

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 105*
PROPOSED COMMITTEE SUBSTITUTE S105-PCS15263-SB-23

Short Title: Suspension and Revocation of Fishing Licenses.

(Public)

Sponsors:

Referred to:

February 11, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO DIRECT THE MARINE FISHERIES COMMISSION TO STUDY ISSUES
3 AND ADOPT RULES RELATED TO THE SUSPENSION, REVOCATION, AND
4 REISSUANCE OF LICENSES AND TO MAKE CONFORMING CHANGES, AS
5 RECOMMENDED BY THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD
6 AND AQUACULTURE.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** The Marine Fisheries Commission shall study the current statutes
9 and rules for suspension, revocation, and reissuance of marine resources licenses and permits
10 issued under Articles 14A, 14B, and 25A of Chapter 113 of the General Statutes.

11 **SECTION 2.** The Marine Fisheries Commission shall adopt rules pursuant to and
12 consistent with G.S. 113-171, as amended by Section 3 of this act, and G.S. 143B-289.52 for
13 the suspension, revocation, and reissuance of marine resources licenses and permits issued
14 under Articles 14A, 14B, and 25A of Chapter 113 of the General Statutes. Rules adopted
15 pursuant to this section shall not become effective prior to October 1, 2010. In adopting rules
16 pursuant to this section, the Commission shall consider all of the following:

- 17 (1) Whether the rules should differentiate between minor and major violations.
- 18 (2) How to define minor and major violations.
- 19 (3) How service of revocation could be made more efficient.
- 20 (4) How the rules should treat violations related to recreational fishing licenses
21 and permits.
- 22 (5) Whether violations related to littering or assault on a marine patrol inspector
23 should be treated as grounds for suspension or revocation.
- 24 (6) Whether suspension and revocation provisions should be strengthened in
25 cases of harvesting shellfish from polluted waters.

26 **SECTION 3.** G.S. 113-171 reads as rewritten:

27 "**§ 113-171. Suspension, revocation, and reissuance of licenses.**

28 (a) Upon receipt of reliable notice that a person licensed under this ~~Article~~ Article,
29 Article 14B, or Article 25A of Chapter 113 of the General Statutes to take resources under the
30 jurisdiction of the Marine Fisheries Commission has had imposed against the person a
31 conviction of a criminal offense within the jurisdiction of the Department under the provisions
32 of this Subchapter or of rules of the Commission adopted under the authority of this
33 Subchapter, the Secretary must suspend or revoke all licenses held by the person in accordance
34 with the terms of this ~~section~~ section and rules adopted by the Commission. Reliable notice



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1 includes information furnished the Secretary in prosecution or other reports from inspectors. As
2 used in this section, a conviction includes a plea of guilty or nolo contendere, any other
3 termination of a criminal prosecution unfavorably to the defendant after jeopardy has attached,
4 or any substitute for criminal prosecution whereby the defendant expressly or impliedly
5 confesses the defendant's guilt. In particular, procedures whereby bond forfeitures are accepted
6 in lieu of proceeding to trial and cases indefinitely continued upon arrest of judgment or prayer
7 for judgment continued are deemed convictions. The Secretary may act to suspend or revoke
8 licenses upon the basis of any conviction in which:

- 9 (1) No notice of appeal has been given;
- 10 (2) The time for appeal has expired without an appeal having been perfected; or
- 11 (3) The conviction is sustained on appeal. Where there is a new trial, finality of
12 any subsequent conviction will be determined in the manner set out above.

13 (b) The Secretary must initiate an administrative procedure designed to give the
14 Secretary systematic notice of all convictions of criminal offenses by licensees covered by
15 subsection (a) of this section above and keep a file of all convictions reported. ~~Upon receipt of
16 notice of conviction, the Secretary must determine whether it is a first, a second, a third, or a
17 fourth or subsequent conviction of some offense covered by subsection (a). In the case of
18 second convictions, the Secretary must suspend all licenses issued to the licensee for a period
19 of 10 days. In the case of third convictions, the Secretary must suspend all licenses issued to the
20 licensee for a period of 30 days. In the case of fourth or subsequent convictions, the Secretary
21 must revoke all licenses issued to the licensee. Where several convictions result from a single
22 transaction or occurrence, they are to be treated as a single conviction so far as suspension or
23 revocation of the licenses of any licensee is concerned. Anyone convicted of taking or of
24 knowingly possessing, transporting, buying, selling, or offering to buy or sell oysters or clams
25 from areas closed because of suspected pollution will be deemed by the Secretary to have been
26 convicted of two separate offenses on different occasions for license suspension or revocation
27 purposes.~~

28 (c) ~~Where a license has been suspended or revoked, the former licensee is not eligible
29 to apply for reissuance of license or for any additional license authorized in this Article during
30 the suspension or revocation period. Licenses must be returned to the licensee by the Secretary
31 or the Secretary's agents at the end of a period of suspension. Where there has been a
32 revocation, application for reissuance of license or for an additional license may not be made
33 until six months following the date of revocation. In such case of revocation, the eligible
34 former licensee must satisfy the Secretary that the licensee will strive in the future to conduct
35 the operations for which the license is sought in accord with all applicable laws and rules. Upon
36 the application of an eligible former licensee after revocation, the Secretary, in the Secretary's
37 discretion, may issue one license sought but not another, as deemed necessary to prevent the
38 hazard of recurring violations of the law.~~

39 (d) ~~Upon receiving reliable information of a licensee's conviction of a second or
40 subsequent criminal offense covered by subsection (a) of this section, the Secretary shall
41 promptly cause the licensee to be personally served with written notice of suspension or
42 revocation, as the case may be. The written notice may be served upon any responsible
43 individual affiliated with the corporation, partnership, or association where the licensee is not
44 an individual. The notice of suspension or revocation may be served by an inspector or other
45 agent of the Department, must state the ground upon which it is based, and takes effect
46 immediately upon personal service. The agent of the Secretary making service shall then or
47 subsequently, as may be feasible under the circumstances, collect all license certificates and
48 plates and other forms or records relating to the license as directed by the Secretary. It is
49 unlawful for any licensee willfully to evade the personal service prescribed in this subsection.~~

50 (e) A licensee served with a notice of suspension or revocation may obtain an
51 administrative review of the suspension or revocation by filing a petition for a contested case

1 under G.S. 150B-23 within 20 days after receiving the notice. The only issue in the hearing
2 shall be whether the licensee was convicted of a criminal offense for which a license must be
3 suspended or revoked. A license remains suspended or revoked pending the final decision by
4 the Secretary.

5 (f) If the Secretary refuses to reissue the license of or issue an additional license to an
6 applicant whose license was revoked, the applicant may contest the decision by filing a petition
7 for a contested case under G.S. 150B-23 within 20 days after the Secretary makes the decision.
8 The Commission shall make the final agency decision in a contested case under this subsection.
9 An applicant whose license is denied under this subsection may not reapply for the same
10 license for at least six months.

11 (g) The Commission may adopt rules to provide for the disclosure of the identity of any
12 individual or individuals in responsible positions of control respecting operations of any
13 licensee that is not an individual. For the purposes of this section, individuals in responsible
14 positions of control are deemed to be individual licensees and subject to suspension and
15 revocation requirements in regard to any applications for license they may make – either as
16 individuals or as persons in responsible positions of control in any corporation, partnership, or
17 association. In the case of individual licensees, the individual applying for a license or licensed
18 under this Article, Article 14B, or Article 25A of Chapter 113 of the General Statutes to
19 take resources under the jurisdiction of the Marine Fisheries Commission must be the real party
20 in interest.

21 (h) In determining whether a conviction is a second or subsequent offense under the
22 provisions of this section, the Secretary may not consider convictions for:

- 23 (1) Offenses that occurred three years prior to the effective date of this Article;
24 or
25 (2) Offenses that occurred more than three years prior to the time of the latest
26 offense the conviction for which is in issue as a subsequent conviction."

27 **SECTION 4.** Section 3 of this act becomes effective October 1, 2010. The
28 remainder of this act is effective when it becomes law.