

# VIRGINIA ACTS OF ASSEMBLY -- 1996 SESSION

## CHAPTER 434

*An Act to amend and reenact §§ 28.2-526, 28.2-530 and 28.2-532 of the Code of Virginia, relating to clam and oyster aquaculture; penalties.*

[H 1011]

Approved March 31, 1996

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 28.2-526, 28.2-530 and 28.2-532 of the Code of Virginia are amended and reenacted as follows:**

§ 28.2-526. Oyster measures; standards; penalty.

A. It is unlawful for any person to buy or sell oysters in the shell by any measure other than one-half bushel or one bushel metallic measures except as provided in subsection B, ~~or~~ C or D of this section. Such measures shall be iron circular tubs with straight sides and straight bottoms with holes, if desired, for draining one inch in diameter. A half-bushel tub shall have the following dimensions, all measured from inside to inside: fifteen inches across the top, thirteen inches across the bottom, and seventeen inches diagonally from the inside chine to the top; and a bushel tub shall measure 18 1/2 inches across the top, seventeen inches across the bottom, and 21 1/2 inches diagonally from the inside chine to the top. Oysters harvested from the public rocks in the Potomac River or its tributaries may be bought or sold in one bushel metallic measures which shall measure eighteen inches across the top, 16 1/2 inches across the bottom, and twenty-one inches diagonally from the inside chine to the top. Such metallic measure must be level full across the entire top of the measure to be considered a full measure.

Any seller of oysters or oyster shells who fails to furnish a full measure as defined in this section, or a buyer of any seed oysters or oyster shells who accepts less than a full measure as defined in this section, is guilty of a Class 1 misdemeanor.

B. Oysters may be sold in containers of a size greater than 18 1/2 inches across the top, seventeen inches across the bottom, and 21 1/2 inches diagonally from the inside chine to the top if such container has been approved by the Commissioner and its use to measure oysters has been approved by both the buyer and seller.

C. On the eastern or ocean side of the Eastern Shore, oysters may be sold without being measured if both the buyer and the seller agree to the number of bushels of oysters in the transaction.

*D. Cultured oysters in the shell may be sold in any measure or container agreeable to the buyer and seller.*

§ 28.2-530. Taking oysters or loading on vessel on Sunday or at night; penalty.

A. It shall be unlawful for any person to take oysters, from either public or private grounds, on Sunday or between sunset and sunrise; nor shall any person load any vessel or boat for such purpose with any oysters from any of the waters of the Commonwealth on Sunday or between sunset and sunrise.

B. Shucking oysters taken from the public grounds other than from designated seed areas may be unloaded on shore at packinghouses or loaded on trucks or motor vehicles one-half hour after sunset and one-half hour before sunrise. Those oysters which have been inspected by an officer and purchased by the packer or planter, and the oysters owned by the packer or planter, may be unloaded at any time except Sunday within the discretion of the packer.

C. The provisions of subsection A of this section shall not apply to (i) the taking or catching, by hand during the prescribed hours of daylight on Sunday, of not more than one bushel of oysters for personal use or (ii) *the taking or catching of cultured oysters during the prescribed hours of daylight on Sunday.* The presence, on board a boat or other vehicle being used during any Sunday harvesting, *except as part of a oyster aquaculture operation*, of any gear normally associated with the harvesting of oysters other than by hand is prima facie evidence of a violation of the provisions of this section.

A violation of this section is a Class 3 misdemeanor.

§ 28.2-532. Protection of oysters and clams of Virginia; labeling; penalty.

It shall be unlawful for any person to offer for sale, sell or distribute *for direct consumption* oysters or clams as Virginia oysters or clams unless such oysters and clams have been in the waters of the Commonwealth or the Potomac River for a period of at least six months.

Any oysters or clams imported into Virginia, either shucked or unshucked, when sold or distributed, shall not be designated or labeled in any manner indicating they came from Virginia waters or that they are Virginia oysters or clams.

The name, address and Department of Health certificate number on the package or container of the packer or distributor shall not be considered illegal designation or labeling.

A violation of this section is a Class 3 misdemeanor.