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HOUSE BILL NO. 1083

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 16, 1998)

(Patron Prior to Substitute—Delegate Bryant)

*A BILL to amend and reenact § 43-34 of the Code of Virginia, relating to mechanics' liens, obtaining title to certain abandoned vehicles.***Be it enacted by the General Assembly of Virginia:****1. That § 43-34 of the Code of Virginia is amended and reenacted as follows:**

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

Any person having a lien under §§ 43-31 through 43-33 and any bailee, except where otherwise provided, having a lien as such at common law on personal property in his possession which he has no power to sell for the satisfaction of the lien, if the debt for which the lien exists is not paid within ten days after it is due and the value of the property affected by the lien does not exceed \$3,000, 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 thirty 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 twenty-five dollars for each day beyond thirty 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, ten 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. 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 ten 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.

If the value of the property is more than \$3,000 but does not exceed \$10,000, 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 \$10,000, to the circuit court of the county or city, for the sale of the property. If, on the hearing of the case on the petition, the defense, if any made thereto, and such evidence as may be adduced by the parties respectively, the court is satisfied that the debt and lien are established and the property should be sold to pay the debt, the court shall order the sale to be made by the sheriff of the county or city. The sheriff shall make the same and apply and dispose of the proceeds in the same manner as if the sale were made under a writ of fieri facias.

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

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 \$1,000 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 thirty days, apply for and receive from the Department of Motor Vehicles title 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 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

60 or § 46.2-1215 may after ~~ninety~~ *thirty* days from the date of delivery proceed under this section,
61 provided that action has not been taken pursuant to such sections for the sale of such motor vehicle.