

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2311 Session of
2012

INTRODUCED BY MILLER, CALTAGIRONE, CREIGHTON, DALEY, DENLINGER,
DePASQUALE, EVERETT, GILLESPIE, GINGRICH, HESS, MANN,
METZGAR, MILLARD, PICKETT, SCHRODER, SWANGER, TALLMAN, TAYLOR
AND VULAKOVICH, APRIL 16, 2012

REFERRED TO COMMITTEE ON JUDICIARY, APRIL 16, 2012

AN ACT

1 Establishing the requirements for livery and automobile service
2 providers' liens.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Pennsylvania
7 Livery and Automobile Service Providers Fair Lien Act.

8 Section 2. Definitions.

9 The following words and phrases when used in this act shall
10 have the meanings given to them in this section unless the
11 context clearly indicates otherwise:

12 "Automobile service provider." A person who owns or operates
13 a motor vehicle service station, garage or similar operation
14 engaging in the repairing, servicing, modifying or furnishing
15 supplies or accessories for motor vehicles or an accessory used
16 in the operation of a motor vehicle for price, fee or reward.

17 "Boarding stable owner." A person who owns or operates a

1 livery or other similar operation engaging in the sheltering,
2 boarding, keeping, grooming, care, exercising or feeding of
3 horses on behalf of horse owners for price, fee or reward.

4 "Department." The Department of Transportation of the
5 Commonwealth.

6 Section 3. Livery and automobile service providers' lien.

7 (a) Liens.--Any boarding stable owner or automobile service
8 provider who performs labor upon, boards, furnishes services,
9 supplies or provides materials for any horse or motor vehicle or
10 accessory thereof used in the riding of the horse or operation
11 of a motor vehicle, at the request or with the consent of the
12 owner, shall have a lien upon such horse, motor vehicle or
13 accessory and the right to detain the same to secure the payment
14 of such price or reward.

15 (b) Automobile attachment.--An automobile service provider's
16 lien attaches to a vehicle on the day the automobile service
17 provider performs the last labor, repair, service, modification
18 or furnishes the last supplies or materials for which the lien
19 is claimed against the vehicle or accessory.

20 (c) Horse attachment.--A boarding stable owner's lien
21 attaches to a horse on the day the horse is placed in his care
22 for boarding or such other labor by writing a statement of the
23 amount due him for the care of the horse and a description of
24 the horse on which the lien is claimed.

25 Section 4. Enforcement of lien.

26 (a) Sale.--If a lienholder is not paid the amount due for
27 which the lien is given within 30 days after demand has been
28 made in writing, then the lienholder may proceed to sell the
29 horse, motor vehicle or accessory, or so much thereof as may be
30 necessary, to satisfy the lien and costs of sale under section 5

1 if one of the following applies:

2 (1) An authorization to conduct a lien sale has been
3 issued under this section.

4 (2) A judgment has been entered in favor of the
5 lienholder on the claim which gave rise to the lien.

6 (3) The owners and any secured parties of record or
7 known lienholders of the property have signed, after the lien
8 has arisen, a release of any interest in the property. In the
9 case of motor vehicles, said release shall be in a form
10 prescribed by department regulation.

11 (b) Application.--A lienholder may apply to a magisterial
12 district judge or municipal court judge, whichever is
13 appropriate, in the county in which the lienholder's business
14 establishment is physically located for the issuance of an
15 authorization to conduct a lien sale under subsection (c). The
16 application shall be executed under penalty of perjury and shall
17 include all of the following:

18 (1) A description of the horse, motor vehicle or
19 accessory.

20 (2) The names and addresses of the owners of the horse,
21 motor vehicle or accessory and the names and addresses of any
22 other persons who the lienholder knows claim an interest in
23 the horse, motor vehicle or accessory.

24 (3) A statement of the amount of the lien and facts
25 concerning the claim which gives rise to the lien. If
26 compensation for storage is claimed, the per diem rate of
27 storage shall be shown.

28 (4) The date, time and place that the property will be
29 sold if the authorization to conduct a lien sale is issued.

30 (5) A statement that the lienholder has no information

1 or belief that there is a valid defense to the claim which
2 gives rise to the lien.

3 (c) Receipt.--Upon receipt of a lien sale application under
4 subsection (b), the magisterial district judge or municipal
5 court judge shall:

6 (1) Send notice of the filing of the lien sale
7 application within five business days following the receipt
8 of the application to all persons known to the lienholder
9 claiming an interest in the horse or accessory. In the case
10 of a motor vehicle, send notice of the filing of the lien
11 sale application within five business days following the
12 receipt of the application to the department, on a form
13 prescribed by the department, requesting a list of all
14 persons claiming an interest in the motor vehicle. The
15 department shall promptly respond to the request within ten
16 business days following receipt of notice from the
17 magisterial district judge or municipal court judge, a list
18 of the names and addresses of all persons possessing an
19 interest in the motor vehicle as provided on the
20 certification of title.

21 (2) Send notice and a copy of the application by
22 certified mail or registered mail, return receipt requested,
23 to each owner, person whose interest is duly noted on the
24 certification of title in the case of a motor vehicle and any
25 known lienholders and any other person whose name and address
26 are listed in the application. If the identity of a
27 registered owner or party with an interest cannot be
28 determined with reasonable certainty, section 6 shall have
29 the same effect as if notice were sent by certified or
30 registered mail. The notice shall include all the following:

1 (i) A statement that a lien sale application has
2 been made with the magisterial district judge or
3 municipal court judge for the issuance of an
4 authorization to conduct a lien sale.

5 (ii) A statement that the person has a legal right
6 to a hearing in court. If a hearing in court is desired,
7 the enclosed declaration under penalty of perjury must be
8 signed and returned and if the declaration is signed and
9 returned, the lienholder will be allowed to sell the
10 horse, motor vehicle or accessory only if he obtains a
11 judgment in court or obtains a release from the owners
12 and any known lienholders.

13 (iii) A statement that if the declaration is signed
14 and returned, a hearing will be promptly scheduled and
15 the owners may then appear to contest the claim of the
16 lienholder.

17 (iv) A statement of the date, time and place that
18 the property will be sold if the authorization to conduct
19 a lien sale is issued.

20 (v) A statement that the magisterial district judge
21 and municipal court judge will issue the authorization to
22 conduct a lien sale unless the person signs and returns,
23 within 20 days after the date on which the notice was
24 mailed, the enclosed declaration stating that the person
25 desires to contest the claim which gives rise to the
26 lien.

27 (vi) A statement that the person shall be liable for
28 costs if a judgment is entered in favor of the lienholder
29 on the claim which gives rise to the lien.

30 (vii) A declaration which shall be executed by the

1 person under penalty of perjury stating that he desires
2 to contest the claim which gives rise to the lien and
3 that he has a valid defense to the claim and he shall
4 furnish names and addresses where official notice may be
5 received of any person or persons including himself known
6 to claim an interest in the property on the hearing date.

7 (3) If a magisterial district judge or a municipal court
8 judge receives a declaration described in paragraph (2)(ii),
9 which is mailed within 20 days after the date upon which the
10 notice described in this subsection is mailed, the
11 magisterial district judge or a municipal court judge shall
12 notify the lienholder and owners and any other person listed
13 in the application or declaration of the hearing date unless
14 the owners of the property and any known lienholders have
15 signed, after the lien has arisen, a release of any interest
16 in the property in a form prescribed by the department in the
17 case of a motor vehicle or accessory. In any other case, the
18 magisterial district judge or a municipal court judge shall
19 issue an authorization to conduct a lien sale.

20 (4) In any hearing, the lienholder may have the amount
21 of the indebtedness and right to sale determined and the
22 person requesting the hearing may present and have determined
23 any defenses, setoffs, counterclaims, cross-claims or third-
24 party actions.

25 (5) Any fees shall be recoverable as a cost by the
26 lienholder if a sale is conducted.

27 (6) The form of the applications, notices and
28 declarations described in this section related to motor
29 vehicles shall be prescribed by the department.

30 Section 5. Release of owner's interest.

1 (a) Release.--An owner of property subject to a lien under
2 section 3 may release any interest in the property after the
3 lien has risen. The release shall be dated when signed and a
4 copy shall be given at the time the release is signed to the
5 person releasing the interest.

6 (b) Information.--The release shall contain all of the
7 following information:

8 (1) A description of the property sufficient to identify
9 it, including the horse or vehicle identification number if
10 applicable.

11 (2) The names and addresses of the owners.

12 (3) A statement of the amount of the lien and the facts
13 concerning the claim which gives rise to the lien.

14 (4) A statement that the person releasing the interest
15 understands that he has a legal right to a hearing in court
16 prior to any sale of the property to satisfy the lien and he
17 is giving up the right to appear to contest the claim of the
18 lienholder.

19 (5) A statement that the person releasing the interest
20 gives up any interest he may have in the property and he is
21 giving the lienholder permission to sell the property.

22 (6) A statement that there is no other person, persons
23 or lienholders who have an outstanding interest in the
24 property.

25 Section 6. Notice of lien sale, disposition of proceeds.

26 (a) Automobile sale notice.--In the case of a motor vehicle
27 or accessory, prior to any such sale the lienholder shall give
28 at least 15 days' notice of the sale by posting on the Internet
29 website established and maintained by the department for this
30 purpose.

1 (b) Horse sale notice.--In the case of a horse or accessory,
2 prior to any such sale the lienholder shall give at least 15
3 days' notice of the sale by posting notice of the sale in two
4 newspapers of general circulation within the county of the horse
5 owner's residence and the county of the boarding stable owner's
6 place of business.

7 (c) Proceeds.--The proceeds of the sale shall be applied to
8 the discharge of the lien and the cost of keeping and selling
9 the property. The balance, if any, of the proceeds of the sale
10 shall be deposited no later than ten days from the date of the
11 sale with the court to be applied by the magisterial district
12 judge or municipal court judge to the payment of any lien or
13 security interest to which the property may be subject in the
14 order of their priority, with any remaining proceeds to be paid
15 to the owner or owners of the property sold but, in case the
16 owner or owners cannot be found, the balance shall be turned
17 over no later than 60 days from the date of the sale, to the
18 State Treasurer, who shall create a special fund and who shall
19 pay to the owner the moneys left if a claim is made within one
20 year of the sale or deposit the moneys in the General Fund if no
21 claim is made within one year of the sale.

22 (d) Disposition filing.--In every lien sale involving a
23 motor vehicle authorized under this act, it shall be the duty of
24 the lienholder to complete and file with the magisterial
25 district judge or the municipal court judge an account of the
26 disposition of proceeds on a form prescribed by the department
27 within ten business days following the sale. No transfer of or
28 new certificate of title to the vehicle sold or salvage
29 certificate shall be issued by the department without proof of
30 the filing of the disposition of proceeds form with the

1 magisterial district judge or municipal court judge.

2 Section 7. Priority of lien.

3 All liens created under this act shall be superior to any
4 lien, title or interest of any person who has a security
5 interest by virtue of a conditional sale contract or a prior
6 perfected security interest in accordance with the laws of this
7 Commonwealth.

8 Section 8. Department.

9 The department shall exercise such powers and shall
10 promulgate regulations necessary for the administration and
11 enforcement of this act involving motor vehicles.

12 Section 9. Effective date.

13 This act shall take effect in 60 days.