

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 46.2-644.03 and 46.2-1202 of the Code of Virginia, relating to mechanics*
 3 *and storage liens; abandoned vehicles; vehicle records.*

4 [S 595]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That §§ 46.2-644.03 and 46.2-1202 of the Code of Virginia are 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, may sell such vehicle by public auction, for cash, in accordance
 18 with the provisions of this section. The proceeds shall be applied to the satisfaction of the debt and expenses
 19 of sale, and the surplus, if any, shall be paid within 30 days of the sale to any lienholder of record, and then to
 20 the owner of the vehicle, provided such lienholder or owner contacts the bailee prior to the sale to claim any
 21 surplus that may result. If such claim is made by the lienholder or owner within 30 days following the sale,
 22 the surplus shall be paid within 30 days of the claim. If no claim to the surplus is made within 30 days of the
 23 sale, or if the owner or lienholder cannot be ascertained by the Department, the bailee shall be entitled to keep
 24 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 *or fails to respond to the Department by the response date set and communicated to such*
 47 *jurisdiction by the Department.* In either situation, the bailee may continue with lien enforcement under this
 48 section. However, if a vehicle record exists in another jurisdiction, the bailee shall assume all liability for
 49 proceeding with such enforcement without written notice to the owner and/or lienholder of record.

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

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

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57 for the vehicle.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

144 **§ 46.2-1202. Search for owner and secured party; notice.**

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

153 The Department shall check (i) its own records, (ii) the records of a nationally recognized crime database,
 154 and (iii) records of a nationally recognized vehicle title database for owner and lienholder information. If a
 155 vehicle has been reported as stolen, the Department shall notify the appropriate law-enforcement agency of
 156 that fact. If a vehicle has been found to have been titled in another jurisdiction, the Department shall ~~contact~~
 157 ~~that jurisdiction to~~ ascertain the requested information, ~~unless~~ *which may be provided to* the Department ~~is~~
 158 ~~provided with such information~~ by a business in possession of the abandoned vehicle that (a) acquired such
 159 vehicle from an insurance company in connection with a total loss unresolved claim and (b) obtained such
 160 information from a nationally recognized title database with access to such jurisdiction's records about all
 161 entities having security interest in such vehicle. If the Department relies on information provided by a
 162 business as authorized in this subsection, such business shall indemnify, defend, and hold the Department and
 163 the Commonwealth harmless from and against any claims, actions, penalties, damages, losses, fines, and
 164 expenses, including attorney fees, incurred as a result of the Department's reliance on such information.

165 B. If the Department obtains owner or lienholder information as provided in subsection A, the Department
 166 shall notify the owner, at the last known address of record, and lienholder, at the last known address of
 167 record, of the notice of interest in their vehicle, by certified mail, return receipt requested, and advise them to
 168 reclaim and remove the vehicle within 15 days, or, if the vehicle is a manufactured home or a mobile home,
 169 120 days, from the date of notice. Such notice, when sent in accordance with these requirements, shall be
 170 sufficient regardless of whether or not it was ever received. Following the notice required in this subsection,
 171 if the vehicle remains unclaimed, the owner and all persons having security interests in the vehicle shall have
 172 waived all right, title, and interest in the vehicle.

173 C. If records of the Department contain no address for the owner or no address of any person shown by
 174 the Department's records to have a security interest, or if the identity and addresses of the owner and all
 175 persons having security interests cannot be determined with reasonable certainty after the Department ~~has~~
 176 ~~contacted the jurisdiction in which~~ *ascertained where* the vehicle was last titled, the person in possession of
 177 the abandoned vehicle may proceed with the sale or disposal of the vehicle in accordance with this chapter.
 178 However, if a vehicle record exists in another jurisdiction that has refused to release the information to the
 179 Department, the person in possession of the abandoned vehicle shall assume all liability for proceeding with

180 such sale or disposal without written notice to the owner or lienholder of record.

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

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