

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1344\*

Short Title: Removal of Abandoned Vessels.

(Public)

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Sponsors: Senators Jordan; and Perdue.

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Referred to: Judiciary II.

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May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO MAKE IT UNLAWFUL TO ABANDON VESSELS IN COASTAL  
WATERS AND TO AUTHORIZE THE REMOVAL OF ABANDONED VESSELS  
AND THE RECOVERY OF COSTS FOR REMOVAL, AS RECOMMENDED BY  
THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Article 5 of Chapter 76 of the General Statutes is amended by  
adding a new section to read:

**"§ 76-40.1. Removal of abandoned vessels.**

(a) For purposes of this section, the term 'vessel' means any watercraft or structure, including seaplanes, used or capable of being used as a means of transportation or habitation on or under the water. For purposes of this section, the term 'vessel' does not include any shipwreck, vessel, cargo, tackle, or underwater archaeological artifact that is within the exclusive dominion and control of the State pursuant to G.S. 121-22 or to artificial reefs managed by the Department of Environment and Natural Resources.

(b) It shall be unlawful for any person, firm, or corporation to abandon or cause to be abandoned, any vessel in or upon the coastal fishing waters of the State or upon State-owned submerged lands. The last owner of record of a vessel at the time it was abandoned shall be presumed to be the person who abandoned the vessel or caused its abandonment.

1       (c) A vessel shall be presumed to be abandoned in violation of this section when  
2 the vessel is either left unattended for more than 30 consecutive days or the vessel is left  
3 in a wrecked, junked, or substantially dismantled condition without the consent of the  
4 Secretary of Environment and Natural Resources.

5       (d) Any person, firm, or corporation who violates the provisions of subsection (b)  
6 of this section shall be guilty of a Class 2 misdemeanor. After the expiration of 30 days  
7 from the receipt or publication of notice by the Secretary under subdivision (e)(2) of this  
8 section, each day the vessel remains in violation of this section shall constitute a separate  
9 offense. It is a defense to prosecution for a violation of this section if all of the following  
10 requirements are satisfied:

11           (1) The vessel was abandoned due to a natural disaster or other act of God  
12 occasioned exclusively by violence of nature without interference of any  
13 human agency and that could not have been prevented or avoided by the  
14 exercise of due care or foresight.

15           (2) The vessel has been removed from the waters of the State in compliance  
16 with subdivision (e)(2) of this section.

17           (3) The affected area has been restored to the satisfaction of the Secretary.

18       (e) The Department may investigate a report that a vessel has been abandoned in  
19 violation of this section and may remove or require the removal of an abandoned vessel  
20 as provided in this subsection.

21           (1) If the Secretary determines that an abandoned vessel is a hazard to  
22 safety, navigation, human health, or the environment, the owner of the  
23 vessel shall be deemed to have appointed the Secretary his or her agent  
24 for the purposes of removal of the vessel. If the Secretary determines  
25 that the vessel constitutes an imminent hazard to safety, navigation,  
26 human health, or the environment, the Secretary may immediately  
27 remove the vessel from waters of the State prior to giving the notice  
28 required by subdivision (2) of this subsection.

29           (2) The Department may require removal of the vessel by giving notice to  
30 the registered owner of the vessel or other responsible party. The notice  
31 shall require the owner or other responsible party to respond within 10  
32 days and to remove the vessel from the waters of the State within 30  
33 days of the receipt of the notice. Notice shall be given by certified mail,  
34 return receipt requested, or as provided in G.S. 1A-1, Rule 4(j) of the  
35 Rules of Civil Procedure. The notice shall be in writing to the person in  
36 whose name the vessel was last registered or other responsible party at  
37 the last address of record. If the value of the vessel is more than one  
38 hundred dollars (\$100.00) and the identity of the owner cannot be  
39 determined, notice by one publication in a newspaper of general  
40 circulation in the county where the vessel is located shall be sufficient to  
41 meet all requirements of notice. After giving the required notice, the  
42 Secretary may proceed to remove the vessel from waters of the State.

1           (3)    The owner of the abandoned vessel or responsible party shall be liable  
2           for any and all costs incurred by the State in removing the vessel,  
3           including costs to restore any damage to marine, estuarine, or fisheries  
4           resources or lands held by the State in public trust. The Secretary may  
5           authorize or contract with any federal, State, county, or municipal  
6           authority or private enterprise for removal of abandoned vessels,  
7           restoration of resources, or any other services necessary to remove,  
8           store, or dispose of abandoned vessels and restore affected areas. The  
9           method of removal, storage, and disposal of the abandoned vessel,  
10          whether by the owner, a third party, or the State, must comply with all  
11          applicable federal and State laws, regulations, and rules.

12          (4)    The Secretary is authorized to sell abandoned vessels, their cargo,  
13          tackle, and equipment. The Secretary may provide for a public sale of  
14          the property, including public notice of the description of the property  
15          prior to the time set for sale. The procedure may include turning the  
16          property to be sold over to some other agency for sale, provided that  
17          there is proper accounting for the net proceeds of the sale. In the case of  
18          property that cannot lawfully be sold or is unlikely to sell for a sufficient  
19          amount to offset the costs of sale, the Secretary may provide either for  
20          destruction or disposal of the property or legitimate utilization of the  
21          property by some public agency. Net proceeds of the sale shall be used  
22          to reimburse the State for costs incurred in removal, storage, and sale of  
23          the vessel, notification of the owner, and restoration of the environment.  
24          Any excess proceeds shall be refunded to the registered owner, if his or  
25          her identity and address is known. Prior to sale, the registered owner of  
26          the abandoned vessel or any person with an interest in the property may  
27          redeem the property by reimbursing the State for all costs incurred in  
28          removing and storing the vessel, notifying the owner, and restoring the  
29          environment.

30          (f)    The Secretary may, either before or after the institution of proceedings under  
31          subsection (e) of this section, institute a civil action in the superior court in the county  
32          where the vessel is located or where the owner or other responsible party resides for  
33          removal of the vessel, damages, injunctive relief, recovery of the costs of removal,  
34          storage and sale of the vessel, and other relief as the court may deem proper, to prevent or  
35          recover for any damage to any lands or property which the State holds in public trust and  
36          to restrain any violation of this section.

37          (g)    The provisions of this section shall be implemented by the Department of  
38          Environment and Natural Resources in cooperation with the Wildlife Resources  
39          Commission."

40                Section 2. This act is effective when it becomes law.