

HOUSE No. 3439

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

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

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

9 “Abandoned”, unoccupied, deserted, forsaken, derelict, wrecked, sunken vessel or other
10 shipwrecked property, on any of the shores or waters of the Commonwealth and not in the
11 custody of the owner or his agent or of any other person lawfully authorized to take possession
12 of it and deemed by the department to be an obstruction to the safe and convenient navigation or
13 other lawful use of such waters.

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

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

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

23 “Department”, the department of conservation and recreation acting through the division
24 of waterways.

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

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

30 “Lienholder”, any person or entity holding a perfected security interest.

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

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

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

39 “Person”, a natural person, corporation, association, partnership 46 or other legal
40 entity.

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

44 “Security interest”, an interest which is reserved or created, by an agreement which
45 secures payment or performance of an obligation and is valid against third parties generally.

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

50 Section 39. It shall be unlawful for any person to willfully abandon a vessel upon public
51 land or the shores or waters of the Commonwealth or upon any private property or the water
52 thereof adjacent to public land or the shores or waters of the Commonwealth without the consent
53 of the official designated by law to have jurisdiction over such public land or waterway, or the
54 owner or other person in charge of said private property. Mooring, grounding, or otherwise
55 attaching or fastening a vessel upon any public land or waterway or any private property without
56 such consent for a period of more than 90 days shall constitute prima facie evidence of

57 abandonment. Any vessel that the owner, operator or lienholder has placed at a storage or repair
58 facility, which is subject to the provisions of Section 14 of Chapter 255 or which is subject to the
59 provisions of Sections 179 or 180 of Chapter 6, Sections 26 through 27D, inclusive, of Chapter
60 9, Section 63 of 75 Chapter 91, or any other applicable federal or state law, shall not be
61 considered an abandoned vessel.

62 Section 40. Any claimant wishing to obtain title to a vessel abandoned upon public land
63 or the shores or waters of the Commonwealth or upon any private property or the water thereof
64 adjacent to public land or the shores or waters of the Commonwealth and not subject to the
65 exclusive jurisdiction of the United States may apply to the office for title under the provisions of
66 this 83 section. If there is more than one claimant, the office shall give preference for the claim
67 in the following order:— (i) the department; (ii) the office; (iii) another political subdivision of
68 the Commonwealth; (iv) the municipal government or jurisdiction wherein the vessel lies; (v) the
69 government of the United States of America or any political subdivision thereof; (vi) private
70 parties. In no event shall preference be granted if emergency conditions exist and the procedures
71 under this section would jeopardize navigation, public health, or safety. In the event that there is
72 more than one equal claimant, the office shall hold an auction, and the title, subject to valid liens
73 as provided for hereunder, shall go to the highest bidder. Prior to applying to the office for title
74 pursuant to Section 41, the claimant shall: (i) if the vessel has an identification number, a
75 registration number, equipment numbers, a certificate of documentation number, a certificate of
76 number, or other means of identification, contact the office to determine if the vessel has been
77 100 stolen; (ii) secure the owner’s last known address and the address

78 of any lienholder appearing on record if, after 30 days, the office determines that the
79 vessel is abandoned and not stolen; provided that said claimant shall notify the owner, any

80 lienholder of record, the department, the board of underwater archaeological resources, and the
81 Massachusetts historical commission by certified first class mail, return receipt requested, to the
82 owner's, lienholder's, or other required party's address of record; (iii) if the owner of record does
83 not reply within 30 days, the claimant shall cause a notice to appear for 3 consecutive days in a
84 newspaper of general circulation published in the county, city, or town where the vessel is
85 located, where the owner of the boat has its address, or if the owner's name and address are
86 unavailable, where a lienholder has its place of business, provided that said notice shall include:
87 (i) a description of the vessel and any identifying information; (ii) a description of the location
88 where the vessel is situated; (iii) a statement informing the owner and lienholder of their right to
89 reclaim the vessel within 30 days subject to rights of any other lienholder; (iv) a statement that
90 failure to claim the vessel will constitute a waiver of all rights, title, and interest in the vessel;
91 and (v) a statement that if ownership or lienholder interest is not claimed and the vessel is not
92 removed within 30 days after the owner, the owner's agent, or employee signs the return receipt
93 or within 90 days of the last day of notice by publication, whichever is later, the claimant may
94 apply to the office for title to the vessel. If the claimant cannot identify the vessel's owner or
95 ascertain the owner's address after a reasonable search, and if no lienholder appears on record,
96 the claimant need not issue the notice required pursuant to this section.

97 Section 41. If the owner or lienholder fails to claim the vessel within 30 days after the
98 return receipt is received by the claimant or after the last day of notice is given by publication,
99 whichever is later, and if the Commonwealth is not the owner pursuant to Sections 179 or 180 of
100 Chapter 6; or Sections 26 through 27D, inclusive, of Chapter 9; and if the United States is not the
101 owner pursuant to federal law or regulation, the claimant may apply to the office for a title,
102 subject to any lien which is valid and enforceable under any other statute, including Section 9 of

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

115 Section 42. Except as otherwise set forth in this chapter, or in Sections 179 or 180 of
116 Chapter 6 or Sections 26 through 27D, 157 inclusive, of Chapter 9, or any other applicable state
117 or federal 158 law, the office is hereby authorized to grant title to an abandoned 159 vessel, and
118 any contents therein, subject to any valid, perfected security interests, to a claimant. Upon
119 certification as required pursuant to Section 41, and upon payment of any fees or taxes due, the
120 office shall issue the claimant title to the vessel. The applicant shall be responsible for all costs
121 incurred in transferring title. Should such person wish to operate such vessel he shall, if required
122 by law, register said vessel with the office in accordance with Chapter 90B or document the
123 vessel under the applicable federal requirements.

124 Section 43. After receiving title, the claimant may remove the vessel, destroy it, or sell it.
125 Removal costs shall be borne by the previous owner if that owner has been identified, and

126 otherwise shall be borne by the claimant. If the new owner intends to destroy or otherwise
127 dispose of said vessel, he shall report such intention to the department and the office at least 15
128 days prior to said destruction or disposal, supplying all details of the demolition or other
129 disposition including, but not limited to, the place of demolition, any materials or contracts for
130 the demolition, any required permits, and the intended disposition of the vessel or its materials.

131 Section 43A. If An occupied, deserted, forsaken, derelict, wrecked, sunken or
132 abandoned vessel, or any unlawful or unauthorized structure or thing, is deposited or suffered to
133 remain in the tide waters of the Commonwealth, and if the department deems it is, or is liable to
134 cause or become, an obstruction to the safe and convenient navigation or other lawful use of such
135 waters, the department shall move it or cause it to be removed, after which time it may become a
136 claimant and apply for title from the office, complying with the provisions of Sections 187 40,
137 41, 42, and 43, and for a vessel that has been abandoned, and that does not pose an obstruction to
138 the safe and convenient navigation or other lawful use of such waters, and for which no other
139 claimant commences proceedings under this chapter within 60 days of the department having
140 notice of said vessel, the department may become a claimant and apply for title from the office,
141 complying with the provisions of said Sections 40, 41, 42 and 43.

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

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

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

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