

HISTORICAL AND REVISION NOTES

| <i>Revised Section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i> |
|------------------------|---------------------------|--|
| 31109 | 46 App.:787. | Mar. 3, 1925, ch. 428, § 7, 43 Stat. 1113. |

Reference to an arbitration award is added for consistency with sections 30912 and 31108 of the revised title.

§ 31110. Subpoenas to officers or members of crew

An officer or member of the crew of a public vessel may not be subpoenaed in a civil action under this chapter without the consent of—

- (1) the Secretary of the department or the head of the independent establishment having control of the vessel at the time the cause of action arose; or
- (2) the master or commanding officer of the vessel at the time the subpoena is issued.

(Pub. L. 109-304, §6(c), Oct. 6, 2006, 120 Stat. 1522.)

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| <i>Revised Section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i> |
|------------------------|---------------------------|--|
| 31110 | 46 App.:784. | Mar. 3, 1925, ch. 428, § 4, 43 Stat. 1112. |

§ 31111. Claims by nationals of foreign countries

A national of a foreign country may not maintain a civil action under this chapter unless it appears to the satisfaction of the court in which the action is brought that the government of that country, in similar circumstances, allows nationals of the United States to sue in its courts.

(Pub. L. 109-304, §6(c), Oct. 6, 2006, 120 Stat. 1522.)

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| <i>Revised Section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i> |
|------------------------|---------------------------|--|
| 31111 | 46 App.:785. | Mar. 3, 1925, ch. 428, § 5, 43 Stat. 1113. |

§ 31112. Lien not recognized or created

This chapter shall not be construed as recognizing the existence of or as creating a lien against a public vessel of the United States.

(Pub. L. 109-304, §6(c), Oct. 6, 2006, 120 Stat. 1522.)

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| <i>Revised Section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i> |
|------------------------|---------------------------|--|
| 31112 | 46 App.:788. | Mar. 3, 1925, ch. 428, § 8, 43 Stat. 1113. |

§ 31113. Reports

The Attorney General shall report to Congress at each session thereof all claims settled under this chapter.

(Pub. L. 109-304, §6(c), Oct. 6, 2006, 120 Stat. 1523.)

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| <i>Revised Section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i> |
|------------------------|---------------------------|---|
| 31113 | 46 App.:790. | Mar. 3, 1925, ch. 428, §10, 43 Stat. 1113; Aug. 30, 1954, ch. 1076, §1(26), 68 Stat. 968. |

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.
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- 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.
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- 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. Repealed.]
- 31329. Court sales of documented vessels.
- 31330. Penalties.

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- 31341. Persons presumed to have authority to procure necessaries.
- 31342. Establishing maritime liens.
- 31343. Recording and discharging notices of claim of maritime lien.

HISTORICAL AND REVISION NOTES

Section 101 [102] of H.R. 3105 [became Pub. L. 100-710] revises, consolidates, and enacts certain general and permanent laws of the United States related to commercial instruments and liens and public vessels and goods. It amends subtitle III of title 46, United States Code by striking at the end “Chapters 313, 315—Reserved” and substituting “Chapter 313—Commercial Instruments and Maritime Liens”. Chapter 313 is essentially a codification of the Ship Mortgage Act, 1920 (46 App. U.S.C. 911-984). H.R. 3105 is the second step in the process of enacting laws compiled in title 46 of the Code into positive law. The first step in the codification process began in 1983 when certain general and permanent laws related to vessels and seamen were enacted as subtitle II of the title 46, United States Code.

HOUSE FLOOR STATEMENT

Section 102 of this bill adds a new subtitle III to title 46, which contains a codification of the Ship Mortgage Act, 1920 and other related provisions. A previous version of this codification and the remaining sections of the bill were recently reported by the Merchant Marine and Fisheries Committee in H.R. 3105 (H. Rept. 100-918). The significant additions or changes by this provision to the version of H.R. 3105 reported by the Merchant Marine and Fisheries Committee are explained as follows: [see sections 31305, 31321, 31322, 31325, 31329, 31330, 31343 of this title].

AMENDMENTS

2002—Pub. L. 107-295, title II, §205(a)(2), Nov. 25, 2002, 116 Stat. 2096, substituted “notices of claim of mari-

time lien” for “liens on preferred mortgage vessels” in item 31343.

1996—Pub. L. 104-324, title XI, §1113(b)(3), Oct. 19, 1996, 110 Stat. 3970, struck out item 31328 “Limitations on parties serving as trustees of mortgaged vessel interests”.

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);

(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;

(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; and

(7) “Secretary” means the Secretary of the Department of Homeland Security, unless otherwise noted.

(Pub. L. 100-710, title I, §102(c), Nov. 23, 1988, 102 Stat. 4739; Pub. L. 111-281, title IX, §913(a)(2)-(4), Oct. 15, 2010, 124 Stat. 3017.)

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| Revised section | Source section (U.S. Code) |
|-----------------|-------------------------------|
| 31301(1), (2) | New |
| 31301(3) | 46:911(5) |
| 31301(4) | Derived from 46:971-974 |
| 31301(5) | 46:953(a) |
| 31301(6)(A) | 46:922(b) |
| 31301(6)(B) | 46:951 (2d par. less proviso) |

Section 31301(1) defines the term “acknowledge”. This paragraph makes a substantive change to law to expand the current law by allowing a notarization under State law, a form prescribed by the Secretary, as well as a certificate issued under the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, 1961.

Section 31301(2) defines “district court”. This paragraph makes a substantive change to law by including the District Court of Guam, the District Court of the Virgin Islands, the District Court of the Northern Mariana Islands, the High Court of American Samoa, and other Federal territorial courts as they are established. Under current law, only the district courts of the United States have jurisdiction under the Ship Mortgage Act, 1920.

Section 31301(3) defines “mortgagee” as a person to whom property is mortgaged and the trustee authorized under section 31328 that is designated in the trust agreement.

Section 31301(4) defines “necessaries” to include repairs, supplies, towage, and the use of a drydock and marine railway for a vessel. As in all codifications, the term “includes” means “includes but is not limited to” and, therefore, is not intended to be an exclusive listing of those items that a court has determined or may determine as falling within the meaning of the term “other necessities” as contained in current law. The definition is new, is based on 46 App. U.S.C. 971-974, and makes no substantive change to law.

Section 31301(5) defines “preferred maritime lien” to mean a lien on a vessel that arises before a preferred mortgage was filed under section 31321 of this title for damages arising out of maritime tort, stevedore wages, crew wages, general average, and salvage. The definition is new and is based on 46 App. U.S.C. 953(a). The only substantive change to law made by this paragraph is to change the effective date from the day the preferred mortgage is recorded and endorsed to when it is filed. This change is in keeping with other changes with regard to filing. The term “duly and validly” that is in existing law is not used because it is unnecessary. An instrument that is not “duly and validly” executed is not executed under the laws of the foreign country. This makes no substantive change to law.

Section 31301(6)(A) defines “preferred mortgage” to mean a mortgage that meets the requirements of section 31322. This clause makes no substantive change to law.

Section 31301(6)(B) defines “preferred mortgage” to also mean a mortgage on a documented foreign vessel that is preferred under sections 31325 and 31326 for purposes of enforcement of the outstanding mortgage indebtedness. Preference is only granted if the mortgage is executed under the laws of a foreign country, registered under those laws in a public register at the port of registry or at a central office. The use of the word “established” in place of “created” in the current law or “effective” as used in the treaties is not intended to make any substantive change to law. The only substantive changes to law made by this clause are the elimination of the exemption of foreign vessels of less than 200 gross tons, and clarification of the rule of interpretation that if a vessel is registered in one country, but is permitted to fly temporarily the flag of another country (such as through a demise charter), it is the law of the country in which the ownership of the