with reasonable certainty, notice by publication
217 once in a newspaper of general circulation in the area where the motor vehicle was abandoned shall be
218 sufficient to meet all requirements of notice pursuant to this article as to any person who cannot be
219 notified pursuant to the foregoing provisions of this section. Notice by publication may contain multiple
220 listings of abandoned motor vehicles. Any notice of this kind shall be within the time requirements
221 prescribed by this section for notice by mail and shall have the same contents required for a notice by
222 mail.

223 The consequences of failure to reclaim an abandoned motor vehicle shall be as set forth in a notice
224 given in accordance with and pursuant to this section. A. Any person in possession of an abandoned
225 motor vehicle shall make application to the Department, in a manner prescribed by the Commissioner,
226 for removal of the vehicle, requesting the name and address of the owner of record of the motor vehicle
227 and all persons having security interests in the motor vehicle on record in the office of the Department,
228 describing, if ascertainable, the motor vehicle by year, make, model, and vehicle identification number.
229 A fee of \$25 shall be paid to the Department at the time of application. Those fees shall be paid into
230 the state treasury and set aside as a special, nonreverting fund to be used to meet the expenses of the
231 Department.

232 The Department shall check: (i) its own records, (ii) the records of a nationally recognized crime
233 database, and (iii) records of a nationally recognized motor vehicle title database for owner and
234 lienholder information. If a vehicle has been reported as stolen, the Department shall notify the
235 appropriate law-enforcement agency of that fact. If a vehicle has been found to have been titled in
236 another jurisdiction, the Department shall notify the applicant of that jurisdiction. In cases of motor
237 vehicles titled in other jurisdictions, the Commissioner shall issue certificates of title on proof
238 satisfactory to the Commissioner that the persons required to be notified by registered or certified mail
239 have received actual notice fully containing the information required by this section.

240 B. If the Department confirms owner or lienholder information, the Department shall notify the
241 owner, at the last known address of record, and lienholder, at the last known address of record, of the
242 application for removal, by certified mail, return receipt requested, and advise him to reclaim and
243 remove the vehicle within 15 days, or, if the vehicle is a manufactured home or a mobile home, 120

days, from the date of notice. Such notice, when sent in accordance with these requirements, shall be sufficient regardless of whether or not it was ever received. Following the notice required in this sub-section, if the motor vehicle remains unclaimed, the owner and all persons having security interests in the motor vehicle shall have waived all right, title, and interest in the motor vehicle.

The person in possession of the abandoned motor vehicle shall obtain from the Department in a manner prescribed by the Commissioner, a Vehicle Removal Certificate. The vehicle may be sold or transferred to a licensee, as defined in § 46.2-1600, or a scrap metal processor, as defined in § 46.2-1600.

If the person in possession of the abandoned motor vehicle desires to obtain title to the vehicle, that person shall post notice for at least 21 days of his intent to auction the motor vehicle. Postings of intent shall be in an electronic manner prescribed by the Commissioner who shall also ensure that written notice of intent is provided in public locations throughout the Commonwealth. If the Department confirms a lien, the person proposing the sale of the motor vehicle shall notify the lienholder of record, by certified mail, at the address on the certificate of title of the time and place of the proposed sale 10 days prior thereto. It shall be the responsibility of the person proposing the sale to maintain proof that notice was properly mailed.

Whenever a vehicle is shown by the Department's records to be owned by a person who has indicated that he is on active military duty or service, the Department shall include such information in response to requests for vehicle information pursuant to the requirements of this article.

Any person having a lien under the provisions of this article shall comply with the provisions of the federal Servicemembers Civil Relief Act (50 U.S.C. app. 501 et seq.) when disposing of a vehicle owned by a member of the military on active duty or service.

C. If records of the Department contain no address for the owner or no address of any person shown by the Department's records to have a security interest, or if the identity and addresses of the owner and all persons having security interests cannot be determined with reasonable certainty, the person in possession of the abandoned motor vehicle shall obtain from the Department in a manner prescribed by the Commissioner, a Vehicle Removal Certificate. The vehicle may be sold or transferred to a licensee, as defined in § 46.2-1600, or a scrap metal processor, as defined in § 46.2-1600. If the person in possession of the abandoned motor vehicle desires to obtain title to the vehicle, that person shall post notice for at least 21 days of his intent to auction the motor vehicle. Postings of intent shall be in an electronic manner prescribed by the Commissioner who shall also ensure that written notice of intent is provided in public locations throughout the Commonwealth.

Following the auction, the purchaser of the motor vehicle may apply for a title upon payment of the applicable fees and taxes, and by supplying the Department with the completed Vehicle Removal Certificate and the transcript from the Department that indicates that the Department has no record of the abandoned motor vehicle.

§ 46.2-1202.1. Liens for storage and repair of motor vehicles, trailers, and semitrailers.

A. Every keeper of a garage, and every person having possession of any motor vehicles, trailers, or semitrailers shall have a lien upon such motor vehicles, trailers, or semitrailers for the amount that may be due him for the towing, storage, recovery, or repair thereof, and may retain possession of such property until the lien created under this section is paid.

B. In the case of any motor vehicle subject to a chattel mortgage, security agreement, deed of trust, or other instrument securing money, the keeper of the garage shall have a lien thereon for his reasonable charges for storage under this section not to exceed \$500, and for alteration and repair under this section not to exceed \$800. However, in the case of a storage lien, to obtain the priority for an amount in excess of \$300, the person asserting the lien shall follow the procedures set forth in § 46.2-1202. If, within seven business days of receipt of the notice, the secured party does not take or refuses delivery of the motor vehicle to it or its designee, the lienor shall be entitled to priority for the full amount of storage charges, not to exceed \$500. Notwithstanding a redelivery, the motor vehicle shall be subject to subsection C.

C. In addition, any person furnishing services involving the towing and recovery of a motor vehicle shall have a lien for all normal costs incident thereto, if the person asserting the lien gives written notice within seven business days of receipt of the motor vehicle by certified mail, return receipt requested, to all secured parties of record at the Department of Motor Vehicles.

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 the charges created under subsection C are paid.

E. Any lien created under this section shall not extend to any personal property that 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 return it to the owner if the owner claims the items prior to auction.

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

311 *If the owner of the motor vehicle held by the garage or mechanic desires to obtain possession*
312 *thereof, he shall make the garage or mechanic defendant in proceeding in the county or municipal court*
313 *to recover the property.*

314 *The owner may give a bond payable to the court, in an amount equal to the lien claimed by the*
315 *garage or mechanic and court costs, with security to be approved by the clerk. The bond shall be*
316 *conditioned for the performance of the final judgment of the court on the trial of the proceeding, and if*
317 *upon the hearing, the judgment of the court enforces the lien of the garage or mechanic or any part*
318 *thereof, judgment may be entered on such bond for the amount due the garage or mechanic and court*
319 *costs, if assessed, against the owner. Upon giving of the bond, the motor vehicle shall be delivered to*
320 *the owner.*

321 *§ 46.2-1202.2. Enforcement of liens acquired under § 46.2-1202.1.*

322 *A. Any person having a lien under § 46.2-1202.1, if the debt for which the lien exists is not paid*
323 *within 10 days after it is due and the value of the property affected by the lien does not exceed \$10,000,*
324 *may sell such property or so much thereof as may be necessary, by public auction, for cash. The*
325 *proceeds shall be applied to the satisfaction of the debt and expenses of sale, and the surplus, if any,*
326 *shall be paid within 30 days of the sale to any lienholder, and then to the owner of the property. A*
327 *seller who fails to remit the surplus as provided shall be liable to the person entitled to the surplus in*
328 *an amount equal to \$50 for each day beyond 30 days that the failure continues.*

329 *Before making the sale, the seller shall electronically post notice of his intent to auction the motor*
330 *vehicle in a manner prescribed by the Commissioner. The person having the lien shall ascertain from*
331 *the Department whether the certificate of title of the motor vehicle shows a lien thereon. If the*
332 *certificate of title shows a lien, the Department shall notify the lienholder of record, by certified mail, at*
333 *the address on the certificate of title of the time and place of the proposed sale 10 days prior thereto.*
334 *Whenever a motor vehicle is shown by the Department's records to be owned by a person who has*
335 *indicated that he is on active military duty or service, the Department shall include such information in*
336 *response to requests for vehicle information pursuant to the requirements of this article.*

337 *Any person having a lien under the provisions of this article shall comply with the provisions of the*
338 *federal Servicemembers Civil Relief Act (50 U.S.C. app. 501 et seq.) when disposing of a vehicle owned*
339 *by a member of the military on active duty or service.*

340 *B. If the value of the property is more than \$10,000 but does not exceed \$15,000, the party having*
341 *the lien, after giving notice as herein provided, may apply by petition to any general district court of the*
342 *county or city wherein the property is, or, if the value of the property exceeds \$15,000, to the circuit*
343 *court of the county or city, for the sale of the property. If, on the hearing of the case on the petition,*
344 *the defense, if any made thereto, and such evidence as may be adduced by the parties respectively, the*
345 *court is satisfied that the debt and lien are established and the property should be sold to pay the debt,*
346 *the court shall order the sale to be made by the sheriff of the county or city. The sheriff shall make the*
347 *same and apply and dispose of the proceeds in the same manner as if the sale were made under a writ*
348 *of fieri facias.*

349 *Before making the sale, the sheriff shall electronically post notice of his intent to auction the motor*
350 *vehicle in a manner prescribed by the Commissioner who shall also ensure that written notice of intent*
351 *is provided in public locations throughout the Commonwealth.*

352 *If the property is a motor vehicle (i) for which neither the owner nor any other lienholder or secured*
353 *party can be determined by the Department through a diligent search of its records, (ii) manufactured*
354 *for a model year at least five years prior to the current model year, and (iii) having a value of no more*
355 *than \$5,000 as determined by the provisions of § 8.01-419.1, a person having a lien on such vehicle*
356 *may, after showing proof that the vehicle has been in his continuous custody for at least 30 days, apply*
357 *for and receive from the Department a title or a nonrepairable certificate to such vehicle, free of all*
358 *liens and claims of ownership of others, and proceed to sell or otherwise dispose of the vehicle.*

359 *Whenever a motor vehicle is sold hereunder, the Department shall issue a certificate of title and*
360 *registration or a nonrepairable certificate to the purchaser thereof upon his application containing the*
361 *vehicle identification number of the vehicle purchased together with an affidavit of the lienholder that he*
362 *has complied with the provisions hereof, or by the sheriff conducting a sale that he has complied with*
363 *said order.*

364 *Any garage keeper to whom a motor vehicle has been delivered pursuant to § 46.2-1209, 46.2-1213,*
365 *or 46.2-1215 may after 30 days from the date of delivery proceed under this section, provided that*
366 *action has not been taken pursuant to such sections for the sale of such motor vehicle.*

§ 46.2-1206. Surrender of certificate of title, etc., where motor vehicle acquired for demolition; records to be kept by demolisher or scrap metal processor.

No demolisher or scrap metal processor who purchases or otherwise acquires a motor vehicle for wrecking, dismantling, or demolition shall be required to obtain a certificate of title for the motor vehicle in his own name. After the motor vehicle has been demolished, processed, or changed so that it physically is no longer a motor vehicle, the demolisher or scrap metal processor shall surrender to the Department for cancellation the certificate of title, vehicle removal certificate, properly executed vehicle disposition history, or sales receipt from a foreign jurisdiction for the vehicle. The Department shall issue the appropriate forms and regulations governing for the surrender of sales receipts and, certificates of title, vehicle disposition histories, and vehicle removal certificates.

Demolishers and scrap metal processors shall keep accurate and complete records, in accordance with § 46.2-1608, of all motor vehicles purchased or received by them in the course of their business. These records shall contain the name and address of the person from whom each motor vehicle was purchased or received and the date on which purchases or receipts occurred. These records shall be open for inspection by the Department at any time during normal business hours. Demolishers and scrap metal processors shall also collect and verify:

1. The towing company's name and, if applicable, the license number issued to the towing company by the Virginia Board for Towing and Recovery Operators,

2. One of the ownership or possession documents set out in this section following verification of its accuracy, and

3. The driver's license of the person delivering the motor vehicle.

If the delivering vehicle does not possess a license number issued by the Virginia Board for Towing and Recovery Operators, the license plate number of the vehicle that delivered the motor vehicle or scrap shall also be collected and maintained.

In addition, a photocopy or electronic copy of the appropriate ownership document or a vehicle removal certificate presented by the customer shall be maintained. Ownership documents shall consist of either a motor vehicle title or a sales receipt from a foreign jurisdiction or a vehicle disposition history. These records shall be maintained in a permanent ledger in a manner acceptable to the Department at the place of business or at another readily accessible and secure location within the Commonwealth for at least five years. The personal identifying information contained within these records shall be protected from unauthorized disclosure through the ultimate destruction of the information. Disclosure of personal identifying information by anyone other than the Department is subject to the Driver's Privacy Protection Act (18 U.S.C. § 2721 et seq.).

If requested by a law-enforcement officer, a licensee shall make available, during regular business hours, a report of all the purchases of motor vehicles. Each report shall include the information set out in this chapter and be available electronically or in an agreed-upon format. Any person who violates any provision of this chapter or who falsifies any of the information required to be maintained by this article shall be guilty of a Class 3 misdemeanor for the first offense. Any licensee or scrap metal processor who is found guilty of second or subsequent violations shall be guilty of a Class 1 misdemeanor. The Department shall also assess a civil penalty not to exceed \$500 for the first offense and \$1,000 for the second and subsequent offenses. Those penalties shall be paid into the state treasury and set aside as a special fund to be used to meet the expenses of the Department.

If the vehicle identification number has been altered, is missing, or appears to have been otherwise tampered with, the demolisher or scrap metal processor shall take no further action with regard to the vehicle except to safeguard it in its then-existing condition and shall promptly notify the Department. The Department shall, after an investigation has been made, notify the demolisher or scrap metal processor whether the motor vehicle can be freed from this limitation. In no event shall the motor vehicle be disassembled, demolished, processed, or otherwise modified or removed prior to authorization by the Department. If the vehicle is a motorcycle, the demolisher or scrap metal processor shall cause to be noted on the title or salvage certificate, certifying on the face of the document, in addition to the above requirements, the frame number of the motorcycle and motor number, if available.

§ 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.

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

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

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

437 "Late model vehicle" means the current-year model of a vehicle and the ~~six~~ *five* preceding model
438 years, or any vehicle whose actual cash value is determined to have been at least ~~\$7,500~~ *\$10,000* prior
439 to being damaged.

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

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

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

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

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

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

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

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

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

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

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

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

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

487 § 55-417. Definitions.

488 As used in this chapter, unless the context clearly requires otherwise:

489 1. "Self-service storage facility" means any real property designed and used for renting or leasing

individual storage spaces, other than storage spaces which are leased or rented as an incident to the lease or rental of residential property or dwelling units, to which the occupants thereof have access for storing or removing their personal property. No occupant shall use a self-service storage facility for residential purposes.

2. "Owner" means the owner, operator, lessor, or sublessor of a self-service storage facility, his agent, or any other person authorized to manage the facility or to receive rent from any occupant under a rental agreement.

The owner of a self-service storage facility is not a warehouseman as defined in § 8.7-102, unless the owner issues a warehouse receipt, bill of lading, or other document of title for the personal property stored, in which event, the owner and the occupant are subject to the provisions of Title 8.7 dealing with warehousemen.

3. "Occupant" means a person, his sublessee, successor, or assign, entitled to the use of a leased space at a self-service storage facility under a rental agreement.

4. "Rental agreement" means any agreement or lease that establishes or modifies the terms, conditions, or rules concerning the use and occupancy of a self-service storage facility.

5. "Leased space" means the individual storage space at the self-service facility which is leased or rented to an occupant pursuant to a rental agreement.

6. "Personal property" means movable property, not affixed to land and includes, but is not limited to, goods, wares, merchandise, ~~motor vehicles~~, and household items and furnishings.

7. "Default" means the failure to perform on time any obligation or duty set forth in the rental agreement or this chapter.

8. "Last known address" means that address provided by the occupant in the rental agreement or the address provided by the occupant in a subsequent written notice of a change of address.

§ 55-418. Lien.

A. The owner shall have a lien on all personal property stored within each leased space for rent, labor, or other charges, and for expenses reasonably incurred in its sale pursuant to this chapter. Such lien shall attach as of the date the personal property is stored within each leased space, and, to the extent the property remains stored within such leased space, as hereinafter provided, shall be superior to any other existing liens or security interests to the extent of \$250 or, if the leased space is a climate-controlled facility, \$500. In addition, such lien shall extend to the proceeds, if any, remaining after the satisfaction of any perfected liens and the owner may retain possession of such proceeds until the balance, if any, of such charges is paid.

B. In the case of any ~~motor vehicle~~ or watercraft which is subject to a lien, previously recorded on the certificate of title, the owner, so long as the ~~motor vehicle~~ or watercraft remains stored within such leased space, shall have a lien on such ~~vehicle~~ or watercraft as provided for herein to the extent of \$250 or \$500 if the leased space is a climate-controlled facility. In addition, such lien shall extend to the proceeds, if any, remaining after the satisfaction of any recorded liens and the owner may retain possession of such proceeds until the balance, if any, of such charges is paid.

C. The rental agreement shall contain a statement, in bold type, advising the occupant of the existence of such lien, and that the personal property stored within the leased space may be sold to satisfy the lien if the occupant is in default.

D. In the case of any motor vehicle that is subject to a lien, previously recorded on the certificate of title, the owner, so long as the motor vehicle remains stored within such leased space, shall have a lien on such vehicle in accordance with § 46.2-1202.1.

§ 55-419. Enforcement of lien.

A. 1. If any occupant is in default under a rental agreement, the owner shall notify the occupant of such default by regular mail at his last known address. If such default is not cured within ten days after its occurrence, then the owner may proceed to enforce such lien by selling the contents of the occupant's unit at public auction, for cash, and apply the proceeds to satisfaction of the lien, with the surplus, if any, to be disbursed as hereinafter provided. Before conducting such a public auction, the owner shall notify the occupant as prescribed in subsection C of this section and shall advertise the time, place, and terms thereof in such manner as to give publicity thereto.

2. In the case of personal property having a fair market value in excess of \$1,000, and against which a creditor has filed a financing statement in the name of the occupant at the State Corporation Commission or in the city or county where the self-service storage facility is located or in the city or county in Virginia shown as the last known address of the occupant, or if such personal property is a ~~motor vehicle~~ or watercraft required by the laws of Virginia to be registered and the Department of ~~Motor Vehicles~~ or Department of Game and Inland Fisheries shows a lien on the certificate of title, the owner shall notify the lienholder of record, by certified mail, at the address on the financing statement or certificate of title, at least 10 days prior thereto of the time and place of the proposed public auction.

If the owner of the personal property cannot be ascertained, the name of "John Doe" shall be

551 substituted in the proceedings hereunder and no written notice shall be required. Whenever a ~~motor~~
552 ~~vehicle or watercraft~~ is sold hereunder, the Department of ~~Motor Vehicles or Department of Game and~~
553 Inland Fisheries shall issue a certificate of title and registration to the purchaser thereof upon his
554 application containing the serial or motor number of the ~~vehicle or watercraft~~ purchased, together with
555 an affidavit by the lienholder, or by the person conducting the public auction, evidencing compliance
556 with the provisions hereof.

557 B. Whenever the occupant is in default, the owner shall have the right to deny the occupant access to
558 the leased space.

559 C. After the occupant has been in default for a period of ten days, and before the owner can sell the
560 occupant's personal property in accordance with this chapter, the owner shall send a further notice of
561 default, by registered or certified mail, postage prepaid, to the occupant at his last known address. Such
562 notice of default shall include:

563 1. An itemized statement of the owner's claim, indicating the charges due on the date of the notice
564 and the date when the charges became due;

565 2. A demand for payment of the charges due within a specified time not less than twenty days after
566 the date of the notice;

567 3. A statement that the contents of the occupant's leased space are subject to the owner's lien;

568 4. A conspicuous statement that unless the claim is paid within the time stated, the contents of the
569 occupant's space will be sold at public auction at a specified time and place; and

570 5. The name, street address, and telephone number of the owner or his designated agent whom the
571 occupant may contact to respond to the notice.

572 D. At any time prior to the public auction pursuant to this section, the occupant may pay the amount
573 necessary to satisfy the lien and thereby redeem the personal property.

574 E. In the event of a public auction pursuant to this section, the owner may satisfy his lien from the
575 proceeds of the public auction, and shall hold the balance, if any, for delivery on demand to the
576 occupant or other lienholder referred to in this chapter. However, the owner shall not be obligated to
577 hold any balance for a lienholder of record notified pursuant to subdivision A 2, or any other lien
578 creditor, that fails to claim an interest in the balance within thirty days of the public auction. So long as
579 the owner complies with the provisions of this chapter, the owner's liability to the occupant under this
580 chapter shall be limited to the net proceeds received from the public auction of any personal property,
581 and as to other lienholders, shall be limited to the net proceeds received from the public auction of any
582 personal property covered by such superior lien.

583 F. Any public auction of the personal property shall be held at the self-service storage facility or at
584 the nearest suitable place to where the personal property is held or stored. An advertisement shall be
585 published in a newspaper of general circulation in the county, city or town in which the public auction
586 is to be held at least once prior to the public auction. The advertisement must state (i) the fact that it is
587 a public auction; (ii) the date, time and location of the public auction; and (iii) form of payment.

588 G. A purchaser in good faith of any personal property sold or otherwise disposed of pursuant to this
589 chapter takes such property free and clear of any rights of persons against whom the lien was valid.

590 H. Any notice made pursuant to this section shall be presumed delivered when it is deposited with
591 the United States Postal Service and properly addressed to the occupant's last known address with
592 postage prepaid.

593 *I. In the case of any motor vehicle, so long as the motor vehicle remains stored within such leased*
594 *space, the owner shall have a lien on such vehicle in accordance with § 46.2-1202.1.*

595 **2. That §§ 46.2-1204 and 46.2-1208 of the Code of Virginia are repealed.**

596 **3. That the provisions of this act shall become effective on October 1, 2009.**