

[First Reprint]

**SENATE, No. 428**

**STATE OF NEW JERSEY**  
**220th LEGISLATURE**

PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

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**SYNOPSIS**

Extends Right to Farm Act protections to certain shellfish aquaculture activities.

**CURRENT VERSION OF TEXT**

As reported by the Assembly Agriculture and Food Security Committee on January 19, 2023, with amendments.



**(Sponsorship Updated As Of: 1/26/2023)**

1 AN ACT concerning Right to Farm Act protections for <sup>1</sup>shellfish<sup>1</sup>  
2 aquaculture, <sup>1</sup>[and]<sup>1</sup> amending <sup>1</sup>P.L.1983, c.31 and P.L.1998,  
3 c.48,<sup>1</sup> and supplementing P.L.1983, c.31 <sup>1</sup>(C.4:1C-1 et seq.)<sup>1</sup> .  
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:  
7

8 1. Section 3 of P.L.1983, c.31 (C.4:1C-3) is amended to read as  
9 follows:

10 3. As used in P.L.1983, c.31 (C.4:1C-1 et seq.):

11 <sup>1</sup>[“Aquaculture” means the same as the term is defined in section  
12 3 of P.L.1997, c.236 (C.4:27-3).

13 “Aquaculture management unit” means an area used specifically  
14 for an aquaculture operation, including all leased, riparian, nursery,  
15 or hatchery property listed in an approved aquatic farmers license  
16 issued by the New Jersey Department of Agriculture or a shellfish  
17 aquaculture permit issued by the Bureau of Marine Water  
18 Monitoring in the Department of Environmental Protection, and  
19 including all storage, processing, or retail facilities associated with  
20 an aquaculture operation that may be located on separate parcels of  
21 terrestrial land, regardless of whether that land is zoned for  
22 agricultural or horticultural use.

23 “Aquatic organism” means the same as the term is defined in  
24 section 3 of P.L.1997, c.236 (C.4:27-3).<sup>1</sup>

25 “Board” or “county board” means a county agriculture  
26 development board established pursuant to section 7 of P.L.1983,  
27 c.32 (C.4:1C-14).

28 “Commercial farm” means (1) a farm management unit of no less  
29 than five acres producing agricultural or horticultural products  
30 worth \$2,500 or more annually, and satisfying the eligibility criteria  
31 for differential property taxation pursuant to the “Farmland  
32 Assessment Act of 1964,” P.L.1964, c.48 (C.54:4-23.1 et seq.), (2)  
33 a farm management unit less than five acres, producing agricultural  
34 or horticultural products worth \$50,000 or more annually and  
35 otherwise satisfying the eligibility criteria for differential property  
36 taxation pursuant to the “Farmland Assessment Act of 1964,”  
37 P.L.1964, c.48 (C.54:4-23.1 et seq.), **[or]** <sup>1</sup>or<sup>1</sup> (3) a farm  
38 management unit that is a beekeeping operation producing honey or  
39 other agricultural or horticultural apiary-related products, or  
40 providing crop pollination services, worth \$10,000 or more annually  
41 <sup>1</sup>[, or (4) a farm management unit or aquaculture management unit  
42 engaging in aquaculture and producing, or likely to produce within  
43 three years of commencing aquaculture, aquatic organisms worth  
44 \$40,000 or more annually]<sup>1</sup> .

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly AAN committee amendments adopted January 19, 2023.

1 “Committee” means the State Agriculture Development  
2 Committee established pursuant to section 4 of P.L.1983, c.31  
3 (C.4:1C-4).

4 “Farm management unit” means a parcel or parcels of land,  
5 whether contiguous or noncontiguous, together with agricultural or  
6 horticultural buildings, structures and facilities, producing  
7 agricultural or horticultural products, and operated as a single  
8 enterprise.

9 “Farm market” means a facility used for the wholesale or retail  
10 marketing of the agricultural output of a commercial farm, and  
11 products that contribute to farm income, except that if a farm  
12 market is used for retail marketing at least 51 **【%】** percent of the  
13 annual gross sales of the retail farm market shall be generated from  
14 sales of agricultural output of the commercial farm, or at least 51  
15 **【%】** percent of the sales area shall be devoted to the sale of  
16 agricultural output of the commercial farm, and except that if a  
17 retail farm market is located on land less than five acres in area, the  
18 land on which the farm market is located shall produce annually  
19 agricultural or horticultural products worth at least \$2,500.

20 “Full-time, year-round equine-related farm employee” means any  
21 person employed by the owner or operator of a commercial farm on  
22 a full-time, year-round basis to provide proper care and ensure the  
23 safety of horses on the commercial farm, including, but not limited  
24 to, a groom or other employee working in a stable. “Full-time,  
25 year-round equine-related farm employee” shall not include a  
26 migrant, seasonal, or temporary employee.

27 1“Shellfish” means the same as the term is defined in R.S.50:1-5.

28 “Shellfish aquaculture” means the propagation, rearing, and  
29 subsequent harvesting of shellfish in controlled or selected  
30 environments, and the subsequent processing, packaging, and  
31 marketing of such shellfish, and includes activities to intervene in  
32 the rearing process to increase production such as stocking, feeding,  
33 transplanting, and providing for protection from predators.

34 “Shellfish aquaculture management unit” means an area,  
35 contiguous or noncontiguous, together with buildings, structures,  
36 and facilities, on which shellfish aquaculture is occurring, and  
37 which is operated as a single enterprise.

38 “Shellfish commercial farm” means a shellfish aquaculture  
39 management unit that engages in shellfish aquaculture and produces  
40 shellfish worth \$40,000 or more annually.

41 “Shellfish farm market” means a structure co-located with a  
42 shellfish post-harvest activities facility that is part of the shellfish  
43 aquaculture management unit used for the wholesale or retail  
44 marketing of the shellfish output of a shellfish commercial farm,  
45 and products that contribute to farm income, except that if a  
46 shellfish farm market is used for retail marketing at least 51 percent  
47 of the annual gross sales of the retail farm market shall be generated  
48 from sales of shellfish output of the shellfish commercial farm, or at

1 least 51 percent of the sales area shall be devoted to the sale of  
2 shellfish output of the shellfish commercial farm.

3 “Shellfish post-harvest activities” means the storage, processing,  
4 and packaging activities carried out at a shellfish aquaculture  
5 management unit.

6 “Single enterprise” means a person, including a business entity,  
7 that coordinates operations and combines resources in pursuit of the  
8 same business purpose, as evidenced by items including, but not  
9 limited to: common owners, principals, managers, directors,  
10 shareholders, or employees; integrated business records, financial  
11 statements, and tax returns; shared business resources; centralized  
12 accounting processes; commingling of income or expenses; the  
13 sharing of profits, losses, or liabilities; or common bank accounts.<sup>1</sup>

14 (cf: P.L.2020, c.154, s.1)

15

16 <sup>1</sup>2. Section 5 of P.L.1998, c.48 (C.4:1C-10.1) is amended to  
17 read as follows:

18 5. a. Any person aggrieved by the operation of a commercial  
19 farm, or the operation of a shellfish commercial farm, shall file a  
20 complaint with the applicable county agriculture development board  
21 or the State Agriculture Development Committee in counties where  
22 no county board exists prior to filing an action in court.

23 b. In the event the dispute concerns activities that are addressed  
24 by an agricultural management practice recommended by the  
25 committee and adopted pursuant to the provisions of the  
26 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
27 seq.), the county board shall hold a public hearing and issue  
28 findings and recommendations within 60 days of the receipt of the  
29 complaint.

30 c. In the event the committee has not recommended an  
31 agricultural management practice concerning activities addressed by  
32 a complaint, the county board shall forward the complaint to the  
33 committee for a determination of whether the disputed agricultural  
34 operation constitutes a generally accepted agricultural operation or  
35 practice. Upon receipt of the complaint, the committee shall hold a  
36 public hearing and issue its decision, in writing, to the county  
37 board. The county board shall hold a public hearing and issue its  
38 findings and recommendations within 60 days of the receipt of the  
39 committee's decision.

40 d. Any person aggrieved by the decision of the county board  
41 shall appeal the decision to the committee within 10 days. The  
42 committee shall schedule a hearing and make a determination  
43 within 90 days of receipt of the petition for review.

44 e. The decision of the State Agriculture Development  
45 Committee shall be binding, subject to the right of appeal to the  
46 Appellate Division of the Superior Court. Any decision of a county  
47 agriculture development board that is not appealed shall be  
48 binding.<sup>1</sup>

49 (cf: P.L.1998, c.48, s.5)

1       <sup>1</sup>[2.] 3.<sup>1</sup> (New section) <sup>1</sup>【Notwithstanding the provisions of  
2 section 3 of P.L.1983, c.31 (C.4:1C-3), or any rules or regulations  
3 adopted pursuant thereto, to the contrary, a farm management unit  
4 or】 a. A shellfish<sup>1</sup> aquaculture management unit that qualifies as a  
5 'shellfish'<sup>1</sup> commercial farm <sup>1</sup>【for the purposes of P.L.1983, c.31  
6 (C.4:1C-1 et al.) because it is an aquaculture operation producing,  
7 or likely to produce within three years of commencing the  
8 aquaculture operation, aquatic organisms worth \$40,000 or more  
9 annually】 , pursuant to P.L. , c. (C. ) (pending before the  
10 Legislature as this bill),<sup>1</sup> shall be entitled to the protections  
11 <sup>1</sup>【provided to any other commercial farm pursuant to P.L.1983,  
12 c.31 (C.4:1C-1 et al.)】 set forth in section 4 of  
13 P.L. , c. (C. ) (pending before the Legislature as this bill)<sup>1</sup> ,  
14 but not for agricultural or horticultural activities that are not  
15 <sup>1</sup>【aquaculture-related】 related to shellfish aquaculture<sup>1</sup> unless the  
16 <sup>1</sup>【farm】 shellfish aquaculture<sup>1</sup> management unit also qualifies as a  
17 commercial farm pursuant to section 3 of P.L.1983, c.31 (C.4:1C-3)  
18 for reasons other than 'shellfish'<sup>1</sup> aquaculture.

19       <sup>1</sup>b. Notwithstanding the provisions of any municipal or county  
20 ordinance, resolution, or regulation to the contrary, the owner or  
21 operator of a shellfish commercial farm that is located in an area in  
22 which, as of December 31, 1997 or thereafter, agriculture is a  
23 permitted use under the municipal zoning ordinance and is  
24 consistent with the municipal master plan, or that is in operation as  
25 of the effective date of P.L. , c. (C. ) (pending before the  
26 Legislature as this bill) and is located in an area zoned for  
27 commercial or industrial use, or that is located in the coastal area,  
28 as designated pursuant to section 4 of P.L.1973, c.185 (C.13:19-4),  
29 and is zoned for commercial or industrial use, or that is located on  
30 land under tidal waters that the shellfish commercial farm has the  
31 authority to use pursuant to a riparian grant or lease granted  
32 pursuant to R.S.12:3-2 et seq. or a lease granted pursuant to  
33 R.S.50:1-23 et seq., and that operates in conformance with  
34 agricultural management practices recommended by the committee  
35 and adopted pursuant to the provisions of the "Administrative  
36 Procedure Act," P.L.1968, c410 (C.52:14B-1 et seq.), or whose  
37 specific operation or practice has been determined by the  
38 appropriate county board, or by the committee in a county where no  
39 county board exists, to constitute a generally accepted agricultural  
40 operation or practice, and that operates in conformance with all  
41 relevant federal or State statutes or rules and regulations adopted  
42 pursuant thereto and does not pose a direct threat to public health  
43 and safety shall be authorized to:

44       (1) produce shellfish as described in the Standard Industrial  
45 Classification for shellfish farming or, after the operative date of the  
46 regulations adopted pursuant to section 5 of P.L.2003, c.157  
47 (C.4:1C-9.1), as described in the corresponding classification under  
48 the North American Industry Classification System;

- 1     (2) process and package the shellfish output of the shellfish  
2 commercial farm;  
3     (3) provide for the operation of a shellfish farm market,  
4 including the construction of a building and parking area in  
5 conformance with municipal standards;  
6     (4) control pests, predators, and diseases of shellfish;  
7     (5) conduct on-site disposal of organic waste on land included in  
8 the shellfish aquaculture management unit, excluding land currently  
9 flowed by tidal waters;  
10    (6) recycle shells on land included in the shellfish aquaculture  
11 management unit;  
12    (7) conduct agriculture-related educational and farm-based  
13 recreational activities, provided that the activities are related to  
14 marketing the shellfish output of the shellfish commercial farm; and  
15    (8) engage in any other agricultural activity as determined by  
16 the committee and adopted by rule or regulation pursuant to the  
17 provisions of the "Administrative Procedure Act," P.L.1968, c.410  
18 (C.52:14B-1 et seq.).<sup>1</sup>

19  
20     <sup>1</sup>4. (New section) In all relevant actions filed subsequent to the  
21 effective date of P.L. \_\_\_\_\_, c. \_\_\_\_\_ (C. \_\_\_\_\_) (pending before the  
22 Legislature as this bill), there shall exist an irrebuttable presumption  
23 that a shellfish commercial farm's operation, activity, or structure  
24 does not pose a direct threat to public health and safety, does not  
25 constitute a public or private nuisance, and does not otherwise  
26 invade or interfere with the use and enjoyment of any other land or  
27 property, provided that the operation, activity, or structure:  
28 conforms either to agricultural management practices recommended  
29 by the committee and adopted pursuant to the provisions of the  
30 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-  
31 1 et seq.), or to a specific operation or practice that has been  
32 determined by the appropriate county board, or by the committee in  
33 a county where no county board exists, to constitute a generally  
34 accepted agricultural operation or practice; and additionally  
35 conforms to all relevant federal or State statutes and rules and  
36 regulations adopted pursuant thereto.<sup>1</sup>

37  
38     <sup>1</sup>[3.] 5.<sup>1</sup> This act shall take effect immediately.