

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 Rules

BILL: CS/CS/CS/SB 664

INTRODUCER: Rules Committee; Transportation Committee; Commerce and Tourism Committee; and Senators Young and others

SUBJECT: Salvage of Pleasure Vessels

DATE: February 22, 2018

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>Fav/CS</u>
3.	<u>Little</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 664 requires all salvors operating in the waters of Florida to provide customers with a written notification before salvaging a pleasure vessel.

The salvage of a vessel occurs when assistance is voluntarily rendered to a vessel under circumstances of marine peril, and such assistance is successful in saving, preserving, or rescuing the vessel. The individual who rendered the assistance that saved, preserved, or rescued the vessel, is considered the salvor. Generally, a salvor is entitled to an award of compensation after the salvage of a vessel.

The bill requires all salvors operating in the waters of Florida to notify a customer in writing when the salvor offers a service to the customer that is considered salvage work and the cost of the work will not be covered by a towing contract. The written notice must provide a specified description of salvage operations and inform the customer of his or her right to agree to a fixed price or to decline service. The customer must sign the notice before the salvor begins salvage work, unless there is an imminent threat of injury or death to any person on board the vessel.

If a salvor fails to provide the customer with the notice required by the bill, the owner of the pleasure vessel is authorized to bring a civil action in a court of competent jurisdiction. The bill provides that a prevailing owner is entitled to damages in an amount equal to 1.5 times the amount paid or awarded to the salvor, plus court costs and reasonable attorney fees.

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

Generally, state courts may apply state law to maritime actions so long as there is no conflict with federal law.¹¹

III. Effect of Proposed Changes:

The bill creates s. 559.9602, F.S., relating to the salvage of pleasure vessels. The bill applies the new section to all salvors operating in the waters of Florida,¹² 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:
 - 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.

The bill also provides definitions for the terms "customer,"¹³ "pleasure vessel,"¹⁴ "salvage work,"¹⁵ and "salvor."¹⁶

⁹ United Nations, *International Convention on Salvage*, available at <https://treaties.un.org/doc/Publication/UNTS/Volume%201953/v1953.pdf> (last visited Feb. 22, 2018).

¹⁰ *International Convention on Salvage, 1989*, <http://treaties.fco.gov.uk/docs/pdf/1996/TS0093.pdf> (last visited Feb. 22, 2018); 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 Feb. 22, 2018).

¹¹ *Madruga v. Superior Court of State of California ex. Rel San Diego County*, 346 U.S. 556 (1954). See the discussion under the "Other Constitutional Issues" heading below for further details.

¹² Section 327.02(47), F.S., defines the waters of Florida as "any navigable waters of the United States within the territorial limits of this state, the marginal sea adjacent to this state and the high seas when navigated as a part of a journey or ride to or from the shore of this state, and all the inland lakes, rivers, and canals under the jurisdiction of this state."

¹³ "Customer" means the owner of the pleasure vessel or the person who has been given the authority by the owner to authorize salvage work of the pleasure vessel.

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, and 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.

The bill requires a salvor, before engaging in the salvage of a pleasure vessel, to provide a customer with written notice that the service offered is considered salvage work and the service is not covered by a towing contract. The written notice must include a statement in capital letters of at least 12-point type that notifies the customer that:

- The service offered is salvage work not covered by any towing contract.
- Salvage work allows the salvor to bill the customer or the customer's insurance company at a later date.
- The salvor is required to calculate the charges according to federal salvage law.
- The total salvage charges could amount to as much as the entire value of the vessel and its contents, including its gear and equipment.
- If the customer agrees to allow the salvor to perform the offered work without an agreement for a fixed charge, the customer's only recourse to challenge any salvage charges is by a lawsuit in federal court or, if the customer and salvor both agree in writing, by binding arbitration.
- The customer and salvor may agree in writing to a fixed charge on the U.S. Open Form Salvage Agreement¹⁷ or other similar salvage contract.
- The customer has the right to reject the salvor's offer of service if the salvor will not agree to a charge before beginning work.

The salvor must also obtain the signature of the customer on the written notice before engaging in the salvage of a pleasure vessel. However, the bill relieves a salvor of the obligation to provide the notice and obtain a signature when there is an imminent threat of injury or death to any person on board the vessel.

The bill provides that an owner who does not receive the required notice may bring an action for relief in a court of competent jurisdiction. An owner who prevails in such action is entitled to damages in the amount of 1.5 times that paid or awarded to the salvor, plus court costs and reasonable attorney fees.

The bill 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.

¹⁷ See The Society of Maritime Arbitrators, *The U.S. Open Form Salvage Agreement*, available at <http://www.smany.org/salvage-rules-agreement-form.html> (last visited Feb. 22, 2018).

D. Other Constitutional Issues:

The U.S. Constitution grants federal district courts judicial power over of any civil case of admiralty or maritime jurisdiction.¹⁸ While it is established that federal courts have exclusive jurisdiction over *in rem* actions,¹⁹ courts are split as to whether states can handle admiralty or maritime *in personam* claims for *quantum meruit*.²⁰ As noted, state courts generally may apply state law to maritime actions so long as there is no conflict with federal law.²¹

The bill provides a legal remedy for owners of pleasure vessels and entitles a prevailing owner an award of damages equal to 1.5 times the amount paid or awarded to the salvor, plus court costs and reasonable attorney fees. Federal maritime law does not award attorney fees to a prevailing party.²² It is unclear whether a federal court or state court would have jurisdiction over a dispute arising from the lack of notification 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 lack of notification falls within maritime jurisdiction, the language in the bill directing the court to award attorney fees to the prevailing party may be preempted by federal law.

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 arrive at agreed-upon charges before any salvage work is performed.

Salvors operating in the waters of Florida may incur costs associated with:

- Providing the required written notices.
- Litigating cases brought under the legal remedy created by the bill, including payment of the specified damages, costs, and attorney fees.

¹⁸ U.S. Const. Art. III, ss. 1 and 2.

¹⁹ *Supra* note 11.

²⁰ 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).

²¹ *Madruga*, 346 U.S. 556 (1954).

²² *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).

C. **Government Sector Impact:**

Indeterminate. The fiscal impact to the Florida Court System will depend on the volume and complexity of civil lawsuits filed by owners of pleasure vessels.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill creates section 559.9602 of the Florida Statutes.

IX. **Additional Information:**

A. **Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS/CS by Rules on February 22, 2018:

The bill is amended to:

- Require a salvor to provide a customer with written notice, rather than written or oral notice, that the service offered is not covered by any towing contract before beginning a salvage operation of a pleasure vessel;
- Modify the requirements of the written notice to include the signature of the customer and to provide the customer with notice of his or her opportunity to agree to a fixed charge for the salvage;
- Remove injunctive relief and actual damages from the legal remedies that may be sought by the owner of a pleasure vessel after a salvor fails to provide the required notice; and
- Modify the definition of “customer,” remove the definition for the term “employee,” and clarify that the term “waters of the state” has the same meaning as defined in s. 327.02(47), F.S.

CS/CS by Transportation on January 25, 2018:

The committee adopted a delete-all amendment that generally replaces the text of the bill as follows:

- Requires a salvor to provide a customer with verbal and written notice that the salvor’s offered service is not covered by any towing contract before a salvor may engage in the salvage operation of a pleasure vessel.
- Requires the written notice to include a specified statement, including, among other items, that a customer’s only recourse to challenge assessed salvage charges is by a lawsuit in federal court or, if agreed to, binding arbitration.
- Relieves a salvor of providing the verbal and written notice if there is an imminent threat of injury or death to any person on board the vessel.

- Provides that a customer injured by a violation of the new section of law may bring an action in the appropriate court.
- Deems a prevailing customer in such an action entitled to damages in an amount that is 1.5 times that charged by the salvor, plus actual damages, court costs, and reasonable attorney fees.
- Provides that a customer may also bring an action for injunctive relief in the circuit court.

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.