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## GARAGE KEEPERS' LIENS

House Bill 4431 (Substitute H-5)  
First Analysis (6-22-93)

Sponsor: Rep. Gary Randall  
Committee: Consumers

### ***THE APPARENT PROBLEM:***

The garage keepers' lien act (Public Act 312 of 1915) in general allows people who repair, maintain, service, or store vehicles -- including motor vehicles, airplanes, and boats -- to protect themselves against unpaid bills, and, in certain circumstances, to sell a customer's vehicle to satisfy a bad debt. More specifically, the act authorizes a "garage" (a comprehensive term that includes auto mechanics' shops, airfield mechanics' hangers, and boat repair marinas) to place a lien on a vehicle for the amount of unpaid repairs or services (for labor or material furnished in making the repairs, including gasoline or aviation fuel, electricity, or other accessories and supplies furnished with the consent of the owner). To enforce the lien, the garage can hold the vehicle until the necessary charges are paid, and, if they are not paid within 45 days of notification of the registered owner, the garage can auction the vehicle to recoup its charges. Any surplus resulting from the sale must first be used to satisfy other liens, with the balance going to the former owner. If the owner cannot be located, the surplus, after all liens have been paid off, goes back to the secretary of state and, if unclaimed for two years, escheats to the state. To the extent that the garage keeper's lien is for labor and parts, his or her lien takes priority over all other liens on the vehicle. However, a prior lienholder can discharge the lien by paying the amount owed (up to \$600 for a "ground vehicle," up to \$200 for a boat, and from \$5,000 to \$100,000 for aircraft, depending on the kind of airplane). The caps on motor vehicles and watercraft -- \$600 and \$200 -- have stayed the same since the mid-1960s, and now fall well short of the protection originally offered garages. Legislation has been proposed to increase those figures, as well as to make a number of other changes to the act.

### ***THE CONTENT OF THE BILL:***

The bill would:

- \* increase the maximum lien for automobiles and boats to \$1,000;

- \* extend the act to cover off-road vehicles and snowmobiles;
- \* name the act the "garage keeper's lien act";
- \* add a \$10 fee for a certificate allowing a public sale to satisfy a lien;
- \* allow owners to sue garage keepers who failed to comply with the bill;
- \* require garage keepers to be in compliance with the Motor Vehicle Service and Repair Act in order to avail themselves of the bill's provisions;
- \* rewrite most of the existing sections of the act; and
- \* repeal three sections of the existing act, reincorporating two of them (dealing with aircraft liens).

Non-aircraft liens. The bill would rewrite the existing sections of the act regulating garage keeper's liens for automobiles ("vehicle" as defined in the Michigan Vehicle Code), off-road vehicles, snowmobiles, and watercraft, and name the act the "garage keeper's lien act."

The bill would keep the current provisions allowing garage keepers who repair or store vehicles to have a lien on the vehicle, and to keep the vehicle within 90 days after doing the last repair or providing the last supplies for which the lien was claimed. So far as the lien was for labor and parts, the lien would have priority over all other liens on the vehicle. However, the bill would raise the maximum amount of the lien for all non-aircraft vehicles to \$1,000 (currently, the maximum lien for automobiles is \$600, for watercraft, \$200). The bill also would add that garage keepers could charge owners a "reasonable amount" for storage of a vehicle (including accessories) for up to 120 days, unless otherwise agreed to in writing.

Enforcement of liens. Except for aircraft, as is currently the case, the bill would allow garage keepers to continue to sell vehicles at public sales if the charges for repairs and parts are not paid (though the bill would add that the sale would have

House Bill 4431 (6-22-93)

to take place at the garage "or at the nearest suitable place").

Currently, the act requires garage owners to notify, by first-class mail and not less than ten business days before a sale is held, the Department of State, any lienholders recorded with the department, and the owner. The bill would require that notification be by certified mail to the lienholder and owner, and would require that certain information be included in the notice to the owner (an itemized statement of the lien, showing the amount due and the date on which it became due and a demand for payment within 45 days of delivery of the notice). On the same day that the notice was sent to the owner, the garage keeper would have to send a copy of the notice, by first-class mail, to the Bureau of Automotive Regulation in the Department of State.

The bill also would add a new requirement, that of public notification (in the form of advertisements published once a week for two consecutive weeks in a local newspaper of general circulation) of the sale after the 45-day period had passed. The advertisement would have to include a description of the vehicle (including the year, make, model, color, and vehicle identification number), the address of the garage, the name of the owner, and the "manner" of the proposed sale. (The bill also would provide for public notification in areas where there were no newspapers of general circulation.)

As is currently the case, the garage keeper could bid for and buy the vehicle at the sale, and the proceeds of the sale would be considered to be either the amount paid by the garage keeper or the fair cash market value of the vehicle at the time of sale, whichever was greater. Any surplus -- after the garage keeper's charges had been paid and the costs of the sale deducted -- would be returned to any lienholder who had notified the garage keeper of his or her claim of lien. Any balance would, as at present, be returned to the vehicle's owner by certified mail. If the owner couldn't be located within 14 days after the sale, the surplus would be sent to the Department of State, and if the owner didn't claim the surplus from the department within two years, it would revert to the state.

The bill would allow both owners and other lienholders to pay off the lien before the sale (including "reasonable expenses" incurred by the garage keeper) and redeem the vehicle. When the garage keeper received payment from the owner, he

or she would have to return the vehicle to the owner in the same condition ("or substantially the same condition") it had been while in storage. Payments made by a lienholder would be added to the amount of the lienholder's lien and subtracted from the garage keeper's lien.

The bill would require garage keepers, after the 45-day period had passed, to apply to the Department of State for a certificate -- and pay a \$10 fee (currently the certificate is issued free) -- authorizing a public sale. After a sale had been made, the garage keeper would have to complete the certificate and give it to whomever bought the vehicle. The new owner would then have to send the certificate in to the department when he or she applied for a certificate of title or a vehicle registration in his or her name.

Failure to comply with the bill. The bill would say that a buyer "in good faith" would take the vehicle free of any rights of people against whom the lien was valid, even if the garage keeper had not complied with the bill's requirements.

The bill also would allow owners who suffered damages because of a garage keeper's failure to comply with the bill to file a lawsuit for the actual amount of damages or \$250, whichever was greater, along with reasonable attorney's fees.

Exemption. The bill would not apply to vehicles for which a garage keeper had issued a warehouse receipt, bill of lading, or other document of title.

Municipal ordinances. As is currently the case, garage keepers couldn't take advantage of the bill's provisions unless the garage keeper, during the time covered by his or her claim for lien, had been properly licensed and fully complied with all municipal laws and ordinances (if any) regulating the licensing of garages.

The bill would add that garage keepers regulated by the Motor Vehicle Service and Repair Act (Public Act 300 of 1974) also could not avail themselves of the bill's provisions unless they had complied with the act during the entire period of the claim for lien.

Repealer. The bill would repeal the existing subsections of the act dealing with aircraft (sections 1a and 1b), basically incorporating them into the rewritten act as separate sections, and the section

requiring the reporting of unregistered vehicles to the sheriff (Section 2a).

(Note: In the new section 5, which basically is the existing section 1b, it appears that the word "registered" inadvertently has been omitted. Currently, this section says, in part, that a garage keeper may sell an airplane at public auctions if certain conditions hold, including if charges for the repair are not paid within 60 days after a claim of lien, together with an itemized statement of the account, are delivered to the owner by personal service or by registered or certified mail. The new section 5 says "is delivered to the owner of the aircraft by personal service or service by or certified mail".)

### **BACKGROUND INFORMATION:**

Legislation was introduced in 1983 and in 1992 to increase the maximum amount of payment to discharge a lien on a motor vehicle, but neither bill was enacted.

### **SUGGESTED AMENDMENT:**

The Department of State recommends an amendment to ensure that customers of garage keepers be notified of the bill's provisions at the time the customer entered into a contract with a garage keeper for repair or storage of a vehicle. (6-15-93)

### **FISCAL IMPLICATIONS:**

The Department of State reports a negligible increase in revenue because of the \$10 fee, since the department only processes a few hundred such cases each year. For example, in 1992, the department processed 695 cases, which, under the bill, would have brought in revenues of \$6,950. (6-21-93)

### **ARGUMENTS:**

#### **For:**

Repairs to automobiles and boats can easily mount to thousands of dollars, yet under current law, the auto repair garages or boat repair marinas can end up having to absorb the loss if the owner does not pay, the garage or marina files a lien, and a prior lienholder steps in to discharge the lien. Under current law, a prior lienholder need pay only up to \$600 to discharge a lien on a motor vehicle and only \$200 for a boat. These figures date back nearly 30

years and are now woefully inadequate. The legislature recognized the similar situation of airfield mechanics' repair hangers, and in 1986 (Public Act 126, enrolled House Bill 4577) abolished the \$2,000 maximum lien on aircraft and instead instituted a range of maximums (from \$5,000 for single-engine airplanes with less than 150 horsepower to \$100,000 for turboprop or turbojet aircraft) that recognized the real expense of repairing aircraft. The bill would build a little more fairness into law for auto mechanics' shops and boat repair marinas.

#### **For:**

The bill would revise and update the garage keeper's lien act to clarify and update the procedures garage keepers and lien holders would have to follow when placing a lien on a vehicle and the lien (and the garage keeper's services) were not paid. Currently, garage keepers can sell vehicles without public notification. As a result, vehicle owners may not receive clear notice of the sale in time to claim their vehicles. By requiring garage keepers to notify owners of pending sales, the owners are more likely to receive notification in time for them to redeem their vehicles, should they so desire.

The bill also would help offset the costs to the Department of State of issuing certificates to garage keepers for the sale of vehicles. Currently these certificates are issued free of charge, and the bill's \$10 charge would help pay for the department's costs associated with issuing, collecting, and recording the certificates.

Finally, the bill also would require garage keepers to comply with the state law regulating motor vehicle repair in order to use the bill's lien provisions, and would authorize vehicle owners to recoup losses sustained from garage keepers who failed to comply with the bill's provisions.

#### **Against:**

The maximum for "ground vehicles" ought to be increased to more than the proposed \$1,000. As long ago as 1983, a Senate Analysis Section analysis of a similar bill related how, in one reported instance, a service garage made \$3,500 worth of repairs on a car, was unable to collect payment from the car's registered owner, and was forced to discharge the lien to a prior lien holder for \$600 -- resulting in a loss of \$2,900 to the garage keeper. Given the increase in cost of repairs and labor and

the increase in the worth of automobiles, the maximum lien amount should be raised to match inflationary increases since the last time the maximum was increased in 1965. Since 1965, the Detroit Consumer Price Index (CPI) reportedly has increased 390 percent, which would mean that the lien maximum on automobiles should be increased to over \$2,000 (according to one estimate, \$2,340).

***Response:***

Because garage keepers' liens take precedence over other liens, to the extent that the bill would protect the rights of garage keepers, it would erode the rights of prior lienholder. Some lenders may oppose such a proposed increase in the amount of a lien that would supersede the lender's prior lien. (And, in fact, the banking industry did oppose the 1983 Senate bill that would have increased a garage keeper's maximum lien to \$2,000.)

***POSITIONS:***

The Department of State supports the bill. (9-21-93)