

SENATE BILL 689

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0lr3174
CF HB 856

By: **Senators Klausmeier and King**

Introduced and read first time: February 3, 2020

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Unlawful Taking of Oysters From Submerged Land Leases and Water Column**
3 **Leases – Penalties**

4 FOR the purpose of establishing a certain minimum and maximum fine for unlawfully
5 taking oysters from a submerged land lease or water column lease under certain
6 circumstances; requiring a person who unlawfully takes oysters from a submerged
7 land lease or water column lease to complete a certain class at the person's expense;
8 requiring certain commercial authorizations of a person who unlawfully takes
9 oysters from a submerged land lease or water column lease under certain
10 circumstances to be suspended until the person completes a certain class; providing
11 that a person who commits a certain second or subsequent offense is guilty of the
12 crime of theft and subject to certain criminal penalties; making a stylistic change;
13 and generally relating to the unlawful taking of oysters.

14 BY repealing and reenacting, without amendments,
15 Article – Criminal Law
16 Section 7–104(g)
17 Annotated Code of Maryland
18 (2012 Replacement Volume and 2019 Supplement)

19 BY repealing and reenacting, with amendments,
20 Article – Natural Resources
21 Section 4–1201
22 Annotated Code of Maryland
23 (2018 Replacement Volume and 2019 Supplement)

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
25 That the Laws of Maryland read as follows:

26 **Article – Criminal Law**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 7-104.

2 (g) (1) A person convicted of theft of property or services with a value of:

3 (i) at least \$1,500 but less than \$25,000 is guilty of a felony and:

4 1. is subject to imprisonment not exceeding 5 years or a fine
5 not exceeding \$10,000 or both; and

6 2. shall restore the property taken to the owner or pay the
7 owner the value of the property or services;

8 (ii) at least \$25,000 but less than \$100,000 is guilty of a felony and:

9 1. is subject to imprisonment not exceeding 10 years or a fine
10 not exceeding \$15,000 or both; and

11 2. shall restore the property taken to the owner or pay the
12 owner the value of the property or services; or

13 (iii) \$100,000 or more is guilty of a felony and:

14 1. is subject to imprisonment not exceeding 20 years or a fine
15 not exceeding \$25,000 or both; and

16 2. shall restore the property taken to the owner or pay the
17 owner the value of the property or services.

18 (2) Except as provided in paragraph (3) of this subsection, a person
19 convicted of theft of property or services with a value of at least \$100 but less than \$1,500,
20 is guilty of a misdemeanor and:

21 (i) is subject to:

22 1. for a first conviction, imprisonment not exceeding 6
23 months or a fine not exceeding \$500 or both; and

24 2. for a second or subsequent conviction, imprisonment not
25 exceeding 1 year or a fine not exceeding \$500 or both; and

26 (ii) shall restore the property taken to the owner or pay the owner
27 the value of the property or services.

28 (3) A person convicted of theft of property or services with a value of less
29 than \$100 is guilty of a misdemeanor and:

30 (i) is subject to imprisonment not exceeding 90 days or a fine not

1 exceeding \$500 or both; and

2 (ii) shall restore the property taken to the owner or pay the owner
3 the value of the property or services.

4 (4) Subject to paragraph (5) of this subsection, a person who has four or
5 more prior convictions under this subtitle and who is convicted of theft of property or
6 services with a value of less than \$1,500 under paragraph (2) of this subsection is guilty of
7 a misdemeanor and:

8 (i) is subject to imprisonment not exceeding 5 years or a fine not
9 exceeding \$5,000 or both; and

10 (ii) shall restore the property taken to the owner or pay the owner
11 the value of the property or services.

12 (5) The court may not impose the penalties under paragraph (4) of this
13 subsection unless the State's Attorney serves notice on the defendant or the defendant's
14 counsel before the acceptance of a plea of guilty or nolo contendere or at least 15 days before
15 trial that:

16 (i) the State will seek the penalties under paragraph (4) of this
17 subsection; and

18 (ii) lists the alleged prior convictions.

19 Article – Natural Resources

20 4–1201.

21 (a) Except as otherwise specifically provided in this title, a person who violates
22 any provision of this title is guilty of a misdemeanor and, upon conviction, is subject to a
23 fine not exceeding \$1,000, with costs imposed in the discretion of the court.

24 (b) (1) Unless another penalty is specifically provided elsewhere in this title,
25 any person found guilty of a second or subsequent violation of any provision of this title is
26 subject to a fine not exceeding \$2,000, or imprisonment not exceeding one year, or both,
27 with costs imposed in the discretion of the court.

28 (2) For the purpose of this subsection, a second or subsequent violation is
29 one which has occurred within two years of any prior violation of this title.

30 (c) In addition to any administrative penalty provided in this title, violation of
31 any rule or regulation adopted by any unit within the Department pursuant to the
32 provisions of this title is a misdemeanor and is punishable as provided in subsections (a)
33 and (b) of this section.

(d) (1) In addition to any other applicable penalty set forth in subsections (a) and (b) of this section, a person who violates any provision of this title or any regulations adopted by the Secretary under the authority of this title concerning the taking of or creel limits for striped bass, commonly known as rockfish, shall be subject to the following penalties:

(i) For a first violation, a fine not exceeding \$1,500 per fish;

(ii) For a second violation, within a 2-year period, a fine not exceeding \$2,500 per fish and revocation of the fishing license for a period not less than 1 year but not more than 2 years; and

(iii) For a third violation within a 4-year period, a fine not exceeding \$2,500 per fish and revocation of the fishing license for a period not less than 2 years but not more than 5 years.

(2) In addition to any other penalty provided under this title, a person who commits any of the following violations, and the violation results in the unlawful capture of over \$20,000 worth of striped bass as determined by the proceeds of the unlawful capture, is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 2 years:

(i) Using unlawful gear;

(ii) Harvesting during closed seasons;

(iii) Harvesting from a closed area;

(iv) Violating established harvest, catch, or size limits; or

(v) Violating tagging and reporting requirements.

(e) A common carrier transporting fish who is not the buyer, seller, or catcher of the fish or is not controlled by the buyer, seller, or catcher of the fish is not subject to any penalty under this section for transporting fish which is either unlawfully caught or of unlawful size provided that the operator of the common carrier has in his possession a valid bill of lading, stating the origin, shipper, destination and receiver of the fish and the common carrier does not know or have reason to know that the fish were unlawfully caught or of unlawful size.

(f) In addition to any other applicable penalty set forth in this title, a person who unlawfully takes oysters from [a leased oyster bottom,] an oyster sanctuary, an oyster reserve, or an area closed to shellfish harvest by the Department of the Environment, when the area is designated and marked by buoys or other signage or the person knew or should have known that taking the oysters from the area was unlawful, is subject to a fine not exceeding \$3,000.

(g) (1) If a person is convicted of violating any provision of this title and the violation causes or results in the injury, death, or destruction of any fish, including a protected species of animal, in addition to any other penalty provided in this title, the Secretary may order the person to pay restitution to the Department for the resource value of the fish, as determined by the regulations adopted by the Department under paragraph (2) of this subsection.

(2) The Department, in consultation with the Tidal Fisheries Advisory Commission and the Sport Fisheries Advisory Commission, shall adopt regulations that establish a schedule of resource values for individual species.

(3) If two or more defendants are convicted for the same violation causing or resulting in the injury, death, or destruction of protected species of animals, the court may impose restitution against the defendants jointly and equally.

(4) (i) Restitution under this section shall be paid within 30 days or a time prescribed by regulation.

(ii) In each instance, restitution paid under this section shall be credited to the Department to be used only for the replacement, habitat management, or enforcement programs for injured, killed, or destroyed fish or protected species of animals.

(h) In addition to any other applicable penalty under this title, a person who violates § 4-708(a)(1) of this title (Committing separate commercial fishing violation while license or authorization is suspended or revoked) or § 4-708(a)(2) of this title (Engaging in commercial fishing activity without holding appropriate license or authorization) is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 1 year or a fine not exceeding \$25,000 or both, with costs imposed in the discretion of the court.

(I) (1) IN ADDITION TO ANY OTHER APPLICABLE PENALTY UNDER THIS TITLE, A PERSON WHO UNLAWFULLY TAKES OYSTERS FROM A SUBMERGED LAND LEASE OR A WATER COLUMN LEASE, WHEN THE LEASE AREA IS DESIGNATED AND MARKED BY BUOYS OR OTHER SIGNAGE OR THE PERSON KNEW OR SHOULD HAVE KNOWN THAT TAKING THE OYSTERS FROM THE AREA WAS UNLAWFUL:

(I) IS SUBJECT TO A FINE OF NOT LESS THAN \$2,000 AND NOT MORE THAN \$3,000;

(II) SHALL BE REQUIRED, AT THE PERSON'S EXPENSE, TO COMPLETE A CLASS PROVIDED BY THE DEPARTMENT ON COMMERCIAL FISHERY LAWS; AND

(III) IN ADDITION TO BEING SUBJECT TO THE REVOCATION OF THE PERSON'S AUTHORIZATION TO CATCH OYSTERS UNDER § 4-1210 OF THIS SUBTITLE, SHALL HAVE ALL OF THE PERSON'S COMMERCIAL FISHING AUTHORIZATIONS SUSPENDED UNTIL THE PERSON HAS COMPLETED THE CLASS

1 **REQUIRED UNDER ITEM (II) OF THIS PARAGRAPH.**

2 **(2) IN ADDITION TO ANY OTHER APPLICABLE PENALTY UNDER THIS**
3 **SUBSECTION AND THIS TITLE, A PERSON WHO COMMITS A SECOND OR SUBSEQUENT**
4 **OFFENSE INVOLVING THE UNLAWFUL TAKING OF OYSTERS FROM A SUBMERGED**
5 **LAND LEASE OR A WATER COLUMN LEASE, WHEN THE LEASE AREA IS DESIGNATED**
6 **AND MARKED BY BUOYS OR OTHER SIGNAGE OR THE PERSON KNEW OR SHOULD**
7 **HAVE KNOWN THAT TAKING THE OYSTERS FROM THE AREA WAS UNLAWFUL:**

8 **(I) IS GUILTY OF THE CRIME OF THEFT; AND**

9 **(II) ON CONVICTION, IS SUBJECT TO THE PENALTIES PROVIDED**
10 **IN § 7-104 OF THE CRIMINAL LAW ARTICLE.**

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
12 1, 2020.