

ACT 195

H.B. NO. 1181

A Bill for an Act Relating to Aquatic Resources.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 187A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§187A- Receipts and reports. Any person who knowingly misrepresents any material fact or makes a false statement in any document required by

subtitle 5 of title 12, or any rule adopted thereunder, shall be guilty of a petty misdemeanor and punished as provided by law.”

SECTION 2. Section 187A-6.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§187A-6.5]]~~ **Release and confiscation of harmful aquatic life[; penalty].** (a) No person shall release any live non-native fish or other live non-native aquatic life being held in an aquarium or other confinement for scientific study, exhibition, display, sale, or for any other purpose, into any waters of the State, except as provided in section 187A-2(4).

(b) The department or its agents may seize, confiscate, or destroy, as a public nuisance, any fish or other aquatic life found in any waters of the State and whose importation is prohibited or restricted pursuant to rules of the department of agriculture.

(c) Any person violating this section shall be guilty of a petty misdemeanor and upon conviction thereof shall be punished as provided by section 188-70.”

SECTION 3. Section 187A-13, Hawaii Revised Statutes, is amended to read as follows:

“**§187A-13 General penalty.** (a) Any person violating [any of the provisions of] this chapter or any rule [of the department] adopted thereunder for which a penalty is not otherwise provided, shall be guilty of a petty misdemeanor and [upon conviction thereof shall be punished as provided by section 188-70.], in addition to any other penalties, shall be fined not less than:

- (1) \$250 for a first offense;
- (2) \$500 for a second offense; and
- (3) \$1,000 for a third or subsequent offense.

(b) The fines specified in this section shall not be suspended or waived.”

SECTION 4. Section 187A-14, Hawaii Revised Statutes, is amended to read as follows:

“**§187A-14 Informer’s fee.** One-half of the fine imposed and collected in all cases wherein the defendant has been convicted for a violation of [any of the provisions of this chapter] subtitle 5 of title 12 or any rule adopted thereunder shall be paid to the person giving the information leading to the arrest of the person so convicted; provided that this section shall not apply[,] if the informer is a regular salaried sheriff, deputy sheriff, police officer, warden or constable, or officer or agent of the department.”

SECTION 5. Section 187A-15, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§187A-15]]~~ **Rights of inspection of catch.** Any agent of the department upon whom the board has conferred powers of police officers or any other enforcement officer of the State shall have the authority to conduct examinations and searches of:

- (1) The contents of any bag or container of any kind used to carry aquatic life; or
- (2) Any vehicle or conveyance used to transport aquatic life;

if such agent or officer has probable cause, as provided by law, to believe that such bag, container, vehicle, or conveyance contains evidence of a violation of [the

fishing laws of the State.] subtitle 5 of title 12 or any rule adopted thereunder. No person shall refuse any enforcement officer of the department or any other enforcement officer of the State such examination and search.”

SECTION 6. Section 188-70, Hawaii Revised Statutes, is amended to read as follows:

“**§188-70 Penalties.** (a) Any person violating any provision of this chapter, excepting section 188-23, or any rule adopted pursuant thereto, is guilty of a petty misdemeanor and [upon conviction thereof, shall be punished as follows:

- (1) For a first conviction, by a fine of not more than \$500, or by imprisonment of not more than thirty days, or both:
- (2) For a second conviction within five years of a previous conviction by a fine not less than \$100 nor more than \$500, or by imprisonment of not more than thirty days, or both:
- (3) For a third or subsequent conviction within five years of the first two or more convictions, by a fine of not less than \$300 nor more than \$500, or by imprisonment of not more than thirty days, or both.], in addition to any other penalties, shall be fined not less than:
 - (A) \$100 for a first offense;
 - (B) \$200 for a second offense; and
 - (C) \$500 for a third or subsequent offense.

(b) Any person violating section 188-23, is guilty of a [misdemeanor and upon conviction thereof,] class C felony and shall be [punished as follows:

- (1) For a first conviction by a fine of not more than \$1,000, or by imprisonment of not more than one year, or both:
- (2) For a second conviction within five years of a previous conviction, by a fine of not less than \$250 nor more than \$1,000 or by imprisonment of not more than one year, or both:
- (3) For a third or subsequent conviction within five years of the first two or more convictions, by a fine of not less than \$500 nor more than \$1,000, or by imprisonment of not more than one year, or both.]

sentenced pursuant to chapter 706; provided that the court, in addition to any term of imprisonment or any other terms and conditions of probation, shall order the defendant to pay a fine of not less than \$1,000. Notwithstanding section 706-669 and any other law to the contrary, any person in violation of subsection (b), as a first offense, shall be sentenced to a mandatory minimum period of imprisonment without possibility of parole for thirty days. Repeat offenders shall be sentenced pursuant to chapter 706.

(c) [In addition to the above penalties, for the first conviction a fine of up to \$100 may be levied for each specimen of aquatic life taken or rock or coral broken or damaged illegally under this chapter; provided that for every subsequent conviction within five years of the first conviction, a fine of up to \$100 shall be levied for each specimen of aquatic life taken or rock or coral broken or damaged illegally under this chapter.] The fines specified in this section shall not be suspended or waived.”

SECTION 7. Section 189-4, Hawaii Revised Statutes, is amended to read as follows:

“**§189-4 Penalties.** [In addition to the revocation of a commercial marine license, any] (a) Any person violating any of the provisions of [sections 189-2 and 189-3] this chapter for which a penalty is not otherwise provided, or any rule of the department adopted thereunder, shall be guilty of a petty misdemeanor[, and upon conviction thereof, shall be fined not less than \$25 nor more than \$500, or impris-

oned not less than five nor more than thirty days, or both;] and punishable as provided in subsection (b); provided that in the case of a corporation violating any of the provisions only the fine shall be imposed, but any officer of the corporation who wilfully procures or permits the violation of the provisions by the corporation shall be [subject to fine and imprisonment, or both.] punishable as in the case of an individual violating the same.

(b) The punishment, in addition to any other penalties, shall be a fine of not less than:

- (1) \$250 for a first offense;
- (2) \$500 for a second offense;
- (3) \$1,000 for a third or subsequent offense.

(c) The fines specified in this section shall not be suspended or waived."

SECTION 8. Section 189-14, Hawaii Revised Statutes, is amended to read as follows:

"§189-14 Rights of entry, penalties. The department [of land and natural resources] may board any vessel, whether commercial or non-commercial, capable of being used in taking marine life, or enter any place of business where marine life is sold, stored, processed, cooked, canned, or cured, for purposes of investigation and inspection, and inspect any and all books and records containing account of the marine life taken, bought, or sold.

Any person who fails to permit an inspection as provided in this section, or who refuses to produce any book or record containing any information of the marine life taken, bought, or sold, and any person who interferes with any officer or agent of the department in the performance of the officer's or agent's duty as authorized in this section, shall be guilty of a petty misdemeanor and[, upon conviction thereof, shall be fined not less than \$25 nor more than \$500, or imprisoned not less than five nor more than thirty days, or both.] punished as provided by section 189-4."

SECTION 9. Section 190-5, Hawaii Revised Statutes, is amended to read as follows:

"§190-5 Penalty. (a) Any person violating this chapter, any rule adopted pursuant thereto, or the terms and conditions of any permit issued under section 190-4, shall be guilty of a petty misdemeanor and [fined not more than \$500 or imprisoned not more than thirty days, or both.] and punished as provided in subsections (b) and (c).

(b) The punishment, in addition to any other penalties, shall be a fine of not less than:

- (1) \$250 for a first offense;
- (2) \$500 for a second offense; and
- (3) \$1,000 for a third or subsequent offense.

(c) The fines specified in this section shall not be suspended or waived."

SECTION 10. Section 706-606.5, Hawaii Revised Statutes, is amended by amending subsection (1)¹ to read as follows:

"§706-606.5 Sentencing of repeat offenders. (1) Notwithstanding section 706-669 and any other law to the contrary, any person convicted of murder in the second degree, any class A felony, any class B felony, or any of the following class C felonies: section 188-23 relating to possession or use of explosives, electrofishing devices, and poisonous substances in state waters; section 707-703 relating to negligent homicide in the first degree; 707-711 relating to assault in the second

degree; 707-713 relating to reckless endangering in the first degree; 707-716 relating to terroristic threatening in the first degree; 707-721 relating to unlawful imprisonment in the first degree; 707-732 relating to sexual assault or rape in the third degree; 707-735 relating to sodomy in the third degree; 707-736 relating to sexual abuse in the first degree; 707-751 relating to promoting child abuse in the second degree; 707-766 relating to extortion in the second degree; 708-811 relating to burglary in the second degree; 708-821 relating to criminal property damage in the second degree; 708-831 relating to theft in the first degree as amended by Act 68, Session Laws of Hawaii 1981; 708-831 relating to theft in the second degree; 708-835.5 relating to theft of livestock; 708-836 relating to unauthorized control of propelled vehicle; 708-852 relating to forgery in the second degree; 708-854 relating to criminal possession of a forgery device; 708-875 relating to trademark counterfeiting; 710-1031 relating to intimidation of a correctional worker; 710-1071 relating to intimidating a witness; 711-1103 relating to riot; 712-1203 relating to promoting prostitution in the second degree; 712-1221 relating to gambling in the first degree; 712-1224 relating to possession of gambling records in the first degree; 712-1243 relating to promoting a dangerous drug in the third degree; 712-1247 relating to promoting a detrimental drug in the first degree; 134-7 relating to ownership or possession of firearms or ammunition by persons convicted of certain crimes; 134-8 relating to ownership, etc., of prohibited weapons; 134-9 relating to permits to carry, or who is convicted of attempting to commit murder in the second degree, any class A felony, any class B felony, or any of the class C felony offenses enumerated above and who has a prior conviction or prior convictions for the following felonies, including an attempt to commit the same: murder, murder in the first or second degree, a class A felony, a class B felony, any of the class C felony offenses enumerated above, or any felony conviction of another jurisdiction shall be sentenced to a mandatory minimum period of imprisonment without possibility of parole during such period as follows:

- (a) One prior felony conviction:
 - (i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree—ten years;
 - (ii) Where the instant conviction is for a class A felony—six years, eight months;
 - (iii) Where the instant conviction is for a class B felony—three years, four months;
 - (iv) Where the instant conviction is for a class C felony offense enumerated above—one year, eight months;
- (b) Two prior felony convictions:
 - (i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree—twenty years;
 - (ii) Where the instant conviction is for a class A felony—thirteen years, four months;
 - (iii) Where the instant conviction is for a class B felony—six years, eight months;
 - (iv) Where the instant conviction is for a class C felony offense enumerated above—three years, four months;
- (c) Three or more prior felony convictions:
 - (i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree—thirty years;
 - (ii) Where the instant conviction is for a class A felony—twenty years;
 - (iii) Where the instant conviction is for a class B felony—ten years;
 - (iv) Where the instant conviction is for a class C felony offense enumerated above—five years.’’

SECTION 11. Section 189-13, Hawaii Revised Statutes, is repealed.

SECTION 12. Section 189-16, Hawaii Revised Statutes, is repealed.

SECTION 13. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 14. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 15. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.