

SENATE 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.

**HB 4983, As Passed Senate, September 24, 1998**

House Bill No. 4983

2

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 or repair of boats, boat motors,  
7 boat cradles, 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, a register of deeds,  
16 or other public 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 possessory lien on prop-  
23 erty stored at that facility for storage, rent, labor, materials,  
24 supplies, and other charges and for expenses reasonably incurred  
25 in the sale of that property under this act. Except as provided  
26 in subsection (8), a lien on property under this section takes  
27 priority over any prior lien on the property unless the prior

**HB 4983, As Passed Senate, September 24, 1998**

House Bill No. 4983

3

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 is not more than 27 feet long,  
7 \$5,000.00 or 20% of the fair market value, whichever is less.

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

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

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

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

19 (3) The amount calculated under subsection (1) shall 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 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:

**HB 4983, As Passed Senate, September 24, 1998**

House Bill No. 4983

4

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 to a facility owner under this section  
6 shall be added to the amount of the lien of the prior lienholder  
7 who made the payment and shall be subtracted from the amount of  
8 the facility owner's lien.

9 (6) The facility owner's lien under this act is the only  
10 lien that a facility owner has on a vessel, unless the facility  
11 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, 46 U.S.C. 31301 to 31343. A facility owner  
16 is required to obtain an abstract of title from the United States  
17 coast guard for a vessel that is documented as that term is  
18 defined in chapter 301 of subtitle III of title 46 of the United  
19 States Code, 46 U.S.C. 30101.

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

**HB 4983, As Passed Senate, September 24, 1998**

House Bill No. 4983

5

1 (9) The lienholder shall arrange to remove the property from  
2 the facility upon the termination of a lien under this act unless  
3 the lienholder and the facility owner enter into a new storage  
4 agreement.

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

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

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

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

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

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

25 Sec. 5. (1) A facility owner shall enforce a lien created  
26 in this act only if the facility owner has notified the property

**HB 4983, As Passed Senate, September 24, 1998**

House Bill No. 4983

6

1 owner and all prior lienholders of the lien as required by  
2 section 4.

3 (2) If a property owner is in default for a period of more  
4 than 180 days, the facility owner may enforce the lien by selling  
5 the repaired or stored property at a commercially reasonable  
6 public sale. As used in this section, "commercially reasonable"  
7 means that term as defined in the uniform commercial code, 1962  
8 PA 174, MCL 440.1101 to 440.11102. The proceeds of the sale pur-  
9 suant to this section shall be applied in the following order:

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

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

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

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

20 (3) If, after satisfying the reasonable expenses of the sale  
21 and the lien under subsection (2), there is a dispute concerning  
22 the priority of record lienholders under subsection (2), the  
23 facility owner may hold the proceeds of the sale until the dis-  
24 pute is settled by the written agreement of the parties or until  
25 an order or final judgment is issued by a court of competent  
26 jurisdiction relative to the dispute. The facility owner may pay  
27 the proceeds of sale to a court with subject matter

**HB 4983, As Passed Senate, September 24, 1998**

House Bill No. 4983

7

1 jurisdiction. After a facility owner pays the proceeds to a  
2 court as described in this subsection, the facility owner shall  
3 be relieved of all further obligation concerning those proceeds.

4 (4) If proceeds of the sale pursuant to this section are not  
5 sufficient to satisfy the property owner's outstanding obliga-  
6 tions to the facility owner or any lienholder of record, the  
7 property owner remains liable to the facility owner or lienholder  
8 for the deficiency.

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

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

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

22 (ii) A statement of the facility owner's claim indicating  
23 the charges due on the date of the notice, the amount of any  
24 additional charges that will become due before the date of sale,  
25 and the date those additional charges will become due.

**HB 4983, As Passed Senate, September 24, 1998**

House Bill No. 4983

8

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

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

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

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

18       (6) At any time prior to the sale of property under this  
19 act, any lienholder may cure the default by paying the amount of  
20 the lien to the facility owner, which amount shall be added to  
21 the lien of the lienholder.

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

24       (8) A person who purchases property sold at a commercially  
25 reasonable sale pursuant to this act takes the property free and  
26 clear of the rights of the property owner and all lienholders of  
27 record.

**HB 4983, As Passed Senate, September 24, 1998**

House Bill No. 4983

9

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

3 (a) The facility owner's liability to a lienholder of record  
4 is limited to the net proceeds received from the sale of the  
5 property.

6 (b) The facility owner's liability to the property owner is  
7 limited to the net proceeds received from the sale of the prop-  
8 erty after payment in full of all lienholders of record.

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

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

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

26 (13) Except as otherwise provided in this act, all notices  
27 required by this act shall be mailed by registered or certified

**HB 4983, As Passed Senate, September 24, 1998**

House Bill No. 4983

10

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

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

18 Sec. 6. The secretary of state shall issue a new title or  
19 registration to the purchaser of property at a sale conducted  
20 pursuant to section 5.

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

26 (a) A copy of this act.

**HB 4983, As Passed Senate, September 24, 1998**

House Bill No. 4983

11

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

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

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

7 Sec. 8. A lien under this act shall terminate and a facil-  
8 ity owner shall immediately cease enforcement of actions brought  
9 under this act if either of the following occurs:

10 (a) The property owner pays the facility owner the full  
11 amount necessary to satisfy the lien or other amount that is  
12 accepted by a facility owner as payment in full. At any time  
13 before the conclusion of a sale conducted under this act, the  
14 property owner may redeem the property by paying the full amount  
15 necessary to satisfy the lien or other amount that is accepted by  
16 a facility owner as payment in full.

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

**HB 4983, As Passed Senate, September 24, 1998**

House Bill No. 4983

12

1       Sec. 9. If a provision of this act is inconsistent with a  
2 provision of 1915 PA 312, MCL 570.301 to 570.309, then the  
3 provision of this act shall govern.