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STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

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Chief Operating Officer

April 1, 2025

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

FROM: Steven M. Sakamoto-Wengel
Executive Counsel to the Attorney General

RE: Senate Bill 883 – Post-Towing Procedure Workgroup -- Establishment —
LETTER OF INFORMATION

The Consumer Protection Division of the Office of the Attorney General states the following with respect to Senate Bill 883, sponsored by Senator James, which would establish a workgroup to examine procedures related to towing of vehicles from private lots and examine the procedures necessary to ensure that a lien is not established with respect to the vehicle unless the procedures comport with due process requirements. While the Division does not have an opinion as to whether such a workgroup is necessary, we do believe that, if a workgroup is established, additional consumer representation should be included on the workgroup.

Senate Bill 883 arose from a situation in which towing companies tried to assert a lien against vehicles that had been towed from private lots and require the vehicle owners to pay towing and storage fees before they could remove their vehicles from the lots. However, the vehicle owners asserted that no such lien existed unless they first received notice of the lien and an opportunity to promptly contest the basis for the tow. Legislation was introduced last session (Senate Bill 107) that would have provided a towing company with an automatic lien on a towed vehicle, but the bill did not pass. The attached April 5, 2024, letter of advice from the Office of Counsel to the General Assembly found that "Senate Bill 107 would be at risk of being found to be unconstitutional because the attachment of any lien is not conditioned upon the provision of constitutionally adequate notice and opportunity for a hearing within a short time of any tow."

Senate Bill 883 as introduced was virtually unchanged from Senate Bill 107.¹ The Senate amended the bill to instead create a workgroup to study the issues involved and report back to the General Assembly on or before December 1, 2025. The workgroup would consist of one member of the Senate and one member of the House; a representative of the Consumer Protection Division; a representative of MACO; two representatives of the towing industry; a representative of the Maryland Retailers; and representatives of both MMHA and AOBA.

The Division is concerned that the proposed workgroup is heavily weighted towards organizations with an interest in promoting the towing of vehicles and does not include sufficient representation of consumers whose vehicles are towed. While the Division does mediate complaints involving towing and appreciates being part of the proposed workgroup, we believe that additional consumer representatives, such as the Montgomery County and Howard County Offices of Consumer Protection, who regularly deal with towing complaints from residents, and organizations that work directly with consumers, such as Economic Action Maryland or Consumer Auto, should be added to the workgroup to ensure balance.

Accordingly, should the Environment and Transportation Committee choose to give Senate Bill 883 a favorable report, the Division respectfully requests that additional consumer representatives be added to the workgroup.

cc: The Honorable Mary-Dulany James

¹ The Division notes that Delegate Allen introduced House Bill 1405 this session that would have included procedures intended to address some of the due process concerns, but the bill was withdrawn.

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STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

April 5, 2024

The Honorable Sara Love
Maryland General Assembly
210 Lowe House Office Building
6 Bladen Street
Annapolis, Maryland 21401
Via email

**RE: Senate Bill 107 – Commercial Law – Statutory Liens – Motor Vehicles Towed
or Removed From Parking Lots**

Dear Delegate Love:

You have requested advice concerning the constitutionality of a proposed amendment to Senate Bill 107 (“Commercial Law – Statutory Liens – Motor Vehicles Towed or Removed From Parking Lots”). It is my view that the bill, even with the proposed amendment, presents a significant risk of leading to a violation of the Due Process Clause because it does not provide the opportunity for a prompt hearing so that a person can challenge the legality and factual basis of the tow.

Senate Bill 107

Senate Bill 107 establishes “a lien on a motor vehicle if the person tows or removes the motor vehicle from a privately owned parking lot under Title 21, Subtitle 10A of the Transportation Article” for charges incurred for towing, recovery, storage, or notice provided. Proposed Md. Code Ann., Comm. Law, § 16-202(e). You have asked our Office to consider the constitutionality

of the bill, including the proposed amended language shown below, which requires certain signage and conditions the lien on the tow being legal.

(E) (1) **IF A CLEARLY VISIBLE SIGN IS POSTED AT A PRIVATELY OWNED PARKING LOT THAT EXPLICITLY NOTIFIES PARKERS THAT THEIR VEHICLE WILL BE SUBJECT TO A LIEN IF IT IS LEGALLY TOWED PURSUANT TO STATE AND LOCAL LAW FOR PARKING IMPROPERLY, A PERSON HAS A POSSESSORY LIEN ON A MOTOR VEHICLE IF THE PERSON LEGALLY TOWS OR REMOVES THE MOTOR VEHICLE FROM A PRIVATELY OWNED PARKING LOT UNDER TITLE 21, SUBTITLE 10A OF THE TRANSPORTATION ARTICLE, ON BEHALF OF THE PARKING LOT OWNER OR AGENT, FOR ANY REASONABLE CHARGE INCURRED FOR ANY:**

- (I) TOWING;
- (II) RECOVERY;
- (III) STORAGE; OR
- (IV) NOTICE PROVIDED.

Constitutional Analysis

It is my view that the bill, even with the proposed amended language, is at a substantial risk of being found unconstitutional if challenged because it does not provide an opportunity for a prompt post-deprivation hearing so that a person with an interest in the vehicle could test the factual and legal basis for the tow. Deprivation of even a temporary use of a vehicle implicates a constitutionally protected property interest and thus requires certain procedural due process protections. *Stypmann v. City & Cnty. of San Francisco*, 557 F.2d 1338, 1342-43 (9th Cir. 1977). “The fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

Numerous federal courts have concluded that state or local laws allowing a vehicle to be towed without providing notice and an opportunity for a hearing within a short amount of time after the tow violate the Due Process Clause of the Fourteenth Amendment. For example, the United States Court of Appeals for the Fourth Circuit affirmed that an Ocean City towing ordinance “was manifestly defective” when vehicle recovery “was absolutely conditioned on payment of towing and storage charges” and “[n]o opportunity was presented for notice and a hearing to establish whether or not the initial removal of the vehicle was rightful or wrongful.” *Huemmer v. Mayor & City Council of Ocean City*, 632 F.2d 371, 372 (4th Cir. 1980). The Fourth Circuit later upheld the Ocean City towing ordinance after it added a new “provision requiring written notice to the owner of the vehicle, within one working day of the tow, of his entitlement to a hearing [within 24 hours of request] on the question of legality of the seizure.” *De Franks v. Mayor & City Council of Ocean City*, 777 F.2d 185, 187 (4th Cir. 1985).

Likewise, the United States Court of Appeals for the Ninth Circuit agreed that provisions of the California Vehicle Code “authorizing removal of privately owned vehicles from streets and highways without prior notice or opportunity for hearing” and another statute “establishing a possessory lien for towage and storage fees without a hearing before or after the lien attaches” were unconstitutional for the same reason. *Stypmann*, 557 F.2d at 1344-45. In reaching its conclusion, the Ninth Circuit court noted that the statute at issue did not provide for the release of the vehicles upon payment of a bond, that “no official participates in any way in assessing the storage charges or enforcing the lien,” “[t]he only hearing available under any other state procedure may be long deferred, and the burden of proof is placed upon the owner of the property seized rather than upon those who have seized it.” *Id.* at 1343. The court determined that a San Francisco ordinance providing a vehicle owner with a hearing within five days of providing notice was “clearly excessive” and other remedies through a “regular court action” would entail “considerable delay.” *Id.* at 1344, 1342, n. 19.

Maryland law already requires persons towing a vehicle to provide notice to certain persons, including the vehicle owner, within a certain amount of time after towing. Md. Code Ann., Transp. § 21-10A-04; *see also* Md. Code. Ann. Comm. Law § 16-203(b) (requiring notice to holders of security interests in the property). But neither the Transportation Article, nor Senate Bill 107, provides a prompt hearing opportunity or notice thereof. However, there are other procedural protections available to a property owner. Section 16-206(a) of the Commercial Law Article stays execution of a lien if the owner “disputes any part of the charge for which the lien is claimed” and “institute[s] appropriate judicial proceedings.” Md. Code. Ann. Comm. Law § 16-206(a). And if the owner “disputes any part of the charge for which the lien is claimed, he immediately may repossess his property by filing a corporate bond for double the amount of the charge claimed.” *Id.* § 16-206(b). It is possible that a court could find these protections are sufficient, but I think it is more likely they would not. Those provisions require an owner to file an action in court, and a hearing would likely not occur in a quick enough timeframe. Generally, hearings within one to two days of a request have been determined to be constitutional, while hearings after five days or more have been found to be unconstitutional. *See Towers v. City of Chicago*, 979 F. Supp. 708, 715, n.13 (N.D. Ill. 1997), *aff’d*, 173 F.3d 619 (7th Cir. 1999) (collecting cases). In addition, the provision allowing the owner to retake possession after filing a bond is also unlikely to save the statute. *See N. Georgia Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601, 606 (1975) (holding that a garnishment statute was unconstitutional because it allowed a creditor to impound a bank account so that the owner could not use it until litigation of the debt was resolved unless the owner paid a bond). A court would likely conclude, as did the court in *Huemmer*, that the “failure to provide an opportunity to be heard at some meaningful time before the injury occasioned by the taking becomes final” is constitutionally deficient. *Huemmer v. Mayor & City Council of Ocean City*, 474 F. Supp. 704, 711 (D. Md. 1979), *aff’d in part, rev’d in part*, 632 F.2d 371 (4th Cir. 1980).

It is possible that, in a particular scenario, a local law that requires a hearing would apply and could provide adequate procedural due process, but that obviously would not insulate the statute from legal challenge in other scenarios. Accordingly, it is my view that Senate Bill 107

The Honorable Sara Love
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would be at risk of being found to be unconstitutional because the attachment of any lien is not conditioned upon the provision of constitutionally adequate notice and opportunity for a hearing within a short time after any tow.

I hope this information is helpful. Please let me know if you have further questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Natalie Bilbrough".

Natalie R. Bilbrough
Assistant Attorney General