

HOUSE No.

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

[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

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

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

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

29 "Lienholder", any person or entity holding a perfected security interest.

30 "Office", the office of law enforcement within the executive office of energy and environmental
31 affairs.

32 "Operator", a person who operates or who has a charge of the navigation or use of a vessel.

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

37 "Person", a natural person, corporation, association, partnership 46 or other legal entity.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

142 repealed.

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