



House of Representatives

General Assembly

File No. 482

February Session, 2004

Substitute House Bill No. 5241

House of Representatives, April 6, 2004

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING SHELLFISHING VIOLATIONS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 26-192f of the general statutes, as amended by
2 section 146 of public act 03-6 of the June 30 special session, is repealed
3 and the following is substituted in lieu thereof (*Effective July 1, 2004*):

4 Any person, firm or corporation (1) harvesting or taking shellfish
5 from an area closed and posted by the Department of Agriculture and
6 Consumer Protection against the [taking] removal of shellfish, except
7 as provided in section 26-192h, or an area closed by commercial
8 shellfish transplant license issuance or by order of the local director of
9 health with the approval of the department, (2) misusing any shipping
10 tag or license in violation of section 26-192c, as amended, (3)
11 mislabeling shellfish shipments or deliveries with any false
12 information, (4) failing to identify shellfish shipments or deliveries in
13 accordance with regulations adopted by the department, [or] (5)
14 [failing to surrender a license to the department upon request,]

15 harvesting shellfish from undesignated grounds, or (6) harvesting
16 shellfish from designated grounds not listed on a license issued by the
17 Department of Agriculture and Consumer Protection to such person,
18 firm or corporation shall be fined [not less than fifty dollars nor more
19 than] (A) one thousand dollars, or (B) three times the market value of
20 any shellfish taken, based on the quantity and type [,] involved in the
21 violation if such amount is greater than one thousand dollars, or
22 imprisoned not more than twelve months and shall surrender any
23 such shellfish license to the department upon request. The
24 Commissioner of Agriculture and Consumer Protection may revoke
25 any license issued by said commissioner for ninety days for the first
26 violation of this section, one hundred eighty days for a second
27 violation of this section, one year for a third violation and permanently
28 for a fourth violation. Any person who defaces or removes a sign
29 posted by the Department of Agriculture and Consumer Protection in
30 accordance with the provisions of section 26-192e, as amended, shall
31 be fined not more than five hundred dollars or imprisoned not more
32 than six months. The provisions of this section are in addition to and in
33 no way derogate any other enforcement provisions or penalties
34 contained in any other section of the general statutes.

35 Sec. 2. Section 26-235 of the general statutes, as amended by section
36 146 of public act 03-6 of the June 30 special session, is repealed and the
37 following is substituted in lieu thereof (*Effective July 1, 2004*):

38 (a) No person shall take any long clams less than one and one-half
39 inches in length, provided the Waterford-East Lyme shellfish
40 commission may make such residency requirements for digging or
41 taking clams from the shores or waters of the Niantic River as it deems
42 reasonable and in the best public interest of the Waterford-East Lyme
43 area. Unless otherwise provided by statute, regulation or local
44 ordinance, the recreational harvest limit of clams shall not exceed
45 one-half bushel per person daily. The Commissioner of Agriculture
46 and Consumer Protection may designate by regulations adopted in
47 accordance with the provisions of chapter 54 shores and waters for the
48 exclusive recreational harvesting of clams. For the purposes of this

49 section, recreational harvest of clams means the collection of clams by
50 an individual for [his own or his family's consumption] personal
51 consumption or consumption by such individual's family.

52 (b) The common council of any consolidated town and city and the
53 selectmen of any other town may determine the quantity of clams to be
54 taken therein by a person during one day and may prohibit, for a
55 period not exceeding one year, the taking of clams from any waters or
56 beaches they may designate within the territorial limits of such town, if
57 they deem such prohibition necessary for the protection of the natural
58 clam areas, by posting notices on such designated territorial limits
59 stating that the taking of clams within such areas is prohibited.

60 (c) Any person who violates any provision of subsection (a) or (b) of
61 this section shall have committed an infraction.

62 (d) Any person who takes clams from an area closed and posted
63 against the taking of clams by the Department of Agriculture and
64 Consumer Protection, or from an area closed by license issuance or by
65 order of a local health department shall be fined not less than seventy-
66 five dollars nor more than one thousand dollars or three times the
67 market value of any clams taken, based on the quantity and type
68 involved in the violation, if such amount is greater than one thousand
69 dollars, or imprisoned not more than twelve months.

70 (e) Any person who defaces or removes a sign posted by the
71 Department of Agriculture and Consumer Protection, in accordance
72 with the provisions of section 26-192e, as amended, shall be fined not
73 more than five hundred dollars or imprisoned not more than six
74 months.

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| This act shall take effect as follows: | |
| Section 1 | July 1, 2004 |
| Sec. 2 | July 1, 2004 |

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

| Agency Affected | Fund-Effect | FY 05 \$ | FY 06 \$ |
|-------------------------------|---------------------|-------------------|-------------------|
| Department of Agriculture | GF - None | None | None |
| Resources of the General Fund | GF - Revenue Impact | Potential Minimal | Potential Minimal |

Note: GF=General Fund

Municipal Impact: None

Explanation

Any revenue gain under the bill due to increased and/or expanded penalties is anticipated to be minimal.

OLR Bill Analysis

HB 5241

AN ACT CONCERNING SHELLFISHING VIOLATIONS

SUMMARY:

This bill makes it illegal for a person, firm, or corporation to harvest shellfish from shellfish beds for which he or it is not licensed, or which are undesignated. It (1) makes it illegal to harvest, as well as take, shellfish from certain areas closed by order or issuance of a license; (2) increases the penalty for violating various shellfish laws; and (3) specifically applies to recreational clam fishermen (people who take clams for personal or family consumption) certain laws already applicable to commercial shellfishermen.

By law, it is illegal to take shellfish from an area the Department of Agriculture and Consumer Protection (DACP) has closed and posted against such taking. The bill specifies that it is illegal to harvest, as well as take, shellfish from an area posted against the removal, rather than the taking, of shellfish from such an area. It exempts commercial shellfish harvesters who remove shellfish for transplanting and similar activities.

By law, it is also illegal to take shellfish from an area closed by the issuance of a transplant license. The bill specifies that it is illegal to harvest, as well as take, shellfish from an area closed only by the issuance only of a commercial shellfish transplant license. The department also issues town recreational transplant licenses.

The bill eliminates a penalty for failing to surrender a shellfish license upon request, but it authorizes DACP to request such a surrender as part of the penalty for illegally taking shellfish worth more than \$1,000.

EFFECTIVE DATE: July 1, 2004

INCREASED PENALTIES FOR VIOLATING COMMERCIAL SHELLFISHING LAWS

By law, any person, firm, or corporation that violates various shellfish

laws can be fined between \$50 and \$1,000. Any person, firm, or corporation that illegally takes shellfish worth more than \$1,000 may be fined between \$50 and three times their market value, or sentenced to up to 12 months in prison. The bill increases the minimum fine for violating any of the shellfish laws listed below to \$1,000 and requires those who illegally take shellfish worth more than \$1,000 to surrender their shellfish license at DACP's request, in addition to the penalties under existing law. It authorizes the commissioner to revoke the license of anyone who violates any of the laws below for 90 days upon a first violation, 180 days for a second violation, one year for a third, and permanently for a fourth. The bill specifies that these penalties are in addition to other penalties the law authorizes.

The increased penalties apply to any person, firm, or corporation who

1. harvests or takes shellfish from an area (a) DACP closed and posted against the removal of shellfish, except for commercial shellfishermen harvesting shellfish for transplanting, (b) closed by the issuance of a commercial shellfish transplant license, or (c) closed by a DACP-approved order of the local health director;
2. misuses any shipping tag or license;
3. mislabels shellfish shipments or deliveries with false information;
4. fails to identify shellfish shipments or deliveries according to regulation;
5. harvests shellfish from undesignated grounds; or
6. harvests shellfish from designated grounds not listed on the person's, firm's or corporation's license.

VIOLATIONS BY RECREATIONAL SHELLFISHERMEN

The bill specifically applies to recreational shellfishermen laws making it illegal to (1) take clams from a DACP-posted and closed area and (2) deface or remove DACP signs.

The bill makes it illegal to take clams for personal or family consumption from an area (1) DACP has closed and posted against the taking of clams or (2) closed by the issuance of a license or local public health department order. Violators may be fined from \$75 to \$1,000 if the clams' value is \$1,000 or less. If the clams' value is more than \$1,000, violators may be fined three times their market value, based on their quantity and type, or imprisoned up to 12 months.

The bill subjects any person who defaces or removes a DACP sign closing any coastal waters, shores, or tidal flats to shellfishing to a fine of up to \$500 or six months in prison.

BACKGROUND

Department of Agriculture and Consumer Protection (DACP)

The departments of Agriculture and Consumer Protection are scheduled to merge into DACP on July 1, 2004, the effective date of this bill.

COMMITTEE ACTION

Environment Committee

Joint Favorable Change of Reference
Yea 25 Nay 0

Judiciary Committee

Joint Favorable Report
Yea 42 Nay 0