

House Bill No. 1671

An act relating to Brevard County; amending chapter 94-419, Laws of Florida, as amended; conforming provisions relating to clam harvesting licenses to the transfer of duties from the Department of Environmental Protection to the Fish and Wildlife Conservation Commission; revising provisions relating to the use of proceeds from the collection of licensing fees; deleting authority to use a portion of such proceeds for boat launching facilities; requiring moneys to be used for clam resource restoration and enhancement projects; providing an effective date.

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

Section 1. Chapter 94-419, Laws of Florida, as amended by chapters 96-463, 98-486, and 99-416, Laws of Florida, is amended to read:

Section 1. A person, firm, or corporation may not harvest clams of the genus *Mercenaria* from the salt waters of Brevard County without a valid clam license issued by the Fish and Wildlife Conservation Commission ~~Department of Environmental Protection~~ and a valid saltwater products license bearing an RS endorsement.

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

(2) Only persons who are bona fide permanent residents of this state and firms and corporations that are organized under the laws of this state are eligible for the resident license. A person, firm, or corporation that has had its license to harvest shellfish in this state or any other state suspended or revoked is ineligible for either a resident or nonresident clam license for the duration of that suspension or revocation. Proof of eligibility must be by means of an affidavit sworn to by the applicant and additional documentation that shows, to the satisfaction of the Fish and Wildlife Conservation Commission ~~Department of Environmental Protection~~, that the applicant is a natural person permanently residing in this state or is a firm or corporation organized under the laws of this state.

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

(4) Beginning June 1, 1996, no new clam licenses shall be issued by the Department of Environmental Protection or the Fish and Wildlife Conserva-

tion Commission until the total number of active and renewed clam licenses for Brevard County falls below 500 for the previous license year. In any year thereafter, the commission department may issue such additional new licenses to bring the total number of licenses issued for Brevard County up to a maximum of 500.

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

(6) Beginning with the 1996-1997 license year, the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or the Fish and Wildlife Conservation Commission shall hold, on a semiannual basis, a required educational seminar of up to 4 hours, but not less than 2 hours, regarding harvesting, health standards, and any other issues appropriate to the health of the clam resources and the clamming industry. Proof of attendance at one such seminar per year is required before any clam license may be renewed for the 1997-1998 license year or subsequent license years.

(7) On July 1 of each year, the Fish and Wildlife Conservation Commission ~~Department of Environmental Protection~~ will determine if the total number of licenses has fallen below 500. If so, the commission department may issue new licenses under the following stipulations:

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

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

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

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

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

Section 4. (1) The license required by this act may be issued in the form of an endorsement on the licensee's saltwater products license card. Each person, firm, or corporation that obtains a license under this act must prominently display the license number upon any vessel used, in numbers that are at least 8 inches in height and 1 inch in width and in such manner that the

permit number is readily identifiable from both the air and the water. Only one vessel displaying a given number may be used at any time.

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

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

Section 5. The proceeds from the collection of license fees or civil penalties under this act, including any late fees, are to be deposited in the General Inspection Trust Fund of the Department of Agriculture and Consumer Services ~~Department of Environmental Protection~~ and, less reasonable administrative and educational costs, must be appropriated for the initial testing and reclassification of shellfish-harvesting waters in Brevard County. A portion of the proceeds, not more less than 40 percent, must be used to mark those open and closed waters of Brevard County until all such waters are so marked. An additional portion of the proceeds must be used for clam resource restoration and enhancement projects, not to exceed \$200,000, may be used as matching funds for the construction of boat-launching facilities in various areas of benefit to and in coordination with the Brevard County clamming industry. ~~The amount of these matching funds may not exceed 25 percent of the total projected costs of the launching facilities.~~

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

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

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

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

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

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

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

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

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

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

(3) The ~~Fish and Wildlife Conservation Commission~~ Department of Environmental Protection may bring a civil action to enforce the civil penalties prescribed in this section.

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

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

(b) The harvesting of clams more than $\frac{1}{4}$ mile inside the boundaries of any closed area and at least 24 hours after that area has been closed; or

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

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

Section 12. This act shall expire July 1, 2003.

Section 2. This act shall take effect July 1, 2000.

Approved by the Governor June 5, 2000.

Filed in Office Secretary of State June 5, 2000.