

HWS - SB 107 - 2024 - Final.pdf

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Position: FAV



Senate Bill 107

Committee: Judicial Proceedings Committee

Date: March 5, 2024

Position: Favorable

In conjunction with Title 21, Subtitle 10A of the Maryland Transportation Article, Senate Bill 107 (SB 107) codifies into state law a longstanding industry practice where the owner of a lawfully towed vehicle from a private parking lot must pay certain tow-related charges before the owner may reclaim their vehicle.

Modeled after Prince George's County's law, SB 107 also establishes a possessory lien in favor of the tower until the vehicle owner pays the aforementioned tow-related charges. See *Prince George's County Code, Division 10, Sec. 26-142.11*. Once paid, the lien will be extinguished, and the owner will retain possession of their vehicle. As a result, SB 107 will ensure that law-abiding Maryland tow businesses are protected from exploitive lawsuits that arise from this inadvertent gap in the Maryland Transportation Article.

The Maryland General Assembly has established strict requirements for parking lot signage, including laws that regulate the size, location, and specific information that the signs must include to inform drivers of the potential for towing. See *MD Code, Transportation, § 21-10A-02(b-c)*. To be clear, the driver of any lawfully towed vehicle in Maryland must have received open and conspicuous notice through regulated signage that an improperly parked vehicle will be towed from the parking lot. In turn, SB 107 simply requires the operator of the vehicle, who has received ample notice from mandated signs placed at the parking lot, to pay certain charges prior to reclaiming the vehicle.

In addition to codifying existing practice, SB 107 specifically limits the types of charges that a tower may assess for towing a vehicle and includes a retroactive provision to ensure that Maryland tow businesses who have acted in accordance with this longstanding industry practice are protected from exploitive lawsuits. Therefore, these common sense provisions will simultaneously ensure an appropriate level of consumer protection and protect law abiding tow businesses that provide critical services to private parking lot owners.

We are aware of the following amendment that will be offered to resolve concerns from the Maryland Banking Association, and we respectfully request that the Committee adopt the amendment and provide SB 107 with a favorable report.

Amendment

On page 2, after line 13, insert:

“(4) A LIEN CREATED UNDER THIS SUBSECTION IS SUBORDINATE TO A SECURITY INTEREST THAT PREDATES THE CREATION OF THE LIEN.”.

Sponsor Testimony

Uploaded by: Senator James

Position: FAV

MARY-DULANY JAMES
Legislative District 34
Harford County



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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.

SB 107 Statutory Liens - Motor Vehicles Towed or R

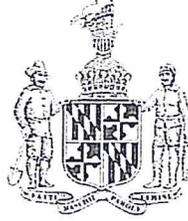
Uploaded by: Senator Mary-Dulany James

Position: FAV

MARY-DULANY JAMES
Legislative District 34
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Judicial Proceedings Committee
Executive Nominations Committee

Senate Chair
Joint Committee on
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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)).

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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.

SB 107 - MoCo_Consumer Protection_OPP (GA 24).pdf

Uploaded by: Kathleen Boucher

Position: UNF



Montgomery County

Office of Intergovernmental Relations

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SB 107

DATE: March 5, 2024

SPONSOR: Senator James

ASSIGNED TO: Judicial Proceedings

CONTACT PERSON: Kathleen Boucher (Kathleen.boucher@montgomerycountymd.gov)

POSITION: Oppose (Office of Consumer Protection)

Commercial Law – Statutory Liens – Motor Vehicles Towed or Removed From Parking Lots

“Predatory Towing” occurs when merchants illegally engage in towing parked cars and retaining the vehicles until the vehicle owners pay fees to the towing firms.

The State of Maryland and several local jurisdictions in Maryland have enacted and enforce statutes regulating trespass/non-consensual towing practices. The Montgomery County Office of Consumer Protection registers towing firms, maintains a registry of parking lots, and investigates complaints regarding illegal towing.

The number of complaints alleging illegal towing practices has reached a crisis level and has been the subject of extensive local and national news media. Allegations regarding these practices include:

- Improper signage and disclosures;
- Damage to vehicles;
- Failure to release personal property;
- Failure to notify police;
- Dark and unsafe impound lots;
- Demanding cash; and
- Failure to comply with numerous other statutory requirements.

These towing practices and the complaints that they generate are unique consumer transactions in our marketplace. In essence, the towing firms serve as “*Judge, Jury, and Jailer*” in their ability to retain property belonging to consumers. Most other transactions in our marketplace provide that disputes between merchants and consumers are to be resolved in court.

These illegal practices occur 24-hours a day and 365 days a year. The ability of our office to appropriately investigate and address non-consensual towing practices would be significantly impaired if the State statutorily establish a “mechanics lien” regarding a non-consensual transaction which may have been illegal.

Montgomery County’s Office of Consumer Protection respectfully requests that the Judicial Proceedings Committee give this bill an unfavorable report.

_Testimony - SB107 Commercial Law Statutory Liens

Uploaded by: Marceline White

Position: UNF



Testimony to the Senate Judiciary Committee

**SB107: Commercial Law-Statutory Liens-Motor Vehicles Towed or Removed from Parking Lots
Position: Opposed**

March 5, 2024

The Honorable Senator William Smith, Chair
Senate Judicial Proceedings Committee
2 East, Miller Senate Office Building
Annapolis, Maryland 21401

cc: Members, Judicial Proceedings Committee

Honorable Chair Smith and Members of the Committee:

Economic Action Maryland (formerly the Maryland Consumer Rights Coalition) is a statewide coalition of individuals and organizations that advances economic rights and equity for Maryland families through research, education, direct service, and advocacy. Our 12,500 supporters include consumer advocates, practitioners, and low-income and working families throughout Maryland.

SB107 seeks to overturn decisions established in multiple Maryland Courts¹ that state clearly that a trespass tower cannot hold onto a vehicle until all towing fees have been paid. The reasoning is clear-to do so creates perverse incentives for unscrupulous actors to tow more vehicles whether the tow is proper or not because they will be paid regardless.

SB107 is unconstitutional, violating the Maryland Constitution's due process clause. Retroactivity has been rejected time and time again and should certainly be done so again in this legislation.

Finally, this legislation seeks to interfere with litigation² pending before the Federal Court in Maryland and is inappropriate to bring forward while that case is moving.

For all these reasons, we strongly oppose SB107 and urge an unfavorable report,

Best,

Marceline White
Executive Director

¹ *T.R. v. Lee*, 55 Md. App. 629 (1983) *Cade, t/a G&G Towing v. Montgomery County*, 83 Md. App. 419, 427 (1990))

² *Hall v. HWS, LLC, et al.*, Civil Action No. 8:22-cv-00996-PJM

SB 107 -- Unfavorable.pdf

Uploaded by: Peter Holland

Position: UNF

The **HOLLAND LAW FIRM**
for Consumer Rights

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March 4, 2024

Senator William C. Smith, Jr.
Chair, Judicial Proceedings Committee

RE: Senate Bill 0107 – Statutory Liens for Towing -- UNFAVORABLE

Dear Chair and Members of the Committee,

As one of the few law firms in Maryland that focusses on consumer protection, we have a ground-level view of many abusive, unfair and deceptive practices. At present, we are counsel in a putative class action against a Baltimore County towing company that engages in towing from a privately owned parking lot. The case is *Bosnick, et al v. Pollard's Towing Company*, Case No. C-03-CV-23-002122.

I am against Senate Bill 0107. On its face, the bill applies to someone who tows from a private lot “under Title 21, Subtitle 10A of the Transportation Article.” If passed, in the future this law could be used to try an end run around existing statutes and regulations around towing. For example, there could be litigation whether “under” Title 21, Subtitle 10A” gives a pass to someone who is not otherwise in full compliance with it.

But more importantly, this law is specifically designed to immunize and stop existing litigation in its tracks. Section 2 of this bill is the proof that it is trying to extinguish an existing lawsuit, presumably the case of *Hall v. HWS, LLC, et al.*, Civil Action No. 8:22-cv-00996-PJM:

That this Act shall be construed to apply retroactively and shall be applied to and interpreted to affect any action for the wrongful retention of a motor vehicle arising out of the towing or removal of the motor vehicle from a privately owned parking lot under Title 21, Subtitle 10A of the Transportation Article occurring before the effective date of this Act.

This body should not target existing lawsuits for erasure by legislative fiat, and to do so here would almost certainly be stricken down as unconstitutional by the Maryland Supreme Court. I urge you not to go down this path of creating special rights for special interests. To try and eliminate an existing lawsuit over vested rights is simply wrong.

Respectfully,

/s/ Peter A. Holland

Peter A. Holland

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Unfavorable.SB 107.3-4-24.pdf

Uploaded by: Richard Gordon

Position: UNF



March 5, 2024

Re: Request for an UNFAVORABLE report on SB 107

Dear Members of the Judicial Proceedings Committee:

I write at this time to urge the Judicial Proceedings Committee to give SB 107 an unfavorable report. If passed, SB 107 would: (1) statutorily establish non-consensual towing liens against decades of precedent; (2) attempt to wipe out a lawsuit currently pending in Federal Court which is intended to vindicate the rights of more than 33,500 Marylanders whose motor vehicles were towed between 2019 and the present, by Henry's Wrecker Service ("Henry's"), a notorious towing company that operates in Montgomery County; and (3) violate due process, to the extent that SB 107 would apply retroactively. *See Dua v. Comcast Cable of Md., Inc.*, 370 Md. 604 (2002).

First, Maryland's appellate courts multiple times have considered the fundamental issue that would be impacted by this legislation and held that neither statutory nor common law permits a trespass tower to hold a vehicle until all towing fees are paid. More than forty years ago, in *T.R. v. Lee*, 55 Md. App. 629 (1983), the Maryland Appellate Court held that no possessory lien exists with respect to a towed vehicle at common law. Seven years later, in *Cade, t/a G&G Towing v. Montgomery County*, 83 Md. App. 419, 427 (1990), the Court repeated this point. The sound public policy behind these and other cases is that permitting towing companies, especially unscrupulous ones, to exercise a lien, encourages them to tow more vehicles because payment, whether the tow is proper or not, is guaranteed. However, it also has an effect on commerce because consumers do not want to return to where they believe their vehicles were improperly towed and held for ransom.

Second, SB 107 is intended to interfere with ongoing litigation, pending in Federal Court in Maryland. In particular, *Hall v. HWS, LLC, et al.*, Civil Action No. 8:22-cv-00996-PJM (filed on March 23, 2022), challenges Henry's widespread and unlawful scheme to tow more than 33,500 vehicles from shopping centers, apartment buildings and strip malls throughout Montgomery County, without the owners' consent. Once Henry's towed the vehicle, it refused to permit the owner or anyone else to reclaim it until someone paid all of Henry's fees and charges relating to the tow. The lawsuit further alleges that Henry's was well aware of *T.R. v. Lee* and *Cade, t/a G&G Towing v. Montgomery County* but did not care. Instead, at least since 2018, Henry's has ignored and usurped the power of the Courts and General Assembly and asserted a lien anyway. Section 2 of SB 107, because it specifically will "apply retroactively and shall be applied to and interpreted to affect any [pending] action," will, no doubt be used by Henry's in Federal Court to argue that Henry's unilaterally created and imposed lien was nonetheless permissible.

Third, regardless, the retroactive provisions of SB 107 violate fundamental principles of due process. There is a vested right in an accrued cause of action and the Maryland Constitution precludes the impairment of such right. Furthermore, this principle applies to both common law and statutory causes of action. *Dua v. Comcast Cable of Maryland, Inc.*, 370 Md. 604, 633 (2002).

The *Dua* case arose from two separate and consolidated appeals regarding retroactive statutes, one of which retroactively established subrogation rights for HMOs, and the other which retroactively changed the law applicable to late fee charges by cable TV providers. The Maryland Supreme Court conducted a detailed and exhaustive analysis of the constitutionality of the two legislative acts which, it held, were unconstitutional because they retroactively impaired, interfered with, or abolished accrued causes of action and deprived plaintiffs of vested rights.

In *Dua*, the Supreme Court reviewed and or cited roughly 40 of its own prior decisions, spanning more than 180 years of consistent jurisprudence, to conclude that retroactive legislation is unconstitutional if it impairs vested rights. In addition to those Maryland cases, Maryland’s Supreme Court approvingly cited and adopted similar holdings in cases from other States.

The Court relied upon *Gibson v. Commonwealth of Pennsylvania*, 490 Pa. 156, 160-162, 415 A.2d 80, 83-84 (1980), which illustrates conclusively that the retroactivity in SB 107 is unconstitutional:

In an opinion by Justice Roberts, the Court held that a constitutional provision, like Article 19, providing that persons are entitled to justice “by the law of the land” means “that the law relating to the transaction in controversy, at the time when it is complete, shall be an inherent element of the case, and shall guide the decision; and that the case shall not be altered, in substance, by any subsequent law.”

Dua, 370 Md. at 645. In this instance, the “law of the land” is the existing law at the time when the cause of action accrued – *i.e.* when a towing company asserts an illegal lien against the owner of a vehicle – and that law cannot be “altered, in substance, by any subsequent law.” Because Section 2 of SB 107 retroactively impairs accrued causes of action, it is clearly unconstitutional.

Even if it did not completely wipe out Marylanders’ ability to challenge the past behavior of towing companies (which it does), SB 107 is still unconstitutional. As *Dua* makes clear, a retroactive law is unconstitutional if it merely *impairs or interferes with* an accrued cause of action. Plainly, that is precisely what SB 107 does, and what it intends to do.

The constitutional standard for determining the validity of retroactive civil legislation “is whether vested rights are **impaired**.” 370 Md. at 623 (emphasis added). The provision of the Maryland constitution cited “for **the principle that retroactive legislation impairing vested rights is invalid** is Article 24 of the Declaration of Rights, which is often referred to as the Maryland Constitution’s due process clause.” 370 Md. at 628 (tracing history of Article 24 to the *Magna Carta*). This ancient principle of constitutional law precludes passage of SB 107.

Nobody (except perhaps lawyers who charge by the hour) benefits when the Legislature enacts an unconstitutional law. Such legislation spawns endless litigation over its validity until, finally, the Maryland Supreme Court declares what everyone already knew – that the law does not pass constitutional muster. Unconstitutional laws – like SB 107 – must not be enacted.

Respectfully,

Richard S. Gordon

SB 107 Letter of concern.pdf

Uploaded by: Karen Straughn

Position: INFO

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Chief Operating Officer

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WILLIAM D. GRUHN
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March 5, 2024

To: The Honorable William C. Smith, Jr.
Chair, Judicial Proceedings Committee

From: Karen S. Straughn
Consumer Protection Division

Re: Senate Bill 107 – Commercial Law – Statutory Liens – Motor Vehicles Towed or
Removed from Parking Lots (CONCERN)

The Consumer Protection Division of the Office of the Attorney General has concerns regarding Senate Bill 107 introduced by Senator Mary-Dulany James. This bill provides for an automatic lien on a motor vehicle towed from a privately owned parking lot for the charges incurred for towing, recovery, storage and notice and is intended to apply retroactively. Although the Division appreciates the sponsors' concern about towing companies having difficulty in some situations with cars not being claimed by their owners, we believe the bill could harm consumers and, in the large majority of cases, would be unnecessary.

When a vehicle is towed from a private lot, there are charges incurred which are usually paid by the individual who owns the vehicle in order to recover it. Sometimes, however, the vehicle is towed because it has been abandoned, leaving no one to pay the costs, or the owner may have difficulty paying the fees. In some cases, the owner of the vehicle may have a dispute concerning the basis for towing the vehicle in the first place. Generally, in these cases, a lien may be filed with the courts, to serve as notice that the towing company may have a claim against the individual's assets. This bill would allow a towing company to bypass the normal process of obtaining a lien, and would make the lien automatic, only being discharged when all fees are paid. The lien becomes a public record, which could be detrimental to individual owners who are taking the necessary steps to pay the bill in a timely manner. Moreover, under §25-206 of the

Transportation Article, if an owner or secured party fails to reclaim an abandoned vehicle within 3 weeks after notice is given, the responsible party is deemed to have waived all of their rights, title, and interest in the vehicle and to have consented to the sale of the vehicle at public auction. Therefore, no automatic lien is necessary.

Finally, the Division is concerned that the retroactive aspect of the bill could impact individuals without providing notice that their towed vehicle is subject to a lien. Further, the Division is concerned that the bill would undermine pending litigation before the Courts have had a chance to address consumers' claims. The Division has been engaged in discussions with SB 107's proponents about our concerns and we understand the proponents have agreed to remove the retroactivity provision. Discussions are continuing about the Division's concerns that meaningful notice needs to be provided to the consumer before a lien attaches. Accordingly, the Consumer Protection Division wanted to make the Judicial Proceedings Committee aware of our concerns.

cc: The Honorable Mary-Dulany James
Members, Judicial Proceedings Committee