



OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich  
County Executive

March 4, 2025

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

FROM: Marc Elrich  
County Executive

RE: Senate Bill 883, *Commercial Law – Statutory Liens – Motor Vehicles Towed or Removed From Parking Lots*

OPPOSE

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I am writing to express strong opposition to Senate Bill 883, *Commercial Law – Statutory Liens – Motor Vehicles Towed or Removed From Parking Lots*, which relates to the towing of vehicles from private parking lots. Under current law, when a vehicle owner is not able to immediately pay towing and storage fees, the towing company is required to release the vehicle and use normal legal means to collect a commercial debt. Senate Bill 883 flips current law on its head by creating a statutory “possessory lien” that allows the company to keep a vehicle until fees are paid. As a policy matter, I am very concerned with how the enactment of Senate Bill 883 would impact Montgomery County residents. As a legal matter, I believe Senate Bill 883 is unconstitutional because it violates Due Process rights of our residents.

Senate Bill 883 was introduced during the 2024 Session as Senate Bill 107, *Commercial Law – Statutory Liens – Motor Vehicles Towed or Removed From Parking Lots*. Although Senate Bill 107 was passed by the Senate, it never received a vote in the House Environment and Transportation Committee. During deliberations on the House side, the Office of the Attorney General issued a Letter of Advice that discusses the constitutional issues. See **Attachment 1**.

I am particularly concerned about “predatory towing” practices, which occur when merchants illegally engage in towing parked cars and retaining the vehicles until the vehicle owners pay fees to the towing firms. The State of Maryland and several local jurisdictions in Maryland have enacted and enforce statutes regulating trespass/non-consensual towing practices. The Montgomery County Office of Consumer Protection registers towing firms, maintains a registry of parking lots, sets the rates for towing and storage fees, and investigates complaints regarding illegal towing, including complaints about:

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

These towing practices and the complaints that they generate are unique consumer transactions in our marketplace. In essence, the towing companies are serving as “*Judge, Jury, and Jailer*” when they refuse to return property belonging to consumers. For most other transactions in our marketplace, disputes between merchants and consumers are resolved in court.

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

I respectfully request that the Senate Judicial Proceedings Committee give this bill an unfavorable report.

cc: Members of the Judicial Proceedings Committee

# Attachment 1

**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*

**ZENITA WICKHAM HURLEY**  
*Chief, Equity, Policy, and Engagement*

**PETER V. BERNS**  
*General Counsel*



**ANTHONY G. BROWN**  
*Attorney General*

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

**SANDRA BENSON BRANTLEY**  
*Counsel to the General Assembly*

**DAVID W. STAMPER**  
*Deputy Counsel*

**JEREMY M. MCCOY**  
*Assistant Attorney General*

**SHAUNEE L. HARRISON**  
*Assistant Attorney General*

**NATALIE R. BILBROUGH**  
*Assistant Attorney General*

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,

A handwritten signature in cursive script that reads "Natalie Bilbrough".

Natalie R. Bilbrough  
Assistant Attorney General