SENATE BILL NO. 2076
(As Sent to Governor)

AN ACT TO AMEND SECTION 49-27-71, MISSISSIPPI CODE OF 1972, TO DEFINE CERTAIN TERMS RELATING TO DERELICT VESSELS; TO PROVIDE FOR JURISDICTION IN ACTIONS TO REMOVE DERELICT VESSELS; TO PROVIDE CERTAIN REQUIREMENTS FOR THE REMOVAL OF DERELICT VESSELS; TO PROVIDE CERTAIN REQUIREMENTS FOR THE NOTICE PROCESS FOR THE REMOVAL OF DERELICT VESSELS; TO PROVIDE FOR THE PROCESS FOR DETERMINING OWNERSHIP OF DERELICT VESSELS; TO PROVIDE FOR RECOVERY OF COSTS ASSOCIATED WITH REMOVING DERELICT VESSELS; TO AUTHORIZE CERTAIN POWERS AND DUTIES OF THE DEPARTMENT OF MARINE RESOURCES; AND FOR RELATED PURPOSES.

BE IT ENacted BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 49-27-71, Mississippi Code of 1972, is amended as follows:

49-27-71. (1) Definitions. As used in the section, the following words and phrases have the following meanings unless the context clearly indicates otherwise:

* * *

(a) "Abandoned vessel" means a vessel left unattended for four (4) or more weeks after a hurricane, tropical storm or other natural event resulting in a declaration of emergency by the Governor, or, in the absence of a hurricane, tropical storm or
other natural event resulting in a declaration of emergency by the Governor, any of the following:

(i) A vessel left unattended that is moored, anchored, or otherwise in the waters of the state or on public property for a period of more than ten (10) days.

(ii) A vessel that is moored, anchored, or otherwise on or attached to private property for a period of more than ten (10) days without the consent of the owner or lessee of the property or of the public trust tidelands.

Upon notification from the owner of the vessel outlining the circumstances following a hurricane, tropical storm or other natural event, the department may grant an exception to the time frames indicated above.

(b) "Department" means the Mississippi Department of Marine Resources.

(c) "Derelict vessel" means a vessel in the waters of the State of Mississippi that satisfies any of the following:

(i) Is aground without the ability to extricate itself absent mechanical assistance;

(ii) Is sunk or otherwise resting on the bottom of the waterway;

(iii) Is abandoned;

(iv) Is wrecked, junked, or in a substantially dismantled condition upon any waters of this state:
1. A vessel is "wrecked" if it is sunken or sinking; or remaining after a marine casualty, including, but not limited to, a boating accident, extreme weather, or fire.

2. A vessel is "junked" if it has been substantially stripped of vessel components, if vessel components have substantially degraded or been destroyed, or if the vessel has been discarded by the owner or operator. Attaching an outboard motor to a vessel that is otherwise junked will not cause the vessel to no longer be junked if such motor is not an effective means of propulsion.

3. A vessel is "substantially dismantled" if at least two (2) of the three (3) following vessel systems or components are missing, compromised, incomplete, inoperable, or broken:

   (A) The steering system;
   (B) The propulsion system; or
   (C) The exterior hull integrity.

   Attaching an outboard motor to a vessel that is otherwise substantially dismantled will not cause the vessel to no longer be substantially dismantled if such motor is not an effective means of propulsion;

   (v) Docked, grounded, or beached upon the property of another without the consent of the owner of the property;
(vi) Is obstructing a waterway or within one hundred (100) yards of the boundaries of any state, county or municipal port;

(vii) Is endangering life or property;

(viii) Has broken loose or is in danger of breaking loose from its anchor, mooring, or ties; or

(iv) A vessel that is otherwise not seaworthy.

(d) "Documented vessel" means a vessel documented under 46 USC, Chapter 121.

(e) "Effective means of propulsion" means a vessel, other than a barge, that is equipped with:

(i) A functioning motor, controls, and steering system; or

(ii) Rigging and sails that are present and in good working order, and a functioning steering system.

A vessel does not have an effective means of propulsion for safe navigation within seventy-two (72) hours after the vessel owner or operator received telephonic notice, in-person notice recorded on an agency-approved body camera, or written notice, which may be provided by facsimile, electronic mail, or other electronic means, stating such from a representative of the department, and the vessel owner or operator is unable to provide a receipt, proof of purchase, or other documentation of having ordered necessary parts for vessel repair. The department may adopt regulations to implement this paragraph.
(f) "Floating building or structure" means a floating entity, with or without accommodations built thereon, which is not primarily used as a means of transportation on water but which serves purposes or provides services typically associated with a structure or other improvement to real property. The term includes, but is not limited to, an entity used as a residence, place of business or office with public access; a hotel or motel; a restaurant or lounge; a clubhouse; a meeting facility; a storage or parking facility; or a mining platform, dredge, dragline, or similar facility or entity represented as such. Incidental movement upon water or resting partially or entirely on the bottom does not, in and of itself, preclude an entity from classification as a floating structure.

(g) "Gross negligence" means conduct so reckless or wanting in care that it constitutes a conscious disregard or indifference to the safety of the property to such conduct.

(h) "Moored" means a vessel that is anchored or affixed in some other way to the public trust tidelands, to leased tidelands, to private land, or within the riparian zone of a private or public landowner or leaseholder.

(i) "Registered" means a vessel documented under Section 59-21-5, Mississippi Code of 1972.

(j) "Unseaworthy" means a vessel that is not fit or safe for any normal perils of the sea or has no effective means of propulsion.
(k) "Vessel" means every description of watercraft, other than a seaplane, capable of being used as a means of transportation on the water. For the purposes of this section, vessels powered only by hand, foot, oars or paddles, are included. For the purposes of this section, floatable buildings and structures, whether or not they are used for navigation, are included.

(l) "Waters of the state" means any waters located within Harrison, Hancock and Jackson Counties under the jurisdiction of the Mississippi Department of Marine Resources as established pursuant to Section 49-15-23, Mississippi Code of 1972.

(m) "Willful misconduct" means conduct evidencing carelessness or negligence of such a degree or recurrence as to manifest culpability, wrongful intent, or evil design or to show an intentional and substantial disregard of the interests of the vessel owner.

(2) Jurisdiction. (a) In the waters of Harrison, Hancock and Jackson Counties, a person *, firm, corporation or other entity may not leave derelict or at risk of being derelict, any vessel on the coastal wetlands, marine waters, or on public or privately owned lands without the owner's permission.

(ii) The Department of Marine Resources has the authority to remove derelict vessels, whether located on private or public property.
(iii) Vessels located in ports and harbors are subject to the provisions outlined in Title 50, Mississippi Code of 1972, Ports, Harbors, Landings and Watercraft.

(iv) Subparagraph (i) of this paragraph (a) does not apply to vessels located in marinas, garages or repair shops for repairs, improvements or other work with knowledge of the owner and for which the costs for such services have been unpaid.

(v) Vessels deemed to be derelict pursuant to this chapter are exempt from the salvage provisions in Section 89-17-1 et seq., Mississippi Code of 1972.

(b) (i) In all other waters of the State of Mississippi, a person, firm, corporation or other entity may not leave derelict or at risk of being derelict, any vessel in the wetlands, public waters or waterways or on public or privately owned lands without the owner's permission.

(ii) Subparagraph (i) of this paragraph (b) does not apply to vessels located in public or private marinas, garages or repair shops for repairs, improvements or other work with knowledge of the owner and for which the costs for such services have been unpaid.

(iii) Vessels deemed to be derelict pursuant to this chapter are exempt from the salvage provisions of Section 89-17-1 et seq., Mississippi Code of 1972.

(3) **Penalties.** Violations of this act will be subject to the penalties as provided in Section 49-15-63.
Standing. A party with standing may initiate the derelict vessel procedures in this section. For purpose of this section, the following parties have standing:

(a) The owner of the property where the vessel came to rest or to which the vessel was made fast;

(b) Any harbormaster, police department, municipality or agent of the state that agrees to accept or process a derelict vessel; or

(c) Any professional marine salvager when the salvager is engaged by a person with standing.

Landowner permission may be revoked at any time. The landowner must provide the department sufficient proof that the vessel owner has been notified of the revocation of landowner's permission or proof that the landowner cannot locate the owner of the vessel.

When a vessel that is not otherwise leased to another party is moored upon public trust tidelands for a period of thirty (30) days or longer, permission must be granted by the Secretary of State's Office.

Notice. Any party with standing, or his or her representative, may initiate the notice process by filing an application with the department to remove the derelict vessel. Upon receipt and review of the application, the department may initiate the following notice process:
(a) A department officer * *** is authorized to board any vessel that has been reported to the department as being derelict or at risk of being derelict to determine the condition of the vessel and in an attempt to establish ownership of the vessel.

(b) A department officer shall post notice, which must comply with the following requirements:

   (i) Be posted on the vessel in a prominent location, visible to an approaching person;

   (ii) Require the vessel owner to submit a plan for removal to the department within seven (7) days of the notice; and

   ( *** *iii) *** Include a space for the owner of the vessel to respond.

(c) If the registered owner responds with a signature in the space or otherwise provides a written response to the department requesting an extension of time, then the registered owner will have an additional five (5) days to * *** submit the plan for removal.

(d) * *** The department will notify the respondent of the approval or denial of the removal plan within seven (7) business days.

(e) If the respondent fails to comply with the approved removal plan and fails to submit a satisfactory reason as to why the vessel cannot be moved as planned, the department may present
the removal plan and evidence of the owner's noncompliance to the chancery court.

(f) Upon presentation of the required evidence, the chancery court will issue an order allowing the department or its representative to remove the vessel from its current location and make whatever disposition is deemed appropriate, including, but not limited to, immediate disposal, storage pending disposal, use for official purposes, transfer to another state agency or other disposition.

(g) If the vessel is located in an area of coastal wetlands where emergent vegetation is present or where the vessel is embedded in the ground, a wetlands permit may be required prior to removal.

(h) Any party who acts in good faith and without malicious intent in the processing, storing or moving any derelict vessel pursuant to this section is immune from liability for damages to the vessel.

(7) **Determining ownership.** (a) Upon receipt of an application for the removal of a derelict vessel where no removal plan has been submitted by the owner, the department must attempt to contact the registered owner of the vessel and any lien holders of record by other available means.

(b) The department must inquire of the Mississippi Department of Wildlife, Fisheries and Parks (MDWFP) as to the status of the vessel in regard to the Mississippi Boating Law of...
1960, Section 59-21-1 et seq., or the United States Coast Guard as
to the status of the vessel in regard to documentation under 46
USC, Chapter 121.

(c) The inquiry must provide the description of the
vessel, including the vessel registration number.

(d) The MDWFP is required to provide the requested
information to the department within two (2) business days.

(e) The registered owner of a vessel must comply with
Section 59-21-21 to change ownership. In the event a vessel owner
fails to notify the MDWFP of a transfer of ownership and supply
the new owner's contact information, the owner of the vessel
according to MDWFP records is presumed to be the person to whom
the vessel is registered.

(f) If there is no registered owner found, the
department must make publication on the department's website and
in a newspaper with general circulation for three (3) weeks,
describing the vessel and the location.

(*) (*) (*) Derelict vessel removal. (a) After the initial
notice period described in subsection (*) (*) (*) has lapsed (*) *
and the department can show proof of inquiries to ascertain the
vessel ownership under subsection (7) of this section, the
department may obtain an order from the chancery court for the
derelict vessel to be removed from its current location.

(b) (*) (*) The chancery court order may authorize the
department to make whatever disposition is deemed appropriate,
including, but not limited to, immediate disposal of the vessel, storage pending disposal, use for official purposes, transfer to another state agency or other disposition.

(c) *** If the vessel is located in an area of coastal wetlands where emergent vegetation is present or where the vessel is embedded in the ground, a wetlands permit may be required prior to removal.

(d) Any person who acts in good faith and without malicious intent in the processing, *** storing or *** moving of any derelict vessel pursuant to this section is immune from civil liability for damage to the vessel.

(* * *9) Emergency removal. Any derelict vessel that is obstructing a waterway, is within any designated navigation channel or within one hundred (100) yards of the boundaries of any state, county or municipal port may be declared a hazard to navigation and subject to immediate relocation, removal *** disposal, or other disposition by the department or other party with standing.

(a) Any derelict vessel that is leaking any hazardous substances, chemicals or fuels will be reported to the Mississippi Department of Environmental Quality (MDEQ) and may be declared an environmental hazard and subject to immediate relocation, removal *** disposal *** or other disposition by MDEQ, the department or other party with standing.
(b) The registered owner of a vessel removed in accordance with this subsection is liable for the costs associated with the relocation, removal, salvage storage or disposal of the vessel and any damages to the flora and fauna within the affected area.

(c) Any funds derived from salvage or sale of a vessel pursuant to this section will be used to offset the costs to the department associated with the removal, salvage, storage or disposal of the vessel.

(d) Any funds derived from damages to the flora and fauna will be deposited into the Coastal Resource Management Fund if the Department of Marine Resources initiates the action.

(e) Any party who relocates or removes a vessel under this section is not liable for damages resulting from relocation or removal unless the damage results from gross negligence or willful misconduct.

Cost recovery. (a) The department may seek full cost recovery from the registered owner of the derelict vessel for any expense incurred as a result of, or incidental to, removing the vessel. The registered owner of the vessel is liable for the costs of removal, storage, disposal, and restoration of affected lands, attorneys' fees, and all court costs.

(b) The owner of the vessel is also liable for an administrative penalty of Five Hundred Dollars ($500.00) per day. The penalty for emergency removal of vessels under
subsection (9) of this section may be imposed by the Executive Director of the Department of Marine Resources upon the recommendation of the Advisory Commission on Marine Resources, under Section 49-15-401 et seq. The fines for removal of all other vessels may be imposed by the chancery court.

(c) Expenses incurred, including, but not limited to, fines, court costs, vessel removal, storage, disposal, restoration of affected lands, and attorneys' fees for derelict vessels will be imposed by the chancery court as outlined in subsection (11) of this section.

(d) If the registered owner should fail to pay fines imposed by the department in accordance with paragraph (b) of this subsection, an enforcement action will be filed with the chancery court which may result in the court issuing an order, including, but not limited to, the collection of fines, court costs, and/or any legal avenue the court finds appropriate to collect such funds.

(e) All proceeds from any activity initiated by the Department of Marine Resources related to the disposition of a vessel under this chapter will go into the Derelict Vessel Fund, a special fund within the Seafood Fund. However, any fines imposed for the damage to coastal wetlands will be placed in the Coastal Resource Management Fund.

(* * *11) Court process. (a) The chancery court of the county in which the vessel is located has jurisdiction over all
matters concerning derelict vessels under this section, including injunctions and demands for damages. If the vessel is allowed to float and/or is otherwise moved to another county after notice has been provided under subsection (6) of this section, the county in which the vessel was first provided notice shall have continuing jurisdiction.

(b) If there is no response to the publication attempts under subsection (7)(e) of this section, the chancery court will issue an order to the department allowing the department to take possession of the vessel and make such use or disposition of the vessel as deemed appropriate under the circumstances. If the department determines that the vessel may be used for official purposes or otherwise sold, the MDWFP will issue a vessel registration number or a hull identification number to the department after proof of public notice has been submitted.

(* * c) The chancery court may, in its discretion, order damages up to Five Hundred Dollars ($500.00) per day for every day the vessel was left abandoned or derelict, beginning on the day * * * notice was posted on the vessel. * * *

(* * d) If the department or a party with standing desires to require the registered owner to remove the vessel, then he or she may apply to the chancery court for a writ of mandatory injunction ordering the registered owner to remove the vessel. The chancery court must allow a reasonable time for removal and restoration of the affected lands. The chancery court may order
further damages not to exceed Five Hundred Dollars ($500.00) per day for each day that the violation exists beyond the date set by the court in an injunction for the removal of the vessel and restoration of the affected lands.

(* * *e) Any court-ordered reimbursed costs or damages in excess of the actual costs of removal and restoration initiated by the Department of Marine Resources must be deposited in a special fund in the State Treasury known as the "Derelict Vessel Fund" * * * within the Seafood Fund. Any funds deposited in the fund must be used to cover the administrative costs and removal costs incurred by the department for the removal of vessels. Any remaining funds must be used to cover the costs of removing additional derelict vessels. However, any fines imposed for the damage to coastal wetlands will be placed in the Coastal Resource Management Fund.

(* * *12) Department authorities. (a) The department is authorized to enter into contracts with individuals, firms and corporations, or agreements with other state agencies for the removal and/or temporary storage of vessels prior to removal. The salvage value, if any, of the vessel may be used to offset the costs of the removal of the vessel and the restoration of the affected area. The department may enter into noncompetitive contracts or agreements with any state or federal entity for the removal of vessels.
(b) The * * * department may * * * enter into interstate or intrastate * * * agreements toward this end, and may seek and utilize aid from all federal, state, and local sources in this endeavor.

(c) The Department of Marine Resources shall adopt rules and regulations necessary and appropriate to carry out this section for actions falling within its jurisdiction.

(d) The department may promulgate regulations to establish a derelict vessel prevention program to address vessels at risk of becoming derelict. Such program may, but is not required to, include:

(i) Removal, relocation, and destruction of vessels declared a public nuisance due to the lack of proper marine sanitation, derelict or at risk of becoming derelict, or lost or abandoned.

(ii) Creation of a vessel turn-in program allowing the owner of a vessel determined by the department to be at risk of becoming derelict, to turn the vessel and vessel title over to the department to be destroyed without penalty.

(iii) Providing for removal and destruction or other disposition of an abandoned vessel for which an owner cannot be identified or the owner of which is deceased and no heir is interested in acquiring the vessel.
(iv) Purchase of anchor line, anchors, and other equipment necessary for securing vessels at risk of becoming derelict.

(v) Creating or acquiring moorings designated for securing vessels at risk of becoming derelict.

(* * *) The State of Mississippi, the Commission on Marine Resources, the Department of Marine Resources, and their employees and representatives shall not be liable for any damages resulting from the removal, towing, storage, sale or disposal of any vessel * * * that is derelict or hazardous under this section.

(f) The department or any party with standing does not incur liability for any resulting damage to the vessel or any damage the vessel may cause to any property or person during the time frame between posting notice and vessel removal. If any damages occur during the period of time between notice and removal of the vessel, the registered vessel owner, according to MDWFP records, is presumed liable for all damages.

SECTION 2. This act shall take effect and be in force from and after July 1, 2022.