

HOUSE No. 726

By Mr. Cabral of New Bedford, petition of Antonio F. D. Cabral and others relative to the disposition of abandoned vessels. Environment, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

PETITION OF:

Antonio F. D. Cabral
Anthony J. Verga

Robert M. Koczera
John D. Keenan

In the Year Two Thousand and Seven.

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. Chapter ninety-one of the General Laws, as
2 appearing in the 2004 Official Edition, is hereby amended by
3 striking sections thirty-eight, thirty-nine, forty, forty-one, forty-two,
4 forty-three, and forty-nine.

1 SECTION 2. Section one of chapter ninety-one is hereby
2 amended by adding the following in the definition of “Depart-
3 ment”:— After section “forty,” add “forty-one A, forty-one B,”.

1 SECTION 3. Said chapter ninety-one is hereby further amended
2 by adding the following sections:

3 Section 38. DEFINITIONS

4 For the purposes of sections thirty-eight to forty-eight, inclusive,
5 the following terms shall have the following meanings:

6 “Certificate of Number”, a document issued by the director of the
7 division of law enforcement, upon application therefore, stating the
8 name and address of the owner of, and the number awarded to a
9 vessel subject to this chapter, except such vessels, other than livery
10 boats, owned by a manufacturer of or dealer in boats.

11 “Certificate of Documentation Number”, a document issued by
12 the United States Coast Guard, upon application therefore, stating
13 the name and address of the owner of commercial vessels, and the
14 number awarded to a vessel subject to this chapter.

15 “Claimant”, the commonwealth, its political subdivisions, or any
16 person or entity, public or private, which desires to acquire title to an
17 abandoned vessel;

18 “Department”, the department of conservation and recreation
19 acting through the division of water supply protection;

20 “Director”, the director of the office of law enforcement within
21 the executive office of environmental affairs;

22 “Identification number”, the number awarded to a vessel subject
23 to this chapter and upon approval of an application for a certificate
24 of number or certificate of documentation number;

25 “Lienholder”, any person or entity holding a perfected security
26 interest;

27 “Office”, the office of law enforcement within the executive
28 office of environmental affairs;

29 “Operator”, a person who operates or who has a charge of the
30 navigation or use of a vessel;

31 “Owner”, a person, other than a lienholder, holding a vessel or the
32 title to a vessel. The term includes a person entitled to the use or
33 possession of a vessel subject to an interest of another person,
34 reserved or created by agreement and securing payment or perfor-
35 mance of an obligation but shall exclude a lessee under a lease not
36 intended as a security interest;

37 “Removal costs”, any and all costs associated with the removal or
38 destruction of any vessel from land and /or water and shall include
39 the reimbursement of any or all costs incurred by the claimant in the
40 course of acquiring title to an abandoned vessel;

41 “Security interest”, an interest which is reserved or created, by an
42 agreement which secures payment or performance of an obligation
43 and is valid against third parties generally;

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

50 Section 39. It shall be unlawful for any person to willfully
51 abandon any vessel to or upon public land or waters of the Com-
52 monwealth or to or upon any private property or the water immedi-
53 ately adjacent thereto without the consent of the official designated
54 by law to have jurisdiction over such public land or waterway, or the
55 owner or other person in charge of the private property. A vessel
56 which has remained moored, grounded, or otherwise attached or fas-
57 tened upon any public land or waterway or any private property
58 without such consent for a period of more than 90 days shall be
59 prima facie evidence of such abandonment.

60 Any vessel that the owner, operator, or lienholder has placed at a
61 storage or repair facility, which is subject to the provisions of section
62 fourteen of chapter two hundred and fifty-five or which is subject to
63 the provisions of sections one hundred seventy-nine or one hundred
64 eighty of chapter six; sections twenty-six to twenty-seven D, inclu-
65 sive, of chapter nine; section sixty-three of chapter ninety-one; or
66 any other applicable federal or state law, shall not be considered an
67 abandoned vessel.

68 Section 40.

69 Any claimant wishing to obtain title to an abandoned vessel, as
70 defined hereunder, may apply to the office for title under the provi-
71 sions of this section. (a) If there is more than one claimant, the office
72 shall give preference for the claim in the following order:

73 (i) the department;

74 (ii) the office;

75 (iii) another department of agency of the commonwealth;

76 (iv) the municipal government of jurisdiction where the vessel
77 lies;

78 (v) the United States government or any of its departments or
79 agencies;

80 (vi) private parties.

81 (b) In no event shall this preference be granted if emergency con-
82 ditions exist and the procedures under this section would jeopardize
83 navigation, public health, or safety. In the event that there is more
84 than one equal claimant, the office shall hold an auction, and the
85 title, subject to valid liens as provided for hereunder, shall go to the
86 highest bidder.

87 (c) Before applying to the office for title under section 40A, the
88 claimant must first comply with the following:

89 (i) If a vessel has any identification number, registration number,
90 equipment numbers, certificate of documentation number, certificate
91 of number, or other means of identification, the claimant shall con-
92 tact the office to determine if the vessel has been stolen.

93 (ii) If after thirty days the office determines that the vessel is
94 abandoned and not stolen, the claimant shall, if possible, secure the
95 owner's last known address and the address of any lienholder
96 appearing on record. Said claimant shall notify the owner, any lien-
97 holder of record, the department, the Board of Underwater Archaeo-
98 logical Resources, and the Massachusetts Historical Commission by
99 certified first class mail, return receipt requested, to the owner's,
100 lienholder's, or other required party's address of record.

101 (iii) If the owner of record does not reply within thirty days, the
102 claimant shall cause a notice to appear for three consecutive days in
103 a newspaper of general circulation published in the county, city, or
104 town where the vessel is located, where the owner of the boat has its
105 address, or if the owner's name and address are unavailable, where a
106 lienholder has its place of business. The notice given pursuant to
107 this section shall contain the following:

- 108 (1) a description of the vessel, including any identifying numbers;
- 109 (2) a description of the location where the vessel is situated;
- 110 (3) a statement informing the owner and lienholder of their right
111 to reclaim the vessel within thirty days subject to rights of any other
112 lienholder;
- 113 (4) a statement that failure to claim the vessel will constitute a
114 waiver of all rights, title, and interest in the vessel; and
- 115 (5) a statement that if ownership or lienholder interest is not
116 claimed and the vessel is not removed within thirty days after the
117 owner, the owner's agent, or employee signs the return receipt or
118 within ninety days of the last day of notice by publication,
119 whichever is later, the claimant may apply to the office for title to
120 the vessel.

121 (d) If the claimant cannot identify any vessel owner or ascertain
122 the owner's address after a reasonable search of record, and if no
123 lienholder appears on record, the claimant need not issue the notice
124 required by subsection (c)(ii).

125 Section 40A.

126 If the owner or lienholder fails to claim the vessel within thirty
127 days after the return receipt is received by the claimant or after the

128 last day of notice is given by publication, whichever is later, and if
129 the commonwealth is not the owner pursuant to section one hundred
130 seventy-nine or one hundred eighty of chapter six; or sections
131 twenty-six to twenty-seven D, inclusive, of chapter nine; and if the
132 United States is not the owner pursuant to federal law or regulation,
133 the claimant may apply to the office for a title, subject to any lien
134 which is valid and enforceable under any other statute, including
135 section nine of chapter one hundred six. (a) Such application must
136 include the following:

137 (i) a notarized affidavit by the claimant stating that the vessel has
138 been abandoned for at least ninety days, that all notice requirements
139 under this chapter have been met, and that the vessel is not subject to
140 sections one hundred seventy-nine or one hundred eighty of chapter
141 six; or, sections twenty-six to twenty-seven D, inclusive, of chapter
142 nine; or, the requirements of section sixty-three of chapter ninety-
143 one, or any other applicable state or federal law or regulation;

144 (ii) a copy of the letter, if sent, to the identified owner and lien-
145 holders and accompanying return receipts. In the alternative, the
146 claimant may supply a detailed explanation of the unsuccessful steps
147 taken to identify the owner and any lienholder and to secure the
148 address of the owner or any lienholder, including any returned
149 notices; and

150 (iii) in the case of notice by publication, original copies of the
151 notice as published.

152 (b) The office shall certify that the claimant has met the require-
153 ments of this section, and such certification shall be included with
154 the records of the granting of the title.

155 Section 41. Except as otherwise set forth in this chapter, or in
156 section one hundred seventy-nine or one hundred and eighty of
157 chapter six, or sections twenty-six to twenty-seven D, inclusive, of
158 chapter 9, or any other applicable state or federal law, the office is
159 hereby given the authority to grant title to a vessel, and any contents
160 therein, subject to any valid, perfected security interests, to the
161 claimant. Upon certification as required in section forty A, and upon
162 payment of any fees or taxes due, the office shall issue the claimant
163 title to the vessel. All costs incurred in transferring title shall be
164 borne by the applicant. Should such person wish to operate such
165 vessel he or she shall, if required by law, register said vessel with the

166 office in accordance with chapter ninety B, as amended, or docu-
167 ment the vessel under the applicable federal requirements.

168 Section 41A. After receiving title, the claimant may remove the
169 vessel, destroy it, or sell it. Removal costs shall be borne by the pre-
170 vious owner if that owner has been identified, and shall be borne by
171 the claimant if the previous owner cannot be identified. If the new
172 owner intends to destroy or otherwise dispose of said vessel, he or
173 she shall report such intention to the department and office at least
174 fifteen days prior, supplying all details of the demolition or other
175 disposition, including, but not limited to, the place of demolition,
176 any materials or contracts for the demolition, any required permits,
177 and the intended disposition of the vessel or its materials. The
178 department shall immediately notify the office of the disposal or
179 destruction of any vessel.

180 Section 41B. If a wrecked, sunken or abandoned vessel, or any
181 unlawful or unauthorized structure or thing, is deposited or suffered
182 to remain in the tide waters of the commonwealth, and if the depart-
183 ment deems it is, or is liable to cause or become, an obstruction to
184 the safe and convenient navigation or other lawful use of such
185 waters, the department shall move it or cause it to be removed, after
186 which time it may become a claimant and apply for title from the
187 office, complying with the provisions of sections 40, 40A, 41, and
188 41A of this chapter, and

189 For a vessel that has been abandoned, and that does not pose an
190 obstruction to the safe and convenient navigation or other lawful use
191 of such waters, and for which no other claimant commences pro-
192 ceedings under this chapter within sixty days of the department
193 having notice of said vessel, the department may become a claimant
194 and apply for title from the office, complying with the provisions of
195 sections 40, 40A, 41, and 41A.

196 Section 42. Any person who abandons a vessel shall be punished
197 by a fine of not more than ten thousand dollars, except in any case,
198 where, by reason of accident, emergency, errors of navigation, or in
199 order to prevent loss of life or the sinking of a vessel, scow, lighter
200 or other structure, such vessel, scow, lighter or structure is or has
201 been grounded within the limits of any harbor or on any of the
202 shores of the commonwealth. Any person who obtains or attempts to
203 obtain title to a vessel through fraudulent means shall be punished
204 by a fine of not more than one thousand dollars.

205 Section 42A. The department and the office shall promulgate such
206 rules and regulations as necessary to carry out the provisions of sec-
207 tions thirty-eight to forty-two, inclusive.

1 SECTION 4. Chapter ninety-two, as so appearing, is hereby
2 amended by repealing sections seventy-two and seventy-three.