

HOUSE BILL No. 5429

March 8, 2016, Introduced by Reps. LaFontaine, Poleski, Hughes, Lucido, Goike and Pscholka and referred to the Committee on Judiciary.

A bill to amend 1998 PA 362, entitled
"Michigan marina and boatyard storage lien act,"
by amending sections 2, 3, 4, 5, and 6 (MCL 570.372, 570.373,
570.374, 570.375, and 570.376).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (a) "Boat" and "vessel" mean boat and vessel as those words
3 are defined in sections 80101 and 80104 of the natural resources
4 and environmental protection act, 1994 PA 451, MCL 324.80101 and
5 324.80104.

6 (b) "Default" means the failure to pay obligations incurred
7 for labor, **REPAIRS, MAINTENANCE SERVICES**, materials, supplies, or
8 the storage of a boat, boat motor, **BOAT CRADLE**, or boat trailer.

9 (c) "Facility" means a marina, boatyard, boat or yacht club,

1 or marine repair facility that provides, as part of its commercial
 2 operation, for the storage or repair of boats, boat motors, boat
 3 cradles, or boat trailers.

4 (d) "Fair market value" means the value of the property as
 5 determined by the current issue of a nationally recognized used
 6 vessel guide at the time of the notice to the property owner and
 7 any lienholder under section 5(5)(a).

8 (e) "Lienholder" or "lienholder of record" means a person ~~who~~

9 **TO WHOM EITHER OF THE FOLLOWING APPLIES:**

10 (i) **THE PERSON HAS FILED A LIEN NOTATION ON THE TITLE OF A**
 11 **BOAT OR BOAT TRAILER.**

12 (ii) **THE PERSON** claims an interest in ~~or lien on the property~~
 13 ~~pursuant to~~ **A BOAT MOTOR OR BOAT CRADLE UNDER** a financing statement
 14 ~~, title, registration, or other marine documentation filed with the~~
 15 secretary of state ~~, a register of deeds, or other~~ **ANOTHER** public
 16 filing.

17 (f) "Person" means an individual, association, partnership,
 18 limited liability company, corporation, boat or yacht club,
 19 governmental entity, or other legal entity.

20 (g) "Property" means a boat, boat motor, boat cradle, or boat
 21 trailer in storage at a facility **FOR OR FOLLOWING SERVICE, REPAIR,**
 22 **OR STORAGE.**

23 Sec. 3. (1) A facility owner has a possessory lien on property
 24 stored at that facility for storage, rent, labor, **REPAIRS,**
 25 **MAINTENANCE SERVICES,** materials, supplies, and other charges and
 26 for expenses reasonably incurred in the sale of that property under
 27 this act. Except as provided in subsection (8), a lien on property

1 under this section takes priority over any prior lien on the
2 property unless the prior lienholder pays to the facility owner the
3 amount of the lien attributable to storage, labor, materials,
4 supplies, or other charges reasonably incurred in the sale of ~~that~~
5 **THE** property under this act or the following applicable amount,
6 except as otherwise provided in this section, whichever is less:

7 (a) For a vessel that is not more than 27 feet long, \$5,000.00
8 or 20% of the fair market value, whichever is less.

9 (b) For a vessel that is more than 27 feet but not more than
10 40 feet long, \$30,000.00.

11 (c) For a vessel that is more than 40 feet but not more than
12 60 feet long, \$75,000.00.

13 (d) For a vessel that is more than 60 feet long, \$90,000.00.

14 (2) The amount calculated under subsection (1) ~~shall~~**MUST** be
15 increased by a like amount if the expenditure for labor and
16 materials was for both primary power engines of a vessel equipped
17 with 2 engines. However, this subsection does not apply to
18 auxiliary propulsion or trolling engines.

19 (3) The amount calculated under subsection (1) ~~shall~~**MUST** be
20 reduced by 1/2 if more than half of the expenditure for labor and
21 materials was attributable only to the repair or replacement of 1
22 of the following:

23 (a) Navigational electronics.

24 (b) Auxiliary power generators.

25 (4) The amount calculated under subsection (1) ~~shall~~**MUST** be
26 reduced by 3/4 if more than half of the expenditure for labor and
27 materials was attributable only to 1 of the following:

1 (a) The repair or replacement of a cabin interior.

2 (b) Painting.

3 (c) Cosmetic work.

4 (d) Any combination of subdivisions (a) to (c).

5 (5) A payment made **BY A PRIOR LIENHOLDER** to a facility owner
6 under this section ~~shall~~**MUST** be added to the amount of the lien of
7 the prior lienholder who made the payment and ~~shall~~**MUST** be
8 subtracted from the amount of the facility owner's lien.

9 (6) The facility owner's lien under this act is the only lien
10 that a facility owner has on ~~a vessel~~, **PROPERTY**, unless the
11 facility owner is also the prior lienholder.

12 (7) This act does not create a lien on a documented vessel
13 subject to a preferred ship mortgage or other preferred maritime
14 lien ~~pursuant to chapter 313 of subtitle III of title 46 of the~~
15 ~~United States Code~~, **UNDER** 46 U.S.C. ~~USC~~ 31301 to 31343. A facility
16 owner is required to obtain an abstract of title from the United
17 States ~~coast guard~~ **COAST GUARD** for a vessel that is documented ~~as~~
18 ~~that term is defined in chapter 301 of subtitle III of title 46 of~~
19 ~~the United States Code~~, **UNDER** 46 U.S.C. ~~30101~~. **USC 12101 TO 12152.**

20 (8) The lien created for storage under this act without a
21 written **REPAIR, SERVICE, OR** storage agreement that includes a
22 notice of lien ~~shall~~**DOES** not take priority over the lien of a
23 prior lienholder for **REPAIRS, SERVICE, OR** storage incurred before
24 30 days after the notice of lien required by section 4(1)(b) is
25 delivered to the prior lienholder. After that 30-day period, the
26 lien ~~shall include~~ **INCLUDES** all **REPAIR, SERVICE, OR** storage charges
27 incurred, including, but not limited to, those incurred during the

1 30-day period.

2 (9) ~~The~~**A PRIOR** lienholder shall arrange to remove the
3 property from the facility ~~upon~~**ON** the termination of ~~a~~**THE**
4 **FACILITY'S** lien under this act unless the lienholder and the
5 facility owner enter into a new storage agreement.

6 Sec. 4. (1) A facility owner shall notify a property owner and
7 all prior lienholders of ~~the~~**A** lien created ~~in~~**UNDER** this act
8 before enforcing the lien. A property owner is notified if either
9 of the following has occurred:

10 (a) The property owner has signed a written **REPAIR, SERVICE,**
11 **OR** storage agreement that includes a notice of the lien created ~~in~~
12 **UNDER** this act.

13 (b) The facility owner has mailed written notification of the
14 lien **CREATED UNDER THIS ACT** to the property owner and all prior
15 lienholders **OR HAS OTHERWISE SATISFIED THE REQUIREMENTS OF SECTION**
16 **5(5) (A) .**

17 (2) A facility owner who does not have a written storage **OR**
18 **SERVICE** agreement that includes a notice of ~~the~~**A** lien created
19 under this act on ~~a vessel~~**PROPERTY** originally left at the facility
20 only for repairs, labor, **MAINTENANCE SERVICES,** or materials
21 installation on a repair order shall not do either of the
22 following:

23 (a) File a lien for **SERVICE OR** storage fees on the ~~vessel~~
24 **PROPERTY** before 30 days after the notice of intent to commence
25 **SERVICE OR** storage fees was filed with the prior lienholder.

26 (b) Initiate an enforcement **OF LIEN** action under section 5
27 until 30 days after the written notice of a lien required by

subsection (1)(b) is delivered to the property owner and all prior lienholders.

Sec. 5. (1) A facility owner shall enforce a lien created ~~in~~ **UNDER** this act only if the facility owner has notified the property owner and all prior lienholders of the lien as required by section 4.

(2) If a property owner is in default for a period of more than 180 days, the facility owner may enforce the lien by selling the repaired or stored property at a commercially reasonable public sale. As used in this section, "commercially reasonable" means that term as defined in the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102. ~~440.9994~~. The proceeds of the sale pursuant ~~to~~ **UNDER** this section ~~shall~~ **MUST** be applied in the following order:

(a) To the reasonable expenses of the sale incurred by the facility owner including, to the extent not prohibited by law, reasonable attorney fees and legal expenses.

(b) To satisfy the lien created ~~in~~ **UNDER** this act to the extent that it has priority over all other liens.

(c) To satisfy all other liens on the property held by all lienholders of record to be paid in the order of priority.

(d) To the extent that the proceeds of sale exceed the sum of the items described in subdivisions (a) to (c), the **FACILITY OWNER** ~~surplus shall be paid by the facility owner~~ **PAY THE SURPLUS** to the property owner.

(3) If, after satisfying the reasonable expenses of the sale and the lien under subsection (2), there is a dispute concerning the priority of record lienholders under subsection (2), the

1 facility owner may hold the proceeds of the sale until the dispute
2 is settled by the written agreement of the parties or until an
3 order or final judgment is issued by a court of competent
4 jurisdiction relative to the dispute. The facility owner may pay
5 the proceeds of sale to a court with subject matter jurisdiction.
6 After a facility owner pays the proceeds to a court as described in
7 this subsection, the facility owner ~~shall be~~ **IS** relieved of all
8 further obligation concerning ~~these~~ **THE** proceeds.

9 (4) If proceeds of the sale ~~pursuant to~~ **UNDER** this section are
10 not sufficient to satisfy the property owner's outstanding
11 obligations to the facility owner or any lienholder of record, the
12 property owner remains liable to the facility owner or lienholder
13 for the deficiency.

14 (5) Before conducting a sale under this section, and within a
15 reasonable time after default has continued for more than 180 days,
16 the facility owner shall do both of the following:

17 (a) Mail a notice of default to the property owner and the
18 secretary of state **BY CERTIFIED MAIL OR BY ANOTHER COMMERCIALY**
19 **AVAILABLE DELIVERY SERVICE THAT PROVIDES PROOF OF DELIVERY, AND, IF**
20 **THE PROPERTY IS REGISTERED IN ANOTHER STATE OR WITH A FEDERAL**
21 **AGENCY, MAIL A NOTICE BY CERTIFIED MAIL TO THE OTHER STATE OR**
22 **FEDERAL AGENCY RESPONSIBLE FOR REGISTRATION OR DOCUMENTATION OF THE**
23 **VESSEL.** The secretary of state shall ~~notify~~ **PROVIDE** the facility
24 owner ~~and provide him or her with the name~~ **AND ADDRESS** of the
25 registered owner of the property and a list of all lienholders. **IF**
26 **THE OWNER OF A VESSEL OR TRAILER CANNOT BE DETERMINED BECAUSE OF**
27 **THE CONDITION OF THE VESSEL IDENTIFICATION NUMBERS OR BECAUSE A**

1 CHECK OF THE RECORDS OF THE SECRETARY OF STATE OR OTHER APPLICABLE
2 STATE OR FEDERAL AGENCY DOES NOT REVEAL OWNERSHIP, THE FACILITY
3 OWNER MAY SEND NOTICE OF DEFAULT BY CERTIFIED MAIL OR BY ANOTHER
4 COMMERCIALY AVAILABLE DELIVERY SERVICE THAT PROVIDES PROOF OF
5 DELIVERY TO THE PERSON THAT DELIVERED THE VESSEL OR TRAILER TO THE
6 FACILITY, IF KNOWN, AT THE PERSON'S LAST KNOWN ADDRESS AND SHALL
7 PUBLISH IN THE PRINT OR ELECTRONIC VERSION OF A NEWSPAPER OF
8 GENERAL CIRCULATION A NOTICE THAT CONTAINS A DESCRIPTION OF THE
9 PROPERTY AND THE INFORMATION REQUIRED TO BE PROVIDED IN A NOTICE OF
10 DEFAULT. The facility owner shall provide a copy of the notice of
11 default to each lienholder of record ~~listed on the title,~~
12 ~~registration, or other marine documentation.~~ **PROVIDED BY THE**
13 **SECRETARY OF STATE.** The notice of default ~~shall~~ **MUST** include all of
14 the following:

15 (i) A statement that the property is subject to a lien held by
16 the facility owner.

17 (ii) A statement of the facility owner's claim indicating the
18 charges due on the date of the notice, the amount of any additional
19 charges that will become due before the date of sale, and the date
20 ~~these~~ **THE** additional charges will become due.

21 (iii) A demand for payment of the charges due within a
22 specified time not less than 30 days after the date the notice is
23 delivered to the property owner and all lienholders of record.

24 (iv) A statement that the property will be sold if the claim
25 is not paid within the time ~~period~~ stated in the notice. The
26 statement ~~shall~~ **MUST** include the time and location of the sale.

27 (v) The name, street address, and telephone number of the

1 facility owner, or the facility owner's designated agent, whom the
2 property owner may contact to respond to the notice.

3 (b) After the expiration of the 30-day period set forth in
4 subdivision (a)(iii), publish an advertisement of the sale once a
5 week for 2 consecutive weeks in a newspaper of general circulation
6 in the area where the sale is to be held. The advertisement ~~shall~~
7 **MUST** include a general description of the property, the name of the
8 property owner, and the time and location of the sale. The date of
9 the sale ~~shall~~**MUST** be not less than 15 days after the date the
10 first advertisement of the sale is published.

11 (6) At any time ~~prior to~~**BEFORE** the sale of property under
12 this act, any lienholder may cure the default by paying the amount
13 of the ~~lien~~**CLAIM** to the facility owner, which amount ~~shall~~**MUST** be
14 added to the lien of the lienholder.

15 (7) A sale under this act ~~shall~~**MUST** be held at the facility
16 or at another reasonable location.

17 (8) A person who purchases property sold at a commercially
18 reasonable sale ~~pursuant to~~**UNDER** this act takes the property free
19 and clear of the rights of the property owner and all lienholders
20 of record.

21 (9) A facility owner who complies with this act is liable as
22 follows:

23 (a) The facility owner's liability to a lienholder of record
24 is limited to the net proceeds received from the sale of the
25 property.

26 (b) The facility owner's liability to the property owner is
27 limited to the net proceeds received from the sale of the property

1 after payment in full of all lienholders of record.

2 (10) A property owner or lienholder who suffers damages
3 because of a facility owner's failure to comply with this act may
4 bring an action in a court of competent jurisdiction for his or her
5 actual damages or \$250.00, whichever is greater.

6 (11) A facility owner is limited to 1 lien under state law
7 against a ~~vessel~~**PROPERTY** for the storage, labor, **REPAIRS,**
8 **MAINTENANCE SERVICES,** materials, or supplies for the ~~vessel~~.
9 **PROPERTY.** A facility owner who asserts a lien against a ~~vessel~~
10 **PROPERTY** under another statute or the common law shall not also
11 assert a lien under this act for the same storage, labor, **REPAIRS,**
12 **MAINTENANCE SERVICES,** materials, or supplies, or other charges or
13 expenses related to the ~~vessel~~**PROPERTY.**

14 (12) A facility owner may deny a property owner who has been
15 notified under subsection (5) access to the storage facility,
16 except that the property owner is entitled to access to the
17 facility during normal business hours for the purpose of satisfying
18 the lien or viewing and verifying the condition of the property.

19 (13) Except as otherwise provided in this act, all notices
20 required by this act ~~shall~~**MUST** be mailed by registered or
21 certified mail, return receipt requested. Notices to a facility
22 owner ~~shall~~**MUST** be mailed to the owner's business address or to
23 the address of the owner's designated representative. Notices to a
24 property owner ~~shall~~**MUST** be mailed to ~~the property owner at the~~
25 property owner's last known address as listed on the title,
26 registration, or other marine documentation or as provided in the
27 most recent agreement concerning storage, labor, **REPAIRS,**

1 **MAINTENANCE SERVICES**, materials, or supplies entered into between
2 the facility owner and the property owner. Notices to a lienholder
3 of record shall ~~shall~~ **MUST** be sent to the address of the lienholder as
4 ~~listed on the title, registration, or other marine documentation in~~
5 ~~the public filings that serve to perfect the lienholder's interest~~
6 ~~in the property.~~ **PROVIDED BY THE SECRETARY OF STATE UNDER**
7 **SUBSECTION (5).** Notices are considered delivered on the date the
8 recipient of the notice signs the return receipt or, if the notice
9 is undeliverable, the date the post office last attempts to deliver
10 the notice.

11 (14) The facility owner may bid all or a portion of his or her
12 claim at the auction sale of the property.

13 Sec. 6. The secretary of state shall issue a new title or
14 registration to the purchaser of ~~property~~ **A VESSEL OR TRAILER** at a
15 sale conducted ~~pursuant to~~ **UNDER** section 5. **IF THE VESSEL OR**
16 **TRAILER WAS REGISTERED IN ANOTHER STATE, THE SECRETARY OF STATE**
17 **SHALL NOTIFY THE OTHER STATE THAT A NEW TITLE OR REGISTRATION HAS**
18 **BEEN ISSUED.**

19 Enacting section 1. This amendatory act takes effect 90 days
20 after the date it is enacted into law.