

GARAGE KEEPERS' LIEN ACT

House Bill 4640 (Substitute H-4*) First Analysis (11-4-97)

Sponsor: Rep. Kirk Profit
Committee: Commerce

THE APPARENT PROBLEM:

Under Michigan law garage keepers have a priority lien position ahead of the banks and lending institutions that finance most vehicle purchases. When a vehicle owner authorizes repairs but abandons the vehicle rather than paying the repair bills, a garage keeper (or mechanic) can claim a portion of the vehicle's value for services rendered. That amount is remitted to the garage keeper when the lender repossesses and sells the vehicle at a public sale, or the garage keeper sells the vehicle at auction. The priority lien position enjoyed by garage keepers is supported by lending institutions, since they acknowledge that an unrepaired repossessed auto is worth little at public sale.

The maximum dollar value of a lien that a garage keeper can claim for ground vehicles under the Garage Keepers' Lien Act was last updated 33 years ago, in 1964. Since then it has been \$600. As the price of automobiles and other ground vehicles has increased, so too have the prices for the parts and labor necessary to fix them. Consequently, an vehicle repair shop owner can incur bad debt far in excess of the amount the current law allows for recovery.

The maximum lien standard for ground vehicles, specified in law, is periodically increased, since the standard is informally indexed to vehicle cost. For example, in 1941 the maximum value was \$40; in 1949 it rose to \$150; in 1951 to \$400; and then in 1964 it was set at the current limit, \$600. Some argue that a higher maximum lien standard is necessary, given the increasing prices associated with auto repairs, in order to more fairly reimburse garage keepers for their repair services.

THE CONTENT OF THE BILL:

House Bill 4640 would amend Public Act 312 of 1915, the Garage Keeper's Lien Act. The bill would repeal certain provisions pertaining to automobiles, aircraft, and watercraft liens; make the general provisions of the act apply to ground vehicles; revise the procedures garage keepers would be required to follow in order to exercise a lien; and, cap the amount of the maximum lien for all vehicles. Generally, House Bill 4640 would

update the lien cap maximum for ground vehicles, and allow garage

keepers to include vehicle storage costs in the lien claim. The bill would delete the act's current references to watercraft. (Watercraft and boatyard liens would be addressed in a separate measure, House Bill 4983, which is pending before the Marine Affairs and Port Development Committee). The aircraft provisions of the act, adopted as Public Act 58 of 1990, are not addressed by this bill. Those provisions (MCL 570.301a through 570.301b) are retained in current law.

Definitions. House Bill 4640 would define "vehicle" to mean "every device in, upon, or by which any person or property is or may be transported or drawn upon a highway," excepting mobile homes. A "garage keeper" would mean "a person or the person's heirs, personal representative, successors, and assignees, who for hire or reward, publicly offers to store, maintain, keep and repair a vehicle or to furnish accessories and supplies for a vehicle or an accessory used in the operation of a vehicle." (Under current law those who repair watercraft and aircraft also are included in the definition of garage keeper.) "Market value" would mean "the value as determined by the issue of the National Auto Dealers Association official used car guide in effect at the time the garage keeper performs the first labor or first furnishes supplies for which the garage keeper claims a lien."

Lien Cap. Currently, a garage keeper's maximum lien is \$600 for a ground vehicle (\$200 for a watercraft, and between \$5,000 and \$100,000 for an aircraft). Under House Bill 4640, the maximum amount of a lien that a prior lienholder shall pay a garage keeper would vary by value of vehicle: if value was greater than \$3,000, then the lien would not be more than 20 percent of the market value of the repaired vehicle or \$5,000, whichever was less; or in the alternative, if the vehicle was worth less than \$3,000, then the amount of the lien would be \$600.

Detaining a Vehicle and Attaching Lien. Under House Bill 4640, a garage keeper may detain a vehicle for not more than 120 days after performing labor or furnishing supplies. The bill then specifies the manner in which a garage keeper's lien would attach. Both under the bill and in current law, liens for the labor and materials used

to make repairs would take precedence over other liens. (The language reads: "The portion of a lien that is for labor and material furnished in making repairs upon a vehicle has priority over all other liens upon the vehicle.") However, House Bill 4640 specifies that a garage keeper's lien would not include an amount for labor and materials if those used were custom materials and not normally available from the original manufacturer or supplier.

Storage Fees. Under House Bill 4640, the garage keeper also would have a lien in a reasonable amount to store the vehicle for up to a 120 days. Longer storage periods would be claimable with a written agreement. The storage fee could be considered in addition to the maximum lien.

Notice of Sale and Proceeds. As is the case under existing law, House Bill 4640 would allow a garage keeper to sell a vehicle at a public sale when charges are not paid. The bill re-states the process for providing notice of the public sale. Specifically, the garage keeper would be required to give written notice not less than 30 business days before a sale to each lienholder and to the owner. Under the bill, garage keepers would be required to notify the Automotive Regulation Bureau of the Department of State when any charges are due and a sale of a vehicle is scheduled at public auction, and also each prior lienholder listed on the title of the vehicle. As with current law, the garage keeper's notice would be required to include an itemized statement of charges due, the date upon which they became due, and a demand for payment within 45 days. Then, no earlier than twenty business days or later than sixty, a sale could be scheduled. During the 20-day waiting period between notice and sale, the garage keeper would be required to notify (by certified mail) all lienholders about the place of sale.

Garage Keeper/Lender Lien/Owner Claims. In order to clarify the relationship between the garage keeper and any lending institution that also holds a lien (subordinate to the garage keeper's) on the vehicle, House Bill 4640 would specify that before a sale a lender who is a lienholder of a vehicle to be sold by the garage keeper could pay the garage keeper the amount of the garage keeper's lien, in addition to reasonable expenses, and redeem the vehicle. The payment made to the garage keeper could then be added to the lender's lien (and subtracted from the garage keepers). If a lien is successfully collected on a vehicle, House Bill 4640 also would prohibit a garage keeper from attempting to collect on a second lien on that vehicle. The bill also would retain the provision that a garage keeper may bid for and purchase the vehicle at sale, and it specifies how to define the proceeds of the sale in this instance. House Bill 4640 also specifies that after the amount of

the lien is paid to the garage keeper and the costs of the sale are deducted,

other people would be paid in descending order: a prior lienholder who gives notice to the garage keeper; the reasonable charges of the garage keeper; and, the owner of the vehicle. Proceeds of the sale remaining after the distribution would be returned to the owner. If the owner could not be located within 14 days, the surplus would be sent to the Department of State, and after two years the surplus would escheat to the state.

Owner Rights. The bill would modify current law to specify that any lienholder or owner who suffered damage under the act would be able to sue for the actual amount of the damages or \$250, whichever was greater.

Proper Business Licenses. House Bill 4640 also would include provisions that specify that if a garage keeper does business in a city that regulates or licenses garages, he or she would have to be duly licensed in order for the provisions of the act to apply. Likewise, a garage keeper regulated by the Motor Vehicle Service and Repair Act would not be entitled to avail himself or herself of the provisions of the Garage Keeper's Lien Act unless he or she was in compliance with the vehicle service and repair act.

MCL 570.301 et al.

FISCAL IMPLICATIONS:

The House Fiscal Agency notes that under the bill, a garage keeper would be allowed to purchase a \$10 certificate from the Department of State to document the sale of a vehicle under the statute. The completed certificate would be used by the purchaser of the vehicle when making an application for a certificate of title or vehicle registration with the Department of State. The Department of State reports that approximately 700 vehicles are sold each year that contain garage keeper liens. The bill does not specify the disposition of the revenue generated from the new fee, and therefore it would be deposited in the state general fund. State revenues would increase very minimally, about \$7,000, as a result of the imposition of this new fee. (10-29-97)

ARGUMENTS:

For:

The maximum lien for vehicles, specified in law, has not increased in more than 30 years. As the prices of automobiles have increased, so too have the costs of repairing them. Garage keepers who incur bad debts when owners abandon their vehicles rather than pay the costs for repairs, should be able to recover some of their loss. Setting a lien that is a percentage of a vehicle's value (this bill specifies 20 percent, but not less than

\$600 nor more than \$5,000) is a fair way to acknowledge the

increased price of labor and repair materials, and also to index the lien standard within a lower and upward limit, so that it can fluctuate as values change.

For:

House Bill 4640 would allow garage keepers to store vehicles that have been abandoned with the hope of recovering some of the storage costs. The bill would allow a garage keeper to charge a prior lienholder (typically a bank or lending institution that finances a vehicle purchase) a reasonable amount for the storage of a vehicle for up to 120 days (or more if agreed to in writing), and tally the storage charges above and beyond the maximum lien standard.

Against:

The bill would not adequately protect the lenders who finance the vehicles that have been repaired but abandoned by their owners. Since garage keepers enjoy a claim to primary lien under the act, the lender has subordinate lien status. This legislation offers the opportunity to make garage keepers subordinate and lenders primary, thereby allowing garage keepers to price and to sell abandoned vehicles and more fully recover their costs. This approach would recognize the primary lien status of lenders in instances of vehicle repair, and bring this law into line with lenders' rights to attach property noted elsewhere in Michigan statute.

POSITIONS:

The Auto Service Association of Michigan supports the bill. (10-30-97)

The National Bank of Detroit supports the bill. (10-30-97)

The Michigan Bankers Association would support the bill with amendments to make lenders the primary lienholders. (10-30-97)

Analyst: J. Hunault

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

