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H.B. No. 2785

A BILL TO BE ENTITLED

AN ACT

relating to the promotion and marketing of the shrimp industry of this state, the funding of those activities, and certain health and safety requirements for shrimp for human consumption.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 47, Agriculture Code, is amended to read as follows:

CHAPTER 47. TEXAS OYSTER AND SHRIMP PROGRAM

SUBCHAPTER A. TEXAS OYSTER PROGRAM

Sec. 47.001. PROMOTION AND ADVERTISEMENT. (a) The department may promote and advertise the Texas oyster industry by:

(1) using current market research to develop an oyster marketing plan to increase consumption of Texas oysters;

(2) conducting a public relations campaign to create a responsible and accurate image of the Texas oyster industry;

(3) providing information, education, and training to consumers, food handlers, and restaurant personnel on safe and proper handling of oysters, for the purpose of promoting the use and consumption of oysters; and

(4) using other methods the department considers appropriate.

(b) The department, following guidance of the oyster advisory committee established under Section 47.002, may use a portion of the oyster sales fee funds provided for administrative

1 purposes.

2           Sec. 47.002. OYSTER ADVISORY COMMITTEE.           (a)       The  
3 commissioner shall appoint an oyster advisory committee to provide  
4 guidance and direction on the programs and activities established  
5 under this chapter and expenditures of the funds appropriated for  
6 the purposes of this chapter.

7           (b) A member of the advisory committee may not receive  
8 compensation for service on the committee, but is entitled to  
9 reimbursement of expenses incurred by the member while conducting  
10 the business of the committee and approved by the commissioner, as  
11 provided by the General Appropriations Act. A reimbursement under  
12 this subsection must be paid from revenue from fees on oyster sales  
13 and related penalties imposed under Section 436.103, Health and  
14 Safety Code, available for that purpose or from other revenue as  
15 provided by the General Appropriations Act.

16           (c) The advisory committee shall meet and elect a  
17 chairperson from its members and shall conduct other meetings it  
18 considers necessary to provide guidance and direction to the  
19 department.

20           (d) The advisory committee consists of the following nine  
21 members:

22                   (1) three members appointed by the commissioner who  
23 are oyster dealers who have been certified in Texas for at least 12  
24 months of each year of the three years preceding the appointment;

25                   (2) two members appointed by the commissioner who are  
26 oyster dealers who have been certified in Texas for at least six  
27 months of each year of the three years preceding the appointment;

1 (3) one member appointed by the commissioner  
2 representing consumer interests;

3 (4) one member appointed by the commissioner  
4 representing grocery retail business interests;

5 (5) one member appointed by the commissioner  
6 representing the restaurant industry; and

7 (6) one member appointed by the commissioner who:

8 (A) is employed by an institution of higher  
9 education as a researcher or instructor; and

10 (B) specializes in the area of food science,  
11 particularly seafood.

12 (e) The advisory committee shall develop its own bylaws  
13 under which it shall operate. The bylaws shall stipulate that five  
14 members constitute a quorum sufficient to conduct meetings and  
15 business of the advisory committee.

16 (f) An advisory committee member serves a three-year term,  
17 with the terms of three members expiring August 31 of each year.

18 (g) A member of the advisory committee may be reappointed to  
19 the advisory committee.

20 [Sections 47.003-47.049 reserved for expansion]

21 SUBCHAPTER B. TEXAS SHRIMP MARKETING ASSISTANCE PROGRAM IN

22 DEPARTMENT OF AGRICULTURE

23 Sec. 47.050. DEFINITIONS. In this subchapter:

24 (1) "Program" means the Texas Shrimp Marketing  
25 Assistance Program.

26 (2) "Coastal waters" means all the salt water of this  
27 state, including that portion of the Gulf of Mexico within the

1 jurisdiction of the state.

2 (3) "Shrimp marketing account" means the account in  
3 the general revenue fund established under Section 77.002(b), Parks  
4 and Wildlife Code.

5 Sec. 47.051. PROGRAM ESTABLISHED. (a) The Texas Shrimp  
6 Marketing Assistance Program is established in the Texas Department  
7 of Agriculture to assist the Texas shrimp industry in promoting and  
8 marketing shrimp harvested from coastal waters and educating the  
9 public about the Texas shrimp industry and shrimp harvested from  
10 coastal waters.

11 (b) The commissioner, in consultation with the advisory  
12 committee established under Section 47.052, shall adopt rules as  
13 necessary to implement the program.

14 (c) The department may accept grants, gifts, and gratuities  
15 from any source, including any governmental entity, any private or  
16 public corporation, and any other person in furtherance of the  
17 program. Any monies received as a grant, gift, or gratuity shall be  
18 deposited in the shrimp marketing account.

19 (d) The program shall be funded at a minimum level of  
20 \$250,000 per fiscal year with funds deposited into the shrimp  
21 marketing account. The department may not expend more than two  
22 percent of the annual program budget on out-of-state travel.

23 Sec. 47.052. ADVISORY COMMITTEE. (a) The commissioner  
24 shall appoint a shrimp advisory committee to assist the  
25 commissioner in implementing the program established under this  
26 chapter and the expenditure of funds appropriated for the purpose  
27 of this chapter.

1       (b) The committee shall be composed of the following nine  
2 members:

3               (1) two owners of commercial bay shrimp boats;

4               (2) two owners of commercial gulf shrimp boats;

5               (3) one retail fish dealer;

6               (4) one wholesale fish dealer;

7               (5) one person employed by an institution of higher  
8 education as a researcher or instructor specializing in the area of  
9 food science, particularly seafood;

10              (6) one member of the seafood restaurant industry; and

11              (7) one representative of the public.

12       (c) The members of the advisory committee serve without  
13 compensation but may be reimbursed for expenses incurred in the  
14 direct performance of their duties upon approval of the  
15 commissioner.

16       (d) An advisory committee member serves a three-year term,  
17 with the terms of three members expiring August 31 of each year.  
18 The commissioner may reappoint a member to the advisory committee.

19       (e) The members of the advisory committee shall elect a  
20 presiding officer from among the members and adopt rules governing  
21 the operation of the committee. The rules shall specify that five  
22 members of the committee constitute a quorum sufficient to conduct  
23 the meetings and business of the committee.

24       (f) The advisory committee shall meet as necessary, but at  
25 least once a calendar year, to provide guidance to the commissioner  
26 in establishing and implementing the program.

27       Sec. 47.053. PROGRAM STAFF. (a) The commissioner shall

1 employ one or more persons as employees of the department to staff  
2 the program.

3 (b) Unless otherwise expressly provided by the legislature,  
4 the source of funding for the employees shall be monies generated  
5 from the program, including the license surcharge authorized  
6 pursuant to Section 77.002, Parks and Wildlife Code.

7 Sec. 47.054. PROMOTION, MARKETING, AND EDUCATION. The  
8 program shall promote and advertise the Texas shrimp industry by:

9 (a) developing and maintaining a database of Texas  
10 shrimp wholesalers that sell shrimp harvested from coastal waters;

11 (b) operating a toll-free telephone number to:

12 (1) receive inquiries from persons who wish to  
13 purchase a particular type of shrimp harvested from coastal waters;  
14 and

15 (2) make information about the Texas shrimp  
16 industry available to the public;

17 (c) developing a shrimp industry marketing plan to  
18 increase the consumption of shrimp harvested from coastal waters;

19 (d) educating the public about shrimp harvested from  
20 coastal waters by providing publicity about the information in the  
21 program's database to the public and making the information  
22 available to the public through the department's toll-free  
23 telephone number and electronically available through the  
24 Internet;

25 (e) promoting the Texas shrimp industry; and

26 (f) promoting and marketing, and educating consumers  
27 about, the shrimp harvested from coastal waters using any other

1 method the commissioner determines is appropriate.

2 SECTION 2. Section 436.011, Health and Safety Code, is  
3 amended to read as follows:

4 Sec. 436.011. PROHIBITED ACTS. The following acts and the  
5 causing of the following acts within this state are unlawful and  
6 prohibited:

7 (1) taking, selling, offering for sale, or holding for  
8 sale molluscan shellfish from a closed area;

9 (2) taking, selling, offering for sale, or holding for  
10 sale molluscan shellfish from a restricted or conditionally  
11 restricted area without complying with a rule adopted by the board  
12 to ensure that the molluscan shellfish have been purified, unless:

13 (A) permission is first obtained from the Parks  
14 and Wildlife Department and the transplanting is supervised by that  
15 department; and

16 (B) the Parks and Wildlife Department furnishes a  
17 copy of the transplant permit to the director before transplanting  
18 activities begin;

19 (3) possessing a species of aquatic life taken from a  
20 prohibited area while the area was prohibited for that species;

21 (4) operating as a molluscan shellfish processor  
22 without a shellfish certificate for each plant or place of  
23 business;

24 (5) operating as a crabmeat processor without a  
25 crabmeat processing license for each plant;

26 (6) selling, offering for sale, or holding for sale  
27 molluscan shellfish or crabmeat that has not been picked, handled,

1 packaged, or pasteurized in accordance with the rules adopted by  
2 the board;

3 (7) selling, offering for sale, or holding for sale  
4 molluscan shellfish or crabmeat from facilities for the handling  
5 and packaging of molluscan shellfish or crabmeat that do not comply  
6 with the rules adopted by the board;

7 (8) selling, offering for sale, or holding for sale  
8 molluscan shellfish or crabmeat that is not labeled in accordance  
9 with the rules adopted by the board;

10 (9) selling, offering for sale, or holding for sale  
11 molluscan shellfish that is not in a container bearing a valid  
12 certificate number from a state or nation whose molluscan shellfish  
13 certification program conforms to the current Manual of Operations  
14 for Sanitary Control of the Shellfish Industry issued by the Food  
15 and Drug Administration or its successor, except selling molluscan  
16 shellfish removed from a container bearing a valid certificate  
17 number for on-premises consumption; in the event the Texas  
18 Molluscan Shellfish Program is found to be out of conformity with  
19 the current Manual of Operations, selling, offering for sale, or  
20 holding for sale molluscan shellfish in a container bearing a valid  
21 Texas certificate number shall not be considered a violation of  
22 this chapter provided all other requirements of this chapter are  
23 complied with and the shellfish have come from an approved source;

24 (10) processing, transporting, storing for sale,  
25 possessing with intent to sell, offering for sale, or selling  
26 molluscan shellfish or crabmeat for human consumption that is  
27 adulterated or misbranded;



1 (11) removing or disposing of a detained or embargoed  
2 article in violation of Section 436.028;

3 (12) altering, mutilating, destroying, obliterating,  
4 or removing all or part of the labeling of a container;

5 (13) adulterating or misbranding molluscan shellfish  
6 or crabmeat in commerce;

7 (14) refusing to permit entry or inspection, to permit  
8 the taking of a sample, or to permit access to or copying by an  
9 authorized agent of a record required by this chapter;

10 (15) failing to establish or maintain a record or  
11 report required by this chapter or by a rule adopted by the board;  
12 [~~or~~]

13 (16) violating a rule adopted by the board or an  
14 emergency rule or order adopted by the director; or

15 (17) processing, transporting, storing for sale,  
16 possessing with intent to sell, offering for sale, or selling  
17 shrimp for human consumption that has been treated with a  
18 veterinary drug or antibiotic that is illegal for the treatment of  
19 shrimp in the United States.

20 SECTION 3. Section 77.002, Parks and Wildlife Code, is  
21 amended to read as follows:

22 Sec. 77.002. LICENSE FEES. (a) License fees provided in  
23 this chapter are a privilege tax on catching, buying, selling,  
24 unloading, transporting, or handling shrimp within the  
25 jurisdiction of this state.

26 (b) The shrimp marketing account is an account in the  
27 general revenue fund that shall be appropriated to the Texas

1 Department of Agriculture solely for the purpose of the Texas  
2 Shrimp Marketing Assistance Program established under Subchapter  
3 B, Chapter 47, Agriculture Code. The account consists of money  
4 deposited to the account under this section. The account is exempt  
5 from the application of Section 11.032 of this code and Section  
6 403.095, Government Code.

7 (c) In addition to fee increases the department is  
8 authorized to make under this code, the department shall increase  
9 by 10 percent the fee as of September 1, 2003, for the following  
10 licenses and shall deposit the amount of the increase to the credit  
11 of the shrimp marketing account:

12 (1) a wholesale fish dealer's license issued under  
13 Section 47.009;

14 (2) a wholesale truck dealer's fish license issued  
15 under Section 47.010;

16 (3) a retail fish dealer's license issued under  
17 Section 47.011;

18 (4) a retail dealer's truck license issued under  
19 Section 47.013;

20 (5) a commercial bay shrimp boat license issued under  
21 Section 77.031;

22 (6) a commercial bait-shrimp boat license issued under  
23 Section 77.033;

24 (7) a commercial gulf shrimp boat license issued under  
25 Section 77.035; and

26 (8) a commercial shrimp boat captain's license issued  
27 under Section 77.0351.

1       (d) Money in the shrimp marketing account may be used only  
2 to implement, maintain, and conduct, including program staff  
3 employees, the Texas Shrimp Marketing Assistance Program created  
4 pursuant to Subchapter B, Chapter 47, Agriculture Code. The Texas  
5 Department of Agriculture may allocate not more than \$100,000 per  
6 fiscal year of the money in the account to cover administrative and  
7 personnel costs of the Texas Department of Agriculture associated  
8 with the program.

9       (e) The department shall deposit, at the end of each  
10 quarter, to the credit of the shrimp marketing account fees  
11 received under Section 77.002 for use by the Texas Department of  
12 Agriculture to conduct and operate the Texas Shrimp Marketing  
13 Assistance Program created pursuant to Subchapter B, Chapter 47,  
14 Agriculture Code.

15       SECTION 4. This Act takes effect immediately if it receives  
16 a vote of two-thirds of all the members elected to each house, as  
17 provided by Section 39, Article III, Texas Constitution. If this  
18 Act does not receive the vote necessary for immediate effect, this  
19 Act takes effect September 1, 2003.