

HOUSE BILL No. 4983

June 26, 1997, Introduced by Reps. Callahan, Kukuk and Hale and referred to the Committee on Marine Affairs and Port Development.

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

6 (b) "Facility" means a marina, boatyard, boat or yacht club,
7 or marine repair facility that provides, as part of its

1 commercial operation, for the storage of boats, boat motors, boat
2 cradles, or boat trailers.

3 (c) "Lienholder" or "lienholder of record" means a person
4 who claims an interest in or lien on the property pursuant to a
5 financing statement, title, registration, or other marine docu-
6 mentation filed with the secretary of state or other public
7 filing.

8 (d) "Person" means an individual, association, partnership,
9 limited liability company, corporation, boat or yacht club, gov-
10 ernmental entity, or other legal entity.

11 (e) "Property" means a boat, boat motor, boat cradle, or
12 boat trailer in storage at a facility.

13 Sec. 3. (1) A facility owner has a lien on property stored
14 at that facility for rent, labor, materials, supplies, or other
15 charges and for expenses reasonably incurred in the sale of that
16 property under this act.

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

25 Sec. 4. (1) A facility owner shall notify a property owner
26 of the lien created in this act before enforcing the lien. A

1 property owner is notified if either of the following has
2 occurred:

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

5 (b) The facility owner has mailed written notification of
6 the lien to the property owner.

7 (2) A facility owner who does not have a written storage
8 agreement that includes a notice of the lien created in this act
9 shall not initiate an enforcement action under section 5 until 30
10 days after the written notice of a lien required by subsection
11 (1)(b) is delivered to the property owner.

12 Sec. 5. (1) A facility owner shall enforce a lien created
13 in this act only if the facility owner has notified the property
14 owner of the lien as required by section 4.

15 (2) If a property owner is in default for a period of more
16 than 90 days, a facility owner may enforce a lien by selling the
17 stored property at a commercially reasonable public sale for
18 cash. As used in this section, "commercially reasonable" means
19 that term as defined in the uniform commercial code, 1962 PA 174,
20 MCL 440.1101 to 440.11102. The proceeds of the sale pursuant to
21 this section shall be applied in the following order:

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

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

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

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

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

11 (a) Mail a notice of default to the property owner. The
12 facility owner shall provide a copy of the notice of default to
13 each lienholder of record listed on the title, registration, or
14 other marine documentation. The notice of default shall include
15 all of the following:

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

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

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

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

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), publish an advertisement of the sale once a week
6 for 2 consecutive weeks in a newspaper of general circulation in
7 the area where the sale is to be held. The advertisement shall
8 include a general description of the property, the name of the
9 property owner, and the time and location of the sale. The date
10 of the sale shall be not less than 15 days after the date the
11 first advertisement of the sale is published.

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

14 (6) A person who purchases property sold at a commercially
15 reasonable sale pursuant to this act takes the property free and
16 clear of the rights of the property owner and all lienholders of
17 record.

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

20 (a) The facility owner's liability to a lienholder of record
21 is limited to the net proceeds received from the sale of the
22 property.

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

26 (8) A facility owner may deny a property owner who has been
27 notified under subsection (4) access to the storage facility,

1 except that the property owner is entitled to access to the
2 facility during normal business hours for the purpose of satisfy-
3 ing the lien or viewing and verifying the condition of the
4 property.

5 (9) Except as otherwise provided in this act, all notices
6 required by this act shall be mailed by registered or certified
7 mail, return receipt requested. Notices to a facility owner
8 shall be mailed to the owner's business address or to the address
9 of the owner's designated representative. Notices to a property
10 owner shall be mailed to the property owner at the property
11 owner's last known address as listed on the title, registration,
12 or other marine documentation. Notices to a lienholder of record
13 shall be sent to the address of the lienholder as listed on the
14 title, registration, or other marine documentation in the public
15 filings that serve to perfect the lienholder's interest in the
16 property. Notices are considered delivered on the date the
17 recipient of the notice signs the return receipt or, if the
18 notice is undeliverable, the date the post office last attempts
19 to deliver the notice.

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

23 Sec. 7. If a documented vessel is sold pursuant to this
24 act, the facility owner shall satisfy the United States coast
25 guard requirements for passage of title by extrajudicial repos-
26 session and sale in 46 C.F.R. 67.83 which include providing all
27 of the following:

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1 (a) A copy of the instrument under which the foreclosure was
2 made.

3 (b) An affidavit from the foreclosing party setting forth
4 the reasons for foreclosure, the chronology of foreclosure, the
5 statute or statutes under which foreclosure was made, and the
6 steps taken to comply with the relevant foreclosure instrument or
7 statutes.

8 (c) Evidence of substantial compliance with the relevant
9 foreclosure instrument or statutes.

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

12 Sec. 8. A facility owner shall cease enforcement of actions
13 brought under this act immediately if either of the following
14 occurs:

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

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

1 new storage agreement, the lienholder shall arrange removal of
2 the property from the facility.