

1 HB409
2 166101-2
3 By Representatives Sessions, Greer, Hanes, Buskey and Clarke
4 RFD: Agriculture and Forestry
5 First Read: 02-APR-15

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8 SYNOPSIS: Under existing law, the issuance of net and
9 seine permits for commercial fishing is limited and
10 certain permits are not transferable under any
11 circumstances including physical hardship, and
12 applicants for renewal are required to have
13 previously purchased a license and to meet certain
14 income requirements in subsequent years.

15 This bill would authorize certain permits to
16 be transferred in the case of physical hardship and
17 the requirements for proof of income requirements
18 under Alabama income tax law in subsequent years
19 would be deleted. This bill would further authorize
20 a person who failed to meet the income requirements
21 beginning October 1, 2014, to renew a net or seine
22 permit and would delete certain income verification
23 provisions.

24
25 A BILL
26 TO BE ENTITLED
27 AN ACT

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To amend Section 9-12-113 of the Code of Alabama 1975, relating to commercial fishing and net and seine permits; to delete certain restrictions on the transfer of certain permits and to further provide for the renewal of permits of persons who failed to meet the income requirements for certain license years.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 9-12-113 of the Code of Alabama 1975, is amended to read as follows:

"§9-12-113.

"(a) Each license or permit issued by the Commissioner of Conservation and Natural Resources or his or her authorized agent shall state the name of the applicant.

"(1) If the applicant is a resident of the State of Alabama, the applicant shall pay the following fees:

"a. One hundred dollars (\$100) for commercial fishing.

"b. Three hundred dollars (\$300) on each net or seine permit, plus an additional five hundred dollars (\$500) per permit for the taking of Roe Mullet and Spanish Mackerel, as defined by regulation of the Department of Conservation and Natural Resources.

"c. One thousand five hundred dollars (\$1,500) for each purse seine license.

"(2) Nonresidents shall pay the following fees:

1 "a. Two hundred dollars (\$200) for commercial
2 fishing.

3 "b. One thousand five hundred dollars (\$1,500) for
4 each net or seine permit, plus an additional two thousand five
5 hundred dollars (\$2,500) per permit for the taking of Roe
6 Mullet and Spanish Mackerel, as defined by regulation of the
7 Department of Conservation and Natural Resources.

8 "c. Three thousand dollars (\$3,000) for each purse
9 seine license except where the nonresident of the State of
10 Alabama is a resident of a state which has a reciprocal
11 fishing agreement with the State of Alabama, in which case the
12 fee shall be the same as the fee for an Alabama resident in
13 that state.

14 "(3) A commercial fishing license shall be required
15 for any person to do any of the following:

16 "a. Sell or attempt to sell finfish or take or
17 attempt to take, by the use of hook and line, rod and reel,
18 cast net, gig, trot line, spear gun, or bow and arrow, or
19 other gear as defined by regulation or to possess or transport
20 for commercial purposes finfish from those waters under the
21 jurisdiction of the Marine Resources Division of the
22 Department of Conservation and Natural Resources, as provided
23 in Rule 220-2-.42, Alabama Administrative Code.

24 "b. Possess finfish for commercial purposes on board
25 a boat in those waters under the jurisdiction of the Marine
26 Resources Division of the Department of Conservation and

1 Natural Resources, as provided in Rule 220-2-.42, Alabama
2 Administrative Code.

3 "c. Off-load or land a catch of finfish to a
4 resident or nonresident seafood dealer, regardless of where
5 the fish were taken.

6 "(4) A commercial fishing license shall not be
7 required for a commercial gill net license holder validly
8 licensed under this section, in order for the licensee to
9 take, possess, or sell his or her catch taken with a gill net,
10 seine, or other entangling net, nor shall it be required for
11 the taking, possession, and sale of finfish taken with a
12 licensed commercial shrimp boat.

13 "(b) The net and seine permits provided for pursuant
14 to ~~subdivision (1) of~~ subsection (c) shall not be transferable
15 from one person to another for a period of three years from
16 October 1, 1995, or until a transfer system is developed by
17 departmental regulation, except in the case of proven physical
18 hardship, as determined within the sole discretion of the
19 Director of the Marine Resources Division. The Department of
20 Conservation and Natural Resources shall by regulation
21 establish a system for the transfer of the permits within a
22 three-year period. In establishing the system, the department
23 shall provide that there shall be no financial gain realized
24 by the transferor of the permits. ~~The net and seine permits~~
25 ~~provided for pursuant to subdivision (2) of subsection (c)~~
26 ~~shall not be transferable under any circumstances, including~~

1 ~~physical hardship, and shall not be transferred to any other~~
2 ~~applicant by the department.~~

3 "(c) In addition to all other requirements to be
4 permitted pursuant to this section, except as otherwise
5 provided for residents age 62 years or older under certain
6 conditions as may be subsequently determined by the
7 department, all applicants for net and seine permits shall
8 submit the following:

9 "(1) Proof that the applicant purchased a license
10 under this section in at least two of the five years during
11 the period of 1989 through 1993 and proof, in the form of
12 unamended original income tax returns including Alabama state
13 income tax returns for all applicants in accordance with
14 procedures established by departmental regulations, that the
15 applicant recognized his or her applicable Alabama income and
16 derived at least 50 percent of his or her gross income from
17 the capture and sale of seafood species in at least two of the
18 five years during the period of 1989 through 1993 and in
19 subsequent years for annual renewal until the license year
20 ending on September 30, 2014; or

21 "(2) Proof that the applicant purchased a license
22 under this section every year from 1989 through 1993, and,
23 unless exempt from filing under the Alabama income tax law,
24 proof that the applicant filed an Alabama income tax return
25 from 1989 through 1993, and in subsequent years for annual
26 renewal until on the license year ending on September 30,
27 2014.

1 "For the license year beginning October 1, 1997,
2 only, any permittee who obtained a net and seine permit
3 pursuant to subdivision (2) may obtain a permit transferable
4 in the same manner as a permit pursuant to subdivision (1)
5 upon submitting proof in the form of unamended original income
6 tax returns including Alabama state income tax returns for all
7 applicants in accordance with procedures established by
8 departmental regulations, that the applicant recognized his or
9 her applicable Alabama income and derived at least 50 percent
10 of his or her gross income in 1996 from the capture and sale
11 of seafood species, ~~provided the permittee must meet the gross
12 income requirements to continue to renew a permit issued
13 pursuant to subdivision (1) in subsequent years. A permittee
14 who receives a permit pursuant to the provision in the
15 preceding sentence may not receive a permit pursuant to
16 subdivision (2) thereafter. The Alabama Department of Revenue
17 shall verify, upon request, to the Director of the Marine
18 Resources Division of the Alabama Department of Conservation
19 and Natural Resources the income tax return of the applicant
20 if the applicant authorizes the release of the information.
21 Authorization by the applicant to release the information
22 shall be a prerequisite for a permit. After the effective date
23 of the act adding this sentence, a person issued a permit
24 pursuant to this subsection in the license year commencing on
25 October 1, 2014, or thereafter, shall not be required to
26 submit proof of income in order to renew a permit.~~

1 "(d) Only one permit shall be issued per individual.
2 The department shall issue each permittee one decal or placard
3 which shall be visibly displayed on the permittee's designated
4 vessel or vessels in accordance with regulations promulgated
5 by the Department of Conservation and Natural Resources. The
6 decal or placard may only be displayed on an Alabama
7 registered vessel and may not be displayed on an out-of-state
8 registered vessel. A permittee shall have only one net or
9 seine in use at any time and shall be present and have the
10 permit in his or her possession when the net or seine is in
11 use or in transit, provided the presence of the permittee
12 shall not be required when the boat is docked, refueling, or
13 at a launch site.

14 "(e) All nets and seines, except purse seines, and
15 seines 25 feet or less, shall bear a tag showing the name and
16 number of the permittee and any other identification as
17 required by regulation, when the nets or seines are in use or
18 on board a boat in the waters of Alabama. A designated vessel
19 of 45 feet in length or less, as measured down the centerline,
20 may have properly marked nets which are the property of the
21 owner of the designated vessel on board the vessel but no fish
22 may be in contact with the nets and provided that the vessel
23 is not in motion and is moored or anchored when the permittee
24 is not present. An initial designated vessel may be replaced
25 by another vessel owned by the permittee that is no longer
26 than 110 percent of the original vessel subject in all events
27 to a maximum of 45 feet except in certain cases which may be

1 waived by the Director of the Division of Marine Resources
2 upon presentation of evidence that a permittee owned a vessel
3 longer than 45 feet prior to the passage of this amendatory
4 act.

5 "(f) All permits issued shall be issued to
6 individual persons only. A purse seine license may be issued
7 to a person, firm, or corporation. A nonresident, as mentioned
8 in this section, for the purposes of all permits issued, is
9 defined to be any person who has not been continuously
10 domiciled in this state for more than one continuous year
11 prior to the date of the issuance of the license and for the
12 purpose of purse seine licenses, a nonresident is defined to
13 be any person, firm, or corporation who has not been domiciled
14 in this state for more than one continuous year immediately
15 prior to the date of the issuance of the license. Any
16 nonresident fishing with a resident commercial gill net
17 license holder shall not provide any gill nets, trammel nets,
18 haul nets, or other fishing equipment to the resident
19 commercial gill net license holder. All persons on board must
20 have proof of residency in the form of a valid state driver's
21 license or state nondriver identification card.

22 "(g) All licenses and permits issued pursuant to
23 this section shall expire on September 30 thereafter
24 irrespective of the date of the issuance of the same.

25 "(h) All nets and seines fished in an illegal
26 manner, or in an illegal area, are declared to be a nuisance
27 and may be confiscated, along with the entire catch, boat,

1 motor, and any other fishing gear in the violator's
2 possession, and all of the items may be held as evidence by
3 any agent of the Department of Conservation and Natural
4 Resources. After conviction of the person in whose possession
5 the device or items were found or when the operator of the
6 device has not been determined after a period of 30 days, the
7 device or items shall be forfeited to the Department of
8 Conservation and Natural Resources which shall destroy or
9 otherwise dispose of the device or items as it shall deem
10 advisable or in lieu of forfeiture, the court may impose
11 additional fines.

12 "(i) All game fish taken by nets or seines under
13 this law shall be immediately returned to the waters where
14 they were taken with the least possible injury to the fish.
15 Possession of game fish in violation of this subsection will
16 be considered as using a net or seine in an illegal manner.
17 Saltwater game fish are defined as follows: Spotted Seatrout
18 (*Cynoscion nebulosus*); Red Drum (*Sciaenops ocellata*); Tarpon
19 (*Megalops atlanticus*); and those species designated by
20 regulation of the Department of Conservation and Natural
21 Resources. The department shall by regulation to the extent
22 possible establish a tagging system to regulate importation or
23 sale of the above listed species or species added by
24 regulation.

25 "(j) In addition to any other penalties provided in
26 this section, a violation of this section or any regulation
27 promulgated pursuant to this section, shall be a Class B

1 misdemeanor punishable as provided by law; provided, however,
2 that there shall be a mandatory minimum fine of two thousand
3 dollars (\$2,000) for first offenses of utilizing a net or
4 seine without the required license or permit hereunder, and
5 any subsequent violation of subsection (a) committed within a
6 three-year period of the date of conviction shall be a Class A
7 misdemeanor, punishable by a mandatory minimum fine of three
8 thousand dollars (\$3,000) and a mandatory minimum imprisonment
9 of 10 days. Any person violating this section or any
10 regulation promulgated pursuant to this section shall be
11 strictly liable and it shall not be necessary to prove any
12 criminal intent for conviction.

13 "A 10-point system is also hereby established to
14 provide that in the event a person is convicted of the
15 following offenses as set out in subdivisions (1) to (5),
16 inclusive, below in a manner so as to acquire ten or more
17 points within a three-year period the department shall
18 automatically and permanently revoke all licenses or permits
19 issued and the licenses, permits, and any decal issued to that
20 person shall be surrendered immediately by the licensee or
21 permittee to the Director of the Division of Marine Resources
22 upon conviction. Points shall be considered for a period of
23 three years from the date of conviction and shall be as
24 follows:

25 "(1) Sale, purchase, trade or barter of game fish,
26 10 points.

27 "(2) Fishing in closed areas, 5 points.

1 "(3) Retention of game fish, 5 points.

2 "(4) Fishing with improperly marked gear, 4 points.

3 "(5) Points for any other offense established or
4 designated by regulation of the Department of Conservation and
5 Natural Resources, shall be as provided in the regulation
6 relating to the prohibitions of this section."

7 Section 2. This act shall become effective
8 immediately following its passage and approval by the
9 Governor, or its otherwise becoming law.