



SENATE BILL No. 74

January 17, 1995, Introduced by Senator BERRYMAN and referred to the Committee on Transportation and Tourism.

A bill to provide for certain liens on certain marine property stored in marinas, boatyards, and marine repair facilities; to provide for the sale of certain property subject to a lien; to provide for the liability of certain persons; and to provide for the enforcement of this act.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "marina and boatyard storage lien act".

3 Sec. 2. As used in this act, unless the context otherwise
4 indicates, the following terms have the following meanings:

5 (a) "Default" means the failure to pay obligations incurred
6 by the storage of a boat, boat motor, or boat trailer.

7 (b) "Facility" means a marina, boatyard, or marine repair
8 facility that provides, as part of its commercial operation, for
9 the storage of boats, boat motors, or boat trailers.

1 (c) "Lienholder" or "lienholder of record" means a person
2 who claims an interest in or lien on the property pursuant to a
3 financing statement filed with the secretary of state or other
4 public filing.

5 (d) "Person" means an individual, partnership, corporation,
6 association, governmental entity, or other legal entity.

7 (e) "Property" means a boat, boat motor, or boat trailer in
8 storage at a facility.

9 Sec. 3. (1) A facility owner has a lien on property stored
10 at that facility for rent, labor, or other charges and for
11 expenses reasonably incurred in the sale of that property under
12 this act.

13 (2) This act does not create a lien on a documented vessel
14 subject to a preferred ship mortgage or other preferred maritime
15 lien pursuant to chapter 131 of subtitle II of title 46 of the
16 United States Code, 46 U.S.C. 13101 to 13110.

17 Sec. 4. (1) A property owner shall be notified of the lien
18 created by this act before enforcement of the lien by a facility
19 owner. Notification of the lien created by this act is satisfied
20 by either of the following:

21 (a) A written storage agreement signed by the property owner
22 that includes a notice of the lien created by this act.

23 (b) Written notification of the lien sent by the facility
24 owner to the property owner.

25 (2) A facility owner who does not have a written storage
26 agreement that includes a notice of the lien created by this act
27 may not initiate an enforcement action under section 5 until 30

1 days after the written notice of a lien required by subsection
2 (1)(b) is delivered to the property owner.

3 Sec. 5. (1) A facility owner may enforce a lien created by
4 this act only if the property owner has been notified of the lien
5 as required by section 4.

6 (2) If a property owner is in default for a period of more
7 than 90 days, a facility owner may enforce a lien by selling the
8 stored property at a commercially reasonable public sale for
9 cash. As used in this section, "commercially reasonable" has the
10 same meaning as used in the uniform commercial code, Act No. 174
11 of the Public Acts of 1962, being sections 440.1101 to 440.11102
12 of the Michigan Compiled Laws. The proceeds of the sale pursuant
13 to this section shall be applied in the following order:

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

17 (b) To the satisfaction of the lien created by this act.

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

21 (d) To the extent that the proceeds of sale exceed the sum
22 of the items described in subdivisions (a) to (c), the surplus
23 shall be paid by the facility owner to the property owner.

24 (3) If proceeds of the sale pursuant to this section are not
25 sufficient to satisfy the property owner's outstanding obliga-
26 tions to the facility owner or any lienholder of record, the

1 property owner remains liable to the facility owner or lienholder
2 for the deficiency.

3 (4) Before conducting a sale under this section, the facil-
4 ity owner shall do both of the following:

5 (a) Send a notice of default to the property owner. The
6 facility owner shall provide a copy of the notice of default to
7 each lienholder of record. The notice of default shall include
8 all of the following:

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

11 (ii) A statement of the facility owner's claim indicating
12 the charges due on the date of the notice, the amount of any
13 additional charges that will become due before the date of sale,
14 and the date those additional charges will become due.

15 (iii) A demand for payment of the charges due within a spec-
16 ified time not less than 30 days after the date the notice is
17 delivered to the property owner and all lienholders of record.

18 (iv) A statement that unless the claim is paid within the
19 time stated, the property will be sold. The statement shall
20 specify the time and place of the sale.

21 (v) The name, street address, and telephone number of the
22 facility owner, or the facility owner's designated agent, whom
23 the property owner may contact to respond to the notice.

24 (b) After the expiration of the 30-day period set forth in
25 subdivision (a), publish an advertisement of the sale once a week
26 for 2 consecutive weeks in a newspaper of general circulation in
27 the area where the sale is to be held. The advertisement shall

1 include a general description of the property, the name of the
2 property owner, and the time and place of the sale. The date of
3 the sale shall be more than 15 days after the date the first
4 advertisement of the sale is published.

5 (5) A sale under this act shall be held at the facility or
6 at the nearest suitable location.

7 (6) A purchaser of property sold at a commercially reason-
8 able sale pursuant to this act takes the property free and clear
9 of any rights of persons against whom the lien was valid and all
10 other lienholders of record.

11 (7) If the facility owner complies with this act, the facil-
12 ity owner's liability is as follows:

13 (a) To a lienholder of record, the facility owner's liabil-
14 ity is limited to payment from the net proceeds received from the
15 sale of the property.

16 (b) To the property owner, the facility owner's liability is
17 limited to the net proceeds received from the sale of the prop-
18 erty after payment in full of all lienholders of record.

19 (8) A facility owner may deny a property owner who has been
20 notified under subsection (4) access to the storage facility,
21 except that the property owner is entitled to access to the
22 facility during normal business hours for the purpose of satisfy-
23 ing the lien or viewing and verifying the condition of the
24 property.

25 (9) Except as otherwise provided in this act, all notices
26 required by this act shall be sent by registered or certified
27 mail, return receipt requested. Notices sent to a facility owner

1 shall be sent to the owner's business address or to the address
2 of the owner's designated representative. Notices to a property
3 owner shall be sent to the property owner at the property owner's
4 last known address. Notices to a lienholder of record shall be
5 sent to the address of the lienholder as provided in the public
6 filings that serve to perfect the lienholder's interest in the
7 property. Notices are considered delivered on the date the
8 recipient of the notice signs the return receipt or, if the
9 notice is undeliverable, the date the post office last attempt:
10 to deliver the notice.

11 Sec. 6. A facility owner shall cease enforcement of actions
12 brought under this act immediately if either of the following
13 occurs:

14 (a) The property owner pays the facility owner the full
15 amount necessary to satisfy the lien. At any time before the
16 conclusion of a sale conducted under this act, the property owner
17 may redeem the property by paying the full amount necessary to
18 satisfy the lien.

19 (b) A person other than the facility owner who has a lien on
20 the property pays the facility owner the full amount necessary to
21 satisfy the lien held by the facility owner. Upon payment by a
22 lienholder of record, the facility owner shall hold the property
23 for the benefit of and at the direction of that lienholder and
24 may not deliver possession of the property to the property
25 owner. Unless the facility owner and the lienholder enter into
26 new storage agreement, the lienholder shall arrange removal of
27 the property from the facility.