

JAN 21 2022

A BILL FOR AN ACT

RELATING TO AQUACULTURE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that diversification of
2 the State's economy is necessary to lessen the economic
3 dependence on tourism and to respond to the economic downturn
4 exacerbated by the coronavirus disease 2019 pandemic.

5 Supporting local aquaculture can help the State move towards
6 greater food sustainability and expand a home-based workforce.
7 Seafood demand regularly outpaces supply and world fishery
8 resources are quickly depleting. Accordingly, there is
9 significant growth potential for commercial activities in the
10 State's aquaculture industry and for aspiring entrepreneurs
11 looking to establish themselves in this global emerging
12 industry.

13 The legislature further finds that establishing a
14 centralized aquaculture program under the department of
15 agriculture will help to streamline efficiency of functions,
16 safety, and enforcement to further enhance Hawaii as a leader in
17 the global aquaculture industry.



1 Therefore, the purpose of this Act is to move certain
2 responsibilities and functions related to aquaculture to the
3 department of agriculture and to:

4 (1) Establish the Shellfish Sanitation Act to be
5 administered by the department of agriculture's
6 division of animal industry aquaculture and livestock
7 support services branch; and

8 (2) Transfer certain positions, records, and equipment
9 from the department of health to the department of
10 agriculture.

11 SECTION 2. The Hawaii Revised Statutes is amended by
12 adding a new chapter to be appropriately designated and to read
13 as follows:

14 "CHAPTER

15 SHELLFISH SANITATION ACT

16 PART I. GENERAL PROVISIONS

17 § -1 Short title; purpose. This chapter shall be known
18 as the "Shellfish Sanitation Act". The purpose of this chapter
19 is to establish sanitary controls for the shellfish industry to
20 be regulated by the aquaculture and livestock support services
21 branch of the division of animal industry of the department of



1 agriculture. These provisions shall apply to the growing area
2 and to all aspects of harvesting, processing, packaging,
3 storing, and distributing of shellfish.

4 § -2 Definitions. As used in this chapter unless the
5 context otherwise requires:

6 "Act" means the "Hawaii Shellfish Sanitation Act".

7 "Approved growing area" means an area which has been
8 approved by the division for growing and harvesting of shellfish
9 for direct marketing.

10 "Aquaculture" means the propagation, cultivation, or
11 farming of aquatic plants and animals in controlled or selected
12 environments for commercial purposes.

13 "Artificial growing system for shellfish" means a man-made
14 system with definite boundaries in which shellfish are grown and
15 where supplemental material is introduced for ultimate
16 utilization by the shellfish.

17 "Board" means the board of agriculture of the State.

18 "Department" means the department of agriculture.

19 "Depuration" means the process of removing microbial
20 contaminants from live shellfish by placing them in a water



1 environment of low coliform, low turbidity, and free from
2 chemicals which are detrimental to health.

3 "Division" means the division of animal industry's
4 aquaculture and livestock support services branch.

5 "Growing area" means any offshore ocean, coastal,
6 estuarine, or fresh water area suitable for natural shellfish
7 growth artificial shellfish propagation.

8 "Harvester" means a person who takes shellfish from growing
9 areas for commercial purposes.

10 "Market shellfish" means fresh or frozen shellfish, or
11 parts thereof, sold for human consumption.

12 "National Shellfish Sanitation Program" means the
13 cooperative federal, state, and industry program for the
14 certification of interstate shellfish shippers as described in
15 Public Health Service Publication Number 33, National Shellfish
16 Sanitation Program Manual of Operations, Parts I and II (1965).

17 "Pathogen" means any disease-producing microorganism or
18 material.

19 "Person" means an individual, firm, partnership, company,
20 corporation, trustee, association, or any public or private
21 entity.



1 "Processor" means a repacker, shellstock shipper, or
2 shucker-packer.

3 "Prohibited area" means a shellfish growing area where
4 hazardous levels of toxic material or pathogens may be found or
5 where a sanitary survey has not been made.

6 "Relaying" means the moving of market shellfish from waters
7 classified as restricted or prohibited to an approved area for
8 the purpose of natural purification.

9 "Restricted area" means a shellfish growing area subject to
10 moderate degrees of pollution, as further defined by the
11 division per rule, which would make it unsafe to harvest
12 shellfish for direct marketing but from which shellfish may be
13 subject to depuration or relaying with approval of the division.

14 "Sanitary survey" means the evaluation of all factors
15 having a bearing on the sanitary quality of a shellfish growing
16 area including sources of pollution, the effects of wind, tides,
17 and currents, and distribution and dilution of the polluting
18 materials, and the bacteriological quality of the water.

19 "Shellfish" means all edible species of oysters, clams, and
20 muscles of the molluscan class Pelecypoda. This term does not
21 include shellfish or products thereof which, in their final



1 packaging, have been heat-sterilized and packaged in
2 hermetically sealed containers.

3 "Shellstock" means shellfish still in their shells.

4 PART II. ADMINISTRATION, POWERS, AND DUTIES

5 § -6 Administration. The division shall administer this
6 chapter subject to the supervision of the board. The division
7 may delegate any of its powers except the power to make rules
8 and regulations and may direct any of its duties to be performed
9 by any appropriate agents, officers, or employees of the
10 division.

11 The division may employ on a full or part-time basis
12 employees and inspectors, subject to chapter 76, as are
13 necessary to carry out the administration of this chapter and a
14 uniform inspection system of shellfish or shellfish products in
15 the State.

16 § -7 General powers and duties. The division may:

- 17 (1) Regulate, supervise, inspect, and control the
18 operation or business of growing, harvesting,
19 shucking, packing, repacking, or reshipping of fresh
20 or fresh-frozen shellfish for sale to the public for
21 human consumption;



(2) Adopt, amend, and repeal rules as are necessary to implement this chapter, subject to chapter 91, on the following matters:

(A) The issuance of permits or certifications, including any class of permits or certifications to be issued;

(B) The revocation or suspension of a permit if, for any reason the safety of the shellfish as an article of food is not assured or if the standards set forth herein are not met, or if the permit was obtained by misrepresentation, or omission of relevant information;

(C) The administration and enforcement of this chapter and rules adopted thereto;

(D) The type of equipment or facilities that may be used in operations or businesses involving shellfish;

(E) The internal operations of plants or businesses involving shellfish;

(F) The procedures for inspections of shellfish products;



1 (G) The labeling and packaging of shellfish;

2 (H) The storing, handling, and transportation of
3 shellfish;

4 (I) The sanitary conditions of all establishments
5 engaged in commercial aquaculture operations, and
6 where shellfish products are processed or
7 prepared; and

8 (J) Any other matters as may be necessary or
9 desirable to implement this chapter.

10 Notwithstanding the foregoing provisions, the division,
11 without regard to the notice and public hearing requirements of
12 chapter 91, may adopt all federal regulations, including changes
13 made from time to time by the United States Secretary of
14 Agriculture, as rules for the efficient administration of this
15 chapter.

16 **PART III. PERMITS AND OPERATIONS**

17 § -12 Permit required. (a) The regulations governing
18 requirements for shellfish certification in their several forms
19 in the State shall equal or exceed the requirements set forth by
20 the Food and Drug Administration of the United States Department



1 of Health and Human Services, and the National Shellfish
2 Sanitation Program.

3 (b) No person in the State shall operate a plant, business
4 engaged in growing, harvesting, shucking, packing, repacking, or
5 reshipping fresh or fresh-frozen shellfish for sale to the
6 public for human consumption without a valid permit issued and
7 administered by the division.

8 (c) Each permit holder shall notify the division
9 immediately by telephone if there is any report or knowledge of
10 contamination of its shellfish or of suspected illness from
11 consumption of its shellfish. The harvesting, distribution, and
12 sale of shellfish shall cease immediately pending review of the
13 safety of the product and approval by the division to resume
14 operations.

15 (d) A person who exports shellfish certified by the
16 division shall be listed on the Interstate Certified Shellfish
17 Shippers List of the United States Public, Health Service, Food
18 and Drug Administration.

19 § -13 Application for a permit. (a) Applications for
20 permits shall be filed with the division. Each application, if
21 necessary, shall be accompanied with sufficient written data,



1 drawings, and descriptions for the division to evaluate the
2 operation relative to the provisions of this chapter.

3 (b) A permit issued under this chapter shall be valid for
4 a period not to exceed one year or a portion thereof, with
5 automatic expiration on June 30 of each year. An application
6 for renewal of a permit shall be made on or before June 1.
7 Permits are not transferable.

8 § -14 Shellfish growing areas. (a) No person shall
9 buy, sell, offer for sale, receive, keep, transport, deliver, or
10 take any shellfish not declared by the division to be approved
11 or otherwise fit for direct marketing.

12 (b) The division shall make a sanitary survey of each
13 shellfish growing area prior to its classification as
14 "approved", "restricted", or "prohibited". Any sanitary survey
15 shall evaluate all sources of actual and potential pollution in
16 the area including but not limited to pesticides, industrial
17 wastes, and sewage effluent. In addition, the effect of wind
18 action, water flow, and currents in distributing polluting
19 materials over a growing area shall be considered.

20 (c) Growing areas in which sanitary surveys have not been
21 made shall be automatically classified as prohibited.



(d) The taking of shellfish from prohibited areas for direct marketing shall be prohibited.

(e) The division shall adopt rules pursuant to chapter 91 to further carry out and effectuate the purposes of this section.

§ -15 Artificial growing systems for shellfish. (a)

Artificial growing systems for shellfish shall meet the performance criteria of natural growing water systems as provided in this chapter or by rule adopted by the division. The operator of an artificial growing system shall be issued a shellstock shipper's certificate. Harvesting, processing, packing, storing, and shucking operating shall be the same as for shellfish reared in natural waters, as required by the division.

(b) An artificial growing system shall have a program of sanitation, maintenance, and supervision approved by the division to prevent the contamination of the final shellfish product. Plumbing and sewage disposal shall be as expressed for a packaging facility of shellstock."

SECTION 3. Section 321-11, Hawaii Revised Statutes, is amended to read as follows:



1 "§321-11 Subjects of health rules, generally. The
2 department of health pursuant to chapter 91 may adopt rules that
3 it deems necessary for the public health and safety respecting:

4 (1) Nuisances, foul or noxious odors, gases, vapors,
5 waters in which mosquitoes breed or may breed, sources
6 of filth, and causes of sickness or disease, within
7 the respective districts of the State, and on board
8 any vessel;

9 (2) Adulteration and misbranding of food or drugs;

10 (3) Location, air space, ventilation, sanitation,
11 drainage, sewage disposal, and other health conditions
12 of buildings, courts, construction projects,
13 excavations, pools, watercourses, areas, and alleys;

14 (4) Privy vaults and cesspools;

15 (5) Fish and fishing[+], except for the shellfish industry
16 subject to chapter ;

17 (6) Interments and dead bodies;

18 (7) Disinterments of dead human bodies, including the
19 exposing, disturbing, or removing of these bodies from
20 their place of burial, or the opening, removing, or
21 disturbing after due interment of any receptacle,



1 coffin, or container holding human remains or a dead
2 human body or a part thereof and the issuance and
3 terms of permits for the aforesaid disinterments of
4 dead human bodies;

5 (8) Cemeteries and burying grounds;

6 (9) Laundries, and the laundering, sanitation, and
7 sterilization of articles including linen and uniforms
8 used by or in the following businesses and
9 professions: barber shops, manicure shops, beauty
10 parlors, electrology shops, restaurants, soda
11 fountains, hotels, rooming and boarding houses,
12 bakeries, butcher shops, public bathhouses, midwives,
13 masseurs, and others in similar calling, public or
14 private hospitals, and canneries and bottling works
15 where foods or beverages are canned or bottled for
16 public consumption or sale; provided that nothing in
17 this chapter shall be construed as authorizing the
18 prohibiting of laundering, sanitation, and
19 sterilization by those conducting any of these
20 businesses or professions where the laundering or



sterilization is done in an efficient and sanitary manner;

(10) Hospitals, freestanding surgical outpatient facilities, skilled nursing facilities, intermediate care facilities, adult residential care homes, adult foster homes, assisted living facilities, special treatment facilities and programs, home health agencies, home care agencies, hospices, freestanding birthing facilities, adult day health centers, independent group residences, and therapeutic living programs, but excluding youth shelter facilities unless clinical treatment of mental, emotional, or physical disease or handicap is a part of the routine program or constitutes the main purpose of the facility, as defined in section 346-16 under "child [÷]caring[÷] institution". For the purpose of this paragraph, "adult foster home" has the same meaning as provided in section 321-11.2;

(11) Hotels, rooming houses, lodging houses, apartment houses, tenements, and residences for persons with



developmental disabilities including those built under
federal funding;

(12) Laboratories;

(13) Any place or building where noisome or noxious trades
or manufacturing is carried on, or intended to be
carried on;

(14) Milk;

(15) Poisons and hazardous substances, the latter term
including any substance or mixture of substances that:

(A) Is corrosive;

(B) Is an irritant;

(C) Is a strong sensitizer;

(D) Is inflammable; or

(E) Generates pressure through decomposition, heat,
or other means,

if the substance or mixture of substances may cause
substantial personal injury or substantial illness
during or as a proximate result of any customary or
reasonably foreseeable handling or use, including
reasonably foreseeable ingestion by children;

(16) Pig and duck ranches;



(17) Places of business, industry, employment, and commerce, and the processes, materials, tools, machinery, and methods of work done therein; and places of public gathering, recreation, or entertainment;

(18) Any restaurant, theater, market, stand, shop, store, factory, building, wagon, vehicle, or place where any food, drug, or cosmetic is manufactured, compounded, processed, extracted, prepared, stored, distributed, sold, offered for sale, or offered for human consumption or use;

(19) Foods, drugs, and cosmetics, and the manufacture, compounding, processing, extracting, preparing, storing, selling, and offering for sale, consumption, or use of any food, drug, or cosmetic;

(20) [Device] as defined in section 328-1;

(21) Sources of ionizing radiation;

(22) Medical examination, vaccination, revaccination, and immunization of school children. No child shall be subjected to medical examination, vaccination, revaccination, or immunization, whose parent or



1 guardian objects in writing thereto on grounds that
2 the requirements are not in accordance with the
3 religious tenets of an established church of which the
4 parent or guardian is a member or adherent, but no
5 objection shall be recognized when, in the opinion of
6 the department, there is danger of an epidemic from
7 any communicable disease;

8 (23) Disinsectization of aircraft entering or within the
9 State as may be necessary to prevent the introduction,
10 transmission, or spread of disease or the introduction
11 or spread of any insect or other vector of
12 significance to health;

13 (24) Fumigation, including the process by which substances
14 emit or liberate gases, fumes, or vapors that may be
15 used for the destruction or control of insects,
16 vermin, rodents, or other pests, which, in the opinion
17 of the department, may be lethal, poisonous, noxious,
18 or dangerous to human life;

19 (25) Ambulances and ambulance equipment;

20 (26) Development, review, approval, or disapproval of
21 management plans submitted pursuant to the Asbestos



1 Hazard Emergency Response Act of 1986, Public Law 99-
2 519; and

3 (27) Development, review, approval, or disapproval of an
4 accreditation program for specially trained persons
5 pursuant to the Residential Lead-Based Paint Hazard
6 Reduction Act of 1992, Public Law 102-550.

7 The department of health may require any certificates,
8 permits, or licenses that it may deem necessary to adequately
9 regulate the conditions or businesses referred to in this
10 section."

11 SECTION 4. All rights, powers, functions, and duties of
12 the department of health's food safety branch regarding the
13 sanitary controls for the shellfish industry are transferred to
14 the department of agriculture's division of animal industry
15 aquaculture and livestock support services branch.

16 All employees who occupy civil service positions and whose
17 functions are transferred to the department of agriculture by
18 this Act shall retain their civil service status, whether
19 permanent or temporary. Employees shall be transferred without
20 loss of salary, seniority (except as prescribed by applicable
21 collective bargaining agreements), retention points, prior



1 service credit, any vacation and sick leave credits previously
2 earned, and other rights, benefits, and privileges, in
3 accordance with state personnel laws and this Act; provided that
4 the employees possess the minimum qualifications and public
5 employment requirements for the class or position to which
6 transferred or appointed, as applicable; provided further that
7 subsequent changes in status may be made pursuant to applicable
8 civil service and compensation laws.

9 Any employee who, prior to this Act, is exempt from civil
10 service and is transferred as a consequence of this Act may
11 retain the employee's exempt status, but shall not be appointed
12 to a civil service position as a consequence of this Act. An
13 exempt employee who is transferred by this Act shall not suffer
14 any loss of prior service credit, vacation or sick leave credits
15 previously earned, or other employee benefits or privileges as a
16 consequence of this Act; provided that the employees possess
17 legal and public employment requirements for the position to
18 which transferred or appointed, as applicable; provided further
19 that subsequent changes in status may be made pursuant to
20 applicable employment and compensation laws. The chairperson of
21 the board of agriculture may prescribe the duties and



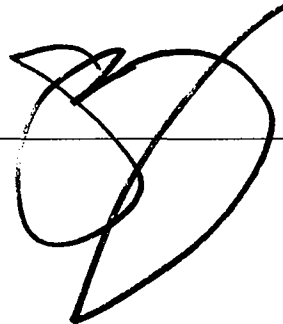
1 qualifications of these employees and fix their salaries without
2 regard to chapter 76, Hawaii Revised Statutes.

3 SECTION 5. All appropriations, records, equipment,
4 machines, files, supplies, contracts, books, papers, documents,
5 maps, and other personal property heretofore made, used,
6 acquired, or held by the department of health's food safety
7 branch relating to the functions transferred to the department
8 of agriculture shall be transferred with the functions to which
9 they relate.

10 SECTION 6. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 7. This Act shall take effect upon its approval.

13 INTRODUCED BY: _____

A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned over the line following "INTRODUCED BY:".

S.B. NO. 2285

Report Title:

Aquaculture; Shellfish Sanitation Act; Permits; Department of Agriculture; Division of Animal Industry; Aquaculture and Livestock Support Services Branch; Employees; Records

Description:

Establishes the Shellfish Sanitation Act to be administered by the Department of Agriculture's Division of Animal Industry Aquaculture and Livestock Support Services Branch. Transfers certain positions, records, and equipment from the Department of Health to the Department of Agriculture.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

