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2 An act relating to Brevard County; amending ch.
3 94-419, Laws of Florida, as amended; providing
4 certain restrictions and requirements on
5 licensure on the harvesting of clams; providing
6 penalties; providing an effective date.

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8 Be It Enacted by the Legislature of the State of Florida:

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10 Section 1. Chapter 94-419, Laws of Florida, as amended
11 by section 1 of chapter 96-463, Laws of Florida, is amended to
12 read:

13 Section 1. A person, firm, or corporation may not
14 harvest clams of the genus Mercenaria from the saltwaters of
15 Brevard County without a valid clam license issued by the
16 Department of Environmental Protection and a valid saltwater
17 products license bearing an RS endorsement.

18 Section 2. (1) The Department of Environmental
19 Protection shall issue a resident or nonresident clam license
20 during a 61-day period beginning June 1 of each year, except
21 that in 1994 the 61-day period shall begin on the effective
22 date of this act. The term of the license begins on July 1 of
23 the purchase year and ends on June 30 of the third succeeding
24 year. The fee for a resident license is \$300, and the fee for
25 a nonresident license is \$1,200. The license is valid only for
26 the individual licensee to whom it is issued. The nonresident
27 license must be readily distinguishable from the resident
28 license.

29 (2) Only persons who are bona fide permanent residents
30 of this state and firms and corporations that are organized
31 under the laws of this state are eligible for the resident

1 license. A person, firm, or corporation that has had its
2 license to harvest shellfish in this state or any other state
3 suspended or revoked is ineligible for either a resident or
4 nonresident clam license for the duration of that suspension
5 or revocation. Proof of eligibility must be by means of an
6 affidavit sworn to by the applicant and additional
7 documentation that shows, to the satisfaction of the
8 Department of Environmental Protection, that the applicant is
9 a natural person permanently residing in this state or is a
10 firm or corporation organized under the laws of this state.

11 (3) A license may be purchased after the annual 61-day
12 license issuance period upon the payment of an additional
13 \$1,200 late fee to the department.

14 (4) Beginning June 1, 1996, no new clam licenses shall
15 be issued by the Department of Environmental Protection until
16 the total number of active and renewed clam licenses for
17 Brevard County falls below 500 for the previous license year.
18 In any year thereafter, the department may issue such
19 additional new licenses to bring the total number of licenses
20 issued for Brevard County up to a maximum of 500.

21 (5) Any clam licenses not renewed within 6 months
22 after their expiration date are not eligible for renewal until
23 additional new licenses also become available.

24 (6) Beginning with the 1996-1997 license year, the
25 Department of Environmental Protection shall hold, on a
26 semiannual basis, a required educational seminar of up to 4 ~~8~~
27 hours, but not less than 2 ~~4~~ hours, regarding harvesting,
28 health standards, and any other issues appropriate to the
29 health of the clam resources and the clamming industry. Proof
30 of attendance at one such seminar per year is required before
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1 any clam license may be renewed for the 1997-1998 license year
2 or subsequent license years.

3 Section 3. Each person, firm, or corporation that
4 holds a resident or nonresident clam license must produce such
5 license, along with a valid saltwater products license bearing
6 an RS endorsement, upon demand of any law enforcement officer,
7 within a reasonable period of time after the demand is made.

8 Section 4. (1) The license required by this act may
9 be issued in the form of an endorsement on the licensee's
10 saltwater products license card. Each person, firm, or
11 corporation that obtains a license under this act must
12 prominently display the license number upon any vessel used,
13 in numbers that are at least 8 inches in height and 1 inch in
14 width and in such manner that the permit number is readily
15 identifiable from both the air and the water. Only one vessel
16 displaying a given number may be used at any time.

17 (2) Any vessel used for harvesting clams in Brevard
18 County shall have on board a portable or U.S. Coast
19 Guard-approved marine sanitation device having a holding tank
20 and any thru valve shut and fixed in a closed position.

21 (3) All license holders harvesting clams by swimming
22 at or below the surface of the water and using an underwater
23 breathing apparatus must be certified divers. A person
24 harvesting clams in such a manner may not use more than 150
25 feet of air hose and must have a diver down flag floating as
26 close by as practical.

27 Section 5. The proceeds from the collection of license
28 fees or civil penalties under this act, including any late
29 fees, are to be deposited in the Marine Biological Research
30 Trust Fund of the Department of Environmental Protection and,
31 less reasonable administrative and educational costs, must be

1 appropriated for the testing and reclassification of
2 shellfish-harvesting waters in Brevard County. A portion of
3 the proceeds, not less than 40 percent, must be used to mark
4 those open and closed waters of Brevard County until all such
5 waters are so marked. An additional portion of the proceeds,
6 not to exceed \$200,000, may be used as matching funds for the
7 construction of boat-launching facilities in various areas of
8 benefit to and in coordination with the Brevard County
9 clamming industry. The amount of these matching funds may not
10 exceed 25 percent of the total projected costs of the
11 launching facilities.

12 Section 6. (1) A person, firm, or corporation may not
13 ship, transport, or otherwise carry by public or private
14 carrier, vehicle, or vessel, within the limits of Brevard
15 County, whether over the land, on water, or in the air, clams
16 in numbers greater than those allowed by rules of the Marine
17 Fisheries Commission.

18 (2) Subsection (1) does not prohibit a certified
19 wholesale or retail dealer, or any person who is employed by
20 such wholesale or retail dealer or is serving such wholesale
21 or retail dealer, from transporting clams, taken lawfully and
22 in lawful amounts, directly to a licensed, certified wholesale
23 or retail dealer or shucking house. This act does not
24 prohibit the removal and transportation of clams lawfully
25 taken from an authorized clam lease by the leaseholder or his
26 authorized agent.

27 Section 7. Except for section 11,this act does not
28 apply to a natural person possessing or harvesting clams in
29 noncommercial quantities during open season designated by law
30 or regulation.

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1 Section 8. This act shall not apply to any aquaculture
2 operations licensed pursuant to chapter 370, Florida Statutes.

3 Section 9. Any person, firm, or corporation that
4 violates any of the provisions of this act is guilty of a
5 misdemeanor of the second degree, punishable as provided in
6 section 775.082 or section 775.083, Florida Statutes.

7 Section 10. (1) In addition to being subject to the
8 other penalties provided in this act, a person, firm, or
9 corporation that commits a major violation is subject to the
10 following civil penalties:

11 (a) For a first major violation within a 7-year
12 period, a civil penalty equal to the wholesale value of the
13 illegal clams and suspension of the clam license for 90 days.

14 (b) For a second major violation within a 7-year
15 period, a civil penalty of \$5,000 and suspension of the clam
16 license for 12 months.

17 (c) For a third or subsequent major violation within a
18 7-year period, a civil penalty of \$5,000, lifetime revocation
19 of the clam license, and forfeiture of all gear and equipment
20 used in the violation.

21 (2) During any period of license suspension or
22 revocation under this section, the licensee may not fish from
23 any vessel that is harvesting clams.

24 (3) The Department of Environmental Protection may
25 bring a civil action to enforce the civil penalties prescribed
26 in this section.

27 (4) As used in this section, the term "major
28 violation" includes:

29 (a) The possession of more than one bushel of
30 undersized clams;

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1 (b) The harvesting of clams more than 1/4 mile
2 inside the boundaries of any closed area and at least 24 hours
3 after that area has been closed; or

4 (c) The sale of clams harvested from any waters or
5 leases that have not been tested and are not open at the time
6 of the harvest.

7 Section 11. It is unlawful for any person to harvest
8 clams in Brevard County, whether such harvesting is for
9 private use, commercial sale, or relaying, from any submerged
10 land that is within 75 feet of a shoreline of the Indian River
11 or the Banana River which abuts property that is used for
12 residential purposes or within 75 feet of any canal bank.

13 Section 12 ~~11~~. This act shall ~~take effect upon~~
14 ~~becoming a law, and shall expire July 1, 2001, except that the~~
15 ~~amendments to sections 1 and 4(3) of chapter 94-419, Laws of~~
16 ~~Florida, shall take effect July 1, 1996.~~

17 Section 2. This act shall take effect July 1, 1998.