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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

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A N A C T

RELATING TO PROPERTY -- DRY DOCK FACILITIES

Introduced By: Senators Felag, Euer, DiPalma, Sosnowski, and Miller

Date Introduced: February 25, 2021

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 34-46-2, 34-46-3, 34-46-4, 34-46-5 and 34-46-6 of the General
2 Laws in Chapter 34-46 entitled "Dry Dock Facilities" are hereby amended to read as follows:

3 **34-46-2. Definitions.**

4 As used in this chapter, the following words shall have the following meanings unless the
5 context clearly indicates otherwise:

6 (1) "Default" means the failure to pay obligations incurred by the storage and/or ownership
7 of a vessel.

8 (2) "Dry dock" means any space and/or real property designed and/or used for the purpose
9 of renting or leasing storage space for vessels.

10 (3) "Facility" means a marina, boatyard, or marine repair facility that provides, as part of
11 its commercial operation, the storage of vessels.

12 (4) "Last known address" means that address provided by the owner in the latest ~~rental~~
13 storage agreement or the address provided by the owner in a subsequent notice of a change of
14 address.

15 (5) "Lien holder" means a person holding a security interest and such persons identity and
16 address of record shall be provided by the department of environmental management (DEM) to the
17 facility operator upon written request.

18 (6) "Operator" means the proprietor, operator, lessor, or sublessor of a dry dock facility,
19 his or her agent, or any other person authorized by him or her to manage the facility or to receive

1 rent from the owner under a rental agreement.

2 (7) "Owner" means a person, other than a lienholder, having a property interest in or title
3 to a vessel. The term includes a person entitled to use or have possession of a vessel subject to an
4 interest in another person, reserved, or created by agreement and securing payment or performance
5 of an obligation, but it does not include a lessee under a lease not intended as security.

6 (8) ~~"Personal property" means movable property not affixed to land and includes, but is~~
7 ~~not limited to equipment, goods, furniture, and household items whether affixed to the vessel or~~
8 ~~not.~~

9 (9) "~~Rental~~ Storage agreement" means any written agreement or lease that establishes or
10 modifies the terms, conditions, rules, or any other provisions concerning the storage of a vessel in
11 a dry dock facility.

12 (10) "Vessel" means every description of watercraft used or capable of being used as a
13 means of transportation on water and any personal property located thereon and shall include its
14 appurtenances, engines, tackle, sails, generators, electronics, gear, bunkers, stands and contents.

15 **34-46-3. Lien.**

16 (a) Lien created. A facility operator has a lien on a vessel stored or located at that facility
17 for storage charges, labor, or other charges and for expenses reasonably incurred in the sale of that
18 vessel under the provisions of this chapter including, but not limited to, reasonable attorneys' fees
19 and costs.

20 (b) Exclusion. This chapter does not create a lien on a documented vessel subject to a
21 preferred ship mortgage or other preferred maritime lien pursuant to 46 U.S.C. § 31301 et seq.

22 **34-46-4. Notice of lien.**

23 (a) ~~A vessel owner must be notified of the lien created by this chapter before enforcement~~
24 ~~of the lien by a facility operator.~~ The facility operator must provide notice of the lien created by
25 this chapter before it may enforce the lien. Notification of the lien created by this chapter is satisfied
26 by either of the following:

27 (1) Written storage agreement. A written storage agreement signed by the vessel owner
28 that includes ~~a notice of the lien created by this chapter~~ the following language in bold, capitalized
29 font: "BEWARE -- THE VESSEL AND ITS CONTENTS MAY BE SOLD AT PUBLIC
30 AUCTION FOR FAILURE TO PAY STORAGE CHARGES PURSUANT TO THE DRY DOCK
31 FACILITIES ACT, CHAPTER 46 OF TITLE 34."; or

32 (2) Written notice of lien. Written notification of the lien sent by the facility operator:
33 (i) To the last known address of the person or entity identified as the registered owner(s)
34 of the vessel such information to be provided by the department of environmental management to

1 the facility operator upon written request; and

2 (ii) To the last known address of the person or entity the facility operator has on record as
3 being responsible for the vessel if different from the vessel's registered owner. Notices shall be
4 provided in the manner described in § 34-46-5(7) ~~to the vessel owner.~~

5 (b) A facility operator who does not have a written storage agreement that includes a notice
6 of the lien created by this chapter may not initiate an enforcement action under § 34-46-5 until
7 thirty (30) days after the ~~written notice of a lien required by subdivision (a)(2) is delivered to the~~
8 ~~vessel owner~~ delivery of written notice of the lien is effected pursuant to § 34-46-4(a)(2).

9 **34-46-5. Enforcement of lien.**

10 A facility operator may enforce a lien created by this chapter only if the ~~vessel owner has~~
11 ~~been notified of the lien as required by § 34-46-4~~ notice requirement set forth in § 34-46-4 is
12 satisfied.

13 (1) Sale -- Use of proceeds.

14 (i) If a vessel owner is in default for a period of more than ninety (90) days, a facility
15 operator may enforce a lien by selling the ~~stored~~ vessel at a commercially reasonable public sale
16 for cash. ~~As used in this section, "commercially reasonable" shall have the same meaning as in the~~
17 ~~Uniform Commercial Code. The proceeds of the sale shall be applied in the following order:~~

18 (ii) The proceeds of the sale shall be applied in the following order:

19 (A) To the reasonable expenses of the sale incurred by the facility operator including, but
20 not limited to, reasonable attorneys' fees, legal expenses and expenses of advertisement;

21 (B) To the satisfaction of the lien created by this chapter;

22 (C) To the satisfaction of all other liens on the vessel held by all lienholders of record to
23 be paid in the order of priority; and

24 (D) To the extent that the proceeds of sale exceed the sum of the foregoing, the surplus
25 must be paid by the facility operator to the vessel owner. Where the surplus is not collected within
26 thirty (30) days of the sale, the facility operator shall provide the funds to the general treasurer as
27 unclaimed property.

28 ~~(ii)~~(iii) If proceeds of the sale are not sufficient to satisfy the vessel owner's outstanding
29 obligations to the facility operator or any lienholder of record, the vessel owner remains liable to
30 the facility operator and/or lienholder for the deficiency.

31 (2) Advertisement -- Notice of default. Before conducting a sale under this section, the
32 facility operator shall:

33 (i) Personally serve a notice of default on the vessel owner if the vessel owner is a Rhode
34 Island resident. ~~If the vessel owner is not a Rhode Island resident, notice shall be in accordance~~

1 ~~with subdivision (7). The facility operator shall provide a copy of the notice to each lienholder of~~
2 ~~record. The notice must include:~~ Personally serve a notice of default on the person or entity the
3 facility operator has on record as being responsible for the vessel if different from the vessel's
4 registered owner if the person or entity is a Rhode Island resident.

5 After a licensed process server makes three (3) attempts at personal service on different
6 days and at different times of the day at the last known address of the vessel owner and the person
7 or entity the facility operator has on record as being responsible for the vessel if different than
8 the vessel's registered owner, service will be deemed effectuated by leaving a copy of the notice of
9 default in the door of the residence and mailing a copy of the notice of default in accordance with
10 subsection (7) of this section.

11 The licensed process server will provide an affidavit detailing the attempts at personal
12 service including the date, time and location of each attempt, efforts to find an alternate address for
13 service, where and when the notice was left and the mailing of the notice. The notice will be deemed
14 delivered on the date the notice is left at the residence.

15 If the vessel owner and the person or entity the facility operator has on record as being
16 responsible for the vessel if different from the vessel's registered owner are not Rhode Island
17 resident(s), notice shall be in accordance with subsection (7) of this section. The facility operator
18 shall provide a copy of the notice to each lienholder of record. In addition, the facility operator shall
19 affix a copy of the notice of default on the outside of the vessel in a manner where it can be
20 reasonably seen.

21 The notice of default must include:

22 ~~(A)~~(I) A statement that the vessel is subject to a lien held by the facility operator;

23 ~~(B)~~(II) A statement of the facility operator's claim indicating the charges due on the date
24 of the notice, the amount of any additional charges that will or may become due before the date of
25 sale, ~~and the date those additional charges will become due;~~

26 ~~(C)~~(III) A demand for payment of the charges due within a specified time not less than
27 ~~forty (40)~~ thirty (30) days after the date the last notice of default required hereunder is delivered to
28 the vessel owner or the person or entity the facility operator has on record as being reasonable for
29 the vessel;

30 ~~(D)~~(IV) A statement that unless the ~~claim is~~ charges are paid within the time stated the
31 vessel will be sold, specifying the time and place of the sale; and

32 ~~(E)~~(V) The name, street address, and telephone number of the facility operator, or the
33 facility operator's designated agent, whom the vessel owner or the person or entity the facility
34 operator has on record as being responsible for the vessel may contact to respond to the notice;

1 (ii) After the expiration of the ~~forty (40)~~ thirty (30) day period set forth in ~~subdivision~~
2 ~~(2)(i)(C)~~ subsection (2)(i)(III) of this section, the facility operator shall publish an advertisement
3 of the sale once a week for two (2) consecutive weeks in a newspaper of general circulation in the
4 area where the sale is to be held and of general circulation in the state. The advertisement must
5 include a general description of the vessel, the name of the vessel owner (if known), and the person
6 or entity the facility operator has on record as being responsible for the vessel and the date, time
7 and place of the sale. The date of the sale must be more than fifteen (15) days after the date the first
8 advertisement of the sale is published. In addition, the facility operator shall affix a copy of the
9 advertisement on the outside of the vessel in a manner where it can be reasonably seen.

10 (3) Location of sale. A sale under this chapter ~~must~~ shall be held at the facility or at the
11 nearest suitable location.

12 (4) Purchasers. A purchaser of a vessel sold at a sale pursuant to this chapter takes the
13 vessel free and clear of any rights of persons against whom the lien was valid and all other
14 lienholders of record. The purchaser shall remove the vessel from the facility within ten (10) days
15 of the sale on condition that the facility operator provides the purchaser with a sworn statement of
16 having accomplished the requirements set forth in this chapter. The purchaser may not resell or
17 transfer the vessel until such time as a duplicate title or registration for the vessel has been obtained.

18 (5) Facility operator liability. If the facility operator complies with the provisions of this
19 chapter, the facility operator's liability is as follows:

20 (i) To a lienholder of record, the facility operator's liability is limited to payment from the
21 net proceeds received from the sale of the vessel pursuant to § 34-46-5; and

22 (ii) To the vessel owner, the facility operator's liability is limited to the net proceeds
23 received from the sale of the vessel after payment in full of all lienholders of record pursuant to
24 this section.

25 (6) Denying access to storage facility. A facility operator may deny a vessel owner who
26 has been notified under § 34-46-4 access to the storage facility, except that the vessel owner or
27 responsible party is entitled to access to the facility during normal business hours for the purpose
28 of satisfying the lien or viewing and verifying the condition of the vessel.

29 (7) Notices. Except as otherwise provided in subdivision (2)(i), all notices required by this
30 chapter ~~must be sent by registered or certified mail, return receipt requested~~ may be served by
31 registered or certified mail, return receipt requested or by a recognized commercial courier with
32 proof of signed-for delivery. Notices sent to a facility operator must be sent to the facility operator's
33 business address or to the address of the facility operator's designated representative. Notices to a
34 vessel owner or the person or entity the facility operator has on record as being responsible for the

1 vessel must be sent to the ~~vessel owner at the vessel owner's~~ person's or entity's last known address.
2 Notices to a lienholder of record must be sent to the address of the lienholder as provided in the
3 public filings that serve to perfect the lienholder's interest in the vessel. ~~Notices~~ Except as otherwise
4 provided by this chapter, notices are considered delivered on the date ~~the return receipt is signed~~
5 ~~or, if the notice is undeliverable, the date the post office last attempts to deliver~~ the notice is
6 deposited with the postal service or received by the commercial courier.

7 **34-46-6. Cessation of enforcement actions.**

8 A facility operator shall cease enforcement actions immediately upon any of the following:

9 (1) Payment by owner. The vessel owner pays the facility operator the full amount
10 necessary to satisfy the amount of the lien on the date payment is tendered and removes the vessel
11 from the facility. At any time before the conclusion of a sale conducted under this chapter, the
12 vessel owner may redeem the vessel by paying the full amount ~~necessary to satisfy the lien of the~~
13 lien on the date payment is tendered and removing the vessel from the facility;

14 (2) Payment by other lienholders. A person other than the facility operator who has a lien
15 on the vessel pays the facility operator the full amount necessary to satisfy the lien held by the
16 facility operator. Upon payment by a lienholder of record, the facility operator shall hold the vessel
17 for the benefit of and at the direction of that lienholder and may not deliver possession of the vessel
18 to the vessel owner. Unless the facility operator and the lienholder enter into a new storage
19 agreement, the lienholder shall arrange removal of the vessel from the facility forthwith. Absent a
20 new storage agreement with the lienholder, where the lienholder fails to remove the vessel from
21 the facility within fourteen (14) days of its payment, the facility operator, without prejudice to any
22 other remedy, may assess and collect storage charges from the lienholder at three (3) times its
23 published rate; or

24 (3) Initiation of Civil Action. An owner of a vessel or one claiming ownership rights in the
25 vessel files in a court of competent jurisdiction and serves on the facility operator, not less than ten
26 (10) days before the scheduled date of sale, a complaint against the facility operator relating to the
27 obligations incurred by the storage of the vessel or any claims related to the vessel and in such
28 complaint objects to the enforcement of the lien and sets forth the legal reasons why the lien should
29 not be enforced. The enforcement action shall not resume until either the civil action is resolved or
30 the court enters an order permitting the enforcement action to proceed.

31 SECTION 2. Section 34-46-7 of the General Laws in Chapter 34-46 entitled "Dry Dock
32 Facilities" is hereby repealed.

33 ~~**34-46-7. Rental agreements -- Notice of this chapter.**~~

34 ~~All rental agreements which are subject to this chapter shall contain clear and conspicuous~~

1 ~~language as follows: "BEWARE — THE VESSEL AND ITS CONTENTS MAY BE SOLD AT~~
2 ~~PUBLIC AUCTION FOR FAILURE TO PAY STORAGE CHARGES."~~

3 SECTION 3. Chapter 34-46 of the General Laws entitled "Dry Dock Facilities" is hereby
4 amended by adding thereto the following section:

5 **34-46-8. Issuance of title cessation of enforcement actions.**

6 (a) Where by a sworn statement, the facility operator establishes having accomplished the
7 requirements or made sufficient attempts to accomplish the requirements set forth in this chapter,
8 the department of environmental management shall issue a new title to the facility operator or to
9 the entity or person who purchased the vessel at the sale as identified by the facility operator. Title
10 shall be promptly issued no later than fourteen (14) days from receipt of a written request. The
11 written request may be made by either the facility operator or the purchaser.

12 (b) No claim, cause of action or lawsuit shall lie against any officer or employee of the
13 department of environmental management, any person holding or acquiring a lien or security
14 interest in this vessel, and any successor in interest of said purchaser or person on account of any
15 defect in or undisclosed claim upon the right, title and interest of the person acquiring title in the
16 vessel pursuant to this chapter.

17 SECTION 4. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO PROPERTY -- DRY DOCK FACILITIES

1 This act would amend the lien and notice procedures for facility operators of dry dock
2 facilities.

3 This act would take effect upon passage.

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