

Regular Session, 2013

HOUSE BILL NO. 236

BY REPRESENTATIVE LEOPOLD

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

FISHING/OYSTERS: Increases penalties for certain oyster harvesting violations

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

AN ACT

To amend and reenact R.S. 40:6(A) and R.S. 56:424(E) and 433(C), (G), and (J), to enact R.S. 40:6(H) and LAC 51:IX.3.335(B), and to repeal R.S. 56:433(D), relative to violations of oyster harvesting laws; to increase the penalties for harvesting from closed waters; to increase the penalties for harvesting in violation of the health time restrictions; to repeal the prohibition removal from the natural reefs of oysters for steamed oysters; and to provide for related matter.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 40:6(A) is hereby amended and reenacted and R.S. 40:6(H) is hereby enacted to read as follows:

§6. Penalties for violation of state Sanitary Code

A. ~~Whoever~~ Except as provided otherwise in Subsection H of this Section, whoever violates any provision of the sanitary code, except those provisions dealing with isolation or quarantine of communicable disease, shall be fined not more than twenty-five dollars or be imprisoned for not more than ten days, or both, for the first offense. For the second offense, he shall be fined not less than twenty-five dollars nor more than fifty dollars or be imprisoned for not less than ten days nor more than thirty days, or both. For any subsequent offense, he shall be fined one hundred dollars or be imprisoned for not less than thirty days, or both.

* * *

1 H. Any violation of the rules and regulations contained in Chapter 3 of Part
2 IX of Title 51 of the Louisiana Administrative Code pertaining to refrigeration of
3 oysters, clams, and mussels, shall constitute a class four violation as delineated in
4 R.S. 56:34.

5 Section 2. R.S. 56:424(E), 433(C), (G), and (J) are hereby amended and reenacted
6 to read as follows:

7 §424. Taking of oysters

8 * * *

9 E.(1) No person shall harvest, possess, sell, barter, trade, purchase, or
10 exchange or attempt to sell, barter, trade, or exchange oysters in the state of
11 Louisiana or in interstate commerce unless such oysters are taken from areas
12 approved by the state health officer in accordance with R.S. 40:5.3. Unless otherwise
13 permitted by the Department of Wildlife and Fisheries, when any vessel is found to
14 be harvesting within an unapproved or closed area, all oysters on board the vessel
15 shall be deemed to have been taken from unapproved or closed waters and shall be
16 deemed to constitute a hazard to the safety, health, and welfare of the citizens of the
17 state. In addition, no oysters taken from sources outside of Louisiana shall be sold
18 in Louisiana, unless taken from areas approved by the state authorities having
19 jurisdiction, and unless secured from oyster dealers whose state certifications have
20 been endorsed by the United States Food and Drug Administration Public Health
21 Services for interstate shipment. All oysters found in violation of this Paragraph
22 shall be seized and ordered returned to the water. Any violation of this Paragraph
23 shall constitute a class ~~four~~ six violation under the provisions of ~~R.S. 56:34~~ R.S.
24 56:36.

25 (2)(a) In addition to all other penalties provided ~~hereunder~~ in this Section,
26 ~~whoever violates~~ for the first violation of this Subsection ~~shall have the~~ oyster
27 harvester's license ~~or licenses~~ under which the violation occurred shall be ~~revoked~~
28 by the department and for the period for which it or they were issued. ~~For the first~~
29 ~~offense, the license or licenses shall not be reinstated~~ no new such license shall be

1 issued for one year thereafter from the date of the conviction. ~~For the second and~~
 2 ~~subsequent offenses, the license or licenses shall not be reinstated for three years~~
 3 ~~thereafter.~~ In addition, the violator shall be sentenced to perform no less than forty
 4 hours of community service. If available, the hours shall be served in a litter
 5 abatement community service program. During the period in which the violator is
 6 prohibited from possession of an oyster harvester license for a first offense, the
 7 violator may only be present on a vessel harvesting or processing oysters if that
 8 vessel is equipped with and is actively using a vessel monitoring system as
 9 prescribed in R.S. 56:424.1.

10 (b) For a second violation of this Subsection, the violator's oyster harvester
 11 license shall be revoked and no new such license shall be issued for three years from
 12 the date of conviction. In addition, the violator shall be sentenced to perform no less
 13 than ninety hours of community service. If available, the hours shall be served in a
 14 litter abatement community service program. During the period in which the violator
 15 is prohibited from possession of an oyster harvester license for a second violation,
 16 the violator shall not be present on a vessel harvesting or processing oysters.

17 (c) For a third or subsequent violation of this Subsection, the violator's oyster
 18 harvester license shall be revoked and no new such license shall be issued for ten
 19 years from the date of the third or subsequent conviction. In addition, the violator
 20 shall be sentenced to perform no less than one hundred twenty hours of community
 21 service. If available, the hours shall be served in a litter abatement community
 22 service program. During the period in which the violator is prohibited from
 23 possession of an oyster harvester license for a third or subsequent violation, the
 24 violator shall not be present on a vessel harvesting or processing oysters.

* * *

§433. Culling oysters taken from natural reefs; size limits

* * *

28 C. No person shall take oysters from the natural reef of the waters of the
 29 state during the period beginning the day following the closing date set by the

1 commission pursuant to Paragraph (B)(1) of this Section and ending the Tuesday
2 following Labor Day, nor shall any person take oysters from the natural reefs during
3 any closure of such reefs as set by the commission or department. No person shall
4 can, shuck, or pack any oysters from the natural reefs during the closure period. This
5 provision does not prevent any lessee of oyster bedding grounds from harvesting his
6 own oysters and using them for personal home consumption or for sale during the
7 time of closure.

8 * * *

9 G. No provisions of this Section shall prevent the department from
10 exercising its option to close the natural grounds to all oyster fishing as provided in
11 Subsection B ,and no person shall take oysters from the natural reefs during any such
12 closure.

13 * * *

14 J.(1) ~~A~~ Except for a violation of the provisions of Subsection C or G of this
15 Section, violation of the provisions of this Section shall constitute a class two
16 violation.

17 (2) A violation of Subsection C or G of this Section shall constitute a class
18 six violation. In addition to the penalties associated with a class six violation, the
19 violation shall be sentenced to perform no less than forty hours of community service.
20 If available, the hours shall be served in a litter abatement community service
21 program.

22 * * *

23 Section 3. LAC 51:IX.3.335(B) is hereby enacted to read as follows:

24 §335. Penalties Relative to Shell-Stock Refrigeration

25 * * *

26 B. Any violation of LAC 51:IX.3.327 through 333 shall constitute a class
27 four violation as delineated in R.S. 56:34.

28 Section 4. R.S. 56:433(D) is hereby repealed in its entirety.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Leopold

HB No. 236

Abstract: Increases penalties for violations of laws regulating oyster harvest during health closures and health time restrictions.

Present law requires oysters to be transferred to refrigeration within one hour of harvest. Provides for a \$25 penalty for violation of such regulations. Proposed law provides that such violations constitute a class four violation punishable as follows:

1st offense	between \$400 & \$950	or	imprisonment for more than 120 days, or both
2nd offense	between \$750 & \$999	&	imprisonment between 90 and 180 days
3rd or more	between \$1,000 & \$5,000	&	imprisonment between 180 days and two years

Provides forfeiture of anything seized in connection with the violation.

Present law prohibits the harvest, possession, sale, trade, purchase, or exchange of oysters taken from areas not approved by the state health officer. Provides that violations of such prohibition are class four punishable as above. Present law, for a first violation, further provides for revocation of the oyster harvester license for the remainder of the period for which it was issued and for a second or subsequent offense, provides for revocation for three years.

Proposed law changes the penalties for such violations to class six violations punishable, for each offense, with a fine of between \$900 and \$950 or imprisonment for less than 120 days or both and forfeiture of anything seized.

In addition, for the first violation, the violator's oyster harvester license shall be revoked and a new license shall not be issued for one year from the date of conviction, and the violator shall be required to perform at least 40 hours of community service, litter abatement if available. During the period of revocation, proposed law allows the violator to be present on a vessel harvesting or processing oysters only if the vessel is equipped with and actively using a vessel monitoring system approved by the Dept. of Wildlife and Fisheries.

For a second violation, the violator's oyster harvester license shall be revoked and a new license shall not be issued for three years from the date of conviction and the violator shall be required to perform at least 90 hours of community service, litter abatement if available.

For a third or subsequent violation, the violator's oyster harvester license shall be revoked and a new license shall not be issued for 10 years from the date of conviction and the violator shall be required to perform at least 120 hours of community service, litter abatement if available. For a second or subsequent violation, the violator is prohibited from being on a vessel harvesting or processing oysters.

Present law prohibits the harvest of oysters from the natural reefs or seed grounds during any closure of such by the Wildlife and Fisheries Commission. Provides that violations are class two punishable as follows:

1st offense	\$100 - \$350	or	imprisonment not more than 60 days, or both
-------------	---------------	----	---

2nd offense	\$300 - \$550	&	imprisonment between 30 and 60 days
3rd or more	\$500 - \$750	&	imprisonment between 60 and 90 days, and forfeiture

Proposed law provides that such violations are class six punishable for each offense with a fine of between \$900 and \$950 or imprisonment for less than 120 days or both and forfeiture of anything seized. Further provides that violators shall perform 40 hours of community service, litter abatement if available.

Present law prohibits harvesting of oysters for steaming during a specified period of closure. Proposed law repeals present law.

(Amends R.S. 40:6(A) and R.S. 56:424(E) and 433(C), (G), and (J); Adds R.S. 40:6(H) and LAC 51:IX.3.335(B); Repeals R.S. 56:433(D))