

CHAPTER 336

S.B. No. 556

AN ACT

relating to regulating the taking of crab, molluscan shellfish, and other aquatic life; providing civil and criminal penalties.

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

SECTION 1. Chapter 436, Health and Safety Code, is amended to read as follows:

CHAPTER 436. AQUATIC LIFE

SUBCHAPTER A. GENERAL PROVISIONS

*Sec. 436.001. SHORT TITLE. This chapter may be cited as the Texas Aquatic Life Act.*

*Sec. 436.002. DEFINITIONS. In this chapter:*

*(1) "Approved area" means a molluscan shellfish growing area determined to be acceptable for harvesting of molluscan shellfish for direct marketing according to the National Shellfish Sanitation Program.*

*(2) "Approved source" means a source of molluscan shellfish acceptable to the director.*

*(3) "Aquatic life" means animals and plants that live in water.*

*(4) "Authorized agent" means an employee of the department who is designated by the director to enforce provisions of this chapter.*

- (5) "Board" means the Texas Board of Health.
- (6) "Closed area" means a molluscan shellfish growing area where the taking including the harvesting for sale, the harvesting for transplant, or the gathering for depuration of molluscan shellfish is temporarily or permanently not permitted. A closed area status may be placed on any one of the five classified area designations established by the National Shellfish Sanitation Program.
- (7) "Conditionally approved area" means a molluscan shellfish growing area determined to meet approved area criteria for a predictable period conditioned on performance standards specified in a management plan. A conditionally approved area is a closed area when the area does not meet the approved area criteria.
- (8) "Conditionally restricted area" means a molluscan shellfish growing area determined to meet restricted area criteria for a predictable period conditioned on performance standards specified in a management plan. A conditionally restricted area is open for transplanting or gathering for depuration only during the times it meets the restricted area criteria and is specified as a conditionally restricted area by the department. A conditionally restricted area is a closed area at all times for harvesting of molluscan shellfish for direct marketing.
- (9) "Container" means the physical material in contact with or immediately surrounding molluscan shellfish or crabmeat that confines it into a single unit.
- (10) "Crabmeat" means the edible meat of steamed or cooked crabs that has not been processed other than by picking, packing, and chilling.
- (11) "Crabmeat processing license" means a numbered document issued by the department that authorizes a person to process crabmeat for sale.
- (12) "Crabmeat processor" means a person who cooks and backs crabs and who picks, packs, or pasteurizes crabmeat.
- (13) "Department" means the Texas Department of Health.
- (14) "Depletion" means the removal of all existing commercial quantities of market-size molluscan shellfish.
- (15) "Depuration" means the process of using any approved artificially controlled aquatic environment to reduce the level of bacteria and viruses in molluscan shellfish.
- (16) "Depuration plant" means a place where depuration of molluscan shellfish occurs.
- (17) "Director" means the executive head of the Texas Department of Health.
- (18) "Growing area" means an area that supports or could support live molluscan shellfish.
- (19) "Health authority" means a physician authorized to administer state or local laws relating to public health.
- (20) "Label" means written, printed, or graphic matter appearing on a container of molluscan shellfish or crabmeat, including any written, printed, or graphic matter on any wrappers or accompanying any molluscan shellfish or crabmeat.
- (21) "Molluscan shellfish" means an edible species of oyster, clam, or mussel that is shucked, in the shell, fresh, or fresh frozen, in whole or in part, as defined by the National Shellfish Sanitation Program.
- (22) "National Shellfish Sanitation Program" means the cooperative program by the states, the United States Food and Drug Administration, and the shellfish industry that classifies molluscan shellfish growing areas and certifies interstate molluscan shellfish shippers according to the National Shellfish Sanitation Program Manual of Operations or its successor program and documents.
- (23) "Open area" means a molluscan shellfish growing area where harvesting for sale, harvesting for transplant, or gathering for depuration of molluscan shellfish is permitted. An open area status may be placed on any one of the classified area designations established by the National Shellfish Sanitation Program except for a prohibited area.

(24) "Pasteurization plant" means a place where crabmeat is heat-treated in compliance with rules adopted by the board, without complete sterilization, to improve the keeping qualities of the meat.

(25) "Picking plant" means a place where crabs are cooked and edible meat is picked from the crabs.

(26) "Possess" means the act of having in possession or control, keeping, detaining, restraining, or holding as owner, agent, bailee, or custodian for another.

(27) "Prohibited area" means an area where the director finds, according to a sanitary, chemical, or bacteriological survey, that the area contains aquatic life that is unfit for human consumption. A prohibited area for molluscan shellfish means a molluscan shellfish growing area determined to be unacceptable for transplanting, gathering for depuration, or harvesting of molluscan shellfish. The only molluscan shellfish removal permitted from a prohibited area is for the purpose of depletion.

(28) "Principal display panel" means the part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for sale.

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

(30) "Restricted area" means a molluscan shellfish growing area that is determined to be unacceptable for harvesting of molluscan shellfish for direct marketing but that is acceptable for transplanting or gathering for depuration. A restricted area may be closed for transplanting or gathering for depuration when the area does not meet the restricted area criteria established by the National Shellfish Sanitation Program.

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

(32) "Shellfish certificate" means a numbered document issued by the department that authorizes a person to process molluscan shellfish for sale.

(33) "Shellfish processor" means a person who depurates, shucks, packs, or repacks molluscan shellfish.

(34) "Take" means catch, hook, net, snare, trap, kill, or capture by any means, including the attempt to take.

Sec. 436.003. **AUTHORITY TO DELEGATE POWERS AND DUTIES.** (a) The board by rule may delegate a power or duty imposed on the director in this chapter, including the power or duty to issue emergency rules or orders or to render a final administrative decision.

(b) A health authority may delegate any power or duty imposed on the health authority in this chapter to an employee of the local health department, the local health unit, or the public health district in which the health authority serves, unless otherwise restricted by law.

[Sections 436.004 to 436.010 reserved for expansion]

#### SUBCHAPTER B. PROHIBITED ACTS

Sec. 436.011. **PROHIBITED ACTS.** The following acts and the causing of the following acts within this state are unlawful and prohibited:

(1) taking, selling, offering for sale, or holding for sale molluscan shellfish from a closed area;

(2) taking, selling, offering for sale, or holding for sale molluscan shellfish from a restricted or conditionally restricted area without complying with a rule adopted by the board to ensure that the molluscan shellfish have been purified, unless:

(A) permission is first obtained from the Parks and Wildlife Department and the transplanting is supervised by that department; and

(B) the Parks and Wildlife Department furnishes a copy of the transplant permit to the director before transplanting activities begin;

(3) possessing a species of aquatic life taken from a prohibited area while the area was prohibited for that species;

(4) operating as a molluscan shellfish processor without a shellfish certificate for each plant or place of business;

(5) operating as a crabmeat processor without a crabmeat processing license for each plant;

(6) selling, offering for sale, or holding for sale molluscan shellfish or crabmeat that has not been picked, handled, packaged, or pasteurized in accordance with the rules adopted by the board;

(7) selling, offering for sale, or holding for sale molluscan shellfish or crabmeat from facilities for the handling and packaging of molluscan shellfish or crabmeat that do not comply with the rules adopted by the board;

(8) selling, offering for sale, or holding for sale molluscan shellfish or crabmeat that is not labeled in accordance with the rules adopted by the board;

(9) selling, offering for sale, or holding for sale molluscan shellfish that is not in a container bearing a valid certificate number from a state or nation whose molluscan shellfish certification program conforms to the current Manual of Operations for Sanitary Control of the Shellfish Industry issued by the Food and Drug Administration or its successor, except selling molluscan shellfish removed from a container bearing a valid certificate number for on-premises consumption; in the event the Texas Molluscan Shellfish Program is found to be out of conformity with the current Manual of Operations, selling, offering for sale, or holding for sale molluscan shellfish in a container bearing a valid Texas certificate number shall not be considered a violation of this chapter provided all other requirements of this chapter are complied with and the shellfish have come from an approved source;

(10) processing, transporting, storing for sale, possessing with intent to sell, offering for sale, or selling molluscan shellfish or crabmeat for human consumption that is adulterated or misbranded;

(11) removing or disposing of a detained or embargoed article in violation of Section 436.028;

(12) altering, mutilating, destroying, obliterating, or removing all or part of the labeling of a container;

(13) adulterating or misbranding molluscan shellfish or crabmeat in commerce;

(14) refusing to permit entry or inspection, to permit the taking of a sample, or to permit access to or copying by an authorized agent of a record required by this chapter;

(15) failing to establish or maintain a record or report required by this chapter or by a rule adopted by the board; or

(16) violating a rule adopted by the board or an emergency rule or order adopted by the director.

[Sections 436.012 to 436.020 reserved for expansion]

### SUBCHAPTER C. ENFORCEMENT

Sec. 436.021. **DEFINITION.** In this subchapter, “detained or embargoed article” means molluscan shellfish or crabmeat that has been detained or embargoed under Section 436.028.

Sec. 436.022. **INSPECTION.** (a) The director, an authorized agent, or a health authority may, on presenting appropriate credentials to the owner, operator, or agent in charge:

(1) enter at reasonable times, including when processing is conducted, an establishment or location in which molluscan shellfish or crabmeat is processed, packed, pasteurized, or held for introduction into commerce or held after introduction into commerce;

(2) enter a vehicle being used to transport or hold the molluscan shellfish or crabmeat in commerce; or

(3) inspect the establishment, location, or vehicle, including equipment, records, files, papers, materials, containers, labels, or other items, and obtain samples necessary for enforcement of this chapter.

(b) The inspection of an establishment or location is to determine whether the molluscan shellfish or crabmeat:

- (1) is adulterated or misbranded;
- (2) may not be processed, introduced into commerce, sold, or offered for sale under this chapter or the rules adopted by the board; or
- (3) is otherwise in violation of this chapter.

(c) The director, an authorized agent, or a health authority may not inspect:

- (1) financial data;
- (2) sales data, other than shipment data;
- (3) pricing data;
- (4) personnel data, other than personnel data relating to the qualifications of technical and professional personnel; or
- (5) research data.

Sec. 436.023. **ACCESS TO RECORDS.** A person who is required to maintain records under this chapter or a rule adopted by the board or a person who is in charge or custody of those records on request shall permit the director, authorized agent, or health authority at all reasonable times to have access to and to copy the records.

Sec. 436.024. **ACCESS TO RECORDS SHOWING MOVEMENT IN COMMERCE.** (a) A commercial carrier or other person receiving or holding molluscan shellfish or crabmeat in commerce on request shall permit the director, authorized agent, or health authority at all reasonable times to have access to and to copy all records showing:

- (1) the movement in commerce of the molluscan shellfish or crabmeat;
- (2) the holding after movement in commerce of the molluscan shellfish or crabmeat; or
- (3) the quantity, shipper, and consignee of the molluscan shellfish or crabmeat.

(b) The carrier or other person may not refuse access to and copying of the requested records if the request is accompanied by a written statement that specifies the nature or kind of molluscan shellfish or crabmeat to which the request relates.

(c) A carrier is not subject to other provisions of this chapter solely because of the carrier's receipt, carriage, holding, or delivery of molluscan shellfish or crabmeat in the usual course of business as a carrier.

Sec. 436.025. **EMERGENCY ORDER.** (a) The director may issue an emergency order that mandates or prohibits the taking, processing, or sale of molluscan shellfish or crabmeat in the department's jurisdiction if:

- (1) the processing or sale of the molluscan shellfish or crabmeat creates or poses an immediate threat to human life or health; and
- (2) other procedures available to the department to remedy or prevent the threat will result in unreasonable delay.

(b) The director may issue the emergency order without notice and hearing if the director or a person designated by the director determines that issuing the emergency order without notice and hearing is necessary under the circumstances.

(c) If an emergency order is issued without a hearing, the department shall determine the earliest time and place for a hearing at which the emergency order shall be affirmed, modified, or set aside. The hearing shall be held under board rules.

(d) This section prevails over Sections 11.013 and 12.001.

Sec. 436.026. **VIOLATION; INJUNCTION.** (a) The director, an authorized agent, or a health authority may petition the district court for a temporary restraining order to restrain a continuing violation or a threat of a continuing violation of Section 436.011 if the director, authorized agent, or health authority believes that:

(1) a person has violated, is violating, or is threatening to violate a provision of Section 436.011; and

(2) the violation or threatened violation creates an immediate threat to the health and safety of the public.

(b) If the court finds that a person is violating or threatening to violate Section 436.011, the court shall grant injunctive relief.

(c) Venue for a suit brought under this section is in the county in which the violation or threat of violation is alleged to have occurred or in Travis County.

Sec. 436.027. **CIVIL PENALTY.** (a) At the request of the director, the attorney general or a district, county, or municipal attorney shall institute an action in district or county court to collect a civil penalty from a person who has violated Section 436.011.

(b) A person who violates Section 436.011 is liable for a civil penalty not to exceed \$25,000 a day for each violation. Each day of a continuing violation constitutes a separate violation for purposes of penalty assessment.

(c) In determining the amount of the penalty, the court shall consider:

- (1) the person's history of previous violations under this chapter;
- (2) the seriousness of the violation;
- (3) any hazard to the health and safety of the public;
- (4) the demonstrated good faith of the person; and
- (5) other matters as justice may require.

(d) A civil penalty recovered in a suit instituted by the attorney general under this chapter shall be deposited in the state treasury to the credit of the general revenue fund. A civil penalty recovered in a suit instituted by a local government under this chapter shall be paid to the local government.

(e) Venue for a suit to collect a civil penalty brought under this section is in the municipality or county in which the violation occurred or in Travis County.

Sec. 436.028. **DETAINED OR EMBARGOED ARTICLE.** (a) The director or an authorized agent may detain or embargo molluscan shellfish or crabmeat if the director or authorized agent believes or has probable cause to believe that the molluscan shellfish or crabmeat:

- (1) is adulterated; or
- (2) is misbranded so that the molluscan shellfish or crabmeat is dangerous or fraudulent under this chapter.

(b) The director or an authorized agent shall affix to any molluscan shellfish or crabmeat a tag or other appropriate marking that gives notice that the molluscan shellfish or crabmeat is, or is suspected of being, adulterated or misbranded and that the molluscan shellfish or crabmeat has been detained or embargoed.

(c) The tag or marking on a detained or embargoed article must prohibit the removal or disposal of the article unless permission is given by the director, the authorized agent, or a court.

(d) A person may not remove a detained or embargoed article from the premises or dispose of it without permission of the director, the authorized agent, or a court. The director or the authorized agent may permit perishable goods to be moved to a place suitable for proper storage.

(e) The director or an authorized agent shall remove the tag or other marking from a detained or embargoed article if the director or an authorized agent believes that the article is not adulterated or misbranded.

(f) The claimant of a detained or embargoed article may move the article to a secure storage area with the permission of the director or an authorized agent.

Sec. 436.029. **REMOVAL ORDER FOR DETAINED OR EMBARGOED ARTICLE.** (a) The director or authorized agent may order the claimant or the claimant's agent to move a

detailed or embargoed article to a secure place to prevent the unauthorized disposal or removal of the article.

(b) If the claimant fails to carry out the order, the director or the authorized agent may move the article.

(c) If the director or the authorized agent moves the article, the director shall assess the cost of removal against the claimant.

(d) The director may request the attorney general to bring an action in the district court in Travis County to recover the costs of removal. In a judgment in favor of the state, the court may award costs, attorney fees, and interest from the date the expense was incurred until the date the department is reimbursed.

Sec. 436.030. **RECALL FROM COMMERCE.** (a) The director may order a recall of molluscan shellfish or crabmeat with:

- (1) the detention or embargo of molluscan shellfish or crabmeat;
- (2) the issuance of an emergency order under Section 436.025; or
- (3) both.

(b) The director's recall order may require that the molluscan shellfish or crabmeat be removed to one or more secure areas approved by the director or authorized agent.

(c) The recall order must be in writing and be signed by the director and may be issued:

- (1) before or in conjunction with a tag or other marking as provided by Section 436.028;
- (2) with an emergency order authorized by Section 436.025; or
- (3) both.

(d) The recall order is effective until it expires by its own terms, is withdrawn by the director, is reversed by a court in an order denying condemnation, or is set aside at a hearing authorized by Section 436.025.

(e) The claimant shall pay the costs of the removal and storage of a recalled product. If the claimant or the claimant's agent fails to carry out the recall order, the director may recall the product. The director shall assess the costs of the recall against the claimant.

(f) The director may request the attorney general to bring an action in a district court in Travis County to recover the costs of recall. In a judgment in favor of the state, the court may award costs, attorney fees, and interest from the date the expense was incurred until the date the department is reimbursed.

Sec. 436.031. **CONDEMNATION.** If molluscan shellfish or crabmeat is adulterated or misbranded, an action for the condemnation of the molluscan shellfish or crabmeat may be filed in a district court in whose jurisdiction the molluscan shellfish or crabmeat is located.

Sec. 436.032. **DESTRUCTION OF MOLLUSCAN SHELLFISH OR CRABMEAT.** (a) The court may order the destruction of sampled, detained, or embargoed molluscan shellfish or crabmeat if the court finds that the article is adulterated or misbranded.

(b) After entry of the court's order, an authorized agent shall supervise the destruction of the article.

(c) The claimant shall pay the cost of the destruction of the article.

(d) The court shall order the claimant or the claimant's agent to pay court costs, storage fees, and other proper expenses.

Sec. 436.033. **CORRECTION BY PROPER LABELING.** (a) A court may order the delivery of sampled, detained, or embargoed molluscan shellfish or crabmeat that is misbranded to the claimant for relabeling under the supervision of the director or an authorized agent if:

- (1) the court costs and other expenses have been paid;
- (2) proper labeling can correct the misbranding; and
- (3) the claimant executes a bond, conditioned on the correction of the misbranding by proper labeling.

(b) The claimant shall pay the costs of the supervision.

(c) *The court shall order the return of the molluscan shellfish or crabmeat to the claimant if the director or an authorized agent represents to the court that the molluscan shellfish or crabmeat no longer violates this chapter and that the expenses of supervision are paid.*

**Sec. 436.034. ADMINISTRATIVE PENALTY.** (a) *The director may assess an administrative penalty against a person who violates Section 436.011 or an order issued under this chapter.*

(b) *In determining the amount of the penalty, the director shall consider:*

- (1) *the person's previous violations;*
- (2) *the seriousness of the violation;*
- (3) *the hazard to the health and safety of the public;*
- (4) *the person's demonstrated good faith; and*
- (5) *other matters as justice may require.*

(c) *The penalty may not exceed \$25,000 a day for each violation.*

(d) *Each day of a continuing violation constitutes a separate violation.*

**Sec. 436.035. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE.** (a) *The director may assess an administrative penalty only after a person charged with a violation is given an opportunity for a hearing.*

(b) *If a hearing is held, the director shall make findings of fact and shall issue a written decision regarding the violation and the amount of the penalty.*

(c) *If the person charged with the violation does not request a hearing, the director may assess a penalty after determining that a violation has occurred and the amount of the penalty.*

(d) *The director shall issue an order requiring a person to pay a penalty assessed under this section.*

(e) *The director may consolidate a hearing held under this section with another proceeding.*

**Sec. 436.036. PAYMENT OF ADMINISTRATIVE PENALTY.** (a) *Not later than the 30th day after the date an order is issued under Section 436.035(d), the director shall notify the person against whom the penalty is assessed of the order and the amount of the penalty.*

(b) *Not later than the 30th day after the date notice of the order is given to the person, the person shall:*

- (1) *pay the penalty in full; or*
- (2) *seek judicial review of the amount of the penalty, the findings of the director, or both.*

(c) *If the person seeks judicial review, the person shall:*

- (1) *send the amount of the penalty to the director for placement in an escrow account; or*
- (2) *post with the director a bond for the amount of the penalty.*

(d) *A bond posted under this section must be in a form approved by the director and must be effective until judicial review of the order or decision is final.*

(e) *A person who does not send the money to the director or post the bond within the period described by Subsection (b) waives all rights to contest the violation or the amount of the penalty.*

(f) *The attorney general, at the request of the director, may bring a civil action to recover an administrative penalty assessed under this subchapter.*

**Sec. 436.037. REFUND OF ADMINISTRATIVE PENALTY.** *Not later than the 30th day after the date of a judicial determination that an administrative penalty against a person should be reduced or not assessed, the director shall:*

- (1) *remit to the person the appropriate amount of any penalty payment plus accrued interest; or*
- (2) *execute a release of the bond if the person has posted a bond.*



Sec. 436.038. *CRIMINAL PENALTY; DEFENSES.* (a) A person commits an offense if the person intentionally, knowingly, recklessly, or with criminal negligence commits an unlawful act under Section 436.011.

(b) A violation of Section 436.011(1), (2), or (3) is a Class B Parks and Wildlife Code misdemeanor under Section 12.405, Parks and Wildlife Code. Each day of a continuing violation constitutes a separate offense. Commissioned officers of the Parks and Wildlife Department shall enforce Sections 436.011(1), (2), and (3).

(c) If it is shown at trial that the defendant has been convicted once within five years before the trial date of a violation of Section 436.011(1) or (2), a violation by the defendant under Section 436.011(1) or (2) is a Class A Parks and Wildlife Code misdemeanor under Section 12.404, Parks and Wildlife Code.

(d) If it is shown at trial that the defendant has been convicted two or more times within five years before the trial date of a violation of Section 436.011(1) or (2), a violation by the defendant under Section 436.011(1) or (2) is a Parks and Wildlife Code felony under Section 12.407, Parks and Wildlife Code.

(e) A violation of Section 436.011(4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), or (15) is a Class A misdemeanor. Each day of a continuing violation constitutes a separate offense.

(f) A person is not subject to the penalties of Subsection (e) if the person received molluscan shellfish or crabmeat in commerce and delivered or offered to deliver the molluscan shellfish or crabmeat in good faith, unless the person refuses to furnish on request of the director, an authorized agent, or a health authority the name and address of the person from whom the product was received and copies of any documents relating to the receipt of the product.

(g) A publisher, radiobroadcast licensee, or agency or medium for the publication or broadcast of an advertisement, except the harvester, processor, distributor, or seller of molluscan shellfish or crabmeat to which a false advertisement relates, is not liable under this section for the publication or broadcast of the false advertisement unless the person has refused to furnish, on the request of the director, the name and address of the harvester, processor, distributor, seller, or advertising agency residing in this state who caused the person to publish or broadcast the advertisement.

(h) A person is not subject to the penalties of Subsection (e) for a violation of Section 436.011 involving misbranded molluscan shellfish or crabmeat if the violation exists only because the product is misbranded because of a mistake in advertising, unless the violation is committed with intent to defraud or mislead.

Sec. 436.039. *INITIATION OF PROCEEDINGS.* The attorney general or a district, county, or municipal attorney to whom the director, an authorized agent, or a health authority reports a violation of this chapter shall prosecute without delay.

Sec. 436.040. *MINOR VIOLATION.* This chapter does not require the director, an authorized agent, or a health authority to report for prosecution a minor violation of this chapter if the director, authorized agent, or health authority believes that the public interest is adequately served by a written warning.

[Sections 436.041 to 436.060 reserved for expansion]

#### SUBCHAPTER D. ADULTERATED AQUATIC LIFE

Sec. 436.061. *ADULTERATED AQUATIC LIFE.* (a) A species of aquatic life is adulterated if it has been taken from an area declared prohibited for that species by the director.

(b) Molluscan shellfish or crabmeat is adulterated if:

(1) it bears or contains a poisonous or deleterious substance that may render it injurious to health unless the substance is a naturally occurring substance and the quantity of the substance in the molluscan shellfish or crabmeat does not ordinarily render the substance injurious to health;

(2) it consists in whole or in part of a diseased, contaminated, filthy, or putrid substance or if it is otherwise unfit for human consumption;

(3) it has been produced, prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth or may have been rendered diseased, unwholesome, or injurious to health;

(4) it is in whole or in part the product of diseased aquatic life or has died otherwise than by taking;

(5) its container is made in whole or in part of a poisonous or deleterious substance that may render the contents injurious to health;

(6) it has been intentionally exposed to radiation, unless the use of the radiation complied with a regulation or an exemption under Section 409. Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 348);

(7) a substance has been substituted in whole or in part for it;

(8) damage to or inferiority of the product has been concealed;

(9) a substance has been added, mixed, or packed to increase its bulk or weight, to reduce its quality or strength, or to make it appear better or of greater value than it is;

(10) it contains a chemical substance containing sulphites, sulphur dioxide, or any other chemical preservative that is not approved by the Animal Plant Health Inspection Service or by rules of the board;

(11) the molluscan shellfish have been taken from a closed area;

(12) the molluscan shellfish have been taken from a restricted or conditionally restricted area and have not been purified under the rules adopted by the board;

(13) the molluscan shellfish have been processed by a person without a shellfish certificate;

(14) the molluscan shellfish have not been handled and packaged in accordance with the rules adopted by the board;

(15) the crabmeat has been processed by a person without a crabmeat processing license; or

(16) the crabmeat was not picked, packed, or pasteurized in accordance with the rules adopted by the board.

[Sections 436.062 to 436.070 reserved for expansion]

#### SUBCHAPTER E. MISBRANDING

Sec. 436.071. MISBRANDED MOLLUSCAN SHELLFISH AND CRABMEAT. Molluscan shellfish or crabmeat is misbranded if:

(1) its labeling is false, misleading, or fails to conform with the requirements of Section 436.081;

(2) it is offered for sale under the name of another food;

(3) its container is made, formed, or filled so as to be misleading;

(4) a word, statement, or other information required by this chapter or a rule adopted under this chapter to appear on a label is not prominently and conspicuously placed on the label and is not likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or

(5) it does not have a label containing:

(A) the name, address, and certification or license number of the processor;

(B) an accurate statement in a uniform location on the principal display panel of the quantity of the contents in terms of weight, measure, or numerical count; and

(C) a date as provided by rules adopted by the board.

[Sections 436.072 to 436.080 reserved for expansion]

## SUBCHAPTER F. LABELING AND PACKAGING

*Sec. 436.081. FAIR PACKAGING AND LABELING. (a) A label on molluscan shellfish or crabmeat shall conform to the requirements for the declaration of net quantity of contents under Section 1458, Fair Packaging and Labeling Act (15 U.S.C. Section 1453), and the regulations adopted under that Act.*

*(b) The label on a package of molluscan shellfish or crabmeat that represents the number of servings contained in the package shall state the net quantity in terms of weight, measure, or numerical count of each serving.*

*(c) A person may not distribute or cause to be distributed in commerce any molluscan shellfish or crabmeat if a qualifying word or phrase appears with the statement of the net quantity of contents required by Subsection (a). A supplemental statement at another place on the package may contain descriptions in nondeceptive terms of the net quantity of contents, except the supplemental statement of net quantity of contents may not include a term qualifying a unit of weight, measure, or count that tends to exaggerate the amount of the shellfish or crabmeat in the package.*

*Sec. 436.082. FALSE ADVERTISEMENT. An advertisement of molluscan shellfish or crabmeat is false if it is false or misleading in any manner.*

*[Sections 436.083 to 436.090 reserved for expansion]*

## SUBCHAPTER G. AQUATIC LIFE FROM PROHIBITED AREAS

*Sec. 436.091. DECLARATION OF PROHIBITED AREAS. (a) The director by order shall declare a body of public water to be a prohibited area if:*

*(1) the director finds, according to a sanitary, chemical, or bacteriological survey, that the area contains aquatic life that is unfit for human consumption; or*

*(2) aquatic life from a prohibited area may have been transferred to that body of public water.*

*(b) The director shall modify or revoke an order according to the results of a sanitary, chemical, or bacteriological survey conducted by the department. The director shall file the order in the department's office and shall furnish without charge a copy of the order describing prohibited areas on request.*

*(c) The director shall conspicuously outline prohibited areas on maps and shall furnish the maps without charge on request. The failure of a person to obtain that information does not relieve that person from liability under this chapter.*

*[Sections 436.092 to 436.100 reserved for expansion]*

## SUBCHAPTER H. MOLLUSCAN SHELLFISH

*Sec. 436.101. CLASSIFICATION OF GROWING AREAS. (a) The director by order shall designate an area that is coastal water according to the rules of the Parks and Wildlife Commission as an approved area, a conditionally approved area, a restricted area, a conditionally restricted area, or a prohibited area, according to the classification categories in the current National Shellfish Sanitation Program Manual of Operations or its successor. Coastal water is a prohibited area for the taking of molluscan shellfish unless designated otherwise by the director.*

*(b) The director shall prohibit the taking of molluscan shellfish for a specified period from water to which molluscan shellfish may have been transferred from a restricted or conditionally restricted area.*

*(c) The director by order shall designate growing areas as closed areas or open areas. The director shall modify or revoke an order according to the results of sanitary and bacteriological surveys conducted by the department. The director shall file the order in the department's office and shall furnish without charge a copy of the order describing the open or closed area on request.*

(d) The director shall conspicuously outline the classifications of areas for the taking of molluscan shellfish on maps and shall furnish the maps without charge on request. The failure of a person to obtain that information does not relieve that person from liability under this chapter.

Sec. 436.102. **DEPURATION.** (a) The director may allow depuration by artificial means of molluscan shellfish taken from a restricted or conditionally restricted area, subject to the rules adopted by the board and under the supervision the director considers necessary to protect public health.

(b) A molluscan shellfish plant operator may employ an off-duty peace officer to monitor the gathering of shellfish for depuration from a restricted or conditionally restricted area as provided by the rules adopted by the board under Subsection (a). In this subsection, "peace officer" includes those persons listed in Article 2.12, Code of Criminal Procedure.

Sec. 436.103. **FEE ON OYSTER SALES; PENALTIES.** (a) A certified shellfish dealer who handles oysters taken from the water of this state shall pay the department a fee of \$1 for each barrel of oysters processed by the certified shellfish dealer.

(b) A certified shellfish dealer shall pay a fee imposed by this section not later than the 30th day of the month following the month in which the barrel of oysters was handled. A certified shellfish dealer who fails to pay the fee in full within the prescribed period is liable for a penalty of 10 percent of the amount due. The department may suspend, until the fee or penalty is paid, the shellfish certificate of a certified shellfish dealer who fails to timely pay the fee or penalty in full. The department may revoke the shellfish certificate of a certified shellfish dealer who refuses to pay a fee or penalty on written demand of the department.

(c) The department shall deposit fees and penalties collected under this section to the credit of the general revenue fund to be allocated each quarter to the department for oyster-related activities, including:

- (1) contracting for water sample analysis for classification and opening or closing of oyster harvesting areas;
- (2) the study of organisms in oysters that are harmful to consumers of oysters;
- (3) the education of the public on health issues relating to oyster consumption;
- (4) the sanitary handling of oysters at the wholesale, retail, and consumer level; and
- (5) the optional additional marking of the boundaries of areas declared closed by the director.

(d) The department shall adopt rules, forms, and procedures to obtain from a certified shellfish dealer required to pay fees under this section information on the:

- (1) location of the oysters harvested;
- (2) identity of the harvesting boat;
- (3) identity of the captain and the number of crew of the harvesting boat; and
- (4) identity of the receiving certified shellfish dealer.

[Sections 436.104 to 436.110 reserved for expansion]

### SUBCHAPTER I. GENERAL ADMINISTRATIVE PROVISIONS AND RULEMAKING AUTHORITY

Sec. 436.111. **DEFINITIONS.** In this subchapter:

- (1) "Certificate" means a shellfish certificate issued by the department.
- (2) "License" means a crabmeat processing license issued by the department.

Sec. 436.112. **RULEMAKING AUTHORITY.** The board may adopt rules for the enforcement of this chapter. The board shall adopt rules establishing specifications for molluscan shellfish processing and crabmeat processing and shall furnish without charge printed copies of the rules on request.

Sec. 436.113. **CERTIFICATION AND LICENSING PROCEDURES.** (a) A person may not operate as a molluscan shellfish or crabmeat processor unless the person submits an

application for a certificate or a license to the department according to rules adopted by the board and receives a certificate or license for each plant or place of business.

(b) When an application has been properly filed with the department, the director or an authorized agent shall inspect the property identified in the application, including buildings and equipment, and the operating procedures under which the product is processed.

(c) The director shall issue a certificate or license to a person who operates a plant or place of business that conforms to the requirements of this chapter and rules adopted by the board.

(d) A certificate is nontransferrable and expires at 11:59 p.m. on August 31 of each year.

(e) A license is nontransferrable and expires at 11:59 p.m. on the last day of February each year.

(f) A person shall apply for a new certificate or license each year for each plant or place of business.

Sec. 436.114. **REFUSAL TO CERTIFY OR LICENSE; SUSPENSION OR REVOCATION OF CERTIFICATE OR LICENSE.** (a) After notice to the applicant and opportunity for a hearing, the department may refuse an application for a certificate or a license or may suspend or revoke a certificate or license.

(b) The board by rule shall establish minimum standards for a certificate or license and criteria for the refusal to issue a certificate or license and the suspension or revocation of a certificate or license.

Sec. 436.115. **HEARINGS AND APPEALS.** (a) A hearing under this chapter is governed by the procedures for a contested case hearing under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and the board's formal hearing rules.

(b) An appeal from a final administrative decision under this chapter shall be conducted under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

#### ~~[SUBCHAPTER A. TAKING AQUATIC LIFE FROM PROHIBITED AREAS~~

~~[Sec. 436.001. DEFINITIONS. In this subchapter:~~

~~(1) "Aquatic life" means animals and plants that live in water.~~

~~(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 barter.~~

~~[Sec. 436.002. APPLICABILITY OF SUBCHAPTER. This subchapter does not apply to oysters, clams, and mussels, or to the taking, selling, or offering or holding for sale of oysters, clams, and mussels from a polluted area to which Subchapter B applies.~~

~~[Sec. 436.003. DECLARATION OF PROHIBITED AREAS. (a) The commissioner by order shall declare any public water to be a prohibited area if:~~

~~(1) the commissioner finds, according to a sanitary, chemical, or bacteriological survey, that the area contains aquatic life that is unfit for human consumption; or~~

~~(2) aquatic life from a prohibited area may have been transferred to that public water.~~

~~(b) The commissioner's order closes the prohibited area to the taking of aquatic life for the period the commissioner considers advisable.~~

~~(c) The commissioner shall modify or revoke an 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 department's office 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 and shall furnish the maps without charge to any interested person. The failure of a person to avail himself of that information does not relieve that person from liability under this subchapter.~~

~~[Sec. 436.004. TAKING, OFFERING, OR SELLING AQUATIC LIFE FROM PROHIBITED AREAS; CRIMINAL PENALTY. (a) A person commits an offense if the person takes, sells, or offers or holds for sale or human consumption any aquatic life from an area declared by the commissioner to be a prohibited area.~~

~~(b) An offense under this section is a misdemeanor punishable by a fine of not less than \$200 or more than \$500.~~

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

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

~~[Sec. 436.005. DISPOSITION OF AQUATIC LIFE. (a) Aquatic life taken from a prohibited area and offered or held for sale or human consumption is subject to immediate condemnation, seizure, and confiscation by the commissioner or the commissioner's agents.~~

~~(b) The aquatic life shall be held or destroyed or otherwise disposed of as directed by the commissioner.~~

~~[[Sections 436.006 to 436.010 reserved for expansion]]~~

#### ~~[SUBCHAPTER B. SHELLFISH~~

~~[Sec. 436.011. DEFINITIONS. In this subchapter:~~

~~(1) "Board" means the Texas Board of Health.~~

~~(2) "Commissioner" means the commissioner of health.~~

~~(3) "Department" means the Texas Department of Health.~~

~~(4) "Polluted area" means an area that is continuously or intermittently subject to the discharge of sewage or other wastes, or to the presence of coliform organisms in quantities likely to indicate that shellfish taken from the area are unfit for human consumption.~~

~~(5) "Shellfish" means oysters, clams, and mussels, either fresh or frozen and either shucked or in the shell.~~

~~[Sec. 436.012. DECLARATION OF POLLUTED AREAS. (a) The commissioner by order shall declare to be polluted any area within the jurisdiction of the state that the commissioner finds is a polluted area.~~

~~(b) The commissioner shall close to the taking of shellfish for the period the commissioner considers advisable any water to which shellfish from a polluted area may have been transferred.~~

~~(c) The commissioner shall modify or revoke an order in accordance with the results of sanitary and bacteriological surveys conducted by the department. The commissioner shall file the order in the department's office and shall furnish without charge a copy of the order describing polluted areas to any interested person.~~

~~(d) The commissioner shall conspicuously outline polluted areas on maps and shall furnish the maps without charge to any interested person. The failure of a person to avail himself of that information does not relieve that person from liability under this subchapter.~~

~~[Sec. 436.013. RULES. (a) The board shall adopt rules establishing specifications for shellfish plant facilities and for the harvesting, transporting, storing, handling, and packaging of shellfish.~~

~~(b) The board may adopt rules necessary for the efficient enforcement of this subchapter.~~

~~(c) A rule adopted under this subchapter takes effect three months after the date on which the rule is adopted.~~

~~[(d) The board shall furnish without charge printed copies of the rules to any interested person on request.~~

~~[Sec. 436.014. COMPLIANCE WITH RULES. (a) The commissioner shall allow a shellfish plant a reasonable time to comply with a rule after its adoption, but that time may not exceed six months after the date on which the rule is adopted unless an extension is granted.~~

~~[(b) The commissioner may grant an extension to a plant on a showing that more time is reasonably required for compliance.~~

~~[Sec. 436.015. INSPECTION OF SHELLFISH PLANT. (a) The commissioner or the commissioner's agent shall inspect each shellfish plant and the practices followed in handling and packaging shellfish. The commissioner shall issue a certificate attesting to compliance with the rules adopted under this subchapter to each operator who the commissioner finds is in compliance with the rules.~~

~~[(b) The commissioner or the commissioner's agent may reinspect a plant at any time and shall revoke the operator's certificate if:~~

~~[(1) the operator refuses to allow an inspection of the plant or free access to the plant at a reasonable hour; or~~

~~[(2) the commissioner finds that the plant is not being operated in compliance with the rules adopted under this subchapter.~~

~~[Sec. 436.016. PERFORMANCE BOND. (a) The commissioner may require a person holding a shellfish plant certificate to post and maintain with the commissioner a good and sufficient bond with a corporate surety or two personal sureties approved by the commissioner, or a cash deposit in a form acceptable to the commissioner, if reasonably necessary to ensure that the certificate holder will comply with the requirements imposed under this subchapter.~~

~~[(b) If the certificate holder fails to comply with the requirements of this subchapter, the certificate holder or the certificate holder's surety forfeits to the commissioner an amount not to exceed \$1,000.~~

~~[Sec. 436.017. PURIFICATION OF SHELLFISH. (a) The commissioner may allow purification by artificial means of shellfish taken from polluted areas, subject to the rules adopted by the board and under the supervision the commissioner considers necessary to protect public health.~~

~~[(b) A shellfish plant operator may employ off-duty peace officers to monitor the taking of shellfish from polluted areas as provided by the rules adopted to implement Subsection (a). In this subsection, "peace officer" includes those persons listed in Article 2.12, Code of Criminal Procedure.~~

~~[Sec. 436.018. PROHIBITION AGAINST TAKING SHELLFISH FROM POLLUTED AREA. A person may not take, sell, or offer or hold for sale any shellfish from a polluted area without complying with the rules adopted by the board to ensure that the shellfish have been purified.~~

~~[Sec. 436.019. TRANSPLANTING SHELLFISH. (a) Section 436.018 does not prohibit the transplanting of shellfish from polluted water if permission for the transplanting is first obtained from the Parks and Wildlife Department and the transplanting is supervised by that department.~~

~~[(b) The Parks and Wildlife Department shall furnish a copy of the transplant permit to the commissioner before transplanting activities begin.~~

~~[Sec. 436.020. PROHIBITION AGAINST UNLAWFULLY OPERATING SHELLFISH PLANT. A person may not operate a shellfish plant for the handling and packaging of shellfish without a certificate issued by the commissioner for each plant or place of business.~~

~~[Sec. 436.021. PROHIBITION AGAINST SALE OF IMPROPERLY HANDLED SHELLFISH. A person may not sell or offer or hold for sale any shell stock or shucked shellfish that have not been handled and packaged in accordance with the specifications adopted by the board.~~

~~[Sec. 436.022. PROHIBITION AGAINST SALE OF SHELLFISH FROM IMPROPER FACILITIES. A person may not sell or offer or hold for sale any shellfish from facilities for~~

the packaging and handling of shellfish that do not comply with the specifications adopted by the board.

~~[Sec. 436.023. PROHIBITION AGAINST SALE OF SHELLFISH WITHOUT CERTIFICATE NUMBER. (a) A person may not sell or offer for sale any shellfish that are not in a container bearing a valid certificate number from a state or nation whose shellfish certification program conforms to the current Manual of Recommended Practice for Sanitary Control of the Shellfish Industry issued by the Food and Drug Administration.~~

~~[(b) This section does not apply to the sale for on-premise consumption of shellfish removed from a certified container.~~

~~[Sec. 436.024. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this subchapter or a rule adopted under this subchapter. Each day of a continuing violation constitutes a separate offense.~~

~~[(b) An offense under Subsection (a) is a misdemeanor punishable by a fine of not less than \$200 or more than \$1,000, confinement in jail for not more than 180 days, or both.~~

~~[(c) If it is shown at the trial of a defendant for a violation of Section 436.018 that the defendant has been convicted once within five years before the trial date of a violation of Section 436.018, the defendant is guilty of a misdemeanor punishable by a fine of not less than \$500 or more than \$2,000, confinement in jail for a term not to exceed one year, or both.~~

~~[(d) If it is shown at the trial of a defendant for a violation of Section 436.018 that the defendant has been convicted two or more times within five years before the trial date of a violation of Section 436.018, the defendant is guilty of a felony punishable by imprisonment for a term of not more than 10 years or less than two years. In addition to imprisonment, an individual adjudged guilty of a felony under this subsection may be punished by a fine of not less than \$2,000 or more than \$5,000.~~

~~[Sec. 436.025. DISPOSITION OF UNFIT OR UNLAWFUL SHELLFISH. (a) Shellfish held or offered for sale at retail or for human consumption are subject to immediate condemnation, seizure, and confiscation by the commissioner or the commissioner's agents if the shellfish:~~

~~[(1) have not been handled and packaged in accordance with specifications adopted by the board;~~

~~[(2) are not in a certified container; or~~

~~[(3) are otherwise found by the commissioner to be unfit for human consumption.~~

~~[(b) The shellfish shall be held or destroyed or disposed of as directed by the commissioner.~~

~~[Sec. 436.026. ENFORCEMENT. (a) The commissioner and the commissioner's representatives, with assistance from officers of the Parks and Wildlife Department as determined by the executive director of that department, shall enforce this subchapter, other than Section 436.018.~~

~~[(b) Commissioned officers of the Parks and Wildlife Department shall enforce Section 436.018.~~

~~[[Sections 436.027 to 436.040 reserved for expansion]]~~

#### ~~[SUBCHAPTER C. CRABMEAT PRODUCTION~~

~~[Sec. 436.041. DEFINITIONS. In this subchapter:~~

~~[(1) "Board" means the Texas Board of Health.~~

~~[(2) "Crabmeat" means the edible meat of steamed or cooked crabs that has not been processed, other than by picking, packing, and chilling.~~

~~[(3) "Department" means the Texas Department of Health.~~

~~[(4) "Pasteurization plant" means a plant in which crabmeat is heat-treated, without complete sterilization, to improve the keeping qualities of the meat.~~

~~[(5) "Person" means an individual, partnership, corporation, or association.~~



~~[(6) "Picking plant" means a place in which crabs are steamed or cooked and edible meat from the crabs is picked.~~

~~[Sec. 436.042. LICENSE REQUIRED. (a) A person may not operate a picking or pasteurization plant unless the person has a license for that plant.~~

~~[(b) A person must submit a license application to the department for each plant.~~

~~[(c) A separate license is required for each plant.~~

~~[Sec. 436.043. INSPECTIONS. When an application has been properly filed with the department, the department shall inspect all properties identified in the application, all buildings and equipment on the property, and the operating procedures under which the product is processed.~~

~~[Sec. 436.044. LICENSE ISSUANCE. (a) The department shall issue a serially numbered license to a person who operates a plant that conforms to the requirements of this subchapter and board rules.~~

~~[(b) A license is nontransferable and expires the last day of February of each year.~~

~~[(c) A person who operates a picking or pasteurization plant must annually apply for a new license for each plant.~~

~~[Sec. 436.045. RULES. The board shall adopt rules for the picking, pasteurizing, storing, transporting, and selling of crabmeat to ensure a wholesome product.~~

~~[Sec. 436.046. COMPLIANCE WITH BOARD RULES. Crabmeat from this state or from plants outside this state must comply with the board rules as provided by this subchapter. The department may seize and condemn crabmeat that does not comply with board rules.~~

~~[Sec. 436.047. ADULTERATED OR SUBSTANDARD CRABMEAT. (a) A person may not process, transport, store for sale, possess with the intent to sell, offer or expose for sale, or sell any crabmeat for human consumption that is adulterated or that is packed or pasteurized in violation of this subchapter or a rule adopted under this subchapter.~~

~~[(b) The possession of adulterated crabmeat by a person licensed under this subchapter is presumptive evidence of intent to sell the crabmeat for human consumption.~~

~~[(c) Crabmeat is adulterated if:~~

~~[(1) any substance has been substituted in whole or in part for the crabmeat;~~

~~[(2) the crabmeat consists in whole or in part of any filthy, putrid, or decomposed substance, or the crabmeat is for any other reason unsound, unwholesome, unhealthful, or otherwise unfit for human consumption;~~

~~[(3) the crabmeat has been prepared, packed, or held under unsanitary conditions that, in the department's judgment, may have contaminated the crabmeat with filth or may have made it injurious to health; or~~

~~[(4) the crabmeat container is composed, in whole or in part, of any poisonous or deleterious substance that may make the contents injurious to health.~~

~~[Sec. 436.048. LABELING OF CRABMEAT CONTAINERS. (a) A container of crabmeat must be conspicuously labeled in a manner approved by the department. Stamping with ink is not permitted.~~

~~[(b) The label must contain:~~

~~[(1) the proper designation of the content of the container;~~

~~[(2) the name and address of the picking plant in which the product was produced or the name and address of the distributor;~~

~~[(3) the presence of any chemical, if any is allowed;~~

~~[(4) the license number of the picking plant preceded by the state abbreviation plainly and conspicuously marked on the body of the container;~~

~~[(5) the net weight of the contents; and~~

~~[(6) any other information pertinent to the public health required by the department.~~

~~[(c) If a label contains the name and address of the distributor, the name and address must be:~~

~~[(1) preceded by the words "packed for" or "distributed by"; and~~

~~[(2) followed by the word "distributor."~~

~~[(d) A label may not bear a false or misleading statement.~~

~~[(e) In this section, "label" means a display of written, printed, or other graphic matter on the immediate container, excluding package liners, of an article.~~

~~[Sec. 436.049. REVOCATION OF LICENSE. (a) If the department finds that a provision of this subchapter has been violated by a license holder or that a violation has occurred or is occurring on any premises for which a license is issued, the department shall notify the license holder in writing of the nature of the violation and direct that the violation cease.~~

~~[(b) The department may revoke the license of a license holder who refuses or fails to comply in the time and manner set forth in the notice.~~

~~[Sec. 436.050. APPEAL OF DEPARTMENT DECISION. An applicant for a license or a license holder who is aggrieved by a decision of the department in failing to issue or in revoking a license may appeal that decision to a district court in:~~

~~[(1) the county in which the property identified in the application or license is located; or~~

~~[(2) Travis County.~~

~~[Sec. 436.051. PROSECUTION; INJUNCTION. (a) At the request of the health authority, the district or county attorney shall prosecute a person charged with a violation of this subchapter or a rule issued under this subchapter.~~

~~[(b) In an appropriate proceeding, a district court may prohibit a repetition or continuance of an offense. At the request of the health authority, the district or county attorney shall bring a suit to enjoin a violation of this subchapter or a rule issued under this subchapter.~~

~~[Sec. 436.052. CRIMINAL PENALTY. (a) A person commits an offense if the person violates a provision of this subchapter or a rule adopted under this subchapter.~~

~~[(b) An offense under this section is a misdemeanor punishable by a fine of not less than \$25 or more than \$200.~~

~~[(c) Each violation constitutes a separate offense.]~~

SECTION 2. The change in law made by this Act applies only to a certificate or license issued under Chapter 436, Health and Safety Code, on or after the effective date of this Act. A certificate or license issued before the effective date of this Act is covered by the law in effect when the certificate or license was issued, and the former law is continued in effect for this purpose.

SECTION 3. (a) The change in law made by this Act applies only to an offense or unlawful act committed under Chapter 436, Health and Safety Code, on or after the effective date of this Act. For purposes of this section, an offense or unlawful act is committed before the effective date of this Act if any element of the offense or act occurs before the effective date.

(b) An offense or unlawful act committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 4. Section 76.019, Parks and Wildlife Code, is repealed.

SECTION 5. This Act takes effect September 1, 1993.

SECTION 6. 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 April 13, 1993: Yeas 31, Nays 0; May 10, 1993, Senate refused to concur in House amendment and requested appointment of Conference Committee; May 12, 1993, House granted request of the Senate; May 18, 1993, Senate discharged conferees; May 18, 1993, Senate concurred in House amendment by a viva-voce vote; passed the House, with amendment, on May 4, 1993, by a non-record vote; May 12, 1993, House granted request of the Senate for appointment of Conference Committee.

Approved May 29, 1993.  
Effective Sept. 1, 1993.