

HOUSE No. 3439

The Commonwealth of Massachusetts

PRESENTED BY:

Antonio F.D. Cabral

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to abandoned vessels

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Antonio F.D. Cabral	13th Bristol
Bruce E. Tarr	First Essex and Middlesex
Robert M. Koczera	11th Bristol
Bruce J. Ayers	1st Norfolk
Steven J. D'Amico	4th Bristol
Jennifer M. Callahan	18th Worcester
Patricia A. Haddad	5th Bristol
Mark C. Montigny	Second Bristol and Plymouth

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 4187 OF .]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT 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 Official Edition, is
2 hereby amended by inserting after the word “forty-one”, in line 10, the following:— “43A, 43B, and
3 43C”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

57 Section 40. Any claimant wishing to obtain title to a vessel abandoned upon public land or the
58 shores or waters of the Commonwealth or upon any private property or the water thereof adjacent to
59 public land or the shores or waters of the Commonwealth and not subject to the exclusive jurisdiction of
60 the United States may apply to the office for title under the provisions of this 83 section. If there is more
61 than one claimant, the office shall give preference for the claim in the following order:— (i) the
62 department; (ii) the office; (iii) another political subdivision of the Commonwealth; (iv) the municipal

63 government or jurisdiction wherein the vessel lies; (v) the government of the United States of America or
64 any political subdivision thereof; (vi) private parties. In no event shall preference be granted if emergency
65 conditions exist and the procedures under this section would jeopardize navigation, public health, or
66 safety. In the event that there is more than one equal claimant, the office shall hold an auction, and the
67 title, subject to valid liens as provided for hereunder, shall go to the highest bidder. Prior to applying to
68 the office for title pursuant to Section 41, the claimant shall: (i) if the vessel has an identification number,
69 a registration number, equipment numbers, a certificate of documentation number, a certificate of
70 number, or other means of identification, contact the office to determine if the vessel has been 100 stolen;
71 (ii) secure the owner's last known address and the address
72 of any lienholder appearing on record if, after 30 days, the office determines that the vessel is abandoned
73 and not stolen; provided that said claimant shall notify the owner, any lienholder of record, the
74 department, the board of underwater archaeological resources, and the Massachusetts historical
75 commission by certified first class mail, return receipt requested, to the owner's, lienholder's, or other
76 required party's address of record; (iii) if the owner of record does not reply within 30 days, the claimant
77 shall cause a notice to appear for 3 consecutive days in a newspaper of general circulation published in
78 the county, city, or town where the vessel is located, where the owner of the boat has its address, or if the
79 owner's name and address are unavailable, where a lienholder has its place of business, provided that said
80 notice shall include: (i) a description of the vessel and any identifying information; (ii) a description of
81 the location where the vessel is situated; (iii) a statement informing the owner and lienholder of their right
82 to reclaim the vessel within 30 days subject to rights of any other lienholder; (iv) a statement that failure
83 to claim the vessel will constitute a waiver of all rights, title, and interest in the vessel; and (v) a statement
84 that if ownership or lienholder interest is not claimed and the vessel is not removed within 30 days after
85 the owner, the owner's agent, or employee signs the return receipt or within 90 days of the last day of
86 notice by publication, whichever is later, the claimant may apply to the office for title to the vessel. If the
87 claimant cannot identify the vessel's owner or ascertain the owner's address after a reasonable search, and
88 if no lienholder appears on record, the claimant need not issue the notice required pursuant to this section.

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

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

114 Section 43. After receiving title, the claimant may remove the vessel, destroy it, or sell it.
115 Removal costs shall be borne by the previous owner if that owner has been identified, and otherwise shall
116 be borne by the claimant. If the new owner intends to destroy or otherwise dispose of said vessel, he shall
117 report such intention to the department and the office at least 15 days prior to said destruction or disposal,
118 supplying all details of the demolition or other disposition including, but not limited to, the place of
119 demolition, any materials or contracts for the demolition, any required permits, and the intended
120 disposition of the vessel or its materials.

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

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

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

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

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

141 repealed.