

Senate Amendments to House Bill No. 1211

TO THE CLERK OF THE HOUSE:

THIS IS TO INFORM YOU THAT THE SENATE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

AMENDMENT NO. 1

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

27 **SECTION 1.** Section 49-15-401, Mississippi Code of 1972, is
28 amended as follows:

29 49-15-401. It is the purpose of this article to establish an
30 administrative hearing procedure for the * * * Mississippi
31 Department of Marine Resources to enforce the rules and
32 regulations * * * set forth in Title 22 Administrative Code and
33 Sections 49-15-1 through 49-15-321, 49-27-1 through 49-27-71,
34 59-21-111, and such other statutes within the jurisdiction of
35 the * * * Department of Marine Resources. Unless specifically
36 authorized, the * * * department shall not seek both
37 administrative and criminal penalties against violators of the
38 statutes referred to herein for the same offense, except as
39 provided in Section 49-15-63. * * *

40 **SECTION 2.** Section 49-15-403, Mississippi Code of 1972, is
41 amended as follows:

42 49-15-403. (1) When any allegation or charge in the form of
43 a complaint has been made against a person for * * * violations

44 pursuant to the authorities outlined in Section 49-15-401 and such
45 matter has been brought before the * * * department for
46 administrative penalty processing, the * * * department shall:

47 (a) Cause the complaint to be in writing * * *, signed
48 by the person and/or office making the charge and include the
49 recommended fine;

50 (b) * * * Ensure that the complaint is filed * * * with
51 the executive director;

52 (c) Cause the * * * executive director of the
53 department, or his designee, to review the complaint; and

54 (d) Send or deliver a copy of the complaint and any
55 supporting documents to the alleged violator along with a request
56 for the alleged violator to respond to the allegations within
57 thirty (30) days. The notification shall be accomplished by any
58 of the methods provided for by the Mississippi Rules of Civil
59 Procedure. Citations issued at the time of the alleged violation
60 by marine enforcement officers shall constitute sufficient notice.

61 (2) Upon receipt of the response and any supporting
62 documents from the alleged violator, the executive director, or
63 his designee, shall review all information on file to determine
64 the merit of the complaint. If the executive director, or his
65 designee, determines that the complaint lacks merit, the executive
66 director may * * * dismiss the complaint.

67 (3) If the executive director, or his designee, determines
68 that there are reasonable grounds to indicate that a violation has
69 occurred or if the alleged violator admits to the truth of the

70 allegations upon which the complaint is based, the executive
71 director may * * * impose a fine not to exceed Ten Thousand
72 Dollars (\$10,000.00) for each violation. The executive director
73 shall send a copy of the * * * recommended fine to the alleged
74 violator * * *.

75 (4) * * * The alleged violator shall have fifteen (15) days
76 from receipt of the * * * finding and recommended fine of the
77 executive director within which to file * * * a written request
78 for an informal settlement conference with the executive director,
79 or his designee. If the alleged violator requests a conference,
80 the executive director, or his designee, shall meet with the
81 alleged violator to discuss the proposed penalty and the
82 possibility of an agreed settlement. The alleged violator may
83 present evidence and written or oral comments at the executive
84 director's conference. The alleged violator may be represented by
85 legal counsel, at his or her own expense. If, in the judgment of
86 the executive director, or his designee, a reasonable settlement
87 is reached, the recommended penalty shall be revised accordingly.
88 The executive director shall make the final decision regarding the
89 penalty to be issued, which may include dismissal of the
90 complaint, issuance of a warning in lieu of a penalty or a
91 monetary penalty not to exceed Ten Thousand Dollars (\$10,000.00)
92 for each violation. If a request for information settlement is
93 not received within the timeframe provided, the executive
94 director's recommended fine will be the final decision.

95 * * *

96 **SECTION 3.** Section 49-15-405, Mississippi Code of 1972, is
97 amended as follows:

98 49-15-405. (1) * * * If the alleged violator requests a
99 formal hearing within thirty (30) days from the receipt of the
100 finding and recommended fine, or within fifteen (15) days from the
101 receipt of the executive director's decision following the
102 information settlement, the executive director shall designate a
103 representative of the Attorney General's office to preside over
104 the hearing and render a finding and recommendation as provided in
105 this section.

106 * * *

107 (* * * 2) A duly qualified court reporter shall be in
108 attendance and shall make a full and complete transcript of the
109 proceedings. The hearing shall be closed unless the alleged
110 violator requests a public hearing. The * * * hearing officer
111 shall have the right and duty to impose reasonable restrictions
112 as * * * he may deem necessary or appropriate to ensure an
113 orderly, expeditious and impartial proceedings, and shall admit
114 all relevant and material evidence except evidence which is unduly
115 repetitious. Hearsay shall be admissible to the extent permitted
116 by the * * * hearing officer.

117 (* * * 3) For purposes of such hearing, the * * * hearing
118 officer is hereby empowered to require the attendance of
119 witnesses, administer oaths and hear testimony, either oral or
120 documentary, for and against the alleged violator. The * * *
121 hearing officer shall have the authority to issue subpoenas to

122 compel the attendance of witnesses and the production of books,
123 papers, records or other documentary evidence at a hearing.
124 Subpoenas to be issued shall be delivered to the sheriff of the
125 county where they are to be executed and the sheriff shall serve
126 them. In case of the failure of any person to comply with any
127 subpoena issued by the * * * hearing officer, the * * * hearing
128 officer may invoke the aid of any court of general jurisdiction of
129 this state. The court may thereupon order such person to comply
130 with the requirements of the subpoena. Failure to comply with the
131 order of the court may be treated as contempt thereof.

132 (* * * 4) At the conclusion of the hearing, the * * *
133 hearing officer shall issue a written * * * recommendation
134 incorporating * * * his findings of facts and conclusions of law
135 regarding whether a violation has occurred and * * * the
136 appropriate penalty, if any, that * * * he may assess not to
137 exceed Ten Thousand Dollars (\$10,000.00) per violation. * * *

138 (5) The hearing officer's recommendation shall then be
139 forwarded to the executive director who will make the final
140 decision regarding whether a violation has occurred and the
141 appropriate penalty, if any.

142 (6) The executive director's final decision shall be
143 delivered to the alleged violator.

144 **SECTION 4.** Section 49-15-407, Mississippi Code of 1972, is
145 amended as follows:

146 49-15-407. Failure of the alleged violator to request an
147 informal settlement conference * * * , a hearing, or to respond to

148 the complaint within thirty (30) days shall constitute a waiver of
149 the right to a hearing, and any penalties assessed by the * * *
150 executive director shall be due and payable as provided in Section
151 49-15-415.

152 **SECTION 5.** Section 49-15-409, Mississippi Code of 1972, is
153 amended as follows:

154 49-15-409. The * * * department shall have jurisdiction over
155 all persons and property necessary to administer and enforce the
156 provisions of this article and the * * * authorities outlined in
157 Section 49-15-401. The * * * department may adopt rules and
158 regulations to implement the provisions of this article.

159 **SECTION 6.** Section 49-15-411, Mississippi Code of 1972, is
160 amended as follows:

161 49-15-411. (1) Any individual aggrieved by a final decision
162 of the * * * executive director shall be entitled to judicial
163 review.

164 (2) Any appeal from the * * * executive director's decision
165 shall be filed in the Chancery Court of the Second Judicial
166 District of Harrison County, Mississippi, on the record made,
167 including a verbatim transcript of the testimony at the hearing
168 held before the * * * hearing officer. The appeal shall be filed
169 within thirty (30) days after notification of the final decision
170 of the * * * executive director is mailed or served, and the
171 proceedings in chancery court shall be conducted as other matters
172 coming before the court on appeal. The appeal shall be perfected
173 upon filing notice of the appeal and by the prepayment of all

174 estimated costs, including the cost of preparation of the record
175 of the proceedings before the * * * executive director, and the
176 filing of a bond in the sum of Five Hundred Dollars (\$500.00)
177 conditioned that if the * * * executive director's final decision
178 be affirmed by the chancery court, the aggrieved party shall pay
179 the costs of the appeal to the chancery court.

180 (3) The scope of review of the chancery court in such cases
181 shall be limited to a review of the record made before the * * *
182 executive director's final decision to determine if the * * *
183 decision is unlawful for the reason that it was:

- 184 (a) Not supported by any substantial evidence;
185 (b) Arbitrary or capricious; or
186 (c) In violation of some statutory or constitutional
187 right of the individual.

188 (4) No relief shall be granted based upon the court's
189 finding of harmless error by the * * * executive director in
190 complying with the procedural requirements of this article. If
191 there is a finding of prejudicial error in the proceedings, the
192 cause may be remanded for a rehearing consistent with the findings
193 of the court.

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

196 **SECTION 7.** Section 49-15-413, Mississippi Code of 1972, is
197 amended as follows:

198 49-15-413. Each violation of the rules and regulations * * *
199 set forth in Title 22 of the Administrative Code or violations of

200 the statutes set forth in Chapters 15 and 27 of Title 49, and
201 Chapter 21 of Title 59, Mississippi Code of 1972, shall be subject
202 to the imposition of a civil penalty up to Ten Thousand Dollars
203 (\$10,000.00).

204 **SECTION 8.** Section 49-15-415, Mississippi Code of 1972, is
205 amended as follows:

206 49-15-415. (1) Any penalty assessed by the * * * department
207 shall be due and payable within forty-five (45) days of the
208 notification of the decision. All sums of money collected as a
209 result of criminal or civil penalties levied under this article
210 shall be paid into the Seafood Fund created and described in
211 Section 49-15-17.

212 (2) If the judgment is not paid within the forty-five (45)
213 days, or within such additional time as the * * * department may
214 allow, the * * * department may file suit in the chancery court of
215 the county where the defendant resides or in the case of a
216 nonresident defendant in the Chancery Court of the Second Judicial
217 District of Harrison County or any other court with appropriate
218 jurisdiction to enforce the decision of the * * * executive
219 director and recover reasonable attorney's fees and all court
220 costs.

221 (3) A copy of the notification sent by the * * * department
222 to the violator shall be sufficient proof as to the judgment of
223 the * * * department.

224 **SECTION 9.** Section 49-15-323, Mississippi Code of 1972, is
225 amended as follows:

226 49-15-323. If any violation of any marine resources law or
227 regulation is alleged to have been committed in the Gulf of Mexico
228 outside of the state's territorial waters where the state has
229 jurisdiction over the recreational or commercial fishing vessel,
230 under the Magnuson-Stevens Fishery Conservation and Management
231 Act, 16 USCS Section 1856, or any other provision of federal law,
232 the * * * Department of Marine Resources shall have jurisdiction
233 of the offense and may commence administrative enforcement action
234 against alleged violators in accordance with the administrative
235 procedures provisions of Section 49-15-401 et seq., Mississippi
236 Code of 1972.

237 **SECTION 10.** Section 49-15-63, Mississippi Code of 1972, is
238 amended as follows:

239 49-15-63. (1) (a) Any person, firm or corporation
240 violating any of the provisions of this chapter or any ordinance
241 duly adopted by the * * * department, unless otherwise
242 specifically provided for herein, shall, on conviction, be fined
243 not less than One Hundred Dollars (\$100.00), nor more than Five
244 Hundred Dollars (\$500.00), for the first offense, unless the first
245 offense is committed during a closed season, in which case the
246 fine shall be not less than Five Hundred Dollars (\$500.00), nor
247 more than One Thousand Dollars (\$1,000.00); and not less than Five
248 Hundred Dollars (\$500.00), nor more than One Thousand Dollars
249 (\$1,000.00), for the second offense when such offense is committed
250 within a period of three (3) years from the first offense; and not
251 less than Two Thousand Dollars (\$2,000.00) nor more than Four

252 Thousand Dollars (\$4,000.00), or imprisonment in the county jail
253 for a period not exceeding thirty (30) days for any third or
254 subsequent offense when such offense is committed within a period
255 of three (3) years from the first offense.

256 (b) In addition, upon conviction of such third or
257 subsequent offense, it shall be the duty of the court to revoke
258 the license of the convicted party and of the boat or vessel used
259 in such offense, and no further license shall be issued to such
260 person and for said boat to engage in catching or taking of any
261 seafoods from the waters of the State of Mississippi for a period
262 of one (1) year following such conviction. Forfeiture of any
263 equipment or nets used in a second or subsequent offense may be
264 instituted pursuant to Sections 49-15-201 through 49-15-207. If
265 the person in possession of or using the nets in the violation is
266 not the owner or licensee of the nets, the department shall notify
267 the owner or licensee of the nets. The nets shall be subject to
268 forfeiture unless the nets were stolen and prosecution for the
269 theft is initiated. Equipment as used in this section shall not
270 mean boats or vessels.

271 (c) Any person convicted and sentenced under this
272 section for a second or subsequent offense shall not be considered
273 for reduction of sentence.

274 (d) Except as provided under subsection (5) of Section
275 49-15-45, any fines collected under this section shall be paid
276 into the Seafood Fund.

277 (e) In addition to any other penalties, the * * *
278 department may suspend the license of any person convicted of a
279 violation of this chapter and may suspend the license of any
280 vessel used in the violation for a period not to exceed five (5)
281 days for the first offense. For a second offense, the * * *
282 department may suspend the license of such person and vessel for a
283 period not to exceed thirty (30) days.

284 (f) Upon conviction of five (5) seafood violations
285 within a five-year period, the * * * department may revoke the
286 license of the convicted party and the boat or vessel used in the
287 offenses, and may prohibit indefinitely the issuance of a license
288 to the person and boat or vessel to engage in catching or taking
289 of any seafood from the waters of the State of Mississippi.
290 The * * * department shall exercise this authority in accordance
291 with the administrative procedures in Section 49-15-401 et seq.

292 (2) For any violation of this chapter, the individual
293 registered as the captain shall be subject to the penalties
294 provided in this chapter, if that individual is aboard the vessel.
295 If that individual is not aboard the vessel, the individual
296 designated as the alternate captain under Section 49-15-46 or
297 substitute captain under Section 49-15-64.5 shall be subject to
298 the penalties provided in this chapter. If no individual is
299 designated under Section 49-15-46 or Section 49-15-64.5, the
300 person, firm or corporation owning the vessel shall be subject to
301 the penalties provided for boat captains.

302 (3) All citations issued to boat operators for not
303 possessing the boat's registration card shall be dismissed, along
304 with all related court costs, upon the presentment of the boat's
305 proper registration card to the court or magistrate holding the
306 trial or hearing.

307 **SECTION 11.** This act shall take effect and be in force from
308 and after July 1, 2021.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

1 AN ACT TO AMEND SECTION 49-15-401, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT THE DEPARTMENT OF MARINE RESOURCES SHALL ENFORCE
3 THE RULES AND REGULATIONS, ADMINISTRATIVE CODE AND OTHER STATUTES
4 WITHIN THE JURISDICTION OF THE DEPARTMENT OF MARINE RESOURCES; TO
5 AMEND SECTION 49-15-403, MISSISSIPPI CODE OF 1972, TO REVISE THE
6 ADMINISTRATIVE HEARING PROCESS FOR VIOLATIONS WITHIN THE
7 JURISDICTION OF THE DEPARTMENT OF MARINE RESOURCES AND TO CLARIFY
8 THE AUTHORITY OF THE EXECUTIVE DIRECTOR OF THE DEPARTMENT; TO
9 PROVIDE THAT THE EXECUTIVE DIRECTOR SHALL MAKE THE FINAL DECISION
10 REGARDING THE PENALTY, IF ANY, TO BE ISSUED; TO AMEND SECTION
11 49-15-405, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR A FORMAL
12 HEARING CONCLUDED BY A REPRESENTATIVE OF THE ATTORNEY GENERAL; TO
13 AMEND SECTION 49-15-407, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT
14 AN ALLEGED VIOLATOR'S FAILURE TO PRESENT EVIDENCE SHALL CONSTITUTE
15 A WAIVER OF THE RIGHT TO A HEARING; TO AMEND SECTION 49-15-409,
16 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE DEPARTMENT OF MARINE
17 RESOURCES SHALL HAVE JURISDICTION OVER ALL PERSONS AND PROPERTY
18 NECESSARY TO ADMINISTER AND ENFORCE THE ADMINISTRATIVE HEARING
19 PROCEDURES FOR THE DEPARTMENT; TO AMEND SECTION 49-15-411,
20 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ANY INDIVIDUAL AGGRIEVED
21 BY A FINAL DECISION OF THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF
22 MARINE RESOURCES SHALL BE ENTITLED TO JUDICIAL REVIEW; TO AMEND
23 SECTIONS 49-15-413, 49-15-415, 49-15-323 AND 49-15-63, MISSISSIPPI
24 CODE OF 1972, TO CONFORM TO THE PROVISIONS OF THIS ACT; AND FOR
25 RELATED PURPOSES.

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Eugene S. Clarke
Secretary of the Senate