

“Oysters and Clams”, and to add new Sub-sections (h) to (p) to said Section 712, to follow immediately after Sub-section (g) thereof, providing for a license for taking or gathering clams, relating to the method of taking hardshell clams and to the penalties for an illegal taking, and relating generally to the taking and gathering of hardshell clams in this State.

May 5, 1959.

Honorable George W. Della
President of the Senate
State House
Annapolis, Maryland

Dear Mr. President:

I am returning herewith Senate Bill No. 375, vetoed by me this morning. The Maryland Constitution, Article II, Section 17, requires me to return all vetoed legislation to the House of its origin, which in this case is your honorable body.

The purpose of Senate Bill No. 375 is to repeal and re-enact, with amendments, Subsections (a), (f) and (g) of Section 712, Article 66C of the Annotated Code of Maryland, 1957 Edition, entitled “Natural Resources”, sub-titled “Oysters and Clams”, and to add new Subsections (h) to (p) to Section 712, to follow immediately after Subsection (g).

In Section 712, Subsection (o) of this bill, the amendment provides that any person who violates the provisions of the Section shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than \$25 nor more than \$200, or imprisoned in the House of Correction for not more than six months, or both. There is a proviso that in Worcester County any non-resident of the State of Maryland who is convicted shall be fined not less than \$100 nor more than \$1,000, or imprisoned in the House of Correction for not less than three months nor more than six months, or both, and that any boat involved in the violation may be seized and held until the fine is paid.

Under this bill, the penalty for violation by a non-resident of the State is much greater than that imposed upon a resident of the State who is in violation of the law.

The Attorney General has informed me by letter dated May 1, 1959 that in his opinion this bill is inconsistent with Article IV, Section 2 of the Federal Constitution, and that he cannot approve the same as to legal form and sufficiency.

He stated in his letter that Article IV, Section 2 of the Federal Constitution provides in part that:

“The Citizens of each State shall be entitled to all privileges and immunities of Citizens in the Several States.”

This Section of the Constitution was recently applied by the United States Supreme Court in considering a violation of the fisheries laws of South Carolina where non-residents of the State were required to pay larger license fees than residents of the State. The case in question was *Toomer vs. Witsell* (334 U. S. 385). The Supreme Court held that the South Carolina Act violated the protection provided by the privilege and immunities clause of the Constitution and was to that extent unconstitutional.

As a result of the opinion expressed by the Attorney General and the recent ruling of the United States Supreme Court as referred