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Senate Bill 543 (as enrolled)
Sponsor: Senator Loren Bennett
Committee: Economic Development, International Trade and Regulatory Affairs

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RATIONALE

Under the Garage Keeper's Lien Act, a person who performs labor on a vehicle or provides supplies for a vehicle for compensation (a "garage keeper") has a lien upon the vehicle for repair and storage charges. If the charges are not paid, the garage keeper may sell the vehicle at a public sale. The Act outlines the procedures for enforcing the lien and selling the vehicle, and specifies deadlines for following those procedures. Reportedly, the time lines that garage keepers must meet are too tight. The Act allows a garage keeper to keep a vehicle for up to 120 days after completing labor. The 120-day period may have expired, however, by the time the garage keeper decides to pursue the lien rather than try to collect charges due from the vehicle's owner and meets all the requirements for enforcing the lien. In that case, the garage keeper no longer has the authority to keep and sell the vehicle. Some people believe that the Act should be revised to establish clearer and more reasonable time frames in which a garage keeper must fulfill certain responsibilities in enforcing a lien.

CONTENT

The bill would amend the Garage Keeper's Lien Act to do all of the following:

- Revise time lines pertaining to a garage keeper's lien.**
- Establish conditions under which the Department of State's Bureau of Automotive Regulation could object to a sale, and otherwise revise enforcement procedures relative to notification and sale of a vehicle.**
- Revise the amount a prior lienholder**

must pay to a garage keeper.

- Establish criminal penalties for making a false statement on documents pertaining to a garage keeper's lien.**

Garage Keeper's Lien

Under the Act, a garage keeper who, in pursuit of an expressed, implied, written, or unwritten contract, furnishes labor, material, or supplies for a vehicle, has a lien upon the vehicle, for the charges due for the storage, maintenance, keeping, and repair of the vehicle as well as for certain other expenses. The bill specifies that a garage keeper who furnished labor, material, storage, diagnosis, an estimate of repairs, or supplies for a vehicle would have a lien upon that vehicle for the charges due for the storage, maintenance, keeping, diagnosis, estimate, and repair as well as for certain other expenses.

The bill provides that a garage keeper's lien would attach if a vehicle remained in the garage keeper's possession after the repairs were completed or after a diagnosis and subsequent storage of the vehicle, when repairs were not authorized. The bill also states that the lien would attach to the vehicle on the day the garage keeper performed the last labor or furnished the last supplies for which a lien was claimed. Under the Act, a garage keeper may detain a vehicle for up to 120 days after performing the last labor or furnishing the last supplies for which a lien is claimed; under the bill, the garage keeper could keep the vehicle for not more than 225 days after performing labor or furnishing supplies.

Under the Act, a garage keeper's lien has no

effect upon the holder of another lien that attached before the garage keeper's lien attached, if the prior lienholder makes a payment, as calculated in the Act, to the garage keeper. Subject to certain exceptions, if the repaired vehicle has a market value over \$3,000, the maximum amount of a lien that a prior lienholder must pay a garage keeper is 20% of the market value of the vehicle or \$5,000, whichever is less. The bill would apply that lien amount if a repaired vehicle had a market value over \$5,000. Under the Act, if a repaired vehicle has a market value of \$3,000 or less, then the amount of the lien is \$600. The bill would change that to a lien of not more than \$1,000 if a repaired vehicle had a market value of \$5,000 or less.

The Act provides that a garage keeper has a lien in a reasonable amount for the storage of the vehicle, the storage of an accessory used in the vehicle's operation, or the storage of accessories and supplies furnished for the vehicle. Under the bill, unless otherwise agreed to in writing, a garage keeper's lien could include an amount of up to \$10 per day for storage. A lienholder who paid a garage keeper's lien would neither be liable for nor required to pay for any storage charges that accrued before 45 days after the garage keeper's notification to the lienholder.

Enforcement

Notification. The Act requires the garage keeper to notify the owner of the proposed sale of the vehicle. The garage keeper also must notify each prior lienholder and the Department of State's Bureau of Automotive Regulation. Under the bill, the garage keeper would have to send the notices within 30 days after the date placed on the certificate of foreclosure and bill of sale by the Department.

The Act requires that the notice include a demand for payment within 45 days after delivery of the notice. The bill specifies instead that the notice would have to include a demand for payment in the amount necessary to satisfy the lien and that the demand for payment would have to give the owner or owners at least 30 calendar days after the notice's postmark date to satisfy the garage keeper's lien. The notice also would have to include a statement that all lienholders were being notified of the delinquency, that a lienholder had the right to

satisfy the garage keeper's lien, plus any storage charges, and obtain possession of the vehicle, and that a lienholder would be required to notify the garage keeper before the proceeds were distributed, if the lienholder desired to claim any of the proceeds from a vehicle sale conducted by the garage keeper.

Certificate of Foreclosure. The Act provides that, after the 45-day period expires, the garage keeper may apply to the Department of State and pay a \$10 fee for a certificate that must be completed after the sale and given to the purchaser. Under the bill, to enforce a lien, a garage keeper or authorized agent would have to apply, within 105 days after the date the lien attached, to the Department of State for a certificate of foreclosure of garage keeper's lien and bill of sale, accompanied by a fee of \$10 paid to the Department. (As currently required, the garage keeper would have to give the completed certificate to the purchaser after the sale.) Within 30 days after the application was mailed or hand-delivered, the Department would have to provide to the garage keeper or agent the names and addresses of all owners of record and of all lienholders of the vehicle as shown by Department records.

Sale. Under the Act, the sale must be held between 20 and 60 days after the 45-day notice period expires. The bill specifies instead that the sale would have to be held at least 75 calendar days after the date placed on the certificate of foreclosure of the garage keeper's lien and bill of sale by the Department.

Under the bill, the Bureau of Automotive Regulation could object to a sale only if it had reason to believe that the garage keeper had failed to comply substantially with the Act, the Motor Vehicle Service and Repair Act, or the rules promulgated under either Act. If the Bureau objected to the sale within the 75-day period, all of the following conditions would apply:

- The Bureau would have to complete an investigation of its objection within 150 calendar days after the date on the certificate of foreclosure and bill of sale.
- Upon completion of the investigation or the expiration of the 150-day period, whichever occurred first, the Bureau would have to remove the objection to the sale or

complete service upon the garage keeper of a written notice of a specific alleged violation of the Motor Vehicle Service and Repair Act, or rules promulgated under it, and extend the Bureau's objection to the sale indefinitely until resolution of that allegation.

- The garage keeper could, within 10 days after notice of the alleged violation, notify the Bureau in writing that the garage keeper wanted to contest the alleged violation.
- Storage charges provided for under the Act could not accrue during the period that the Bureau objected to the sale.
- The maximum period for which the garage keeper may keep the vehicle would be extended by the number of days that the Bureau objected to the sale.

If a garage keeper contested a notice of alleged violation, the Bureau would have to conduct an immediate review of its reasons for the objection. After the review, the Bureau would have to do one of the following:

- Remove the objection to the sale.
- If the objection were sustained, offer the garage keeper an opportunity to have the objection resolved under the Administrative Procedures Act as a contested case proceeding under the Motor Vehicle Service and Repair Act.

If a contested case proceeding were pursued, the Bureau could include in the complaint any other outstanding alleged repair, act, or rule violation against the garage keeper that could be pursued through a contested case proceeding. If the garage keeper failed to respond to the offer for a contested case proceeding within 10 days of receiving the offer, the Bureau's objection to the lien would be deemed permanent.

The Act allows a lienholder to pay the garage keeper the amount of the garage keeper's lien or another amount to which the two parties agree, before the date of the sale. Upon receiving that payment, the garage keeper must return the vehicle to the lienholder in the same condition, or substantially the same condition, as it was when repairs were completed and it was stored by the garage keeper. If no repairs were authorized by the owner, the vehicle must be returned to the lienholder in the same, or substantially the

same condition as when the garage keeper received it. The amount of the payment to the garage keeper then is added to the amount of the lien of the lienholder who made the payment and is subtracted from the amount of the garage keeper's lien. The bill specifies that, if the garage keeper performed diagnostic tests on the vehicle, the garage keeper would have to include a written explanation of the results of the tests when the vehicle was returned to the lienholder.

The Act allows the garage keeper to bid for and purchase the vehicle at the public sale. If the garage keeper directly or indirectly buys the vehicle at the sale, the proceeds are considered to be the greater of the amount paid by the garage keeper or the market value of the vehicle at the time of sale. The bill would delete that provision and specifies instead that, if the garage keeper bought the vehicle, directly or indirectly, the lien granted under the Act would be extinguished in full.

Penalty for False Statement

Under the bill, it would be a misdemeanor for a person, agent, or employee of a garage keeper knowingly to make a false statement on an application for a garage keeper's lien, documents filed by the applicant with the Department in support of an application, or a certification required under the Act. A first conviction would be punishable by a maximum fine of \$1,000 and/or up to 90 days' imprisonment; any subsequent conviction would be punishable by a maximum fine of \$5,000 and/or up to one year's imprisonment.

MCL 570.302 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bill would establish clearer and more reasonable time lines for enforcing a garage keeper's lien and selling a vehicle subject to a lien. Several problems have emerged with the current lien enforcement process. The 120-day maximum period that a garage keeper may hold a vehicle is too short for the garage keeper to meet all the other deadlines in the Act; deadlines for meeting certain

requirements to collect on the lien are too tight; there is no specified time frame in which the Department of State must respond to a request for authorization to sell a vehicle subject to a lien; and challenges to a garage keeper's attempt to sell a vehicle do not freeze the period during which the vehicle must be sold.

By allowing a garage keeper to retain a vehicle for 225 days, rather than only 120 days, the bill would provide an adequate period for a garage keeper to meet all of his or her responsibilities in the lien enforcement process. The bill also specifies exactly when a lien would attach and the number of days within which a garage keeper would have to apply to the Department for a certificate of foreclosure and bill of sale. The bill would require that the Department respond to an application within 30 days. Deadlines for notifying the vehicle owner and other lienholders of the garage keeper's intent to sell the vehicle, and for conducting the sale, would be based on the date placed on the certificate by the Department, and the 225-day total period would afford the garage keeper adequate time to meet those deadlines. The bill also specifies that the 225-day period that a garage keeper could keep a vehicle would be extended by the duration of the Bureau's objection to a garage keeper's attempt to enforce a lien, so that an objection by the Bureau on the vehicle owner's behalf could not serve as a delaying tactic on the part of the owner to allow the garage keeper's deadline for sale to expire.

Supporting Argument

The bill includes some consumer protection measures. Although it reportedly has been the practice of the Bureau of Automotive Regulation at times to intervene in a garage keeper's enforcement of a lien on behalf of a vehicle owner, there is no specific procedure in the Act outlining the steps for the Bureau's objection to the vehicle sale. The bill would establish in statute procedures for the Bureau to object to a garage keeper's sale and investigate whether enforcement of the lien was pursued properly. In addition, the Act is silent with regard to sanctions against the fraudulent enforcement of a garage keeper's lien. The bill, however, would enact criminal penalties for knowingly making false statements on an application for a garage keeper's lien and documents associated with the enforcement of a lien.

FISCAL IMPACT

The fiscal impact of the bill is indeterminate. The bill would revise the process for the Department's Bureau of Automotive Regulation to object to the sale of a vehicle by a garage keeper. The number of cases in which the Department would object is unknown and the costs of each investigation would vary depending upon the history of the vehicle.

There are no data to indicate how many offenders would be convicted of knowingly making a false statement on an application for a garage keeper's lien. A first-time offender would be subject to probation or incarceration for not more than 90 days in a local facility. An offender with a second conviction or more would be subject to not more than one year of probation or incarceration in a local facility. Local units would incur the cost of probation as well as the cost of incarceration, which varies between \$27 and \$62 per day.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.