

By: Senator(s) Gollott

To: Ports and Marine  
Resources; Judiciary,  
Division A

SENATE BILL NO. 2728

1 AN ACT TO ESTABLISH AN ADMINISTRATIVE HEARING PROCEDURE FOR  
2 THE COMMISSION ON MARINE RESOURCES TO ENFORCE ITS RULES AND  
3 REGULATIONS AND ANY STATUTES WITHIN THE COMMISSION'S JURISDICTION;  
4 TO PROVIDE THAT THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF MARINE  
5 RESOURCES SHALL REVIEW EACH COMPLAINT TO DETERMINE IF THERE ARE  
6 REASONABLE GROUNDS TO INDICATE THAT A VIOLATION HAS OCCURRED; TO  
7 PROVIDE THAT WHEN REASONABLE GROUNDS EXIST, THE EXECUTIVE DIRECTOR  
8 MAY RECOMMEND A FINE NOT TO EXCEED \$25,000.00 PER VIOLATION; TO  
9 ALLOW THE ALLEGED VIOLATOR TO REQUEST AN INFORMAL SETTLEMENT  
10 CONFERENCE WITH THE EXECUTIVE DIRECTOR AND TO ALLOW THE EXECUTIVE  
11 DIRECTOR DISCRETION TO REVISE THE RECOMMENDED PENALTY; TO ALLOW  
12 THE ALLEGED VIOLATOR TO REQUEST A HEARING BEFORE THE COMMISSION;  
13 TO REQUIRE THE COMMISSION TO SCHEDULE A HEARING UPON REQUEST OF AN  
14 ALLEGED VIOLATOR; TO REQUIRE A MAJORITY VOTE OF THE COMMISSION  
15 BEFORE ASSESSING A PENALTY AND ISSUING A WRITTEN OPINION REGARDING  
16 THE ASSESSMENT OF THE PENALTY; TO ALLOW THE WAIVER OF THE RIGHT TO  
17 AN INFORMAL SETTLEMENT CONFERENCE OR A HEARING; TO PROVIDE FOR  
18 JUDICIAL REVIEW OF ANY FINAL DECISION OF THE COMMISSION; TO  
19 AUTHORIZE THE IMPOSITION OF A CIVIL PENALTY; TO PROVIDE THAT  
20 CRIMINAL AND CIVIL PENALTIES BE PAID INTO THE SEAFOOD FUND; TO  
21 PROVIDE CRIMINAL IMMUNITY FOR WITNESSES SUBPOENAED BY THE  
22 COMMISSION; AND FOR RELATED PURPOSES.

23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

24 **SECTION 1.** It is the purpose of this act to establish an  
25 administrative hearing procedure for the Commission on Marine  
26 Resources to enforce the rules and regulations of the commission  
27 and Sections 49-15-1 through 49-15-321, 49-27-1 through 49-27-71,  
28 59-21-111, and such other statutes within the jurisdiction of the  
29 Commission on Marine Resources. Unless specifically authorized,  
30 the commission shall not seek both administrative and criminal  
31 penalties against violators of the statutes referred to herein for  
32 the same offense.

33 **SECTION 2.** (1) When any allegation or charge in the form of  
34 a complaint has been made against a person for violating the rules  
35 and regulations of the commission the commission shall:

36 (a) Cause the complaint to be in writing and signed by  
37 the person making the charge;

38           (b) Insure that the complaint is filed in the office of  
39 the commission;

40           (c) Cause the complaint to be reviewed by the executive  
41 director of the department, or his designee; and

42           (d) Send or deliver a copy of the complaint and any  
43 supporting documents to the alleged violator along with a request  
44 for the alleged violator to respond to the allegations within  
45 thirty (30) days. The notification shall be accomplished by any  
46 of the methods provided for by the Mississippi Rules of Civil  
47 Procedure. Citations issued at the time of the alleged violation  
48 by marine enforcement officers shall constitute sufficient notice.

49           (2) Upon receipt of the response and any supporting  
50 documents from the alleged violator, the executive director, or  
51 his designee, shall review all information on file to determine  
52 the merit of the complaint. If the executive director, or his  
53 designee, determines that the complaint lacks merit, the executive  
54 director may recommend that the complaint be dismissed.

55           (3) If the executive director, or his designee, determines  
56 that there are reasonable grounds to indicate that a violation has  
57 occurred or if the alleged violator admits to the truth of the  
58 allegations upon which the complaint is based, the executive  
59 director may recommend to the commission a fine not to exceed  
60 Twenty-five Thousand Dollars (\$25,000.00) for each violation. The  
61 executive director shall send a copy of the recommendation to the  
62 alleged violator and the commission.

63           (4) (a) The alleged violator shall have fifteen (15) days  
64 from receipt of the recommendation of the executive director  
65 within which to file with the commission a written request for an  
66 informal settlement conference with the executive director, or his  
67 designee. If the alleged violator requests a conference, the  
68 executive director, or his designee, shall meet with the alleged  
69 violator to discuss the proposed penalty and the possibility of an  
70 agreed settlement. If, in the judgment of the executive director,

71 or his designee, a reasonable settlement is reached, the  
72 recommended penalty shall be revised accordingly.

73 (b) If the alleged violator and the executive director,  
74 or his designee, fail to reach an agreement on the recommended  
75 penalty, or if the alleged violator does not file a written  
76 request for a settlement conference, the alleged violator shall  
77 file within twenty (20) days of receipt of the recommendation of  
78 the executive director a written request for a hearing before the  
79 commission.

80 (5) The commission shall consider the alleged violation and  
81 the recommendation of the department at a regularly scheduled  
82 meeting of the commission. In determining the amount of the  
83 penalty, the commission may consider the appropriateness of such  
84 penalty and the gravity of the violation. The commission may  
85 issue a warning in lieu of proposing a penalty.

86 **SECTION 3.** (1) The commission shall, within forty (40) days  
87 of notification from the alleged violator that a hearing is  
88 requested, schedule a hearing at a date, time and place to be  
89 determined by the commission. For good cause shown the commission  
90 may grant a continuance or continuances of such hearings. Written  
91 notice of the date, time and place of such hearing shall be mailed  
92 to the alleged violator by registered mail, return receipt  
93 requested, no less than fifteen (15) days before the time of the  
94 hearing.

95 (2) In lieu of a hearing before the full commission, the  
96 commission may designate three (3) or more members of the  
97 commission to preside over the hearing and render a decision for  
98 the full commission.

99 (3) A duly qualified court reporter shall be in attendance  
100 and shall make a full and complete transcript of the proceedings.  
101 The hearing shall be closed unless the alleged violator requests a  
102 public hearing. The commission shall have the right and duty to  
103 impose reasonable restrictions as it may deem necessary or

104 appropriate to ensure an orderly, expeditious and impartial  
105 proceedings, and shall admit all relevant and material evidence  
106 except evidence which is unduly repetitious. Hearsay shall be  
107 admissible to the extent permitted by the commission.

108 (4) For purposes of such hearing, the commission is hereby  
109 empowered to require the attendance of witnesses, administer oaths  
110 and hear testimony, either oral or documentary, for and against  
111 the alleged violator. The commission shall have the authority to  
112 issue subpoenas to compel the attendance of witnesses and the  
113 production of books, papers, records or other documentary evidence  
114 at a hearing. Subpoenas to be issued shall be delivered to the  
115 sheriff of the county where they are to be executed and the  
116 sheriff shall serve them. In case of the failure of any person to  
117 comply with any subpoena issued by the commission, the commission  
118 or its authorized representative may invoke the aid of any court  
119 of general jurisdiction of this state. The court may thereupon  
120 order such person to comply with the requirements of the subpoena.  
121 Failure to comply with the order of the court may be treated as  
122 contempt thereof.

123 (5) At the conclusion of the hearing, the commission, upon  
124 the majority vote of the members present, shall issue a written  
125 opinion incorporating its findings of facts and conclusions of law  
126 and any penalty that it may assess not to exceed Twenty-five  
127 Thousand Dollars (\$25,000.00) per violation. The executive  
128 officer shall notify the alleged violator of the commission's  
129 decision.

130 **SECTION 4.** Failure of the alleged violator to request an  
131 informal settlement conference or a hearing or to respond to the  
132 complaint within thirty (30) days shall constitute a waiver of the  
133 right to a hearing, and any penalties assessed by the commission  
134 shall be due and payable as provided in Section 8 of this act.

135 **SECTION 5.** The commission shall have jurisdiction over all  
136 persons and property necessary to administer and enforce the

137 provisions of this act and the rules and regulations of the  
138 commission. The commission may adopt rules and regulations to  
139 implement the provisions of this act.

140 **SECTION 6.** (1) Any individual aggrieved by a final decision  
141 of the commission shall be entitled to judicial review.

142 (2) Any appeal from the commission's decision shall be filed  
143 in the Chancery Court of the Second Judicial District of Harrison  
144 County, Mississippi, on the record made, including a verbatim  
145 transcript of the testimony at the hearing held before the  
146 commission. The appeal shall be filed within thirty (30) days  
147 after notification of the decision of the commission is mailed or  
148 served, and the proceedings in chancery court shall be conducted  
149 as other matters coming before the court on appeal. The appeal  
150 shall be perfected upon filing notice of the appeal and by the  
151 prepayment of all estimated costs, including the cost of  
152 preparation of the record of the proceedings before the  
153 commission, and the filing of a bond in the sum of Five Hundred  
154 Dollars (\$500.00) conditioned that if the action of the commission  
155 be affirmed by the chancery court, the aggrieved party shall pay  
156 the costs of the appeal to the chancery court.

157 (3) The scope of review of the chancery court in such cases  
158 shall be limited to a review of the record made before the  
159 commission to determine if the action of the commission is  
160 unlawful for the reason that it was:

- 161 (a) Not supported by any substantial evidence;  
162 (b) Arbitrary or capricious; or  
163 (c) In violation of some statutory or constitutional  
164 right of the individual.

165 (4) No relief shall be granted based upon the court's  
166 finding of harmless error by the commission in complying with the  
167 procedural requirements of this act. If there is a finding of  
168 prejudicial error in the proceedings, the cause may be remanded  
169 for a rehearing consistent with the findings of the court.

170 (5) Any party aggrieved by action of the chancery court may  
171 appeal to the State Supreme Court in the manner provided by law.

172 **SECTION 7.** Each violation of the rules and regulations of  
173 the commission or violations of the statutes set forth in Chapters  
174 15 and 27 of Title 49, and Chapter 21 of Title 59, Mississippi  
175 Code of 1972, shall be subject to the imposition of a civil  
176 penalty up to Twenty-five Thousand Dollars (\$25,000.00).

177 **SECTION 8.** (1) Any penalty assessed by the commission shall  
178 be due and payable within forty-five (45) days of the notification  
179 of the decision. All sums of money collected as a result of  
180 criminal or civil penalties levied under this act shall be paid  
181 into the Seafood Fund created and described in Section 49-15-17.

182 (2) If the judgment is not paid within the forty-five (45)  
183 days, or within such additional time as the commission may allow,  
184 the commission may file suit in the chancery court of the county  
185 where the defendant resides or in the case of a nonresident  
186 defendant in the Chancery Court of the Second Judicial District of  
187 Harrison County or any other court with appropriate jurisdiction  
188 to enforce the decision of the commission and recover reasonable  
189 attorney's fees and all court costs.

190 (3) A copy of the notification sent by the commission to the  
191 violator shall be sufficient proof as to the judgment of the  
192 commission.

193 **SECTION 9.** No person shall be subject to criminal  
194 prosecution or to any penalty or forfeiture in a separate  
195 proceeding for or on account of any transaction, matter or issue  
196 concerning which he may be required to testify to or produce  
197 evidence, or provide documentation, before the commission or at  
198 any of its hearings or conferences, or in compliance with any  
199 subpoena; however, no person testifying shall be exempt from  
200 prosecution and punishment for perjury committed in so testifying.

201 **SECTION 10.** The provisions of Sections 1 through 9 shall be  
202 codified in Chapter 15, Title 49, Mississippi Code of 1972.

203           **SECTION 11.** This act shall take effect and be in force from  
204 and after July 1, 2005.