

HOUSE BILL 396

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CF SB 414

By: **Delegates Beidle, Frush, Gilchrist, Glenn, Holmes, Lafferty, Love, Malone, McIntosh, Niemann, Stein, and Weir**

Introduced and read first time: February 3, 2011

Assigned to: Environmental Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 24, 2011

CHAPTER _____

1 AN ACT concerning

2 **Natural Resources – Administrative Procedures – Electronic Citations,**
3 **Inspections, and Hearings**

4 FOR the purpose of altering the acknowledgment procedures for citations issued by
5 certain police officers for certain natural resources violations; repealing a
6 certain hearing requirement that must be met before the Department of
7 Natural Resources may suspend a recreational or commercial fishing license
8 and requiring the Department to provide certain notice to certain persons of the
9 right to a hearing; requiring the Department to hold a hearing under certain
10 circumstances within a certain time frame in accordance with certain
11 procedures before suspending a recreational or commercial fishing license;
12 authorizing the Department to suspend a recreational ~~or commercial~~ fishing
13 license without a hearing under certain circumstances; ~~altering who may~~
14 ~~perform administrative inspections of commercial fishing operations;~~ altering
15 the authorized scope of administrative inspections of commercial fishing
16 operations; authorizing the seizure and forfeiture by the Department of certain
17 property under certain circumstances; making certain stylistic changes; and
18 generally relating to administrative procedures for natural resources violations.

19 BY repealing and reenacting, with amendments,
20 Article – Natural Resources
21 Section 1–205, 4–220, and 4–701(l) and (m)
22 Annotated Code of Maryland
23 (2005 Replacement Volume and 2010 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY repealing and reenacting, without amendments,
2 Article – Natural Resources
3 Section 4–701(a) and (b)
4 Annotated Code of Maryland
5 (2005 Replacement Volume and 2010 Supplement)

6 BY repealing and reenacting, with amendments,
7 Article – Natural Resources
8 Section 8–2003
9 Annotated Code of Maryland
10 (2007 Replacement Volume and 2010 Supplement)

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

13 **Article – Natural Resources**

14 1–205.

15 (a) If a Natural Resources police officer apprehends a person for violating
16 any law punishable as a misdemeanor, the officer may prepare [and sign] a written
17 **OR ELECTRONIC** citation containing[a]:

18 (1) **A** notice to appear in court[, the];

19 (2) **THE** name and address of the person charged[, appropriate];

20 (3) **RELEVANT** license numbers, if any[, the];

21 (4) **THE** offense charged[, the];

22 (5) **THE** time and place the person shall appear in court[.];

23 (6) **AN ACKNOWLEDGMENT OF RECEIPT OF THE CITATION BY THE**
24 **PERSON CHARGED MADE IN A MANNER DETERMINED BY THE DEPARTMENT;** and

25 (7) [other] **OTHER** pertinent information required by the Secretary.

26 (b) (1) The person charged may [give his written] promise to appear in
27 court by [signing] **ACKNOWLEDGING RECEIPT OF** the citation prepared by the officer
28 **IN A MANNER DETERMINED BY THE DEPARTMENT.**

29 (2) [In this event,] **IF THE PERSON CHARGED ACKNOWLEDGES**
30 **RECEIPT OF THE CITATION,** the officer is not required to take the person into
31 physical custody for the violation unless [the]:

1 **(I) THE** person charged does not furnish satisfactory evidence
2 of identity; or [the]

3 **(II) THE** officer has reasonable grounds to believe the person
4 charged will [disregard a written promise to] **NOT** appear.

5 (c) A person may not [violate his written promise to appear in court] **FAIL**
6 **TO COMPLY WITH A NOTICE TO APPEAR IN A CITATION ISSUED UNDER THIS**
7 **SECTION** unless [sufficient]:

8 **(1) SUFFICIENT** collateral for the offense is posted[, the];

9 **(2) THE** fine is paid in advance of trial[.]; or [the]

10 **(3) THE** person is represented by counsel in court.

11 (d) (1) If a person fails to comply with the notice to appear in a citation
12 issued under this section, the court may:

13 (i) Except as provided in paragraph (4) of this subsection, issue
14 a warrant for the person's arrest; or

15 (ii) After 5 days, notify the court's clerk of the person's
16 noncompliance.

17 (2) On receipt of notice of noncompliance from the court, the clerk
18 shall notify the person by mail at the address indicated on the citation that a warrant
19 for the person's arrest may be issued by the court unless, by the end of the 15th day
20 after the date on which the notice is mailed, the person:

21 (i) Pays the fine on the original charge as provided for in the
22 original citations and a fine of \$100 for failing to appear; or

23 (ii) Posts bond or a penalty deposit and requests a new trial
24 date.

25 (3) If a person fails to pay the fines or post the bond or penalty deposit
26 under paragraph (2) of this subsection, the court may issue a warrant.

27 (4) When the original offense is not punishable by incarceration, a
28 warrant may not be issued for the person under this subsection until 20 days after the
29 original trial date.

30 4-220.

1 (a) In addition to any other penalty provided by the provisions of this title,
2 the Secretary may revoke or suspend any recreational license issued to any person
3 under this title.

4 (b) The Secretary may adopt regulations that list the criteria for a
5 suspension of a person's entitlement to engage in an activity or activities that are
6 licensed or permitted under this title.

7 (c) (1) During a period of suspension imposed by the Department, the
8 person whose entitlement to engage in an activity or activities has been suspended
9 may not engage in an activity for which the suspension was imposed.

10 (2) The following are grounds for an immediate suspension of a license
11 issued under this title:

12 (i) Knowingly making a false statement in an application;

13 (ii) Three convictions for violations occurring on separate days
14 within any 3-year period of provisions under this title;

15 (iii) Failure to submit a report required under this title or by
16 regulation; or

17 (iv) Failure of a nonresident of the State to appear in court in
18 accordance with a citation issued by a Natural Resources police officer, or to any other
19 process issued by any court of Maryland, for violation of this title.

20 (3) A penalty imposed in accordance with this section is in addition to
21 any other penalty authorized under § 4-1201 of this title regarding striped bass.

22 (4) The Department shall initiate any proceeding to suspend a license
23 under this section not later than 6 months after the time for filing an appeal of the
24 third conviction under paragraph (2)(ii) of this subsection has passed.

25 (5) (i) Before the suspension of a license under this section, the
26 Department shall [hold a hearing on not less than 10 days' notice to the licensee]
27 **NOTIFY THE LICENSEE IN WRITING OF THE LICENSEE'S RIGHT TO A HEARING ON**
28 **REQUEST.**

29 (ii) [On the failure of a nonresident of the State to appear in a
30 court of this State as required by any charging document accusing the person of
31 committing any offense under this subtitle, in addition to any other appropriate action
32 taken by the court or the Department, the Department may suspend immediately and
33 without a hearing any license issued to the person under this title.] **IF A LICENSEE**
34 **SUBMITS A WRITTEN REQUEST FOR A HEARING TO THE DEPARTMENT, WITHIN**

30 DAYS AFTER THE DATE THAT THE NOTICE REQUIRED UNDER THIS PARAGRAPH IS MAILED, THE DEPARTMENT SHALL:

1. HOLD A HEARING AFTER PROVIDING AT LEAST 10 DAYS' NOTICE TO THE LICENSEE; AND

2. CONDUCT THE HEARING IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

(III) THE DEPARTMENT MAY SUSPEND A RECREATIONAL LICENSE ISSUED UNDER THIS TITLE WITHOUT A HEARING IF:

1. THE LICENSEE DOES NOT SUBMIT A WRITTEN REQUEST FOR A HEARING; OR

2. THE LICENSEE FAILS TO APPEAR FOR A SCHEDULED HEARING FOR WHICH THE DEPARTMENT PROVIDED NOTICE.

4-701.

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

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

(2) A tidal fish license authorizes a licensee:

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

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

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

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

(l) (1) In addition to any other penalty provided in this title, the Department may suspend or revoke a person's entitlement to engage in a particular activity or activities under a tidal fish license.

1 (2) During a period of suspension or revocation imposed by the
2 Department, the person penalized is not and shall not be authorized under any
3 existing, renewed, transferred, or new tidal fish license to engage in the particular
4 activity or activities for which the suspension is imposed.

5 (3) The following are grounds for suspension or revocation of a tidal
6 fish license:

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

9 (ii) A serious violation of a State or federal commercial fisheries
10 law that results in a conviction or an accepted plea of nolo contendere;

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

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

16 (4) A penalty imposed in accordance with this subtitle shall be in
17 addition to any other penalty authorized under § 4-1201 of this title regarding striped
18 bass.

19 (5) The Department, in consultation with the Tidal Fisheries Advisory
20 Commission and the Sport Fisheries Advisory Commission, shall adopt regulations
21 relating to the suspension and revocation of licenses and authorizations issued under
22 this title, including:

23 (i) A schedule of points assigned to various offenses under this
24 title;

25 (ii) A schedule of the maximum number of days that a license
26 may be suspended according to the number of points accumulated;

27 (iii) Suspension or revocation of a license or authorization for a
28 serious violation of a State or federal commercial fisheries law that results in an
29 individual receiving a conviction or an accepted plea of nolo contendere;

30 (iv) Enhanced penalties for repeated violations of this title; and

31 (v) Enhanced penalties for violations of provisions of this title
32 that regulate species deemed by the Department to be in need of special protection,
33 including striped bass, crabs, oysters, and menhaden.

1 (6) **(I)** Before the suspension or revocation of a tidal fish license
2 under this section, the Department shall [hold a hearing upon not less than 10 days'
3 notice to the licensee, except that upon the failure of a nonresident of the State to
4 appear in a court of this State as required by any charging document accusing the
5 person of committing any offense under this title, in addition to any other appropriate
6 action taken by the court or the Department, the Department may suspend
7 immediately and without hearing any license issued to the person under this title]
8 **NOTIFY THE LICENSEE IN WRITING ~~ON~~ OF THE LICENSEE'S RIGHT TO A HEARING**
9 **ON REQUEST.**

10 **(II)** **IF A LICENSEE SUBMITS A WRITTEN REQUEST FOR A**
11 **HEARING TO THE DEPARTMENT, WITHIN 30 DAYS AFTER THE DATE THAT THE**
12 **NOTICE REQUIRED UNDER THIS PARAGRAPH IS MAILED, THE DEPARTMENT**
13 **SHALL:**

14 1. **HOLD A HEARING AFTER PROVIDING AT LEAST 10**
15 **DAYS' NOTICE TO THE LICENSEE; AND**

16 2. **CONDUCT THE HEARING IN ACCORDANCE WITH**
17 **TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.**

18 **(III)** **THE DEPARTMENT MAY SUSPEND A COMMERCIAL**
19 **LICENSE ISSUED UNDER THIS TITLE WITHOUT A HEARING IF:**

20 1. **THE LICENSEE DOES NOT SUBMIT A WRITTEN**
21 **REQUEST FOR A HEARING; OR**

22 2. **THE LICENSEE FAILS TO APPEAR FOR A**
23 **SCHEDULED HEARING FOR WHICH THE DEPARTMENT PROVIDED NOTICE.**

24 (m) **(1)** A licensee or any person to whom a licensee has transferred a
25 license under subsection (i) of this section shall have in possession the tidal fish
26 license and any valid application to transfer the commercial tidal fish license approved
27 by the Department for a temporary transfer whenever engaged in any licensed
28 activity.

29 **(2)** **(I)** **THIS PARAGRAPH DOES NOT LIMIT THE DEPARTMENT'S**
30 **AUTHORITY TO INSPECT BOOKS, STATEMENTS, AND ACCOUNTS UNDER §**
31 **4-206(B) OF THIS TITLE.**

32 **(II)** The licensee or any person to whom a licensee has
33 transferred a license under subsection (i) of this section shall allow ~~[any police officer]~~
34 ~~**THE DEPARTMENT,**~~ **AT REASONABLE TIMES, INCLUDING WHEN THE LICENSEE**
35 **OR PERSON IS ENGAGED IN AN ACTIVITY THAT REQUIRES A LICENSE UNDER**
36 **THIS SECTION,** to inspect [the]:

1 1. **THE** license [and any];

2 2. **ANY** applicable application to transfer the commercial
3 tidal fish license approved by the Department for a temporary transfer[, to conduct
4 searches as authorized in Subtitle 12 of this title, and to inspect books, statements,
5 and accounts as authorized in § 4-206(b) of this title];

6 3. **COMMERCIAL FISHING VESSELS;**

7 4. **VEHICLES USED TO TRANSPORT FISH FOR**
8 **COMMERCIAL PURPOSES; AND**

9 5. **FISH BUSINESSES OWNED OR OPERATED BY A**
10 **PERSON LICENSED UNDER THIS SECTION.**

11 **(III) INSPECTIONS OF VESSELS, VEHICLES, AND BUSINESSES**
12 **AUTHORIZED UNDER THIS PARAGRAPH ~~INCLUDE~~ SHALL BE RESTRICTED TO**
13 **INSPECTIONS OF FISHING GEAR AND PLACES WHERE FISH MAY BE STORED.**

14 **(IV) INSPECTIONS OF BUSINESSES AUTHORIZED UNDER THIS**
15 **PARAGRAPH MAY BE CONDUCTED IN ANY BUILDING OTHER THAN A DWELLING**
16 **HOUSE.**

17 **(3) (I) AN INSPECTOR MAY SEIZE FISHING GEAR OR FISH**
18 **FOUND DURING AN INSPECTION UNDER THIS SUBSECTION THAT IS USED OR**
19 **POSSESSED IN CONNECTION WITH A VIOLATION OF THIS TITLE OR A**
20 **REGULATION ADOPTED UNDER THIS TITLE.**

21 **(II) FISHING GEAR ~~OR—FISH~~ SEIZED UNDER THIS**
22 **PARAGRAPH SHALL BE HELD BY THE DEPARTMENT PENDING DISPOSITION OF**
23 **COURT PROCEEDINGS AND ON CONVICTION THE PROPERTY SEIZED OR**
24 **PROCEEDS FROM THE SEIZURE SHALL BE FORFEITED TO THE STATE FOR**
25 **DESTRUCTION OR DISPOSITION AS THE DEPARTMENT MAY DEEM APPROPRIATE.**

26 **(III) THE DEPARTMENT MAY DISPOSE OF FISH SEIZED**
27 **UNDER THIS PARAGRAPH AT ITS DISCRETION.**

28 8-2003.

29 (a) Whenever a person is halted by a regular or special police officer for an
30 offense on publicly owned watershed property punishable as a misdemeanor and
31 which is either a violation of law or a violation of watershed regulations, and is not
32 taken before a District Court commissioner as would otherwise be required or is

permitted by law, the officer may prepare a written **OR ELECTRONIC** citation containing [a]:

(1) A notice to appear in court[, the];

(2) THE name and address of the person CHARGED[.];

(3) [the] THE offense charged[, the];

(4) THE time and place the person shall appear in court[.];

(5) AN ACKNOWLEDGMENT OF RECEIPT OF THE CITATION BY THE PERSON CHARGED MADE IN A MANNER DETERMINED BY THE DEPARTMENT; and [whatever other]

(6) OTHER pertinent information as necessary.

(b) The time specified in the notice to appear shall be at least five days after the alleged violation unless the person charged with the violation demands an earlier hearing.

(c) The place specified in the notice to appear shall be before a judge of the appropriate District Court.

(d) The person charged with the violation may [give his written] promise to appear in court by [signing] **ACKNOWLEDGING RECEIPT OF** at least one copy of the [written] citation prepared by the officer **IN A MANNER DETERMINED BY THE DEPARTMENT**, in which event the officer shall deliver a copy of the citation to the person. Then, the officer may not take the person into physical custody for the violation.

(e) Failure to **COMPLY WITH THE NOTICE TO** appear [as promised] is punishable as contempt or as otherwise provided by law in such cases.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.