

FISH AND GAME CODE - FGC

DIVISION 9. FINES AND PENALTIES [12000 - 12300]

(Division 9 enacted by Stats. 1957, Ch. 456.)

CHAPTER 2. Forfeitures, Revocation, and Seizures [12150 - 12166]

(Chapter 2 enacted by Stats. 1957, Ch. 456.)

12150.

Whenever any person, while taking a bird or mammal, kills or wounds any human being and that fact is ascertained by the department, the department shall notify the district attorney of the county in which the act occurred. The district attorney may thereupon bring an action in the superior court of the county in which the act occurred for the purpose of determining the cause of the killing or the wounding. These proceedings shall be conducted in the same manner as an action to try a misdemeanor and the defendant may request that all findings of fact shall be made by a jury. The court shall inform the defendant of the nature of the proceedings and of the defendant's right to have a jury. If it is found that the defendant did the killing or wounding, but that it was not intentional or negligent, the court shall dismiss the proceeding. Otherwise, if it is found that the defendant did the killing or wounding intentionally, by an act of gross negligence, or while under the influence of alcohol, the court shall issue an order permanently prohibiting the defendant from taking any bird or mammal. If it is found that the defendant was negligent, but not grossly negligent, the court shall issue an order prohibiting the defendant from taking any bird or mammal for a period specified at the discretion of the court but not less than five years.

(Amended by Stats. 2003, Ch. 449, Sec. 17. Effective January 1, 2004.)

12150.5.

Any person whose license has heretofore been revoked pursuant to Section 12150 may, upon petition, obtain a new trial in the court which originally revoked his license. Such trial shall be with a jury if requested as provided in Section 12150, and shall be to determine if the revocation was based on an intentional or grossly negligent act or an act committed while under the influence of alcohol, in which case the petition shall be denied. If however, it was based on a negligent act not amounting to gross negligence the court may review and redetermine the length of time for which no license should be issued such person. The court may authorize the issuance of a license to the person after such time as the court shall determine to be proper in light of the circumstances.

(Added by Stats. 1961, Ch. 2210.)

12150.6.

(a) Any person who has been prohibited from taking any bird or mammal pursuant to Section 12150 or 12151 shall not apply for a hunting license or take any bird or mammal unless the person has filed with the department proof of ability to respond in damages in an amount of at least ten thousand dollars (\$10,000) for personal injury or death of any person, subject to a maximum of twenty thousand dollars (\$20,000) for such injury or the death of two or more persons in any one accident and at least five thousand dollars (\$5,000) for property damage resulting from any one accident.

(b) Proof of ability to respond in damages may be given by any of the following:

(1) The written certificate of any insurance carrier duly authorized to do business within the state that it has issued to or for the benefit of the person named a public liability insurance policy which is, at the date of the certificate, in full force and effect. The certificate shall certify that the policy therein cited shall not be canceled except upon 10 days' prior written notice to the department.

(2) A bond in the amount of twenty-five thousand dollars (\$25,000) approved by a judge of a court of record. The bond shall be conditioned for the payment of the amounts specified in this section and shall provide for the entry of judgment on motion of the state in favor of any holder of any final judgment on account of damages to property or injury to any person caused while the licensee is taking any bird or mammal.

(Amended by Stats. 1982, Ch. 517, Sec. 232.)

12150.7.

The department shall, upon request, cancel any bond or shall direct the return to the person entitled thereto of any money or securities deposited pursuant to this code as proof of ability to respond in damages:

(a) On the filing of an affidavit with the department that the person will not thereafter engage in the taking of any bird or mammal.

(b) In the event of the permanent incapacity of such person to engage in the taking of any bird or mammal.

(c) Upon the death of the person on whose behalf such proof was filed.

(Added by Stats. 1961, Ch. 2210.)

12150.8.

Whenever any claim is made against any such person or judgment is rendered against any such person required to file proof of ability to respond in damages, such person shall not apply for a hunting license or take any bird or mammal until additional proof of ability to respond in damages has been filed with the

department in an amount sufficient to provide proof of ability to respond in damages in the amount specified in Section 12150.6 over and above all claims made against previously filed proof of ability to respond in damages.

(Added by Stats. 1961, Ch. 2210.)

12151.

Whenever any person, while taking a bird or mammal, kills or wounds any domestic animal belonging to another and that fact is ascertained by the department, the department shall notify the district attorney of the county in which the act occurred. The district attorney may thereupon bring an action in the superior court of the county in which the act occurred for the purpose of determining the cause of the killing or wounding. These proceedings shall be conducted in the same manner as an action to try a misdemeanor and the defendant may request that all findings of fact shall be made by a jury. The court shall inform the defendant of the nature of the proceedings and of the defendant's right to have a jury.

If it is found that the defendant did the killing or wounding but that it was not intentional or negligent, the court shall dismiss the proceeding. Otherwise, if it is found that the defendant did the killing or wounding intentionally or negligently, the court shall issue an order prohibiting the defendant from taking any bird or mammal for a period of five years.

(Amended by Stats. 2003, Ch. 449, Sec. 18. Effective January 1, 2004.)

12151.5.

A person who, while hunting, kills or wounds or witnesses the killing or wounding of a human being, or domestic animal belonging to another, shall, within 48 hours after the incident, forward a complete written report to the Department of Fish and Wildlife, 1416 Ninth Street, Sacramento, California 95814, providing the reporter's full name and address and all facts relating to the incident.

(Amended by Stats. 2015, Ch. 154, Sec. 108. Effective January 1, 2016.)

12152.

Whenever a person has been prohibited from taking any bird or mammal pursuant to Section 12150 or Section 12151, the court in which the proceeding for such action was had shall report the facts to the department at its Sacramento headquarters office. The report shall show the date and place of the occurrence, the name and address of the person who did the killing or wounding, the name and address of the person who was killed or wounded or the name and

address of the owner of the animal, as the case may be, and such other information as the department may require.

The department shall maintain a record of all orders issued under Section 12150 and Section 12151. The record shall show the name and address of the person involved, the date of such action, and the date of expiration of such order. The department shall periodically transmit copies of such records to each person authorized to issue a hunting license and to each district attorney in the State.

(Amended by Stats. 1961, Ch. 2210.)

12153.

A commercial fishing license is forfeited for the violation of Sections 1050.1 to 1060, inclusive, or Section 2012, or of any of the provisions of this code relating to the use of nets.

(Amended by Stats. 2015, Ch. 683, Sec. 33. Effective January 1, 2016.)

12154.

(a) Upon a conviction of a violation of this code or any regulation adopted pursuant thereto that is punishable pursuant to Section 12012, 12013, 12013.3, or 12013.5, the department may suspend or permanently revoke a person's hunting or sport fishing license or permit privileges.

(b) (1) Any person whose privileges are suspended or revoked pursuant to this section may appeal the suspension or revocation to the commission. The commission shall initiate the appeal process within 12 months of the violator's appeal request. The commission shall consider at least the nature, circumstances, extent, and gravity of the person's violations, the person's culpability for the violations, and the injury to natural resources by the violations, and may restore a person's hunting or sport fishing license or permit privileges.

(2) The department may adopt regulations to implement this subdivision.

(c) Pursuant to subdivision (c) of Section 12157, a judge may order the seizure or forfeiture of any device or apparatus, including a vessel, vehicle, or hunting or fishing gear, that is used in committing an offense punishable under Section 12012, 12013, 12013.3, or 12013.5.

(Amended by Stats. 2012, Ch. 590, Sec. 5. Effective January 1, 2013.)

12155.

(a) Upon the third conviction of a person of a violation of any provision of this code or regulation adopted pursuant to this code relating to the taking or possession of a bird or mammal in a five-year period, and upon a conviction

subsequent to the three convictions during a five-year period, that person shall be prohibited from taking a bird or mammal in the state for three years from the date of the last conviction. The commission shall revoke a hunting license of a person prohibited from taking a bird or mammal in this state for the period of prohibition.

(b) It shall be unlawful for a person to obtain, or attempt to obtain, a hunting license during a period of prohibition.

(Amended by Stats. 2015, Ch. 154, Sec. 109. Effective January 1, 2016.)

12155.5.

(a) The commission shall adopt regulations and procedures governing the revocation or suspension of hunting or sport fishing privileges. The regulations shall provide for notice and opportunity for a hearing.

(b) Any person, whose license was revoked pursuant to Section 12154, 12155, or 12156, may appeal to the commission for reissuance of the license and termination of the prohibition against the taking of fish, reptiles, amphibia, or birds or mammals.

(c) After a public hearing at which the person has appeared in person, the commission may terminate the prohibition and authorize the issuance of a license if it finds that there are sufficient mitigating circumstances to warrant that action.

(d) It is unlawful for a person whose hunting or sport fishing privileges have been revoked or suspended to obtain or attempt to obtain, or to possess a hunting or sport fishing license, permit, or tag during that suspension or revocation period.

(e) Any person who violates subdivision (d) is guilty of an infraction punishable by a fine of not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000), or of a misdemeanor.

(Amended by Stats. 2003, Ch. 291, Sec. 7. Effective January 1, 2004.)

12156.

No person who is licensed or required to be licensed pursuant to Section 4005 and who is convicted of a violation of any provision of Article 1 (commencing with Section 4000) of Chapter 2 of Part 3 of Division 4 or of Section 4150 shall take any fur-bearing or nongame mammal in the state for three years from the date of the next regularly scheduled meeting of the commission held at least 30 days after the date of that conviction. The commission shall revoke the trapping license of the person who is prohibited from taking fur-bearing and nongame mammals in the state, if the person has one, for the period of prohibition.

No person shall obtain, or attempt to obtain, a trapping license during a period of prohibition.

(Repealed and added by Stats. 1985, Ch. 127, Sec. 3.)

12156.5.

(a) The judge before whom any guide, as defined in Section 2535, is arraigned for a violation of this code, or regulation adopted pursuant thereto, may, upon the conviction of the person, order the revocation of the person's privilege to hunt, fish, or guide for a period not to exceed three years from the date of the conviction.

(b) For purposes of this section, a plea of nolo contendere or no contest or a forfeiture of bail is a conviction.

(c) It shall be unlawful for any person to obtain, or attempt to obtain a guide license, sportfishing license, or hunting license during a period of revocation imposed under this section.

(d) Neither the disposition of the criminal action other than by conviction nor the discretionary refusal of the judge to order revocation upon conviction impairs the right of the department to commence proceedings to order revocation of the guide license pursuant to Section 2546.

(Added by Stats. 1986, Ch. 750, Sec. 16.)

12157.

(a) Except as provided in subdivision (b), the judge before whom any person is tried for a violation of any provision of this code, or regulation adopted pursuant thereto, may, upon the conviction of the person tried, order the forfeiture of any device or apparatus that is designed to be, or is capable of being, used to take birds, mammals, fish, reptiles, or amphibia and that was used in committing the offense charged.

(b) The judge shall, if the offense is punishable under Section 12008 of this code or under subdivision (c) of Section 597 of the Penal Code, order the forfeiture of any device or apparatus that is used in committing the offense, including, but not limited to, any vehicle that is used or intended for use in delivering, importing, or exporting any unlawfully taken, imported, or purchased species.

(c) (1) The judge may, for conviction of a violation of any of the following offenses, order forfeiture of any device or apparatus that is used in committing the offense, including, but not limited to, any vehicle used or intended for use in committing the offense:

(A) Section 2000 relating to deer, elk, antelope, feral pigs, European wild boars, black bears, and brown or cinnamon bears.

(B) Any offense that involves the sale, purchase, or possession of abalone for commercial purposes.

(C) Any offense that involves the sale, purchase, or possession of sturgeon or lobster, pursuant to Section 7370 or 8254.

(D) Any offense that involves a violation of Section 12012.

(E) A violation of subdivision (b) of Section 12013.

(2) In considering an order of forfeiture under this subdivision, the court shall take into consideration the nature, circumstances, extent, and gravity of the prohibited act committed, the degree of culpability of the violator, the property proposed for forfeiture, and other criminal or civil penalties imposed on the violator under other provisions of law for that offense. The court shall impose lesser forfeiture penalties under this subdivision for those acts that have little significant effect upon natural resources or the property of another and greater forfeiture penalties for those acts that may cause serious injury to natural resources or the property of another, as determined by the court. In determining whether or not to order forfeiture of a vehicle, the court shall, in addition to any other relevant factor, consider whether the defendant is the owner of the vehicle and whether the owner of the vehicle had knowledge of the violation.

(3) It is the intent of the Legislature that forfeiture not be ordered pursuant to this subdivision for minor or inadvertent violations, as determined by the court.

(d) A judge shall not order the forfeiture of a vehicle under this section if there is a community property interest in the vehicle that is owned by a person other than the defendant and the vehicle is the only vehicle available to the defendant's immediate family that may be operated on the highway with a class A, class B, or class C driver's license.

(e) Any device or apparatus ordered forfeited shall be sold, used, or destroyed by the department.

(f) (1) The proceeds from all sales under this section, after payment of any valid liens on the forfeited property, shall be paid into the Fish and Game Preservation Fund.

(2) A lien in which the lienholder is a conspirator is not a valid lien for purposes of this subdivision.

(g) The provisions in this section authorizing or requiring a judge to order the forfeiture of a device or apparatus also apply to the judge, referee, or juvenile hearing officer in a juvenile court action brought under Section 258 of the Welfare and Institutions Code.

(h) For purposes of this section, a plea of nolo contendere or no contest, or forfeiture of bail, constitutes a conviction.

(i) Neither the disposition of the criminal action other than by conviction nor the discretionary refusal of the judge to order forfeiture upon conviction impairs the right of the department to commence proceedings to order the forfeiture of fish nets or traps pursuant to Section 8630.

(Amended by Stats. 2009, Ch. 290, Sec. 7. Effective January 1, 2010.)

12157.5.

The judge before whom any person is tried and convicted of violating Sections 2004 and 2016 and, at the same proceeding, is also tried and convicted of violating Section 2001 or 2005 may, in his discretion, order the forfeiture of any motor vehicle or snowmobile used in committing one or more of the offenses charged. Any vehicle so forfeited shall be sold or destroyed by the department. The proceeds from all such sales shall be paid into the Fish and Game Preservation Fund, except that any valid liens on the forfeited property shall first be paid from proceeds of the sale unless the lienholder is a conspirator. For purposes of this section, forfeiture of bail or a plea of nolo contendere shall constitute a conviction.

(Added by Stats. 1980, Ch. 1006, Sec. 2.)

12158.

The sport fishing or hunting license of any person to whom such a license has been issued, may, in the discretion of the court, be suspended or revoked upon his conviction of a violation of any provision of this code or regulation made pursuant thereto relating to hunting or fishing for purposes other than profit, in addition to any fine or other punishment imposed.

Any person who obtains another hunting or fishing license during the period his license has been suspended or revoked is guilty of a misdemeanor.

(Enacted by Stats. 1957, Ch. 456.)

12158.5.

For the purpose of invoking any provision of this code, or any rule, regulation, or order made or adopted under this code, relating to the suspension, revocation, or forfeiture of any license or permit, a plea of nolo contendere or "no contest" to, or forfeiture of bail from, a charge of a violation of any provision of this code, or any rule, regulation, or order made or adopted under this code, is a conviction of a violation thereof.

(Amended by Stats. 1984, Ch. 472, Sec. 5.)

12159.

All birds, mammals, fish, reptiles, aquaculture animals and products, plants, or amphibians, or any part thereof, which have been taken, possessed, sold,

imported, or transported contrary to any of the laws of this state shall be seized by the department, and, in accordance with the commission's regulations, notice of seizure shall be given to the person who had possession of the birds, mammals, fish, reptiles, aquaculture animals and products, plants, or amphibians, or any part thereof, at the time of the seizure if that person is known.

(Amended by Stats. 2009, Ch. 294, Sec. 29. Effective January 1, 2010.)

12159.5.

The judge before whom any person is tried for a violation of a provision of this code that prohibits the taking of any endangered species, threatened species, or fully protected bird, mammal, reptile, amphibian, or fish, as specified by Section 12008, may, in the court's discretion and upon the conviction of that person, order the forfeiture of any proceeds resulting from the taking of the endangered species, threatened species, or fully protected bird, mammal, reptile, amphibian, or fish.

(Added by Stats. 1984, Ch. 1215, Sec. 6.)

12160.

All birds, mammals, fish, reptiles, aquaculture animals and products, plants, or amphibians, or any part thereof, seized in accordance with Section 12159, the sale of which is not prohibited and which have a current market value of one hundred dollars (\$100) or more, shall be packed, preserved, sold for bait, used for fish food in state-owned fish hatcheries, or otherwise put to economical use immediately upon seizure, at the prevailing market price for legal birds, mammals, fish, reptiles, aquaculture animals and products, plants, or amphibians in effect on the date of seizure. Any proceeds thereof shall be placed in the Fish and Game Preservation Fund. If the person from whom such birds, mammals, fish, reptiles, aquaculture animals and products, plants, or amphibians were seized is not convicted in a court of competent jurisdiction for the offense out of which the seizure arose, then and in that event the proceeds shall be returned to that person.

(Amended by Stats. 2009, Ch. 294, Sec. 30. Effective January 1, 2010.)

12161.

The judge before whom any person is tried for taking, possessing, selling, importing, or transporting birds, mammals, fish, reptiles, aquaculture animals and products, plants, or amphibians or parts thereof contrary to the laws of this

state shall upon the conviction of the accused make an order forfeiting and disposing of the birds, mammals, fish, reptiles, aquaculture animals and products, plants, or amphibians, or parts thereof, in accordance with the provisions of Section 12160. However, if the birds, mammals, fish, reptiles, aquaculture animals and products, plants, or amphibians, or parts thereof may not be sold lawfully or have a current market value of less than one hundred dollars (\$100), the judge may at his or her discretion order that they be donated to a state, county, city, or any charitable institution, or that they be destroyed.

(Amended by Stats. 2009, Ch. 294, Sec. 31. Effective January 1, 2010.)

12162.

A bird, mammal, fish, reptile, or amphibian seized under circumstances in which it cannot be determined who took, possessed, sold, imported, or transported the bird, mammal, fish, reptile, or amphibian contrary to law may be sold or donated to a state, county, city, city and county, or charitable institution.

(Amended by Stats. 2015, Ch. 154, Sec. 110. Effective January 1, 2016.)

12163.

A person who purchases birds, mammals, fish, reptiles, or amphibians from the department pursuant to the preceding sections shall, upon delivery, pay to the department, for deposit in the Fish and Game Preservation Fund, the prevailing market price for legal birds, mammals, fish, reptiles, or amphibians in effect on the date of seizure.

(Amended by Stats. 2015, Ch. 154, Sec. 111. Effective January 1, 2016.)

12164.

The court before whom a person has been convicted of trespassing under Section 602 of the Penal Code shall, in addition to any other fine or forfeiture imposed, confiscate any bird or mammal taken while trespassing, and shall dispose of the bird or mammal to a charitable institution or cause it to be destroyed if unfit for human consumption.

(Amended by Stats. 2015, Ch. 154, Sec. 112. Effective January 1, 2016.)

12165.

When any person licensed as a guide under Section 2536 is adjudged guilty by a court of competent jurisdiction of violating or permitting the violation of any

provision of this code or regulation made pursuant thereto, in addition to any fine or other punishment imposed, the court may revoke his guide license. Any person who obtains another guide license within two years after a guide license issued to him has been revoked or forfeited, is guilty of a misdemeanor.

(Enacted by Stats. 1957, Ch. 456.)

12166.

A termination of probation and dismissal of charges pursuant to Section 1203.4 of the Penal Code or a dismissal of charges pursuant to Section 1203.4a of the Penal Code does not affect either a past revocation or suspension of any license or permit to take fish or game or the authority of the commission or a court to revoke or suspend a license or permit to take fish and game.

(Added by Stats. 1983, Ch. 1048, Sec. 20. Effective September 26, 1983.)