

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 28.2-226.1, 28.2-232, and 28.2-528 of the Code of Virginia, relating to revocation of fishing privileges in tidal waters.

[H 2195]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 28.2-226.1, 28.2-232, and 28.2-528 of the Code of Virginia are amended and reenacted as follows:

§ 28.2-226.1. Recreational gear license required.

A. Any person desiring to take or catch finfish or shellfish for recreational purposes in the tidal waters of the Commonwealth using commercial gear authorized under § 28.2-226.2, and for which an exemption is not provided in § 28.2-226, or included in § 28.2-302.1, shall first obtain the appropriate commercial gear license for recreational purposes. A license to use such gear for recreational purposes shall be issued to an individual for his exclusive use and shall not be transferable.

B. All gear licenses issued for recreational purposes shall be so marked.

C. Any person who has obtained a commercial gear license for recreational purposes only shall be exempt from the commercial fishing registration requirements of §§ 28.2-241 and 28.2-242.

D. For purposes of this section and §§ 28.2-226.2 and 28.2-232, "recreational purposes" means finfish or shellfish taken for personal use and not sold, traded, bartered or given to another in order to be sold, traded or bartered.

E. Holders of licenses under this section shall report catch and other data as is deemed necessary by the Commission for effective fisheries management.

§ 28.2-232. Revocation of licenses.

A. The Commission may revoke the fishing privileges within the Commonwealth's tidal waters and revoke, prohibit the issuance, reissuance, or renewal of any licenses if, after a hearing held after 10 days' notice to the applicant or licensee, it finds that the person has violated any provision of this subtitle.

B. The duration of the revocation and prohibition shall be fixed by the Commission up to a maximum of ~~two~~ five years with the withdrawal of all fishing privileges conferred by this title during that period, taking into account (i) evidence of repeated or habitual disregard for conservation, health and safety laws and regulations; (ii) abusive conduct and behavior toward officers; and (iii) the severity of any damage that has occurred, or might have occurred, to the natural resources, the public health, or the seafood industry.

C. The Commission may assess a civil penalty of up to \$10,000 against a person if it finds, after a hearing held after 10 days' notice, that the person has engaged in fishing, other than for recreational purposes as defined in § 28.2-226.1, while the person's licenses and fishing privileges have been revoked pursuant to this section or § 28.2-528. In setting the amount of the civil penalty, the Commission shall consider the person's history of violating the conservation, health, and safety laws and regulations of the Commonwealth.

D. If the person fails to pay the civil penalty within 180 days of the assessment of the civil penalty by the Commission, the Commissioner may transmit a true copy of the order assessing such civil penalty to the clerk of the court of any county or city wherein it is ascertained that the person owing the penalty has any estate, and the clerk to whom such copy is so sent shall record it, as a judgment is required by law to be recorded, and shall index the same as well in the name of the Commonwealth as of the person owing the penalty, and thereupon there shall be a lien in favor of the Commonwealth on the property of the person within such county or city in the amount of the civil penalty.

E. Civil penalties collected pursuant to this section shall be deposited into the Virginia Marine Products Fund established in § 3.2-2705.

An appeal from the Commission's decision may be taken to the courts as provided in Article 3 (§ 28.2-216 et seq.) of this chapter.

§ 28.2-528. Revocation of licenses for theft of oysters.

The Commission, without notice and hearing required by § 28.2-232, shall revoke all licenses and the fishing privileges within the Commonwealth's tidal waters to take or catch fish, shellfish, or marine organisms, issued to any person convicted of unlawfully taking oysters or other mollusca from the public grounds, any riparian oyster planting grounds assigned pursuant to Article 1 (§ 28.2-600 et seq.) of Chapter 6 of this title, or any general oyster planting ground leased pursuant to Article 2 (§ 28.2-603 et seq.) of Chapter 6 of this title. No new licenses shall be issued to such person for a minimum of six

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57 months or a maximum of ~~two~~ *five* years after such conviction in the discretion of the Commission.