

MAINE STATE LEGISLATURE

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SEVENTY-NINTH LEGISLATURE

SENATE

NO. 181

In Senate, March 7, 1919.

Referred to Committee on Sea and Shore Fisheries and 500 copies ordered printed. Sent down for concurrence.

P. F. CRANE, Secretary.

Presented by Mr. Davies of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD ONE THOUSAND
NINE HUNDRED AND NINETEEN

AN ACT Regulating the Taking, Selling, Packing and Canning of Clams, Authorizing the Survey of Clam Bottoms and the Leasing Thereof by the State, Prohibiting the Taking of Clams from Leased Areas, Except by the Lessee, Authorizing the Selection and Reservation of Areas for Experimentation in Clam Conservation and Propagation, Establishing the Boundaries of Polluted Areas from which the Taking of Clams is Prohibited and the Repeal of All Existing Laws Inconsistent Therewith.

Be it enacted by the People of the State of Maine, as follows:

Section 1. There shall be kept at the office of the Sea & Shore Fisheries Commission, books of record in which shall

3 be recorded all leases, permits, and other conveyances of
4 clam bottoms or land to be used for the planting and culti-
5 vation of clams in accordance with this act. A set of clear
6 and simple forms, for all leases, permits and conveyances
7 of any kind, shall be prepared by the director of sea and
8 shore fisheries, with the advice of the attorney general,
9 and no title shall be vested in any leasee or transfers of
10 any interest or estate acquired under this act until the con-
11 veyance or conveyances evidencing such leases or transfers
12 shall have been recorded in the office of the sea and shore
13 fisheries at Rockland.

Sect. 2. The board of sea and shore fisheries commissioners
2 shall as soon as practicable after the passage of this act
3 cause to be made a true and accurate survey of the clam
4 bottoms of the state of Maine, said survey to be made with
5 reference to fixed and permanent objects on the adjoining
6 shores and banks, giving courses and distances, to be fully
7 described and set forth in a written report. A true and ac-
8 curate delineation of the survey shall be made on copies
9 of published maps and charts of the United States Coast
10 and Goodetic Survey, which said copies shall be kept on
11 file in the office of the sea and shore fisheries commission.
12 The said survey shall be made by a competent hydrographic
13 engineer, employed by and acting under the direction and
14 control of the board of commissioners of sea and shore fish-
15 eries.

Sect. 3. Any person who may desire to plant and cultivate clams under the provisions of this act, shall file with the director of sea and shore fisheries, an application on the form furnished by the director, the applicant who must be a resident of the state of Maine, shall indicate plainly the location of the clam bottoms, and number of acres he desires to lease, also giving the postoffice address of the riparian abuttor. A fee of five dollars shall be paid by the applicant to the director of sea and shore fisheries at the time of filing the application, which fee shall be returned to the applicant if for any reason his application shall be declined. When application has been made to the director he shall give immediate notice in writing by mail, or otherwise to the riparian abuttor, stating the name of applicant with the number of acres of clam bottoms desired, at the expiration of thirty days from the time said notice was given, if riparian abuttor fails to file an application according to the provisions of this act, for adjoining clam bottoms, applications applying to this tract may be granted in order application received. But if the riparian abuttor shall file an application for adjoining clam bottoms within thirty days after notice of filing of first application, to him shall be given the choice of location.

Sect. 4. After the survey provided for herein shall have been completed it shall be the duty of the Department of Sea & Shore Fisheries to lease in the name of the state of Maine tracts or parcels of clam bottoms in the area to be

5 opened for clam culture, according to the provisions of
6 this act. It shall be the duty of the director of sea and
7 shore fisheries to require that the tracts so leased shall be
8 as nearly rectangular as possible. It shall be the duty of
9 the director to demand from each lessee payment of the
10 rent each year in advance. Leases of such clam bottoms
11 shall be made only to residents of Maine. The term of
12 such leases shall be twenty years and the annual rent for
13 first grade clam bottoms as set forth by the survey shall
14 be one dollar per acre for each of the first two years of
15 said term of twenty years; two dollars per acre for the
16 third year; three dollars per acre for the third year; and
17 four dollars per acre for the remainder of the term. The
18 Department of Sea & Shore Fisheries may lease at a rental
19 price which, in the judgment of the commission is a proper
20 one and commensurate with the value of the land so leased,
21 any land subject to the provisions of this act, which by the
22 report of the survey is below first grade clam bottoms; pro-
23 vided, however, that no land shall be leased at a less price
24 than twenty-five cents (25c) per acre, and the land so leased
25 shall be subject to all other provisions of this act. If any
26 part of the rent reserved under such leases shall remain
27 unpaid for more than sixty days after the same becomes
28 due, such lease or leases may at the option of the said di-
29 rector be declared void, and in that event the land shall re-
30 vert to the state and may be leased again in accordance
31 with the provisions of this act. The said commission may

32 at the request of any lessee, if it shall appear equitable so
33 to do, upon cause shown in writing, cancel his lease as to
34 the whole or part of the lands leased.

Sect. 5. Upon payment by the applicant of the first year-
2 ly rental, as determined by the number of acres declared
3 in the application, the director of sea and shore fisheries
4 shall issue a lease stating the number of acres with marks
5 and bounds, and a concise but clear description of the land
6 applied for as set forth in the application, and upon execu-
7 tion of the lease the said director shall have said lease duly
8 recorded in a book or books to be known as "The Register
9 of Titles to Clam Bottoms." The payment of the proper
10 fees due for the application, and recording in the register
11 required by this section to be kept shall constitute between
12 the state and applicant the relation of landlord and tenant
13 for the term of twenty years from the record of the land
14 so applied for as aforesaid.

Sect. 6. The relation of landowner and tenant stated in
2 section 5 shall have all the incidents attaching to that re-
3 lation as the same exists under the laws of Maine, excepting
4 only in the following particulars:

First: Land leased under this act shall be used only for
2 the purpose of planting and cultivating clams.

Second: Residents of this state shall have the right to
2 fish upon all leased areas, providing they do not remove or
3 destroy clams thereon.

Third: No right shall exist to redeem or purchase any
2 land of the state so leased.

Fourth: In no way shall any of the provisions of this
2 act be so construed so as to interfere with or prevent the
3 riparian abuttor from the taking of rockweed, fishing, erect-
4 ing abutments, or fish weirs.

Sect. 7. The director of sea and shore fisheries shall at
2 once notify the lessee of the record in the register required
3 by section 5, and the lessee shall as soon thereafter as prac-
4 ticable, not exceeding thirty days from the receipt of no-
5 tice, cause the ground designated as leased to him to be
6 plainly marked out by stakes or monuments, under the su-
7 pervision of the said director. At least four such stakes or
8 monuments shall have the initials of the lessee plainly
9 marked upon them, and such stakes or monuments shall
10 be at all times during the existence of said lease continued
11 by the lessee or his legal representative.

Sect. 8. The lessee of any land leased for the purpose of
2 planting and cultivating clams shall have exclusive owner-
3 ship of the title to all clams planted by him or existing on
4 the land leased.

Sect. 9.—No assignment or transfer of any interest ac-
2 quired by this act shall be valid for any purpose if made
3 to a non-resident of this state.

Sect. 10. Any person who shall wilfully and without au-
2 thority take or remove clams from any land leased under
3 the provisions of this act, or shall wilfully injure or inter-

4 fere with clams on such land in any manner, or injure
5 the clams with the stakes or monuments marking the same,
6 shall upon conviction thereof, for the first offense, be sen-
7 tenced to imprisonment in jail or in the State Prison at
8 Thomaston, in the discretion of the court, for not less than
9 three months and not more than two years, and for the sec-
10 ond, or any subsequent offense, be sentenced to imprison-
11 ment in the State Prison at Thomaston for not less than
12 two years, and not more than five years.

Sect. 11. Any person who shall dig clams upon any land
2 leased under the provisions of this act without the con-
3 sent of the lessee or owner, upon conviction thereof, shall,
4 for the first offense be fined not less than fifty dollars, nor
5 more than two hundred dollars in the discretion of the
6 court, be imprisoned in jail or in the State Prison for not
7 less than three months or more than one year, or shall be
8 both fined and imprisoned, and for the second, or any sub-
9 sequent offense, shall be sentenced to imprisonment in the
10 State Prison for not less than two years or more than five
11 years.

Sect. 12. The director of sea and shore fisheries is au-
2 thorized to select and reserve for experiments in clam con-
3 servation and propagation such areas as are deemed neces-
4 sary, said areas to be located at different points on the coast
5 of Maine, and to transplant thereon seed clams or to cul-
6 tivate seed clams, or in any other feasible manner to de-
7 velop methods of production of clams, and the Department

8 of Sea & Shore Fisheries shall improve, replenish or culti-
9 vate said experimental areas in such manner and for such
10 length of time as it may determine. The said department
11 shall have power to dispose of the clams at any time, and
12 manner, and upon any terms which it may establish, the
13 proceeds thereof to be paid to the treasurer of the state,
14 and placed to the credit of the "Sea & Shore Fisheries
15 Fund." Any person taking clams upon such experimental
16 area without a permit in writing from the said director
17 shall be guilty of a misdemeanor, and upon conviction there-
18 of shall for the first offense be fined not less than fifty dol-
19 lars, be imprisoned in jail or in the State Prison, in the
20 discretion of the court, for not less than three months or
21 more than two years, and for the second or any subsequent
22 offense, be sentenced to imprisonment in the State Prison
23 for not less than two years or more than five years.

Sect. 13. As soon as practicable after location of re-
2 served area is decided upon the director of sea and shore
3 fisheries shall cause the ground taken for experimental
4 purposes to be plainly marked out by erecting at or above
5 high water mark one or more centrally located large signs,
6 with the legend "State Reservation," in dark blue letters
7 on yellow ground, and shall also erect at high water mark
8 on each areal limit a sign with the legend, "Reservation
9 Limit."

Sect. 14. Any person who shall in any way interfere
2 with, remove or deface any sign erected by the Department
3 of Sea & Shore Fisheries, on reserved experimental areas,
4 shall upon conviction in the discretion of the court, be
5 sentenced to State Prison for a term of not less than one
6 year or more than three years.

Sect. 15. All clams taken from clam bottoms shall be
2 culled on their natural beds as taken, and clams measur-
3 ing less than two and one-half inches in length, measur-
4 ing the long diameter of shell, shall be replaced on said
5 clam bottoms when taken, and it shall be unlawful for any
6 person to take, buy, sell, or have in possession clams less
7 than two and one-half inches, measuring the long diameter
8 of the shell. Whenever any warden, or other officer shall
9 have reason to believe that this section has been violated
10 with reference to the culling of clams, such warden or
11 other officer shall with or without a warrant examine the
12 cargo of any boat or vessel, enter any building or factory,
13 market, peddler's vehicle, or any receptacle or place when
14 they have reason to believe that clams of less than the legal
15 size are to be found. If upon examination the said war-
16 den or other officer shall find that five per cent or more of
17 clams found shall consist of clams that measure less than
18 two and one-half inches measured the long diameter of
19 the shells, the captain of the vessel or boat, or the person
20 in charge of said vessel or boat, the owner or lessee of
21 factory, building, vehicle or receptacle in which such clams

22 of less than two and one-half inches measured the long
23 diameter of the shell are found, shall be deemed to have
24 violated this section, and upon conviction shall be fined
25 not less than twenty-five or more than two hundred dol-
26 lars, or confined in jail not less than thirty days nor more
27 than six months, either or both. Clams taken under a vio-
28 lation of this act shall be confiscated, and returned to their
29 natural beds, and the vessel or boat on which said clams
30 are found shall be held as security for the payment of said
31 fine.

Sect. 16. It shall be unlawful to have in possession clams
2 uncooked and shucked, for sale, or for use in hotels, res-
3 taurants, markets, factories, peddlers or others, the rims of
4 which are less than two and one-half inches in length, meas-
5 ured from its attachment to the commonly named belly,
6 to its junction with the shoulder. Whenever the director
7 of sea and shore fisheries or any of his wardens shall have
8 reason to believe that this section has been violated, the
9 director or wardens shall with or without a warrant enter
10 such premises and examine said uncooked shucked clams.
11 If said director or wardens shall find that five per cent or
12 more of said clam rims are less than two and one-half
13 inches measured from their attachment to the so-called
14 belly to its junction with the shoulder, the proprietor of
15 the hotel, restaurant, market, factory, peddler or others
16 from whose possession said clams are taken shall be deemed
17 to have violated this section, and upon conviction shall be

18 fined not less than twenty or more than fifty dollars, or
19 confined in jail not less than thirty days or more than three
20 months, either or both. Said clams confiscated and given
21 to the worthy poor through the medium of the assessors
22 of the poor of the town or city in which violation occurred.

Sect. 17. It shall be unlawful for any person or firm to
2 have in possession any shucked clams for sale, to be used
3 for bait or for shipment, any uncleansed shucked clams,
4 those that are fresh the rims of which measure less than
5 two and one-half inches in length measuring from its at-
6 tachment to the commonly named belly, to its junction
7 with the shoulder or clams that are salted, those that meas-
8 ure in length, measuring as above. Whenever the director
9 of sea and shore fisheries or any of his wardens shall have
10 reason to believe that this section has been violated the di-
11 rector or wardens shall with or without a warrant enter
12 such suspected premises and examine such clams. If said
13 director or wardens shall find five per cent or more of said
14 clam rims are less than the above mentioned measurements,
15 the person or firm from whom the said clams are taken
16 shall be deemed to have violated this section, and upon
17 conviction shall be fined not less than twenty-five or more
18 than one hundred dollars or confined in jail not less than
19 sixty days or more than six months, either or both. Said
20 clams to be confiscated and taken to the nearest fishing
21 ground and sown broadcast from boat in motion, to serve
22 as food for bottom fish.

Sect. 18. No clams measuring less than two and one-half inches in length, measuring the long diameter of the shell; shall be canned. Whenever any warden or other officer shall have reason to believe that this section is being violated with reference to canning clams, such warden or other officer with or without a warrant may enter any such premises or boats where they have reason to believe that clams of less than legal size may be found. If upon examination the said warden or other officer shall find that five per cent or more of clams found shall consist of clams that measure less than legal length, the captain of vessel or boat, or person in charge of said vessel or boat, the owner, lessee or person in charge of factory, building, receptacle or vehicle in which such clams of less than legal length are found shall be deemed to have violated this section, and upon conviction shall be fined not less than fifty or more than three hundred dollars, or confined in jail not less than sixty days or more than one year, either or both. Clams taken under this act shall be confiscated, and if in the shell be returned to their natural beds if shucked and fit for table use shall be given to the worthy poor, as provided for in section 16, if shucked and not fit for table use shall be disposed of as provided in section 17.

Sect. 19. Any clams measuring less than two and one-half inches in length, measuring the long diameter of the shell shall be deemed illegal. Any shucked clams the rims of which are less than two and one-half inches, measured

5 from its attachment to the so-called belly, to its junction
6 with the shoulder shall be deemed illegal. Mutilated clam
7 rims shall be prima facia evidence that they are illegal.

Sect. 20. Any resident of this state desiring to take
2 clams, for sale, or canning purposes, from any clam bot-
3 tom of this state, shall first obtain by application to the
4 director of sea and shore fisheries at Rockland, a fisher-
5 man's license, and such license shall have effect from the
6 first day of August in the year in which it may have been
7 obtained, to the fifteenth day of May, inclusive, next suc-
8 ceeding. Blank applications shall be furnished by the di-
9 rector of sea and shore fisheries to applicant who shall
10 make oath or affirmation before a clerk or justice of peace,
11 authorized to administer oaths; that the facts set forth
12 therein are strictly true, and that he will comply with and
13 obey all laws of this state regulating the taking of clams.
14 The director of sea and shore fisheries upon receipt of the
15 application properly attested, shall issue a fisherman's li-
16 cense, upon the payment of license fee of one dollar.

Sect. 21. If any person shall take clams for sale or can-
2 ning purposes, without first having obtained a license as
3 required by the preceding sections of this chapter, shall
4 upon conviction be fined not less than twenty nor more
5 than one hundred dollars, and stand committed to the coun-
6 ty jail until all costs and fines are paid. All persons tak-
7 ing clams under the provisions of this act shall exhibit their

8 authority for so doing when required by any warden or
9 other officers of the state.

Sect. 22. It shall be unlawful for any person, firm or
2 corporation to engage in the business of packing or canning
3 clams without first procuring a license to engage in such
4 business by application to the director of sea and shore fish-
5 eries, who upon request shall furnish application blank to
6 applicant, who after he or they have properly filled in the
7 application, shall make oath or affirmation to same before
8 a justice of peace or person authorized to administer oaths;
9 that the facts set forth therein are strictly true, and that
10 he or they will comply with and obey all the laws of this
11 state relating to packing and canning of clams. The direc-
12 tor upon receipt of application properly filled in and at-
13 tested, upon the payment of ten dollars license fee, shall is-
14 sue a license to the person, firm or corporation applying
15 for same. Said license shall take effect from the first
16 day of August in the year in which it may have been ob-
17 tained, to the fifteenth day of May inclusive, next succeed-
18 ing.

Sect. 23. If any person, firm or corporation shall engage
2 or attempt to engage in the business of packing or canning
3 clams without first obtaining a license, as provided in the
4 foregoing section, he or they shall be deemed guilty of a
5 misdemeanor and shall be fined not less than two hundred
6 dollars or more than five hundred dollars for each offense.

Sect. 24. It shall be the duty of the director of sea and

2 shore fisheries to investigate and have examined along the
3 entire coast of Maine all sources of water pollution from
4 sewage of cities, decaying animal matter, such as refuse
5 and water containing poisonous substance from factories,
6 packing, curing and canning establishments, and limit the
7 taking of clams for market, outside an area, the bounda-
8 ries of which shall be established by bacterial examination
9 of the clams within the limits of said area, said boundaries
10 to extend beyond the point where any infected shell fish
11 are found. All such areas shall be plainly marked by warn-
12 ing signs, stakes, monuments and buoys. It shall be deemed
13 unlawful for any person to take clams from said area; or
14 remove, deface or interfere in any way with the signs,
15 stakes, monuments or buoys, erected by the state to mark
16 the bounds of said area, and upon conviction shall be sen-
17 tenced to State Prison for not less than one or more than
18 three years.

Sect. 25. By order of, or written permit from the direc-
2 tor of sea and shore fisheries, clams may be taken from
3 any polluted area for use only as seed for cultivating clam
4 bottoms, when said bottoms are located where there is a
5 sufficient current, upon the said order or permit clams
6 from polluted area shall be used for seed only, when ac-
7 ceptable assurance has been given said director that such
8 clam seed shall remain undisturbed after being sown for a
9 stated number of weeks and then not taken to market until
10 a bacteriological examination has been made, and said clams

11 declared free from bacterial infection by the Department of
12 Sea & Shore Fisheries. Any person, firm or corporation
13 violating the provisions of this section shall be deemed
14 guilty of a misdemeanor, and upon conviction shall be sen-
15 tenced to State Prison for not less than one or more than
16 three years.

Sect. 26. In all contracts relating to the sale of clam
2 bait, fresh or salt, by the barrel, and clam bait barrels, such
3 barrel shall be twenty-five and one-fourth inches long and
4 fifteen and one-half inches in diameter, outside measure.
5 Whoever violates this provision shall be liable to a penalty
6 of fifty dollars for each offense.

Sect. 27. The canning, packing and barreling of clams,
2 either fresh or in salt, and the digging of clams for the pur-
3 pose of canning, packing, or barreling between the fifteenth
4 day of May and the first day of August following, is hereby
5 prohibited under a penalty of five dollars a bushel in the
6 shell.

Sect. 28. The shipping or transportation of clams in any
2 manner beyond the limits of the state, between the fifteenth
3 day of May and the first day of August following, is hereby
4 prohibited under a penalty of five dollars for each bushel
5 so shipped or transported.

Sect. 29. In all prosecutions under this chapter municipal
2 and police judges and trial justices have by complaint orig-
3 inal and concurrent jurisdiction with the supreme judicial
4 and superior courts.

Sect. 30. All fines and penalties under this chapter may
2 be recovered by complaint, indictment or action of debt
3 made or brought in the country where the offense was com-
4 mitted or in an adjoining county. The action of debt shall
5 be brought in the name of the director of sea and shore fish-
6 eries, and all offenses under, or violations of, the provisions
7 of this statute, may be settled by the director of sea and
8 shore fisheries, upon such terms and conditions as he
9 deems advisable. All fines, penalties and collections under
10 this chapter, except when otherwise expressly provided,
11 shall forthwith be paid to the director of sea and shore
12 fisheries and by him be paid to the treasurer of the state
13 to be added to and made a part of the appropriation for
14 sea and shore fisheries. And the director shall report to
15 the treasurer of state the amount of each fine, penalty and
16 collection itemized and the name of the party paying the
17 same which shall be kept on record in the treasurer's of-
18 fice.

Sect. 31. All laws relating to the regulation of clam in-
2 dustry existing prior to the passage of this act are hereby
3 repealed.