

HOUSE No. 4762

The Commonwealth of Massachusetts

By Mr. Straus of Mattapoisett, for the committee on Environment, Natural Resources and Agriculture, on House, No. 3439, a Bill relative to abandoned vessels (House, No. 4762). June 14, 2010.

FOR THE COMMITTEE:

| | |
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| NAME: | DISTRICT/ADDRESS: |
| William M. Straus | 10th Bristol |

The Commonwealth of Massachusetts

In the Year Two Thousand and Ten

An Act relative to abandoned vessels.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 1 of Chapter 91 of the General Laws, as appearing in the 2006
2 Official Edition, is hereby amended by inserting after the word “forty-one”, in line 10, the
3 following:— “43A, 43B, and 43C”
4

5 SECTION 2. Said Chapter 91 of the General Laws, as so appearing, is hereby further amended by
6 striking Sections 38 through 43, inclusive, and inserting in place thereof the following
7 sections:—
8

9 Section 38. As used in Sections 38 through 48 the following terms shall, unless the context
10 clearly requires otherwise, have the following meanings:—

11 “Abandoned”, unoccupied, deserted, forsaken, derelict, wrecked, sunken vessel or other
12 shipwrecked property, on any of the shores or waters of the Commonwealth and not in the
13 custody of the owner or his agent or of any other person lawfully authorized to take possession
14 of it and deemed by the department or the harbor master of the city or town in whose jurisdiction
15 the vessel lies or whomsoever is so empowered by said city or town to be an obstruction to the
16 safe and convenient navigation or other lawful use of such waters.

17 “Certificate of number”, a document issued by the director of the office of law enforcement
18 stating the name and address of the owner and the number awarded to a vessel pursuant to this
19 chapter, except such vessels, other than livery boats, owned by a manufacturer of, or dealer in,
20 boats.

21 “Certificate of documentation number”, a document issued by the United States Coast Guard
22 stating the name and address of the owner of commercial vessels and the number awarded to a
23 vessel pursuant to this chapter.

24 “Claimant”, the Commonwealth, its political subdivisions, or any person or entity, public or
25 private, which desires to acquire title to an abandoned vessel

26 “Department”, the department of conservation and recreation acting through the division of
27 waterways.

28 “Director”, the director of the office of law enforcement within the executive office of energy
29 and environmental affairs.

30 “Identification number”, the number awarded to a vessel pursuant to this chapter and upon
31 approval of an application for a certificate of number or certificate of documentation number.

32 “Lienholder”, any person or entity holding a lien on a vessel pursuant to generally accepted
33 admiralty or maritime law.

34 “Office”, the office of law enforcement within the executive office of energy and environmental
35 affairs.

36 “Operator”, a person who operates or who has a charge of the navigation or use of a vessel.

37 “Owner”, a person, other than a lienholder, holding title to a vessel; provided further, that the
38 term shall include a person entitled to the use or possession of a vessel subject to an interest of
39 another person, reserved or created by agreement and securing payment or performance of an
40 obligation, but shall exclude a lessee under a lease not intended as a security interest.

41 “Person”, a natural person, corporation, association, partnership or other legal entity.

42 “Removal costs”, costs associated with the removal or destruction of any vessel from land or
43 water including the reimbursement of any costs incurred by the claimant in the course of
44 acquiring title to an abandoned vessel.

45 “Vessel”, a boat or any watercraft of every description, motorized and non-motorized, except a
46 seaplane on the water, used or capable of being used as a means of transportation on water
47 including, but not limited to, documented boats and ships, flat bottomed boats, barges, scows and
48 rafts and including all equipment, modes of power, and all property aboard the vessel.

49

50 Section 39. It shall be unlawful for any person to willfully abandon a vessel upon public land or
51 the shores or waters of the Commonwealth or upon any private property or the water thereof
52 adjacent to public land or the shores or waters of the Commonwealth without the consent of the
53 official designated by law to have jurisdiction over such public land or waterway, or the owner
54 or other person in charge of said private property. Mooring, grounding, or otherwise attaching or
55 fastening a vessel upon any public land or waterway or any private property without such
56 consent for a period of more than 90 days shall constitute prima facie evidence of abandonment.
57 Any vessel that the owner, operator or lienholder has placed at a storage or repair facility, which
58 is subject to the provisions of Section 14 of Chapter 255 or which is subject to the provisions of
59 Sections 179 or 180 of Chapter 6, Sections 26 through 27D, inclusive, of Chapter 9, Section 63
60 of 75 Chapter 91, or any other applicable federal or state law, shall not be considered an
61 abandoned vessel for purposes of this chapter.

62

63 Section 40. Any claimant wishing to obtain title to a vessel abandoned upon public land or the
64 shores or waters of the Commonwealth or upon any private property or the water thereof
65 adjacent to public land or the shores or waters of the Commonwealth and not subject to the
66 exclusive jurisdiction of the United States may apply to the office for title under the provisions of
67 this section. If there is more than one claimant, the office shall give preference for the claim in
68 the following order:— (i) lienholders, in order of priority as determined by admiralty or maritime
69 law; and (ii) the first to file of the department, the office, another political subdivision of the
70 Commonwealth, the municipal government or jurisdiction wherein the vessel lies and the
71 government of the United States of America or any political subdivision thereof. In no event
72 shall preference be granted if emergency conditions exist and the procedures under this section
73 would jeopardize navigation, public health, or safety. In the event that there is more than one
74 equal claimant, the office shall hold an auction, and the title, subject to valid liens as provided for
75 hereunder, shall go to the highest bidder. Prior to applying to the office for title pursuant to

76 Section 41, the claimant shall: (i) if the vessel has an identification number, a registration
77 number, equipment numbers, a certificate of documentation number, a certificate of number, or
78 other means of identification, contact the office to determine if the vessel has been stolen; (ii)
79 secure the owner's last known address and the address of any lienholder appearing on record if,
80 after 30 days, the office determines that the vessel is abandoned and not stolen; provided that
81 said claimant shall notify the owner, any known lienholder, the department, the board of
82 underwater archaeological resources, and the Massachusetts historical commission by certified
83 first class mail, return receipt requested, to the owner's, lienholder's, or other required party's
84 address of record; (iii) if the owner of record does not reply within 30 days, the claimant shall
85 cause a notice to appear for 3 consecutive printings in a newspaper of general circulation
86 published in the county, city, or town of the owner's last known address, or if the owner's name
87 and address are unavailable, where known lienholders have their place of business, or if no
88 lienholder's name and address are known, where the vessel is located, provided that said notice
89 shall include: (i) a description of the vessel and any identifying information; (ii) a description of
90 the location where the vessel is situated; (iii) a statement informing the owner and any lienholder
91 of their right to reclaim the vessel within 30 days subject to rights of any other lienholder; (iv) a
92 statement that failure to claim the vessel will constitute a waiver of all rights, title, and interest in
93 the vessel; and (v) a statement that if ownership or lienholder interest is not claimed and the
94 vessel is not removed within 30 days after the owner, the owner's agent, or employee signs the
95 return receipt or within 90 days of the last day of notice by publication, whichever is later, the
96 claimant may apply to the office for title to the vessel.

97
98 Section 41. If the owner or lienholder fails to claim the vessel within 30 days after the return
99 receipt is received by the claimant or after the last day of notice is given by publication,
100 whichever is later, and if the Commonwealth is not the owner pursuant to Sections 179 or 180 of
101 Chapter 6; or Sections 26 through 27D, inclusive, of Chapter 9; and if the United States is not the
102 owner pursuant to federal law or regulation, the claimant may apply to the office for a title,
103 subject to any lien which is valid and enforceable under any other statute, including Section 9 of
104 Chapter 106. Such application shall include: (i) a notarized affidavit by the claimant stating that
105 the vessel has been abandoned for at least 90 days, that all notice requirements pursuant to this
106 chapter have been satisfied and that the vessel is not subject to said Sections 179 or 180 of
107 Chapter 6; or to said Sections 26 through 27D, inclusive, of Chapter 9 or, the requirements of
108 Section 63 of Chapter 91, or any other applicable state or federal law or regulation; (ii) if
109 applicable, a copy of the letter to the identified owner and lienholders and accompanying return
110 receipts; provided however, that in the alternative, the claimant may supply a detailed
111 explanation of the unsuccessful steps taken to identify the owner and any lienholder and to
112 secure the address of the owner or any lienholder, including any returned notices; and (iii) in the
113 case of notice by publication, original copies of the notice as published. The office shall certify
114 that the claimant has met the requirements of this section, and such certification shall be included
115 with the records of the granting of the title.

116
117 Section 42. Except as otherwise set forth in this chapter, or in Sections 179 or 180 of Chapter 6
118 or Sections 26 through 27D, inclusive, of Chapter 9, or any other applicable state or federal law,
119 the office is hereby authorized to grant title to an abandoned vessel, and any contents therein, to
120 a claimant. Upon certification as required pursuant to Section 41, and upon payment of any fees
121 or taxes due, the office shall issue the claimant title to the vessel. The applicant shall be

122 responsible for all costs incurred in transferring title. Should such person wish to operate such
123 vessel, he shall, if required by law, register said vessel with the office in accordance with
124 Chapter 90B or document the vessel under the applicable federal requirements.

125
126 Section 43. After receiving title, the claimant may remove the vessel, destroy it, or sell it.
127 Removal costs shall be borne by the previous owner if that owner has been identified, and
128 otherwise shall be borne by the claimant. If the new owner intends to destroy or otherwise
129 dispose of said vessel, he shall do so in compliance with any and all related state and federal
130 statutes.

131
132 Section 43A. If an unoccupied, deserted, forsaken, derelict, wrecked, sunken or abandoned
133 vessel, or any unlawful or unauthorized structure or thing, is deposited or suffered to remain in
134 the tide waters of the Commonwealth, and if the department deems it is, or is liable to cause or
135 become, an obstruction to the safe and convenient navigation or other lawful use of such waters,
136 the department shall move it or cause it to be removed, after which time it may become a
137 claimant and apply for title from the office, complying with the provisions of Sections 40, 41, 42,
138 and 43, and for a vessel that has been abandoned, and that does not pose an obstruction to the
139 safe and convenient navigation or other lawful use of such waters, and for which no other
140 claimant commences proceedings under this chapter within 60 days of the department having
141 notice of said vessel, the department may become a claimant and apply for title from the office,
142 complying with the provisions of said Sections 40, 41, 42 and 43.

143
144 Section 43B. Any person who willfully abandons a vessel shall be punished by a fine of not more
145 than \$10,000, except where a vessel, scow, lighter or other structure is or has been grounded
146 within the limits of any harbor or on any of the shores of the Commonwealth by reason of
147 accident, emergency, errors of navigation, or in order to prevent loss of life or the sinking of such
148 vessel, scow, lighter or other structure . Any person who obtains or attempts to obtain title to a
149 vessel through fraudulent means shall be punished by a fine of not more than \$1,000.

150
151 Section 43C. The department and the office shall promulgate such rules and regulations as
152 necessary to carry out the provisions of Sections 38 through 43B.

153 SECTION 3. Section 49 of Chapter 91 of the General Laws, as 2 so appearing, is hereby
154 repealed.

155 SECTION 4. Section 72 and 73 of Chapter 92 of the General 2 Laws, as so appearing, are hereby
156 repealed.