

1985 Senate Bill 618

Date of enactment: April 21, 1986
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1985 Wisconsin Act 289

AN ACT to renumber and amend 29.16; to amend 29.092 (7) (title) and 29.093 (7) (title); and to create 29.092 (7) (i) to (n), 29.093 (7) (f) to (i), 29.16 (2), 29.38 and 29.99 (1m) of the statutes, relating to the regulation and licensing of commercial clamming, granting rule-making authority and providing penalties.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. Legislative intent. The legislature declares that the purposes of this act will be best achieved if the department of natural resources acts quickly to establish reciprocity with the states listed under section 29.16 (2) of the statutes.

SECTION 2. 29.092 (7) (title) of the statutes is amended to read:

29.092 (7) (title) COMMERCIAL FISHING, COMMERCIAL CLAMMING AND WHOLESALE FISH DEALER LICENSES; TAGS.

SECTION 3. 29.092 (7) (i) to (n) of the statutes are created to read:

29.092 (7) (i) *Resident clam buyer license.* The fee for a resident clam buyer license is \$300.

(j) *Nonresident clam buyer license.* The fee for a nonresident clam buyer license is \$2,500.

(k) *Assistant clam buyer license.* There is no fee for an assistant clam buyer license.

(L) *Clam helper license.* There is no fee for a clam helper license.

(m) *Resident commercial clam sheller license.* The fee for a resident commercial clam sheller license is \$30.

(n) *Nonresident commercial clam sheller license.* The fee for a nonresident commercial clam sheller license is \$400.

SECTION 4. 29.093 (7) (title) of the statutes is amended to read:

29.093 (7) (title) COMMERCIAL FISHING, COMMERCIAL CLAMMING AND WHOLESALE FISH DEALER LICENSES.

SECTION 5. 29.093 (7) (f) to (i) of the statutes are created to read:

29.093 (7) (f) *Assistant clam buyer license.* An assistant clam buyer license is valid from January 1 or the date of issuance, whichever is later, until December 31.

(g) *Resident or nonresident clam buyer license.* A resident or nonresident clam buyer license is valid from January 1 or the date of issuance, whichever is later, until December 31.

(h) *Clam helper license.* A clam helper license is valid from January 1 or the date of issuance, whichever is later, until December 31.

(i) *Resident or nonresident commercial clam sheller license.* A resident or nonresident commercial clam sheller license is valid from January 1 or the date of issuance, whichever is later, until December 31.

SECTION 6. 29.16 of the statutes is renumbered 29.16 (1) and amended to read:

29.16 (1) (title) FISHING PRIVILEGES. Whenever and so long as the states of Michigan, Minnesota or Iowa confer upon the fishing licensees of this state reciprocal rights, privileges and immunities, any hook and line or other fishing license, ~~or clamming license~~ issued by such other state shall entitle the licensee to all the rights, privileges and immunities, in and upon the boundary waters between such state and this state, enjoyed by the holders of equivalent licenses issued by this state; subject, however, to the duties, responsibilities and liabilities imposed on its own licensees by the laws of this state.

SECTION 7. 29.16 (2) of the statutes is created to read:

29.16 (2) COMMERCIAL CLAMMING PRIVILEGES. Whenever and so long as the states of Michigan, Minnesota, Iowa, Illinois or Missouri confer upon the commercial clamming licensees of this state reciprocal rights, privileges and immunities, any commercial clamming license issued by such other state shall entitle the licensee to all the rights, privileges and immunities, in and upon the boundary waters between Michigan and this state, between Minnesota and this state and between Iowa and this state, enjoyed by the holders of equivalent licenses issued by this state; subject, however, to the duties, responsibilities and liabilities imposed on its own licensees by the laws of this state.

SECTION 8. 29.38 of the statutes is created to read:

29.38 Clams, clamming and commercial clamming.

(1) **PURPOSE.** The purpose of this section is to regulate the taking of clams in order to conserve and maintain their supply, to require licensing of persons engaged in commercial clamming and to protect those clam species which are endangered, threatened or rare.

(2) **DEFINITIONS.** As used in this section:

(a) "Assistant clam buyer" means any natural person who engages in clam buying on behalf of a clam buyer.

(b) "Clam" means any freshwater mussel, shell, valve or part of any shell, or meat of a freshwater mussel found in inland or outlying waters, but does not include meat after it has been processed for human or animal consumption and does not include bait, pearls, shells and parts of shells which have been mounted for display or fashioned into jewelry or items of apparel.

(c) "Clam buyer" means any person who engages in clam buying or who employs or authorizes an assistant clam buyer to do so on the person's behalf.

(d) "Clam buying" means buying, bartering or obtaining clams from commercial clam shellers or others for resale as clams.

(e) "Clam helper" means any natural person who engages in clam helping.

(f) "Clam helping" means assisting a commercial clam sheller in activities related to commercial clam shelling or assisting a clam buyer in activities relating to clam buying but does not include buying, bartering or obtaining clams from commercial clam shellers or others for resale as clams.

(g) "Clamming" means the taking, killing, collecting or removing of clams from inland or outlying waters or the beds of inland or outlying waters and the incidental killing of clams in the search for pearls but does not include commercial clam shelling.

(h) "Commercial clamming" means commercial clam shelling, clam buying, clam helping and related activities.

(i) "Commercial clam sheller" means any natural person who engages in commercial clam shelling.

(j) "Commercial clam shelling" means the taking, killing, collecting or removing of more than 50 pounds of clams per day from inland or outlying waters or the beds of inland or outlying waters and the incidental killing of more than 50 pounds of clams per day in the search for pearls.

(3) LICENSE OR PERMIT REQUIRED. (a) No person may engage in commercial clam shelling unless at least one of the following applies:

1. The person is a natural person and has been issued a commercial clam sheller license by the department.

2. The person is a licensed clam helper engaged in commercial clam shelling while aboard a vessel with the licensed commercial clam sheller whom the clam helper is assisting.

3. The person is a resident who has not attained the age of 16 years, and the value of the clams taken, killed, collected or removed by that person does not exceed \$1,000 per year. The department may, by rule, require persons under this subdivision to obtain a commercial clam shelling permit, at no charge, with the requirements for the permit to be determined by the department by rule.

(b) No person may engage in clam helping unless the person is a natural person and has been issued a clam helper license by the department.

(c) No person may engage in clam buying unless the person has been issued a clam buyer license or the person is a natural person and has been issued an assistant clam buyer license by the department.

(d) The department may limit the number of licenses and permits issued under this section.

(4) ASSISTANT CLAM BUYERS. (a) A licensed clam buyer may employ or authorize assistant clam buyers to buy clams. Upon proper application, the department shall issue no more than 10 assistant clam buyer licenses with a clam buyer license. Each assistant clam buyer license shall have printed on it the number of the clam buyer license for which it is issued.

(b) A natural person may be issued an assistant clam buyer license for each licensed clam buyer who employs or authorizes the natural person to buy clams.

(c) A licensed clam buyer is responsible for all acts relating to clamming performed by the assistant clam buyers engaged in clam buying activities for the clam buyer. A clam buyer may be charged with and penalized for a violation of this section committed by the assistant clam buyer while the assistant clam buyer is engaged in clam buying activities for the clam buyer.

(d) Upon revocation of a clam buyer license, all assistant clam buyer licenses issued under the clam buyer license shall also be revoked.

(5) CLAM HELPERS. (a) A licensed commercial clam sheller or a licensed clam buyer may employ or authorize a clam helper to assist him or her in activities related to commercial clam shelling or clam buying, but no clam helper may buy, barter or obtain clams from commercial clam shellers or others for resale as clams. Upon proper application, the department shall issue no more than 10 clam helper licenses with each commercial clam sheller license or with each clam buyer license. Each clam helper license shall have printed on it the number of the commercial clam sheller license or clam buyer license for which it is issued.

(b) A natural person may be issued a clam helper license for each licensed commercial clam sheller or licensed clam buyer who employs or authorizes the natural person to engage in clam helping.

(c) A licensed commercial clam sheller or licensed clam buyer is responsible for all acts relating to clamming performed by the clam helpers engaged in clam helping for the commercial clam sheller or clam buyer. A commercial clam sheller or clam buyer may be charged with and penalized for a violation of this section committed by the clam helper while the clam helper is engaged in clam helping for the commercial clam sheller or clam buyer.

(d) Upon revocation of a commercial clam sheller license or clam buyer license, all clam helper licenses issued under the commercial clam sheller license or the clam buyer license shall also be revoked.

(6) INSPECTION; ACCESS TO RECORDS. (a) Except as provided in par. (d), for purposes of enforcement of

this section and rules adopted under it, conservation wardens or department employes authorized and designated by the secretary, upon presenting appropriate credentials to the licensee or agent in charge, are authorized to do all of the following:

1. Enter any place, building or structure, excluding a dwelling place, in which clams or clamming equipment are stored, processed, packed or held and enter any vessel or vehicle being used to transport clams or clamming equipment when the licensee or agent in charge is present or upon 8 hours' notice at other times.

2. Inspect places, buildings, structures, vessels or vehicles, all pertinent equipment used or stored in the places to be inspected and any clams stored, processed, packed or held in the places to be inspected.

(b) No licensee, operator of a vehicle or vessel for the licensee, or employe acting on behalf of the licensee may prohibit entry or prohibit an inspection from being conducted as authorized under par. (a).

(c) The department may examine any records relating to clamming or to commercial clamming.

(d) The department may not conduct an inspection or examine a person's records under this section if such action has been lawfully enjoined by a court order.

(7) **POSSESSION, TRANSPORTATION AND SALE.** No person may possess or transport more than 50 pounds of clams or sell or barter any clams unless at least one of the following applies:

(a) The person has been issued a commercial clam sheller, clam helper, clam buyer or assistant clam buyer license by the department or the person is exempt under sub. (3) (a) 3, and the clams are of a species open to commercial clam shelling and are of the minimum size or larger for commercial clam shelling.

(b) The person demonstrates that the clams are being transported through the state in interstate commerce by a reasonably direct route.

(8) **RULES.** The department may promulgate rules governing clamming and the clamming practices of commercial clam shellers, clam helpers, clam buyers and assistant clam buyers and other related matters, including but not limited to all of the following:

(a) Open and closed seasons and size and possession limits for different clam species.

(b) The methods of clamming and commercial clam shelling.

(c) Equipment specifications and requirements.

(d) Recordkeeping and reporting requirements.

(e) Waters and portions of waters open and closed to clamming or commercial clam shelling.

(f) Transportation, possession, purchase, sale and barter of clams.

(g) Issuance and duration of permits for commercial clam shellers who are exempt under sub. (3) (a) 3 from the license requirement.

(h) Harvest limits, allocating the harvest limits among the commercial clam shellers and criteria for allocation.

(9) **CONFIDENTIALITY.** Upon request in writing by a person who is required by department rule to keep a record or submit a report, the department shall keep confidential any information on the record or report relating to the value or weight of clams bought, sold or bartered by the person or relating to the specific location where the clams were taken, killed, collected or removed, except that the information may be disclosed in statistical summaries or reports which do not identify the person by name or license number and in any enforcement action under s. 29.99 (1m).

SECTION 9. 29.99 (1m) of the statutes is created to read:

29.99 (1m) (a) For the violation of s. 29.38 or rules adopted thereunder, by a forfeiture of not more than \$1,000, except as provided under pars. (b) and (c).

(b) For possessing clams in violation of s. 29.38 or rules adopted thereunder, if the value of the clams under par. (d) exceeds \$300 but does not exceed \$1,000, by a fine of not more than \$5,000 or imprisonment for not more than 30 days or both.

(c) For possessing clams in violation of s. 29.38 or rules adopted thereunder, if the value of the clams under par. (d) exceeds \$1,000, by a fine of not more than \$10,000 or imprisonment for not more than 2 years or both.

(d) Clams shall be valued for the purpose of pars. (b) and (c) according to the current average wholesale value. In this paragraph, "average wholesale value" means the average price received by commercial clam shellers during the 30-day period prior to the date of violation.

(e) For any person holding any approval issued under this chapter, upon the person's 2nd conviction within a 3-year period for violations of this chapter or rules promulgated thereunder relating to clamming or commercial clamming, by the revocation of all the person's approvals. In addition, no commercial clamming license or permit may be issued to the person for at least one year after the date of conviction.

SECTION 10. Nonstatutory provisions. Notwithstanding section 227.027 (1) (a) of the statutes, the department of natural resources may promulgate rules under section 29.38 (8) of the statutes, as created by this act, by using the emergency rule-making procedures under section 227.027 of the statutes. Notwithstanding section 227.027 (1) (b) of the statutes, such rules shall not expire until July 1, 1987, or until repealed, repealed and recreated or amended by the department of natural resources, whichever occurs first.

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SECTION 11. **Effective dates.** (1) Except as provided in subsection (2), this act takes effect on the day following publication. (2) The treatment of section 29.38 (3) (d) of the statutes takes effect on July 1, 1988.
