

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City



THIRTEENTH CONGRESS
Third Regular Session

House Bill No. 6099

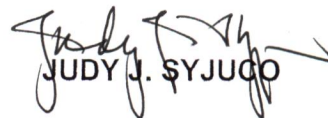
Introduced by **Hon. Judy J. Syjuco**

Affordable financing is a major concern of this sector, thus, its growth has been stunted. The Mortgage Law has not helped ship owners to gain access to more affordable financing because foreign banks, generally, do not accept a mortgage over a vessel constituted under Philippine law. There, apparently, is a problem in the concurrence and preference of credits as provided in the law.

As an alternative, Filipino vessel operators serving the overseas trade have resorted to chartering vessels and they have been the primary beneficiaries of the Bareboat Charter Law. They have used it as a vehicle to gain access to vessels that are manned by Filipino seafarers and which serve cross trades.

There are presently no laws governing this sector of the industry as this has always been viewed as part of ship owning and ship operation.

In view hereof, immediate passage of this measure is earnestly sought.


JUDY J. SYJUCO

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

THIRTEENTH CONGRESS
Third Regular Session

House Bill No. 6099

Introduced by **Hon. Judy J. Syjuco**

AN ACT
TO BE KNOWN AS "THE MARITIME LIENS AND SHIP MORTGAGE ACT
OF 1999"
2002

Be it enacted by the Senate and House of Representatives of the Philippines in Congress Assembled:

SECTION 1. *Title.* - This Act shall be known as "The Maritime Liens and Ship Mortgage Act of 2002".

CHAPTER I - Maritime Liens

SECTION 2. *Definition of Terms.* - The terms used in this Act shall have the following meaning:

- a) Vessel, ship or watercraft - means:
 - i) a barge, lighter, bulk carrier, passenger ship, freighter, tanker, container ship, fishing boats, or other artificial contrivance utilizing any source of motive power designed, used or capable of being used as means of transportation by water including its apparel and appurtenances, this definition shall not include warship, naval auxiliaries or other ships owned or operated by a state and engaged only on governmental non-commercial service;
 - ii) a structure, whether completed or in the course of completion for use as a vessel, ship or watercraft; or

iii) an aircraft or hovercraft when waterborne and capable of being utilized as means of transportation by water.

b) Maritime Lien - is a claim constituted by virtue of this Act which unconditionally attaches as a privileged claim upon maritime property whether disclosed or not, wherever it maybe found, enforceable by an action in rem.

c) Preferred Mortgage - is a mortgage validly executed in accordance with the provisions of this Act on the ship permanently registered, enrolled or licensed under the laws of the Philippines.

d) Foreign Mortgage - is a mortgage which relates to a ship when it is registered in a country other than the Philippines and shall include any hypothec which relates to such a ship, validly executed in accordance with the documentation laws of that foreign country and duly registered in a public register in the port of registry.

e) Maritime Property - means a ship in being, its cargo, freight and subfreights.

f) Necessaries - means things incorporated or furnished into the ship because they are required for her ordinary needs after she is built and equipped and starts upon her voyage which includes repairs, needs, services and materials required for the maintenance of operation thereof except those which go into her original construction and which are necessary to her completion.

g) Philippine-registered ship - means a ship registered or enrolled or licensed under the laws of the Philippines, whether permanently or temporarily.

h) Owner - means the registered owner, demise charterer, manager or operator of the ship against whom claims had been filed in respect of loss of life or personal injury occurring on land or on water in direct connection with the operation

of the ship or claims based on tort and not capable of being used on contract has been filed in respect of loss or damage to property occurring, whether on land or on water, in direct connection with the operation of the ship which, in both circumstances, constitute a maritime lien under this Act.

SECTION 3. *Claims Secured by Maritime Liens* -

(1) The following claims in relation to a ship shall be secured by maritime lien on the ship:

- a) claims for salvage, wreck removal and contribution in general average;
- b) wages and other sums due to the master, officers and other members of the ship's crew with respect to their employment on board the ship;
- c) claims against the owner with respect to loss of life or personal injury occurring on land and on water, in direct connection with the operation of the ship;
- d) claims based on tort arising out of physical loss or damage caused by the operation of the ship other than loss of or damage to cargo, containers and passengers' effects carried on the ship;
- e) port, canal and other waterway dues, tonnage dues, light dues, pilotage dues and other public taxes dues and charges of the same character;
- f) cost incurred by the government, national or local, in preventing, mitigating or eliminating pollution by oil, or otherwise, within the territorial waters and exclusive economic zone of the Philippines.

(2) A ship can still be charged with a maritime lien although she has become derelict or has been reduced to a wreck.

(3) No maritime lien shall attach to a ship to secure claims as set out in subparagraphs (c) and (d) of paragraph 1 which arise out of or result from:

a) Damage in connection with the carriage of oil or other hazardous or noxious substances by sea for which compensation is payable to the claimants pursuant to international conventions or national law providing for strict liability and compulsory insurance or other means of securing the claims; or

b) The radioactive properties or a combination of radioactive properties with toxic, explosive or other hazardous properties of nuclear fuel or of radioactive products or waste.

SECTION 4. *Priority Between Maritime Liens.* -

(1) The maritime liens set out in paragraph 1 Section 3 hereof shall rank in the order listed therein and shall take priority over registered mortgages, "hypothèques" and charges. No other claim shall take priority over such maritime liens or over such mortgages, "hypothèques" or charges.

(2) Maritime liens which secure claims for salvage, wreck removal and contributions in general average shall take priority over all maritime liens which have attached to the ship whether prior or subsequent to the time when the operations giving rise to the said liens were performed.

(3) The maritime liens which secure claims for salvage, wreck removal and contributions in general average shall rank in the inverse order of the time when the claims secured thereby accrued. Claims for contributions in general average shall be deemed to have accrued on the date on which the general average act was performed; claims for salvage or wreck removal shall be deemed to have accrued on the date on which the salvage or wreck removal operation were terminated.

SECTION 5. *Nature of Maritime Liens.* -

(1) Maritime liens shall arise whether the claims secured by such liens are against the owner or against the demise charterer, manager or operator of the ship.

(2) Maritime liens, whether original, assigned or subrogated, shall follow the ship notwithstanding any change of ownership or of registration.

SECTION 6. *Assignment and Subrogation.* -

(1) The assignment of or subrogation to a claim secured by a maritime lien shall entail the simultaneous assignment of or subrogation to such maritime lien;

(2) Claimants holding maritime liens may not be subrogated to the compensation payable to the owner of the ship under an insurance contract.

SECTION 7. *Extinction of Maritime Liens.* -

(1) Maritime liens shall be extinguished after a period of one year from the time when the claims secured thereby arose unless, prior to the expiry of such period, the ship has been arrested, such arrest leading to a forced sale or the provision of a satisfactory security for the release of such ship from arrest.

(2) The one-year period referred to in paragraph 1 shall commence:

a) With respect to the maritime lien set out in Section 3, paragraph 1 (b), upon the claimant's discharge from the ship;

b) With respect to the maritime liens set out in Section 3, paragraph 1 (a), (c), (d), (e) and (f) when the claims secured thereby arise;

and shall not be subject to suspension or interruption: Provided, however, That time shall not run during the period that the arrest or seizure of the ship is not permitted by law.

SECTION 8. *Enforcement of a Maritime Lien.* -

(1) A person having a maritime lien under Sec. 3 hereof may enforce that maritime lien by bringing a proceeding in rem against the ship to which the maritime lien attaches before the court having jurisdiction over the latter, within one year from the time when the claims secured thereby arose. The person bringing such

proceedings shall be entitled to apply to the court *ex parte* for an order for the arrest of the ship subject to the maritime lien.

(2) The court, once the ship subject of the maritime lien has been arrested pursuant to the court's order, shall make an order for the forced sale of the ship: *Provided*, That, the provision of this Act on the enforcement of ship mortgage shall be followed.

(3) The provisions of this Act on the enforcement of mortgage shall likewise apply in cases involving enforcement of maritime liens in relation to the arrest of a ship subject to that lien: *Provided*, That, when reference is made to the maritime lien which is being enforced, the debtor or mortgagor and the creditor or mortgagee shall be, the owner of the ship and the lien holder, respectively.

CHAPTER 2 - Ship Mortgages

SECTION 9. *Application.* - The provisions of this Chapter shall apply to every mortgage wherever executed which shall, moreover, be subject to Philippine laws notwithstanding any agreement to the contrary in respect of:

- a) a ship which is registered in the Philippines; or
- b) a ship which is under construction in the Philippines.

SECTION 10. *Subject of the Mortgage.* - Subject to the terms of the mortgage contract:

- a) a mortgage in respect of a ship shall include all the property of the mortgagor which is appropriated to the ship and on board at the time when the mortgage contract is entered into, or which is later substituted for such property; and
- b) a mortgage in respect of a ship under construction shall include all materials, machinery and equipment in the possession of the mortgagor which are

within the premises of the builder's yard and distinctly identified as intended to be incorporated in the ship under construction.

SECTION 11. *Formal Validity* - A mortgage shall not be valid, except as between the parties, unless it is:

- a) made by or with the consent of the owner of the ship under construction; and
- b) made in writing and signed by the mortgagor and mortgagee;
- c) registered in accordance with Section 12 of this Act.

SECTION 12. *Registration of Mortgages* - Every mortgage of a ship which is registered in the Philippines or which is under construction in the Philippines shall be duly registered in the Record of Transfers and Encumbrances of Ships in order to be valid and enforceable. The application for the registration of mortgage hereunder shall be accompanied by the following:

- 1. An authenticated copy of the mortgage contract or other similar instrument.
- 2. Such forms as the Maritime Industry Authority, hereinafter referred to as the Administration, shall prescribe, signed by the mortgagor and setting out the following:
 - a) the name or description of the ship being mortgaged;
 - b) the name, nationality and place of residence of the owner of the ship;
 - c) the name of each mortgagor and each mortgagee;
 - d) the interest of the mortgagor in the ship being mortgaged;
 - e) the date of the mortgage contract;

f) the extent of the mortgage as specified in the mortgage contract; and

g) the maturity date of the mortgage and the conditions specified in the mortgage contract relating to the termination of the mortgage debt.

3. An authenticated copy of the certificate of registration of the ship; and

4. In the case of a ship under construction, a declaration stating:

a) the name and location of the construction yard;

b) the intended port of registration;

c) the yard number;

d) the dimensions and approximate deadweight of the ship on completion.

If the mortgage is transferred or materially amended as to any of the particulars in paragraphs (2) and (4) hereof, or if one mortgage is substituted for another, the transfer, amendment or substitution shall be registered in the Record of Transfers and Encumbrances of Ships in the same manner as above provided. Any transfer, amendment or substitution which is not registered as aforesaid shall be invalid and unenforceable.

SECTION 13. *Annotation of Mortgages.* - The Administration shall, at the request of the mortgagee or his authorized agent, cause the annotation upon the Certificate of Philippine Registry of the Ship subject to the mortgage the matters set out in paragraph (2) of Sec. 12.

If the ship, in respect of which a mortgage has been made, holds only a Provisional Certificate of Philippine Registry and is abroad at the time of the registration of the mortgage, the annotation shall be made by such consular officer of the Republic of the Philippines as the Administration shall direct.

If a new certificate or a full certificate is issued to a ship by the Administration any annotation upon the old or provisional certificate of a mortgage, which remains undischarged at the time of the issuance of the new or full certificate shall be transferred to and annotated upon such new or full certificate.

SECTION 14. *Publication of Mortgage.* - The Administration shall, upon the registration of a mortgage, issue two (2) official copies of the relevant entry in the Record of Transfers and Encumbrances of Ships relating to the mortgage which has been registered, to the mortgagor named in the application. Each official copy of the entry shall bear the official date of the registration of the mortgage.

The mortgagor shall take all reasonable steps to exhibit in a prominent place on board the ship subject of the mortgage:

- 1) at least one of the official copies issued under the first paragraph above; and
- 2) an authenticated copy of the ship's Certificate of Philippine Registry duly containing the annotation of the mortgage.

Failure to exhibit the copies as specified above shall not affect the validity or enforceability of the mortgage.

SECTION 15. *Prior and Subsequent Maritime Liens on Mortgaged Ships.* - The mortgagor upon the request by the mortgagee before the execution of the mortgage to which they are parties, shall give details in writing to the mortgagee of:

- 1) any prior mortgage on the vessel which is to be the subject of the mortgage; and
- 2) any maritime lien to which the said vessel is subject, which are known to the mortgagor; or
- 3) Other obligation or liability upon the ship.

The mortgagor, without the consent of the mortgagee, shall not incur, after the execution of such mortgage and before the mortgagee has had a reasonable time in which to record the mortgage and have indorsements in respect thereto made upon the documents of the ships, any contractual obligation creating a lien upon the ship other than a lien for wages of stevedores when employed directly by the owner, operator, master, ships' husband, an agent of the ship, for wages of the crew of the ship, for general averages, or for salvage, including contract salvage, in respect to the ship, tonnage dues and all other charges (not to exceed P20,000.00) of the Philippine government in respect to the ship.

A mortgagor who with intent to defraud, violates the above provisions and if the mortgagor is a corporation or association, the president or the principal executive officer of the corporation or association shall be punished by a fine of not more than P5,000.00 or imprisonment of not more than two years, or both. The mortgage indebtedness shall thereupon become due and payable at the election of the mortgagee.

SECTION 16. *De-registration of a Ship Subject to a Mortgage -*

1. Except as otherwise provided in this Act, a Philippine registered-ship shall not be deregistered:

- a) unless all registered mortgages, hypothec or charges are previously deleted; or
- b) the written consent of all holder of such mortgages, hypothec or liens is obtained.

2. Where the deregistration of a ship from the Philippine Register of Ships is obligating in accordance with existing laws and rules and regulations,

otherwise than as a result of voluntary sale, the holders of registered mortgages, hypothèques or liens shall be certified of the pending deregistration

3. No deregistration pursuant to paragraph 2 above shall be effected earlier than three months after the notice to holders had been made. (International Convention)

CHAPTER 3 – Right to Enforce the Mortgage

SECTION 17. *Foreclosure, jurisdiction and procedure –*

1. A mortgagee shall be entitled to foreclose on the security represented by the ship under a mortgage if:

a) The mortgage default in the discharge of the indebtedness or other obligation secured by the mortgage;

b) The mortgage or any person in possession of the mortgaged property substantially prejudiced the security of the mortgagee by any act or omission; or

c) The mortgagor commits any breach of the mortgage contract which, by the terms of the contract entitles the mortgagee to foreclose on the security.

2. The foreclosure on the security under the mortgage contract in the circumstances referred to in paragraph 1 hereof may be effected by a suit in rem in admiralty where the vessel itself may be made a party defendant and be arrested in the manner as provided in Section _____ in order to:

a) cause the forced sale of the ships in accordance with this Act;
or

b) assume management of the ships (in the case of preferred mortgage); or

c) in any other manner permitted by the mortgage contract.

3. Original jurisdiction of all suits is granted to the Regional Trial Court .

4. Upon the commencement of any such suit, the mortgagee shall, in such manner as the court may direct:

a) give notice by publication;

b) give actual notice to the master, other ranking officer of the ship and my person who has recorded a notice of claim of an undischarged lien upon the ship unless after search by the mortgagee satisfactory to the court, such mortgages, master or other ranking officer or claimant is not found within the Philippines.

5. Failure to give notice to any such person, as required by this Section, shall not constitute a jurisdictional defect; but the mortgagee shall be liable to such person for damages in the amount of his interest in the ship terminated by the suit.
(PD 1521)

SECTION 18. *Arrest Leading to Forced Sale.* -

(1) A mortgagee entitled to enforce his mortgage may bring proceedings in rem against the ship, which is the subject of the mortgage before the court having jurisdiction over the ship, within one year from the time when the grounds which entitle the mortgagee to enforce the mortgage arose. The mortgagee shall be entitled in such proceedings to apply to the court *ex parte* for an order for the arrest of the mortgaged ship.

(2) A mortgagee who applies to the court for an order of arrest shall file in support of his claim an affidavit stating the circumstances upon which the mortgagee relies as entitling him to enforce the mortgage. If the affidavit establishes this to the satisfaction of the court, the court shall make an order for the arrest of the mortgaged ship.

(3) The court shall require the mortgagee applying for an order to provide a guarantee or other security in a form satisfactory to the court as a pre-condition for the issuance of the order sought. The guarantee or security shall be for such sum, not exceeding the extent of the mortgage debt, as the court considers appropriate.

(4) The mortgagor or any person authorized to act on his behalf or any other person interested in the ship may, at any time after the order of arrest has been granted, apply to the court for an order releasing the ship from arrest. The Court shall not order the release of the ship under this paragraph unless the mortgagor provides a counter-guarantee or security in an amount double the value of the claim to secure the payment of any judgment that the creditor may recover in the action.

(5) Subject to paragraph (4), the court, once the mortgaged ship has been arrested pursuant to the court's order, shall make an order for its forced sale in accordance with this Act.

(6) Where on an application the mortgagor satisfies the court that the order of arrest was improperly and irregularly made, the court shall order the release of the ship and notwithstanding paragraph (4) shall not require the provision of a counter-guarantee or security.

(7) The Supreme Court pursuant to this Act shall provide for the regulations and the procedure to be applied in respect of applications for the arrest and forced sale of the ship under this section, in particular:

- a) the procedure in relation to the *ex parte* application;
- b) the procedure in relation to the provision of a guarantee or security, or of a counter-guarantee or security;
- c) the procedure for the application for the release of a ship from arrest;
- d) the arrangement of and procedure for a forced sale.

SECTION 19. *Notice of Forced Sale.* - After ordering a forced sale, whether under Section 18 above or pursuant to any power vested in court, and prior to the forced sale of a ship, the court shall give, or cause to be given, at least thirty (30) days written notice of the time and place of such sale to:

- (a) The Maritime Industry Authority;
- (b) All holders of registered mortgages;
- (c) Such holders of maritime liens by virtue of this Act whose claims have been notified to the court;
- (d) All others persons having an interest in the ship which interest has been notified the court; and
- (e) The registered owner of the ship.

The notice specified in paragraph 1 of this article shall be given either by registered mail, or by any electronic or other appropriate means which provide confirmation of receipt, to the persons interested as specified in paragraph 1, if known. In addition, the notice shall be published in a newspaper of a general circulation once a week for three consecutive weeks, immediately prior to the date of the sale.

CHAPTER 4 – Rights of Retention

SECTION 20. *Rights of Retention.* -

- (1) The following persons, when in possession of a ship or one which is under construction, shall have the right to retain possession of the same, as follows:
 - a) a shipbuilder, to secure claims arising out of the construction of, or other work carried out in relation to the ship; and
 - b) a ship repairer, to secure claims arising out of the repair of, or other work carried out in relation to the ship, effected during such possession.

(2) The right of retention shall be extinguished when:

- a) the claim in respect of which the said right has been exercised is met or is otherwise discharged, in accordance with the provisions of the new civil code on the extinguishment of obligations;
- b) the ship ceases to be in the possession of the shipbuilder or ship repairer as the case maybe; or
- c) the court issues an order that the ship is to be released.

CHAPTER 5 - Forced Sale

SECTION 21. *Effect of the Forced Sale of Ship.* -

(1) In the event of the forced sale of the ship, all mortgages except those assumed by the purchaser with the consent of the holders, and all liens and other encumbrances of whatsoever nature, shall cease to attach to the ship but shall be transferred and shall attach to the proceeds of sale: *Provided, That:*

- a) at the time of sale, the ship is in the jurisdiction of the Philippines; and
- b) the sale has been effected in accordance with the law of the Philippines.

Any charter party or contract for the use of the ship, in existence at the time of the forced sale, shall be deemed to be terminated, without prejudice to any claim the charterer may have against the owner of the ship, at the time of the sale.

(2) The costs and expenses arising out of the arrest or seizure and subsequent sale of the ship shall be paid first out of the proceeds of sale. Such costs and expenses include, inter alia, the costs for the upkeep of the ship and the crew as well as wages, other sums and costs referred to in Section 3, paragraph 1(b), incurred from the time of arrest or seizure. The balance of the proceeds shall be distributed in

accordance with the provisions of this Act, to the extent necessary to satisfy the respective claims. Upon satisfaction of all claimants, the residue of the proceeds, if any, shall be paid to the owner and it shall be freely transferable.

(3) A State Party may provide in its law that, in the event of the forced sale of a stranded or sunken ship following its removal by a public authority in the interest of safe navigation or the protection of the marine environment, the costs of such removal shall be paid out of the proceeds of the sale, before all other claims secured by a maritime lien on the ship.

(4) If at the time of the forced sale the ship is in the possession of a shipbuilder or of a shiprepairer who under this Act of the State Party in which the sale takes place enjoys a right of retention, such shipbuilder or shiprepairer must surrender possession of the ship to the purchaser but is entitled to obtain satisfaction of his claim out of the proceeds of sale after the satisfaction of the claims of holders of maritime liens mentioned in Section 3.

(5) When a ship registered in the Philippines has been the object of a forced sale in the Philippines, the court having jurisdiction shall, at the written request of the purchaser, issue a certificate to the effect that the ship is sold free of all mortgages and all maritime liens and other encumbrances, except those assumed by the purchaser. Upon production of such certificate, the registrar shall be bound to delete all registered mortgages, "hypotheques" or charges, and to register the ship in the name of the purchaser or to issue a certificate of deregistration for the purpose of new registration, as the case may be.

SECTION 22. *Priority Between Kinds of Claim.* -

(1) Claims in relation to maritime liens, rights of retention and mortgages under this Act shall rank in the following order:

- a) maritime liens;
- b) mortgages registered in accordance with this Act;
- c) rights of retention; and
- d) other mortgages.

(2) The claims referred to in paragraphs (a), (b) and (c) of paragraph (1) of this Section shall rank before all other claims on, or respect of, the ship or one under construction to which they relate.

CHAPTER 6

SECTION 23. *Maritime Liens in Respect of Claims Governed by Foreign Law.* -

(1) A claim against the owner or against the demise or other charterer, manager or operator of a ship being a claim which is governed by the law of a state other than the Philippines and which is recognized by that law as giving rise to a maritime lien, or right of a similar nature shall be recognized by and enforceable in a court of the Philippines in the same manner as the claims set out under this Act.

(2) A claim referred to in paragraph (1) shall not be recognized or enforced by any court in the Philippines unless, according to the law of the Philippines, that claim constitutes or corresponds substantially to a claim set out under this Act.

(3) Where a claim is recognized and enforced by a court in the Philippines, the provisions of this Act in relation to maritime liens, and in particular, concerning

priority, the ranking of liens between themselves and enforcement, shall apply to such a claim as they apply to claims governed by the law of the Philippines.

SECTION 24. *Foreign Mortgages.*

(1) A foreign mortgage shall be recognized and enforceable in a court of the Philippines: *Provided That:*

a) such mortgage has been effected and registered or otherwise recorded as valid and existing in accordance with the law of the state where the ship is registered;

b) the registry in which the mortgage is registered or recorded and any instrument or documents which are required to be deposited with the registry in accordance with the laws of the state where the ship is registered, are open to public inspection, and that extracts of the register and copies of such instruments are obtainable from the registrar; and

c) either the register or any instrument referred to in paragraph (b) above specifies:

i) the name and address of the person in whose favor the mortgage has been effected or that it has been issued to bearer;

ii) either the amount secured by the mortgage or the manner of calculating such amount;

iii) the date of the mortgage; and

iv) such other particulars which, according to the law of the state where the ship is registered, determined the rank as regards other registered or recorded mortgages.

(2) The ranking of registered or recorded mortgages as between themselves and their effect with regard to third parties shall be determined according to the law of the state where the ship is registered.

(3) All matters other than ranking of mortgages relating to the procedure for the enforcement of a foreign mortgage in the Philippines shall be governed by the existing and pertinent laws of the Philippines and the provisions of this Act: *Provided, That, foreign mortgages on ships registered in the Philippines pursuant to a bareboat charter agreement but executed prior to such registration may or may not be governed by the law of the Philippines.*

SECTION 25. *Repealing Clause.* - All laws, executive orders, decrees, rules and regulations, or part thereof, contrary to or inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SECTION 26. *Separability Clause.* - If, for any reason or reasons, any part or provision of this Code shall be held to be unconstitutional or invalid, other parts or provisions hereof which are not affected thereby shall continue to be in full force and effect.

SECTION 27. *Effectivity Clause.* - This Act shall take effect fifteen days after its publication in the Official Gazette or at least two national newspaper of general circulation

Approved,