

MARY-DULANY JAMES
Legislative District 34
Harford County



James Senate Office Building
11 Bladen Street, Room 103
Annapolis, Maryland 21401
410-841-3158 · 301-858-3158
800-492-7122 Ext. 3158
MaryDulany.James@senate.state.md.us

Judicial Proceedings Committee
Executive Nominations Committee

Senate Chair
Joint Committee on
Children, Youth, and Families

THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

**Testimony of Senator Mary-Dulany James
In Favor of SB 107 - Commercial Law - Statutory Liens - Motor Vehicles
Towed or Removed From Parking Lots
Before the Judicial Proceedings Committee on March 5th, 2024**

SB 107 creates a statutory possessory lien on motor vehicles that are lawfully towed from private parking lots pursuant to a contract between the towing company and the lot owner. While the drafting rules of the Department of Legislative Services (DLS) has SB 107 amending the laws governing the statutory liens on personal property contained in the Commercial Law Article (see Title 10 §16-101 through Commercial Law Article Title 10 §16-209 of the Maryland Annotated Code), the bill is also aimed at clarifying that a towing company has the right to be paid all statutorily recognized charges before the vehicle is released to the owner pursuant to the provisions contained in Title 21, Subtitle 10A governing the towing or removal of vehicles from parking lots contained in the Transportation Article of the Maryland Annotated Code.

When you read Subtitle 10A and, in particular, section 21-10A-05- Delivery to Storage Facility- Repossession by Owner- Before or After Towing- Payment, and how the various subcomponents of this subtitle work together, it is clear that they operate so that while the towing company must provide that vehicle owner with the continuous

opportunity to retake possession (see (a) (3)), the opportunity is premised on the owner paying the outstanding towing charges and compelling the towing company to accept such payment (see subparagraphs (c) and (2)). This operation is made even clearer by the anticipation of the situation that, even if the owner has not yet made the requisite payment in order to repossess the vehicle, the towing company is still legally required to allow the owner to inspect or retrieve items from the vehicle while it is still in the possession of the towing company (see subparagraph (3)).

The bill sponsor could find only one reported case in Maryland that appears to be instructive. In *Glenn Cade T/A G & G Towing, et al v. Montgomery County, Maryland* 83 Md App. 419 575 A 20 744 (1990), the Court of Special Appeals upheld the constitutionality of a local county law that allowed towing from private parking lots passed pursuant to the predecessor statute to Article 21 Section 10A Transportation Code (see 26-301 (b) (3) 1987 & Supplemental 1989). In so doing, the court said that while the issue of whether the towing company had a possessory lien was not preserved on appeal, nonetheless, there was an implied agreement between the vehicle owner and the towing company whereby the vehicle owner agreed to pay the towing and storage charges. The court approvingly referenced other state statutes that hold the vehicle owner parking in defiance of a posted parking restriction, “shall be deemed to have consented to the removal and storage of their vehicle as well as to payment of charges for its removal and storage.”

It is time for the Maryland legislature to make its intentions known explicitly and, thereby, relieve the State courts from attempting to understand the legal implications of

our towing from private property statutes. It is clear from a survey of other states that in the modern era, states are tending away from the common law, and instead are routinely creating statutory possessory liens in favor of towing companies that remove motor vehicles from private property after having complied with all applicable towing laws (well-posted signage, towed only a reasonable distance, capped towing fees, adequate notice, an opportunity to inspect, retrieve items, and opportunity to retake the vehicle after allowable charges are paid). Such states include Idaho, Illinois, Florida, North Carolina, Pennsylvania, Colorado, Delaware, and a number of others.

Two final points on the needed amendment for SB 107:

- 1. The retroactive provision in the statute was erroneously included and retroactivity, in general, is controversial and thus an amendment eliminating it should be considered.**
- 2. The Maryland Banker's Association has an amendment to clarify that security interests such as car loans collateralized by a motor vehicle have priority over any possessory lien created by SB 107. This amendment should likewise be adopted by the Committee.**

For all of these reasons, SB 107 should receive a favorable report.