

(2) The Secretary shall prescribe the way dimensions (except length) are measured and which coefficients are appropriate.

(c) The resulting gross tonnages, taken as a group, reasonably shall reflect the relative internal volumes of the vessels measured under this subchapter. The resulting net tonnages shall be in approximately the same ratios to corresponding gross tonnages as are the net and gross tonnages of comparable vessels measured under subchapter II of this chapter.

(d) Under regulations prescribed by the Secretary, the Secretary may determine the gross and net tonnages of a vessel representative of a designated class, model, or type, and then assign those gross and net tonnages to other vessels of the same class, model, or type.

(Pub. L. 99-509, title V, § 5101(3), Oct. 21, 1986, 100 Stat. 1925.)

HISTORICAL AND REVISION NOTES

Revised section 14522

Source: Section (U.S. Code) 46 App. U.S.C. 71. Section 14522(a) defines the term "length" as it is used in the simplified measurement system.

Section 14522(b) requires the Secretary to assign gross and net tonnages under the simplified system, based on a vessel's length, breadth, depth, other dimensions and appropriate coefficients, as the Secretary deems appropriate.

Section 14522(c) provides that the gross tonnages as measured under this section shall reflect the relative internal volumes of vessels. It provides further that the net tonnages measured under this section shall be in approximately the same ratio to corresponding gross tonnages as are the net and gross tonnages of comparable vessels measured under the standard regulatory measurement system.

CHAPTER 147—PENALTIES

Sec.	
14701.	General violation.
14702.	False statements.

HISTORICAL AND REVISION NOTES

This chapter provides for penalties for violations of Part J—Measurement of Vessels.

§ 14701. General violation

The owner, charterer, managing operator, agent, master, and individual in charge of a vessel violating this part or a regulation prescribed under this part are each liable to the United States Government for a civil penalty of not more than \$20,000. Each day of a continuing violation is a separate violation. The vessel also is liable in rem for the penalty.

(Pub. L. 99-509, title V, § 5101(3), Oct. 21, 1986, 100 Stat. 1925.)

HISTORICAL AND REVISION NOTES

Revised section 14701

Source: Section (U.S. Code) 46 App. U.S.C. 83j.

Section 14701 provides that the owner, charterer, managing operator, agent, master, and individual in charge of a vessel violating Part J—Measurement of Vessels—are each liable to the U.S. Government for a civil penalty of not more than \$20,000. It also provides that the vessel is liable in rem for the penalty and that each day of a continuing violation is a separate violation.

§ 14702. False statements

A person knowingly making a false statement or representation in a matter in which a state-

ment or representation is required by this part or a regulation prescribed under this part is liable to the United States Government for a civil penalty of not more than \$20,000 for each false statement or representation. The vessel also is liable in rem for the penalty.

(Pub. L. 99-509, title V, § 5101(3), Oct. 21, 1986, 100 Stat. 1925.)

HISTORICAL AND REVISION NOTES

Revised section 14702

Source: Section (U.S. Code) 46 App. U.S.C. 83i.

Section 14702 provides that a person knowingly making a false statement or representation in a matter in which a statement or representation is required by this part or a regulation prescribed under this part is liable to the United States Government for a civil penalty of not more than \$20,000 for each false statement or representation. It further provides that the vessel is liable in rem for the penalty. This penalty is increased from \$1,000 in existing law and conforms with the level of similar penalties throughout the subtitle.

Subtitle III—Maritime Liability

Chapter		Sec.
301.	General Liability Provisions	30101
303.	Death on the High Seas	30301
305.	Exoneration and Limitation of Liability	30501
307.	Liability of Water Carriers	30701
309.	Suits in Admiralty Against the United States	30901
311.	Suits Involving Public Vessels	31101
313.	Commercial Instruments and Maritime Liens	31301

AMENDMENTS

2006—Pub. L. 109-304, §6(a), Oct. 6, 2006, 120 Stat. 1509, amended subtitle analysis generally, substituting "General Liability Provisions" for "General" in item for chapter 301, striking out "[Chapters 303-311—Reserved]" after item for chapter 301, adding items for chapters 303, 305, 307, 309, and 311, and striking out "[Chapter 315—Reserved]" after item for chapter 313.

CHAPTER 301—GENERAL LIABILITY PROVISIONS

Sec.	
30101.	Extension of jurisdiction to cases of damage or injury on land.
30102.	Liability to passengers.
30103.	Liability of master, mate, engineer, and pilot.
30104.	Personal injury to or death of seamen.
30105.	Restriction on recovery by non-citizens and non-resident aliens for incidents in waters of other countries.
30106.	Time limit on bringing maritime action for personal injury or death.

PRIOR PROVISIONS

A prior chapter 301, consisting of section 30101, provided definitions for purposes of this subtitle, prior to repeal by Pub. L. 109-304, §6(b), Oct. 6, 2006, 120 Stat. 1509.

§ 30101. Extension of jurisdiction to cases of damage or injury on land

(a) IN GENERAL.—The admiralty and maritime jurisdiction of the United States extends to and includes cases of injury or damage, to person or property, caused by a vessel on navigable waters, even though the injury or damage is done or consummated on land.

(b) PROCEDURE.—A civil action in a case under subsection (a) may be brought in rem or in personam according to the principles of law and the rules of practice applicable in cases where the injury or damage has been done and consummated on navigable waters.

(c) ACTIONS AGAINST UNITED STATES.—

(1) EXCLUSIVE REMEDY.—In a civil action against the United States for injury or damage done or consummated on land by a vessel on navigable waters, chapter 309 or 311 of this title, as appropriate, provides the exclusive remedy.

(2) ADMINISTRATIVE CLAIM.—A civil action described in paragraph (1) may not be brought until the expiration of the 6-month period after the claim has been presented in writing to the agency owning or operating the vessel causing the injury or damage.

(Pub. L. 109–304, §6(c), Oct. 6, 2006, 120 Stat. 1509.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 1: 30101, 46 App.:740, June 19, 1948, ch. 526, 62 Stat. 496.

In subsections (b) and (c), the words “civil action” are substituted for “suit” for consistency with rule 2 of the Federal Rules of Civil Procedure (28 App. U.S.C.).

In subsection (c)(1), the words “for all causes of action arising after June 19, 1948, and for all causes of action where suit has not been hitherto filed under the Federal Tort Claims Act” are omitted as obsolete.

PRIOR PROVISIONS

A prior section 30101, Pub. L. 100–710, title I, §102(c), Nov. 23, 1988, 102 Stat. 4738, provided definitions for purposes of this subtitle, prior to repeal by Pub. L. 109–304, §6(b), Oct. 6, 2006, 120 Stat. 1509.

SHORT TITLE

This section is popularly known as the Admiralty Extension Act.

§ 30102. Liability to passengers

(a) LIABILITY.—The owner and master of a vessel, and the vessel, are liable for personal injury to a passenger or damage to a passenger’s baggage caused by—

(1) a neglect or failure to comply with part B or F of subtitle II of this title; or

(2) a known defect in the steaming apparatus or hull of the vessel.

(b) NOT SUBJECT TO LIMITATION.—A liability imposed under this section is not subject to limitation under chapter 305 of this title.

(Pub. L. 109–304, §6(c), Oct. 6, 2006, 120 Stat. 1509.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 1: 30102, 46 App.:491 (words before semicolon), R.S. §4493 (words before semicolon).

In subsection (a), before paragraph (1), the words “or either of them” are omitted as unnecessary. The words “are liable for personal injury to a passenger or damage to a passenger’s baggage” are substituted for “Whenever damage is sustained by any passenger or his baggage” and “shall be liable to each and every person so injured” for clarity and to eliminate unnecessary

words. The words “from explosion, fire, collision, or other cause” are omitted as unnecessary. The words “caused by” are substituted for “if it happens through” to eliminate unnecessary words. In paragraph (1), the words “part B or F of subtitle II of this title” are substituted for “title 52 of the Revised Statutes” because of the prior codification of subtitle II of title 46. In paragraph (2), the word “imperfections” is omitted as included in “defect”.

Subsection (b) is substituted for “to the full amount of damage” for clarity. See Hines v. Butler, 278 F. 877, 880, 881 (4th Cir. 1921), cert. denied, 257 U.S. 659 (1922); The Annie Faxon, 75 F. 312, 317–319 (9th Cir. 1896).

§ 30103. Liability of master, mate, engineer, and pilot

A person may bring a civil action against a master, mate, engineer, or pilot of a vessel, and recover damages, for personal injury or loss caused by the master’s, mate’s, engineer’s, or pilot’s—

(1) negligence or willful misconduct; or

(2) neglect or refusal to obey the laws governing the navigation of vessels.

(Pub. L. 109–304, §6(c), Oct. 6, 2006, 120 Stat. 1510.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 1: 30103, 46 App.:491 (words after semicolon), R.S. §4493 (words after semicolon).

Before paragraph (1), the words “bring a civil action” are substituted for “sue” for consistency with rule 2 of the Federal Rules of Civil Procedure (28 App. U.S.C.). In paragraph (1), the word “carelessness” is omitted as included in “negligence”.

§ 30104. Personal injury to or death of seamen

A seaman injured in the course of employment or, if the seaman dies from the injury, the personal representative of the seaman may elect to bring a civil action at law, with the right of trial by jury, against the employer. Laws of the United States regulating recovery for personal injury to, or death of, a railway employee apply to an action under this section.

(Pub. L. 109–304, §6(c), Oct. 6, 2006, 120 Stat. 1510; Pub. L. 110–181, div. C, title XXXV, §3521(a), Jan. 28, 2008, 122 Stat. 596.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 1: 30104(a), 46 App.:688(a) (1st sentence), Mar. 4, 1915, ch. 153, §20(a), 38 Stat. 1185; June 5, 1920, ch. 250, §33, 41 Stat. 1007; Pub. L. 97–389, title V, §503(a)(1), Dec. 29, 1982, 96 Stat. 1955. Row 2: 30104(b), 46 App.:688(a) (last sentence).

In subsection (a), the words “A seaman injured in the course of employment or, if the seaman dies from the injury, the personal representative of the seaman” are substituted for “Any seaman who shall suffer personal injury in the course of his employment” and “in case of the death of any seaman as a result of any such personal injury the personal representative” to eliminate unnecessary words. The words “bring a civil action” are substituted for “maintain an action” for consistency with rule 2 of the Federal Rules of Civil Procedure (28 App. U.S.C.). The words “for damages” are omitted as unnecessary. The words “against the employer” are

added for clarity. The words “Laws of the United States regulating recovery for personal injury to, or death of, a railway employee” are substituted for “all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees” and “all statutes of the United States conferring or regulating the right of action for death in the case of railway employees” to eliminate unnecessary words.

In subsection (b), the words “An action under this section shall be brought” are substituted for “Jurisdiction in such actions shall be under” because 46 App. U.S.C. 688(a) (last sentence) provides for venue, not jurisdiction. *Panama R.R. Co. v. Johnson*, 264 U.S. 375 (1924). As to the relationship between 46 App. U.S.C. 688(a) (last sentence) and 28 U.S.C. 1391(c), see *Pure Oil Co. v. Suarez*, 384 U.S. 202 (1966).

AMENDMENTS

2008—Pub. L. 110-181 struck out subsec. (a) designation and heading before “A seaman injured” and struck out heading and text of subsec. (b). Text read as follows: “An action under this section shall be brought in the judicial district in which the employer resides or the employer’s principal office is located.”

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-181, div. C, title XXXV, §3521(b), Jan. 28, 2008, 122 Stat. 596, provided that: “The amendment made by subsection (a) [amending this section] shall be effective as if included in the enactment of Public Law 109-304.”

§ 30105. Restriction on recovery by non-citizens and non-resident aliens for incidents in waters of other countries

(a) DEFINITION.—In this section, the term “continental shelf” has the meaning given that term in article I of the 1958 Convention on the Continental Shelf.

(b) RESTRICTION.—Except as provided in subsection (c), a civil action for maintenance and cure or for damages for personal injury or death may not be brought under a maritime law of the United States if—

(1) the individual suffering the injury or death was not a citizen or permanent resident alien of the United States at the time of the incident giving rise to the action;

(2) the incident occurred in the territorial waters or waters overlaying the continental shelf of a country other than the United States; and

(3) the individual suffering the injury or death was employed at the time of the incident by a person engaged in the exploration, development, or production of offshore mineral or energy resources, including drilling, mapping, surveying, diving, pipelaying, maintaining, repairing, constructing, or transporting supplies, equipment, or personnel, but not including transporting those resources by a vessel constructed or adapted primarily to carry oil in bulk in the cargo spaces.

(c) NONAPPLICATION.—Subsection (b) does not apply if the individual bringing the action establishes that a remedy is not available under the laws of—

(1) the country asserting jurisdiction over the area in which the incident occurred; or

(2) the country in which the individual suffering the injury or death maintained citizenship or residency at the time of the incident.

(Pub. L. 109-304, §6(c), Oct. 6, 2006, 120 Stat. 1510.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
30105(a)	46 App.:688(b)(1) (last sentence).	Mar. 4, 1915, ch. 153, §20(b), as added Pub. L. 97-389, title V, §503(a)(2), Dec. 29, 1982, 96 Stat. 1955.
30105(b)	46 App.:688(b)(1) (less last sentence).	
30105(c)	46 App.:688(b)(2).	

In subsection (b), before paragraph (1), the words “civil action” are substituted for “action” for consistency with rule 2 of the Federal Rules of Civil Procedure (28 App. U.S.C.). The words “under subsection (a) of this section or under any other” are omitted as unnecessary. In paragraph (2), the words “its territories, or possessions” are omitted as unnecessary because of the definition of “United States” in chapter 1 of the revised title. In paragraph (3), the word “person” is substituted for “enterprise” for consistency in the revised title.

REFERENCES IN TEXT

The 1958 Convention on the Continental Shelf, referred to in subsec. (a), was done at Geneva, April 29, 1958, and entered into force for the United States, June 10, 1964. See 15 UST 471; TIAS 5578.

§ 30106. Time limit on bringing maritime action for personal injury or death

Except as otherwise provided by law, a civil action for damages for personal injury or death arising out of a maritime tort must be brought within 3 years after the cause of action arose.

(Pub. L. 109-304, §6(c), Oct. 6, 2006, 120 Stat. 1511.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
30106	46 App.:763a.	Pub. L. 96-382, §1, Oct. 6, 1980, 94 Stat. 1525.

The words “civil action” are substituted for “suit” for consistency with rule 2 of the Federal Rules of Civil Procedure (28 App. U.S.C.). The words “or both” are omitted as unnecessary. The words “must be brought” are substituted for “shall not be maintained unless commenced” for clarity and consistency. The word “arose” is substituted for “accrued” for consistency in the revised title.

CHAPTER 303—DEATH ON THE HIGH SEAS

Sec.	
30301.	Short title.
30302.	Cause of action.
30303.	Amount and apportionment of recovery.
30304.	Contributory negligence.
30305.	Death of plaintiff in pending action.
30306.	Foreign cause of action.
30307.	Commercial aviation accidents.
30308.	Nonapplication.

§ 30301. Short title

This chapter may be cited as the “Death on the High Seas Act”.

(Pub. L. 109-304, §6(c), Oct. 6, 2006, 120 Stat. 1511.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
30301	46 App.:761 note.	

SHORT TITLE

Act Mar. 30, 1920, ch. 111, 41 Stat. 537, which enacted chapter 21 (§761 et seq.) of the former Appendix to this title, was popularly known as the “Death on the High Seas Act”, prior to being repealed and restated in this chapter by Pub. L. 109-304, §§6(c), 19, Oct. 6, 2006, 120 Stat. 1509, 1710.

§ 30302. Cause of action

When the death of an individual is caused by wrongful act, neglect, or default occurring on the high seas beyond 3 nautical miles from the shore of the United States, the personal representative of the decedent may bring a civil action in admiralty against the person or vessel responsible. The action shall be for the exclusive benefit of the decedent's spouse, parent, child, or dependent relative.

(Pub. L. 109-304, §6(c), Oct. 6, 2006, 120 Stat. 1511.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
30302	46 App.:761(a).	Mar. 30, 1920, ch. 111, §1(a), 41 Stat. 537; Pub. L. 106-181, title IV, §404(a)(1), Apr. 5, 2000, 114 Stat. 131.

The words “Subject to subsection (b) of this section” are omitted as unnecessary. The words “3 nautical miles” are substituted for “a marine league” for clarity. The words “United States” are substituted for “any State, or the District of Columbia, or the Territories or dependencies of the United States” because of the definition of “United States” in chapter 1 of the revised title. The words “bring a civil action” are substituted for “maintain a suit” for consistency with rule 2 of the Federal Rules of Civil Procedure (28 App. U.S.C.). The words “for damages” are omitted as unnecessary. The words “in the district courts of the United States” are omitted as unnecessary because of 28 U.S.C. 1333. The words “person or vessel” are substituted for “vessel, person, or corporation” because of 1 U.S.C. 1. The word “responsible” is substituted for “which would have been liable if death had not ensued” to eliminate unnecessary words.

§ 30303. Amount and apportionment of recovery

The recovery in an action under this chapter shall be a fair compensation for the pecuniary loss sustained by the individuals for whose benefit the action is brought. The court shall apportion the recovery among those individuals in proportion to the loss each has sustained.

(Pub. L. 109-304, §6(c), Oct. 6, 2006, 120 Stat. 1511.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
30303	46 App.:762(a).	Mar. 30, 1920, ch. 111, §2(a), 41 Stat. 537; Pub. L. 106-181, title IV, §404(b)(1), Apr. 5, 2000, 114 Stat. 131.

The words “and just” are omitted as redundant to “fair”. The words “each has sustained” are substituted for “they may severally have suffered by reason of the death of the person by whose representative the suit is brought” to eliminate unnecessary words.

§ 30304. Contributory negligence

In an action under this chapter, contributory negligence of the decedent is not a bar to recovery. The court shall consider the degree of neg-

ligence of the decedent and reduce the recovery accordingly.

(Pub. L. 109-304, §6(c), Oct. 6, 2006, 120 Stat. 1511.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
30304	46 App.:766.	Mar. 30, 1920, ch. 111, §6, 41 Stat. 537.

§ 30305. Death of plaintiff in pending action

If a civil action in admiralty is pending in a court of the United States to recover for personal injury caused by wrongful act, neglect, or default described in section 30302 of this title, and the individual dies during the action as a result of the wrongful act, neglect, or default, the personal representative of the decedent may be substituted as the plaintiff and the action may proceed under this chapter for the recovery authorized by this chapter.

(Pub. L. 109-304, §6(c), Oct. 6, 2006, 120 Stat. 1511.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
30305	46 App.:765.	Mar. 30, 1920, ch. 111, §5, 41 Stat. 537.

The words “If a civil action in admiralty is pending in a court of the United States to recover for personal injury caused by wrongful act, neglect, or default described in section 30302 of this title, and the individual dies during the action as a result of the wrongful act, neglect, or default” are substituted for “If a person die [sic] as the result of such wrongful act, neglect, or default as is mentioned in section 761 of this Appendix during the pendency in a court of admiralty of the United States of a suit to recover damages for personal injuries in respect of such act, neglect, or default” to eliminate unnecessary words. The words “the plaintiff” are substituted for “a party” to be more precise.

§ 30306. Foreign cause of action

When a cause of action exists under the law of a foreign country for death by wrongful act, neglect, or default on the high seas, a civil action in admiralty may be brought in a court of the United States based on the foreign cause of action, without abatement of the amount for which recovery is authorized.

(Pub. L. 109-304, §6(c), Oct. 6, 2006, 120 Stat. 1511.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
30306	46 App.:764.	Mar. 30, 1920, ch. 111, §4, 41 Stat. 537.

The words “a civil action in admiralty may be brought in a court of the United States based on the foreign cause of action” are substituted for “such right may be maintained in an appropriate action in admiralty in the courts of the United States” for clarity and consistency. The words “any statute of the United States to the contrary notwithstanding” are omitted as unnecessary.

§ 30307. Commercial aviation accidents

(a) DEFINITION.—In this section, the term “nonpecuniary damages” means damages for loss of care, comfort, and companionship.

(b) BEYOND 12 NAUTICAL MILES.—In an action under this chapter, if the death resulted from a commercial aviation accident occurring on the high seas beyond 12 nautical miles from the shore of the United States, additional compensation is recoverable for nonpecuniary damages, but punitive damages are not recoverable.

(c) WITHIN 12 NAUTICAL MILES.—This chapter does not apply if the death resulted from a commercial aviation accident occurring on the high seas 12 nautical miles or less from the shore of the United States.

(Pub. L. 109–304, §6(c), Oct. 6, 2006, 120 Stat. 1512.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
30307(a)	46 App.:762(b)(2).	Mar. 30, 1920, ch. 111, §§1(b), 2(b); as added Pub. L. 106–181, title IV, §404(a)(2), (b)(2), Apr. 5, 2000, 114 Stat. 131.
30307(b)	46 App.:762(b)(1).	
30307(c)	46 App.:761(b).	

In subsections (b) and (c), the words “the United States” are substituted for “any State, or the District of Columbia, or the Territories or dependencies of the United States” because of the definition of “United States” in chapter 1 of the revised title.

In subsection (b), the words “of a decedent” are omitted as unnecessary.

In subsection (c), the words “if the death resulted from a commercial aviation accident occurring on the high seas” are substituted for “In the case of a commercial aviation accident, whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas” for consistency with subsection (b) and to eliminate unnecessary words. The words “and the rules applicable under Federal, State, and other appropriate law shall apply” are omitted as unnecessary.

§ 30308. Nonapplication

(a) STATE LAW.—This chapter does not affect the law of a State regulating the right to recover for death.

(b) INTERNAL WATERS.—This chapter does not apply to the Great Lakes or waters within the territorial limits of a State.

(Pub. L. 109–304, §6(c), Oct. 6, 2006, 120 Stat. 1512.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
30308	46 App.:767.	Mar. 30, 1920, ch. 111, §7, 41 Stat. 538.

In subsection (a), the words “law of a State” are substituted for “any State statute” for consistency in the revised title. The words “regulating the right to recover for death” are substituted for “giving or regulating rights of action or remedies for death” to eliminate unnecessary words.

In subsection (b), the words “or to any navigable waters in the Panama Canal Zone” are omitted because the Panama Canal Zone was transferred to the Republic of Panama.

CHAPTER 305—EXONERATION AND LIMITATION OF LIABILITY

Sec.	
30501.	Definition.
30502.	Application.
30503.	Declaration of nature and value of goods.

Sec.	
30504.	Loss by fire.
30505.	General limit of liability.
30506.	Limit of liability for personal injury or death.
30507.	Apportionment of losses.
30508.	Provisions requiring notice of claim or limiting time for bringing action.
30509.	Provisions limiting liability for personal injury or death.
30510.	Vicarious liability for medical malpractice with regard to crew.
30511.	Action by owner for limitation.
30512.	Liability as master, officer, or seaman not affected.

§ 30501. Definition

In this chapter, the term “owner” includes a charterer that mans, supplies, and navigates a vessel at the charterer’s own expense or by the charterer’s own procurement.

(Pub. L. 109–304, §6(c), Oct. 6, 2006, 120 Stat. 1512.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
30501	46 App.:186.	R.S. §4286.

The words “In this chapter” are substituted for “within the meaning of the provisions of title 48 of the Revised Statutes relating to the limitation of the liability of the owners of vessels” because of the codification of title 46, United States Code. The word “supplies” is substituted for “victual” for clarity. The words “and such vessel, when so chartered, shall be liable in the same manner as if navigated by the owner thereof” are omitted as unnecessary.

§ 30502. Application

Except as otherwise provided, this chapter (except section 30503) applies to seagoing vessels and vessels used on lakes or rivers or in inland navigation, including canal boats, barges, and lighters.

(Pub. L. 109–304, §6(c), Oct. 6, 2006, 120 Stat. 1512.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
30502	46 App.:188.	R.S. §4289; Feb. 18, 1875, ch. 80, §1 (related to R.S. §4289), 18 Stat. 320; June 19, 1886, ch. 421, §4, 24 Stat. 80; June 5, 1936, ch. 521, §4, 49 Stat. 1481.

§ 30503. Declaration of nature and value of goods

(a) IN GENERAL.—If a shipper of an item named in subsection (b), contained in a parcel, package, or trunk, loads the item as freight or baggage on a vessel, without at the time of loading giving to the person receiving the item a written notice of the true character and value of the item and having that information entered on the bill of lading, the owner and master of the vessel are not liable as carriers. The owner and master are not liable beyond the value entered on the bill of lading.

(b) ITEMS.—The items referred to in subsection (a) are precious metals, gold or silver plated articles, precious stones, jewelry, trinkets, watches, clocks, glass, china, coins, bills, securities, printings, engravings, pictures, stamps, maps,

papers, silks, furs, lace, and similar items of high value and small size.

(Pub. L. 109-304, §6(c), Oct. 6, 2006, 120 Stat. 1512.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
30503	46 App.:181.	R.S. § 4281.

In subsection (a), the words “load” and “loading” are substituted for “lade” and “lading” to use more common terminology. The words “person receiving the item” are substituted for “master, clerk, agent, or owner of such vessel receiving the same” to eliminate unnecessary words. The words “thereof in any form or manner” and “and according to the character thereof so notified and” are omitted as unnecessary.

In subsection (b), the words “precious metals” are substituted for “platina, gold, gold dust, silver, . . . or other precious metals, . . . gold or silver in a manufactured or unmanufactured state”, the words “precious stones” are substituted for “diamonds, or other precious stones”, the words “watches, clocks” are substituted for “watches, clocks, or timepieces of any description”, the words “coins, bills, securities” are substituted for “bullion, . . . coins, . . . bills of any bank or public body, . . . orders, notes, or securities for the payment of money”, the word “papers” is substituted for “writings, title deeds”, and the word “silks” is substituted for “silks in a manufactured or unmanufactured state, and whether wrought up or not wrought up with any other material”, to eliminate unnecessary words. The words “and similar items of high value and small size” are added to ensure that any of the items specifically named in the source but omitted in the revised section, or similar items, will be covered by this section.

§ 30504. Loss by fire

The owner of a vessel is not liable for loss or damage to merchandise on the vessel caused by a fire on the vessel unless the fire resulted from the design or neglect of the owner.

(Pub. L. 109-304, §6(c), Oct. 6, 2006, 120 Stat. 1513.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
30504	46 App.:182.	R.S. § 4282.

The words “liable for” are substituted for “liable to answer for or make good to any person”, the words “merchandise on the vessel” are substituted for “any merchandise whatsoever, which shall be shipped, taken in, or put on board any such vessel”, and the words “caused by a fire on the vessel” are substituted for “by reason or by means of any fire happening to or on board the vessel”, to eliminate unnecessary words.

§ 30505. General limit of liability

(a) IN GENERAL.—Except as provided in section 30506 of this title, the liability of the owner of a vessel for any claim, debt, or liability described in subsection (b) shall not exceed the value of the vessel and pending freight. If the vessel has more than one owner, the proportionate share of the liability of any one owner shall not exceed that owner’s proportionate interest in the vessel and pending freight.

(b) CLAIMS SUBJECT TO LIMITATION.—Unless otherwise excluded by law, claims, debts, and liabilities subject to limitation under subsection (a) are those arising from any embezzlement,

loss, or destruction of any property, goods, or merchandise shipped or put on board the vessel, any loss, damage, or injury by collision, or any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of the owner.

(c) WAGES.—Subsection (a) does not apply to a claim for wages.

(Pub. L. 109-304, §6(c), Oct. 6, 2006, 120 Stat. 1513.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
30505	46 App.:183(a).	R.S. § 4283(a); Aug. 29, 1935, ch. 804, §1, 49 Stat. 960; June 5, 1936, ch. 521, §1, 49 Stat. 1479.
	46 App.:189	June 26, 1884, ch. 121, §18, 23 Stat. 57.

In subsection (a), the words “Except as provided in section 30506 of this title” are substituted for “except in the cases provided for in subsection (b) of this section” because 46 App. U.S.C. 183(b) is restated in section 30506 of the revised title. The words “whether American or foreign” are omitted as unnecessary because of section 30502 of the revised title. The words “shall not exceed the value of the vessel and pending freight” are substituted for “shall not . . . exceed the amount or value of . . . such vessel, and her freight then pending” in 46 App. U.S.C. 183(a) and for “the aggregate liabilities of all the owners of a vessel on account of the same shall not exceed the value of such vessels and freight pending” in 46 App. U.S.C. 189 for consistency and to eliminate unnecessary words. The last sentence is substituted for “the interest of such owner in” in 46 App. U.S.C. 183(a) and for “The individual liability of a shipowner shall be limited to the proportion of any or all debts and liabilities that his individual share of the vessel bears to the whole” in 46 App. U.S.C. 189 for clarity and consistency. The words “Provided, That this provision shall not prevent any claimant from joining all the owners in one action” in 46 App. U.S.C. 189 are omitted as unnecessary.

Subsection (c) is substituted for “nor shall the same apply to wages due to persons employed by said shipowners” in 46 App. U.S.C. 189 because of the reorganization of the source provisions.

§ 30506. Limit of liability for personal injury or death

(a) APPLICATION.—This section applies only to seagoing vessels, but does not apply to pleasure yachts, tugs, towboats, towing vessels, tank vessels, fishing vessels, fish tender vessels, canal boats, scows, car floats, barges, lighters, or non-descript vessels.

(b) MINIMUM LIABILITY.—If the amount of the vessel owner’s liability determined under section 30505 of this title is insufficient to pay all losses in full, and the portion available to pay claims for personal injury or death is less than \$420 times the tonnage of the vessel, that portion shall be increased to \$420 times the tonnage of the vessel. That portion may be used only to pay claims for personal injury or death.

(c) CALCULATION OF TONNAGE.—Under subsection (b), the tonnage of a self-propelled vessel is the gross tonnage without deduction for engine room, and the tonnage of a sailing vessel is the tonnage for documentation. However, space for the use of seamen is excluded.

(d) CLAIMS ARISING ON DISTINCT OCCASIONS.—Separate limits of liability apply to claims for personal injury or death arising on distinct occasions.

(e) PRIVACY OR KNOWLEDGE.—In a claim for personal injury or death, the privacy or knowledge of the master or the owner’s superintendent or managing agent, at or before the beginning of each voyage, is imputed to the owner.

(Pub. L. 109–304, §6(c), Oct. 6, 2006, 120 Stat. 1513.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
30506(a)	46 App.:183(f) (related to 46 App.:183(b)–(e)).	
30506(b)	46 App.:183(b) (1st sentence).	R.S. § 4283(b) (1st sentence); Aug. 29, 1935, ch. 804, §1, 49 Stat. 960; June 5, 1936, ch. 521, §1, 49 Stat. 1479; Pub. L. 98–498, title II, §213(a), Oct. 19, 1984, 98 Stat. 2306.
30506(c)	46 App.:183(c).	R.S. § 4283(c)–(f) (related to R.S. § 4283(b)–(e)); Aug. 29, 1935, ch. 804, §1, 49 Stat. 960; June 5, 1936, ch. 521, §1, 49 Stat. 1480.
30506(d)	46 App.:183(d).	
30506(e)	46 App.:183(e).	

Subsection (a) is written as an application provision rather than as a definition to be more direct and to avoid having to repeat the word “seagoing” throughout the section. The words “fishing vessel, fish tender vessel” are substituted for “fishing vessels or their tenders” for clarity. The words “nondescript vessel” are substituted for “nondescript self-propelled vessels” and “nondescript non-self-propelled vessels” to eliminate unnecessary words. The words “self-propelled lighters” are omitted as covered by “lighter”. The words “even though the same may be seagoing vessels within the meaning of such term as used in section 188 of this Appendix, as amended” are omitted as unnecessary. This provision is restated also at section 30508(a) of the revised title.

In subsection (b), the words “is such that the portion available to pay claims for personal injury or death” are substituted for “is insufficient to pay all losses in full, and the portion of such amount applicable to the payment of losses in respect of loss of life or bodily injury” to eliminate unnecessary words.

In subsection (c), the words “self-propelled vessel” are substituted for “steam or motor vessel”, and the words “tonnage for documentation” are substituted for “registered tonnage”, for consistency in the revised title. The words “space for the use of seamen” are substituted for “space occupied by seamen or apprentices and appropriated to their use” to eliminate unnecessary words.

In subsection (d), the words “Separate limits of liability apply” are substituted for “The owner . . . shall be liable . . . to the same extent as if no other loss of life or bodily injury had arisen” to eliminate unnecessary words.

In subsection (e), the words “the privacy or knowledge . . . is imputed to the owner” are substituted for “shall be deemed conclusively the privacy or knowledge of the owner” for consistency and to eliminate unnecessary words.

§ 30507. Apportionment of losses

If the amounts determined under sections 30505 and 30506 of this title are insufficient to pay all claims—

(1) all claimants shall be paid in proportion to their respective losses out of the amount determined under section 30505 of this title; and

(2) personal injury and death claimants, if any, shall be paid an additional amount in proportion to their respective losses out of the additional amount determined under section 30506(b) of this title.

(Pub. L. 109–304, §6(c), Oct. 6, 2006, 120 Stat. 1513.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
30507	46 App.:183(b) (last sentence).	R.S. § 4283(b) (last sentence); Aug. 29, 1935, ch. 804, §1, 49 Stat. 960; June 5, 1936, ch. 521, §1, 49 Stat. 1479; Pub. L. 98–498, title II, §213(a), Oct. 19, 1984, 98 Stat. 2306.
	46 App.:184.	R.S. § 4284; Feb. 27, 1877, ch. 69, §1 (related to R.S. § 4284), 19 Stat. 251.

This section is substituted for 46 App. U.S.C. 183(b) (last sentence) and 184 (words before semicolon) for clarity and consistency and to eliminate unnecessary words. The text of 46 App. U.S.C. 184 (words after semicolon) is omitted as unnecessary. See G. Gilmore & C. Black, *The Law of Admiralty*, §10–8 (2d ed. 1975).

§ 30508. Provisions requiring notice of claim or limiting time for bringing action

(a) APPLICATION.—This section applies only to seagoing vessels, but does not apply to pleasure yachts, tugs, towboats, towing vessels, tank vessels, fishing vessels, fish tender vessels, canal boats, scows, car floats, barges, lighters, or non-descript vessels.

(b) MINIMUM TIME LIMITS.—The owner, master, manager, or agent of a vessel transporting passengers or property between ports in the United States, or between a port in the United States and a port in a foreign country, may not limit by regulation, contract, or otherwise the period for—

(1) giving notice of, or filing a claim for, personal injury or death to less than 6 months after the date of the injury or death; or

(2) bringing a civil action for personal injury or death to less than one year after the date of the injury or death.

(c) EFFECT OF FAILURE TO GIVE NOTICE.—When notice of a claim for personal injury or death is required by a contract, the failure to give the notice is not a bar to recovery if—

(1) the court finds that the owner, master, or agent of the vessel had knowledge of the injury or death and the owner has not been prejudiced by the failure;

(2) the court finds there was a satisfactory reason why the notice could not have been given; or

(3) the owner of the vessel fails to object to the failure to give the notice.

(d) TOLLING OF PERIOD TO GIVE NOTICE.—If a claimant is a minor or mental incompetent, or if a claim is for wrongful death, any period provided by a contract for giving notice of the claim is tolled until the earlier of—

(1) the date a legal representative is appointed for the minor, incompetent, or decedent’s estate; or

(2) 3 years after the injury or death.

(Pub. L. 109–304, §6(c), Oct. 6, 2006, 120 Stat. 1514.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
30508(a)	46 App.:183(f) (related to 46 App.:183b).	R.S. § 4283(f) (related to R.S. § 4283A); Aug. 29, 1935, ch. 804, §1, 49 Stat. 960; June 5, 1936, ch. 521, §1, 49 Stat. 1480.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
30508(b)	46 App.:183b(a).	R.S. §4283A, as added Aug. 29, 1935, ch. 804, §3, 49 Stat. 960.
30508(c)	46 App.:183b(b).	
30508(d)	46 App.:183b(c).	

For an explanation of subsection (a), see the revision notes for section 30506(a), where 46 App. U.S.C. 183(f) is also restated.

In subsection (b), before paragraph (1), the words “sea-going vessel (other than tugs, barges, fishing vessels and their tenders)” are omitted because of subsection (a) of this section. The word “merchandise” is omitted as covered by “property”. The words “between ports in the United States, or between a port in the United States and a port in a foreign country” are substituted for “from or between ports of the United States and foreign ports” for clarity and for consistency with section 30509(a)(1) of the revised title. See *Burstein v. United States Lines Co.*, 43 F. Supp. 226 (S.D.N.Y. 1942), rev'd on other grounds, 134 F.2d 89 (2d Cir. 1943). The word “rule” is omitted as covered by “regulation”. In paragraph (1), the words “after the date of the injury or death” are added for clarity and consistency with paragraph (2).

In subsection (c), before paragraph (1), the words “When notice of a claim for personal injury or death is required by a contract, the failure to give the notice” are substituted for “Failure to give such notice, where lawfully prescribed in such contract” for clarity. In paragraph (1), the words “the court finds” are stated at the beginning rather than the middle to be more precise. The word “damage” is omitted as unnecessary. In paragraph (2), the words “the court finds there was a satisfactory reason” are substituted for “the court excuses such failure on the ground that for some satisfactory reason” to eliminate unnecessary words.

In subsection (d), before paragraph (1), the word “claimant” is substituted for “person who is entitled to recover on any such claim” to eliminate unnecessary words. The word “lawful” is omitted as unnecessary. The words “is tolled until” are substituted for “shall not be applicable so long as” and “but shall be applicable from” for clarity and to eliminate unnecessary words.

§ 30509. Provisions limiting liability for personal injury or death

(a) PROHIBITION.—

(1) IN GENERAL.—The owner, master, manager, or agent of a vessel transporting passengers between ports in the United States, or between a port in the United States and a port in a foreign country, may not include in a regulation or contract a provision limiting—

(A) the liability of the owner, master, or agent for personal injury or death caused by the negligence or fault of the owner or the owner’s employees or agents; or

(B) the right of a claimant for personal injury or death to a trial by court of competent jurisdiction.

(2) VOIDNESS.—A provision described in paragraph (1) is void.

(b) EMOTIONAL DISTRESS, MENTAL SUFFERING, AND PSYCHOLOGICAL INJURY.—

(1) IN GENERAL.—Subsection (a) does not prohibit a provision in a contract or in ticket conditions of carriage with a passenger that relieves an owner, master, manager, agent, operator, or crewmember of a vessel from liability for infliction of emotional distress, mental

suffering, or psychological injury so long as the provision does not limit such liability when the emotional distress, mental suffering, or psychological injury is—

(A) the result of physical injury to the claimant caused by the negligence or fault of a crewmember or the owner, master, manager, agent, or operator;

(B) the result of the claimant having been at actual risk of physical injury, and the risk was caused by the negligence or fault of a crewmember or the owner, master, manager, agent, or operator; or

(C) intentionally inflicted by a crewmember or the owner, master, manager, agent, or operator.

(2) SEXUAL OFFENSES.—This subsection does not limit the liability of a crewmember or the owner, master, manager, agent, or operator of a vessel in a case involving sexual harassment, sexual assault, or rape.

(Pub. L. 109–304, §6(c), Oct. 6, 2006, 120 Stat. 1514.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
30509	46 App.:183c.	R.S. §4283B, as added June 5, 1936, ch. 521, §2, 49 Stat. 1480; Oct. 19, 1996, Pub. L. 104–324, §1129(b), 110 Stat. 3984.

In subsection (a)(1), before subparagraph (A), the words “may not” are substituted for “It shall be unlawful” for consistency in the revised title and with other titles of the United States Code. The words “rule” and “agreement” are omitted as covered by “regulation” and “contract”, respectively. The words “a provision limiting” are substituted for “any provision or limitation (1) purporting . . . to relieve . . . , or (2) purporting . . . to lessen, weaken, or avoid” to eliminate unnecessary words. In subparagraph (A), the words “the owner’s employees or agents” are substituted for “his servants” for consistency in the revised title. In subparagraph (B), the words “on the question of liability for such loss or injury, or the measure of damages therefor” are omitted as unnecessary.

Subsection (b)(2) is substituted for 46 App. U.S.C. 183c (last sentence) for consistency and to eliminate unnecessary words.

§ 30510. Vicarious liability for medical malpractice with regard to crew

In a civil action by any person in which the owner or operator of a vessel or employer of a crewmember is claimed to have vicarious liability for medical malpractice with regard to a crewmember occurring at a shoreside facility, and to the extent the damages resulted from the conduct of any shoreside doctor, hospital, medical facility, or other health care provider, the owner, operator, or employer is entitled to rely on any statutory limitations of liability applicable to the doctor, hospital, medical facility, or other health care provider in the State of the United States in which the shoreside medical care was provided.

(Pub. L. 109–304, §6(c), Oct. 6, 2006, 120 Stat. 1515.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
30510	46 App.:183(g).	R.S. § 4283(g); Pub. L. 104-324, § 1129(a), Oct. 19, 1996, 110 Stat. 3984.

The words “civil action” are substituted for “suit” for consistency in the revised title. The words “is entitled to rely on any statutory” are substituted for “shall be entitled to rely upon any and all statutory” to eliminate unnecessary words.

§ 30511. Action by owner for limitation

(a) IN GENERAL.—The owner of a vessel may bring a civil action in a district court of the United States for limitation of liability under this chapter. The action must be brought within 6 months after a claimant gives the owner written notice of a claim.

(b) CREATION OF FUND.—When the action is brought, the owner (at the owner’s option) shall—

(1) deposit with the court, for the benefit of claimants—

(A) an amount equal to the value of the owner’s interest in the vessel and pending freight, or approved security; and

(B) an amount, or approved security, that the court may fix from time to time as necessary to carry out this chapter; or

(2) transfer to a trustee appointed by the court, for the benefit of claimants—

(A) the owner’s interest in the vessel and pending freight; and

(B) an amount, or approved security, that the court may fix from time to time as necessary to carry out this chapter.

(c) CESSATION OF OTHER ACTIONS.—When an action has been brought under this section and the owner has complied with subsection (b), all claims and proceedings against the owner related to the matter in question shall cease.

(Pub. L. 109–304, §6(c), Oct. 6, 2006, 120 Stat. 1515.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
30511	46 App.:185.	R.S. § 4285; June 5, 1936, ch. 521, § 3, 49 Stat. 1480.

In subsection (a), the words “bring a civil action . . . in a district court of the United States” are substituted for “petition a district court of the United States” for consistency in the revised title and with other titles of the United States Code. See rule 2 of the Federal Rules of Civil Procedure (28 App. U.S.C.). The words “of competent jurisdiction” are omitted as unnecessary.

In subsection (b), the word “pending” before “freight” is added for consistency in the chapter. The words “to carry out this chapter” are substituted for “to carry out the provisions of section 183 of this Appendix” because of the reorganization of the source provisions.

§ 30512. Liability as master, officer, or seaman not affected

This chapter does not affect the liability of an individual as a master, officer, or seaman, even though the individual is also an owner of the vessel.

(Pub. L. 109–304, §6(c), Oct. 6, 2006, 120 Stat. 1516.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
30512	46 App.:187.	R.S. § 4287.

This section is substituted for the source provision for consistency with the restatement of 46 App. U.S.C. 183(a) and 189 in section 30505 and to eliminate unnecessary words. The reference in the source to particular sections is extended to include the entire chapter to simplify the reference and to conform to the obvious original policy and intent of the source provision.

CHAPTER 307—LIABILITY OF WATER CARRIERS

Sec.	Definition.
30701.	Application.
30702.	Bills of lading.
30703.	Loading, stowage, custody, care, and delivery.
30704.	Seaworthiness.
30705.	Defenses.
30706.	Criminal penalty.

§ 30701. Definition

In this chapter, the term “carrier” means the owner, manager, charterer, agent, or master of a vessel.

(Pub. L. 109–304, §6(c), Oct. 6, 2006, 120 Stat. 1516.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
30701	(no source).	

This chapter codifies the Act of February 13, 1893 (ch. 105, 27 Stat. 445) (commonly known as the Harter Act). Changes are made to simplify, clarify, and modernize the language and style, but the intent is that these changes should not result in changes in substance.

A definition of “carrier” is added based on language appearing in various provisions of the Harter Act. The definition avoids the need to repeat in various sections of this chapter the list of persons to whom the requirements and restrictions of this chapter apply, and it ensures that the list of persons is consistent in the chapter.

CARRIAGE OF GOODS BY SEA ACT

Act Apr. 16, 1936, ch. 229, 49 Stat. 1207, as amended by Pub. L. 97–31, §12(146), Aug. 6, 1981, 95 Stat. 166, provided:

“That every bill of lading or similar document of title which is evidence of a contract for the carriage of goods by sea to or from ports of the United States, in foreign trade, shall have effect subject to the provisions of this Act.

“TITLE I

“SECTION 1. When used in this Act—

“(a) The term ‘carrier’ includes the owner or the charterer who enters into a contract of carriage with a shipper.

“(b) The term ‘contract of carriage’ applies only to contracts of carriage covered by a bill of lading or any similar document of title, insofar as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same.

“(c) The term ‘goods’ includes goods, wares, merchandise, and articles of every kind whatsoever, except live

animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried.

“(d) The term ‘ship’ means any vessel used for the carriage of goods by sea.

“(e) The term ‘carriage of goods’ covers the period from the time when the goods are loaded on to the time when they are discharged from the ship.

“RISKS

“SEC. 2. Subject to the provisions of section 6, under every contract of carriage of goods by sea, the carrier in relation to the loading, handling, stowage, carriage, custody, care, and discharge of such goods, shall be subject to the responsibilities and liabilities and entitled to the rights and immunities hereinafter set forth.

“RESPONSIBILITIES AND LIABILITIES

“SEC. 3. (1) The carrier shall be bound, before and at the beginning of the voyage, to exercise due diligence to—

“(a) Make the ship seaworthy;

“(b) Properly man, equip, and supply the ship;

“(c) Make the holds, refrigerating and cooling chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage, and preservation.

“(2) The carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.

“(3) After receiving the goods into his charge the carrier, or the master or agent of the carrier, shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things—

“(a) The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage.

“(b) Either the number of packages or pieces, or the quantity or weight, as the case may be, as furnished in writing by the shipper.

“(c) The apparent order and condition of the goods: *Provided*, That no carrier, master, or agent of the carrier, shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.

“(4) Such a bill of lading shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with paragraphs (3)(a), (b), and (c), of this section: *Provided*, That nothing in this Act shall be construed as repealing or limiting the application of any part of the Act, as amended, entitled ‘An Act relating to bills of lading in interstate and foreign commerce’, approved August 29, 1916 (U.S.C., title 49, secs. 81–124), commonly known as the ‘Pomerene Bills of Lading Act’ [now chapter 801 of Title 49, Transportation].

“(5) The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity, and weight, as furnished by him; and the shipper shall indemnify the carrier against all loss, damages, and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

“(6) Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading. If the loss or

damage is not apparent, the notice must be given within three days of the delivery.

“Said notice of loss or damage may be endorsed upon the receipt for the goods given by the person taking delivery thereof.

“The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

“In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered: *Provided*, That if a notice of loss or damage, either apparent or concealed, is not given as provided for in this section, that fact shall not affect or prejudice the right of the shipper to bring suit within one year after the delivery of the goods or the date when the goods should have been delivered.

“In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

“(7) After the goods are loaded the bill of lading to be issued by the carrier, master, or agent of the carrier to the shipper shall, if the shipper so demands, be a ‘shipped’ bill of lading: *Provided*, That if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the ‘shipped’ bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier, master, or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted the same shall for the purpose of this section be deemed to constitute a ‘shipped’ bill of lading.

“(8) Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with the goods, arising from negligence, fault, or failure in the duties and obligations provided in this section, or lessening such liability otherwise than as provided in this Act, shall be null and void and of no effect. A benefit of insurance in favor of the carrier, or similar clause, shall be deemed to be a clause relieving the carrier from liability.

“RIGHTS AND IMMUNITIES

“SEC. 4. (1) Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped, and supplied, and to make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried fit and safe for their reception, carriage, and preservation in accordance with the provisions of paragraph (1) of section 3. Whenever loss or damage has resulted from unseaworthiness, the burden of proving the exercise of due diligence shall be on the carrier or other persons claiming exemption under this section.

“(2) Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from—

“(a) Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship;

“(b) Fire, unless caused by the actual fault or privity of the carrier;

“(c) Perils, dangers, and accidents of the sea or other navigable waters;

“(d) Act of God;

“(e) Act of war;

“(f) Act of public enemies;

“(g) Arrest or restraint of princes, rulers, or people, or seizure under legal process;

“(h) Quarantine restrictions;

“(i) Act or omission of the shipper or owner of the goods, his agent or representative;

“(j) Strikes or lockouts or stoppage or restraint of labor from whatever cause, whether partial or general:

Provided, That nothing herein contained shall be construed to relieve a carrier from responsibility for the carrier's own acts;

“(k) Riots and civil commotions;

“(l) Saving or attempting to save life or property at sea;

“(m) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods;

“(n) Insufficiency of packing;

“(o) Insufficiency or inadequacy of marks;

“(p) Latent defects not discoverable by due diligence; and

“(q) Any other cause arising without the actual fault and privity of the carrier and without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

“(3) The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault, or neglect of the shipper, his agents, or his servants.

“(4) Any deviation in saving or attempting to save life or property at sea, or any reasonable deviation shall not be deemed to be an infringement or breach of this Act or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom: *Provided, however*, That if the deviation is for the purpose of loading or unloading cargo or passengers it shall, *prima facie*, be regarded as unreasonable.

“(5) Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the transportation of goods in an amount exceeding \$500 per package lawful money of the United States, or in case of goods not shipped in packages, per customary freight unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading. This declaration, if embodied in the bill of lading, shall be *prima facie* evidence, but shall not be conclusive on the carrier.

“By agreement between the carrier, master, or agent of the carrier, and the shipper another maximum amount than that mentioned in this paragraph may be fixed: *Provided*, That such maximum shall not be less than the figure above named. In no event shall the carrier be liable for more than the amount of damage actually sustained.

“Neither the carrier nor the ship shall be responsible in any event for loss or damage to or in connection with the transportation of the goods if the nature or value thereof has been knowingly and fraudulently misstated by the shipper in the bill of lading.

“(6) Goods of an inflammable, explosive, or dangerous nature to the shipment whereof the carrier, master or agent of the carrier, has not consented with knowledge of their nature and character, may at any time before discharge be landed at any place or destroyed or rendered innocuous by the carrier without compensation, and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment. If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place, or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any.

“SURRENDER OF RIGHTS AND IMMUNITIES AND INCREASE OF RESPONSIBILITIES AND LIABILITIES

“SEC. 5. A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and liabilities under this Act, provided such surrender or increase

shall be embodied in the bill of lading issued to the shipper.

“The provisions of this Act shall not be applicable to charter parties; but if bills of lading are issued in the case of a ship under a charter party, they shall comply with the terms of this Act. Nothing in this Act shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average.

“SPECIAL CONDITIONS

“SEC. 6. Notwithstanding the provisions of the preceding sections, a carrier, master or agent of the carrier, and a shipper shall, in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness (so far as the stipulation regarding seaworthiness is not contrary to public policy), or the care or diligence of his servants or agents in regard to the loading, handling, stowage, carriage, custody, care, and discharge of the goods carried by sea: *Provided*, That in this case no bill of lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a nonnegotiable document and shall be marked as such.

“Any agreement so entered into shall have full legal effect: *Provided*, That this section shall not apply to ordinary commercial shipments made in the ordinary course of trade but only to other shipments where the character or condition of the property to be carried or the circumstances, terms, and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement.

“[AGREEMENT AS TO RESPONSIBILITY AND LIABILITY BEFORE LOADING OR AFTER DISCHARGE]

“SEC. 7. Nothing contained in this Act shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation, or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to or in connection with the custody and care and handling of goods prior to the loading on and subsequent to the discharge from the ship on which the goods are carried by sea.

“[RIGHTS AND LIABILITIES UNDER OTHER OBLIGATIONS]

“SEC. 8. The provisions of this Act shall not affect the rights and obligations of the carrier under the provisions of the Shipping Act, 1916 [former 46 U.S.C. App. 801 et seq., see Disposition Table preceding section 101 of this title], or under the provisions of sections 4281 to 4289, inclusive, of the Revised Statutes of the United States [see chapter 305 of this title] or of any amendments thereto; or under the provisions of any other enactment for the time being in force relating to the limitation of the liability of the owners of seagoing vessels.

“TITLE II

“[DISCRIMINATION BETWEEN COMPETING SHIPPERS]

“SECTION. 9. Nothing contained in this Act shall be construed as permitting a common carrier by water to discriminate between competing shippers similarly placed in time and circumstances, either (a) with respect to their right to demand and receive bills of lading subject to the provisions of this Act; or (b) when issuing such bills of lading, either in the surrender of any of the carrier's rights and immunities or in the increase of any of the carrier's responsibilities and liabilities pursuant to section 5, title I, of this Act; or (c) in any other way prohibited by the Shipping Act, 1916, as amended [former 46 U.S.C. App. 801 et seq., see Disposition Table preceding section 101 of this title].

“[OMITTED]

“SEC. 10. [Amended section 25 of the Interstate Commerce Act (former 49 U.S.C. 25).]

“[WEIGHT OF BULK CARGO]

“SEC. 11. Where under the customs of any trade the weight of any bulk cargo inserted in the bill of lading is a weight ascertained or accepted by a third party other than the carrier or the shipper, and the fact that the weight is so ascertained or accepted is stated in the bill of lading, then, notwithstanding anything in this Act, the bill of lading shall not be deemed to be prima facie evidence against the carrier of the receipt of goods of the weight so inserted in the bill of lading, and the accuracy thereof at the time of shipment shall not be deemed to have been guaranteed by the shipper.

“[RELATIONSHIP TO OTHER LAW]

“SEC. 12. Nothing in this Act shall be construed as superseding any part of the Act entitled ‘An Act relating to navigation of vessels, bills of lading, and to certain obligations, duties, and rights in connection with the carriage of property’, approved February 13, 1893 [now this chapter], or of any other law which would be applicable in the absence of this Act, insofar as they relate to the duties, responsibilities, and liabilities of the ship or carrier prior to the time when the goods are loaded on or after the time they are discharged from the ship.

“[SCOPE OF ACT; “UNITED STATES”; “FOREIGN TRADE”]

“SEC. 13. This Act shall apply to all contracts for carriage of goods by sea to or from ports of the United States in foreign trade. As used in this Act the term ‘United States’ includes its districts, territories, and possessions: *Provided, however,* That the Philippine Legislature may by law exclude its application to transportation to or from ports of the Philippine Islands. The term ‘foreign trade’ means the transportation of goods between the ports of the United States and ports of foreign countries. Nothing in this Act shall be held to apply to contracts for carriage of goods by sea between any port of the United States or its possessions, and any other port of the United States or its possessions: *Provided, however,* That any bill of lading or similar document of title which is evidence of a contract for the carriage of goods by sea between such ports, containing an express statement that it shall be subject to the provisions of this Act, shall be subjected hereto as fully as if subject hereto by the express provisions of this Act: *Provided further,* That every bill of lading or similar document of title which is evidence of a contract for the carriage of goods by sea from ports of the United States, in foreign trade, shall contain a statement that it shall have effect subject to the provisions of this Act.

“[As to proviso in second sentence that Philippine Legislature may by law exclude its application to transportation to or from ports of the Philippine Islands, see Proc. No. 2695, set out under section 1394 of Title 22, Foreign Relations and Intercourse, which proclaimed the independence of the Philippines.]

“[SUSPENSION OF PROVISIONS BY PRESIDENT]

“SEC. 14. Upon the certification of the Secretary of Transportation that the foreign commerce of the United States in its competition with that of foreign nations is prejudiced by the provisions, or any of them, of title I of this Act, or by the laws of any foreign country or countries relating to the carriage of goods by sea, the President of the United States may, from time to time, by proclamation, suspend any or all provisions of said sections for such periods of time or indefinitely as may be designated in the proclamation. The President may at any time rescind such suspension of said sections, and any provisions thereof which may have been suspended shall thereby be reinstated and again apply to contracts thereafter made for the carriage of

goods by sea. Any proclamation of suspension or rescission of any such suspension shall take effect on a date named therein, which date shall be not less than ten days from the issue of the proclamation.

“Any contract for the carriage of goods by sea, subject to the provisions of this Act, effective during any period when title I hereof, or any part thereof, are suspended, shall be subject to all provisions of law now or hereafter applicable to that part of title I which may have thus been suspended. [As amended Pub. L. 97-31, §12(146), Aug. 6, 1981, 95 Stat. 166.]

“[EFFECTIVE DATE]

“SEC. 15. This Act shall take effect ninety days after the date of its approval [April 16, 1936]; but nothing in this Act shall apply during a period not to exceed one year following its approval to any contract for the carriage of goods by sea, made before the date on which this Act is approved, nor to any bill of lading or similar document of title issued, whether before or after such date of approval in pursuance of any such contract as aforesaid.

“[SHORT TITLE]

“SEC. 16. This Act may be cited as the ‘Carriage of Goods by Sea Act.’”

§ 30702. Application

(a) IN GENERAL.—Except as otherwise provided, this chapter applies to a carrier engaged in the carriage of goods to or from any port in the United States.

(b) LIVE ANIMALS.—Sections 30703 and 30704 of this title do not apply to the carriage of live animals.

(Pub. L. 109-304, §6(c), Oct. 6, 2006, 120 Stat. 1516.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
30702(a)	(no source).	
30702(b)	46 App.:195.	Feb. 13, 1893, ch. 105, §7, 27 Stat. 446.

Subsection (a) is added based on language appearing in various source provisions restated in this chapter. The word “carriage” is substituted for “transporting”, and the word “goods” is substituted for “merchandise or property”, to use the same terminology as in the Carriage of Goods By Sea Act (Apr. 16, 1936, ch. 229, 49 Stat. 1207). The words “to or from any port in the United States” are substituted for “from or between ports of the United States and foreign ports” in 46 App. U.S.C. 190 and 193, “from or between ports of the United States of America and foreign ports” in 46 App. U.S.C. 191, and “to or from any port in the United States of America” in 46 App. U.S.C. 192, for clarity and consistency. See *Knott v. Botany Mills*, 179 U.S. 69 (1900).

§ 30703. Bills of lading

(a) ISSUANCE.—On demand of a shipper, the carrier shall issue a bill of lading or shipping document.

(b) CONTENTS.—The bill of lading or shipping document shall include a statement of—

- (1) the marks necessary to identify the goods;
- (2) the number of packages, or the quantity or weight, and whether it is carrier’s or shipper’s weight; and
- (3) the apparent condition of the goods.

(c) PRIMA FACIE EVIDENCE OF RECEIPT.—A bill of lading or shipping document issued under this section is prima facie evidence of receipt of the goods described.

(Pub. L. 109-304, §6(c), Oct. 6, 2006, 120 Stat. 1516.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
30703	46 App.:193.	Feb. 13, 1893, ch. 105, §4, 27 Stat. 445.

In subsection (a), the words “On demand of a shipper” are added because of the reference to a demand in 46 App. U.S.C. 194. The words “transporting merchandise or property from or between ports of the United States and foreign ports” are omitted because of section 30702(a) of the revised title. The word “lawful” (which modifies “merchandise”) is omitted as unnecessary.

In subsection (b)(2), the words “or weight” are added for consistency with the requirement to state whether it is the carrier’s or shipper’s weight.

In subsection (b)(3), the word “order” is omitted as redundant to “condition”. The words “delivered to and received by . . . for transportation” are omitted as unnecessary.

§ 30704. Loading, stowage, custody, care, and delivery

A carrier may not insert in a bill of lading or shipping document a provision avoiding its liability for loss or damage arising from negligence or fault in loading, stowage, custody, care, or proper delivery. Any such provision is void.

(Pub. L. 109-304, §6(c), Oct. 6, 2006, 120 Stat. 1516.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
30704	46 App.:190.	Feb. 13, 1893, ch. 105, §1, 27 Stat. 445.

The words “transporting merchandise or property from or between ports of the United States and foreign ports” are omitted because of section 30702(a) of the revised title. The words “may not” are substituted for “It shall not be lawful . . . to”, and the word “provision” is substituted for “clause, covenant, or agreement”, to eliminate unnecessary words. The words “any and all lawful” and “committed to its or their charge” are omitted as unnecessary. The words “Any such provision is void” are substituted for “Any and all words or clauses of such import inserted in bills of lading or shipping receipts shall be null and void and of no effect” to eliminate unnecessary words.

§ 30705. Seaworthiness

(a) PROHIBITION.—A carrier may not insert in a bill of lading or shipping document a provision lessening or avoiding its obligation to exercise due diligence to—

- (1) make the vessel seaworthy; and
- (2) properly man, equip, and supply the vessel.

(b) VOIDNESS.—A provision described in subsection (a) is void.

(Pub. L. 109-304, §6(c), Oct. 6, 2006, 120 Stat. 1516.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
30705	46 App.:191.	Feb. 13, 1893, ch. 105, §2, 27 Stat. 445.

In subsection (a), before paragraph (1), the words “transporting merchandise or property from or be-

tween ports of the United States of America and foreign ports” are omitted because of section 30702(a) of the revised title. The words “may not” are substituted for “It shall not be lawful . . . to”, the word “provision” is substituted for “covenant or agreement”, and the words “lessening or avoiding its obligation” are substituted for “whereby the obligations . . . shall in any wise be lessened, weakened, or avoided”, to eliminate unnecessary words.

In paragraph (1), the words “and capable of performing her intended voyage” are omitted as unnecessary.

In paragraph (2), the word “supply” is substituted for “provision, and outfit” to eliminate unnecessary words.

The words “or whereby the obligations of the master, officers, agents, or servants to carefully handle and stow her cargo and to care for and properly deliver same” are omitted as covered by section 30704 of the revised title.

Subsection (b) is added for clarity and for consistency with section 30704 of the revised title.

§ 30706. Defenses

(a) DUE DILIGENCE.—If a carrier has exercised due diligence to make the vessel in all respects seaworthy and to properly man, equip, and supply the vessel, the carrier and the vessel are not liable for loss or damage arising from an error in the navigation or management of the vessel.

(b) OTHER DEFENSES.—A carrier and the vessel are not liable for loss or damage arising from—

- (1) dangers of the sea or other navigable waters;
- (2) acts of God;
- (3) public enemies;
- (4) seizure under legal process;
- (5) inherent defect, quality, or vice of the goods;
- (6) insufficiency of package;
- (7) act or omission of the shipper or owner of the goods or their agent; or
- (8) saving or attempting to save life or property at sea, including a deviation in rendering such a service.

(Pub. L. 109-304, §6(c), Oct. 6, 2006, 120 Stat. 1517.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
30706	46 App.:192.	Feb. 13, 1893, ch. 105, §3, 27 Stat. 445.

This section is restated as two subsections to clarify that the exercise of due diligence in making the vessel seaworthy is a condition only to the defense of error in navigation or management restated in subsection (a). See *May v. Hamburg-Amerikanische Packetfahrt Aktiengesellschaft (The Isis)*, 290 U.S. 333, 353 (1933). The words “transporting merchandise or property to or from any port in the United States of America” are omitted because of section 30702(a) of the revised title.

§ 30707. Criminal penalty

(a) IN GENERAL.—A carrier that violates this chapter shall be fined under title 18.

(b) LIEN.—The amount of the fine and costs for the violation constitute a lien on the vessel engaged in the carriage. A civil action in rem to enforce the lien may be brought in the district court of the United States for any district in which the vessel is found.

(c) DISPOSITION OF FINE.—Half of the fine shall go to the person injured by the violation and half to the United States Government.

(Pub. L. 109-304, §6(c), Oct. 6, 2006, 120 Stat. 1517.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
30707	46 App.:194.	Feb. 13, 1893, ch. 105, §5, 27 Stat. 446.

In subsection (a), the words “and who refuses to issue on demand the bill of lading herein provided for” are omitted as unnecessary. The words “shall be fined under title 18” are substituted for “shall be liable to a fine not exceeding \$2,000” because of chapter 227 of title 18.

In subsection (b), the words “A civil action in rem to enforce the lien may be brought in the district court of the United States for any district in which the vessel is found” are substituted for “such vessel may be libeled therefor in any district court of the United States” for clarity and to modernize the language.

CHAPTER 309—SUITS IN ADMIRALTY AGAINST THE UNITED STATES

Sec.	
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§ 30901. Short title

This chapter may be cited as the “Suits in Admiralty Act”.

(Pub. L. 109-304, §6(c), Oct. 6, 2006, 120 Stat. 1517.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
30901	46 App.:741 note.	

SHORT TITLE

Act Mar. 9, 1920, ch. 95, 41 Stat. 525, which enacted chapter 20 (§741 et seq.) of the former Appendix to this title, was popularly known as the “Suits in Admiralty Act”, prior to being repealed and restated in this chapter by Pub. L. 109-304, §§6(c), 19, Oct. 6, 2006, 120 Stat. 1509, 1710.

§ 30902. Definition

In this chapter, the term “federally-owned corporation” means a corporation in which the United States owns all the outstanding capital stock.

(Pub. L. 109-304, §6(c), Oct. 6, 2006, 120 Stat. 1517.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
30902	46 App.:741 (11th-26th words).	Mar. 9, 1920, ch. 95, §1 (11th-26th words), 41 Stat. 525.

The term “federally-owned corporation” is defined in this section and used in this chapter to avoid repeating the substance of the definition in several sections in this chapter. The words “or its representatives” are omitted as unnecessary.

§ 30903. Waiver of immunity

(a) IN GENERAL.—In a case in which, if a vessel were privately owned or operated, or if cargo were privately owned or possessed, or if a private person or property were involved, a civil action in admiralty could be maintained, a civil action in admiralty in personam may be brought against the United States or a federally-owned corporation. In a civil action in admiralty brought by the United States or a federally-owned corporation, an admiralty claim in personam may be filed or a setoff claimed against the United States or corporation.

(b) NON-JURY.—A claim against the United States or a federally-owned corporation under this section shall be tried without a jury.

(Pub. L. 109-304, §6(c), Oct. 6, 2006, 120 Stat. 1518.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
30903	46 App.:742 (1st, 3d sentences).	Mar. 9, 1920, ch. 95, §2 (1st, 3d sentences), 41 Stat. 525; Pub. L. 86-770, §3, Sept. 13, 1960, 74 Stat. 912; Pub. L. 104-324, title XI, §1105, Oct. 19, 1996, 110 Stat. 3967.

In subsection (a), the words “civil action” are substituted for “proceeding” and “libel” because of rule 2 of the Federal Rules of Civil Procedure (28 App. U.S.C.) and for consistency in the chapter. The words “civil action in admiralty in personam” are substituted for “any appropriate nonjury proceeding in personam” for clarity. The words “in rem or in personam in any district” are omitted as unnecessary. The words “admiralty claim” are substituted for “cross libel” for consistency in this chapter and with the various means of asserting a claim (such as by counterclaim or cross-claim) allowed by the Federal Rules of Civil Procedure. The words “with the same force and effect as if the libel had been filed by a private party” are omitted as unnecessary.

Subsection (b) is substituted for the word “nonjury” to clarify that the nonjury requirement applies to any claim against the United States or a federally-owned corporation under this section regardless of which party brings the action.

§ 30904. Exclusive remedy

If a remedy is provided by this chapter, it shall be exclusive of any other action arising out of the same subject matter against the officer, employee, or agent of the United States or the federally-owned corporation whose act or omission gave rise to the claim.

(Pub. L. 109-304, §6(c), Oct. 6, 2006, 120 Stat. 1518.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
30904	46 App.:745 (1st proviso).	Mar. 9, 1920, ch. 95, §5 (1st proviso), 41 Stat. 526; June 30, 1932, ch. 315, 47 Stat. 420; Dec. 13, 1950, ch. 1136, 64 Stat. 1112.

The words “officer, employee, or agent of the United States or the federally-owned corporation” are substituted for “agent or employee of the United States or of any incorporated or unincorporated agency thereof” for consistency in this chapter and to eliminate unnecessary words.

§ 30905. Period for bringing action

A civil action under this chapter must be brought within 2 years after the cause of action arose.

(Pub. L. 109–304, §6(c), Oct. 6, 2006, 120 Stat. 1518.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
30905	46 App.:745 (words before 1st proviso).	Mar. 9, 1920, ch. 95, §5 (words before 1st proviso), 41 Stat. 526; June 30, 1932, ch. 315, 47 Stat. 420; Dec. 13, 1950, ch. 1136, 64 Stat. 1112.

§ 30906. Venue

(a) IN GENERAL.—A civil action under this chapter shall be brought in the district court of the United States for the district in which—

- (1) any plaintiff resides or has its principal place of business; or
- (2) the vessel or cargo is found.

(b) TRANSFER.—On a motion by a party, the court may transfer the action to any other district court of the United States.

(Pub. L. 109–304, §6(c), Oct. 6, 2006, 120 Stat. 1518.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
30906(a)	46 App.:742 (2d sentence).	Mar. 9, 1920, ch. 95, §2 (2d, last sentences), 41 Stat. 526.
30906(b)	46 App.:742 (last sentence).	

In subsection (a)(1), the words “in the United States” are omitted as unnecessary.

In subsection (a)(2), the words “charged with liability” are omitted as unnecessary.

In subsection (b), the words “in the discretion of the court” are omitted as unnecessary. For general change of venue provision, see 28 U.S.C. 1404.

§ 30907. Procedure for hearing and determination

(a) IN GENERAL.—A civil action under this chapter shall proceed and be heard and determined according to the principles of law and the rules of practice applicable in like cases between private parties.

(b) IN REM.—

(1) REQUIREMENTS.—The action may proceed according to the principles of an action in rem if—

- (A) the plaintiff elects in the complaint; and

(B) it appears that an action in rem could have been maintained had the vessel or cargo been privately owned and possessed.

(2) EFFECT ON RELIEF IN PERSONAM.—An election under paragraph (1) does not prevent the plaintiff from seeking relief in personam in the same action.

(Pub. L. 109–304, §6(c), Oct. 6, 2006, 120 Stat. 1518.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
30907(a)	46 App.:743 (1st, 4th sentences).	Mar. 9, 1920, ch. 95, §3 (1st, 4th–6th sentences), 41 Stat. 526.
30907(b)	46 App.:743 (5th, 6th sentences).	

In subsection (a), the text of 46 App. U.S.C. 743 (4th sentence) is omitted as unnecessary.

In subsection (b)(1)(A), the words “plaintiff” and “complaint” are substituted for “libelant” and “libel”, respectively, for consistency with the Federal Rules of Civil Procedure (28 App. U.S.C.).

In subsection (b)(2), the words “in any proper case” are omitted as unnecessary.

§ 30908. Exemption from arrest or seizure

The following are not subject to arrest or seizure by judicial process in the United States:

- (1) A vessel owned by, possessed by, or operated by or for the United States or a federally-owned corporation.
- (2) Cargo owned or possessed by the United States or a federally-owned corporation.

(Pub. L. 109–304, §6(c), Oct. 6, 2006, 120 Stat. 1518.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
30908	46 App.:741 (less 11th–26th words).	Mar. 9, 1920, ch. 95, §1 (less 11th–26th words), 41 Stat. 525; Sept. 26, 1950, ch. 1049, §2(a)(2), 64 Stat. 1038; Pub. L. 96–70, §3(b)(5), Sept. 27, 1979, 93 Stat. 455.

The words “a federally-owned corporation” are substituted for “any corporation in which the United States or its representatives shall own the entire outstanding capital stock” because of the definition of “federally-owned corporation” in section 30902 of the revised title. The words “after March 9, 1920” are omitted as obsolete. The words “in view of the provision herein made for a libel in personam” are omitted as unnecessary. The words “or its possessions” are omitted because of the definition of “United States” in chapter 1 of the revised title. The words “Provided, That this chapter shall not apply to the Panama Canal Commission” are omitted because the Commission has been dissolved. See 22 U.S.C. 3714a.

§ 30909. Security

Neither the United States nor a federally-owned corporation may be required to give a bond or admiralty stipulation in a civil action under this chapter.

(Pub. L. 109–304, §6(c), Oct. 6, 2006, 120 Stat. 1519.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
30909	46 App.:743 (last sentence).	Mar. 9, 1920, ch. 95, §3 (last sentence), 41 Stat. 526; Pub. L. 97–31, §12(25)(A), Aug. 6, 1981, 95 Stat. 155.

The words “civil action” are substituted for “proceeding” for consistency in this chapter and with rule 2 of the Federal Rules of Civil Procedure (28 App. U.S.C.).

§ 30910. Exoneration and limitation

The United States is entitled to the exemptions from and limitations of liability provided by law to an owner, charterer, operator, or agent of a vessel.

(Pub. L. 109-304, §6(c), Oct. 6, 2006, 120 Stat. 1519.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 1: 30910, 46 App.:746, Mar. 9, 1920, ch. 95, §6, 41 Stat. 527.

§ 30911. Costs and interest

(a) IN GENERAL.—A judgment against the United States or a federally-owned corporation under this chapter may include costs and interest at the rate of 4 percent per year until satisfied. Interest shall run as ordered by the court, except that interest is not allowable for the period before the action is filed.

(b) CONTRACT PROVIDING FOR INTEREST.—Notwithstanding subsection (a), if the claim is based on a contract providing for interest, interest may be awarded at the rate and for the period provided in the contract.

(Pub. L. 109-304, §6(c), Oct. 6, 2006, 120 Stat. 1519.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 1: 30911, 46 App.:743 (2d, 3d sentences), 46 App.:745 (last proviso), Mar. 9, 1920, ch. 95, §3 (2d, 3d sentences), 41 Stat. 526; Mar. 9, 1920, ch. 95, §5 (last proviso), 41 Stat. 526; June 30, 1932, ch. 315, 47 Stat. 420; Dec. 13, 1950, ch. 1136, 64 Stat. 1112.

In subsection (a), the words “and when the decree is for a money judgment” are omitted as unnecessary. The words “except that interest is not allowable for the period before the action is filed” are substituted for “And provided further, That after June 30, 1932, no interest shall be allowed on any claim prior to the time when suit on such claim is brought as authorized by section 742 of this Appendix” to eliminate unnecessary words.

Subsection (b) is substituted for “or at any higher rate which shall be stipulated in any contract upon which such decree shall be based” in 46 App. U.S.C. 743 and “unless upon a contract expressly stipulating for the payment of interest” in 46 App. U.S.C. 745 (last proviso) for clarity and consistency.

§ 30912. Arbitration, compromise, or settlement

The Secretary of a department of the United States Government, or the board of trustees of a federally-owned corporation, may arbitrate, compromise, or settle a claim under this chapter.

(Pub. L. 109-304, §6(c), Oct. 6, 2006, 120 Stat. 1519.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 1: 30912, 46 App.:749, Mar. 9, 1920, ch. 95, §9, 41 Stat. 527; Pub. L. 92-417, §3, Aug. 29, 1972, 86 Stat. 656; Pub. L. 97-31, §12(25)(C), Aug. 6, 1981, 95 Stat. 155.

The words “claim under this chapter” are substituted for “claim in which suit will lie under the provisions of sections 742, 744, and 750 of this Appendix” to eliminate unnecessary words.

§ 30913. Payment of judgment or settlement

(a) IN GENERAL.—The proper accounting officer of the United States shall pay a final judgment, arbitration award, or settlement under this chapter on presentation of an authenticated copy.

(b) SOURCE OF PAYMENT.—Payment shall be made from an appropriation or fund available specifically for the purpose. If no appropriation or fund is specifically available, there is hereby appropriated, out of money in the Treasury not otherwise appropriated, an amount sufficient to pay the judgment, award, or settlement.

(Pub. L. 109-304, §6(c), Oct. 6, 2006, 120 Stat. 1519.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 1: 30913, 46 App.:748, Mar. 9, 1920, ch. 95, §8, 41 Stat. 527.

§ 30914. Release of privately owned vessel after arrest or attachment

If a privately owned vessel not in the possession of the United States or a federally-owned corporation is arrested or attached in a civil action arising or alleged to have arisen from prior ownership, possession, or operation by the United States or corporation, the vessel shall be released without bond or stipulation on a statement by the United States, through the Attorney General or other authorized law officer, that the United States is interested in the action, desires release of the vessel, and assumes liability for the satisfaction of any judgment obtained by the plaintiff. After the vessel is released, the action shall proceed against the United States in accordance with this chapter.

(Pub. L. 109-304, §6(c), Oct. 6, 2006, 120 Stat. 1519.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 1: 30914, 46 App.:744, Mar. 9, 1920, ch. 95, §4, 41 Stat. 526.

The words “on a statement” are substituted for “upon the suggestion” as more appropriate.

§ 30915. Seizures and other proceedings in foreign jurisdictions

(a) IN GENERAL.—If a vessel or cargo described in section 30908 or 30914 of this title is arrested, attached, or otherwise seized by judicial process in a foreign country, or if an action is brought in a court of a foreign country against the mas-

ter of such a vessel for a claim arising from the ownership, possession, or operation of the vessel, or the ownership, possession, or carriage of such cargo, the Secretary of State, on request of the Attorney General or another officer authorized by the Attorney General, may direct the United States consul residing at or nearest the place at which the action was brought—

(1) to claim the vessel or cargo as immune from arrest, attachment, or other seizure, and to execute an agreement, stipulation, bond, or undertaking, for the United States or federally-owned corporation, for the release of the vessel or cargo and the prosecution of any appeal; or

(2) if an action has been brought against the master of such a vessel, to enter the appearance of the United States or corporation and to pledge the credit of the United States or corporation to the payment of any judgment and costs in the action.

(b) **ARRANGING BOND OR STIPULATION.**—The Attorney General may—

(1) arrange with a bank, surety company, or other person, whether in the United States or a foreign country, to execute a bond or stipulation; and

(2) pledge the credit of the United States to secure the bond or stipulation.

(c) **PAYMENT OF JUDGMENT.**—The appropriate accounting officer of the United States or corporation may pay a judgment in an action described in subsection (a) on presentation of a copy of the judgment if certified by the clerk of the court and authenticated by—

(1) the certificate and seal of the United States consul claiming the vessel or cargo, or by the consul's successor; and

(2) the certificate of the Secretary as to the official capacity of the consul.

(d) **RIGHT TO CLAIM IMMUNITY NOT AFFECTED.**—This section does not affect the right of the United States to claim immunity of a vessel or cargo from foreign jurisdiction.

(Pub. L. 109-304, §6(c), Oct. 6, 2006, 120 Stat. 1519.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
30915	46 App.:747.	Mar. 9, 1920, ch. 95, §7, 41 Stat. 527; Pub. L. 97-31, §12(25)(B), Aug. 6, 1981, 95 Stat. 155.

In this section, references to the Maritime Administration are omitted as unnecessary.

In subsection (a), before paragraph (1), the words “or in connection with”, “of the United States in his discretion”, and “duly” are omitted as unnecessary. In paragraph (1), the words “as by said court required” are omitted as unnecessary.

In subsection (b)(1), the words “firm, or corporation” are omitted as included in “person” as defined in 1 U.S.C. 1.

Subsection (b)(2) is substituted for “to pledge the credit of the United States to the indemnification of such surety or stipulator as may be required to secure the execution of such bond or stipulation” to eliminate unnecessary words.

In subsection (c), the words “may pay” are substituted for “presentation . . . shall be sufficient evidence . . . for the allowance and payment” to eliminate unnecessary words.

§ 30916. Recovery by the United States for salvage services

(a) **CIVIL ACTION.**—The United States, and the crew of a merchant vessel owned or operated by the United States, or a federally-owned corporation, may bring a civil action to recover for salvage services provided by the vessel and crew.

(b) **DEPOSIT OF AMOUNTS RECOVERED.**—Any amount recovered under this section by the United States for its own benefit, and not for the benefit of the crew, shall be deposited in the Treasury to the credit of the department of the United States Government, or the corporation, having control of the possession or operation of the vessel.

(Pub. L. 109-304, §6(c), Oct. 6, 2006, 120 Stat. 1520.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
30916	46 App.:750.	Mar. 9, 1920, ch. 95, §10, 41 Stat. 528; Pub. L. 97-31, §12(25)(D), Aug. 6, 1981, 95 Stat. 155.

In subsection (a), the words “may bring a civil action to recover” are substituted for “shall have the right to collect and sue” for consistency in this chapter and to eliminate unnecessary words.

§ 30917. Disposition of amounts recovered by the United States

Amounts recovered in a civil action brought by the United States on a claim arising from the ownership, possession, or operation of a merchant vessel, or the ownership, possession, or carriage of cargo, shall be deposited in the Treasury to the credit of the department of the United States Government, or the federally-owned corporation, having control of the vessel or cargo, for reimbursement of the appropriation, insurance fund, or other fund from which the compensation for which the judgment was recovered was or will be paid.

(Pub. L. 109-304, §6(c), Oct. 6, 2006, 120 Stat. 1520.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
30917	46 App.:751.	Mar. 9, 1920, ch. 95, §11, 41 Stat. 528; Pub. L. 97-31, §12(25)(D), Aug. 6, 1981, 95 Stat. 155.

The words “or in connection with” and “with respect to which such cause of action arises” are omitted as unnecessary.

§ 30918. Reports

The Secretary of each department of the United States Government, and the board of trustees of each federally-owned corporation, shall report to Congress at each session thereof all arbitration awards and settlements agreed to under this chapter since the previous session, for which the time to appeal has expired or been waived.

(Pub. L. 109-304, §6(c), Oct. 6, 2006, 120 Stat. 1521.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
30918	46 App.:752.	Mar. 9, 1920, ch. 95, §12, 41 Stat. 528; Aug. 30, 1954, ch. 1076, §1(26), 68 Stat. 968; Pub. L. 97-31, §12(25)(E), Aug. 6, 1981, 95 Stat. 155.

CHAPTER 311—SUITS INVOLVING PUBLIC VESSELS

- Sec.
- 31101. Short title.
- 31102. Waiver of immunity.
- 31103. Applicable procedure.
- 31104. Venue.
- 31105. Security when counterclaim filed.
- 31106. Exoneration and limitation.
- 31107. Interest.
- 31108. Arbitration, compromise, or settlement.
- 31109. Payment of judgment or settlement.
- 31110. Subpoenas to officers or members of crew.
- 31111. Claims by nationals of foreign countries.
- 31112. Lien not recognized or created.
- 31113. Reports.

§ 31101. Short title

This chapter may be cited as the “Public Vessels Act”.

(Pub. L. 109–304, §6(c), Oct. 6, 2006, 120 Stat. 1521.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
31101	46 App.:781 note.	

SHORT TITLE

Act of March 3, 1925, ch. 428, 43 Stat. 1112, which enacted chapter 22 (§781 et seq.) of the former Appendix to this title, was popularly known as the “Public Vessels Act”, prior to being repealed and restated in this chapter by Pub. L. 109–304, §§6(c), 19, Oct. 6, 2006, 120 Stat. 1509, 1710.

§ 31102. Waiver of immunity

(a) IN GENERAL.—A civil action in personam in admiralty may be brought, or an impleader filed, against the United States for—

- (1) damages caused by a public vessel of the United States; or
- (2) compensation for towage and salvage services, including contract salvage, rendered to a public vessel of the United States.

(b) COUNTERCLAIM OR SETOFF.—If the United States brings a civil action in admiralty for damages caused by a privately owned vessel, the owner of the vessel, or the successor in interest, may file a counterclaim in personam, or claim a setoff, against the United States for damages arising out of the same subject matter.

(Pub. L. 109–304, §6(c), Oct. 6, 2006, 120 Stat. 1521.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
31102(a)	46 App.:781.	Mar. 3, 1925, ch. 428, §1, 43 Stat. 1112.
31102(b)	46 App.:783 (words before proviso).	Mar. 3, 1925, ch. 428, §3 (words before proviso), 43 Stat. 1112.

In this section, the words “civil action” are substituted for “libel” because of rule 2 of the Federal Rules of Civil Procedure (28 App. U.S.C.).

In subsection (a), the words “Provided, That the cause of action arose after the 6th day of April, 1920” are omitted as unnecessary.

In subsection (b), the words “in rem or in personam” are omitted as unnecessary. The words “file a counterclaim in personam, or claim a setoff” are substituted for “file a cross libel in personam or claim a set-off or counterclaim” to conform to the terminology in the Federal Rules of Civil Procedure and to eliminate unnecessary words. The words “for damages arising out of the same subject matter” are substituted for “in such suit for and on account of any damages arising out of the same subject matter or cause of action” to eliminate unnecessary words.

§ 31103. Applicable procedure

A civil action under this chapter is subject to the provisions of chapter 309 of this title except to the extent inconsistent with this chapter.

(Pub. L. 109–304, §6(c), Oct. 6, 2006, 120 Stat. 1521.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
31103	46 App.:782 (last sentence words before last comma).	Mar. 3, 1925, ch. 428, §2 (last sentence words before last comma), 43 Stat. 1112.

§ 31104. Venue

(a) IN GENERAL.—A civil action under this chapter shall be brought in the district court of the United States for the district in which the vessel or cargo is found within the United States.

(b) VESSEL OR CARGO OUTSIDE TERRITORIAL WATERS.—If the vessel or cargo is outside the territorial waters of the United States—

- (1) the action shall be brought in the district court of the United States for any district in which any plaintiff resides or has an office for the transaction of business; or
- (2) if no plaintiff resides or has an office for the transaction of business in the United States, the action may be brought in the district court of the United States for any district.

(Pub. L. 109–304, §6(c), Oct. 6, 2006, 120 Stat. 1521.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
31104	46 App.:782 (1st sentence).	Mar. 3, 1925, ch. 428, §2 (1st sentence), 43 Stat. 1112.

In subsection (a), the words “charged with creating the liability” are omitted as unnecessary.

In subsection (b)(2), the words “in the United States” are omitted as unnecessary.

§ 31105. Security when counterclaim filed

If a counterclaim is filed for a cause of action for which the original action is filed under this chapter, the respondent to the counterclaim shall give security in the usual amount and form to respond to the counterclaim, unless the court for cause shown orders otherwise. The proceedings in the original action shall be stayed until the security is given.

(Pub. L. 109–304, §6(c), Oct. 6, 2006, 120 Stat. 1522.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
31105	46 App.:783 (proviso).	Mar. 3, 1925, ch. 428, § 3 (proviso), 43 Stat. 1112.

The word “counterclaim” is substituted for “cross-libel”, and the words “original action” are substituted for “original libel”, to conform to the terminology in the Federal Rules of Civil Procedure (28 App. U.S.C.).

§ 31106. Exoneration and limitation

The United States is entitled to the exemptions from and limitations of liability provided by law to an owner, charterer, operator, or agent of a vessel.

(Pub. L. 109–304, §6(c), Oct. 6, 2006, 120 Stat. 1522.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
31106	46 App.:789.	Mar. 3, 1925, ch. 428, § 9, 43 Stat. 1113.

§ 31107. Interest

A judgment in a civil action under this chapter may not include interest for the period before the judgment is issued unless the claim is based on a contract providing for interest.

(Pub. L. 109–304, §6(c), Oct. 6, 2006, 120 Stat. 1522.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
31107	46 App.:782 (last sentence words after last comma).	Mar. 3, 1925, ch. 428, § 2 (last sentence words after last comma), 43 Stat. 1112.

§ 31108. Arbitration, compromise, or settlement

The Attorney General may arbitrate, compromise, or settle a claim under this chapter if a civil action based on the claim has been commenced.

(Pub. L. 109–304, §6(c), Oct. 6, 2006, 120 Stat. 1522.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
31108	46 App.:786.	Mar. 3, 1925, ch. 428, § 6, 43 Stat. 1113.

The words “claim under this chapter” are substituted for “claim on which a libel or cross libel would lie under the provisions of this chapter” to eliminate unnecessary words.

§ 31109. Payment of judgment or settlement

The proper accounting officer of the United States shall pay a final judgment, arbitration award, or settlement under this chapter on presentation of an authenticated copy. Payment shall be made from any money in the Treasury appropriated for the purpose.

(Pub. L. 109–304, §6(c), Oct. 6, 2006, 120 Stat. 1522.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
31109	46 App.:787.	Mar. 3, 1925, ch. 428, § 7, 43 Stat. 1113.

Reference to an arbitration award is added for consistency with sections 30912 and 31108 of the revised title.

§ 31110. Subpoenas to officers or members of crew

An officer or member of the crew of a public vessel may not be subpoenaed in a civil action under this chapter without the consent of—

(1) the Secretary of the department or the head of the independent establishment having control of the vessel at the time the cause of action arose; or

(2) the master or commanding officer of the vessel at the time the subpoena is issued.

(Pub. L. 109–304, §6(c), Oct. 6, 2006, 120 Stat. 1522.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
31110	46 App.:784.	Mar. 3, 1925, ch. 428, § 4, 43 Stat. 1112.

§ 31111. Claims by nationals of foreign countries

A national of a foreign country may not maintain a civil action under this chapter unless it appears to the satisfaction of the court in which the action is brought that the government of that country, in similar circumstances, allows nationals of the United States to sue in its courts.

(Pub. L. 109–304, §6(c), Oct. 6, 2006, 120 Stat. 1522.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
31111	46 App.:785.	Mar. 3, 1925, ch. 428, § 5, 43 Stat. 1113.

§ 31112. Lien not recognized or created

This chapter shall not be construed as recognizing the existence of or as creating a lien against a public vessel of the United States.

(Pub. L. 109–304, §6(c), Oct. 6, 2006, 120 Stat. 1522.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
31112	46 App.:788.	Mar. 3, 1925, ch. 428, § 8, 43 Stat. 1113.

§ 31113. Reports

The Attorney General shall report to Congress at each session thereof all claims settled under this chapter.

(Pub. L. 109–304, §6(c), Oct. 6, 2006, 120 Stat. 1523.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
31113	46 App.:790.	Mar. 3, 1925, ch. 428, §10, 43 Stat. 1113; Aug. 30, 1954, ch. 1076, §1(26), 68 Stat. 968.

CHAPTER 313—COMMERCIAL INSTRUMENTS AND MARITIME LIENS

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31341.	Persons presumed to have authority to procure necessities.
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HISTORICAL AND REVISION NOTES

Section 101 [102] of H.R. 3105 [became Pub. L. 100-710] revises, consolidates, and enacts certain general and permanent laws of the United States related to commercial instruments and liens and public vessels and goods. It amends subtitle III of title 46, United States Code by striking at the end "Chapters 313, 315—Reserved" and substituting "Chapter 313—Commercial Instruments and Maritime Liens". Chapter 313 is essentially a codification of the Ship Mortgage Act, 1920 (46 App. U.S.C. 911-984). H.R. 3105 is the second step in the process of enacting laws compiled in title 46 of the Code into positive law. The first step in the codification process began in 1983 when certain general and permanent laws related to vessels and seamen were enacted as subtitle II of the title 46, United States Code.

HOUSE FLOOR STATEMENT

Section 102 of this bill adds a new subtitle III to title 46, which contains a codification of the Ship Mortgage Act, 1920 and other related provisions. A previous version of this codification and the remaining sections of the bill were recently reported by the Merchant Marine and Fisheries Committee in H.R. 3105 (H. Rept. 100-918). The significant additions or changes by this provision to the version of H.R. 3105 reported by the Merchant Marine and Fisheries Committee are explained as follows: [see sections 31305, 31321, 31322, 31325, 31329, 31330, 31343 of this title].

AMENDMENTS

2002—Pub. L. 107-295, title II, §205(a)(2), Nov. 25, 2002, 116 Stat. 2096, substituted "notices of claim of mari-

time lien" for "liens on preferred mortgage vessels" in item 31343.

1996—Pub. L. 104-324, title XI, §1113(b)(3), Oct. 19, 1996, 110 Stat. 3970, struck out item 31328 "Limitations on parties serving as trustees of mortgaged vessel interests".

SUBCHAPTER I—GENERAL

§ 31301. Definitions

In this chapter—

(1) "acknowledge" means making—

(A) an acknowledgment or notarization before a notary public or other official authorized by a law of the United States or a State to take acknowledgments of deeds; or

(B) a certificate issued under the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, 1961;

(2) "district court" means—

(A) a district court of the United States (as defined in section 451 of title 28);

(B) the District Court of Guam;

(C) the District Court of the Virgin Islands;

(D) the District Court for the Northern Mariana Islands;

(E) the High Court of American Samoa; and

(F) any other court of original jurisdiction of a territory or possession of the United States;

(3) "mortgagee" means—

(A) a person to whom property is mortgaged; or

(B) when a mortgage on a vessel involves a trust, the trustee that is designated in the trust agreement;

(4) "necessaries" includes repairs, supplies, towage, and the use of a dry dock or marine railway;

(5) "preferred maritime lien" means a maritime lien on a vessel—

(A) arising before a preferred mortgage was filed under section 31321 of this title;

(B) for damage arising out of maritime tort;

(C) for wages of a stevedore when employed directly by a person listed in section 31341 of this title;

(D) for wages of the crew of the vessel;

(E) for general average; or

(F) for salvage, including contract salvage;

(6) "preferred mortgage"—

(A) means a mortgage that is a preferred mortgage under section 31322 of this title; and

(B) also means in sections 31325 and 31326 of this title, a mortgage, hypothecation, or similar charge that is established as a security on a foreign vessel if the mortgage, hypothecation, or similar charge was executed under the laws of the foreign country under whose laws the ownership of the vessel is documented and has been registered under those laws in a public register at the port of registry of the vessel or at a central office; and

(7) "Secretary" means the Secretary of the Department of Homeland Security, unless otherwise noted.

(Pub. L. 100-710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4739; Pub. L. 111-281, title IX, § 913(a)(2)-(4), Oct. 15, 2010, 124 Stat. 3017.)

HISTORICAL AND REVISION NOTES

Revised section	Source section (U.S. Code)
31301(1), (2)	New
31301(3)	46:911(5)
31301(4)	Derived from 46:971-974
31301(5)	46:953(a)
31301(6)(A)	46:922(b)
31301(6)(B)	46:951 (2d par. less proviso)

Section 31301(1) defines the term “acknowledge”. This paragraph makes a substantive change to law to expand the current law by allowing a notarization under State law, a form prescribed by the Secretary, as well as a certificate issued under the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, 1961.

Section 31301(2) defines “district court”. This paragraph makes a substantive change to law by including the District Court of Guam, the District Court of the Virgin Islands, the District Court of the Northern Mariana Islands, the High Court of American Samoa, and other Federal territorial courts as they are established. Under current law, only the district courts of the United States have jurisdiction under the Ship Mortgage Act, 1920.

Section 31301(3) defines “mortgagee” as a person to whom property is mortgaged and the trustee authorized under section 31328 that is designated in the trust agreement.

Section 31301(4) defines “necessaries” to include repairs, supplies, towage, and the use of a drydock and marine railway for a vessel. As in all codifications, the term “includes” means “includes but is not limited to” and, therefore, is not intended to be an exclusive listing of those items that a court has determined or may determine as falling within the meaning of the term “other necessities” as contained in current law. The definition is new, is based on 46 App. U.S.C. 971-974, and makes no substantive change to law.

Section 31301(5) defines “preferred maritime lien” to mean a lien on a vessel that arises before a preferred mortgage was filed under section 31321 of this title for damages arising out of maritime tort, stevedore wages, crew wages, general average, and salvage. The definition is new and is based on 46 App. U.S.C. 953(a). The only substantive change to law made by this paragraph is to change the effective date from the day the preferred mortgage is recorded and endorsed to when it is filed. This change is in keeping with other changes with regard to filing. The term “duly and validly” that is in existing law is not used because it is unnecessary. An instrument that is not “duly and validly” executed is not executed under the laws of the foreign country. This makes no substantive change to law.

Section 31301(6)(A) defines “preferred mortgage” to mean a mortgage that meets the requirements of section 31322. This clause makes no substantive change to law.

Section 31301(6)(B) defines “preferred mortgage” to also mean a mortgage on a documented foreign vessel that is preferred under sections 31325 and 31326 for purposes of enforcement of the outstanding mortgage indebtedness. Preference is only granted if the mortgage is executed under the laws of a foreign country, registered under those laws in a public register at the port of registry or at a central office. The use of the word “established” in place of “created” in the current law or “effective” as used in the treaties is not intended to make any substantive change to law. The only substantive changes to law made by this clause are the elimination of the exemption of foreign vessels of less than 200 gross tons, and clarification of the rule of interpretation that if a vessel is registered in one country, but is permitted to fly temporarily the flag of another country (such as through a demise charter), it is the law of the country in which the ownership of the

vessel is documented that is used to determine when a mortgage attains preferred status.

AMENDMENTS

2010—Par. (7). Pub. L. 111-281 added par. (7).

EFFECTIVE DATE

Pub. L. 100-710, title I, § 107, Nov. 23, 1988, 102 Stat. 4752, provided that:

“(a) This title [see Tables for classification] and amendments made by this title take effect on January 1, 1989. However, sections 31321 and 31322 of title 46 (as enacted by section 102 of this Act), United States Code (as sections 31321 and 32322 [probably should be 31322] apply to vessels for which an application for documentation has been filed), take effect on January 1, 1990.

“(b) An instrument filed before January 1, 1989, but not recorded before that date, is deemed to comply with section 31321 of title 46, United States Code, if it is in substantial compliance with the provisions in that section that had corresponding requirements under the law on December 31, 1988. However, the mortgage may not become a preferred mortgage until the vessel is documented.

“(c) This title and the amendments made by this title do not affect the validity of any instrument filed or recorded before January 1, 1989, if there was a corresponding requirement under the law on December 31, 1988.

“(d) An instrument filed or recorded before January 1, 1989, is deemed to comply with any new requirement under chapter 313 of title 46, United States Code (as enacted by section 102 of this Act), affecting the validity of that instrument.

“(e) Section 102 of this Act and amendments made by that section [enacting former section 30101 and sections 31301 to 31309, 31321 to 31330, and 31341 to 31343 of this title and provisions set out as a note preceding section 2101 of this title] do not affect any civil action filed before January 1, 1989.

“(f) Section 104(b) of this Act and the amendments made by section 104(b) of this Act [amending section 808 of the former Appendix to this title] do not apply to any change in control resulting from, or which may at any time result from, any proposed plan of reorganization filed under the United States bankruptcy laws prior to the date of enactment of this Act [Nov. 23, 1988], except that transactions undertaken as a result of such a plan shall continue to be governed by section 9 of the Shipping Act, 1916 ([former] 46 App. U.S.C. 808) [see 46 U.S.C. 56101, 57109], as it existed prior to the date of enactment of this Act, to the extent that such section 9 would have governed such transactions.”

§ 31302. Availability of instruments, copies, and information

The Secretary shall—

(1) make any instrument filed or recorded with the Secretary under this chapter available for public inspection;

(2) on request, provide a copy, including a certified copy, of any instrument made available for public inspection under this chapter; and

(3) on request, provide a certificate containing information included in an instrument filed or recorded under this chapter.

(Pub. L. 100-710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4740; Pub. L. 111-281, title IX, § 913(a)(1), Oct. 15, 2010, 124 Stat. 3017.)

HISTORICAL AND REVISION NOTES

Revised section	Source section (U.S. Code)
31302(1)	46:927 (1st sentence)
31302(2)	46:927 (2d sentence)

HISTORICAL AND REVISION NOTES—CONTINUED

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
31302(3)	New

Section 31302(1) makes all instruments filed for recording or recorded with the Secretary of Transportation available for public inspection. The only substantive change to law made by this subsection is the inclusion of instruments filed for recording, which is in keeping with the new requirements on filing of instruments made in section 31321.

Section 31302(2) requires the Secretary to provide the public with a certified copy of the material made available to the public under subsection (a). This subsection makes no substantive change to law.

Section 31302(3) requires the Secretary, on request, to issue a certificate containing the information included in instruments on file, such as certificates of ownership.

AMENDMENTS

2010—Pub. L. 111-281 struck out “of Transportation” after “Secretary” in introductory provisions.

§ 31303. Certain civil actions not authorized

If a mortgage covers a vessel and additional property that is not a vessel, this chapter does not authorize a civil action in rem to enforce the rights of the mortgagee under the mortgage against the additional property.

(Pub. L. 100-710, title I, §102(c), Nov. 23, 1988, 102 Stat. 4740.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
31303	46:954(b)

Section 31303 makes it clear that, if a mortgage covers a vessel and additional property that is not a vessel, this chapter does not authorize a civil action *in rem* in admiralty to enforce rights against the additional property. This section makes no substantive change to law.

§ 31304. Liability for noncompliance

(a) If a person makes a contract secured by, or on the credit of, a vessel covered by a mortgage filed or recorded under this chapter and sustains a monetary loss because the mortgagor or the master or other individual in charge of the vessel does not comply with a requirement imposed on the mortgagor, master, or individual under this chapter, the mortgagor is liable for the loss.

(b) A civil action may be brought to recover for losses referred to in subsection (a) of this section. The district courts have original jurisdiction of the action, regardless of the amount in controversy or the citizenship of the parties. If the plaintiff prevails, the court shall award costs and attorney fees to the plaintiff.

(Pub. L. 100-710, title I, §102(c), Nov. 23, 1988, 102 Stat. 4740.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
31304	46:941(c)

Section 31304 imposes liability on the mortgagor if the mortgagor, master, or other individual in charge of the vessel does not comply with the statutory requirements. A civil action may be brought in a district court of the United States for losses incurred. If the plaintiff

prevails, the court shall award costs and attorneys fees to the plaintiff. This section makes two substantive changes to law. First, is the broadening of its coverage from documented vessels covered by a preferred mortgage to any vessel covered by a mortgage that is filed or recorded under the chapter. The second substantive change repeals the liability on the United States Government for losses caused because the Secretary did not comply with statutory requirements. This is covered by the Federal Tort Claims Act due to the non-discretionary responsibility of the Secretary.

§ 31305. Waiver of lien rights

This chapter does not prevent a mortgagee or other lien holder from waiving or subordinating at any time by agreement or otherwise the lien holder’s right to a lien, the priority or, if a preferred mortgage lien, the preferred status of the lien.

(Pub. L. 100-710, title I, §102(c), Nov. 23, 1988, 102 Stat. 4741.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
31305	46:974

Section 31305 provides for the waiver of lien rights by the mortgagee or a person performing or supplying necessities. This section makes no substantive change to law and is included only because of a like provision in current law. Without this provision the Committee believes these waivers would be permissible as a matter of law as they do not violate any public policy and on their face reflect an arms length transaction between the parties. The inclusion of this provision should not raise the implication that a similar provision is required for other matters that may be waivable as a matter of law.

HOUSE FLOOR STATEMENT

Section 31305 has been changed to clarify that the chapter does not prevent a mortgagee or other lien holder from waiving by contract the right to a lien, or the priority of that lien.

§ 31306. Declaration of citizenship

(a) Except as provided by the Secretary, when an instrument transferring an interest in a vessel is presented to the Secretary for filing or recording, the transferee shall file with the instrument a declaration, in the form the Secretary may prescribe by regulation, stating information about citizenship and other information the Secretary may require to show the transaction involved does not violate section 56102 or 56103 of this title.

(b) A declaration under this section filed by a corporation must be signed by its president, secretary, treasurer, or other official authorized by the corporation to execute the declaration.

(c) Except as provided by the Secretary, an instrument transferring an interest in a vessel is not valid against any person until the declaration required by this section has been filed.

(d) A person knowingly making a false statement of a material fact in a declaration filed under this section shall be fined under title 18, imprisoned for not more than 5 years, or both.

(Pub. L. 100-710, title I, §102(c), Nov. 23, 1988, 102 Stat. 4741; Pub. L. 101-225, title III, §303(1), Dec. 12, 1989, 103 Stat. 1923; Pub. L. 109-304, §15(27), Oct. 6, 2006, 120 Stat. 1704; Pub. L. 111-281, title IX, §913(a)(1), Oct. 15, 2010, 124 Stat. 3017.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
31306	46:838

Section 31306(a) requires that a person submitting an instrument transferring interest in a vessel to the Secretary for recording is also to file a declaration stating information about citizenship and other information to show that the transfer is not in violation of section 9 of the Shipping Act, or section 37 of that Act in a national emergency. This section makes no substantive change to law.

Section 31306(b) requires that a declaration filed by a corporation must be signed by the president, secretary, treasurer, or other official authorized by the corporation to execute the declaration. This section makes no substantive change to law.

Section 31306(c) invalidates any instrument transferring an interest until the declaration is filed. This section makes no substantive change to law.

Section 31306(d) provides for a criminal penalty for a violation of this section. The amount of the fine is prescribed under title 18, United States Code, and may include imprisonment for not more than 5 years, or both. This section makes no substantive change to law.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111-281 struck out “of Transportation” after “provided by the Secretary”.

2006—Subsec. (a). Pub. L. 109-304 substituted “section 56102 or 56103 of this title” for “section 9 or 37 of the Shipping Act, 1916 (46 App. U.S.C. 808, 835)”.

1989—Subsec. (a). Pub. L. 101-225, §303(1)(A), substituted “Except as provided by the Secretary of Transportation, when” for “When” and “Secretary for filing” for “Secretary of Transportation for filing”.

Subsec. (c). Pub. L. 101-225, §303(1)(B), substituted “Except as provided by the Secretary, an” for “An”.

§ 31307. State statutes superseded

This chapter supersedes any State statute conferring a lien on a vessel to the extent the statute establishes a claim to be enforced by a civil action in rem against the vessel for necessaries.

(Pub. L. 100-710, title I, §102(c), Nov. 23, 1988, 102 Stat. 4741.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
31307	46:975

Section 31307 provides for preemption of State laws to the extent a claim for necessaries is enforced by a civil action *in rem* in admiralty against the vessel.

§ 31308. Secretary of Commerce or Transportation as mortgagee

The Secretary of Commerce or Transportation, as a mortgagee under this chapter, may foreclose on a lien arising from a right established under a mortgage under chapter 537 of this title, subject to section 362(b) of title 11.

(Pub. L. 100-710, title I, §102(c), Nov. 23, 1988, 102 Stat. 4741; Pub. L. 101-595, title VI, §603(13), Nov. 16, 1990, 104 Stat. 2993; Pub. L. 109-304, §15(28), Oct. 6, 2006, 120 Stat. 1704; Pub. L. 111-281, title IX, §913(b), Oct. 15, 2010, 124 Stat. 3017.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
31308	46:952 (last sentence)

Section 31308 allows the Secretary of Commerce or Transportation to foreclose on a lien arising from a right established under a mortgage under title XI of the Merchant Marine Act, 1936. This section makes no substantive change to law.

AMENDMENTS

2010—Pub. L. 111-281 substituted “The Secretary of Commerce or Transportation, as a mortgagee under this chapter,” for “When the Secretary of Commerce or Transportation is a mortgagee under this chapter, the Secretary”.

2006—Pub. L. 109-304 substituted “chapter 537 of this title” for “title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1271 et seq.)”.

1990—Pub. L. 101-595 substituted “(46 App. U.S.C. 1271 et seq.)” for “(46 App. U.S.C. 1241 et seq.)”.

§ 31309. General civil penalty

Except as otherwise provided in this chapter, a person violating this chapter or a regulation prescribed under this chapter is liable to the United States Government for a civil penalty of not more than \$10,000.

(Pub. L. 100-710, title I, §102(c), Nov. 23, 1988, 102 Stat. 4741.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
31309	New

Section 31309 provides for a civil penalty of not more than \$10,000 for a violation of this chapter or a regulation prescribed under this chapter.

SUBCHAPTER II—COMMERCIAL INSTRUMENTS

§ 31321. Filing, recording, and discharge

(a)(1) A bill of sale, conveyance, mortgage, assignment, or related instrument, whenever made, that includes any part of a documented vessel or a vessel for which an application for documentation is filed, must be filed with the Secretary to be valid, to the extent the vessel is involved, against any person except—

- (A) the grantor, mortgagor, or assignor;
- (B) the heir or devisee of the grantor, mortgagor, or assignor; and
- (C) a person having actual notice of the sale, conveyance, mortgage, assignment, or related instrument.

(2) Each bill of sale, conveyance, mortgage, assignment, or related instrument that is filed in substantial compliance with this section is valid against any person from the time it is filed with the Secretary.

(3) The parties to an instrument or an application for documentation shall use diligence to ensure that the parts of the instrument or application for which they are responsible are in substantial compliance with the filing and documentation requirements.

(4) A bill of sale, conveyance, mortgage, assignment, or related instrument may be filed electronically under regulations prescribed by the Secretary.

(b) To be filed, a bill of sale, conveyance, mortgage, assignment, or related instrument must—

- (1) identify the vessel;

(2) state the name and address of each party to the instrument;

(3) state, if a mortgage, the amount of the direct or contingent obligations (in one or more units of account as agreed to by the parties) that is or may become secured by the mortgage, excluding interest, expenses, and fees;

(4) state the interest of the grantor, mortgagor, or assignor in the vessel;

(5) state the interest sold, conveyed, mortgaged, or assigned; and

(6) be signed and acknowledged.

(c) If a bill of sale, conveyance, mortgage, assignment, or related document is filed that involves a vessel for which an application for documentation is filed, and the Secretary decides that the vessel cannot be documented by an applicant—

(1) the Secretary shall send notice of the Secretary's decision, including reasons for the decision, to each interested party to the instrument filed for recording; and

(2) 90 days after sending the notice as provided under clause (1) of this subsection, the Secretary—

(A) may terminate the filing; and

(B) may return the instrument filed without recording it under subsection (e) of this section.

(d) A person may withdraw an application for documentation of a vessel for which a mortgage has been filed under this section only if the mortgagee consents.

(e) The Secretary shall—

(1) record the bills of sale, conveyances, mortgages, assignments, and related instruments of a documented vessel complying with subsection (b) of this section in the order they are filed; and

(2) maintain appropriate indexes, for use by the public, of instruments filed or recorded, or both.

(f) On full and final discharge of the indebtedness under a mortgage recorded under subsection (e)(1) of this section, a mortgagee, on request of the Secretary or mortgagor, shall provide the Secretary with an acknowledged certificate of discharge of the indebtedness in a form prescribed by the Secretary. The Secretary shall record the certificate.

(g) The mortgage or related instrument of a vessel covered by a preferred mortgage under section 31322(d) of this title, that is later filed under this section at the time an application for documentation is filed, is valid under this section from the time the mortgage or instrument representing financing became a preferred mortgage under section 31322(d).

(h) On full and final discharge of the indebtedness under a mortgage deemed to be a preferred mortgage under section 31322(d) of this title, a mortgagee, on request of the Secretary, a State, or mortgagor, shall provide the Secretary or the State, as appropriate, with an acknowledged certificate of discharge of the indebtedness in a form prescribed by the Secretary or the State, as applicable. If filed with the Secretary, the Secretary shall enter that information in the vessel identification system under chapter 125 of this title.

(Pub. L. 100–710, title I, §102(c), Nov. 23, 1988, 102 Stat. 4741; Pub. L. 101–225, title III, §303(2), Dec. 12, 1989, 103 Stat. 1923; Pub. L. 104–324, title III, §305, Oct. 19, 1996, 110 Stat. 3918; Pub. L. 107–295, title IV, §420, Nov. 25, 2002, 116 Stat. 2124; Pub. L. 111–281, title IX, §913(a)(1), Oct. 15, 2010, 124 Stat. 3017.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
31321(a)(1)	46:921(a)
31321(a)(2)	46:1012
31321(a)(3)	New
31321(b)	46:926(a), (b)
31321(c), (d)	New
31321(e)	46:921(b)
31321(f)	46:925(b)
31321(g)	New
31321(h)	46:925(b)

Section 31321(a)(1) provides for the filing of a bill of sale, conveyance, mortgage, assignment, or related instrument of a vessel. This subsection makes substantive changes to law. The bill would allow a bill of sale, conveyance, mortgage, assignment, or related instrument to be filed at the same time an application for documentation under chapter 121 is filed. The Committee intends that the types of related instruments required to be filed be defined by regulations prescribed by the Secretary of Transportation. A major change the bill makes is that the instrument needs only be filed with the Secretary of Transportation to be valid. It is not necessary that it be recorded. This change is being made to eliminate a problem under existing law that prevents a person from recording an instrument when the vessel has not been yet documented. When filed with the Secretary, it is valid (to the extent the vessel is involved) against any person except the grantor, mortgagor, or assignor, their heirs or devisees, and a person having actual notice of that instrument. Clauses (A)–(C) make no substantive change to law.

Paragraph (2) provides that each bill of sale, conveyance, mortgage, assignment, or related instrument that is filed in substantial compliance with the requirements of this section is valid against any person from the time it is filed with the Secretary.

Paragraph (3) provides that it is the responsibility of the parties to an instrument to use diligence to ensure that the particulars of a filed instrument for which they are responsible are in substantial compliance. It is not the responsibility of the Secretary to validate the information in the instrument. If an instrument is later found to be invalid because it is not in substantial compliance, and the parties lose the benefits of a preferred mortgage, it is their fault, not the Secretary's.

Section 31321(b) sets out the requirements that an instrument must meet to be properly filed. To be filed the instruments must: (1) identify the vessel; (2) state the name and address of each party to the instrument; (3) state, if a mortgage, the amount of the direct or contingent obligations (in one or more units of account as agreed to by the parties) that is or may become secured by the mortgage, excluding interest, expenses, and fees; (4) state the interest of the grantor, mortgagor, or assignor; (5) state the interest sold, conveyed, mortgaged, or assigned; and (6) be signed and acknowledged. While most of these items are required under current law to be included in the index, and therefore required to be submitted to the Secretary to be recorded, this subsection makes a number of substantive changes to law. First, while vessel names are currently required to be submitted, this requirement has been broadened so that hull identification numbers and official numbers can be used to more specifically identify a vessel (since many vessels have the same name). Second, it requires the mortgage to state the maximum amount of the obligation, including principal, interest, fees, etc., that are secured by the mortgage. It also clarifies that the mortgage obligation may be payable in more than one unit of account, such as yen, franc, or

special drawing right. Third, it recognizes that under some modern financing practices an instrument may not have a date of maturity. The requirement for supplying the date of maturity has been eliminated.

Section 31321(c) provides that if an instrument filed involves a vessel that has not yet been documented, and the Secretary decides that the vessel cannot be documented by the applicant, then the Secretary shall send notice of that denial to the parties, including the reasons for the Secretary's decision. If the parties have not corrected the deficiencies within 90 days, the Secretary may terminate the filing and return the instruments. This invalidates the instruments.

Section 31321(d) prohibits a person from withdrawing an application for documentation of a vessel for which a mortgage has been filed unless the mortgagee consents. Since the withdrawal will invalidate the mortgage, the mortgagee should be allowed to prohibit the withdrawal.

Section 31321(e) makes a substantive change to law. It requires the Secretary to record instruments in the order they are received for filing, not in the order in which they were received for recording. It also makes a substantive change by eliminating the specific indexes required under the law and substituting a general requirement for the Secretary to maintain indexes of instruments filed or recorded, or both, for use by the public. These indexes, prescribed by regulations, must be in keeping with U.S. obligations under treaties to which the United States is a party. Since section 104 [105] of this Act makes the existing rules and regulations applicable under this subsection, the current indexing system will be maintained that includes the names of the vessels; names of the parties to the instruments; time and date each instrument was received; the interest in the vessel that was sold, conveyed, mortgaged, or assigned; and the date of the maturity of the mortgage, if any. However, it allows the Secretary by regulation to automate the system with computers, as long as the new system provides the public with an adequate method of finding and examining these public records.

Section 31321(f) makes a substantive change to law by eliminating the requirement that a partial discharge of indebtedness be filed with the Secretary. The bill requires that on the full and final discharge of indebtedness the mortgagee, on request of the Secretary or mortgagor, shall provide the Secretary with a written, acknowledged certificate of discharge of the indebtedness. This subsection also makes a substantive change by requiring that the mortgagee, not the mortgagor, provide the certificate of discharge. The Secretary shall then record the certificate. However, this does not prohibit a person from submitting a certificate of discharge under subsection (a) since it is a related instrument. This subsection also makes a substantive change to law by eliminating the requirement that the discharge be endorsed on the vessel's certificate of documentation, and that the Customs Service only may clear a vessel after an endorsement has been made. This change is made because of the elimination of endorsements under section 31322.

HOUSE FLOOR STATEMENT

Section 31321 has been changed to clarify that a mortgage, whenever made, must be filed to be valid against third parties. This clarification allows mortgage closings to occur previous to filing of an instrument, and to eliminate the need for a fictional simultaneous closing and filing.

Subsection (g) clarifies that if an application for documentation is filed for a vessel covered by a preferred mortgage under section 31322(d) (as enacted by this Act), the preferred mortgage must be filed with the Secretary at the same time the application for documentation is filed to be valid against third parties. If the preferred mortgage is filed with the Secretary at the time the documentation application is filed, it is valid from the time it became a preferred mortgage under section 31322(d).

When a State preferred mortgage under section 31322(d) is finally discharged, subsection (h) of this section requires the mortgagee to provide upon request to the Secretary or a State, whichever is more appropriate, an acknowledged certificate of discharge of indebtedness. This is necessary when a vessel in the system moves from a participating titling State and is not retitled in another participating State. In this case, there is no way to update the status of the indebtedness through the original titling State. The Secretary is required to accept this information to be maintained in the vessel identification system under section 12503(c) of title 46 (as enacted by this Act).

AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111-281 struck out “of Transportation” after “Secretary” in introductory provisions.

2002—Subsec. (a)(4) Pub. L. 107-295 struck out subpar. (A) designation before “A bill of sale” and subpar. (B) which read as follows: “A filing made electronically under subparagraph (A) shall not be effective after the 10-day period beginning on the date of the filing unless the original instrument is provided to the Secretary within that 10-day period.”

1996—Subsec. (a). Pub. L. 104-324 added par. (4).

1989—Subsec. (c). Pub. L. 101-225 substituted “for which an application for documentation is filed” for “that has not yet been documented” in introductory provisions and “interested party to” for “party whose name and address is stated on” in par. (1).

EFFECTIVE DATE

Section effective Jan. 1, 1989, not to affect any civil action filed before that date, and, insofar as applicable to vessels for which an application for documentation has been filed, effective Jan. 1, 1990, with further provision for an instrument filed before Jan. 1, 1989, but not recorded before that date, and with other qualifications, see section 107 of Pub. L. 100-710, set out as a note under section 31301 of this title.

§ 31322. Preferred mortgages

(a) A preferred mortgage is a mortgage, whenever made, that—

(1) includes the whole of the vessel;

(2) is filed in substantial compliance with section 31321 of this title;

(3)(A) covers a documented vessel; or

(B) covers a vessel for which an application for documentation is filed that is in substantial compliance with the requirements of chapter 121 of this title and the regulations prescribed under that chapter; and

(4) with respect to a vessel with a fishery endorsement that is 100 feet or greater in registered length, has as the mortgagee—

(A) a person eligible to own a vessel with a fishery endorsement under section 12113(c) of this title;

(B) a state¹ or federally chartered financial institution that is insured by the Federal Deposit Insurance Corporation;

(C) a farm credit lender established under title 12, chapter 23 of the United States Code;

(D) a commercial fishing and agriculture bank established pursuant to State law;

(E) a commercial lender organized under the laws of the United States or of a State and eligible to own a vessel for purposes of documentation under section 12103 of this title; or

¹ So in original. Probably should be capitalized.

(F) a mortgage trustee under subsection (f) of this section.

(b) Any indebtedness secured by a preferred mortgage that is filed or recorded under this chapter, or that is subject to a mortgage, security agreement, or instruments granting a security interest that is deemed to be a preferred mortgage under subsection (d) of this section, may have any rate of interest to which the parties agree.

(c)(1) If a preferred mortgage includes more than one vessel or property that is not a vessel, the mortgage may provide for the separate discharge of each vessel and all property not a vessel by the payment of a part of the mortgage indebtedness.

(2) If a vessel covered by a preferred mortgage that includes more than one vessel or property that is not a vessel is to be sold on the order of a district court in a civil action in rem, and the mortgage does not provide for separate discharge as provided under paragraph (1) of this subsection—

(A) the mortgage constitutes a lien on that vessel in the full amount of the outstanding mortgage indebtedness; and

(B) an allocation of mortgage indebtedness for purposes of separate discharge may not be made among the vessel and other property covered by the mortgage.

(d)(1) A mortgage, security agreement, or instrument granting a security interest perfected under State law covering the whole of a vessel titled in a State is deemed to be a preferred mortgage if—

(A) the Secretary certifies that the State titling system complies with the Secretary's guidelines for a titling system under section 13107(b)(8) of this title; and

(B) information on the vessel covered by the mortgage, security agreement, or instrument is made available to the Secretary under chapter 125 of this title.

(2) This subsection applies to mortgages, security agreements, or instruments covering vessels titled in a State after—

(A) the Secretary's certification under paragraph (1)(A) of this subsection; and

(B) the State begins making information available to the Secretary under chapter 125 of this title.

(3) A preferred mortgage under this subsection continues to be a preferred mortgage even if the vessel is no longer titled in the State where the mortgage, security agreement, or instrument granting a security interest became a preferred mortgage under this subsection.

(e) If a vessel is already covered by a preferred mortgage when an application for titling or documentation is filed—

(1) the status of the preferred mortgage covering the vessel to be titled in the State is determined by the law of the jurisdiction where the vessel is currently titled or documented; and

(2) the status of the preferred mortgage covering the vessel to be documented under chapter 121 is determined by subsection (a) of this section.

(f)(1) A mortgage trustee may hold in trust, for an individual or entity, an instrument or evidence of indebtedness, secured by a mortgage of the vessel to the mortgage trustee, provided that the mortgage trustee—

(A) is eligible to be a preferred mortgagee under subsection (a)(4), subparagraphs (A)–(E) of this section;

(B) is organized as a corporation, and is doing business, under the laws of the United States or of a State;

(C) is authorized under those laws to exercise corporate trust powers;

(D) is subject to supervision or examination by an official of the United States Government or a State;

(E) has a combined capital and surplus (as stated in its most recent published report of condition) of at least \$3,000,000; and

(F) meets any other requirements prescribed by the Secretary.

(2) If the beneficiary under the trust arrangement is not a commercial lender, a lender syndicate or eligible to be a preferred mortgagee under subsection (a)(4), subparagraphs (A)–(E) of this section, the Secretary must determine that the issuance, assignment, transfer, or trust arrangement does not result in an impermissible transfer of control of the vessel to a person not eligible to own a vessel with a fishery endorsement under section 12113(c) of this title.

(3) A vessel with a fishery endorsement may be operated by a mortgage trustee only with the approval of the Secretary.

(4) A right under a mortgage of a vessel with a fishery endorsement may be issued, assigned, or transferred to a person not eligible to be a mortgagee of that vessel under this section only with the approval of the Secretary.

(5) The issuance, assignment, or transfer of an instrument or evidence of indebtedness contrary to this subsection is voidable by the Secretary.

(g) For purposes of this section a "commercial lender" means an entity primarily engaged in the business of lending and other financing transactions with a loan portfolio in excess of \$100,000,000, of which not more than 50 per centum in dollar amount consists of loans to borrowers in the commercial fishing industry, as certified to the Secretary by such lender.

(h) For purposes of this section a "lender syndicate" means an arrangement established for the combined extension of credit of not less than \$20,000,000 made up of four or more entities that each have a beneficial interest, held through an agent, under a trust arrangement established pursuant to subsection (f), no one of which may exercise powers thereunder without the concurrence of at least one other unaffiliated beneficiary.

(Pub. L. 100-710, title I, §102(c), Nov. 23, 1988, 102 Stat. 4743; Pub. L. 101-225, title III, §303(3), Dec. 12, 1989, 103 Stat. 1923; Pub. L. 104-324, title XI, §1113(a), Oct. 19, 1996, 110 Stat. 3970; Pub. L. 105-277, div. C, title II, §202(b), Oct. 21, 1998, 112 Stat. 2681-618; Pub. L. 105-383, title IV, §401(c)(1)–(4), Nov. 13, 1998, 112 Stat. 3425; Pub. L. 106-31, title III, §3027(a)(1), May 21, 1999, 113 Stat. 101; Pub. L. 107-20, title II, §2202(b), (c), July 24, 2001, 115 Stat. 168, 169; Pub. L. 109-304, §§15(29), 16(c)(7), Oct. 6, 2006, 120 Stat. 1704, 1706.)

HISTORICAL AND REVISION NOTES

Revised section	Source section (U.S. Code)
31322(a)(1)	46:922(a), (b)
31322(a)(2)	New
31322(b)	46:926(d)
31322(c)(1)	46:922(e)
31322(c)(2)	46:922(f)
31322(d), (e)	New

Section 31322 sets out the conditions that must be met for a mortgage to be considered a preferred mortgage, and the types of endorsements that the Secretary must make on any certificate of documentation of a vessel that is to be covered by a preferred mortgage.

Subsection (a)(1) makes many substantive changes to law. While a preferred mortgage must still include the whole of a vessel, this subsection eliminates the exception of certain vessels under 25 gross tons. It allows a vessel for which an application for documentation has been filed to have a preferred mortgage. It allows a mortgage to be a preferred mortgage from the time all four conditions are met, rather than from when the vessel is finally documented. Therefore, a mortgage will usually attain its preferred status when the application for documentation and the instrument have been filed. This subsection changes the requirement that all documented vessels have as a mortgagee a person that is a citizen of the United States, as defined in section 2 of the Shipping Act, 1916, and allows a State, the United States Government, a federally insured depository institution, or any other person approved by the Secretary to be a mortgagee.

Subsection (a)(2) makes a substantive change to law exempting fishing, fish processing, and fish tender vessels, and vessels operated only for pleasure from the mortgagee restrictions, since these vessels do not have significant national defense use.

Subsection (b) permits a preferred mortgage to have any rate of interest that is agreeable to the parties to the mortgage. This subsection makes no substantive change to law.

Subsection (c)(1) applies to a mortgage that covers more than one vessel or additional property that is not a vessel. This subsection allows a preferred mortgage to include a separate discharge of the additional vessels and property.

Subsection (c)(2) applies when a preferred mortgage covers more than one vessel, does not provide for the separate discharge of a vessel, and is to be sold by court order. The amount of the mortgage indebtedness attributable to a vessel is that part of the indebtedness, increased by 20 percent, that the court determines approximates the value that the particular vessel bears to the value of all the vessels and property covered by the mortgage. In other words, the amount to be set by the court is the estimated value of the one vessel plus 20 percent of that value to assure sufficiency of collateral.

This section also makes a substantive change by eliminating the requirement that a vessel's certificate of documentation be endorsed with information from the mortgage. This change is made since most of the information is out of date when examined, and since a mortgage must be carried on self-propelled vessels under section 31324(b). This section also eliminates the requirement for the inclusion of an affidavit of good faith. However, both criminal and civil penalties have been added [in section 31330] to help ensure that there is not fraud. This section also eliminates the requirement that a preferred mortgage include a separate discharge for additional property that is not a vessel, the requirement that the mortgage does not stipulate that the mortgagee waives the mortgage's preferred status; and the requirement for clearing vessels with endorsed documents through Customs.

HOUSE FLOOR STATEMENT

Under section 31322(a)(2) a "vessel operated only for pleasure" is exempt from any restrictions on who can be a mortgagee. This standard is the same as used for the documentation of a recreational vessel under sec-

tion 12109 of title 46. The Committee intends that vessels that have a recreational vessel license, or combined fisheries and recreational license, fall under this exemption. However, if the vessel has a Coastwise License, Great Lakes License, or Registry combined with a Recreational License, the vessel would not fall under this exemption.

Under subsection (c)(2), if a vessel covered by a preferred mortgage that includes more than one vessel or property that is not a vessel is to be sold on the order of a district court *in rem*, and there is not a separate discharge, then the mortgage constitutes a lien on that vessel in the full amount of the outstanding mortgage indebtedness, and an allocation of mortgage indebtedness for purposes of a separate discharge may not be made. This change is made to eliminate the formula that did not work and to allow the vessel to be sold free and clear, regardless of the amount of the sale.

Under subsection (d) of section 31322, a mortgage or other instrument representing financing of a vessel under State law that is made under applicable State law and covers the whole of a vessel titled in a State is deemed to be a preferred mortgage if two conditions are fulfilled. The first condition is that the Secretary must certify that the State in which the vessel is titled has a titling system that complies with the Secretary's vessel titling guidelines established under section 13106(b)(8) of title 46. Congress mandated the promulgation of these guidelines in the Recreational Boating Safety Act of 1986, Public Law 99-626. The second condition is that the State in which the vessel is titled must make information available to the Secretary for the vessel identification system established under chapter 125 of title 46 (as enacted by this Act) on the vessel covered by the mortgage or other instrument. This status only applies to vessels titled in the State after those two conditions are met. The phrase "instrument representing financing of a vessel under State law" is used in addition to "mortgage" because State laws do not always use the term mortgage when referring to financing. It is intended, however, that the financing covered by this phrase would be the same as that covered by the concept of a mortgage under other Federal law.

Paragraph (2) of subsection (d) clarifies that mortgages or other financing instruments may obtain preferred status under subsection (d) if they cover vessels titled in a State after the Secretary certifies the compliance of the State's titling system, and the State begins making vessel identification information available to the Secretary. Preferred mortgage status can only be attained when these two conditions are in effect. Mortgages or financing instruments made prior to that are not preferred and, if these two conditions cease to exist, new mortgages or financing instruments made after that time cannot attain preferred status.

The law of the titling State controls the making of the preferred mortgage or financing instrument under this subsection. No additional Federal recording requirements may be imposed for the mortgage or instrument to obtain preferred status under this subsection.

Paragraph (3) of this subsection ensures that a preferred mortgage under this subsection retains that status if the vessel covered by the mortgage later relinquishes its title. If the vessel is subsequently documented, the continuing validity of the mortgage is determined by section 31321(g) (as enacted by this Act).

Subsection (e) of section 31322 clarifies the validity of preferred mortgages made under subsection (d). In the case of a State titled vessel covered by a preferred mortgage for which a new titling application is filed, the validity of the mortgage is governed by the law of the titling State in which the mortgage became preferred. In the case of a documented vessel covered by a preferred mortgage for which an application for a State title is filed, or a State titled vessel covered by a preferred mortgage for which an application for documentation is filed, the validity of the preferred mortgage is governed by section 31322(a) of title 46 (as enacted by this Act).

Information on vessels with preferred mortgages made under State law will be available to creditors

from the vessel identification system under chapter 125 of title 46 (as enacted by this Act).

ity as a lender with respect to that vessel owner, until after April 1, 2003.”

AMENDMENTS

2006—Subsec. (a)(4)(A). Pub. L. 109-304, §15(29)(A), substituted “section 12113(c)” for “section 12102(c)”.

Subsec. (a)(4)(E). Pub. L. 109-304, §15(29)(B), substituted “for purposes of documentation under section 12103” for “under section 12102(a)”.

Subsec. (d)(1)(A). Pub. L. 109-304, §16(c)(7), substituted “section 13107(b)(8)” for “section 13106(b)(8)”.

Subsec. (f)(2). Pub. L. 109-304, §15(29)(C), substituted “section 12113(c)” for “section 12102(c)”.

2001—Subsec. (a)(4)(B) to (F). Pub. L. 107-20, §2202(b), added subpars. (B) to (F) and struck out former subpars. (B) and (C) which read as follows:

“(B) a state or federally chartered financial institution that satisfies the controlling interest criteria of section 2(b) of the Shipping Act, 1916 (46 U.S.C. 802(b));

“(C) a person that complies with the provisions of section 12102(c)(4) of this title.”

Subsecs. (f) to (h). Pub. L. 107-20, §2202(c), added subsecs. (f) to (h).

1999—Subsec. (a)(4). Pub. L. 106-31 made technical amendment to directory language of Pub. L. 105-277, §202(b). See 1998 Amendment note below.

1998—Subsec. (a)(4). Pub. L. 105-277, §202(b), as amended by Pub. L. 106-31, added par. (4).

Subsec. (b). Pub. L. 105-383, §401(c)(1), added subsec. (b) and struck out former subsec. (b) which read as follows: “A preferred mortgage filed or recorded under this chapter may have any rate of interest that the parties to the mortgage agree to.”

Subsec. (d)(1). Pub. L. 105-383, §401(c)(2), substituted “mortgage, security agreement, or instrument” for “mortgage or instrument” in introductory provisions and subpar. (B).

Subsec. (d)(2). Pub. L. 105-383, §401(c)(4), substituted “mortgages, security agreements, or instruments” for “mortgages or instruments” in introductory provisions.

Subsec. (d)(3). Pub. L. 105-383, §401(c)(3), added par. (3) and struck out former par. (3) which read as follows: “A preferred mortgage under this subsection continues to be a preferred mortgage if the vessel is no longer titled in the State where the mortgage was made.”

1996—Subsec. (a). Pub. L. 104-324 amended subsec. (a) generally. Prior to amendment, subsec. (a) consisted of 2 pars. with substantially similar provisions defining a preferred mortgage except that it included a mortgage with a State, the United States Government, a federally insured depository institution, or specified individual as mortgagee.

1989—Subsec. (a)(2). Pub. L. 101-225, §303(3)(A), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “Paragraph (1)(D) of this subsection does not apply to a vessel operated only as a fishing vessel, fish processing vessel, or a fish tender vessel (as defined in section 2101 of this title) or to a vessel operated only for pleasure.”

Subsec. (d)(1). Pub. L. 101-225, §303(3)(B), substituted “granting a security interest perfected under State law” for “representing financing of a vessel under State law that is made under applicable State law”.

Subsec. (e). Pub. L. 101-225, §303(3)(C), substituted “the status of the preferred mortgage” for “the validity of the preferred mortgage” in pars. (1) and (2).

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-20, title II, §2202(d), July 24, 2001, 115 Stat. 170, provided that: “Section 31322 of title 46, United States Code as amended in this section, and as amended by section 202(b) of the American Fisheries Act (Public Law 105-277, division C, title II) shall not take effect until April 1, 2003, nor shall the Secretary of Transportation, in determining whether a vessel owner complies with the requirements of section 12102(c) of title 46, United States Code [now 46 U.S.C. 12113(b)(2) to (d)], consider the citizenship status of a lender, in its capac-

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-277, div. C, title II, §203(a), Oct. 21, 1998, 112 Stat. 2681-619, provided that: “The amendments made by section 202 [amending this section and former section 12102 of this title] shall take effect on October 1, 2001.”

EFFECTIVE DATE

Section effective Jan. 1, 1989, not to affect any civil action filed before that date, and, insofar as applicable to vessels for which an application for documentation has been filed, effective Jan. 1, 1990, with other exceptions and qualifications, see section 107 of Pub. L. 100-710, set out as a note under section 31301 of this title.

§ 31323. Disclosing and incurring obligations before executing preferred mortgages

(a) On request of the mortgagee and before executing a preferred mortgage, the mortgagor shall disclose in writing to the mortgagee the existence of any obligation known to the mortgagor on the vessel to be mortgaged.

(b) After executing a preferred mortgage and before the mortgagee has had a reasonable time to file the mortgage, the mortgagor may not incur, without the consent of the mortgagee, any contractual obligation establishing a lien on the vessel except a lien for—

- (1) wages of a stevedore when employed directly by a person listed in section 31341 of this title;
- (2) wages for the crew of the vessel;
- (3) general average; or
- (4) salvage, including contract salvage.

(c) On conviction of a mortgagor under section 31330(a)(1)(A) or (B) of this title for violating this section, the mortgage indebtedness, at the option of the mortgagee, is payable immediately.

(Pub. L. 100-710, title I, §102(c), Nov. 23, 1988, 102 Stat. 4744.)

HISTORICAL AND REVISION NOTES

Revised section	Source section (U.S. Code)
31323(a)	46:924(1)
31323(b)	46:924(2)
31323(c)	46:941(b) (last sentence)

Section 31323(a) requires the mortgagor to disclose any obligations on the vessel before executing a preferred mortgage. This subsection makes no substantive change to law.

Section 31323(b) provides that, after executing a preferred mortgage, the mortgagor may not incur, without consent of the mortgagee, any contractual obligations establishing a lien on the vessel—except a lien for stevedore wages, crew wages, general average, and salvage. The only substantive change to law made by this subsection is that the reasonable time to record a mortgage is changed to a reasonable time to file the mortgage, and the elimination of the reference to endorsements. These changes are in keeping with the changes made in section 31322.

Section 31323(c) provides that if a mortgagor is convicted of a violation of this section, then the mortgage indebtedness, at the option of the mortgagee, is payable immediately. This subsection makes no substantive change to law.

§ 31324. Retention and examination of mortgages of vessels covered by preferred mortgages

(a) On request, the owner, master, or individual in charge of a vessel covered by a preferred mortgage shall permit a person to examine the mortgage if the person has business with the vessel that may give rise to a maritime lien or the sale, conveyance, mortgage, or assignment of a mortgage of the vessel.

(b) A mortgagor of a preferred mortgage covering a self-propelled vessel shall use diligence in keeping a certified copy of the mortgage on the vessel.

(Pub. L. 100-710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4744.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
31324	46:923

Section 31324(a) provides for examination of mortgages of a vessel that is covered by a preferred mortgage by persons that have business with the vessel that may give rise to a maritime lien or the sale, conveyance, mortgage, or assignment of the mortgage. This subsection makes no substantive change to law.

Section 31324(b) requires that a certified copy of the mortgage must be on board a self-propelled vessel. This subsection makes no substantive change to law.

§ 31325. Preferred mortgage liens and enforcement

(a) A preferred mortgage is a lien on the mortgaged vessel in the amount of the outstanding mortgage indebtedness secured by the vessel.

(b) On default of any term of the preferred mortgage, the mortgagee may—

(1) enforce the preferred mortgage lien in a civil action in rem for a documented vessel, a vessel to be documented under chapter 121 of this title, a vessel titled in a State, or a foreign vessel;

(2) enforce a claim for the outstanding indebtedness secured by the mortgaged vessel in—

(A) a civil action in personam in admiralty against the mortgagor, maker, comaker, or guarantor for the amount of the outstanding indebtedness or any deficiency in full payment of that indebtedness; and

(B) a civil action against the mortgagor, maker, comaker, or guarantor for the amount of the outstanding indebtedness or any deficiency in full payment of that indebtedness; and

(3) enforce the preferred mortgage lien or a claim for the outstanding indebtedness secured by the mortgaged vessel, or both, by exercising any other remedy (including an extrajudicial remedy) against a documented vessel, a vessel for which an application for documentation is filed under chapter 121 of this title, a vessel titled in a State, a foreign vessel, or a mortgagor, maker, comaker, or guarantor for the amount of the outstanding indebtedness or any deficiency in full payment of that indebtedness, if—

(A) the remedy is allowed under applicable law; and

(B) the exercise of the remedy will not result in a violation of section 56101 or 56102 of this title.

(c) The district courts have original jurisdiction of a civil action brought under subsection (b)(1) or (2) of this section. However, for a documented vessel, a vessel to be documented under chapter 121 of this title, a vessel titled in a State, or a foreign vessel, this jurisdiction is exclusive of the courts of the States for a civil action brought under subsection (b)(1) of this section.

(d)(1) Actual notice of a civil action brought under subsection (b)(1) of this section, or to enforce a maritime lien, must be given in the manner directed by the court to—

(A) the master or individual in charge of the vessel;

(B) any person that recorded under section 31343(a) or (d) of this title an unexpired notice of a claim of an undischarged lien on the vessel; and

(C) a mortgagee of a mortgage filed or recorded under section 31321 of this title that is an undischarged mortgage on the vessel.

(2) Notice under paragraph (1) of this subsection is not required if, after search satisfactory to the court, the person entitled to the notice has not been found in the United States.

(3) Failure to give notice required by this subsection does not affect the jurisdiction of the court in which the civil action is brought. However, unless notice is not required under paragraph (2) of this subsection, the party required to give notice is liable to the person not notified for damages in the amount of that person's interest in the vessel terminated by the action brought under subsection (b)(1) of this section. A civil action may be brought to recover the amount of the terminated interest. The district courts have original jurisdiction of the action, regardless of the amount in controversy or the citizenship of the parties. If the plaintiff prevails, the court may award costs and attorney fees to the plaintiff.

(e) In a civil action brought under subsection (b)(1) of this section—

(1) the court may appoint a receiver and authorize the receiver to operate the mortgaged vessel and shall retain in rem jurisdiction over the vessel even if the receiver operates the vessel outside the district in which the court is located; and

(2) when directed by the court, a United States marshal may take possession of a mortgaged vessel even if the vessel is in the possession or under the control of a person claiming a possessory common law lien.

(f)(1) Before title to the documented vessel or vessel for which an application for documentation is filed under chapter 121 is transferred by an extrajudicial remedy, the person exercising the remedy shall give notice of the proposed transfer to the Secretary, to the mortgagee of any mortgage on the vessel filed in substantial compliance with section 31321 of this title before notice of the proposed transfer is given to the Secretary, and to any person that recorded an unexpired notice of a claim of an undischarged lien on the vessel under section 31343(a) or (d) of

this title before notice of the proposed transfer is given to the Secretary.

(2) Failure to give notice as required by this subsection shall not affect the transfer of title to a vessel. However, the rights of any holder of a maritime lien or a preferred mortgage on the vessel shall not be affected by a transfer of title by an extrajudicial remedy exercised under this section, regardless of whether notice is required by this subsection or given.

(3) The Secretary shall prescribe regulations establishing the time and manner for providing notice under this subsection.

(Pub. L. 100-710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4745; Pub. L. 101-225, title III, § 303(4), Dec. 12, 1989, 103 Stat. 1923; Pub. L. 104-324, title XI, § 1124(a), (b), Oct. 19, 1996, 110 Stat. 3980; Pub. L. 105-383, title IV, § 401(c)(5)-(7), Nov. 13, 1998, 112 Stat. 3425; Pub. L. 107-295, title II, § 205(b), Nov. 25, 2002, 116 Stat. 2096; Pub. L. 109-304, § 15(30), Oct. 6, 2006, 120 Stat. 1704; Pub. L. 110-181, div. C, title XXXV, § 3529(b)(1)(B), Jan. 28, 2008, 122 Stat. 603.)

HISTORICAL AND REVISION NOTES

Revised section	Source section (U.S. Code)
31325(a)	46:951 (1st sentence)
31325(b)(1)	46:951 (2d sentence)
31325(b)(2)	46:954(a)
31325(b)(3)	New
31325(c)	46:951 (3d sentence)
31325(d)	46:951 (4th to 6th sentences)
31325(e)	46:952 (1st, 2d sentences)

Section 31325 provides for the enforcement of a preferred mortgage lien.

Section 31325(a) makes a “preferred mortgage” a lien on the vessel in the amount of the mortgage indebtedness secured by the vessel outstanding at foreclosure. This subsection makes no substantive change to law.

Section 31325(b) provides that, on default of any term, the mortgagee may enforce the preferred mortgage lien in a civil action *in rem*, or *in personam* in admiralty against the mortgagor, comaker, or guarantor for the amount of the outstanding indebtedness secured by the vessel or any deficiency in paying off that indebtedness. This subsection makes a substantive change to law by allowing a nonadmiralty civil action to be brought against the mortgagor, comaker, or guarantor for the amount of the outstanding indebtedness secured by the vessel or any deficiency in paying off that indebtedness. This change allows an action to be brought even when the vessel is outside U.S. jurisdiction. This section will also allow the action to be brought against the comaker or guarantor of the mortgage.

Section 31325(c) provides for original and exclusive jurisdiction by a district court, to the exclusion of the courts of a State for civil actions brought *in rem*. It also provides for original jurisdiction for civil actions brought *in personam* in admiralty and civil actions brought under subsection (b)(3). This subsection makes a substantive change to law by broadening the jurisdiction to courts in the territories, as defined in section 31301, as well as giving original jurisdiction to the district courts in nonadmiralty civil actions brought to enforce the preferred mortgage lien.

Subsection (d) provides that actual notice of a civil action *in rem* to enforce a maritime lien must be given in a manner directed by the court to the master, individual in charge of the vessel, to any person that recorded a notice of a claim of an undischarged lien, and, for the first time, to the mortgagee of a mortgage filed with the Secretary. This notice is not required if, after a search is made that is satisfactory to the court, the person entitled to notice is not found in the United States. Failure to give notice does not affect the court’s jurisdiction. However, the mortgagor is still lia-

ble to the person not notified for damages in the amount of that person’s interest in the vessel that was terminated by the civil action *in rem*, and a civil action may still be brought to recover the amount of the terminated interest. The district courts have original jurisdiction of the action, regardless of the amount in controversy or the citizenship of the parties. If plaintiff prevails, the court shall award costs and attorneys fees to the plaintiff.

Subsection (e) provides that, in a civil action *in rem*, the court may appoint a receiver and authorize operation of the vessel. When directed by the court, a United States marshal may take possession—even if the vessel is in the possession of or under the control of a person claiming a possessory common law lien. This subsection makes a substantive change to law by allowing the court to retain *in rem* jurisdiction over the vessel even if the receiver operates the vessel outside the district in which the court is located.

HOUSE FLOOR STATEMENT

Subsection (c) of this section clarifies that the district courts have original jurisdiction for a civil action under subsection (b) of this section, and exclusive jurisdiction in the case of vessels documented or to be documented under chapter 121 of title 46.

AMENDMENTS

2008—Subsec. (b)(3)(B). Pub. L. 110-181 amended Pub. L. 109-304, § 15(30). See 2006 Amendment note below.

2006—Subsec. (b)(3)(B). Pub. L. 109-304, § 15(30), as amended by Pub. L. 110-181, substituted “section 56101 or 56102 of this title” for “section 9 or 37 of the Shipping Act, 1916 (46 App. U.S.C. 808, 835)”.

2002—Subsec. (d)(1)(B). Pub. L. 107-295, § 205(b)(1), substituted “an unexpired notice of a claim” for “a notice of a claim”.

Subsec. (f)(1). Pub. L. 107-295, § 205(b)(2), substituted “an unexpired notice of a claim” for “a notice of a claim”.

1998—Subsecs. (b)(1), (3), (c). Pub. L. 105-383 inserted “a vessel titled in a State,” after “chapter 121 of this title.”

1996—Subsec. (b). Pub. L. 104-324, § 1124(a)(1), substituted “mortgagee may” for “mortgage may” in introductory provisions.

Subsec. (b)(1). Pub. L. 104-324, § 1124(a)(2)(A), substituted “preferred” for “perferred”.

Subsec. (b)(3). Pub. L. 104-324, § 1124(a)(2)(B), (3), added par. (3).

Subsec. (f). Pub. L. 104-324, § 1124(b), added subsec. (f).

1989—Subsecs. (b), (c). Pub. L. 101-225 amended subsecs. (b) and (c) generally. Prior to amendment, subsecs. (b) and (c) read as follows:

“(b) On default of any term of the preferred mortgage, the mortgagee may enforce the preferred mortgage lien in—

“(1) a civil action *in rem* for a documented vessel or a vessel to be documented under chapter 121 of this title;

“(2) a civil action *in personam* in admiralty against the mortgagor, comaker, or guarantor for the amount of the outstanding indebtedness secured by the mortgaged vessel or any deficiency in full payment of that indebtedness; and

“(3) a civil action against the mortgagor, comaker, or guarantor for the amount of the outstanding indebtedness secured by the mortgaged vessel or any deficiency in full payment of that indebtedness.

“(c) The district courts have original jurisdiction of a civil action brought under subsection (b) of this section. However, for documented vessels or vessels to be documented under chapter 121 of this title, this jurisdiction is exclusive of the courts of the States for a civil action under subsection (b)(1) of this section.”

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-181 effective as if included in the enactment of Pub. L. 109-304, see section

3529(b)(2) of Pub. L. 110-181, set out as a note under section 3205 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-295, title II, §205(e), Nov. 25, 2002, 116 Stat. 2096, provided that: "This section [see Tables for classification] shall take effect January 1, 2003."

CONSTRUCTION OF 1996 AMENDMENTS

Section 1124(c) of Pub. L. 104-324 provided that: "The amendments made by subsections (a) and (b) [amending this section] may not be construed to imply that remedies other than judicial remedies were not available before the date of enactment of this section [Oct. 19, 1996] to enforce claims for outstanding indebtedness secured by mortgaged vessels."

§ 31326. Court sales to enforce preferred mortgage liens and maritime liens and priority of claims

(a) When a vessel is sold by order of a district court in a civil action in rem brought to enforce a preferred mortgage lien or a maritime lien, any claim in the vessel existing on the date of sale is terminated, including a possessory common law lien of which a person is deprived under section 31325(e)(2) of this title, and the vessel is sold free of all those claims.

(b) Each of the claims terminated under subsection (a) of this section attaches, in the same amount and in accordance with their priorities to the proceeds of the sale, except that—

(1) the preferred mortgage lien, including a preferred mortgage lien on a foreign vessel whose mortgage has been guaranteed under chapter 537 of this title, has priority over all claims against the vessel (except for expenses and fees allowed by the court, costs imposed by the court, and preferred maritime liens); and

(2) for a foreign vessel whose mortgage has not been guaranteed under chapter 537 of this title, the preferred mortgage lien is subordinate to a maritime lien for necessities provided in the United States.

(Pub. L. 100-710, title I, §102(c), Nov. 23, 1988, 102 Stat. 4746; Pub. L. 103-160, div. A, title XIII, §1360, Nov. 30, 1993, 107 Stat. 1816; Pub. L. 109-304, §15(31), Oct. 6, 2006, 120 Stat. 1704.)

HISTORICAL AND REVISION NOTES

Table with 2 columns: Revised section, Source section (U.S. Code). Rows include 31326(a), 31326(b)(1), and 31326(b)(2) with their corresponding source sections.

Section 31326(a) provides for a court-ordered sale to enforce a preferred mortgage lien or a maritime lien and the priority of claims. When a mortgaged vessel is sold by court order in a civil action in rem, any prior claim in the vessel is terminated—including any possessory common law lien. This subsection makes a substantive change to law by making the process the same for maritime liens as was provided for preferred mortgage liens. This eliminates the requirement for making a new mortgagee for a court sale to enforce a maritime lien. This section also broadens the jurisdiction to courts in the territories, as defined in section 31301.

Section 31326(b)(1) provides that each of these terminated claims attaches, in the same amount and priority, to the proceeds of sale—except that the preferred mortgage lien always has priority over these other claims. However, the preferred mortgage lien is still subordinated to expenses and fees allowed by the court,

costs imposed by the court, and any preferred maritime liens. This may include statutory fees such as the fee of the United States Marshal under 28 U.S.C. 1921. Except for broadening its coverage under subsection (a), this makes no substantive change to law.

Section 31326(b)(2) provides in the case of a foreign vessel, the preferred mortgage lien is also subordinated to a maritime lien for necessities performed or supplied for the vessel in the United States. "Provided" has been substituted for "provided or supplied" for consistency in usage. Except for broadening its coverage under subsection (a), this paragraph makes no substantive change to law.

AMENDMENTS

2006—Subsec. (b)(1). Pub. L. 109-304, §15(31)(A), substituted "chapter 537 of this title," for "title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1101 et seq.)".

Subsec. (b)(2). Pub. L. 109-304, §15(31)(B), substituted "chapter 537 of this title" for "title XI of that Act".

1993—Subsec. (b)(1). Pub. L. 103-160, §1260(1), inserted "including a preferred mortgage lien on a foreign vessel whose mortgage has been guaranteed under title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1101 et seq.)" after "preferred mortgage lien".

Subsec. (b)(2). Pub. L. 103-160, §1360(2), inserted "whose mortgage has not been guaranteed under title XI of that Act" after "foreign vessel".

§ 31327. Forfeiture of mortgagee interest

The interest of a mortgagee in a documented vessel or a vessel covered by a preferred mortgage under section 31322(d) of this title may be terminated by a forfeiture of the vessel for a violation of a law of the United States only if the mortgagee authorized, consented, or conspired to do the act, failure, or omission that is the basis of the violation.

(Pub. L. 100-710, title I, §102(c), Nov. 23, 1988, 102 Stat. 4746.)

HISTORICAL AND REVISION NOTES

Table with 2 columns: Revised section, Source section (U.S. Code). Row includes 31327 with source section 46:961(b).

Section 31327 provides for forfeiture of the mortgagee's interest if the mortgagee authorized, consented, or conspired to do the act, failure, or omission that is the basis of the violation that caused forfeiture of the vessel. This section makes no substantive change to law.

[§ 31328. Repealed. Pub. L. 104-324, title XI, § 1113(b)(1), Oct. 19, 1996, 110 Stat. 3970]

Section, Pub. L. 100-710, title I, §102(c), Nov. 23, 1988, 102 Stat. 4746, related to limitations on parties serving as trustees of mortgaged vessel interests.

§ 31329. Court sales of documented vessels

(a) A documented vessel may be sold by order of a district court only to—

- (1) a person eligible to own a documented vessel under section 12103 of this title; or
(2) a mortgagee of that vessel.

(b) When a vessel is sold to a mortgagee not eligible to own a documented vessel—

- (1) the vessel must be held by the mortgagee for resale;
(2) the vessel held by the mortgagee is subject to chapter 563 of this title; and
(3) the sale of the vessel to the mortgagee is not a sale to a person not a citizen of the United States under section 12132 of this title.

(c) Unless waived by the Secretary of Transportation, a person purchasing a vessel by court order under subsection (a)(1) of this section or from a mortgagee under subsection (a)(2) of this section must document the vessel under chapter 121 of this title.

(d) The vessel may be operated by the mortgagee not eligible to own a documented vessel only with the approval of the Secretary of Transportation.

(e) A sale of a vessel contrary to this section is void.

(f) This section does not apply to a documented vessel that has been operated only for pleasure.

(Pub. L. 100-710, title I, §102(c), Nov. 23, 1988, 102 Stat. 4747; Pub. L. 104-324, title XI, §1118, Oct. 19, 1996, 110 Stat. 3973; Pub. L. 109-304, §15(32), Oct. 6, 2006, 120 Stat. 1704; Pub. L. 111-281, title IX, §913(c), Oct. 15, 2010, 124 Stat. 3017.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
31329	46:961(f)

Section 31329 sets out certain restrictions on the court sale of a documented vessel.

Section 31329(a) restricts the sale only to a person eligible to own a documented vessel under section 12102 of title 46 or to the mortgagee, which may be a trustee acting as a holder of a preferred mortgage on a documented vessel for the benefit of a person not eligible to be the holder of a preferred mortgage on that vessel.

Section 31329(b) sets out conditions on the sale to a trustee acting as a holder of a preferred mortgage on a documented vessel for the benefit of a person not eligible to be the holder of a preferred mortgage on that vessel. First, the vessel must be held by the trustee for resale. Second, while being held for resale, the vessel is subject to requisition or purchase during a national emergency under section 902 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1242). And third, the sale of the vessel to the trustee is not a sale foreign within the terms of the First Proviso of section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883).

Section 31329(c) requires a person that is eligible to document the vessel that purchases a vessel from the court to document the vessel. This subsection also requires the person purchasing the vessel from the trustee to document it, thereby restricting to whom the trustee can sell the vessel. Many documented vessels have no national defense utility, such as recreational vessels and fishing vessels. Therefore, both of these restrictions can be waived by the Secretary. As previously discussed, these waivers can be on a case-by-case basis or with a blanket waiver.

Section 31329(d) prohibits a trustee from operating the vessel without the approval of the Secretary.

Section 31329(e) voids any sale that is done contrary to this section.

HOUSE FLOOR STATEMENT

Under section 31329(d) a vessel may be operated by the trustee only with the approval of the Secretary. Under current law a vessel may be documented by a trust if all of the members of the trust are citizens of the United States. If the trust buying the vessel at the court sale includes foreign investors, the vessel cannot be documented. The Committee intends in this section that the vessel will only be "operated" in a maintenance manner, but not in a commercial service.

AMENDMENTS

2010—Subsec. (d). Pub. L. 111-281 substituted "Secretary of Transportation" for "Secretary".

2006—Subsec. (a)(1). Pub. L. 109-304, §15(32)(A), substituted "section 12103" for "section 12102".

Subsec. (b)(2). Pub. L. 109-304, §15(32)(B)(i), substituted "chapter 563 of this title" for "section 902 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1242)".

Subsec. (b)(3). Pub. L. 109-304, §15(32)(B)(ii), substituted "sale to a person not a citizen of the United States under section 12132 of this title" for "sale foreign within the terms of the first proviso of section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883)".

1996—Subsec. (f). Pub. L. 104-324 added subsec. (f).

§ 31330. Penalties

(a)(1) A mortgagor shall be fined under title 18, imprisoned for not more than 2 years, or both, if the mortgagor—

(A) with intent to defraud, does not disclose an obligation on a vessel as required by section 31323(a) of this title;

(B) with intent to defraud, incurs a contractual obligation in violation of section 31323(b) of this title; or

(C) with intent to hinder or defraud an existing or future creditor of the mortgagor or a lienor of the vessel, files a mortgage with the Secretary.

(2) A mortgagor is liable to the United States Government for a civil penalty of not more than \$10,000 if the mortgagor—

(A) does not disclose an obligation on a vessel as required by section 31323(a) of this title;

(B) incurs a contractual obligation in violation of section 31323(b) of this title; or

(C) files with the Secretary a mortgage made not in good faith.

(b)(1) A person that knowingly violates section 31329 of this title shall be fined under title 18, imprisoned for not more than 3 years, or both.

(2) A person violating section 31329 of this title is liable to the Government for a civil penalty of not more than \$25,000.

(3) A vessel involved in a violation under section 31329 of this title and its equipment may be seized by, and forfeited to, the Government.

(c) If a person not an individual violates this section, the president or chief executive of the person also is subject to any penalty provided under this section.

(Pub. L. 100-710, title I, §102(c), Nov. 23, 1988, 102 Stat. 4747; Pub. L. 104-324, title XI, §1113(b)(2), Oct. 19, 1996, 110 Stat. 3970; Pub. L. 111-281, title IX, §913(a)(1), (d), Oct. 15, 2010, 124 Stat. 3017.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
31330(a)	46:941(b) (1st sentence)
31330(b)	New
31330(c)	46:941(b) (1st sentence)

Section 31330(a) provides for criminal penalties for not disclosing obligations, incurring contractual obligations in violation of section 31323(b), and filing a mortgage made not in good faith. This subsection makes a substantive change to law by adding civil penalties and by making it a crime to record with the Secretary of Transportation a mortgage made not in good faith with the intent to hinder an existing or future creditor of the mortgagor or a lienor of the vessel. This is done since the affidavit of good faith has been eliminated from the elements of a preferred mortgage.

Section 31330(b) adds criminal and civil penalties for violating the sale and trust requirements under sec-

tions 31328 and 31329. It also makes a vessel and its equipment involved in those violations subject to seizure by the Government.

Section 31330(c) makes the president or chief executive officer of a corporation or association liable as a mortgagor for the penalties under this section.

HOUSE FLOOR STATEMENT

Subsection (a) of this section adds criminal and civil penalties for a preferred mortgagor's failure to carry out certain requirements under chapter 313 of title 46 (as enacted by this Act).

AMENDMENTS

2010—Subsec. (a)(1)(B). Pub. L. 111-281, §913(d)(1)(A), inserted "or" after semicolon.

Subsec. (a)(1)(C). Pub. L. 111-281, §913(d)(1)(B), substituted "Secretary." for "Secretary; or".

Pub. L. 111-281, §913(a)(1), struck out "of Transportation" after "Secretary".

Subsec. (a)(1)(D). Pub. L. 111-281, §913(d)(1)(C), struck out subpar. (D) which read as follows: "with intent to defraud, does not comply with section 31321(h) of this title."

Subsec. (a)(2)(B) to (D). Pub. L. 111-281, §913(d)(2), inserted "or" at end of subpar. (B), substituted "faith." for "faith; or" at end of subpar. (C), and struck out subpar. (D) which read as follows: "does not comply with section 31321(h) of this title."

1996—Subsec. (b). Pub. L. 104-324 struck out "31328 or" before "31329" in pars. (1) to (3).

SUBCHAPTER III—MARITIME LIENS

§ 31341. Persons presumed to have authority to procure necessities

(a) The following persons are presumed to have authority to procure necessities for a vessel:

- (1) the owner;
(2) the master;
(3) a person entrusted with the management of the vessel at the port of supply; or
(4) an officer or agent appointed by—
(A) the owner;
(B) a charterer;
(C) an owner pro hac vice; or
(D) an agreed buyer in possession of the vessel.

(b) A person tortiously or unlawfully in possession or charge of a vessel has no authority to procure necessities for the vessel.

(Pub. L. 100-710, title I, §102(c), Nov. 23, 1988, 102 Stat. 4748; Pub. L. 101-225, title III, §303(5), Dec. 12, 1989, 103 Stat. 1924.)

HISTORICAL AND REVISION NOTES

Table with 2 columns: Revised section, Source section (U.S. Code). Rows: 31341(a) 46:972 (1st sentence), 973; 31341(b) 46:972 (2d sentence)

Section 31341(a) lists those persons who are presumed to have authority to procure necessities for a vessel. These include the owner, master, or a manager at the port of supply; and an officer or agent appointed by the owner, charterer, owner pro hac vice, or buyer in possession of the vessel. This subsection makes no substantive change to law.

Section 31341(b) provides that any person that is tortiously or unlawfully in possession of or in charge of a vessel has no authority to procure necessities. This subsection makes no substantive change to law.

AMENDMENTS

1989—Subsec. (a)(3). Pub. L. 101-225 substituted "management" for "management".

§ 31342. Establishing maritime liens

(a) Except as provided in subsection (b) of this section, a person providing necessities to a vessel on the order of the owner or a person authorized by the owner—

- (1) has a maritime lien on the vessel;
(2) may bring a civil action in rem to enforce the lien; and
(3) is not required to allege or prove in the action that credit was given to the vessel.

(b) This section does not apply to a public vessel.

(Pub. L. 100-710, title I, §102(c), Nov. 23, 1988, 102 Stat. 4748; Pub. L. 101-225, title III, §303(6), Dec. 12, 1989, 103 Stat. 1924.)

HISTORICAL AND REVISION NOTES

Table with 2 columns: Revised section, Source section (U.S. Code). Row: 31342 46:971

Section 31342 provides that any authorized person providing necessities for a vessel has a maritime lien on the vessel, may bring a civil action in rem in admiralty to enforce the lien, and is not required to allege or prove that credit was given to the vessel. "Providing" has been substituted for "furnishing" for consistency with other laws. This section makes no substantive change to law. This section does not supersede the prohibition under the Public Vessels Act, the Foreign Sovereign Immunities Act, or the Suits in Admiralty Act, on bringing an in rem action against a public vessel.

AMENDMENTS

1989—Pub. L. 101-225 designated existing provisions as subsec. (a), substituted "Except as provided in subsection (b) of this section, a person providing necessities to a vessel on the order of the owner" for "A person providing necessities to a vessel (except a public vessel) on the order of a person listed in section 31341 of this title", and added subsec. (b).

§ 31343. Recording and discharging notices of claim of maritime lien

(a) Except as provided under subsection (d) of this section, a person claiming a lien on a vessel documented, or for which an application for documentation has been filed, under chapter 121 may record with the Secretary a notice of that person's lien claim on the vessel. To be recordable, the notice must—

- (1) state the nature of the lien;
(2) state the date the lien was established;
(3) state the amount of the lien;
(4) state the name and address of the person; and
(5) be signed and acknowledged.

(b)(1) The Secretary shall record a notice complying with subsection (a) of this section if, when the notice is presented to the Secretary for recording, the person having the claim files with the notice a declaration stating the following:

(A) The information in the notice is true and correct to the best of the knowledge, information, and belief of the individual who signed it.

(B) A copy of the notice, as presented for recordation, has been sent to each of the following:

- (i) The owner of the vessel.
(ii) Each person that recorded under subsection (a) of this section an unexpired no-

tice of a claim of an undischarged lien on the vessel.

(iii) The mortgagee of each mortgage filed or recorded under section 31321 of this title that is an undischarged mortgage on the vessel.

(2) A declaration under this subsection filed by a person that is not an individual must be signed by the president, member, partner, trustee, or other individual authorized to execute the declaration on behalf of the person.

(c)(1) On full and final discharge of the indebtedness that is the basis for a notice of claim of lien recorded under subsection (b) of this section, the person having the claim shall provide the Secretary with an acknowledged certificate of discharge of the indebtedness. The Secretary shall record the certificate.

(2) The district courts of the United States shall have jurisdiction over a civil action in Admiralty to declare that a vessel is not subject to a lien claimed under subsection (b) of this section, or that the vessel is not subject to the notice of claim of lien, or both, regardless of the amount in controversy or the citizenship of the parties. Venue in such an action shall be in the district where the vessel is found or where the claimant resides or where the notice of claim of lien is recorded. The court may award costs and attorneys fees to the prevailing party, unless the court finds that the position of the other party was substantially justified or other circumstances make an award of costs and attorneys fees unjust. The Secretary shall record any such declaratory order.

(d) A person claiming a lien on a vessel covered by a preferred mortgage under section 31322(d) of this title must record and discharge the lien as provided by the law of the State in which the vessel is titled.

(e) A notice of claim of lien recorded under subsection (b) of this section shall expire 3 years after the date the lien was established, as such date is stated in the notice under subsection (a) of this section.

(f) This section does not alter in any respect the law pertaining to the establishment of a maritime lien, the remedy provided by such a lien, or the defenses thereto, including any defense under the doctrine of laches.

(Pub. L. 100-710, title I, §102(c), Nov. 23, 1988, 102 Stat. 4748; Pub. L. 107-295, title II, §205(a)(1), Nov. 25, 2002, 116 Stat. 2095; Pub. L. 111-281, title IX, §913(a)(1), Oct. 15, 2010, 124 Stat. 3017.)

HISTORICAL AND REVISION NOTES

Table with 2 columns: Revised section, Source section (U.S. Code). Row 1: 31343, 46:925

Section 31343 provides that any person claiming a lien on a vessel covered by a preferred mortgage may record a notice of lien. This notice must state the nature of the lien, date it was established; the amount; and the name and address of the person claiming a lien, and it must be acknowledged. The Secretary must record a notice of lien if it complies with these requirements. When any part of the indebtedness is discharged, the claimant shall provide the Secretary with a written, acknowledged certificate of discharge of the indebtedness, and the Secretary shall record the certificate. This section makes no substantive change to law.

Section 31343(c) provides that, on the full and final discharge of an indebtedness that is the basis for a claim, the person having the claim shall provide the Secretary with an acknowledged certificate of discharge on the request of the Secretary or owner of the vessel. This subsection makes a substantive change to law by not requiring partial discharges to be filed, as well as making the filing of discharge certificates only at the request of the Secretary or owner of the vessel.

HOUSE FLOOR STATEMENT

Subsection (d) of this section requires a person claiming a lien on a vessel covered by a preferred mortgage under section 31322(d) to record and discharge the lien as provided by the law of the State in which the vessel is titled.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111-281 struck out “of Transportation” after “Secretary” in introductory provisions.

2002—Pub. L. 107-295, §205(a)(1)(A), substituted “notices of claim of maritime lien” for “liens on preferred mortgage vessels” in section catchline.

Subsec. (a). Pub. L. 107-295, §205(a)(1)(B), substituted “documented, or for which an application for documentation has been filed, under chapter 121” for “covered by a preferred mortgage filed or recorded under this chapter” in introductory provisions.

Subsec. (b). Pub. L. 107-295, §205(a)(1)(C), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “The Secretary shall record a notice complying with subsection (a) of this section.”

Subsec. (c). Pub. L. 107-295, §205(a)(1)(D), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “On full and final discharge of the indebtedness that is the basis for a claim recorded under subsection (b) of this section, on request of the Secretary or owner, the person having the claim shall provide the Secretary with an acknowledged certificate of discharge of the indebtedness. The Secretary shall record the certificate.”

Subsecs. (e), (f). Pub. L. 107-295, §205(a)(1)(E), added subsecs. (e) and (f).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-295 effective Jan. 1, 2003, see section 205(e) of Pub. L. 107-295, set out as a note under section 31325 of this title.

Subtitle IV—Regulation of Ocean Shipping

PART A—OCEAN SHIPPING

Table with 2 columns: Chapter, Sec. Rows include 401. General (40101), 403. Agreements (40301), 405. Tariffs, Service Contracts, Refunds, and Waivers (40501), 407. Controlled Carriers (40701), 409. Ocean Transportation Intermediaries (40901), 411. Prohibitions and Penalties (41101), 413. Enforcement (41301)

PART B—ACTIONS TO ADDRESS FOREIGN PRACTICES

Table with 2 columns: Chapter, Sec. Rows include 421. Regulations Affecting Shipping in Foreign Trade (42101), 423. Foreign Shipping Practices (42301)

PART C—MISCELLANEOUS

Table with 2 columns: Chapter, Sec. Row 441. Evidence of Financial Responsibility for Passenger Transportation (44101)

PART A—OCEAN SHIPPING

CHAPTER 401—GENERAL

Table with 2 columns: Sec., Purposes. Row 40101. Purposes.