

BILL ANALYSIS

Senate Research Center
86R29386 AAF-F

C.S.H.B. 1828
By: Martinez (Fallon)
Water & Rural Affairs
4/30/2019
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, penalties for the illegal harvest of finfish are not strong enough to deter people from committing these crimes. In April of 2017, a case made by the Texas Game Wardens in Houston, Harris County, showed an individual allegedly funneling 28,000 pounds of unlawfully purchased aquatic products (mainly red snapper) through restaurants he owned to serve to customers as an "off the menu" item. His profit made from all the illegal aquatic products was estimated at over a quarter-million dollars. The penalties that could be assessed were only Class C misdemeanors and were merely written off as a cost of doing business.

H.B. 1828 would allow for penalty ranges from a Class C misdemeanor to a state jail felony depending on the poundage of aquatic products sold in the transaction and would allow for one criminal case with the appropriate fine range to be filed for the illegal sale of product. This would actually deter fishermen and purchasers from selling or purchasing illegally caught fish.

- 10–50 pounds would increase to a Class B misdemeanor with a minimum fine of \$500;
- 50–100 pounds would be a Class B misdemeanor with a minimum fine of \$1,000;
- 100–200 pounds would increase to a Class A misdemeanor with a minimum fine of \$1,500;
- 200–300 pounds would be a Class A misdemeanor with a minimum fine of \$2,000;
- 300–500 pounds would be a state jail felony with a minimum fine of \$3,000; and
- 500 pounds and above be a state jail felony with a minimum fine of \$4,000;

Committee Substitute Changes:

Adds a Section 47.0121(b) in Section 1 of the bill that provides an affirmative defense of this section if the person had no reason to believe at the time the offense was committed that the aquatic products purchased for resale or received for sale were taken in violation of a federal or state law or regulation.

C.S.H.B. 1828 amends current law relating to prohibiting the sale and purchase of certain aquatic products; creates a criminal offense; and increases a criminal penalty.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter A, Chapter 47, Parks and Wildlife Code, by adding Section 47.0121, as follows:

Sec. 47.0121. UNLAWFUL COMMERCIAL SALE OR PURCHASE OF AQUATIC PRODUCTS. (a) Provides that a person commits an offense if the person purchases for resale or receives for sale, barter, exchange, transport, or any other commercial purpose aquatic products that are taken, possessed, transported, or sold in violation of a federal or state law or regulation.

(b) Provides that it is an affirmative defense to prosecution under this section that the person:

(1) had no reason to believe at the time the offense was committed that the aquatic products purchased for resale or received for sale, barter, exchange, transport, or any other commercial purpose were taken, possessed, transported, or sold in violation of a federal or state law or regulation; and

(2) purchased or received the aquatic products described by Subdivision (1) from a seller who had a valid commercial license to sell aquatic products.

SECTION 2. Amends Section 47.051, Parks and Wildlife Code, as follows:

Sec. 47.051. PENALTY. Provides that, except as provided by Sections 47.052 (Penalty) and 47.053, rather than Section 47.052 of this code, a person who violates a provision of this chapter (Commercial Fishing Licenses) commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

SECTION 3. Amends Subchapter C, Chapter 47, Parks and Wildlife Code, by adding Section 47.053, as follows:

Sec. 47.053. PENALTY. (a) Provides that a person who violates or fails to comply with Section 47.0121 commits an offense that is:

(1) a Class B Parks and Wildlife Code misdemeanor punishable by a fine of at least:

(A) \$500 if the weight of the aquatic products totals 10 pounds or more but less than 50 pounds; or

(B) \$1,000 if the weight of the aquatic products totals 50 pounds or more but less than 100 pounds;

(2) a Class A Parks and Wildlife Code misdemeanor punishable by a fine of at least:

(A) \$1,500 if the weight of the aquatic products totals 100 pounds or more but less than 200 pounds; or

(B) \$2,000 if the weight of the aquatic products totals 200 pounds or more but less than 300 pounds; or

(3) a Parks and Wildlife Code state jail felony for which, in addition to confinement, the person may be punished by a fine of at least:

(A) \$3,000 if the weight of the aquatic products totals 300 pounds or more but less than 500 pounds; or

(B) \$4,000 if the weight of the aquatic products totals 500 pounds or more.

(b) Authorizes an offense under this section to be prosecuted in the county in which the aquatic products were unlawfully taken, possessed, transported, or sold or in any county through or into which the aquatic products were taken or transported.

(c) Authorizes a scheme or conduct, when aquatic products are obtained in violation of Section 47.0121 under one scheme or continuing course of conduct,

whether from the same or several sources, to be considered as one offense and the weight of the aquatic products aggregated in determining the grade of the offense.

SECTION 4. Makes application of this Act prospective. Provides that, for purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 5. Effective date: September 1, 2019.