

Regular Session, 2012

HOUSE BILL NO. 596

BY REPRESENTATIVES ST. GERMAIN AND GAROFALO AND SENATOR WARD

1 AN ACT

2 To amend and reenact R.S. 9:4781(8), 4783(B), 4784(B)(1)(c), (D), and (G), and R.S.
3 39:2181(A) and to enact Part XVII of Chapter 1 of Title 9 of the Louisiana Revised
4 Statutes of 1950, to be comprised of R.S. 9:4791 through 4798, relative to towed and
5 stored vessels; to provide for sales of certain boats; to provide for definitions; to
6 provide for a privilege on towed and stored vessels; to provide for notice and
7 advertisement; to provide for the disposition of proceeds; to provide for the authority
8 to promulgate rules and regulations; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 9:4781(8), 4783(B), and 4784(B)(1)(c), (D), and (G) are hereby
11 amended and reenacted and Part XVII of Chapter 1 of Title 9 of the Louisiana Revised
12 Statutes of 1950, comprised of R.S. 9:4791 through 4798, is hereby enacted to read as
13 follows:

14 §4781. Definitions

15 For the purposes of this Part, the following terms shall have the following
16 meanings unless the context clearly requires otherwise:

17 * * *

18 (8) "Rental agreement" means any written agreement or lease, entered into
19 between the marina ~~operator~~ owner and a lessee that establishes or modifies the
20 terms, conditions, rules, or any other provisions concerning use of the marina.

21 * * *

22 §4783. Notice of privilege

23 * * *

1 owner at the property owner's last known address. Notices to a lienholder of record
 2 must be sent to the address of the lienholder as provided in the public record that
 3 ~~serve~~ serve to perfect the lienholder's interest in the property. Notices are
 4 considered delivered on ~~the~~ either of the following dates:

5 (1) The date the recipient of the notice signs the return receipt or, if the
 6 notice is undeliverable, the date the post office last attempts to deliver the notice.

7 (2) The date of delivery as indicated on the signed receipt of delivery
 8 obtained by the commercial courier.

9 PART XVII. TOWED AND STORED VESSEL ACT

10 §4791. Short title

11 This Act shall be known as the "Towed and Stored Vessel Act".

12 §4792. Definitions

13 For the purposes of this Part, the following terms shall have the following
 14 meanings:

15 (1) "Department" means the Department of Wildlife and Fisheries.

16 (2) "Licensed storage facility" means a lot, yard, or other storage, parking,
 17 or repair facility licensed by the Department of Public Safety and Corrections, office
 18 of state police, to store towed vehicles as provided by R.S. 32:1714.

19 (3) "Tow truck" means any motor vehicle equipped with a boom or booms,
 20 winches, slings, tilt beds, or similar equipment designed for the towing or recovery
 21 of vehicles and other objects which cannot operate under their own power or for
 22 other reason is required to be transported by means of towing and licensed by the
 23 Department of Public Safety and Corrections pursuant to R.S. 32:1711 et seq.

24 (4) "Towed vessel" means any vessel titled under the Vessel and Motor
 25 Titling Act, R.S. 34:852.1 et seq., or required to be registered pursuant to R.S.
 26 34:851.1 et seq., towed by a tow truck and being held at a licensed storage facility.
 27 "Towed vessel" does not include any vessel with a valid or expired registration
 28 number awarded pursuant to federal law or a federally approved numbering system
 29 of another state, unless subsequently registered in Louisiana.

1 §4793. Privilege

2 A licensed storage facility has a privilege on a vessel, including any inboard
3 or outboard motor attached to the vessel, towed and stored at that facility for the
4 towing charges and storage fees. However, this Part shall not create a privilege on
5 a documented vessel subject to a preferred ship mortgage or other preferred maritime
6 privilege pursuant to 46 U.S.C. Chapter 313.

7 §4794. Vessel owner information

8 The licensed storage facility shall provide the department or its authorized
9 agent, within three business days of the vessel being towed and stored, the vessel's
10 registration numbers, hull identification number (HIN), motor serial number, and any
11 other identifying factors requested by the department. The department or its
12 authorized agent shall provide to a licensed storage facility holding a towed vessel
13 the name and address of the last registered owner of the vessel and lienholders as
14 listed in the official records of the agency.

15 §4795. Notice of privilege and default

16 A. The towed vessel owner and any lienholders shall be notified of the
17 privilege created by this Part before enforcement of the privilege by the licensed
18 storage facility. Notification of the privilege created by this Part shall be satisfied
19 by the following:

20 (1) For owners and lienholders identified by the department pursuant to R.S.
21 9:4794, written notification of the privilege sent by the licensed storage facility,
22 using a certificate of mailing within ten business days from the date the department
23 or its authorized agent sends the owner and lienholder information of the stored
24 vessel to the licensed storage facility. If the department or its authorized agent sends
25 the information electronically, the licensed storage facility shall send notice within
26 five business days.

27 (2) After compliance with R.S. 9:4794, for those vessels for which no
28 records exist in the official records of the department, publishing notification of the
29 privilege in the official newspaper of the parish in which the towed vessel was towed
30 on two separate occasions.

1 B. Notification shall include the following:

2 (1) As applicable, registration numbers, a general description of the towed
3 vessel, including the make, length, type of vessel, whether inboard or outboard
4 motors, and make and horsepower, registration numbers, motor serial number, and
5 hull identification number (HIN).

6 (2) The date and location where the vessel was found, the present location,
7 charges due on the date of the notice, and name, street address, and telephone
8 number of the licensed storage facility, which the owner may contact to respond to
9 the notice.

10 (3) A statement that the vessel is subject to the privilege held by the licensed
11 storage facility and that the vessel owner is in default.

12 (4) A statement that unless the claim is paid within the time stated the
13 property will be sold at a commercially reasonable public sale, and the location and
14 date of the sale, which shall not be earlier than thirty days after the date notice is
15 mailed to the owner or thirty days after the last date of notification as provided in
16 this Section. As used in this Part, "commercially reasonable" has the same meaning
17 as in the Commercial Laws, R.S. 10:1-101 through 9-710.

18 §4796. Advertisement: Enforcement of Privilege

19 After the expiration of the thirty-day period set forth in R.S. 9:4795(B)(4),
20 the licensed storage facility shall publish an advertisement of the sale once a week
21 for two consecutive weeks in the official newspaper of the parish where the sale is
22 to be held. The date of the sale shall be more than fifteen days after the date of the
23 first advertisement of the sale is published. The advertisement shall include the
24 following:

25 (1) The name of the last registered owner of the vessel, if known.

26 (2) The date and location where the vessel was found.

27 (3) As applicable, the registration numbers, a general description of the
28 towed vessel, including the make, length, type of vessel, whether inboard or outboard
29 motors, and make and horsepower, outboard motor serial number, and hull
30 identification number (HIN).

1 §4797. Sale and purchasers

2 A. A sale under this Part shall be held at the location of the licensed storage
3 facility or at the nearest suitable location.

4 B. The vessel shall be sold to the highest bidder and shall require a notarized
5 bill of sale signed by the buyer and a representative of the licensed storage facility,
6 clearly identifying the licensed storage facility as the seller, and shall state the boat
7 was sold pursuant to the Towed and Stored Vessel Act. The licensed storage facility
8 shall attach to the bill of sale the proof of notice and sale requirements, including
9 proof of all publications, without which the bill of sale shall be null and void.

10 C. The proceeds of the sale shall be applied in the following order:

11 (1) To the reasonable expenses of the sale including, to the extent not
12 prohibited by law, reasonable attorney fees and legal expenses.

13 (2) To the satisfaction of all superior mortgages on the vessel held by holders
14 of record to be paid in order of priority.

15 (3) To the satisfaction of the privilege created by this Part.

16 (4) To the satisfaction of all other mortgages and privileges on the vessel
17 held by all lienholders of record to be paid in the order of priority.

18 (5) To the extent the proceeds of the sale exceed the sum of the foregoing,
19 the surplus shall be paid to the owner of the vessel. However, if the funds so
20 credited are not claimed by the owner within six months from the date of the sale,
21 the funds shall be transferred to the administrator of the Uniform Unclaimed
22 Property Act of 1997 as unclaimed property.

23 (6) If proceeds of the sale are not sufficient to satisfy the vessel owner's
24 outstanding obligations to the licensed storage facility or any lienholder of record,
25 the vessel owner remains liable to the licensed storage facility for the deficiency.

26 D. A purchaser of the vessel sold at a commercially reasonable sale pursuant
27 to this Part takes the vessel free and clear of any rights of persons against whom the
28 privilege was valid and all other lienholders of record.

