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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2015

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A N A C T

RELATING TO PROPERTY -- DRY DOCK FACILITIES

Introduced By: Senators Felag, Ciccone, and Walaska

Date Introduced: February 26, 2015

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, 34-46-6 and 34-46-7 of the  
2 General Laws in Chapter 34-46 entitled "Dry Dock Facilities" are hereby amended to read as  
3 follows:

4           **34-46-2. Definitions.** -- As used in this chapter, the following words shall have the  
5 following meanings unless the context clearly indicates otherwise:

6           (1) "Default" means the failure to pay obligations incurred by the storage of a vessel.

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

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

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

13           (5) "Lien holder" means a person holding a security interest.

14           (6) "Operator" means the proprietor, operator, lessor, or sublessor of a dry dock facility,  
15 his or her agent, or any other person authorized by him or her to manage the facility or to receive  
16 rent from the owner under a rental agreement.

17           (7) "Owner" means a person, other than a lienholder, having a property interest in or title  
18 to a vessel. The term includes a person entitled to use or have possession of a vessel subject to an  
19 interest in another person, reserved, or created by agreement and securing payment or

1 performance of an obligation, but it does not include a lessee under a lease not intended as  
2 security.

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

6 ~~(9)~~(8) "Rental Storage agreement" means any written agreement or lease that establishes  
7 or modifies the terms, conditions, rules, or any other provisions concerning the storage of a vessel  
8 in a dry dock facility.

9 ~~(10)~~(9) "Vessel" means every description of watercraft used or capable of being used as  
10 a means of transportation on water and any personal property located thereon and shall include its  
11 appurtenances, engines, tackle, sales, generators, electronics, gear, bunkers and contents.

12 **34-46-3. Lien.** -- (a) Lien created. - A facility operator has a lien on a vessel stored or  
13 located at that facility for storage charges, labor, or other charges and for expenses reasonably  
14 incurred in the sale of that vessel under the provisions of this chapter including, but not limited to,  
15 reasonable attorneys' fees and costs.

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

18 **34-46-4. Notice of lien.** -- (a) ~~A vessel owner must be notified~~ The facility operator must  
19 provide notice of the lien created by this chapter before ~~enforcement of the lien by a facility~~  
20 ~~operator~~ it may enforce the lien. Notification of the lien created by this chapter is satisfied by  
21 either of the following:

22 (1) Written storage agreement. - A written storage agreement signed by the vessel owner  
23 that includes the following language in bold, capitalized font: "BEWARE—THE VESSEL AND  
24 ITS CONTENTS MAY BE SOLD AT PUBLIC AUCTION FOR FAILURE TO PAY  
25 STORAGE CHARGES." ~~a notice of the lien created by this chapter; or~~

26 (2) Written notice of lien. - Written notification of the lien sent by the facility operator to  
27 the vessel ~~owner~~ owner's last known address. Where the identity of the vessel owner is unknown  
28 or uncertain, notification of the lien shall be provided to the last known address of the person or  
29 entity the facility operator has on record as being responsible for the vessel. Notices shall be  
30 provided in the manner described in § 34-46-5(7).

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

1           **34-46-5. Enforcement of lien.** -- A facility operator may enforce a lien created by this  
2 chapter only if the vessel owner has been notified of the lien as required by § 34-46-4.

3           (1) Sale -- Use of proceeds.

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

8           (ii) A facility operator may bid the amount of its lien at the sale.

9           (iii) The proceeds of the sale shall be applied in the following order:

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

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

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

15           (D) To the extent that the proceeds of sale exceed the sum of the foregoing, the surplus  
16 must be paid by the facility operator to the vessel owner. Where the identity of the vessel owner  
17 is unknown or uncertain, or where the surplus is not collected within fourteen (14) days of the  
18 sale, the facility operator shall deliver the funds to the Rhode Island department of environmental  
19 management which department shall deposit the same for the use by its office of legal counsel.

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

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

25           (i) Personally serve a notice of default on the vessel owner if the vessel owner who is a  
26 Rhode Island resident or where the identity of the vessel owner is unknown or uncertain,  
27 personally serve the person or entity the facility operator has on record as being responsible for  
28 the vessel where such person or entity is a Rhode Island resident. Where an attempt at personal  
29 service is made, but cannot be accomplished, service shall be made in accord with subdivision (7)  
30 of this section. If the vessel owner or the person or entity the facility operator has on record as  
31 being responsible for the vessel is not a Rhode Island resident, notice shall be in accordance with  
32 subdivision (7). The facility operator shall provide a copy of the notice to each lienholder of  
33 record. The notice must include:

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

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

4 (C) A demand for payment of the charges due within a specified time not less than ~~forty~~  
5 ~~(40)~~ fourteen (14) days after the date the notice is delivered to the vessel owner;

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

8 (E) The name, street address, and telephone number of the facility operator, or the  
9 facility operator's designated agent, whom the vessel owner may contact to respond to the notice;

10 (ii) After the expiration of the ~~forty (40)~~ fourteen (14) day period set forth in subdivision  
11 (2)(i)(C), the facility operator shall publish an advertisement of the sale once a week for two (2)  
12 consecutive weeks in a newspaper of general circulation in the area where the sale is to be held  
13 and of general circulation in the state. The advertisement must include a general description of the  
14 vessel, the name of the vessel owner or the person or entity the facility operator has on record as  
15 being responsible for the vessel, and the date, time and place of the sale. The date of the sale must  
16 be more than fifteen (15) days after the date the first advertisement of the sale is published.

17 (3) Location of sale. - A sale under this chapter must be held at the facility or at the  
18 nearest suitable location.

19 (4) Purchasers. - A purchaser of a vessel sold at a sale pursuant to this chapter takes the  
20 vessel free and clear of any rights of persons against whom the lien was valid and all other  
21 lienholders of record. The purchaser shall remove the vessel from the facility within ten (10) days  
22 of the sale provided the facility operator provides the purchaser with a sworn statement of having  
23 accomplished the requirements set forth herein.

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

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

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

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

1 [condition of access that the vessel owner release in writing the facility operator from claims](#)  
2 [arising in connection with verifying the vessel's condition.](#)

3 (7) Notices. - Except as otherwise provided in subdivision (2)(i), all notices required by  
4 this chapter must be sent by registered or certified mail, return receipt requested [or via a](#)  
5 [recognized commercial courier with proof of delivery](#). Notices sent to a facility operator must be  
6 sent to the facility operator's business address or to the address of the facility operator's  
7 designated representative. Notices to a vessel owner [or the person or entity the facility operator](#)  
8 [has on record as being responsible for the vessel](#) must be sent to the ~~vessel owner at the vessel~~  
9 ~~owner's~~ [person or entity's](#) last known address. Notices to a lienholder of record must be sent to the  
10 address of the lienholder as provided in the public filings that serve to perfect the lienholder's  
11 interest in the vessel. Notices are considered delivered on the date the [notice is deposited with the](#)  
12 [postal service or received by the commercial courier](#) ~~return receipt is signed or, if the notice is~~  
13 ~~undeliverable, the date the post office last attempts to deliver the notice.~~

14 **34-46-6. Cessation of enforcement actions.** -- A facility operator shall cease  
15 enforcement actions immediately upon any of the following:

16 (1) Payment by owner. - The vessel owner pays the facility operator the full amount  
17 necessary to satisfy [the amount of](#) the lien [on the date payment is tendered and removes the vessel](#)  
18 [from the facility](#). At any time before the conclusion of a sale conducted under this chapter, the  
19 vessel owner may redeem the vessel by paying the full amount [of the lien on the date payment is](#)  
20 [tendered and removing the vessel from the facility](#) ~~necessary to satisfy the lien;~~

21 (2) Payment by other lienholders. - A person other than the facility operator who has a  
22 lien on the vessel pays the facility operator the full amount necessary to satisfy the lien held by  
23 the facility operator. Upon payment by a lienholder of record, the facility operator shall hold the  
24 vessel for the benefit of and at the direction of that lienholder and may not deliver possession of  
25 the vessel to the vessel owner. Unless the facility operator and the lienholder enter into a new  
26 storage agreement, the lienholder shall arrange removal of the vessel from the facility forthwith  
27 [absent a new storage agreement, where the lienholder fails to remove the vessel from the facility](#)  
28 [within fourteen \(14\) days of its payment, the facility operator, without prejudice to any other](#)  
29 [remedy, may assess and collect storage charges from the lienholder at three \(3\) times its](#)  
30 [published rate;](#) or

31 (3) Initiation of Civil Action. - An owner of a vessel files in a court of competent  
32 jurisdiction and [personally](#) serves on the facility operator, not less than ten (10) days before the  
33 scheduled date of sale, a complaint against the facility operator relating to the obligations  
34 incurred by the storage of the vessel or any claims related to the vessel and in such complaint

1 objects to the enforcement of the lien and sets forth the legal reasons why the lien should not be  
2 enforced. The enforcement action shall not resume until either the civil action is resolved or the  
3 court enters an order permitting the enforcement action to proceed. Where the court enters an  
4 order permitting the enforcement action to proceed, and without prejudice to any other remedy,  
5 the facility operator shall be awarded all of its reasonable attorneys' fees and costs incurred in  
6 responding to the civil action.

7 ~~34-46-7. Rental agreements -- Notice of this chapter Issuance of title. -- All rental~~  
8 ~~agreements which are subject to this chapter shall contain clear and conspicuous language as~~  
9 ~~follows: "BEWARE -- THE VESSEL AND ITS CONTENTS MAY BE SOLD AT PUBLIC~~  
10 ~~AUCTION FOR FAILURE TO PAY STORAGE CHARGES."~~ Cessation of enforcement actions:

11 (1) Whereby a sworn statement, the facility operator establishes having satisfied the  
12 requirements set forth herein, the Rhode Island department of environmental management shall  
13 issue a new title to the facility operator or to the entity or person who purchased the vessel at the  
14 sale as identified by the facility operator. Title shall be promptly issued no later than ten (10) days  
15 from receipt of a written request. The written request may be made by either the facility operator  
16 or the purchaser.

17 (2) No claim, cause of action or lawsuit shall lie against any officer or employee of the  
18 Rhode Island department of environmental management, any person holding or acquiring a lien  
19 or security interest in the vessel, and any successor in interest of said purchaser or person on  
20 account of any defect in or undisclosed claim upon the right, title and interest of the person  
21 acquiring title in the vessel pursuant to this chapter.

22 SECTION 2. 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

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1           This act would expand the means by which marine facility operators may achieve service  
2 of written notice of liens on vessels, would permit a facility operator to bid at any subsequent  
3 sale, and would provide for the issuance of new title.

4           This act would take effect upon passage.

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