

**SUBSTITUTE FOR
HOUSE BILL NO. 4983**

A bill to provide for certain liens on certain marine property repair, service, or storage 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; to provide for powers and duties of certain state departments; 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 "Michigan marina and boatyard storage lien act".

3 Sec. 2. As used in this act:

4 (a) "Boat" and "vessel" mean boat and vessel as those words
5 are defined in sections 80101 and 80104 of the natural resources
6 and environmental protection act, 1994 PA 451, MCL 324.80101 and
7 324.80104.

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1 (b) "Default" means the failure to pay obligations incurred
2 for labor, materials, supplies, or the storage of a boat, boat
3 motor, or boat trailer.

4 (c) "Facility" means a marina, boatyard, boat or yacht club,
5 or marine repair facility that provides, as part of its commer-
6 cial operation, for the storage of boats, boat motors, boat cra-
7 dles, or boat trailers.

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

12 (e) "Lienholder" or "lienholder of record" means a person
13 who claims an interest in or lien on the property pursuant to a
14 financing statement, title, registration, or other marine docu-
15 mentation filed with the secretary of state or other public
16 filing.

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

20 (g) "Property" means a boat, boat motor, boat cradle, or
21 boat trailer in storage at a facility.

22 Sec. 3. (1) A facility owner has a lien on property stored
23 at that facility for storage, rent, labor, materials, supplies,
24 and other charges and for expenses reasonably incurred in the
25 sale of that property under this act. Except as provided in
26 subsection (8), a lien on property under this section takes
27 priority over any prior lien on the property unless the prior

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1 lienholder pays to the facility owner the amount of the lien
2 attributable to storage, labor, materials, supplies, or other
3 charges reasonably incurred in the sale of that property under
4 this act or the following applicable amount, except as otherwise
5 provided in this section, whichever is less:

6 (a) For a vessel that has a single engine of less than 454
7 horsepower, \$5,000.00 or 20% of the fair market value, whichever
8 is less.

9 (b) For a vessel that has a single engine of not less than
10 454 horsepower but not more than 600 horsepower, \$10,000.00.

11 (c) For a vessel that has a single engine of not less than
12 601 horsepower but not more than 1,000 horsepower, \$30,000.00.

13 (d) For a vessel that has a single engine of not less than
14 1,001 horsepower but not more than 1,500 horsepower, \$75,000.00.

15 (e) For a vessel that has a single engine of not less than
16 1,501 horsepower but not more than 2,000 horsepower, \$90,000.00.

17 (2) The amount calculated under subsection (1) shall be
18 increased by a like amount if the expenditure for labor and mate-
19 rials was for both engines of a vessel equipped with 2 engines.
20 However, this subsection does not apply to auxiliary propulsion
21 or trolling engines.

22 (3) The amount calculated under subsection (1) shall be
23 reduced by 1/2 if more than half of the expenditure for labor and
24 materials was attributable only to the repair or replacement of
25 navigational electronics or auxiliary power generators.

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

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

5 (b) Painting.

6 (c) Cosmetic work.

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

8 (5) A payment made to a facility owner under this section
9 shall be added to the amount of the lien of the prior lienholder
10 who made the payment and shall be subtracted from the amount of
11 the facility owner's lien.

12 (6) The facility owner's lien under this act is the only
13 lien that a facility owner has on a vessel, unless the facility
14 owner is also the prior lienholder.

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

23 (8) The lien created for storage under this act without a
24 written storage agreement that includes a notice of lien shall
25 not take priority over the lien of a prior lienholder for storage
26 incurred before 30 days after the notice of lien required by
27 section 4(1)(b) is delivered to the prior lienholder.

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1 Sec. 4. (1) A facility owner shall notify a property owner
2 and all prior lienholders of the lien created in this act before
3 enforcing the lien. A property owner is notified if either of
4 the following has occurred:

5 (a) The property owner has signed a written storage agree-
6 ment that includes a notice of the lien created in this act.

7 (b) The facility owner has mailed written notification of
8 the lien to the property owner and all prior lienholders.

9 (2) A facility owner who does not have a written storage
10 agreement that includes a notice of the lien created under this
11 act on a vessel originally left at the facility only for repairs,
12 labor, or materials installation on a repair order shall not do
13 either of the following:

14 (a) File a lien for storage fees on the vessel before 30
15 days after the notice of intent to commence storage fees was
16 filed with the prior lienholder.

17 (b) Initiate an enforcement action under section 5 until 30
18 days after the written notice of a lien required by subsection
19 (1)(b) is delivered to the property owner and all prior
20 lienholders.

21 Sec. 5. (1) A facility owner shall enforce a lien created
22 in this act only if the facility owner has notified the property
23 owner and all prior lienholders of the lien as required by sec-
24 tion 4.

25 (2) If a property owner is in default for a period of more
26 than 180 days, the facility owner may enforce the lien by selling
27 the repaired or stored property at a commercially reasonable

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1 public sale. As used in this section, "commercially reasonable"
2 means that term as defined in the uniform commercial code, 1962
3 PA 174, MCL 440.1101 to 440.11102. The proceeds of the sale pur-
4 suant to this section shall be applied in the following order:

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

8 (b) To satisfy the lien created in this act.

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

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

14 (3) If, after satisfying the reasonable expenses of the sale
15 and the lien under subsection (2), there is a dispute concerning
16 the priority of record lienholders under subsection (2), the
17 facility owner may hold the proceeds of the sale until the dis-
18 pute is settled by the written agreement of the parties or until
19 an order or final judgment is issued by a court of competent
20 jurisdiction relative to the dispute. The facility owner may pay
21 the proceeds of sale to a court with subject matter
22 jurisdiction. After a facility owner pays the proceeds to a
23 court as described in this subsection, the facility owner shall
24 be relieved of all further obligation concerning those proceeds.

25 (4) If proceeds of the sale pursuant to this section are not
26 sufficient to satisfy the property owner's outstanding
27 obligations to the facility owner or any lienholder of record,

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

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

6 (a) Mail a notice of default to the property owner and the
7 secretary of state. The secretary of state shall notify the
8 facility owner and provide him or her with the name of the regis-
9 tered owner of the property and a list of all lienholders. The
10 facility owner shall provide a copy of the notice of default to
11 each lienholder of record listed on the title, registration, or
12 other marine documentation. The notice of default shall include
13 all of the following:

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

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

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

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

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

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

12 (6) During the 30-day period prescribed in
13 subsection (5)(a)(iii), any lienholder may cure the default by
14 paying the amount of the lien to the facility owner, which amount
15 shall be added to the lien of the lienholder.

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

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

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

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

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1 (b) The facility owner's liability to the property owner is
2 limited to the net proceeds received from the sale of the
3 property after payment in full of all lienholders of record.

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

8 (11) A facility owner is limited to 1 lien under state law
9 against a vessel for the storage, labor, materials, or supplies
10 for the vessel. A facility owner who asserts a lien against a
11 vessel under another statute or the common law shall not also
12 assert a lien under this act for the same storage, labor, materi-
13 als, or supplies, or other charges or expenses related to the
14 vessel.

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

21 (13) Except as otherwise provided in this act, all notices
22 required by this act shall be mailed by registered or certified
23 mail, return receipt requested. Notices to a facility owner
24 shall be mailed to the owner's business address or to the address
25 of the owner's designated representative. Notices to a property
26 owner shall be mailed to the property owner at the property
27 owner's last known address as listed on the title, registration,

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1 or other marine documentation or as provided in the most recent
2 agreement concerning storage, labor, materials, or supplies
3 entered into between the facility owner and the property owner.
4 Notices to a lienholder of record shall be sent to the address of
5 the lienholder as listed on the title, registration, or other
6 marine documentation in the public filings that serve to perfect
7 the lienholder's interest in the property. Notices are consid-
8 ered delivered on the date the recipient of the notice signs the
9 return receipt or, if the notice is undeliverable, the date the
10 post office last attempts to deliver the notice.

11 (14) The facility owner may bid all or a portion of his or
12 her 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 at a sale conducted
15 pursuant to section 5.

16 Sec. 7. If a documented vessel is sold pursuant to this
17 act, the facility owner shall satisfy the United States coast
18 guard requirements for passage of title by operation of state law
19 under 46 C.F.R. 67.91 that include providing all of the
20 following:

21 (a) A copy of this act.

22 (b) An affidavit from the facility owner setting forth the
23 grounds for selling the property and the steps taken to comply
24 with this act.

25 (c) Evidence of substantial compliance with this act.

26 (d) A bill of sale in recordable form from the facility
27 owner as agent for the property owner.

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1 Sec. 8. A facility owner shall immediately cease
2 enforcement of actions brought under this act if either of the
3 following occurs:

4 (a) The property owner pays the facility owner the full
5 amount necessary to satisfy the lien or other amount that is
6 accepted by a facility owner as payment in full. At any time
7 before the conclusion of a sale conducted under this act, the
8 property owner may redeem the property by paying the full amount
9 necessary to satisfy the lien or other amount that is accepted by
10 a facility owner as payment in full.

11 (b) A person other than the facility owner who has a lien on
12 the property pays the facility owner the full amount necessary to
13 satisfy the facility owner's lien or other amount that is
14 accepted by a facility owner as payment in full. Upon payment by
15 a lienholder of record, the facility owner shall hold the prop-
16 erty for the benefit of and at the direction of that lienholder
17 and shall not deliver possession of the property to the property
18 owner. Unless the facility owner and the lienholder enter into a
19 new storage agreement, the lienholder shall arrange removal of
20 the property from the facility.

21 Sec. 9. If a provision of this act is inconsistent with a
22 provision of 1915 PA 312, MCL 570.301 to 570.303, then the provi-
23 sion of this act shall govern.