

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5316

53rd Legislature
1993 Regular Session

Passed by the Senate April 20, 1993
YEAS 47 NAYS 0

President of the Senate

Passed by the House April 8, 1993
YEAS 97 NAYS 0

**Speaker of the
House of Representatives**

Approved

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5316** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

Governor of the State of Washington

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5316

AS AMENDED BY THE HOUSE

Passed Legislature - 1993 Regular Session

State of Washington 53rd Legislature 1993 Regular Session

By Senate Committee on Labor & Commerce (originally sponsored by
Senators Moore and McCaslin)

Read first time 02/26/93.

1 AN ACT Relating to private moorage facilities; and adding a new
2 chapter to Title 88 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** Unless the context clearly requires
5 otherwise, the definitions in this section apply throughout this
6 chapter.

7 (1) "Charges" means charges of a private moorage facility operator
8 for moorage and storage, all other charges owing to or that become
9 owing under a contract between a vessel owner and the private moorage
10 facility operator, or any costs of sale and related legal expenses for
11 implementing section 2 of this act.

12 (2) "Vessel" means every watercraft used or capable of being used
13 as a means of transportation on the water. "Vessel" includes any
14 trailer used for the transportation of watercraft.

15 (3) "Private moorage facility" means any properties or facilities
16 owned or operated by a private moorage facility operator that are
17 capable of use for the moorage or storage of vessels.

18 (4) "Private moorage facility operator" means every natural person,
19 firm, partnership, corporation, association, organization, or any other

1 legal entity, employee, or their agent, that owns or operates a private
2 moorage facility. Private moorage facility operation does not include
3 a "moorage facility operator" as defined in RCW 53.08.310.

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

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

14 NEW SECTION. **Sec. 2.** (1) Any private moorage facility operator
15 may take reasonable measures, including the use of chains, ropes, and
16 locks, or removal from the water, to secure vessels within the private
17 moorage facility so that the vessels are in the possession and control
18 of the operator and cannot be removed from the facility. These
19 procedures may be used if an owner mooring or storing a vessel at the
20 facility fails, after being notified that charges are owing and of the
21 owner's right to commence legal proceedings to contest that such
22 charges are owing, to pay charges owed or to commence legal
23 proceedings. Notification shall be by two separate letters, one sent
24 by first class mail and one sent by registered mail to the owner and
25 any lienholder of record at the last known address. In the case of a
26 transient vessel, or where no address was furnished by the owner, the
27 operator need not give notice prior to securing the vessel. At the
28 time of securing the vessel, an operator shall attach to the vessel a
29 readily visible notice. The notice shall be of a reasonable size and
30 shall contain the following information:

31 (a) The date and time the notice was attached;

32 (b) A statement that if the account is not paid in full within
33 ninety days from the time the notice is attached the vessel may be sold
34 at public auction to satisfy the charges; and

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

37 After a vessel is secured, the operator shall make a reasonable
38 effort to notify the owner and any lienholder of record by registered

1 mail in order to give the owner the information contained in the
2 notice.

3 (2) A private moorage facility operator, at his or her discretion,
4 may move moored vessels ashore for storage within properties under the
5 operator's control or for storage with a private person under their
6 control as bailees of the private moorage facility, if the vessel is,
7 in the opinion of the operator, a nuisance, in danger of sinking or
8 creating other damage, or is owing charges. The costs of any such
9 procedure shall be paid by the vessel's owner.

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

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

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

29 (4) If a vessel has been secured by the operator under subsection
30 (1) of this section and is not released to the owner under the bonding
31 provisions of this section within ninety days after notifying or
32 attempting to notify the owner under subsection (1) of this section,
33 the vessel is conclusively presumed to have been abandoned by the
34 owner.

35 (5) If a vessel moored or stored at a private moorage facility is
36 abandoned, the operator may authorize the public sale of the vessel by
37 authorized personnel to the highest and best bidder for cash as
38 follows:

1 (a) Before the vessel is sold, the vessel owner and any lienholder
2 of record shall be given at least twenty days' notice of the sale in
3 the manner set forth in subsection (1) of this section if the name and
4 address of the owner is known. The notice shall contain the time and
5 place of the sale, a reasonable description of the vessel to be sold,
6 and the amount of charges owed with respect to the vessel. The notice
7 of sale shall be published at least once, more than ten but not more
8 than twenty days before the sale, in a newspaper of general circulation
9 in the county in which the facility is located. This notice shall
10 include the name of the vessel, if any, the last known owner and
11 address, and a reasonable description of the vessel to be sold. The
12 operator may bid all or part of its charges at the sale and may become
13 a purchaser at the sale.

14 (b) Before the vessel is sold, any person seeking to redeem an
15 impounded vessel under this section may commence a lawsuit in the
16 superior court for the county in which the vessel was impounded to
17 contest the validity of the impoundment or the amount of charges owing.
18 This lawsuit must be commenced within sixty days of the date the
19 notification was provided under subsection (1) of this section, or the
20 right to a hearing is deemed waived and the owner is liable for any
21 charges owing the operator. In the event of litigation, the prevailing
22 party is entitled to reasonable attorneys' fees and costs.

23 (c) The proceeds of a sale under this section shall be applied
24 first to the payment of any liens superior to the claim for charges,
25 then to payment of the charges, then to satisfy any other liens on the
26 vessel in the order of their priority. The balance, if any, shall be
27 paid to the owner. If the owner cannot in the exercise of due
28 diligence be located by the operator within one year of the date of the
29 sale, the excess funds from the sale shall revert to the department of
30 revenue under chapter 63.29 RCW. If the sale is for a sum less than
31 the applicable charges, the operator is entitled to assert a claim for
32 deficiency, however, the deficiency judgment shall not exceed the
33 moorage fees owed for the previous six-month period.

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

38 (6) The rights granted to a private moorage facility operator under
39 this section are in addition to any other legal rights an operator may

1 have to hold and sell a vessel and in no manner does this section alter
2 those rights, or affect the priority of other liens on a vessel.

3 NEW SECTION. **Sec. 3.** Sections 1 and 2 of this act shall
4 constitute a new chapter in Title 88 RCW.

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