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HOUSE BILL NO. 919

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Finance
on February 6, 2012)

(Patron Prior to Substitute—Delegate Brink)

A *BILL to amend and reenact §§ 46.2-617 and 58.1-3942 of the Code of Virginia, relating to personal property tax; property distrained for delinquent taxes.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-617 and 58.1-3942 of the Code of Virginia are amended and reenacted as follows:

§ 46.2-617. Sale of vehicle without certificate of title.

Except as provided in §§ 46.2-644.03 and 58.1-3942, any person who sells, trades, exchanges, or barter a motor vehicle, trailer, or semitrailer in the Commonwealth without first having secured a certificate of title for it or without legally having in his possession a certificate of title for the vehicle issued to its owner, except as otherwise provided in this title, shall be guilty of a Class 3 misdemeanor.

§ 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 costs of such distraint shall be chargeable against the delinquent taxpayer and added to what is owed.* The person conducting the sale shall apply the proceeds of the sale first to the costs of distraint, then to unpaid taxes, penalty, and accrued interest, and then to 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 § 58.1-3941 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.

F. *The purchaser of a motor vehicle sold under this section shall receive a sales receipt and an affidavit of the treasurer, sheriff, constable or collector, or other party conducting the sale affirming that he has complied with the provisions of this section, and shall be entitled to apply to and receive from the Department of Motor Vehicles a certificate of title and registration card for the vehicle.*