

GARAGE KEEPER'S LIENS

House Bill 4431 as enrolled
Second Analysis (7-18-94)

Sponsor: Rep. Gary Randall
House Committee: Consumers
Senate Committee: Transportation &
Tourism

THE APPARENT PROBLEM:

Public Act 312 of 1915 (the so-called garage keeper's lien act) in general allows people who repair, maintain, service, or store vehicles -- including motor vehicles, airplanes, and boats -- to protect themselves against unpaid bills by claiming a lien on customers' vehicles left with them. 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, services or material furnished at the request or with the consent of the owner.

To enforce a lien, the garage can hold the vehicle until the necessary charges are paid, but must send the owner a claim of lien. If the charges aren't paid within 45 days after the owner is notified, the garage can auction the vehicle to recoup its charges. Any money left over from the sale, after the garage keeper's costs are paid, must first be applied to other liens, and then any remaining balance goes to the vehicle's former owner.

To the extent that the garage keeper's lien is for labor and parts, it 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 amend Public Act 312 of 1915 to do the following:

- * name the act the "garage keeper's lien act";
- * increase the maximum garage keeper's lien for automobiles and boats to \$1,000;
- * extend the act to cover off-road vehicles and snowmobiles;
- * increase the required notification of a pending sale to 20 business days;
- * add a \$10 fee for a certificate allowing a public sale to satisfy a lien;
- * allow owners and lienholders 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).

Inclusion off-road vehicles and snowmobiles. Currently, the act defines "garage keeper" in relation to automobiles, aircraft, and watercraft. The bill would define "garage keeper" as someone (or their heirs, personal representatives, successors, and assignees) who "for hire or reward, publicly offer[s] to store, maintain, keep, or repair a vehicle or any accessory used in the operation of a vehicle or to furnish accessories and supplies for a vehicle or any accessory used in the operation of a vehicle." A "vehicle" would include not only watercraft and automobiles ("vehicle" as defined by the Michigan

Vehicle Code), but also off-road vehicles and snowmobiles.

Liens on aircraft. The bill would repeal the existing subsections of the act dealing with aircraft (sections 1a and 1b) and basically reincorporate them into the rewritten act as separate sections (sections 4 and 5).

Liens on ground vehicles and watercraft. Currently, the act gives garage keepers liens on vehicles for the amount due for storage, maintenance, repair or material up to a maximum for automobiles of \$600 and, for watercraft, of \$200. So far as a lien is for labor and parts, it has priority over all other liens on the vehicle. Other lien holders can pay the amount owed the garage keeper (up to a maximum of \$600 for automobiles and up to \$200 for boats); these payments are added to the amount of their liens.

The bill would increase the maximum amount of the garage keeper's lien for non-aircraft vehicles -- automobiles, boats, off-road vehicles, and snowmobiles -- to \$1,000. It also would allow garage keepers to charge vehicle owners a "reasonable amount" for storage, in addition to the maximum lien allowance, for up to 120 days' storage. Payments made by prior lien holders to redeem a vehicle before a public sale couldn't be more than the vehicle's fair market value, and any payments made by a prior lien holder would be subtracted from the garage keeper's lien.

Enforcement of liens. Currently, a garage keeper may detain a vehicle at any time it is in his or her possession within 90 days after doing the last repair or providing the last supplies for which a lien was claimed. If payment isn't made within 45 days after the vehicle owner is notified (by registered or certified mail) of a claim of lien and is sent an itemized statement of the account, the garage keeper may sell the vehicle at public auction 20 to 60 days after the 45 days. (A garage keeper can bid for and buy a vehicle put up for sale due to nonpayment of his or her charges.) At least ten days before the auction, the garage keeper has to give notice (by first-class mail) of the time and place of the sale to the Department of State and any lien holders; vehicle owners must be notified personally or by certified mail. After a vehicle is sold and the garage keeper's charges and the costs of the sale have been paid, the balance of the money from the sale of the vehicle goes to any lienholder who notifies the garage keeper before the

sale of his or her claim against the vehicle. After the garage keeper and appropriate lienholders have been paid, and the costs of the sale have been satisfied, any remaining money is returned to the vehicle owner.

The bill would add a number of clarifications to the current procedure for enforcing garage keepers' liens. For example, it would allow owners, as well as lien holders, to pay off a garage keeper's lien before a proposed sale, and thereby redeem the vehicle (though if they did they would also have to pay "reasonable expenses" incurred by the garage keeper). When the garage keeper received payment from an owner, he or she would have to return the vehicle to the owner in the same condition ("or substantially the same condition") as it had been in while in storage. The bill would specify that the public sale of a vehicle for nonpayment of charges would have to take place "at the facility of the garage keeper or at the nearest suitable place". The bill would require that notification (of a pending sale) to any lien holders and to the owner be by certified mail and be sent at least 20 business days (instead of the current ten days) before the sale was held. The bill would require that certain additional information be included in the notice of a pending sale to the owner, including 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 a notice was sent to the owner, the garage keeper also would have to send a copy of the notice, by first-class mail, to the Bureau of Automotive Regulation in the Department of State. Proceeds from the sale of vehicles and boats to satisfy garage keepers' liens would continue to be distributed as currently required, but any balance returned to the vehicle's owner would have to be by certified mail and if the owner couldn't be located within 14 days after the sale, the surplus would be sent to the Department of State. If the owner didn't claim the surplus from the department within two years, it would revert to the state.

Certificate and fee. Currently, according to the Department of State, when garage keepers want to publicly auction a vehicle or boat for nonpayment, they apply to the department for a free certificate authorizing the public auction. They then give the certificate to the buyer, who submits it to the department as proof of ownership and the department issues the new owner a title or registration.

The bill would require garage keepers to apply to the Department of State for a certificate -- and to pay a \$10 fee -- authorizing public sales of a vehicles for nonpayment. 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.

Lawsuits. The bill would allow owners and lienholders 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.

Compliance with the bill. Currently, in order for garage keepers to be able to use the act, they must have been licensed and have fully complied with all local laws and ordinances relative to 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) couldn't avail themselves of the bill's provisions unless they had complied with that act during the entire period of the claim for lien.

The bill also would say that someone who, "in good faith," bought a vehicle or boat sold to satisfy a garage keeper's lien would take it 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.

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.

Repealer. In addition to repealing (and reinstating) the existing sections of the act regarding aircraft, the bill would repeal (without reinstating) the section of the act which requires the reporting of unregistered vehicles to the sheriff (Section 2a).

Effective date. The bill would take effect on October 1, 1994.

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 a garage keeper placed a lien on a vehicle or boat because the owner had failed to pay the garage keeper's charges.

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, the Department of State issues certificates authorizing vehicle and boat sales free of charge to garage keepers. When a vehicle or boat is sold to satisfy a garage keeper's lien, the garage keeper forwards the certificate to the buyer, who then submits it to the Department of State for a title or registration. The bill's \$10 charge for these certificates would help pay for the department's costs associated with issuing, collecting, and recording the certificates.

Finally, the bill 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.)

Against:

Notification to vehicle and boat owners should be strengthened. For example, garage keepers ought to be required to notify people of the act's provisions -- namely, that a vehicle or boat can be sold for nonpayment of charges -- at the time an owner brings a vehicle or boat in for storage and repair. And garage keepers who decide to sell a vehicle or boat for nonpayment should have to provide public notification of the pending sale to ensure that vehicle and boat owners receive clear notice of the pending sale in time to claim their vehicles, should they so desire.