

who has requested the substance after having been given sufficient information in writing to make an informed decision.

It is not the intent of this section to shield a physician from acts or omissions which otherwise would constitute unprofessional conduct ((as defined in RCW 18.57.170 and 18.72.030)).

NEW SECTION. Sec. 152. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the House January 13, 1986.

Passed the Senate March 11, 1986.

Approved by the Governor April 3, 1986.

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## CHAPTER 260

[House Bill No. 1504]

### MOORAGE FACILITIES—MOORAGE COLLECTION

AN ACT Relating to moorage collection; and amending RCW 53.08.310 and 53.08.320.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 1, chapter 188, Laws of 1983 and RCW 53.08.310 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this section and RCW 53.08.320.

(1) "Port charges" mean charges of a moorage facility operator for moorage and storage, and all other charges owing or to become owing under a contract between a vessel owner and the moorage facility operator, or under an officially adopted tariff including, but not limited to, costs of sale and related legal expenses.

(2) "Vessel" means every species of watercraft or other artificial contrivance capable of being used as a means of transportation on water and which does not exceed two hundred feet in length. "Vessel" includes any trailer used for the transportation of watercraft.

(3) "Moorage facility" means any properties or facilities owned or operated by a moorage facility operator which are capable of use for the moorage or storage of vessels.

(4) "Moorage facility operator" means any port district, city, town, metropolitan park district, or county which owns and/or operates a moorage facility.

(5) "Owner" means every natural person, firm, partnership, corporation, association, or organization, or agent thereof, with actual or apparent authority, who expressly or impliedly contracts for use of a moorage facility.

(6) "Transient vessel" means a vessel using a moorage facility and which belongs to an owner who does not have a moorage agreement with the moorage facility operator. Transient vessels include, but are not limited to: Vessels seeking a harbor of refuge, day use, or overnight use of a moorage facility on a space-as-available basis.

Sec. 2. Section 2, chapter 188, Laws of 1983 as amended by section 124, chapter 7, Laws of 1985 and RCW 53.08.320 are each amended to read as follows:

A moorage facility operator may adopt all regulations necessary for rental and use of moorage facilities and for the expeditious collection of port charges. The regulations may also establish procedures for the enforcement of these regulations by port district, city, county, metropolitan park district or town personnel. The regulations shall include the following:

(1) Procedures authorizing moorage facility personnel to take reasonable measures, including the use of chains, ropes, and locks, or removal from the water, to secure vessels within the moorage facility so that the vessels are in the possession and control of the moorage facility operator and cannot be removed from the moorage facility. These procedures may be used if an owner mooring or storing a vessel at the moorage facility fails, ((for more than sixty days)) after being notified that charges are owing and of the owner's right to commence legal proceedings to contest that such charges are owing, to pay the port charges owed or to commence legal proceedings. Notification shall be by registered mail to the owner at his last known address. ((ff)) In the case of a transient vessel, or where no address was furnished by the owner, the ((port district, city, county, metropolitan park district, or town)) moorage facility operator need not give such notice prior to securing the vessel. At the time of securing the vessel, an authorized moorage facility employee shall attach to the vessel ((two)) a readily visible ((notification stickers)) notice. The ((stickers)) notice shall be of a reasonable size and shall contain the following information:

(a) The date and time the ((stickers were)) notice was attached;  
 (b) ((The identity of the authorized employee;  
 (c)) A statement that if the account is not paid in full within ((one hundred eighty)) ninety days from the time the ((stickers are)) notice is attached, the vessel may be sold at public auction to satisfy the port charges; and

((dd)) (c) The address and telephone number where additional information may be obtained concerning release of the vessel.

((If the)) After a vessel is ((the subject of a delinquent moorage account, and sixty days have expired since notification pursuant to subsection (1) of this section, the moorage facility operator shall review its records to ascertain the identity of the owner.)) secured, the operator shall make a reasonable effort to ((contact)) notify the owner by registered mail in order

to give the owner the information ~~((on))~~ contained in the ((notification stickers)) notice.

(2) Procedures authorizing moorage facility personnel at their discretion to move moored vessels ashore for storage within properties under the operator's control or for storage with private persons under their control as bailees of the moorage facility, if the vessel is, in the opinion of port personnel~~(;)~~ a nuisance, if the vessel is in danger of sinking ((or of sustaining)) or creating other damage, or is owing port charges. ~~((Reasonable))~~ Costs of any such procedure shall be paid by the vessel's owner.

(3) If a vessel is secured under subsection (1) of this section or moved ashore under subsection (2) of this section, the owner who is obligated to the moorage facility operator for port charges may regain possession of the vessel by:

(a) Making arrangements satisfactory with the moorage facility operator for the immediate removal of the vessel from the moorage facility or for authorized moorage; and

(b) Making payment to the moorage facility operator of all port charges, or by posting with the moorage facility operator a sufficient cash bond or other acceptable security ~~((acceptable to such operator)),~~ to be held in trust by the moorage facility operator pending written agreement of the parties with respect to payment by the vessel owner of the amount owing, or pending resolution of the matter of the ~~((port))~~ charges in a civil action in a court of competent jurisdiction. After entry of judgment, including any appeals, in a court of competent jurisdiction, or after the parties reach agreement with respect to payment, the trust shall terminate and the moorage facility operator shall receive so much of the bond or other security as is agreed, or as is necessary to satisfy any judgment, costs, and interest as may be awarded to the moorage facility operator. The balance shall be refunded immediately to the owner at his last known address.

(4) ~~((If a vessel moored or stored at a moorage facility is abandoned, the port district, city, county, metropolitan park district, or town, may, by resolution of its legislative authority, authorize the public sale of the vessel by authorized personnel to the highest and best bidder for cash as follows:~~

~~((a)))~~ If a vessel has been secured by the moorage facility operator under subsection (1) of this section and is not released to the owner under the bonding provisions of this section within ~~((one hundred eighty))~~ ninety days after notifying or attempting to notify the owner under subsection (1) of this section, ~~((or in all other cases, for one hundred eighty days after the operator secures the vessel,))~~ the vessel shall be conclusively presumed to have been abandoned by the owner~~(;)~~.

~~((b)))~~ (5) If a vessel moored or stored at a moorage facility is abandoned, the moorage facility operator may, by resolution of its legislative authority, authorize the public sale of the vessel by authorized personnel to the highest and best bidder for cash as follows:

(a) Before the vessel is sold, the owner of the vessel shall be given at least twenty days' notice of the sale in the manner set forth in subsection (1) of this section if the name and address of the owner is known. The notice shall contain the time and place of the sale, a reasonable description of the vessel to be sold, and the amount of port charges owed with respect to the vessel. The notice of sale shall be published at least once, more than ten but not more than twenty days before the sale, in a newspaper of general circulation in the county in which the moorage facility is located. Such notice shall include the name of the vessel, if any, the last known owner and address, and a reasonable description of the vessel to be sold. The moorage facility operator may bid all or part of its port charges at the sale and may become a purchaser at the sale;

(b) Before the vessel is sold, any person seeking to redeem an impounded vessel under this section may commence a lawsuit in the superior court for the county in which the vessel was impounded to contest the validity of the impoundment or the amount of the port charges owing. Such lawsuit must be commenced within ten days of the date the notification was provided pursuant to subsection (1) of this section, or the right to a hearing shall be deemed waived and the owner shall be liable for any port charges owing the moorage facility operator. In the event of litigation, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

(c) The proceeds of a sale under this section shall first be applied to the payment of port charges. The balance, if any, shall be paid to the owner. If the owner cannot in the exercise of due diligence be located by the moorage facility operator within one year of the date of the sale, the excess funds from the sale shall revert to the department of revenue pursuant to chapter 63.29 RCW. If the sale is for a sum less than the applicable port charges, the moorage facility operator is entitled to assert a claim for a deficiency.

(d) In the event no one purchases the vessel at a sale, or a vessel is not removed from the premises or other arrangements are not made within ten days of sale, title to the vessel will revert to the moorage facility operator.

~~((5))~~ (6) The regulations authorized under this section shall be enforceable only if the moorage facility has had its tariff containing such regulations conspicuously posted at ~~((at))~~ its moorage facility ~~((offices))~~ at all times.

Passed the House February 13, 1986.

Passed the Senate March 4, 1986.

Approved by the Governor April 3, 1986.

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