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HOUSE BILL NO. 940

House Amendments in [] — February 8, 2016

A *BILL to amend and reenact §§ 43-32, 43-33, 43-34, 46.2-644.01, 46.2-644.02, and 46.2-644.03 of the Code of Virginia, relating to mechanics' liens, amount of lien; nonresident notice requirements.*

Patron Prior to Engrossment—Delegate Wilt

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 43-32, 43-33, 43-34, 46.2-644.01, 46.2-644.02, and 46.2-644.03 of the Code of Virginia are amended and reenacted as follows:

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

A. Every keeper of a livery stable, hangar, tie-down, or marina, and every person pasturing or keeping any horses or other animals, boats, aircraft, or harness, shall have a lien upon such horses and other animals, boats, aircraft, and harness, for the amount ~~which~~ *that* 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 subject to a chattel mortgage, security agreement, deed of trust, or other instrument securing money, the keeper of the marina, hangar, or tie-down 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~~ *\$1,000*. 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 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 Game and Inland Fisheries within seven business days of taking possession of the boat or aircraft. 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 watercraft shall be subject to subsection D.

C. In addition, any person furnishing services involving the towing and recovery of a boat or aircraft, 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 by certified mail, return receipt requested, to all secured parties of record at 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.

§ 43-33. Lien of mechanic for repairs.

Every mechanic, who shall alter or repair any article of personal property 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 property which from its character requires the making of ordinary repairs thereto as a reasonable incident to its reasonable and customary use, at the request of any person legally in possession thereof under a reservation of title contract, chattel mortgage, deed of trust, or other instrument securing money, the person so in possession having authority to use such property, shall have a lien thereon for his just and reasonable charges therefor to the extent of ~~\$800~~ *\$1,000*. In addition, such mechanic shall be entitled to a lien against the proceeds, if any, remaining after the satisfaction of all prior security interests or liens; and may retain possession of such property until such charges are paid. In any action to enforce the lien hereby given all persons having an interest in the property sought to be subjected shall be made parties defendant.

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

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

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59 shall be delivered to the owner.

60 **§ 43-34. Enforcement of liens acquired under §§ 43-31 through 43-33 and of liens of bailees.**

61 Any person having a lien under §§ 43-31 through 43-33 and any bailee, except where otherwise
62 provided, having a lien as such at common law on personal property in his possession ~~which~~ *that* he has
63 no power to sell for the satisfaction of the lien, if the debt for which the lien exists is not paid within
64 10 days after it is due and the value of the property affected by the lien does not exceed \$10,000, may
65 sell such property or so much thereof as may be necessary, by public auction, for cash. The proceeds
66 shall be applied to the satisfaction of the debt and expenses of sale, and the surplus, if any, shall be paid
67 within 30 days of the sale to any lienholder, and then to the owner of the property. A seller who fails to
68 remit the surplus as provided shall be liable to the person entitled to the surplus in an amount equal to
69 \$50 for each day beyond 30 days that the failure continues.

70 Before making the sale, the seller shall advertise the time, place, and terms thereof in a public place.
71 In the case of property other than a motor vehicle required to be registered in Virginia having a value in
72 excess of \$600, 10 days' prior notice shall be given to any secured party who has filed a financing
73 statement against the property, and written notice shall be given to the owner as hereinafter provided.

74 If the value of the property is more than \$10,000 but does not exceed \$25,000, the party having the
75 lien, after giving notice as herein provided, may apply by petition to any general district court of the
76 county or city wherein the property is, or, if the value of the property exceeds \$25,000, to the circuit
77 court of the county or city, for the sale of the property. If, on the hearing of the case on the petition, the
78 defense, if any made thereto, and such evidence as may be adduced by the parties respectively, the court
79 is satisfied that the debt and lien are established and the property should be sold to pay the debt, the
80 court shall order the sale to be made by the sheriff of the county or city. The sheriff shall make the
81 same and apply and dispose of the proceeds in the same manner as if the sale were made under a writ
82 of fieri facias.

83 If the owner of the property is a resident of ~~this~~ *the* Commonwealth, any notice required by this
84 section may be served as provided in § 8.01-296 or, if the sale is to be made without resort to the
85 courts, by personal delivery or by certified or registered mail delivered to the present owner of the
86 property to be sold at his last known address at least 10 days prior to the date of sale. If ~~he~~ *the owner*
87 *of the property* is a nonresident or if his address is unknown, any notice required by this section may be
88 served by posting a copy thereof in three ~~of any of the following places in any combination:~~ *of* (i) one or
89 more public places in the county or city ~~wherein~~ *where* the property is located; (ii) one or more
90 websites operated by the Commonwealth, the county or city where the property is located, or a political
91 subdivision of either; or (iii) one or more newspapers of general circulation in the county or city where
92 the property is located, either in print or on their websites. For purposes of this section, a "public place"
93 means a premises owned by the Commonwealth, or a political subdivision thereof, or an agency of
94 either ~~which~~ *that* is open to the general public. ["*Public place*" includes any library that is wholly or
95 partially funded by the Commonwealth or a political subdivision thereof that is open to the general
96 public.]

97 **§ 46.2-644.01. Lien of keeper of garage.**

98 A. Every keeper of a garage, and every person keeping any vehicles shall have a lien upon such
99 vehicles for the amount ~~which~~ *that* may be due him for the towing, storage, recovery, and care thereof,
100 until such amount is paid.

101 B. In the case of any vehicle subject to a chattel mortgage, security agreement, deed of trust, or other
102 instrument securing money, the keeper of the garage shall have a lien thereon for his reasonable charges
103 for storage under this section not to exceed \$500 and for alteration and repair under § 46.2-644.02 not to
104 exceed ~~\$800~~ *\$1,000*. However, in the case of a storage lien, to obtain the priority for an amount in
105 excess of \$300, the person asserting the lien shall make a reasonable attempt to notify any secured party
106 of record at the Department of Motor Vehicles by telephonic means and shall give written notice by
107 certified mail, return receipt requested, to any secured party of record at the Department of Motor
108 Vehicles within seven business days of taking possession of the vehicle. If the secured party does not,
109 within seven business days of receipt of the notice, take or refuse redelivery to it or its designee, the
110 lienor shall be entitled to priority for the full amount of storage charges, not to exceed \$500.
111 Notwithstanding a redelivery, the vehicle shall be subject to subsection D.

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

116 D. In addition, any keeper shall be entitled to a lien against any proceeds remaining after the
117 satisfaction of all prior security interests or liens, and may retain possession of such property until such
118 charges are paid.

119 E. Any lien created under this section shall not extend to any personal property ~~which~~ *that* is not
120 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.

§ 46.2-644.02. Lien of mechanic for repairs.

Every mechanic, who shall alter or repair any article of personal property 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 property which from its character requires the making of ordinary repairs thereto as a reasonable incident to its reasonable and customary use, at the request of any person legally in possession thereof under a reservation of title contract, chattel mortgage, deed of trust, or other instrument securing money, the person so in possession having authority to use such property, shall have a lien thereon for his just and reasonable charges therefor to the extent of ~~\$800~~ \$1,000. In addition, such mechanic shall be entitled to a lien against the proceeds, if any, remaining after the satisfaction of all prior security interests or liens, and may retain possession of such property until such charges are paid. In any action to enforce the lien hereby given all persons having an interest in the property sought to be subjected shall be made parties defendant.

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

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

§ 46.2-644.03. Enforcement of liens acquired under §§ 46.2-644.01 and 46.2-644.02 and of liens of bailees.

Any person having a lien under §§ 46.2-644.01 and 46.2-644.02 and any bailee, except where otherwise provided, having a lien as such at common law on personal property in his possession ~~which~~ *that* he has no power to sell for the satisfaction of the lien, if the debt for which the lien exists is not paid within 10 days after it is due and the value of the property affected by the lien does not exceed \$12,500, may sell such property or so much thereof as may be necessary, by public auction, for cash. The proceeds shall be applied to the satisfaction of the debt and expenses of sale, and the surplus, if any, shall be paid within 30 days of the sale to any lienholder, and then to the owner of the property. A seller who fails to remit the surplus as provided shall be liable to the person entitled to the surplus in an amount equal to \$50 for each day beyond 30 days that the failure continues.

Before making the sale, the seller shall advertise the time, place, and terms thereof in a public place. In the case of property other than a motor vehicle required to be registered in Virginia having a value in excess of \$600, 10 days' prior notice shall be given to any secured party who has filed a financing statement against the property, and written notice shall be given to the owner as hereinafter provided. If the property is a motor vehicle required by the motor vehicle laws of Virginia to be registered, the person having the lien shall ascertain from the Commissioner of the Department of Motor Vehicles whether the certificate of title of the motor vehicle shows a lien thereon. At that time, the Commissioner shall also determine the value of the property and shall communicate it to the bailee. If the certificate of title shows a lien, the bailee 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. If the name of the owner cannot be ascertained, the name of "John Doe" shall be substituted in any proceedings hereunder and no written notice as to him shall be required to be mailed. Whenever a vehicle is shown by the Department of Motor Vehicles 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 chapter.

If the value of the property is more than \$12,500 but does not exceed \$25,000, the party having the lien, after giving notice as herein provided, may apply by petition to any general district court of the county or city wherein the property is, or, if the value of the property exceeds \$25,000, to the circuit

182 court of the county or city, for the sale of the property. If, on the hearing of the case on the petition, the
183 defense, if any made thereto, and such evidence as may be adduced by the parties respectively, the court
184 is satisfied that the debt and lien are established and the property should be sold to pay the debt, the
185 court shall order the sale to be made by the sheriff of the county or city. The sheriff shall make the
186 same and apply and dispose of the proceeds in the same manner as if the sale were made under a writ
187 of fieri facias.

188 In determining the value of the property as required by this section, the Commissioner shall use a
189 recognized pricing guide and, in using such guide, shall use the trade-in value specified in such guide.

190 If the owner of the property is a resident of the Commonwealth, any notice required by this section
191 may be served as provided in § 8.01-296 or, if the sale is to be made without resort to the courts, by
192 personal delivery or by certified or registered mail delivered to the present owner of the property to be
193 sold at his last known address at least 10 days prior to the date of sale. ~~If he the owner of the property~~
194 ~~is a nonresident or if his address is unknown, any notice required by this section may be served by~~
195 ~~posting a copy thereof in three of any of the following places in any combination: (i) one or more~~
196 ~~public places in the county or city wherein where the property is located; (ii) one or more websites~~
197 ~~operated by the Commonwealth, the county or city where the property is located, or a political~~
198 ~~subdivision of either; or (iii) one or more newspapers of general circulation in the county or city where~~
199 ~~the property is located, either in print or on their websites.~~ For purposes of this section, a "public place"
200 means a premises owned by the Commonwealth, or a political subdivision thereof, or an agency of
201 either which, that is open to the general public. ~~["Public place" includes any library that is wholly or~~
202 ~~partially funded by the Commonwealth or a political subdivision thereof that is open to the general~~
203 ~~public.]~~

204 If the property is a motor vehicle (i) for which neither the owner nor any other lienholder or secured
205 party can be determined by the Department of Motor Vehicles through a diligent search of its records,
206 (ii) manufactured for a model year at least six years prior to the current model year, and (iii) having a
207 value of no more than \$3,000 as determined by the provisions of § 8.01-419.1, a person having a lien
208 on such vehicle may, after showing proof that the vehicle has been in his continuous custody for at least
209 30 days, apply for and receive from the Department of Motor Vehicles title or a nonrepairable certificate
210 to such vehicle, free of all liens and claims of ownership of others, and proceed to sell or otherwise
211 dispose of the vehicle.

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

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

220 Notwithstanding any provisions to the contrary, any person having a lien under § 46.2-644.01 or
221 46.2-644.02 shall comply with the provisions of the federal Servicemembers Civil Relief Act (50 U.S.C.
222 App. 501 et seq.) when disposing of a vehicle owned by a member of the military duty or service.