

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1685
By: Bernsen
Natural Resources
4/19/1999
Committee Report (Substituted)

DIGEST

Currently, Texas law does not regulate certain actions associated with the oyster industry. C.S.S.B. 1685 would establish certain requirements for the oyster industry in order to protect the public and promote the industry.

PURPOSE

As proposed, C.S.S.B. 1685 regulates the oyster industry.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the comptroller of public accounts in SECTION 2 (Section 436.103(d), Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 431A, Health and Safety Code, by adding Section 431.006, as follows:

Sec. 431.006. COMPLIANCE WITH OTHER LAW; MOLLUSCAN SHELLFISH. Requires a person who is subject to this chapter and who handles molluscan shellfish, as that term is defined by Section 436.002, to comply with Section 436.105.

SECTION 2. Amends Section 436.103, Health and Safety Code, to require the first certified shellfish dealer who handles, stores, packs, labels, unloads at dockside, or holds oysters taken from the waters of this state to pay the state a fee of \$1 for each barrel of oysters processed by the certified shellfish dealer (dealer). Provides that for purposes of assessing the fee required by this section, three 100-pound containers of oysters is the equivalent of one barrel of oysters. Prohibits a dealer from packing oysters in containers that, when packed, exceed 110 pounds in weight. Provides that a dealer who violates this subsection is liable for a penalty of \$5 for each container that exceeds 110 pounds. Requires a certified shellfish dealer to pay a fee or penalty imposed by Subsection (a) or (b) not later than the 20th, rather than the 30th day of the month following the month in which the barrel of oysters was handled. Provides that a dealer who fails to pay the fee or penalty in full within the prescribed period is liable for the amount of the fee or penalty and an additional penalty of 10 percent of the amount of the fee or penalty due. Authorizes the Texas Department of Health (department), on certification by the comptroller that a fee is past due, to suspend until the fee, penalty, or additional penalty is paid, the shellfish certificate of a certified shellfish dealer who fails to timely pay the fee or penalty in full. Authorizes the department on certification from the comptroller that a certified shellfish dealer has refused to pay a fee, penalty, or additional penalty, on written demand, to revoke the certificate of compliance of a certified dealer who refuses to pay a fee, penalty or additional penalty. Authorizes the comptroller to collect fees and penalties under this section and to adopt rules, forms, and procedures for submission of fees under this section. Requires the comptroller each month to report to the department the fees and penalties that are submitted to the comptroller. Requires two percent of the amount of the fees and penalties, before any other disposition of the fees and penalties collected under this section is made, to be deposited in the state treasury for appropriation for the use of the comptroller in the administration and enforcement of this section. Requires the remainder of the fees to deposited to the credit of the oyster sales account in the general revenue fund to be allocated each year for the certain oyster-related activities. Provides that Subtitles A and B, Title 2, Tax Code, apply to the comptroller's administration, collection, and enforcement of this section to the same extent as if the fee imposed under this section were a tax imposed under Title 2 of the Tax Code. Deletes existing Subsection (d) regarding rules and forms.

SECTION 3. Amends Chapter 436H, Health and Safety Code, by adding Sections 436.104-436.108, as follows:

Sec. 436.104. OYSTER PROGRAM. Sets forth certain requirements of the department for the oyster program.

Sec. 436.105. TEMPERATURE REQUIREMENTS. Sets forth certain required temperatures for molluscan shellfish.

Sec. 436.106. TEMPERATURE ABUSE. Prohibits the department from designating a harvest area as a closed area unless the temperature abuse does not appear to be the possible cause of the illness, if temperature abuse of oysters associated with possible *Vibrio parahaemolyticus* illness is identified at any point in the market chain from harvest to consumer.

Sec. 436.107. TEXAS OYSTER COUNCIL. Creates the Texas Oyster Council (council). Sets forth the membership of the council. Provides that the members of the council serve one-year terms expiring August 31 of each year and may be reappointed at the end of a term. Provides that a person is not eligible for appointment as a consumer member of the council if the person or the person's spouse is in the industry. Requires the council to elect a presiding officer from among its members.

Sec. 436.108. POWERS AND DUTIES OF THE TEXAS OYSTER COUNCIL. Sets forth the powers and duties of the council. Provides that the council is entitled to certain information. Authorizes the council to establish procedures for certain actions. Sets forth requirements for confidentiality. Provides that the council is subject to Chapter 551, Government Code. Provides that the council is not required to conduct an open meeting to deliberate confidential communications and records provided under this section relating to the investigation of a food-borne illness that is suspected of being related to molluscan shellfish.

SECTION 4. Amends Title 3, Agriculture Code, by adding Chapter 47, as follows:

CHAPTER 47. TEXAS OYSTER PROGRAM

Sec. 47.001. DUTIES. Authorizes the Texas Department of Agriculture (TDA) to take certain actions regarding the promotion and advertisement of the Texas Oyster Industry. Authorizes TDA, in consultation with the advisory committee appointed under Section 47.002, to use money appropriated to the department to implement this chapter for administration expenses related to this chapter.

Sec. 47.002. OYSTER ADVISORY COMMITTEE. Requires the commissioner of agriculture to appoint an Oyster Advisory Committee (advisory committee) to provide guidance and direction on the programs and activities established under this chapter and expenditures of the money appropriated for this chapter. Prohibits members of the advisory committee from receiving compensation for service on the committee and from being reimbursed for expenses incurred while conducting the business of the advisory committee. Sets forth the members of the advisory committee. Requires the advisory committee to meet and elect a presiding officer from among its members and to adopt bylaws for the conduct of its activities. Requires the bylaws to provide that five members constitute a quorum sufficient to conduct meetings and business of the advisory committee. Sets forth the terms of the advisory committee members. Authorizes a member to be reappointed.

SECTION 5. Amends Chapter 87C, Education Code, by adding Section 87.207, as follows:

Sec. 87.207. MOLLUSCAN SHELLFISH PROGRAMS. Authorizes the marine biology department of Texas A&M University at Galveston to take certain actions.

SECTION 6. Requires the commissioner of agriculture to appoint certain members by certain dates, in making the initial appointments of the Oyster Advisory Committee members under Section 47.002, Agriculture Code, as added by this Act.

SECTION 7. Emergency clause.

Effective date: upon passage.

SUMMARY OF COMMITTEE CHANGES

SECTION 1.

Deletes proposed SECTION 1 regarding definitions. Adds Section 431.006, Health and Safety Code, to require a person who is subject to this chapter and who handles molluscan shellfish, as that term is defined by Section 436.002, to comply with Section 436.105.

SECTION 2.

Deletes proposed changes to Section 81.046, Health and Safety Code, regarding confidentiality.

Deletes proposed SECTION 3 amending Section 431.002, Health and Safety Code, regarding definitions and proposed changes to Section 431.005, Health and Safety Code, regarding provisions of the sale of food, drugs devices, or cosmetics.

Amends Section 436.103, Health and Safety Code, regarding certain fees and penalties. Deletes text regarding dealers who pack oyster sacks exceeding 110 pounds. Deletes text requiring penalties to be payable under the same terms established in this section for payment of fees.

SECTION 3.

Amends Chapter 436H, Health and Safety Code, by adding Sections 436.104-436.108, regarding the oyster program, temperature requirements, temperature abuse, Texas oyster council, and powers and duties of the Texas oyster council.

SECTION 4.

Amends Title 3, Agriculture Code, by adding Chapter 47, regarding the Texas Oyster program. Amends Section 47.001, Agriculture Code, to set forth certain duties. Amends Section 47.002, Agriculture Code, to set forth the oyster advisory committee.

SECTION 5.

Amends Chapter 87C, Education Code, by adding Section 87.207, to authorize the marine biology department of Texas A&M University at Galveston to take certain actions.

SECTION 6.

Adds new SECTION 6 to require the commissioner of agriculture to appoint certain members by certain dates, in making the initial appointments of the Oyster Advisory Committee members under Section 47.002, Agriculture Code, as added by this Act.

SECTION 7.

Redesignated from SECTION 9.