

## **BILL ANALYSIS**

C.S.S.B. 543

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Licensing & Administrative Procedures  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The Texas Property Code provides requirements for possessory liens and for the sale of certain motor vehicles on which such a lien is recorded. Under current law, a worker's possessory lien (mechanic's lien) is superior to the lien of a dealer, who has true ownership of the property. Current law does not require a mechanic to file a work order nor does it require the mechanic to divulge certain information, including the physical location of the property. There have been a number of instances where fraudulent liens are filed, dealers are not notified of the liens, and the property is sold as a way of transferring title. In some cases, no work has been performed on the property and it is sold for a profit.

C.S.S.B. 543 excludes charges for repairs from the amount of the lien a garageman has on a motor vehicle, motorboat, vessel, or outboard motor left in the garageman's care. The bill requires certain holders of a worker's possessory lien to include specified information in the notice to a lienholder of record and to file a signed copy of the work order authorizing the repairs on the motor vehicle. The bill makes it a Class B misdemeanor to knowingly provide false or misleading information in the required notice.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Transportation Commission in SECTION 3 of this bill.

### **ANALYSIS**

C.S.S.B. 543 amends the Property Code to exclude charges for repairs from the amount of a lien a garageman has on a motor vehicle, motorboat, vessel, or outboard motor left in the garageman's care. The bill clarifies that a holder of a worker's possession lien who retains possession of a motor vehicle, motorboat, vessel, or outboard motor is required to give written notice to the owner and each holder of a lien recorded on the certificate of title not later than the 30th day after the date on which the charges accrue.

C.S.S.B. 543 requires a holder of a worker's possessory lien on a motor vehicle, other than a person licensed as a franchised dealer, to file a copy of the notice and all required information with the county tax assessor-collector's office in the county in which the repairs were made with an administrative fee of \$25 payable to the county tax assessor-collector. The bill requires a holder of such a lien, other than a person licensed as a franchised motor vehicle dealer, who is required to give notice to a lienholder of record when retaining possession of a motor vehicle for unpaid repairs to include in the notice the physical address of the real property at which the repairs were made; the legal name of the person holding the possessory lien; the taxpayer identification number or employer identification number, as applicable, of the holder of the possessory lien; and a signed copy of the work order authorizing the repairs. The bill specifies that if the holder of such a possessory lien required to give notice does not comply with these provisions, a lien recorded on the certificate of title of the motor vehicle is superior to the possessory lienholder's lien. The bill makes it a Class B misdemeanor offense to knowingly

provide false or misleading information in such a notice. The bill requires a holder of a worker's possessory lien on a motor vehicle, other than a person licensed as a franchised motor vehicle dealer, after providing the required notice, to make commercially reasonable efforts to allow an owner and each lienholder of record, on request and not later than the 30th day after the date on which the charges accrue, to inspect or arrange an inspection of the motor vehicle by a qualified professional to verify that the repairs were made. The bill requires the county tax assessor-collector not later than the 10th day after the date the county tax assessor-collector receives the notice, to provide a copy of the notice to the owner of the motor vehicle and each holder of a lien recorded on the certificate of title of the motor vehicle. The bill requires the county tax assessor-collector to provide the required notice in the same manner as a holder of a lien is required to provide a notice, except as otherwise specified.

C.S.S.B. 543 requires the Texas Transportation Commission to adopt rules necessary to carry out the duties of the Texas Department of Transportation as amended by these provisions.

### **EFFECTIVE DATE**

September 1, 2009.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.S.B. 543 clarifies provisions in the original by requiring a holder of a worker's possessory lien who retains possession of a motor vehicle, motorboat, vessel, or outboard motor to give the required notice not later than the 30th day after the date on which the charges accrue, rather than specifying that the requirement to give such notice applies to the holder of a lien who retains possession of the motor vehicle, motorboat, vessel, or outboard motor for 30 days after the day that the charges accrue.

C.S.S.B. 543 adds a provision not in the original requiring a holder of a worker's possessory lien on a motor vehicle, other than a person licensed as a franchised dealer, to file a copy of the notice and all required information with the county tax assessor-collector's office and establishing an administrative fee of \$25.

C.S.S.B. 543 removes language in the original applying the notification requirement to the holder of a possessory lien who is required to give notice to the owner of the vehicle. The substitute differs from the original by exempting a person licensed as a franchised dealer from the bill's requirements for the notice to the lienholder of record. The substitute adds provisions not in the original requiring the notice to include the physical address of the real property at which the repairs were made; the legal name of the person that holds the possessory lien; and that person's taxpayer identification number or employer identification number, as applicable. The bill removes language that applies its provisions to unpaid repairs on a motorboat, vessel, or outboard motor.

C.S.S.B. 543 adds provisions not in the original specifying that a lien recorded on the certificate of title of the motor vehicle is superior to a possessory lienholder's lien if the lienholder does not comply with notice requirements, and making it a Class B misdemeanor offense to knowingly provide false or misleading information in such a notice. The substitute adds a provision not in the original requiring a lienholder to make certain reasonable efforts to allow for the inspection of a motor vehicle to verify that repairs were made. The substitute adds provisions not in the original specifying the time by which the county tax assessor-collector is required to provide a copy of the notice, and requiring the tax assessor-collector to provide such notice in the same manner as a holder of a lien is required to provide a notice.

C.S.S.B. 543 removes provisions in the original authorizing a person who holds a worker's lien on a motor vehicle and who retains possession of the vehicle for a specified period of time to sell the vehicle after filing notice with the county assessor-collector of the county in which the motor

vehicle is located and paying an administrative fee, and if the county assessor-collector is unable to locate the last known registered owner or any lienholder of record of the vehicle. The substitute removes provisions in the original authorizing the owner or lienholder of record of such a vehicle to gain possession of the vehicle by paying all charges due to the person claiming the worker's lien. The substitute removes provisions in the original authorizing the owner or lienholder to file an objection to the worker's lien and establishing requirements for that process. The substitute removes provisions in the original requiring the county assessor-collector, on receipt of such an objection, to notify the Texas Department of Transportation of the objection, and requiring the department to place a hold on the motor vehicle record relating to the certificate of title for the motor vehicle on which the worker's lien is held and to continue the hold under for a specified time unless the owner or lienholder of record notifies the county assessor-collector and the department of a pending case regarding the validity of the worker's lien.

C.S.S.B. 543 differs from the original by requiring the Texas Transportation Commission to adopt rules necessary to carry out the department's duties under the bill's provisions, whereas the original applies that requirement to provisions relating to the sale of a motor vehicle by certain holders of a worker's lien.