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## SENATE BILL NO. 978

Offered January 11, 2023

Prefiled January 6, 2023

A *BILL to amend and reenact §§ 46.2-644.01, 46.2-644.03, and 46.2-644.04 of the Code of Virginia, relating to keeper of vehicles; liens; certain towing and recovery drivers and operators.*

Patrons—Marsden and Spruill

Referred to Committee on Transportation

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 46.2-644.01, 46.2-644.03, and 46.2-644.04 of the Code of Virginia are amended and reenacted 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 *or clean up related to vehicle collisions.*

B. Every keeper of 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. *In the case of a tow truck driver or towing and recovery operator furnishing services to a truck, tractor truck, or combination of vehicles, any such lien held shall apply to any power unit, tractor, trailer, or semitrailer in the combination, along with any cargo being carried by such vehicle.*

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.

C. In the case of any vehicle for which the title shows an existing lien, the keeper of vehicles shall have a lien upon the vehicle for his reasonable charges for storage under this section not to exceed \$500; 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 an existing lien on the title, the keeper of vehicles shall have a lien thereon for his reasonable charges for storage under this section, 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.

D. 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 relinquish the lien under the provisions of § 46.2-644.04.

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

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 vehicles to permit the owner to access the vehicle in order to recover his personal property, provided the owner claims and retrieves the items at least two business days prior to the auction date. The keeper of vehicles may dispose of any unclaimed personal property.

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, *and the keeper of vehicles of any such vehicle shall have an immediate lien upon any truck, tractor truck, or combination of vehicles, including any power unit, tractor, trailer, or semitrailer*

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59 *in the combination, along with any cargo being carried by such vehicle.* Nothing in this subsection,  
60 however, shall bar the owner of the truck or tractor truck from subsequently seeking to recover from the  
61 owner of any trailer, semitrailer, or cargo all or any portion of these towing, recovery, and storage costs.

62 **§ 46.2-644.03. Enforcement of liens acquired under §§ 46.2-644.01 and 46.2-644.02.**

63 A. For the purposes of this section:

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

65 "Independent appraisal" means an estimate for the value of (i) a motor vehicle or (ii) *other property*  
66 *subject to a lien acquired under §46.2-644.01* prepared by an individual or business that (i) (a) has all  
67 required business licenses and zoning approvals and (ii) (b) is either a licensed appraiser in another state  
68 or a business authorized by an insurance company to prepare insurance appraisals. "Independent  
69 appraisal" does not include an estimate prepared by an individual or business with a financial interest in  
70 the bailee's business.

71 B. Any bailee eligible to enforce a lien under § 46.2-644.01 or 46.2-644.02, if the value of the  
72 vehicle or *other property subject to such lien* affected by the lien does not exceed \$12,500, may sell  
73 such vehicle or *other property* by public auction, for cash, in accordance with the provisions of this  
74 section. The proceeds shall be applied to the satisfaction of the debt and expenses of sale, and the  
75 surplus, if any, shall be paid within 30 days of the sale to any lienholder of record, and then to the  
76 owner of the vehicle, provided such lienholder or owner contacts the bailee prior to the sale to claim  
77 any surplus that may result. If such claim is made by the lienholder or owner within 30 days following  
78 the sale, the surplus shall be paid within 30 days of the claim. If no claim to the surplus is made within  
79 30 days of the sale, or if the owner or lienholder cannot be ascertained by the Department, the bailee  
80 shall be entitled to keep the surplus.

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

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

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

102 No notice by the Department shall be required if no record for the vehicle can be found or, in the  
103 case of a vehicle titled in another jurisdiction, the other jurisdiction refuses to release the requested  
104 vehicle information to the Department. In either situation, the bailee may continue with lien enforcement  
105 under this section. However, if a vehicle record exists in another jurisdiction, the bailee shall assume all  
106 liability for proceeding with such enforcement without written notice to the owner and/or lienholder of  
107 record.

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

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

117 If the Department confirms owner or lienholder information, either through a search of its own  
118 records or those of another jurisdiction, the Department shall notify the owner, at the last known address  
119 of record, and any lienholder, at the last known address of record, of the intent to sell the vehicle or  
120 *other property subject to such lien*, by certified mail, return receipt requested, and advise them to

reclaim the vehicle and repay the debt owed within 15 days from the date the notice was sent. 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 vehicle *or other property subject to such lien* remains unclaimed and the debt unpaid, the owner and all persons having security interest shall have waived all right, title, and interest in the vehicle *or other property*, except to the extent that subsection B requires a surplus to be paid. The bailee shall notify the Department in a manner prescribed by the Commissioner within five business days if the vehicle *or other property subject to such lien* is reclaimed and the debt paid. Should the bailee fail to notify the Department as required herein, and the Department must remove the administrative hold placed under subsection C at the request of the vehicle owner or lienholder, and upon submission of proof that the debt was paid and the vehicle reclaimed, the Department may impose and collect an administrative fee of \$40 from the bailee for each such removal.

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

Upon notice by the bailee that the vehicle will be sold, the Department shall provide a certification document in a manner prescribed by the Commissioner to the bailee. The bailee shall complete all applicable certification statements on the document and provide it to the buyer of the vehicle, who shall submit the document and an application to the 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.

F. If the value of the vehicle *or other property subject to such lien* is more than \$12,500 but does not exceed \$25,000, the bailee, after the notice is sent by the Department pursuant to subsection C, may apply by petition to any general district court of the county or city wherein the vehicle is, or, if the value of the vehicle exceeds \$25,000, to the circuit court of the county or city, for the sale of the vehicle *or other property subject to such lien*. No notice sent by the Department pursuant to this section shall substitute for service of process for any court proceeding. If the name of the owner cannot be ascertained, the name "John Doe" shall be substituted in any proceeding pursuant to this section.

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 vehicle *or other property subject to such lien* 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. No additional notifications or postings by the Department related to the sale shall be required.

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

However, the bailee may submit an independent appraisal and supporting documentation to show the accurate value of the vehicle *or other property subject to such lien* 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.

H. For a vehicle (i) for which neither the owner nor any other lienholder or secured party can be

determined by the Department through a diligent search 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 \$4,500 as determined by the provisions of this section, a 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.

I. Notwithstanding any provisions to the contrary, 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 vehicle 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 *or other property subject to such lien* 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 *or other property subject to such lien* 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 *or other property* 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.