

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 853

Short Title: Motor Vehicle Towing Modifications.

(Public)

Sponsors: Representative Bowie.

Referred to: Transportation, if favorable, Judiciary II.

April 12, 1995

A BILL TO BE ENTITLED

AN ACT TO MAKE MODIFICATIONS TO VARIOUS STATUTES REGULATING
THE TOWING OF MOTOR VEHICLES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-72(b) reads as rewritten:

"(b) In order to assign or transfer title or interest in any motor vehicle registered under the provisions of this Article, the owner shall execute in the presence of a person authorized to administer oaths at a Division of Motor Vehicles facility or at a commission contract North Carolina Motor Vehicle License Agency an assignment and warranty of title on the reverse of the certificate of title in form approved by the Division, including in such assignment the name and address of the transferee; and no title to any motor vehicle shall pass or vest until such assignment is executed and the motor vehicle delivered to the transferee. The provisions of this section shall not apply to any foreclosure or repossession under a chattel mortgage or conditional sales contract or any judicial sale.

Any person transferring title or interest in a motor vehicle shall deliver the certificate of title duly assigned in accordance with the foregoing provision to the transferee at the time of delivering the vehicle, except that where a security interest is obtained in the motor vehicle from the transferee in payment of the purchase price or otherwise, the transferor shall deliver the certificate of title to the lienholder and the lienholder shall

1 forward the certificate of title together with the transferee's application for new title and
2 necessary fees to the Division within 20 days. Any person who delivers or accepts a
3 certificate of title assigned in blank shall be guilty of a Class 2 misdemeanor.

4 The title to a salvage vehicle shall be forwarded to the Division as provided in G.S.
5 20-109.1."

6 Sec. 2. G.S. 20-77(d) reads as rewritten:

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

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

16 Sec. 3. G.S. 20-114(c) reads as rewritten:

17 "(c) It shall also be the duty of every sheriff of every county of the State and of
18 every police or peace officer of the State to make immediate report to the Commissioner
19 of all motor vehicles reported to him as abandoned or that are seized by him for being
20 used for illegal transportation of alcoholic beverages or other unlawful purposes, and no
21 motor vehicle shall be sold by any sheriff, police or peace officer, or by any person, firm
22 or corporation claiming a mechanic's or storage lien, or under judicial proceedings, until
23 notice on a form approved by the Commissioner shall have been given the Commissioner
24 at least ~~20-10~~ days before the date of such sale."

25 Sec. 4. G.S. 44A-4 reads as rewritten:

26 "**§ 44A-4. Enforcement of lien by sale.**

27 (a) Enforcement by Sale. – If the charges for which the lien is claimed under this
28 Article remain unpaid or unsatisfied for ~~30-10~~ days following the maturity of the
29 obligation to pay any such charges, the lienor may enforce the lien by public or private
30 sale as provided in this section. The lienor may bring an action on the debt in any court
31 of competent jurisdiction in the county where the vehicle is being stored at any time
32 following maturity of the obligation. Failure of the lienor to bring such action within a
33 180-day period following the commencement of storage shall constitute a waiver of any
34 right to collect towing and storage charges which accrue after such period. Provided that
35 when property is placed in storage pursuant to an express contract of towing or storage,
36 the lien shall continue and the lienor may bring an action to collect towing and storage
37 charges and enforce his lien at any time within 120 days following default on the
38 obligation to pay towing and storage charges.

39 The owner or person with whom the lienor dealt may at any time following the
40 maturity of the obligation bring an action in any court of competent jurisdiction in the
41 county where the vehicle is being stored as by law provided. If in any such action the
42 owner or other party requests immediate possession of the property and pays the amount
43 of the lien asserted into the clerk of the court in which such action is pending, the clerk

1 shall issue an order to the lienor to relinquish possession of the property to the owner or
2 other party. The request for immediate possession may be made in the complaint, which
3 shall also set forth the amount of the asserted lien and the portion thereof which is not in
4 dispute, if any. If within three days after service of the summons and complaint, as the
5 number of days is computed in G.S. 1A-1, Rule 6, the lienor does not file a contrary
6 statement of the amount of the lien at the time of the filing of the complaint, the amount
7 set forth in the complaint shall be deemed to be the amount of the asserted lien. The
8 clerk may at any time disburse to the lienor that portion of the cash bond, which the
9 plaintiff says in his complaint is not in dispute, upon application of the lienor. The
10 magistrate or judge shall direct appropriate disbursement of the disputed or undisbursed
11 portion of the bond in the judgment of the court. In the event an action by the owner
12 pursuant to this section is heard in district or superior court, the substantially prevailing
13 party in such court may be awarded a reasonable attorney's fee in the discretion of the
14 ~~judge.~~ judge payable by the party requesting the initial tow.

15 (b) Notice and Hearings. –

16 (1) If the property upon which the lien is claimed is a motor vehicle that is
17 required to be registered, the lienor following the expiration of the ~~30-~~
18 ~~day~~ 10-day period provided by subsection (a) shall give notice to the
19 Division of Motor Vehicles that a lien is asserted and sale is proposed
20 and shall remit to the Division a fee of ten dollars (\$10.00). The
21 Division of Motor Vehicles shall issue notice by registered or certified
22 mail, return receipt requested, within 10 days of receipt of notice from
23 the lienor, to the person having legal title to the property, if reasonably
24 ascertainable, to the person with whom the lienor dealt if different, and
25 to each secured party and other person claiming an interest in the
26 property who is actually known to the Division or who can be
27 reasonably ascertained. The notice shall state that a lien has been
28 asserted against specific property and shall identify the lienor, the date
29 that the lien arose, the general nature of the services performed and
30 materials used or sold for which the lien is asserted, the amount of the
31 lien, and that the lienor intends to sell the property in satisfaction of the
32 lien. The notice shall inform the recipient that the recipient has the right
33 to a judicial hearing at which time a determination will be made as to
34 the validity of the lien prior to a sale taking place. The notice shall
35 further state that the recipient has a period of ~~10~~ five days from the date
36 of receipt in which to notify the Division by registered or certified mail,
37 return receipt requested, that a hearing is desired and that if the recipient
38 wishes to contest the sale of his property pursuant to such lien, the
39 recipient should notify the Division that a hearing is desired and the
40 Division shall notify lienor. The hearing shall be held in the county
41 where the vehicle is being stored. The notice shall state the required
42 information in simplified terms and shall contain a form whereby the
43 recipient may notify the Division that a hearing is desired by the return

1 of such form to the Division. Failure of the recipient to notify the
2 Division within ~~40~~five days of the receipt of such notice that a hearing
3 is desired shall be deemed a waiver of the right to a hearing prior to the
4 sale of the property against which the lien is asserted, the Division shall
5 notify the lienor, and the lienor may proceed to enforce the lien by
6 public or private sale as provided in this section and the Division shall
7 transfer title to the property pursuant to such sale. If the Division is
8 notified within the 10-day period provided above that a hearing is
9 desired prior to sale, the lien may be enforced by sale as provided in this
10 section and the Division will transfer title only pursuant to the order of a
11 court of competent ~~jurisdiction.~~jurisdiction in the county where the
12 vehicle is being stored.

13 If the Division notifies the lienor that the registered or certified mail
14 notice has been returned as undeliverable, the lienor may institute a
15 special proceeding in the county where the vehicle is being held, for
16 authorization to sell that vehicle. In such a proceeding a lienor may
17 include more than one vehicle, but the proceeds of the sale of each shall
18 be subject only to valid claims against that vehicle, and any excess
19 proceeds of the sale shall escheat to the State and be paid immediately
20 to the treasurer for disposition pursuant to Chapter 116B of the General
21 Statutes. A vehicle owner or possessor claiming an interest in such
22 proceeds shall have a right of action under G.S. 116B-38.

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

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

38 If the vehicle value is eight hundred dollars (\$800.00) or less, the
39 lienor may contact the Division of Motor Vehicles, once notification has
40 been made to the division pursuant to this section, to arrange
41 certification of vehicle value. A certificate of disposal may be issued by
42 the Division within 30 days of the initial tow, service, or repairs. This

1 certificate of disposal will be properly validated by the Division and will
2 cause the vehicle to be closed and the title voided.

3 If the lienor desires a title to a vehicle with a value of eight hundred
4 dollars (\$800.00) or less, a certificate of declared value shall be issued
5 by the Division, properly validated and shall cause the title to transfer
6 through the special proceeding process.

7 If a vehicle is left on a property engaged in the business of towing,
8 storage, or repairs for more than 10 days, it shall be considered
9 abandoned. If the last registered owner fails to redeem the vehicle, the
10 owner shall be guilty of a traffic infraction and shall be responsible for
11 all charges to that vehicle. In addition to the monetary penalty payable
12 under this Chapter, the person found to be responsible for the infraction
13 is also liable for restitution in the amount of the deficiency remaining
14 after disposal of the vehicle pursuant to this section. Any attempt on the
15 part of the registered owner to renew his drivers license shall be denied
16 until all penalties and the deficiency have been satisfied pursuant to this
17 section.

18 Notice to the proper authority shall be on a failure to redeem form
19 approved by the Division and shall cause a citation to be issued to the
20 registered owner.

- 21 (2) If the property upon which the lien is claimed is other than a motor
22 vehicle required to be registered, the lienor following the expiration of
23 the ~~30-day~~ 15-day period provided by subsection (a) shall issue notice to
24 the person having legal title to the property, if reasonably ascertainable,
25 and to the person with whom the lienor dealt if different by registered or
26 certified mail, return receipt requested. Such notice shall state that a
27 lien has been asserted against specific property and shall identify the
28 lienor, the date that the lien arose, the general nature of the services
29 performed and materials used or sold for which the lien is asserted, the
30 amount of the lien, and that the lienor intends to sell the property in
31 satisfaction of the lien. The notice shall inform the recipient that the
32 recipient has the right to a judicial hearing at which time a
33 determination will be made as to the validity of the lien prior to a sale
34 taking place. The notice shall further state that the recipient has a
35 period of 10 days from the date of receipt in which to notify the lienor
36 by registered or certified mail, return receipt requested, that a hearing is
37 desired and that if the recipient wishes to contest the sale of his property
38 pursuant to such lien, the recipient should notify the lienor that a hearing
39 is desired. The notice shall state the required information in simplified
40 terms and shall contain a form whereby the recipient may notify the
41 lienor that a hearing is desired by the return of such form to the lienor.
42 Failure of the recipient to notify the lienor within ~~10-~~ five days of the
43 receipt of such notice that a hearing is desired shall be deemed a waiver

1 of the right to a hearing prior to sale of the property against which the
2 lien is asserted and the lienor may proceed to enforce the lien by public
3 or private sale as provided in this section. If the lienor is notified within
4 the 10-day period provided above that a hearing is desired prior to sale,
5 the lien may be enforced by sale as provided in this section only
6 pursuant to the order of a court of competent jurisdiction.

7 (c) Private Sale. – Sale by private sale may be made in any manner that is
8 commercially reasonable. If the property upon which the lien is claimed is a motor
9 vehicle, the sale may not be made until notice is given to the Commissioner of Motor
10 Vehicles pursuant to G.S. 20-114(c). Not less than ~~30~~15 days prior to the date of the
11 proposed private sale, the lienor shall cause notice to be mailed, as provided in subsection
12 (f) hereof, to the person having legal title to the property, if reasonably ascertainable, to
13 the person with whom the lienor dealt if different, and to each secured party or other
14 person claiming an interest in the property who is actually known to the lienor or can be
15 reasonably ascertained. Notices provided pursuant to subsection (b) hereof shall be
16 sufficient for these purposes if such notices contain the information required by
17 subsection (f) hereof. The lienor shall not purchase, directly or indirectly, the property at
18 private sale and such a sale to the lienor shall be voidable.

19 (d) Request for Public Sale. – If an owner, the person with whom the lienor dealt,
20 any secured party, or other person claiming an interest in the property notifies the lienor
21 prior to the date upon or after which the sale by private sale is proposed to be made, that
22 public sale is requested, sale by private sale shall not be made. After request for public
23 sale is received, notice of public sale must be given as if no notice of sale by private sale
24 had been given.

25 (e) Public Sale. –

26 (1) Not less than ~~20~~10 days prior to sale by public sale the lienor:

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

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

38 b. Shall advertise the sale by posting a copy of the notice of sale at
39 the courthouse door in the county where the sale is to be held;

40 and shall publish notice of sale once a week for two consecutive weeks
41 in a newspaper of general circulation in the same county, the date of the
42 last publication being not less than five days prior to the ~~sale~~sale if the
43 vehicle is less than three years old.

- 1 (2) A public sale must be held on a day other than Sunday and between the
2 hours of 10:00 A.M. and 4:00 P.M.:
- 3 a. In any county where any part of the contract giving rise to the
4 lien was performed, or
5 b. In the county where the obligation secured by the lien was
6 contracted for.
- 7 (3) A lienor may purchase at public sale.
- 8 (f) Notice of Sale. – The notice of sale shall include:
- 9 (1) The name and address of the lienor;
- 10 (2) The name of the person having legal title to the property if such person
11 can be reasonably ascertained and the name of the person with whom
12 the lienor dealt;
- 13 (3) A description of the property;
- 14 (4) The amount due for which the lien is claimed;
- 15 (5) The place of the sale;
- 16 (6) If a private sale the date upon or after which the sale is proposed to be
17 made, or if a public sale the date and hour when the sale is to be held.
- 18 (g) Damages for Noncompliance. – If the lienor fails to comply substantially with
19 any of the provisions of this section, the lienor shall be liable to the person having legal
20 title to the property or any other party injured by such noncompliance in the sum of one
21 hundred dollars (\$100.00), together with a reasonable attorney's fee as awarded by the
22 court. Damages provided by this section shall be in addition to actual damages to which
23 any party is otherwise entitled."
- 24 Sec. 5. This act becomes effective October 1, 1995.