

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Environmental Preservation and Conservation Committee

BILL: SB 318

INTRODUCER: Senator Sobel

SUBJECT: Reptiles/Prohibitions

DATE: February 16, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiggins	Kiger	EP	Favorable
2.			GA	
3.				
4.				
5.				
6.				

I. Summary:

The bill amends s. 379.372, F.S., to prohibit any person from possessing, importing, selling, trading, or breeding certain specified reptiles species, including a reptile designated as a reptile of concern by the Florida Fish and Wildlife Conservation Commission (commission). The bill provides an exception to this probation for persons who are currently licensed or acquire a license prior to July 1, 2010 to continue to possess the animal for the remainder of its life.

The bill provides an effective date of July 1, 2010.

II. Present Situation:

The commission has been working with the U.S. Fish and Wildlife Service, Everglades National Park, South Florida Water Management District and other partners on issues concerning Burmese pythons since 2006. During the 2007 Session, the Florida Legislature passed and the Governor approved CS/SB 2766 which amended the venomous reptile statute, s. 372.86, F.S., (now s. 379.372, F.S.) to require a license to possess any Reptile of Concern (ROC) and directed the Commission to develop such a list of reptiles by December 31, 2007. Six species were consequently listed by rule:

- Indian or Burmese python (*Python molurus*)
- Reticulated python (*Python reticulatus*)
- African rock python (*Python sebae*)
- Amethystine or Scrub python (*Morelia amethystinus*)
- Green anacondas (*Eunectes murinus*)
- Nile monitor (*Varanus niloticus*)

The species on the commission's list match the list of species in the proposed legislation with one exception. The proposed legislation includes all anaconda species whereas the commission's ROC list includes only the green anaconda.

The cost of the license to possess a ROC was set at \$100 in s. 379.373, F.S. This license revenue is deposited in the State Game Trust Fund and is used to implement and enforce the ROC program.

Presently, Florida Statutes include penalty enhancements, minimum mandatory fines for violations and mandatory license suspensions/revocations. These are found in s. 379.4015, F.S. Penalties range between a non-criminal infraction, second degree misdemeanor, first degree misdemeanor and third degree felony (depending on the level of severity). Most penalties, however, fall into the second degree misdemeanor (Level Two) category which provides that:

- A person who commits any offense classified as a Level Two violation and who has not been convicted of a Level Two or higher violation within the past 3 years commits a misdemeanor of the second degree, punishable as provided in s. 775.082, (describes penalties applicable and sentencing structures for certain reoffenders) or s. 775.083, F.S. (describes mandatory fines for non-capital felonies).
- Unless otherwise stated, a person who commits any offense classified as a Level Two violation within a 3-year period of any previous conviction of a Level Two or higher violation commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, F.S., with a minimum mandatory fine of \$250.
- Unless otherwise stated, a person who commits any offense classified as a Level Two violation within a 5-year period of any two previous convictions of Level Two or higher violations commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, F.S., with a minimum mandatory fine of \$500 and a suspension of all licenses issued under this chapter related to captive wildlife for 1 year.
- A person who commits any offense classified as a Level Two violation within a 10-year period of any three previous convictions of Level Two or higher violations commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, F.S., with a minimum mandatory fine of \$750 and a suspension of all licenses issued under this chapter related to captive wildlife for 3 years.

Other statutory penalties regarding the safekeeping of snakes include s. 379.305, F.S., which provides for a Level three misdemeanor violation to a person who knowingly releases a nonnative venomous reptile or ROC to the wild or allows it to escape. According to s. 379.374, F.S., no person, party, firm, or corporation shall exhibit venomous reptiles to the public without posting a bond in the amount of \$10,000.

The list of ROC species and associated regulations are found in Rules 68A-6.007, 68A-6.0071 and 68A-6.0072, Florida Administrative Code (F.A.C.). They address minimum age (18), licensing requirements, strict caging requirements, identification of specimens by micro-chipping, record keeping and reporting of changes in inventory, reporting of any escape and the need for a Critical Incident/Disaster plan. Current ROC rule implementation and enforcement is supported in part by the ROC license revenues.

As of December 2009, the commission had issued 398 licenses with authorizations to possess, exhibit or sell a ROC. Upon implementation of the regulations, the commission initially focused on education and outreach to obtain compliance. Through December 2009, the commission has conducted 480 ROC related inspections, issued 98 citations, 132 warnings and seized 73 ROC species.

ROCs are still readily sold in the pet trade throughout the U.S. Although industry trends show that the trade in ROCs has been reduced in Florida, due to licensing and regulations that went into effect in January 2008, these species are still easily obtained via the internet from outside of Florida. In an effort to explore ways to stop entities from purchasing ROCs without a license and from out of state vendors the commission has a stakeholder group to develop rules to protect the public and the environment. A Reptiles of Concern Technical Advisory Group (ROCTAG) has been assembled to review the commission's program dealing with ROCs and to provide recommendations for future direction, including regulations and management. The ROCTAG, consisting of eight experts, considers risk assessment and risk management, including regulations for Florida. The group members were selected based on their backgrounds and areas of expertise. The members possess expertise in herpetology, scientific research and academia, conservation and land management, disease/bioterrorism, animal welfare and all facets of the reptile industry. The ROCTAG meets regularly with recent meetings in December 2009, January 2010 and February 2010.

The commission periodically conducts amnesty day events at sites where pet owners can surrender ROCs to qualified adopters. Amnesty days dampen the motivation to release the reptiles to the wild. Commission Executive Order 09-21 allows current ROC licensees to participate in 24/7 amnesty mode and accept or adopt ROC species from unlicensed holders of those specimens. This Executive Order will be presented as a draft rule at the February commission meeting, which if approved, would result in a permanent authorization for 24/7 amnesty and acceptance or adoption of ROCs from unlicensed holders.

The commission has stated that it considers the following when making a change to the current laws specifying ROC regulations:

- threat to public safety,
- the species ability to establish themselves in Florida,
- the species threat to the environment,
- the potential release of ROCs to the environment,
- the potential economic impact on the reptile industry,
- the potential creation of a black market for ROC species,
- enforcement strategies, and
- other similar concerns.

The Florida Fish and Wildlife Conservation Commission's commissioners are scheduled to meet on February 17-18, 2010 and will discuss current ROC regulations. Further, the commission will continue to partner with Everglades National Park, Big Cypress National Park and the South Florida Water Management District to establish and implement control measures on both state and federal lands

Currently, there are several bills pending in the U.S. Congress to limit or prohibit the importation of the python into the United States. Senate Bill 373 by Senator Nelson and HR 2188 by Congressman Meek identifies certain species and prohibits those species from being imported into the United States and shipped across state borders. Two other bills in Congress: HR 669 by Congressman Bordallo requires risk assessments of nonnative species and HR 3215 by Congressman Rooney allows hunting pythons in Everglades National Park.

Recently, the U.S. Fish and Wildlife Service initiated rulemaking that would add the nine constrictor species in Sen. Nelson's bill to the "injurious wildlife" list. Any species on the "injurious wildlife" list is prohibited from being imported into the United States and is prohibited from interstate commerce.

III. Effect of Proposed Changes:

This bill will eliminate acquisition by persons in Florida of current ROC species and all species of anacondas. Captive snake species subject to this bill's provisions live between 10 and 30 years. The Nile monitor, a large lizard, lives between 10 and 15 years in captivity. The bill will immediately stop persons, firms, and corporations from keeping, possessing, importing, selling, bartering, trading or breeding ROC species for personal use or for sale for personal use.

The bill would grandfather ROC owners licensed as of July 1, 2010, until those animals die. Anaconda owners, other than green anaconda owners, must be licensed by October 1, 2010. Green anacondas are already listed as a ROC and would fall under the July 1, 2010, license requirement.

Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

There is a potential conflict with the State of Florida Constitution and the powers given to the commission. Article IV, Section 9 of the Florida Constitution provides the Florida Fish and Wildlife Conservation Commission with the exclusive authority to "exercise the regulatory and executive powers of the state with respect to wild animal life and fresh water aquatic life." There are several qualifications to this exclusive grant: first, the constitutional provision exempts from the commission's authority the setting of license

fees and penalties; second, the constitutional provision allows that the legislature may “enact laws in aid of the commission, not inconsistent” with the commission’s grant of authority. The language as proposed creates prohibitions on possession and related activities for species that commission rules 68A-6.007-68A-6.0072, F.A.C. regulate. Those rules do require compliance with several sections of Florida Statutes including s. 379.372, F.S., which is being amended by SB 318. Despite this cross reference, the commission rules specifically contemplate personal possession of the species at issue in SB 318. The inconsistency between existing commission rules and the proposed bill could make it difficult to consider whether SB 318 goes beyond aiding the commission.

IV. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Reptile dealers will no longer be able to sell these species to individuals and as a result may experience a financial loss. The suppliers that provide related food, caging, and other items may experience a decrease in sales.

C. Government Sector Impact:

The proposed bill would create a loss of licensing revenue to the State Game Trust Fund. The cost of a license to possess ROC species is \$100 per year. Last year the commission issued 398 licenses which generated approximately \$39,800. New licenses to individuals would not be issued if this bill passes. Those individuals that are grandfathered could decide to surrender their animals and no longer need a license. Also, upon death of the species listed in the bill, a grandfathered licensee would no longer need a license. The revenues generated by the current ROC license issued by the commission are used to offset the cost to administer the program and enforce ROC regulations.

V. Technical Deficiencies:

None.

VI. Related Issues:

It is unclear if after the effective date of the bill if a ROC owner may participate in an amnesty program to give up the animal. It is unclear if the intent is to allow for commercial activity to continue for the purpose of sales to wholesalers in/out of Florida and retailers out of Florida.

Expanded prohibitions on all trade or possession unless a person has obtained grandfathered license status have the potential to create a black market for species placed on the ROC list.

Increasing risk for potential for unlicensed or unregulated possession may increase risks to public safety or increase release of ROCs to the wild.

Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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