

2019 -- S 0599

=====
LC002104
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

—————
A N A C T

RELATING TO PROPERTY -- DRY DOCK FACILITIES

Introduced By: Senators Felag, McCaffrey, Sosnowski, and Euer

Date Introduced: March 14, 2019

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
7 ownership of a vessel.

8 (2) "Dry dock" means any space and/or real property designed and/or used for the
9 purpose 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
3 performance of an obligation, but it does not include a lessee under a lease not intended as
4 security.

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

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

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

14 **34-46-3. Lien.**

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

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

21 **34-46-4. Notice of lien.**

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

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

30 (2) Written notice of lien. Written notification of the lien sent by the facility operator:

31 (i) To the last known address of the individual or entity identified as the registered
32 owner(s) of the vessel; and

33 (ii) To the last known address of the person or entity the facility operator has on record as
34 being responsible for the vessel if different from the vessel's registered owner. Notices shall be

1 provided in the manner described in § 34-46-5(7) to the vessel owner.

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

6 **34-46-5. Enforcement of lien.**

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

10 (1) Sale -- Use of proceeds.

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

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

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

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

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

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

22 (D) To the extent that the proceeds of sale exceed the sum of the foregoing, the surplus
23 must be paid by the facility operator to the vessel owner. Where the surplus is not collected
24 within thirty (30) days of the sale, the facility operator shall provide the funds to the Rhode Island
25 department of environmental management which department shall deposit the same for use by its
26 office of legal counsel.

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

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

32 (i) ~~Personally serve a notice of default on the vessel owner if the vessel owner is a Rhode~~
33 ~~Island resident. If the vessel owner is not a Rhode Island resident, notice shall be in accordance~~
34 ~~with subdivision (7). The facility operator shall provide a copy of the notice to each lienholder of~~

1 ~~record. The notice must include:~~ Serve:

2 (A) A notice of default on the person or entity identified as the registered owner of the

3 vessel; and

4 (B) Serve a notice of default on the person or entity the facility operator has on record as

5 being responsible for the vessel if different than the vessel's registered owner. Service shall be

6 made in accordance with § 34-46-5(7). The facility operator shall also provide a copy of the

7 notice of default to each lienholder of record. In addition, the facility operator shall affix a copy

8 of the notice of default on the outside of the vessel in a manner where it can be reasonably seen.

9 The notice of default must include:

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

11 ~~(B)(II)~~ (II) A statement of the facility operator's claim indicating the charges due on the date

12 of the notice, the amount of any additional charges that will or may become due before the date of

13 sale, ~~and the date those additional charges will become due;~~

14 ~~(C)(III)~~ (III) A demand for payment of the charges due within a specified time not less than

15 ~~forty (40)~~ fourteen (14) days after the date the last notice of default required hereunder is

16 delivered ~~to the vessel owner;~~

17 ~~(D)(IV)~~ (IV) A statement that unless the ~~claim charges are~~ is paid within the time stated the

18 vessel will be sold, specifying the time and place of the sale; and

19 ~~(E)(V)~~ (V) The name, street address, and telephone number of the facility operator, or the

20 facility operator's designated agent, whom the vessel owner or the person or entity the facility

21 operator has on record as being responsible for the vessel may contact to respond to the notice;

22 (ii) After the expiration of the ~~forty (40)~~ fourteen (14) day period set forth in ~~subdivision~~

23 ~~(2)(i)(C)~~ subsection (2)(i)(III) of this section, the facility operator shall publish an advertisement

24 of the sale once a week for two (2) consecutive weeks in a newspaper of general circulation in the

25 area where the sale is to be held ~~and of general circulation in the state.~~ In lieu of print publication,

26 one of the two (2) advertisements may be published online by said newspaper provided the online

27 advertisement is visible for no fewer than three (3) days. The advertisement must include a

28 general description of the vessel, the name of the vessel owner (if known), and the person or

29 entity the facility operator has on record as being responsible for the vessel and the date, time and

30 place of the sale. The date of the sale must be more than fifteen (15) days after the date the first

31 advertisement of the sale is published. In addition, the facility operator shall affix a copy of the

32 advertisement on the outside of the vessel in a manner where it can be reasonably seen.

33 (3) Location of sale. A sale under this chapter ~~must~~ shall be held at the facility or at the

34 nearest suitable location.

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

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

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

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

15 (6) Denying access to storage facility. A facility operator may deny a vessel owner who
16 has been notified under § 34-46-4 access to the storage facility, except that the vessel owner or
17 responsible party is entitled to access to the facility during normal business hours for the purpose
18 of satisfying the lien or viewing and verifying the condition of the vessel. A facility operator may
19 require as a condition to access the vessel that the vessel owner or responsible party sign a release
20 releasing the facility operator from claims arising in connection with verifying the vessel's
21 condition.

22 (7) Notices. ~~Except as otherwise provided in subdivision (2)(i), all~~ All notices required by
23 this chapter ~~must be sent by registered or certified mail, return receipt requested~~ may be served
24 personally using a process server or served by registered or certified mail, return receipt requested
25 or served via a recognized commercial courier with proof of signed-for delivery. Notices sent to a
26 facility operator must be sent to the facility operator's business address or to the address of the
27 facility operator's designated representative. Notices to a vessel owner or the person or entity the
28 facility operator has on record as being responsible for the vessel must be sent to the ~~vessel owner~~
29 ~~at the vessel owner's~~ person's or entity's last known address. Notices to a lienholder of record
30 must be sent to the address of the lienholder as provided in the public filings that serve to perfect
31 the lienholder's interest in the vessel. ~~Notices~~ Except as otherwise provided by this chapter,
32 notices are considered delivered on the date ~~the return receipt is signed or, if the notice is~~
33 ~~undeliverable, the date the post office last attempts to deliver the notice~~ personal service is made,
34 or on the date notice is deposited with the postal service or received by the commercial courier.

1 **34-46-6. Cessation of enforcement actions.**

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

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

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

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

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

28 ~~**34-46-7. Rental agreements -- Notice of this chapter.**~~

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

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

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

1 (a) Where by a sworn statement, the facility operator establishes having accomplished the
2 requirements set forth in this chapter, the Rhode Island department of environmental management
3 shall issue a new title to the facility operator or to the entity or person who purchased the vessel at
4 the sale as identified by the facility operator. Title shall be promptly issued no later than ten (10)
5 days from receipt of a written request. The written request may be made by either the facility
6 operator or the purchaser.

7 (b) No claim, cause of action or lawsuit shall lie against any officer or employee of the
8 Rhode Island department of environmental management, any person holding or acquiring a lien
9 or security interest in this vessel, and any successor in interest of said purchaser or person on
10 account of any defect in or undisclosed claim upon the right, title and interest of the person
11 acquiring title in the vessel pursuant to this chapter.

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

=====
LC002104
=====

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.

=====
LC002104
=====