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BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 3. PROFESSIONS AND VOCATIONS GENERALLY [5000 - 9998.11] (*Heading of Division 3 added by Stats. 1939, Ch. 30.*)

CHAPTER 19.5. Aircraft Repair [9790 - 9798.4] (*Chapter 19.5 repealed and added by Stats. 1992, Ch. 1001, Sec. 2.*)

9790. As used in this chapter, the following definitions apply:

- (a) To the extent applicable, the definitions which are now or may hereafter be set forth in Section 1301 of Title 49 of the United States Code are incorporated herein by reference.
- (b) To the extent applicable, the definitions which are now or may hereafter be set forth in Sections 1.1, and 1.2 of Part 1 of Title 14 of the Code of Federal Regulations, are incorporated herein by reference.
- (c) To the extent applicable, the definitions which are now or may hereafter be set forth in Chapter 2 (commencing with Section 1201) of Division 1 of the Commercial Code are incorporated herein by reference.
- (d) "General aviation" means all aviation with the exception of air carrier and military aviation.
- (e) "Repairperson" means any person engaged in the business of repairing general aviation aircraft.
- (f) "Customer" means any person who requests a repairperson to do work on a general aviation aircraft which is in the possession of that person.
- (g) "Certificated repair station" means a person or business entity which is the duly authorized holder of a Federal Aviation Administration certificated repair station designation pursuant to the provisions of Part 145 of Title 14 of the Code of Federal Regulations. A certificated repair station is a subcategory of a "repairperson."
- (h) "Certificated mechanic" means an individual person who is the duly authorized holder of a Federal Aviation Administration Mechanic Certificate, with either an "Airframe," a "Powerplant," or an "Inspection Authorization" rating, which has been issued to that person pursuant to the provisions of Part 65 of Title 14 of the Code of Federal Regulations. A certificated mechanic is a subcategory of a "repairperson."
- (i) "Fixed base operator" means a person or business entity which is the duly authorized holder of a business license issued by all applicable state or local governmental entities, to engage in the business of providing fuel, oil, storage, parking, cleaning, and other products and services for use in general aviation aircraft, or by customers utilizing general aviation aircraft. A fixed-base operator is a subcategory of a "repairperson."
- (j) A "noncertificated repairperson" means a repairperson that is not a certificated repair station, a certificated mechanic, nor a fixed-base operator. A noncertificated repairperson is a subcategory of a "repairperson."
- (k) The "FAA Aircraft Registry" means that particular system for the recording of conveyances and other documents which affect the title to, or any interest in, civil aircraft of the United States, which was originally created pursuant to Section 503 of the Federal Aviation Act of 1958 as set forth in Section 1403 of Title 49 of the United States Code and which is more specifically identified in Section 49.11 of Title 14 of the Code of Federal Regulations as:

FAA Aircraft Registry
Department of Transportation
P.O. Box 25504
Oklahoma City, OK 73125
or delivered to the Registry at:
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

(*Repealed and added by Stats. 1992, Ch. 1001, Sec. 2. Effective January 1, 1993.*)

9791. This chapter applies only to work done on a general aviation aircraft with either an estimated cost or an actual cost of one hundred dollars (\$100) or more.

(Repealed and added by Stats. 1992, Ch. 1001, Sec. 2. Effective January 1, 1993.)

9792. (a) It is the public policy of this state that parties to all business transactions, including those transactions which are the subject of this chapter, exhibit mutual financial responsibility with respect to one another. Accordingly, the existence of liens, the concurrence of liens, and the priorities of liens subject to this chapter are determined so as to implement this public policy.

(b) In addition, it is the public policy of this state that all persons engaged in the business of aviation be subject to the highest level of certification by the Federal Aviation Administration of the United States of America (hereafter "the FAA") available to those persons, and further, that these certificated persons be subject to the highest level of FAA surveillance activities and enforcement proceedings. This certification and surveillance contributes substantially towards the protection of the public by attempting to assure continued and ongoing compliance with all applicable FAA standards and certification criteria. Accordingly, the existence of liens, concurrence of liens, and priorities of liens as set forth in this chapter are determined so as to implement this public policy.

(Repealed and added by Stats. 1992, Ch. 1001, Sec. 2. Effective January 1, 1993.)

9793. No repairperson shall commence work for compensation without specific authorization from the customer or his or her agent, in accordance with all of the following requirements:

(a) The repairperson shall give to the customer either of the following:

(1) A written estimated price for labor and parts for a specific job.

(2) A written estimate of the maximum cost for a specific job that does not differentiate between labor and parts, but which shall not be exceeded by the actual cost of the job, including labor and parts.

No work shall be done or parts supplied in excess of, or different from, the original written estimate without the separate oral or written consent of the customer. If the consent is oral, the repairperson shall make a notation on the work order and on the invoice of the date, time, name of person authorizing the additional work or change in work, and the telephone number called, if any, together with a specification of the additional parts and labor and the total additional cost.

(b) If it is necessary to disassemble a general aviation aircraft or its component in order to prepare a written estimated price for required work, the repairperson shall first give the customer a written estimated price for the disassembly and reassembly. The estimate shall also include the cost of parts and necessary labor to replace items such as gaskets and seals that are normally destroyed by disassembling the component. If the disassembling might prevent the restoration of the component to its former condition, the repairperson shall write that information on the work order containing the estimate before the work order is signed by the customer.

The repairperson shall inform the customer orally, and conspicuously in writing on the work order, of the maximum time it will take the repairperson to reassemble the aircraft or its component if the customer elects not to proceed with the work. The repairperson shall not charge the customer for more time than the specified maximum time if the customer elects not to proceed with the work.

(Amended by Stats. 1993, Ch. 589, Sec. 14. Effective January 1, 1994.)

9794. Any repairperson who gives an original estimate in good faith, shall not be obligated to complete a job within the quoted or written estimated price if additional, unforeseen work is necessary to complete the job and the customer refuses to consent to payment for the cost of that additional work.

(Repealed and added by Stats. 1992, Ch. 1001, Sec. 2. Effective January 1, 1993.)

9795. All work done by a repairperson, including all warranty work, shall be recorded on an invoice and shall describe all work done and parts supplied.

Work and parts shall be listed separately on the invoice, which shall also state separately the subtotal prices for work and for parts, not including sales tax, and shall state separately the sales tax, if any, applicable to each.

If any used, rebuilt, or reconditioned parts are supplied, the invoice shall clearly state that fact. If a part of a component system is composed of new and used, rebuilt, or reconditioned parts, the invoice shall clearly state that fact.

One copy of the invoice shall be given to the customer and one copy shall be retained by the repairperson.

(Repealed and added by Stats. 1992, Ch. 1001, Sec. 2. Effective January 1, 1993.)

9796. The invoice shall show the repairperson's business name and address.

If the repairperson's telephone number is on the invoice, it shall be the telephone number that appears in any advertisement or on an advertising sign, and shall be the same number as that listed for the repairperson's firm name and address in the telephone directory, or on the telephone company records if the number is assigned to the repairperson subsequent to the publication of the telephone directory.

(Repealed and added by Stats. 1992, Ch. 1001, Sec. 2. Effective January 1, 1993.)

9797. Notwithstanding any provision to the contrary, upon authorization from the customer as to a specific job, a repairperson may work on an aircraft on a time and materials basis.

(Repealed and added by Stats. 1992, Ch. 1001, Sec. 2. Effective January 1, 1993.)

9798. (a) Sections 9793, 9794, 9795, and 9796 of this chapter shall not apply to services provided to a general aviation aircraft in distress which is in need of immediate work critical to its preservation and safety, for which consent cannot be expeditiously obtained. In all such instances, the work performed shall be done on a time and material basis, notwithstanding the absence of consent by the customer.

(b) In all instances in which the provisions of subdivision (a) are applicable, Sections 9798.1, 9798.2, 9798.3, and 9798.4 shall also be applicable.

(Repealed and added by Stats. 1992, Ch. 1001, Sec. 2. Effective January 1, 1993.)

9798.1. (a) Subject to the provisions set forth in this chapter, each repairperson shall have a special lien pursuant to Sections 2872 and 2875 of the Civil Code, upon the civil aircraft, engine, or aircraft appliance upon which the repairperson has bestowed labor or furnished material. The special lien shall be in an amount equal to the agreed upon value of the labor and material furnished, or in the absence of any agreement, for the reasonable value thereof.

(b) The statutory lien created pursuant to subdivision (a) is applicable to any civil aircraft engine, aircraft propeller, or aircraft appliance which is capable of having the ownership, or an interest in the ownership, affected by a conveyance, recorded at the FAA Aircraft Registry.

(c) The statutory lien created pursuant to subdivision (a) is not dependent upon possession by the repairperson of the property which is subject to the lien.

(d) The statutory lien created pursuant to subdivision (a) is dependent upon the recordation of the lien at the FAA Aircraft Registry in accordance with Section 9798.2.

(e) The statutory lien created pursuant to subdivision (a) is created by written contract between the parties but only if the written contract is signed by the customer, and predates the commencement of work for which the lien is applicable.

(f) The statutory lien created pursuant to subdivision (a) is in addition to the statutory lien created pursuant to Section 3051 of the Civil Code if:

(1) The repairperson is a certificated repair station.

(2) The repairperson is a certificated mechanic.

(3) The repairperson is a fixed-base operator.

(g) The statutory lien created pursuant to subdivision (a) is in addition to the statutory lien created pursuant to Chapter 5 (commencing with Section 1208.61) of Title 4 of Part 3 of the Code of Civil Procedure if:

(1) The repairperson is a certificated repair station.

(2) The repairperson is a certificated mechanic.

(3) The repairperson is a fixed-base operator.

(h) The statutory lien created pursuant to subdivision (a) shall not exist unless the repairperson has complied with all provisions of Sections 9793, 9794, 9795, 9796, 9797, and 9798.

(i) The statutory lien created pursuant to subdivision (a) shall not exist unless the repairperson complies with either of the following:

(1) The repairperson is insured pursuant to a policy of liability insurance predating the commencement of work for which the lien is applicable, which was applicable and in full force and effect, and contained no policy defenses with respect to the work for which the lien is applicable.

(2) The repairperson is the duly authorized holder of a written surety bond predating the commencement of the work for which the lien is applicable, which obligates the surety to satisfy any and all valid legal claims which may be asserted against the repairperson by the customer in an amount up to and including the value of the property to which the lien applies.

(j) Any statutory lien pursuant to Section 3051 of the Civil Code, and any statutory lien pursuant to Chapter 5 (commencing with Section 1208.61) of Title 4 of Part 3 of the Code of Civil Procedure, and any lien created by the written agreement of the parties pursuant to Section 2884 of the Civil Code, in addition to being dependent upon possession, shall be subject to the applicability of the Commercial Code and "financing statements" as described in Division 9 (commencing with Section 9101) of the Commercial Code may be filed in accordance with the provisions of the Commercial Code.

(Added by Stats. 1992, Ch. 1001, Sec. 2. Effective January 1, 1993.)

9798.2. (a) The statutory lien created pursuant to subdivision (a) of Section 9798.1 is not valid unless and until it is recorded with the FAA Aircraft Registry in the manner and in the form generally required for the "Recording of Aircraft Titles and Security Documents" pursuant to Part 49 of Title 14 of the Code of Federal Regulations.

(b) In addition to any requirements set forth in Part 49 of Title 14 of the Code of Federal Regulations, the statutory lien created pursuant to subdivision (a) of Section 9798.1 is valid upon recordation by the FAA Aircraft Registry of a written document entitled "NOTICE OF LIEN (PURSUANT TO CHAPTER 19.5 OF THE CALIFORNIA BUSINESS AND PROFESSIONS CODE)." This document shall be:

(1) Signed by the repairperson or by a duly authorized agent or attorney of the repairperson.

(2) Verified by the person signing the notice of lien upon that person's personal knowledge of the matters stated in the notice of lien, and which shall affirmatively state: "Except as to those matters asserted as being upon my information and belief, I declare under penalty of perjury in accordance with the laws of the State of California and of the laws of the United States of America that the matters stated herein are true and correct; and, as to those matters asserted as being upon my information and belief, I declare under penalty of perjury in accordance with the laws of the State of California and of the United States of America that, upon reasonable inquiry, I honestly and genuinely believe these matters to be true as stated."

(3) Contain the date, time, and place of signing of the notice of lien.

(c) The notice of lien referred to in subdivision (b) shall contain the following information:

(1) The United States Registration Number, make, model, and serial number of the aircraft subject to the lien.

(2) The name of the manufacturer, the model, and the serial number of all applicable engines, propellers, or appliances subject to the lien, to the extent they are not otherwise identifiable merely by reference to the Aircraft Registration Number.

(3) The name, address, and business telephone number of the repairperson asserting the lien.

(4) The name, address, and business telephone number of the registered owner of the civil aircraft or other property subject to the lien.

(5) The name, address, and business telephone number of the person consenting to the performance of the work giving rise to the lien.

(6) The amount of the lien, exclusive of prospective storage costs.

(7) A narrative statement describing the nature of the work accomplished.

(8) The affirmative statement that a copy of the notice of lien is concurrently being sent by United States mail, certified, return receipt requested with postage fully prepaid thereon, or by other comparable or more expeditious delivery services, to both the registered owner and to the person consenting to the work.

(9) The date of last services or materials provided.

(d) No notice of lien pursuant to subdivision (b) is valid unless it is presented for recording at the FAA Registry within 180 days of the completion of the work giving rise to the lien.

(Added by Stats. 1992, Ch. 1001, Sec. 2. Effective January 1, 1993.)

9798.3. (a) Any repairperson having perfected his or her statutory lien pursuant to Section 9798.2 shall be entitled to the ex parte issuance of an order to show cause why the aircraft or other property should not be sold at auction. The order to show cause shall be issued by the Superior Court of the State of California upon the filing in the superior court of a verified application for ex parte order to show cause why the aircraft or other property should not be sold at auction, which sets forth a true copy of the notice of lien described in Section 9798.2. The order to show cause shall set a hearing date not less than 20 days after the date of the order, upon which the customer, the registered owner, or any other person having an interest therein may present evidence to the court, by way of declarations under penalty of perjury, or oral testimony as may be authorized by the court, as to any reason why the aircraft or other property subject to the lien should not be sold at auction in accordance with the provisions pertaining to the enforcement of judgments generally within this state.

(b) The order to show cause shall be personally served upon the registered owner, the customer, and any other person then known to the repairperson to have an interest in the aircraft or other property subject to the lien within five days of the date of issuance of the order to show cause; and concurrent with all attempts to obtain personal service, a copy of the order to show cause shall be sent by United States mail, certified, return receipts requested, to each customer, the registered owner, and any other person or entity then known to the repair person to have an interest in the aircraft or other property subject to the lien or any other person who has registered a lien upon, conveyance of, or other interest in, the aircraft or other property subject to the lien with the FAA Aircraft Registry.

(c) At the hearing, the court shall have in rem jurisdiction with respect to the aircraft or other property subject to the lien, and shall have personal jurisdiction over all persons or entities appearing at the hearing, and may make orders and enter judgments in accordance with applicable law.

(d) The registered owner or customer of the aircraft or other property subject to the lien shall have a right of redemption in the full amount of all amounts due to the repairperson, to be paid in cash, or in the equivalent, to the repairperson at any time up to, but not including, the entering of any judgment affecting the title to the aircraft or other property subject to the lien.

(e) Any judgment entered by the court shall be deemed to be a "conveyance" within the meaning of subdivision (17) of Section 1301 of Title 49 of the United States Code, and shall be recordable at the FAA Aircraft Registry pursuant to Section 49.17 of Title 14 of the Code of Federal Regulations.

(f) Upon payment to the repairperson by or on behalf of the registered owner of the aircraft or other property subject to the lien, or by the customer, the repairperson shall cause to be filed with the FAA Aircraft Registry a notice of cancellation of lien. The filing of the notice of cancellation of lien shall terminate all interest of the repairperson that was otherwise subject to the notice of lien.

(g) In any action for the enforcement of the statutory lien provided by this chapter, the prevailing party or parties shall be entitled to recover from the nonprevailing party or parties such costs of suit and attorney fees as may be deemed by the court, in its discretion, to be just and reasonable.

(Added by Stats. 1992, Ch. 1001, Sec. 2. Effective January 1, 1993.)

9798.4. (a) The priority of liens set forth in this section supersedes the priority otherwise set forth in Section 2897 of the Civil Code.

(b) The time of creation of the lien shall be the time that the FAA Aircraft Registry actually records the notice of lien described in Section 9798.2.

(c) With respect to the subcategory of "repairpersons" as described in Section 9790, as between lien claimants of equal subcategory, different liens upon the same property have priority according to the time of their creation.

(d) With respect to the subcategories of "repairperson" as described in Section 9790 as between different liens upon the same property which are created within 30 days of one another:

(1) The lien of a certificated repair station has priority over the liens of all other repairpersons.

(2) The lien of a certificated mechanic has priority over the liens of all other repairpersons other than certificated repair stations.

(3) The liens of a fixed-base operator have priority over all other repairpersons other than certificated repair stations and certificated mechanics.

(Added by Stats. 1992, Ch. 1001, Sec. 2. Effective January 1, 1993.)