

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 635
HOUSE BILL 1268

AN ACT TO EXPEDITE DISPOSAL OF UNCLAIMED VEHICLES BY TOWING
AND STORAGE BUSINESSES.

The General Assembly of North Carolina enacts:

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

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

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

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

"(a) Enforcement by Sale. – If the charges for which the lien is claimed under this Article remain unpaid or unsatisfied for ~~30 days~~ days or, in the case of towing and storage charges on a motor vehicle, 10 days following the maturity of the obligation to pay any such charges, the lienor may enforce the lien by public or private sale as provided in this section. The lienor may bring an action on the debt in any court of competent jurisdiction at any time following maturity of the obligation. Failure of the lienor to bring such action within a 180-day period following the commencement of storage shall constitute a waiver of any right to collect storage charges which accrue after such period. Provided that when property is placed in storage pursuant to an express contract of storage, the lien shall continue and the lienor may bring an action to collect storage charges and enforce his lien at any time within 120 days following default on the obligation to pay storage charges.

The owner or person with whom the lienor dealt may at any time following the maturity of the obligation bring an action in any court of competent jurisdiction as by law provided. If in any such action the owner or other party requests immediate possession of the property and pays the amount of the lien asserted into the clerk of the court in which such action is pending, the clerk shall issue an order to the lienor to relinquish possession of the property to the owner or other party. The request for immediate possession may be made in the complaint, which shall also set forth the amount of the asserted lien and the portion thereof which is not in dispute, if any. If

within three days after service of the summons and complaint, as the number of days is computed in G.S. 1A-1, Rule 6, the lienor does not file a contrary statement of the amount of the lien at the time of the filing of the complaint, the amount set forth in the complaint shall be deemed to be the amount of the asserted lien. The clerk may at any time disburse to the lienor that portion of the cash bond, which the plaintiff says in his complaint is not in dispute, upon application of the lienor. The magistrate or judge shall direct appropriate disbursement of the disputed or undisbursed portion of the bond in the judgment of the court. In the event an action by the owner pursuant to this section is heard in district or superior court, the substantially prevailing party in such court may be awarded a reasonable attorney's fee in the discretion of the judge."

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

"(1) If the property upon which the lien is claimed is a motor vehicle that is required to be registered, the lienor following the expiration of the ~~30-day~~ relevant time period provided by subsection (a) shall give notice to the Division of Motor Vehicles that a lien is asserted and sale is proposed and shall remit to the Division a fee of ten dollars (\$10.00). The Division of Motor Vehicles shall issue notice by registered or certified mail, return receipt requested, within 15 days of receipt of notice from the lienor, to the person having legal title to the property, if reasonably ascertainable, to the person with whom the lienor dealt if different, and to each secured party and other person claiming an interest in the property who is actually known to the Division or who can be reasonably ascertained. The notice shall state that a lien has been asserted against specific property and shall identify the lienor, the date that the lien arose, the general nature of the services performed and materials used or sold for which the lien is asserted, the amount of the lien, and that the lienor intends to sell the property in satisfaction of the lien. The notice shall inform the recipient that the recipient has the right to a judicial hearing at which time a determination will be made as to the validity of the lien prior to a sale taking place. The notice shall further state that the recipient has a period of 10 days from the date of receipt in which to notify the Division by registered or certified mail, return receipt requested, that a hearing is desired and that if the recipient wishes to contest the sale of his property pursuant to such lien, the recipient should notify the Division that a hearing is desired and the Division shall notify lienor. The notice shall state the required information in simplified terms and shall contain a form whereby the recipient may notify the Division that a hearing is desired by the return of such form to the Division. Failure of the recipient to notify the Division within 10 days of the receipt of such notice that a hearing is desired shall be deemed a waiver of the right to a hearing prior to the sale of the property against which the lien is asserted, the Division shall notify the lienor, and the lienor may proceed to enforce the lien by public or private sale as provided in this section and the

Division shall transfer title to the property pursuant to such sale. If the Division is notified within the 10-day period provided above that a hearing is desired prior to sale, the lien may be enforced by sale as provided in this section and the Division will transfer title only pursuant to the order of a court of competent jurisdiction.

If the Division notifies the lienor that the registered or certified mail notice has been returned as undeliverable, or if the Division cannot ascertain the name of the person having legal title to the vehicle and the fair market value of the vehicle is less than eight hundred dollars (\$800.00), the lienor may institute a special proceeding in the county where the vehicle is being held, for authorization to sell that vehicle. Market value shall be determined by the schedule of values adopted by the Commissioner under G.S. 105-187.3.

In such a proceeding a lienor may include more than one vehicle, but the proceeds of the sale of each shall be subject only to valid claims against that vehicle, and any excess proceeds of the sale shall escheat to the State and be paid immediately to the treasurer for disposition pursuant to Chapter 116B of the General Statutes. A vehicle owner or possessor claiming an interest in such proceeds shall have a right of action under G.S. 116B-38.

The application to the clerk in such a special proceeding shall contain the notice of sale information set out in subsection (f) hereof. If the application is in proper form the clerk shall enter an order authorizing the sale on a date not less than 14 days therefrom, and the lienor shall cause the application and order to be sent immediately by first-class mail pursuant to G.S. 1A-1, Rule 5, to each person to whom the Division has mailed notice pursuant to this subsection. Following the authorized sale the lienor shall file with the clerk a report in the form of an affidavit, stating that the lienor has complied with the public or private sale provisions of G.S. 44A-4, the name, address, and bid of the high bidder or person buying at a private sale, ~~two or more bona fide bids on the vehicle were received, the names, addresses and bids of the bidders,~~ and a statement of the disposition of the sale proceeds. The clerk then shall enter an order directing the Division to transfer title accordingly.

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

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

"(e) Public Sale. –

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

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

- a1. Shall cause notice to be mailed to the person having legal title to the property if reasonably ascertainable, to the person with whom the lienor dealt if different, and to each secured party or other person claiming an interest in the property who is actually known to the lienor or can be reasonably ascertained, provided that notices provided pursuant to subsection (b) hereof shall be sufficient for these purposes if such notices contain the information required by subsection (f) hereof; and
 - b. Shall advertise the sale by posting a copy of the notice of sale at the courthouse door in the county where the sale is to be held; and shall publish notice of sale once a week for two consecutive weeks in a newspaper of general circulation in the same county, the date of the last publication being not less than five days prior to the sale. The notice of sale need not be published if the vehicle has a market value of less than three thousand five hundred dollars (\$3,500), as determined by the schedule of values adopted by the Commissioner under G.S. 105-187.3.
- (2) A public sale must be held on a day other than Sunday and between the hours of 10:00 A.M. and 4:00 P.M.:
- a. In any county where any part of the contract giving rise to the lien was performed, or
 - b. In the county where the obligation secured by the lien was contracted for.
- (3) A lienor may purchase at public sale."

Sec. 5. This act becomes effective October 1, 1996.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives