

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: Criminal Justice Committee

BILL: CS/CS/SB 2202

INTRODUCER: Criminal Justice Committee, Environmental Preservation Committee, and Senator Baker

SUBJECT: Fish and wildlife

DATE: April 25, 2006

REVISED: _____

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Withdrawn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

I. Summary:

The bill establishes a framework for proposed penalties applied to recreational violations of statutes and Fish and Wildlife Commission (FWC or commission) rules relating to saltwater fisheries, and all violations of statutes and FWC rules relating to hunting and freshwater fishing violations. The bill 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 bill deletes the minimum number of hours required for successful completion of a hunter safety course.

The bill 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 chs. 370 and 372, F.S., to the new penalty structure.

The bill 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, 372.562, 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 921.0022, F.S.; creates ss. 372.935, 372.831, and 372.8311, F.S.; and repeals ss. 372.711 and 372.912, F.S.

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. The IHEA also provides a video series for training instructors, and publishes the *Hunter's Handbook* 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. 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 industries; 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.²

Wisconsin's hunter mentoring program requires that the mentor must have the person within "arm's reach" at all times while hunting. A person must be at least 18 years of age to serve as a mentor, 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 who is 17 years of age or older and 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 deferral license is a one-time purchase. A hunter with a deferral license must be accompanied by another licensed hunter who is 17 years of age or older and who has completed and passed the hunter education program or is exempt, and must be within normal voice control.

Wildlife Violators Compact³

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 s. 372.562, F.S.

³ 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 violator complies with the citation. 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 ch. 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 ch. 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, commits a second 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 second-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 second degree misdemeanor for a first offense and a first 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:

- Second degree misdemeanor: Not more than 60 days in jail, and/or up to a \$500 fine.
- First degree misdemeanor: Not more than 1 year in jail, and/or up to a \$1,000 fine.
- Third 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 for sale or with intent to sell, and that is doing any of the following:

- Operating under or is required to operate under a permit, license, or authorization issued pursuant to ch. 370, F.S.
- Using gear which is prohibited for use in the harvest of recreational amounts of any saltwater product being taken or harvested, or
- 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, F.S. Various references in this subsection to “crawfish” are deleted and replaced with references to “spiny lobsters.”
- Subsection (4) is amended to clarify that additional penalties for major violations committed by commercial harvesters who violate this subsection are provided in s. 370.021(3)(b), F.S. Any other person who violates this subsection commits a Level Three violation under s. 372.83, F.S.

- 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 ch. 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. Various references to “crawfish” are deleted and replaced with references to “spiny lobsters.”

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

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 - 13. Amend ss. 370.1105, 370.1121, 370.13, 370.135, 370.14, and 370.142, F.S., to conform penalty provisions in these sections to the new penalty structure created in the bill. Various references to “crawfish” are deleted and replaced with references to “spiny lobsters.”

Section 14. Amends s. 372.562, F.S., to provide that a hunting, freshwater fishing, or saltwater fishing license or permit is not required for any resident who holds a valid license under s. 372.65(1)(a), F.S.

Section 15. Amends s. 372.57, F.S., to do the following:

- Create an annual \$5 archery season and 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 knowingly possess a forged, counterfeit, or unauthorized reproduction of a license or permit.
- Provide that a person violating provisions relating to forged or counterfeited licenses commits a Level Four violation under s. 372.83, F.S.
- Provides that a person who takes game, freshwater fish, saltwater fish, or fur-bearing animals within this state when the person’s license is suspended or revoked commits a Level Three violation under s. 372.83, F.S.

Sections 16 and 17. Amend ss. 372.5704 and 372.571, F.S., to conform penalty provisions in these sections to the new penalty structure created in the bill.

Section 18. Amends s. 372.5717, F.S., to do the following:

- 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 and in the physical presence of a person 21 years of age or older, who must have successfully completed the hunter safety course or be required to take the course.
- 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, F.S.

Section 19. Amends s. 372.573, F.S., to correct a cross-reference.

Section 20. 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:

- Violations of rules or orders of the FWC relating 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 use permits, alcoholic beverages, swimming, firearm possession, vehicle operation, and watercraft speed in fish management areas.
 - Vessel size or specifying motor restrictions on specified water bodies.
- Violation of:
 - Section 370.063, providing for special recreational spiny lobster licenses.
 - Section 372.57(1)-(15), F.S., providing for recreational licenses to hunt, fish, and trap.
 - Section 372.5717, F.S., providing hunter safety course requirements.
 - Section 372.988, F.S., prohibiting deer hunting unless required clothing is worn.

Establishes Level One penalties as follows:

- Civil penalty for a Level One violation involving the licensing and permit requirements of s. 372.57, F.S., is \$50 plus the cost of the license or permit, unless the person commits a Level One violation involving this statute and has committed the same Level One

violation within the preceding 36 months, in which case the civil penalty is \$100 plus the cost of the license or permit.

- Civil penalty for any other Level One violation is \$50, unless the person has previously committed the same Level One violation within the preceding 36 months, in which case the civil penalty is \$100.
- Persons committing a Level One violation are required to sign and accept a citation to appear before a county court and may pay the civil penalty by mail or in person within 30 days after receiving citation, in which case they are deemed to have admitted guilt and waived the right to a hearing.
- Persons who refuse to accept a citation, fail to pay the civil penalty, or fail to appear before a county court as required, commit a second degree misdemeanor.
- Persons who elect to appear before the court or who are required to appear before it are deemed to have waived the \$50 civil penalty limitation, and the court, after a hearing in which the court determines there has been a violation, may impose a civil penalty of not less than \$50 for a first-time violation and not more than \$500 for a subsequent violation, which may be appealed.
- Persons cited for violating requirements for personal possession of a license or permit may not be convicted if, prior to or at the time of the hearing, the required license or permit can be produced for verification by the hearing officer or the court clerk. The clerk or hearing officer may assess a \$5 fee.

Establishes Level Two violations as follows:

- Violations of rules or orders of the FWC relating to:
 - Seasons or time periods for the taking of fish or wildlife.
 - Bag, possession, or size limits, or restricting methods of taking fish or wildlife.
 - Access to wildlife management areas or other commission managed areas.
 - Feeding fish or wildlife.
 - Landing requirements for fish.
 - Restricted hunting areas, bird sanctuaries, or critical wildlife areas.
 - Tagging requirements for game and fur-bearing animals.
 - Use of dogs for the taking of game.
 - Matters not otherwise classified.
- Violation of:
 - Ch. 370, F.S., not otherwise classified.
 - Section 370.28, F.S., prohibiting violation of or noncompliance with commission rules.
 - Section 370.021(6), F.S., prohibiting the sale, purchase, harvest, or attempted harvest of saltwater products with intent to sell.
 - Section 370.08, F.S., prohibiting the obstruction of waterways with net gear.
 - Section 370.1105, F.S., prohibiting the unlawful use of finfish traps.
 - Section 370.1121, F.S., prohibiting the unlawful taking of bonefish.
 - Section 370.13(2)(a) and (b), F.S., prohibiting the possession or use of stone crab traps without trap tags and theft of trap contents or gear.

- Section 370.135(2)(c), F.S., prohibiting the theft of blue crab trap contents or trap gear.
- Section 370.142(2)(c), F.S., prohibiting the possession or use of spiny lobster traps without trap tags or certificates and theft of spiny lobster trap contents or gear.
- Section 372.5704, F.S., prohibiting the possession of tarpon without purchasing a tarpon tag.
- Section 372.667, F.S., prohibiting the feeding or enticement of alligators or crocodiles.
- Section 372.705, F.S., prohibiting the intentional harassment of hunters, fishers, or trappers.

Establishes Level Two penalties as follows:

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

Establishes Level Three violations as follows:

- Violation of rules or orders of the FWC relating to the prohibited sale of saltwater fish.
- Violation of:
 - Section 370.021(2), F.S., establishing major violations.
 - Section 370.021(4), F.S., prohibiting the possession of certain finfish in excess of recreational daily bag limits.
 - Section 370.081, F.S., prohibiting the illegal importation or possession of exotic marine plants or animals.
 - Section 372.26, F.S., prohibiting the importation of freshwater fish.
 - Section 372.265, F.S., prohibiting the importation of nonindigenous animal species without a permit issued by the commission.
 - Section 372.57(17), F.S., prohibiting the taking of fish or game with a suspended or revoked license.
 - Section 372.662, F.S., prohibiting the illegal sale or possession of alligators.
 - Section 372.99, F.S., prohibiting the illegal taking and possession of deer and wild turkey.
 - Section 372.9903, F.S., prohibiting the possession and transportation of commercial quantities of freshwater game fish.

Establishes Level Three penalties as follows:

- First degree misdemeanor for any person who commits a Level Three violation but has not been convicted of a Level Three or higher violation within the past 10 years.
- First degree misdemeanor with a minimum mandatory fine of \$750 and a suspension of all recreational licenses for 3 years for any person who commits a Level Three violation within 10 years after a previous conviction for a Level Three or higher violation.
- 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, which are violations of:

- Section 370.13(2)(c), F.S., prohibiting criminal activities relating to the taking of stone crabs.
- Section 370.135(1)(b), F.S., prohibiting the willful molestation of blue crab gear.
- Molestation of crawfish gear under s. 370.14, F.S.
- Section 370.14(4), F.S., prohibiting the willful molestation of spiny lobster gear.
- Section 370.142(2)(c)5., F.S., prohibiting the unlawful reproduction, possession, sale, trade, or barter of spiny lobster trap tags or certificates.
- Section 372.57(16), F.S., prohibiting the making, forging, counterfeiting, or reproduction of a recreational license or possession of same without commission authorization.
- Section 372.99(5), F.S., prohibiting the sale of illegally-taken deer or wild turkey.
- Section 372.99022, F.S., prohibiting the molestation or theft of freshwater fishing gear.

Establishes Level Four violations as follows:

- Third degree felony for committing any Level Four violation.

Other violations of ch. 372, F.S.:

- First offense is a second degree misdemeanor.
- Second or subsequent offenses are first degree misdemeanors.

Section 21. 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 second 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 372.86, 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 22 - 31. Amend 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 bill.

Section 32. Amends the Criminal Punishment Code ranking chart (s. 921.0022, F.S.) to delete Level One rankings of the following offenses: s. 370.13(2)(c)1., F.S. (molestation of a stone crab trap); s. 370.1345(1), F.S. (molestation of a blue crab trap); and s. 372.663(1), F.S. (alligator poaching). The deletion of Level One third degree felony offenses from the ranking chart does not change their Level One ranking because third degree felonies not specifically ranked in the chart are Level One offenses pursuant to s. 921.0023, F.S.

Section 33-34. 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 ch. 120, F.S.

Section 35. Provides that, for purposes of incorporating the crossbow permit, hunter safety exemption, and Wildlife Violator Compact, the commission must update the automated licensing system by no later than August 1, 2006.

Section 36. Repeals ss. 372.711 and 372.912, F.S., relating to noncriminal infractions.

Section 37. 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 bill. 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.

The bill does not appear to create any ranked third degree felonies which might have a prison bed impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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.
