

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Environmental Preservation Committee

BILL: CS/SB 2202

INTRODUCER: Environmental Preservation Committee and Senator Baker

SUBJECT: Fish and wildlife

DATE: March 27, 2006

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------|
| 1. | Molloy | Kiger | EP | Fav/CS |
| 2. | _____ | _____ | JU | _____ |
| 3. | _____ | _____ | CJ | _____ |
| 4. | _____ | _____ | GA | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

The committee substitute establishes a framework for proposed penalties applied to recreational violations of statutes and Fish and Wildlife Commission (FWC or commission rules) relative to saltwater fisheries, and all violations of statutes and commission rules relative to hunting and freshwater fishing violations. The committee substitute attempts to provide consistency among similar freshwater fish, saltwater fish, and hunting/wildlife violations and creates an increased penalty structure for repeated convictions within specified time frames. The committee substitute deletes the minimum number of hours required for successful completion of a hunter safety course.

The committee substitute creates a criminal penalty for hunting or fishing with a suspended or revoked license, provides for a special authorization for certain persons to hunt without taking the hunter safety course, enacts the Wildlife Violators Compact in Florida law, and conforms provisions in chapters 370 and 372, Florida Statutes, to the new penalty structure.

The committee substitute substantially amends ss. 370.01, 370.021, 370.028, 370.061, 370.063, 370.08, 370.081, 370.1105, 370.1121, 370.13, 370.135, 370.14, 370.142, 372.57, 372.5704, 372.571, 372.5717, 372.573, 372.83, 372.26, 372.265, 372.661, 372.662, 372.667, 372.705, 372.988, 372.99, 372.99022, 372.9903, F.S., and creates ss. 372.935 and 372.831, F.S. Section 372.711, F.S., is repealed.

II. Present Situation:

Hunter Safety Course Standards

Current law requires that persons born on or after July 1, 1975, must successfully complete a hunter safety course, consisting of not less than 12 hours and not more than 16 hours of

instruction on competent and safe handling of firearms, conservation, and hunting ethics. Any person who violates these provisions commits a noncriminal infraction under s. 372.111, F.S., and is fined \$50.

International Hunter Education Association (IHEA)¹

The IHEA, is the official organization representing the interests of 69 state, provincial, and federal hunter education coordinators, and 70,000 hunter education instructors who teach hunter safety, ethics, and conservation to approximately 750,000 students each year. The association offers online instruction through the Introduction to Hunter Education course, which can be part of any state's official hunter education course. IHEA also provides a video series for training instructors, and publishes the "Hunter's Handbook" which is published once a year for distribution to hunting education students throughout the country.

The IHEA is affiliated with the International Association of Fish and Wildlife Agencies, and the goals of the association include serving as the primary resource for hunter education information, promoting hunter education by fostering cooperative efforts between government, organized groups and industry, and promoting programs which prevent hunting accidents.

Hunter Mentoring

Florida does not have a hunter mentoring program, but persons under the age of 16 years may participate in hunting activities without a license so long as they hunt in the presence of a parent or guardian (s. 372.562, F.S.).

Wisconsin's hunter mentoring program requires that the mentor must have the person within "arm's reach" at all times while hunting. No person may serve as a mentor unless they are at least 18 years of age, and all mentors born after 1973 must have completed the state's hunter safety program. The mentor must be the parent or guardian of the person being mentored, or be authorized by the parent or guardian to serve as a mentor.

In Texas, the hunter mentor program allows a person 17 years of age or older, who has not taken and successfully completed a hunter education course, to defer completion of the course and purchase a special deferral hunting license for \$10, in addition to the regular hunting license fee. The deferred license is a one-time purchase. A hunter with a deferral license must be accompanied by another licensed hunter 17 years of age or older, who has completed and passed the hunter education program or is exempt, and must be within normal voice control.

Wildlife Violators Compact²

The concept of the Wildlife Violators Compact was advanced in the early 1980's by member states in the Western Association of Fish and Wildlife Agencies. Law enforcement administrators and Wildlife Commissioners from several states began discussing the idea of a compact based on the format of the existing Drivers License Compact and Non-Resident Visitor Compact.

¹ Please see www.ihea.com for further information.

² http://www.stoppoaching.org/wvc/operation_manual.pdf

The Compact assures non-resident visitors receiving citations for wildlife violations in participating states the same treatment accorded residents of the state. Procedures in the Compact can cause a non-resident violator who fails to comply with the terms of a citation issued in a participating state to face the possibility of having wildlife license privileges in the home state suspended until the citation is complied with. Member states have reciprocal recognition of suspension of license privileges by the participating states, subject to due process limitations. Information on convictions is forwarded to the home state of the violator and the home state treats those convictions as if they had occurred in the home state.

Penalty provisions of chapter 370, F.S.

The penalty provisions of ch. 370, F.S., apply to all persons violating any statutes or rules of the commission relating to saltwater fisheries. No distinction is made between recreational and commercial saltwater fishers except in the assessment of administrative penalties and license suspensions. While a recreational license may be suspended or revoked, a saltwater products license holder may lose that license as well as any recreational licenses.

Penalty provisions of chapter 372, F.S.

The penalty provisions of ch. 372, F.S., apply to all persons violating any statutes or rules of the commission relating to hunting or freshwater fishing. Very little distinction is made between the recreational and commercial hunters and freshwater fishers.

Section 372.711, F.S.

Section 372.711, F.S., establishes penalties for the noncriminal infractions established in s. 372.83, F.S. Persons who are cited for committing a noncriminal infraction must appear before the county court, post a bond applicable to the amount of any civil penalty which could be assessed, and sign and accept a citation indicating a promise to appear before the court. Any person who willfully refuses to post a bond, or sign and accept a citation, is guilty of a 2nd degree misdemeanor.

Persons who commit a noncriminal infraction must pay a \$50 fine, and persons who commit a noncriminal infraction of the license and permit requirements of s. 372.57, F.S., must pay a \$50 fine plus the cost of the license or permit. Any person who elects to appear before the court, or is required to appear before the court, waives the \$50 fine and is subject to a civil penalty of not more than \$500. Also, anyone charged with violating the requirement for personal possession of a license may not be convicted, if prior to the hearing or at the hearing, the person can produce the required permit or license for verification by the hearing officer or court clerk. The clerk of the court may assess a \$5 fee to cover the administrative costs of such a case.

Section 372.83, F.S.

Subsection (1) of s. 372.83, F.S., establishes noncriminal infractions for violations of rules, regulations or orders of the FWC relating to certain reporting requirements, fish management areas, quota and daily use permits, personal possession of captive wildlife, size and slot limits for freshwater game fish, vessel size, motor restrictions, off-road vehicles and airboats operated on state lands, hunting and fishing license requirements, and required clothing for hunting deer.

Subsection (2) of s. 372.83, F.S., establishes 2nd degree misdemeanor penalties for violations of rules, regulations or orders of the FWC relating to season and take periods for freshwater fish or

wildlife, methods of take, illegal sale or possession, purchase, transfer or importation of freshwater fish and wildlife, access to wildlife management areas or other areas, the payment of fees for possession of captive wildlife, and all other rules and regulations not listed in subsection (1).

Subsection (3) of s. 372.83, F.S., establishes third-degree felony penalties for anyone who unlawfully makes, forges, counterfeits, or reproduces a saltwater, freshwater, or hunting license, or who knowingly possesses such a license.

Subsection (4) of s. 372.83, F.S., provides that unless otherwise established in ch. 372, F.S., a violation of any chapter provision is a 2nd degree misdemeanor for a first offense, and a 1st degree misdemeanor for subsequent offenses.

Criminal Penalties

Criminal penalties are established in ss. 775.082, 775.083, and 775.084, F.S., and are as follows:

- 2nd degree misdemeanor: Not more than 60 days in jail, and/or up to a \$500 fine.
- 1st degree misdemeanor: Not more than 1 year in jail, and/or up to a \$1,000 fine.
- 3rd degree felony: Not more than 5 years in jail, and/or up to a \$5,000 fine.
- Habitual felony offender: Not more than 10 years in jail.

III. Effect of Proposed Changes:

Section 1. Amends s. 370.01, F.S., to define "commercial harvester" as any person, firm, or corporation that takes, harvests, or attempts to take or harvest saltwater products with intent to sell, and that:

- Is operating under or is required to operate under a permit, license or authorization issued pursuant to chapter 370, F.S, or
- Is using gear which is prohibited for use in the harvest of recreational amounts of any saltwater product being taken or harvested, or
- Is harvesting any saltwater product in an amount that is at least twice the recreational bag limit for the saltwater product being taken or harvested.

Section 2. Amends s. 370.021, F.S., as follows:

- Subsection (1) is amended to clarify that penalties authorized in the subsection are base penalties to which additional penalties may be added.
- Subsection (2) is amended to apply major violation penalties to commercial harvesters and wholesale and retail saltwater products dealers, and to provide that any other person committing a major violation commits a Level Three violation under s. 372.83.
- Subsection (4) is amended to clarify that additional penalties for major violations committed by commercial harvesters are provided in s. 370.021(3)(b). Any other person committing a major violation commits a Level Three violation under s. 372.83.
- Subsection (6) is amended to clarify that penalties for unlicensed sale, purchase, or harvest of saltwater products under the subsection apply to commercial harvesters or wholesale or retail saltwater products dealers.
- Subsection (12) is amended to clarify that the administrative and monetary civil penalties in chapter 370, F.S., apply to commercial harvesters only.

Section 3. Amends s. 370.028, F.S., to clarify that except as provided under s. 372.83, F.S., persons who violate rules of the commission are punished pursuant to s. 370.021(1), F.S.

Section 4. Amends s. 370.061, F.S., to correct a cross-reference.

Section 5. Amends s. 370.063, F.S., to provide that all persons violating requirements for a special recreational crawfish license commit a Level One violation under s. 372.83, F.S.

Section 6. Amends s. 370.08, F.S., to conform penalty provisions in the section to the new penalty structure created in the committee substitute.

Section 7. Amends s. 370.081, F.S., to provide that all persons who illegally import or possess nonindigenous marine plants and animals commit a Level Three violation under s. 372.83, F.S.

Sections 8 through 13. Amends ss. 370.1105, 370.1121, 370.13, 370.135, 370.14, and 370.142, F.S., to conform penalty provisions in the sections to the new penalty structure created in the committee substitute.

Section 14. Amends s. 372.57, F.S., to:

- Create an annual \$5 crossbow season permit for residents and non-residents, and conform fees for the annual sportsman's license and annual gold sportsman's license to include the new permit.
- Provide that it is illegal for a person to make, forge, counterfeit, or reproduce a freshwater fishing license, hunting license, or saltwater fishing license unless authorized by the commission to make or reproduce such a license.
- Provide that it is illegal to possess a forged, counterfeit, or unauthorized reproduction of a license or permit.
- Provide that a person violating provisions relating to forged or counterfeited licenses creates a Level Four violation under s. 372.83, F.S.

Sections 15 and 16. Amends ss. 372.5704 and 372.571, F.S., to conform penalty provisions in those sections to the new penalty structure created in the committee substitute.

Section 17. Amends s. 372.5717, F.S., to:

- Authorize the FWC to issue a license to a person born on or after July 1, 1975, to hunt under supervision without successfully completing a hunter safety course.
- Provide that such a license is valid for no longer than 1 year and can only be issued one time to an individual requesting such a license.
- Provide that a person hunting under a supervised hunting license may only hunt under the supervision of, and in the physical presence of a person 21 years of age or older, who must have successfully completed the hunter safety course, or is not required to take it.
- Delete the minimum number of instruction hours for the statewide hunter safety course.
- Provide that a person who violates a hunter safety provision commits a Level One violation under s. 372.83.

Section 18. Amends s. 372.573, F.S., to correct a cross-reference.

Section 19. Substantially revises s. 372.83, F.S., to reorganize and reclassify recreational penalties, and license and permit suspension and revocation procedures.

Establishes Level One violations as follows:

- Violating rules or orders of the FWC which relate to:
 - The filing of required reports or documents by persons holding licenses or permits issued by the commission.
 - Quota hunt permits, daily use permits, hunting zone assignments, camping, alcoholic beverages, vehicles, and check stations in wildlife management areas or other areas managed by the commission.
 - Daily permits, alcoholic beverages, swimming, firearm possession, vehicle operation, and boat speeds in fish management areas.
 - Vessel size or motor restrictions on specified water bodies.
- Violating statutory requirements relating to:
 - Special recreational crawfish licenses issued under s. 370.063, F.S.
 - Hunting, fishing and trapping licenses issued under s. 372.57 (1)-(15), F.S.
 - Hunter safety certification as provided in s. 372.5717, F.S.
 - Required clothing for hunting deer as provided in s. 372.988, F.S.

Establishes Level One penalties as follows:

- Civil penalty for all first-time noncriminal violations is \$50.
- Civil penalty for subsequent Level One violations is \$250, plus the cost of the license or permit for violations of s. 372.57, F.S.
- Persons committing a Level One violation shall be cited to appear before the county court, and may:
 - Post a bond equal to the amount of the applicable civil penalty.
 - Sign and accept a citation to appear before a county court.
 - Pay the civil penalty by mail or in person within 30 days after receiving citation.
 - Be deemed to have admitted guilt and waived the right to a hearing by paying the civil penalty or failing to appear in court.
- Persons who refuse to post a bond or sign a summons, or who fail to timely pay a civil penalty or appear in court, commit a 2nd degree misdemeanor.
- For persons who appear before the court, the \$50 civil penalty limitation is waived and a civil penalty of not more than \$500 may be assessed.
- Persons charged with violating requirements for personal possession of a license or permit may not be convicted, if prior to the hearing, the required license or permit can be produced for verification by the hearing officer. The court may assess a \$5 fee.

Establishes Level Two violations as follows:

- Violating rules or orders of the FWC relating to:
 - Seasons or time periods for the taking of fish and wildlife.
 - Bag, possession, size limits, and methods of taking fish and wildlife.
 - Public access on wildlife management areas or other commission managed areas.
 - Feeding fish and wildlife.
 - Restricted hunting areas, bird sanctuaries, or critical wildlife areas.
 - Landing requirements for fish.

- Tagging requirements for game and fur-bearing animals.
- Rules or orders of the FWC which are not otherwise classified.
- Violating statutory requirements relating to:
 - Violation of or noncompliance with commission rules as provided in s. 370.028, F.S.
 - The illegal sale, purchase, harvest, or attempted harvest of saltwater products with intent to sell as provided in subsection 370.021(6), F.S.
 - Obstructing waterways with net gear as provided in s. 370.08, F.S.
 - Finfish traps as provided in s. 370.1105, F.S.
 - Bonefish as provided in s. 370.1121, F.S.
 - Illegal possession or use of stone crab traps, and theft of stone crab trap contents or gear as provided in s. 370.13 (2) (a) and (b), F.S.
 - Theft of blue crab trap contents or trap gear as provided in s. 370.135 (2)(c), F.S.
 - Illegal possession or use of spiny lobster traps without trap tags or certificates, and theft of spiny lobster trap contents or gear as provided in s. 370.142 (2)(c), F.S.
 - Possession of tarpon without purchasing a tarpon tag as provided in s. 372.5704, F.S.
 - Feeding or enticement of alligators or crocodiles as provided in s. 372.667, F.S.
 - Harassment of hunters, fishers, and trappers as provided in s. 372.705, F.S.

Establishes Level Two penalties as follows:

- 2nd degree misdemeanor for any person who has not been convicted of a Level Two or higher violation within the past 3 years.
- 1st degree misdemeanor for any person who commits a Level Two or higher violation within a 3-year period following any previous conviction, with a minimum mandatory fine of \$250.
- 1st degree misdemeanor for any person who commits a Level Two or higher violation within a 5-year period following any two previous Level Two convictions, with a minimum mandatory fine of \$500, and a 1-year suspension of all recreational licenses.
- 1st degree misdemeanor for any person who commits a Level Two or higher violation within a 10-year period following any three previous Level Two convictions, with a minimum mandatory fine of \$750, and a suspension of all recreational licenses for a 3-year period.

Establishes Level Three violations as follows:

- Violating rules or orders of the FWC relating to:
 - The prohibited sale of saltwater fish.
- Violating statutory requirements relating to:
 - Major violations under s. 370.021 (2), F.S.
 - Possession of certain finfish in excess of bag limits under s. 370.021 (4), F.S.
 - Illegal importation or possession of exotic marine plants or animals under s. 370.081, F.S.
 - Foreign wildlife under s. 372.26, F.S.
 - The importation of nonindigenous animal species without a permit issued by the commission under s. 372.265, F.S.
 - Taking fish or game with a suspended or revoked license under s. 372.57, F.S.
 - Illegal sale or possession of alligators under s. 372.662, F.S.
 - Illegal take or possession of deer and wild turkey under s. 372.99, F.S.
 - Possession and transportation of commercial quantities of freshwater fish under s. 372.9903, F.S.

Establishes Level Three penalties as follows:

- 1st degree misdemeanor for any person not convicted of a Level Three violation or above within the past 10 years.
- 1st degree misdemeanor for any person who commits a Level Three violation within a 10-year period following a previous conviction for a Level Three or higher violation, with a minimum mandatory fine of \$750, and a suspension of all recreational licenses for 3 years.
- Mandatory fine of \$1,000 and a 5-year suspension of all recreational licenses for a person who hunts or fishes while a license is suspended or revoked.

Establishes Level Four violations as follows:

- Violating statutory requirements relating to:
 - Molestation of stone crab gear under s. 370.13, F.S.
 - Molestation of blue crab gear under s. 370.135, F.S.
 - Molestation of crawfish gear under s. 370.14, F.S.
 - Unlawful reproduction of spiny lobster trap tags or certificates under s. 370.142, F.S.
 - Forging a license or possession of a forged license under s. 372.57 (16), F.S.
 - Sale of illegally taken deer or turkey under s. 372.99(5), F.S.
 - Molestation of or theft from freshwater fishing gear under s. 372.99022, F.S.

Establishes Level Four violations as follows:

- 3rd degree felony for committing any Level Four violation.

Other violations of Chapter 372:

- 1st offense is a 2nd degree misdemeanor.
- 2nd or subsequent offenses are 1st degree misdemeanors.

Section 20. Creates subsection (1) in s. 372.935, F.S., to provide that persons who violate rules or orders of the commission requiring no-cost permits to possess captive wildlife for personal use, or rules or orders of the commission relating to required reports and documents for persons licensed to possess captive wildlife, commit a noncriminal infraction and are subject to a civil penalty of \$50.

Creates subsection (2) in s. 372.935, F.S., to provide that 2nd degree misdemeanor penalties apply to persons who violate:

- Rules or orders of the commission requiring the payment of a fee to possess captive wildlife.
- Rules or orders of the commission requiring the maintenance of records relating to captive wildlife.
- Rules or orders of the commission relating to captive wildlife which are not specified in subsection (1).
- Sections 372.88, 372.89, 372.90, 372.901, and 372.91, F.S., relating to poisonous or venomous reptiles.
- Section 372.921, F.S., prohibiting the exhibition or sale of wildlife.
- Section 372.922, F.S., prohibiting the personal possession of wildlife.

Sections 21 through 30. Amends ss. 372.26, 372.265, 372.661, 372.662, 372.667, 372.705, 372.988, 372.99022, 372.99, and 372.9903, F.S., to conform penalty provisions in those sections to the new penalty structure created in the committee substitute.

Section 31. Creates the Wildlife Violators Compact Act. Provides that the Compact is enacted into law and entered into with all other jurisdictions legally joining there. Provides for:

- Findings relating to the management of wildlife resources.
- Definitions.
- Procedures for the state to issue a citation.
- Procedures for the licensing authority of the home state of the violator.
- Reciprocal recognition of license suspensions.
- Procedures for entering and withdrawing from the Compact.
- Compact enforcement by the FWC.
- The FWC to be the licensing authority of the state for purposes of the Compact.
- Provisions of the Compact to be subject to review in accordance with chapter 120, F.S.

Section 32. Repeals s. 372.711, F.S., relating to noncriminal infractions.

Section 33. Provides an effective date of October 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons committing violations may see increases in civil penalties, especially for repeated violations.

Persons hunting under the special authorization provisions for hunter safety education must still purchase the appropriate hunting license, unless they are exempt from licensing requirements or eligible for a free license under s. 372.562, F.S.

Individuals who choose to hunt within the state during the new crossbow season will be required to purchase an annual \$5 crossbow season permit.

C. Government Sector Impact:

The FWC estimates minimal additional costs associated with the penalties proposed in the committee substitute. The revenue impacts from the deferred hunter education program are unknown since no estimates can be made regarding the number of persons who may participate in the program. The impact to the Total Licensing System for the special authorization to hunt is minimal.

The revenues from the sale of the annual \$5 crossbow season permit are unknown.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
