

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 1268
Committee Substitute Favorable 6/6/96

Short Title: Expedite Towed Vehicle Disposal.

(Public)

Sponsors:

Referred to:

May 21, 1996

1 A BILL TO BE ENTITLED
2 AN ACT TO EXPEDITE DISPOSAL OF UNCLAIMED VEHICLES BY TOWING
3 AND STORAGE BUSINESSES.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 20-77(d) reads as rewritten:

6 "(d) An operator of a place of business for garaging, repairing, parking or storing
7 vehicles for the public in which a vehicle remains unclaimed for ~~30 days,~~10 days, or the
8 landowners upon whose property a motor vehicle has been abandoned for more than ~~60~~
9 ~~days,~~30 days, shall, within five days after the expiration of that period, report the vehicle
10 as unclaimed to the Division. Failure to make such report shall constitute a Class 3
11 misdemeanor.

12 Any vehicle which remains unclaimed after report is made to the Division may be
13 sold by such operator or landowner in accordance with the provisions relating to the
14 enforcement of liens and the application of proceeds of sale of Article 1 of Chapter 44A."

15 Sec. 2. G.S. 44A-4(a) reads as rewritten:

16 "(a) Enforcement by Sale. – If the charges for which the lien is claimed under this
17 Article remain unpaid or unsatisfied for ~~30 days~~days or, in the case of towing and storage
18 charges on a motor vehicle, 10 days following the maturity of the obligation to pay any
19 such charges, the lienor may enforce the lien by public or private sale as provided in this

1 section. The lienor may bring an action on the debt in any court of competent jurisdiction
2 at any time following maturity of the obligation. Failure of the lienor to bring such action
3 within a 180-day period following the commencement of storage shall constitute a waiver
4 of any right to collect storage charges which accrue after such period. Provided that
5 when property is placed in storage pursuant to an express contract of storage, the lien
6 shall continue and the lienor may bring an action to collect storage charges and enforce
7 his lien at any time within 120 days following default on the obligation to pay storage
8 charges.

9 The owner or person with whom the lienor dealt may at any time following the
10 maturity of the obligation bring an action in any court of competent jurisdiction as by law
11 provided. If in any such action the owner or other party requests immediate possession of
12 the property and pays the amount of the lien asserted into the clerk of the court in which
13 such action is pending, the clerk shall issue an order to the lienor to relinquish possession
14 of the property to the owner or other party. The request for immediate possession may be
15 made in the complaint, which shall also set forth the amount of the asserted lien and the
16 portion thereof which is not in dispute, if any. If within three days after service of the
17 summons and complaint, as the number of days is computed in G.S. 1A-1, Rule 6, the
18 lienor does not file a contrary statement of the amount of the lien at the time of the filing
19 of the complaint, the amount set forth in the complaint shall be deemed to be the amount
20 of the asserted lien. The clerk may at any time disburse to the lienor that portion of the
21 cash bond, which the plaintiff says in his complaint is not in dispute, upon application of
22 the lienor. The magistrate or judge shall direct appropriate disbursement of the disputed
23 or undisbursed portion of the bond in the judgment of the court. In the event an action by
24 the owner pursuant to this section is heard in district or superior court, the substantially
25 prevailing party in such court may be awarded a reasonable attorney's fee in the
26 discretion of the judge."

27 Sec. 3. G.S. 44A-4(b)(1) reads as rewritten:

28 "(1) If the property upon which the lien is claimed is a motor vehicle that is
29 required to be registered, the lienor following the expiration of the ~~30-~~
30 ~~day-relevant time~~ period provided by subsection (a) shall give notice to
31 the Division of Motor Vehicles that a lien is asserted and sale is
32 proposed and shall remit to the Division a fee of ten dollars (\$10.00).
33 The Division of Motor Vehicles shall issue notice by registered or
34 certified mail, return receipt requested, within 15 days of receipt of
35 notice from the lienor, to the person having legal title to the property, if
36 reasonably ascertainable, to the person with whom the lienor dealt if
37 different, and to each secured party and other person claiming an
38 interest in the property who is actually known to the Division or who
39 can be reasonably ascertained. The notice shall state that a lien has been
40 asserted against specific property and shall identify the lienor, the date
41 that the lien arose, the general nature of the services performed and
42 materials used or sold for which the lien is asserted, the amount of the
43 lien, and that the lienor intends to sell the property in satisfaction of the

1 lien. The notice shall inform the recipient that the recipient has the right
2 to a judicial hearing at which time a determination will be made as to
3 the validity of the lien prior to a sale taking place. The notice shall
4 further state that the recipient has a period of 10 days from the date of
5 receipt in which to notify the Division by registered or certified mail,
6 return receipt requested, that a hearing is desired and that if the recipient
7 wishes to contest the sale of his property pursuant to such lien, the
8 recipient should notify the Division that a hearing is desired and the
9 Division shall notify lienor. The notice shall state the required
10 information in simplified terms and shall contain a form whereby the
11 recipient may notify the Division that a hearing is desired by the return
12 of such form to the Division. Failure of the recipient to notify the
13 Division within 10 days of the receipt of such notice that a hearing is
14 desired shall be deemed a waiver of the right to a hearing prior to the
15 sale of the property against which the lien is asserted, the Division shall
16 notify the lienor, and the lienor may proceed to enforce the lien by
17 public or private sale as provided in this section and the Division shall
18 transfer title to the property pursuant to such sale. If the Division is
19 notified within the 10-day period provided above that a hearing is
20 desired prior to sale, the lien may be enforced by sale as provided in this
21 section and the Division will transfer title only pursuant to the order of a
22 court of competent jurisdiction.

23 If the Division notifies the lienor that the registered or certified mail
24 notice has been returned as undeliverable, the lienor may institute a
25 special proceeding in the county where the vehicle is being held, for
26 authorization to sell that vehicle.

27 If the market value of the vehicle, as determined by the schedule of
28 values adopted by the Commissioner under G.S. 105-187.3, is less than
29 eight hundred dollars (\$800.00) and one of the following applies, the
30 lienor may institute a special proceeding in the county where the vehicle
31 is being held for authorization to sell the vehicle:

- 32 a. The registered or certified mail notice has been delivered and no
33 hearing was requested.
34 b. The person having legal title to the vehicle, the person with
35 whom the lienor dealt if different, and each secured party or
36 other person claiming an interest in the vehicle cannot be
37 ascertained by the Division.

38 In such a proceeding a lienor may include more than one vehicle, but
39 the proceeds of the sale of each shall be subject only to valid claims
40 against that vehicle, and any excess proceeds of the sale shall escheat to
41 the State and be paid immediately to the treasurer for disposition
42 pursuant to Chapter 116B of the General Statutes. A vehicle owner or

1 possessor claiming an interest in such proceeds shall have a right of
2 action under G.S. 116B-38.

3 The application to the clerk in such a special proceeding shall contain
4 the notice of sale information set out in subsection (f) hereof. If the
5 application is in proper form the clerk shall enter an order authorizing
6 the sale on a date not less than 14 days therefrom, and the lienor shall
7 cause the application and order to be sent immediately by first-class
8 mail pursuant to G.S. 1A-1, Rule 5, to each person to whom the
9 Division has mailed notice pursuant to this subsection. Following the
10 authorized sale the lienor shall file with the clerk a report in the form of
11 an affidavit, stating that two or more bona fide bids on the vehicle were
12 received, the names, addresses and bids of the bidders, and a statement
13 of the disposition of the sale proceeds. The clerk then shall enter an
14 order directing the Division to transfer title accordingly.

15 If prior to the sale the owner or legal possessor contests the sale or lien
16 in a writing filed with the clerk, the proceeding shall be handled in
17 accordance with G.S. 1-399."

18 Sec. 4. G.S. 44A-4(e) reads as rewritten:

19 "(e) Public Sale. –

20 (1) Not less than 20 days prior to sale by public sale the lienor:

21 a. Shall notify the Commissioner of Motor Vehicles as provided in
22 G.S. 20-114(c) if the property upon which the lien is claimed is a
23 motor vehicle; and

24 a1. Shall cause notice to be mailed to the person having legal title to
25 the property if reasonably ascertainable, to the person with whom
26 the lienor dealt if different, and to each secured party or other
27 person claiming an interest in the property who is actually known
28 to the lienor or can be reasonably ascertained, provided that
29 notices provided pursuant to subsection (b) hereof shall be
30 sufficient for these purposes if such notices contain the
31 information required by subsection (f) hereof; and

32 b. Shall advertise the sale by posting a copy of the notice of sale at
33 the courthouse door in the county where the sale is to be held;
34 ~~and~~ and, if the vehicle is less than five years old, shall publish notice of
35 sale once a week for two consecutive weeks in a newspaper of general
36 circulation in the same county, the date of the last publication being not
37 less than five days prior to the sale.

38 (2) A public sale must be held on a day other than Sunday and between the
39 hours of 10:00 A.M. and 4:00 P.M.:

40 a. In any county where any part of the contract giving rise to the
41 lien was performed, or

42 b. In the county where the obligation secured by the lien was
43 contracted for.

- 1 (3) A lienor may purchase at public sale."
- 2 Sec. 5. This act becomes effective October 1, 1996.