S T A T E O F N E W Y O R K

6692

2009-2010 Regular Sessions

I N A S S E M B L Y

March 11, 2009

Introduced by M. of A. DelMONTE, SWEENEY -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to fines and penalties for violations of the fish and wildlife law

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 2 of section 71-0519 of the environmental conservation law, as amended by chapter 289 of the laws of 2004, is amended to read as follows:

2. The agreed amount shall not be less than [ten] TWENTY-FIVE dollars nor more than the amount for which such person would be liable in a civil action for penalties; provided that any person who has violated the provisions of this chapter listed in section 71-0501 or under titles 5 through 13 inclusive and titles 27 and 33 of this article, involving the taking of a deer with the aid of an artificial light, or has illegally taken a deer prior to the first day of the open season or after the last day of the open season in the county in which taken, or has otherwise illegally taken a deer, and who desires to compromise and settle his civil liability therefor, may, in the manner herein provided, compromise and settle his liability for civil penalties under the provisions of this chapter listed in section 71-0501 or under titles 5 through 13 inclusive and titles 27 and 33 of this article, in an amount not less than [one] TWO hundred dollars nor more than the amount for which such person would be liable in a civil action for penalties.

S 2. The opening paragraph, subdivision 1, subparagraph 9 of paragraph a of subdivision 4, subparagraph 5 of paragraph a of subdivision 5 and subdivision 6 of section 71-0921 of the environmental conservation law, the opening paragraph as added by chapter 640 of the laws of 1977, subdivision 1 as amended by chapter 289 of the laws of 2004, subparagraph 9 of paragraph a of subdivision 4 and subparagraph 5 of paragraph a of subdivision 5 as added by chapter 417 of the laws of 1996 and

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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subdivision 6 as amended by chapter 416 of the laws of 1989, are amended to read as follows:

The following acts are misdemeanors, punishable as herein provided, when they are done in violation of the section or subdivision thereof specified, or if no section is specified, in violation of any section of the Fish and Wildlife Law, OR ANY ORDER, RULE OR REGULATION OF THE DEPARTMENT PROMULGATED PURSUANT THERETO OR THE TERMS OF ANY LICENSE OR PERMIT ISSUED THEREUNDER:

1. The illegal taking of big game prior to the first day of the open season or after the last day of the open season in the county or part thereof where taken, or any illegal taking of a deer, or the taking of big game by the aid of an artificial light. [Each such] A FIRST misdemeanor FOR A VIOLATION OF THIS SUBDIVISION shall be punishable by imprisonment for not more than one year or by a fine of not less than [two] THREE hundred [fifty] dollars nor more than two thousand dollars, or by both such imprisonment and fine. EVERY SUBSEQUENT MISDEMEANOR FOR A VIOLATION OF THIS SUBDIVISION SHALL BE PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR OR BY A FINE OF NOT LESS THAN FIVE HUNDRED DOLLARS NOR MORE THAN THREE THOUSAND DOLLARS, OR BY BOTH SUCH IMPRISONMENT AND FINE.

(9) [subdivision two of] REGULATIONS PROMULGATED PURSUANT TO section 13-0327 of this chapter, regarding the taking of undersized scallops, where the taking involves more than twenty-four percentum of scallops of less than legal size; and

(5) [subdivision two of] REGULATIONS PROMULGATED PURSUANT TO section 13-0327 of this chapter, regarding the taking of undersized scallops, where the taking involves between ten and twenty-four percentum of scallops of less than legal size.

6. Violations of paragraph b of subdivision 3, or subdivision 5 or 12, OR REGULATIONS PROMULGATED PURSUANT TO SUBDIVISION 15 OR 16 of section 13-0329 of this chapter. Each such misdemeanor shall be punishable by imprisonment for not more than one year or by a fine of not less than five hundred dollars nor more than two thousand dollars, or by both such imprisonment and fine.

S 3. Section 71-0923 of the environmental conservation law, as added by chapter 640 of the laws of 1977, subdivision 1 as amended and subdivision 6 as added by chapter 417 of the laws of 1996, subdivision 3 as amended by section 53 of part F of chapter 82 of the laws of 2002, subdivision 5 as added by chapter 896 of the laws of 1980, subdivision 8 as amended by chapter 284 of the laws of 2004, subdivision 9 as added by chapter 881 of the laws of 1986 and as renumbered by chapter 586 of the laws of 1991, subdivision 10 as added by chapter 586 of the laws of 1991, subdivision 11 as added by chapter 381 of the laws of 1997 and subdivision 12 as added by chapter 653 of the laws of 2005, is amended to read as follows:

S 71-0923. Violations.

1. Any offense specified in section 71-0919 of this article, unless made a misdemeanor by section 71-0921 of this article or another provision of [such] THIS chapter, shall be a violation, punishable, except as otherwise provided in this section, by imprisonment for not more than fifteen days, or by a fine of not LESS THAN THIRTY-FIVE DOLLARS NOR more than [two hundred fifty] THREE HUNDRED FIFTY dollars, or by both such fine and imprisonment.

2. A violation of subdivision 1 of section 11-0705 of this chapter, OR ANY ORDER, RULE OR REGULATION OF THE DEPARTMENT PROMULGATED PURSUANT

THERETO OR THE TERMS OF ANY LICENSE OR PERMIT ISSUED THEREUNDER, shall be punishable as follows:

a. As provided in subdivision 1 of this section, if the violation consisted of a refusal to exhibit a license, TAG, OR STAMP on demand of any [environmental conservation officer or other] person;

b. BY IMPRISONMENT FOR NOT MORE THAN FIFTEEN DAYS OR BY A FINE OF NOT LESS THAN FIFTY DOLLARS NOR MORE THAN FIVE HUNDRED DOLLARS, OR BY BOTH SUCH IMPRISONMENT AND FINE IF THE VIOLATION CONSISTED OF A REFUSAL TO EXHIBIT A LICENSE, TAG, OR STAMP ON DEMAND OF ANY ENVIRONMENTAL CONSERVATION OFFICER.

C. By forfeiture of the license and by a fine of NOT LESS THAN FIFTY DOLLARS AND not more than [twenty-five] TWO HUNDRED FIFTY dollars if the violation was committed while exercising the privileges of a special antlerless deer license and consisted of failure of the offender to have on his person a license held by him entitling him to exercise those privileges.

3. A violation of subdivision 2 of section 11-0705 of this chapter, OR ANY ORDER, RULE OR REGULATION OF THE DEPARTMENT PROMULGATED PURSUANT THERETO OR THE TERMS OF ANY LICENSE OR PERMIT ISSUED THEREUNDER, shall be punishable by forfeiture of licenses and tags issued pursuant to this chapter which authorizes the holder to hunt wildlife and by a fine of not LESS THAN FIFTY DOLLARS NOR more than [twenty-five] TWO HUNDRED FIFTY dollars.

4. When a license or license tag is forfeited as provided in this section, the licensee shall surrender it to any environmental conservation officer, special game protector or any other person authorized by the department to receive it. Such forfeiture does not prevent the procurement of another license.

5. A violation of subdivision one of section 11-0923, OR ANY ORDER, RULE OR REGULATION OF THE DEPARTMENT PROMULGATED PURSUANT THERETO OR THE TERMS OF ANY LICENSE OR PERMIT ISSUED THEREUNDER, is punishable by imprisonment for not more than ten days, or by a fine of not less than two hundred dollars, or by both such fine and imprisonment.

6. A first conviction for a violation of subdivision eight of section 13-0309 of this chapter, OR ANY ORDER, RULE OR REGULATION OF THE DEPARTMENT PROMULGATED PURSUANT THERETO OR THE TERMS OF ANY LICENSE OR PERMIT ISSUED THEREUNDER, involving devices for taking shellfish in uncertified lands, or a violation of subdivision ten of section 13-0309 of this chapter, OR ANY ORDER, RULE OR REGULATION OF THE DEPARTMENT PROMULGATED PURSUANT THERETO OR THE TERMS OF ANY LICENSE OR PERMIT ISSUED THEREUNDER, involving possession of a stick dredge, shall be punishable as a violation under this section.

8. Any violation of sections 13-0329, 13-0330, 13-0331, 13-0333, 13-0334, 13-0335, subdivision one of section 13-0337, 13-0338, 13-0339, 13-0339-a, 13-0340, 13-0340-a through 13-0340-g, 13-0341, 13-0342, 13-0343, 13-0347, and 13-0349 of this chapter, or of any regulation adopted pursuant to the foregoing sections OR THE TERMS OF ANY LICENSE OR PERMIT ISSUED THEREUNDER, shall be punishable by imprisonment of not more than fifteen days or by a fine of the greater of two hundred fifty dollars or:

a. for violations involving one to five fish, shellfish or crustaceans, twenty-five dollars for each fish, shellfish or crustacean taken or possessed in violation of the above sections;

b. for violations involving six to twenty-five fish, shellfish or crustaceans, fifty dollars for each fish, shellfish or crustacean taken or possessed in violation of the above sections;

c. for violations involving more than twenty-five fish, shellfish or crustaceans, one hundred dollars for each fish, shellfish or crustacean taken or possessed in violation of the above sections; or by both such fine and imprisonment.

For purposes of determining the applicable fine pursuant to this subdivision, the number of fish, crustaceans or shellfish shall be the aggregate number involved in the violation, regardless of species.

9. A violation of section 11-0110 of this chapter, OR ANY ORDER, RULE OR REGULATION OF THE DEPARTMENT PROMULGATED PURSUANT THERETO, is punishable by imprisonment for not more than ten days, or by a fine of not more than two hundred fifty dollars, or by both such fine and imprisonment.

10. [A violation of subdivision twelve of section 11-1101 of this chapter is punishable by imprisonment of not more than ten days, or by a fine of not more than one hundred dollars, or by both such fine and imprisonment.

11.] A violation of subdivision eight of section 11-0505 of this chapter, OR ANY ORDER, RULE OR REGULATION OF THE DEPARTMENT PROMULGATED PURSUANT THERETO, shall be punishable by a fine of not LESS THAN TWENTY-FIVE DOLLARS NOR more than fifty dollars.

[12] 11. A violation of section 11-1906 of this chapter, OR ANY ORDER, RULE OR REGULATION OF THE DEPARTMENT PROMULGATED PURSUANT THERETO OR THE TERMS OF ANY LICENSE OR PERMIT ISSUED THEREUNDER, shall be punishable by a fine of not LESS THAN ONE HUNDRED DOLLARS NOR more than two thousand five hundred dollars.

12. A VIOLATION OF ANY OF THE FOLLOWING PROVISIONS SHALL BE PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN FIFTEEN DAYS, OR BY A FINE OF NOT LESS THAN FIFTY DOLLARS NOR MORE THAN SEVEN HUNDRED FIFTY DOLLARS, OR BY BOTH SUCH IMPRISONMENT AND FINE:

A. SUBPARAGRAPH SEVEN OF PARAGRAPH B OF SUBDIVISION FOUR OF SECTION 11-0901 OF THIS CHAPTER INVOLVING THE HUNTING OF DEER WITH THE AID OF A PRE-ESTABLISHED BAIT PILE;

B. SUBPARAGRAPH SEVEN OF PARAGRAPH C OF SUBDIVISION FOUR OF SECTION 11-0901 OF THIS CHAPTER INVOLVING THE HUNTING OF BEAR WITH THE AID OF A PRE-ESTABLISHED BAIT PILE;

C. SUBDIVISION TWELVE OF SECTION 11-0901 OF THIS CHAPTER INVOLVING THE TAKING OF UPLAND GAME BIRDS WITH THE AID OF BAITING OR ON OR OVER ANY BAITED AREA; AND

D. ANY RULES OR REGULATIONS ADOPTED PURSUANT TO SECTION 11-0307 OF THIS CHAPTER INVOLVING THE TAKING OF MIGRATORY GAME BIRDS WITH THE AID OF BAITING OR ON OR OVER ANY BAITED AREA.

S 4. The opening paragraph and subdivision 3 of section 71-0925 of the environmental conservation law are amended and a new subdivision 15 is added to read as follows:

The penalties referred to in section 71-0919, to which a person is liable upon violation of provisions of the Fish and Wildlife Law or any order, rule or regulation of the department PROMULGATED PURSUANT THERETO OR THE TERMS OF ANY LICENSE OR PERMIT ISSUED THEREUNDER, shall be:

3. If the violation involves the illegal taking of a deer prior to the first day of the open season or after the last day of the open season in the county or part of a county in which taken, or the taking of deer with the aid of an artificial light, or the illegal taking of a wild deer, one hundred FIFTY dollars and an additional penalty of [four] FIVE hundred dollars for the first deer taken and a further penalty of [five] SEVEN hundred FIFTY dollars for each succeeding deer taken;

15. IF THE VIOLATION WAS A VIOLATION OF SUBPARAGRAPH SEVEN OF PARAGRAPH B OF SUBDIVISION FOUR OF SECTION 11-0901 OF THIS CHAPTER INVOLVING THE HUNTING OF DEER WITH THE AID OF A PRE-ESTABLISHED BAIT PILE, OR OF SUBPARAGRAPH SEVEN OF PARAGRAPH C OF SUBDIVISION FOUR OF SECTION 11-0901 OF THIS CHAPTER INVOLVING THE HUNTING OF BEAR WITH THE AID OF A PRE-ESTABLISHED BAIT PILE, OR OF SUBDIVISION TWELVE OF SECTION 11-0901 OF THIS CHAPTER INVOLVING THE TAKING OF UPLAND GAME BIRDS WITH THE AID OF BAITING OR ON OR OVER ANY BAITED AREA, OR OF ANY RULES OR REGULATIONS ADOPTED PURSUANT TO SECTION 11-0307 OF THIS CHAPTER INVOLVING THE TAKING OF MIGRATORY GAME BIRDS WITH THE AID OF BAITING OR ON OR OVER ANY BAITED AREA, NOT LESS THAN FIFTY DOLLARS NOR MORE THAN SEVEN HUNDRED FIFTY DOLLARS.

S 5. This act shall take effect on the ninetieth day after it shall have become a law.