

HOUSE No. 4762

The Commonwealth of Massachusetts

In the Year Two Thousand 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 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 or the harbormaster of the city or town in whose jurisdiction

13 the vessel lies or whomsoever is so empowered by said city or town to be an obstruction to the
14 safe and convenient navigation or other lawful use of such waters.

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

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

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

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

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

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

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

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

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

37 “Owner”, a person, other than a lienholder, holding title to a vessel; provided further, that
38 the term shall include a person entitled to the use or possession of a vessel subject to an interest
39 of 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
43 land or 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,
46 except a seaplane on the water, used or capable of being used as a means of transportation on
47 water including, but not limited to, documented boats and ships, flat bottomed boats, barges,
48 scows and rafts and including all equipment, modes of power, and all property aboard the vessel.

49 Section 39. It shall be unlawful for any person to willfully abandon a vessel upon public
50 land or the shores or waters of the Commonwealth or upon any private property or the water
51 thereof adjacent to public land or the shores or waters of the Commonwealth without the consent
52 of the official designated by law to have jurisdiction over such public land or waterway, or the
53 owner or other person in charge of said private property. Mooring, grounding, or otherwise

54 attaching or fastening a vessel upon any public land or waterway or any private property without
55 such consent for a period of more than 90 days shall constitute prima facie evidence of
56 abandonment. Any vessel that the owner, operator or lienholder has placed at a storage or repair
57 facility, which is subject to the provisions of Section 14 of Chapter 255 or which is subject to the
58 provisions of Sections 179 or 180 of Chapter 6, Sections 26 through 27D, inclusive, of Chapter
59 9, Section 63 of 75 Chapter 91, or any other applicable federal or state law, shall not be
60 considered an abandoned vessel for purposes of this chapter.

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

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

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

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

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

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

123 otherwise shall be borne by the claimant. If the new owner intends to destroy or otherwise
124 dispose of said vessel, he shall do so in compliance with any and all related state and federal
125 statutes.

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

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

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

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

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