

HOUSE BILL 94

Unofficial Copy
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2002 Regular Session
2lr0066

(PRE-FILED)

By: **Chairman, Environmental Matters Committee (Departmental - Natural Resources)**

Requested: November 7, 2001

Introduced and read first time: January 9, 2002

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Natural Resources - Fishing Licenses and Authorizations - Suspension or**
3 **Revocation**

4 FOR the purpose of altering the criteria for suspension or revocation of certain fishing
5 licenses and authorizations under certain circumstances; authorizing the
6 Department of Natural Resources to suspend or revoke certain fishing licenses
7 for certain fraudulent conduct; establishing certain hearing procedures;
8 providing for certain additional penalties; establishing certain procedures for
9 the immediate suspension of a certain fishing license under certain
10 circumstances; and generally relating to the suspension or revocation of fishing
11 licenses and authorizations.

12 BY repealing and reenacting, with amendments,
13 Article - Natural Resources
14 Section 4-701
15 Annotated Code of Maryland
16 (2000 Replacement Volume and 2001 Supplement)

17 BY adding to
18 Article - Natural Resources
19 Section 4-1210
20 Annotated Code of Maryland
21 (2000 Replacement Volume and 2001 Supplement)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
23 MARYLAND, That the Laws of Maryland read as follows:

1 **Article - Natural Resources**

2 4-701.

3 (a) This section applies to any person who is required under Subtitle 2, 7, 8, 9,
4 or 10 of this title to be licensed to guide fishing parties or to catch, sell, buy, process,
5 transport, export, or otherwise deal in fish caught in tidal waters.

6 (b) (1) The Department shall utilize a single, commercial license, to be
7 known and designated as a tidal fish license.

8 (2) A tidal fish license authorizes a licensee:

9 (i) To engage in each activity indicated on the license; and

10 (ii) For catching crabs, to utilize the number of crew members
11 indicated on the license.

12 (3) Except for a person receiving a license under subsection (i)(2)(ii) of
13 this section, the Department may not issue a tidal fish license to an individual who is
14 younger than 14 years of age.

15 (4) A person may not guide fishing parties or catch, sell, buy, process,
16 transport, export, or otherwise deal in fish caught in tidal waters unless licensed
17 under this section.

18 (c) (1) The license year for every tidal fish license shall be 12 months from
19 September 1 through August 31 of the following year.

20 (2) A licensee and crew members may engage only in those activities for
21 which the annual fees for that license year have been paid.

22 (d) (1) The Department may issue no more than one authorization to a
23 person to engage in each activity under paragraph (2)(i)1 and 2 of this subsection
24 during a license year.

25 (2) (i) On a tidal fish license, the Department may issue an
26 authorization for any of the following activities for which the indicated fee has been
27 paid.

28 (ii) The following annual fees for an authorization shall apply
29 regardless of when the license is issued or an activity is authorized:

30 1. To provide services as:

31 A. A fishing guide in the tidal waters of Maryland - \$50 for a
32 resident and \$100 for a nonresident; and

33 B. A master fishing guide, in addition to the fee under item A
34 of this item - \$50 per vessel

1 Agriculture to fund seafood marketing programs which have been approved by the
2 Department.

3 (4) (i) 1. In this paragraph, "fishing activities" means those
4 activities that are directly related to catching fish.

5 2. "Fishing activities" does not include the activities of
6 buying, selling, processing, transporting, exporting, or similarly dealing in fish.

7 (ii) The Department shall assess annually on every nonresident
8 license applicant for the applicant's fishing activities under Subtitles 7, 8, and 9 of
9 this title, in addition to the normal license fees imposed by this subsection, a
10 surcharge which cumulatively for the license year, shall be the greater of:

11 1. An amount equal to the difference between the total fees
12 charged to a Maryland resident engaged in like fishing activities in the state of
13 residence of the nonresident applicant and the total of normal license fees for fishing
14 activities in Maryland; or

15 2. \$350.

16 (f) An applicant for a new license to provide services as a commercial fishing
17 guide in tidal waters of the State shall supply as part of the initial application
18 verifiable references to any federal license that is issued by the U.S. Coast Guard to
19 operate a vessel carrying passengers for hire in the applicant's name, as a condition
20 precedent to engaging as a commercial fishing guide in tidal waters.

21 (g) (1) Notwithstanding any other provision of this section, the Department
22 may issue an apprenticeship permit for any activity under subsection (d)(2)(ii)1 or 2 of
23 this section to a person who currently resides and has resided for at least 5 years on
24 an island in the State that is at least 3 miles from the mainland.

25 (2) The Department shall set by regulation targets for the number of
26 tidal fish license authorizations under subsection (d)(2)(ii) of this section to be the
27 number issued between September 1, 1998 and March 31, 1999. The Department may
28 modify by regulation the target number of authorizations based on:

29 (i) Recommendations of the Tidal Fisheries Advisory Commission;

30 (ii) Recommendations of fishery management plans adopted by the
31 Department, the Chesapeake Bay Program, the Atlantic States Marine Fisheries
32 Commission, the Mid-Atlantic Fisheries Management Council, or any other
33 appropriate management body;

34 (iii) The number of people historically participating;

35 (iv) Target species, size, number, weight, incidental catch, total
36 biomass, annual harvest, mortality rates, and other factors which are necessary and
37 appropriate; and

1 (v) The number of authorizations relinquished to the Department
2 under subsection (j-1) of this section.

3 (3) (i) The Department shall by regulation limit the total number of
4 authorizations to fish for striped bass to 1,231 participants in the commercial fishery
5 and 499 participants in the charter boat fishery.

6 (ii) The Department shall provide in its regulations for reallocation
7 of any authorizations that may be revoked or voluntarily relinquished to the
8 Department.

9 (iii) The Department shall provide in its regulations for the
10 allocation of any available quota on a monthly basis to assure that all areas of the
11 State have ample opportunity to attain an equitable portion of the available quota.

12 (h) The Department shall issue a license authorizing participation in a
13 particular fishing activity to a person who has completed the requirements of an
14 apprenticeship under § 4-701.1 of this subtitle.

15 (i) (1) A license or authorization may be transferred only under the
16 provisions of this subsection.

17 (2) The Department shall review and may approve the permanent
18 transfer of a license or an authorization to a person who is the licensee's spouse,
19 daughter, son, stepchild, grandchild, step grandchild, parent, sister, brother,
20 grandparent, father-in-law, mother-in-law, son-in-law, daughter-in-law,
21 sister-in-law, or brother-in-law, and only:

22 (i) If the licensee makes application to the Department requesting
23 transfer and the transferee has paid the fee for the license or authorization; or

24 (ii) Upon death of the licensee, if the licensee or an authorized
25 representative of the licensee indicates or had indicated that person's name to the
26 Department.

27 (3) (i) The Department may approve a temporary transfer for not less
28 than 30 days and not more than 90 days.

29 (ii) A person may not transfer a license in exchange for any type of
30 remuneration.

31 (4) (i) The Department shall establish by regulation a procedure for a
32 licensee, except a fishing guide licensee or a master fishing guide licensee, to
33 voluntarily register the licensee's commercial fishing vessel number on the face of the
34 license.

35 (ii) If a licensee has voluntarily registered the vessel number on the
36 license under subparagraph (i) of this paragraph, the licensee may allow another
37 person to use the vessel for the commercial activities authorized on the license.

1 (iii) If a licensee allows another person to utilize a vessel under
2 subparagraph (ii) of this paragraph, for purposes of the license suspension criteria in
3 subsection (k) of this section, the licensee shall be held responsible for any violations
4 committed by the person using the vessel.

5 (5) (i) This paragraph applies only to:

6 1. A licensee who has held a valid tidal fish license in each of
7 the three immediately preceding seasons; or

8 2. An authorized representative of a deceased licensee
9 regardless of the number of seasons the deceased licensee held a valid tidal fish
10 license.

11 (ii) The Department shall review and may approve a permanent
12 transfer of a license or authorization under this paragraph to a person who has:

13 1. A. Purchased a vessel used for commercial fishing from
14 the license holder; or

15 B. Purchased equipment and assets with a minimum value of
16 \$2,000 and the commercial fishing business from the license holder;

17 2. Been a crew member for at least 2 years in any commercial
18 fishery as certified by three tidal fish licensees;

19 3. Paid the fee for the license or authorization; and

20 4. Provided a notarized bill of sale.

21 (j) (1) Notwithstanding the qualification criteria for a license and
22 authorization to engage in an activity under this section, licensees may renew any
23 valid existing authorizations on their licenses annually.

24 (2) (i) Application to renew a tidal fish license shall be made not later
25 than August 31, or the next business day in the instance that the Department is not
26 open, for the following license year.

27 (ii) The Department may not accept application for renewal after
28 that date, as stated in subparagraph (i) of this paragraph unless:

29 1. Application is made by March 31, or the next business day
30 in the instance that the Department is not open, of the following license year;

31 2. The applicant shows good cause why application was not
32 made by August 31 of the previous license year; and

33 3. A late fee of \$50 is paid by the applicant in addition to the
34 license fee.

1 (j-1) (1) At the time of license renewal, a licensee who possesses three or more
2 authorizations under subsections (d)(2)(ii)1 and (d)(2)(ii)2 A through E of this section,
3 one of which is a crabbing authorization, may relinquish each authorization and
4 receive an authorization under subsection (d)(2)(ii)2 F of this section.

5 (2) The Department shall adjust the number of authorizations under
6 subsection (d)(2)(ii) of this section to reflect the number of license conversions under
7 paragraph (1) of this subsection.

8 (k) (1) In addition to any other penalty provided in this title, the
9 Department may suspend [for a period of not less than 10 days nor more than 365
10 days] OR REVOKE a person's entitlement to engage in a particular activity or
11 activities under a tidal fish license.

12 (2) During a period of suspension imposed by the Department, the
13 person penalized is not and shall not be authorized under any existing, renewed,
14 TRANSFERRED, or new tidal fish license to engage in the particular activity or
15 activities for which the suspension is imposed.

16 (3) The following are grounds for suspension OF A TIDAL FISH LICENSE
17 OR AN AUTHORIZATION under this section:

18 (i) Making any false statement in an application for a tidal fish
19 license;

20 (ii) Conviction of a person for violations under this title so often as
21 to indicate an intent to disregard the fish and fisheries laws of the State, provided
22 that proceedings for [revocation] SUSPENSION on this ground are based on no fewer
23 than[:

24 1.] 3 convictions for violations occurring [on separate days]
25 within any [365-day] 2-YEAR period, of provisions under this [subtitle; or] TITLE;

26 [2. 5 convictions for violations occurring on separate days
27 within any 365-day period, of any provisions under this title;]

28 (iii) Failure to submit reports required by the provisions of this title
29 or by the Department pursuant to provisions of this title; or

30 (iv) Failure for a nonresident of the State to appear in court
31 pursuant to a citation issued by a Natural Resources police officer, or to any other
32 process issued by any court of Maryland, for violation of this title.

33 (4) The following are grounds for revocation of a tidal fish license OR AN
34 AUTHORIZATION:

35 (i) Submitting a false report required by the provisions of this title
36 or by the Department pursuant to the provisions of this title; [or]

1 (ii) Suspension of the person's tidal fish license OR
2 AUTHORIZATION under paragraph (1) of this subsection more than once in any
3 24-month period[.];

4 (III) CONVICTION OF A PERSON FOR A VIOLATION UNDER THIS
5 TITLE THAT INVOLVES FRAUDULENT REPRESENTATION; OR

6 (IV) WITHIN ANY 3-YEAR PERIOD, CONVICTION OF A PERSON FOR
7 AT LEAST 5 VIOLATIONS.

8 (5) REVOCATION OF A PERSON'S TIDAL FISH LICENSE OR
9 AUTHORIZATION SHALL BE FOR A MINIMUM OF A 1-YEAR PERIOD. APPLICATION FOR
10 A TIDAL FISH LICENSE OR AUTHORIZATION BY A PERSON WHOSE LICENSE OR
11 AUTHORIZATION HAS BEEN REVOKED UNDER THIS SUBTITLE IS SUBJECT TO THE
12 PROVISIONS OF THIS SUBTITLE AND ANY REGULATIONS ADOPTED BY THE
13 SECRETARY UNDER THE AUTHORITY OF THIS SUBTITLE.

14 (6) A PERSON WHOSE TIDAL FISH LICENSE OR AUTHORIZATION HAS
15 BEEN REVOKED MAY NOT BE ISSUED A TIDAL FISH LICENSE OR RECEIVE THE
16 TRANSFER OF A TIDAL FISH LICENSE FOR A PERIOD OF 1 YEAR FROM THE DATE OF
17 ANY REVOCATION OF A LICENSE OR AUTHORIZATION ISSUED UNDER THIS SECTION.

18 (7) EXCEPT AS PROVIDED IN § 4-1210 OF THIS TITLE, BEFORE THE
19 DEPARTMENT TAKES ANY ACTION TO REVOKE A PERSON'S TIDAL FISH LICENSE OR
20 AUTHORIZATION PURSUANT TO PARAGRAPH (4) OF THIS SUBSECTION, THE PERSON
21 SHALL HAVE THE RIGHT TO A HEARING.

22 (8) THE PENALTIES IN THIS SUBTITLE SHALL BE IN ADDITION TO ANY
23 OTHER PENALTIES AUTHORIZED UNDER § 4-1201 OF THIS TITLE REGARDING STRIPED
24 BASS.

25 [(5)] (9) For purposes of suspensions under subparagraph (ii) of
26 paragraph (3) of this subsection, the Department shall adopt as part of its procedural
27 regulations:

28 (i) A schedule of points assigned to various offenses under this
29 title; and

30 (ii) A schedule of the maximum number of days that a license may
31 be suspended according to the number of points accumulated.

32 [(6)] (10) The Department shall initiate any proceeding to suspend a tidal
33 fish license under this section not later than 6 months after the time for filing an
34 appeal of the 3rd conviction under paragraph (3)(i)1 of this subsection has passed or
35 the time for filing an appeal of the 5th conviction under paragraph (3)(i)2 of this
36 subsection has passed.

37 [(7)] (11) Before the suspension of a tidal fish license under this section,
38 the Department shall hold a hearing upon not less than 10 days' notice to the licensee,
39 except [that] AS PROVIDED IN § 4-1210 OF THIS TITLE OR upon the failure of a

1 nonresident of the State to appear in a court of this State as required by any charging
2 document accusing the person of committing any offense under this title, in addition
3 to any other appropriate action taken by the court or the Department, the
4 Department may suspend immediately and without hearing any license issued to the
5 person under this title.

6 (l) A licensee or any person to whom a licensee has transferred a license under
7 subsection (i) of this section shall have in possession the tidal fish license and any
8 valid application to transfer the commercial tidal fish license approved by the
9 Department for a temporary transfer whenever engaged in any licensed activity. The
10 licensee or any person to whom a licensee has transferred a license under subsection
11 (i) of this section shall allow any police officer to inspect the license and any
12 applicable application to transfer the commercial tidal fish license approved by the
13 Department for a temporary transfer, to conduct searches as authorized in Subtitle 12
14 of this title, and to inspect books, statements, and accounts as authorized in §
15 4-206(b) of this title.

16 (m) The Department shall assign a permanent identification number to each
17 licensee. A licensee shall display the identification number on every vessel, vehicle,
18 gear, or place of business, as the Department may require by regulation.

19 (n) The Department shall:

20 (1) Deposit to the credit of the Fisheries Research and Development
21 Fund all fees received for tidal fish licenses and apprenticeship permits; and

22 (2) Use the funds received from the sale of licenses to catch striped bass
23 for enforcement purposes during the open season for catching striped bass.

24 (o) (1) This subsection applies only to a person who, on April 1, 1997:

25 (i) Held a valid fishing guide license; and

26 (ii) Either:

27 1. Owned two or more vessels used to carry passengers for
28 fishing;

29 2. Owned or operated a federally licensed vessel of 50 tons or
30 more that was used to carry passengers for fishing; or

31 3. Owned or operated a marina from which 10 or more
32 vessels operate to carry passengers for fishing.

33 (2) A person who meets the requirements of paragraph (1) of this
34 subsection may obtain an annual master fishing guide license by:

35 (i) Filing an application on a form provided by the Department;

1 (ii) Supplying with the application proofs of ownership of the
2 required vessels; and

3 (iii) Paying the master fishing guide license fee set forth in §
4 4-701(d)(2)(ii)1 of this title.

5 (3) A person holding a master fishing guide license may:

6 (i) Employ other persons to guide fishing parties on vessels owned
7 by the master fishing guide; and

8 (ii) Allow a person who holds a valid coast guard license to operate
9 a vessel to carry passengers for fishing from the marina owned or operated by the
10 master guide license holder authorized under paragraph (1)(ii)3 of this subsection as
11 follows:

12 1. One person for 10 vessels;

13 2. Two persons for 11 to 20 vessels;

14 3. Three persons for 21 to 30 vessels;

15 4. Four persons for 31 to 40 vessels;

16 5. Five persons for 41 to 50 vessels; and

17 6. Six persons for 51 or more vessels.

18 (4) (i) The Department shall issue a number of copies of the master
19 fishing guide license corresponding to the number of vessels owned or operated by the
20 master fishing guide, with each copy bearing the registration number of one of the
21 vessels.

22 (ii) The master fishing guide shall ensure that when a vessel is
23 operated, the appropriate copy of the license is on board.

24 (5) If a master fishing guide employs another person to operate a vessel
25 to carry passengers for fishing, for purposes of the license suspension criteria in
26 subsection (k) of this section, the master fishing guide shall be held responsible for
27 any violations committed by the person employed to operate the vessel.

28 (p) A commercial crabbing license shall identify either Sunday or Monday as
29 the day on which the person who holds the license may not crab for commercial
30 purposes.

31 4-1210.

32 (A) NOTWITHSTANDING THE PROVISIONS OF § 4-701(K) OF THIS TITLE AND
33 UPON THE FILING OF CERTIFIED DOCKET ENTRIES WITH THE DEPARTMENT BY THE
34 OFFICE OF THE ATTORNEY GENERAL EVIDENCING THAT A PERSON STANDS
35 CONVICTED OF OR PLEADS GUILTY OR NOLO CONTENDERE TO FRAUDULENT

1 CONDUCT IN ANY ACTIVITY AUTHORIZED BY THIS TITLE OR ANY REGULATIONS
2 ADOPTED BY THE SECRETARY UNDER THE AUTHORITY OF THIS TITLE, THE
3 DEPARTMENT MAY IMMEDIATELY SUSPEND ANY LICENSE ISSUED IN ACCORDANCE
4 WITH THIS TITLE REGARDLESS OF ANY PENDING APPEAL OR OTHER PROCEEDING TO
5 SET ASIDE A PLEA OR REVERSE A CONVICTION.

6 (B) AFTER COMPLETION OF THE APPELLATE PROCESS, IF THE CONVICTION
7 HAS NOT BEEN REVERSED OR THE PLEA HAS NOT BEEN SET ASIDE WITH RESPECT TO
8 FRAUDULENT CONDUCT, THE DEPARTMENT MAY REVOKE A LICENSE ISSUED IN
9 ACCORDANCE WITH THIS TITLE.

10 (C) A LICENSEE HAS A RIGHT TO A HEARING FOR ANY LICENSE SUSPENDED
11 OR REVOKED IN ACCORDANCE WITH THIS SUBTITLE.

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
13 effect October 1, 2002.