SB 883-TRPM-Post-Towing Procedure Workgroup-SUPPOR

Uploaded by: Andrea Mansfield

Position: FAV

Towing & Recovery Professionals of Maryland
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MEMORANDUM

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

FROM: Ted Dent, President, Towing & Recovery Professionals of Maryland
Vince Flook, 1st Vice President, Towing & Recovery Professionals of Maryland

DATE: April 1, 2025

RE: **SB 883 Post-Towing Procedure Workgroup - Establishment**

POSITION: **SUPPORT**

The Towing & Recovery Professionals of Maryland (TRPM) SUPPORT SB 883 as amended by the Senate. This bill establishes a Post-Towing Procedure Workgroup to examine procedures related to the towing or removal of motor vehicles from privately owned parking lots. The workgroup is also required to develop recommendations on measures to be put in place or required to comply with due process requirements under State and federal law to establish a legally enforceable possessory or statutory lien as part of post-towing procedures, including any notice requirements.

As introduced, the intent of SB 883 was to codify current practice with respect to towing a vehicle from a private parking lot. These types of tows are pursuant to a contract between a lot owner and a towing company, and in some cases may involve a disgruntled vehicle owner who finds that his or her improperly parked vehicle has been towed without knowledge upon returning to the parking lot.

Understanding there were concerns with the bill as introduced, SB 883 was amended to be a workgroup to bring all interested parties together to talk through post-towing procedures to determine whether statutory changes need to be made to clarify the process.

For these reasons, TRPM SUPPORTS SB 883 as AMENDED and urges a FAVORABLE Committee report.

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Uploaded by: Barry Glassman
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2735 Hartland Road
Suite 202 Falls Church, VA 22043 Phone: (301) 908-9600

Senate Bill 883 Post-Towing Procedure Workgroup-Establishment

April 1, 2025 Position: Favorable

Chairman and Members Environment and Transportation,

Henry's Wrecker Service (Henry's) strongly supports Senate Bill 883: Post-Towing Procedure Workgroup-Establishment. This bill establishes the Post-Towing Procedure Workgroup, staffed by the Department of Commerce, to identify and examine post-towing procedures relating to the towing or removal of motor vehicles from privately owned parking lots in accordance with Title 21, Subtitle 10A of the Transportation Article. In conducting the examination, the workgroup will provide recommendations on what measures would need to be in place or be required to comply with due process requirements under State and federal law in order to establish a legally enforceable possessory or statutory lien as part of post towing procedures, including notice requirements.

The Maryland General Assembly has instituted stringent regulations governing parking lot signage, encompassing laws that dictate the dimensions, placement, and specific content required on signs. These regulations inform drivers of the potential for towing.

Currently, conflicting opinions from the Attorney General related to the towing, storage and reasonable payments have led to opportunistic class action lawsuits. These lawsuits do not assert any violations of state or local towing regulations but focus solely on the holding of vehicles until payment is made. It is essential that the proposed workgroup study and address current gaps in the law to reach a solution for consumers and the tow industry.

Thank you for your consideration of Senate Bill 883 and we respectfully request a FAVORABLE report to create the proposed workgroup.

Attachment A (Sponsor Testimony).pdf
Uploaded by: Mary-Dulany James
Position: FAV

MARY-DULANY JAMES
Legislative District 34
Harford County

Judicial Proceedings Committee
Executive Nominations Committee

Senate Chair
Joint Committee on
Children, Youth, and Families

THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

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Testimony of Senator Mary-Dulany James
In Favor of SB 883 - Commercial Law - Statutory Liens - Motor Vehicles Towed or Removed From Parking Lots
Before the Judicial Proceedings Committee on March 4th, 2025

Dear Chair Smith, Vice Chair Waldstreicher, and members of the Committee,

Senate Bill 883 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 have SB 883 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 the Transportation Article of the Maryland Annotated Code, Title 21, Subtitle 10A, which governs the towing or removal of vehicles from parking lots.

When you read Title 21, Subtitle 10A of the Transportation Article – specifically section 21-10A-05 (Delivery to Storage Facility; Repossession by Owner; Before or After Towing; Payment) – and see how the various subcomponents of this subtitle work together, it is clear that they operate so that while the towing company must provide the 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)).

My research 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.

I also would like to note that it was brought to my attention that the legislation was not entirely clear regarding whether the lien could be attached to any personal property in a vehicle. To address this, I am offering a sponsor amendment to clarify that the lien does not apply to any personal items that are not attached to the motor vehicle subject to the lien. The amendment also clarifies that the owner shall have the opportunity to retrieve any property from the vehicle.

Thank you for your consideration of Senate Bill 883 and I ask that the committee issue a favorable report with the sponsor amendment.

Respectfully,

Senator Mary-Dulany James

Attachment B (Cade v. Montgomery County).pdf
Uploaded by: Mary-Dulany James
Position: FAV

No. 1161, September Term, 1989
Court of Special Appeals of Maryland

Cade v. Montgomery County

83 Md. App. 419 (Md. Ct. Spec. App. 1990) · 575 A.2d 744
Decided Aug 30, 1990

No. 1161, September Term, 1989.

June 27, 1990. Certiorari Denied August 30, 1990.

Appeal from the Circuit Court, Montgomery
420 County, William M. Cave, J. *420

William C. Brennan, Jr. (Knight, Manzi, Brennan, Ostrom Ham, P.A., on the brief), Upper Marlboro,
421 for appellants. *421

Patricia P. Hines, Asst. County Atty. (Clyde H. Sorrell, County Atty., and Linda D. Berk, Sr. Asst. County Atty., on the brief), Rockville, for appellees.

Argued before MOYLAN, GARRITY and WENNER, JJ.

WENNER, Judge.

Upon this appeal and cross-appeal from the Circuit Court for Montgomery County, we are asked to consider the validity of a comprehensive local ordinance regulating the towing of motor vehicles from private property without the consent
422 of the vehicles' owners. We shall reverse the judgment of the circuit court which declared the ordinance unconstitutional in its entirety. In so doing we shall address, although not necessarily in the order presented, the following arguments:

I. A local ordinance which requires a towing service to accept as payment for towing and storage fees personal checks or credit cards in lieu of cash violates the prohibition against States making anything but gold and silver coins tender in payment of debts;

II. A possessory lien is created in favor of the towing service until the vehicle owner pays the towing and storage fees;

III. A vehicle owner who parks without permission on private property that is properly posted with signs warning that trespassing vehicles will be towed, and whose vehicle is towed at the direction of the property owner, is liable for the towing and storage fees;

IV. Towing services do not have standing to assert that the rights of private property owners are improperly infringed by the ordinance;

*422

V. The ordinance is a proper exercise of the police power.[1]

[1] Issues I and II are presented by appellants; issues III, IV and V are presented on cross-appeal by appellee.

Appellants, G G Towing, et al., are a number of towing companies. They sought a declaration that the ordinance, Bill No. 16-87, was unconstitutional. In the meantime, appellants were

successful in enjoining the appellee, Montgomery County, Maryland, from enforcing the ordinance until resolution of the merits of their complaint.[2] The matter was heard by the circuit court upon cross motions for summary judgment. After a hearing, the circuit court declared that the ordinance was unconstitutional as exceeding the county's police power.[3] We disagree.

[2] The injunction was later modified to permit appellee to enforce the provisions relating to posting signs, requiring the towing companies to notify the local police department of trespass tows, and precluding the towing of vehicles with valid handicapped identification. 30C-4(b), 30C-5 and 30C-6.

[3] The circuit court's declaration was based upon grounds different from those advanced by the appellants. Appellants contended below that the ordinance violated Article I, § 10 of the United States Constitution by impairing the obligation of contracts and establishing a form of legal tender other than gold and silver coin. Appellants' claim that the ordinance violated anti-trust laws was apparently abandoned at the hearing.

Montgomery County has adopted a home rule charter under Article XI-A of the Maryland Constitution. Consequently, Article 25A, § 5(S) of the Annotated Code of Maryland confers upon Montgomery County the authority to "pass all ordinances, resolutions, or bylaws not inconsistent with the provisions of this article or the laws of the State, as may be proper in executing and enforcing any of the powers enumerated in this section or elsewhere in this article, as well as such ordinances as may be deemed expedient in maintaining the peace, good government, health and welfare of the county." *See also Montgomery Citizens League v. Greenhalgh,* 253 Md. 151, 159-160, 252 A.2d 242 (1969). *See also* Mont.Co.Code § 2-12 (1984) (conferring upon the
423 Montgomery County Council "full *423 power and authority to enact ordinances for the county as it may deem necessary for the peace, good government, safety or welfare of the county"). The Court of Appeals has held that this grant of power to legislate for the general welfare of the county is to be afforded a broad reading. *Id*. at 161, 252 A.2d 242. The Court has also said that it is enough that a legislative act tends to correct some local evil or promote some local interest, and that the act is reasonably and substantially related to its goal or purpose. *Steuart Petroleum Co. v. Board of County Commissioners,* 276 Md. 435, 446-447, 347 A.2d 854 (1975). For purposes of illumination, we summarize the legislation and its objective.

The catalyst behind Montgomery County Council Bill No. 16-87, to be codified in the Montgomery County Code as Chapter 30C, Motor Vehicle Towing From Private Property, was citizen complaints of "excessive rates, little or no notice of which areas are off limits to parking, and difficulty in redeeming towed vehicles." *See* Legislative Request Report, Bill No. 16-87. The purpose of the Bill, then, was to "clarify the respective rights of landowners, towing services, and motorists." *Id*.

The scope of Bill No. 16-87 is limited to the towing of motor vehicles from private property without the consent of the owners of the vehicles. 30C-1(b). Generally, vehicles with valid handicapped registration plates or valid disabled person's parking permit may not be towed from private property without the consent of the vehicle's owner.[4] 30C-6.

[4] A vehicle with a valid handicap registration plate or a valid disabled person's parking permit conspicuously displayed may be towed without the owner's consent, however, if the tow is expressly authorized by a police officer at the request of a property owner, or the vehicle is blocking a clearly marked fire lane or access to another vehicle, the property or a building.

The rates which a towing company may charge are limited to those maximum rates set by the county executive. 30C-2(a). Every trespass towing company must file with the office of consumer
424 affairs a schedule of its towing and *424 storage rates, and is precluded from charging fees that exceed that schedule. 30C-3(c) and (d). Each trespass towing company must enter into a written agreement with every private property owner that authorizes a towing company to tow trespassing vehicles. 30C-3(f).

Bill No. 16-87 imposes certain requirements on owners of private property. Prior to having a motor vehicle towed without the consent of the vehicle's owner, the property owner must post a sufficient number of signs notifying the public of the parking restrictions. 30C-4(b)(1). Signs must be posted 24 hours prior to towing a trespassing vehicle. *Id*. It is sufficient if at least one sign is clearly visible from each parking area and each vehicle entrance to the property. 30C-4(b)(2). In the alternative, private parking lots having more than 100 spaces may post in a conspicuous place, readable from all affected spaces, at least one sign for every 75 spaces. *Id*. Each sign must indicate the area and time within which the restrictions will be enforced and give notice that any vehicles violating the restrictions will be towed at the owner's expense. 30C-4(b)(3). Signs must include the telephone numbers of each towing company hired to tow and, in the alternative, a telephone number at which the towing company may be reached at all hours. *Id*. Signs must be clearly legible and unobstructed. *Id*. Alternatively, owners of residential property, such as condominiums, may have a trespassing vehicle towed within not less than 48 hours after having attached a written notice to the vehicle in a conspicuous place notifying the owner of the violation. *Id*. Public notice provisions are inapplicable to towing from the yard or driveway of single family dwellings. 30C-1(b)(3)(B). Private property owners or their agent must expressly authorize the tow. 30C-4(c).

Bill No. 16-87 also prescribes towing and redemption procedures. The towing company must tow each trespassing vehicle to the nearest storage site available to the company, but not more than 12 miles from the origin of the tow. 30C-8(a)(1). The towing company must keep the towed vehicle
425 and its contents secure at all times. *425 30C-8(a)(4). The towing company must notify the appropriate county or municipal police department of each trespass tow, 30C-5(a); the police must be contacted again if a vehicle remains in the company's possession for more than 72 hours. 30C-5(d). The towing company is required to remain open at least 2 hours after completion of the last tow. 30C-8(b).

The towing company is required to accept in lieu of cash payment either a major credit card or a personal check. 30C-8(c)(2)(A).[5] In the event a vehicle owner later withholds payment for a credit card transaction or stops payment on a check, the vehicle owner is liable to the towing company for twice the amount validly charged. 30C-8(c)(5) and (6). If, prior to a vehicle's removal from private property but after the vehicle has been attached to the tow truck, the vehicle owner returns to the tow site, the towing company must release the vehicle to the owner upon payment by the owner of a release fee. 30C-7(a). Such release fee cannot be greater than one-half the fixed rate for towing the vehicle to the nearest storage site. *Id*. With this background firmly in mind, we now turn to the issues at hand.

[5] The towing company is required to accept the two most widely used major credit cards as determined by the Office of Consumer Affairs.

Discussion

At the outset, we observe that an ordinance, like a statute, is presumed to be valid. *R.S. Construction Co. v. City of Baltimore,* 269 Md. 704, 706, 309 A.2d 629 (1973). A legislative enactment is within the permissible bounds of the police power if it is reasonably and substantially related to the public

health, morals, safety and welfare of the people. *Steuart, supra,* 276 Md. at 446, 347 A.2d 854. Beyond that, of course, the act must not infringe upon any constitutional guarantees. *Maryland Board of Pharmacy v. Sav-A-Lot, Inc.,* 270 Md. 103, 106-107, 311 A.2d 242 (1973). In any event,
426 the burden of demonstrating the *426 invalidity of a legislative enactment rests with the party attacking its constitutionality. *Salisbury Beauty Schools v. State Board of Cosmetologists,* 268 Md. 32, 48, 300 A.2d 367 (1973).

A.

The circuit court found that Bill No. 16-87 was an improper exercise of the police power for essentially two reasons.

1.

The circuit court determined that the provisions of the Bill relating to the posting of signs and the exception prohibiting generally the towing of vehicles with valid handicapped identifications were too stringent and interfered with the rights of private property owners to remove trespassing vehicles from their property. Initially, we shall reject appellee's contention that appellants do not have standing to assert that the rights of private property owners are improperly infringed by the ordinance. It is true that this issue was not raised below. *See supra,* n. 3. As we see it, however, the circuit court was not precluded from granting declaratory relief on grounds entirely different from those on which relief was sought. *See Mayor and Town Council of New Market v. Armstrong,* 42 Md. App. 227, 233, 400 A.2d 425 (1979). And, appellee cites no authority for the proposition that the circuit court improperly decided the issue. Moreover, we think it appropriate on appeal to address the issue, as it was expressly decided by the circuit court. Md. Rule 8-131(a).

Having crossed that hurdle, we need only briefly consider appellee's contention on cross-appeal that the Bill does not improperly interfere with the rights of private property owners. There is no evidence whatsoever in the record before us that the provisions of the Bill requiring signs to be posted and prohibiting generally the towing of vehicles with valid handicapped identification are unduly restrictive of the rights of private property owners. In fact, not one private property owner
427 participated in this *427 litigation. Consequently, in view of the strong presumption as to the validity of the Bill, we hold that there was insufficient evidence to sustain, on these grounds, the circuit court's conclusion to the contrary. *Salisbury Beauty Schools, supra,* 268 Md. at 48, 300 A.2d 367.

2.

Bill No. 16-87 does not expressly create a possessory lien in favor of the towing company. In other words, the Bill does not give a towing company the right to retain a motor vehicle until the vehicle owner pays the towing and storage fees. 30C-8(c)(8). From that, the circuit court concluded that "since no possessory lien exists, there was no statutory or common law requirement that the owner has to pay the tow truck operation . . . the trespassing vehicle owner isn't required to pay anything for the return of his vehicle and is entitled to have it returned upon demand."

Appellants contend that, under the circumstances, a common law possessory lien is created in favor of the towing company until the vehicle owner pays the towing and storage fees. However that may be, appellants repeatedly conceded at the hearing in the circuit court that the Bill created no possessory lien by virtue of the trespassing vehicles having been towed and stored. Consequently, whether the circuit court properly decided that no possessory lien was created by Bill No. 16-87 has not been preserved for review. *Pitts v. Mahan,* 39 Md. App. 95, 96-97, 382 A.2d 1092 (1978) (whether trial court erred in finding plaintiff guilty of contributory negligence as a

matter of law not preserved for review where plaintiff's counsel conceded at trial that plaintiff was contributorially negligent).

Beyond that, the parties agree on appeal that a vehicle owner who parks without permission on private property that is properly posted with signs warning that trespassing vehicles will be towed, and whose vehicle is towed at the direction of the
428 property owner, is liable to the *428 towing company for towing and storage fees. We agree and hold that, under these circumstances, there is an obligation to pay.

A promise to pay may be manifested by conduct or by implication from surrounding circumstances. Restatement (Second) of Contracts § 4 Comment a (1981). *See also* 1 Corbin, Contracts §§ 18-19 (1963). As we see it, the obligation to pay arises because a vehicle owner, who parks in an area where signs prohibit the parking of unauthorized vehicles and such signs indicate that vehicles will be towed at the expense of the vehicle's owner, impliedly agrees to pay reasonable towing and storage charges. *See* 73 Op. Atty. Gen. ___ (1988) [Opinion No. 88-055 (December 19, 1988)]. In *Capson v. Superior Court of Marcipoa,* 139 Ariz. 113, 677 P.2d 276 (1984), a towing company was charged with theft after it failed to return to the owner a vehicle which had been involuntarily towed. While the Court found that no possessory lien existed, it indicated that there may be an implied agreement by the vehicle owner to pay for towing where the signs posted on the parking lot specified that a $75 towing fee would be assessed if the vehicle was towed. *Id*. 677 P.2d at 278. Under Bill No. 16-87, posted signs must indicate, among other things, that any vehicles that are parked in violation of the restrictions may be towed at the expense of the vehicle owner. 30C-4(b)(3)(B). We hold that the provisions of Bill No. 16-87 regulating the posting of signs are sufficient to place vehicle owners on notice that if they park in designated no parking areas they are liable for reasonable towing and storage fees.[6]

6 The obligation to pay may also arise by statute or ordinance. *See T.R. Ltd. v. Lee,* 55 Md. App. 629, 465 A.2d 1186 (1983), *cert. denied,* 298 Md. 395, 470 A.2d 353 (1984). We express no opinion as to whether Bill No. 16-87, read in its entirety, imposes such liability.

Our holding is not inconsistent with Md.Transp.Code Ann. § 26-301(b)(3) (1987 Supp. 1989), which empowers political subdivisions
429 generally to regulate the towing of vehicles *429 from privately owned parking lots. Moreover, statutes in other jurisdictions expressly provide that a vehicle owner who without authorization parks on private property in defiance of posted parking restrictions 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. *See* Ill. Rev. Stat. Ch. 82, para. 47a (1989); Ohio Rev. Code Ann. § 4513.60 (Baldwin 1989).

The actions of a municipality in the exercise of its police power will ordinarily not be interfered with unless they are arbitrary or patently unreasonable. *Salisbury Beauty Schools, supra,* 268 Md. at 48, 300 A.2d 367. In *Crane Towing, Inc. v. Gorton,* 89 Wn.2d 161, 570 P.2d 428 (1977) the Supreme Court of Washington upheld as a proper exercise of the State's police power a statute that is markedly similar to Bill No. 16-87. Like Bill No. 16-87, the statute in *Crane* requires private property owners to post signs that contain warnings that unauthorized vehicles will be towed as well as information to assist vehicle owners in recovering their vehicles. 570 P.2d at 430. In *Crane,* the statute also imposes restrictions on the towing companies. For instance, towing companies are required to be available on a 24-hour basis to facilitate vehicle recovery, and must give notice of each towing to local law enforcement agencies. *Id*. at 431. And, not unlike Bill No. 16-87, towing companies are required to accept as payment for towing and storage fees either cash, personal checks drawn on local banks,

or valid and appropriate credit cards. *Id*. at 432, n. 6. The statute also provides for damages twice the amount of towing and storage fees in the event that the vehicle owner later attempts to defraud the towing company. *Id*. We find persuasive the Court's reasoning in *Crane* as to why the legislation was a valid exercise of the State's general police power:

> Modern society's dependence on the automobile as the primary mode of travel is well known in this time of national discussion on energy conservation. Traveling hundreds of miles from one's
> 430 home and back in one day, *430 whether for business or pleasure, is surely not an uncommon experience. It cannot be doubted that the unexpected loss of the use of one's vehicle directly affects the safety and welfare of vehicle operators and owners. A person may be stranded hundreds of miles from home with no alternative mode of return travel and with no place to stay until the vehicle can be recovered. Similarly, the loss of the use of one's vehicle may substantially affect one's employment. Legislation which tends to assist members of the public from involuntarily losing the use of their vehicles and which tends to expedite recovery of their vehicles once they have been removed fairly and clearly promotes the safety and welfare of the public.

Id. at 433-434. Accordingly, we hold that Bill No. 16-87 bears a reasonable and substantial relation to the safety and welfare of the people and to the goals of the Montgomery County Council.

B.

That the enactment of Bill No. 16-87 is a proper exercise by the county of the police power does not conclude our inquiry, however. Appellants contend that the Bill, by requiring towing companies to accept as payment for towing and storage charges personal checks or credit cards in lieu of cash, violates Article I, § 10 of the United States Constitution:

> No State shall . . . make anything but gold and silver coin a tender in payment of debts. . . .

We see it somewhat differently.

Section 30C-8(c), entitled "Payment and Promise to Pay," requires a towing company to accept as full payment of towing and storage charges either a credit card or a personal check. 30C-8(c)(2)(A). That section does not create a new form of legal tender nor regulate its value. Nor does it deprive the towing company of its right to collect its debt in money. In *Porter v. City of Atlanta,* 259 Ga. 526, 384 S.E.2d 631 (1989), *cert. denied,* ___ U.S. ___, 110 S.Ct. 1297, 108 L.Ed.2d 474 (1990), the
431 Supreme Court of Georgia *431 considered whether a municipal ordinance requiring wrecker companies to accept checks and credit cards attempts to legislate a change in legal tender. In rejecting the argument, the Court said,

> [t]he regulation does not require appellees to accept something other than legal tender to discharge a debt. The debt is discharged when the appellants receive payment in legal tender through a third party institution.

384 S.E.2d at 634. We hold that the circuit court's determination that the provision at issue represents merely an alternative manner of "cash" payment, rather than establishing a substitute form of legal tender, was correct.

Furthermore, the provisions requiring a towing company to accept checks or credit cards has a reasonable relation to facilitating the recovery of vehicles by their owners. Moreover, in the absence of a possessory lien to secure payment of towing and storage charges, those provisions are obviously favorable to the towing companies. In any event, a towing company that has been defrauded may find solace in the provisions

protecting towing companies against an owner who later withholds payment. *See* 30C-8(c)(5) and (6).

Appellants' reliance on *Capital Grain Feed Co. v. Federal Reserve Bank of Atlanta,* 3 F.2d 614 (N.D.Ga. 1925) is misplaced. That case held unconstitutional a state law permitting banks to pay its checks by another check. This was, according to the Court, a plain effort to make a debt dischargeable by something other than gold or silver coin or other medium fixed by constitutional federal authority. *Id*. at 616. Yet, the Court said that the case would have been different had the statute made the check to be given by the bank in payment of a debt only tentative and to be payment when itself was paid by lawful money. *Id*. This latter circumstance is not unlike the present case. Here, the tender of personal checks or credit cards are characterized as promises to pay. *See* 30C-8(c).

In sum, we hold that the circuit court erred in holding that Bill No. 16-87 was an unconstitutional exercise of the police power by
432 Montgomery County. *432

JUDGMENT REVERSED.

COSTS TO BE PAID BY THE APPELLANTS.

Attachment C (T.R. Ltd. v. Lee).pdf
Uploaded by: Mary-Dulany James
Position: FAV

No. 1760, September Term, 1982
Court of Special Appeals of Maryland

T.R. Ltd. v. Lee

55 Md. App. 629 (Md. Ct. Spec. App. 1983) · 465 A.2d 1186
Decided Oct 6, 1983

No. 1760, September Term, 1982.

Decided October 6, 1983.

MOTOR VEHICLES — *Impounding Authority — Prince George's County Police Officers Are Authorized To Impound, Have Towed And Stored At Owner's Cost Unattended Tractor-Trailer Which Had Overturned In Cloverleaf Of Interstate Highway's Access Ramp — P.G. County Code, § 26-160*. pp. 631-632

MOTOR VEHICLES — *Impounding Authority — Maryland State Police, Under Md. Ann. Code, Art. 88B, § 4, Have The Same Common Law And Statutory Authority In Prince George's County As That County's Police Officers, Including The Power To Impound, Have Towed And Stored At Owner's Cost Unattended Vehicle Which Had Overturned In Interstate Highway's Cloverleaf*. Owner of tractor-trailer incurred debt in amount of reasonable towing and storage charges when state police officer ordered impounding, towing and storage of the overturned vehicle, which the officer determined was unattended and impeding safe flow of traffic. pp. 632-634

LIENS — MOTOR VEHICLES — *Absent Consent Of Vehicle Owner, Towing Company Did Not Acquire Common Law Or Statutory Lien On Vehicle For Towing And Storage Expenses, Where Vehicle Had Been Impounded By Police Officer*. Towing company was obliged to return vehicle upon owner's demand and was not permitted to charge for storage beyond date of demand. pp. 634-636

ATTACHMENTS — *Award Of Storage Costs — Trial Court Has Discretion To Award Reasonable Storage Charges To Third Party Which Stored Personal Property Attached By Sheriff But Left In Control Of The Third Party*. p. 637

F.F.L.

Appeal from the Circuit Court for Prince George's County (McCULLOUGH, J.).

T.R. Ltd. filed an action against Ted Lee to recover charges for uprighting, towing and storing a tractor-trailer which had been impounded by the Maryland State Police following a traffic accident. T.R. Ltd. also caused the vehicle to be seized upon a writ of attachment on original process. The trial court entered judgment in favor of Ted Lee and T.R. Ltd. noted this appeal from that adverse
630 ruling. *630

Judgment reversed and remanded for entry of a judgment not inconsistent with this opinion. Costs to be paid by appellee.–

– Note: *Certiorari* denied, Court of Appeals of Maryland, February 1, 1984.

The cause was argued before MOYLAN, ADKINS and BLOOM, JJ.

Frank J. Emig, with whom were *Dunn Emig, P.A.,* on the brief, for appellant.

Gary Gasparovic, with whom was *John D. Hungerford* on the brief, for appellee.

BLOOM, J., delivered the opinion of the Court.

On October 29, 1980, a stolen tractor-trailer carrying 35 pound containers of egg yolks ran off a ramp connecting two interstate highways located in Prince George's County, in which it was traveling, and overturned within the cloverleaf surrounded by the ramp. A Maryland State Police officer, observing that curious passersby were causing further accidents, directed the appellant, T.R. Ltd., trading as Raley's Emergency Road Service, to unload, right, tow and store the vehicle. Robert Oaks, a trucking concern which leased the truck from appellee, was immediately notified of the towing and storage; but Ted Lee, appellee, owner and lessor, may not have been apprised until as late as November 25, 1980. On that date, agents of Ted Lee made a demand for the return of the tractor-trailer. Raley's refused such demand until all assessed towing and storage charges were paid and refused the request of Ted Lee's agents for a copy of the bill until the bill, orally estimated at $4,440.00 at that point, was paid.

Appellee, unwilling to pay what was thought to be unreasonable towing and storage charges, repeatedly demanded the return of the vehicle and, on March 27, 1981, filed the first of two replevin actions. Appellant filed suit in the Circuit Court for Prince George's County, causing the tractor-trailer to be seized upon a writ of attachment on original process. Appellee subsequently
631 voluntarily *631 dismissed his replevin action and, on July 16, 1981, posted a bond to dissolve the writ of attachment and to cover the storage and towing claim.

Notwithstanding the posting of the bond,
632 appellant, of the opinion that it had acquired a lien on the tractor-trailer either by virtue of Md. Com. Law Code Ann. § 7-307 or by virtue of Section 26-160 of the Prince George's County Code, refused to release possession to the owner until the amount of the lien was tendered.[1] The trial court, while opining that any recovery for storage charges should be limited to the reasonable rate of $15 per day through July 16, nevertheless concluded that there was no legal basis for appellant to recover for unloading, righting, towing and storing the vehicle. We disagree.

[1] In fact, it was not until October 12, 1981, after demands were made by Ford Motor Credit Company, a lienholder, that the tractor was released and November 25, 1981, after a writ of replevin was issued, that the trailer was released.

While there appears to be no statewide provision, Section 26-160 of the Prince George's County Code, in conjunction with Md. Ann. Code Art. 88B, § 4, provides the following statutory authorization for appellant to recover for its towing and storage services:

> Sec. 26-160. Removal and impounding of unattended vehicles.
>
> If any motor vehicle is left unattended upon any public road, highway, alley or parking lot of the County in violation of any law, ordinance or order regarding the parking of motor vehicles, or if any motor vehicle is left unattended upon any road, highway, alley or parking lot for an unreasonable length of time so as to impede the movement of traffic or constitute a threat to public safety, the County Police Department shall have authority to impound and remove such motor vehicle and charge the owner thereof the costs of towing, storage and any other charges incurred in connection therewith.

*632

There having been no violation of any law, ordinance or order regarding the parking of motor vehicles, this case clearly falls within the second prong, that is, a motor vehicle left unattended for an unreasonable length of time and impeding traffic flow or constituting a threat to public safety.

The vehicle owner argues here, as he did successfully below, that this provision is inapplicable for four reasons:

1. The vehicle was not left unattended;

2. The vehicle was not left on a public road, highway, alley or parking lot *of the County*.

3. The vehicle was not left for an unreasonable length of time before it was ordered towed; and

4. The authority to tow and impose costs on the owner does not extend to state police officers.

With respect to the first argument, there can be no question that a stolen tractor-trailer whose driver has been or is about to be taken to a hospital after being involved in an accident is "unattended" for the purpose of § 26-160. The driver was not capable, physically or legally, of driving the tractor-trailer away himself. The true owners were not present or known. The tractor-trailer was unattended in every sense of the word. As to the length of time the "vehicle" so remained unattended, we think that in proper circumstances, such as the instant case, an "unreasonable" period of time might be very short indeed.

As for the argument that the power conferred by § 26-160 is limited to county officers, Md. Ann. Code Art. 88B, § 4, is dispositive:

> § 4. Powers of police employees.
>
> (a) Generally. — The Superintendent, the deputy superintendent, and employees designated by the Superintendent as police employees shall have throughout the State the same powers, privileges, immunities, and defenses as sheriffs, constables, police officers, and other peace officers possessed at common law *and may now or hereafter exercise* 633 *633 within their respective jurisdictions. Any warrant of arrest may be executed by a police employee in any part of the State without further endorsement. (emphasis supplied).

Appellee misconstrues the statutory language which, while not a model of legislative draftmanship, is clearly intended to confer upon state police officers not only those powers possessed by county police officers at common law but also any additional powers subsequently conferred upon such officers by statutes and ordinances.

Lastly, appellee asserts that because the vehicle was towed from the cloverleaf encompassed by two interstate highways it was not towed from a "public road, highway, alley or parking lot of the County." Assuming even that a highway "of the County" means a highway belonging to the county rather than one located in the county, the words "of the County" do not appear in the applicable second prong of § 26-160. We cannot presume that the omission was an oversight, especially in light of what we deem to be at least one logical reason for the distinction. It might well be that with respect to the first circumstance of a vehicle left unattended upon a County highway in violation of a parking law or regulation § 26-160 is protective of county property rights, whereas with respect to the second circumstance of an unattended vehicle impeding traffic, the ordinance is concerned with public safety. In any event, the distinction is there; and, for purposes of establishing a debt for a vehicle towed without the owner's consent, it is not necessary that the vehicle be towed from a roadway "of the County."

We conclude that a debt in the amount of reasonable towing and storage charges was incurred by appellee, under authority of § 26-160 of the Prince George's County Code and Md. Ann. Code Art. 88B, § 4, when the state police officer, upon determining that an unattended motor vehicle[2] impeded the safe flow of traffic, 634 impounded the vehicle *634 by ordering appellant to remove and store it without first obtaining the consent of the owner.

2 One issue not addressed by either party is the applicability of § 26-160 to the trailer portion or the tractor-trailer in light of the definition, in both the Commercial Law and Transportation Articles of the Maryland Code, of a "motor vehicle" as a vehicle which is "self-propelled."

The Court of Appeals, in Patapsco Trailer v. Eastern Freight, 271 Md. 558, 563 (1974), *in dictum,* stated that, for the purposes of a statutory garageman's lien on motor vehicles, a trailer not attached to a tractor was not subject to such lien. We do not think, however, that the intent of § 26-160 would be much served by such a restrictive definition of the word "motor vehicle" as there used. In any event, the question, not having been argued or briefed, is not properly before us.

Having determined that by virtue of § 26-160 appellee was indebted for towing and storage charges, we now turn to the issue of the extent of that indebtedness. The trial court made factual determinations as to reasonable charges for unloading, righting and towing the vehicle as well as reasonable per diem charges for storage. We see no reason to disturb those findings, but it is necessary to determine the length of time for which appellant is entitled to demand storage charges.

In the absence of some common law or statutory lien authorizing it to retain possession of the property until its charges were paid, appellant was obliged to restore the property to its owner when demand was made for its return on November 25, 1980, and there was no right to charge for storage of the property beyond that date.

It is clear that appellant had no common law possessory lien, which has been "defined as the right `in one man to retain that which is in his possession belonging to another till certain demands of him the person in possession are satisfied.'" Brown, *The Law of Personal Property,* § 107 (2nd ed. 1955). (footnote omitted). The basis of such a lien is an agreement, express or implied, between the parties. "Possessory liens are fundamentally consensual in nature and arise from some agreement, either express or implied, between the owner of goods and his bailee who renders some service with respect to those goods." *Younger v. Plunkett,* 395 F. Supp. 702, 707 (E.D. Pa. 1975). In *Younger,* plaintiffs' vehicles had been illegally parked and consequently towed away at the direction of the police. Defendant towing companies asserted the right to possessory liens on
635 the vehicles *635 in order to secure payment of the towing charges. The court rejected defendants' argument.

> No exception to the assent requirement in the creation of possessory liens is recognized at common law under circumstances alleged in the present case, and no such exception has been construed as arising by implication from the authority of a police officer to remove a disabled automobile from a public way or the right of a property owner to remove a vehicle left on his property without his consent.

Id. at 711. (footnote omitted).

See also, Wilkinson v. Townsend, 96 Ga. App. 179, 99 S.E.2d 539 (1957); *Stephens v. Millirons Garage, Inc.,* 109 Ga. App. 832, 137 S.E.2d 563 (1964); *Lewis v. Best-By-Test Garage,* 200 Iowa 1051, 205 N.W. 983 (1925); *Burns Motor Co. v. Briggs,* 27 Ohio App. 80, 160 N.E. 728 (1928); *Rickenberg v. Capitol Garage,* 68 Utah 30, 249 P. 121 (1926).

In the case at bar, no such agreement, express, or implied, existed. The debt for towing and storage charges arose not out of contract but by operation of law. Thus, no common law possessory lien existed.

Certainly, § 26-160 did not create or purport to create any lien as security for debts arising thereunder. There is no mention of a lien, and

none can be implied from the mere establishment of a monetary obligation on the owner of a vehicle. Consent being an important element of a common law lien, any statutory attempt to create such lien without the element of consent would have to be strictly construed as in derogation of the common law. *Patapsco Trailer v. Eastern Freight, supra* note 2, at 564; *Wilkinson v. Townsend, supra,* 99 S.E.2d at 540, 541. If such a remedy is to be imposed, it is "a matter for ultimate correction by the legislature rather than by the judiciary." *Younger v. Plunkett, supra,* at 715.

We note that Title 16 of Md. Com. Law Code Ann. (1975) does create various statutory liens on personal property. Under § 16-202, any person
636 who, with the consent of the *636 owner, has custody of a motor vehicle and who, at the request of the owner, provides a service to or materials for the motor vehicle has a lien on the vehicle for any charges incurred for repairs, rebuilding, storage, tires, parts or accessories. "Owner" is defined as including "a person lawfully in possession"; "person" includes "the State, any county, municipal corporation or other political subdivision of the State or any of its units." § 16-101.

The provision in § 26-160 of the Prince George's County Code for removal of unattended vehicles authorizes the police officer to "impound" and remove the vehicle. Appellee's tractor-trailer was impounded when the trooper ordered appellant to tow it away. But "impound" means merely to take into custody, and "custody is not the same as "possession," which implies proprietary rights in addition to custody. *Black's Law Dictionary* 347, 681, 1047 (5th ed. 1979); *Ballentine's Law Dictionary* 300, 593, 964-65 (3 ed. 1969); *see also,* Brown, *supra,* Special Note on Possession; Holmes, *The Common Law* 206-46 (1881). The trooper (or Prince George's County under whose authority he impounded appellee's property) had custody pursuant to impoundment but not the possession equivalent to ownership that is required to confer a mechanics' lien under Md. Com. Law Ann. Code § 16-202 (1975).

Appellant raises the possibility of a statutory carrier's lien. *See* Md. Com. Law Code Ann. § 7-307 (1975). It appears, however, that the tractor-trailer was not covered by a bill of lading, as is required to establish a carrier's lien. Bills submitted to the owner for towing and storage costs to date cannot, we think, be considered bills of lading; there is no evidence that the bills dated at least six weeks after the vehicle was towed purported to be an acknowledgement of receipt of the vehicle, a contract of carriage, or a document of title. *See Younger v. Plunkett, supra,* at 712-14.

Appellant's claim against appellee by virtue of § 26-160, therefore, is limited to the reasonable charges for unloading, righting and towing the tractor-trailer and storing it until November 25,
637 1980. *637

A question was raised as to the effect of actual promises allegedly made by appellee to appellant to pay "reasonable charges" made at some point in time after the services were performed. Appellant concedes that it would not be entitled to storage charges beyond November 25, 1980, on that theory; thus, in view of our decision on the obligation created by § 26-160, we need not address this question.

Since we shall remand this case to the Circuit Court, we should, perhaps, address the issue as to the effect of the writ of attachment and appellant's control of the property during the existence of that writ. When appellant caused a writ of attachment to be issued and the sheriff attached appellee's vehicle, he left it in the physical control of the appellant; and it was thereafter lawfully in the sheriff's custody and appellant's physical control on behalf of the sheriff until July 16, 1981, when the writ of attachment was dissolved by appellee's posting of a bond pursuant to Md. Rule G57.

Normally, storage charges incurred by the sheriff in conserving property which is under a writ of attachment are repayable out of the proceeds of sale. 43 Op. Att'y Gen. 290, 292 (1958); *Groh v. Kim,* 263 Md. 140, 145 (1971); 61 Op. Att'y Gen. 763, 768 (1976). Likewise, when the goods are in *custodia legis* but are in the physical control of a third party, the third party may recover storage charges. *Groh v. Kim, supra,* at 144-45. Thus, reasonable per diem storage charges from the date of the attachment to July 16, 1981, may be allowed as costs. Whether such costs should be awarded under the facts and circumstances of this case would be entirely within the sound discretion of the trial court.

Since the court below made factual findings as to what constituted reasonable charges for the unloading, righting and towing and a reasonable per diem charge for storage, we shall remand for
638 entry of a judgment in favor of appellant in *638 an appropriate amount consistent with those findings and this opinion.

Judgment reversed and remanded for entry of a judgment not inconsistent with this opinion.

Costs to be paid by appellee.

639 *639

Attachment D (OAG Opinion) (002).pdf
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Position: FAV

73 Md. Op. Atty. Gen. 349 (Md.A.G.), 1988 WL 482024

Office of the Attorney General

State of Maryland
Opinion No. 88-055
December 19, 1988

***1 VEHICLE LAWS—TOWING—FEES—LIENS—CIRCUMSTANCES UNDER WHICH VEHICLE OWNER MUST PAY TOWING AND STORAGE CHARGES**

The Honorable Albert R. Wynn
8700 Central Avenue—Suite 306
Landover, Maryland 20785

Dear Senator Wynn:
You have requested our opinion on whether a vehicle owner who parks on private property without permission is liable for the cost when the property owner has the vehicle towed away. In addition, you ask whether a tow truck operator who tows a vehicle at the request of a property owner may retain the vehicle until the vehicle owner pays the towing and storage fees.

For the reasons set forth below, we conclude as follows:

1. A vehicle owner who parks without permission on private property and whose vehicle is towed away at the direction of the property owner is liable for reasonable towing and storage costs if (i) a conspicuously posted sign on the property provides unambiguous notice to the vehicle owner that the owner bears the liability for those costs, or (ii) a statute or ordinance imposes liability on the vehicle owner.

2. A tow truck operator who, at the request of the property owner, tows and stores a vehicle parked without permission on private property may retain the vehicle until the vehicle owner pays reasonable towing and storage costs if (i) a conspicuously posted sign on the property provides unambiguous notice to the vehicle owner that an improperly parked vehicle will be subject to such a lien, or (ii) a statute or ordinance creates a lien in favor of the tow truck operator.

I

Liability For Towing And Storage Costs

A. Common Law

There are two types of implied contracts, one implied in fact and the other implied in law. Parties who manifest their agreement by conduct create a contract implied in fact. This contract is actually no different than one in which the parties manifest their agreement by words; the law views both modes of assent as express contracts. See 1 Corbin on Contracts § 18, at 41 (1963). A contract implied in law, however, commonly referred to as a "quasi-contract," is not a true contract, but rather is "the theory of recovery by which courts give a remedy similar to that historically available for breach of contract when courts find that justice requires such a remedy." 1 Corbin on Contracts § 19A, at 34-35 (1984 Supp.). A quasi-contract is imposed "[i]f the plaintiff reasonably expected to be paid, if the defendant reasonably expected to have to pay, or if society's reasonable expectations of security of person and property would be defeated by non-payment." Id.

In our view, these contract principles logically apply to a trespassing vehicle owner's liability for the cost of towing and storage. In Capson v. Superior Court, 139 Ariz. 113, 677 P.2d 276 (1984), a towing company was charged with theft for refusing to

release an automobile until the vehicle owner paid a $75 towing fee. The vehicle owner had parked in an area where signs prohibited parking and "indicated that violators' automobiles would be towed away and a $75 towing fee incurred." 677 P.2d at 277. When the owner attempted to retrieve his vehicle, the towing company, which had been employed by the property owner, refused to return the vehicle until the fee was paid.

***2** The towing company argued that there was an implied agreement by the vehicle owner to pay the $75 towing fee, because the no-parking signs made the cost clear. The court recognized that a contract in fact might exist since the driver parked in a designated no-parking area and was placed on notice of the financial consequence of his decision. 677 P.2d at 278.

Even if such an express contract were not found, we believe that a court would find an implied contract and impose the financial burden on a trespasser who parked in defiance of a prominently posted warning sign. "Society's reasonable expectation," in Corbin's phrase, is that the trespasser ought to bear the financial burden of rectifying the trespass. After all, a property owner has the right to have his property free from trespass. See Murrell v. Trio Towing Service, Inc., 294 So.2d 331, 332 (Fla.App.1974). [1]

B. Statutory Obligation

The obligation to pay may also be statutory. In T.R. Ltd. v. Lee, 55 Md.App. 629, 465 A.2d 1186 (1983), a police officer, acting pursuant to a county ordinance, directed a towing company to "unload, right, tow and store" an overturned tractor-trailer. 55 Md.App. 630. When the vehicle owner demanded that the towing company return the tractor-trailer, the company refused "until all assessed towing and storage charges were paid." Id.

The police had directed that the tractor-trailer be towed pursuant to § 26-160 of the Prince George's County Code, which provided that "the County Police Department shall have authority to impound and remove [an unattended motor vehicle] and charge the owner thereof the costs of towing, storage and any other charges incurred in connection therewith." The court held that "a debt in the amount of reasonable towing and storage charges was incurred" by the vehicle owner under the authority of § 26-160. 55 Md.App. at 633.

Although the ordinance did not apply to a request made by a private property owner, we have no doubt that the court's rationale would apply if the General Assembly or a local jurisdiction enacted a law that authorizes property owners to remove an illegally parked vehicle and imposes the financial burden on the vehicle owner. [2] Such a law would provide the basis for holding a vehicle owner liable for the cost of towing and storing a trespasser's vehicle. See, e.g., Chapter 30C of the Montgomery County Code.

II

Creation Of A Lien

A. Common Law

In T.R. Ltd., the Court of Special Appeals defined a common law lien as " 'the right "in one man to retain that which is in his possession belonging to another till certain demands of him [by] the person in possession are satisfied." ' " 55 Md.App. at 634 (quoting Brown, The Law of Personal Property § 107 (2d ed. 1955). [3] The basis of such a lien is an express or implied agreement between the owner of the goods and the person who renders some service with respect to those goods; thus, it must be consensual. Id. In T.R. Ltd., the police authorized the towing pursuant to a county ordinance. Because the vehicle owner had neither expressly nor impliedly consented to being towed, the court held that the towing company had no common law possessory lien since "[t]he debt ... arose not out of contract but by operation of law." 55 Md.App. at 635.

***3** Similarly, in Kunde v. Biddle, 41 Ill.App.3d 223, 353 N.E.2d 410, 415 (1976), the court rejected a towing company's claim that it had a right to retain a vehicle until its owner paid for towing and storage costs: "[T]he mere towing of an automobile from a private parking lot without the owner's or lawful possessor's consent does not create a lien against that automobile. An

automobile taken from a private parking lot without the lawful possessor's consent may not be withheld from him for his failure to pay the expense of the towing and storage." See also Younger v. Plunkett, 395 F.Supp. 702, 707-8 (E.D.Pa.1975); Murrell v. Trio Towing Service, 294 So.2d 331 (Fla.App.1974). The towing company must look to the property owner for payment. Murrell v. Trio Towing Service, 294 So.2d at 333 n. 3.

In all of these towing cases, the vehicle owners were not put on notice that a lien would be created if they parked improperly. Thus, they had not impliedly consented to the creation of a lien. In short, these cases suggest that a common law implied lien is not readily created. [4]

Yet T.R. Ltd. and other cases do recognize the possibility of a implied lien, presumably involving conduct by the vehicle owner from which consent to the lien's creation is to be inferred. See Re Dave Noake, 12 Bankr.Ct.Dec. (CRR) 815, 816 (Bankr.D.Vt.1984) (vehicle owner's failure to claim vehicle for two months after notice of towing is deemed consent to lien for storage charges). Cf. Association Financial Services Co. Inc. v. O'Dell, 417 A.2d 604, 606 (Pa.1980) ("nothing in the circumstances of this case suggests implied consent" by a vehicle owner to lien for garageman's expenses).

Hence, although we can find no case so holding, we conclude that a common law possessory lien in favor of a tow truck operator could arise by implication through posting of a sufficiently explicit sign plainly visible to all parkers. The sign would have to do more than notify trespassers that they will be liable for towing costs; it must also put them on notice that their improper parking will subject them to a lien for the payment of those costs. [5]

B. Statutory Lien

In T.R. Ltd., the Court of Special Appeals observed that: "Consent being an important element of a common law lien, any statutory attempt to create such a lien without the element of consent would have to be strictly construed as in derogation of the common law." 55 Md.App. at 635. The court further held that the Prince George's County ordinance authorizing the removal of an unattended motor vehicle and imposing a financial obligation on the vehicle owner "did not create or purport to create any lien as security for debts arising" under the law. Id. The court explained: "There is no mention of a lien, and none can be implied from the mere establishment of a monetary obligation on the owner of a vehicle." Id.

Applying these same strict requirements, the court found no lien to have been created by § 16-202(c)(2) of the Commercial Law Article, which provides as follows: "Any person who, with the consent of the owner, has custody of a motor vehicle and who, at the request of the owner, provides a service to or materials for the motor vehicle, has a lien on the vehicle for any charge incurred for ... [s]torage." The court held that, although the trooper had custody when he impounded the tractor-trailer, he did not have the "possession equivalent to ownership that is required to confer a mechanics' lien...." 55 Md.App. 636. [6]

***4** In sum, no State statute expressly creates a lien in favor of a towing company. Therefore, no statutory lien will be found unless a local ordinance creates it. [7]

III

Conclusion

In summary, it is our opinion that:

1. A vehicle owner who parks without permission on private property and whose vehicle is towed away at the direction of the property owner is liable for reasonable towing and storage costs if (i) a conspicuously posted sign on the property provides unambiguous notice to the vehicle owner that the owner bears the liability for those costs, or (ii) a statute or ordinance imposes liability on the vehicle owner.

2. A tow truck operator who, at the request of the property owner, tows and stores a vehicle parked without permission on private property may retain the vehicle until the vehicle owner pays reasonable towing and storage costs if (i) a conspiciously posted sign on the property provides unambiguous notice to the vehicle owner that an improperly parked vehicle will be subject to such a lien, or (ii) a statute or ordinance creates a lien in favor of the tow truck operator. [8]

Very truly yours,

J. Joseph Curran, Jr.
Attorney General
Sharon Krevor-Weisbaum
Staff Attorney
Jack Schwartz
Chief Counsel Opinions and Advice

Footnotes

1 In Fields v. Steyaert, 21 Ariz.App. 30, 515 P.2d 57, 61 (1974) (Stevens, J. dissenting in part and concurring in part), Judge Stevens viewed the towing company as a constructive bailee when at the request of the police it towed an illegally parked car. Judge Stevens applied the law of restitution to hold the vehicle owner liable for towing and storage costs since, "[a] person legally assuming custody over another's property for its preservation is entitled to compensation."

Like the law of contracts, a bailment relationship may be implied in fact or in law. 8 Am.Jur.2d Bailments § 62, at 798 (1980). When the law imposes a bailment, it is known as a constructive bailment. Unlike an implied contract, however, these principles may not necessarily impose liability on the owner. See Pollaro v. Borneman, 201 N.W. 525 (S.D.1924) (where there is no privity of contract between the property owner and bailee, the owner is not liable).

2 No State statute regulates private towing practices. Cf. § 26-306 of the Transportation Article (reimbursement for towing costs when government agency wrongfully authorizes towing). In the 1988 Session of the General Assembly, several bills were introduced for the purpose of regulating the towing of vehicles from private property. See, e.g., Senate Bill 534 and Senate Bill 570, House Bill 306, and House Bill 1466. None of these bills, however, was enacted.

3 At its inception, the common law lien was a very limited right in the debtor's goods. It "was limited to those circumstances where a lien creditor undertook to render his services upon the implied promise of the lien debtor to pay him." Younger v. Plunkett, 395 F.Supp. 702, 707 (E.D.Pa.1975). The lien creditor could not sell the debtor's goods to satisfy the lien nor did he have a right of present use and enjoyment. The lien only extended to the goods upon which he rendered his services, not to all of the debtor's property. 395 F.Supp. at 707 n. 6.

4 A towing company that retains a vehicle unlawfully would be liable for conversion. See Bender v. Bender, 57 Md.App. 593, 599, 471 A.2d 335 (1984).

5 In Capson v. Superior Court, the Arizona court did not find that the vehicle owner had impliedly consented to the creation of a lien even though a sign had "indicated that violators' automobiles would be towed away and a $75 towing fee incurred." 677 P.2d at 277.

6 The court also rejected the argument that the towing company had a statutory carrier's lien under § 7-307 of the Commercial Law Article.

7 Under Article 25A, § 5(S) of the Maryland Code, charter home rule counties have power to regulate the towing of vehicles from private property. 73 Opinions of the Attorney General (1988) [Opinion No. 88-023 (May 24, 1988)].

8 This opinion does not address the procedural due process issues that might arise from a statute governing towing. See DeFranks v. Mayor and City Council, 777 F.2d 185 (4th Cir.1985); Huemmer v. Mayor and City Council, 632 F.2d 371 (4th Cir.1980).

73 Md. Op. Atty. Gen. 349 (Md.A.G.), 1988 WL 482024

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Sponsor Testimony SB883 before the Environment and

Uploaded by: Mary-Dulany James

Position: FAV

MARY-DULANY JAMES
Legislative District 34
Harford County

Judicial Proceedings Committee
Executive Nominations Committee

Senate Chair
Joint Committee on
Children, Youth, and Families

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Testimony of Senator Mary-Dulany James
In Favor of SB 883 – Post-Towing Procedure Workgroup - Establishment
Before the House Environment and Transportation Committee

Dear Chair Korman, Vice Chair Boyce, and members of the Committee,

Senate Bill 883 as introduced created a statutory possessory lien on motor vehicles that are lawfully towed from private parking lots pursuant to a contract between a towing company and a lot owner.

Please see the Testimony of Senator James in favor of SB 883. (Attachment A)

After discussions with the Consumer Protection Division of the Office of Attorney General, an organization representing towing companies, lobbyists representing several different individual towing companies in several different jurisdictions of the State, and a representative of Montgomery County, it was agreed that a workgroup should be formed. The workgroup will be charged with consulting the stakeholders from around the State and identifying post-towing procedures that are currently in place and whether there are gaps in these procedures. The workgroup will then be tasked with formulating what measures, if any, need to be in place in order for there to be due process and a legally enforceable possessory or statutory lien as part of the post towing process.

As the original testimony to the bill as initially introduced, an ever growing number of states all across the country have codified the existence of a possessory lien on towed vehicles. The testimony also referenced several Maryland opinions that have held either that an implied agreement or implied lien between the vehicle owner and the towing company exists whenever the owner agrees to pay the towing and storage charges.

See eg. *Glenn Cade T/A G & G Towing, et al v. Montgomery County, Maryland 83 Md App. 419 575 A 20 744 (1990)* (Attachment B) and *T.R. Ltd. v. Lee, Maryland 55 Md. App. 629 465 A.2d 1186 (1983)* (Attachment C) that a statutory lien can be created under the proper circumstances, including an opportunity after the tow to be heard if claiming that the tow was unlawful.

Please see the 1988 Office of Attorney General Opinion (Attachment D).

Thank you for your consideration of Senate Bill 883, and I ask that the committee issue a favorable report.

Respectfully,

Senator Mary-Dulany James

SB0883-ET_MACo_OPP.pdf
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Position: UNF

Senate Bill 883

Post-Towing Procedure Workgroup - Establishment

MACo Position: **OPPOSE**

To: Environment and Transportation Committee

Date: April 1, 2025

From: Karrington Anderson

The Maryland Association of Counties (MACo) **OPPOSES** SB 883. Counties appreciate the changes made to SB 883 in the Senate, shifting the focus from creating a statutory possessory lien to forming a workgroup. However, counties do not believe a workgroup is necessary, as no clear problem has been identified that requires further study. The fundamental question of whether towing companies should have the authority to hold and sell vehicles for unpaid fees has already been considered and rejected multiple times by the General Assembly. Further, the composition and charge of the workgroup do not represent a fair direction for future evaluation of these issues.

Counties are grateful that the Judicial Proceedings Committee did not advance the bill in its original form and understand that some may see value in studying the issue further. However, MACo remains concerned that possessory liens on towed vehicles could undermine important consumer protections. Counties have concerns that the goal of this workgroup appears to be addressing the constitutional issues associated with establishing a statutory lien. Specifically, allowing a private company to hold someone's property until payment is made—without sufficient legal safeguards—could violate due process and fundamental private property rights. **However, the virtually assured outcome of this workgroup would be a shift in responsibility to local governments, requiring them to create an administrative hearing process for vehicle owners to challenge a tow. This would amount to an unfunded mandate and create an unwarranted fiscal impact on county governments.**

The General Assembly has previously declined to authorize possessory liens in 2010, 2011, and 2012, recognizing the potential harm they could cause. Additionally, current law already allows local governments to establish such liens if they find them necessary. This local authority should be preserved so that each local government can determine the best approach for their own communities. If the General Assembly chooses to move forward with a workgroup, counties respectfully suggest ensuring that local governments and consumer protection advocates have an appropriate voice in the discussion, which is not represented in its current makeup.

Additionally, any charge to the workgroup should not pre-suppose a certain outcome, which the current language does in effectively presuming a future path toward possessory liens. Any workgroup should be balanced and granted the ability to appropriately weigh whether such a policy is in the public interest. For these reasons, MACo urges an **UNFAVORABLE** report on SB 883.

SB 883 - MoCo_Elrich_OPP (GA 25) (House).pdf
Uploaded by: Marc Elrich
Position: UNF

OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

April 1, 2025

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

FROM: Marc Elrich
County Executive

RE: Senate Bill 883, *Post-Towing Procedure Workgroup – Establishment*

OPPOSE

I am writing to express strong opposition to Senate Bill 883, *Post-Towing Procedure Workgroup – Establishment*, because there is no reason to study whether to change State law governing possessory liens. Under current law, when a vehicle owner is not able to immediately pay towing and storage fees in a trespass tow situation, the towing company is required to release the vehicle and use normal legal means to collect a commercial debt. The company does not have authority to assert a possessory lien that would allow it to keep the car and later sell the car if the vehicle owner is not able to pay the debt. This is a fundamental consumer protection principle that is embedded in the State's towing law.

Most consumers pay towing charges immediately when they pick up vehicles. However, some consumers are not able to immediately pay the charges. They might not have wallets with them or have credit cards or cash. They might have limited income and cannot afford to pay at that time. In such situations, towing companies have authority to collect the payment later, in the same manner as every other private merchant when there is an unpaid bill. Towing companies should not be allowed to keep the car or ultimately to sell it.

Attempts to create a possessory lien have failed in four previous legislative sessions: (1) in 2010, House Bill 1120/Senate Bill 788 failed to pass; (2) in 2011, House Bill 356/Senate Bill 570 failed to pass; (3) in 2012, provisions in Senate Bill 401 that would have created a possessory lien were stricken from the bill before passage; and (4) in 2024, House Bill 514 was never acted on by the Environment and Transportation (E&T) Committee and Senate Bill 107 passed the Senate but was never acted on by the E&T Committee. During deliberations in the E&T Committee last year, the Office of the Attorney General issued a letter of advice that identified constitutional issues relating to Senate Bill 107. *See* **Attachment 1**.

The Montgomery County Office of Consumer Protection (OCP) has a decades long history of handling consumer complaints against companies who tow cars illegally and/or illegally assert a possessory lien by refusing to return a vehicle when the owner is not able to immediately pay towing and storage fees. The office regularly receives complaints about "predatory towing" practices which occur when companies make an unlawful tow and then refuse to return the car until the owner pays for the illegal towing costs. In such situations, towing companies are serving as "*Judge, Jury, and Jailer"* regarding the lawfulness of a tow.

Another major problem has been the widespread assertion of a possessory lien by Henry's Wrecker Service (Henry's) throughout the County for many years. Henry's is an out-of-State company that is owned by an out-of-State private equity firm. In Maryland, Henry's operates only in Montgomery County, where it towed at least 38,000 vehicles over four and a half years and asserted a possessory lien for all the tows in flagrant violation of current law. Henry's recently settled a class action suit regarding its illegal practice and agreed to return $3 million to consumers. For an example of signs that are still posted widely throughout the County and reflect Henry's assertion of a possessory lien for all tows, *see* **Attachment 2**.

As initially introduced, Senate Bill 883 was identical to Senate Bill 107 from 2024 as passed by the Senate and would have flipped current law on its head by creating a statutory possessory lien in Maryland. I am grateful that the Senate refused to pass a bill to create such a lien but do not believe there is any justification for creating a work group to study how to create one.

I am concerned that the effort to create a work group would be focused on how to place the responsibility for creating a constitutionally valid lien process onto counties, which would have significant legal and fiscal impacts. It is important to understand that counties already have authority under current law to create a possessory lien in their respective jurisdictions and should retain the right to decide what is best for their own communities.

I respectfully request that the E&T Committee give this bill an unfavorable report.

If the Committee decides to create a work group, the membership should be amended to better balance local government and consumer protection interests. The mission of the work group should also be amended as set out below to require that the work group conduct a more wholistic evaluation of key issues relating to post-towing practices on Maryland.

On page 3, strike lines 19 through 27 and substitute:

(f) (1) In consultation with interested stakeholders, the Work Group shall:

(i) Evaluate current law governing post–towing procedures relating to the towing or removal of motor vehicles from privately owned parking lots in accordance with Title 21, Subtitle 10A of the Transportation Article;

(ii) Evaluate current practices of the towing industry to identify the extent to which towing companies are violating current law by asserting a possessory lien over vehicles;

(iii) Evaluate existing civil and criminal penalties for violation of current law regarding possessory liens and identify whether there is a need for additional penalties;

(iv) Evaluate whether it is in the public interest to change current law to establish a possessory lien and, if so, evaluate what process must be used to address constitutional due process requirements, whether the process should be administered at the State or local level, and the potential fiscal impacts on the State or local governments for creating a legally valid possessory lien process.

(2) The Work Group shall make findings and recommendations regarding each issue listed in paragraph (1).

Thank you for your consideration.

cc: Members of the Environment and Transportation Committee

Attachment 1

Attachment 2

CANDACE MCLAREN LANHAM
Chief Deputy Attorney General

CAROLYN A. QUATTROCKI
Deputy Attorney General

LEONARD J. HOWIE III
Deputy Attorney General

CHRISTIAN E. BARRERA
Chief Operating Officer

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NATALIE R. BILBROUGH
Assistant Attorney General

ANTHONY G. BROWN
Attorney General

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

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,

Natalie R. Bilbrough
Assistant Attorney General

EconAction SB883 Workgroup UNF.pdf
Uploaded by: Marceline White
Position: UNF

Testimony to the Senate Judicial Proceedings Committee
SB883 Post-Towing Procedure Workgroup-Establishment
Position: Unfavorable

April 1 2025

The Honorable Mark Korman, Chair
Room 250, House Office Building
Annapolis, Maryland 21401
cc: Members, Environment and Transportation Committee

Chair Korman 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.

As amended, SB883 establishes a workgroup to discuss post-towing procedures.

We oppose the establishment of this workgroup for the following reasons:

- **It is not needed.** Non-consensual towing liens are not only illegal in Maryland, but also bad for consumers. Maryland courts have consistently found that a possessory lien does not exist for a towed vehicle[1].
- **It is bad public policy which harms consumers.** Courts and the Office of the Attorney General agree that allowing towing companies to exercise lien creates perverse incentives; unscrupulous actors are likely to tow more vehicles since payment is guaranteed, regardless of whether the tow is proper or not. To provide these kinds of tows in a way that does not violate the constitution would be prohibitively expensive for Maryland counties at a time when local jurisdictions are already under tremendous financial strain.

However, should the General Assembly move forward with a Workgroup, we propose two amendments to ensure the workgroup is fair and balanced in its deliberations:

[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)

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info@econaction.org · www.econaction.org
Tax ID 52-2266235

- Revise the mandate of the workgroup. As amended, the workgroup is charged to find a way to establish possessory liens rather than to deliberate the issue more comprehensively. We suggest amending the bill as follows:
    - On page 3, line 19 (f) (1)
    - At the beginning of line 20 ADD CONSIDER WHETHER IT IS NECESSARY, APPROPRIATE AND IN THE PUBLIC INTEREST TO ESTABLISH
    - On line 21, STRIKE ~~in accordance with Title 21, Subtitle 10A of the 22 Transportation Article.~~ and instead ADD THE COSTS AND RESOURCES NECESSARY TO SATISFY THE COSTS OF DUE PROCESS IF SUCH A LIEN IS ESTABLISHED; AND THE FISCAL IMPACT ON MARYLAND'S COUNTIES.
    - on line 28 ADD (3) THE WORKGROUP IS NOT UNDER ANY PRESUMPTION THAT A STATUTORY LIEN IS NECESSARY, APPROPRIATE, OR IN THE PUBLIC INTEREST.
    - On page 3, after line 3 ADD
        - four consumer protection organizations working at the county level or statewide

Best,

Marceline White
Executive Director

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Tax ID 52-2266235

Opposition to SB 883 (2025)(Cross-over bill).3-28
Uploaded by: Richard Gordon
Position: UNF

GORDON, WOLF & CARNEY CHTD

March 28, 2025

Re: Request for an UNFAVORABLE report on SB 883

Dear Members of the Environment and Transportation Committee:

I am attorney in private practice in Baltimore County. My law firm handles consumer protection cases, including cases against trespass towing companies that have engaged in predatory, unfair and/or deceptive practices.

I write at this time to urge the Environment and Transportation Committee to give SB 883 an unfavorable report. While I oppose the bill in its entirety, if passed by the House in its current form, SB 883 would create a Workgroup on an issue that would not only overturn decades of legal precedent, but also significantly disrupt towing operations statewide; and it would do so with a membership that largely excludes consumer advocates and other important stakeholders.

The Proposed Workgroup Bill Will be Looking for a Solution When the Law is Clear and there is no Problem

First, a non-consensual towing lien is not appropriate or necessary in this State. As an advocate with more than ten (10) years of experience handling towing litigation in Maryland, I have not heard private parking lot owners complain of a shortage of towing companies able and willing to tow improperly parked vehicles on their behalf. Nor, during the many times that this issues has been before the General Assembly in past years, have the bills' proponents claimed that there is a "towing issue" in Maryland. Indeed, the non-consensual towing lien that is the subject of the proposed Workgroup is limited to ***post*** towing remedies that, if ultimately enacted, will ***not*** positively impact towing operations statewide (which, generally, run smoothly). Only the towing companies will benefit. However, it will come at the expense of consumers, and carry, as discussed below, a prohibitive price tag for Maryland and Maryland's Counties.

Second, there is no question that non-consensual towing liens are not only illegal in Maryland, but also inherently anti-consumer. Maryland's appeals Courts have consistently held that no possessory lien exists with respect to a towed vehicle at common law. *See T.R. v. Lee*, 55 Md. App. 629 (1983); *Cade, t/a G&G Towing v. Montgomery County*, 83 Md. App. 419, 427 (1990). The Office of the Attorney General ("OAG") also has determined that such liens are illegal. *See* 73 Md. Op. Atty. Gen. 349 (Md.A.G.), 1988 WL 482024. Indeed, as recently as last year, the OAG, in a letter to then-Delegate Sara Love, pointed out the difficulties with legislation proposing the establishment of a non-consensual towing lien. *See* OAG Letter dated April 5, 2024, attached as **Attachment 1**.

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 unlawful or predatory. At the same time, it also adversely impacts commerce because consumers do not want to return to where they believe their vehicles were improperly towed.

Third, even though Maryland law does not permit non-consensual liens, some towing companies (in Montgomery County and Baltimore City, especially) already ignore the Courts and the General Assembly, and unilaterally (and in my view deceptively) represent to consumers that such a towing lien already exists. *See* **Attachment 2**, Towing Sign.

Fourth, non-consensual towing liens are inherently unconstitutional unless significant and costly due process protections are included. In *Huemmer v. Mayor & City Council of Ocean City*, 632 F.2d 371 (4th Cir. 1980), the Fourth Circuit held that a statute to authorize a lien on a vehicle towed from private property must provide ***both*** notice and a hearing or it is "manifestly defective" from a due process perspective. *Id.* at 372. To include adequate notice and an opportunity for an expedited hearing will come at a substantial cost for all Maryland jurisdictions – Judges, administrators and office space are all required. The fiscal impact will be prohibitive, especially since the Fourth Circuit has held that due process requires that any possessory lien must be supported by a system that can deliver an expedited hearing "***within twenty-four hours after a request***." *De Franks v. Mayor and City Council of Ocean City*, 777 F.2d 185, 187 (4th Cir. 1985). For the State and every Maryland County, the cost will be tremendous.

The Mission of the Workgroup Needs to be Balanced

However, if the bill is passed and Workgroup established, then is it in the interest of the public and Maryland's Counties, generally, that the mission of the Workgroup be amended to reflect that SB 883 is more balanced:

> FOR the purpose of establishing the Post–Towing Procedure Workgroup to consider whether it is necessary, appropriate and in the public interest to establish ~~identify and examine issues relating to the establishment of~~ statutory liens on motor vehicles that are towed or removed from privately owned parking lots under certain circumstances; the costs and resources necessary to satisfy the requirements of due process if such a lien is established; the fiscal impact of on Maryland's Counties; and generally relating to the Post–Towing Procedure Workgroup

In subsection (f), the bill must also provide that:

> The Workgroup is not working under any presumption that a statutory lien is necessary, appropriate or in the public interest.

Membership of the Workgroup Needs to Be Balanced and Fair

Finally, there is no question that the composition of the Workgroup, as currently in SB 883, needs to be adjusted. In this regard, as a matter of equity and fairness, consumer advocates must be included in equal measure to provide balance.

Respectfully,

Richard S. Gordon

CANDACE MCLAREN LANHAM
Chief Deputy Attorney General

CAROLYN A. QUATTROCKI
Deputy Attorney General

LEONARD J. HOWIE III
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STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

Attachment 1

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:

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

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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

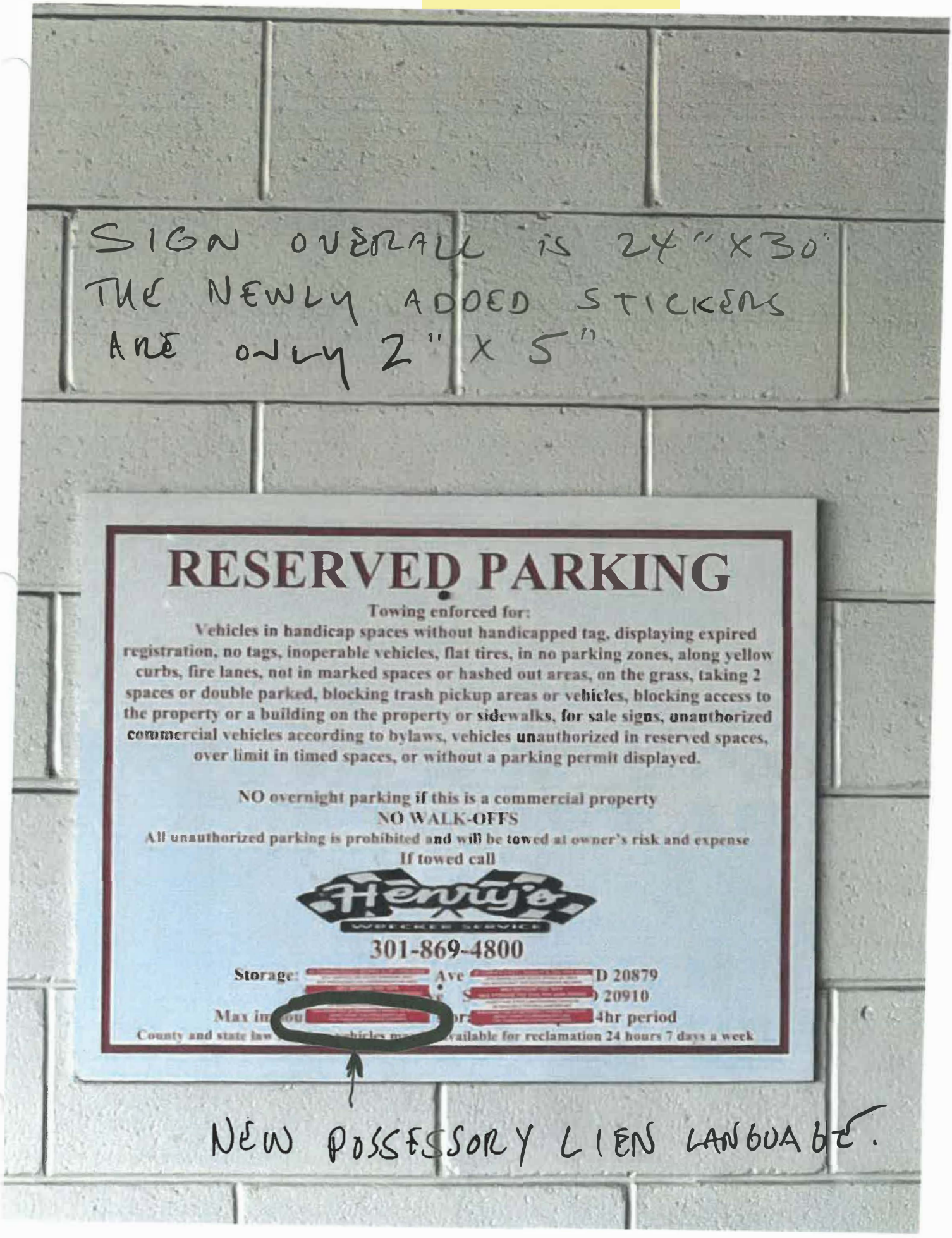
would be at risk of being found to be unconstitutional because the attachment of any lien is not conditioned upon the provision of constitutionally adequate notice and opportunity for a hearing within a short time after any tow.

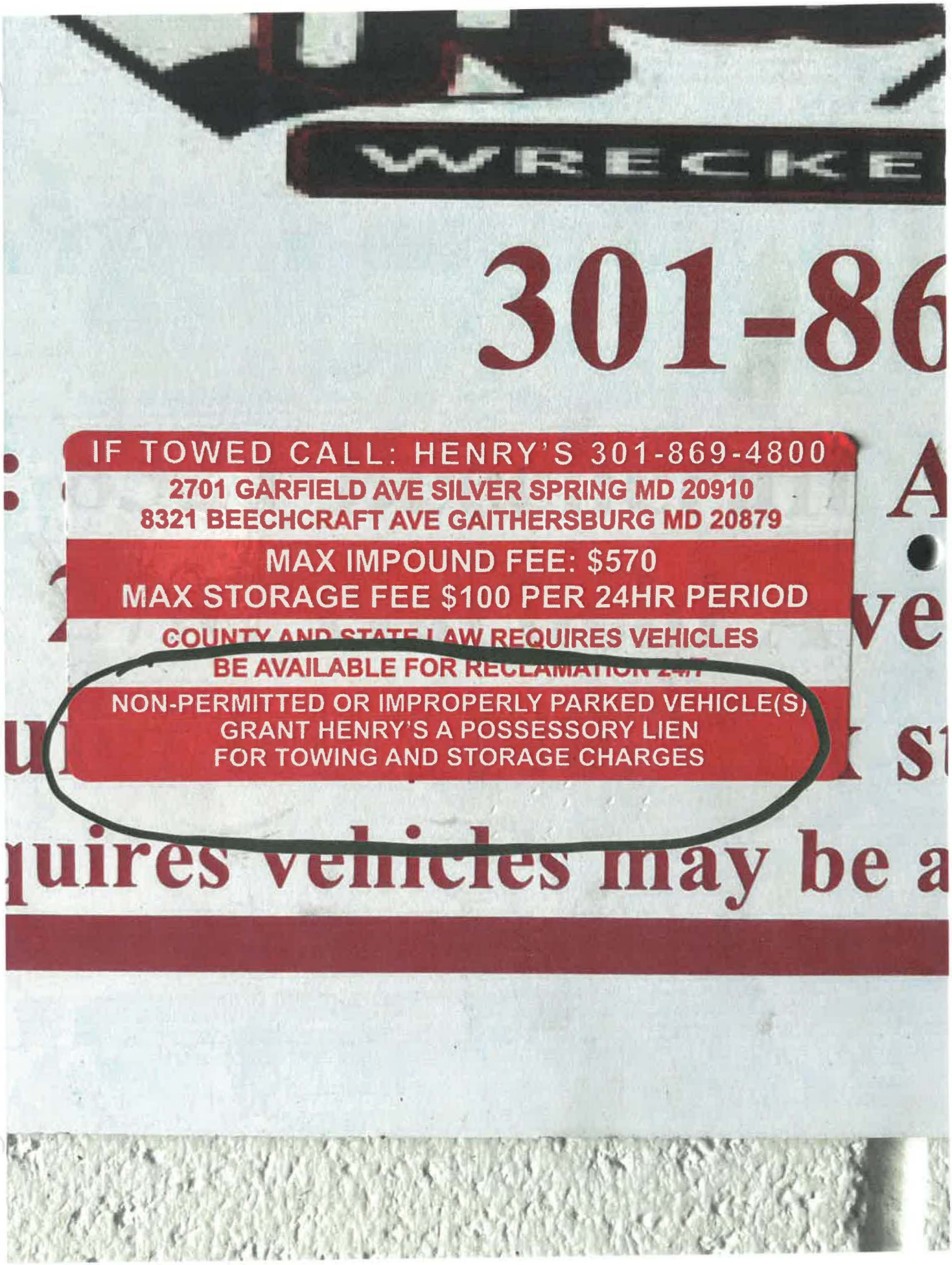
I hope this information is helpful. Please let me know if you have further questions.

Sincerely,

Natalie R. Bilbrough
Assistant Attorney General

Attachment 2




WRECKE
301-86
IF TOWED CALL: HENRY'S 301-869-4800
2701 GARFIELD AVE SILVER SPRING MD 20910
8321 BEECHCRAFT AVE GAITHERSBURG MD 20879
MAX IMPOUND FEE: $570
MAX STORAGE FEE $100 PER 24HR PERIOD
COUNTY AND STATE LAW REQUIRES VEHICLES
BE AVAILABLE FOR RECLAMATION 24/7
NON-PERMITTED OR IMPROPERLY PARKED VEHICLE(S)
GRANT HENRY'S A POSSESSORY LIEN
FOR TOWING AND STORAGE CHARGES
quires vehicles may be a

SB 883 - Towing Workgroup - CPD - Information.pdf
Uploaded by: Steven M. Sakamoto-Wengel
Position: INFO

CAROLYN A. QUATTROCKI
Chief Deputy Attorney General

LEONARD J. HOWIE III
Deputy Attorney General

CARRIE J. WILLIAMS
Deputy Attorney General

SHARON S. MERRIWEATHER
Deputy Attorney General

ZENITA WICKHAM HURLEY
Chief, Equity, Policy, and Engagement

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

ANTHONY G. BROWN
Attorney General

WILLIAM D. GRUHN
Division Chief

STEVEN M. SAKAMOTO-WENGEL
Executive Counsel to the Attorney General

PETER V. BERNS
General Counsel

CHRISTIAN E. BARRERA
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.

CANDACE MCLAREN LANHAM
Chief Deputy Attorney General

CAROLYN A. QUATTROCKI
Deputy Attorney General

LEONARD J. HOWIE III
Deputy Attorney General

CHRISTIAN E. BARRERA
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Assistant Attorney General

NATALIE R. BILBROUGH
Assistant Attorney General

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).

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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,

Natalie Bilbrough

Natalie R. Bilbrough
Assistant Attorney General

SB883 Towing as amended.pdf
Uploaded by: Tracy Rezvani
Position: INFO

OFFICE OF CONSUMER PROTECTION

DEPARTMENT OF COUNTY ADMINISTRATION
9830 Patuxent Woods Drive • Columbia, Maryland 21046 • 410-313-6420
Calvin Ball, County Executive • Tracy D. Rezvani, Administrator

consumer@howardcountymd.gov FAX 410-313-6453
www.howardcountymd.gov/consumer

March 28, 2025

Delegate Marc Korman, Chair
Delegate Regina T. Boyce, Vice Chair
House Environment and Transportation Committee
250 & 251 Taylor House Office Building
Annapolis, Maryland 21401

RE: Letter of Information: SB883: *Post-Towing Procedure Workgroup - Establishment*

Dear Chair Korman, Vice Chair Boyce, and Members of the House Environment and Transportation Committee,

The Office of Consumer Protection (OCP) helps protect Howard County consumers by providing education regarding unfair and deceptive trade practices, conducting mediation, and enforcing consumer protection code. In addition, the OCP regulates and licenses trespass towing companies in Howard County under HCC §17.600, *et seq.* The OCP writes this letter of information in connection with SB883 as amended.

Trespass towing is a unique business model. In no other industry does the law allow a business to take an individual's personal property without permission and refuse to return it until they are paid a fee. While most tow companies operate with integrity and lawfulness, many do not. Authorizing automatic statutory liens, as proposed by SB883, adds a layer of complexity which could be misused by predatory tow companies. Below are four examples for your consideration.

First, through a complaint, we learned about a scheme by unlicensed tow operators from neighboring counties which monitor police scanners for accidents, arrive on the scene, tow the damaged vehicles, and provide owners with false information about the company name and address for the storage lot. This prevents consumers from timely locating their vehicles while storage fees accumulate.

Second, the OCP received a complaint from a consumer who had his car illegally towed from a Howard County deli which had no posted tow signs. The deli owner hired an unlicensed tow operator to tow the car to a Baltimore auto repair shop (more than 12 miles away), which he also owned. The repair shop then removed the car's tire and rims to prevent the owner from retrieving his car and demanded almost 3 times the cost of the illegal tow (and well in excess of the County's approved tow redemption charges) before he would repair the car and allow the owner to retrieve it.

Finally, last year, we conducted enforcement and compliance actions against two companies. An unlicensed tow company towed 42 vehicles, and when approached for compliance, provided false information in its subsequent licensing application, failed to provide updated insurance information, charged unapproved rates, charged government fines, 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. Another tower, despite not having a contract with the property owner, 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.

As the Senate reviews SB883, we ask that these four scenarios, and how liens would have impacted the consumers, be taken into consideration. Moreover, while a lien is a redundant and unnecessary form of protection given the laws already in place, if the Committee recommends moving forward with a workgroup, we ask that it consider the proposed make-up and the inclusion of additional consumer protection and local government voices.

Sincerely,

Tracy D. Rezvani

CC: Honorable Dr. Calvin Ball III, County Executive
Maureen Evans, Director of Government Affairs & Strategic Partnerships