



SPONSOR: Rep. Osienski & Sen. Lockman & Sen. Hansen  
Reps. Baumbach, Briggs King, Griffith, Heffernan,  
K. Johnson, S. Moore, Morrison, K. Williams, Wilson-  
Anton; Sens. Bonini, Ennis, Mantzavinos, Pinkney,  
Richardson, Townsend

HOUSE OF REPRESENTATIVES  
151st GENERAL ASSEMBLY

HOUSE BILL NO. 223

AN ACT TO AMEND TITLES 21 AND 25 OF THE DELAWARE CODE RELATING TO POSSESSORY AND OTHER CERTAIN LIENS ON MOTOR VEHICLES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 4404, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4404. Sale of abandoned vehicles; disposition of proceeds.

The Department of Safety and Homeland Security shall have a possessory lien against said abandoned vehicles and shall have a right to sell said abandoned vehicles after complying with the notice and sale provisions outlined in Chapter 39 of Title 25, with the exception that the proceeds of the sale shall be applied first to the costs of the sale, then to the costs of removing, towing, preserving and storing and then to the payment of any liens to which said motor vehicle, trailer or part thereof may be subject in order of their priority, then to the State Treasurer who shall create a special fund thereof and who shall pay to the owner the moneys held if a claim is made within 1 year of the removal or deposit the moneys in the General Fund if no claim is made within 1 year of removal. Any possessory lien created under this section shall not extend to any personal property that is not attached to or considered necessary for the proper operation of any motor vehicle, and such property shall be returned to the owner of the motor vehicle if the owner of the motor vehicle claims the items prior to the sale of such motor vehicle.

Section 2. Amend § 6901(a), Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as show by underline as follows:

§ 6901. Removal of motor vehicles from public highways by police; sale of vehicles; towers.

(a) Any police officer of this State, or of a county or municipality therein, while in the performance of duty, may remove, store or cause to be removed or stored from any public highway, highway right-of-way, street or alley, at the owner's or operator's expense, any motor vehicle, trailer or part whereof which:

(1) Is unregistered or has an expired registration; or

(2) Is parked or left standing in such manner as to create a hazard by interfering with the normal movement of traffic:

- a. By preventing the exit from or entrance to any public highway, private road or driveway;
- b. By interfering with emergency firefighting equipment;
- c. By being involved in a collision and rendered incapable of being moved under its own power, when the owner or operator has been arrested and detained; or
- d. When the owner or operator is unable, unwilling or not available to do so immediately.

Anyone so removing any motor vehicle, trailer or part thereof shall have a possessory lien against said motor vehicle, trailer or part thereof for the costs of removing, towing, preserving and storing said motor vehicle, trailer or part thereof and shall have the right to sell said motor vehicle, trailer or part thereof after complying with the notice and sale provisions outlined in Chapter 39 of Title 25, with the exception that the proceeds of the sale shall be applied first to the costs of the sale, then to the costs of removing, towing, preserving and storing and then to the payment of any liens to which said motor vehicle, trailer or part thereof may be subject in order of their priority, then to the State Treasurer who shall create a special fund thereof and who shall pay to the owner the moneys held if a claim is made within 1 year of the removal or deposit the moneys in the General Fund if no claim is made within 1 year of removal. Any possessory lien created under this section shall not extend to any personal property that is not attached to or considered necessary for the proper operation of any motor vehicle, and such property shall be returned to the owner of the motor vehicle if the owner of the motor vehicle claims the items prior to the sale of such motor vehicle.

There shall be no liability incurred by any police officer of this State or a county or municipality therein, or agents directed by them, whether or not they are also police officers, with in the performance of duty, for damages incurred to immobilized motor vehicles or vehicles moved under this subsection, or to the vehicle's contents or surrounding area caused by the emergency measures employed by the officer or employee to move the vehicle or vehicles for the purpose of clearing the lane or lanes to remove any threat to public safety, unless the circumstances meet the conditions for liability established in § 4001(2) or (3) or § 4011(c) of Title 10.

Section 3. Amend § 3906, Title 25 of the Delaware Code by making deletions as shown by strike through and insertions as show by underline as follows:

§ 3906. Motor vehicles.

(a) In the case of motor vehicles required to be registered under the motor vehicle laws of this or any other state, notice containing the information required in § 3903(b) of this title shall be given to the registered owners and know lienholders at their addresses of record with the Division of Motor Vehicles or similar agency and the return receipt, signed

51 or unsigned, shall be held and considered as prima facie evidence of service of such notice. The lienholder shall notify the  
52 appropriate Delaware auto theft unit.

53 (b) Any lien created under this chapter shall not extend to any personal property that is not attached to or  
54 considered necessary for the proper operation of any motor vehicle and such property shall be returned to the owner of the  
55 motor vehicle if the owner of the motor vehicle claims the items prior to the sale of such motor vehicle.

56 Section 4. Amend § 4001, Title 25 of the Delaware Code by making deletions as shown by strike through and  
57 insertions as shown by underline as follows:

58 (b) The following personal property shall not be deemed to be "abandoned personal property":

59 (7) Personal property in a motor vehicle that is not attached to or considered necessary for the proper  
60 operation of the motor vehicle if the owner of the personal property files an answer to the petition pursuant to § 4003 of  
61 this chapter.

#### SYNOPSIS

This Act clarifies that when a motor vehicle is subject to a possessory lien either through towing or because of failure to make payment to a garage owner for services rendered to the motor vehicle, the possessory lien does not extend to personal property located in the motor vehicle, and such property shall be returned to the owner if the owner claims the items prior to the sale of such vehicle. This Act also clarifies that "abandoned personal property" does not include personal property inside an abandoned motor vehicle if the owner of the personal property files an answer to a Petition seeking full title and interest to the personal property.