



2014-010

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

October 22, 2013

LUTHER STRANGE  
ATTORNEY GENERAL

501 WASHINGTON AVENUE  
P.O. BOX 300152  
MONTGOMERY, AL 36130-0152  
(334) 242-7300  
WWW.AGG.ALABAMA.GOV

Honorable N. Gunter Guy, Jr., Commissioner  
Department of Conservation and Natural Resources  
64 North Union Street  
Suite 468  
Montgomery, Alabama 36130-1450

Conservation Department – Piers and  
Docks – Crimes and Offenses – Boats –  
Violations

Act 2013-348 creates an offense under  
Alabama law that may be enforced by  
marine police officers of the Department of  
Conservation and Natural Resources.

Dear Commissioner Guy:

This opinion of the Attorney General is issued in response to your  
request.

QUESTION

Does Act 2013-348 create a criminal offense  
enforceable by marine police officers of the  
Department of Conservation?

FACTS AND ANALYSIS

Act 2013-348 states as follows:

Section 1. (a) Any person who anchors, moors, or  
abandons a floating pier, barge, or vessel or sunken or  
submerged pier, barge, or vessel that obstructs  
navigation on a public water, as defined in subsection  
(a) of Section 9-11-80, Code of Alabama 1975, *shall be  
fined not less than one hundred dollars (\$100) nor  
more than one thousand dollars (\$1,000) per day.*

(b) This section does not apply to public waters used primarily for agricultural, industrial, power generation, public water supply, and sanitation purposes.

[Section 2 stricken in original]

Section 3. Although this bill would have as its purpose or effect the requirement of a new or increased expenditure of local funds, the bill is excluded from further requirements and application under Amendment 621, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, because *the bill defines a new crime or amends the definition of an existing crime.*

Section 4. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.

2013 Ala. Acts No. 2013-348 (emphasis added).

Section 13A-1-2(10) of the Code of Alabama defines “offense” as “[c]onduct for which a sentence to a term of imprisonment, or the death penalty, or to *a fine is provided by any law of this state. . . .*” ALA. CODE § 13A-1-2(10) (2006) (emphasis added). Because Act 2013-348 authorizes a fine, it is an “offense” as defined by section 13A-1-2(10) of the Code. *See* opinion to Honorable Oliver Gilmore, Administrative Office of the Courts, dated November 24, 1993, A.G. No. 94-00049 (act authorizing a fine for unlawful conduct, “while not a violation, misdemeanor, or felony, is clearly an offense as defined in Section 13A-1-2”).

Additionally, section 33-5-5 of the Code confers the powers of peace officers upon marine police officers of the Department of Conservation. ALA. CODE § 33-5-5 (2002). Accordingly, marine police officers of the Department of Conservation are authorized to enforce the provisions of Act 2013-348.

#### CONCLUSION

Act 2013-348 creates an offense under Alabama law that may be enforced by marine police officers of the Department of Conservation.

Honorable N. Gunter Guy, Jr.  
Page 3

I hope this opinion answers your question. If this Office can be of further assistance, please contact Ben Baxley of my staff.

Sincerely,

LUTHER STRANGE  
Attorney General

By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH  
Chief, Opinions Division

LS/BB  
1628903/172571