

1 SB462
2 148981-4
3 By Senator Hightower
4 RFD: Agriculture, Conservation, and Forestry
5 First Read: 18-APR-13

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8 SYNOPSIS: Under existing law, a net or seine permit
9 issued by the Commissioner of Conservation and
10 Natural Resources, or the commissioner's authorized
11 agent, is not transferable under any circumstances,
12 including physical hardship.

13 This bill would require the Department of
14 Conservation and Natural Resources to transfer the
15 permit upon physical hardship, retirement, or death
16 of the permittee.

17 This bill would require the department to
18 transfer the permit to an immediate family member
19 or an administrator or executor of the permittee's
20 estate.

21 This bill would allow an immediate family
22 member who receives a permit from a deceased
23 permittee to transfer the permit to any third party
24 purchaser of the permittee's fishing vessel.

25
26 A BILL
27 TO BE ENTITLED

1 AN ACT

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3 To amend Section 9-12-113, Code of Alabama 1975,
4 relating to net or seine permits; to require a net or seine
5 permit to be transferred upon physical hardship, retirement,
6 or death of the permittee.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

10 "§9-12-113.

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

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

16 "a. One hundred dollars (\$100) for commercial hook
17 and line fishing.

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

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

25 "(2) Nonresidents shall pay the following fees:

26 "a. Two hundred dollars (\$200) for commercial hook
27 and line fishing.

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

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

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

1 ~~transferred to any other applicant by the department~~ In the
2 case of death of the permittee, the department shall transfer
3 the permit to an administrator or executor or executrix of the
4 permittee's estate, or immediate family member. For purposes
5 of this act, an immediate family member is a mother, father,
6 brother, sister, spouse, stepsister, stepbrother, stepparent,
7 or step child. An immediate family member who receives a
8 permit under this section may transfer the permit to any third
9 party purchaser of the permittee's fishing vessel.

10 "(c) In addition to all other requirements to be
11 permitted pursuant to this section, except as otherwise
12 provided for residents age 62 years or older under certain
13 conditions as may be subsequently determined by the
14 department, all applicants for net and seine permits shall
15 submit the following:

16 "(1) Proof that the applicant purchased a license
17 under this section in at least two of the five years during
18 the period of 1989 through 1993 and proof, in the form of
19 unamended original income tax returns including Alabama state
20 income tax returns for all applicants in accordance with
21 procedures established by departmental regulations, that the
22 applicant recognized his or her applicable Alabama income and
23 derived at least 50 percent of his or her gross income from
24 the capture and sale of seafood species in at least two of the
25 five years during the period of 1989 through 1993 and in
26 subsequent years for annual renewal; or

1 "(2) Proof that the applicant purchased a license
2 under this section every year from 1989 through 1993, and,
3 unless exempt from filing under the Alabama income tax law,
4 proof that the applicant filed an Alabama income tax return
5 from 1989 through 1993, and in subsequent years for annual
6 renewal.

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

1 Authorization by the applicant to release the information
2 shall be a prerequisite for a permit.

3 "(d) Only one permit shall be issued per individual.
4 The department shall issue each permittee one decal or placard
5 which shall be visibly displayed on the permittee's designated
6 vessel or vessels in accordance with regulations promulgated
7 by the Department of Conservation and Natural Resources. The
8 decal or placard may only be displayed on an Alabama
9 registered vessel and may not be displayed on an out-of-state
10 registered vessel. A permittee shall have only one net or
11 seine in use at any time and shall be present and have the
12 permit in his or her possession when the net or seine is in
13 use or in transit, provided the presence of the permittee
14 shall not be required when the boat is docked, refueling, or
15 at a launch site. Upon physical hardship of a permittee, he or
16 she may temporarily designate a third party to represent the
17 permittee for the duration of the hardship without the
18 presence of the permittee on board his or her boat in Alabama
19 waters.

20 "(e) All nets and seines, except purse seines, and
21 seines 25 feet or less, shall bear a tag showing the name and
22 number of the permittee and any other identification as
23 required by regulation, when the nets or seines are in use or
24 on board a boat in the waters of Alabama. A designated vessel
25 of 45 feet in length or less, as measured down the centerline,
26 may have properly marked nets which are the property of the
27 owner of the designated vessel on board the vessel but no fish

1 may be in contact with the nets and provided that the vessel
2 is not in motion and is moored or anchored when the permittee
3 is not present. An initial designated vessel may be replaced
4 by another vessel owned by the permittee that is no longer
5 than 110 percent of the original vessel subject in all events
6 to a maximum of 45 feet except in certain cases which may be
7 waived by the Director of the Division of Marine Resources
8 upon presentation of evidence that a permittee owned a vessel
9 longer than 45 feet prior to the passage of this amendatory
10 act.

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

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

4 "(h) All nets and seines fished in an illegal
5 manner, or in an illegal area, are declared to be a nuisance
6 and may be confiscated, along with the entire catch, boat,
7 motor, and any other fishing gear in the violator's
8 possession, and all of the items may be held as evidence by
9 any agent of the Department of Conservation and Natural
10 Resources. After conviction of the person in whose possession
11 the device or items were found or when the operator of the
12 device has not been determined after a period of 30 days, the
13 device or items shall be forfeited to the Department of
14 Conservation and Natural Resources which shall destroy or
15 otherwise dispose of the device or items as it shall deem
16 advisable or in lieu of forfeiture, the court may impose
17 additional fines.

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

1 possible establish a tagging system to regulate importation or
2 sale of the above listed species or species added by
3 regulation.

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

19 "A 10-point system is also hereby established to
20 provide that in the event a person is convicted of the
21 following offenses as set out in subdivisions (1) to (5),
22 inclusive, below in a manner so as to acquire ten or more
23 points within a three-year period the department shall
24 automatically and permanently revoke all licenses or permits
25 issued and the licenses, permits, and any decal issued to that
26 person shall be surrendered immediately by the licensee or
27 permittee to the Director of the Division of Marine Resources

1 upon conviction. Points shall be considered for a period of
2 three years from the date of conviction and shall be as
3 follows:

4 "(1) Sale, purchase, trade or barter of game fish,
5 10 points.

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

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

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

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

13 Section 2. This act shall become effective on the
14 first day of the third month following its passage and
15 approval by the Governor, or its otherwise becoming law.