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SENATE BILL NO. 668

Senate Amendments in [] — February 8, 2010

A *BILL to amend and reenact §§ 28.2-201, 28.2-302.1, 28.2-302.2, 28.2-302.3, 28.2-302.5, and 28.2-302.8 of the Code of Virginia; to amend the Code of Virginia by adding in Article 1.1 of Chapter 3 of Title 28.2 a section numbered 28.2-302.11; and to repeal §§ 28.2-302.7, 28.2-302.7:1, and 28.2-302.9 of the Code of Virginia, relating to saltwater recreational fishing; conformance with national registry.*

Patron Prior to Engrossment—Senator Northam

Unanimous consent to introduce

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 28.2-201, 28.2-302.1, 28.2-302.2, 28.2-302.3, 28.2-302.5, and 28.2-302.8 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 1.1 of Chapter 3 of Title 28.2 a section numbered 28.2-302.11 as follows:

§ 28.2-201. Authority of Commission to make regulations, establish licenses, and prepare fishery management plans; accept federal grants; enforcement; penalty for violation of regulation.

The Commission may:

1. Promulgate regulations, including those for taking seafood, necessary to promote the general welfare of the seafood industry and to conserve and promote the seafood and marine resources of the Commonwealth. The Commission may also promulgate regulations necessary for the conservation and reasonable use of surf clams.

2. Establish new licenses and fees commensurate with other licenses in an amount not to exceed \$100 for any device used for taking or catching seafood in the tidal waters of the Commonwealth when the device (i) is not otherwise licensed in this title and (ii) is used for commercial purposes. The Commission may specify, when issuing such licenses, any restrictions or control over the devices or the persons operating the device.

3. Establish fees for permits required for delayed or limited entry fisheries, shellfish relaying, scientific collections, and for the administrative transfer of these permits among fisherman, where applicable.

4. Beginning July 1, 2004, and not more frequently than every three years thereafter, increase fees for tidal fisheries licenses and permits that are authorized under this title or by regulation promulgated pursuant to Article 2 (§ 28.2-209 et seq.) of this chapter. Any fee increase for such licenses and permits shall be capped at \$5 or a percentage equal to the increase in the Consumer Price Index calculated from the time the fee was last set or adjusted, whichever is greater. Beginning July 1, 2004, any amounts generated from the increases in commercial fishing licenses and permits shall be paid into the Marine Fishing Improvement Fund for the purposes authorized by § 28.2-208, and any amounts generated from the increases in recreational fishing licenses shall be paid into the Virginia Saltwater Recreational Fishing Development Fund for the purposes authorized by § 28.2-302.3. The Commission may charge nonresidents a higher fee than residents for purchase of any of the fishing licenses issued pursuant to §§ 28.2-302.2, 28.2-302.2:1, 28.2-302.6, ~~28.2-302.7~~, 28.2-302.8, 28.2-302.10, and 28.2-302.10:1. The fee charged to a nonresident shall be no greater than twice the Virginia resident fee. ~~The Commission may prohibit the sale of the private boat license established by § 28.2-302.7 to a nonresident whose boat is not registered in Virginia.~~

5. The Commission shall ensure that increases in licenses and fees are equitably distributed among resource user groups.

6. Prepare fishery management plans containing evaluations of regulatory management options, based upon scientific, economic, biological, and sociological information, and use them in the development of regulations. The Commissioner may appoint a fisheries advisory committee and its chairman, consisting of representatives of the various fishery user groups, to assist in the preparation and implementation of the fishery management plans. The Commission may expend funds to compensate the members of the committee pursuant to § 2.2-2825.

7. Provide for enforcement of any regulation governing surf clams by any law-enforcement officer of any agency of the Commonwealth or its political subdivisions or by any law-enforcement officer of any agency of the federal government. Enforcement agreements with other agencies or political subdivisions shall be stated in the regulation.

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8. The Commonwealth hereby assents to the provisions of the Federal Aid in Sport Fish Restoration Act of August 9, 1950 (16 U.S.C. §§ 777-777k), as amended. The Commission is authorized to perform all such acts as may be necessary for the establishment and implementation of cooperative fish restoration and management projects as defined by these federal statutes and the implementing regulations promulgated thereunder.

§ 28.2-302.1. Recreational license required.

Except in areas under the jurisdiction of the Department of Game and Inland Fisheries and as provided in § 28.2-302.5, a person shall not take or catch fish with rod and reel, hand line, by spearing or gigging, with a cast net, with a dip net, or by using up to two eel pots in the tidal waters of the Commonwealth under the jurisdiction of the Commission without first obtaining a saltwater recreational fishing license. The license required by this section and issued pursuant to § 28.2-302.2, 28.2-302.2:1, 28.2-302.6, ~~28.2-302.7~~, 28.2-302.8, ~~28.2-302.9~~ or 28.2-302.10 shall not be transferable.

§ 28.2-302.2. Recreational license fee; cooperative program.

A. The annual fee for the saltwater recreational fishing license shall be ~~seven dollars and fifty cents~~ (i) \$7.50 for persons under age 65, (ii) \$5 for persons age 65 or older, and (iii) \$5 for persons fishing from a rental boat, or as such fees may be subsequently revised by the Commission pursuant to § 28.2-201. Agents of the Commission shall retain the agent's fee established by the Board of Game and Inland Fisheries pursuant to subsection B of § 29.1-327, except that the agent's fee shall be deducted from the license fee established by the Commission pursuant to subdivision 4 of § 28.2-201, as compensation for issuing each license.

B. All funds collected under this section shall be paid into the state treasury to the credit of the Virginia Saltwater Recreational Fishing Development Fund, as established in § 28.2-302.3.

C. The Commission shall enter into cooperative programs with the Department of Game and Inland Fisheries as are necessary to carry out the provisions of this section.

D. The Commission shall also have the power necessary to conduct and establish cooperative fish projects with the federal government as prescribed by Congress and in compliance with rules and regulations promulgated by the United States Secretary of the Interior.

E. Upon implementation of an automated point-of-sale licensing system, licenses issued under this section shall be valid for one year from their date of purchase.

§ 28.2-302.3. Virginia Saltwater Recreational Fishing Development Fund established.

There is hereby established a special, nonreverting fund in the state treasury to be known as the Virginia Saltwater Recreational Fishing Development Fund, hereafter referred to as the Fund. The interest earned on the principal of the Fund also shall not revert to the general fund. The Fund shall be administered by the Commission, to be used solely for the purposes of conserving and enhancing finfish species taken by recreational anglers; enforcing the provisions of §§ 28.2-302, 28.2-302.1, and 28.2-302.6 through ~~28.2-302.9~~ 28.2-302.8 and regulations promulgated thereunder; improving recreational fishing opportunities; administering the Virginia Saltwater Sport Fishing Tournament certificates program; obtaining necessary data and conducting research for fisheries management; and creating or restoring habitat for species taken by recreational fishermen. The Fund shall consist of moneys collected pursuant to §§ 28.2-302, 28.2-302.2, and 28.2-302.6 through ~~28.2-302.9~~, and 28.2-302.8.

§ 28.2-302.5. Exemptions to saltwater recreational fishing license.

A. The following persons shall be exempt from the requirements of obtaining a saltwater recreational fishing license as set forth in § 28.2-302.1:

1. A person under the age of ~~sixteen~~ or a person who has attained the age of ~~sixty-five~~ 16.

2. A person fishing from private real property that he owns or rents, the nonpaying guest of such person, or a member of the immediate family of such person.

3. A person fishing from a licensed recreational boat licensed pursuant to § 28.2-302.7.

4. A person fishing from a licensed headboat, or charterboat or pier licensed pursuant to § 28.2-302 or § 28.2-302.8.

5. A person fishing with gear licensed by the Commission.

6. The holder of a valid recreational fishing license issued by another state or jurisdiction, upon determination of reciprocity of the license by the Commissioner.

7. Members of the following groups, as determined by the Commissioner:

a. Organized groups of individuals with physical or mental limitations;

b. Organized groups of military veterans residing in veterans' hospitals; and

c. School groups, grades kindergarten through ~~twelve~~ 12, participating in school-sponsored trips.

8. A permanently and totally disabled person as defined in § 58.1-3217 holding a special lifetime saltwater recreational fishing license issued pursuant to § 28.2-302.10.

9. A person holding a lifetime saltwater recreational fishing license issued pursuant to § 28.2-302.10:1.

10. A person fishing from a federally owned park or reserve with boundaries extending into an

adjoining state that does not require a saltwater fishing license.

B. No saltwater recreational fishing licenses shall be required on days that are designated as free fishing days. The Commissioner shall designate no more than three free fishing days in any calendar year. This exemption shall not apply to headboats, or charterboats, or rental boats.

§ 28.2-302.8. Headboat or charterboat.

A. The Commission may establish the sale of a fishing guide license. If established, such fishing guide license shall be required for each charterboat and headboat captain. The Commission may limit the sale of such licenses when deemed necessary by the Commission for effective fisheries management. The application for the license shall include a copy of the applicant's current U.S. Coast Guard license permitting him to carry passengers for hire. The fee for the license shall not exceed \$100. The Commission may reduce the fee charged for the saltwater recreational fishing license under subsection B by an amount equal to the fee for the fishing guide license.

B. The owner of a headboat or charterboat annually shall purchase a recreational fishing license which covers his passengers and the captain and mate of the vessel to meet the requirements set forth in § 28.2-302.1. The annual cost of the license shall be \$150 for uninspected vessels licensed by the United States Coast Guard to carry six fishing passengers or fewer and, for boats United States Coast Guard certified to carry a number of fishing passengers greater than six, \$150 plus \$4 for each passenger over six for which the boat is designed. A headboat or charterboat owner who has purchased the license required under this subsection shall be issued, at no additional cost, the saltwater recreational fishing license issued pursuant to § 28.2-302.1.

C. The owner of a boat rental service shall purchase a recreational fishing license which covers his customers to meet the requirements set forth in § 28.2-302.1. The annual cost of the license shall be \$7.50 per boat with a maximum fee of \$500, whichever is less.

D. Charterboat and headboat operators shall report such data as are deemed necessary by the Commission for the effective fisheries management as a condition of issuance of the license.

E. All funds collected pursuant to this section shall be paid into the state treasury to the credit of the Virginia Saltwater Recreational Fishing Development Fund, as established by § 28.2-302.3. The Commission may subsequently revise the cost of licenses in this section pursuant to § 28.2-201.

§ 28.2-302.11. Angler contact information for the National Saltwater Angler Registry Program.

The Commission may require, by regulation, the submission of angler contact information in a form that is consistent with the National Saltwater Angler Registry Program from anglers purchasing lifetime saltwater licenses who are exempt from licensing under state law.

2. That §§ 28.2-302.7, 28.2-302.7:1, and 28.2-302.9 of the Code of Virginia are repealed.

[3. That the provisions of this act shall become effective on January 1, 2011.]

[4. That the provisions of this act shall expire upon the repeal or expiration of the regulations adopted by the National Marine Fisheries Service establishing a registry of recreational anglers fishing in federal waters pursuant to 50 CFR 600.1405 et seq., as amended.]

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