



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 5429 (Substitute H-2 as passed by the House)
Sponsor: Representative Andrea LaFontaine
House Committee: Natural Resources
Senate Committee: Judiciary

Date Completed: 7-12-16

CONTENT

The bill would amend the Michigan Marina and Boatyard Storage Lien Act to do the following:

- **Include property stored at a marina or other boat facility for repairs or maintenance among the items that are subject to a lien under the Act and for which notification of a lien must be made.**
- **Revise provisions that require the mailing of a notice of lien or the sale of property subject to a lien, to include delivery by another service that provides proof of delivery.**
- **Require a facility owner to mail notice to the state or agency responsible for registration or documentation of the property, if property subject to a lien were registered in another state or with a Federal agency.**
- **Provide for publication in the print or electronic version of a newspaper, if notice by publication is required.**
- **Allow notice of default to be sent to the person who delivered the property to the facility, if the owner of the property could not be determined.**
- **Require a facility to give notice of default to each lienholder of record identified by the Secretary of State (SOS), rather than each lienholder listed on the title, registration, or other marine documentation.**
- **Require the SOS to issue a new title or registration to the purchaser of a vessel or trailer, rather than the purchaser of property, upon a sale authorized under the Act.**
- **Require the SOS to notify another state that a new title or registration had been issued, if a sold vessel or trailer were registered in that state.**

The bill would take effect 90 days after its enactment.

Possessory Lien

The Act provides that a facility owner has a possessory lien on property stored at the facility for storage, rent, labor, materials, supplies, and other charges and for expenses reasonably incurred in the sale of that property under the Act. The bill would include property stored at the facility for repairs or maintenance services. ("Facility" means a marina, boatyard, boat or yacht club, or marine repair facility that provides for the storage or repair of boats, boat motors, boat cradles, or boat trailers as part of its commercial operation.)

The lien created for storage under the Act without a written storage agreement that includes a notice of lien does not take priority over the lien of a prior lienholder for storage incurred

before 30 days after the notice of lien required under the Act is delivered to the prior lienholder. After that 30-day period, the lien includes all storage charges incurred, including those incurred during the 30-day period. The bill would refer to repair and service, as well as storage, in those provisions.

A facility owner is limited to one lien under State law against a vessel for the storage, labor, materials, or supplies for the vessel. A facility owner who asserts a lien against a vessel under another statute or the common law may not also assert a lien under the Act for the same storage, labor, materials, or supplies, or other charges or expenses related to the vessel. The bill would refer to property, rather than a vessel, in those provisions. Also, under the bill, those provisions would apply to a lien for storage, labor, repairs, maintenance services, materials, or supplies.

The Act defines "property" as a boat, boat motor, boat cradle, or boat trailer in storage at a facility. The bill would refer to those items in storage at a facility for or following service, repair, or storage.

The Act defines "lienholder" or "lienholder of record" as a person who claims an interest in or lien on the property pursuant to a financing statement, title, registration, or other marine documentation filed with the Secretary of State, a register of deeds, or other public filing. Under the bill, the term instead would mean a person to whom either of the following applies:

- The person has filed a lien notation on the title of a boat or boat trailer.
- The person claims an interest in a boat motor or boat cradle under a financing statement or other marine documentation filed with the SOS or under another public filing, other than a filing with a register of deeds in Michigan.

Notification of Lien

The Act requires a facility owner to notify a property owner and all prior lienholders of a lien created under the Act before enforcing the lien. A property owner is considered notified if either of the following has occurred:

- The property owner has signed a written storage agreement that includes notice of the lien created under the Act.
- The facility owner has mailed written notification of the lien to the property owner and all prior lienholders.

The bill would refer to a written repair, service, or storage agreement in the first condition above. To meet the second condition, the facility owner would have to have mailed written notice of the lien or otherwise satisfied the requirements for notice of a sale to enforce the lien.

The bill also would refer to property, rather than a vessel, and would include references to service or maintenance services in other provisions related to the filing of, or notification of the filing of, a lien.

Enforcement of Lien

A facility owner may enforce a lien created under the Act only if he or she has notified the property owner and all prior lienholders. If a property owner is in default for more than 180 days, the facility owner may enforce the lien by selling the repaired or stored property at a commercially reasonable public sale.

Before conducting a sale, and within a reasonable time after default has continued for more than 180 days, the facility owner must mail a notice of default to the property owner and the

SOS, who must give the facility owner the name of the registered owner of the property and a list of all lienholders. The bill instead would require the facility owner to mail a notice of default to the property owner and the SOS by certified mail or by another commercially available delivery service that provides proof of delivery. If the property were registered in another state or with a Federal agency, the facility owner would have to mail a notice by certified mail to the state or agency responsible for registration or documentation of the property. If the property were a vessel or trailer, the SOS would have to give the facility owner the name and address of the registered owner of the vessel or trailer and a list of all lienholders.

If the owner of the property could not be determined because of the condition of identification numbers or because a check of the records did not reveal ownership, the facility owner could send notice of default by certified mail or by another commercially available delivery service that provides proof of delivery to the person that delivered the property to the facility, if known, at the person's last known address. The facility owner also would have to publish in the print or electronic version of a newspaper of general circulation a notice that contained a description of the property and information required to be provided in a notice of default.

The Act requires a facility owner to provide a copy of the notice of default to each lienholder of record listed on the title, registration, or other marine documentation. The bill instead would refer to each lienholder of record provided by the SOS.

Under the Act, a notice of default must contain specific information, including a demand for payment of the charges due within a specified time of not less than 30 days after the date the notice is delivered to the property owner and all lienholders of record. After that 30-day period expires, a facility owner must publish an advertisement of the sale of the property once a week, for two consecutive weeks, in a newspaper of general circulation in the area where the sale is to be held. The bill would require that notice to be published in either the print or electronic version of such a newspaper.

New Title or Registration

Currently, the SOS must issue a new title or registration to the purchaser of property at a sale conducted under the Act. The bill specifies that the SOS would have to issue a new title or registration to the purchaser of a vessel or trailer. If the vessel or trailer were registered in another state, the SOS would have to notify the other state that a new title or registration had been issued.

MCL 570.372-570.376

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Joe Carrasco

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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.