



March 26, 2024

Re: Request for an UNFAVORABLE report on Cross-filed SB 107

Dear Members of the Environment and Transportation Committee:

I write at this time to urge the Environment and Transportation Committee to give cross-filed SB 107 an unfavorable report. If passed by the House in its current form, SB 107 would statutorily establish non-consensual towing liens against decades of precedent. It also would establish a lien that is unfair and deceptive to consumers

Maryland's appellate courts and the Maryland Office of the Attorney General, 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.

In 1988, the Office of the Attorney General ("OAG") issued an opinion, 73 Md. Op. Atty. Gen. 349 (Md.A.G.), 1988 WL 482024, in response to the question "whether a tow truck operator who tows a vehicle at the request of a property owner [*i.e.*, trespass towing] may retain the vehicle until the vehicle owner pays the towing and storage fees." The OAG determined no such lien exists in Maryland; and without "consent" and "conspicuously posted sign[s] on the property provid[ing] unambiguous notice to the vehicle owner that an improperly parked vehicle will be subject to such a lien," no lien was really possible.

The sound public policy behind these and other opinions 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. In short, the lien essentially takes away the right of all consumers to challenge the tow as unlaw or predatory. At the same time, 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.

In addition to the fact that SB 107 would create bad public policy, as the OAG observed 35 years ago, establishing a non-consensual lien in favor of trespass towers without requiring "consent" of or "notice" to the vehicle owner, is both unfair and deceptive. Indeed, "consent" is a primary requirement in §16-202 of the Commercial Law Article (the statute that would be amended by cross-filed SB 107). Under this Title, the General Assembly has created a series of "mechanics liens" vis-à-vis the repair or maintenance of: Aircraft (§16-202(a)), Boats (§16-202(b)), and Motor Vehicles (§16-202(c)). The black letter requirement for creation of each such a lien, though, is that the non-owner person who has custody of the personal property, must have: (1) acquired it "with the consent of the owner," and, (2) provided a service to or materials for the personal property "at

the request of the owner.” *See e.g.* Md. Code Ann., Com. Law §16-202(a). Neither of these requirements are possible in a trespass towing scenario.

Because the proposed towing lien is contrary to public policy and unfair and deceptive to consumers, I oppose the legislation.

Respectfully,

Richard S. Gordon