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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 283      Session of  
1997

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INTRODUCED BY MADIGAN, DELP, WENGER, THOMPSON, ROBBINS,  
STAPLETON, O'PAKE, GERLACH, MUSTO, WHITE, BELAN, KASUNIC,  
HOLL AND COSTA, FEBRUARY 28, 1997

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REFERRED TO AGRICULTURE AND RURAL AFFAIRS, FEBRUARY 28, 1997

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AN ACT

1 Amending Title 3 (Agriculture) of the Pennsylvania Consolidated  
2 Statutes, adding provisions relating to aquacultural  
3 development; imposing powers and duties on the Department of  
4 Agriculture; and making repeals.

5 The General Assembly finds and declares as follows:

6 (1) It is the policy of the Commonwealth to conserve,  
7 protect and encourage the development and improvement of its  
8 agricultural lands for the production of food and other  
9 agricultural products.

10 (2) It is also the policy of the Commonwealth that  
11 aquaculture is an agricultural activity which adds to the  
12 diversity of our food and fiber production system and should  
13 be conserved, protected and encouraged to develop and grow  
14 within this Commonwealth.

15 (3) Aquacultural production is a vital sector of  
16 Pennsylvania's agriculture supplying fresh foodfish,  
17 ornamental species and over 70% of the trout stocked in the  
18 northeastern United States.



This chapter shall be known and may be cited as the  
Aquacultural Development Law.

§ 4202. Purpose.

The purposes of this chapter are as follows:

(1) To encourage aquacultural operators to make a long-term commitment to aquaculture by offering them the same protections afforded other agricultural practices.

(2) To reduce the amount of governmental agencies with jurisdiction over aquaculture by transferring authority over commercial aquacultural operations to the Department of Agriculture.

(3) To encourage further development of the aquacultural industry by including aquaculture in any and all promotional and other economic developmental programs which are made available to other industry sectors.

§ 4203. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Account." The Aquaculture Development Account.

"Advisory committee." The Aquaculture Advisory Committee in the Department of Agriculture.

"Aquaculture." A form of agriculture which is the controlled cultivation of aquatic plants, animals and microorganisms.

"Aquarium species." Any aquatic species which may not be propagated in open air facilities within this Commonwealth under normal circumstances and are primarily kept indoors in glass aquariums for their aesthetic value.

"Aquatic organism." Any plant or animal that grows or lives in or upon the water.

1 "Artificial propagation." Rearing any species of fish during  
2 any stage of the species' life cycle from inception by natural  
3 or artificial means to the adult stage of the species.

4 "Baitfish." The following fish, unless otherwise provided by  
5 departmental regulation:

6 (1) All forms of the minnow family (Cyprinidae) except  
7 carp and goldfish.

8 (2) Suckers, chubs, fallfish, lampreys and eels  
9 measuring less than eight inches in length.

10 (3) All forms of darters, killifish and madtoms  
11 (otherwise known as stonecats).

12 "Commission." The Pennsylvania Fish and Boat Commission.

13 "Department." The Department of Agriculture of the  
14 Commonwealth.

15 "Finfish." True fish which are any number of strictly  
16 aquatic craniate vertebrates that include the teleosts,  
17 elasmobranches and cyclostomes. These fish typically have an  
18 elongated, spindle-shaped body terminating in a caudal fin.

19 "Fish." When used as a noun, the term includes all game  
20 fish, fish bait, bait fish, amphibians, reptiles and aquatic  
21 organisms.

22 "Hobby breeder." Any person who keeps and propagates aquatic  
23 animals on a small scale. A small scale is gross annual sales of  
24 less than \$1,000.

25 "Ornamental species." Any aquatic organism kept primarily  
26 for its aesthetic value which can be propagated in open-air  
27 facilities within this Commonwealth under normal circumstances.

28 "Secretary." The Secretary of Agriculture of the  
29 Commonwealth.

30 "Watershed." One of the five major watersheds located within

1 this Commonwealth:

2 (1) Lake Erie.

3 (2) Ohio.

4 (3) Delaware.

5 (4) Susquehanna.

6 (5) Potomac.

7 Smaller watersheds not considered as part of these five shall be  
8 identified by the Pennsylvania Fish and Boat Commission as  
9 annexes to one of the five listed.

10 "Wild and feral animal." Any animal not held in captivity or  
11 escaped from captivity without recapture for a period longer  
12 than six months.

13 SUBCHAPTER B

14 AQUACULTURAL DEVELOPMENT

15 Sec.

16 4211. Designation of aquaculture as agriculture.

17 4212. Wetlands.

18 4213. Requirements for discharge of water.

19 4214. Aquacultural marketing programs.

20 4215. Aquacultural plan.

21 4216. Aquaculture Advisory Committee.

22 4217. Biennial survey of aquaculture.

23 4218. Aquaculture Development Account.

24 4219. Permissible propagation.

25 4220. Registration for artificial propagation.

26 4221. Activities under registration for artificial propagation.

27 4222. Registration for dealers of live aquatic animals.

28 4223. Prohibited propagation and penalties.

29 § 4211. Designation of aquaculture as agriculture.

30 Aquaculture is hereby designated as an agricultural practice

1 within this Commonwealth for all purposes. This designation  
2 shall be recognized by all agencies of State and local  
3 government.

4 § 4212. Wetlands.

5 Aquacultural facilities licensed pursuant to this chapter are  
6 not wetlands under 25 Pa. Code Ch. 105 Subch. A (relating to  
7 general provisions) so long as such facilities were created and  
8 have been continuously operating for any purpose, including  
9 effluent mitigation, prior to September 23, 1985. Facilities  
10 created on or after September 23, 1985, are not wetlands under  
11 any statute or regulation of this Commonwealth so long as the  
12 facilities are or were not created nor are currently maintained  
13 on wetlands. Normal maintenance and improvements on facilities  
14 created prior to September 23, 1985, are permissible  
15 notwithstanding any statutory provision relating to wetlands.  
16 Permits issued by the Commonwealth for normal maintenance and  
17 improvements of facilities created prior to September 23, 1985,  
18 are not required.

19 § 4213. Requirements for discharge of water.

20 (a) General permit.--Except as provided in subsection (b),  
21 aquacultural facilities, including those existing facilities  
22 which discharge into high quality or exceptional value waters,  
23 licensed under this chapter may be eligible for inclusion under  
24 a National Pollutant Discharge Elimination System (NPDES)  
25 general permit issued pursuant to regulations of the Department  
26 of Environmental Protection.

27 (b) Permitting system.--The Department of Environmental  
28 Protection is directed to develop an NPDES general permit for  
29 aquacultural facilities. Net effluent limitation, monitoring  
30 type and frequency of pollutants shall be determined in

1 consultation with the Department of Agriculture and the advisory  
2 committee. The fee for an applicant seeking coverage to  
3 discharge pursuant to the terms and conditions of the general  
4 permit shall not exceed \$100 per facility during a period of  
5 five years.

6 (c) Consolidation of permitting.--All agencies of the  
7 Commonwealth are directed to work with the Department of  
8 Environmental Protection to develop a consolidated permitting  
9 process for aquacultural facilities. This consolidated  
10 permitting process shall result in one permit to replace  
11 potentially several permits necessary for an applicant to file.  
12 This consolidated permitting process shall be developed and  
13 implemented on or before January 1, 1999.

14 § 4214. Aquacultural marketing programs.

15 The department may develop voluntary aquacultural marketing  
16 programs. The department may request nominal payment by  
17 participants to cover costs of these programs.

18 § 4215. Aquacultural plan.

19 (a) Development of plan.--The department shall develop a  
20 plan to promote and develop aquacultural industry in this  
21 Commonwealth. Economic development and exportation of products  
22 from this Commonwealth shall be components of this plan. The  
23 advisory committee shall advise the department in development of  
24 the plan. The department must obtain the consent of the advisory  
25 committee for the plan.

26 (b) Implementation of plan.--The department shall, in the  
27 manner provided by law, promulgate the plan as regulations of  
28 the department.

29 § 4216. Aquaculture Advisory Committee.

30 (a) Establishment and composition.--The Aquaculture Advisory

Committee is hereby established as a departmental advisory board within the department. The advisory committee shall consist of 21 members of whom the following 12 shall be members ex officio:

- (1) The Secretary of Agriculture.
- (2) The Secretary of Environmental Protection.
- (3) The Secretary of Community and Economic Development.
- (4) The Executive Director of the Pennsylvania Fish and Boat Commission.
- (5) The chairman of the Agriculture and Rural Affairs Committee of the Senate.
- (6) The minority chairman of the Agriculture and Rural Affairs Committee of the Senate.
- (7) The chairman of the Game and Fisheries Committee of the Senate.
- (8) The minority chairman of the Game and Fisheries Committee of the Senate.
- (9) The chairman of the Agriculture and Rural Affairs Committee of the House of Representatives.
- (10) The minority chairman of the Agriculture and Rural Affairs Committee of the House of Representatives.
- (11) The chairman of the Game and Fisheries Committee of the House of Representatives.
- (12) The minority chairman of the Game and Fisheries Committee of the House of Representatives.

Ex officio members may designate a substitute for membership. Ex officio members cast votes at committee meetings.

(b) Appointments by secretary.--The remaining nine members are appointed by the secretary. Three of his appointees must be active, resident cold or cool water aquacultural producers. One of his appointees must be an active, resident warm water



1 aquacultural producer. One of his appointees must be an active,  
2 resident indoor aquacultural producer. One of his appointees  
3 must be an active, resident servicer or supplier to the  
4 aquacultural industry. One of his appointees must be an active,  
5 resident aquacultural wholesaler, food broker or food merchant.  
6 One of his appointees must be an active, resident aquarium or  
7 ornamental species aquacultural merchant. The remaining  
8 appointee must be a representative of recreational sport  
9 fishing.

10 (c) Tenure and convention.--All appointed members shall  
11 serve terms of three years. Ex officio members and their  
12 designees shall serve so long as the official who is a member or  
13 who designated another to serve as a member retains his official  
14 position. The advisory committee shall convene at the discretion  
15 of the secretary or his designee, who shall serve as chairman of  
16 the committee.

17 (d) Function of committee.--The advisory committee shall  
18 draft and submit an aquacultural plan to the secretary on or  
19 before December 31, 1997. The focus of the plan shall be  
20 economic development to include recommendations for regulations  
21 necessary to foster development of aquaculture. The advisory  
22 committee shall also advise the secretary on matters relating to  
23 aquacultural production and development.

24 § 4217. Biennial survey of aquaculture.

25 The department shall cooperate with the Pennsylvania  
26 Agricultural Statistics Service to compile biennially a survey  
27 of this Commonwealth's aquacultural industry. Persons licensed  
28 under sections 4220 (relating to registration for artificial  
29 propagation) and 4222 (relating to registration for dealers of  
30 live aquatic animals) whose businesses involve the sale of fish

1 shall submit annually at the conclusion of each calendar year a  
2 summary report of sales specifying the amount or weight of each  
3 species sold and gross receipts. The contents shall be used by  
4 the department solely for statistics. The individual summary  
5 reports are not public records and shall not be made public  
6 without written consent of the party submitting that report.

7 § 4218. Aquaculture Development Account.

8 (a) Establishment of account.--There is hereby established a  
9 separate account in the State Treasury to be known as the  
10 Aquaculture Development Account. Moneys in this account shall be  
11 used to stimulate the growth of the aquacultural industry in  
12 this Commonwealth.

13 (b) Sources of funds.--Except for fees generated pursuant to  
14 section 4213 (relating to requirements for discharge of water),  
15 all fees and charges generated under this chapter shall be  
16 deposited in the account.

17 (c) Use of funds.--Up to 10% of the annual income of the  
18 account may be available for aquacultural research. The  
19 remainder may be used for administration of aquacultural  
20 programs, provision of low-interest loans to aquacultural  
21 producers for development, expansion and modernization of  
22 facilities and the survey in section 4217 (relating to biennial  
23 survey of aquaculture).

24 § 4219. Permissible propagation.

25 (a) Species.--The commission shall determine which species  
26 of fish are allowed to be propagated in each watershed. On or  
27 before January 31 of each year, the commission shall supply the  
28 department a current list of species approved for propagation  
29 and the conditions under which each species may be cultured. As  
30 the commission approves a new species for propagation throughout

1 the year, it shall notify the department of the species and  
2 watersheds. Except triploid and other nonreproducing forms,  
3 species may be propagated in the same watersheds within which  
4 they are allowed to be stocked.

5 (b) Initial list of approved species.--Except for those  
6 species of fish allowed for stocking only in a triploid or other  
7 nonreproducing form, the initial list of approved species shall  
8 include all species approved for artificial propagation or  
9 stocking by watershed as listed by the commission on January 1,  
10 1995. Requirements for special conditions to culture certain  
11 species will be retained until modified. The initial list shall  
12 be submitted to the department within 60 days of the effective  
13 date of this chapter.

14 (c) Closed systems.--Special regulations shall be  
15 promulgated regarding the cultural methods for species of fish  
16 allowed to be propagated in systems which do not discharge water  
17 into waters of this Commonwealth. Systems whose discharge of  
18 water is rendered incapable of containing self-perpetuating  
19 living organisms may be registered for any species of fish with  
20 approval by the department.

21 § 4220. Registration for artificial propagation.

22 (a) Application.--Application to register for artificial  
23 propagation shall be made on forms, prepared by the department,  
24 which relate to the size, character and purpose of the facility  
25 to be used for propagation. The species of fish to be propagated  
26 and each separate propagation facility as well as any other  
27 information required by the department shall also be indicated  
28 on the forms.

29 (b) Registration.--The department may register applicants  
30 for artificial propagation upon receipt of a written application

1 signed by the applicant after the applicant has paid a fee of  
2 \$150 to the department. Registration allows the registered  
3 operator to propagate all approved species of fish. The  
4 department shall establish a system to provide unique  
5 identification to a facility for the duration of that facility's  
6 continuous, commercial existence. A registration expires five  
7 years after the initial date of registration. A registration may  
8 be renewed for an additional five-year period upon payment of  
9 the fee.

10 § 4221. Activities under registration for artificial  
11 propagation.

12 (a) Sale of certain species.--

13 (1) Only species of fish approved for propagation and  
14 stocking under section 4219 (relating to permissible  
15 propagation) taken from waters wholly within this  
16 Commonwealth or legally taken in waters outside of this  
17 Commonwealth and received in interstate commerce are  
18 permitted to be purchased, sold or offered for sale.

19 (2) A registrant selling species of fish shall furnish  
20 to the consumer a receipt specifying the date of sale,  
21 identification of the registered facility and the amount of  
22 species sold by count or weight. The holder of the receipt  
23 must display it upon demand to anyone authorized to enforce  
24 laws of this Commonwealth. The receipt authorizes sale or  
25 possession of the purchased species for a period of 15 days  
26 after the date on the receipt. The period of 15 days,  
27 however, is inapplicable to species stocked in regulated  
28 fishing areas as well as ornamental, aquarium and baitfish  
29 species which may be held by dealers until disposed.

30 (b) Water obstruction.--A person registered under section

1 4220 (relating to registration for artificial propagation) must  
2 obtain prior, written approval from the Department of  
3 Environmental Protection to erect or place a dam, pond or other  
4 device which will prevent the free migration of finfish. This  
5 subsection permits dams, ponds and other devices erected prior  
6 to January 1, 1980, and used continuously since then to be  
7 maintained.

8 (c) Authorized activities by registrants.--Registration  
9 under section 4220 authorizes the registrant to:

10 (1) carry on the business of propagation and sale of  
11 species of fish and eggs thereof which are specified in the  
12 registration;

13 (2) catch and kill the specified species of fish in the  
14 specified facility or facilities in the registration by any  
15 means except explosives or poison; and

16 (3) sell, transport or dispose of species of fish and  
17 eggs thereof which are specified in the registration. Public  
18 transportation companies are authorized to receive and  
19 transport species and eggs.

20 (d) Unauthorized activities by registrants.--

21 (1) Registration under section 4220 does not authorize  
22 registrants to catch species of fish out of natural streams  
23 flowing over property of a registrant nor from other waters  
24 within this Commonwealth. Transportation of species neither  
25 cultivated nor purchased by the registrant is also  
26 unauthorized.

27 (2) Species of fish or eggs thereof taken from waters  
28 within this Commonwealth unoccupied, unowned or uncontrolled  
29 by a registrant and uncovered by his registration shall  
30 neither be stocked nor maintained in any manner. This

paragraph, however, allows the exchange of eggs or the fry of any species with the department and the commission.

§ 4222. Registration for dealers of live aquatic animals.

(a) Registration for dealing.--A resident or nonresident who does not propagate live aquatic animal and live baitfish species, but deals in those species, shall register with the department. The department may register applicants upon receipt of a written application signed by the applicant and the payment of a \$50 registration fee. Registration expires five years after the initial date of registration and may be renewed upon payment of the fee.

(b) Records to be kept.--Registrants shall keep records of all transactions, buying and selling, and shall record the date, amount by count or weight of species of fish, source of species, registration identification and place of sale.

(c) Approval.--

(1) Distribution by dealers is limited to those species of fish approved by the department.

(2) Transportation of species of fish into this Commonwealth is limited to sources of species whose health inspection reports have already been approved by the department. Sources may be preapproved by the department for an entire calendar year. Denials shall be restricted to those sources where diseases are nonendemic to this Commonwealth and for any diseases designated by the department upon recommendation of the advisory committee.

(d) Exemption from registration.--Dealers who are registered under section 4220 (relating to registration for artificial propagation) are exempt from licensure under this section for those species of fish. Compliance with subsection (c), is,

1 however, required.

2 § 4223. Prohibited propagation and penalties.

3 (a) Prohibited propagation.--Except for hobby breeders,  
4 artificial propagation of any species of fish is limited to  
5 those who have registered under section 4220 (relating to  
6 registration for artificial propagation). Artificial propagation  
7 by anyone whether or not registered is limited to those species  
8 approved under this chapter by law or by regulation of the  
9 department.

10 (b) Penalties.--Any person who sells, offers to sell or  
11 purchases fish with a market value or sale price of \$50 or more  
12 in violation section 4221(a)(1) (relating to activities under  
13 registration for artificial propagation) commits a misdemeanor  
14 of the third degree. Any other violation of this subchapter as  
15 well as a violation of section 4221(a)(1) where the market value  
16 or sale price is not shown or is less than \$50 is a summary  
17 offense of the first degree, as described in 30 Pa.C.S. § 923  
18 (relating to classification of offenses and penalties).

19 Section 2. The Department of Agriculture is directed to  
20 analyze needs for aquacultural research to determine the  
21 desirability and feasibility of acquiring via a public or  
22 private consortium one or both of the Federal fish research  
23 stations located within this Commonwealth should either or both  
24 of the stations become available.

25 Section 3. (a) The provisions of 30 Pa.C.S. Ch. 33 are  
26 repealed.

27 (b) All other acts and parts of acts are repealed insofar as  
28 they are inconsistent with this act.

29 Section 4. This act shall take effect in 60 days.