

SENATE, No. 955

STATE OF NEW JERSEY
208th LEGISLATURE

INTRODUCED MARCH 26, 1998

Sponsored by:

Senator JOHN O. BENNETT

District 12 (Monmouth)

SYNOPSIS

Revises public sale provisions of Garage Keepers Lien Act.

CURRENT VERSION OF TEXT

As introduced.



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1 AN ACT concerning garage keeper liens and amending and repealing
2 various sections of the New Jersey Statutes.

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4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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7 1. N.J.S.2A:44-21 is amended to read as follows:

8 2A:44-21. A garage keeper who shall store, maintain, keep or
9 repair a motor vehicle or furnish gasoline, accessories or other
10 supplies therefor, at the request or with the consent of the owner or
11 his representative, shall have a lien upon the motor vehicle or any part
12 thereof for the sum due for such storing, maintaining, keeping or
13 repairing of such motor vehicle or for furnishing gasoline or other fuel,
14 accessories or other supplies therefor, and may, without process of
15 law, detain the same at any time it is lawfully in his possession until the
16 sum is paid. A motor vehicle is considered detained when the owner
17 or person entitled to possession of the motor vehicle is advised by the
18 garage keeper, by a writing sent by certified mail return receipt
19 requested to the address supplied by the owner or person entitled to
20 possession of the motor vehicle, that goods or services have been
21 supplied or performed, and that there is a sum due for those goods or
22 services.

23 The lien shall not be superior to, nor affect a lien, title or interest
24 of a person held by virtue of a prior conditional sale or a prior chattel
25 mortgage properly recorded or a prior security interest perfected in
26 accordance with chapter 9 of Title 12A of the New Jersey Statutes.
27 (cf: P.L.1961, c.121, s.4)

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29 2. N.J.S.2A:44-23 is amended to read as follows:

30 2A:44-23. The owner or the person entitled to the immediate
31 possession of the motor vehicle or part thereof so detained, may, on
32 learning of the detention of the same, immediately demand from the
33 garage keeper or the person in charge thereof, a statement of the true
34 amount claimed to be due for the storing, maintaining, keeping or
35 repairing of such motor vehicle, or for furnishing gasoline or other
36 fuel, accessories or other supplies therefor. If upon receiving such
37 statement he considers the amount thereof excessive, he may offer
38 what he considers to be reasonably due and demand possession of the
39 motor vehicle or part thereof so detained. If possession is refused, he
40 may **[obtain possession thereof by depositing the amount claimed in**
41 **the statement with the clerk of a court of competent jurisdiction in the**
42 **county where the motor vehicle or part thereof may be, together with**
43 **\$10 to cover the costs of court in]** immediately bring an action for

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 possession thereof in the Superior Court, Law Division, Special Civil
2 Part **【and \$50】** or in any other court. The owner or person entitled to
3 immediate possession thereof shall pay the appropriate court fees and
4 costs prior to the hearing; except that the owner or the person may
5 seek relief from the payment of court fees and costs as provided in the
6 Rules Governing the Courts of the State of New Jersey . The
7 application for the waiver of fees shall be determined prior to or in
8 conjunction with the summary hearing for possession of the motor
9 vehicle.

10 (cf: P.L.1991, c.91, s.92)

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12 3. N.J.S.2A:44-24 is amended to read as follows:

13 2A:44-24. When the amount **【claimed】** determined by the court to
14 be due to the garage keeper is paid in cash or by certified or cashier's
15 check to the garage keeper and the court costs, if any, are deposited
16 with the clerk of the court 【as provided in section 2A:44-23 of this
17 title,】 the 【claimant】 owner or person entitled to possession of the
18 motor vehicle or part thereof shall be entitled to possession of the
19 motor vehicle or part thereof, pursuant to process out of said court.

20 (cf: N.J.S.2A:44-24)

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22 4. N.J.S.2A:44-26 is amended to read as follows:

23 2A:44-26. **【The】** In an action brought for possession by the motor
24 vehicle owner or person entitled to possession of the motor vehicle,
25 the garage keeper shall assert his claim for a lien in the court 【within
26 the time and】 in the manner prescribed by the 【rules governing the
27 practice of the court】 Rules Governing the Courts of the State of New
28 Jersey. The court may hear and determine the matter in a summary
29 manner, and shall determine the amount due to the garage keeper, if
30 any, and the amount of court costs, if any, due to the court clerk. 【The
31 judgment, if any, may be satisfied out of the deposit made or an action
32 may be brought on the bond filed.】

33 (cf: N.J.S.2A:44-26)

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35 5. N.J.S.2A:44-27 is amended to read as follows:

36 2A:44-27. If **【no claim is made by the garage keeper, or if】**
37 judgment 【shall be】 is rendered for the 【defendant】 motor vehicle
38 owner or person entitled to possess in at the motor vehicle, the court
39 may 【order the return of the money deposited or the discharge of the
40 bond and may also】 fix and determine the amount of damages
41 suffered by the motor vehicle owner or person entitled to possession
42 of the motor vehicle for the seizure and detention of the motor vehicle
43 or part thereof, and render a judgment for such amount against the
44 garage keeper.

45 (cf: N.J.S.2A:44-27)

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1 6. N.J.S.2A:44-29 is amended to read as follows:

2 2A:44-29. If no proceedings are taken for the repossession of the
3 motor vehicle or part thereof by the motor vehicle owner or person
4 entitled to possession of the motor vehicle, such property so held by
5 the garage keeper shall, after the expiration of not less than 30 days
6 from the date of the detention, be sold at public auction, subject to any
7 prior lien, title or interest held by virtue of a prior conditional sale or
8 a prior chattel mortgage properly recorded. If an action has been
9 brought under N.J.S.2A:44-26 and the court has ordered payment of
10 money to the garage keeper, the garage keeper shall, upon payment to
11 the garage keeper in cash or by certified or cashier's check of the
12 amount ordered by the court, surrender the motor vehicle or part
13 thereof immediately. If the amount in the court order has not been
14 paid in accordance with this act within 15 days from the date of the
15 order, the property held by the garage keeper may then be sold at
16 public auction, subject to any prior lien, title or interest held by virtue
17 of a prior conditional sale or a prior chattel mortgage properly
18 recorded.

19 (cf: N.J.S.2A:44-29)

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21 7. N.J.S.2A:44-30 is amended to read as follows:

22 2A:44-30. Notice of the sale, under section 2A:44-29 of this title
23 shall be published for 2 weeks at least once in each week, in some
24 newspaper circulating in the municipality in which the garage is situate
25 and not less than 5 days' notice of such sale shall be given by posting
26 the notice **【in 5 public places in said municipality】** at the garage
27 keeper's place of business.

28 (cf: N.J.S.2A:49-30)

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30 8. N.J.S.2A:44-31 is amended to read as follows:

31 N.J.S.2A:44-31. The proceeds of the sale shall be applied to the
32 payment of the lien or the amount specified in the order of court and
33 the expenses of the sale. The balance, if any, shall be paid to the
34 owner of the motor vehicle, or part thereof. The balance, if not
35 claimed by the owner within 60 days after sale, shall be paid to the
36 municipality, in which the garage is situated, **【for the support of the**
37 **poor】** to provide financial support for social programs for the indigent.

38 (cf: N.J.S.2A:44-31)

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40 9. N.J.S.2A:44-25 and N.J.S.2A:44-28 are repealed.

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42 10. This act shall take effect immediately.

STATEMENT

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This bill revises the public sale provisions of the Garage Keepers Lien Act, N.J.S.A.2A:44-20 et seq. Currently, under the act, a motor vehicle owner who disputes a car repair bill can only regain possession of his car if he posts the full amount of the disputed bill or a double bond including court costs. In Whitmore v. New Jersey Division of Motor Vehicles, 137 N.J. Super. 492 (Ch. Div. 1975), the Superior Court concluded that this requirement violated the Fourteenth Amendment to the United States Constitution because it effectively denied indigent motor vehicle owners the constitutional right to a pre-sale judicial hearing.

This bill attempts to correct the constitutional infirmities of the Garage Keepers Lien Act by eliminating the requirement that a motor vehicle owner post the full amount of the disputed bill or a double bond before a pre-sale hearing. Under this bill, a motor vehicle owner would not need to post court costs to obtain a pre-sale hearing. If the owner demonstrated financial difficulty that prevented him from paying court fees and costs, the court could not assess those fees unless and until a hearing was held and a determination was made by the court that such costs should be paid. This hearing would occur either prior to or at the summary hearing in which the court determines what amount, if any, is due to the garage keeper.

Under the bill, if no court action is initiated by the owner, the motor vehicle could be sold at auction not less than 30 days after being detained. If the owner has initiated a court action, the motor vehicle could be sold at public auction not less than 15 days after entry of a court order specifying the amount due to the garage keeper. The bill also retains remedies for the vehicle owner if the garage owner wrongfully detains the vehicle.