

Mechanics' and Storage Lien and Abandoned Vehicle Process Study Report

2020 Report

Virginia Department of Motor Vehicles
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Executive Summary

Sections 46.2-644.01 and 46.2-644.02 of the *Code of Virginia* create statutory liens for persons who tow, store, or repair motor vehicles to enable those persons to recover costs or other charges owed when the owners of the vehicles fail to pay within a reasonable timeframe. Storage liens, which apply to anyone who stores a motor vehicle, are established in § 46.2-644.01 of the *Code of Virginia*. Mechanics' liens, for those who perform work on a motor vehicle, are found in § 46.2-644.02 of the *Code of Virginia*. Both liens are enforced through the provisions of § 46.2-644.03 of the *Code of Virginia*. That section also permits tow companies, which recover unattended or immobilized vehicles at the direction of localities, to use the mechanics' and storage lien (MSL) process if the vehicles have not been disposed of through the abandoned vehicle process (AVP) or another statutorily authorized procedure.

Sections 46.2-1200 through 46.2-1207 of the *Code of Virginia* designate the current process for applicants to dispose of an abandoned motor vehicle, trailer, or manufactured home left on a Virginia highway, public property, or private property. That process also applies to unattended and immobile vehicles, generally, under §§ 46.2-1209 through 46.2-1215 of the *Code of Virginia*. Anyone in possession of an abandoned vehicle is required to use the abandoned vehicle process. The Department of Motor Vehicles (DMV) allows individuals, businesses, and government agencies or their authorized agents to use the AVP through its website.

In 2019, former Chairmen of the Senate and House Transportation Committees charged DMV to convene a stakeholder group to examine issues surrounding abandoned vehicles and vehicles subject to MSL. The issues raised have included: difficulties complying with notice, posting, and Servicemembers Civil Relief Act (SCRA) requirements; confusion between the different processes legislated for abandoned vehicles and MSL, and when they may be used; lack of options to facilitate compliance with other states' requirements, when necessary; and the lack of adequate statutory authority or direction for some practices, especially those of towing companies (Appendix A).

The stakeholders include representatives from the towing industry, the vehicle data industry, the insurance industry, the banking industry, the vehicle dealer industry, the vehicle storage industry, law enforcement, and other relevant stakeholders as identified by DMV. In March of 2019, DMV assembled an internal working group to begin reviewing the issues surrounding the concerns raised in the charge letter issued by the Transportation Committee's Chairmen. The team began:

- Reviewing concerns regarding the different processes legislated for abandoned vehicles and vehicles subject to mechanics' and storage liens and when they can be used;
- Reviewing options to comply with other states' requirements;
- Reviewing concerns regarding the difficulties complying with notices, postings and the requirements of SCRA;
- Identifying changes for adequate statutory authority or direction for some practices;
- Streamlining and increasing compliance with Virginia's current requirements and processes; and

- Identifying processes or legislation needed to ensure compliance with notification requirements in Virginia law and other jurisdictions' laws.

After three meetings and a conference call, the stakeholders agreed that, in order to ensure a thorough review of the MSL process and AVP, the study needed to be extended into 2020, with a full report submitted to the House and Senate Transportation Committees in December 2020. With the agreement and understanding of the stakeholders, DMV submitted an interim report to the Senate and House Transportation Committees in December 2019. As we conclude the extended sessions for the MSL/AVP Stakeholder Study, this final report is being submitted and supersedes the interim report.

Stakeholder meetings resumed in the summer of 2020. Many topics were discussed, such as: lien relinquishment, securing priority, submission of independent appraisals, retail versus trade-in value, process timeframes, notification and mail requirements, notice of sale, out-of-state vehicle information, and rewriting the *Code of Virginia* for MSL and AVP. DMV provided revisions to the *Code of Virginia* based on stakeholder discussion and consensus was reached on the majority of the proposed enhancements. No consensus was reached for increasing storage lien caps or enforcement sections proposed by the Office of the Attorney General (OAG). The towing industry and the OAG agreed to continue discussions into the fall and felt optimistic that an agreement could be reached on the latter.

An overwhelmingly popular concept was the proposed online MSL/AVP portal where customers with proper access would be able to log in, conduct MSL and AVP transactions, and review their vehicle activity without having to contact DMV. The concept would expand on the existing AVP online service option and include transactions such as conducting a record request, posting notice of sale, uploading documents for certain processes needed for DMV review, submitting paperwork for the new lien relinquishment process, and viewing all vehicle postings for MSL. The group sought to align MSL and AVP, as much as possible, in order to streamline and enhance the processes.

In addition to the portal, a number of policy and process discussions occurred. While a few proposals did not obtain consensus, mentioned previously, the group was successful in identifying many process enhancements for both lien types, to include:

MSL Process:

- Permit authorized agents of bailees to request transcripts and use the enforcement process. Anyone requesting more than five transcripts in a 12-month period must use DMV's extranet tool;
- Expand DMV's vehicle record search to other states. DMV would be responsible for contacting the other states and notifying all owners or lienholders. If no record is found, or another state will not provide DMV with the owner or lienholder information, the bailee may proceed with enforcement; however, they would assume liability for doing so without notice to the owner. Nothing would prevent the bailee from using a third-party data provider to obtain vehicle information; however, it would not be required;

- DMV would place an administrative hold on each vehicle record for which an MSL transcript is requested. The bailee would be responsible for advising DMV within five business days that a vehicle has been reclaimed in order to remove the hold. Failure to do so could result in a \$40 administrative removal fee. The hold would also be removed at the close of the enforcement process, when the vehicle is sold. There would be no fee associated with that removal;
- If the bailee wants to prove that a vehicle is worth less than the trade-in value determined by DMV, they would be able to submit an independent appraisal for that purpose. If DMV cannot establish a value, the agency would have guidelines for other acceptable valuation documents, which may be something other than an independent appraisal. Independent appraisals would be acceptable for any vehicle of any value;
- When the bailee is ready to sell the vehicle, DMV would conduct a second search of vehicle records, in case the vehicle has been retitled or a new lien has been added, and send notices by certified mail to the owner and lienholder. The notice would give the recipients 15 days in which to reclaim the vehicle, after which all ownership and security interests in the vehicle would be waived. At the same time, DMV would post the bailee's auction notice for at least 21 days on the agency's website. This process would carry a \$40 fee and would also produce a certification document to provide to the purchaser of the vehicle. DMV intends for the certification document to be an updated, electronic version of the VSA 41 in use today;
- If the bailee must petition a court in order to sell the vehicle, the court order must be submitted to DMV in order to produce the certification document for the purchaser. The sheriff or sheriff's representative would have to sign that document, in addition to the bailee;
- After the sale, surplus proceeds would still have to be paid to a lienholder of record and/or the owner; however, that surplus must be claimed. If the lienholder or owner claims any surplus prior to the auction, the bailee must pay within 30 days of the date of sale. If the lienholder or owner claims any surplus within 30 days after the auction date, the bailee must pay within 30 days of the claim date. The bailee would be permitted keep any surplus not claimed within 30 days of the sale; and
- Out-of-state requesters would be able to obtain Virginia vehicle information for MSL enforcement in their states for a \$25 fee. DMV would notify the vehicle owner and lienholder, if any, of the release of the transcript by first class mail.

Lien relinquishment:

- Any MSL would be able to be relinquished, provided the MSL transcript shows no existing lien and the vehicle owner fails to reclaim the vehicle during the 10 days following DMV's initial notice;
- Relinquishment would require the bailee to report the transfer of the vehicle to DMV through the portal. Submissions would carry a \$5 fee and be reviewed by DMV staff. DMV would note the relinquishment on the vehicle record and notify the owner of the same, including the contact information for the new possessor of the vehicle. The relinquishment would be allowed as long as the vehicle is transferred within county/city boundaries in the Commonwealth; and

- The new possessor of the vehicle would have a storage lien that must be enforced.

AVP:

- Removal and disposal of abandoned vehicles from public property would be limited to law enforcement, localities, and their contracted agents. Language would make clear that unattended and immobile vehicles could be processed as abandoned;
- DMV would be responsible for contacting the other states and notifying all owners or lienholders by certified mail;
- Out-of-state requesters would be able to obtain Virginia vehicle information for AVP enforcement in their states for a \$25 fee. DMV would notify the vehicle owner and lienholder, if any, of the release of information by first class mail; and
- Private, non-governmental AVP users would be required to hold an auction before obtaining title to the vehicle themselves. Statutes would provide for clearer titling documentation to be submitted to DMV.

Background

The definition of “abandoned vehicle” in Chapter 12 of Title 46.2 of the *Code of Virginia* was first codified in 1968. Until 2009, the AVP was manual, with the definition changing very little for several decades. The MSL process has remained manual; however, prior to 2009, MSL for motor vehicles followed the processes set forth in §§ 43-31 through 43-40 of the *Code of Virginia*. Changes made by the General Assembly to both code sections in 2009 resulted in the two distinct processes in use today. Those changes were the culmination of nearly two years of work by DMV and stakeholders, as well as decisions made by General Assembly members during the 2007 and 2009 Sessions.

In 2007, former Delegate Morgan Griffith introduced legislation, House Bill 1929, that would have allowed a property owner to have an abandoned vehicle removed from private property without notification to the vehicle owner, while explicitly providing protection from liability resulting from the removal of the vehicle. Numerous concerns regarding this legislation were raised in areas including the MSL provisions of SCRA and conflicts with the existing process for removing abandoned vehicles, as it was previously set out in § 46.2-1208 of the *Code of Virginia* (now repealed). The bill was left in the House Transportation Committee, which effectively killed the bill. In the fall of 2007, DMV convened an Abandoned Vehicle Task Force to address concerns with Delegate Griffith’s legislation. DMV expanded the task force the following year.

In 2008, DMV established the Abandoned Vehicle and Salvage Vehicle Task Force with four workgroups and tasked with identifying issues and presenting findings on:

- Abandoned vehicles and tracking their removal, salvage, and destruction;
- Salvage laws and issues dealing with branded titles and rebuilt vehicles;
- Mechanics’ and storage liens; and
- Auto auctions and insurance issues.

The result of this task force was a 2009 legislative proposal that would have created a combined process for abandoned vehicles and MSL; however, the provisions of the bill were divided and enacted by the General Assembly as separate requirements that are now under review in this study. The General Assembly amended Chapter 12 of Title 46.2 of the *Code of Virginia* to create a new electronic process for disposing of abandoned vehicles, but separated out MSL rules and procedures. MSL procedures were placed into Chapter 6, which applies to vehicle titling and registration. The current MSL statutes are §§ 46.2-644.01 through 46.2-644.03 of the *Code of Virginia*. The current AVP statutes are §§ 46.2-1200 through 46.2-1207 and §§ 46.2-1209 through 46.2-1215 of the *Code of Virginia*. DMV and stakeholder experiences strongly suggest that the manner in which the 2009 bill was divided is the root of some of the identified concerns for both processes. Some of the concerns resulting from the division of the combined process originally proposed by the 2009 legislation, which are also being reviewed in this study include:

- Clarity on fees and the notification process;
- Conflicts with the Virginia Self Storage Act and disposition of vehicles;
- Guidelines for transaction fees to provide buyers during the titling process;
- Law enforcement holds on vehicles;
- Public notice requirements; and
- A clear titling process for abandoned vehicles.

Since 2009, various customers and trade associations have raised concerns about the state of both the AVP and MSL process. Even though the General Assembly has made amendments to the applicable sections since that time, those changes have been relatively minor. As a result, these processes may not have kept up with the pace of modern business needs. For that reason, the former Chairmen of the Senate and House Transportation Committees asked DMV to conduct this study. The charge from the Chairmen included:

- Identifying difficulties complying with notice, posting, and SCRA requirements;
- Clarifying the confusion between the different processes legislated for abandoned vehicles and MSL, and when they may be used;
- Providing more options to facilitate compliance with other states' requirements, when necessary; and
- Providing more statutory authority or direction for some practices, especially those of towing companies.

Industry groups invited to participate in the 2019/2020 study included: towing industry, the vehicle data industry, the insurance industry, the banking industry, the vehicle dealer industry, the vehicle storage industry, law enforcement, and other relevant stakeholders as identified by DMV (Appendix F).

In 2019, stakeholder meetings took place on June 5th, July 9th, August 14th, and December 11th, 2019 at DMV headquarters. There was also a conference call on July 20th, 2019 to resolve outstanding issues after the second stakeholder meeting regarding a unified abandoned vehicle and MSL process. During the conference call, it was agreed upon by the stakeholders to extend the

study and explore the options for a unified process, including the possibility of creating a user-friendly web based portal to streamline the unified process. In 2020, full stakeholder meetings took place June 25th, July 22nd, and August 26th, and a subcommittee meeting was held on August 12th. As a result of the changes related to the COVID-19 pandemic, all of the meetings in 2020 were held through conference calls.

Best Practices

The American Association of Motor Vehicle Administrators (AAMVA) publishes Best Practice documents and model legislation designed for Chief Driver License Administrators and Law Enforcement personnel and staff. In March 2020, AAMVA released its “Best Practices for the Prevention of Abandoned Vehicle & Mechanics’ Lien Fraud” Document. DMV obtained an advanced copy and utilized it throughout the later study meetings. Upon review, the group noted that most of the suggestions in the document are already required by DMV policy or included in the new proposals being considered by the stakeholder group. In a few cases, the Best Practices are not applicable to the group’s envisioned new process, primarily on the subject of notification, because the proposal includes DMV assuming the responsibility for notifying owners and lienholders of vehicles for which a lien has been applied.

The study group identified three subjects from the Best Practices, on which additional discussion with stakeholders was needed: the vehicle sales process, MSL process timelines, and the location of the vehicle. A requirement to notify owners and lienholders of the physical location of the vehicle, as outlined in the AAMVA best practices, had not been discussed in any prior meetings. However, internal discussion came to a consensus that this should be a requirement and that DMV should additionally require applicants to provide owners and lienholders with access to the vehicle, as any property contained within the vehicle is not subject to the MSL.

Current Law and Concerns

Mechanics’ and Storage Lien Process

Eligibility and Procedure

Sections 46.2-644.01 and 46.2-644.02 of the *Code of Virginia* create statutory liens for persons who tow, store, or repair motor vehicles to enable those persons to recover costs or other charges owed when the owners of the vehicles fail to pay within a reasonable timeframe. Storage liens, which apply to anyone who stores a motor vehicle, are established in § 46.2-644.01 of the *Code of Virginia*. Mechanics’ liens, for those who perform work on a motor vehicle, are found in § 46.2-644.02 of the *Code of Virginia*. Both liens are enforced through the provisions of § 46.2-644.03 of the *Code of Virginia*. That statute also permits tow companies that recover unattended or immobilized vehicles at the direction of localities to use the MSL process if the vehicles have not been disposed of through the AVP or another statutorily authorized procedure.

The *Code of Virginia* grants a storage lien for the reasonable costs of storage up to \$500, if there is an existing recorded lien on the vehicle, or up to the value of the vehicle as determined

under § 8.01-419.1 of the *Code of Virginia*, if there is no lien. For vehicles with existing liens, if the vehicle is sold at auction, storage lienholders have a statutory priority of \$300 of the sale price over the existing lienholder. However, the storage lienholder can increase that priority to the full \$500 by notifying the existing lienholder of the storage lien within seven days of taking possession of the vehicle by telephone and certified mail. The lienholder has seven business days from receipt of the notice to reclaim the vehicle or the full priority is awarded to the storage lienholder.

A mechanics' lien for reasonable costs of repair is capped at \$1,000, if there is an existing lien on the vehicle, or up to the value of the vehicle as determined under § 8.01-419.1 of the *Code of Virginia*, if there is no lien. Mechanics' liens differ from storage liens in that the mechanic has full priority for the lien over existing liens, without the need to secure priority in advance.

Under § 46.2-644.03 of the *Code of Virginia*, a mechanics' or storage lien may be enforced by sale of the vehicle at public auction after the owner has failed to pay an invoice for charges at least 10 days after the invoice is due. The MSL enforcement process begins with a transcript request by the applicant through DMV for a fee of \$9.00. DMV must check Virginia records to determine the owner and any lienholder of the vehicle, as well as whether any owner has a military active-duty indicator on the vehicle record. The agency also checks for any state or national stolen vehicle indicators through the National Crime Information Center (NCIC), and uses the National Automobile Dealers Association (NADA) to determine the trade-in value of the vehicle. When it finds a Virginia record, DMV mails a courtesy notice the next business day to the owner or lienholder of record, providing the name and address of the MSL applicant. This notice does not replace any notice required to be sent by the MSL applicant, nor is it archived by DMV. Assuming DMV finds no stolen indicators, the presence of a Virginia record and the trade-in value determine the next steps for the MSL applicant.

For the MSL applicant, the value of the vehicle determines whether the applicant needs a court order to sell the vehicle. In general, no court order is required for vehicles valued up to \$12,500. A general district court order is required for vehicles valued between \$12,500.01 and \$25,000. For vehicles over \$25,000 in value, the MSL applicant must petition the circuit court. The *Code of Virginia* requires vehicles subject to a court ordered sale to be sold by the local sheriff. An exception to these rules is vehicles subject to SCRA (50 U.S.C. § 3901, *et seq.*).

If any owner of a vehicle is on active duty military service, the MSL applicant must petition a court, regardless of the vehicle's value, for authorization to sell the vehicle. Section § 46.2-644.03 of the *Code of Virginia* requires compliance with SCRA; however, the MSL applicant bears the full burden of determining whether an owner is on active-duty. DMV will provide an active-duty indicator, if one is present on a vehicle record, but can provide no other assistance with compliance. The DMV active-duty indicator is not proof that an owner is currently on active duty, nor is the absence of an indicator proof that an owner is not currently on active duty. The MSL applicant must use a United States Department of Defense website to attempt to determine active-duty status. Except for a court order, when granted, DMV requires only that an MSL applicant certify compliance with SCRA when a vehicle is titled after sale.

When a vehicle is eligible to be sold, § 46.2-644.03 of the *Code of Virginia* requires the MSL applicant to post a notice of the time, place, and terms of the sale in one of the following places: 1) a public place in the locality where the vehicle is located; 2) a website operated by the Commonwealth, the locality where the vehicle is located, or a political subdivision of either; or 3) a newspaper of general circulation, either in print or on its website, in the locality where the vehicle is located. If there is a Virginia record for the vehicle, the MSL applicant must also send the same notice by certified or registered mail to the owner or lienholder at the last known address as indicated on the transcript, at least 10 days prior to the sale. If no Virginia record is found, or the owner is not a Virginia resident, the MSL applicant must post the notice of sale in a total of three locations, in any combination of the above places.

The MSL applicant may conduct the auction after 10 days have passed. Proceeds from the sale are used to satisfy the mechanics' or storage lien, based on the priority granted or secured. Additional proceeds are to be paid, in order, to the lienholder of record and then the owner within 30 days of the sale. The *Code of Virginia* imposes a statutory penalty of \$50 for each day over 30 days the excess from the sale remains unremitted.

Section § 46.2-644.03 of the *Code of Virginia* provides for a single exception to the requirement to auction the vehicle when enforcing a mechanics' or storage lien. If a vehicle has no Virginia record, is at least six years old, and has a value of no more than \$3,000, the MSL applicant may apply for a title or a nonrepairable certificate without meeting notice requirements or attempting to sell the vehicle.

The majority of the stakeholder discussion centered on concerns with potential changes to the MSL process. There were several key issues:

- Securing priority for storage liens;
- Lien caps;
- The scope of DMV's record check;
- The contents of the MSL transcript;
- The use of administrative stops during the MSL process;
- SCRA compliance;
- Determining the value of the vehicle;
- Posting notices of sale;
- Notifying owners and lienholders;
- The possibility of a time limit on the MSL process;
- Sheriff's sales;
- Claiming personal items from the vehicle;
- Payment of a surplus;
- Lien relinquishment; and
- Enhanced enforcement by the Office of the Attorney General.

Securing Priority

This provision applies only to storage liens. Under current law, the statute provides for an automatic lien of \$300 to cover storage fees. A storage facility may then secure priority for a higher amount, up to \$500, by applying for a vehicle transcript and notifying the owner and/or lienholder by certified mail and by telephone within seven days of storing the vehicle. The lienholder then has seven days to respond and reclaim the vehicle. If the vehicle is not reclaimed, then the priority increases to \$500.

Stakeholders discussed a proposal to increase the storage lien statutory priority to \$500 and relieve them of their current notification requirement, instead making the DMV's courtesy notice to lienholders and owners a statutory requirement. In addition, the notice would be updated to state that the owner or lienholder has ten business days from the date of the notice to reclaim the vehicle. Vehicles that remain unclaimed after the 10 business day period could then proceed to the auction process. There were no objections to removing the priority requirement or to codifying DMV's notice; however, towing stakeholders asked that the study group consider raising the priority cap on the storage lien due to overall increases in towing and storage costs to the businesses.

Lien Cap

Section 46.2-644.01 of the *Code of Virginia* sets a maximum cap on priority for storage liens at \$500, when there is an existing lien on a vehicle and proper notification is given. If the vehicle sells at auction, the storage lienholder is entitled to take up to that amount, after which, proceeds from the sale must be paid to the lienholder of record. The section also gives the storage lienholder a second lien against proceeds remaining after a recorded lien is satisfied. According to the towing stakeholders, vehicle sales rarely result in enough proceeds to cover the priority amount and the outstanding recorded lien. That fact, coupled with increased underlying costs of storage and the expenses of the MSL enforcement process, means that \$500 often does not make the storage lienholder whole. Additionally, the section provides for a third, uncapped, lien for towing expenses; however, those expenses merely add to the costs that are not recovered through most sales.

Discussions during the 2020 stakeholder meetings revealed an ongoing enforcement issue regarding the separate liens for storage and towing, especially considering that the towing lien is uncapped. In order to address that issue, DMV proposed statutory language that would combine the two liens and apply the priority cap. After reviewing the proposal and explaining the issues of increased underlying costs, the towing stakeholders offered options for increases to the lien cap to reflect the combined lien. Stakeholders discussed two options for increasing the cap: a flat increase to \$1000 or \$1500 or a limit of up to 30 days of storage fees, rather than a specific dollar amount. Stakeholders from the banking industry made a case for leaving the cap at \$500.

The stakeholders did not reach a consensus on either combining the liens or raising the cap. As a result, the statutory draft reflects only the changes to claiming priority, the elimination of the initial \$300 cap, and the codification of DMV's notice. The cap for storage liens in the draft statutory amendments remains at \$500. This amount is not a final recommendation of the group,

but rather a reflection of current law. Stakeholders or related groups could choose to seek separate legislation to address this issue.

Scope of DMV Record Checks

The *Code of Virginia* requires DMV to check only Virginia records for an MSL transcript. Unlike with the AVP, when no Virginia record is found, MSL applicants are not required to check other states for vehicle owner information or attempt to send notification to the owner. As a result, vehicles can go to auction with no more notice than basic postings of auction notices. The absence of this requirement may invite fraud by allowing MSL applicants, who know the vehicle owners are not Virginia residents to sell the vehicles without the knowledge of the owners, which may appear to violate the rights of vehicle owners outside of Virginia. Similarly, Virginia vehicle owners may lose some protections because DMV does not share Virginia vehicle owner information with any mechanics' or storage lienholder trying to comply with MSL requirements in another state due to limitations in Virginia privacy laws.

In contrast to MSL, the AVP requires DMV to conduct a nationwide search for vehicle owner information through the National Motor Vehicle Title Information System (NMVTIS). While DMV does not obtain owner or lienholder information from other states, it does identify the jurisdiction to the applicant, who is required to obtain the information and properly notify the owners before an abandoned vehicle can be sold or retitled. Though not codified, DMV also permits out-of-state persons to obtain Virginia vehicle owner and lienholder information for abandoned vehicles through an online lookup. The current AVP search was originally intended to be used for MSL, as well; however, the division of the 2009 legislation created two separate requirements.

Stakeholders discussed the possibility and importance of including a NMVTIS check for MSL transcripts. Doing so would give DMV three general options for assisting the MSL applicant: 1) provide the MSL applicant with the state of title and contact information, requiring the applicant to obtain the information; 2) reach out to the state of title to obtain the owner and lienholder information to provide to the MSL applicant for notification purposes; or 3) obtain the owner and lienholder information from the state of title and send the required notices instead of the applicant. DMV and the stakeholders were in favor of option three; however, all recognize that the final result may be a combination of two of these in order to accommodate court processes, including compliance with SCRA. As mentioned briefly above, DMV sends a courtesy notice to vehicle owners and lienholders when it issues an MSL transcript. With any record found, whether in Virginia or out, DMV would continue to send this notice by first class mail. In addition, stakeholders agreed that DMV should be allowed to release Virginia owner and lienholder information to out-of-state requesters looking to enforce MSL in other states. After releasing the information, DMV would also send courtesy notices by first class mail to the owners and lienholders to advise them that their records were released for MSL enforcement in Virginia.

This approach would protect owners' rights by reducing the number of vehicles processed through the MSL as if no record exists, especially if DMV can obtain ownership information from another state. Furthermore, amending the *Code of Virginia* to allow DMV to provide Virginia

information to an out-of-state requester would help ensure vehicle owners in the Commonwealth receive at least initial notification if their vehicles are subject to MSL enforcement in other states.

MSL Transcript

The MSL transcript provides vehicle owner and lienholder information for the purpose of MSL notification and enforcement. Discussions about the transcript during the study centered on the potential for eliminating some of the information that is not required for MSL enforcement, as well as adding information that could assist MSL applicants with meeting certain requirements. DMV staff explained to stakeholders that any changes to the MSL transcript could be made administratively, so no statutory changes would be needed.

First, during internal discussions about the future state of MSL, DMV staff expressed concern over the amount of information contained on the transcript. Citing privacy concerns, staff initially thought the best approach for the transcript in the future would be to copy the AVP and not release any vehicle owner or lienholder information directly to requesters. DMV does not recommend this approach because MSL enforcement can require court filings and service of process, for which DMV would have to provide owner and lienholder information. As a result, DMV cannot limit the information on the transcript to a great degree. The only information DMV is looking to remove is the identity of the dealer that originally sold the vehicle, which appears if present on the vehicle record. DMV staff can find no reason for the inclusion of the dealer for MSL enforcement purposes because notices are only required for owners and lienholders. If the dealer is also the lienholder, its name would appear as such, even with the removal of the dealer field. Stakeholders were not opposed to this change.

Second, stakeholders raised concerns that vehicles marked as “sold” in DMV’s records return no information on transcripts other than an indicator that the vehicle was sold. DMV staff explained that the agency cannot provide vehicle owner information for sold vehicles, since they have been disassociated from the previous owner’s record. Privacy laws prevent DMV from releasing the prior owner’s name once that occurs. However, the agency has determined that, if the vehicle record is marked as “sold,” but shows a lien that has not been satisfied, DMV can provide the lienholder information on the transcript. Lienholder information is a portion of the vehicle record that, while privileged, is not subject to the same release prohibitions as the personal information of the prior vehicle owner. Including the lienholder information will allow for better notice and, potentially, vehicle recovery, if the lienholder is looking for the vehicle. Stakeholders supported this change. Sample current and future transcripts are provided in Appendix B.

Finally, stakeholders asked DMV to consider adding the vehicle owner’s birthday to the MSL transcript in order to assist with SCRA compliance, discussed further, below. While DMV acknowledges that an owner’s birthdate may assist with the SCRA lookup, reliable results require name, date of birth, and social security number, which DMV cannot provide. For that reason, DMV is concerned that including birthdate on all MSL transcripts is a privacy risk with little true benefit. Stakeholders were advised that DMV will not add birthdate to the transcript.

Administrative Stops on the Record

DMV staff has seen various ways in which vehicle owners try to obstruct the MSL enforcement process when they do not want to reclaim the vehicle, but also do not want the MSL applicant to be able to recover any charges owed. One of the most common approaches is to assign the vehicle title to someone else after the owner receives a courtesy notice from DMV that an MSL transcript was issued. The MSL applicant will send notice based on the owner information provided on the transcript and proceed with the sale of the vehicle; however, after the vehicle is sold, the new owner will present documentation to DMV that does not match the vehicle record. If the purchaser cannot provide documentation to show that the owner on DMV's record was notified properly before the sale, DMV cannot accept the titling paperwork.

The study group recommends creating a new administrative stop in statute for MSL. DMV proposed to the stakeholders that an MSL transcript request could trigger a hold to be placed on the vehicle record. That hold would prohibit DMV from processing any titling transaction prior to the sale of the vehicle, or other indication from the MSL applicant that the stop should be removed, such as when the vehicle is reclaimed. The MSL applicant would be required to request that the hold be released within five business days of a vehicle being reclaimed. If DMV must remove a stop on a reclaimed vehicle's record at the request of the vehicle owner or lienholder after that period, the agency would be given the authority to charge the MSL applicant a \$40 stop removal fee, which is consistent with fees associated with other similar vehicle stops. That fee would not apply to vehicles sold at auction.

In the interim report, DMV posited that the administrative stop could be placed on the record while disputes or civil matters are being resolved; however, subsequent discussions led the study group and DMV to conclude that the stop, as proposed, should be sufficient. Stakeholders were supportive of this approach.

SCRA

The Servicemembers Civil Relief Act (50 U.S.C. § 3901, *et seq.*), among other purposes, protects military servicemembers from otherwise-common debt collection practices while the member is on active military duty or service. These practices include the enforcement of mechanics' and storage liens. SCRA requires that a court approve the sale of a motor vehicle owned by an active-duty service member in order to enforce such a lien. In order to comply, the MSL holder must use a United States Department of Defense (DoD) website to attempt to determine whether a vehicle owner is on active duty. As mentioned previously, the website provides for lookups based on name or a combination of name, date of birth, and social security number. The DoD warns that name searches or combinations of less than all three fields may not be reliable. Regardless, both SCRA and Virginia's MSL enforcement laws require compliance with the act by mechanics' and storage lienholders.

SCRA compliance is an issue that has been raised with DMV for several years. The MSL transcript provides only vehicle owner name and address. It does not include birthdate or social security number. As a result, MSL applicants have difficulty determining whether any vehicle owner is on active duty. The 2008 Abandoned Vehicle and Salvage Vehicle Task Force recommended the creation of an active duty indicator for vehicle records, which was enacted in 2009. While DMV is required to ask vehicle owners if they are on active military duty or service and provide the response on MSL transcripts, the indicator is not set out as an alternative to the DoD website search for SCRA purposes, as it is not included in the federal law. Furthermore, it is less reliable than the DoD website search because it is voluntary, unverified, and often not updated after the vehicle owner returns from active duty.

DMV has explored options in the past for assisting MSL applicants with SCRA compliance; however, the agency is unable to do so in any meaningful way. During the study, DMV explained to stakeholders that state law prevents the agency from sharing the social security numbers of vehicle owners. Several years ago, DMV explored the potential for conducting automated SCRA lookups on the DoD website on behalf of MSL applicants and returning a yes/no indicator on the MSL transcript; however, that option continues to be unworkable.

The Commonwealth has a data agreement with the Social Security Administration (SSA) for the verification of social security numbers connected with driver's license transactions. That agreement prohibits DMV from using social security numbers for any other purpose. DMV staff contacted the SSA to ask whether SCRA lookups would be allowed under the agreement, because the social security numbers would be provided to a federal agency. The SSA administrator for the agreement indicated that the recipient being a federal agency is irrelevant. The lookups are outside of the purpose for which DMV is collecting and verifying social security numbers.

As explained above, study stakeholders asked whether DMV would consider including date of birth on the MSL transcript. After careful internal discussion, DMV advised stakeholders that it would not provide date of birth because there is little added benefit to the DoD search without the social security number and the privacy risks are significant, as the transcripts are provided to vehicle purchasers as proof of compliance with MSL statutes. In addition, modern online services make obtaining the desired information possible without reliance on DMV.

Stakeholders were supportive of proposing an amendment to the MSL SCRA compliance language. While the language would not necessarily make compliance easier, it does attempt to clarify the purpose of the active-duty indicator on the record, which is to serve as a trigger for a SCRA lookup. Unfortunately, because the field is voluntary, a "no" indicator does not mean the MSL applicant is safe to proceed without a lookup.

Determining Vehicle Value

Retail vs. Trade-In

Section 46.2-644.03 of the *Code of Virginia* requires DMV to determine the value of a vehicle subject to MSL enforcement. That value determines whether or not an MSL applicant must

obtain a court order before selling a vehicle. Currently, DMV must use the trade-in value from a recognized pricing guide in determining value. Vehicle valuation is automated through DMV's computer system and a connection to the National Automobile Dealer Association's (NADA) valuation tool. The agency uses the average trade-in value with no adjustments for mileage or vehicle condition.

When legislation in 2019 (SB 1342) tied the caps on mechanics' and storage liens on vehicles with no existing liens to the retail value of the vehicles, DMV raised the question of whether MSL enforcement should also be based on the retail value. Under §§ 46.2-644.01 and 46.2-644.02 of the *Code of Virginia*, the lien caps are tied to § 8.01-419.1, which is the basis for vehicle valuation in the rules of evidence for civil cases in Virginia courts. In addition, § 46.2-644.03 of the *Code of Virginia* applies the valuation rules of § 8.01-419.1 to vehicles that are more than six years old and have no record found in DMV's system. If those vehicles have values of \$3,000 or less, MSL applicants may take title to the vehicles directly. However, because of limitations in DMV's computer system, the agency can only provide trade-in values for those vehicles, as well. DMV staff thought aligning all valuations to the retail value might be beneficial to the process overall, especially because many vehicles are subject to a court process that might otherwise use that value.

During the initial study meetings, DMV proposed to stakeholders that MSL vehicle valuation be based on retail value, which would represent an increase in baseline valuations. Representatives from the VADA roughly estimated that retail values are approximately 11% higher than trade-in values; other stakeholders agreed with that estimate. Many stakeholders took an initial position that retail values might be acceptable, provided the value thresholds for court could be increased accordingly; however, additional research by DMV revealed that, while the \$12,500 threshold for general district court could potentially be increased, increasing the \$25,000 threshold for circuit court would cause a statutory conflict. Except in a few instances unrelated to mechanics' and storage liens, the jurisdictional limit for civil actions in general district courts is \$25,000 under § 16.1-77 of the *Code of Virginia*. Anything above that must go to circuit court. In the end, most stakeholders were in favor of keeping trade-in value as the baseline. Law enforcement, OAG, and the courts took no position.

In addition to retaining the trade-in value, generally, the stakeholders agreed to propose expanding the use of the trade-in value expressly to those vehicles six years old or older with no record found to be consistent with DMV's current practice, as described above. Furthermore, the stakeholders reached a consensus to increase the threshold for titling those vehicles from \$3,000 to \$4,500, to adjust for rising vehicle values, in general.

Independent Appraisals

When DMV proposed basing vehicle valuation on retail values, it coupled that idea with an allowance for independent appraisals. That plan was based on the valuation rules of § 8.01-419.1 of the *Code of Virginia*, which start with retail value, but allow other "credible evidence" to show the value of the vehicle is lower or higher than the initial value. For many years, DMV has used that provision to permit independent appraisals to lower values for the vehicles described

above that are more than six years old and have no Virginia record. In choosing to allow them in that limited instance, the agency made an administrative determination that, absent clearer statutory language, independent appraisals would be the most reliable form of creditable evidence. Coming into the study, DMV staff thought allowing for independent appraisals for more vehicles would make the increased baseline value palatable. While stakeholders were not in favor of retail values, they expressed their desire for DMV to accept independent appraisals on a broader scale.

The independent appraisal allowance described above is not the only time DMV will accept such appraisals. Under current DMV MSL procedures, independent appraisals are accepted in the following situations:

1. The NADA Trade-In Value of a motor vehicle cannot be determined through DMV's online valuation system or on the NADA website;
2. The NADA Trade-In Value of a manufactured home cannot be determined through DMV's online valuation system or on the NADA website; and
3. To establish that the value of a vehicle that is at least six years old, with no record in Virginia, and a value of no more than \$3,000.

While these are different reasons for submitting independent appraisals, they have something in common: The *Code of Virginia* is not clear on when the appraisals are acceptable for MSL enforcement and contains no guidelines for their acceptance.

DMV offered a new independent appraisal process for the stakeholders' consideration along with the retail value proposal. The stakeholders initially reviewed three different options for accepting appraisals:

- **Option 1:** Appraisals would be accepted for any vehicle initially valued by DMV up to \$25,000;
- **Option 2:** Appraisals would be accepted for any vehicle, regardless of initial value determined by DMV; or
- **Option 3:** The current rules for independent appraisals would remain in place; however, alternative nationally-recognized pricing guide (e.g., Kelley Blue Book) values could be submitted.

Stakeholders supported a combination of options 2 and 3, providing justification as to why there should be no exclusions to the allowance for independent appraisals. For example, the towing industry raised concerns over values of large commercial vehicles, which may be determined by DMV to be well over \$50,000. If those vehicles are damaged and inoperable, stakeholders want the ability to demonstrate that the vehicle value is far lower. Because DMV is not able to take vehicle condition into account, but is aware of how condition affects value, the agency was amenable to the idea, provided there could be some limits on who could prepare the independent appraisals. Storage facilities agreed that there should be clarity on that issue.

Virginia does not license independent appraisers at the state level; however, this process needs some level of control over who can prepare the appraisals. Discussions emphasized a

preference for professional appraisers, but in an approach that would give applicants choices, based on what may be available in their areas. For example, if an applicant is close to another state that licenses independent appraisers, an appraiser from that other state would be acceptable. Another applicant who may be close to automobile dealers that prepare insurance appraisals could choose to use their services for this purpose. Stakeholders discussed the possibility of DMV providing a list of acceptable appraisers; however, the agency has neither the knowledge or staff to create and maintain such a list or to regulate appraisers, which is the effect that requirement would have.

The study group reached consensus on the following approach. Law enforcement, the OAG, and courts took no position. DMV would continue to set an initial vehicle value, using the NADA trade-in value; however, applicants would be allowed to submit an independent appraisal and supporting documentation to establish a more accurate value for the vehicle. The independent appraisal must be prepared by an individual or business that (i) has all required business licenses and zoning approvals and (ii) is either a licensed appraiser in another state or business authorized by an insurance company to prepare insurance appraisals. The preparer of the appraisal may not have a financial interest in the applicant's business. Upon receipt of the independent appraisal, DMV would make note of the new value on the vehicle record and notify the applicant that they may proceed with enforcement under that value. If DMV cannot determine a trade-in value for a vehicle, the Commissioner would be authorized to set guidelines for acceptable alternate valuation options, to include both independent appraisals and retail or loan values in recognized pricing guides. Language to this effect is included in the statutory drafts.

Posting Notices of Sale

The current MSL process requires MSL applicants preparing to sell a vehicle at auction to post notice of sale in one of the following places: 1) a public place in the locality where the vehicle is located; 2) a website operated by the Commonwealth, the locality where the vehicle is located, or a political subdivision of either; or 3) a newspaper of general circulation, either in print or on its website, in the locality where the vehicle is located. When no Virginia record is found, notice must be posted in any combination of three of these places. Under § 46.2-644.03 of the *Code of Virginia*, “public place” means a premises owned by the Commonwealth or a political subdivision thereof, or an agency of either, that is open to the general public.” While the statute requires posting in a public place, it does not require premises that would be “public places” to allow such posting. As a result, for years, a growing concern for MSL applicants has been the decrease, if not elimination, of public places that allow MSL auction postings.

In 2016, the General Assembly sought to address this concern by expanding posting options for instances where no record is found to include the websites and newspapers listed above. However, that legislation, HB 940, only addressed half of the issue. As noted previously, all MSL auctions require a notice of sale, not just those for vehicles with no Virginia records. In 2019, the General Assembly corrected that oversight by expanding posting options for that single notice to match the options when three notices are required. Even with this language in statute, actual posting options for MSL applicants are limited.

Recent years have seen not only the decline in available public places for posting, but also a reduction in the number of newspapers of general circulation. In addition, even though the statute allows for online posting, DMV's website is the only available space for applicants to use. As a result, stakeholders have continued to express concern about difficulty complying with posting requirements. DMV also has concerns that the dwindling posting options have led to fraudulent documentation being provided to the agency for MSL compliance. Staff has investigated situations after the fact only to discover that no notice was ever actually posted. DMV has no tools available to determine whether posting occurs prior to sale. Instead, the agency can only rely on a certification by the MSL applicant that all enforcement requirements were met.

To address those concerns, stakeholders discussed the possibility of a single posting requirement on DMV's website, which is the process used for abandoned vehicles. The 2009 task force recommended a single posting for MSL, in addition to abandoned vehicles, in its report and proposed legislation; however, the requirement was only enacted for abandoned vehicles when MSL was separated out. Using DMV's website for the required posting would modernize the process and allow for better access for vehicle owners, who may be looking for information about the sale of their vehicles. DMV hosts auction notices today and allows for such searches; however, the postings are not mandatory and the lack of results may lead vehicle owners to assume that an auction is not scheduled if they have not seen the actual posting elsewhere.

Furthermore, while owners and lienholders must receive at least 10 days' notice prior to sale, there is no minimum statutory posting period for MSL auction notices. In order to provide more protection for vehicle owners, especially when DMV finds no record, the proposal would be to set a required posting period of 21 days, as currently applies to abandoned vehicles. Stakeholders supported this approach.

Owner and Lienholder Notification Requirements

In addition to public posting of notices of sale, an MSL applicant must mail notice of the time, place, and terms of the sale by certified or registered mail to the owner and, if applicable, lienholder of the vehicle. The notices are mailed to the addresses provided on the MSL transcript at least 10 days prior to the date of sale. Stakeholders described the common problems they have had with this requirement, while DMV shared other concerns.

For stakeholders, the primary issue was ensuring that the certified mail is delivered or that the mail is properly returned if undeliverable. In some cases, stakeholders reported sending notices up to nine times, with no return receipt or undelivered mail received from the United States Postal Service. This process is complicated because § 46.2-644.03 of the *Code of Virginia* requires delivery, either in person or by certified mail, rather than simply allowing for the notice to be mailed. As a result, the MSL process can take months longer than anticipated.

DMV raised concerns about the contents and timing of the notices. The agency has discovered that some notices have lacked required auction information or have been simply blank pages within the envelope. These notices do not comply with statutory requirements; however, DMV can do nothing about them, especially when a third-party has purchased the vehicle at

auction. In addition, some MSL applicants wait so long between obtaining the transcript and mailing the notices that the vehicle record changes, either to indicate a new owner or a new lienholder. In those cases, the notices are sent to the prior owner or lienholder, resulting in no notice to the owner or lienholder on record at the time of sale.

As a potential solution to these issues, DMV has proposed taking over the certified mailing of notices as part of the more streamlined process being discussed. DMV would send these notices when the MSL applicant advises the agency that the vehicle will be sold. These notices would give the vehicle owner or lienholder a final 15 days in which to reclaim the vehicle or lose their ownership or financial interest in it. This period would be in addition to the initial 10 days following the MSL transcript issuance; however, the distinction would be that the 10 days is for the purpose of setting eligibility to sell the vehicle, while the 15 days is to ensure that, if the vehicle is to be sold, the new owner will not have to contend with existing ownership claims.

Taking on this responsibility would allow DMV to run a second record check to ensure that the proper parties are notified. Even though the proposed process would include an administrative hold to prevent titling in Virginia, that hold would not stop title issuance in another state. With the broader record check, DMV could determine whether an out-of-state individual has taken over title for the vehicle and send the proper notification. In addition, other orders and notifications sent by DMV are deemed sufficient if mailed to the address of record, regardless of whether they are actually received. This proposal includes similar language for MSL notices, which would eliminate the need for repeated certified mailings, ensure the proper notices are included in the envelopes, and allow for the process to continue in a timely manner. Stakeholders were very supportive of this approach.

MSL Process Time Limit

Early in the study, DMV and stakeholders discussed options for shortening the period for the MSL process. Various circumstances affect how long the MSL process takes from start to finish. Some circumstances are outside of the control of MSL applicants; however, where an applicant can control the steps, DMV has seen some applicants hold vehicles until values drop low enough for the applicants to avoid the court process. Stakeholders raised concerns that such a practice potentially harms vehicle owners, who may not receive notice of the MSL for months or years. It also drives up costs for MSL applicants, themselves, to a point that those costs may not be recoverable over time due to high numbers of vehicles on hand.

The initial option discussed by the group was to establish a time limit on the process, tied to the issuance of the MSL transcript. A set period, such as 90 days, would begin on the date DMV issues the transcript. Before the end of the 90-day period, the MSL applicant would need to complete the enforcement process and report to DMV that the vehicle was reclaimed or sold. Some exceptions to the limit might be vehicles that require a court order to be sold, including those subject to SCRA, and vehicles with stolen indicators or other stops that would prohibit the applicant from proceeding without additional steps.

As discussions progressed, the group could not reach a consensus on a set time limit. Too many variables, such as court schedules, are outside of the control of an MSL applicant. While the group talked about other versions of the approach, such as setting an expiration date for MSL transcripts, nothing appeared workable. Instead, the overall proposed process began to take shape, with DMV taking over more troublesome and time-consuming steps. As a result, stakeholders began to look at ways to make the process more efficient, which should work toward the same desired effect. The group reached consensus on overlapping the 15 day second reclamation period for vehicle owners and the 21 day posting period for notice of sale.

The combination of the initial 10-day window for reclaiming the vehicle following the MSL transcript, the 15 days following the certified notice, and the 21 posting days would create a minimum process length of 46 days, not including other administrative actions the MSL applicant might need to complete. Stakeholders understood the difference between the two reclamation periods; however, the majority of the group, including DMV, could see how an owner or lienholder, who failed to respond to the initial notice, might be unlikely to respond to the second notice, even if sent certified. Furthermore, the current process requires only 10 days' notice to the owner or lienholder prior to sale. Even running concurrently, the proposed notice period would be considerably longer.

Following the stakeholder meetings, DMV conducted additional research into whether there would be any issues with having those timelines overlap. Finding none, DMV advised stakeholders that it supports the consensus reached. As such, the study group proposes allowing the 15-day reclamation period following the certified notice to run concurrently with the 21-day notice of sale posting period.

Sheriff's Sale

In accordance with § 46.2-644.03 of the *Code of Virginia*, an MSL applicant must seek a court order before enforcing their lien through the sale of a vehicle if the value of the vehicle exceeds \$12,500. If the value does not exceed \$25,000, the applicant must petition the general district court in the locality where the vehicle is located for sale. Petitions to sell vehicles valued in excess of \$25,000 must be filed with the applicable circuit court. In either case, the statute requires a vehicle subject to such a court order to be sold via sheriff's sale, according to the same rules as a sale under a writ of *fiery facias*, which is governed by § 8.01-492 of the *Code of Virginia*.

Study discussions revealed that this requirement has not been followed in many years, if ever it was. Initially, anecdotal evidence indicated that courts may not fully understand that sheriff's sales are required for these vehicles and, so, do not include the sales when granting orders. Prior to the first of the 2020 study meetings, DMV asked the Virginia Sheriffs' Association to send a survey to its members to try to gauge the understanding of sheriffs. While relatively few responses were received, it became clear that MSL sheriff sales are not common practice.

Early in the study, the stakeholders agreed that proposed changes to the MSL process would not affect statutory court processes unless necessary. As a result, when DMV discovered that the sheriff's sales were not occurring, assuming the requirement would remain, DMV offered

to create some basic educational materials for the courts and sheriffs to ensure that every party is aware of the statutory requirements. During the later meetings, stakeholders questioned whether sheriff's sales are necessary, since the process has, in effect, been working without them for so long. DMV raised concerns about altering the long-standing requirement, but promised to look into the matter further.

After the final stakeholder meeting, further research revealed that the true purpose of the sheriff's sale in this situation is unknown; however, given the context of the requirement and the purpose for sheriff's sales, generally, one can comfortably presume that the General Assembly intended to ensure the court's order is properly carried out. While there may be alternative options to achieve the same goal in the future, at this time, there does not appear to be a compelling reason to eliminate the requirement that would outweigh its likely purpose.

Personal Items

Storage liens under § 46.2-644.01 of the *Code of Virginia* do not extend to personal items that are neither attached to the vehicle nor necessary for its operation. Current law requires the storage lienholder to return personal items to the vehicle owner; however, stakeholders indicated that such a requirement is difficult to comply with when the vehicle owner is nonresponsive. The language is broad enough to be read as a requirement that the storage lienholder seek out the owner to return the items, even if the owner cannot be identified. Conversely, an additional concern was raised that some storage lienholders may prohibit access to the vehicles for owners, who want to reclaim their personal items. The reasons given for why this might occur were varied. In some cases, the storage lienholder may be concerned that the owner will remove vehicle components, instead of personal items, in order to reduce the value of the vehicle. In other cases, the storage lienholder may be intentionally obscuring the location of the vehicle.

Industry stakeholders indicated that they want vehicle owners to reclaim their personal items because the items are not connected to lien enforcement; however, they believe the requirement to seek out the owner in all cases is unduly burdensome. They proposed a requirement that the vehicle owner must reclaim the items prior to auction; otherwise, the storage lienholder would be authorized to dispose of the items. Stakeholders agreed to proposed language that would place requirements on both the vehicle owner and the storage lienholder. The vehicle owner would be required to reclaim personal items at least two business days prior to the auction date; and, the storage lienholder would be required to provide access to the vehicle when that occurs.

The primary component discussed for this approach was how long the vehicle owner would have in order to claim the personal items. The majority of interested stakeholders indicated that at least two business days before the auction would be sufficient. A minority felt it should be at least seven days. Dealers, courts, and law enforcement representatives took no position; however, the OAG expressed opposition from a consumer protection standpoint to the proposal of seven days or more, but did not oppose two business days with the condition that all mailed notices to the owner shall include a disclosure stating the date by which the owner must retrieve any personal items.

Payment of Surplus

As with the reclamation of personal items, stakeholders expressed concern with the statutory requirements for disbursement of excess proceeds following the sale of a vehicle at auction. Under § 46.2-644.03 of *the Code of Virginia*, any person that has a mechanics' or storage lien on a vehicle may sell that vehicle by public auction, for cash. Any proceeds of the auction are applied to the debt and expenses of the sale, based on the priority caps, if applicable. If there is a surplus, that money must be paid to any lienholder of record, or to the owner, within 30 days of the sale. The primary concern of the stakeholders is that the statute has the effect of requiring the MSL holder to seek out the owner or lienholder of record, even if there is no record of either, and imposes penalties for failure to pay in the established time limit. Even when DMV has identified an owner or lienholder, this process can be difficult if the interested party is nonresponsive or has provided DMV with an incorrect address.

Stakeholders proposed that the process for surplus payments be changed. Their desire was to place a burden on the owner or lienholder to claim the surplus, if any, so that proper payment could be made. The group discussed a number of options, but agreed to recommend an approach that would require repayment when claimed, but permit the MSL holder to retain the surplus if no claim is made. The proposal would permit the owner or lienholder to claim the surplus either before the auction, if they are not going to reclaim the vehicle, or within 30 days after the sale, when they know there is a surplus. If the claim is made before the sale, and there is a surplus, the MSL holder would have to pay within thirty days of the sale. If the claim is made within 30 days after the sale, the MSL holder would have to pay within thirty days of the claim.

The proposal would eliminate the current penalties for nonpayment, \$50 per day beyond 30 days. Surpluses from these sales are unusual. If they occur, payment is often impossible unless the MSL holder has been in active contact with the owner or lienholder during the process. Furthermore, the statute is silent as to what entity is responsible for imposing and collecting the penalties. If that entity is DMV, the agency would have no knowledge of whether a surplus existed for any sale, nor any awareness that it has gone unpaid. For these reasons, the penalties are unenforceable.

The study group discussed whether the MSL holder should keep unclaimed surpluses or forward them to unclaimed property at the state Treasury. Consensus was that the surplus could be kept. The OAG subsequently objected to the surplus being kept, and stated that its position is that the funds go to unclaimed property. DMV offered that allowing the MSL holder to keep the unclaimed surplus appeared to be consistent with the additional liens granted on surplus proceeds under §§ 46.2-644.01 and 46.2-644.02 of the *Code of Virginia*. Those liens give MSL holders a claim to additional proceeds after the satisfaction of liens of record, if the priority amounts first taken do not satisfy the MSLs. Failure of a lienholder to claim a surplus would put the proceeds in a similar disposition to those that may exist after satisfaction of a lien. In either situation, the lienholder of record either has no claim left or has given up its claim.

Lien Relinquishment

Self-storage facility and dealer stakeholders expressed a need for an option that would allow MSL holders to have an unwanted vehicle removed from their property quickly, without the time and cost necessary to enforce an MSL. In particular, the stakeholders described vehicles for which the enforcement process might cost more than would likely be recovered at auction or that would continue to take up space because they would not sell at all. Generally, the MSL process is intended to prevent transfers of vehicles because unscrupulous MSL holders could shuffle vehicles around in order to avoid returning a vehicle to its owner. The process creates a paper trail meant to protect vehicle owners from improper divestiture of their ownership rights. The study group agreed that, if a transfer or relinquishment process were to be established, it would need to protect the rights of the vehicle owners to the extent possible.

DMV presented three options to stakeholders:

- **Option 1:** Create a process for the MSL to be transferred to another business, either a storage facility or towing operator;
- **Option 2:** Create a process for the MSL to be relinquished and the vehicle transferred to another business in order to establish a new lien; or
- **Option 3:** Do not create either a transfer or relinquishment option, but try to identify efficiencies in the proposed MSL process that would serve a similar purpose.

The consensus of the stakeholders was that Option 2 would work best, along with identifying efficiencies for the overall process, as offered in Option 3. The proposed relinquishment process would permit any MSL holder to relinquish their lien and transfer a vehicle to an unaffiliated tower or storage facility, which would then be granted a storage lien that must be enforced. No additional relinquishment would be allowed for that vehicle until after it has been titled to a new owner and similar circumstances arise. The process would be tracked by DMV, which would notify the owner of the transfer of the vehicle.

Relinquishment would be subject to a few limitations. First, the initial MSL holder would be required to obtain an MSL transcript from DMV in order to ascertain whether a lien exists on the record. If there is a lien, relinquishment would not be permitted. Second, the MSL transcript would generate a notice from DMV, which would give the vehicle owner instructions for reclaiming the vehicle. Relinquishment may only proceed if the owner fails to reclaim the vehicle according to the applicable statutes. Finally, the MSL holder would be required to notify DMV of the relinquishment within five business days of the transfer of possession, identifying the vehicle and the entity or person taking possession, and pay a \$5 fee to cover DMV's administrative costs, including the notice mentioned previously. Once the vehicle is transferred, the new storage lien holder could then proceed with the MSL process.

Law enforcement, the OAG, and courts took no position on this proposal; however, following the study meetings, DMV law enforcement raised the need for a geographic limitation on the vehicle transfer. The proposed legislation would limit the transfer to within the same locality as the relinquishing MSL holder. The purpose of this limitation would be to prevent the vehicle

being moved to another region of the Commonwealth, or even out of state, which could hinder the ability of the owner to recover the vehicle, if they choose to do so. The draft legislation creates a new statute for this purpose.

OAG Enforcement

Section § 46.2-119 of the *Code of Virginia*, provides a remedy for citizens that have complaints against tow truck drivers or towing and recovery operators. If a tower violates subsection A of § 46.2-118 or §§ 46.2-1217, 46.2-1231, or 46.2-1233.1, or if a towing and recovery operator violates subsection B of § 46.2-118 or §§ 46.2-1217, 46.2-1231, or 46.2-1233.1, of the *Code of Virginia*, a complaint may be filed with the Division of Consumer Protection of the OAG's office (the "Division").

The OAG's office proposed changes to §§ 46.2-119 and 46.2-644.01 of the *Code of Virginia* during the course of this study to improve its enforcement tools and to incorporate storage lien violations by towers into the general violations enforced by the Division. According to the OAG, current law provides the Division no civil penalty outside of Northern Virginia and no formal investigatory power with respect to the violations listed in *Code of Virginia* § 46.2-118, which limits meaningful enforcement efforts in the area. The primary goal of the OAG's proposal was to give the Division the ability to issue civil investigative demands when investigating complaints and to establish civil penalties for violations. The language presented was described as being consistent with the Virginia Consumer Protection Act (§ 59.1-196 *et seq.* of the *Code of Virginia*). Towing industry stakeholders raised concerns about the proposal.

Due to the potentially divisive nature of the proposal and opposition to it, DMV convened interested stakeholders for a subcommittee meeting to address the issue. The initial draft set a civil penalty of \$2,500 for each violation, which the towing stakeholders strongly opposed. When the stakeholders could not reach a compromise during the meeting, the OAG offered a continued discussion outside the study to further explain its proposals and its enforcement and complaint processes. At the time of the last stakeholder meeting, the two sides were closer to a compromise; however, penalties continued to be an issue.

At the last stakeholder meeting, the study group briefly discussed a revised proposal by the OAG that included the civil investigative demand authorization, but reduced the civil penalty to \$1,000. Most stakeholders agreed that this proposal was a common sense approach to provide the OAG with needed enforcement tools; however, one towing group was still concerned about the penalty structure, indicating that tiered penalties might be more palatable. The OAG said it might be possible to reach an agreement on tiered penalties; however, higher approval would be required. Regardless, the civil investigative demand authorization had to be included. By the end of the meeting, the OAG and that towing group could not reach an agreement, but anticipated additional discussions outside of the study.

As the study coordinator, DMV must determine from the meeting events which proposals are recommended by the stakeholders and which are not. In this instance, most stakeholders do recommend including the OAG enforcement language, with the \$1,000 penalties, in the statutory

drafts. However, the final meeting left the potential for the enforcement language to change because one group that could be directly impacted by it objected. For that reason, DMV is attaching two versions of the statutory drafts to this report, one without the language (Appendix C) and one with (Appendix D), along with letters of support and opposition from stakeholders (Appendix F) for legislators' consideration.

Abandoned Vehicle Process

Eligibility and Procedure

Sections 46.2-1200 through 46.2-1207 of the *Code of Virginia* designate the current abandoned vehicle process for applicants to dispose of an abandoned motor vehicle, trailer, or manufactured home left on a Virginia highway, public property, or private property. Sections 46.2-1209 through 46.2-1215 of the *Code of Virginia* also apply that process to unattended and immobile vehicles, generally.

“Abandoned vehicle” is defined in § 46.2-1200 of the *Code of Virginia* as:

[... A] *motor vehicle, trailer, or semitrailer that:*

- 1. Is left unattended on public property for more than 48 hours in violation of a state law or local ordinance;*
- 2. Has remained for more than 48 hours on private property without the consent of the property's owner, regardless of whether it was brought onto the private property with the consent of the owner or person in control of the private property; or*
- 3. Is left unattended on the shoulder of a primary highway.*

Under current language, the abandoned vehicle process is required to be used by anyone in possession of an abandoned vehicle. DMV allows individuals, businesses, and government agencies or their authorized agents to use the AVP.

Sections 46.2-1202 and 46.2-1202.1 of the *Code of Virginia* authorize an electronic AVP, which DMV administers, for use by eligible applicants. Under § 46.2-1202, the applicant must initiate a vehicle record request with DMV, which provides an online transaction for that purpose. DMV then checks: DMV records for the vehicle owner information and lienholder information if applicable; the National Motor Vehicle Title Information System (NMVTIS), a nationwide vehicle record database, for out-of-state records and the last state of title; and the National Crime Information Center (NCIC) for stolen vehicle records. The applicant prints out an abandoned vehicle record request receipt and must maintain the receipt until the entire process is complete. The fee to use the AVP is \$25; however, localities can use the system for free if they enter into use agreements with DMV for the information. The AVP fee covers the record check, notice to owners and/or lienholders via certified mail sent by DMV, and auction notice postings on DMV's website. The applicant must also complete a Vehicle Removal Certificate (VSA 40), which must be provided to DMV, either by the applicant or a purchaser at auction, along with the printed receipt, in order to receive title to the vehicle.

If DMV's record search returns a Virginia vehicle record, DMV mails letters via certified mail to the owner and the lienholder, if there is one, the next business day. The letters advise the recipients that the AVP is in progress and that they have 15 days from the date of the notice to reclaim the vehicle (120 days for manufactured homes). DMV archives these letters electronically. When the 15 (or 120) days have passed, if the vehicle is unclaimed, the applicant may return to the online AVP and post an intent to auction the vehicle. If DMV's records show an existing lienholder, the applicant must notify the lienholder by certified mail of the time and place of the auction at least 10 days prior to that date. After an intent to auction has been active on DMV's website for 21 days, the applicant may auction the vehicle or apply to DMV for a title without holding the auction.

If DMV's record search indicates an out-of-state record, DMV identifies the state on the record receipt printed by the AVP applicant and provides the out-of-state motor vehicle agency's address, telephone number, and fax number. An applicant receiving an out-of-state result still pays the full \$25 fee; however, the applicant, not DMV, is responsible for contacting the out-of-state motor vehicle agency to obtain the vehicle owner or lienholder information and to issue the required notices. These notices must be sent via certified mail and provide the owner or lienholder the option to reclaim the vehicle within 15 days, just like the notices sent by DMV. After 15 days, if the vehicle is unclaimed, the applicant may return to the online AVP and post an intent to auction the vehicle; however, the applicant must provide DMV (or a purchaser at auction) with proof that the required notices were received and contained all statutorily-required information at the time of titling. As for a Virginia-titled vehicle, following the intent to auction period, the applicant may sell the vehicle or obtain a title.

If no Virginia or out-of-state record is found, the applicant may immediately transfer the vehicle to a demolisher or scrap metal processor; however, to obtain a title, instead, the applicant must post the required intent to auction on DMV's website and wait the required 21 days before applying for the title.

Issues Discussed

Eligibility to Use the AVP

Article 1 *Code of Virginia* grants the authority for applicants to dispose of an abandoned motor vehicle, trailer, or manufactured home left on public property, private property, or the shoulder of the highway solely based on a claim of possession of the vehicle, rather than based on property ownership. However, the definition of "abandoned vehicle" cited above implies that the property owner, or someone in control of the property, whether that is a private or government entity, would be the expected AVP applicant. Use of the AVP is based on a certification that the applicant is eligible because they are in possession of an abandoned vehicle. DMV does not have a mechanism for ensuring that the applicant has control over the property, authorization from the property owner, or even possession of the abandoned vehicle, which means DMV cannot stop the process before it starts. As a result, law enforcement is unlikely to be made aware of a false claim until after the process has been completed and the vehicle retitled.

Rather than proposing complex new tools for DMV to create, stakeholders discussed some of the potentially fraudulent situations that have arisen because the statutes are unclear. DMV identified two scenarios that have occurred in the past: one for public property and one for private property. For public property, DMV shared that private citizens have used the AVP to obtain titles to vehicles that were parked on public streets. In most cases, the vehicles were not abandoned, but simply parked outside of the owner's residence. Had they been abandoned, the expectation would be that a tow company under contract with the locality would be responsible for removing the vehicles and using either the AVP or, after 30 days, the MSL enforcement process. On private property, DMV indicated that residents of apartment complexes have used the AVP to obtain title for vehicles parked in the parking lot, rather than leaving that responsibility to complex management, the landlord, or contracted towers.

Stakeholders agreed with DMV that the concern that needed to be addressed in statute was with public property. DMV may have administrative options to address the private property issue, because the abandoned vehicle definition specifically references the property owner or person in control. In contrast, the statutes are silent on control over public property and who can use the AVP for those vehicles left on public property. The study group recommends limiting the private individuals or entities authorized to remove and sell abandoned vehicles from public property to those who have an agreement for such removal with the locality or local law enforcement. The included proposed language would create a new statute for that purpose.

A second issue with regard to eligibility was whether towers removing vehicles from public property at the direction of localities or law enforcement can use the AVP to dispose of the vehicle. Industry stakeholders stated that they did not believe they could use the AVP and must, instead, use the MSL enforcement process; however, that understanding does not align with statute. Both the abandoned vehicle article (Article 1) and the immobilized and unattended vehicles article (Article 2) of Chapter 12 of Title 46.2 of the *Code of Virginia* make clear that localities and their agents can dispose of vehicles through the AVP. While authorized, the AVP is not required. Once the vehicles are removed and stored, the MSL enforcement process may be used after 30 days.

The study group does not propose removing the option to use the MSL process, which offers advantages over the AVP, such as explicit authorizations to recover costs and charges owed. However, stakeholders agreed to propose a change to § 46.2-1209 of the *Code of Virginia* pertaining to unattended and immobile vehicles. Currently, that section sets out a never-used option for those vehicles to be sold by DMV, instead of the locality. Other sections in the same article provide conflicting instruction that the vehicles are to be treated and disposed of as abandoned vehicles. The proposal would replace the optional DMV sale with language consistent with the other sections, subjecting those vehicles, generally, to the AVP.

The interim report indicated that the stakeholders discussed conflicting statutory timelines related to abandoned, immobilized, and unattended vehicles; however, further exploration of the topic led stakeholders to conclude that other areas of concern were more critical, so no consensus was reached. Furthermore, several of the statutes setting out the timelines are intertwined with local ordinances. As they did with court provisions, stakeholders did not want to impact local

ordinances unless necessary. The same conclusion was reached for private property towing, signage requirements, and towing charges, which are all subject to a combination of statute and local ordinance.

Out-of-State Searches and Requesters

Under the current AVP, DMV checks NMVTIS for titling records in other states; however, the AVP applicant is required to obtain the vehicle owner and lienholder information from the other state, as well as send the required notices by certified mail. In order for DMV to issue a title, either to the applicant or a purchaser at auction, the applicant must provide proof to DMV that the certified mail notices were received. As with certified mailing requirements for MSL, DMV has raised concerns about noncompliance with this requirement. DMV does not have the ability to ensure that an applicant has properly notified an owner or lienholder in another state and cannot always trust that the proof presented is legitimate. Stakeholders and DMV agree that DMV should take on the responsibility of obtaining owner and lienholder information from other states and sending the required notices by certified mail, as proposed for MSL.

Furthermore, DMV currently allows out-of-state requesters to obtain Virginia vehicle information through the AVP. Those requesters cannot use the AVP for the purpose of selling the vehicles; however, DMV does notify vehicle owners and lienholders by certified mail, just as if the requesters were in the Commonwealth. Stakeholders agreed on proposing that this process be codified in the same manner as similar requests under MSL, including that the notices be mailed first class, rather than certified, because the requesters would be responsible for proper notification under the laws of their states.

Auction and Titling Requirements

Stakeholders identified two concerns with the statutory provisions controlling the auction and titling process for the AVP: conflicting notice requirements and a lack of clear auction and titling requirements for all applicants. Consensus was reached to propose changes to address both.

First, §§ 46.2-1202 and 46.2-1202.1 of the *Code of Virginia* both require an AVP applicant to notify a lienholder, if one appears on the vehicle record. The first notice is sent by DMV and gives the lienholder 15 days in which to recover the vehicle. Failure to do so explicitly waives the lienholder's security interest in the vehicle. If the vehicle is not reclaimed, the AVP applicant must post notice of intent to auction on DMV's website and, at least 10 days before the advertised auction date, notify the lienholder again. Once again, failure to recover the vehicle waives the lienholder's security interest. Stakeholders were confused as to why the second notice would be required, if the lienholder's security interest is waived after the first. The consensus of the study group was to recommend removing the second notice requirement, leaving the first notice and the 21-day posting requirements in place. However, while the consensus for MSL was to have the notice and posting periods run concurrently, the consensus for AVP was to leave them separate. Stakeholders cited the complexity of the MSL process, as well as its initial courtesy notice, as reasons the approaches should be different. Overlapping notice and posting requirements in AVP would create a shorter process that might encourage more fraudulent use.

Second, the *Code of Virginia* does not set out a clear auction or title process to be followed for all abandoned vehicles. Section 46.2-1203 of the *Code of Virginia* requires localities to sell abandoned vehicles at public auction if the vehicles are unclaimed by owners or lienholders. The same *Code of Virginia* section details the paperwork that must be provided to the purchaser of the vehicle for the purpose of obtaining a title from DMV and what the locality is required to do with the proceeds of the sale. However, the *Code of Virginia* does not include similar requirements for other persons in possession of abandoned vehicles. Instead, § 46.2 1202.1 of the *Code of Virginia* states only that “[i]f the person in possession of an abandoned motor vehicle desires to obtain title to the vehicle, that person shall post notice for at least 21 days of his intent to auction the motor vehicle.” DMV posts such notice on its website, including the time and place of the auction; however, there is no subsequent requirement that the auction actually take place. As a result, DMV will issue a title to an AVP applicant who does not hold an auction following the 21-day posting period. Furthermore, when the vehicle is titled, whether to the AVP applicant or a purchaser, the *Code of Virginia* is silent on the documentation required to be submitted. Currently, DMV applies the documentation rules for localities to all abandoned vehicles sold at auction.

Stakeholders agreed to recommend a proposal that would create a clear requirement for private persons or businesses to auction, or attempt to auction, a vehicle before a title can be issued. After the posting period, the AVP applicant would have to hold the auction. If the vehicle is purchased, the applicant would give the purchaser the completed Vehicle Removal Certificate and the printed AVP receipt to be provided to DMV for titling purposes. If the vehicle fails to sell, the AVP applicant would be eligible to apply for a title to the vehicle using the same documentation and a written statement that the vehicle did not sell at auction. That written statement could be made part of the Vehicle Removal Certificate itself. The proposal would make minor changes to the auction requirements for localities in order to allow for authorized agents to conduct the auctions and more clearly state the documents required for a purchaser to obtain title.

Portal Process

Should the General Assembly enact the recommendations of this study, DMV would create an online MSL process similar to the existing online AVP. During the study, DMV and the stakeholders consistently referred to this future concept as the “portal.” The portal would become the access point for both MSL and AVP; however, because the recommendations for each vary slightly, the back-end processes for both are likely to remain separate. For a user, though, the experience should be consistent, regardless of which option they would use. This is a way to combine the processes after the study group discovered it could not do so statutorily.

For AVP, the portal process would be very similar to the online AVP today. The underlying rules for identifying an abandoned vehicle, notices sent by DMV, and the intent to auction posting would not change for the user. Changes for the user would be outside of the portal, as the existing requirement to send certified mail notices to out-of-state owners and lienholders would be eliminated and the documentation required for titling would change. The new requirement that the applicant must attempt to auction the vehicle prior to obtaining a title would also occur outside of

the portal. For that reason, the majority of discussion during the study was on the MSL portal process.

Under the proposed process, MSL enforcement would still begin with a transcript request. At this time, DMV intends for existing transcript request options to be available, with a focus on encouraging frequent users to sign up for access to transcripts through DMV's extranet. The proposed draft language would require anyone who initiates more than five MSL transcript requests within any 12-month period to use the extranet. DMV intends to create a separate online transcript request for occasional use; however, the specifics of how that might work and be secure remain under development. In person and mail-in transcript requests would also be available, but would be considered exceptions to the rule. Requesting a transcript would prompt DMV to mail notices in the same manner as today.

The portal itself would be used for the new aspects of the MSL process. Access would be based on a combination of factors, including the unique MSL transcript number. Once logged in, DMV expects to give the user the choice of:

- Record Request/Notice of Sale;
- Upload Documents;
- Lien Relinquishment; or
- Status Check.

Record Request/Notice of Sale would be the heart of the system and would be modeled on the existing AVP, but with the differences proposed by the study group. This option would be for users, who are ready to enforce the lien on a vehicle that was not reclaimed after the initial notice. As part of this step, DMV would require the user to provide the date, time, place, and terms of sale of the scheduled auction. In order to allow for proper posting, the user would need to complete this step at least 21 days before the scheduled auction. In response to this request, DMV would conduct a second record search to ensure that the proper owner and lienholder would be notified and send letters by certified mail to begin the final 15-day reclamation period. At the same time, the agency would post notice of the auction on its website for a minimum of 21 days.

This process would also permit users to generate a certification document to be given to the purchaser at auction. Under current practices, DMV provides a paper form for that purpose. DMV expects to recreate that form electronically in the portal. After the sale, the user would be able to report that the vehicle was sold, which would remove the administrative stop placed when the transcript was first issued. This step would carry a \$40 fee to cover the administrative costs to DMV, including, but not limited to, the certified mail costs. The same fee would apply to the AVP, which is currently \$25, but would include enhancements through this proposal. Stakeholders agreed to these fees.

If a user is not ready to enforce the lien, either because they want to show that the vehicle value is lower than what DMV has determined or because they need to report a court order to DMV, then the user would choose the option to Upload Documentation. The documentation would be placed into a queue for review by DMV's MSL work center. Work center staff would review

documents and adjust the vehicle records appropriately. If documentation must be denied, the denial would prevent the user from proceeding with the enforcement step. For independent appraisals, staff would update the vehicle value and notify the user that they may proceed with enforcement. Court orders would be used to alert DMV that the vehicle would not require the Record Request/Notice of Sale step, because the vehicle would be subject to a sheriff's sale. Upon receipt, DMV would provide the certification document described above to the user in order to be completed by the user and sheriff, which would then be given to the purchaser of the vehicle.

Users opting to relinquish their liens and transfer possession of vehicles to others would choose the Lien Relinquishment option. This process would replace a paper form and permit the user to enter the information required by the relinquishment statute. Submissions would fall into the same, or a similar, queue as the uploaded documents to be reviewed by the MSL work center. Upon submission of the form and receipt of the \$5 fee, DMV would record the relinquishment on the vehicle record and send notice to the owner. The new storage lienholder would be required to start the MSL process from the transcript stage.

The final option listed, Status Check, would permit users to inquire on the status of a transaction by inputting a VIN. It would allow users to see the status of notices that have been sent by DMV, whether auction notices have been properly posted, or pull reports of their activities in the portal. Stakeholders have requested a number of features that DMV is reviewing. The agency plans to include multiple reporting options for its own use, as well.

In addition to the options for users, the portal would have two public-facing tools: Search (or View) Postings and Virginia Information Request. DMV currently hosts auction notices for both MSL and AVP. Those postings may be searched through DMV's website; however, the agency plans to use the portal project to make that process more user-friendly. Once complete, vehicle owners, lienholders, and prospective purchasers would be able to view postings easily. DMV also plans to use the portal process to improve, and better secure, the process for out-of-state requesters to obtain Virginia vehicle information for MSL or abandoned vehicle enforcement. As explained above, this process exists today as part of the online AVP. DMV charges \$25 for the service. The proposal would keep the fee at \$25 for both AVP and MSL moving forward.

All members of the study group expressed excitement over the creation of the portal. DMV believes it will help make MSL and AVP enforcement more efficient and help control fraud.

Conclusion

After two years of meetings, either with stakeholders, among stakeholders, or internally at DMV, the study group offers its recommendations and proposed statutory language for the consideration of General Assembly members. Stakeholders and DMV agree that the most effective way to improve both MSL enforcement and the AVP is to have the agency take over the more burdensome aspects of formally notifying vehicle owners and lienholders, to include those out-of-state. DMV taking on that responsibility would reduce potential for fraud and bring more efficiency to both processes.

Furthermore, simplifying and modernizing the posting requirements for MSL will benefit not only those looking to enforce the liens, but also vehicle owners and lienholders of record, who will have a central posting location to search for their vehicles. The 2009 task force sought to align the posting requirements of AVP and MSL and create an electronic database for them at DMV. Time and changing circumstances have led the study group to conclude that the requirements for the two processes should not be identical; however, the end goal remains the same.

The 2019/2020 study group did not simply revisit the work of the 2009 task force. Stakeholders and DMV staff brought fresh eyes and an additional decade's worth of experience to the table in order to build off of and improve the approaches proposed by that team. The end result is a proposal intended to address unintended gaps in both processes, which have caused delays and opened the door for fraud for too long. In asking DMV to lead this study, legislators recognized that a continued piecemeal approach to amending MSL and AVP statutes is not a long-term best practice. The agency and stakeholders encourage General Assembly members to review the proposed drafts carefully and pursue these much-needed changes.

Appendices

Appendix A:

Charge Letters



COMMONWEALTH OF VIRGINIA
HOUSE OF DELEGATES
RICHMOND

February 28, 2019

DAVID E. YANCEY
POST OFFICE BOX 1163
NEWPORT NEWS, VIRGINIA 23601

COMMITTEE ASSIGNMENTS:
EDUCATION
TRANSPORTATION
COMMERCE AND LABOR

NINETY-FOURTH DISTRICT

Commissioner Richard Holcomb
Virginia Department of Motor Vehicles
Post Office Box 27412
Richmond, Virginia 23269

RE: Mechanics Lien Work Group, Virginia Towing Industry

Dear Commissioner Holcomb:

I am writing to you for two reasons, first to commend you and your staff for the work you have conducted over the previous year, in relation to the Virginia towing community's concerns in regards to the Mechanics Liens Laws in out state. Second, I ask that you continue to work with this group in an effort to develop a consensus on legislation or executive actions that would address their concerns and that of the department before the 2020 General Assembly Session.

Please convene at least two or three meetings and report back to me on your findings before September 1, 2019. Thank you very much for all you do to serve the Commonwealth of Virginia. If you have any questions feel free to contact me at any time.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Yancey".

David Yancey,
Delegate 94th House District

CC: Karen Grim, Deputy Commissioner
Matt Benka, MDB Strategies
James Pickral, Commonwealth Strategy Group

SENATE OF VIRGINIA



C.W. "BILL" CARRICO, SR.
40TH SENATORIAL DISTRICT
ALL OF GRAYSON, LEE, SCOTT, AND WASHINGTON
COUNTIES; ALL OF THE CITY OF BRISTOL; AND PART OF
SMYTH, WISE, AND WYTHE COUNTIES
P.O. BOX 396
RICHMOND, VIRGINIA 23218
(804) 698-7540

COMMITTEE ASSIGNMENTS:
TRANSPORTATION, CHAIR
EDUCATION AND HEALTH
FINANCE
LOCAL GOVERNMENT
RULES

March 14, 2019

Mr. Richard D. Holcomb
Commissioner
Virginia Department of Motor Vehicles
P.O. Box 27412
2300 West Broad Street
Richmond, Virginia 23269

Dear Commissioner Holcomb:

Ten years ago, the General Assembly enacted legislation that overhauled processes for enforcing mechanic's and storage liens and for disposing of abandoned vehicles. With the exception of a few amendments to individual requirements, the overall statutes and processes remain largely the same today as they were following the 2009 General Assembly session. However, I am aware that a broad range of concerns about these processes have been raised with both the Department of Motor Vehicles (DMV) and legislators in the intervening years that indicate a review of these statutes is in order.

To that end, I request that DMV convene a stakeholder group to examine the following issues surrounding abandoned vehicles and vehicles subject to mechanic's and storage liens, as well as any other issues DMV and stakeholders agree upon during the review process. The concerns raised have included difficulties complying with notice, posting, and Servicemember Civil Relief Act requirements; confusion between the different processes legislated for abandoned vehicles and vehicles subject to mechanic's and storage liens and when they may be used; the lack of options to facilitate compliance with other states' requirements, when necessary; and the lack of adequate statutory authority or direction for some practices, especially those of towing companies.

The stakeholder group shall include representatives from the towing industry, the vehicle data industry, the insurance industry, the banking industry, the vehicle dealer industry, the vehicle storage industry, law enforcement, and other relevant stakeholders identified by DMV. The stakeholder group shall review Virginia's current requirements and processes to determine

SENATE OF VIRGINIA

C.W. "BILL" CARRICO, SR.

40TH SENATORIAL DISTRICT
ALL OF GRAYSON, LEE, SCOTT, AND WASHINGTON
COUNTIES; ALL OF THE CITY OF BRISTOL; AND PART OF
SMYTH, WISE, AND WYTHE COUNTIES
P.O. BOX 396
RICHMOND, VIRGINIA 23218
(804) 698-7540



COMMITTEE ASSIGNMENTS:
TRANSPORTATION, CHAIR
EDUCATION AND HEALTH
FINANCE
LOCAL GOVERNMENT
RULES

how to increase compliance with Virginia's requirements, streamline those requirements, and identify processes or legislation needed to ensure compliance with both Virginia law and other jurisdictions' laws when a situation requires out-of-state notices.

I request that the working group report back to the Senate and House Committees on Transportation in December of 2019 with the results of the study, including the stakeholder group's recommendations. The report should include any proposed legislation that would be necessary in order to pursue the recommendations and the costs to implement such legislation.

Sincerely,

A handwritten signature in blue ink that reads "Bill".

Charles W. Carrico, Sr.
Chair, Senate Transportation Committee

cc: The Honorable David E. Yancey
The Honorable Shannon R. Valentine
Matt Benka, MDB Strategies
James Pickral, Commonwealth Strategy Group



COMMONWEALTH OF VIRGINIA

HOUSE OF DELEGATES
RICHMOND

DAVID E. YANCEY

POST OFFICE BOX 1163
NEWPORT NEWS, VIRGINIA 23601

NINETY-FOURTH DISTRICT

COMMITTEE ASSIGNMENTS:
TRANSPORTATION (CHAIRMAN)
EDUCATION
COMMERCE AND LABOR

Wednesday, April 17, 2019

Mr. Richard D. Holcomb
Commissioner
Virginia Department of Motor Vehicles
P.O. Box 27412
2300 West Broad Street
Richmond, Virginia 23269

Dear Commissioner Holcomb:

Ten years ago, the General Assembly enacted legislation that overhauled processes for enforcing mechanic's and storage liens and for disposing of abandoned vehicles. With the exception of a few amendments to individual requirements, the overall statutes and processes remain largely the same today as they were following the 2009 General Assembly session. However, I am aware that a broad range of concerns about these processes have been raised with both the Department of Motor Vehicles (DMV) and legislators in the intervening years that indicate a review of these statutes is in order.

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The stakeholder group shall include representatives from the towing industry, the vehicle data industry, the insurance industry, the banking industry, the vehicle dealer industry, the vehicle storage industry, law enforcement, and other relevant stakeholders identified by DMV. The stakeholder group shall review Virginia's current requirements and processes to determine how to increase compliance with Virginia's requirements, streamline those requirements, and identify processes or legislation needed to ensure compliance with both Virginia law and other jurisdictions' laws when a situation requires out-of-state notices.

I request that the working group report back to the Senate and House Committees on Transportation in December of 2019 with the results of the study, including the stakeholder group's recommendations. The report should include any proposed legislation that would be necessary in order to pursue the recommendations and the costs to implement such legislation.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Yancey', with a long horizontal stroke extending to the right.

David E. Yancey
Chair, House Transportation Committee

cc: The Honorable Charles W. Carrico, Sr.
The Honorable Shannon R. Valentine
Matt Benka, MDB Strategies
James Pickral, Commonwealth Strategy Group

Appendix B:

Current and Future MSL Transcripts



Virginia Department of Motor Vehicles
P.O Box 27142 Richmond, Va. 23269-0001

TRANSCRIPT OF VEHICLE RECORD AS OF 08/21/2020 14:44:23:7

RSN FOR REQ: MECHANICS'/STORAGE LIEN

REQUESTED BY:

[REDACTED]

TRANSCRIPT ID NO:

[REDACTED]

USER ID:

LOC:

4SL APPLICANT:

[REDACTED]

INFORMATION PROVIDED BY REQUESTOR:

[REDACTED]

VEHICLE OWNER(S) - NAME/ADDRESS:

[REDACTED]

VEHICLE TITLE INFORMATION:

TITLE NO:	[REDACTED]	VEHICLE MAKE:	LEXUS
TITLE EST DT:	[REDACTED]	BODY TYPE:	4D SDN
PURCHASE DT:	[REDACTED]	MODEL:	GS300
VEHICLE YEAR:	2002	VIN:	[REDACTED]
EMPTY/GROSS WGT:	3,649	GVWR/GCWR:	
ODOMETER:	210,000	ODOMETER TYPE:	ACTUAL MILEAGE
DISPOSITION:		DISPOSITION DT:	
NCIC CHECKED:	YES	REPLICA ASSEMBLY YEAR:	0000
OWNERSHIP DOC:	[REDACTED]		
DEALER:	[REDACTED]		
CURRENT VCO:	SILVER/		
ORIGINAL VCO:	SILVER/		
'PTR VEHICLE USE:	[REDACTED]		

NO LIEN ON THIS TITLE

OTHER VEHICLE INFORMATION: NONE ON FILE

ADDITIONAL INFORMATION FOR MECHANICS' OR STORAGE LIEN TRANSCRIPTS:

NCIC CHECKED: YES

VIN EDIT PASSED FOR: [REDACTED]

NADA TRADE IN VALUE: \$2600

VEHICLE OWNER ACTIVE MILITARY DUTY/SERVICE: NO



TRANSCRIPT OF VEHICLE RECORD AS OF 11/03/2016 15:48:46:8
PAGE: 1

REQUESTED BY:



RSN FOR REQ: MECHANICS'/STORAGE LIEN
TRANSCRIPT ID NO: 163080006
USER ID: DMVB1C
LOC: 167

MSL APPLICANT:



INFORMATION PROVIDED BY REQUESTOR: TESTINGMSL12444

VEHICLE OWNER(S) - NAME/ADDRESS:

TEST,MSL TRANSCRIPT
2300 WEST BROAD ST
RICHMOND VA 23220

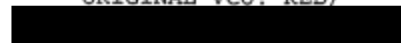
VEHICLE TITLE INFORMATION:



VEHICLE YEAR: 1999
EMPTY/GROSS WGT: 3,500
ODOMETER: 1,111
DISPOSITION:



CURRENT VCO: RED/
ORIGINAL VCO: RED/



VEHICLE MAKE: FORD
BODY TYPE: 4D SDN
MODEL: TEST
VIN: TESTINGMSL12444
GVWR/GCWR:
ODOMETER TYPE: ACTUAL MILEAGE
DISPOSITION DT:
REPLICA ASSEMBLY YEAR:

NO LIEN ON THIS TITLE

OTHER VEHICLE INFORMATION: NONE ON FILE

ADDITIONAL INFORMATION FOR MECHANICS' OR STORAGE LIEN TRANSCRIPTS:

NCIC CHECKED: YES
VIN EDIT FAILED FOR: TESTINGMSL12444
NADA TRADE IN VALUE: UNKNOWN

VEHICLE OWNER ACTIVE MILITARY DUTY/SERVICE: NO

Appendix C:

Proposed Statutory Drafts without Attorney General Enforcement Language

1 **§ 46.2-644.01. Lien of keeper of vehicles garage.**

2 A. For purposes of this section, the term “keeper of vehicles” shall mean every garage
3 keeper; person keeping any vehicles, including a self-storage facility; and tow truck driver or
4 towing and recovery operator furnishing services involving the towing and recovery of any
5 vehicle.

6
7 ~~B. Every keeper of a garage and every person keeping any vehicles shall have a lien upon~~
8 ~~such vehicles for the amount that may be due him for the towing, storage, recovery, and care~~
9 ~~thereof, until such amount is paid. The lien shall be in addition to any lien under § 46.2-644.02.~~

10
11 Any garage keeper to whom a vehicle has been delivered pursuant to § 46.2-1209, 46.2-1213, or
12 46.2-1215 shall, 30 days from the date of delivery, have a lien upon such vehicle under this section,
13 provided that action has not been taken pursuant to such sections for the sale of such vehicle.

14
15 ~~C. B. In the case of any vehicle for which the title shows an existing lien, subject to a chattel~~
16 ~~mortgage, security agreement, deed of trust, or other instrument securing money, the keeper of~~
17 ~~vehicles the garage shall have a lien upon the vehicle for his reasonable charges for storage under~~
18 ~~this section not to exceed \$500; however, the keeper shall also be entitled to a lien against any~~
19 ~~proceeds remaining after the satisfaction of all prior security interests or liens. In addition, any tow~~
20 ~~truck driver or towing and recovery operator shall have a lien for all normal costs incident to any~~
21 ~~towing and recovery services furnished for the vehicle. and for alteration and repair under § 46.2-~~
22 ~~644.02 not to exceed \$1,000. However, in the case of a storage lien, to obtain the priority for an~~
23 ~~amount in excess of \$300, the person asserting the lien shall make a reasonable attempt to notify~~

24 ~~any secured party of record at the Department of Motor Vehicles by telephonic means and shall~~
25 ~~give written notice by certified mail, return receipt requested, to any secured party of record at the~~
26 ~~Department of Motor Vehicles within seven business days of taking possession of the vehicle. If~~
27 ~~the secured party does not, within seven business days of receipt of the notice, take or refuse~~
28 ~~redelivery to it or its designee, the lienor shall be entitled to priority for the full amount of storage~~
29 ~~charges, not to exceed \$500. Notwithstanding a redelivery, the vehicle shall be subject to~~
30 ~~subsection D.~~

31
32 In the case of any vehicle not subject to an existing lien on the title, ~~chattel mortgage, security~~
33 ~~agreement, deed of trust, or other instrument securing money,~~ the keeper of vehicles ~~the garage~~
34 shall have a lien thereon for his reasonable charges for storage under this section, alone or in
35 combination with a lien ~~and for alteration and repair under § 46.2-644.02,~~ not to exceed the value
36 of the vehicle as determined by the provisions of § 8.01-419.1.

37
38 D. The keeper of vehicles, or the authorized agent of such, shall ascertain from the
39 Department whether the certificate of title for the vehicle shows a lien thereon in accordance with
40 the provisions of § 46.2-644.03 within seven business days of taking possession of the vehicle.
41 The owner or lienholder of record shall have 10 business days from the date of the notice sent by
42 the Department pursuant to § 46.2-644.03 to reclaim the vehicle. The terms for such reclamation
43 shall be the payment of the amount due to the keeper of vehicles or other amount as agreed to
44 between the parties. If the vehicle remains unclaimed, the keeper of vehicles may enforce his lien
45 under the provisions of § 46.2-644.03 or relinquish his lien under the provisions of § 46.2-644.04.

46 For purposes of this subsection, the date of possession for a garage keeper to whom a
47 vehicle has been delivered pursuant to § 46.2-1209, 46.2-1213, or 46.2-1215 shall be the date such
48 lien attaches, and the date of possession for a self-storage facility shall be the date on which the
49 facility owner learns that a leased space subject to default contains a motor vehicle.

50
51 ~~C. In addition, any person furnishing services involving the towing and recovery of a~~
52 ~~vehicle shall have a lien for all normal costs incident thereto, if the person asserting the lien gives~~
53 ~~written notice within seven days of receipt of the vehicle by certified mail, return receipt requested,~~
54 ~~to all secured parties of record at the Department of Motor Vehicles.~~

55
56 ~~D. In addition, any keeper shall be entitled to a lien against any proceeds remaining after~~
57 ~~the satisfaction of all prior security interests or liens, and may retain possession of such property~~
58 ~~until such charges are paid.~~

59
60 E. Any lien created under this section shall not extend to any personal property that is not
61 attached to or considered to be necessary for the proper operation of any motor vehicle, and it shall
62 be the duty of any keeper of vehicles such personal property to return it to permit the owner to
63 access the vehicle in order to recover his personal property, if provided the owner claims and
64 retrieves the items at least two business days prior to the auction date. The keeper of vehicles may
65 dispose of unclaimed personal property.

66
67 F. For the purposes of this section, in the case of a truck or combination of vehicles, the
68 owner, or in the case of a rented or leased vehicle, the lessee of the truck or tractor truck, shall be

69 liable for the costs of the towing, recovery, and storage of the cargo and of any trailer or semitrailer
70 in the combination. Nothing in this subsection, however, shall bar the owner of the truck or tractor
71 truck from subsequently seeking to recover from the owner of any trailer, semitrailer, or cargo all
72 or any portion of these towing, recovery, and storage costs.

73

74 **§ 46.2-644.02. Lien of mechanic for repairs.**

75 A. Every mechanic who shall alter or repair any ~~article of personal property vehicle~~ at the
76 request of the owner or authorized person in possession of such ~~property vehicle~~ shall have a lien
77 thereon for his just and reasonable charges therefor and may retain possession of such ~~property~~
78 vehicle until such charges are paid. The lien shall be in addition to any lien under § 46.2-644.01.

79

80 B. No lien under this section shall exceed \$1,000 for any vehicle for which the title shows
81 an existing lien. However, the mechanic shall be entitled to a lien against the proceeds, if any,
82 remaining after the satisfaction of all prior security interests or liens.

83

84 For any vehicle not subject to an existing lien on the title, no lien under this section, alone or in
85 combination with a lien under § 46.2-644.01, shall exceed the value of the vehicle as determined
86 by the provisions of § 8.01-419.1.

87

88 C. The mechanic or his authorized agent shall ascertain from the Department whether the
89 certificate of title for the vehicle shows a lien thereon in accordance with the provisions of § 46.2-
90 644.03 within seven business days after the due date of an invoice for the amount due for the
91 alteration or repair. The mechanic may then enforce his lien under the provisions of § 46.2-644.03

92 after such invoice goes unpaid for 10 days after it is due or relinquish his lien under the provisions
93 of § 46.2-644.04.

94
95 ~~Every mechanic who shall make necessary alterations or repairs on any article of personal property~~
96 ~~which from its character requires the making of ordinary repairs thereto as a reasonable incident~~
97 ~~to its reasonable and customary use, at the request of any person legally in possession thereof under~~
98 ~~a reservation of title contract, chattel mortgage, deed of trust, or other instrument securing money,~~
99 ~~the person so in possession having authority to use such property, shall have a lien thereon for his~~
100 ~~just and reasonable charges therefor to the extent of \$1,000 or, if the property is a motor vehicle~~
101 ~~and is not subject to a chattel mortgage, security agreement, deed of trust, or other instrument~~
102 ~~securing money, an amount not to exceed the value of the vehicle as determined by the provisions~~
103 ~~of § 8.01-419.1. In addition, such mechanic shall be entitled to a lien against the proceeds, if any,~~
104 ~~remaining after the satisfaction of all prior security interests or liens and may retain possession of~~
105 ~~such property until such charges are paid. In any action to enforce the lien hereby given all persons~~
106 ~~having an interest in the property sought to be subjected shall be made parties defendant.~~

107
108 D. If the owner of the ~~property~~ vehicle held by the mechanic shall desire to obtain
109 possession thereof, he shall make the mechanic defendant in proceeding in the county or municipal
110 court to recover the ~~property~~ vehicle.

111
112 The owner may give a bond payable to the court, in a penalty of the amount equal to the lien
113 claimed by the mechanic and court costs, with security to be approved by the clerk, and conditioned
114 for the performance of the final judgment of the court on the trial of the proceeding, and with a

115 further condition to the effect that, if upon the hearing, the judgment of the court be that the lien
116 of the mechanic on such ~~property~~ vehicle, or any part thereof, be enforced, judgment may
117 thereupon be entered against the obligors on such bond for the amount due the mechanic and court
118 costs, if assessed against the owner, without further or other proceedings against them thereon.
119 Upon giving of the bond, the ~~property~~ vehicle shall be delivered to the owner.

120

121 **§ 46.2-644.03. Enforcement of liens acquired under §§ 46.2-644.01 and 46.2-644.02**
122 **~~and of liens of bailees.~~**

123 A. For the purposes of this section:

124 “Bailee” means anyone who has one or more liens under §§ 46.2-644.01 or 46.2-644.02.

125 “Independent appraisal” means an estimate for the value of a motor vehicle prepared by
126 an individual or business that (i) has all required business licenses and zoning approvals and (ii) is
127 either a licensed appraiser in another state or a business authorized by an insurance company to
128 prepare insurance appraisals. This term shall not include an estimate prepared by any individual
129 or business with a financial interest in the bailee’s business.

130 ~~“public place” means a premises owned by the Commonwealth or a political subsection~~
131 ~~thereof, or an agency of either, that is open to the general public.~~

132

133 B. Any bailee ~~person having~~ eligible to enforce a lien under §§ 46.2-644.01 ~~or and~~ 46.2-
134 644.02 ~~and any bailee, except where otherwise provided, having a lien as such at common law on~~
135 ~~personal property in his possession that he has no power to sell for the satisfaction of the lien, if~~
136 ~~the debt for which the lien exists is not paid within 10 days after it is due and the value of the~~
137 ~~property~~ vehicle affected by the lien does not exceed \$12,500, may sell such ~~vehicle~~ property ~~or~~
138 ~~so much thereof as may be necessary, by public auction, for cash, in accordance with the provisions~~

139 of this section. The proceeds shall be applied to the satisfaction of the debt and expenses of sale,
140 and the surplus, if any, shall be paid within 30 days of the sale to any lienholder of record, and
141 then to the owner of the property vehicle, provided such lienholder or owner contacts the bailee
142 prior to the sale to claim any surplus that may result. If such claim is made by the lienholder or
143 owner within 30 days following the sale, the surplus shall be paid within 30 days of the claim. If
144 no claim to the surplus is made within 30 days of the sale, or if the owner or lienholder cannot be
145 ascertained by the Department, the bailee shall be entitled to keep the surplus. A seller who fails
146 to remit the surplus as provided shall be liable to the person entitled to the surplus in an amount
147 equal to \$50 for each day beyond 30 days that the failure continues.

148
149 C. Before any lien may be enforced under this section, the bailee or his authorized agent
150 shall initiate with the Department, in a manner prescribed by the Commissioner, a search for the
151 owner and lienholder of record for the vehicle, the names and addresses of which if found shall be
152 provided to the bailee. Any bailee or authorized agent who initiates more than five such requests
153 within any 12 month period shall enter into an agreement with the Department to initiate requests
154 and receive responses electronically.

155
156 The Department shall check: (i) its own records, (ii) the records of a nationally recognized crime
157 database, and (iii) records of a nationally recognized motor vehicle title database for owner and
158 lienholder information. If a vehicle has been reported stolen, the Department shall notify the
159 appropriate law-enforcement agency of that fact. If a vehicle is found to have been titled in another
160 jurisdiction, the Department shall contact that jurisdiction to ascertain the requested information
161 and provide it to the bailee. At the time of the search, the Department shall also determine the

162 value of the vehicle, using the trade-in value specified in a recognized pricing guide, and, for a
163 vehicle titled in the Commonwealth, whether the records of the Department show that the owner
164 of the vehicle has indicated that he is on active military duty or service. The Department shall
165 include such information in the response to the request for vehicle information.

166
167 After responding to the request for vehicle information, the Department shall notify the owner and
168 any lienholder of record of the request by first class mail to the address provided on the vehicle
169 record held by the Department or by the jurisdiction in which the vehicle is titled. Such notice shall
170 include the name and contact information of the bailee and any terms for reclaiming the vehicle,
171 as well as any additional information the Commissioner determines to be necessary.

172
173 No notice by the Department shall be required if no record for the vehicle can be found or, in the
174 case of a vehicle titled in another jurisdiction, the other jurisdiction refuses to release the requested
175 vehicle information to the Department. In either situation, the bailee may continue with lien
176 enforcement under this section. However, if a vehicle record exists in another jurisdiction, the
177 bailee shall assume all liability for proceeding with such enforcement without written notice to the
178 owner and/or lienholder of record.

179
180 For every vehicle subject to a record search as provided in this section, if the record for the vehicle
181 is held by the Department, the Department shall place an administrative hold on the vehicle record
182 until the bailee reports to the Department that the vehicle has been reclaimed or sold pursuant to
183 this section.

184

185 D. Any bailee enforcing a lien in accordance with this section shall notify the Department
186 of his intent to sell the vehicle in a manner prescribed by the Commissioner. A \$40 fee shall be
187 paid to the Department at the time of notice. Upon receipt of such notice and fee, the Department
188 shall repeat the vehicle record search prescribed in subsection A for the purpose of confirming the
189 most recent owner and lienholder information for the vehicle.

190
191 If the Department confirms owner or lienholder information, either through a search of its own
192 records or those of another jurisdiction, the Department shall notify the owner, at the last known
193 address of record, and any lienholder, at the last known address of record, of the intent to sell the
194 vehicle, by certified mail, return receipt requested, and advise them to reclaim the vehicle and
195 repay the debt owed within 15 days from the date the notice was sent. Such notice, when sent in
196 accordance with these requirements, shall be sufficient regardless of whether or not it was ever
197 received.

198
199 Following the notice required in this subsection, if the vehicle remains unclaimed and the debt
200 unpaid, the owner and all persons having security interest shall have waived all right, title, and
201 interest in the vehicle, except to the extent that subsection B requires a surplus to be paid. The
202 bailee shall notify the Department in a manner prescribed by the Commissioner within five
203 business days if the vehicle is reclaimed and the debt paid. Should the bailee fail to notify the
204 Department as required herein, and the Department must remove the administrative hold placed
205 under subsection C at the request of the vehicle owner or lienholder, and upon submission of proof
206 that the debt was paid and the vehicle reclaimed, the Department may impose and collect an
207 administrative fee of \$40 from the bailee for each such removal.

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E. At the time the bailee notifies the Department of his intent to sell the motor vehicle, the bailee shall provide the intended date of sale at public auction, including the time, place, and terms of such sale. The intended date shall be at least 21 days after the date of notification. The Department shall post notice on behalf of the bailee for at least 21 days prior to the date of sale, advertising the time, place, and terms of the sale. Such 21-day posting period shall run concurrently with the 15-day reclamation period provided for in subsection D. Notifications and postings shall be in an electronic manner prescribed by the Commissioner and shall include the vehicle identification number and a description of each vehicle to be sold. No other postings or notices advertising the sale shall be required.

Upon notice by the bailee that the vehicle will be sold, the Department shall provide a certification document in a manner prescribed by the Commissioner to the bailee. The bailee shall complete all applicable certification statements on the document and provide it to the buyer of the vehicle, who shall submit the document and an application to the Department in order to obtain a certificate of title for the vehicle. Upon receipt of a completed application and certification document, the Department shall issue a certificate of title to the buyer or a nonrepairable certificate, if requested, free of all prior liens and claims of ownership of others.

~~Before making the sale, the seller shall advertise the time, place, and terms thereof in any of the following places: (i) a public place in the county or city where the property is located; (ii) a website operated by the Commonwealth, the county or city where the property is located, or a political subsection of either; or (iii) a newspaper of general circulation in the county or city where the~~

231 ~~property is located, either in print or on its website. In the case of property other than a motor~~
232 ~~vehicle required to be registered in Virginia having a value in excess of \$600, 10 days' prior notice~~
233 ~~shall be given to any secured party who has filed a financing statement against the property, and~~
234 ~~written notice shall be given to the owner as hereinafter provided. If the property is a motor vehicle~~
235 ~~required by the motor vehicle laws of Virginia to be registered, the person having the lien shall~~
236 ~~ascertain from the Commissioner of the Department of Motor Vehicles whether the certificate of~~
237 ~~title of the motor vehicle shows a lien thereon. At that time, the Commissioner shall also determine~~
238 ~~the value of the property and shall communicate it to the bailee. If the certificate of title shows a~~
239 ~~lien, the bailee proposing the sale of the motor vehicle shall notify the lienholder of record, by~~
240 ~~certified mail, at the address on the certificate of title of the time and place of the proposed sale 10~~
241 ~~days prior thereto. If the name of the owner cannot be ascertained, the name of "John Doe" shall~~
242 ~~be substituted in any proceedings hereunder and no written notice as to him shall be required to be~~
243 ~~mailed. Whenever a vehicle is shown by the Department of Motor Vehicles records to be owned~~
244 ~~by a person who has indicated that he is on active military duty or service, the Department shall~~
245 ~~include such information in response to requests for vehicle information pursuant to the~~
246 ~~requirements of this chapter.~~

247

248 F. If the value of the property vehicle is more than \$12,500 but does not exceed \$25,000,
249 the bailee party having the lien, after giving the notice sent by the Department in subsection C as
250 herein provided, may apply by petition to any general district court of the county or city wherein
251 the property vehicle is, or, if the value of the property vehicle exceeds \$25,000, to the circuit court
252 of the county or city, for the sale of the property vehicle. No notice sent by the Department pursuant
253 to this section shall substitute for service of process for any court proceeding. If the name of the

254 owner cannot be ascertained, the name of “John Doe” shall be substituted in any proceeding
255 pursuant to this section.

256

257 If, on the hearing of the case on the petition, the defense, if any made thereto, and such evidence
258 as may be adduced by the parties respectively, the court is satisfied that the debt and lien are
259 established and the ~~property~~ vehicle should be sold to pay the debt, the court shall order the sale
260 to be made by the sheriff of the county or city. The sheriff shall make the same and apply and
261 dispose of the proceeds in the same manner as if the sale were made under a writ of fieri facias.
262 No additional notifications or postings by the Department related to the sale shall be required.

263

264 If a court has ordered the sale of the vehicle, the bailee shall submit to the Department a copy of
265 the court order in a manner prescribed by the Commissioner. Upon receipt, the Department shall
266 provide a certification document to the bailee. The bailee and the sheriff conducting the sale, or
267 his authorized representative, shall complete all applicable certification statements on the
268 document and provide it to the buyer of the vehicle, who shall submit the document and an
269 application to the Department in order to obtain a certificate of title for the vehicle. Upon receipt
270 of a completed application and certification document, the Department shall issue a certificate of
271 title to the buyer or a nonrepairable certificate, if requested, free of all prior liens and claims of
272 ownership of others.

273

274 G. In determining the value of the property as required by this section, the Commissioner
275 shall use a recognized pricing guide and, in using such guide, shall use the trade-in value specified
276 in such guide. However, the bailee may submit an independent appraisal and supporting

277 documentation to show the accurate value of the vehicle in a manner prescribed by the
278 Commissioner. Upon receipt, the Department shall update the vehicle record to reflect the value
279 established by the independent appraisal and notify the bailee that enforcement under this section
280 may proceed based on the new value.

281
282 If the Department is unable to determine a trade-in value for a vehicle by the Department, the
283 Commissioner may establish guidelines for acceptable alternate valuation options to include
284 independent appraisals and retail or loan values that may be available in online or printed pricing
285 guides. The bailee may submit documentation pursuant to such guidelines in order to establish the
286 value of the vehicle.

287
288 ~~If the owner of the property is a resident of the Commonwealth, any notice required by this section~~
289 ~~may be served as provided in § 8.01 296 or, if the sale is to be made without resort to the courts,~~
290 ~~by personal delivery or by certified or registered mail delivered to the present owner of the property~~
291 ~~to be sold at his last known address at least 10 days prior to the date of sale. If the owner of the~~
292 ~~property is a nonresident or if his address is unknown, any notice required by this section may be~~
293 ~~served by posting a copy thereof in three of any of the following places in any combination: (i)~~
294 ~~one or more public places in the county or city where the property is located; (ii) one or more~~
295 ~~websites operated by the Commonwealth, the county or city where the property is located, or a~~
296 ~~political subsection of either; or (iii) one or more newspapers of general circulation in the county~~
297 ~~or city where the property is located, either in print or on their websites.~~

298

299 ~~H. If the property is a motor~~ For a vehicle (i) for which neither the owner nor any other
300 lienholder or secured party can be determined by the Department of Motor Vehicles through a
301 diligent search ~~of its records~~ as required by this section, (ii) manufactured for a model year at least
302 six years prior to the current model year, and (iii) having a value of no more than \$4,500 as
303 determined by the provisions of ~~§ 8.01-419.1~~ this section, a ~~person having a lien on such vehicle~~
304 bailee may, after showing proof that the vehicle has been in his continuous custody for at least 30
305 days, apply for and receive from the Department of Motor Vehicles title or a nonrepairable
306 certificate to such vehicle, free of all liens and claims of ownership of others, and proceed to sell
307 or otherwise dispose of the vehicle.

308
309 ~~Whenever a motor vehicle is sold hereunder, the Department of Motor Vehicles shall issue a~~
310 ~~certificate of title and registration or a nonrepairable certificate to the purchaser thereof upon his~~
311 ~~application containing the serial or motor number of the vehicle purchased together with an~~
312 ~~affidavit of the lienholder that he has complied with the provisions hereof, or by the sheriff~~
313 ~~conducting a sale that he has complied with said order.~~

314
315 ~~Any garage keeper to whom a motor vehicle has been delivered pursuant to § 46.2-1209, 46.2-~~
316 ~~1213, or 46.2-1215 may after 30 days from the date of delivery proceed under this section,~~
317 ~~provided that action has not been taken pursuant to such sections for the sale of such motor vehicle.~~

318
319 I. Notwithstanding any provisions to the contrary, a bailee ~~any person having a lien under~~
320 ~~§ 46.2-644.01 or 46.2-644.02~~ shall comply with the provisions of the federal Servicemembers
321 Civil Relief Act (50 U.S.C. § 3901 et seq.) (the Act) when disposing of a vehicle owned by a

322 member of the military on active duty or service. If the records of the Department show that the
323 owner of the vehicle has indicated to the Department that he is on active military duty or service,
324 such indicator shall be prima facie evidence that the vehicle is subject to the provisions of the Act.
325 However, neither the presence nor absence of such indicator on the vehicle record shall absolve
326 the bailee of his obligation to ascertain the owner's military service status, if any, in accordance
327 with the Act.

328
329 I. All fees imposed and collected pursuant to this section shall be paid into the state treasury
330 and set aside as a special, nonreverting fund to be used to meet the expenses of the Department.

331
332 J. Residents or businesses of other jurisdictions in possession of vehicles titled in the
333 Commonwealth, or the authorized agents of such residents or businesses, seeking to enforce laws
334 in those jurisdictions that are substantially similar to the enforcement of liens under §§ 46.2-644.01
335 and 46.2-644.02 may request information for such vehicles from the Department. The Department
336 shall conduct the information search as provided for in subsection C, provide the names and
337 addresses of the owner and lienholder, if any, for each vehicle to the requester, and notify the
338 named owner and lienholder, if any, by first class mail of the request. Such notification shall not
339 replace any notification requirements imposed by the jurisdiction in which the requester and
340 subject vehicle are located, nor shall the enforcement rules of this section apply to vehicles not
341 located within the Commonwealth. If the Department finds that the vehicle is titled in another
342 jurisdiction, the Department shall identify that jurisdiction to the requester with no further
343 obligation to the requester or vehicle owner. The Department shall collect a \$25 fee for this search.

344

345 **§ 46.2-644.04. Relinquishment of liens acquired under §§ 46.2-644.01 and 46.2-644.02.**

346 A. For purposes of this section, “bailee” shall have the same meaning as ascribed to it in §
347 46.2-644.03.

348

349 B. A bailee may relinquish a lien acquired under § 46.2-644.01 or 46.2-644.02, provided
350 (i) the Department has completed a vehicle record search pursuant to subsection C of § 46.2-644.03
351 and determined that no lien exists on the vehicle record, whether held by the Department or another
352 state, and (ii) the vehicle owner has not reclaimed the vehicle as provided for in § 46.2-644.01 or
353 46.2-644.02. Such relinquishment shall permit the bailee to transfer possession of the vehicle to
354 an unaffiliated tow truck driver, towing and recovery operator, or keeper of a garage, whose
355 business is located within the same locality as the bailee.

356

357 C. Any lien relinquishment hereunder shall be reported to the Department by the bailee on
358 a form and in a manner prescribed by the Commissioner within five business days of the transfer
359 of possession of the vehicle. Such form shall include (i) the make, model, model year, and vehicle
360 identification number of the vehicle, (ii) the name and address of the bailee, (iii) the name and
361 address of the person or entity receiving the vehicle, and (iv) the date of transfer of possession.

362

363 Upon receipt of the relinquishment form, the Department shall note such relinquishment on the
364 vehicle record and notify the owner by first class mail at the last known address of record that the
365 bailee has relinquished the lien and transferred possession of the vehicle. The Department shall
366 collect a \$5 administrative fee for this process from the bailee. Such fee shall be paid into the state

367 treasury and set aside as a special, nonreverting fund to be used to meet the expenses of the
368 Department.

369
370 D. Upon taking possession of a vehicle for which a lien has been relinquished pursuant to
371 this section, a towing and recovery operator or keeper of a garage shall have a lien on the vehicle
372 in accordance with § 46.2-644.01 and all enforcement provisions applicable to such lien shall
373 remain in place. No other relinquishment may take place under this section for the same vehicle
374 until the lien created under this subsection is enforced pursuant to this article and the vehicle
375 titled to a new owner.

376
377 **§ 46.2-1200.2. Vehicles registered to active duty military personnel.**

378 Whenever a vehicle is shown by the Department of Motor Vehicles records to be owned
379 by a person who has indicated that he is on active military duty or service, the Department shall
380 include such information in response to requests for vehicle information pursuant to the
381 requirements of this chapter.

382
383 Notwithstanding any provisions of this chapter, any person ~~having a lien~~ disposing of a vehicle
384 under the provisions of this chapter shall determine whether ~~comply with~~ the provisions of the
385 federal Servicemembers Civil Relief Act (50 U.S.C. § 3901 et seq.) (the Act) apply to the
386 circumstances of such disposition ~~when disposing of a vehicle owned by a member of the military~~
387 ~~on active duty or service.~~ The presence on a vehicle record of an indicator that the owner is on
388 active military duty or service shall be an indication that said Act may apply. However, should the
389 person determine that said Act applies, the indicator on the vehicle record shall not satisfy any

390 obligation under the Act to ascertain the owner's military status, nor shall the absence of an
391 indicator suffice to establish the owner is not on active military duty or service.

392

393 **§ 46.2-1200.3. Limitation on removal and sale of abandoned vehicles.**

394 No person may remove or sell any abandoned vehicle left on public property or the
395 shoulder of a primary highway unless such person is acting pursuant to an agreement for such
396 removal or sale with a local government entity or law enforcement agency and has actual
397 possession of the vehicle.

398

399 **§ 46.2-1202. Search for owner and secured party; notice.**

400 A. Any person in possession of an abandoned ~~motor~~ vehicle shall initiate with the
401 Department, in a manner prescribed by the Commissioner, a search for the owner and/or lienholder
402 of record of the vehicle, requesting the name and address of the owner of record of the ~~motor~~
403 vehicle and all persons having security interests in the ~~motor~~ vehicle on record in the office of the
404 Department, describing, if ascertainable, the ~~motor~~ vehicle by year, make, model, and vehicle
405 identification number. A fee of \$~~25~~ 40 shall be paid to the Department at the time of application.
406 Those fees shall be paid into the state treasury and set aside as a special, nonreverting fund to be
407 used to meet the expenses of the Department. A local government agency with a written agreement
408 with the Department shall be exempt from this fee.

409

410 The Department shall check: (i) its own records, (ii) the records of a nationally recognized crime
411 database, and (iii) records of a nationally recognized motor vehicle title database for owner and
412 lienholder information. If a vehicle has been reported as stolen, the Department shall notify the
413 appropriate law-enforcement agency of that fact. If a vehicle has been found to have been titled in

414 another jurisdiction, the Department shall contact that jurisdiction to ascertain the requested
415 information. notify the applicant of that jurisdiction. In cases of motor vehicles titled in other
416 jurisdictions, ~~the Commissioner shall issue certificates of title on proof satisfactory to the~~
417 ~~Commissioner that the persons required to be notified by registered or certified mail have received~~
418 ~~actual notice fully containing the information required by this section.~~

419
420 B. If the Department confirms owner or lienholder information, either through a search of
421 its own records or those of another jurisdiction, the Department shall notify the owner, at the last
422 known address of record, and lienholder, at the last known address of record, of the notice of
423 interest in their vehicle, by certified mail, return receipt requested, and advise them to reclaim and
424 remove the vehicle within 15 days, or, if the vehicle is a manufactured home or a mobile home,
425 120 days, from the date of notice. Such notice, when sent in accordance with these requirements,
426 shall be sufficient regardless of whether or not it was ever received. Following the notice required
427 in this subsection, if the ~~motor~~ vehicle remains unclaimed, the owner and all persons having
428 security interests in the motor vehicle shall have waived all right, title, and interest in the motor
429 vehicle.

430
431 ~~Whenever a vehicle is shown by the Department's records to be owned by a person who has~~
432 ~~indicated that he is on active military duty or service, the Department shall notify the requestor of~~
433 ~~such information. Any person having an interest in such vehicle under the provisions of this article~~
434 ~~shall comply with the provisions of the federal Servicemembers Civil Relief Act (50 U.S.C. § 3901~~
435 ~~et seq.).~~

436

437 C. If records of the Department contain no address for the owner or no address of any
438 person shown by the Department's records to have a security interest, or if the identity and
439 addresses of the owner and all persons having security interests cannot be determined with
440 reasonable certainty after the Department has contacted the jurisdiction in which the vehicle was
441 last titled, the person in possession of the abandoned ~~motor~~ vehicle may proceed with the sale or
442 disposal of the vehicle in accordance with this chapter. However, if a vehicle record exists in
443 another jurisdiction that has refused to release the information to the Department, the person in
444 possession of the abandoned vehicle shall assume all liability for proceeding with such sale or
445 disposal without written notice to the owner and/or lienholder of record. ~~shall obtain from the~~
446 Department in a manner prescribed by the Commissioner, a Vehicle Removal Certificate. The
447 vehicle may be sold or transferred to a licensee or a scrap metal processor, as defined in § 46.2-
448 1600.

449
450 D. The Department shall provide to the person in possession of the abandoned vehicle a
451 receipt indicating that the search requested pursuant to this section has been completed.

452
453 E. Residents or businesses of other jurisdictions in possession of vehicles titled in the
454 Commonwealth, or the authorized agents of such residents or businesses, seeking to enforce laws
455 in those jurisdictions that are substantially similar to the provisions of Article 1 or Article 2 of this
456 Chapter may request information for such vehicles from the Department. The Department shall
457 conduct the information search as provided for in subsection A, provide the names and addresses
458 of the owner and lienholder, if any, for each vehicle to the requester, and notify the named owner
459 and lienholder, if any, by certified mail, return receipt requested, of the request. Such notification

460 shall not replace any notification requirements imposed by the jurisdiction in which the requester
461 and subject vehicle are located, nor shall the enforcement rules of this Chapter apply to vehicles
462 not located within the Commonwealth. If the Department finds that the vehicle is titled in another
463 jurisdiction, the Department shall identify that jurisdiction to the requester with no further
464 obligation to the requester or vehicle owner. The Department shall collect a \$25 fee for this search.

465

466 **§ 46.2-1202.1. Vehicle Removal Certificates.**

467 The person in possession of an abandoned ~~motor~~ vehicle shall obtain from the Department
468 in a manner prescribed by the Commissioner, a Vehicle Removal Certificate at no fee. If the
469 Department has found no record for the vehicle, the vehicle may then be sold or transferred to a
470 licensee or a scrap metal processor, as defined in § 46.2-1600. Upon such sale or transfer, the
471 completed Vehicle Removal Certificate and receipt produced pursuant to § 46.2-1202 shall be
472 given to the licensee or scrap metal processor.

473

474 ~~If the person in possession of an abandoned motor vehicle desires to obtain title to the vehicle, that~~
475 ~~person shall post notice for at least 21 days of his intent to auction the motor vehicle. Postings of~~
476 ~~intent shall be in an electronic manner prescribed by the Commissioner who shall also ensure that~~
477 ~~written notice of intent is provided in public locations throughout the Commonwealth. If the~~
478 ~~Department confirms a lien, the person proposing the sale of the motor vehicle shall notify the~~
479 ~~lienholder of record, by certified mail, at the address on the certificate of title of the time and place~~
480 ~~of the proposed sale 10 days prior thereto.~~

481

482 ~~A purchaser of the motor vehicle may apply for a title upon payment of the applicable fees and~~
483 ~~taxes, and by supplying the Department with the completed Vehicle Removal Certificate and the~~

484 ~~transcript from the Department that indicates that the Department has no record of the abandoned~~
485 ~~motor vehicle.~~

486

487 **§ 46.2-1202.2. Notice of intent to auction and sale of vehicle; posting requirements.**

488 If the person in possession of an abandoned vehicle does not intend to sell or transfer the
489 vehicle to a licensee or a scrap metal processor, as defined in § 46.2-1600, and the abandoned
490 vehicle is not reclaimed as provided for in § 46.2-1202, the person in possession of an abandoned
491 vehicle shall post notice for at least 21 days of his intent to auction the vehicle. Postings of intent
492 shall be in an electronic manner prescribed by the Commissioner and shall include the vehicle
493 identification number and a description of each vehicle to be sold.

494

495 After the posting period has passed, and notwithstanding the provisions of § 46.2-617, the vehicle
496 may be sold at auction. A purchaser of the vehicle at auction may apply for a title for such vehicle
497 upon payment of the applicable fees and taxes, and by supplying the Department with the
498 completed Vehicle Removal Certificate and the receipt produced pursuant to § 46.2-1202.

499

500 If the vehicle does not sell at auction, the person in possession of the abandoned vehicle may apply
501 for a title for such vehicle upon payment of the applicable fees and taxes, and by supplying the
502 Department with the completed Vehicle Removal Certificate, the receipt produced pursuant to §
503 46.2-1202, and a written statement that the vehicle did not sell at auction.

504

505

506 **§ 46.2-1203. Sale of vehicle at public auction by locality; disposition of proceeds.**

507 If an abandoned ~~motor~~ vehicle in the possession of a locality or its authorized agent is not
508 reclaimed as provided for in § 46.2-1202, the locality or its authorized agent shall, notwithstanding
509 the provisions of § 46.2-617, sell it at public auction. For the purposes of this article, the term
510 "public auction," when conducted by any county, city, or town, shall include an Internet sale by
511 auction. The purchaser of the ~~motor~~ vehicle shall take title to the ~~motor~~ vehicle free of all liens and
512 claims of ownership of others, shall receive a sales receipt from the sale, and shall be entitled to
513 apply to and receive from the Department a certificate of title and registration card for the vehicle
514 upon submission of the sales receipt, the completed Vehicle Removal Certificate, and the receipt
515 produced by the Department pursuant to § 46.2-1202. The sales receipt from the sale shall be
516 sufficient title only for purposes of transferring the vehicle to a demolisher for demolition,
517 wrecking, or dismantling, and in that case no further titling of the vehicle shall be necessary;
518 however, such demolisher shall provide the Department acceptable documentation indicating that
519 the vehicle has been demolished. From the proceeds of the sale of an abandoned ~~motor~~ vehicle the
520 locality or its authorized agent shall reimburse itself for the expenses of the auction, the cost of
521 towing, preserving, and storing the vehicle which resulted from placing the abandoned ~~motor~~
522 vehicle in custody, and all ~~notice and publication~~ costs, if any, incurred pursuant to § 46.2-1202.
523 Any remainder from the proceeds of a sale shall be held for the owner of the abandoned ~~motor~~
524 vehicle or any person having security interests in the vehicle, as their interests may appear, for 60
525 days, and then be deposited into the treasury of the locality in which the abandoned ~~motor~~ vehicle
526 was abandoned.

527

528

529 **§ 46.2-1209. Unattended or immobile vehicles, generally.**

530 No person shall leave any motor vehicle, trailer, semitrailer, or part or combination thereof
531 immobilized or unattended on or adjacent to any roadway if it constitutes a hazard in the use of
532 the highway. No person shall leave any immobilized or unattended motor vehicle, trailer,
533 semitrailer, or part or combination thereof longer than 24 hours on or adjacent to any roadway
534 outside the corporate limits of any city or town, or on an interstate highway or limited access
535 highway, expressway, or parkway inside the corporate limits of any city or town. Any law-
536 enforcement officer or other uniformed employee of the local law-enforcement agency who
537 specifically is authorized to do so by the chief law-enforcement officer or his designee may remove
538 it or have it removed to a storage area for safekeeping and shall report the removal to the
539 Department and to the owner of the motor vehicle, trailer, semitrailer, or combination as promptly
540 as possible. Before obtaining possession of the motor vehicle, trailer, semitrailer, or combination,
541 its owner or successor in interest to ownership shall pay to the parties entitled thereto all costs
542 incidental to its removal or storage. In any violation of this section the owner of such motor vehicle,
543 trailer, semitrailer or part or combination of a motor vehicle, trailer, or semitrailer, shall be
544 presumed to be the person committing the violation; however, this presumption shall be rebuttable
545 by competent evidence.

546

547 When a motor vehicle, trailer, semitrailer, or part or combination of a motor vehicle, trailer, or
548 semitrailer was stolen or illegally used by a person other than the owner of the vehicle at the time
549 of the theft or used without his authorization, express or implied, it shall be forthwith returned to
550 its owner or the owner's successor in interest, other than an insurance company, who shall be
551 relieved of the payment of any costs charged by the towing operator or storage facility for its daily

552 storage, towing, and recovery fees, provided that the owner removes the vehicle within five
553 business days following the owner's receipt of written notice by certified mail, return receipt
554 requested. If the vehicle's owner fails to remove the vehicle within five days of receipt of such
555 notice, the vehicle shall be released to the owner upon payment of the full costs of storage, towing,
556 and recovery fees, and the owner shall then be entitled to seek reimbursement from the state
557 treasury from the appropriation for criminal charges. The owner shall produce a valid motor
558 vehicle registration or other proof of ownership to the employees of the facility wherein the motor
559 vehicle, trailer, semitrailer or part or combination thereof is being stored. In any case in which the
560 identity of the violator cannot be determined, or where it is found by a court that this section was
561 not violated, the costs of daily storage, towing, and recovery fees of the vehicle shall be reimbursed
562 to the towing and recovery operator and paid out of the state treasury from the appropriation for
563 criminal charges. Payment from the treasury shall be made no later than 45 days from the
564 application for such payment. In all cases where an insurance company is the stolen vehicle
565 owner's successor in interest, the motor vehicle, trailer, semitrailer, or part or combination thereof
566 shall be released to the insurance company upon presentation of a valid motor vehicle registration
567 and payment by the insurance company to the towing operator or storage facility for its daily
568 storage, towing, and recovery fees. The insurance company shall be entitled to seek reimbursement
569 for the costs of the daily storage, towing, and recovery fees through the state treasury from the
570 appropriation for criminal charges. If any person convicted of violating this section fails or refuses
571 to pay these costs or if the identity or whereabouts of the owner is unknown and unascertainable
572 after a diligent search has been made, the locality or its authorized agent in possession of the motor
573 vehicle, trailer, semitrailer, or combination shall treat the vehicle as an abandoned vehicle under
574 the provisions of Article 1 (§ 46.2-1200 et seq.).

575 ~~or after notice to the owner at his address as indicated by the records of the Department and to the~~
576 ~~holder of any lien of record with the Department, against the motor vehicle, trailer, semitrailer, or~~
577 ~~combination, the Commissioner may, after 30 days and after having the value of such motor~~
578 ~~vehicle, trailer, semitrailer, or combination determined by three disinterested dealers dispose of it~~
579 ~~by public or private sale. The proceeds from the sale shall be forthwith paid by him into the state~~
580 ~~treasury and shall be set aside as a special fund to be used to meet the expenses of the Department~~
581 ~~in carrying out the duties required by this section and to reimburse the owner of such motor vehicle,~~
582 ~~trailer, semitrailer, or combination as hereafter provided in this section.~~

583 ~~If after the sale or other disposition of the motor vehicle, trailer, semitrailer, or combination the~~
584 ~~ownership of a motor vehicle, trailer, or semitrailer at the time of its removal is established~~
585 ~~satisfactorily to the Commissioner by the person claiming its ownership, the Commissioner shall~~
586 ~~pay him so much of the proceeds from the sale or other disposition of the motor vehicle, trailer,~~
587 ~~semitrailer, or combination as remains after paying the costs of daily storage, towing, and recovery~~
588 ~~fees, investigation of ownership, appraisal, and sale.~~

Appendix D:

Proposed Statutory Drafts with Attorney General Enforcement Language

1 **§ 46.2-119. Complaints against tow truck drivers or towing and recovery operators;**
2 **enforcement by the Office of the Attorney General.**

3 A. Any consumer aggrieved by the actions of a (i) tow truck driver for an alleged violation
4 of subsection A of § 46.2-118 or § 46.2-1217, 46.2-1231, or 46.2-1233.1 or (ii) towing and
5 recovery operator for an alleged violation of subsection B of § 46.2-118 or § 46.2-1217, 46.2-
6 1231, or 46.2-1233.1 may file a complaint with the Division of Consumer Counsel of the Office
7 of the Attorney General for appropriate action in accordance with this section and any other
8 applicable law.

9
10 B. The Attorney General may cause an action to be brought in the appropriate circuit court
11 in the name of the Commonwealth to enjoin any violation of § 46.2-118, 46.2-1217, 46.2-1231,
12 or 46.2-1233.1. The circuit court having jurisdiction may enjoin such violations notwithstanding
13 the existence of an adequate remedy at law. In any action under this section, it shall not be
14 necessary that damages or intent be proved to establish a violation. The standard of proof at trial
15 shall be a preponderance of the evidence. The circuit court may issue temporary or permanent
16 injunctions to restrain and prevent violations of § 46.2-118, 46.2-1217, 46.2-1231, or 46.2-1233.1.

17
18 C. In any action brought under this section, the Attorney General may recover damages
19 and such other relief allowed by law, including restitution on behalf of consumers injured by
20 violations of § 46.2-118, 46.2-1217, 46.2-1231, or 46.2-1233.1, as well as costs and reasonable
21 expenses incurred by the Commonwealth in investigating and preparing the case, including
22 attorney fees. In addition to any other relief described in this section or Chapter 17 of Title 59.1,

23 the Attorney General may recover a civil penalty of not more than \$1,000 for each violation of §
24 46.2-118, 46.2-1217, 46.2-1231, or 46.2-1233.1.

25

26 D. Whenever the Attorney General has reasonable cause to believe that any person has
27 engaged in, is engaging in, or is about to engage in, any violation of § 46.2-118, 46.2-1217, 46.2-
28 1231, or 46.2-1233.1, the Attorney General is empowered to issue a civil investigative demand.
29 The provisions of § 59.1-9.10 shall apply mutatis mutandis to civil investigative demands issued
30 pursuant to this section.

31

32 **§ 46.2-644.01. Lien of keeper of vehicles garage.**

33 A. For purposes of this section, the term “keeper of vehicles” shall mean every garage
34 keeper; person keeping any vehicles, including a self-storage facility; and tow truck driver or
35 towing and recovery operator furnishing services involving the towing and recovery of any
36 vehicle.

37

38 B. Every keeper of a garage and every person keeping any vehicles shall have a lien upon
39 such vehicles for the amount that may be due him for the towing, storage, recovery, and care
40 thereof, until such amount is paid. The lien shall be in addition to any lien under § 46.2-644.02.

41

42 Any garage keeper to whom a vehicle has been delivered pursuant to § 46.2-1209, 46.2-1213, or
43 46.2-1215 shall, 30 days from the date of delivery, have a lien upon such vehicle under this section,
44 provided that action has not been taken pursuant to such sections for the sale of such vehicle.

45

46 C.B. In the case of any vehicle for which the title shows an existing lien, subject to a chattel
47 mortgage, security agreement, deed of trust, or other instrument securing money, the keeper of
48 vehicles the garage shall have a lien upon the vehicle for his reasonable charges for storage under
49 this section not to exceed \$500; however, the keeper shall also be entitled to a lien against any
50 proceeds remaining after the satisfaction of all prior security interests or liens. In addition, any tow
51 truck driver or towing and recovery operator shall have a lien for all normal costs incident to any
52 towing and recovery services furnished for the vehicle. and for alteration and repair under § 46.2-
53 644.02 not to exceed \$1,000. However, in the case of a storage lien, to obtain the priority for an
54 amount in excess of \$300, the person asserting the lien shall make a reasonable attempt to notify
55 any secured party of record at the Department of Motor Vehicles by telephonic means and shall
56 give written notice by certified mail, return receipt requested, to any secured party of record at the
57 Department of Motor Vehicles within seven business days of taking possession of the vehicle. If
58 the secured party does not, within seven business days of receipt of the notice, take or refuse
59 redelivery to it or its designee, the lienor shall be entitled to priority for the full amount of storage
60 charges, not to exceed \$500. Notwithstanding a redelivery, the vehicle shall be subject to
61 subsection D.

62

63 In the case of any vehicle not subject to an existing lien on the title, chattel mortgage, security
64 agreement, deed of trust, or other instrument securing money, the keeper of vehicles the garage
65 shall have a lien thereon for his reasonable charges for storage under this section, alone or in
66 combination with a lien and for alteration and repair under § 46.2-644.02, not to exceed the value
67 of the vehicle as determined by the provisions of § 8.01-419.1.

68

69 D. The keeper of vehicles, or the authorized agent of such, shall ascertain from the
70 Department whether the certificate of title for the vehicle shows a lien thereon in accordance with
71 the provisions of § 46.2-644.03 within seven business days of taking possession of the vehicle.
72 The owner or lienholder of record shall have 10 business days from the date of the notice sent by
73 the Department pursuant to § 46.2-644.03 to reclaim the vehicle. The terms for such reclamation
74 shall be the payment of the amount due to the keeper of vehicles or other amount as agreed to
75 between the parties. If the vehicle remains unclaimed, the keeper of vehicles may enforce his lien
76 under the provisions of § 46.2-644.03 or relinquish his lien under the provisions of § 46.2-644.04.

77 For purposes of this subsection, the date of possession for a garage keeper to whom a
78 vehicle has been delivered pursuant to § 46.2-1209, 46.2-1213, or 46.2-1215 shall be the date such
79 lien attaches, and the date of possession for a self-storage facility shall be the date on which the
80 facility owner learns that a leased space subject to default contains a motor vehicle.

81

82 ~~C. In addition, any person furnishing services involving the towing and recovery of a~~
83 ~~vehicle shall have a lien for all normal costs incident thereto, if the person asserting the lien gives~~
84 ~~written notice within seven days of receipt of the vehicle by certified mail, return receipt requested,~~
85 ~~to all secured parties of record at the Department of Motor Vehicles.~~

86

87 ~~D. In addition, any keeper shall be entitled to a lien against any proceeds remaining after~~
88 ~~the satisfaction of all prior security interests or liens, and may retain possession of such property~~
89 ~~until such charges are paid.~~

90

91 E. Any lien created under this section shall not extend to any personal property that is not
92 attached to or considered to be necessary for the proper operation of any motor vehicle, and it shall
93 be the duty of any keeper of vehicles ~~such personal property~~ to ~~return it to~~ permit the owner to
94 access the vehicle in order to recover his personal property, if provided the owner claims and
95 retrieves the items at least two business days prior to the auction date. The keeper of vehicles may
96 dispose of unclaimed personal property.

97
98 F. For the purposes of this section, in the case of a truck or combination of vehicles, the
99 owner, or in the case of a rented or leased vehicle, the lessee of the truck or tractor truck, shall be
100 liable for the costs of the towing, recovery, and storage of the cargo and of any trailer or semitrailer
101 in the combination. Nothing in this subsection, however, shall bar the owner of the truck or tractor
102 truck from subsequently seeking to recover from the owner of any trailer, semitrailer, or cargo all
103 or any portion of these towing, recovery, and storage costs.

104
105 G. Any violation of the provisions of this section committed by a tow truck driver or towing
106 and recovery operator shall constitute a prohibited act pursuant to the provisions of § 46.2-118 and
107 shall be subject to any and all of the enforcement provisions of § 46.2-119.

108
109 **§ 46.2-644.02. Lien of mechanic for repairs.**

110 A. Every mechanic who shall alter or repair any ~~article of personal property vehicle~~ at the
111 request of the owner or authorized person in possession of such ~~property vehicle~~ shall have a lien
112 thereon for his just and reasonable charges therefor and may retain possession of such ~~property~~
113 vehicle until such charges are paid. The lien shall be in addition to any lien under § 46.2-644.01.

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B. No lien under this section shall exceed \$1,000 for any vehicle for which the title shows an existing lien. However, the mechanic shall be entitled to a lien against the proceeds, if any, remaining after the satisfaction of all prior security interests or liens.

For any vehicle not subject to an existing lien on the title, no lien under this section, alone or in combination with a lien under § 46.2-644.01, shall exceed the value of the vehicle as determined by the provisions of § 8.01-419.1.

C. The mechanic or his authorized agent shall ascertain from the Department whether the certificate of title for the vehicle shows a lien thereon in accordance with the provisions of § 46.2-644.03 within seven business days after the due date of an invoice for the amount due for the alteration or repair. The mechanic may then enforce his lien under the provisions of § 46.2-644.03 after such invoice goes unpaid for 10 days after it is due or relinquish his lien under the provisions of § 46.2-644.04.

~~Every mechanic who shall make necessary alterations or repairs on any article of personal property which from its character requires the making of ordinary repairs thereto as a reasonable incident to its reasonable and customary use, at the request of any person legally in possession thereof under a reservation of title contract, chattel mortgage, deed of trust, or other instrument securing money, the person so in possession having authority to use such property, shall have a lien thereon for his just and reasonable charges therefor to the extent of \$1,000 or, if the property is a motor vehicle and is not subject to a chattel mortgage, security agreement, deed of trust, or other instrument~~

137 ~~securing money, an amount not to exceed the value of the vehicle as determined by the provisions~~
138 ~~of § 8.01-419.1. In addition, such mechanic shall be entitled to a lien against the proceeds, if any,~~
139 ~~remaining after the satisfaction of all prior security interests or liens and may retain possession of~~
140 ~~such property until such charges are paid. In any action to enforce the lien hereby given all persons~~
141 ~~having an interest in the property sought to be subjected shall be made parties defendant.~~

142
143 D. If the owner of the ~~property~~ vehicle held by the mechanic shall desire to obtain
144 possession thereof, he shall make the mechanic defendant in proceeding in the county or municipal
145 court to recover the ~~property~~ vehicle.

146
147 The owner may give a bond payable to the court, in a penalty of the amount equal to the lien
148 claimed by the mechanic and court costs, with security to be approved by the clerk, and conditioned
149 for the performance of the final judgment of the court on the trial of the proceeding, and with a
150 further condition to the effect that, if upon the hearing, the judgment of the court be that the lien
151 of the mechanic on such ~~property~~ vehicle, or any part thereof, be enforced, judgment may
152 thereupon be entered against the obligors on such bond for the amount due the mechanic and court
153 costs, if assessed against the owner, without further or other proceedings against them thereon.
154 Upon giving of the bond, the ~~property~~ vehicle shall be delivered to the owner.

155
156 **§ 46.2-644.03. Enforcement of liens acquired under §§ 46.2-644.01 and 46.2-644.02**
157 ~~and of liens of bailees.~~

158 A. For the purposes of this section:
159 “Bailee” means anyone who has one or more liens under §§ 46.2-644.01 or 46.2-644.02.

160 “Independent appraisal” means an estimate for the value of a motor vehicle prepared by
161 an individual or business that (i) has all required business licenses and zoning approvals and (ii) is
162 either a licensed appraiser in another state or a business authorized by an insurance company to
163 prepare insurance appraisals. This term shall not include an estimate prepared by any individual
164 or business with a financial interest in the bailee’s business.

165 ~~“public place” means a premises owned by the Commonwealth or a political subsection~~
166 ~~thereof, or an agency of either, that is open to the general public.~~

167

168 B. Any bailee ~~person having eligible to enforce~~ a lien under §§ 46.2-644.01 ~~or and~~46.2-
169 644.02 ~~and any bailee, except where otherwise provided, having a lien as such at common law on~~
170 personal property in his possession that he has no power to sell for the satisfaction of the lien, if
171 the debt for which the lien exists is not paid within 10 days after it is due and the value of the
172 property vehicle affected by the lien does not exceed \$12,500, may sell such vehicle property or
173 so much thereof as may be necessary, by public auction, for cash, in accordance with the provisions
174 of this section. The proceeds shall be applied to the satisfaction of the debt and expenses of sale,
175 and the surplus, if any, shall be paid within 30 days of the sale to any lienholder of record, and
176 then to the owner of the property vehicle, provided such lienholder or owner contacts the bailee
177 prior to the sale to claim any surplus that may result. If such claim is made by the lienholder or
178 owner within 30 days following the sale, the surplus shall be paid within 30 days of the claim. If
179 no claim to the surplus is made within 30 days of the sale, or if the owner or lienholder cannot be
180 ascertained by the Department, the bailee shall be entitled to keep the surplus. A seller who fails
181 to remit the surplus as provided shall be liable to the person entitled to the surplus in an amount
182 equal to \$50 for each day beyond 30 days that the failure continues.

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C. Before any lien may be enforced under this section, the bailee or his authorized agent shall initiate with the Department, in a manner prescribed by the Commissioner, a search for the owner and lienholder of record for the vehicle, the names and addresses of which if found shall be provided to the bailee. Any bailee or authorized agent who initiates more than five such requests within any 12 month period shall enter into an agreement with the Department to initiate requests and receive responses electronically.

The Department shall check: (i) its own records, (ii) the records of a nationally recognized crime database, and (iii) records of a nationally recognized motor vehicle title database for owner and lienholder information. If a vehicle has been reported stolen, the Department shall notify the appropriate law-enforcement agency of that fact. If a vehicle is found to have been titled in another jurisdiction, the Department shall contact that jurisdiction to ascertain the requested information and provide it to the bailee. At the time of the search, the Department shall also determine the value of the vehicle, using the trade-in value specified in a recognized pricing guide, and, for a vehicle titled in the Commonwealth, whether the records of the Department show that the owner of the vehicle has indicated that he is on active military duty or service. The Department shall include such information in the response to the request for vehicle information.

After responding to the request for vehicle information, the Department shall notify the owner and any lienholder of record of the request by first class mail to the address provided on the vehicle record held by the Department or by the jurisdiction in which the vehicle is titled. Such notice shall

205 include the name and contact information of the bailee and any terms for reclaiming the vehicle,
206 as well as any additional information the Commissioner determines to be necessary.

207
208 No notice by the Department shall be required if no record for the vehicle can be found or, in the
209 case of a vehicle titled in another jurisdiction, the other jurisdiction refuses to release the requested
210 vehicle information to the Department. In either situation, the bailee may continue with lien
211 enforcement under this section. However, if a vehicle record exists in another jurisdiction, the
212 bailee shall assume all liability for proceeding with such enforcement without written notice to the
213 owner and/or lienholder of record.

214
215 For every vehicle subject to a record search as provided in this section, if the record for the vehicle
216 is held by the Department, the Department shall place an administrative hold on the vehicle record
217 until the bailee reports to the Department that the vehicle has been reclaimed or sold pursuant to
218 this section.

219
220 D. Any bailee enforcing a lien in accordance with this section shall notify the Department
221 of his intent to sell the vehicle in a manner prescribed by the Commissioner. A \$40 fee shall be
222 paid to the Department at the time of notice. Upon receipt of such notice and fee, the Department
223 shall repeat the vehicle record search prescribed in subsection A for the purpose of confirming the
224 most recent owner and lienholder information for the vehicle.

225
226 If the Department confirms owner or lienholder information, either through a search of its own
227 records or those of another jurisdiction, the Department shall notify the owner, at the last known

228 address of record, and any lienholder, at the last known address of record, of the intent to sell the
229 vehicle, by certified mail, return receipt requested, and advise them to reclaim the vehicle and
230 repay the debt owed within 15 days from the date the notice was sent. Such notice, when sent in
231 accordance with these requirements, shall be sufficient regardless of whether or not it was ever
232 received.

233
234 Following the notice required in this subsection, if the vehicle remains unclaimed and the debt
235 unpaid, the owner and all persons having security interest shall have waived all right, title, and
236 interest in the vehicle, except to the extent that subsection B requires a surplus to be paid. The
237 bailee shall notify the Department in a manner prescribed by the Commissioner within five
238 business days if the vehicle is reclaimed and the debt paid. Should the bailee fail to notify the
239 Department as required herein, and the Department must remove the administrative hold placed
240 under subsection C at the request of the vehicle owner or lienholder, and upon submission of proof
241 that the debt was paid and the vehicle reclaimed, the Department may impose and collect an
242 administrative fee of \$40 from the bailee for each such removal.

243
244 E. At the time the bailee notifies the Department of his intent to sell the motor vehicle, the
245 bailee shall provide the intended date of sale at public auction, including the time, place, and terms
246 of such sale. The intended date shall be at least 21 days after the date of notification. The
247 Department shall post notice on behalf of the bailee for at least 21 days prior to the date of sale,
248 advertising the time, place, and terms of the sale. Such 21-day posting period shall run concurrently
249 with the 15-day reclamation period provided for in subsection D. Notifications and postings shall
250 be in an electronic manner prescribed by the Commissioner and shall include the vehicle

251 identification number and a description of each vehicle to be sold. No other postings or notices
252 advertising the sale shall be required.

253
254 Upon notice by the bailee that the vehicle will be sold, the Department shall provide a certification
255 document in a manner prescribed by the Commissioner to the bailee. The bailee shall complete all
256 applicable certification statements on the document and provide it to the buyer of the vehicle, who
257 shall submit the document and an application to the Department in order to obtain a certificate of
258 title for the vehicle. Upon receipt of a completed application and certification document, the
259 Department shall issue a certificate of title to the buyer or a nonrepairable certificate, if requested,
260 free of all prior liens and claims of ownership of others.

261
262 ~~Before making the sale, the seller shall advertise the time, place, and terms thereof in any of the~~
263 ~~following places: (i) a public place in the county or city where the property is located; (ii) a website~~
264 ~~operated by the Commonwealth, the county or city where the property is located, or a political~~
265 ~~subsection of either; or (iii) a newspaper of general circulation in the county or city where the~~
266 ~~property is located, either in print or on its website. In the case of property other than a motor~~
267 ~~vehicle required to be registered in Virginia having a value in excess of \$600, 10 days' prior notice~~
268 ~~shall be given to any secured party who has filed a financing statement against the property, and~~
269 ~~written notice shall be given to the owner as hereinafter provided. If the property is a motor vehicle~~
270 ~~required by the motor vehicle laws of Virginia to be registered, the person having the lien shall~~
271 ~~ascertain from the Commissioner of the Department of Motor Vehicles whether the certificate of~~
272 ~~title of the motor vehicle shows a lien thereon. At that time, the Commissioner shall also determine~~
273 ~~the value of the property and shall communicate it to the bailee. If the certificate of title shows a~~

274 ~~lien, the bailee proposing the sale of the motor vehicle shall notify the lienholder of record, by~~
275 ~~certified mail, at the address on the certificate of title of the time and place of the proposed sale 10~~
276 ~~days prior thereto. If the name of the owner cannot be ascertained, the name of "John Doe" shall~~
277 ~~be substituted in any proceedings hereunder and no written notice as to him shall be required to be~~
278 ~~mailed. Whenever a vehicle is shown by the Department of Motor Vehicles records to be owned~~
279 ~~by a person who has indicated that he is on active military duty or service, the Department shall~~
280 ~~include such information in response to requests for vehicle information pursuant to the~~
281 ~~requirements of this chapter.~~

282
283 F. If the value of the property vehicle is more than \$12,500 but does not exceed \$25,000,
284 the bailee party having the lien, after giving the notice sent by the Department in subsection C as
285 herein provided, may apply by petition to any general district court of the county or city wherein
286 the property vehicle is, or, if the value of the property vehicle exceeds \$25,000, to the circuit court
287 of the county or city, for the sale of the property vehicle. No notice sent by the Department pursuant
288 to this section shall substitute for service of process for any court proceeding. If the name of the
289 owner cannot be ascertained, the name of "John Doe" shall be substituted in any proceeding
290 pursuant to this section.

291
292 If, on the hearing of the case on the petition, the defense, if any made thereto, and such evidence
293 as may be adduced by the parties respectively, the court is satisfied that the debt and lien are
294 established and the property vehicle should be sold to pay the debt, the court shall order the sale
295 to be made by the sheriff of the county or city. The sheriff shall make the same and apply and

296 dispose of the proceeds in the same manner as if the sale were made under a writ of fieri facias.
297 No additional notifications or postings by the Department related to the sale shall be required.

298
299 If a court has ordered the sale of the vehicle, the bailee shall submit to the Department a copy of
300 the court order in a manner prescribed by the Commissioner. Upon receipt, the Department shall
301 provide a certification document to the bailee. The bailee and the sheriff conducting the sale, or
302 his authorized representative, shall complete all applicable certification statements on the
303 document and provide it to the buyer of the vehicle, who shall submit the document and an
304 application to the Department in order to obtain a certificate of title for the vehicle. Upon receipt
305 of a completed application and certification document, the Department shall issue a certificate of
306 title to the buyer or a nonrepairable certificate, if requested, free of all prior liens and claims of
307 ownership of others.

308
309 G. In determining the value of the property as required by this section, the Commissioner
310 shall use a recognized pricing guide and, in using such guide, shall use the trade-in value specified
311 in such guide. However, the bailee may submit an independent appraisal and supporting
312 documentation to show the accurate value of the vehicle in a manner prescribed by the
313 Commissioner. Upon receipt, the Department shall update the vehicle record to reflect the value
314 established by the independent appraisal and notify the bailee that enforcement under this section
315 may proceed based on the new value.

316
317 If the Department is unable to determine a trade-in value for a vehicle by the Department, the
318 Commissioner may establish guidelines for acceptable alternate valuation options to include

319 independent appraisals and retail or loan values that may be available in online or printed pricing
320 guides. The bailee may submit documentation pursuant to such guidelines in order to establish the
321 value of the vehicle.

322
323 ~~If the owner of the property is a resident of the Commonwealth, any notice required by this section~~
324 ~~may be served as provided in § 8.01-296 or, if the sale is to be made without resort to the courts,~~
325 ~~by personal delivery or by certified or registered mail delivered to the present owner of the property~~
326 ~~to be sold at his last known address at least 10 days prior to the date of sale. If the owner of the~~
327 ~~property is a nonresident or if his address is unknown, any notice required by this section may be~~
328 ~~served by posting a copy thereof in three of any of the following places in any combination: (i)~~
329 ~~one or more public places in the county or city where the property is located; (ii) one or more~~
330 ~~websites operated by the Commonwealth, the county or city where the property is located, or a~~
331 ~~political subsection of either; or (iii) one or more newspapers of general circulation in the county~~
332 ~~or city where the property is located, either in print or on their websites.~~

333
334 H. If the property is a motor For a vehicle (i) for which neither the owner nor any other
335 lienholder or secured party can be determined by the Department of Motor Vehicles through a
336 diligent search ~~of its records~~ as required by this section, (ii) manufactured for a model year at least
337 six years prior to the current model year, and (iii) having a value of no more than \$4,500 as
338 determined by the provisions of ~~§ 8.01-419.1~~ this section, a ~~person having a lien on such vehicle~~
339 bailee may, after showing proof that the vehicle has been in his continuous custody for at least 30
340 days, apply for and receive from the Department of Motor Vehicles title or a nonrepairable

341 certificate to such vehicle, free of all liens and claims of ownership of others, and proceed to sell
342 or otherwise dispose of the vehicle.

343
344 ~~Whenever a motor vehicle is sold hereunder, the Department of Motor Vehicles shall issue a~~
345 ~~certificate of title and registration or a nonrepairable certificate to the purchaser thereof upon his~~
346 ~~application containing the serial or motor number of the vehicle purchased together with an~~
347 ~~affidavit of the lienholder that he has complied with the provisions hereof, or by the sheriff~~
348 ~~conducting a sale that he has complied with said order.~~

349
350 ~~Any garage keeper to whom a motor vehicle has been delivered pursuant to § 46.2 1209, 46.2-~~
351 ~~1213, or 46.2 1215 may after 30 days from the date of delivery proceed under this section,~~
352 ~~provided that action has not been taken pursuant to such sections for the sale of such motor vehicle.~~

353
354 I. Notwithstanding any provisions to the contrary, a bailee ~~any person having a lien under~~
355 § 46.2 644.01 or 46.2 644.02 shall comply with the provisions of the federal Servicemembers
356 Civil Relief Act (50 U.S.C. § 3901 et seq.) (the Act) when disposing of a vehicle owned by a
357 member of the military on active duty or service. If the records of the Department show that the
358 owner of the vehicle has indicated to the Department that he is on active military duty or service,
359 such indicator shall be prima facie evidence that the vehicle is subject to the provisions of the Act.
360 However, neither the presence nor absence of such indicator on the vehicle record shall absolve
361 the bailee of his obligation to ascertain the owner's military service status, if any, in accordance
362 with the Act.

363

364 I. All fees imposed and collected pursuant to this section shall be paid into the state treasury
365 and set aside as a special, nonreverting fund to be used to meet the expenses of the Department.

366
367 J. Residents or businesses of other jurisdictions in possession of vehicles titled in the
368 Commonwealth, or the authorized agents of such residents or businesses, seeking to enforce laws
369 in those jurisdictions that are substantially similar to the enforcement of liens under §§ 46.2-644.01
370 and 46.2-644.02 may request information for such vehicles from the Department. The Department
371 shall conduct the information search as provided for in subsection C, provide the names and
372 addresses of the owner and lienholder, if any, for each vehicle to the requester, and notify the
373 named owner and lienholder, if any, by first class mail of the request. Such notification shall not
374 replace any notification requirements imposed by the jurisdiction in which the requester and
375 subject vehicle are located, nor shall the enforcement rules of this section apply to vehicles not
376 located within the Commonwealth. If the Department finds that the vehicle is titled in another
377 jurisdiction, the Department shall identify that jurisdiction to the requester with no further
378 obligation to the requester or vehicle owner. The Department shall collect a \$25 fee for this search.

379
380 **§ 46.2-644.04. Relinquishment of liens acquired under §§ 46.2-644.01 and 46.2-644.02.**

381 A. For purposes of this section, “bailee” shall have the same meaning as ascribed to it in §
382 46.2-644.03.

383
384 B. A bailee may relinquish a lien acquired under § 46.2-644.01 or 46.2-644.02, provided
385 (i) the Department has completed a vehicle record search pursuant to subsection C of § 46.2-644.03
386 and determined that no lien exists on the vehicle record, whether held by the Department or another

387 state, and (ii) the vehicle owner has not reclaimed the vehicle as provided for in § 46.2-644.01 or
388 46.2-644.02. Such relinquishment shall permit the bailee to transfer possession of the vehicle to
389 an unaffiliated tow truck driver, towing and recovery operator, or keeper of a garage, whose
390 business is located within the same locality as the bailee.

391
392 C. Any lien relinquishment hereunder shall be reported to the Department by the bailee on
393 a form and in a manner prescribed by the Commissioner within five business days of the transfer
394 of possession of the vehicle. Such form shall include (i) the make, model, model year, and vehicle
395 identification number of the vehicle, (ii) the name and address of the bailee, (iii) the name and
396 address of the person or entity receiving the vehicle, and (iv) the date of transfer of possession.

397
398 Upon receipt of the relinquishment form, the Department shall note such relinquishment on the
399 vehicle record and notify the owner by first class mail at the last known address of record that the
400 bailee has relinquished the lien and transferred possession of the vehicle. The Department shall
401 collect a \$5 administrative fee for this process from the bailee. Such fee shall be paid into the state
402 treasury and set aside as a special, nonreverting fund to be used to meet the expenses of the
403 Department.

404
405 D. Upon taking possession of a vehicle for which a lien has been relinquished pursuant to
406 this section, a towing and recovery operator or keeper of a garage shall have a lien on the vehicle
407 in accordance with § 46.2-644.01 and all enforcement provisions applicable to such lien shall
408 remain in place. No other relinquishment may take place under this section for the same vehicle

409 until the lien created under this subsection is enforced pursuant to this article and the vehicle
410 titled to a new owner.

411

412 **§ 46.2-1200.2. Vehicles registered to active duty military personnel.**

413 Whenever a vehicle is shown by the Department of Motor Vehicles records to be owned
414 by a person who has indicated that he is on active military duty or service, the Department shall
415 include such information in response to requests for vehicle information pursuant to the
416 requirements of this chapter.

417

418 Notwithstanding any provisions of this chapter, any person ~~having a lien~~ disposing of a vehicle
419 under the provisions of this chapter shall determine whether ~~comply with~~ the provisions of the
420 federal Servicemembers Civil Relief Act (50 U.S.C. § 3901 et seq.) (the Act) apply to the
421 circumstances of such disposition ~~when disposing of a vehicle owned by a member of the military~~
422 ~~on active duty or service.~~ The presence on a vehicle record of an indicator that the owner is on
423 active military duty or service shall be an indication that said Act may apply. However, should the
424 person determine that said Act applies, the indicator on the vehicle record shall not satisfy any
425 obligation under the Act to ascertain the owner's military status, nor shall the absence of an
426 indicator suffice to establish the owner is not on active military duty or service.

427

428 **§ 46.2-1200.3. Limitation on removal and sale of abandoned vehicles.**

429 No person may remove or sell any abandoned vehicle left on public property or the
430 shoulder of a primary highway unless such person is acting pursuant to an agreement for such

431 removal or sale with a local government entity or law enforcement agency and has actual
432 possession of the vehicle.

433

434 **§ 46.2-1202. Search for owner and secured party; notice.**

435 A. Any person in possession of an abandoned ~~motor~~ vehicle shall initiate with the
436 Department, in a manner prescribed by the Commissioner, a search for the owner and/or lienholder
437 of record of the vehicle, requesting the name and address of the owner of record of the ~~motor~~
438 vehicle and all persons having security interests in the ~~motor~~ vehicle on record in the office of the
439 Department, describing, if ascertainable, the ~~motor~~ vehicle by year, make, model, and vehicle
440 identification number. A fee of \$25 40 shall be paid to the Department at the time of application.
441 Those fees shall be paid into the state treasury and set aside as a special, nonreverting fund to be
442 used to meet the expenses of the Department. A local government agency with a written agreement
443 with the Department shall be exempt from this fee.

444

445 The Department shall check: (i) its own records, (ii) the records of a nationally recognized crime
446 database, and (iii) records of a nationally recognized motor vehicle title database for owner and
447 lienholder information. If a vehicle has been reported as stolen, the Department shall notify the
448 appropriate law-enforcement agency of that fact. If a vehicle has been found to have been titled in
449 another jurisdiction, the Department shall contact that jurisdiction to ascertain the requested
450 information. notify the applicant of that jurisdiction. In cases of motor vehicles titled in other
451 jurisdictions, the Commissioner shall issue certificates of title on proof satisfactory to the
452 Commissioner that the persons required to be notified by registered or certified mail have received
453 actual notice fully containing the information required by this section.

454

455 B. If the Department confirms owner or lienholder information, either through a search of
456 its own records or those of another jurisdiction, the Department shall notify the owner, at the last
457 known address of record, and lienholder, at the last known address of record, of the notice of
458 interest in their vehicle, by certified mail, return receipt requested, and advise them to reclaim and
459 remove the vehicle within 15 days, or, if the vehicle is a manufactured home or a mobile home,
460 120 days, from the date of notice. Such notice, when sent in accordance with these requirements,
461 shall be sufficient regardless of whether or not it was ever received. Following the notice required
462 in this subsection, if the ~~motor~~ vehicle remains unclaimed, the owner and all persons having
463 security interests in the motor vehicle shall have waived all right, title, and interest in the motor
464 vehicle.

465
466 ~~Whenever a vehicle is shown by the Department's records to be owned by a person who has~~
467 ~~indicated that he is on active military duty or service, the Department shall notify the requestor of~~
468 ~~such information. Any person having an interest in such vehicle under the provisions of this article~~
469 ~~shall comply with the provisions of the federal Servicemembers Civil Relief Act (50 U.S.C. § 3901~~
470 ~~et seq.).~~

471
472 C. If records of the Department contain no address for the owner or no address of any
473 person shown by the Department's records to have a security interest, or if the identity and
474 addresses of the owner and all persons having security interests cannot be determined with
475 reasonable certainty after the Department has contacted the jurisdiction in which the vehicle was
476 last titled, the person in possession of the abandoned ~~motor~~ vehicle may proceed with the sale or
477 disposal of the vehicle in accordance with this chapter. However, if a vehicle record exists in

478 another jurisdiction that has refused to release the information to the Department, the person in
479 possession of the abandoned vehicle shall assume all liability for proceeding with such sale or
480 disposal without written notice to the owner and/or lienholder of record. ~~shall obtain from the~~
481 Department in a manner prescribed by the Commissioner, a Vehicle Removal Certificate. The
482 vehicle may be sold or transferred to a licensee or a scrap metal processor, as defined in § 46.2-
483 1600.

484
485 D. The Department shall provide to the person in possession of the abandoned vehicle a
486 receipt indicating that the search requested pursuant to this section has been completed.

487
488 E. Residents or businesses of other jurisdictions in possession of vehicles titled in the
489 Commonwealth, or the authorized agents of such residents or businesses, seeking to enforce laws
490 in those jurisdictions that are substantially similar to the provisions of Article 1 or Article 2 of this
491 Chapter may request information for such vehicles from the Department. The Department shall
492 conduct the information search as provided for in subsection A, provide the names and addresses
493 of the owner and lienholder, if any, for each vehicle to the requester, and notify the named owner
494 and lienholder, if any, by certified mail, return receipt requested, of the request. Such notification
495 shall not replace any notification requirements imposed by the jurisdiction in which the requester
496 and subject vehicle are located, nor shall the enforcement rules of this Chapter apply to vehicles
497 not located within the Commonwealth. If the Department finds that the vehicle is titled in another
498 jurisdiction, the Department shall identify that jurisdiction to the requester with no further
499 obligation to the requester or vehicle owner. The Department shall collect a \$25 fee for this search.

500

501 **§ 46.2-1202.1. Vehicle Removal Certificates.**

502 The person in possession of an abandoned ~~motor~~ vehicle shall obtain from the Department
503 in a manner prescribed by the Commissioner, a Vehicle Removal Certificate at no fee. If the
504 Department has found no record for the vehicle, the vehicle may then be sold or transferred to a
505 licensee or a scrap metal processor, as defined in § 46.2-1600. Upon such sale or transfer, the
506 completed Vehicle Removal Certificate and receipt produced pursuant to § 46.2-1202 shall be
507 given to the licensee or scrap metal processor.

508
509 ~~If the person in possession of an abandoned motor vehicle desires to obtain title to the vehicle, that~~
510 ~~person shall post notice for at least 21 days of his intent to auction the motor vehicle. Postings of~~
511 ~~intent shall be in an electronic manner prescribed by the Commissioner who shall also ensure that~~
512 ~~written notice of intent is provided in public locations throughout the Commonwealth. If the~~
513 ~~Department confirms a lien, the person proposing the sale of the motor vehicle shall notify the~~
514 ~~lienholder of record, by certified mail, at the address on the certificate of title of the time and place~~
515 ~~of the proposed sale 10 days prior thereto.~~

516
517 ~~A purchaser of the motor vehicle may apply for a title upon payment of the applicable fees and~~
518 ~~taxes, and by supplying the Department with the completed Vehicle Removal Certificate and the~~
519 ~~transcript from the Department that indicates that the Department has no record of the abandoned~~
520 ~~motor vehicle.~~

521

522 **§ 46.2-1202.2. Notice of intent to auction and sale of vehicle; posting requirements.**

523 If the person in possession of an abandoned vehicle does not intend to sell or transfer the
524 vehicle to a licensee or a scrap metal processor, as defined in § 46.2-1600, and the abandoned
525 vehicle is not reclaimed as provided for in § 46.2-1202, the person in possession of an abandoned

526 vehicle shall post notice for at least 21 days of his intent to auction the vehicle. Postings of intent
527 shall be in an electronic manner prescribed by the Commissioner and shall include the vehicle
528 identification number and a description of each vehicle to be sold.

529
530 After the posting period has passed, and notwithstanding the provisions of § 46.2-617, the vehicle
531 may be sold at auction. A purchaser of the vehicle at auction may apply for a title for such vehicle
532 upon payment of the applicable fees and taxes, and by supplying the Department with the
533 completed Vehicle Removal Certificate and the receipt produced pursuant to § 46.2-1202.

534
535 If the vehicle does not sell at auction, the person in possession of the abandoned vehicle may apply
536 for a title for such vehicle upon payment of the applicable fees and taxes, and by supplying the
537 Department with the completed Vehicle Removal Certificate, the receipt produced pursuant to §
538 46.2-1202, and a written statement that the vehicle did not sell at auction.

539
540

541 **§ 46.2-1203. Sale of vehicle at public auction by locality; disposition of proceeds.**

542 If an abandoned ~~motor~~ vehicle in the possession of a locality or its authorized agent is not
543 reclaimed as provided for in § 46.2-1202, the locality or its authorized agent shall, notwithstanding
544 the provisions of § 46.2-617, sell it at public auction. For the purposes of this article, the term
545 "public auction," when conducted by any county, city, or town, shall include an Internet sale by
546 auction. The purchaser of the ~~motor~~ vehicle shall take title to the ~~motor~~ vehicle free of all liens and
547 claims of ownership of others, shall receive a sales receipt from the sale, and shall be entitled to
548 apply to and receive from the Department a certificate of title and registration card for the vehicle
549 upon submission of the sales receipt, the completed Vehicle Removal Certificate, and the receipt
550 produced by the Department pursuant to § 46.2-1202. The sales receipt from the sale shall be
551 sufficient title only for purposes of transferring the vehicle to a demolisher for demolition,
552 wrecking, or dismantling, and in that case no further titling of the vehicle shall be necessary;
553 however, such demolisher shall provide the Department acceptable documentation indicating that
554 the vehicle has been demolished. From the proceeds of the sale of an abandoned ~~motor~~ vehicle the
555 locality or its authorized agent shall reimburse itself for the expenses of the auction, the cost of
556 towing, preserving, and storing the vehicle which resulted from placing the abandoned ~~motor~~
557 vehicle in custody, and all ~~notice and publication~~ costs, if any, incurred pursuant to § 46.2-1202.
558 Any remainder from the proceeds of a sale shall be held for the owner of the abandoned ~~motor~~
559 vehicle or any person having security interests in the vehicle, as their interests may appear, for 60
560 days, and then be deposited into the treasury of the locality in which the abandoned ~~motor~~ vehicle
561 was abandoned.

562

563

564 **§ 46.2-1209. Unattended or immobile vehicles, generally.**

565 No person shall leave any motor vehicle, trailer, semitrailer, or part or combination thereof
566 immobilized or unattended on or adjacent to any roadway if it constitutes a hazard in the use of
567 the highway. No person shall leave any immobilized or unattended motor vehicle, trailer,
568 semitrailer, or part or combination thereof longer than 24 hours on or adjacent to any roadway
569 outside the corporate limits of any city or town, or on an interstate highway or limited access
570 highway, expressway, or parkway inside the corporate limits of any city or town. Any law-
571 enforcement officer or other uniformed employee of the local law-enforcement agency who
572 specifically is authorized to do so by the chief law-enforcement officer or his designee may remove
573 it or have it removed to a storage area for safekeeping and shall report the removal to the
574 Department and to the owner of the motor vehicle, trailer, semitrailer, or combination as promptly
575 as possible. Before obtaining possession of the motor vehicle, trailer, semitrailer, or combination,
576 its owner or successor in interest to ownership shall pay to the parties entitled thereto all costs
577 incidental to its removal or storage. In any violation of this section the owner of such motor vehicle,
578 trailer, semitrailer or part or combination of a motor vehicle, trailer, or semitrailer, shall be
579 presumed to be the person committing the violation; however, this presumption shall be rebuttable
580 by competent evidence.

581

582 When a motor vehicle, trailer, semitrailer, or part or combination of a motor vehicle, trailer, or
583 semitrailer was stolen or illegally used by a person other than the owner of the vehicle at the time
584 of the theft or used without his authorization, express or implied, it shall be forthwith returned to
585 its owner or the owner's successor in interest, other than an insurance company, who shall be
586 relieved of the payment of any costs charged by the towing operator or storage facility for its daily

587 storage, towing, and recovery fees, provided that the owner removes the vehicle within five
588 business days following the owner's receipt of written notice by certified mail, return receipt
589 requested. If the vehicle's owner fails to remove the vehicle within five days of receipt of such
590 notice, the vehicle shall be released to the owner upon payment of the full costs of storage, towing,
591 and recovery fees, and the owner shall then be entitled to seek reimbursement from the state
592 treasury from the appropriation for criminal charges. The owner shall produce a valid motor
593 vehicle registration or other proof of ownership to the employees of the facility wherein the motor
594 vehicle, trailer, semitrailer or part or combination thereof is being stored. In any case in which the
595 identity of the violator cannot be determined, or where it is found by a court that this section was
596 not violated, the costs of daily storage, towing, and recovery fees of the vehicle shall be reimbursed
597 to the towing and recovery operator and paid out of the state treasury from the appropriation for
598 criminal charges. Payment from the treasury shall be made no later than 45 days from the
599 application for such payment. In all cases where an insurance company is the stolen vehicle
600 owner's successor in interest, the motor vehicle, trailer, semitrailer, or part or combination thereof
601 shall be released to the insurance company upon presentation of a valid motor vehicle registration
602 and payment by the insurance company to the towing operator or storage facility for its daily
603 storage, towing, and recovery fees. The insurance company shall be entitled to seek reimbursement
604 for the costs of the daily storage, towing, and recovery fees through the state treasury from the
605 appropriation for criminal charges. If any person convicted of violating this section fails or refuses
606 to pay these costs or if the identity or whereabouts of the owner is unknown and unascertainable
607 after a diligent search has been made, the locality or its authorized agent in possession of the motor
608 vehicle, trailer, semitrailer, or combination shall treat the vehicle as an abandoned vehicle under
609 the provisions of Article 1 (§ 46.2-1200 et seq.).

610 ~~or after notice to the owner at his address as indicated by the records of the Department and to the~~
611 ~~holder of any lien of record with the Department, against the motor vehicle, trailer, semitrailer, or~~
612 ~~combination, the Commissioner may, after 30 days and after having the value of such motor~~
613 ~~vehicle, trailer, semitrailer, or combination determined by three disinterested dealers dispose of it~~
614 ~~by public or private sale. The proceeds from the sale shall be forthwith paid by him into the state~~
615 ~~treasury and shall be set aside as a special fund to be used to meet the expenses of the Department~~
616 ~~in carrying out the duties required by this section and to reimburse the owner of such motor vehicle,~~
617 ~~trailer, semitrailer, or combination as hereafter provided in this section.~~

618 ~~If after the sale or other disposition of the motor vehicle, trailer, semitrailer, or combination the~~
619 ~~ownership of a motor vehicle, trailer, or semitrailer at the time of its removal is established~~
620 ~~satisfactorily to the Commissioner by the person claiming its ownership, the Commissioner shall~~
621 ~~pay him so much of the proceeds from the sale or other disposition of the motor vehicle, trailer,~~
622 ~~semitrailer, or combination as remains after paying the costs of daily storage, towing, and recovery~~
623 ~~fees, investigation of ownership, appraisal, and sale.~~

Appendix E:

Stakeholder Letters of Support and Opposition

The MSL/AVP Study generated a significant volume of e-mail correspondence related to the various topics discussed. While those messages are not attached to this report, they are available from DMV upon request.



COMMONWEALTH of VIRGINIA

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October 29, 2020

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7-1-1

VIA ELECTRONIC MAIL

Robin Sheldon, Deputy Director
Strategic Management Services
Virginia DMV
robin.sheldon@dmv.virginia.gov

Re: Mechanic/Storage Liens and Abandoned Vehicles Stakeholder Study

Dear Ms. Sheldon:

The Office of the Attorney General of Virginia has appreciated the opportunity to participate in the Mechanic/Storage Liens and Abandoned Vehicles Stakeholder Study. As you are aware, the charge letter from the Chairmen of the Senate and House Transportation Committees requested an examination of issues surrounding abandoned vehicles and vehicles subject to mechanic's and storage liens, including, among other things, "the lack of adequate statutory authority or direction for some practices, especially those of towing companies." As we believe there are significant issues with respect to the statutory authority governing the towing industry, the Office of the Attorney General put forward several enforcement proposals, which are being included as an appendix to the report. We believe these proposals are important changes that would improve the Office's ability to enforce the laws currently assigned to the Attorney General for enforcement.

Our proposals call for a civil penalty for violations of the general towing prohibitions found in Virginia Code § 46.2-118. Outside of a \$150 penalty in Planning District 8 in Northern Virginia,¹ there is currently no civil penalty or fine for the violations listed in that section, which include, among other things: using fraud or deceit in the offering or delivering of towing and recovery services; failing to accept for payment cash, insurance company check, certified check, money order, or at least one of two commonly used, nationally recognized credit cards; and knowingly permitting another person to occupy a motor vehicle while such motor vehicle is being towed. The Office of the Attorney General has sole jurisdiction over this section of the Code,² and believes there should be a statewide penalty for these general towing statutory prohibitions.³

¹ See Virginia Code § 46.2-1233.3(B), which went into effect in 2017.

² Additionally, the Office has specific authority with respect to trespassing vehicles and private property towing through the Virginia Consumer Protection Act, Virginia Code §§ 59.1-196 through 59.1-207, with specific provisions found at Virginia Code §§ 2.2-517(C)(6)&(D), 46.2-1231, and 46.2-1233.1. The Virginia Consumer

Our proposals also call for civil investigative demand authority for the Office in line with other statutes we enforce, including the Virginia Consumer Protection Act.⁴ While Virginia Code § 46.2-119 does permit consumers to file complaints with the Office against towing and recovery operators and tow truck drivers, neither the Office nor any other government agency has formal investigative power with respect to the general prohibitions found in Virginia Code § 46.2-118.⁵ Moreover, we have found in many instances towing and recovery operators simply do not respond to complaints, or we lack the ability to obtain information needed to determine if in fact a violation has occurred and pursue an enforcement action against the company.⁶ We believe this authority is crucial to addressing the lack of adequate statutory authority governing towing companies.⁷

Finally, our proposals call for explicit incorporation of the towing and storage lien statute found at Virginia Code § 46.2-644.01 into the enforcement provisions discussed. This section of the Code provides, among other things, that “[a]ny lien created under this section shall not extend to any personal property that is not attached to or considered to be necessary for the proper operation of any motor vehicle, and it shall be the duty of any keeper of such personal property to return it to the owner if the owner claims the items prior to auction.”⁸ Over the number of years we have had enforcement authority with respect to Virginia Code § 46.2-119, we have received complaints regarding the failure of towing and recovery operators to turn over

Protection Act provides for, among other things, civil penalties of not more than \$2,500 per willful violation, attorneys’ fees, restitution, injunctive relief, as well as a private right of action with treble damages for willful violations, and enforcement by Commonwealths’ and city, county, and town attorneys, along with the Attorney General. The general prohibitions found in Virginia Code § 46.2-118 are not incorporated into the Virginia Consumer Protection Act and do not have the full remedies outlined therein.

³ See Virginia Code § 46.2-119 which permits the Attorney General to obtain injunctive relief and restitution on behalf of consumers injured by violations of § 46.2-118, 46.2-1217, 46.2-1231, or 46.2-1233.1, as well as costs and reasonable expenses incurred by the Commonwealth in investigating and preparing the case, including attorney fees, but does not provide for an award of civil penalties.

⁴ See Virginia Code § 59.1-201.1.

⁵ This includes localities, which like the Attorney General have some specific authority under Chapter 12 of Title 46.2 related to abandoned, immobilized, unattended and trespassing vehicles, and parking. The Office regularly hears from police departments and localities regarding towing issues that they refer to our Office to pursue under the exclusive authority we have in Virginia Code §§ 46.2-118 and -119.

⁶ It is also worth noting that since the abolition of the Board of Towing and Recovery Operators by the General Assembly in 2012, there is no longer an administrative process to deal with complaints against towing companies. For instance, while tow truck drivers must register with the Department of Criminal Justice Services pursuant to Virginia Code § 46.2-116, there is currently no license for towers subject to administrative remedies such as suspension or revocation for violations of § 46.2-118. The Office of the Attorney General must file suit in circuit court to pursue an enforcement action. Our proposals do not attempt to change this regulatory structure.

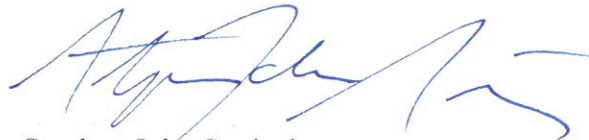
⁷ During the stakeholder meeting some concerns were raised regarding some of the language included in the civil investigatory demand recommendation. We attempted to resolve these concerns through several presentations to the group or the subgroup formed to address the issues. Specifically, we noted there that the Office modeled the language on what is found in the Virginia Consumer Protection Act at Virginia Code § 59.1-201.1, language which is found in many areas of the Code including the Virginia Solicitation of Contributions law at § 57-59(C), the Virginia Telephone Privacy Protection Act at § 59.1-516, and the Virginia Antitrust Act at § 59.1-9.10, among other places. The towing industry is already subject to this language and a civil penalty up to \$2,500 per violation through the separate authority we have with respect to trespassing vehicles and private property towing through the Virginia Consumer Protection Act.

⁸ Virginia Code § 46.2-644.01(E).

personal items to their owners, among other things. We believe this change provides clarity with respect to our Office's enforcement of the section.

The Office of the Attorney General strongly recommends the inclusion of our statutory proposals in the recommended statutory language to the Chairmen of the Transportation Committees. Current law provides the Office no civil penalty outside of Northern Virginia and no formal investigatory power with respect to the violations listed in Virginia Code § 46.2-118, which frustrates meaningful enforcement efforts in the space. Moreover, during the stakeholder meetings, all the represented industry groups with one exception either supported or took no position on the Office's statutory proposals, including the Virginia Association of Towing and Recovery Operators.⁹ The sole industry group objecting to the Office's proposals was the Northern Virginia Towing Coalition. Given the broad support, we believe these commonsense fixes should be incorporated into the full statutory proposal to the General Assembly. Thank you for taking our position into consideration.

Sincerely,



Stephen John Sovinsky
Assistant Attorney General
Consumer Protection Section

⁹ This group fully supported the Office's proposals after we addressed the group's concerns with respect to the proposed civil penalty amount, lowering it from \$2,500 to \$1,000 as is reflected in the report's appendix.



October 28, 2020

Ms. Robin Sheldon
Deputy Commissioner
Department of Motor Vehicles
2300 West Broad Street
Richmond, Virginia 23269

RE: DMV Mechanics and Storage Lien Study Response

Dear Deputy Commissioner Sheldon:

On behalf of the Northern Virginia Towing Coalition (NVTC) we would like to sincerely thank you and your staff for conducting such a professionally run and unbiased study of Virginia's mechanic and storage lien laws. We believe that DMV sets the standard in Virginia government as it pertains to accessibility, customer service, and results.

We have been asked to submit comments on the draft study report, they are as follows:

1) Storage Lien Cap

We request that the study and eventual legislation include changes to § 46.2-644.01, Subsection B, which allows business to recoup 30 days of storage fees.

We request this change because:

- A) The lien cap rate has not been increased in approximately 20 years.
- B) Existing Code requires businesses to hold vehicles for at least 30 days, therefore they should be able to recoup the cost of storage.
- C) Once the current threshold of \$500 is reached there is no incentive or urgency for the lien holder to pick up the vehicle.
- D) Storage costs for businesses are very high due to limitation of storage areas especially in high density regions, taxation rates and use of expensive parcels of land, among many other factors.

2) Attorney General Regulations

We are opposed to any changes to the Code which allows the Office of the Attorney General any additional authority or oversight of the towing industry, which includes all changes to § 46.2-119, § 46.2-644.01 or other sections.

We decline to support this change for the following reasons:

- A) Localities have had the authority for decades to regulate and oversee the towing industry and have done so effectively. Localities understand our business, our clients, towing business owners, the differences in our industry at the macro level and have a proven ability to resolve issues. In many cases localities have General Assembly approved Towing Advisory Boards made up of police officers, towers and citizens that have been operating effectively. We trust our local governments and we hope the General Assembly will continue to support those well-defined and Code supported relationships.
- B) Overlapping responsibilities between the office of Attorney General and local governments are bound to cause friction, misunderstanding and in the end will fail the towing industry, our clients and the customer being towed.
- C) The Office of the Attorney General does not have experience in the towing industry. They do not know our business, our clients or the history of how regional differences have created varying regulations based on local realities.
- D) The cost of creating this new regulatory frame work within the Office of the Attorney General will be significant. The Department of Planning and Budget must assign at least one to two full-time positions with associated costs.
- E) A very important question for legislators and this group to address: do we really want the Office of the Attorney General involved in towing, aren't there many other more important issues that should be addressed by the Office? Is this within the scope and intended purpose of the Attorney General?
- F) Due to the highly controversial nature of this legislation we recommend this item be delayed for at least a year giving local governments, which were not a major part of the study, the opportunity to be included in the discussion.
- G) The most important reason why this should be delayed is there is no problem. Representatives from the Office of the Attorney General agreed that there are few problems with towing state-wide. If so, why is this needed?

3) SCRA Active Duty

The SCRA Active Duty issues are very important to us, we want to do all we can to help our members of the armed forces. It is extremely difficult for our businesses to get timely and accurate information from the government about the duty-status of our military personnel. As a result, the financial, administrative and logistical burden falls on our member businesses. We wish to resolve these issues as soon as possible while doing all we can to best support our fighting men and women. We therefore recommend that DMV continue a work group directly related to these issues, to begin immediately.

We fully support the rest of the changes being made as a result of this study.

Again, we wish to thank DMV for their fine work tackling these issues, many of which were fairly large and complex. All of those involved in this study owe DMV a debt of gratitude for their professionalism and hard work.

Thank you very much and please feel free to contact me at any time.

Best,

Matt Benka

CC: The Honorable Dave Marsden
The Honorable George Barker
The Honorable Delores McQuinn
The Honorable Paul Krizek
The Honorable Shannon Valentine
The Honorable Nick Donohue
Commissioner Richard Holcomb

VIRGINIA BANKERS ASSOCIATION

Matthew J. Bruning
Senior Vice President
4490 Cox Road
Glen Allen, Virginia 23060
(804) 819-4704
mbruning@vabankers.org

October 26, 2020

Robin Sheldon
Deputy Director
2300 West Board Street
Richmond, Virginia 23269

Re: Mechanic's & Storage Lien/Abandoned Vehicle Study

Dear Ms. Sheldon:

The Virginia Bankers Association ("VBA") represents banks of all sizes and charters and has served as the organized voice for Virginia's \$615 billion banking industry and its 42 thousand employees since 1893. We appreciate the opportunity to participate in and comment on the Department of Motor Vehicles study of the Mechanic's & Storage Lien and Abandoned Vehicle statutes.

The VBA appreciates the hard work DMV and stakeholders have undertaken in the review and discussion of potential changes to the MSL and AVP laws. We believe many of the recommended changes contained in the final report will bring clarity and efficiency to those processes.

The banking industry strongly supports the long-standing principle found throughout much of Virginia law that those with first status on lien claims be protected. It is important to note that the current language of §46.2-644.01 already provides a \$500 lien enforcement mechanism to take priority over the existing lienholder. We believe that limited exception to the normal priority status is adequate as the subsequent lienholder, in this case the storage facility, retains the ability to place another lien on additional amounts in line with the traditional lien process. Expanding that limited exception to lien priority diminishes the original lienholder's rights. For financial institutions, that lien is the means of last resort to enforce the original financing of the vehicle as collateral. We oppose increasing the current \$500 amount and believe that proposals to adjust it are out of the scope of this specific study.

We have also reviewed the recommended changes to other processes within the MSL and AVP. We do not have any objection to the proposed changes in the notice timeline and process in Section C of §46.2-644.01 related to the vehicle sale or §46.2-644.03(A) relative to surplus funds disbursement. We also agree that the proposed lien priority outlined in §46.2-644.02 reflects the separate treatment of vehicles depending on the existence of lien we supported from SB 1342 in the 2019 Virginia General Assembly session.

We look forward to supporting the proposed recommendations as presented in the 2021 General Assembly. Thank you for the opportunity to provide comments. If you have any questions, please feel free to contact me at 804-819-4704 or mbruning@vabankers.org.

Sincerely,



Matthew J. Bruning
Senior Vice President



October 29, 2020

Ms. Robin Sheldon
Deputy Director
Virginia Department of Motor Vehicles

Dear Ms. Sheldon:

The National Insurance Crime Bureau (NICB) is a national, not-for-profit organization supported by approximately 1,300 property and casualty insurance companies including many who write business in Virginia. Working with our member companies and law enforcement, we investigate organized criminal conspiracies dealing with insurance fraud and vehicle crime, including predatory towing practices.

NICB stands in strong support of the recommendations outlined by the Virginia Attorney General's Office to deter abuses by predatory and abusive towing operators and the added penalties to deter towing practices that prey on innocent Virginia drivers.

Automobile accidents are a harrowing experience. In the immediate aftermath of an accident, a driver may be dealing with missing work/appointment, liability issues and traffic violations, other motorists trying to circumvent the wreck, and even injuries. This high-stress situation creates the perfect opportunity for an unscrupulous towing company to take advantage of a consumer.

According to reports received by NICB by our member companies, instances of predatory actions by some towing operations in Virginia are on the rise. Examples include towing companies appearing at accident scenes within minutes, unsolicited and claiming they are there at the request of the police or an insurance company. The tow driver upcharges services, bills for services not rendered costing the vehicle owner thousands of dollars in the process. We have seen examples of simple accident tows costing approximately \$10,000.

Over the past few years, responding to these rogue practices, there has been an uptick in towing-reform legislation by several states and municipalities, such as Arizona, California, Indiana, Kentucky and in large metropolitan areas such as Chicago and Philadelphia.

The National Council of Insurance Legislators (NCOIL) in 2018, passed a model towing law, entitled the Consumer Protection Model Towing Law to serve as guide to state lawmakers in providing a solid framework to regulate the towing industry.

Some of the Model's recommendations are for states to establish a mechanism for complaints by insurers and consumers and allowing a regulatory or law enforcement authority to have appropriate oversight over towing companies to ensure appropriate compliance and to protect consumers from abusive practices.

The recommendations proposed to tackle abusive towing practices seeks to do exactly that.

If you have any questions or need any additional information, please feel free to contact me at tlynch@nicb.org or at 773/505-3806.

Regards,

A handwritten signature in blue ink, appearing to read "Tim Lynch", is written over a horizontal line.

Tim Lynch, Senior Director of Government Affairs – National Insurance Crime Bureau



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VIA EMAIL

October 29, 2020

Robin Sheldon, Deputy Director, Strategic Management Services
Virginia Department of Motor Vehicles
robin.sheldon@dmv.virginia.gov

Dear Ms. Sheldon:

As a representative of Erie Insurance Group, I am writing to provide comments to the DMV's 2019-2020 stakeholder study group on mechanic's and storage liens and abandoned vehicles. Specifically, I wanted to convey my company's support for the draft statutory language on towing enforcement proposed by the Virginia Office of the Attorney General (OAG).

Erie Insurance is the second largest writer of commercial auto insurance and the seventh largest writer of personal auto insurance in Virginia by premium volume. As such, we have been troubled by the longstanding absence of proper regulation of the towing industry in Virginia, a concern we share with the rest of the auto insurance industry. The result of such a lack of oversight has been abusive practices by certain towers that ultimately hurt our customers.

The proposed enforcement language that OAG has drafted under §46.2-119 of the Code of Virginia would improve its current towing complaint process immensely. It would provide the OAG with basic authority to enforce violations against towers by giving the OAG authority to issue civil investigative demands along with added penalties to deter anti-consumer violations by towing companies.

Erie Insurance appreciates the study group's consideration of the OAG's proposed towing enforcement statutory language. If adopted into law, such changes could mark a turning point toward improved and long overdue regulation of the towing industry to the benefit of Virginia consumers.

Thank you for the opportunity to submit comments on the OAG proposed towing language. If you have any questions regarding our comments, please do not hesitate to ask.

Sincerely,

Shane Wohlrabe
Vice President, Material Damage, Corporate Claims



VIA EMAIL

October 29,2020

Robin Sheldon, Deputy Director,
Strategic Management Services, Virginia DMV
robin.sheldon@dmv.virginia.gov

RE: Mechanic's and Storage Lien and Abandoned Vehicle Process (MSL/AVP) Draft Final Report – OAG proposed Code language in § 46.2-119

Dear Ms. Sheldon,

Thank you for this opportunity to offer comments on behalf of the members of the American Property Casualty Insurance Association (APCIA) -- a trade association that promotes and protects the viability of a competitive property casualty insurance market for the benefit of consumers and insurers. APCIA represents the broadest cross-section of home, auto, and business insurers of any national trade association. Together, APCIA members write **50.9%** of the personal auto insurance and **80.4%** of the commercial auto insurance in Virginia.

The Virginia DMV was charged by the Chairs of the Senate and House Transportation Committees to convene a stakeholder group to identify difficulties complying with notice, posting, and SCRA requirements; clarify the confusion between the different processes legislated for abandoned vehicles and MSL, and when they may be used; providing more options to facilitate compliance with other states' requirements, when necessary; and providing more statutory authority or direction for some practices, especially those of towing companies. We appreciate the time and effort of the stakeholder group last year and this year regarding the proposed changes regarding enforcement in MSL Virginia Code § 46.2-119


The lack of oversight of the towing industry has been of concern for the insurance industry for many years. In contrast, the insurance industry is subject to the authority of the VA Bureau of Insurance (BOI) which regulates the prompt and fair settlement of auto claims. Back in 1990, the National Association of Insurance Commissioners adopted the Unfair Claims Settlement Practice Act (UCSPA). As the name suggests, these laws are designed to protect policyholders and ensure that claims are paid promptly. Virginia adopted the UCSPA which can be found at VA ST s 38.2-510. If a claimant feels that a company is not paying a claim promptly, the claimant may file a complaint with the VA BOI.

APCIA remains fully supportive of the VA OAG proposed language, we are very supportive of the added penalties that have been proposed by OAG to deter abuse by certain towers.

Insurers can and do file complaints regarding towing abuses, but in almost every case, insurers must make payment to obtain release of the vehicle and stop fees from accumulating further. Insurers have the impression, right or wrong, that they will not recoup those amounts paid, even though the existing law allows the AG to recover restitution. We hope that the OAG will work with the insurance industry to set up an open communication to encourage insurers to use this valuable consumer protection tool.

Thank you for the opportunity to submit comments on the draft Workgroup report. If you have any questions regarding our comments, please do not hesitate to ask.

Sincerely,

A handwritten signature in cursive script that reads "Nancy Egan". The signature is written in black ink and is positioned below the word "Sincerely,".

Nancy Egan

Assistant Vice President & Counsel, State Government Relations, DE, MD, VA, WV

American Property Casualty Insurance Association

(443) 708-4668

Nancy.Egan@apci.org

Appendix F:
Study Participants

Mechanics' and Storage Lien/Abandoned Vehicle Study 2019-2020 Team Participants

Department of Motor Vehicles

Name	Title
Millicent Ford	Assistant Commissioner of Vehicle/Driver Services - Executive Oversight
Linda Ford	Assistant Commissioner of Governmental Affairs - Executive Oversight
Carla Jackson	Assistant Commissioner for Legal Affairs - Executive Oversight
Joseph Hill	Assistant Commissioner of the Office of Enforcement and Compliance - Executive Oversight
Scott Cummings	Assistant Commissioner Financial Services - Executive Oversight
Robin Sheldon	Deputy Director Strategic Management Services - Study Lead
Melissa Velazquez	Director of Legislative Services
Melanie Lester	Director of Vehicle Services
Sam Davenport	Deputy Director Vehicle Services
Sandy Jack	Director of Data Management Services
Alacia Moore	Program Manager Vehicle Services
Matthew Martin	Deputy Director of Strategic Management Services/fmr Legal Services Analyst
Domica Winstead	Deputy Director Court Services and Convictions/fmr Legislative Services Analyst
Brad Berg	Director of Law Enforcement Field Operations
Jennifer Blackwell	Senior Policy Analyst Legislative Services
Daniel Rezai	Senior Policy Analyst Legislative Services
Beau Hurley	Chief Information Security Officer/Agency Risk Manager
Kathy Bunn	IT Manager Vehicle Services
Matt Ely	IT Manager E-Gov
Kathleen Furr	Deputy Director Customer Service Management Services
Robert Davidson	Senior Policy Analyst Strategic Management Services
Greg Cavalli	Senior Policy Analyst Strategic Management Services
Karon Winston	Special Agent Law Enforcement Division

Stakeholders

Name	Organization
Lt. Billy Gilbert	Virginia Sheriffs' Association
Lt. Sean Stewart	Virginia State Police
Dana Schrad	Virginia Association of Chiefs of Police
Mark Sawyers	Affordable Towing
Christian Parrish	Attorney General's Office Transportation Section
Stephen Sovinsky	Attorney General's Office Consumer Protection Section
William Childress	Virginia Motor Vehicle Dealer Board
Phyllis Errico	Virginia Association of Counties (VaCo)
Chris McDonald	Virginia Association of Counties (VaCo)
Michelle Gowdy	Virginia Municipal League (VML)
Jim Taylor	Auto Data Direct
Les Cravens	Auto Data Direct
James Pickral	Commonwealth Strategy Group
Melvin Lawson	Seiberts Towing
Bruce Jennings	Virginia Self Storage Association
Jack Aspinwall	Jack Rabbit Self Storage
Brandi Gerhart	Jack Rabbit Self Storage
Chris Lagow	American Property Casualty Insurance Association (ACPI)
Vicki Harris	USAA
Nancy Egan	American Property Casualty Insurance Association (ACPI)
Kevin Logan	SNL Law
Matt Benka	MDB Strategies
Ashley Miller	Dominion Towing

Mechanics' and Storage Lien/Abandoned Vehicle Study 2019-2020 Team Participants

Name	Organization
Stacey Fulker	Dominion Wrecker Service
Jonathan Morrow	Virginia Recycling Association
Jody Hess	Office of the Executive Secretary of the Supreme Court of Virginia
Brandy Singleton	Office of the Executive Secretary of the Supreme Court of Virginia
John Jung	Richmond Commonwealth's Attorney's Office
Carrie Ann Alford	Virginia Department of Veterans Services
Matt Bruning	Virginia Bankers Association
DeMarion Johnston	Virginia Bankers Association
Bruce Whitehurst	Virginia Bankers Association
Anne Gambardella	Virginia Automobile Dealers Association
Tommy Lukish	Virginia Automobile Dealers Association
Pete Iaricci	Virginia Independent Auto Dealers Association
Alvin Melendez	Virginia Independent Auto Dealers Association
Chris Maher	Car Credit Nation (VIADA)
Emma Buck	Division of Legislative Services
David Miles	Virginia Credit Union League
Chris Maher	Car Credit Nation
Dale Pittman	Pittman Law Office
Jay Speer	Virginia Poverty Law Center
John Forney	Mid Atlantic Towing
Jeffrey Palmore	Reed Smith LLP
Mark Dix	Virginia Trial Lawyers Association
Carl Fly	Hampton Roads Towing Alliance
Ann Leigh Kerr	Kerr Gov Strategies
Gerald Faries	Copart
Charlie Eichman	Copart
Mark Binder	Copart
Rich Savage	Allstate of Virginia