

No. 12

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1st Session, 14th Legislature, Alberta  
8 Elizabeth II

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## **BILL 12**

A Bill to amend The Garagemen's Lien Act

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HON. MR. MANNING

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## **Explanatory Note**

**2.** The expression "motor vehicle" is defined at present in both this Act and The Vehicles and Highway Traffic Act. It is desired to have the meaning the same in both Acts. In The Vehicles and Highway Traffic Act "motor vehicle" means every vehicle propelled by any power, other than muscular power, except aircraft, tractors, whether equipped with rubber tires or not, traction engines and such motor vehicles as run on rails or tracks. Clause (b) of section 2 presently reads:

"2. In this Act,

.....

(b) "motor vehicle"

(i) means a vehicle propelled by any power other than muscular power, and

(ii) includes an aeroplane, but

(iii) does not include a tractor used for agricultural purposes or a motor vehicle that runs only on tracks or rails;"

**3.** Section 3 (3) is amended to include a reference to an agent. Section 3 (3) presently reads:

"(3) No garageman is entitled to a lien under this Act unless before surrendering possession of the motor vehicle he obtains from the person who authorized the storage, repair or maintenance, or who ordered that accessories be furnished for it, an acknowledgment of indebtedness by requiring that person to sign an invoice or other statement of account."

**4.** Section 4, subsection (3) presently reads:

"(3) The registration clerk shall cause an alphabetical index to be kept of all claims of lien filed with him according to the maker of the motor vehicle and setting out the model, year, serial number and engine number of the motor vehicle to which the claim relates, and shall cause to be endorsed upon each claim received by him the time and date of its receipt."

**5.** This subsection is intended to remove an uncertainty presently existing in the case of seizures under one lien by a person who may have several liens on the same vehicle.

# BILL

No. 12 of 1960

An Act to amend The Garagemen's Lien Act

(Assented to \_\_\_\_\_, 1960)

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

**1.** *The Garagemen's Lien Act*, being chapter 128 of the Revised Statutes, is hereby amended.

**2.** Section 2 is amended by striking out clause (b) and by substituting the following:

(b) "motor vehicle" has the same meaning as is given that term under *The Vehicles and Highway Traffic Act*;

**3.** Section 3 is amended by striking out subsection (3) and by substituting the following:

(3) No garageman is entitled to a lien under this Act unless before surrendering possession of the motor vehicle he obtains from

(a) the person who authorized the storage, repair or maintenance, or his duly authorized agent, or

(b) the person who ordered that accessories be furnished for the motor vehicle, or his duly authorized agent,

an acknowledgment of indebtedness by requiring that person or his agent to sign an invoice or other statement of account.

**4.** Section 4, subsection (3) is amended by striking out the words "serial number and engine number" and by substituting the words "and serial number".

**5.** Section 6 is amended

(a) by renumbering the present section as subsection (1),

(b) by adding immediately after the renumbered subsection (1) the following subsection:

(2) If at any one time a person has more than one lien under this Act on the same motor vehicle, seizure of the motor vehicle under any one of the liens constitutes a seizure in respect of all of the liens of that person on the motor vehicle.

**6. Section 7 presently reads:**

"7. Upon the filing of a claim of lien pursuant to this Act the lien continues for a further period of ninety days from the date of filing and determines upon the expiration of that period unless a warrant addressed to the sheriff of the Supreme Court of Alberta for the judicial district in which the motor vehicle subject to the lien is for the time being, and directing the sheriff to seize the motor vehicle and return the same to the garageman, is issued and delivered to the sheriff."

and see note to clause 8 hereafter.

**7. Section 8 presently reads:**

"8. (1) The sheriff shall seize or cause to be seized the motor vehicle in respect of which the warrant was issued if it is found anywhere in the judicial district for which the sheriff is appointed, and thereafter, upon being paid the amount of the proper fees payable in respect of the warrant and seizure, shall deliver it or cause it to be delivered to the garageman or his agent at the place at which the motor vehicle is to be kept under seizure in the judicial district in which the seizure was made.

(2) The warrant expires and the lien determines six months after the issuing of the warrant unless a judge otherwise orders, in which case the warrant and lien expire and determine upon the day specified in the order."

and see note to clause 8 hereafter.

**8. This clause and clauses 6 and 7 are intended to change the manner of enforcing liens under this Act from the special procedure of this Act and The Possessory Liens Act, as heretofore, to the general and more common procedure of The Seizures Act. Section 9 presently reads:**

"9. Upon the delivery of a motor vehicle so seized to the garageman, the garageman

- (a) has the same rights and remedies for enforcing his lien against the motor vehicle as if he then had a possessory lien for the same amount, and
- (b) may enforce the lien in the manner prescribed in The Possessory Liens Act in the case of a possessory lien."

Subsection (2) so far as the garageman is concerned preserves his priority to the proceeds of sale, but thereafter The Seizures Act applies.

**9. Self-explanatory.**

**6.** Section 7 is struck out and the following is substituted:

**7.** (1) Upon the filing of a claim of lien pursuant to this Act, the lien continues for a further period of six months from the date of filing.

(2) A lien determines upon the expiry of six months from the date of filing thereof unless, within the period of six months,

(a) there is issued and delivered to the sheriff a true copy of the lien and a warrant in Form C in the Schedule, addressed to the sheriff of the judicial district in which the motor vehicle that is subject to the lien is for the time being and directing the sheriff to seize the motor vehicle in accordance with the requirements of *The Seizures Act*, and

(b) seizure of the motor vehicle that is subject to the lien has been effected.

**7.** Section 8 is struck out and the following is substituted:

**8.** The sheriff shall, in accordance with *The Seizures Act*, seize or cause to be seized the motor vehicle in respect of which the warrant was issued if it is found anywhere within the judicial district for which the sheriff is appointed.

**8.** Section 9 is struck out and the following section is substituted:

**9.** (1) Upon a seizure of a motor vehicle pursuant to this Act, *The Seizures Act*, except where expressly otherwise provided in this Act, governs and applies to the seizure, and the lienholder shall, subject to subsection (2), enforce his rights and remedies under this Act in accordance with the provisions of that Act.

(2) The proceeds of the sale shall be applied first in payment of the expenses of the sale and then in payment of the lienholder's debt, and thereafter payment out of the balance, if any, shall be governed by the provisions of *The Seizures Act* respecting the payments of a surplus remaining after distraint under that Act.

**9.** The following new section is added immediately after section 9:

**9a.** Where forms are prescribed by this Act, a substantial compliance with the requirements of the form is sufficient and a lien is not invalidated by a failure to comply strictly with the requirements of the prescribed form unless any person having an interest in the subject matter of the lien is prejudiced thereby.

**10.** Authorizes the making of regulations regarding the matters herein set out.

**11. (a)** Forms A and B revised. The Forms presently read as relevant:

**"FORM A**

.....  
A.B. .... of .....  
(Name of Claimant) (Address of Claimant)  
carrying on the business of a garageman at.....  
(Give address)  
pursuant to The Garagemen's Lien Act, claims a lien upon a certain vehicle (here set out the licence number, if any, of the vehicle and the make, style, year and model thereof and the serial number of the vehicle and its engine) in respect of (insert here particulars of the storage, repair, maintenance or accessories in respect of which the lien is claimed, the date upon which the storage terminated or the motor vehicle was last serviced or the repairs were completed, as the case may be) ..... of .....  
(name) (address)  
who authorized the storage, repairs, maintenance or furnishing of accessories, for which a lien in the sum of \$..... is claimed, has acknowledged indebtedness to me for the amount claimed by signing an invoice or other statement of account.  
The address for service of the claimant is ....."

**"FORM B**

.....  
I, ....., named in the above or annexed claim, make oath and say that the statements set out in the said claim are true and that I have full knowledge of the facts.  
....."

(b) Prescribes a form of warrant for use under this Act.

This Act comes into force on the 1st day of July, 1960, by virtue of The Statutes Act (R.S.A. 1955, chapter 320, section 4(4)).

**10. Section 10 is amended**

- (a) by renumbering the present section as subsection (1),
- (b) by adding immediately after the renumbered subsection (1) the following subsection:

(2) The Lieutenant Governor in Council may by regulation prescribe forms for use under this Act and make rules governing the manner of issuing, delivering or filing warrants or other documents with sheriffs.

**11. The Schedule is amended**

- (a) by striking out Forms A and B and by substituting the following:

FORM A  
(Section 4)  
CLAIM OF LIEN

A.B. .... of .....  
(name of claimant) (address of claimant)  
carrying on the business of a garageman at .....  
..... pursuant to *The Garagemen's*  
(give address)

*Lien Act*, claims a lien upon a certain vehicle  
(here set out the licence number, if any, of the  
vehicle, and the make, style, year and model there-  
of and the serial number of the vehicle) in respect  
of (the storage, repair, maintenance and accessories,  
or any of them, as the case may be,) shown on the  
attached invoice or statement of account, together  
with the dates thereof, of ..... of  
(name)

....., who authorized the (storage,  
(address)  
repair, maintenance or furnishing of accessories,  
as the case may be,) for which a lien in the sum of  
\$..... is claimed has (himself or by his  
authorized agent) acknowledged indebtedness to  
me for the amount claimed by signing an invoice  
or other statement of account.

The address for service of the claimant is .....

Dated at ..... this ..... day of  
....., 19.....

.....  
(Signature of claimant or his agent)

FORM B  
(Section 4)  
AFFIDAVIT VERIFYING CLAIM

I, ....., named in the  
above or annexed claim, make oath and say that to





the best of my knowledge, information and belief  
the statements set out in the said claim are true.

Sworn before me at.....  
in the Province of.....  
this ..... day of.....  
19.....

Commissioner for Oaths  
(or as the case may be)

- (b) by adding immediately after Form B the following  
new form:

**FORM C**  
(Section 7)

**WARRANT**

*The Garagemen's Lien Act*

(Chapter 128 Revised Statutes)

TO THE SHERIFF

Judicial District of....., my bailiff in  
this behalf.

You are hereby requested and authorized to  
seize a certain motor vehicle described as follows:

Make                      Model  
Year                      Licence Number  
Serial number

the property of..... of..... in  
the Province of Alberta and now in the possession  
of..... at..... Alberta, which said  
motor vehicle is subject to a certain garageman's  
lien filed with the Registration Clerk for the Motor  
Vehicle Branch on the..... day of.....  
A.D. 19....., at..... o'clock for repairs,  
maintenance of or the furnishing of accessories for  
the said motor vehicle, (a true copy of such lien  
being hereunto attached) to realize the sum of  
..... dollars and costs.

I hereby indemnify the said sheriff for his  
fees, charges, and expenses and any claims for  
damages in respect of the seizure of the said motor  
vehicle and any thing done in relation thereto.

Dated at....., Alberta, this  
..... day of....., A.D. 19.....

.....  
(Signature)

Name and address of Garageman

.....  
(Witness)

No. 12

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FIRST SESSION

FOURTEENTH LEGISLATURE

8 ELIZABETH II

1960

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## BILL

An Act to amend The Garagemen's  
Lien Act

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Received and read the

First time.....

Second time.....

Third time.....

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HON. MR. MANNING

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