

2021 -- H 5759 SUBSTITUTE A

LC002096/SUB A/2

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

A N A C T

RELATING TO PROPERTY -- DRY DOCK FACILITIES

Introduced By: Representative Joseph J. Solomon

Date Introduced: February 24, 2021

Referred To: House Environment and Natural Resources

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 34-46-2, 34-46-4, 34-46-5 and 34-46-6 of the General Laws in
2 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 of a vessel and
7 associated charges.

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.

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

19 (7) "Owner" means a person, other than a lienholder, having a property interest in or title

1 to a vessel. The term includes a person entitled to use or have possession of a vessel subject to an
2 interest in another person, reserved, or created by agreement and securing payment or performance
3 of an obligation, but it does not include a lessee under a lease not intended as security.

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

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

10 (10) "Vessel" means every description of watercraft used or capable of being used as a
11 means of transportation on water and any personal property located thereon and shall include its
12 appurtenances.

13 **34-46-4. Notice of lien.**

14 (a) A vessel owner must be notified of the lien created by this chapter before enforcement
15 of the lien by a facility operator. Notification of the lien created by this chapter is satisfied by:

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

21 (2) Written notice of lien. Written notification of the lien sent by the facility operator to the
22 last known address of the vessel owner and, where applicable, to the last known address of the
23 person or entity the facility operator has on record as being responsible for the vessel, if different
24 from the vessel's registered owner ~~to the vessel owner~~.

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

29 **34-46-5. Enforcement of lien.**

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

33 (1) Sale -- Use of proceeds.

34 (i) If a vessel owner is in default for a period of more than ninety (90) days, a facility

1 operator may enforce a lien by selling the ~~stored~~ vessel at a commercially reasonable public sale
2 for cash. As used in this section, "commercially reasonable" shall have the same meaning as in the
3 Uniform Commercial Code. The proceeds of the sale shall be applied in the following order:

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

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

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

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

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

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

18 (i) Personally serve a notice of default on the vessel owner if the vessel owner is a Rhode
19 Island resident, and where applicable, ~~If the vessel owner is not a Rhode Island resident, notice~~
20 ~~shall be in accordance with subdivision (7).~~ The facility operator shall provide a copy of the notice
21 ~~to each lienholder of record. The notice must include:~~ personally serve a notice of default on the
22 person or entity the facility operator has on record as being responsible for the vessel if different
23 from the vessel's registered owner, if the person or entity is a Rhode Island resident.

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

30 (B) The licensed process server will provide an affidavit detailing the attempts at personal
31 service including the date, time and location of each attempt, efforts to find an alternate address for
32 service, where and when the notice was left and the mailing of the notice. The notice will be deemed
33 delivered on the date the notice is left at the residence.

34 (ii) In the event that either the vessel owner or the person or entity the facility operator has

1 on record as being responsible for the vessel if different from the vessel's registered owner are not
2 Rhode Island resident(s), notice shall be in accordance with subsection (7) of this section. The
3 facility operator shall provide a copy of the notice to each lienholder of record. In addition, the
4 facility operator shall affix a copy of the notice of default on the outside of the vessel in a manner
5 where it can be reasonably seen.

6 (iii) The notice of default must include:

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

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

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

15 (D) A statement that unless the claim is paid within the time stated the vessel will be sold,
16 specifying the time and place of the sale; and

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

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

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

31 (4) Purchasers. A purchaser of a vessel sold at a sale pursuant to this chapter takes the
32 vessel free and clear of any rights of persons against whom the lien was valid and all other
33 lienholders of record.

34 (5) Facility operator liability. If the facility operator complies with the provisions of this

1 chapter, the facility operator's liability is as follows:

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

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

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

11 (7) Notices. Except as otherwise provided in subdivision (2)(+), all notices required by this
12 chapter ~~must be sent by registered or certified mail, return receipt requested~~ must be served by
13 registered or certified mail, return receipt requested or by a recognized commercial courier with
14 proof of signed-for delivery. Notices sent to a facility operator must be sent to the facility operator's
15 business address or to the address of the facility operator's designated representative. Notices to a
16 vessel owner or the person or entity the facility operator has on record as being responsible for the
17 vessel must be sent to the ~~vessel owner at the vessel owner's~~ person's or entity's last known address.
18 Notices to a lienholder of record must be sent to the address of the lienholder as provided in the
19 public filings that serve to perfect the lienholder's interest in the vessel. The lienholder's identity
20 and address that the department of environmental management has in its records shall be provided
21 to the facility operator upon written request and certification that the request is made solely for the
22 purposes of complying with the provisions of this chapter. ~~Notices~~ Except as otherwise provided
23 by this chapter, notices are considered delivered on the date the return receipt or proof of delivery
24 is signed or, if the notice is undeliverable, the date the post office or commercial courier last
25 attempts to deliver the notice.

26 **34-46-6. Cessation of enforcement actions.**

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

28 (1) Payment by owner. The vessel owner pays the facility operator the full amount
29 necessary to satisfy the lien on the date payment is tendered. At any time before the conclusion of
30 a sale conducted under this chapter, the vessel owner may redeem the vessel by paying the full
31 amount ~~necessary to satisfy the lien~~ of the lien on the date payment is tendered;

32 (2) Payment by other lienholders. A person other than the facility operator who has a lien
33 on the vessel pays the facility operator the full amount necessary to satisfy the lien held by the
34 facility operator. Upon payment by a lienholder of record, the facility operator shall hold the vessel

1 for the benefit of and at the direction of that lienholder and may not deliver possession of the vessel
2 to the vessel owner. Unless the facility operator and the lienholder enter into a new storage
3 agreement, the lienholder shall arrange removal of the vessel from the facility forthwith; or

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

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

13 ~~34-46-7. Rental agreements — Notice of this chapter.~~

14 ~~All rental agreements which are subject to this chapter shall contain clear and conspicuous~~
15 ~~language as follows: "BEWARE — THE VESSEL AND ITS CONTENTS MAY BE SOLD AT~~
16 ~~PUBLIC AUCTION FOR FAILURE TO PAY STORAGE CHARGES."~~

17 SECTION 3. 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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