

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/SB 664

INTRODUCER: Commerce and Tourism Committee and Senators Young and Steube

SUBJECT: Salvage of Pleasure Vessels

DATE: January 24, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Little</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Price</u>	<u>Miller</u>	<u>TR</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 664 creates the “Florida Salvage of Pleasure Vessels Act” (act) to provide certain consumer protections for salvage work performed on pleasure vessels, similar to those contained in part IX, ch. 559, F.S., relating to the repair of motor vehicles.

The bill establishes the circumstances in which a salvor must provide a customer or potential customer with a written disclosure statement and salvage work estimate for services. If a salvor’s charges exceed the written estimate by more than 20 percent, the salvor is required to promptly notify the customer of the additional estimated charge and allow the customer to authorize, modify, or cancel the order for salvage.

The bill also requires vessels doing salvage work to post readable signs in a conspicuous manner that inform the customer that the salvors are professional salvors that charge for their services and that the customer has a right to a written estimate for the services offered.

The bill establishes the unlawful acts and practices that constitute a violation of the act and provides a legal remedy for customers injured by such violations. The bill directs the court to award a prevailing customer damages in the amount of three times that charged by the salvor, plus actual damages, court costs, and reasonable attorney fees. The bill also provides that a customer may bring an action for injunctive relief in the circuit court.

The bill takes effect on July 1, 2018.

II. Present Situation:

Salvage of Vessels

Admiralty law encourages seamen to render prompt aid to vessels and property in peril at sea by authorizing vessels of the United States and numbered motorboats owned by citizens to engage in any salvage operation within the territorial waters of the United States.¹

An award for salvage is “the compensation allowed to persons by whose voluntary assistance a ship at sea or her cargo or both have been saved in whole or in part from impending sea peril.”²

To assert a valid salvage claim, a salvor must establish three necessary elements:

- That a marine peril³ existed;
- That the salvage service was rendered voluntarily and was not required as an existing duty or from a special contract; and
- That the salvage service rendered contributed to success, in whole or in part, in saving the ship from the marine peril.⁴

Federal district courts have original jurisdiction of “any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.”^{5,6} The amount of an award for salvage can vary greatly.⁷ Traditionally, courts have considered the following factors in determining an award for salvage:

- The labor expended by the salvors in rendering the salvage service;
- The promptitude, skill, and energy displayed in rendering the salvage service;
- The value of the property employed by the salvors in rendering the service; and
- The danger to which such property was exposed;
- The risk incurred by the salvors in securing the property from the impending peril;
- The value of the property employed by the salvors in rendering the service and the danger to which such property was exposed;
- The risk incurred by the salvors in securing the property from the impending peril;
- The value of the property saved; and
- The degree of danger from which the property was rescued.⁸

¹ 19 C.F.R. s. 4.97(a) (1969).

² *The Sabine*, 101 U.S. 384, 384 (1879).

³ Marine peril does not necessarily require immediate or actual danger so long as at the time the assistance was rendered the ship was in a situation that might expose her to loss or destruction. *Fine v. Rockwood*, 895 F. Supp. 306, 309 (S.D. Fla 1995).

⁴ *Id.* See also *Klein v. Unidentified Wreck & Abandoned Sailing Vessel*, 785 F.2d 1511, 1515 (11th Cir. 1985).

⁵ 28 U.S.C. s. 1333.

⁶ The “saving to suitors clause” has been interpreted to allow state courts concurrent jurisdiction over common law claims arising in connection with admiralty claims. See *Sebastian Tow Boat & Salvage, Inc. v. Vernon Slavens & Allstate Floridian Insurance Co.*, 16 FLW Fed, D187 (M.D. Fla. 2002) (holding that the state court has concurrent jurisdiction, so long as the case proceeded *in personam* rather than *in rem*, and the cause of action arose from a contract entered into by both parties).

⁷ *Biscayne Towing & Salvage, Inc. v. Kilo Alfa Ltd.*, 2004 WL 3310573 (S.D. Fla 2004).

⁸ *The Blackwell*, 77 U.S. 1 (1869).

In an effort to establish uniformity in determining the amount of a salvage award, The 1989 International Convention on Salvage⁹ added additional factors to consider in determining the amount of a salvage award. The additional factors include consideration for the prevention or minimization of environmental damage.¹⁰

Written Motor Vehicle Repair Estimate and Disclosure Statement

Under current law, motor vehicle repair shops are required to provide a written repair estimate if the cost of the repair work will exceed \$100, unless the customer waives in writing his or her right to receive a written estimate. The estimate must include the estimated cost of repair work and the following information:

- The name, address, and telephone number of the motor vehicle repair shop;
- The name, address, and telephone number of the customer;
- The date and time of the written repair estimate;
- The year, make, model, odometer reading, and license tag number of the motor vehicle;
- The proposed work completion date;
- A general description of the customer’s problem or request for repair work or service;
- A statement as to whether the customer is being charged according to a flat rate or an hourly rate, or both;
- The estimated cost of repair, including any charge for shop supplies or for hazardous or other waste removal;
- The customer’s intended method of payment;
- The name and telephone number of another person who may authorize repair work;
- A statement indicating any guarantees offered in connection with the repair work;
- A statement allowing the customer to indicate whether replaced parts should be saved for inspection or return; and
- A statement indicating the daily charge for storing the customer’s motor vehicle after the repair work has been completed.¹¹

III. Effect of Proposed Changes:

Section 1 creates a new part of ch. 559, F.S., entitled “Salvage of Pleasure Vessels.”

Section 2 provides a short title for the “Florida Salvage of Pleasure Vessels Act” (act).

Section 3 applies the act to all salvors operating in Florida, with the exception of:

- Any person who performs salvage work while employed by a municipal, county, state, or federal government when carrying out the functions of that government;
- Any person who engages solely in salvage work for:

⁹ United Nations, *International Convention on Salvage*, available at <https://treaties.un.org/doc/Publication/UNTS/Volume%201953/v1953.pdf> (last visited Dec. 1, 2017).

¹⁰ *International Convention on Salvage, 1989*, <http://treaties.fco.gov.uk/docs/pdf/1996/TS0093.pdf> (last visited Dec. 1, 2017); International Maritime Organization, *International Convention on Salvage*, available at <http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-on-Salvage.aspx>, (last visited Dec. 1, 2017).

¹¹ Section 559.905, F.S.

- Pleasure vessels that are owned, maintained, and operated exclusively by such person and for the person's own use; or
- For-hire pleasure vessels that are rented for periods of 30 days or less;
- Any person who owns or operates a marina or shore-based repair facility and is in the business of repairing pleasure vessels, where the salvage work takes place exclusively at the person's facility;
- Any person who is in the business of repairing pleasure vessels who performs the repair work at a landside or shoreside location designated by the customer; or
- Any person who is in the business of recovering, storing, or selling pleasure vessels on behalf of insurance companies that insure the vessels.

Section 4 provides the definitions for the customer,¹² employee,¹³ pleasure vessel,¹⁴ salvage work,¹⁵ and salvor.¹⁶

Section 5 provides the circumstances in which a written disclosure statement and salvage work estimate must be provided to a customer. If the cost of salvage work might exceed \$500 and the customer is present on the vessel, the salvor is required to provide the customer with a written notice conspicuously disclosing in a separate, blocked section the following information in at least 12-point type:

- A statement asking the customer to read carefully and check one of the statements below and sign;
- A statement that the customer understands that, under state law, the customer is entitled to a written estimate if the final bill might exceed \$500;
- An option to check a box to indicate the customer requests a written estimate;
- An option to check a box to indicate the customer does not request a written estimate as long as the salvage charges do not exceed an unassigned amount of money, as designated by the customer. The salvor cannot exceed the amount designated by the customer without the written or oral approval of the customer;
- An option to check a box to indicate the customer does not request a written estimate; and
- An area for the customer to provide a signature and date.

The salvor is also required to prepare a written estimate for the cost of its services when a customer requests such estimate any time before or during the rendering of any salvage work by

¹² "Customer" means the person who requests or signs the written salvage estimate or is entitled to receive a written salvage estimate, or any other person whom the person who requests, signs, or is entitled to receive the written salvage estimate designates on the written salvage estimate as a person who may authorize salvage work.

¹³ "Employee" means an individual who is employed full-time or part-time by a salvor and performs salvage work.

¹⁴ "Pleasure vessel" means any watercraft no more than 60 feet in length which is used solely for personal pleasure, family use, or the transportation of executives, persons under the employment of, and other guests of the owner.

¹⁵ "Salvage work" means any assistance, services, repairs, or other efforts rendered by a salvor relating to saving, preserving, or rescuing a pleasure vessel or its passengers and crew which are in marine peril. Salvage work does not include towing a vessel.

¹⁶ "Salvor" means a person in the business of voluntarily providing assistance, services, repairs, or other efforts related to saving, preserving, or rescuing a pleasure vessel or the vessel's passengers and crew which are in marine peril in exchange for compensation.

a salvor. This written salvage estimate must state the estimated cost of salvage work, including the cost of any inspections or diagnostic work, and must also include the following items:

- The name, address, and telephone number of the salvor's business;
- The name, address, and telephone number of the customer;
- The date and time of the written salvage estimate;
- A general description of the pleasure vessel;
- A general description of the customer's problem or request for repair work or service relating to the pleasure vessel;
- A statement as to the basis on which the customer is being charged, such as a flat rate, an hourly rate, or both;
- The estimated cost of the salvage work, unless the salvor does not possess sufficient information concerning the marine peril to formulate an estimate, in which case the salvor must provide the customer an estimate for the effort required to determine the source, cause, or nature of the marine peril. Once the salvor has sufficient information regarding the marine peril, the salvor must provide an estimate for the salvage work;
- A statement indicating the daily charge for storing the customer's pleasure vessel if it is to be towed or otherwise transported to a different location from where the salvor performs the work;
- The cancellation fee determined by the salvor in the event the customer cancels the order for services in accordance with s. 559.9605(1), F.S.; and
- A copy of any required disclosure statement, which may be provided on the same form as the written estimate.

The bill specifies that a salvor is not required to give a written estimated price if the salvor does not agree to provide any assistance, service, repairs, or other effort to a potential customer.

The bill also provides that a customer may cancel the salvage work at any time.

Section 6 requires a salvor to promptly, verbally notify a customer of an additional charge if the salvor determines the actual charges for the assistance, service, or repair work will exceed the written estimate by more than 20 percent. After notification, the bill authorizes a customer to authorize, modify, or cancel the order for salvage. The salvor can only continue to work on the pleasure vessel upon authorization from the customer and the work must continue only within the scope authorized by the customer.

If a customer cancels the order for salvage after being advised that the salvage work cannot be accomplished within the previously authorized estimate, the salvor is required to expeditiously place the pleasure vessel back into a condition reasonably similar to the condition in which it was received, unless the customer waives that effort or doing so would be unsafe.

The bill provides that the salvor may charge for salvage work provided up to the point of cancellation, but the charge may not exceed the previously agreed upon cancellation fee. The salvor is only authorized to charge for any work undertaken on the agreed-upon basis.

Section 7 requires vessels used by salvors in connection with performing salvage work to have signs posted in a manner conspicuous to customers and potential customers, readable from the

pleasure vessel of the customer or potential customer. The signs must inform customers and potential customers that:

- The salvors are professional salvors that charge for their services; and
- Customers and potential customers have a right to a written estimate for the services offered.

Section 8 establishes that it is unlawful for a salvor or its employees to:

- Provide or charge for services that have not been expressly or implicitly authorized by the customer when the customer is present on the pleasure vessel;
- Misrepresent that a pleasure vessel being inspected is in a dangerous condition or that the customer's continued use of the pleasure vessel may be hazardous to the customer or cause great damage to, or loss of, the vessel;
- Fraudulently alter any customer contract, estimate, invoice, or other document;
- Fraudulently misuse any customer's credit card;
- Make or authorize in any manner any written or oral statement which is known, or should be known by the exercise of reasonable care, to be untrue, deceptive, or misleading;
- Make false statements of a character likely to influence, persuade, or induce a customer to authorize salvage work for a pleasure vessel;
- Require any customer to waive these rights as a precondition to performing salvage work;
- Charge a customer more than 20 percent over the written estimate provided to the customer without obtaining proper authorization; or
- Perform any other act that violates the act or that constitutes fraud or misrepresentation.

Section 9 authorizes a customer injured by a violation of the act to bring an action for relief in the appropriate court. The bill provides that a customer that prevails in such action should be entitled to:

- Damages in the amount of three times that charged by the salvor;
- Actual damages;
- Court costs; and
- Reasonable attorney fees.

The bill provides that the customer may also bring an action for injunctive relief in the circuit court and that the remedies provided in the act are in addition to any other remedy provided by law.

Section 10 provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The U.S. Constitution grants federal district courts judicial power over of any civil case of admiralty or maritime jurisdiction.¹⁷ While it is established that federal courts have exclusive jurisdiction over *in rem* actions,¹⁸ courts are split as to whether states can handle admiralty or maritime *in personam* claims for *quantum meruit*.¹⁹ Generally, state courts may apply state law to maritime actions so long as there is no conflict with federal law.²⁰

The bill provides a legal remedy for injured customers and directs the court to award damages to a prevailing customer, including reasonable attorney fees. Federal maritime law does not award attorney fees to a prevailing party.²¹ It is unclear whether a federal court or state court would have jurisdiction over a dispute arising from the written estimate for services required by the bill. If the dispute is considered an *in personam* claim concerning a contractual agreement, it may fall within the jurisdiction of a state court. However, if a dispute arising from the written estimate is considered to fall within federal maritime jurisdiction, the language in the bill directing the court to award attorney fees to the prevailing party may be preempted.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Individuals in need of salvage work for a pleasure vessel may see a reduction in the cost of salvage work if they are afforded an opportunity to receive written estimates from multiple salvors.

Salvors may incur costs associated with:

- Preparing written estimates.

¹⁷ U.S. Const. Art. III, ss. 1 and 2.

¹⁸ *Madruga v. Superior Court of State of California ex. Rel San Diego County*, 346 U.S. 556 (1954).

¹⁹ See *Metropolitan Dade County v. One (1) Bronze Cannon*, 537 F.Supp. 923 (S.D. Fla. 1982) (explaining the “saving to suitors” clause affords litigants a choice of remedies but not forums) and *Lewis v. JPI Corp.*, Case No. 07-20103-CIV-TORRES (S.D. Fla. 2009) (“The salvage award, which is unique to maritime and admiralty law, is not one of *quantum meruit* as compensation for work performed”). Compare *Sebastian Tow Boat & Salvage*, *supra* note 6 and *Phillips v. Sea Tow/ Sea Spill of Savannah*, 578 S.E.2d 846 (Ga. 2002).

²⁰ *Madruga*, 346 U.S. 556 (1954).

²¹ *Garan Inc. v. MV Aivik*, 907 F.Supp. 397 (S.D. Fla. 1995) (holding that absent specific federal statutory authorization, federal maritime law does not entitle a prevailing party an award of attorney fees).

- Placing vessels back into a condition reasonably similar to that in which they are received, if a salvage order is canceled and the customer does not waive the effort and it is safe to do so (to the extent these costs are not covered as authorized or by cancellation fees.
- Posting the required signs on vessels performing salvage work.
- Participating in potential litigation that may result in the payment of the specified damages, costs, and attorney fees.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 559.9601, 559.9608, 559.9602, 559.9603, 559.9604, 559.9605, 559.9606, 559.9607.

IX. Additional Information:

- A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce and Tourism Committee on December 4, 2017:

The bill is amended to:

- Clarify that the bill does not apply to any person who is in the business of recovering, storing, or selling pleasure vessels on behalf of insurance companies that insure the vessels;
- Make a technical change to correct the sequential order of the parts and statutes within ch. 559, F.S.; and
- Make a technical change to ensure the term “employee” is used consistently throughout the bill.

B. Amendments:

None.