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February 19, 2026

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

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

RE: Senate Bill 577 – Vehicle Laws – Towing of Vehicles From Parking Lots
– Civil Action for Nonpayment -- OPPOSE

The Consumer Protection Division opposes Senate Bill 577, sponsored by Senator James, which would allow the operator of a storage lot for vehicles towed from private lots to bring a debt collection action against a vehicle owner who has exercised their right to remove their vehicle from the facility without first paying the amount charged by the storage facility for towing the vehicle and, in addition to the towing charges, collect liquidated damages of two times the amount allegedly owed, court costs and attorney's fees. There is no justification for assessing enhanced penalties and attorney's fees, especially where the vehicle owner has no legal remedy available to promptly challenge the basis for towing their vehicle.

Towing lot operators have previously tried to assert a lien against the towed vehicle to prevent the vehicle owner from removing the vehicle from the lot without first paying the towing charges. However, due process requires that the vehicle owner be given notice and a prompt hearing to be able to challenge the basis for towing their vehicle from a private lot. See attached letters of advice to Delegates Boyce and Love. However, no such process to provide vehicle owners with the opportunity to promptly challenge the basis for towing their vehicles from private lots has been established.

Instead, SB 577 would require vehicle owners to challenge the basis for towing their vehicle as a defense to a debt collection action in which the vehicle owner would be subject to draconian penalties not generally available as part of a debt collection action. The Division sees no basis for providing greater relief to the towing lot operator than the relief available in any

other debt collection action. And should the vehicle owner successfully establish that their car was illegally towed, there is no enhanced relief or attorney's fees provided to the vehicle owner. The effect of allowing such draconian awards for the towing lot owner would be to ensure that vehicle owners pay for towing they believe to be questionable rather than risk paying enhanced penalties if the judge fails to accept their explanation as to why the tow was improper.

Accordingly, for the reasons discussed above, the Consumer Protection Division requests that the Judicial Proceedings Committee give Senate Bill 577 an unfavorable report.

cc: The Honorable Mary-Dulany James



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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.¹

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); *Cokinovs 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

¹ 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).

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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,



Natalie R. Bilbrough
Assistant Attorney General

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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

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

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

Sincerely,

A handwritten signature in black ink that reads "Natalie Bilbrough". The signature is written in a cursive style with a large, stylized initial "N".

Natalie R. Bilbrough
Assistant Attorney General