

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIRST LEGISLATURE

Legislative Document

No. 1489

S. P. 554

In Senate, March 29, 1963

Reported by Senator Whittaker of Penobscot from Committee on State Government and printed under Joint Rules No. 10.

CHESTER T. WINSLOW, Secretary

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-THREE

AN ACT Transferring Duties of Commissioner of Agriculture Relating to Shellfish to Commissioner of Sea and Shore Fisheries and Revising Laws Thereto.

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

Sec. 1. R. S., c. 37-A, § 16, repealed and replaced. Section 16 of chapter 37-A of the Revised Statutes, as enacted by section 1 of chapter 331 of the public laws of 1959 and as amended by section 1 of chapter 238 of the public laws of 1961, is repealed and the following enacted in place thereof:

'Sec. 16. Closing of contaminated flats, regulations. The following provisions apply to contaminated or polluted shores, waters or flats:

I. Commissioner to examine and close shores, waters or flats; municipal cooperation. The commissioner shall from time to time examine or cause to be examined the shores, coastal waters and flats of the State as required or recommended by the United States Public Health Service and may examine them from time to time without such request or recommendation. He shall close contaminated or polluted shores, waters or flats in accordance with this section when the results of such an examination show him that clams, quahogs, oysters, mussels or other marine mollusks found in the area examined are contaminated or polluted or are not in conformity with sanitary standards recommended by the United States Public Health Service.

A. Municipalities in which shellfish flats and waters are located shall cooperate with the department in this program and shall collect water and clam samples from their flats and waters under the supervision of the department and such municipalities may raise and appropriate money for that purpose.

II. Commissioner to pass regulation; procedure. The commissioner shall close the shores, waters or flats to all digging or taking of clams, quahogs, oysters, mussels and other marine mollusks by immediately passing a regulation to that effect without a hearing and subject to the following provisions:

A. The commissioner shall state in the regulation the reason why the flats, waters or shores are closed, and the area which is closed.

B. The commissioner shall file a copy of the regulation certified by him with the Secretary of State and with the clerk of the Superior Court in each county where the closed shores, waters or flats are located.

C. After the commissioner has complied with paragraph B, he shall cause the regulation to be published once in a newspaper or combination of newspapers having general circulation in the county or counties where the shores, waters or flats to be closed are located.

D. The regulation is effective and has the force of law immediately upon the newspaper publication.

III. Possession unlawful. It is unlawful to possess any clams, quahogs, mussels, oysters or other marine mollusks which were taken or dug from any shores, waters or flats which are closed by a regulation of the commissioner.

IV. Digging unlawful. It is unlawful to dig or take any clams, quahogs, mussels, oysters or other marine mollusks from any shores, waters or flats which are closed by a regulation of the commissioner.

V. Repealing regulations. When the shores, waters or flats closed by regulation, and the clams, quahogs, mussels, oysters or other marine mollusks there situated are no longer contaminated or polluted and meet the sanitary standards recommended by the United States Public Health Service, the commissioner shall repeal the regulation closing the particular area by publishing notice to that effect in a newspaper or combination of newspapers having general circulation in the county or counties where the area is situated. The regulation is repealed the day following the newspaper publication.

VI. Savings clause. Regulations adopted by the commissioner under this section prior to the effective date of this act remain in full force and effect until repealed as provided in subsection V.'

Sec. 2. R. S., c. 37-A, § 16-A, additional. Chapter 37-A of the Revised Statutes, as enacted by section 1 of chapter 331 of the public laws of 1959, is amended by adding a new section 16-A, to read as follows:

'Sec. 16-A. Authorization to conduct experiments on polluted shellfish. The department is authorized to conduct experiments in an effort to find a commercially feasible method for the purification of clams, quahogs, oysters, mussels and other marine mollusks taken from polluted flats or waters.

I. Authorization to seek and expend federal funds. The department is authorized to seek and expend federal funds for the purposes of this section and the use and expenditure of such funds already obtained is confirmed.

II. May take polluted shellfish for purposes of section. The department may take and authorize others to take under its supervision clams, quahogs, oysters, mussels and other marine mollusks from polluted flats or waters for the purpose of such experiments.

III. Sale of purified shellfish. The department may authorize the sale of any and all shellfish which have been purified by the experiments authorized in this section, provided that the purified shellfish have a bacteriological quality at least equal to shellfish of the same species harvested from local approved areas.'

Sec. 3. R. S., c. 37-A, § 52, sub-§§ I-IV, amended. The first sentence of section 52 and subsections I to IV of section 52 of chapter 37-A of the Revised Statutes, as enacted by section 1 of chapter 331 of the public laws of 1959, are amended to read as follows:

'It is unlawful for any person, firm or corporation to ship beyond the limits of this State any soft-shell clams, quahogs or mussels, whether the same have been removed from the shell or not, or to sell such shellfish to another for shipment or transportation beyond the limits of the State, or to cause the same to be done, without having a current shellfish certificate from the ~~Commissioner of Agriculture~~ **commissioner** as provided in this section.

I. Application. Any person, firm or corporation may apply for a shellfish certificate on a form provided by the ~~Commissioner of Agriculture~~ **commissioner**. Each application for a shellfish certificate must contain the following:

A. It must be signed by the applicant.

B. It must show the names of persons licensed to fish, dig and sell clams, quahogs and mussels, if any, from whom such shellfish in the shell are to be procured by the applicant.

C. It must show the name of the persons holding shucking certificates, if any, from whom shucked soft-shell clams, quahogs or mussels are to be procured by the applicant.

II. Issuance of certificate; contents of certificate. If the ~~Commissioner of Agriculture~~ **commissioner** is satisfied that all persons named in the application are properly licensed or certified, he may issue the applicant a certificate. The certificate must contain the following:

A. The certificate must bear a number.

B. The certificate must designate the persons from whom clams, quahogs and mussels in the shell may be procured for interstate shipment or transportation.

C. The certificate must also show from whom soft-shell clams, quahogs and mussels that have been shucked or removed from the shell, may be procured for interstate shipment.

II-A. Holder to make and file records with department. The holder of the certificate shall make a record of all sales and purchases of shellfish on forms

supplied by the department and shall file those records with the department weekly. The records must contain the following information:

- A. The location of the flats where the shellfish were dug and the amounts dug in each location.
- B. The amounts of shellfish sold and where sold.

III. Expiration of certificates. Shellfish certificates issued under ~~the provisions of~~ this section expire at midnight on December 31st of the calendar year in which they were issued, unless sooner suspended, and must be renewed annually thereafter.

IV. Suspension of certificate. The ~~Commissioner of Agriculture commissioner~~ may suspend for any period of time any certificate issued by him, or the right to obtain a certificate, whenever ~~it is determined by him that~~ the holder of the certificate has violated any provision of the certificate or any law or regulation pertaining to shellfish.

A. The commissioner shall immediately suspend any or all shellfish certificates, intrastate shellfish permits and interstate shellfish transportation licenses if he is satisfied that evidence exists of shellfish poisoning caused by shellfish taken from the State and that the exact source of the contaminated shellfish is not definitely known.

1. He shall cause notice of the suspension to be published in the state paper and the suspension is effective from the moment of that publication.
2. The commissioner shall lift the suspension as soon as he is satisfied that the source of the poisoning has been located and isolated or that the danger of shellfish poisoning no longer exists. The commissioner shall publish notice of the lifting of the suspension in the state paper and the suspension is terminated the moment of publication.'

Sec. 4. R. S., c. 37-A, § 53, sub-§ VII, additional. Section 53 of chapter 37-A of the Revised Statutes, as enacted by section 1 of chapter 331 of the public laws of 1959 and as amended, is further amended by adding a new subsection VII, to read as follows:

'VII. Suspension in event of shellfish poisoning. In event of evidence of shellfish poisoning as provided in section 52, the commissioner shall suspend any or all interstate shellfish transportation licenses in the manner and for the reasons set forth in that section.'

Sec. 5. R. S., c. 37-A, § 55, amended. Section 55 of chapter 37-A of the Revised Statutes, as enacted by section 1 of chapter 331 of the public laws of 1959, is amended as follows:

'Sec. 55. Shellfish certificate required to pack or shuck shellfish for interstate shipment. It is unlawful for any person, firm or corporation to pack any clams, quahogs or mussels, whether or not removed from the shell or to shuck or remove from the shell any clams, quahogs or mussels for shipment or transportation beyond the limits of the State, or to cause the same to be done, without first having a current certificate for that purpose from the ~~Commissioner of Agriculture~~ commissioner as provided in this section.

It is unlawful for any person, firm or corporation to buy or take from any person any clams, quahogs or mussels which have been packed, whether or not they have been removed from the shell, for shipment or transportation beyond the limits of the State, or cause the same to be done, unless the clams, quahogs and mussels were packed in a packing house or shucking house certified by the commissioner at the time they were packed.

It is unlawful for any person, firm or corporation to buy, or take from any person any shucked clams, quahogs or mussels for shipment or transportation beyond the limits of the State, or to cause the same to be done, unless the clams, quahogs and mussels were shucked in a shucking house certified by the ~~Commissioner of Agriculture~~ commissioner at the time of the shucking.

I. Application. Any person, firm or corporation may make application on blanks furnished by the ~~Commissioner of Agriculture~~ commissioner for a shellfish packer's or shucker's certificate giving authority to pack or to shuck and remove clams, quahogs and mussels from the shell for shipment or transportation beyond the limits of the State. Each application must contain the following:

- A. It must be signed by the applicant.
- B. It must show the exact location of the flats from which the clams, quahogs and mussels are to be dug.
- C. It must show the exact location within the State of the packing house where the shellfish will be packed or the shucking house where the shellfish will be removed from the shell.
- D. It must bear all the names of all the persons who will dig the clams, quahogs and mussels that are to be packed or shucked, and shipped by the applicant beyond the limits of the State.

II. Issuance of certificate. The ~~Commissioner of Agriculture~~ commissioner may issue this certificate if he is satisfied that the packing house or shucking house and premises conform to the sanitary standards recommended by the United States Public Health Service and conform to the laws and regulations of the State of Maine, and if he is also satisfied that the shucked product from the shucking house conforms to the standards of purity and quality recommended by the United States Public Health Service and conforms to the laws and regulations of the State of Maine.

III. Contents of certificate. The certificate must bear a number and designate by local name the areas from which clams, quahogs and mussels may be taken, packed or shucked, transported, shipped or sold by the applicant.

It must ~~also~~ bear the names of all persons who will dig the shellfish that are to be packed or shucked.

IV. Authorization of holder. The certificate entitles the holder to either pack or shuck or both as specified in the certificate, clams, quahogs and mussels for interstate trade at the packing or shucking house specified in the certificate which are dug in the flats specified in the certificate, and are dug by the persons specified in the certificate.

V. Expiration of certificate. Shellfish shucking certificates issued under ~~the provision of~~ this section expire at midnight on December 31st of the calendar year in which they were issued, unless sooner revoked or suspended.

VI. Suspension of certificate. ~~The Commissioner of Agriculture commissioner~~ may suspend for any period of time any certificates issued by him, or the right to obtain a certificate, whenever he determines that any of the provisions of law or of regulations governing the shipment or transportation of clams, quahogs or mussels, or the provisions of law or regulations governing establishments where the clams, quahogs or mussels are shucked ~~or packed~~ have been violated.

VI-A. Holder to make reports. The holder of any certificate issued under this section shall make a record of all sales and purchases of shellfish covered by this section on forms supplied by the department and shall file those records with the department weekly. The records and reports must contain the following information:

A. The location of the flats where the shellfish are dug and the amounts dug in each location.

B. The amounts of shellfish sold and where sold.

VII. Exceptions. ~~The provisions of this~~ This section ~~do~~ does not apply to shellfish shucked for sale in intrastate trade, nor to shellfish shucked in hotels or restaurants for serving on the premises, nor to shucking shellfish at home for home consumption.'

Sec. 6. R. S., c. 37-A, § 56, sub-§ I, ¶ A, amended. Paragraph A of subsection I of section 56 of chapter 37-A of the Revised Statutes, as enacted by section 1 of chapter 331 of the public laws of 1959, is amended as follows:

'A. The name of the consignor, ~~the number of the shellfish certificates under which they are being shipped, or the number of the shellfish interstate transportation licenses under which they are being transported, the number of the certificates under which they were packed,~~ and, if the shellfish have been removed from the shell, the number of the shellfish ~~certificate certificates~~ under which they were shucked.'

Sec. 7. R. S., c. 37-A, § 64, sub-§ III, ¶ D, amended. Paragraph D of subsection III of section 64 of chapter 37-A of the Revised Statutes, as enacted by section 1 of chapter 331 of the public laws of 1959, is amended as follows:

'D. The licensee may ship, but not transport, shellfish beyond the limits of the State, provided he holds a current shellfish certificate from the ~~Commissioner of Agriculture commissioner~~.'

Sec. 8. R. S., c. 37-A, § 55-A, additional. Chapter 37-A of the Revised Statutes, as enacted by section 1 of chapter 331 of the public laws of 1959, is amended by adding a new section 55-A, to read as follows:

'Sec. 55-A. Intrastate shellfish permit. It is unlawful for any person, firm or corporation to shuck any clams, quahogs or mussels for sale to stores,

restaurants or other dealer in the intrastate trade, or cause the same to be done, without having a current permit for that purpose from the commissioner.

It is unlawful for any person, firm or corporation to buy or take from any person any clams, quahogs or mussels, removed from the shell for the purpose of serving them in any restaurant or selling them in any store, or to any other dealer in this State, unless the shellfish are in containers marked with the intrastate shellfish permit number under which they were shucked.

I. Application. Any person, firm or corporation may make application on blanks furnished by the commissioner for a shellfish shucker's permit giving authority to shuck and remove clams, quahogs and mussels from the shell for sale to stores, restaurants or other dealer in the intrastate trade. Each application must contain the following:

A. It must be signed by the applicant.

B. It must show the exact location of the flats from which the clams, quahogs and mussels are to be dug.

C. It must show the exact location within the State of the shucking house where the shellfish will be removed from the shell.

D. It must bear all the names of all the persons who will dig the clams, quahogs and mussels that are to be shucked by the applicant.

II. Issuance of permit. The commissioner may issue this permit if he is satisfied that the shucking house and premises conform to the sanitary standards recommended by the United States Public Health Service and conform to the laws and regulations of the State of Maine, and if he is also satisfied that the shucked product from the shucking house conforms to the standards of purity and quality recommended by the United States Public Health Service and conforms to the laws and regulations of the State of Maine.

A. The commissioner shall adopt regulations, after public hearing, setting forth the minimum standards and requirements consistent with necessary standards for the physical plant and equipment for operation of a shucking house under this section. Notice of the public hearing must be published once at least 7 days before the hearing in the state paper. The regulations adopted after the hearing must also be published in the state paper 7 days before they become effective. They may be amended or repealed at any time by the commissioner after like notice, hearing and publication.

III. Contents of permit. The permit must bear a number and designate by local name the areas from which clams, quahogs and mussels may be taken under the permit. It must bear the names of all persons who will dig the shellfish that are to be shucked.

IV. Authorization of holder. The permit entitles the holder to shuck clams, quahogs and mussels for intrastate trade at the shucking house specified in the permit which are dug in the flats specified in the permit and are dug by the persons specified in the permit.

V. Expiration of permits. Shellfish shucking permits issued under this section expire at midnight on December 31st of the calendar year in which they were issued, unless sooner revoked or suspended.

VI. Suspension of permits. The commissioner may suspend for any period of time any permits issued by him, or the right to obtain a permit whenever he determines that any of the provisions of law or regulations governing the shipment or transportation of clams, quahogs or mussels, or the provisions of law or regulations governing establishments where the clams, quahogs or mussels are shucked have been violated.

A. The commissioner may also suspend any permits issued under this section under the procedure set forth in section 52, subsection IV, as amended.

VII. Holder to make reports. The holder of any permit issued under this section shall make a record of all sales and purchases of shellfish covered by this section on forms supplied by the department and shall file those records with the department weekly. The records and reports must contain the following information:

A. The location of the flats where the shellfish are dug and the amounts dug in each location.

B. The amounts of shellfish sold and where sold.'

Sec. 9. Effective date. This act shall take effect January 1, 1964.