

HWS - HB 514 - 2024 - Final.pdf

Uploaded by: Grason Wiggins

Position: FAV



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House Bill 514

Committee: Environment & Transportation Committee

Date: February 15, 2024

Position: Favorable

In conjunction with Title 21, Subtitle 10A of the Maryland Transportation Article, House Bill 514 (HB 514) 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, HB 514 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, HB 514 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, HB 514 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, HB 514 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. For these reasons, we respectfully request a favorable report on HB 514.

HB_514_FWA_LateTestimony_JohnOlzewskiSr

Uploaded by: John Olzewski, Sr.

Position: FWA

HB 0514

John Olszewski Sr
OK Strategies
2423 Matthai Terrace
Balto. MD. 21219
410-917-8211

FAVORABLE WITH AN AMEMDMENT

Good afternoon, Chairman Korman, Vice Chairwoman Boyce & Committee Members,

My name is John Olszewski Sr. and I represent the Baltimore County Towers Association. We support HB 0514 amended. We would like to see the bill amended to include Police Initiated Tow (PIT).

To give you some examples of PIT, they could be inoperable vehicles, abandoned vehicles, vehicles involved in an accident etc. These vehicles are eyesores to the community, strewn across local roads or in the case of accidents they shut down roads until the vehicle or vehicles are towed and the road is cleared of debris.

This legislation, if amended, would allow the towers to hold the legal (PIT) vehicle until the bill was paid for the services provided. It is an unwritten rule that this is the process now. This amended legislation would codify that process.

For instance you wouldn't go into a grocery store, fill your cart, then tell the cahier I'm taking my groceries and I'll pay you later. Including (PIT)in this bill would give towers the ability to have a posessary lien on the vehicle until the bill was paid.

Thank you for your time. If anyone has any questions, I'll be more than happy to answer them.

Signed_DCRS_Oppose - HB 514 Statutory Liens - Moto

Uploaded by: Calvin Ball

Position: UNF



HOWARD COUNTY DEPARTMENT OF COMMUNITY RESOURCES AND SERVICES

9830 Patuxent Woods Drive ■ Columbia, Maryland 21046 ■ 410-313-6400 voice/relay

Jacqueline R. Scott, Director
communityresources@howardcountymd.gov

FAX 410-313-6424

February 15, 2023

Delegate Marc Korman, Chair
Environment and Transportation Committee
House Office Building, Room 251
Annapolis, Maryland 21401

Re: **TESTIMONY OF OPPOSITION:** HB514: Commercial Law - Statutory Liens - Motor Vehicles Towed or Removed From Parking Lots

Dear Chair Korman, Vice Chair Boyce and Members of the Committee:

The Howard County Department of Community Resources and Services (DCRS) provides vital human services through its nine offices and ten boards and commissions, including the Office of Consumer Protection (OCP).

The OCP helps to protect Howard County consumers and tenants by mediating disputes, taking enforcement action or providing tips on how to avoid scams or make smart purchasing decisions. Moreover, the OCP regulates and licenses trespass towing companies in Howard County under HCC §17.600, *et seq.* Trespass towing is a unique business model. No where else does the law allow a business to take someone's personal property without the owner's permission and refuse to turn it over unless paid a fee. Adding automatic statutory liens, especially *ex post facto*, would unduly burden consumers who rely on their cars for their livelihood and their families. While most tow companies operate with integrity and lawfulness, many do not.

In 2023, OCP issued a Notice of Violation to a tow company for sharp practices. There, an apartment community had rejected this tow business for its parking lots. Undeterred, the tow company nevertheless came on the property after hours, removed the prior tow company's signs, installed its own signs, told the concierge it had a valid contract with the property owner when asked, and then towed ten (10) cars without the authorization of the property owner or its agents. These tenants missed work, appointments, and getting their kids to school. The tow company was ordered to return the cars without redemption fees. Had an automatic lien existed, such an order could have been refused.

Also in 2023, OCP revoked the license of a tow company for towing 42 vehicles during a period it was unlicensed. Further, once relicensed, the business knowingly provided false information on its renewal application, failed to provide updated insurance information when requested, charged rates over what was approved by the Council, charged *government fines* whenever it saw fit, refused to return "government fines" when ordered, acted as a spotter, towed vehicles without authorization of the property owner, and failed to provide notice of the tow to the Police as required by County law. Again, an automatic lien would have forced consumers to pay these fees, allowed the tow company to refuse refunds, and harmed Howard County consumers.

For these reasons, DCRS, through its Office of Consumer Protection, opposes this bill.

Sincerely,
Signed by:

A handwritten signature in black ink that reads "Jacqueline Scott".

287A14FE698F43F...

Jacqueline Scott, Director

Cc: The Honorable Dr. Calvin Ball III, County Executive
Maureen Evans Arthurs, Director of Government Affairs & Strategic Partnerships
Tracy Rezvani, Administrator OCP

HB 514 - MoCo_Consumer Protection_OPP (GA 24).pdf

Uploaded by: Kathleen Boucher

Position: UNF



Montgomery County

Office of Intergovernmental Relations

ROCKVILLE: 240-777-6550

ANNAPOLIS: 240-777-8270

HB 514

DATE: February 15, 2024

SPONSOR: Delegates Allen and Boyce

ASSIGNED TO: Environment and Transportation

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 Environment and Transportation Committee give this bill an unfavorable report.

_ Testimony - HB514 Commercial Law Statutory Liens

Uploaded by: Marceline White

Position: UNF



Testimony to the House Environment and Transportation Committee
HB514: Commercial Law-Statutory Liens-Motor Vehicles Towed or Removed from Parking Lots
Position: Opposed

February 15, 2024

The Honorable Marc Korman, Chair
Environment and Transportation Committee
Room 251, House Office Building
Annapolis, MD 21401
Cc: Members, Environment and Transportation Committee

Chair 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.

HB514 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.

HB514 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 HB514 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

***Opposition to HB 514.2-13-24.pdf**

Uploaded by: Richard Gordon

Position: UNF



February 13, 2024

Re: Request for an UNFAVORABLE report on HB 514

Dear Members of the Environment and Transportation Committee:

I write at this time to urge the Environment and Transportation Committee to give HB 514 an unfavorable report. If passed, HB 514 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 HB 514 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, HB 514 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 to assert a lien anyway. Section 2 of HB 514, 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 HB 514 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, the 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 HB 514 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 HB 514 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), HB 514 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 HB 514 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 HB 514.

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 HB 514 – must not be enacted.

Respectfully,

Richard S. Gordon

Sponsor Amendment_HB_514

Uploaded by: Delegate Nick Allen

Position: INFO



HB0514/183126/1

AMENDMENTS
PREPARED
BY THE
DEPT. OF LEGISLATIVE
SERVICES

19 FEB 24
16:49:31

BY: Delegate Allen

(To be offered in the Environment and Transportation Committee)

AMENDMENT TO HOUSE BILL 514

(First Reading File Bill)

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.”

HB 514 Letter of concern.pdf

Uploaded by: Karen Straughn

Position: INFO

CANDACE McLAREN LANHAM
Chief Deputy Attorney General

CAROLYN A. QUATTROCKI
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February 15, 2024

To: The Honorable Marc Korman
Chair, Environment and Transportation Committee

From: Karen S. Straughn
Consumer Protection Division

Re: House Bill 514 – 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 House Bill 514 introduced by Delegate Nick Allen and Vice-Chair Regina T. Boyce. 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. Accordingly, the Consumer Protection Division wanted to make the Environment and Transportation Committee aware of our concerns.

cc: The Honorable Nick Allen
The Honorable Regina T. Boyce
Members, Environment and Transportation Committee