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An Act To Amend the Department of Marine Resources' Administrative Suspension Process

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 12 MRSA §6371, as amended by PL 2009, c. 561, §12, is further amended to read:

§ 6371. Administrative suspension

1. Suspension for refusal to allow inspection. Refusal to allow inspection or seizure under section 6306 is grounds for suspension of any licenses issued under marine resources laws. In order to suspend a license because of a refusal to allow inspection or seizure, the commissioner shall follow the procedures of section 6372.

2. Suspension for refusal to allow a shellfish inspection by a department shellfish inspector. Refusal to allow a shellfish inspection under section 6852-A or 6856 ~~or violation of shellfish sanitation rules adopted under section 6856~~ is grounds for suspension of any licenses or certificates issued under marine resources laws. In order to suspend a license or certificate ~~for these reasons~~under this subsection, the commissioner shall follow the procedures of section ~~6373~~6372.

3. Suspension for violations. ~~Violation~~Except as provided in subsections 1 and 2, violation of any section of marine resources laws or rules adopted under this Part is grounds for suspension under section 6374 of any licenses or certificates issued under this Part. ~~In order to suspend a license or certificate for a violation, the commissioner shall follow the procedures for license suspension or revocation in the District Court, as provided under Title 4, chapter 5.~~

Sec. 2. 12 MRSA §6372, first ¶, as enacted by PL 1977, c. 661, §5, is amended to read:

Notwithstanding the Maine Administrative Procedure Act, the procedure for suspending a license ~~or for refusal to allow inspection or seizure under section 6306 shall be~~or refusal to allow inspection under section 6852-A or section 6856 is as follows.

Sec. 3. 12 MRSA §6373, as amended by PL 1999, c. 547, Pt. B, §30 and affected by §80, is repealed.

Sec. 4. 12 MRSA §6374 is enacted to read:

§ 6374. Procedure for suspending without criminal conviction or civil adjudication

Except as provided in section 6371, subsections 1 and 2, the procedure for suspending a license or certificate for a violation of marine resources law without a criminal conviction or civil adjudication is governed by this section.

1. Initiation and notice. If the Chief of the Bureau of Marine Patrol delivers to the commissioner a written statement under oath that the chief has probable cause to suspect that a violation of marine resources law has been committed, the commissioner shall immediately examine the affidavit and determine if a suspension is necessary. If the commissioner determines that a suspension is necessary, the commissioner shall immediately notify in writing the person who violated the law. The notice must state that there is an opportunity for a hearing, if the person requests the hearing in writing within 10 days of the notice.

2. Hearing. A hearing requested under subsection 1 must be held within 3 business days after receipt by the commissioner of a request for hearing except that a hearing may be held more than 3 business days after the request if the delay is requested by the person requesting the hearing. The hearing must be held in accordance with the Maine Administrative Procedure Act, except that:

A. Notwithstanding Title 5, section 9057, issues of the hearing are limited to whether the person requesting the hearing had a license and whether that person committed a violation of marine resources law; and

B. Notwithstanding Title 5, section 9061, the decision of the presiding officer under Title 5, section 9062 must be made not more than one business day after completion of the hearing.

3. Finding of marine resources violation and suspension. If the presiding officer of the hearing under subsection 2 finds that a violation of marine resources law has been committed, the presiding officer shall immediately notify the commissioner of the finding, and the commissioner may suspend the license or certificate of the person requesting the hearing. The length of the suspension of the license or certificate may not exceed:

A. One year from the date of a first finding of a violation under this subsection;

B. Two years from the date of a 2nd finding of a violation under this subsection; or

C. Three years from the date of a 3rd or subsequent finding of a violation under this subsection.

4. Prohibition against multiple suspensions. If the commissioner suspends a license or certificate under this section, the commissioner may not suspend the license or certificate because of a criminal conviction or civil adjudication for the same violation.

5. Appeal. A decision of the commissioner to suspend a license or certificate pursuant to this section may be appealed to the Superior Court if it is filed with the court within 30 days of the decision.

Sec. 5. 12 MRSA §6852-A, sub-§7 is enacted to read:

7. Inspection. For the purposes of inspection or collection of samples, the commissioner or the commissioner's agent may access an establishment or part thereof or vehicle in which activities authorized under this section are conducted by a person holding an enhanced retail seafood license. Denial of access is grounds for suspension or revocation of an enhanced retail seafood license under the provisions of section 6372.

Sec. 6. 12 MRSA §6856, sub-§5, as amended by PL 2003, c. 248, §11, is further amended to read:

5. Right of entry. Whenever a certificate has been issued under this section, the commissioner, or the commissioner's agent, must have access to any establishment or part thereof for the purpose of inspection or collection of samples. Denial of access is grounds for suspension or revocation of any certificate or license under the provisions of section 63736372.

SUMMARY

This bill amends the ability of the Department of Marine Resources to suspend a license or certificate based on a violation of marine resources law. This bill redirects the license suspension hearing process through the department rather than the District Court for violations of refusing access to department shellfish inspectors. It creates a new administrative hearing process for all other violations of marine resources laws when a license suspension is being considered, clarifies that such suspensions are remedial and creates a provision to prohibit multiple suspensions for the same violation. It retains the current provision that allows for immediate license or certificate suspension in cases when a person denies the Marine Patrol access for inspection and amends the statute that allows for immediate license suspension when the department's public health division's shellfish inspectors are refused access to a shellfish facility.