May 6, 2025

Senator Tim Nangle, Senate Chair
Representative Lydia Crafts, House Chair
Joint Standing Committee on Transportation
c/o Legislative Information Office
100 State House Station
Augusta, ME 04333

Re: Testimony of F. Bruce Sleeper Neither For Nor Against LD 1846, An Act to Amend the Law Governing Notification to Vehicle Owners and Lienholders When a Vehicle Is Towed or Left Without Permission on Residential or Business Property

Dear Senator Nangle and Representative Crafts:

As you know, I am the President of TrainRiders Northeast. In commenting upon this bill, however, I am acting as an individual and not on behalf of or in any way connected to TrainRiders. Before becoming TrainRiders' President, I was a creditors' rights attorney for 43 years. In that role, I represented numerous automobile finance companies and other institutions that leased or financed the purchase of motor vehicles to individuals and businesses. My clients included TD Bank, Chrysler Financial, Ford Motor Credit Company, GMAC, and its successor, Ally Financial, as well as many other financial institutions and finance companies. In rental transactions, my clients retained ownership of the leased vehicles, and in purchases, my clients took a security interest in the purchased vehicles. In either instance, my clients held the right to take possession of the vehicles if the lessee or purchaser failed to comply with the terms of the lease or finance contract. I represented these clients in legal actions seeking to repossess these vehicles once a default occurred. In most cases, this involved bringing a court action against the purchaser or lessee, but, on many occasions, it also included attempting to repossess those vehicles from a company that had possession of the vehicle for repairs and/or storage for which they had not been paid. Thus, I have more than a passing familiarity with the statutes at issue in LD 1846.

LD 1846 seeks to clarify and modify the statutes dealing with the ability of a garage, storage lot, towing company, or other party to obtain title to a motor vehicle that has been abandoned on their property. This is an admirable goal, and, overall, I take no position on these changes. However, many problems with these statutes remain. First, after amendment, 29-A M.R.S. § 1854(1) would provide that the "owner of the premises" where a vehicle is located, or that owner's agent, would provide various notifications to the vehicle owner, any lienholders, and the Secretary of State's office regarding that property owner's possession of the vehicle. These provisions are almost identical to current law. Placing these requirements on the property owner makes sense if the vehicle has been abandoned on real estate owned by the party that has taken possession of that vehicle. It does not work well,

however, where the party in possession of that vehicle is not the owner of that real estate, but is, instead, a tenant or other party with the right to be on that real estate. For example, I had one case where a garage leased its premises from a landlord. A vehicle owner had her vehicle towed to the garage for repairs, which were performed, but for which the garage could not collect. The garage attempted to proceed under the current version of § 1854, but did so in its own name instead of the name of the landlord, at least in part because the landlord did not have any desire to be involved in a dispute between its tenant and the vehicle owner. This was incorrect under both the current version of that statute and the version proposed in LD 1846. To allow for this possibility, § 1854 should be changed to indicate that the property owner in possession of the vehicle, any other party in possession of the vehicle who is also rightfully in possession of the real estate, or their respective agents, are the correct parties to send out these notices and to otherwise proceed under these statutes. Similar changes should be made in other related statutes, such as § 1853. (Strangely, this appears to be recognized in current § 1859(1) which presumes that the party who is to provide notices in compliance with current § 1854(1) and (1-A) is the "person who has possession of and control over the vehicle," while § 1854 itself provides that this notice is to be given by the "owner of the premises" where the vehicle is located.)

Second, proposed § 1854(1) in LD 1846 provides that an initial notice must be sent to the "owner and lienholder, if any" as those parties' names are "on file with the office of the Secretary of State". Those names could be "on file" with that office for a large variety of reasons. This should be limited to "a vehicle owner and lienholder, if any, as shown on the then-current records of the office of the Secretary of State for any title certificate issued, or in the process of being issued, by that office for that vehicle." Additionally, this should apply to all notices required under any part of this statute, not just subsection 1. According, the sentence "Notification under this subsection is required only to a vehicle owner or a lienholder whose name is on file in the office of the Secretary of State." should be changed to read:

> Any notification under this section must be sent only to a vehicle owner and lienholder, if any, as shown on the then-current records of the office of the Secretary of State for any title certificate issued, or in the process of being issued, by that office for that vehicle. It shall be sent to the most recent address for that owner or lienholder, if any, as shown in those records.

This modified sentence should then be moved to a new subsection 5 of §1854. This resolves a problem that I had in the same case, where the garage owner stated that he did not send the notice to a lienholder because he did not have an address for that party.

Third, 29-A M.R.S. § 1852 provides that a vehicle is considered to be abandoned if the owner or lienholder of the vehicle does not pay all outstanding towing, storing, and authorized repair charges within 14 days after the Secretary of State either sends a notice to the owner and the lienholder or publishes an advertisement regarding the vehicle where there is no record of the owner or lienholder in the Secretary of State's records. To conform to the

changes suggested for §1854 above, the phrase "as and to the extent required by Section 1854 subsection 3" should be inserted just after the phrase "the notices to the owner and lienholder are sent by the Secretary of State" now contained in § 1852. Additionally, the phrase "as shown in the files of the office of the Secretary of State" in § 1852 should be changed to read "as shown on the then-current records of the office of the Secretary of State for any title certificate issued, or in the process of being issued, by that office for that vehicle."

Fourth, 23 M.R.S. § 1854(1) as amended by LD1806 requires that the owner of the premises where the vehicle is being kept must notify the vehicle owner and any lienholder of that property owner's possession of the vehicle within 48 hours of the time that the vehicle is "taken into custody." A motor vehicle is deemed to have been taken into custody when, among other things, it has been towed to the property, left at the property after being repaired, or left at the property without permission. This is an extremely short period of time, which may be unworkable, particularly when a vehicle is towed or finally repaired at the beginning of a three-day weekend. In most instances, the property owner or other party that has taken possession of the motor vehicle will not know for certain the name or record address of the vehicle's record owner or, in almost all instances, the names and addresses of lienholders of the vehicle as noted on the vehicle's certificate of title within those 48 hours. It is possible to search for this information online, but how to do this is not readily apparent, making it an unintended obstacle to using these statutory procedures. A more reasonable period would be 3-5 days, excluding Saturdays, Sundays, and legal holidays.

Fifth, as amended by LD 1854, 23 M.R.S. 1856(1) would provide that the office of Secretary of State may issue a letter of ownership or title certificate in the new owner's name when more than 21 days have passed since that office receives notice from the "person who has possession of and control over the vehicle" of compliance with the requirements to notify the owner and any lienholder set forth in amended § 1854(1). This is similar to what is required under current law. In these instances, it is the Secretary of State's practice to mail a notice to the owner and lienholders at the beginning of these 21 days to ensure that they know that a claim has been made to the vehicle's title. In at least one instance, that office mailed a letter to one of my clients on May 10, 2023, which was not received by that client until May 19, 2023. In that particular instance, this was the first notice that my client had that anyone was making a claim to the vehicle, since the garage owner had not sent that client any lienholder notice. Given the inherent and continuing delays in the mail, this 21-day period should be extended to 28 days.

Finally, there is a potential constitutional defect in these statutes, both as they are currently written and as they may be amended by LD 1846. Those statutes ultimately permit a party to obtain title to a motor vehicle. That vehicle may have a value substantially in excess of what is owed to that party for storage, repairs, and other allowable charges. The Maine Constitution provides that private property cannot be taken through governmental action for private use, with or without compensation, except by the owner's consent. See Brown v. Warchalowski, 471 A.2d 1026, 1029. See also Portland Co. v. City of Portland, 2009 ME 98,

¶ 29, 979 A.2d 1279 (Me. 1984). It is likely that the Secretary of State's involvement in transferring title to a third party in this manner makes that transfer a public action without sufficient compensation where the value of that vehicle exceeds what is owed to the party receiving that title. See, e.g., Jackson v. Metropolitan Edison Co., 483 F.2d 754, 757 (3rd Cir. 1973), aff'd 419 U.S. 345 (1974); Toyota Motor Credit Corp. v. Borough of Wyoming, PA, No. 3:23-CV-00377, 2023 U.S. Dist. LEXIS 2020712, 023 WL 7412941, at *6-8 (M.D. Pa. Nov. 9, 2023). Similarly, the taking of property under color of State law without proper compensation violates the Fifth Amendment of the United States Constitution. In the case of Tyler v. Hennepin County, 598 U.S. 631 (2023), the United States Supreme Court held that a taxing authority was prohibited from taking the whole value of a property in foreclosing upon a tax lien securing a lesser amount. Solving this potential constitutional difficulty would require a lienholder, lessor, or owner to be compensated for any vehicle value in excess of what is owed to the third party who obtains a new title to the vehicle.

I have no personal battles to fight concerning the matters discussed in this letter. Instead, I am merely attempting to point out difficulties with this statutory framework that have come to my attention over many years of lawyerly experience. In any case, I am willing to help any party who desires to correct what for now, is a bit of a statutory mess. Furthermore, I appreciate this opportunity to provide the Committee with my comments and stand ready to assist the Committee in considering this bill.

Sincerely,

F. Bruce Sleeper