

GARAGE KEEPERS' LIEN ACT

House Bill 4640 as enrolled

Public Act 236 of 1998

Third Analysis (11-12-98)

Sponsor: Rep. Kirk Profit

House Committee: Commerce

**Senate Committee: Economic Development,
International Trade, and Regulatory
Affairs**

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 are addressed in a separate measure, House Bill 4983, which was enacted as Public Act 362 of 1998. The aircraft provisions of the act were adopted as Public Act 58 of 1990, and are not addressed by this bill.) A more detailed explanation of the bill follows.

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." "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." "Owner" would mean the person in whose name a vehicle was registered or titled.

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 would 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. This amount would be added to the amount of the prior lienholder's lien.

Detaining a Vehicle and Attaching Lien. Under House Bill 4640, a garage keeper could detain a vehicle for not more than 120 days after performing the last labor or furnishing the last supplies for which a lien is claimed against the vehicle. 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.") House Bill 4640 also would specify that the lien has no effect against the holder of a security interest, conditional sales agreement, or other lien that attached before the attachment of the garage keeper's lien. 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 were not paid. The bill re-states the process for providing notice of the public sale. Specifically, the garage keeper would be required to notify the owner of the proposed sale of the vehicle by a notice sent by certified mail. As with current law, that notice would be required to include an itemized statement of the garage keeper's lien showing the amount due at the time of the notice and the date on which the amount

became due, and a demand for payment not more than 45 days after delivery of the notice.

On the same day that the notice is sent to the owner, the garage keeper also would be required to send an exact duplicate of that notice by first class mail, addressed to both the Department of State, Bureau of Automotive Regulation and to each prior lienholder listed on the title of the vehicle. Then, no earlier than 20 business days or later than 60 business days, a sale could be scheduled. Under the bill, a sale of the vehicle would be required to be held at the garage keeper's facility, or at the nearest suitable place. Not less than 30 days before a sale, the garage keeper would be required to provide written notice of the manner, time, and place of the sale to each lienholder as shown by the records of the department, and to the owner of the vehicle. Notice to the lienholders and to the owner would have to be by certified mail.

Owner Claims. Before a sale, the owner could pay the amount necessary to satisfy the lien, in addition to the reasonable expenses or fees incurred by the garage keeper, and redeem the vehicle. Upon receipt of the payment, the garage keeper would have to return the vehicle to the owner in the same condition, or substantially the same condition, as it was in when stored by the garage keeper.

Garage Keeper/Lender Lien. Before a sale, a lienholder of a vehicle could pay the garage keeper the amount of the lien, in addition to the reasonable expenses or fees incurred by the garage keeper, or another amount to which the lienholder and garage keeper agreed. However, the amount payable to the garage keeper could not exceed the market value of the vehicle. A payment made would have to be added to the amount of the lien of the lienholder who made the payment, and subtracted from the amount of the garage keeper's lien. Upon receipt of payment, the garage keeper would return the vehicle to the lienholder in the same condition, or substantially the same condition, as it was in when repairs were completed, and as stored by the garage keeper.

Department of State Certificates. After the expiration of the 45-day owner notification period, the garage keeper could apply to the Department of State for a \$10 certificate. Upon the sale of a vehicle, the garage keeper would be required to complete the certificate and give it to the purchaser of the vehicle. The purchaser would then be required to submit the certificate to the Department of State when making an

original application for a certificate of title, or a vehicle registration for the vehicle.

Garage Keeper Purchase at Sale. 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, by registered mail. 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.

Damages. 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 State 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 with regard to the vehicle in question.

Other remedies. Finally, House Bill 4640 would prohibit a garage keeper who successfully collects on a vehicle lien from bringing an action or attempting to assert any other statutory or common law lien on that vehicle.

MCL 570.301 et al.

FISCAL IMPLICATIONS:

According to the Senate Fiscal Agency, currently, garages place liens on approximately 800 vehicles. Increasing liens up to \$5,000 or 20 percent of book

value (whichever was less) would increase the number of vehicles that garages place liens upon. As many as 1,000 vehicles could have liens placed upon them. Under the bill, a garage keeper would be allowed to purchase a \$10 certificate from the Department of State, fill out the certificate upon sale, and give it to the purchaser. If all vehicles with liens on them were sold (approximately 1,000), the Department of State could raise as much as \$10,000 under this provision. (5-21-98)

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 (the 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 legislators the opportunity to reverse the way it has treated garage keepers, historically. The legislation should be amended. The legislature should make garage keepers subordinate and lenders primary, thereby allowing garage keepers to price and to sell

abandoned vehicles, and in doing so, to 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.

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■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.