

2021 SPECIAL SESSION I

SENATE SUBSTITUTE

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SENATE BILL NO. 1160

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Transportation
on January 28, 2021)

(Patron Prior to Substitute—Senator Suetterlein)

A BILL to amend and reenact §§ 46.2-644.01, 46.2-644.02, 46.2-644.03, 46.2-1200.2, 46.2-1202, 46.2-1202.1, 46.2-1203, 46.2-1209, and 46.2-1212.1 of the Code of Virginia and to amend the Code of Virginia by adding in Article 2 of Chapter 6 of Title 46.2 a section numbered 46.2-644.04 and by adding sections numbered 46.2-1200.3 and 46.2-1202.2, relating to vehicles; liens; abandoned vehicles; removing vehicles involved in accidents.

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-644.01, 46.2-644.02, 46.2-644.03, 46.2-1200.2, 46.2-1202, 46.2-1202.1, 46.2-1203, 46.2-1209, and 46.2-1212.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 2 of Chapter 6 of Title 46.2 a section numbered 46.2-644.04 and by adding sections numbered 46.2-1200.3 and 46.2-1202.2 as follows:

§ 46.2-644.01. Lien of keeper of vehicles.

A. For purposes of this section, "keeper of vehicles" means a garage keeper; a person keeping any vehicles, including a self-storage facility; and a tow truck driver or towing and recovery operator furnishing services involving the towing and recovery of vehicles.

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

Such lien shall be in addition to any lien under § 46.2-644.02. Any garage keeper to whom a vehicle has been delivered pursuant to § 46.2-1209, 46.2-1213, or 46.2-1215 shall, within 30 days from the date of delivery, have a lien upon such vehicle pursuant to this section, provided that action has not been taken pursuant to such sections for the sale of the vehicle.

B. C. In the case of any vehicle subject to a chattel mortgage, security agreement, deed of trust, or other instrument securing money for which the title shows an existing lien, the keeper of the garage vehicles shall have a lien thereon upon the vehicle for his reasonable charges for storage under this section not to exceed \$500 and for alteration and repair under § 46.2-644.02 not to exceed \$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 Motor Vehicles 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 within seven business days of taking possession of the 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 shall be subject to subsection D; however, the keeper of vehicles shall also be entitled to a lien against any proceeds remaining after the satisfaction of all prior security interests or liens. In addition, any tow truck driver or towing and recovery operator shall have a lien for all normal costs incident to any towing and recovery services furnished for the vehicle.

In the case of any vehicle not subject to a chattel mortgage, security agreement, deed of trust, or other instrument securing money an existing lien on the title, the keeper of the garage vehicles shall have a lien thereon for his reasonable charges for storage under this section and for alteration and repair, alone or in combination with a lien under § 46.2-644.02 not to exceed the value of the vehicle as determined by the provisions of § 8.01-419.1.

C. In addition, any person furnishing services involving the towing and recovery of a 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 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 such charges are paid. The keeper of vehicles, or the authorized agents of such, shall ascertain from the Department whether the certificate of title for the vehicle shows a lien in accordance with the provisions of § 46.2-644.03 within seven business days of taking possession of the vehicle. The owner or lienholder shall have 10 business days from the date of the notice sent by the Department pursuant to § 46.2-644.03 to reclaim the vehicle. The terms for such reclamation shall be the payment of the amount due to the keeper of the vehicles or other amount as agreed by the parties. If the vehicle remains unclaimed, the keeper of the vehicles may enforce the lien under the provisions of § 46.2-644.03 or

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60 *relinquish the lien under the provisions of § 46.2-644.04.*

61 *For purposes of this subsection, the date of possession for a garage keeper to whom a vehicle has*
62 *been delivered pursuant to § 46.2-1209, 46.2-1213, or 46.2-1215 shall be the date such lien attaches,*
63 *and the date of possession for a self-storage facility shall be the date on which the facility owner learns*
64 *that a leased space subject to default contains a motor vehicle.*

65 E. Any lien created under this section shall not extend to any personal property that is not attached
66 to or considered to be necessary for the proper operation of any motor vehicle, and it shall be the duty
67 of any keeper of ~~such personal property to return it~~ *vehicles to permit the owner if to access the vehicle*
68 *in order to recover his personal property, provided the owner claims and retrieves the items at least*
69 *two business days prior to the auction date. The keeper of vehicles may dispose of any unclaimed*
70 *personal property.*

71 F. For the purposes of this section, in the case of a truck or combination of vehicles, the owner, or
72 in the case of a rented or leased vehicle, the lessee of the truck or tractor truck, shall be liable for the
73 costs of the towing, recovery, and storage of the cargo and of any trailer or semitrailer in the
74 combination. Nothing in this subsection, however, shall bar the owner of the truck or tractor truck from
75 subsequently seeking to recover from the owner of any trailer, semitrailer, or cargo all or any portion of
76 these towing, recovery, and storage costs.

77 **§ 46.2-644.02. Lien of mechanic for repairs.**

78 A. Every mechanic who shall alter or repair any ~~article of personal property vehicle~~ at the request of
79 the owner *or authorized person in possession* of such ~~property vehicle~~ shall have a lien thereon for his
80 just and reasonable charges therefor and may retain possession of such property until such charges are
81 paid. *Such lien shall be in addition to any lien under § 46.2-644.01.*

82 Every mechanic who shall make necessary alterations or repairs on any article of personal property
83 which from its character requires the making of ordinary repairs thereto as a reasonable incident to its
84 reasonable and customary use, at the request of any person legally in possession thereof under a
85 reservation of title contract, chattel mortgage, deed of trust, or other instrument securing money, the
86 person so in possession having authority to use such property, shall have a lien thereon for his just and
87 reasonable charges therefor to the extent of \$1,000 or, if the property is a motor vehicle and is not
88 subject to a chattel mortgage, security agreement, deed of trust, or other instrument securing money, an
89 amount not to exceed the value of the vehicle as determined by the provisions of ~~§ 8.01-419.1~~. In
90 addition, such mechanic shall be entitled to a lien against the proceeds, if any, remaining after the
91 satisfaction of all prior security interests or liens and may retain possession of such property until such
92 charges are paid. In any action to enforce the lien hereby given all persons having an interest in the
93 property sought to be subjected shall be made parties defendant.

94 B. *No lien under this section shall exceed \$1,000 for any vehicle for which the title shows an*
95 *existing lien. However, the mechanic shall be entitled to a lien against the proceeds, if any, remaining*
96 *after the satisfaction of all prior security interests or liens.*

97 *For any vehicle not subject to an existing lien on the title, no lien under this section, alone or in*
98 *combination with a lien under § 46.2-644.01, shall exceed the value of the vehicle as determined by the*
99 *provisions of § 8.01-419.1.*

100 C. *The mechanic or his authorized agent shall ascertain from the Department whether the certificate*
101 *of title for the vehicle shows a lien thereon in accordance with the provisions of § 46.2-644.03 within*
102 *seven business days after the due date of an invoice for the amount due for the alteration or repair. The*
103 *mechanic may then enforce his lien under the provisions of § 46.2-644.03 after such invoice goes unpaid*
104 *for 10 days after it is due or relinquish his lien under the provisions of § 46.2-644.04.*

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

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

116 **§ 46.2-644.03. Enforcement of liens acquired under §§ 46.2-644.01 and 46.2-644.02.**

117 A. For the purposes of this section, "public place" means a premises owned by the Commonwealth or
118 a political subdivision thereof, or an agency of either, that is open to the general public:

119 *"Bailee" means anyone who has one or more liens under § 46.2-644.01 or 46.2-644.02.*

120 *"Independent appraisal" means an estimate for the value of a motor vehicle prepared by an*
121 *individual or business that (i) has all required business licenses and zoning approvals and (ii) is either*

a licensed appraiser in another state or a business authorized by an insurance company to prepare insurance appraisals. "Independent appraisal" does not include an estimate prepared by an individual or business with a financial interest in the bailee's business.

B. Any person having bailee eligible to enforce a lien under §§ 46.2-644.01 and or 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 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, if the value of the property vehicle affected by the lien does not exceed \$12,500, may sell such property or so much thereof as may be necessary, vehicle by public auction, for cash, in accordance with the provisions of this section. 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 of record, 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 vehicle, provided such lienholder or owner contacts the bailee prior to the sale to claim any surplus that may result. If such claim is made by the lienholder or owner within 30 days following the sale, the surplus shall be paid within 30 days of the claim. If no claim to the surplus is made within 30 days of the sale, or if the owner or lienholder cannot be ascertained by the Department, the bailee shall be entitled to keep the surplus.

Before making the sale, the seller shall advertise the time, place, and terms thereof in any of the following places: (i) a public place in the county or city where the property is located; (ii) a website operated by the Commonwealth, the county or city where the property is located, or a political subdivision of either; or (iii) a newspaper of general circulation in the county or city where the property is located, either in print or on its website. 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.

C. Before any lien may be enforced under this section, the bailee or his authorized agent shall initiate with the Department, in a manner prescribed by the Commissioner, a search for the owner and lienholder of record for the vehicle, the names and addresses of which if found shall be provided to the bailee. Any bailee or authorized agent who initiates more than five such requests within any 12-month period shall enter into an agreement with the Department to initiate requests and receive responses electronically.

The Department shall check (i) its own records, (ii) the records of a nationally recognized crime database, and (iii) records of a nationally recognized motor vehicle title database for owner and lienholder information. If a vehicle has been reported stolen, the Department shall notify the appropriate law-enforcement agency of that fact. If a vehicle is found to have been titled in another jurisdiction, the Department shall contact that jurisdiction to ascertain the requested information and provide it to the bailee. At the time of the search, the Department shall also determine the value of the vehicle, using the trade-in value specified in a recognized pricing guide, and, for a vehicle titled in the Commonwealth, whether the records of the Department show that the owner of the vehicle has indicated that he is on active military duty or service. The Department shall include such information in the response to the request for vehicle information.

After responding to the request for vehicle information, the Department shall notify the owner and any lienholder of record of the request by first-class mail to the address provided on the vehicle record held by the Department or by the jurisdiction in which the vehicle is titled. Such notice shall include the name and contact information of the bailee and any terms for reclaiming the vehicle, as well as any additional information the Commissioner determines to be necessary.

No notice by the Department shall be required if no record for the vehicle can be found or, in the case of a vehicle titled in another jurisdiction, the other jurisdiction refuses to release the requested vehicle information to the Department. In either situation, the bailee may continue with lien enforcement

183 under this section. However, if a vehicle record exists in another jurisdiction, the bailee shall assume all
184 liability for proceeding with such enforcement without written notice to the owner and/or lienholder of
185 record.

186 For every vehicle subject to a record search as provided for in this section, if the record for the
187 vehicle is held by the Department, the Department shall place an administrative hold on the vehicle
188 record until the bailee reports to the Department that the vehicle has been reclaimed or sold pursuant
189 to this section.

190 D. Any bailee enforcing a lien in accordance with this section shall notify the Department of his
191 intent to sell the vehicle in a manner prescribed by the Commissioner. A \$40 fee shall be paid to the
192 Department at the time of notice. Upon receipt of such notice and fee, the Department shall repeat the
193 vehicle record search prescribed in subsection A for the purpose of confirming the most recent owner
194 and lienholder information for the vehicle.

195 If the Department confirms owner or lienholder information, either through a search of its own
196 records or those of another jurisdiction, the Department shall notify the owner, at the last known
197 address of record, and any lienholder, at the last known address of record, of the intent to sell the
198 vehicle, by certified mail, return receipt requested, and advise them to reclaim the vehicle and repay the
199 debt owed within 15 days from the date the notice was sent. Such notice, when sent in accordance with
200 these requirements, shall be sufficient regardless of whether or not it was ever received.

201 Following the notice required in this subsection, if the vehicle remains unclaimed and the debt
202 unpaid, the owner and all persons having security interest shall have waived all right, title, and interest
203 in the vehicle, except to the extent that subsection B requires a surplus to be paid. The bailee shall
204 notify the Department in a manner prescribed by the Commissioner within five business days if the
205 vehicle is reclaimed and the debt paid. Should the bailee fail to notify the Department as required
206 herein, and the Department must remove the administrative hold placed under subsection C at the
207 request of the vehicle owner or lienholder, and upon submission of proof that the debt was paid and the
208 vehicle reclaimed, the Department may impose and collect an administrative fee of \$40 from the bailee
209 for each such removal.

210 E. At the time the bailee notifies the Department of his intent to sell the motor vehicle, the bailee
211 shall provide the intended date of sale at public auction, including the time, place, and terms of such
212 sale. The intended date shall be at least 21 days after the date of notification. The Department shall
213 post notice on behalf of the bailee for at least 21 days prior to the date of sale, advertising the time,
214 place, and terms of the sale. Such 21-day posting period shall run concurrently with the 15-day
215 reclamation period provided for in subsection D. Notifications and postings shall be in an electronic
216 manner prescribed by the Commissioner and shall include the vehicle identification number and a
217 description of each vehicle to be sold. No other postings or notices advertising the sale shall be
218 required.

219 Upon notice by the bailee that the vehicle will be sold, the Department shall provide a certification
220 document in a manner prescribed by the Commissioner to the bailee. The bailee shall complete all
221 applicable certification statements on the document and provide it to the buyer of the vehicle, who shall
222 submit the document and an application to the Department in order to obtain a certificate of title for
223 the vehicle. Upon receipt of a completed application and certification document, the Department shall
224 issue a certificate of title to the buyer or a nonrepairable certificate, if requested, free of all prior liens
225 and claims of ownership of others.

226 F. If the value of the ~~property~~ vehicle is more than \$12,500 but does not exceed \$25,000, the ~~party~~
227 ~~having the lien~~ bailee, after ~~giving the notice as herein provided~~ is sent by the Department pursuant to
228 subsection C, may apply by petition to any general district court of the county or city wherein the
229 ~~property~~ vehicle is, or, if the value of the ~~property~~ vehicle exceeds \$25,000, to the circuit court of the
230 county or city, for the sale of the ~~property~~ vehicle. No notice sent by the Department pursuant to this
231 section shall substitute for service of process for any court proceeding. If the name of the owner cannot
232 be ascertained, the name "John Doe" shall be substituted in any proceeding pursuant to this section.

233 If, on the hearing of the case on the petition, the defense, if any made thereto, and such evidence as
234 may be adduced by the parties respectively, the court is satisfied that the debt and lien are established
235 and the ~~property~~ vehicle should be sold to pay the debt, the court shall order the sale to be made by the
236 sheriff of the county or city. The sheriff shall make the same and apply and dispose of the proceeds in
237 the same manner as if the sale were made under a writ of fieri facias. No additional notifications or
238 postings by the Department related to the sale shall be required.

239 If a court has ordered the sale of the vehicle, the bailee shall submit to the Department a copy of
240 the court order in a manner prescribed by the Commissioner. Upon receipt, the Department shall
241 provide a certification document to the bailee. The bailee and sheriff conducting the sale, or his
242 authorized representative, shall complete all applicable certification statements on the document and
243 provide it to the buyer of the vehicle, who shall submit the document and an application to the
244 Department in order to obtain a certificate of title for the vehicle. Upon receipt of a completed

application and certification document, the Department shall issue a certificate of title to the buyer or a nonrepairable certificate, if requested, free of all prior liens and claims of ownership of others.

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

If the owner of the property is a resident of the 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 10 days prior to the date of sale. If the owner of the property is a nonresident or if his address is unknown, any notice required by this section may be served by posting a copy thereof in three of any of the following places in any combination: (i) one or more public places in the county or city where the property is located; (ii) one or more websites operated by the Commonwealth, the county or city where the property is located, or a political subdivision of either; or (iii) one or more newspapers of general circulation in the county or city where the property is located, either in print or on their websites. However, the bailee may submit an independent appraisal and supporting documentation to show the accurate value of the vehicle in a manner prescribed by the Commissioner. Upon receipt, the Department shall update the vehicle record to reflect the value established by the independent appraisal and notify the bailee that enforcement under this section may proceed based on the new value.

If the Department is unable to determine a trade-in value for a vehicle, the Commissioner may establish guidelines for acceptable alternate valuation options to include independent appraisals and retail or loan values that may be available in online or printed pricing guides. The bailee may submit documentation pursuant to such guidelines in order to establish the value of the vehicle.

If the property is a motor vehicle, for a 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 as required by this section, (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 \$4,500 as determined by the provisions of § 8.01-419.1 this section, a person having a lien on such vehicle bailee 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.

I. Notwithstanding any provisions to the contrary, any person having a lien under § 46.2-644.01 or 46.2-644.02 a bailee shall comply with the provisions of the federal Servicemembers Civil Relief Act (50 U.S.C. § 3901 et seq.) (the Act) when disposing of a vehicle owned by a member of the military on active duty or service. If the records of the Department show that the owner of the vehicle has indicated to the Department that he is on active military duty or service, such indicator shall be prima facie evidence that the vehicles is subject to the provisions of the Act. However, neither the presence nor absence of such indicator on the vehicle record shall absolve the bailee of his obligation to ascertain the owner's military service status, if any, in accordance with the Act.

J. All fees imposed and collected pursuant to this section shall be paid into the state treasury and set aside as a special, nonreverting fund to be used to meet the expenses of the Department.

K. Residents or businesses of other jurisdictions in possession of vehicles titled in the Commonwealth, or the authorized agents of such residents or businesses, seeking to enforce laws in those jurisdictions that are substantially similar to the enforcement of liens under §§ 46.2-644.01 and 46.2-644.02 may request information for such vehicles from the Department. The Department shall conduct the information search as provided for in subsection C, provide the names and addresses of the owner and lienholder, if any, for each vehicle to the requester, and notify the named owner and lienholder, if any, by first-class mail of the request. Such notification shall not replace any notification requirements imposed by the jurisdiction in which the requester and subject vehicle are located, nor shall the enforcement rules of this section apply to vehicles not located within the Commonwealth. If the Department finds that the vehicle is titled in another jurisdiction, the Department shall identify that jurisdiction to the requester with no further obligation to the requester or vehicle owner. The Department shall collect a \$25 fee for such search.

§ 46.2-644.04. Relinquishment of liens acquired under §§ 46.2-644.01 and 46.2-644.02.

A. For purposes of this section, "bailee" means the same as that term is defined in § 46.2-644.03.

B. A bailee may relinquish a lien acquired under § 46.2-644.01 or 46.2-644.02, provided that (i) the Department has completed a vehicle record search pursuant to subsection C of § 46.2-644.03 and determined that no lien exists on the vehicle record, whether held by the Department or another state, and (ii) the vehicle owner has not reclaimed the vehicle as provided for in § 46.2-644.01 or 46.2-644.02. Such relinquishment shall permit the bailee to transfer possession of the vehicle to an unaffiliated tow truck driver, towing and recovery operator, or keeper of a garage, whose business is located within the same locality as the bailee.

C. Any lien relinquishment hereunder shall be reported to the Department by the bailee on a form and in a manner prescribed by the Commissioner within five business days of the transfer of possession of the vehicle. Such form shall include (i) the make, model, model year, and vehicle identification number of the vehicle; (ii) the name and address of the bailee; (iii) the name and address of the person or entity receiving the vehicle; and (iv) the date of transfer of possession.

Upon receipt of the relinquishment form, the Department shall note such relinquishment on the vehicle record and notify the owner by first-class mail at the last known address of record that the bailee has relinquished the lien and transferred possession of the vehicle. The Department shall collect a \$5 administrative fee for this process from the bailee. Such fee shall be paid into the state treasury and set aside as a special, nonreverting fund to be used to meet the expenses of the Department.

D. Upon taking possession of a vehicle for which a lien has been relinquished pursuant to this section, a towing and recovery operator or keeper of a garage shall have a lien on the vehicle in accordance with § 46.2-644.01 and all enforcement provisions applicable to such lien shall remain in place. No other relinquishment may take place under this section for the same vehicle until the lien created under this subsection is enforced pursuant to this article and the vehicle titled to a new owner.

§ 46.2-1200.2. Vehicles registered to active duty military personnel.

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.

Notwithstanding any provisions of this chapter, any person having a lien disposing of a vehicle under the provisions of this chapter shall ~~comply with~~ determine whether the provisions of the federal Servicemembers Civil Relief Act (50 U.S.C. § 3901 et seq.) ~~when disposing of a vehicle owned by a member of the military on active duty or service (the Act) apply to the circumstances of such disposition.~~ The presence on a vehicle record of an indicator that the owner is on active military duty or service shall be an indication that the Act may apply. However, should the person determine that the Act applies, the indicator on the vehicle record shall not satisfy any obligation under the Act to ascertain the owner's military status, nor shall the absence of an indicator suffice to establish that the owner is not on active military duty or service.

§ 46.2-1200.3. Limitation on removal and sale of abandoned vehicles.

No person may remove or sell any abandoned vehicle left on public property or the shoulder of a primary highway unless such person is acting pursuant to an agreement for such removal or sale with a local government entity or law-enforcement agency and has actual possession of the vehicle.

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

A. Any person in possession of an abandoned ~~motor~~ vehicle shall initiate with the Department, in a manner prescribed by the Commissioner, a search for the owner and/or lienholder of record of the vehicle, requesting the name and address of the owner of record of the ~~motor~~ vehicle and all persons having security interests in the ~~motor~~ vehicle on record in the office of the Department, describing, if ascertainable, the ~~motor~~ vehicle by year, make, model, and vehicle identification number. A fee of \$25 \$40 shall be paid to the Department at the time of application. Those fees shall be paid into the state treasury and set aside as a special, nonreverting fund to be used to meet the expenses of the Department. A local government agency with a written agreement with the Department shall be exempt from this fee.

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

B. If the Department confirms owner or lienholder information, *either through a search of its own records or those of another jurisdiction*, the Department shall notify the owner, at the last known address of record, and lienholder, at the last known address of record, of the notice of interest in their

vehicle, by certified mail, return receipt requested, and advise them to reclaim and 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 subsection, 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.

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 notify the requestor of such information. Any person having an interest in such vehicle under the provisions of this article shall comply with the provisions of the federal Servicemembers Civil Relief Act (50 U.S.C. § 3901 et seq.).

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 after the Department has contacted the jurisdiction in which the vehicle was last titled, 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 or a scrap metal processor, as defined in § 46.2-1600 may proceed with the sale or disposal of the vehicle in accordance with this chapter. However, if a vehicle record exists in another jurisdiction that has refused to release the information to the Department, the person in possession of the abandoned vehicle shall assume all liability for proceeding with such sale or disposal without written notice to the owner or lienholder of record.

D. The Department shall provide to the person in possession of the abandoned vehicle a receipt indicating that the search requested pursuant to this section has been completed.

E. Residents or businesses of other jurisdictions in possession of vehicles titled in the Commonwealth, or the authorized agents of such residents or businesses, seeking to enforce laws in those jurisdictions that are substantially similar to the provisions of this article or Article 2 (§ 46.2-1209 et seq.) may request information for such vehicles from the Department. The Department shall conduct the information search as provided for in subsection A, provide the names and addresses of the owner and lienholder, if any, for each vehicle to the requester, and notify the named owner and lienholder, if any, by certified mail, return receipt requested, of the request. Such notification shall not replace any notification requirements imposed by the jurisdiction in which the requester and subject vehicle are located, nor shall the enforcement rules of this chapter apply to vehicles not located within the Commonwealth. If the Department finds that the vehicle is titled in another jurisdiction, the Department shall identify that jurisdiction to the requester with no further obligation to the requester or vehicle owner. The Department shall collect a \$25 fee for this search.

§ 46.2-1202.1. Vehicle Removal Certificates.

The person in possession of an abandoned motor vehicle shall obtain from the Department in a manner prescribed by the Commissioner, a Vehicle Removal Certificate at no fee. ~~The~~ If the Department finds no record for the vehicle, the vehicle may then be sold or transferred to a licensee or a scrap metal processor, as defined in § 46.2-1600. Upon such sale or transfer, the completed Vehicle Removal Certificate and receipt produced pursuant to § 46.2-1202 shall be given to the licensee or scrap metal processor.

If the person in possession of an 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.

A 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.

§ 46.2-1202.2. Notice of intent to auction and sale of vehicle; posting requirements.

If the person in possession of an abandoned vehicle does not intend to sell or transfer the vehicle to a licensee, as defined in § 46.2-1600, or a scrap metal processor and the abandoned vehicle is not reclaimed as provided for in § 46.2-1202, the person in possession of an abandoned vehicle shall post notice for at least 21 days of his intent to auction the vehicle. Postings of intent shall be in an electronic manner prescribed by the Commissioner and shall include the vehicle identification number and a description of each vehicle to be sold.

After the posting period has passed, and notwithstanding the provisions of § 46.2-617, the vehicle

429 *may be sold at auction. A purchaser of the vehicle at auction may apply for a title for such vehicle*
430 *upon payment of the applicable fees and taxes, and by supplying the Department with the completed*
431 *Vehicle Removal Certificate and the receipt produced pursuant to § 46.2-1202.*

432 *If the vehicle does not sell at auction, the person in possession of the abandoned vehicle may apply*
433 *for a title for such vehicle upon payment of the applicable fees and taxes, and by supplying the*
434 *Department with the completed Vehicle Removal Certificate, the receipt produced pursuant to*
435 *§ 46.2-1202, and a written statement that the vehicle did not sell at auction.*

436 **§ 46.2-1203. Sale of vehicle at public auction by locality; disposition of proceeds.**

437 *If an abandoned ~~motor~~ vehicle in the possession of a locality or an authorized agent is not reclaimed*
438 *as provided for in § 46.2-1202, the locality or its authorized agent shall, notwithstanding the provisions*
439 *of § 46.2-617, sell it at public auction. For the purposes of this article, the term "public auction," when*
440 *conducted by any county, city, or town, shall include an Internet sale by auction. The purchaser of the*
441 *~~motor~~ vehicle shall take title to the ~~motor~~ vehicle free of all liens and claims of ownership of others,*
442 *shall receive a sales receipt from the sale, and shall be entitled to apply to and receive from the*
443 *Department a certificate of title and registration card for the vehicle upon submission of the sales*
444 *receipt, the completed Vehicle Removal Certificate, and the receipt produced by the Department*
445 *pursuant to § 46.2-1202. The sales receipt from the sale shall be sufficient title only for purposes of*
446 *transferring the vehicle to a demolisher for demolition, wrecking, or dismantling, and in that case no*
447 *further titling of the vehicle shall be necessary; however, such demolisher shall provide the Department*
448 *acceptable documentation indicating that the vehicle has been demolished. From the proceeds of the sale*
449 *of an abandoned ~~motor~~ vehicle the locality or its authorized agent shall reimburse itself for the expenses*
450 *of the auction, the cost of towing, preserving, and storing the vehicle which resulted from placing the*
451 *abandoned ~~motor~~ vehicle in custody, and all notice and publication costs, if any, incurred pursuant to*
452 *§ 46.2-1202. Any remainder from the proceeds of a sale shall be held for the owner of the abandoned*
453 *~~motor~~ vehicle or any person having security interests in the vehicle, as their interests may appear, for 60*
454 *days, and then be deposited into the treasury of the locality in which the abandoned ~~motor~~ vehicle was*
455 *abandoned.*

456 **§ 46.2-1209. Unattended or immobile vehicles, generally.**

457 *A. The provisions of this article shall not apply to any motor vehicle, trailer, semitrailer, or part or*
458 *combination thereof that weighs less than 75 pounds.*

459 *B. No person shall leave any motor vehicle, trailer, semitrailer, or part or combination thereof*
460 *immobilized or unattended on or adjacent to any roadway if it constitutes a hazard in the use of the*
461 *highway. No person shall leave any immobilized or unattended motor vehicle, trailer, semitrailer, or part*
462 *or combination thereof longer than 24 hours on or adjacent to any roadway outside the corporate limits*
463 *of any city or town, or on an interstate highway or limited access highway, expressway, or parkway*
464 *inside the corporate limits of any city or town. Any law-enforcement officer or other uniformed*
465 *employee of the local law-enforcement agency who specifically is authorized to do so by the chief*
466 *law-enforcement officer or his designee may remove it or have it removed to a storage area for*
467 *safekeeping and shall report the removal to the Department and to the owner of the motor vehicle,*
468 *trailer, semitrailer, or combination as promptly as possible. Before obtaining possession of the motor*
469 *vehicle, trailer, semitrailer, or combination, its owner or successor in interest to ownership shall pay to*
470 *the parties entitled thereto all costs incidental to its removal or storage. In any violation of this section*
471 *the owner of such motor vehicle, trailer, semitrailer or part or combination of a motor vehicle, trailer, or*
472 *semitrailer, shall be presumed to be the person committing the violation; however, this presumption shall*
473 *be rebuttable by competent evidence.*

474 *C. When a motor vehicle, trailer, semitrailer, or part or combination of a motor vehicle, trailer, or*
475 *semitrailer was stolen or illegally used by a person other than the owner of the vehicle at the time of*
476 *the theft or used without his authorization, express or implied, it shall be forthwith returned to its owner*
477 *or the owner's successor in interest, other than an insurance company, who shall be relieved of the*
478 *payment of any costs charged by the towing operator or storage facility for its daily storage, towing, and*
479 *recovery fees, provided that the owner removes the vehicle within five business days following the*
480 *owner's receipt of written notice by certified mail, return receipt requested. If the vehicle's owner fails to*
481 *remove the vehicle within five days of receipt of such notice, the vehicle shall be released to the owner*
482 *upon payment of the full costs of storage, towing, and recovery fees, and the owner shall then be*
483 *entitled to seek reimbursement from the state treasury from the appropriation for criminal charges. The*
484 *owner shall produce a valid motor vehicle registration or other proof of ownership to the employees of*
485 *the facility wherein the motor vehicle, trailer, semitrailer or part or combination thereof is being stored.*
486 *In any case in which the identity of the violator cannot be determined, or where it is found by a court*
487 *that this section was not violated, the costs of daily storage, towing, and recovery fees of the vehicle*
488 *shall be reimbursed to the towing and recovery operator and paid out of the state treasury from the*
489 *appropriation for criminal charges. Payment from the treasury shall be made no later than 45 days from*
490 *the application for such payment. In all cases where an insurance company is the stolen vehicle owner's*

successor in interest, the motor vehicle, trailer, semitrailer, or part or combination thereof shall be released to the insurance company upon presentation of a valid motor vehicle registration and payment by the insurance company to the towing operator or storage facility for its daily storage, towing, and recovery fees. The insurance company shall be entitled to seek reimbursement for the costs of the daily storage, towing, and recovery fees through the state treasury from the appropriation for criminal charges. If any person convicted of violating this section fails or refuses to pay these costs or if the identity or whereabouts of the owner is unknown and unascertainable after a diligent search has been made or after notice to the owner at his address as indicated by the records of the Department and to the holder of any lien of record with the Department, against the motor vehicle, trailer, semitrailer, or combination, the Commissioner may, after 30 days and after having the value of such motor vehicle, trailer, semitrailer, or combination determined by three disinterested dealers dispose of it by public or private sale. The proceeds from the sale shall be forthwith paid by him into the state treasury and shall be set aside as a special fund to be used to meet the expenses of the Department in carrying out the duties required by this section and to reimburse the owner of such motor vehicle, trailer, semitrailer, or combination as hereafter provided in this section.

D. If after the sale or other disposition of the motor vehicle, trailer, semitrailer, or combination the ownership of a motor vehicle, trailer, or semitrailer at the time of its removal is established satisfactorily to the Commissioner by the person claiming its ownership, the Commissioner shall pay him so much of the proceeds from the sale or other disposition of the motor vehicle, trailer, semitrailer, or combination as remains after paying the costs of daily storage, towing, and recovery fees, investigation of ownership, appraisal, and sale, *the locality or its authorized agent in possession of the motor vehicle, trailer, semitrailer, or combination thereof shall treat the vehicle as an abandoned vehicle under the provisions of Article 1 (§ 46.2-1200 et seq.).*

§ 46.2-1212.1. Authority to provide for removal and disposition of vehicles and cargoes of vehicles involved in accidents.

A. As a result of a motor vehicle accident or incident, the Department of State Police and/or local law-enforcement agency in conjunction with other public safety agencies may, without the consent of the owner or carrier, remove:

1. A vehicle, cargo, or other personal property that has been (i) damaged or spilled within the right-of-way or any portion of a roadway in the primary state highway system and (ii) is blocking the roadway or may otherwise be endangering public safety; or

2. Cargo or personal property that the Department of Transportation, the Department of Emergency Management, or the fire officer in charge has reason to believe is a hazardous material, hazardous waste, or regulated substance as defined by the Virginia Waste Management Act (§ 10.1-1400 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. § 1808 et seq.), or the State Water Control Law (§ 62.1-44.2 et seq.), if the Department of Transportation or applicable person complies with the applicable procedures and instructions defined either by the Department of Emergency Management or the fire officer in charge.

B. The Department of Transportation, individuals or entities acting on behalf of a Department of Transportation safety service patrol program as defined in subsection B of § 46.2-920.1, individuals or entities acting pursuant to a contract with the Department of Transportation for, or that includes, traffic incident management services as defined in subsection B of § 46.2-920.1, the Department of State Police, the Department of Emergency Management, local law-enforcement agencies and other local public safety agencies and their officers, employees, and agents, and towing and recovery operators operating under the lawful direction of a law-enforcement officer or the Department of Transportation shall not be held responsible for any damages or claims that may result from *the exercise of or the failure to exercise any authority granted under this section, provided they are acting in good faith reasonably.*

C. The owner and carrier, if any, of the vehicle, cargo, or personal property removed or disposed of under the authority of this section shall reimburse the Department of Transportation, individuals or entities acting on behalf of a Department of Transportation safety service patrol program as defined in subsection B of § 46.2-920.1, individuals or entities acting pursuant to a contract with the Department of Transportation for, or that includes, traffic incident management services as defined in 46.2-920.1, the Department of State Police, the Department of Emergency Management, local law-enforcement agencies, and local public safety agencies for all costs incurred in the removal and subsequent disposition of such property.