

1 SB50
2 187596-5
3 By Senator Pittman
4 RFD: Governmental Affairs
5 First Read: 09-JAN-18
6 PFD: 01/05/2018

1 SB50

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4 ENROLLED, An Act,

5 Relating to vessels; to provide for the disposal of
6 abandoned or derelict vessels; to provide the circumstances
7 under which a person or law enforcement officer may take
8 possession of an abandoned or derelict vessel; to provide
9 procedures for the return of the vessel to the owner or
10 lienholder of record; to provide for the sale of an abandoned
11 vessel; to provide for the disposal of the proceeds of the
12 sale; to create the Alabama Abandoned and Derelict Vessel
13 Fund; to make it unlawful for the owner of a derelict vessel
14 to refuse or fail to remove the derelict vessel from the
15 waters of this state after a request from a law enforcement
16 officer; to provide the Alabama State Law Enforcement Agency
17 with rulemaking authority; and in connection therewith would
18 have as its purpose or effect the requirement of a new or
19 increased expenditure of local funds within the meaning of
20 Amendment 621 of the Constitution of Alabama of 1901, now
21 appearing as Section 111.05 of the Official Recompilation of
22 the Constitution of Alabama of 1901, as amended.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

24 Section 1. Definitions.

1 As used in this act, the following terms shall have
2 the following meanings:

3 (1) ABANDONED VESSEL. A vessel left unattended for
4 four or more weeks after a hurricane, tropical storm, or other
5 natural event resulting in a declaration of emergency by the
6 Governor or, in the absence of a hurricane, tropical storm, or
7 other natural event resulting in a declaration of emergency by
8 the Governor, any of the following:

9 a. A vessel left unattended that is moored,
10 anchored, or otherwise in the waters of the state or on public
11 property for a period of more than 10 days.

12 b. A vessel not left on private property for repairs
13 that is moored, anchored, or otherwise on private property for
14 a period of more than 10 days without the consent of the owner
15 or lessee of the property.

16 c. A vessel left on private property for repairs
17 that has not been reclaimed within 10 days from the latter of
18 either the date the repairs were completed or the agreed-upon
19 redemption date.

20 (2) AGENCY. The Alabama State Law Enforcement
21 Agency.

22 (3) DERELICT VESSEL. A vessel in the waters of this
23 state that satisfies any of the following:

24 a. Is sunk, in danger of sinking, or is otherwise
25 taking on water without an effective means to dewater.

1 b. Is obstructing a waterway.

2 c. Is endangering life or property.

3 d. Has broken loose or is in danger of breaking
4 loose from its anchor.

5 e. Is listing due to water intrusion.

6 f. Does not have an effective means of propulsion
7 for safe navigation or is otherwise not seaworthy.

8 (4) LAW ENFORCEMENT OFFICER. An officer of a county,
9 municipality, or any state agency, department, or subdivision
10 thereof, who is certified by the Alabama Peace Officers'
11 Standards and Training Commission.

12 (5) VESSEL. Every description of watercraft, other
13 than a seaplane, capable of being used as a means of
14 transportation on the water. This term does not include a
15 vessel built or constructed before the year 1918.

16 (6) WATERS OF THIS STATE. Waters of this state as
17 defined in Section 33-5-3, Code of Alabama 1975.

18 Section 2. Removal.

19 (a) A law enforcement officer may request a service
20 to remove a vessel from public property under any of the
21 following circumstances:

22 (1) The vessel is determined by the officer to be
23 abandoned.

24 (2) The vessel is left unattended because the
25 operator of the vessel has been arrested.

1 (3) The vessel is determined by the officer to pose
2 a threat to public health or safety.

3 (4) The vessel is determined by the officer to be a
4 derelict vessel.

5 (b) An owner of private property may request a
6 service to remove an abandoned or derelict vessel from the
7 private property to a storage place.

8 (c) (1) A law enforcement officer who directs the
9 removal of a vessel in accordance with this act shall be
10 liable in accordance with Section 36-1-12, Code of Alabama
11 1975.

12 (2) A person who removes or stores a vessel in
13 accordance with this act shall be liable for negligence only.

14 Section 3. Duty.

15 (a) Except as provided in Section 5, a person who
16 removes a vessel pursuant to this act shall do all of the
17 following:

18 (1) Give written notice of the removal to the agency
19 within five calendar days. The notice shall include a complete
20 description of the vessel, the vessel identification number,
21 and any other information required by the agency.

22 (2) Perform a lien search on the vessel with the
23 Secretary of State of Alabama, the Secretary of State of the
24 state of the owner's residence, and the National Vessel
25 Documentation Center.

1 (3) Give written notice of the removal of the vessel
2 to the owner and lienholders of record of all of the
3 following:

4 a. The location of the vessel.

5 b. The normal business hours of the facility, if
6 any, holding the vessel.

7 c. Any accrued charges or fees and the daily storage
8 rate.

9 d. The mailing address and contact telephone number
10 of the person in possession of the vessel.

11 e. The following language in no smaller than 10
12 point type: "If this vessel is not redeemed by the recorded
13 owner or lienholder of record within 45 calendar days from the
14 date of this notice, the vessel may be sold."

15 (4) If the identity of an owner or lienholder of
16 record cannot be ascertained, place an advertisement in a
17 newspaper of general circulation in the county in which the
18 vessel was located. The advertisement shall run in the
19 newspaper once a week for two consecutive weeks and shall
20 contain all of the information required in subdivision (3).

21 (b) The agency, within 10 calendar days of receiving
22 the notice required in subsection (a), shall provide the
23 person removing or storing the vessel with the identity and
24 address of the owner of the vessel.

1 (c) A person storing a vessel pursuant to this
2 section shall notify the agency if the vessel is claimed by
3 the owner, determined to be stolen, or for any other reason
4 suggesting that the vessel should no longer be considered an
5 abandoned or derelict vessel.

6 (d) A person who does not provide the notice and
7 information required by this act shall forfeit all claims and
8 liens for the vessel's storage prior to the time both the
9 report and notice have been sent. However, failure to report
10 or send notice does not result in a forfeiture of claims and
11 liens for the removal of a vessel.

12 Section 4. Liens and Fees, Sale.

13 Except for vessels subject to Section 5:

14 (1) A person who removes, stores, or sells a vessel
15 in accordance with this act shall have a lien on the vessel
16 for all of the following:

17 a. The reasonable fees connected with the removal
18 and storage of the vessel.

19 b. The court costs and filing fees incurred in
20 obtaining a court order for the sale of the vessel.

21 c. The notification and advertisement costs
22 incurred.

23 d. The costs incurred in selling the vessel.

24 (2) An owner or lienholder of record may redeem an
25 abandoned or derelict vessel by providing reasonable proof of

1 ownership and satisfying any liens upon the vessel created
2 pursuant to this act.

3 (3) An abandoned or derelict vessel may not be sold
4 unless the person in possession of the vessel files a petition
5 to sell the vessel in any court of competent jurisdiction in
6 the county in which the vessel was abandoned and the court
7 authorizes the sale of the vessel.

8 (4) A court shall authorize the sale of a vessel
9 upon a finding that the vessel was abandoned or derelict and
10 not redeemed by the owner or lienholder of record within 30
11 days after notice was given pursuant to subsection (a) of
12 Section 3.

13 (5) The sale of an abandoned or derelict vessel
14 shall be at a public auction. The auction shall take place in
15 the county in which the vessel was located when the person
16 removing the vessel took possession.

17 (6) Prior to a sale under this section, notice of
18 the sale shall be given by publication once a week for two
19 successive weeks in a newspaper of general circulation in the
20 county in which the sale is to be held. Notice shall be in a
21 manner prescribed by the agency and shall include all of the
22 following:

- 23 a. The date, time, and place of the sale.
24 b. A description of the abandoned or derelict
25 vessel, including the year, make, and model.

1 c. The name and address of the current owner and
2 lienholder of record, if any, as reflected on the current
3 title or registration record.

4 d. The contact information for the person filing the
5 notice.

6 (7) A person selling an abandoned or derelict vessel
7 pursuant to this section shall give notice of the public
8 auction to the agency at least 10 calendar days prior to the
9 date of the auction.

10 (8) The agency, within five calendar days of receipt
11 of the notice of public auction, shall send a vessel interest
12 termination notice to the current owner and lienholder of
13 record, if any, of the abandoned or derelict vessel, as
14 disclosed on the notice of public auction. The vessel interest
15 termination notice shall advise the owner and lienholder of
16 record, if any, of all of the following:

17 a. The owner or lienholder's interest in the vessel,
18 upon its sale, will be terminated pursuant to this act.

19 b. Any personal property and items contained in the
20 vessel will be disposed of in a manner determined by the
21 person conducting the sale.

22 c. The owner or lienholder of record may redeem the
23 vessel prior to the sale by providing reasonable proof of
24 ownership and satisfying any liens upon the vessel created
25 pursuant to this act.

1 d. All of the information provided in the notice of
2 public auction.

3 e. The owner or other interested party's right to
4 appeal and contest the proposed sale of the vessel as provided
5 in Section 7.

6 (9) The vessel shall be sold to the highest bidder
7 subject to any reserve price established by the agency.

8 (10)a. Except for any lien created pursuant to this
9 act, the ownership rights of the owner and lienholders of
10 record shall terminate upon the sale of an abandoned or
11 derelict vessel, subject to a 90 day right of redemption as
12 defined herein.

13 b. A person who sells a vessel under this section
14 shall provide notice that the vessel has been sold and a copy
15 of the court order authorizing the sale to the agency. The
16 agency shall issue to the purchaser of the vessel a bill of
17 sale for the abandoned vessel, free and clear of all liens,
18 security interests, and encumbrances, in a form as prescribed
19 by the agency.

20 c. The purchaser of the vessel shall register the
21 vessel with the agency as provided by law.

22 d. Each person who sells a vessel pursuant to this
23 section shall maintain all of the following for two years from
24 the date of the sale:

1 1. Copies of the notices sent pursuant to Section 3
2 to the previous vessel owner and lienholder of record.

3 2. Any other records as required by the agency.

4 Section 5. Disposal of Certain Abandoned and
5 Derelict Vessels.

6 (a) (1) The agency may, without a court order, sell
7 by negotiation, dispose of as junk, donate, or destroy an
8 abandoned or derelict vessel that is not redeemed within 30
9 days if the vessel, as determined by an independent appraiser,
10 is worth less than the cost of selling the vessel. For
11 purposes of this section, the cost of selling the vessel means
12 the total estimated cost, as determined by the agency, of the
13 vessel's seizure, removal, storage, advertisement, appraisal,
14 auction, and court costs.

15 (2) The appraiser may be a boat seller or a licensed
16 marine surveyor and must have at least one year of experience
17 in the sale, purchase, or appraisal of vessels.

18 (b) Prior to the sale, disposal, donation, or
19 destruction of the vessel, the agency shall advertise the
20 vessel once in a public advertisement in a newspaper of
21 general circulation in the county in which the vessel was
22 located.

23 (c) Prior to the sale, disposal, donation, or
24 destruction of the vessel, the owner or lienholder may redeem

1 the vessel by paying all costs incurred in the seizure,
2 removal, storage, appraisal, and advertisement of the vessel.

3 Section 6. Proceeds of the Sale.

4 The proceeds of the sale of an abandoned or derelict
5 vessel shall be distributed by the agency as follows:

6 (1) The reasonable fees and costs incurred in the
7 seizure and sale of the vessel, including but not limited to
8 removal and storage costs, court costs and filing fees, and
9 advertisement and notification costs.

10 (2) Any outstanding security interest or debt
11 attached to the vessel.

12 (3) The remaining balance, if any, shall be
13 deposited into the Alabama Abandoned and Derelict Vessel Fund
14 to be used by the agency for purposes of implementing and
15 administering this act.

16 Section 7. Right to Contest Sale.

17 (a) The current owners, registrants, secured
18 parties, and lienholders of record of a vessel may contest the
19 sale of a vessel by filing a notice of appeal with the court
20 that ordered the sale within two years of the sale of the
21 vessel.

22 (b) The court shall conduct a hearing to determine
23 whether proper notice was provided pursuant to this act. The
24 vessel may not be sold pending the decision of the court.

1 (c) If the court determines that proper notice was
2 issued, the vessel may be sold.

3 (d) Notwithstanding any other provision in this act,
4 if the court determines that proper notice was not provided
5 pursuant to this act, the sale of the vessel shall be void and
6 the current owners, registrants, secured parties, and
7 lienholders of record shall retain their ownership, security
8 interests, liens, and interests in the vessel.

9 Section 8. Right of Redemption.

10 (a) Where a vessel, or an interest in a vessel, is
11 sold under this act, the vessel may be redeemed by any of the
12 following:

13 (1) Any debtor, including any surety or guarantor.

14 (2) Judgement creditor, or its transferee.

15 (3) Any transferee of the interests of the debtor,
16 either before or after the sale. A transfer of any kind made
17 by the debtor will accomplish a transfer of the interests of
18 that party.

19 (4) The respective spouses of all debtors, or
20 transferees of any interest of the debtor, who are spouses on
21 the day of the execution, judgement, or foreclosure sale.

22 (5) Children, heirs, or devisees of any debtor.

23 (b) All persons named or enumerated in subdivisions

24 (a) (1) through (a) (5) may exercise the right of redemption

1 granted by this section within 90 days from the date of the
2 sale.

3 (c) (1) When any judgement creditor or any
4 transferee of a judgement creditor redeems under this section,
5 all recorded judgements, and recorded liens having a higher
6 recorded priority in existence at the time of the sale are
7 revived against the property redeemed and against the
8 redeeming party and such shall become lawful charges to be
9 paid off at redemption.

10 (2) Once any lienholder or recorded judgement
11 creditor is paid the amount of the person's debt and any
12 accrued interest and other contractual charges, the person has
13 no further right to redeem.

14 (3) Any lienholder or recorded judgement creditor
15 with a lower recorded priority may redeem from those having a
16 higher recorded priority who have redeemed.

17 (d) when debtors, or their respective spouses,
18 children, heirs, or devisees redeem, all recorded judgements
19 and recorded liens in existence at the time of the sale, are
20 revived against the property redeemed and against the
21 redeeming party and further redemption by some party other
22 than the debtor under this act is precluded.

23 (e) (1) Except as provided in subdivision (2), the
24 right of redemption granted under this section to the debtors
25 and their spouses, children, heirs, or devisees terminates

1 when the debtor has conveyed his or her interests in the
2 property and is released from liability for the debt.

3 (2) When a debtor conveys his or her interest in the
4 property but remains liable on the debt and is a debtor at the
5 date of the foreclosure sale, the debtor and his or her
6 spouse, children, heirs, or devisees continue to be entitled
7 to the right of redemption under this act.

8 (f) A redemption made by any person under this act,
9 other than the debtors and their respective spouses, children,
10 heirs, or devisees, shall preclude any further redemption by
11 the person.

12 (g) Subject to subsection (e), a debtor has priority
13 over any other redeeming party.

14 Section 9. Alabama Abandoned and Derelict Vessel
15 Fund.

16 (a) There is established a special fund within the
17 State Treasury to be known as the Alabama Abandoned and
18 Derelict Vessel Fund.

19 (b) The fund shall be placed under the management or
20 administration of the Secretary of the Alabama State Law
21 Enforcement Agency for payment of the cost of implementing and
22 administering this act, including but not limited to the cost
23 of the seizure, removal, transportation, preservation,
24 storage, advertisement, appraisal, and disposal of a derelict
25 vessel.

1 (c) The fund shall consist of all moneys collected
2 or received by the secretary pursuant to this act and all
3 grants, appropriations, gifts, donations, and other sources
4 for purposes of implementing and administering this act.

5 (d) The secretary shall have the authority to expend
6 moneys in the fund in accordance with this act.

7 Section 10. Unattended Vessel Check.

8 (a) A law enforcement officer may perform an
9 unattended vessel check on a vessel that has been left
10 unattended on public property. The unattended vessel check
11 shall consist of actions that are reasonably necessary to
12 determine that the unattended vessel does not contain an
13 injured or incapacitated person and to determine that the
14 unattended vessel does not pose a threat to public health or
15 safety.

16 (b) A law enforcement officer who performs an
17 unattended vessel check shall complete and attach to the
18 vessel an unattended vessel check card. Unattended vessel
19 check cards shall be in a form and attached to unattended
20 vessels in a manner as may be specified by rule of the agency.
21 Unattended vessel check cards shall be serially numbered and
22 shall be a distinctive color as determined by the agency.

23 Section 11. (a) It is unlawful for a person who is
24 the owner of a derelict vessel to refuse or fail to remove the
25 derelict vessel from the waters of this state within 24 hours

1 after a verbal or written request from a law enforcement
2 officer.

3 (b) (1) A violation of this section is a Class A
4 misdemeanor if the vessel is a Class 4 vessel as described in
5 Section 33-5-17, Code of Alabama 1975.

6 (2) A violation of this section is a Class B
7 misdemeanor if the vessel is a Class 3 vessel as described in
8 Section 33-5-17, Code of Alabama 1975.

9 (3) A violation of this section is a Class C
10 misdemeanor if the vessel is a Class 1 or Class 2 vessel as
11 described in Section 33-5-17, Code of Alabama 1975.

12 (c) In addition to all other penalties, the
13 sentencing official shall order the owner to pay for all of
14 the costs incurred in the enforcement of this section,
15 including the seizure, removal, transportation, preservation,
16 storage, and disposal expenses of the derelict vessel.

17 (d) Any fines collected pursuant to subsection (b)
18 and all moneys collected pursuant to subsection (c) shall be
19 distributed into the Alabama Abandoned and Derelict Vessel
20 Fund to be used by the Secretary of the Alabama State Law
21 Enforcement Agency in the implementation and administration of
22 this act.

23 Section 12. Rulemaking Authority.

24 The Alabama State Law Enforcement Agency may adopt
25 rules for the implementation and administration of this act.

1 Section 13. Although this bill would have as its
2 purpose or effect the requirement of a new or increased
3 expenditure of local funds, the bill is excluded from further
4 requirements and application under Amendment 621, now
5 appearing as Section 111.05 of the Official Recompilation of
6 the Constitution of Alabama of 1901, as amended, because the
7 bill defines a new crime or amends the definition of an
8 existing crime.

9 Section 14. This act shall become effective on the
10 first day of the third month following its passage and
11 approval by the Governor, or its otherwise becoming law.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB50
Senate 01-FEB-18
I hereby certify that the within Act originated in and passed
the Senate.

Patrick Harris,
Secretary.

House of Representatives
Amended and passed 27-FEB-18

Senate concurred in House amendment 01-MAR-18

By: Senator Pittman