

## **SB883 MMHA**

Uploaded by: Aaron Greenfield

Position: FAV



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

**Committee:** Judicial Proceedings Committee

**Date:** March 4, 2025

**Position:** Favorable

This testimony is offered on behalf of the Maryland Multi-Housing Association (MMHA). MMHA is a professional trade association established in 1996, whose members consist of owners and managers of more than 210,000 rental housing homes in over 958 apartment communities. Our members house over 538,000 residents of the State of Maryland. MMHA also represents over 250 associate member companies who supply goods and services to the multi-housing industry.

Senate Bill 883 establishes that a person has a lien on a motor vehicle if the person tows or removes the motor vehicle from a privately owned parking lot under specified provisions of State law, for any charges incurred for any towing, recovery, storage; or notice provided. A lien created pursuant to the bill must be extinguished if the motor vehicle is reclaimed and the charges giving rise to the lien are paid by the owner, lessee, or operator of the motor vehicle, the insurer of record, any secured party or any authorized agent of the motor vehicle owner. A lien is created under the bill when any charges giving rise to the lien are incurred. Additionally, a lien created under the bill is subordinate to a security interest that predates the creation of the lien.

MMHA strongly supports Senate Bill 883, which establishes a lien on motor vehicles towed from privately owned parking lots, for the following reasons:

1. Strengthening Parking Enforcement for Resident and Guest Safety: One of the most persistent challenges apartment communities face is the unauthorized use of private parking facilities, leading to overcrowding, illegal parking, and tenant complaints. Without an effective enforcement mechanism, residents often find their designated spaces occupied by unauthorized vehicles, creating frustration and diminishing their quality of life. By ensuring that towing companies can recover the costs of towing, storage, and related expenses through a lien process, Senate Bill 883 strengthens the enforcement of parking policies and deters unauthorized parking.

2. Ensuring Financial Viability of Parking Management: Currently, towing and storage companies bear a significant financial risk when removing unauthorized vehicles from private parking lots. If towing companies struggle to recover their costs, fewer companies will be willing to provide these essential services, leaving housing providers with fewer options for enforcing parking rules. Senate Bill 883 provides a clear mechanism for cost recovery, ensuring that towing companies can continue to operate efficiently and serve the needs of private property owners, including apartment communities.



3. Protecting the Rights of Apartment Communities as Private Property Owners: Housing providers invest substantial resources in maintaining their parking facilities for residents and their guests. Unregulated or unenforceable parking policies undermine these investments. Senate Bill 883 reinforces property owners' rights by recognizing that costs incurred for towing and storage services create a legal lien, ensuring that property owners and their service providers are not financially disadvantaged when enforcing parking rules.

4. Fair and Transparent Process for Vehicle Owners: Senate Bill 883 strikes a fair balance between enforcing private parking rules and protecting vehicle owners. The bill ensures that a lien is automatically extinguished once the outstanding charges are paid, preventing excessive penalties or unfair financial burdens. Additionally, by allowing multiple parties—such as the vehicle owner, lessee, insurer, or secured creditor—to pay the necessary fees, the bill increases the likelihood of prompt resolution.

5. Aligning with Best Practices in Property Management: Many states have similar provisions ensuring that towing and parking enforcement remain viable, fair, and effective for private property owners. Senate Bill 883 brings clarity and consistency to Maryland's policies, aligning with best practices that balance the interests of property owners, towing service providers, and vehicle owners.

Housing providers depend on effective parking enforcement to maintain order, ensure resident satisfaction, and protect private property rights. Senate Bill 883 provides a reasonable, enforceable, and fair approach to handling unauthorized parking, ensuring that towing companies can continue to serve private property owners without financial risk. By supporting this legislation, Maryland can strengthen property rights, improve parking management, and promote fairness in the towing process.

For these reasons, we respectfully request a favorable report on Senate Bill 883.

**Aaron J. Greenfield, MMHA Director of Government Affairs, 410.446.1992**

# **SB 883-TRPM-Commercial Law-Statutory Liens-House-S**

Uploaded by: Andrea Mansfield

Position: FAV



## Towing & Recovery Professionals of Maryland

P.O Box 905 \* Huntingtown, Maryland 20639

410-414-5406 \* 1-800-244-0102 \* Fax 410-414-5408

### MEMORANDUM

TO: The Honorable Will Smith, Chair and Members of the Judicial Proceedings Committee

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

DATE: March 4, 2025

RE: **SB 883 Commercial Law- Statutory Liens – Motor Vehicles Towed or Removed From Parking Lots**

POSITION: **SUPPORT**

The Towing & Recovery Professionals of Maryland (TRPM) SUPPORT SB 883. This bill establishes a possessory lien on a motor vehicle when lawfully towed from a private parking lot to ensure the vehicle owner pays the related towing charges for the release of the vehicle.

The intent of SB 883 is 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.

State law, and many local ordinances, have established strict requirements for the towing of vehicles. These requirements include parking lot signage to inform vehicle owners of the possibility of being towed if parked improperly, and regulation of towing and storage charges. Being unhappy with your improperly parked car being towed does not negate the payment of these charges to the towing company for the services rendered on behalf of the parking lot owner.

SB 883 provides protections to the towing company should a vehicle owner refuse to pay for the charges associated with the tow. For these reasons, TRPM SUPPORTS SB 883 and urges a FAVORABLE Committee report.

## **SB883 Henry's**

Uploaded by: J Guzzone

Position: FAV



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

## Senate Bill 883

### Judicial Proceedings Committee

March 4, 2025      Position: Favorable

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Henry's Wrecker Service (Henry's) strongly supports Senate Bill 883: Commercial Law - Statutory Liens - Motor Vehicles Towed or Removed from Parking Lots (SB 883). This bill, in conjunction with Title 21, Subtitle 10A of the Maryland Transportation Article, codifies into state law a longstanding industry practice where the owner of a lawfully towed vehicle from a private parking lot must settle tow-related charges before reclaiming their vehicle.

Modeled after Prince George's County's law, SB 883 establishes a possessory lien, termed a "statutory lien" by the Department of Legislative Services. See *Prince George's County Code, Division 10, Sec. 26-142.11*. This lien grants the tower a possessory claim over the vehicle until the owner satisfies the specified tow-related charges, which are set and capped by local regulatory authorities. Upon payment, the lien dissipates, and the owner regains full possession of their vehicle.

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. See MD Code, Transportation, § 21-10A-02(b-c). It's essential to emphasize that under Maryland law, drivers of vehicles lawfully towed must have received clear and conspicuous notice via regulated signage indicating the possibility of towing for improperly parked vehicles. Consequently, SB 883 simply mandates that vehicle operators, having been duly informed by mandated signage at the parking lot, then settle specified charges before reclaiming their vehicles.

This mandate aligns with established Maryland case law as well. In *Cade v. Montgomery County*, the then-Maryland Court of Special Appeals citing Attorney General's Opinion No. 88-055 held that a vehicle owner towed from private property carries the obligation to cover the associated towing expenses. 83 Md. App. 419 (1990). The Court held, "[T]he 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." *Id.* at 428. Again, the tower simply holding the towed vehicle until the vehicle owner's obligations to the tower are met is the next logical, intermediate step in that process.

Finally, maintaining possession of a towed motor vehicle by the tower was envisioned by this legislative body when it enshrined into law §21-10A of the Maryland Transportation Article. Specifically, §21-10A-05(3) reads,

- (3) A storage facility that is in possession of a towed vehicle shall make the vehicle available to the owner, the owner's agent, the insurer of record, or a secured party, under the supervision of the storage facility, for:
- (i) Inspection; or
  - (ii) Retrieval from the vehicle of personal property that is not attached to the vehicle.

Access to the car wouldn't be necessary if the owner could simply retrieve it without paying the cost of the tow.

Regrettably, this loophole in the law has led to opportunistic class action lawsuits. These lawsuits do not assert any violations of state or local towing regulations but rather focus solely on the holding of vehicles until payment is made. As someone involved in the development of the towing legislation that established Title 21-10A of the Maryland Transportation Article, we recognize this as an unintended consequence and humbly ask this legislative body to close that gap in the law.

Therefore, Henry's supports SB 127 as amended by the Senate Judicial Proceedings Committee that 1. makes the possessory interest created subordinate to all other interests and 2. eliminates the retroactivity provisions of the bill. We look forward to working with the committee and subcommittee in advancing this clarifying piece of legislation for the tow industry.



# **SB883 Sponsor Amendment re personal property.pdf**

Uploaded by: Mary-Dulany James

Position: FWA



SB0883/153724/1

AMENDMENTS  
PREPARED  
BY THE  
DEPT. OF LEGISLATIVE  
SERVICES

25 FEB 25  
11:33:39

BY: Senator James

(To be offered in the Judicial Proceedings Committee)

AMENDMENTS TO SENATE BILL 883

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, after line 12, insert:

“BY repealing and reenacting, without amendments,

Article – Transportation

Section 21–10A–05(c)(3)

Annotated Code of Maryland

(2020 Replacement Volume and 2024 Supplement)”.

AMENDMENT NO. 2

On page 2, in line 11, strike “MOTOR” and substitute “:

**1. INSURER OF RECORD; OR**

**2. MOTOR”;**

in line 14, strike “IS” and substitute “:

**(I) IS”;**

in line 15, after “LIEN” insert “;AND

**(II) DOES NOT APPLY TO ANY PERSONAL PROPERTY THAT IS  
NOT ATTACHED TO THE MOTOR VEHICLE SUBJECT TO THE LIEN”;**

and after line 15, insert:

“Article – Transportation

21–10A–05.

(c) (3) A storage facility that is in possession of a towed vehicle shall make the vehicle available to the owner, the owner’s agent, the insurer of record, or a secured party, under the supervision of the storage facility, for:

(i) Inspection; or

(ii) Retrieval from the vehicle of personal property that is not attached to the vehicle.”.

# **SB883 Sponsor Testimony.pdf**

Uploaded by: Mary-Dulany James

Position: FWA



Judicial Proceedings Committee  
Executive Nominations Committee

Senate Chair

Joint Committee on  
Children, Youth, and Families

THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

**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 4<sup>th</sup>, 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,

A handwritten signature in black ink, appearing to read "Mary-Dulany James". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Senator Mary-Dulany James

**testimony2025sb883ltr.pdf**

Uploaded by: Franz Schneiderman

Position: UNF



**Auto Consumer Alliance**  
13900 Laurel Lakes Avenue, Suite 100  
Laurel, MD 20707

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**Testimony to the Senate Judicial Proceedings Committee  
SB 883 – Commercial Law – Statutory Liens –  
Motor Vehicles Towed or Removed From Parking Lots  
Position: Unfavorable**

The Honorable Will Smith  
Judicial Proceedings Committee  
2 East, Miller Senate Building  
Annapolis, MD 21401  
cc: Members, Judicial Proceedings Committee

March 4, 2025

**Dear Chairman Smith and Committee Members,**

I'm a consumer advocate and Executive Director of Consumer Auto, a non-profit group that works for safety, transparency, and fair treatment for Maryland drivers and consumers.

We oppose **SB 883** because granting automatic liens on any vehicle towed from a private parking lot would not only undermine the due process rights of car owners but tend to encourage private towing firms to engage in predatory towing practices that are often very costly for drivers.

Maryland did pass a law in 2022 to prevent predatory towing when police order a car removed. But abusive and unfair tows from private parking lots remain a common consumer complaint. While the state has rules about notification of parking prohibitions, maximum towing fees, how to reclaim your vehicle and other issues, consumers often find that towing firms and parking lot owners may not respect those rules – and either tow cars unfairly or make it unduly difficult or expensive for drivers to recover their vehicle (and the personal property they may have left in the vehicle).

These at least arguably illegal and unfair tows cost consumers hundreds of dollars, sometimes leave drivers stranded in dangerous places at difficult times, often prompt drivers to go through all kinds of time-consuming steps to recover their vehicle, and, of course, often seriously interfere with their ability to get to work and meet their needs until they can recover their car.

While most towing operators surely do their work fairly and legally, thousands of Maryland drivers each year have a very different experience. And giving towing firms an automatic lien on any tow – without any judicial involvement or showing that the tow was conducted fairly – creates a strong incentive for abusive operators to tow more vehicles, as the lien largely guarantees that they'll be paid the fees they demand, whether the tow was appropriate or not.

Such a law would very likely prompt more drivers to be targeted by predatory towing operators.

**We oppose SB 883 and ask you to give it an Unfavorable report.**

Sincerely  
Franz Schneiderman  
Consumer Auto



# **OAG Opinion to Delegate Boyce 11 18 24.pdf**

Uploaded by: Karen Straughn

Position: UNF

CANDACE McLAREN LANHAM  
*Chief Deputy Attorney General*

CAROLYN A. QUATTROCKI  
*Deputy Attorney General*

LEONARD J. HOWIE III  
*Deputy Attorney General*

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



STATE OF MARYLAND  
OFFICE OF THE ATTORNEY GENERAL  
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*General Counsel*

CHRISTIAN E. BARRERA  
*Chief Operating Officer*

NATALIE R. BILBROUGH  
*Assistant Attorney General*

November 18, 2024

The Honorable Regina T. Boyce  
Maryland General Assembly  
251 Taylor House Office Building  
Annapolis, Maryland 21401  
*Via email*

***RE: Senate Bill 107 of 2024 – Commercial Law – Statutory Liens – Motor Vehicles  
Towed or Removed From Parking Lots***

Dear Delegate Boyce:

You have asked whether a proposed amendment to Senate Bill 107 of 2024 would resolve due process concerns raised in my letter of advice to Delegate Sara Love dated April 5, 2024. In that letter I advised that Senate Bill 107, which would have authorized a possessory lien on a motor vehicle if the person legally tows or removes the motor vehicle from a privately owned parking lot, presented a significant risk of violating the Due Process Clause because it did not provide an opportunity for a prompt hearing so that a person could challenge the legal and factual basis of the tow. Specifically, you have asked about the following amended language:

**(7) A political subdivision must create a prompt statutory post-deprivation hearing process to challenge the legality of the tow, that:**

- a) Allows for an administrative hearing to dispute the legality of the tow within 48 hours of a request for a hearing; and**
- b) In the event that an administrative hearing cannot be provided within 48 hours, the vehicle will be released to the owner without charge.**

In my view, the proposed language *partially* resolves the due process issue raised in my April 5, 2024 letter, as it provides the opportunity for a post-deprivation hearing within 48 hours of request, which courts have found to be reasonably prompt. *See Coleman v. Watt*, 40 F.3d 255, 261 (8th Cir. 1994) (collecting cases); *Goichman v. Rheuban Motors, Inc.*, 682 F.2d 1320, 1325 (9th Cir. 1982) (holding “that provision for a post-seizure hearing within forty-eight hours satisfies the requirements of due process”). Of course, until political subdivisions create and provide the administrative hearing process, there could still be a risk of a procedural due process violation, depending on the circumstances involved.<sup>1</sup>

However, neither the proposed language, nor the current statutory provisions governing vehicle towing, expressly require prompt *notice* of a person’s right to the hearing. If the owner is not told of the opportunity to request a hearing, the protections of such a hearing are lessened. In *De Franks v. Mayor & City Council of Ocean City*, the Fourth Circuit upheld an Ocean City towing ordinance after it was amended to require *both* (1) a “written notice to the owner of the vehicle, within one working day of the tow, of his entitlement to a hearing on the question of legality of the seizure,” and (2) that “the hearing to be had within twenty-four hours after a request for it.” 777 F.2d 185, 187 (4th Cir. 1985). The Eighth Circuit has also recognized there could be a procedural due process violation where a person was not informed that he could request to appear before a judicial officer to prove his vehicle was unlawfully seized sooner than the default court date of seven days after the tow. *Coleman*, 40 F.3d at 261. Accordingly, although not facially unconstitutional, in my view, the amended bill still presents a risk of a procedural due process violation if the political subdivision does not provide adequate notice in addition to a hearing.

This risk could be alleviated by explicitly directing political subdivisions to include as an element of the hearing process a prompt post-tow notice that is reasonably calculated to inform interested parties of the right to request the post-deprivation hearing. *Towers v. City of Chicago*, 979 F. Supp. 708, 716-17 (N.D. Ill. 1997), *aff’d*, 173 F.3d 619 (7th Cir. 1999) (Notice need only to be “‘reasonably calculated’ to apprise an individual of his or her rights.”).

Constitutionally sufficient notice can take many forms. *See id.* (finding that notice was adequate where ordinance required police officers to inform person who was in control of the vehicle at the time of the violation of the right to request a hearing); *see also Scofield v. City of Hillsborough*, 862 F.2d 759, 764 (9th Cir. 1988) (holding that procedural due process was sufficient where statute required that notice of the right to a post-towing hearing and instructions on how to request the hearing be mailed to owner within forty-eight hours after vehicle was towed); *Cokinos v. D.C.*, 728 F.2d 502, 503 (D.C. Cir. 1983) (finding that notice was adequate when back of parking ticket informed recipient that an on-demand hearing was available to challenge the underlying traffic violation that triggered the tow). But in my view, notice of the right to request a hearing within 48 hours must be provided sooner than the seven-day statutory deadline required

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<sup>1</sup> In addition, the individual ordinances setting up the hearing processes must themselves also be constitutionally adequate in terms of the process provided. For example, at least one federal court has held that the denial of an opportunity to appeal the decision made at a post-deprivation hearing can also be a sufficient basis for a procedural due process claim. *Lee v. NNAMHS*, No. 03:06CV-0433-LRH-RAM, 2007 WL 2462616, at \*5 (D. Nev. Aug. 28, 2007).

for tow companies to notify vehicle owners of the fact of the tow. *See* Md. Code Ann., Transp. § 21-10A-04(a)(3).

I hope this response is helpful. Please let me know if you need further information.

Sincerely,

A handwritten signature in dark ink, appearing to read "Natalie Bilbrough". The signature is fluid and cursive, with the first name "Natalie" and last name "Bilbrough" clearly distinguishable.

Natalie R. Bilbrough  
Assistant Attorney General

# **OAG Opinion to Delegate Love 04 05 24.pdf**

Uploaded by: Karen Straughn

Position: UNF

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

April 5, 2024

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

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

Dear Delegate Love:

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

***Senate Bill 107***

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

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

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

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

### ***Constitutional Analysis***

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

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

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

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

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



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 dark ink, appearing to read "Natalie Bilbrough". The signature is fluid and cursive, with a large, stylized initial "N" and a long, sweeping underline.

Natalie R. Bilbrough  
Assistant Attorney General

# **OAG Opinion to Senator Wynn 12 19 88.pdf**

Uploaded by: Karen Straughn

Position: UNF

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).<sup>1</sup>

## 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.<sup>2</sup> 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)).<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup>

## 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.<sup>6</sup>

\*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.<sup>7</sup>

## 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 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.<sup>8</sup>

Very truly yours,

J. Joseph Curran, Jr.

**Attorney General**

Sharon Krevor-Weisbaum

Staff Attorney

Jack Schwartz  
Chief Counsel **Opinions** and Advice

Footnotes

<sup>1</sup> 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).

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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).

<sup>5</sup> 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.

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

<sup>7</sup> 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) ].

<sup>8</sup> 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).



## **SB 883 Letter of Concern.pdf**

Uploaded by: Karen Straughn

Position: UNF





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**STATE OF MARYLAND**  
**OFFICE OF THE ATTORNEY GENERAL**  
**CONSUMER PROTECTION DIVISION**

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March 4, 2025

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

From: Karen S. Straughn  
Consumer Protection Division

Re: Senate Bill 883 – Commercial Law – Statutory Liens – Motor Vehicles Towed or  
Removed from Parking Lots (CONCERN)

The Consumer Protection Division of the Office of the Attorney General has concerns regarding Senate Bill 883 introduced by Senator Mary-Dulany James. This bill provides for an automatic lien on a motor vehicle towed from a privately owned parking lot for the charges incurred for towing, recovery, storage and notice. However, the Division is concerned that the bill fails to address the due process concerns raised by the Office of Counsel to the General Assembly in the attached letters to Senator Love and Delegate Boyce.

When a vehicle is towed from a private lot, there are charges incurred which are usually paid by the individual who owns the vehicle in order to recover it. Sometimes, however, the vehicle is towed because it has been abandoned, leaving no one to pay the costs, or the owner may have difficulty paying the fees. In some cases, the owner of the vehicle may have a dispute concerning the basis for towing the vehicle in the first place. Generally, in these cases, a lien may be filed with the courts, to serve as notice that the towing company may have a claim against the individual's assets. This bill would allow a towing company to bypass the normal process of obtaining a lien, and would make the lien automatic, only being discharged when all fees are paid. The lien becomes a public record, which could be detrimental to individual owners who are taking the necessary steps to pay the bill in a timely manner. Moreover, under §25-206 of the Transportation Article, if an owner or secured party fails to reclaim an abandoned vehicle within 3 weeks after notice is given, the responsible party is deemed to have waived all of their rights,

title, and interest in the vehicle and to have consented to the sale of the vehicle at public auction. Therefore, no automatic lien is necessary.

As noted in the attached letters, due process requires that the vehicle owner be given prompt notice of the lien and the opportunity to promptly challenge the lien and basis for the tow. The bill fails to provide for such a process and, for most Maryland jurisdictions, no such process exists. Accordingly, the Consumer Protection Division wanted to make the Judicial Proceedings Committee aware of our concerns.

cc: The Honorable Mary-Dulany James  
Members, Judicial Proceedings Committee

# **SB0883-JPR\_MACo\_OPP.pdf**

Uploaded by: Karrington Anderson

Position: UNF



## Senate Bill 883

### *Commercial Law - Statutory Liens - Motor Vehicles Towed or Removed From Parking Lots*

MACo Position: **OPPOSE**

To: Judicial Proceedings Committee

Date: March 4, 2025

From: Karrington Anderson

The Maryland Association of Counties (MACo) **OPPOSES** SB 883. This bill would create a statutory possessory lien on vehicles towed from privately owned parking lots, allowing private towing companies to retain vehicles until all charges are paid.

Under current law, towing companies do not have the legal authority to hold a vehicle as collateral for unpaid towing and storage fees. Instead, they must use standard commercial debt collection processes. SB 883 would grant them an extraordinary power that has been repeatedly rejected by the General Assembly and that presents significant policy and constitutional concerns.

Towing and vehicle impoundment are already confusing and frustrating for residents. SB 883 would erode consumer protections by making it harder for vehicle owners—especially those with limited financial means—to reclaim their cars. Without access to their vehicles, residents may face barriers to employment, healthcare, and other essential needs.

Beyond its policy implications, SB 883 raises serious constitutional concerns regarding due process. The Maryland Attorney General's Office has previously issued written acknowledgment of constitutional issues with similar legislation. Allowing a private company to hold someone's property until payment is made—without adequate legal safeguards—could violate fundamental property rights.

Maryland counties are committed to fair and transparent processes that protect residents. SB 883 would create an unprecedented statutory lien that has been repeatedly rejected by policymakers and presents serious legal and consumer protection concerns.

For these reasons, MACo urges an **UNFAVORABLE** report on SB 883.

# **SB 883 - MoCo\_Elrich\_OPP (GA 25).pdf**

Uploaded by: Marc Elrich

Position: UNF



## 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

---

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:

The Honorable William C. Smith, Jr.

Re: Senate Bill 883

March 4, 2025

Page 2

- 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

**CANDACE McLAREN LANHAM**  
*Chief Deputy Attorney General*

**CAROLYN A. QUATTROCKI**  
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*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, reading "Natalie Bilbrough".

Natalie R. Bilbrough  
Assistant Attorney General

# **EconAction SB883 UNF.pdf**

Uploaded by: Marceline White

Position: UNF



Testimony to the Senate Judicial Proceedings Committee  
SB883 Commercial Law - Statutory Liens - Motor Vehicles Towed or Removed From Parking Lots  
Position: Unfavorable

March 4, 2025

The Honorable Senator William Smith, Chair  
Senate Judicial Proceedings Committee  
2 East, Miller Senate Office Building  
Annapolis, Maryland 21401  
cc: Members, Judicial Proceedings Committee

Honorable Chair Smith 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.

SB883 seeks to overturn decisions established in multiple Maryland Courts<sup>1</sup> that clearly state that a trespass tow cannot hold onto a vehicle until all towing fees have been paid. The reasoning is clear-to do so creates perverse incentives for unscrupulous actors to tow more vehicles whether the tow is proper or not because they will be paid regardless.

SB883 is unconstitutional, violating the Maryland Constitution's due process clause. Since SB 883 provides for neither notice nor a hearing, it is "manifestly defective" and, therefore, unconstitutional.

SB883 will increase costs to counties and burden already overtaxed courts with these cases. The court ruled that a hearing must take place within 24 hours. Should SB883 pass, to achieve more Judges, administrators and office space are all required. For virtually every jurisdictions, the costs in each county will be significant.

For all these reasons, we strongly oppose SB883 and urge an unfavorable report,

Best,

Marceline White  
Executive Director

---

<sup>1</sup> (*T.R. v. Lee*, 55 Md. App. 629 (1983) *Cade, t/a G&G Towing v. Montgomery County*, 83 Md. App. 419, 427 (1990))  
2209 Maryland Ave · Baltimore, MD · 21218 · 410-220-0494  
info@econaction.org · www.econaction.org

Tax ID 52-2266235

Economic Action Maryland Fund is a 501(c)(3) nonprofit organization and your contributions are tax deductible to the extent allowed by law.



2209 Maryland Ave · Baltimore, MD · 21218 · 410-220-0494

[info@econaction.org](mailto:info@econaction.org) · [www.econaction.org](http://www.econaction.org)

Tax ID 52-2266235

Economic Action Maryland Fund is a 501(c)(3) nonprofit organization and your contributions are tax deductible to the extent allowed by law.

# **Opposition to SB 883 (2025).2-28-2025.pdf**

Uploaded by: Richard Gordon

Position: UNF



February 28, 2025

**Re: Request for an UNFAVORABLE report on SB 883**

Dear Members of the Judicial Proceedings Committee:

I write at this time to urge the Judicial Proceedings Committee to give SB 883 an unfavorable report. If passed, SB 883 would statutorily establish non-consensual towing liens against decades of precedent. It will also, very likely, end up the subject of litigation in State or Federal Court (or both) – forcing the State of Maryland, every County in the State and, potentially, each towing company implementing it – to defend the legislation in Court. In reality, non-consensual towing liens *in Maryland*, are not only unconstitutional in virtually every instance, there is no rational, cost-effective way to establish and implement them here.

**First**, there is no question that non-consensual towing liens are not only illegal in Maryland, they are 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 proposed legislation similar to the bill currently before the Senate. *See* OAG Letter dated April 5, 2024, attached.

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 has an effect on commerce because consumers do not want to return to where they believe their vehicles were improperly towed and held for ransom.

**Second**, SB 883 is unconstitutional. In *Huemmer v. Mayor & City Council of Ocean City*, 632 F.2d 371 (4th Cir. 1980), the Fourth Circuit held that for a statute to authorize a lien on a vehicle towed from private property, the statute must provide **both** notice and a hearing or it is “manifestly defective” from a due process perspective:

The ordinance was manifestly defective, in that recovery of a removed vehicle was absolutely conditioned on payment of towing and storage charges. No opportunity was presented for notice and a hearing to establish whether or not the initial removal of the vehicle was rightful or wrongful.

*Id.* at 372. Since SB 883 provides for neither notice nor a hearing, it is “manifestly



defective” and, therefore, unconstitutional.

Nobody (except perhaps lawyers who charge by the hour) benefits when the Legislature enacts an unconstitutional law. Such legislation spawns endless litigation over its validity until, finally, the Maryland Supreme Court, or a Federal Court, declares what everyone already knows – that the law does not pass constitutional muster. Unconstitutional laws – like SB 883 – must not be enacted.

**Third**, even if SB 883 is amended to include a notice provision and an opportunity for a hearing, it will come at a substantial cost across the board. Towing companies and/or parking lot owners will have to pay for signage in sufficient numbers and size to put the public on notice of the asserted possessory lien. They will also have to establish a system to notify the owners of the vehicles within “one working day of the tow.” *De Franks v. Mayor and City Council of Ocean City*, 777 F.2d 185, 187 (4<sup>th</sup> Cir. 1985).

And whatever governmental entity is designated and required to provide the hearing will be forced to undertake a substantial expense. Since the Fourth Circuit is clear that the hearing must take place “***within twenty-four hours after a request***” for a hearing, 777 F.2d at 187, and currently no county in Maryland has such a process in place to provide the expedited hearing, the costs in each county will be significant since Judges, administrators and office space are all required. For virtually every jurisdictions, the fiscal impact will be prohibitive.

Respectfully,

Richard S. Gordon

Attachment: OAG Letter dated April 5, 2024

**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*

**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*

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)).

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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 dark ink, appearing to read "Natalie Bilbrough". The signature is fluid and cursive, with a large, stylized initial "N" and a long, sweeping underline.

Natalie R. Bilbrough  
Assistant Attorney General

## **SB883 Testimony final.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  
www.howardcountymd.gov/consumer

FAX 410-313-6453

February 28, 2025

Senator William C. Smith, Jr., Chair  
Senator Jeff Waldstreicher, Vice Chair  
Senate Judicial Proceedings Committee  
Miller Senate Office Building, 2 East  
Annapolis, Maryland 21401

RE: Letter of Information: SB883: Commercial Law - Statutory Liens - Motor Vehicles Towed or Removed from Parking Lots

Dear Chair Smith, Vice Chair Waldstreicher and Members of the Senate Judicial Proceedings 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.

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 Maserati illegally towed from a Howard County gas station 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 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 so the owner could retrieve his car.

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 them, be taken into consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Tracy Rezvani". The signature is fluid and cursive, with the first name "Tracy" and last name "Rezvani" clearly distinguishable.

Tracy D. Rezvani

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