Public Law 100-710
100th Congress

An Act

Nov. 23, 1988
[H.R. 3105]

To revise, consolidate, and enact certain laws related to shipping definitions and maritime commercial instruments and liens as subtitle III of title 46, United States Code, "Shipping", and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—MARITIME COMMERCIAL INSTRUMENTS AND LIENS

VESSEL IDENTIFICATION SYSTEM

SEC. 101. (a) Title 46, United States Code, is amended by adding the following new chapter 125 after chapter 123:

"CHAPTER 125—VESSEL IDENTIFICATION SYSTEM

"Sec.
"12501. Establishment of a vessel identification system.
"12502. Identification numbers, signal letters, and markings.
"12503. Information available to the system.
"12504. Information available from the system.
"12505. Fees.
"12506. Delegation of authority.
"12507. Penalties.

"§ 12501. Establishment of a vessel identification system

Public information.
Law enforcement and crime.
State and local governments.

"(a) The Secretary of Transportation shall establish a vessel identification system to make available information under section 12503 of this title for use by the public for law enforcement and other purposes relating to—

"(1) the ownership of documented vessels;

"(2) the ownership of vessels numbered under chapter 123 of this title; and

"(3) the ownership of vessels titled under the law of a State.

"(b) The vessel identification system shall include information prescribed by the Secretary including—

"(1) identifying a vessel;

"(2) identifying the owner of the vessel;

"(3) identifying the State in which it is titled or numbered;

"(4) indicating whether the vessel is numbered or titled, or both;

"(5) if titled in a State, indicating where evidence of a lien or other security interest may be found against the vessel in that State; and

"(6) information assisting law enforcement officials.

"(c) The Secretary may maintain information under this chapter in connection with any other information system maintained by the Secretary.

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"§ 12502. Identification numbers, signal letters, and markings

"(a) For the identification of a vessel of the United States, the Secretary of Transportation—

"(1) shall maintain a unique numbering system and assign a number to each vessel of the United States;

"(2) may maintain a system of signal letters for a documented vessel;

"(3) shall record a name selected by the owner of a documented vessel approved by the Secretary as the vessel's name of record; and

"(4) may establish other identification markings.

"(b) The manufacturer or owner of a vessel shall affix to the vessel and maintain in the manner prescribed by the Secretary the number assigned and any other markings the Secretary may require.

"(c) Once a number is assigned under this section, it may not be used by another vessel.

"(d) Once a documented vessel's name is established, the name may not be changed without the approval of the Secretary.

"(e) A person may not tamper with or falsify a number or other marking required under this section.

"§ 12503. Information available to the system

"(a) Except as provided in subsections (b) and (c) of this section, a State or a State's delegee approved by the Secretary of Transportation may make information available to the Secretary if, in a manner and form prescribed by the Secretary, the State—

"(1) identifies the vessel;

"(2) identifies the owner of the vessel;

"(3) identifies the State in which it is titled or numbered;

"(4) indicates whether the vessel is numbered or titled, or both;

"(5) if titled in a State, indicates where evidence of a lien or other security interest may be found against the vessel in that State;

"(6) includes information to assist law enforcement; and

"(7) includes other information agreed to by the Secretary and the State.

"(b) Except as provided in subsection (c) of this section, the Secretary also may accept information under conditions and in a manner and form prescribed by the Secretary.

"(c) The Secretary shall—

"(1) retain information on a vessel with a preferred mortgage under section 31322(d) of this title that is no longer titled in a State making information available to the Secretary under this chapter until the mortgage is discharged or the vessel is sold; and

"(2) accept information under section 31321(h) of this title only if that information cannot be provided to a State.

"§ 12504. Information available from the system

Law enforcement and crime.

"For law enforcement or other purposes and under conditions prescribed by the Secretary, the Secretary of Transportation—

"(1) shall make available information in the vessel identification system to a State making information available under section 12503(a) of this title; and

"(2) may make available information in the vessel identification system to others.

"§ 12505. Fees

"(a) The Secretary of Transportation may charge a fee under section 9701 of title 31 for providing information to or requesting information from the vessel identification system, except to—

"(1) an agency; or

"(2) a State making information available to the Secretary under section 12503(a) of this title.

"(b) In addition to any fee under subsection (a) of this section, the Secretary may collect an annual fee of not more than $1.00 from the owner of each vessel of the United States under section 9701 of title 31 for maintaining the vessel identification system. However, the collection of that fee may be delayed under conditions prescribed by the Secretary.

"(c) The Secretary may employ any agency, State, or person to collect the fee established under subsection (b) of this section.

"(d) If a State is employed to collect a fee under subsection (c) of this section, the State may retain one-half of the amounts collected. A State shall transfer one-half of the amounts collected under subsection (b) of this section to the Secretary.

"(e) The Secretary shall deposit amounts transferred or collected under this section in the general fund of the Treasury as proprietary receipts of the Secretary and ascribed to the vessel identification system.

"(f) The amounts retained by a State under this section may be used to make information available to the Secretary and to pay incremental administrative costs.

"§12506. Delegation of authority

"The Secretary of Transportation may delegate to an agency, a State, or a qualified person the authority to—

"(1) establish and maintain the vessel identification system; and

"(2) charge fees under section 12505 of this title to a person making information available to or requesting information from the vessel identification system.

"§ 12507. Penalties

"(a) A person shall be fined under title 18, imprisoned for not more than 2 years, or both, if the person with the intent to defraud—

"(1) provides false information to the Secretary of Transportation or a State issuing authority regarding the identification of a vessel under this chapter; or

"(2) tampers with, removes, or falsifies the unique vessel identification number assigned to a vessel under section 12502 of this title.

"(b) A person is liable to the United States Government for a civil penalty of not more than $10,000 if the person—

"(1) provides false information to the Secretary or a State issuing authority regarding the identification of a vessel under this chapter;

"(2) violates section 12502 of this title; or

"(3) fails to comply with requirements prescribed by the Secretary under section 12505 of this title.

"(c) A vessel involved in a violation of this chapter, or regulation under this chapter, and its equipment, may be seized by, and forfeited to, the Government.

"(d) If a person, not an individual, is involved in a violation of this chapter, the president or chief executive of the person also is subject to any penalty provided under this section.".

(b) The title analysis at the beginning of subtitle II of title 46, United States Code, is amended by adding after item 123 in part H:

"125. Vessel Identification System ..... 12501".

CHAPTERS 301 AND 313 OF TITLE 46

46 USC note prec. 2101.

SEC. 102. (a) Certain general and permanent laws of the United States, related to definitions and maritime commercial instruments and liens, are revised, consolidated, and enacted by paragraph (3) of this subsection as subtitle III of title 46, United States Code, "Shipping".

(b) The title analysis at the beginning of title 46, United States Code, is amended to read as follows:

"Subtitle Sec.
"I. GENERAL 101
"II. VESSELS AND SEAMEN 2101
"III. MARITIME LIABILITY 30101
"[BALANCE OF TITLE RESERVED]"

(c) Title 46, United States Code, is amended by adding at the end the following new subtitle:

"Subtitle III—Maritime Liability

"Chapter Sec.
"301. General 30101
"[Chapters 303-311—Reserved]
'313. Commercial Instruments and Maritime Liens 31301
"[Chapter 315—Reserved]

"CHAPTER 301—GENERAL

"Sec.
"30101. Definitions.

"§ 30101. Definitions

"In this subtitle—

"(1) 'documented vessel' means a vessel documented under chapter 121 of this title;

"(2) 'foreign vessel' means a vessel of foreign registry or operated under the authority of a foreign country;

"(3) 'public vessel' means (except in chapter 315 of this title) a vessel that is owned, demise chartered, or operated by the United States Government or a government of a foreign country;

"(4) 'recreational vessel' means a vessel—

"(A) operated primarily for pleasure; or

"(B) leased, rented, or demise chartered to another for the latter's pleasure;

"(5) 'seaman' means a master or a crewmember of a vessel in operation;

"(6) 'State' means a State of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Northern Mariana Islands, and any other territory or possession of the United States;

"(7) 'State vessel' means a vessel owned or demise chartered by the government of a State or an authority or a political subdivision of a State;

"(8) 'United States', when used in a geographic sense, means the States of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Northern Mariana Islands, and any other territory or possession of the United States; and

"(9) 'vessel of the United States' means a vessel documented under chapter 121 of this title, numbered under chapter 123 of this title, or titled under the law of a State.

"[CHAPTERS 303-311—RESERVED]

"CHAPTER 313—COMMERCIAL INSTRUMENTS AND MARITIME LIENS

"SUBCHAPTER I—GENERAL

"Sec.
"31301. Definitions.
"31302. Availability of instruments, copies, and information.
"31303. Certain civil actions not authorized.
"31304. Liability for noncompliance.
"31305. Waiver of lien rights.
"31306. Declaration of citizenship.
"31307. State statutes superseded.
"31308. Secretary of Commerce or Transportation as mortgagee.
"31309. General civil penalty.

"SUBCHAPTER II—COMMERCIAL INSTRUMENTS

"31321. Filing, recording, and discharge.
"31322. Preferred mortgages.
"31323. Disclosing and incurring obligations before executing preferred mortgages.
"31324. Retention and examination of mortgages of vessels covered by preferred mortgages.
"31325. Preferred mortgage liens and enforcement.
"31326. Court sales to enforce preferred mortgage liens and maritime liens and priority of claims.
"31327. Forfeiture of mortgagee interest.
"31328. Limitations on parties serving as trustees of mortgaged vessel interests.
"31329. Court sales of documented vessels.
"31330. Penalties.

"SUBCHAPTER III—MARITIME LIENS

"31341. Persons presumed to have authority to procure necessaries.
"31342. Establishing maritime liens.
"31343. Recording and discharging liens on preferred mortgage vessels.

"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); Courts, U.S.

"(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; and

"(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.

"§ 31302. Availability of instruments, copies, and information

"The Secretary of Transportation 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.

"§ 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.

"§ 31304. Liability for noncompliance

Contracts.

"(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. Courts, U.S.

"§ 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.

"§ 31306. Declaration of citizenship

"(a) When an instrument transferring an interest in a vessel is presented to the Secretary of Transportation 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 9 or 37 of the Shipping Act, 1916 (46 App. U.S.C. 808, 835). Records.

"(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. Corporations.

"(c) 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. Fraud. Law enforcement and crime.

"§ 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.

"§ 31308. Secretary of Commerce or Transportation as mortgagee

"When the Secretary of Commerce or Transportation is a mortgagee under this chapter, the Secretary may foreclose on a lien arising from a right established under a mortgage under title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1241 et seq.), subject to section 362(b) of title 11.

"§ 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.

"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 of Transportation 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.

"(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 that has not yet been documented, 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 party whose name and address is stated on 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

Public information.

"(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.

State and local governments.

"§ 31322. Preferred mortgages

"(a)(1) A preferred mortgage is a mortgage, whenever made, that—

"(A) includes the whole of a vessel;

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

"(C)(i) covers a documented vessel; or

"(ii) 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

"(D) has as the mortgagee—

"(i) a State;

"(ii) the United States Government;

"(iii) a federally insured depository institution, unless disapproved by the Secretary;

"(iv) an individual who is a citizen of the United States;

"(v) a person qualifying as a citizen of the United States under section 2 of the Shipping Act, 1916 (46 App. U.S.C. 802); or

"(vi) a person approved by the Secretary of Transportation.

"(2) 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.

Fish and fishing.

"(b) A preferred mortgage filed or recorded under this chapter may have any rate of interest that the parties to the mortgage agree to.

"(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.

State and local governments.

"(d)(1) A mortgage or instrument representing financing of a vessel under State law that is made under applicable 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 13106(b)(8) of this title; and

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

"(2) This subsection applies to mortgages 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 if the vessel is no longer titled in the State where the mortgage was made.

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

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

"§ 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.

"§ 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.

"§ 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 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. Courts, U.S.

"(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 a 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. Courts, U.S.

"(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 Courts, U.S.

"(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.

"§ 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 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, the preferred mortgage lien is subordinate to a maritime lien for necessaries provided in the United States.

"§ 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.

"§ 31328. Limitations on parties serving as trustees of mortgaged vessel interests

"(a) Without the approval of the Secretary of Transportation, an instrument or evidence of indebtedness secured by a mortgage of a documented vessel to a trustee may not be issued, assigned, or transferred to, or held in trust for, a person not qualifying as a citizen of the United States under section 2 of the Shipping Act, 1916 (46 App. U.S.C. 802), unless the trustee—

"(1) is a State;

"(2) is the United States Government;

"(3) is a person approved by the Secretary and qualifying as a citizen of the United States under that section 2; or

"(4) has been approved by the Secretary.

"(b) The Secretary shall approve a trustee under subsection (a) (3) or (4) of this section if the trustee—

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

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

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

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

"(5) if the trustee is to be approved under subsection (a)(4) of this section, meets any other requirements prescribed by the Secretary.

"(c) If the trustee at any time does not satisfy the qualifications of subsection (b) of this section, the Secretary shall disapprove the trustee.

"(d) Except as provided in subsection (a) of this section, a right under a mortgage of a documented vessel may be issued, assigned, or transferred to a person not eligible to be a mortgagee of that vessel under section 31322 of this title only with the approval of the Secretary.

"(e) The vessel may be operated by the trustee only with the approval of the Secretary.

"(f) The issuance, assignment, or transfer of an instrument or evidence of indebtedness contrary to this section is void.

"§ 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 12102 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 section 902 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1242); and

"(3) the sale of the vessel to the mortgagee 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).

"(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.

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

"§ 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;

"(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 of Transportation; or

"(D) with intent to defraud, does not comply with section 31321(h) of this title.

"(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;

"(C) files with the Secretary a mortgage made not in good faith; or

"(D) does not comply with section 31321(h) of this title.

"(b)(1) A person that knowingly violates section 31328 or 31329 of this title shall be fined under title 18, imprisoned for not more than 3 years, or both.

"(2) A person violating section 31328 or 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 31328 or 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.

"SUBCHAPTER III—MARITIME LIENS

"§ 31341. Persons presumed to have authority to procure necessaries

"(a) The following persons are presumed to have authority to procure necessaries for a vessel:

"(1) the owner;

"(2) the master;

"(3) a person entrusted with the mangement 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 necessaries for the vessel.

"§ 31342. Establishing maritime liens

"A person providing necessaries to a vessel (except a public vessel) on the order of a person listed in section 31341 of this title 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.

"§ 31343. Recording and discharging liens on preferred mortgage vessels

"(a) Except as provided under subsection (d) of this section, a person claiming a lien on a vessel covered by a preferred mortgage filed or recorded under this chapter may record with the Secretary of Transportation 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) The Secretary shall record a notice complying with subsection (a) of this section.

"(c) 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.

"(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.

"[CHAPTER 315—RESERVED]".

SURRENDER AND INVALIDATION OF CERTIFICATES OF DOCUMENTATION

SEC. 103. (a) Section 12111 of title 46, United States Code, is amended—

(1) by striking the catchline and inserting in lieu thereof the following:

"§ 12111. Surrender and invalidation of certificates of documentation";

and

(2) by striking subsection (b) and inserting in lieu thereof the following:

"(b) An invalid certificate of documentation must be surrendered as provided by regulations prescribed by the Secretary of Transportation.

"(c)(1) Notwithstanding subsection (a) of this section, until the certificate of documentation is surrendered with the approval of the Secretary, a documented vessel is deemed to continue to be documented under this chapter for purposes of—

"(A) chapter 313 of this title for an instrument filed or recorded before the date of invalidation and an assignment after that date;

"(B) sections 9 and 37(b) of the Shipping Act, 1916 (46 App. U.S.C. 808, 835(b));

"(C) section 902 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1242); and

"(D) any other law of the United States identified by the Secretary by regulation as a law to which the Secretary applies this subsection.

"(2) This subsection does not apply when a vessel is forfeited or sold by order of a district court of the United States.

"(3) The Secretary may approve the surrender of the certificate of documentation of a documented vessel covered by a mortgage filed or recorded under section 31321 of this title only if the mortgagee consents.".

(b) Item 12111 in the analysis of chapter 121 of title 46, United States Code, is amended to read as follows:

"12111. Surrender and invalidation of certificates of documentation.".

MISCELLANEOUS AND CONFORMING PROVISIONS

SEC. 104. (a) Title 46, United States Code, is amended—

(1) in section 2101(34), by inserting ", except in part H," immediately before "means";

(2) in section 2101(46), by striking the period at the end and inserting in lieu thereof "or titled under the law of a State.";

(3) in section 2110, by striking "the licensing of masters, mates, pilots, and engineers, and the documentation of vessels,"

and inserting in lieu thereof "and the licensing of masters, mates, pilots, and engineers,";

(4) in sections 12102(b), 12103(a), 12105(c), 12110(a), 12112 (a), (b), and (c), 12117, 12119, and 12120, by inserting "of Transportation" immediately after "Secretary" the first time it appears;

(5) in section 12102, by adding at the end the following:

"(c) A vessel titled in a State is eligible for documentation only if the State certificate of title is surrendered."; and

(6) in section 12103(c), by amending clause (1) to read as follows:

"(1) identify and describe the vessel;".

(b) Section 9 of the Shipping Act, 1916 (46 App. U.S.C. 808), is amended—

(1) in the first paragraph, by inserting "(a)" immediately after "SEC. 9.";

(2) in the second paragraph, by inserting "(b)" immediately before "Every vessel"; and

(3) by striking the third, fourth, and fifth paragraphs and inserting in lieu thereof the following:

"(c) Except as provided in section 611 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1181), and sections 31322(a)(1)(D) and 31328 of title 46, United States Code, a person may not, without the approval of the Secretary of Transportation—

"(1) sell, mortgage, lease, charter, deliver, or in any manner transfer, or agree to sell, mortgage, lease, charter, deliver, or in any manner transfer, to a person not a citizen of the United States, any interest in or control of a documented vessel (except in a vessel that has been operated only as a fishing vessel, fish processing vessel, or fish tender vessel (as defined in section 2101 of title 46, United States Code) or in a vessel that has been operated only for pleasure) owned by a citizen of the United States; or

"(2) place a documented vessel under foreign registry or operate that vessel under the authority of a foreign country.

"(d)(1) Any charter, sale, transfer, or mortgage of a vessel, or interest or control in that vessel, contrary to this section is void.

Law enforcement and crime.

"(2) A person that knowingly charters, sells, transfers, or mortgages a vessel, or interest or control in that vessel, contrary to this section shall be fined under title 18, United States Code, imprisoned for not more than 5 years, or both.

Law enforcement and crime.

"(3) A documented vessel may be seized by, and forfeited to, the United States Government if—

"(A) the vessel is placed under foreign registry or operated under the authority of a foreign country contrary to this section; or

"(B) a person knowingly charters, sells, transfers, or mortgages a vessel, or interest or control in that vessel, contrary to this section.".

(c) The first sentence of section 902 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1242), is amended by striking "or under construction" and inserting in lieu thereof "a documented vessel, or a vessel under construction".

(d) Section 1101(a) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1271(a)), is amended to read as follows:

"(a) The term 'mortgage' includes—

"(1) a preferred mortgage as defined in section 31301 of title 46, United States Code; and

"(2) a mortgage on a vessel that will become a preferred mortgage when filed or recorded under chapter 313 of title 46, United States Code.".

(e)(1) Before January 1, 1992, the annual fee under section 12505 of title 46, United States Code (as enacted by section 101 of this Act), is $1.00. 46 USC 12505 note.

(2) To establish, centralize, and computerize records and other information maintained under chapters 121, 125, and 313 of title 46, United States Code, from the effective date of this title through September 30, 1993, the Secretary of Transportation shall spend (out of amounts appropriated for the Department of Transportation under an appropriations law) not less than an amount that is equal to the amounts estimated to be— 46 USC 12501 note.

(A) collected under section 9701 of title 31, United States Code, for fees paid for services and things of value provided under chapter 313 of title 46, United States Code (as enacted by section 101 of this Act), and for documenting vessels under chapter 121 of title 46; and

(B) transferred to or collected by the Secretary under chapter 125 of title 46, United States Code (as enacted by section 101 of this Act).

(f) Section 12502(a)(1) of title 46, United States Code (as enacted by section 101 of this Act), applies to a vessel of the United States that does not have a unique number as prescribed by the Secretary of Transportation under that section until the earlier of the following: 46 USC 12502 note.

(1) The next time the vessel is documented, numbered, or titled.

(2) January 1, 1995.

(g) Nothing in this section requires the Coast Guard to recruit, compensate, train, purchase, or deploy any personnel or equipment to carry out chapter 125 of title 46, United States Code (as enacted by section 101 of this Act), except to the extent that appropriations are made available in an appropriations law for the Department of Transportation. Uniformed services. 46 USC 12501 note.

LEGISLATIVE PURPOSE AND CONSTRUCTION

SEC. 105. (a) A reference to a law replaced by section 102 of this Act, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding provision of this Act. 46 USC note prec. 2101.

(b) An order, rule, or regulation in effect under a law replaced by section 102 of this Act continues in effect under the corresponding provision of this Act until repealed, amended, or superseded.

(c) An action taken or an offense committed under a law replaced by section 102 of this Act is deemed to have been taken or committed under the corresponding provision of this Act.

(d) An inference of legislative construction is not to be drawn by reason of the caption or catch line of a provision enacted by section 102 of this Act.

(e) If a provision of this Act is held invalid, all valid provisions that are severable from the invalid provision remain in effect. If a provision of this Act is held invalid in any of its applications, the provision remains valid for all valid applications that are severable from any of the invalid applications.

REPEALS

46 USC note prec. 2101.

SEC. 106. (a) The repeal of a law by this title may not be construed as a legislative implication that the provision was or was not in effect before its repeal.

(b) The following laws are repealed, except for rights and duties that matured, penalties that were incurred, and proceedings that were begun, before the effective date of this title:

(1) sections 40 and 42 of the Shipping Act, 1916 (46 App. U.S.C. 838, 840);

(2) section 30 of the Merchant Marine Act, 1920 (46 App. U.S.C. 911-984);

(3) the Act of February 16, 1925 (46 App. U.S.C. 1011-1014);

(4) Reorganization Plan No. 1 of 1967 (46 App. U.S.C. 961 (note)); and

(5) sections 12109(c), 12113, 12114, 12115, 12116, 12118, and 12121 of title 46, United States Code.

EFFECTIVE DATES

46 USC 30101 note.

SEC. 107. (a) This title 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 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 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 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, except that transactions undertaken as a result of such a plan shall continue to be governed by section 9 of the Shipping Act, 1916 (46 App. U.S.C. 808), as it existed prior to the date of enactment of this Act, to the extent that such section 9 would have governed such transactions.

TITLE II—DOCUMENTATION AND REPEALS

COASTWISE AND FISHERIES DOCUMENTATION

SEC. 201. (a) Notwithstanding sections 12106 through 12108 of title 46, United States Code, and section 27 of the Merchant Marine Act,

1920 (46 App. U.S.C. 883), the Secretary of Transportation may issue a certificate of documentation for the following vessels:

(1) ALEUTIAN TRAWLER, United States official number 236979;

(2) ENCORE, United States official number 545162;

(3) FAIR TIDE, United States official number 644363;

(4) FREEDOM, United States official number 569163;

(5) PAVLOF, United States official number 597532;

(6) SUVA, United States official number 225008;

(7) RA, United States official number 655181;

(8) TE DE II, United States official number 572205;

(9) FRE-N-EZE, United States official number 659826;

(10) BETA LYRA, United States official number 679226;

(11) POLAR ICE, United States official number 604676;

(12) COMPASS ROSE III, United States official number 559647;

(13) SCOTCH 'N WATER, United States official number 264090;

(14) ERSA, United States official number 229511;

(15) GILBERT, United States official number 230568, with a restriction that this vessel may engage in the coastwise trade of the United States only for the purpose of moving barges filled with seafood waste and wastewater to designated ocean disposal sites from Port Canaveral, Florida;

(16) MARY L, United States official number 275311;

(17) ZB-6, United States official number 505317;

(18) KUT N OUT, hull identification number BERL1087M-80A-385-80 and Florida registration number FL7665FG;

(19) FOXY LADY III, United States official number 299818; and

(20) GIPSY, United States official number 903276.

(b) Notwithstanding sections 508 and 510(g) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1158 and 1160(g)), and United States Department of Transportation Contract Numbered MA-6772 (IFB PD-X-945) and amendments thereto, the Secretary of Transportation is authorized to allow, and the Secretary of the department in which the Coast Guard is operating may issue a certificate of documentation for, the vessel M/V OCEAN TEMPEST (ex HORSESHOE SPLICE), United States official number 248773, to acquire, purchase, process, and transport fish and fish products in the fisheries of the United States: *Provided*, That if the vessel is scrapped, it shall not be scrapped other than in the domestic market without the prior approval of the Secretary of Transportation.

REPEAL OF OBSOLETE LAWS

SEC. 202. The following laws related to shipping are repealed:

(1) the paragraph immediately before the heading "UNITED STATES VETERANS' BUREAU" in the first section of the Independent Offices Act, 1928 (46 App. U.S.C. 810a);

(2) the Act of July 3, 1926 (46 App. U.S.C. 817a);

(3) sections 3 and 4 of the Act of July 7, 1960 (46 App. U.S.C. 817b, 817c);

(4) sections 2, 4, 5, 16, 22, and 23 of the Merchant Marine Act, 1920 (46 App. U.S.C. 862-864, 874, 878, 879); 46 USC app. 13.

(5) section 2 of the Act of March 4, 1927 (46 App. U.S.C. 870a);

(6) the Act of April 16, 1934 (46 App. U.S.C. 870b-870d);

(7) section 2 of the Act of April 24, 1944 (46 App. U.S.C. 1128e-1);

(8) sections 203, 401-404, 716, 903, 904, 907, 1001-1005, and 1010-1012 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1113, 1141-1144, 1206, 1243, 1246, 1251-1255, 1260-1262);

(9) the first section and sections 2 and 3 of the Act of February 6, 1941 (46 App. U.S.C. 1119a, 1119b, 1214);

(10) the Act of June 12, 1960 (46 App. U.S.C. 1401-1413); and

(11) section 7 of the Maritime Act of 1981 (46 App. U.S.C. 1606).

TRANSFER OF THE COAST GUARD CUTTER INGHAM

South Carolina.

SEC. 203. The Secretary of the department in which the Coast Guard is operating shall transfer the Coast Guard cutter INGHAM to the Naval and Maritime Museum at Patriots Point, South Carolina. The Secretary shall transfer the INGHAM along with such equipment and in such condition as the Secretary considers appropriate. The Secretary shall make the transfer upon the decommissioning of the INGHAM or at a later time as determined appropriate by the Secretary.

Approved November 23, 1988.

LEGISLATIVE HISTORY—H.R. 3105:

HOUSE REPORTS: No. 100-918 (Comm. on Merchant Marine and Fisheries).
CONGRESSIONAL RECORD, Vol. 134 (1988):
Oct. 6, considered and passed House.
Oct. 20, considered and passed Senate, amended.
Oct. 21, House concurred in Senate amendment.