

CHAPTER 433

S.B. No. 823

An Act relating to closing public water to the taking of aquatic life for sale or for human consumption; providing a penalty; adding Subsection (d) to Section 12.109, Parks and Wildlife Code, as amended.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. DEFINITIONS. In this Act:

- (1) "Aquatic life" means animals and plants that live in water, but does not include oysters, clams, and mussels.
- (2) "Board" means the Texas Board of Health.
- (3) "Commissioner" means the Commissioner of Health.
- (4) "Department" means the Texas Department of Health.

(5) "Public water" means all bodies of water that are the property of the state under Section 1.011, Parks and Wildlife Code.

(6) "Sale" means the transfer of ownership or the right of possession of an item to a person for consideration and includes a barter and an even exchange.

SECTION 2. SCOPE. (a) Except as provided by Subsection (b) of this section, this Act applies to all public water of the state.

(b) This Act does not apply to the taking, selling, or offering or holding for sale of oysters, clams, and mussels from polluted areas governed under Subchapter D, Chapter 76, Parks and Wildlife Code.

SECTION 3. DECLARATION OF PROHIBITED AREA. (a) The commissioner shall declare any public water within the jurisdiction of the state to be a prohibited area if he finds that the area contains aquatic life that is unfit for human consumption based on the results of a sanitary, chemical, or bacteriological survey.

(b) The commissioner shall close prohibited areas to the taking of aquatic life for a period he deems advisable and shall close public waters to which aquatic life from prohibited areas may have been transferred.

(c) The commissioner shall establish by order the areas that he declares to be prohibited and shall modify or revoke the order in accordance with the results of a sanitary, chemical, or bacteriological survey conducted by the department. The commissioner shall file the order in the office of the department and shall furnish without charge a copy of the order describing prohibited areas to any interested person.

(d) The commissioner shall conspicuously outline prohibited areas on maps, which he shall furnish without charge to any interested person. The failure of any person to avail himself of this information does not relieve that person from liability under this Act.

SECTION 4. TAKING, OFFERING, OR SELLING AQUATIC LIFE FROM PROHIBITED AREAS. (a) A person may not take, sell, or offer or hold for sale or for human consumption any aquatic life from an area declared by the commissioner to be a prohibited area.

(b) Commissioned law enforcement officers of the Parks and Wildlife Department shall enforce the provisions of this section.

SECTION 5. DISPOSITION OF AQUATIC LIFE TAKEN FROM PROHIBITED AREA. Any aquatic life that is taken from a prohibited area and held or offered for sale or for human consumption is subject to immediate condemnation, seizure, and confiscation by the commissioner or his agents. The aquatic life shall be held, destroyed, or otherwise disposed of as directed by the commissioner.

SECTION 6. PENALTY. (a) A person commits an offense if he violates Subsection (a) of Section 4 of this Act.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than \$200 nor more than \$500.

(c) Each day of a continuing violation constitutes a separate offense.

SECTION 7. AMENDMENT. Section 12.109, Parks and Wildlife Code, as amended, is amended by adding Subsection (d) to read as follows:

"(d) This section does not apply to fish, shrimp, or other marine life that are taken from an area declared by the Commissioner of Health to be a prohibited area."

SECTION 8. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on May 9, 1985, by the following vote: Yeas 31, Nays 0; passed the House on May 24, 1985, by the following vote: Yeas 147, Nays 1, one present not voting.

Approved: June 11, 1985

Effective: Immediately