

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H.B. 1063
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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH40739-MHfa-159

Short Title: Commercial Fishing License Reforms. (Public)

Sponsors: Representatives Yarborough, Dixon, Davis, and W. Richardson (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE COASTAL FISHING LICENSE STATUTES TO EASE
3 REGULATORY BURDENS AND ENHANCE ACCESS TO FISHERIES FOR BONA
4 FIDE COMMERCIAL FISHERMEN.

5 The General Assembly of North Carolina enacts:

6
7 **SCFL REFORMS**

8 **SECTION 1.1.(a)** Article 14A of Chapter 113 of the General Statutes reads as
9 rewritten:

10 "Article 14A.

11 "Coastal and Estuarine Commercial Fishing Licenses.

12 **"§ 113-168. Definitions.**

13 As used in this Article:

14 (1) "CFCL" means Commercial Fishing Crew License.

15 (1a) "Commercial fishing operation" means any activity preparatory to, during, or
16 subsequent to the taking of any fish, the taking of which is subject to
17 regulation by the Commission, either with the use of commercial fishing
18 equipment or gear, or by any means if the purpose of the taking is to obtain
19 fish for sale. Commercial fishing operation does not include (i) the taking of
20 fish as part of a recreational fishing tournament, unless commercial fishing
21 equipment or gear is used, (ii) the taking of fish under a RCGL, or (iii) the
22 taking of fish as provided in G.S. 113-261.

23 (2) "Commission" means the Marine Fisheries Commission.

24 (2a) "Controlling interest," with respect to a corporation, partnership, association,
25 or other legal entity, means the power to make decisions about the entity and
26 the exercise of its legal powers without the agreement of any other person or
27 legal entity.

28 (3) "Division" means the Division of Marine Fisheries in the Department of
29 Environmental Quality.

30 (3a) "HSCFL" means Heritage Standard Commercial Fishing License.

31 (3b) "Immediate family" means the mother, father, brothers, sisters, spouse,
32 children, stepparents, stepbrothers, stepsisters, and stepchildren of a person.

33 (4) "License year" means the period beginning 1 July of a year and ending on 30
34 June of the following year.



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- 1 (5) "North Carolina resident" means a person who is a resident within the meaning
2 of G.S. 113-130(4).
3 (6a) "Person" means an individual.
4 (6) "RCGL" means Recreational Commercial Gear License.
5 (7) "RSCFL" means Retired Standard Commercial Fishing License.
6 (8) "SCFL" means Standard Commercial Fishing License.

7 **"§ 113-168.1. General provisions governing licenses and endorsements.**

8 ...

9 (d) No Dual Residency. – It is unlawful for any person to hold any currently valid license
10 issued under this Article to the person as a North Carolina resident if that person holds any
11 currently valid commercial or recreational fishing license issued by another state to the person as
12 a resident of that state.

13 (d1) It is unlawful for any person to hold more than one of each type of license issued
14 under this Article. For purposes of this subdivision, any corporation or other legal entity in which
15 a person holds a controlling interest shall count towards the limit imposed by this subsection.

16 (e) License Format. – Licenses issued under this Article shall be issued in the name of
17 the applicant. Each license shall show the type of license and any endorsements; the name,
18 mailing address, physical or residence address, and date of birth of the licensee; the date on which
19 the license is issued; the date on which the license expires; and any other information that the
20 Commission or the Division determines to be necessary to accomplish the purposes of this
21 Subchapter.

22 ...

23 **"§ 113-168.2. Standard Commercial Fishing License.**

24 (a) Requirement. – Except as otherwise provided in this Article, it is unlawful for any
25 person to engage in a commercial fishing operation in the coastal fishing waters without holding
26 a SCFL issued by the Division. A person who works as a member of the crew of a vessel engaged
27 in a commercial fishing operation under the direction of a person who holds a valid SCFL is not
28 required to hold a SCFL. A person who holds a SCFL is not authorized to take shellfish unless
29 the SCFL is endorsed as provided in G.S. 113-168.5.

30 (a1) Use of Vessels. – The holder of a SCFL is authorized to use only one vessel in a
31 commercial fishing operation at any given time. The Commission may adopt a rule to exempt
32 from this requirement a person in command of a vessel that is auxiliary to a vessel engaged in a
33 pound net operation, long-haul operation, or beach seine operation. A person who works as a
34 member of the crew of a vessel engaged in a mechanical shellfish operation under the direction
35 of a person who holds a valid SCFL with a shellfish endorsement is not required to hold a
36 shellfish license.

37 (b) through (d) Repealed by Session Laws 1998-225, s. 4.11, effective July 1, 1999.

38 (e) Fees. – The annual SCFL fee for a resident of this State shall be ~~four~~eight hundred
39 dollars ~~(\$400.00)~~(\$800.00). The annual SCFL fee for a person who is not a resident of this State
40 shall be the amount charged to a resident of this State in the nonresident's state. In no event,
41 however, may the fee be less than ~~four~~eight hundred dollars ~~(\$400.00)~~(\$800.00). For purposes
42 of this subsection, a "resident of this State" is a person who is a resident within the meaning of:

- 43 (1) Sub-subdivisions a. through d. of G.S. 113-130(4) and who filed a State
44 income tax return as a resident of North Carolina for the previous calendar or
45 tax year, or
46 (2) G.S. 113-130(4)e.

47 (f) Assignment. – The holder of a SCFL may assign the SCFL ~~to any individual who is~~
48 eligible to hold a SCFL under this Article only to a member of the SCFL holder's immediate
49 family or to a corporation or other legal entity in which the SCFL holder, together with members
50 of the SCFL holder's immediate family, holds a controlling interest. It is unlawful for the holder
51 of an SCFL to assign a shellfish endorsement of an SCFL to any individual who is not a resident

1 of this State. The assignment shall be in writing on a form provided by the Division and shall
2 include the name of the licensee, the license number, any endorsements, the assignee's name,
3 mailing address, physical or residence address, and the duration of the assignment. If a notarized
4 copy of an assignment is not filed with the Morehead City office of the Division within five days
5 of the date of the assignment, the assignment shall expire. It is unlawful for the assignee of a
6 SCFL to assign the SCFL. The assignment shall terminate:

- 7 (1) Upon written notification by the assignor to the assignee and the Division that
8 the assignment has been terminated.
- 9 (2) Upon written notification by the estate of the assignor to the assignee and the
10 Division that the assignment has been terminated.
- 11 (3) If the Division determines that the assignee is operating in violation of the
12 terms and conditions applicable to the assignment.
- 13 (4) If the assignee becomes ineligible to hold a license under this Article.
- 14 (5) Upon the death of the assignee.
- 15 (6) If the Division suspends or revokes the assigned SCFL.
- 16 (7) At the end of the license year.

17 (g) Transfer. – A SCFL may be transferred only by the Division. A SCFL may be
18 transferred pursuant to rules adopted by the Commission or upon the request of:

- 19 (1) A licensee, from the licensee to a member of the licensee's immediate family
20 who is eligible to hold a SCFL under this ~~Article~~ Article or to a corporation in
21 which the SCFL holder, together with members of the SCFL holder's
22 immediate family, holds a majority interest.
- 23 (2) The administrator or executor of the estate of a deceased licensee, to the
24 administrator or executor of the estate if a surviving member of the deceased
25 licensee's immediate family is eligible to hold a SCFL under this Article. The
26 administrator or executor must request a transfer under this subdivision within
27 six months after the administrator or executor qualifies under Chapter 28A of
28 the General Statutes. An administrator or executor who holds a SCFL under
29 this subdivision may, for the benefit of the estate of the deceased licensee:
 - 30 a. Engage in a commercial fishing operation under the SCFL if the
31 administrator or executor is eligible to hold a SCFL under this Article.
 - 32 b. Assign the SCFL as provided in subsection (f) of this section.
 - 33 c. Renew the SCFL as provided in G.S. 113-168.1.
- 34 (3) An administrator or executor to whom a SCFL was transferred pursuant to
35 subdivision (2) of this subsection, to a surviving member of the deceased
36 licensee's immediate family who is eligible to hold a SCFL under this Article.
- 37 (4) ~~The surviving member of the deceased licensee's immediate family to whom~~
38 ~~a SCFL was transferred pursuant to subdivision (3) of this subsection, to a~~
39 ~~third party purchaser of the deceased licensee's fishing vessel.~~
- 40 (5) ~~A licensee who is retiring from commercial fishing, to a third party purchaser~~
41 ~~of the licensee's fishing vessel.~~

42 (h) Identification as Commercial Fisherman. – The receipt of a current and valid SCFL
43 or shellfish license issued by the Division shall serve as proper identification of the licensee as a
44 commercial fisherman.

45 (i) Record-Keeping Requirements. – The fish dealer shall record each transaction at the
46 time and place of landing on a form provided by the Division. The transaction form shall include
47 the information on the SCFL or shellfish license, the quantity of the fish, the identity of the fish
48 dealer, and other information as the Division deems necessary to accomplish the purposes of this
49 Subchapter. The person who records the transaction shall provide a completed copy of the
50 transaction form to the Division and to the other party of the transaction. The Division's copy of

1 each transaction form shall be transmitted to the Division by the fish dealer on or before the tenth
2 day of the month following the transaction.

3 (j) Conversion to Heritage Standard Commercial Fishing License. – A person holding a
4 SCFL, or an administrator or executor to whom a SCFL was transferred pursuant to subsection
5 (g) of this section may, upon filing notice and such other information as the Division may require,
6 request that a SCFL be converted to a HSCFL. The Division shall classify a HSCFL as a separate
7 class of inactive SCFL that Division shall maintain and account for separately from the pool of
8 inactive licenses managed by the Division. The annual fee for a HSCFL is one hundred dollars
9 (\$100.00). The Division will terminate the HSCFL and the right to reconvert the HSCFL to a
10 SCFL if the HSCFL is not timely renewed or 10 years after the original issuance of the HSCFL
11 was originally converted from a SCFL if it has not been reconverted under subsection (k) of this
12 section.

13 (k) Reconversion of HSCFL to SCFL. – The HSCFL may be reconverted as an SCFL by
14 a member of the immediate family of the person holding the SCFL at the time it was converted
15 to a HSCFL. The reconverted SCFL issued under this subsection shall not be subject to
16 procedures adopted by the Commission and the Division for issuance of SCFLs from the pool of
17 inactive licenses. The reconverted SCFL shall not be subject to any eligibility requirements for
18 renewal of a SCFL other than payment of the renewal fee for a period of five years following
19 reconversion.

20 **"§ 113-168.3. Retired Standard Commercial Fishing License.**

21 (a) SCFL Provisions Applicable. – Except as provided in this section, the provisions set
22 forth in this Article concerning the SCFL shall apply to the RSCFL.

23 (b) Eligibility; Fees. – Any individual who is 65 years of age or older and who is eligible
24 for a SCFL under G.S. 113-168.2 may apply for either a SCFL or RSCFL. An applicant for a
25 RSCFL shall provide proof of age at the time the application is made. The annual fee for a RSCFL
26 for a resident of this State shall be ~~two hundred dollars (\$200.00).~~ four hundred dollars (\$400.00).
27 The annual fee for a RSCFL for a person who is not a resident of this State shall be ~~two hundred~~
28 ~~sixty dollars (\$260.00).~~ five hundred twenty dollars (\$520.00). For purposes of this subsection, a
29 "resident of this State" is a person who is a resident within the meaning of:

- 30 (1) Sub-subdivisions a. through d. of G.S. 113-130(4) and who filed a State
31 income tax return as a resident of North Carolina for the previous calendar or
32 tax year, or
- 33 (2) G.S. 113-130(4)e.

34 (c) Transfer. – The holder of a RSCFL may transfer the RSCFL as provided in
35 G.S. 113-168.2.

- 36 (1) If the transferee is less than 65 years of age, the transferee holds a SCFL.
37 When the transferee renews the SCFL, the transferee shall pay the fee set out
38 in G.S. 113-168.2.
- 39 (2) If the transferee is 65 years of age or older, the transferee may elect to hold
40 either a SCFL or RSCFL. If the transferee elects to hold a SCFL, the transferee
41 shall pay the fee set out in G.S. 113-168.2. If the transferee elects to hold a
42 RSCFL, the transferee shall pay the fee set out in this section.

43 (d) Assignment. – The RSCFL shall not be assignable.

44 **"§ 113-168.3B. Commercial Fishing Crew License.**

45 (a) Eligibility. – A person serving on the crew of a vessel engaged in a commercial fishing
46 operation under the direction of a person who holds a valid SCFL may apply for a CFCL.

47 (b) Fee. – The annual fee for a CFCL for a resident of this State shall be one hundred
48 dollars (\$100.00). The annual fee for a CFCL for a person who is not a resident of this State shall
49 be one hundred thirty dollars (\$130.00).

1 (c) Eligibility for CRFL. – A person holding a CFCL shall be eligible to apply for a SCFL
2 without meeting any other eligibility requirements set by the Commission for a new SCFL license
3 after maintaining a CFCL for three consecutive years.

4 "

5 **SECTION 1.1.(b)** G.S. 113-168.2 is amended by adding a new subsection to read:

6 "(a2) Eligibility. – In order to be eligible to renew an SCFL, the holder must demonstrate a
7 minimum level of participation in fisheries of the State through demonstration in a form and
8 manner satisfactory to the Division of any of the following in two out of the five continuous
9 fiscal years preceding the expiration date of the SCFL:

10 (1) Landings of at least 1,000 pounds of seafood products during the year from
11 coastal fishing waters.

12 (2) Fifteen trips for which a trip ticket was completed during the year."

13 **SECTION 1.1.(c)** The Division shall adopt temporary and permanent rules to
14 implement the requirements of this section.

15 **SECTION 1.1.(d)** Subsections (b) and (c) of this section become effective June 30,
16 2021, and applies to all SCFLs expiring on or after that date. The rest of this section becomes
17 effective October 1, 2018.

18 **SECTION 1.2.** The Marine Fisheries Commission and the Division of Marine
19 Fisheries shall develop a plan to expand opportunities for commercial fishermen for access to
20 and harvest of commercial fisheries. In creating the plan, the Commission and the Division shall
21 consider extension of fishing seasons, higher trip limits, authorization of hook and line as an
22 allowable gear for all species, and other measures that the Commission and Division find would
23 meet the purposes for the plan set forth in this section.

24 25 **ELIGIBILITY POOL REFORMS**

26 **SECTION 2.1.(a)** Section 5.2 of S.L. 1997-400, as amended by Section 4.24 of S.L.
27 1998-225, reads as rewritten:

28 "**SECTION 5.2.(a)** Definitions; Citations. The definitions set out in G.S. 113-168 apply to
29 this section. A citation to a provision of the General Statutes in this section means that provision
30 of the General Statutes as enacted by this act.

31 (b) Transitional Provisions. In order to effect an orderly implementation of this Part and
32 the transition from the moratorium imposed by subsection (a) of Section 3 of Chapter 576 of the
33 1993 Session Laws, Regular Session 1994, as amended by Section 3 of Chapter 675 of the 1993
34 Session Laws, Regular Session 1994; subsection (a) of Section 26.5 of Chapter 507 of the 1995
35 Session Laws; Section 7 of S.L. 1997-256; Section 3 of S.L. 1997-347; and Section 6.1 of this
36 act, to the licensing provision of Article 14A of Chapter 113 of the General Statutes, the
37 provisions of this section shall apply to the issuance of licenses under Article 14A of Chapter
38 113 of the General Statutes until all Fishery Management Plans have been adopted as required
39 by G.S. 113-182.1 and G.S. 143B-289.22.

40 (c) ~~Temporary Cap. There is hereby imposed a temporary cap on the total number of~~
41 ~~SCFLs that the Division may issue. The temporary cap equals the total number of endorsements~~
42 ~~to sell fish that establish eligibility for a SCFL under subsection (g) of this section number of~~
43 ~~SCFLs active on June 30, 2018, plus 500-100 additional SCFLs, authorized by subsection (d) of~~
44 ~~this section.~~ SCFLs.

45 (d) ~~1999-2000 License Year. For the 1999-2000 license year, the Commission is~~
46 ~~authorized to issue SCFLs as provided in subsection (g) of this section plus an additional 500~~
47 ~~SCFLs using the procedure set out in subsection (h) of this section.~~

48 (e) Subsequent License Years. For license years beginning with the ~~2000-01-2018-2019~~
49 license year, the Commission is authorized to issue SCFLs from the pool of available SCFLs as
50 provided in subsection (f) of this section using the procedure set out in subsection (h) of this
51 section.

1 (f) Adjustment of Number of SCFLs. The number of SCFLs in the pool of available
2 SCFLs in license years beginning with the ~~2000-01-2018-2019~~ license year is the ~~temporary cap~~
3 ~~set under subsection (c) of this section~~ less the number of SCFLs that were issued and renewed
4 during the previous license year. Licenses that are not renewed will go into a pool of inactive
5 SCFLs (the Inactive Pool). Licenses that are suspended or revoked, as well as the additional 100
6 SCFLs authorized under subsection (c) of this section, will go into the pool of available SCFLs
7 (the Availability Pool). SCFLs in the Inactive Pool may be reactivated by the person holding the
8 SCFL prior to it becoming inactive for a period of two years. If the SCFL has not been reactivated
9 within two years, the Division will transfer it into the Availability Pool. The Commission may
10 ~~increase or decrease~~ determine the number of SCFLs that are issued from the ~~pool of available~~
11 ~~SCFLs.~~ Availability Pool. The Commission may increase the number of SCFLs that are issued
12 from the ~~pool of available SCFLs.~~ Availability Pool up to the ~~temporary cap.~~ cap set under
13 subsection (c) of this section. The Commission may decrease the number of SCFLs that are issued
14 from the pool of available SCFLs but may not refuse to renew a SCFL that is issued during the
15 previous license year and that has not been suspended or revoked. The Commission shall increase
16 or decrease the number of SCFLs that are issued to reflect its determination as to the effort that
17 the fishery can support, based on the best available scientific evidence.

18 (g) ~~Eligibility for SCFL. Any person who holds a valid endorsement to sell fish of a vessel~~
19 ~~license on 30 June 1999 is eligible to receive a SCFL. Any person who holds a valid nonvessel~~
20 ~~endorsement to sell fish, other than a nonvessel endorsement to sell fish issued for an aquaculture~~
21 ~~operation or a fishing tournament, on 30 June 1999 is eligible to receive a SCFL. The Division~~
22 ~~shall issue a SCFL to any person who is eligible under this subsection upon receipt of an~~
23 ~~application and required fees. If the person held more than one endorsement to sell fish, the~~
24 ~~person is eligible to receive a SCFL for each endorsement to sell previously held. Eligibility to~~
25 ~~receive a SCFL under this subsection shall expire 30 June 2000.~~

26 (h) Procedure for Issuing Additional SCFLs. The Commission shall determine a
27 procedure for issuing ~~the 500 additional SCFLs authorized by subsection (d) of this section for~~
28 ~~the 1999-2000 license year and for issuing SCFLs from the pool of available SCFLs authorized~~
29 ~~by subsection (e) of this section.~~ Availability Pool. The procedure shall set a date on which the
30 Division will begin receiving applications and a date on which the determination by lot of which
31 applicants will receive a SCFL will be made. The Commission shall set aside 100 licenses from
32 the Availability Pool for an apprenticeship program. This program will allow persons completing
33 a commercial fishing program offered by a community college in the North Carolina Community
34 College System or a program in another state that the Division determines to be equivalent to the
35 programs offered in this State to obtain a SCFL and be temporarily exempt from other criteria
36 imposed under this subsection for a time period determined by the Commission.

37 The Commission shall develop criteria to be used by the SCFL Eligibility Board in
38 determining eligibility for ~~a SCFL under this subsection.~~ the remaining SCFLs in the Availability
39 Pool. Criteria shall include the past involvement of the applicant and the applicant's family in
40 commercial fishing; the extent to which the applicant has relied on commercial fishing for the
41 applicant's livelihood; the extent to which the applicant has complied with federal and State laws,
42 regulations, and rules relating to coastal fishing and protection of the environment; and any other
43 factors the Commission determines to be relevant. The SCFL Eligibility Board shall review each
44 application for a SCFL that the Division receives during the application period to determine
45 whether the applicant is eligible for a SCFL under the eligibility criteria established by the
46 Commission. The Division shall issue SCFLs under this subsection by lot. All applicants who
47 are determined to be eligible shall have an equal chance of being issued a SCFL.

48 (i) SCFL Eligibility Board. There is established a SCFL Eligibility Board. The Board
49 shall apply the eligibility criteria adopted by the Commission to determine whether an applicant
50 for a SCFL is eligible for a SCFL under subsection (h) of this section. The Board shall consist of
51 the Secretary of ~~Environment and Natural Resources~~ Environmental Quality or the Secretary's

1 designee, the Fisheries Director or the Director's designee, and the Chair of the Commission or
2 the Chair's designee. The Secretary shall designate one member of the Board to serve as Chair of
3 the Board. The Commission shall adopt rules to govern the operation of the Board. The Board is
4 exempt from the provisions of Article 3 of Chapter 150B of the General Statutes. Decisions of
5 the Board shall be subject to judicial review under the provisions of Article 4 of Chapter 150B
6 of the General Statutes."

7 **SECTION 2.1.(b)** This section becomes effective June 30, 2018.

8 **REPEAL RCGL AND ADJUST CRFL ALLOWABLE GEAR**

9 **SECTION 3.1.(a)** G.S. 113-173, 113-168(6), 113-173.1(a)(6) and 113-174(4)c. are
10 repealed.

11 **SECTION 3.1.(b)** G.S. 113-168.1(a) reads as rewritten:

12 "(a) Duration, Fees. – ~~Except as provided in G.S. 113-173(f), all~~ All licenses and
13 endorsements issued under this Article expire on the last day of the license year. An applicant
14 for any license or endorsement shall pay the full annual fee at the time the applicant applies for
15 the license or endorsement regardless of when application is made."

16 **SECTION 3.1.(c)** This section becomes effective June 30, 2019.

17 **SECTION 3.2.(a)** G.S. 113-174.2 is amended by adding a new subsection to read:

18 "(e) Authorized Gear. – The Commission shall adopt rules allowing persons holding a
19 CRFL to use bait seines and up to five crab pots to take fish for recreational purposes."

20 **SECTION 3.2.(b)** The Marine Fisheries Commission may adopt temporary rules to
21 implement the requirements of this section.

22 **ALIGN CRFL AND WRC INLAND FISHING LICENSE FEES**

23 **SECTION 4.1.(a)** G.S. 113-174.2(c) reads as rewritten:

24 "(c) Types of CRFLs; Fees; Duration. – The Wildlife Resources Commission shall issue
25 the following CRFLs:

26 (1) Annual Resident CRFL. – ~~\$15.00.~~ \$20.00. This license is valid from the date
27 of issue for a period of 12 months as defined by G.S. 113-270.1B(b) and
28 G.S. 113-270.1B(c). This license shall be issued only to an individual who is
29 a resident of the State.

30 (1a) Annual Nonresident CRFL. – ~~\$30.00.~~ \$36.00. This license is valid from the
31 date of issue for a period of 12 months as defined by G.S. 113-270.1B(b) and
32 G.S. 113-270.1B(c). This license shall be issued only to an individual who is
33 not a resident of the State.

34 (4) Ten-Day Resident CRFL. – ~~\$5.00.~~ \$7.00. This license is valid for a period of
35 10 consecutive days, as indicated on the license. This license shall be issued
36 only to an individual who is a resident of the State.

37 (4a) Ten-Day Nonresident CRFL. – ~~\$10.00.~~ \$18.00. This license is valid for a
38 period of 10 consecutive days, as indicated on the license. This license shall
39 be issued only to an individual who is not a resident of the State.

40"

41 **SECTION 4.2.(b)** This section becomes effective October 1, 2018.

42 **FUNDING**

43 **SECTION 5.** There is appropriated from the General Fund to the Department of
44 Environmental Quality the sum of fifty thousand dollars (\$50,000) in nonrecurring funds for the
45 2018-2019 fiscal year for support of the Division of Marine Fisheries in carrying out the
46 requirements of this act.

47 **SEVERABILITY CLAUSE AND EFFECTIVE DATE**

1 **SECTION 6.(a)** If any section or provision of this act is declared unconstitutional or
2 invalid by the courts, it does not affect the validity of this act as a whole or any part other than
3 the part declared to be unconstitutional or invalid.
4 **SECTION 6.(b)** Except as otherwise provided, this act is effective when it becomes
5 law.