

MAINE STATE LEGISLATURE

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R. OFS.

L.D. 618

(Filing No. H- 286)

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
116TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 481, L.D. 618, Bill, "An Act Regarding Vessels Stored at Marinas"

Amend the bill by striking out all of section 1 and inserting in its place the following:

Sec. 1. 10 MRSA c. 212-A is enacted to read:

CHAPTER 212-A

MAINE MARINA AND BOATYARD STORAGE ACT

§1381. Short title

This Act may be known and cited as the "Maine Marina and Boatyard Storage Act."

§1382. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Default. "Default" means the failure to pay obligations incurred by the storage of a boat, boat motor or boat trailer.

2. Facility. "Facility" means a marina, boatyard or marine repair facility that provides, as part of its commercial operation, the storage of boats, boat motors or boat trailers.

3. Lienholder. "Lienholder" or "lienholder of record" means a person who claims an interest in or lien on the property pursuant to a financing statement filed with the Secretary of State or other public filing.

COMMITTEE AMENDMENT

2 4. Property. "Property" means a boat, boat motor or boat
3 trailer in storage at a facility.

4 **§1383. Lien**

6 1. Lien created. A facility owner has a lien on property
7 stored at that facility for rent, labor or other charges and for
8 expenses reasonably incurred in the sale of that property under
9 the provisions of this chapter.

12 2. Exclusion. This chapter does not create a lien on a
13 documented vessel subject to a preferred ship mortgage or other
14 preferred maritime lien pursuant to 46 United States Code,
15 Chapter 131.

16 **§1384. Notice of lien**

18 A property owner must be notified of the lien created by
19 this chapter before enforcement of the lien by a facility owner.
20 Notification of the lien created by this chapter is satisfied by:

22 1. Written storage agreement. A written storage agreement
23 signed by the property owner that includes a notice of the lien
24 created by this chapter; or

26 2. Written notice of lien. Written notification of the
27 lien sent by the facility owner to the property owner.

30 A facility owner who does not have a written storage
31 agreement that includes a notice of the lien created by this
32 chapter may not initiate an enforcement action under section 1385
33 until 30 days after the written notice of a lien required by
34 subsection 2 is delivered to the property owner.

36 **§1385. Enforcement of lien**

38 A facility owner may enforce a lien created by this chapter
39 only if the property owner has been notified of the lien as
40 required by section 1384.

42 1. Sale; use of proceeds. If a property owner is in
43 default for a period of more than 90 days, a facility owner may
44 enforce a lien by selling the stored property at a commercially
45 reasonable public sale for cash. As used in this section,
46 "commercially reasonable" has the same meaning as in the Uniform
47 Commercial Code. The proceeds of the sale must be applied in the
48 following order:

COMMITTEE AMENDMENT "A" to H.P. 481, L.D. 618

- 2 A. To the reasonable expenses of the sale incurred by the
facility owner including, to the extent not prohibited by
law, reasonable attorney's fees and legal expenses;
- 4
- 6 B. To the satisfaction of the lien created by this chapter;
- 8 C. To the satisfaction of all other liens on the property
held by all lienholders of record to be paid in the order of
priority; and
- 10
- 12 D. To the extent that the proceeds of sale exceed the sum
of the foregoing, the surplus must be paid by the facility
owner to the property owner.

14 If proceeds of the sale are not sufficient to satisfy the
 16 property owner's outstanding obligations to the facility owner or
 18 any lienholder of record, the property owner remains liable to
the facility owner or lienholder for the deficiency.

20 2. Advertisement; notice of default. Before conducting a
 22 sale under this section, the facility owner shall:

- 24 A. Send a notice of default to the property owner. The
facility owner shall provide a copy of the notice to each
lienholder of record. The notice must include:
- 26
- 28 (1) A statement that the property is subject to a lien
held by the facility owner;
- 30 (2) A statement of the facility owner's claim
indicating the charges due on the date of the notice,
 32 the amount of any additional charges that will become
due before the date of sale and the date those
 34 additional charges will become due;
- 36 (3) A demand for payment of the charges due within a
specified time not less than 30 days after the date the
 38 notice is delivered to the property owner and all
lienholders of record;
- 40 (4) A statement that unless the claim is paid within
the time stated the property will be sold, specifying
 42 the time and place of the sale; and
- 44 (5) The name, street address and telephone number of
 46 the facility owner, or the facility owner's designated
agent, whom the property owner may contact to respond
 48 to the notice; and

2 B. After the expiration of the 30-day period set forth in
3 paragraph A, publish an advertisement of the sale once a
4 week for 2 consecutive weeks in a newspaper of general
5 circulation in the area where the sale is to be held. The
6 advertisement must include a general description of the
7 property, the name of the property owner and the time and
8 place of the sale. The date of the sale must be more than
9 15 days after the date the first advertisement of the sale
10 is published.

11 3. Location of sale. A sale under this chapter must be
12 held at the facility or at the nearest suitable location.

13 4. Purchasers. A purchaser of property sold at a
14 commercially reasonable sale pursuant to this chapter takes the
15 property free and clear of any rights of persons against whom the
16 lien was valid and all other lienholders of record.

17 5. Facility owner liability. If the facility owner
18 complies with the provisions of this chapter, the facility
19 owner's liability is as follows.

20 A. To a lienholder of record, the facility owner's
21 liability is limited to payment from the net proceeds
22 received from the sale of the property.

23 B. To the property owner, the facility owner's liability is
24 limited to the net proceeds received from the sale of the
25 property after payment in full of all lienholders of record.

26 6. Denying access to storage facility. A facility owner
27 may deny a property owner who has been notified under subsection
28 2 access to the storage facility, except that the property owner
29 is entitled to access to the facility during normal business
30 hours for the purpose of satisfying the lien or viewing and
31 verifying the condition of the property.

32 7. Notices. Except as otherwise provided, all notices
33 required by this chapter must be sent by registered or certified
34 mail, return receipt requested. Notices sent to a facility owner
35 must be sent to the owner's business address or to the address of
36 the owner's designated representative. Notices to a property
37 owner must be sent to the property owner at the property owner's
38 last known address. Notices to a lienholder of record must be
39 sent to the address of the lienholder as provided in the public
40 filings that serve to perfect the lienholder's interest in the
41 property. Notices are considered delivered on the date the
42 recipient of the notice signs the return receipt or, if the
43 notice is undeliverable, the date the post office last attempts
44 to deliver the notice.

§1386. Cessation of enforcement actions

A facility owner shall cease enforcement actions immediately if:

1. Payment by owner. The property owner pays the facility owner the full amount necessary to satisfy the lien. At any time before the conclusion of a sale conducted under this chapter, the property owner may redeem the property by paying the full amount necessary to satisfy the lien; or

2. Payment by other lienholders. A person other than the facility owner who has a lien on the property pays the facility owner the full amount necessary to satisfy the lien held by the facility owner. Upon payment by a lienholder of record, the facility owner shall hold the property for the benefit of and at the direction of that lienholder and may not deliver possession of the property to the property owner. Unless the facility owner and the lienholder enter into a new storage agreement, the lienholder shall arrange removal of the property from the facility.'

Further amend the bill by inserting at the end before the statement of fact the following:

FISCAL NOTE

The additional workload and administrative costs associated with the minimal number of new cases filed in the court system to enforce the liens can be absorbed within the budgeted resources of the Judicial Department.'

STATEMENT OF FACT

This amendment makes the following changes to the original bill.

1. It adds a definition of "lienholder of record," which is a term used to describe other persons who claim an interest in the property subject to the lien created by the Maine Revised Statutes, Title 10, chapter 212-A.

2. It provides that the bill does not apply to documented vessels subject to preferred maritime liens, including preferred ships' mortgages. Federal law preempts state laws that create liens on vessels subject to federal maritime liens.

R. of S.

COMMITTEE AMENDMENT "A" to H.P. 481, L.D. 618

2 3. It deletes specific mailing instructions included in
various places in the original bill. The instructions are
unnecessary and duplicative of Title 10, section 1385, subsection
4 7.

6 4. It adds the requirement that any sale of property be
commercially reasonable.

8 5. It provides clear instructions on the payment of sale
10 proceeds and clarifies that the property owner is liable for any
deficiency owing to the facility owner and all other lienholders
12 of record.

14 6. It requires notice of the sale to all lienholders of
record.

16 7. It expands the notice provisions of Title 10, section
18 1385, subsection 7 to permit mailing by either certified or
registered mail, to indicate the proper source of addresses for
20 lienholders of record and to provide that notices be deemed
delivered on the date the recipient of a notice signs the return
22 receipt or on the date the post office last attempts to deliver
an undeliverable notice.

24 8. It provides that on payment of the lien by a lienholder
26 of record, the facility owner holds the property for the
lienholder and shall either enter into a new storage agreement
28 with the lienholder or the lienholder shall remove the property.

30 9. It adds a fiscal note to the bill.

Reported by the Committee on Business Legislation
Reproduced and distributed under the direction of the Clerk of the
House
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