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Senate Bill 543 (as introduced 6-14-01)

Sponsor: Senator Loren Bennett

Committee: Economic Development, International Trade and Regulatory Affairs

Date Completed: 11-6-01

## **CONTENT**

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

- Revise calculation procedures and time lines pertaining to a garage keeper's lien.**
- Require a garage keeper to obtain a certificate of foreclosure and bill of sale from the Department of State in order to enforce a lien, and otherwise revise enforcement procedures relative to notification and sale of a vehicle.**
- 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, has a lien upon the vehicle stored, maintained, supplied, or repaired by him or her for the charges due for the storage, maintenance, keeping, and repair of the vehicle as well as for certain other expenses. The bill, instead, 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 specifies 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, the 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, 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

Certificate of Foreclosure. The Act provides that, if a garage keeper's lien charges are not paid, the garage keeper may sell the vehicle at a public sale. 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. 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.

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.

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 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.

Legislative Analyst: P. Affholter

#### **FISCAL IMPACT**

The fiscal impact of the bill is indeterminate. The bill would institute an application fee of \$10 paid by garage keepers to the Department of State for a certificate of foreclosure of the lien and a bill of sale for the vehicle. The amount of revenue generated by this fee would depend upon the number of liens enforced by garage keepers. The bill also 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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