

# Mechanic's and Storage Lien Study Report

2019 Report

Virginia Department of Motor Vehicles  
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## Executive Summary

Sections 46.2-1200 through 46.2-1207 of the *Code of Virginia* designate the current abandoned vehicle process (AVP) 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, by §§ 46.2-1209 through 46.2-1215 of the *Code of Virginia*. The abandoned vehicle process is required to be used by anyone in possession of an abandoned vehicle. The Department of Motor Vehicles (DMV) allows individuals, businesses, and government agencies or their authorized agents to use the AVP.

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*, which also permits tow companies, which recover unattended or immobilized vehicles at the direction of localities, to use the mechanic's and storage lien (MSL) process if the vehicles have not been disposed of through the AVP or another statutorily-authorized procedure.

DMV was charged by the Chairmen of the Senate and House Transportation Committees 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, 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 abandoned vehicles and MSL processes, the study needs to be extended into 2020, with a full report submitted to the House and Senate Transportation Committees in December 2020.

## Interim Report

With the agreement and understanding of the stakeholders, DMV is submitting this interim report to the Senate and House Transportation Committees. The stakeholders and DMV have agreed to continue holding stakeholder meetings through the end of 2019 and in the months following the 2020 General Assembly Session to work toward a consensus on a more unified MSL and abandoned vehicles process. DMV has scheduled meetings through the summer of 2020 and is reviewing, internally, the options for such a unified process, including exploring the creation of a web-based portal to streamline and expedite the process and its fiscal impact to the agency.

## Background

The definition of “abandoned vehicle” in Chapter 12 Title 46.2 of the *Code of Virginia* was first codified in 1968. Until 2009, the abandoned vehicle process 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. In the fall of 2007, DMV convened an Abandoned Vehicle Task Force to address concerns with Delegate Griffith’s legislation (Appendix B).

In 2008, the Abandoned Vehicle and Salvage Vehicle Task Force was established 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;
- Mechanic’s and storage liens; and
- Auto auctions and insurance issues.

The 2009 legislative proposal 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;
- Private property towing and signage issues and excessive towing charges;
- 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. 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 Chairmen of the Senate and House Transportation Committees asked DMV to conduct this study. The charge from the Chairmen includes:

- 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.

Stakeholders invited to participate in the 2019 study included: the Virginia Automobile Dealers Association (VADA); the Virginia Independent Auto Dealers Association (VIADA); Dominion Wrecker Service; Dominion Towing; Virginia State Police (VSP); the Virginia Sheriffs' Association; the Attorney General's Office / Consumer Protection Section (OAG); the Virginia Association of Counties; the Virginia Motor Vehicle Dealer Board (MVDB); the Virginia Municipal League; the Virginia Bankers Association; Richmond Commonwealth's Attorney's Office; Office of the Executive Secretary of the Supreme Court of Virginia; Nationwide; Chubb; PCI; AIG; the Virginia Self Storage Association; Seibert's Towing; Auto Data Direct; Affordable Towing; Jack Rabbit Self Storage; Commonwealth Strategy Group; and the General Assembly's Division of Legislative Services.

Stakeholder meetings took place June 5, July 9, and August 14, 2019 at DMV headquarters. There was also a conference call on July 20, 2019 that was scheduled 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.



## Current Law and Concerns

### 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. That process is also applied to unattended and immobile vehicles, generally, by §§ 46.2-1209 through 46.2-1215 of the *Code of Virginia*.

“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.

Section 46.2-1202 of the *Code of Virginia* authorizes an electronic AVP, which DMV administers, for use by an eligible applicant in possession of an abandoned vehicle. That section requires the applicant to initiate a vehicle record request using an online application. 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.

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. After an intent to auction has been active on DMV's website for 21 days, the applicant may auction the vehicle, apply to DMV for a title without holding the auction, or transfer the vehicle to a demolisher or scrap metal processor.

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, obtain a title, or transfer it to a demolisher or scrap metal processor.

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

Stakeholders discussed concerns with two aspects of the AVP: eligibility to use the process and auction and titling requirements. Additional meetings may identify further issues to address.

#### *Eligibility to Use the Process*

Section 46.2-1202 of the *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. As a result, DMV is unable to ensure that the AVP is not being used by a person who does not have actual control over the property, possession of the vehicle, or authorization from the property owner to use the system. An example of this for public property might be a private citizen using the AVP to retitle vehicles parked on public streets, which would otherwise be the responsibility of the locality or a towing company under contract with the locality. An example for private property might be an apartment resident using the AVP for a vehicle in the complex's parking lot, rather than the landlord or property manager.

Because the citizen only has to certify under penalty of perjury that he has possession of the vehicle in order to initiate the process, DMV does not have authorization or strong tools in place to 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. Stakeholders are interested in clarifying who can utilize the AVP and in what circumstances.

In addition to a lack of clarity regarding who can use the AVP, the *Code of Virginia* contains inconsistent timelines for abandoned, immobilized, and unattended vehicles. As provided above, the definition of “abandoned vehicle” includes two provisions where a vehicle is deemed to be abandoned after 48 hours (on public or private property) and one with no time limit (on the shoulder of a highway); however, the laws regarding immobilized and unattended vehicles (Article 2 of Chapter 12 of Title 46.2) are based on different timelines. In most cases, these different timelines lead to the vehicle being disposed of through the AVP; but, the *Code of Virginia* also authorizes other methods of disposal, including MSL provisions, for some.

The Immobilized and Unattended Vehicles timelines include: a general prohibition on leaving a vehicle unattended on the side of a highway for more than 24 hours (§ 46.2-1209); authorization for a locality to remove a vehicle left on public or private property for more than 10 days without permission (§ 46.2-1213); the deeming of a vehicle left on public or private property without permission for more than four days as “abandoned,” if the vehicle lacks license plates, local registration, or a state inspection sticker (§ 46.2-1213); and authorization for a locality to remove a vehicle left on private property without permission after 72 hours following a complaint by the property owner (§ 46.2-1215). The stakeholders recognized that these differing timelines exist; however, their primary concern was the actual abandoned vehicle process and who can use it, rather than these timelines, especially because these statutes expressly allow for the use of the AVP. In addition, several statutes directly authorize localities to enact ordinances based on these timelines. There was general consensus that the stakeholders did not want to impact local ordinances unless absolutely necessary, which will be determined as the study moves forward.

Finally, the stakeholders expressed concerns regarding private property towing and signage issues as well as towing charges. Further discussion determined that these issues were outside the scope of the study charge.

### *Auction and Titling Requirements*

Stakeholders identified two concerns with the statutory provisions controlling the auction and titling process for the AVP. First, §§ 46.2-1202 and 46.2-1202.1 of the *Code of Virginia* have conflicting notice requirements. Under the first requirement, DMV sends a notice to the owner and/or lienholder of the vehicle that the AVP has been initiated and the vehicle must be reclaimed within 15 days of the notice date. If vehicle is not reclaimed in 15 days, all rights of ownership and any security interests are waived and the abandoned vehicle applicant may post an intent to auction. The intent to auction must be posted for 21 days on the DMV website. During that period, if there is a lien on the vehicle, § 46.2-1202.1 of the *Code of Virginia* requires DMV to send a second notice to the lienholder, also by certified mail, at least 10 days prior to the advertised sale; however, if the lienholder does not reclaim the vehicle following the notice from DMV, the security interest in the vehicle is waived. For that reason, stakeholders were unclear on the purpose of this second notice.

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. The stakeholders support clarifying whether or not an auction is required and the necessary titling documentation for all abandoned vehicles.

## **Mechanic’s 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 to recover unattended or immobilized vehicles at the direction of localities allowing them 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 mechanic’s 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 mechanic’s 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 for at least 10 days after the invoice is due. The MSL enforcement process begins with a transcript

request by the applicant through DMV at a fee of \$9.00. DMV is required to 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 NCIC, and uses the National Automobile Dealers Association (NADA) to determine the trade-in value of the vehicle. When a Virginia record is found, 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 no stolen indicators are found, 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, which will require the vehicle 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 military active duty, the MSL applicant must petition a court, regardless of 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 no owner is. 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 mechanic's 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 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 mechanic's 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.

### Issues Discussed

The majority of the stakeholder discussion in the initial meetings centered on concerns with potential changes for the MSL process. These included several key issues, including: the scope of DMV's vehicle record checks; potential options for determining the value of the vehicle; concerns with current requirements for posting notices of sale; owner and lienholder notification requirements; and the possibility of an overall time-limit for completing the process. Stakeholders also raised the possibility of providing an option to have low-value vehicles towed from storage units or repair shops to be disposed of by a third party, rather than the mechanic's or storage lienholder. Staff in the Office of the Attorney General indicated that there is interest in potentially clarifying the Attorney General's enforcement authority over the MSL process in any proposed legislation. DMV anticipates that future meetings will address these concerns in more detail, as well as others, as they are identified.

### *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. It also appears not to protect rights of vehicle owners outside of Virginia.

Due to privacy concerns, Virginia does not share vehicle owner information with any mechanic's or storage lienholder who is trying to comply with MSL requirements in another state. The AVP has shown DMV that many other states take this same approach, whether for abandoned vehicles or MSL. However, at least with the AVP, DMV checks NMVTIS and provides the applicant with the state of record and contact information, so that the applicant can attempt to obtain the required information. In the 2009 legislation proposed by the DMV working group, that requirement would have extended to MSL but was not carried over into the MSL statutes in the final act.

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 recognize that the final decision may be a combination of two of these in order to accommodate court processes, including compliance with SCRA.

This approach would reduce the number of vehicles processed through the MSL as if no record exists, especially if DMV can obtain ownership information from another state. Furthermore, if the *Code of Virginia* was amended to allow DMV to provide Virginia information to an out-of-state mechanic's or storage lienholder, vehicle owners in the Commonwealth should receive better notification if their vehicles are subject to MSL enforcement in other states.

### *Potential Options for 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. Enforcement procedures are based on the vehicle's trade-in value; however, legislation in 2019 (SB 1342) changed the basis for mechanic's and storage liens themselves to a standard that starts with the retail values of the vehicles when there is no existing recorded lien. In *Code of Virginia*, this provision is directly tied to § 8.01-419.1, which is the basis for vehicle valuation in the rules of evidence for civil cases in Virginia courts. For lien enforcement, a vehicle with no record found and at least six years old is subject to the same rule to determine that its value is no more than \$3,000; however, because of limitations in DMV's system, DMV starts with the trade-in value for those vehicles but allows independent appraisals to establish a lower value. Under § 8.01-419.1 of the *Code of Virginia*, while the vehicle's value begins at the retail value, other creditable evidence is permitted to establish a different value. Many years ago, DMV determined that independent appraisals were the most reliable form of creditable evidence to the agency for this purpose.

DMV expressed an interest in the initial meetings to change the basis for MSL enforcement from trade-in value to retail value in order to be consistent with the new lien caps and the valuation rule for the older, no-record-found vehicles. Since some MSL enforcement requires court orders, making the vehicle valuation consistent with the rules of evidence is also logical. The stakeholders discussed the difference between the trade-in and retail values of a vehicle. VADA offered a rough average of an approximately 11% increase from trade-in to retail; other stakeholders agreed with that estimate. That increase may offer additional consumer protection for the process, since more vehicles could potentially trigger the court order requirements.

The stakeholders will continue to discuss this proposal and their concerns with it moving forward, including options to increase the thresholds for court to account for the increased values. In addition to this change, because it would be based on the rules of evidence, DMV has proposed for consideration to expand the circumstances under which MSL applicants may submit independent appraisals.

#### Independent Appraisals

As noted above, DMV accepts independent appraisals for certain vehicles based on the allowance for other creditable evidence in § 8.01-419.1 of the *Code of Virginia*; however, the agency also accepts independent appraisals in situations where DMV cannot determine the value

of the vehicle. 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 the value is 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. During the initial study meeting, stakeholders expressed their desire for DMV to allow independent appraisals on a broader scale.

In response and tied to the proposal to change the bases for vehicle valuation, DMV offered a new independent appraisal process for the stakeholders' consideration. Under this proposal, independent appraisals would be acceptable to establish lower values for vehicles with retail values of up to \$25,000. However, appraisals would only be accepted if the appraised value is more than \$2500 below the determined retail value. In addition, DMV would create a form for documenting the appraisal and require the submission of photographs as proof of the vehicle being appraised, as well as a vehicle history report from a recognized supplier of such reports. No independent appraisals would be accepted for vehicles valued over \$25,000 because those vehicles are subject to a circuit court order and must be sold by the local sheriff.

DMV and stakeholders will continue to discuss this proposal in order to ensure that it will work as intended; however, all parties understand that it will require statutory changes. In addition to changing the valuation basis, the *Code of Virginia* will need to be amended to include definitions of "independent appraisal business" and, if necessary, "independent appraisal." Furthermore, a decision will need to be made on how to handle vehicles for which no Virginia or other state's record is found, as well as possible additional options for vehicles for which DMV cannot determine a value. The following table provides a summary of the initial provisions proposed by DMV for stakeholder discussion, all of which are subject to change.



Vehicle Value Under \$3000/ with no record found / older than 6 years	Vehicle Value Up to \$12,500	Vehicle Value Between \$12,500.01 - \$25,000	No Value Can Be Determined by DMV
<ol style="list-style-type: none"> <li>1. Statutory change to codify current process               <ol style="list-style-type: none"> <li>(a) Replace 8.01-419.1 reference with retail value</li> <li>(b) Include express allowance for independent appraisals</li> </ol> </li> <li>2. Appraisal must be on a DMV-provided form</li> <li>3. Require vehicle history report and photos</li> <li>4. If no VA record, but NMVTIS returns out-of-state record, then:               <ol style="list-style-type: none"> <li>(a) DMV will attempt to contact the other state to obtain owner/lienholder information and send certified notices, as required;</li> <li>(b) If DMV cannot obtain owner information, DMV will notify MSL holder that they can proceed to obtain a title, provided MSL holder assumes liability, should the prior vehicle owner or lienholder attempt to claim the vehicle after the title is issued</li> </ol> </li> </ol>	<ol style="list-style-type: none"> <li>1. Independent appraisal permitted if value claimed by MSL holder is more than \$2500 below the value determined by DMV</li> <li>2. Appraisal must be on a DMV-provided form</li> <li>3. Require vehicle history report and photos</li> </ol>	<ol style="list-style-type: none"> <li>1. Independent appraisal permitted if value claimed by MSL holder is more than \$2500 below the value determined by DMV</li> <li>2. Appraisal must be on a DMV-provided form</li> <li>3. Require vehicle history report and photos</li> </ol>	<ol style="list-style-type: none"> <li>1. Independent appraisal permitted if no NADA value available to DMV</li> <li>2. If submitted, Appraisal must be on a DMV-provided form; vehicle history report and photos required</li> <li>3. In lieu of independent appraisal, if a retail value is available in another recognized pricing guide (e.g., Kelley Blue Book), MSL holder can submit printout of pricing guide website; rules for determining value in this manner will be consistent with current DMV rules for use of NADA website for values (no odometer reading, no trim/option selection, average retail)</li> </ol>

*Posting Notices of Sale*

As described above, MSL applicants must 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. For years, MSL applicants have shared a concern that the Commonwealth has few to no public places, as that term is considered in the *Code of Virginia*.

Until 2016, notice for no-record or non-resident-owned vehicles was required to be posted in three public places prior to auction. Difficulty complying with that requirement led the industry to seek legislation to allow posting in the locations noted. However, those new requirements did

not initially extend to the general requirement of a single auction notice posting that applies to all MSL applicants. The General Assembly only expanded options for posting that notice during the 2019 General Assembly Session.

Stakeholders expressed concern about the difficulty complying with such posting requirements through the years. DMV has investigated situations to discover after the fact that no notice was ever actually posted; however, DMV has no tools available to determine whether posting occurs prior to the sale. The agency could rely only on the certification that all requirements had been met from the applicant. For those reasons, the stakeholders discussed the possibility of a single posting requirement on DMV's website. Such a requirement was included for MSL in the 2009 proposed legislation from the DMV working group but was enacted only for the AVP. Because the stakeholders are looking towards a more combined process for the future, they expressed interest in revisiting limiting the posting requirement only to the DMV website, particularly if DMV will take over owner and lienholder notification requirements as outlined below.

#### *Owner and Lienholder Notification Requirements*

Before a vehicle can be sold to enforce an MSL, the 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 at 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 undelivered. 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 potential combined process being discussed. While details are still being developed, a couple of the major benefits of this option would be to allow DMV to run a second record check to ensure the proper parties are notified and to provide for mailing, rather than "delivery", to the address on record as sufficient for the MSL process to continue. Such an approach would be consistent with other orders and notifications sent by DMV. This process could

also include DMV obtaining vehicle information from other states and mailing notices to those owners, rather than allowing those vehicles to be processed as if no record exists.

### *MSL Process Time Limit*

Various circumstances affect how long the MSL process takes from start to finish. Some requirements, such as whether a court order is required, are out of the hands of both the MSL applicant and DMV. However, where the MSL applicant can control the steps DMV's experience has been that some applicants will hold vehicles longer than necessary, resulting in the MSL applicant avoiding the court process through vehicle depreciation. Stakeholders discussed the concern that this practice potentially harms vehicle owners, who may not receive notice of the MSL for months or years, and drives up costs for MSL applicants. This may not be recoverable over time because of high numbers of vehicles on-hand.

One option proposed for discussion by the group is establishing a time limit on the MSL process, beginning from the date the MSL transcript is produced and ending when the MSL applicant reports that the vehicle has either been reclaimed or sold at auction. Some exceptions to the limit would be vehicles that require a court order to be sold, including those subject to SCRA, and vehicles with stolen indicators or other stops in the DMV system or NMVTIS that would prohibit the applicant from proceeding without additional steps. Stakeholder input will be necessary for establishing the time limit. Assuming a consensus can be reached, such a limit would serve not only as a consumer protection tool but also encourage MSL applicants to maintain consistent efforts to dispose of vehicles in a timely manner, which would reduce inventory on-hand.

### *Disposal by Third-Parties*

Finally, stakeholders inquired about the potential for having third-party tow companies take possession of low-value vehicles from mechanic's or storage lienholders and handle disposition of the vehicle, potentially through the AVP. This option would be of benefit to self-storage facilities, which are required to use the storage lien process by § 55.1-2902 of the *Code of Virginia*. Allowing for this would reduce the expenses of the lienholders associated with enforcing MSL on vehicles either unlikely to be sold at auction or so low in value that owed charges would not be recoverable. This possibility and how it might be accomplished will be discussed as the study continues.

## **Conclusion**

After three meetings and a conference call, the stakeholders agreed that in order to ensure a thorough review of the abandoned vehicle and MSL processes the study needs to be extended into 2020. There will be meetings through the end of 2019 and in the months following the 2020 General Assembly Session to work toward a consensus on a more unified MSL and abandoned vehicle process.

DMV has already scheduled meetings through the summer of 2020 and is reviewing internally the options for such a combined process, including exploring the creation of a portal to

streamline and expedite the process and its fiscal impact to the agency. The agency anticipates including the details of those meetings, the proposal for a streamlined process and portal, and any draft legislation needed to accomplish the recommendations of the stakeholders and DMV in a final report to the House and Senate Transportation Committees in December 2020.

## Appendices



## Appendix A: Charge Letter







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 94<sup>th</sup> 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  
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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

Appendix B: HB 1929



2007 SESSION

INTRODUCED

079322308

HOUSE BILL NO. 1929

Offered January 10, 2007

Prefiled January 4, 2007

A BILL to amend the Code of Virginia by adding a section numbered 46.2-1200.2, relating to disposition of vehicles abandoned on private property.

Patron—Griffith

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 46.2-1200.2 as follows:

§ 46.2-1200.2. Removal of abandoned vehicles by property owners.

The owner of the property upon which an abandoned vehicle as defined in § 46.2-1200 is found may have the vehicle removed, in which case the last known owner of the vehicle shall be responsible for paying all costs associated with removal, storage, and disposal of the vehicle, and no liability of whatsoever nature shall attach to the owner of the property on which the vehicle was found abandoned in connection with the removal, storage, and disposal of the vehicle.

INTRODUCED

HB1929





## Appendix C: Stakeholder List



## DMV Study Team

Karen Grim  
*Deputy Commissioner for  
Operations*

Millicent Ford  
*Assistant Commissioner for  
Driver, Vehicle, and Data  
Management Services*

Linda Ford  
*Assistant Commissioner for  
Governmental Affairs*

Carla Jackson  
*Assistant Commissioner for  
Legal Affairs*

Joseph Hill  
*Assistant Commissioner for  
Enforcement and Compliance*

Tonya Blaine  
*Director of Vehicle Services  
Administration*

Melissa Velazquez  
*Director of Legislative  
Services*

Kathleen Furr  
*Deputy Director for  
Customer Services Management  
Administration*

Robin Sheldon  
*Deputy Director  
Strategic Management  
Services*

Nancy Joyce  
*Strategic Management  
Services*

Brad Berg  
*Law Enforcement Division*

Domica Winstead  
*Legislative Services*

Matthew Martin  
*Legal Affairs*

Alacia Moore  
*Vehicle Services*

Karon Winston  
*Law Enforcement Division*

Jessica Seier  
*Legislative Liaison*

Robert Davidson  
*Strategic Management  
Services*

Gregory Cavalli  
*Strategic Management  
Services*

## Stakeholders

Anne Gambardella  
*Virginia Automobile  
Dealers Association*

Pete Iaricci  
*Virginia Independent Auto  
Dealers Association*

Stacey Fulker  
*Dominion Wrecker Service*

Ashley Miller  
*Dominion Towing*

Lt. Sean Stewart  
*Virginia State Police*

Lt. Billy Gilbert  
*Virginia Sheriffs' Association*

Stephen Sovinsky  
*Attorney General's Office  
Dealer*

Chris McDonald  
*Virginia Association of  
Counties*

William Childress  
*Virginia Motor Vehicle  
Board*

Michelle Gowdy  
*Virginia Municipal League*

Peggy Bailey  
*Virginia Motor Vehicle  
Dealer Board*

Matt Bruning  
*Virginia Bankers Association*

John Jung  
*Richmond Commonwealth's  
Attorney's Office*

Brandy Singleton  
*Office of the Executive  
Secretary*

Chris Lagow  
*Nationwide, Chubb  
PCI, AIG*

Bruce Jennings  
*Virginia Self Storage  
Association*

Melvin Lawson  
*Seibert's Towing*

Tom Drake  
*Auto Data Direct*

DeMarion Johnston  
*Virginia Bankers Association*

Mark Sawyers  
*Affordable Towing*

Matt Benka  
*MDB Strategies*

Brandi Gerhart  
*Jack Rabbit Self Storage*

Jack Aspinwall  
*Jack Rabbit Self Storage*

James Pickral  
*Commonwealth Strategy  
Group*

Tommy Lukish  
*Virginia Automobile Dealers  
Association*

Emma Buck  
*Division of Legislative  
Services*

Christian Parrish  
*Attorney General's Office*

Mark Kubiak  
*Attorney General's Office  
OAG Consumer Protection*

Phyllis Errico  
*Virginia Association  
of Counties*

David Miles  
*Virginia Credit Union  
League*

## Appendix D: Stakeholder Comments





Winstead, Domicia &lt;domicia.winstead@dmv.virginia.gov&gt;

---

**Fwd: MSL/AVP Study 2019 Interim Report**

---

**Sheldon, Robin** <robin.sheldon@dmv.virginia.gov>  
To: Domicia Winstead <domicia.winstead@dmv.virginia.gov>

Wed, Oct 30, 2019 at 8:19 AM

----- Forwarded message -----

From: **Michelle Gowdy** <mgowdy@vml.org>  
Date: Mon, Oct 21, 2019 at 12:54 PM  
Subject: RE: MSL/AVP Study 2019 Interim Report  
To: Sheldon, Robin <robin.sheldon@dmv.virginia.gov>

VML has no comments on the report. Thank you for your work and I look forward to next summer!

**From:** Sheldon, Robin <robin.sheldon@dmv.virginia.gov>  
**Sent:** Tuesday, October 15, 2019 12:16 PM  
**To:** bgilbert@vbgov.com; Sean Stewart <sean.stewart@vsp.virginia.gov>; Dana Schrad <dana@vachiefs.org>; Mark Sawyers <jmssls98@aol.com>; Sovinsky, Stephen J. <ssovinsky@oag.state.va.us>; Parrish, Christian A. <cparrish@oag.state.va.us>; Kubiak, Mark S. <mkubiak@oag.state.va.us>; Childress, William <william.childress@mvdb.virginia.gov>; Peggy Bailey <peggy.bailey@mvdb.virginia.gov>; Phyllis Errico <perrico@vaco.org>; Chris McDonald <cmcdonald@vaco.org>; Michelle Gowdy <mgowdy@vml.org>; Jim Taylor <jimt@add123.com>; Tom Drake <tdrake@add123.com>; Les Cravens <lcravens@add123.com>; James Pickral <james@commonwealthstrategy.net>; mlawson@seibertcos.com; Bruce Jennings <bjenn3980@aol.com>; jack@jackrabbitstorage.com; Brandi Gerhart <brandi@jackrabbitstorage.com>; Chris Lagow <Chris@lagowlobby.com>; Harris, Vicki <Vicki.Harris@usaa.com>; klogan@snllaw.com; Matthew Benka <matt@mdbstrategies.com>; Ashley Miller <amiller@dominiontowing.com>; stacey.fulker@dominionwrecker.com; jonathan@mmauto.com; Jody D Hess <jdhess@vacourts.gov>; Brandy Singleton <bsingleton@vacourts.gov>; john.jung@richmondgov.com; Carrie Alford <carriann.alford@dvs.virginia.gov>; Matthew J. Bruning <mbruning@vabankers.org>; DeMarion Johnston <djohnston@vabankers.org>; bruce@vabankers.org; Pete@viada.org; Anne Gambardella <agambardella@vada.com>; tlukish@vada.com; Emma Buck <ebuck@dls.virginia.gov>; dmiles@vacul.org  
**Subject:** MSL/AVP Study 2019 Interim Report

Good afternoon. Attached is the MSL/AVP Stakeholder Study Interim Report 2019 intended for review by the Virginia General Assembly members. If you have feedback on the content of the report, please submit it to me no later than Friday, October 25th.

Please feel free to contact me if you have any questions.

Thank you,

Robin

--



**Robin Sheldon**

Virginia DMV | Deputy Director | Strategic Management Services

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[Quoted text hidden]





Winstead, Domicia <domicia.winstead@dmv.virginia.gov>

## Fwd: MSL/AVP Study 2019 Interim Report

Sheldon, Robin <robin.sheldon@dmv.virginia.gov>

Mon, Oct 28, 2019 at 1:27 PM

To: Domicia Winstead <domicia.winstead@dmv.virginia.gov>, Martin Matthew tlg50159 <matthew.martin@dmv.virginia.gov>, Alacia Moore <alacia.moore@dmv.virginia.gov>, Millicent Ford <millicent.ford@dmv.virginia.gov>, Blaine Tonya lcf44311 <tonya.blaine@dmv.virginia.gov>, Melissa Velazquez <melissa.velazquez@dmv.virginia.gov>, Brad Berg <bradley.berg@dmv.virginia.gov>, Cavalli Gregory obs45008 <gregory.cavalli@dmv.virginia.gov>

These are Stacey Fulker comments regarding the study report.

----- Forwarded message -----

From: <stacey.fulker@dominionwrecker.com>

Date: Mon, Oct 28, 2019 at 1:13 PM

Subject: RE: MSL/AVP Study 2019 Interim Report

To: Sheldon, Robin <robin.sheldon@dmv.virginia.gov>, <bgilbert@vbgov.com>, Sean Stewart <sean.stewart@vsp.virginia.gov>, Dana Schrad <dana@vachiefs.org>, Mark Sawyers <jmssls98@aol.com>, Sovinsky, Stephen J. <ssovinsky@oag.state.va.us>, Parrish, Christian A. <cparrish@oag.state.va.us>, Kubiak, Mark S. <mkubiak@oag.state.va.us>, Childress, William <william.childress@mvdv.virginia.gov>, Peggy Bailey <peggy.bailey@mvdv.virginia.gov>, Phyllis Errico <perrico@vaco.org>, Chris McDonald <cmcdonald@vaco.org>, <mgowdy@vml.org>, Jim Taylor <jimt@add123.com>, Tom Drake <tdrake@add123.com>, Les Cravens <lcravens@add123.com>, James Pickral <james@commonwealthstrategy.net>, <mlawson@seibertcos.com>, Bruce Jennings <bjenn3980@aol.com>, <jack@jackrabbitstorage.com>, Brandi Gerhart <brandi@jackrabbitstorage.com>, Chris Lagow <Chris@lagowlobby.com>, Harris, Vicki <Vicki.Harris@usaa.com>, <klogan@snllaw.com>, Matthew Benka <matt@mdbstrategies.com>, Ashley Miller <amiller@dominiontowing.com>, <jonathan@mmauto.com>, Jody D Hess <jdhess@vacourts.gov>, Brandy Singleton <bsingleton@vacourts.gov>, <john.jung@richmondgov.com>, Carrie Alford <carriann.alford@dvs.virginia.gov>, Matthew J. Bruning <mbruning@vabankers.org>, DeMarion Johnston <djohnston@vabankers.org>, <bruce@vabankers.org>, Pete Iaricci <Pete@viada.org>, Anne Gambardella <agambardella@vada.com>, Tommy Lukish <tlukish@vada.com>, Emma Buck <ebuck@dls.virginia.gov>, <dmiles@vacul.org>

Hi Robin,

I first want to thank the DMV team for drafting this report and allowing for stakeholder comment. The report is very well written, discusses the relevant topics and is organized and easy to read.

I do have a few minor comments which are noted below for your consideration:

1.) Page 7 - middle of the page reads as follows; "Finally, the stakeholders expressed concerns regarding private property towing and signage issues as well as excessive towing charges. Further discussion determined that these issues, though legitimate concerns, were outside the scope of the study charge". I don't recall the group talking about either of these topics in detail specifically, the way that they are written. A representative from the Atty General's office mentioned that their office gets complaints regarding signage but I don't recall it being something we discussed further other than that general comment. In addition, the only thing I recall about the discussion on fees is that the code relating to the maximum fees on storage for lienholders is confusing, not that the fees are excessive. Would it be possible to strike this entire paragraph or rewrite it to accurately reflect the discussion? I do agree that the signage is outside of this scope but the maximum fees as written in 46.2-644.01 may not be.

2.) Page 8 - Middle of the page reads as follows; The Code grants a storage lien for reasonable costs of towing and storage up to \$500.....The code (46.2-644.01) only caps storage costs at \$500, not towing

costs. Section C allows a lien for all normal costs incidental to services involving the towing and recovery of a vehicle, which does not fall under the storage cap of \$500. Can you strike towing costs from the sentence since only the storage costs are capped?

I do have some other comments but can live with them with the understanding that this is just a draft report discussing the overall, high-level topics and possible related solutions.

Thank you again for writing the report and allowing stakeholder comments. If you have any questions or need additional information on my comments please let me know.

Sincerely,

Stacey Fulker  
Dominion Wrecker Service, LLC  
Phone (703) 590-0994  
Fax (703) 590-0988

----- Original Message -----

Subject: Re: MSL/AVP Study 2019 Interim Report  
From: "Sheldon, Robin" <robin.sheldon@dmv.virginia.gov>  
Date: Mon, October 28, 2019 1:00 pm  
To: bgilbert@vbgov.com, Sean Stewart <sean.stewart@vsp.virginia.gov>, Dana Schrad <dana@vachiefs.org>, Mark Sawyers <jmssls98@aol.com>, "Sovinsky, Stephen J." <ssovinisky@oag.state.va.us>, "Parrish, Christian A." <cparrish@oag.state.va.us>, "Kubiak, Mark S." <mkubiak@oag.state.va.us>, "Childress, William" <william.childress@mvdv.virginia.gov>, Peggy Bailey <peggy.bailey@mvdv.virginia.gov>, Phyllis Errico <perrico@vaco.org>, Chris McDonald <cmcdonald@vaco.org>, mgowdy@vml.org, Jim Taylor <jimt@add123.com>, Tom Drake <tdrake@add123.com>, Les Cravens <lcravens@add123.com>, James Pickral <james@commonwealthstrategy.net>, mlawson@seibertcos.com, Bruce Jennings <bjenn3980@aol.com>, jack@jackrabbitstorage.com, Brandi Gerhart <brandi@jackrabbitstorage.com>, Chris Lagow <Chris@lagowlobby.com>, "Harris, Vicki" <Vicki.Harris@usaa.com>, klogan@snllaw.com, Matthew Benka <matt@mdbstrategies.com>, Ashley Miller <amiller@dominiontowing.com>, stacey.fulker@dominionwrecker.com, jonathan@mmauto.com, Jody D Hess <jdhess@vacourts.gov>, Brandy Singleton <bsingleton@vacourts.gov>, john.jung@richmondgov.com, Carrie Alford <carrieann.alford@dvs.virginia.gov>, "Matthew J. Bruning" <mbruning@vabankers.org>, DeMarion Johnston <djohnston@vabankers.org>, bruce@vabankers.org, Pete Iaricci <Pete@viada.org>, Anne Gambardella <agambardella@vada.com>, Tommy Lukish <tlukish@vada.com>, Emma Buck <ebuck@dls.virginia.gov>, dmiles@vacul.org

Good afternoon. This is a friendly reminder to provide your feedback regarding the study report by close of business today.

We are planning to submit to the next level of review by Wednesday, October 30th.

Thanks, Robin

On Tue, Oct 15, 2019 at 12:15 PM Sheldon, Robin <robin.sheldon@dmv.virginia.gov> wrote:  
Good afternoon. Attached is the MSL/AVP Stakeholder Study Interim Report 2019 intended for review by the Virginia General Assembly members. If you have feedback on the content of the report, please submit it to me no later than Friday, October 25th.

Please feel free to contact me if you have any questions.

Thank you,

Robin

--



**Robin Sheldon**

Virginia DMV | Deputy Director | Strategic Management Services  
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Winstead, Domica &lt;domica.winstead@dmv.virginia.gov&gt;

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**Fwd: MSL/AVP Study 2019 Interim Report**

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Tom Drake &lt;tdrake@add123.com&gt;

Mon, Oct 28, 2019 at 2:26 PM

To: "Sheldon, Robin" &lt;robin.sheldon@dmv.virginia.gov&gt;

Cc: "stacey.fulker@dominionwrecker.com" <stacey.fulker@dominionwrecker.com>, Domica Winstead <domica.winstead@dmv.virginia.gov>, Millicent Ford <millicent.ford@dmv.virginia.gov>, Blaine Tonya lcf44311 <tonya.blaine@dmv.virginia.gov>, Alacia Moore <alacia.moore@dmv.virginia.gov>, Melissa Velazquez <melissa.velazquez@dmv.virginia.gov>, "bgilbert@vbgov.com" <bgilbert@vbgov.com>, Sean Stewart <sean.stewart@vsp.virginia.gov>, Dana Schrad <dana@vachiefs.org>, Mark Sawyers <jmssls98@aol.com>, "Sovinsky, Stephen J." <ssovinsky@oag.state.va.us>, "Parrish, Christian A." <cparrish@oag.state.va.us>, "Kubiak, Mark S." <mkubiak@oag.state.va.us>, "Childress, William" <william.childress@mvdv.virginia.gov>, Peggy Bailey <peggy.bailey@mvdv.virginia.gov>, Phyllis Errico <perrico@vaco.org>, Chris McDonald <cmcdonald@vaco.org>, "mgowdy@vml.org" <mgowdy@vml.org>, Jim Taylor <jimt@add123.com>, Les Cravens <lcravens@add123.com>, James Pickral <james@commonwealthstrategy.net>, "mlawson@seibertcos.com" <mlawson@seibertcos.com>, Bruce Jennings <bjenn3980@aol.com>, "jack@jackrabbitstorage.com" <jack@jackrabbitstorage.com>, Brandi Gerhart <brandi@jackrabbitstorage.com>, Chris Lagow <Chris@lagowlobby.com>, "Harris, Vicki" <Vicki.Harris@usaa.com>, "klogan@snllaw.com" <klogan@snllaw.com>, Matthew Benka <matt@mdbstrategies.com>, Ashley Miller <amiller@dominiontowing.com>, "jonathan@mmauto.com" <jonathan@mmauto.com>, Jody D Hess <jdhess@vacourts.gov>, Brandy Singleton <bsingleton@vacourts.gov>, "john.jung@richmondgov.com" <john.jung@richmondgov.com>, Carrie Alford <carrieann.alford@dvs.virginia.gov>, "Matthew J. Bruning" <mbruning@vabankers.org>, DeMarion Johnston <djohnston@vabankers.org>, "bruce@vabankers.org" <bruce@vabankers.org>, Pete Iaricci <Pete@viada.org>, Anne Gambardella <agambardella@vada.com>, Tommy Lukish <tlukish@vada.com>, Emma Buck <ebuck@dls.virginia.gov>, "dmiles@vacul.org" <dmiles@vacul.org>

Good afternoon Robin,

Again, our thanks to the DMV for inviting us to participate in the stakeholder's meetings. :

Comments/questions from Auto Data Direct, Inc.

- 1) In several sections you point to the need for out-of-state tow operators to access Virginia records in order to notify VA residents when their vehicle has been impounded out of state. Auto Data Direct, Inc. (ADD) provides an electronic platform for other DPPA qualified entities to receive real-time owner/lienholder data. What, if anything in the code prevents out-of-state tow operators from accessing those records through a third party like ADD? If there is something in the code that prevents access through a qualified 3<sup>rd</sup> party, can the committee consider a revision allowing for 3<sup>rd</sup> party accessed real-time records to suffice for the required certified mail. The draft recognizes that notification to Virginia consumers will be improved if out-of-state tow operators are allowed to access Virginia records.
- 2) Regarding certified mail in this section, would the department accept electronic certified mail if the documents contain all of the statutorily required language and meets all timeframes set forth in the code.

Tom Drake  
Auto Data Direct, Inc.

[Quoted text hidden]

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Tom Drake

AutoDataDirect, Inc.

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Winstead, Domicia <domicia.winstead@dmv.virginia.gov>

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## Fwd: MSL/AVP Study 2019 Interim Report

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**Sheldon, Robin** <robin.sheldon@dmv.virginia.gov> Tue, Oct 29, 2019 at 12:41 PM  
To: Domicia Winstead <domicia.winstead@dmv.virginia.gov>, Martin Matthew tlq50159 <matthew.martin@dmv.virginia.gov>, Millicent Ford <millicent.ford@dmv.virginia.gov>, Alacia Moore <alacia.moore@dmv.virginia.gov>, Blaine Tonya lcf44311 <tonya.blaine@dmv.virginia.gov>, Melissa Velazquez <melissa.velazquez@dmv.virginia.gov>, Cavalli Gregory obs45008 <gregory.cavalli@dmv.virginia.gov>

See Stephen Sovinsky's response. WE can also discuss this in our meeting at 1:30 p.m.

----- Forwarded message -----

From: **Sovinsky, Stephen J.** <SSovinsky@oag.state.va.us>  
Date: Tue, Oct 29, 2019 at 11:31 AM  
Subject: RE: MSL/AVP Study 2019 Interim Report  
To: Sheldon, Robin <robin.sheldon@dmv.virginia.gov>  
Cc: Kubiak, Mark S. <mkubiak@oag.state.va.us>, Parrish, Christian A. <CParrish@oag.state.va.us>

Robin,

Apologies for not getting you these minor comments yesterday. I have been out on parental leave, and will continue to be out over the next couple of weeks. I wanted to bring to your attention two small items, and raise an additional item for potential inclusion regarding the MSL process:

1. On page 4 there is a reference to "Consumer Protection Sections," it should be "Consumer Protection Section" (i.e., not plural).
2. On the second to last page my name is listed as "Steven," it should be "Stephen."

Additionally, as I mentioned in the August 14, 2019 meeting, the Attorney General's Office is interested in potentially clarifying the Attorney General's enforcement authority over the MSL process in any proposed legislation. If it is possible to include a reference to this in the interim report, it would be appreciated.

Please let me know if you have any questions. I look forward to continuing to participate in the group.

Best,

Stephen

**Stephen J. Sovinsky**  
**Assistant Attorney General**  
**Office of the Attorney General**  
202 North 9th Street  
Richmond, Virginia 23219  
(804) 823-6341 Office  
[SSovinsky@oag.state.va.us](mailto:SSovinsky@oag.state.va.us)  
<http://www.aq.virginia.gov>



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**From:** Sheldon, Robin [mailto:robin.sheldon@dmv.virginia.gov]  
**Sent:** Monday, October 28, 2019 1:01 PM  
**To:** bgilbert@vbgov.com; Sean Stewart; Dana Schrad; Mark Sawyers; Sovinsky, Stephen J.; Parrish, Christian A.; Kubiak, Mark S.; Childress, William; Peggy Bailey; Phyllis Errico; Chris McDonald; mgowdy@vml.org; Jim Taylor; Tom Drake; Les Cravens; James Pickral; mlawson@seibertcos.com; Bruce Jennings; jack@jackrabbitstorage.com; Brandi Gerhart; Chris Lagow; Harris, Vicki; klogan@snllaw.com; Matthew Benka; Ashley Miller; stacey.fulker@dominionwrecker.com; jonathan@mmauto.com; Jody D Hess; Brandy Singleton; john.jung@richmondgov.com; Carrie Alford; Matthew J. Bruning; DeMarion Johnston; bruce@vabankers.org; Pete Iaricci; Anne Gambardella; Tommy Lukish; Emma Buck; dmiles@vacul.org  
**Subject:** Re: MSL/AVP Study 2019 Interim Report

Good afternoon. This is a friendly reminder to provide your feedback regarding the study report by close of business today.

We are planning to submit to the next level of review by Wednesday, October 30th.

Thanks, Robin

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