

CHAPTER 338

S.B. No. 440

AN ACT

relating to the Parks and Wildlife Department's enforcement powers, the seizure and disposal of certain aquatic life and wildlife, and the disposition of fines.

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

SECTION 1. Subsections (a) and (c), Section 12.106, Parks and Wildlife Code, are amended to read as follows:

(a) Any peace officer of this state or a political subdivision of this state or an authorized employee of the department who arrests a person for a violation of this code or a regulation of the commission *adopted under this code* may deliver to the alleged violator a written notice to

appear before the justice court, county court, or another court having jurisdiction of the offense not later than 15 days after the date of the alleged violation.

(c) A person who fails to appear for a violation of this code or a regulation of the commission adopted under this code within the time specified in the written notice commits an offense that is a Class C Parks and Wildlife Code misdemeanor, and a warrant for the arrest of the alleged violator may be issued.

SECTION 2. Section 12.107, Parks and Wildlife Code, is amended to read as follows:

Sec. 12.107. REMISSION OF FINES. (a) A justice of the peace, clerk of any court, or any other officer of the state who receives a fine imposed by a court for a violation of this code or a regulation of the commission adopted under this code [~~any law relating to the protection and conservation of wild birds, wild fowl, wild animals, fish, oysters, and other wildlife~~] shall send the fine to the department within 10 days after the date of collection. A statement containing the docket number of the case, the name of the person fined, and the section of this code or the regulation [~~the law~~] violated must accompany the remission of the fine.

(b) The amount of the fine to be remitted to the department is 80 percent in county court or higher court cases and 85 percent in justice court cases.

SECTION 3. Subsections (b), (c), and (f), Section 12.109, Parks and Wildlife Code, are amended to read as follows:

(b) The confiscated aquatic life shall be sold to the highest of three bidders. The proceeds of the sale shall be deposited in the state treasury to the credit of suspense fund No. 900 pending the outcome of the action taken against the person charged with illegal possession. *If bids cannot be obtained, the department, if practicable, shall donate the aquatic life to a charitable institution, hospital, or other person.*

(c) Unless the person is found guilty, *pleads guilty or nolo contendere, or is placed on deferred adjudication*, all the proceeds shall be paid to the owner of the aquatic life.

(f) The department and an enforcement officer of the department who acts under this section are not liable in any civil action for the seizure, ~~or~~ sale, or donation of aquatic life or for the order to return oysters to a public reef.

SECTION 4. Section 12.110, Parks and Wildlife Code, is amended by adding Subsection (c) to read as follows:

(c) The department and an enforcement officer of the department who acts under this section are not liable in any civil action for the seizure, sale, or donation of a game bird, other fowl, animal, or game fish.

SECTION 5. Section 65.002, Parks and Wildlife Code, is amended to read as follows:

Sec. 65.002. APPLICATION. Except for regulation of those populations listed on the United States List of Endangered Wildlife (50 C.F.R. Part 17), special permits issued under Chapter 43 of this code, revocation or suspension of licenses or permits under Subchapter F, Chapter 12, of this code, or contracts for the removal of reptiles entered into under Section 81.404 [~~as amended,~~] of this code, this chapter governs the taking, possession, and sale of alligators to the exclusion of other regulatory and licensing laws.

SECTION 6. Section 65.009, Parks and Wildlife Code, is amended to read as follows:

Sec. 65.009. SEIZURE AND DISPOSAL OF ALLIGATORS. (a) A game warden or any other peace officer may seize an alligator, alligator hide, alligator egg, or any part of an alligator if he has probable cause to believe it was taken, possessed, sold, or purchased in violation of this chapter or of a regulation of the commission. *An alligator, alligator hide, alligator egg, or alligator part seized under this section may be sold by the department to the highest of three bidders, and the proceeds of the sale shall be deposited in the appropriate department suspense fund.*

(b) On conviction of a violation, on a plea of nolo contendere, or on assessment of deferred adjudication in connection with an alligator, alligator hide, alligator egg, or alligator part seized under this section, the department shall transfer the proceeds of the sale from the suspense fund to the game, fish, and water safety fund [~~If a person is charged with a violation of a provision of this chapter or of a regulation of the commission issued under this chapter,~~

~~the game warden or peace officer shall seize and hold the alligator, alligator hide, or any part of an alligator as evidence].~~

~~(c) If the alleged violator is found not guilty of the offense or if the charges are dismissed, the department shall transfer to the owner the entire proceeds of the sale of the alligator, alligator hide, alligator egg, or alligator part [On conviction of the person or on plea of nolo contendere, the alligator, alligator hide, or any part of an alligator seized may be sold at any time by the department to the highest bidder after taking a minimum of three written bids].~~

~~(d) [If the person is adjudged not guilty of the offense, the department shall return all alligators, alligator hides, or parts of an alligator seized to the lawful owner.~~

~~[(e)] A game warden or peace officer acting under the authority of this chapter or of a regulation of the commission is immune from liability and from suit for the seizure of alligators, alligator hides, alligator eggs, or any part of an alligator.~~

SECTION 7. Section 77.027, Parks and Wildlife Code, is amended to read as follows:

Sec. 77.027. CONFISCATION AND DISPOSAL OF SHRIMP. When an enforcement officer of the department believes that a person has unlawful possession of any shrimp taken in violation of this chapter, all shrimp aboard any vessel involved or in the trawl, whether in storage, on deck, and whether alive or dead, whole or headed, frozen or fresh, shall be deemed to have been taken in violation of the chapter and shall be confiscated by the arresting officer. The cargo of shrimp shall be sold to the highest of three bidders by the officer. The proceeds of the sale shall be deposited in the state treasury to the credit of suspense fund number 900, pending the outcome of the action taken against the person charged with the illegal possession. *If a bid cannot be obtained for the sale, the officer, if practicable, shall donate the shrimp to a charitable institution, hospital, or other person.* Unless the person is found guilty, *pleads guilty or nolo contendere, or is placed on deferred adjudication,* all the proceeds shall be paid to the defendant.

SECTION 8. (a) This Act takes effect September 1, 1993.

(b) Subsection (b), Section 12.109, and Section 77.027, Parks and Wildlife Code, as amended by this Act, apply to aquatic life confiscated on or after the effective date of this Act.

(c) Subsection (c), Section 12.110, Parks and Wildlife Code, as added by this Act, applies to the seizure or donation of a game bird, other fowl, animal, or game fish on or after the effective date of this Act.

(d) Section 65.009, Parks and Wildlife Code, as amended by this Act, applies to an alligator, alligator hide, alligator egg, or alligator part seized on or after the effective date of this Act. The seizure of an alligator, alligator hide, alligator egg, or alligator part before the effective date of this Act is governed by the law in effect on the date of the seizure, and the former law is continued in effect for that purpose.

SECTION 9. 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.

Passed the Senate on March 18, 1993: Yeas 29, Nays 0; the Senate concurred in House amendment on May 19, 1993, by a viva-voce vote; passed the House, with amendment, on May 18, 1993, by a non-record vote.

Approved May 29, 1993.

Effective Sept. 1, 1993.