

By Senator Bronson

18-639A-99

1 A bill to be entitled
2 An act relating to Brevard County; amending ch.
3 94-419, Laws of Florida, as amended; providing
4 a procedure for the issuance of new licenses
5 for the harvesting of clams; providing an
6 expiration date; 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, and by
12 section 1 of chapter 98-486, Laws of Florida, is amended to
13 read:

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

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

30 (2) Only persons who are bona fide permanent residents
31 of this state and firms and corporations that are organized

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

12 (3) A license may be purchased after the annual 61-day
13 license issuance period upon the payment of an additional
14 \$1,200 late fee to the department.

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

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

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

1 clam license may be renewed for the 1997-1998 license year or
2 subsequent license years.

3 (7) On July 1 of each year, the Department of
4 Environmental Protection will determine if the total number of
5 licenses has fallen below 500. If so, the department may issue
6 new licenses under the following stipulations:

7 (a) First priority will be given to current Brevard
8 County Hard Clam License holders who have missed one of the
9 required educational seminars. Applicants will have a 60-day
10 period beginning July 1 to apply for a new license and
11 complete the missed educational seminar.

12 (b) Second priority will be given to past Brevard
13 County Hard Clam License holders under this act. Applicants
14 will have a 60-day period beginning September 1 to apply for a
15 new license and complete all missed educational seminars.

16 (c) Final priority will be on a first-come
17 first-served basis. Applicants will have a 60-day period
18 beginning November 1 to apply for a new license and complete
19 all educational seminars.

20 (d) New licenses will not be issued between January 1
21 and June 30 of any year.

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

27 Section 4. (1) The license required by this act may
28 be issued in the form of an endorsement on the licensee's
29 saltwater products license card. Each person, firm, or
30 corporation that obtains a license under this act must
31 prominently display the license number upon any vessel used,

1 in numbers that are at least 8 inches in height and 1 inch in
2 width and in such manner that the permit number is readily
3 identifiable from both the air and the water. Only one vessel
4 displaying a given number may be used at any time.

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

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

15 Section 5. The proceeds from the collection of license
16 fees or civil penalties under this act, including any late
17 fees, are to be deposited in the Marine Biological Research
18 Trust Fund of the Department of Environmental Protection and,
19 less reasonable administrative and educational costs, must be
20 appropriated for the testing and reclassification of
21 shellfish-harvesting waters in Brevard County. A portion of
22 the proceeds, not less than 40 percent, must be used to mark
23 those open and closed waters of Brevard County until all such
24 waters are so marked. An additional portion of the proceeds,
25 not to exceed \$200,000, may be used as matching funds for the
26 construction of boat-launching facilities in various areas of
27 benefit to and in coordination with the Brevard County
28 clamming industry. The amount of these matching funds may not
29 exceed 25 percent of the total projected costs of the
30 launching facilities.

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

7 (2) Subsection (1) does not prohibit a certified
8 wholesale or retail dealer, or any person who is employed by
9 such wholesale or retail dealer or is serving such wholesale
10 or retail dealer, from transporting clams, taken lawfully and
11 in lawful amounts, directly to a licensed, certified wholesale
12 or retail dealer or shucking house. This act does not
13 prohibit the removal and transportation of clams lawfully
14 taken from an authorized clam lease by the leaseholder or his
15 authorized agent.

16 Section 7. Except for section 11, this act does not
17 apply to a natural person possessing or harvesting clams in
18 noncommercial quantities during open season designated by law
19 or regulation.

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

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

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

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

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

7 (c) For a third or subsequent major violation within a
8 7-year period, a civil penalty of \$5,000, lifetime revocation
9 of the clam license, and forfeiture of all gear and equipment
10 used in the violation.

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

14 (3) The Department of Environmental Protection may
15 bring a civil action to enforce the civil penalties prescribed
16 in this section.

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

19 (a) The possession of more than one bushel of
20 undersized clams;

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

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

27 Section 11. It is unlawful for any person to harvest
28 clams in Brevard County, whether such harvesting is for
29 private use, commercial sale, or relaying, from any submerged
30 land that is within 75 feet of a shoreline of the Indian River
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1 or the Banana River which abuts property that is used for
2 residential purposes or within 75 feet of any canal bank.
3 Section 12. This act shall expire July 1, 2003 ~~2001~~.
4 Section 2. This act shall take effect July 1, 1999.
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