

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 46.2-644.03 of the Code of Virginia, relating to enforcement of vehicle liens;*
 3 *property value.*

4 [H 1288]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 46.2-644.03 of the Code of Virginia is amended and reenacted as follows:**8 **§ 46.2-644.03. Enforcement of liens acquired under §§ 46.2-644.01 and 46.2-644.02.**

9 A. For the purposes of this section:

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

11 "Independent appraisal" means an estimate for the value of a motor vehicle prepared by an individual or
 12 business that (i) has all required business licenses and zoning approvals and (ii) is either a licensed appraiser
 13 in another state or a business authorized by an insurance company to prepare insurance appraisals.
 14 "Independent appraisal" does not include an estimate prepared by an individual or business with a financial
 15 interest in the bailee's business.

16 B. Any bailee eligible to enforce a lien under § 46.2-644.01 or 46.2-644.02, if the value of the vehicle
 17 affected by the lien does not exceed ~~\$12,500~~ \$ 17,000, may sell such vehicle by public auction, for cash, in
 18 accordance with the provisions of this section. The proceeds shall be applied to the satisfaction of the debt
 19 and expenses of sale, and the surplus, if any, shall be paid within 30 days of the sale to any lienholder of
 20 record, and then to the owner of the vehicle, provided such lienholder or owner contacts the bailee prior to the
 21 sale to claim any surplus that may result. If such claim is made by the lienholder or owner within 30 days
 22 following the sale, the surplus shall be paid within 30 days of the claim. If no claim to the surplus is made
 23 within 30 days of the sale, or if the owner or lienholder cannot be ascertained by the Department, the bailee
 24 shall be entitled to keep the surplus.

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

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

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

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

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

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

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HB1288ER

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

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

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

79 Upon notice by the bailee that the vehicle will be sold, the Department shall provide a certification
80 document in a manner prescribed by the Commissioner to the bailee. The bailee shall complete all applicable
81 certification statements on the document and provide it to the buyer of the vehicle, who shall submit the
82 document and an application to the Department in order to obtain a certificate of title for the vehicle. Upon
83 receipt of a completed application and certification document, the Department shall issue a certificate of title
84 to the buyer or a nonrepairable certificate, if requested, free of all prior liens and claims of ownership of
85 others.

86 F. If the value of the vehicle is more than ~~\$12,500~~ \$17,000 but does not exceed \$25,000, the bailee, after
87 the notice is sent by the Department pursuant to subsection C, may apply by petition to any general district
88 court of the county or city wherein the vehicle is, or, if the value of the vehicle exceeds \$25,000, to the circuit
89 court of the county or city, for the sale of the vehicle. No notice sent by the Department pursuant to this
90 section shall substitute for service of process for any court proceeding. If the name of the owner cannot be
91 ascertained, the name "John Doe" shall be substituted in any proceeding pursuant to this section.

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

98 If a court has ordered the sale of the vehicle, the bailee shall submit to the Department a copy of the court
99 order in a manner prescribed by the Commissioner. Upon receipt, the Department shall provide a certification
100 document to the bailee. The bailee and sheriff conducting the sale, or his authorized representative, shall
101 complete all applicable certification statements on the document and provide it to the buyer of the vehicle,
102 who shall submit the document and an application to the Department in order to obtain a certificate of title for
103 the vehicle. Upon receipt of a completed application and certification document, the Department shall issue a
104 certificate of title to the buyer or a nonrepairable certificate, if requested, free of all prior liens and claims of
105 ownership of others.

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

108 However, the bailee may submit an independent appraisal and supporting documentation to show the
109 accurate value of the vehicle in a manner prescribed by the Commissioner. Upon receipt, the Department
110 shall update the vehicle record to reflect the value established by the independent appraisal and notify the
111 bailee that enforcement under this section may proceed based on the new value.

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

116 H. For a vehicle (i) for which neither the owner nor any other lienholder or secured party can be
117 determined by the Department through a diligent search as required by this section, (ii) manufactured for a

118 model year at least six years prior to the current model year, and (iii) having a value of no more than \$4,500
119 as determined by the provisions of this section, a bailee may, after showing proof that the vehicle has been in
120 his continuous custody for at least 30 days, apply for and receive from the Department of Motor Vehicles title
121 or a nonrepairable certificate to such vehicle, free of all liens and claims of ownership of others, and proceed
122 to sell or otherwise dispose of the vehicle.

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

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

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

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