

By: Holland

To: Agriculture

HOUSE BILL NO. 591  
(As Passed the House)

1 AN ACT TO AMEND SECTION 69-1-18, MISSISSIPPI CODE OF 1972, TO  
2 REQUIRE OWNERS OF RETAIL FOOD ESTABLISHMENTS TO PAY AN ANNUAL  
3 LICENSE FEE TO THE DEPARTMENT OF AGRICULTURE AND COMMERCE; TO  
4 REVISE DEFINITIONS; TO INCREASE PENALTIES FOR VIOLATIONS; TO  
5 PROVIDE FOR AN INFORMAL ADMINISTRATIVE REVIEW UPON REQUEST OF THE  
6 ACCUSED; TO PROVIDE APPEAL PROCEDURES; AND FOR RELATED PURPOSES.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

8 SECTION 1. Section 69-1-18, Mississippi Code of 1972, is  
9 amended as follows:

10 69-1-18. (1) The following words and phrases shall have the  
11 meanings ascribed herein unless the context clearly requires  
12 otherwise:

13 (a) "Potentially hazardous food" means a food that is  
14 natural or synthetic and that requires temperature control because  
15 it is in a form capable of supporting: the growth of infectious  
16 or toxigenic microorganisms; the growth and toxin production of  
17 Clostridium botulinum; or in raw shell eggs, the growth of  
18 salmonella enteritis. "Potentially hazardous food" includes an  
19 animal food (of animal origin) that is raw or heat-treated; a food  
20 of plant origin that is heat-treated or consists of raw seed  
21 sprouts; and cut melons.

22 (b) "Retail food establishment" means any establishment  
23 where food and food products are offered for sale to the ultimate  
24 consumer and intended for off-premise consumption. Such food or  
25 food products may be exposed to varying degrees of preparation and  
26 may often need further preparation or processing after it has been  
27 purchased. A retail food establishment does not include:

28 (i) An establishment that offers only prepackaged

foods that are not potentially hazardous;

(ii) A produce stand that only offers whole, uncut fresh fruits and vegetables;

(iii) A food processing plant; and

(iv) A food establishment as defined by the Mississippi State Department of Health.

(2) The commissioner and his agents shall have the authority:

(a) To promulgate rules and regulations establishing certain sanitation requirements for retail food establishments;

(b) To conduct sanitation inspections in retail food establishments; and

(c) To publish the names and addresses of violators and such information pertaining to violation(s) of this section as he deems appropriate.

(3) Each retail food establishment, before engaging in business, shall obtain a license from the commissioner. Owners of more than one (1) retail food establishment must obtain a license for each establishment. A license fee of Twenty Dollars (\$20.00) must be paid to the department before a license will be issued. Application for such license shall be made on forms prescribed and furnished by the commissioner. Licenses issued under this subsection by the commissioner shall expire on June 30 each year and application for renewals thereof shall be made annually before the expiration date. Licenses shall not be transferable and application must be made for a new license if there is any change in location or ownership of the business.

(4) Any person who violates any provision of this law or the regulations adopted hereunder shall be guilty of a misdemeanor, and, upon conviction, shall be punished by the imposition of a fine not to exceed Five Hundred Dollars (\$500.00) or by imprisonment in the county jail for a term not to exceed six (6) months, or both.

62       (5) The commissioner may impose administrative penalties for  
63 violation of this section.

64       (6) Any person found by the commissioner to be in violation  
65 of this section may be assessed a penalty in an amount of not more  
66 than Five Hundred Dollars (\$500.00) and subsequent violations  
67 within a six-month period at a penalty of not more than One  
68 Thousand Dollars (\$1,000.00). In addition to, or in lieu of, such  
69 penalties the commissioner may suspend or revoke the permit issued  
70 to such person under terms of this section. \* \* \*

71       (7) When any violation of this section or the rules and  
72 regulations promulgated hereunder occurs, or is about to occur,  
73 that presents a clear and present danger to the public health,  
74 safety or welfare requiring immediate action, the commissioner or  
75 any of the department's field inspectors, or any other persons  
76 authorized by the commissioner, may issue an order to be effective  
77 immediately before notice and a hearing, that imposes any or all  
78 of the following penalties against the accused: (a) a stop sale  
79 order on any product in violation of this section; (b) an order to  
80 seize any product that is not in compliance with this section and  
81 require it to be denatured or destroyed under the supervision of  
82 the department's inspectors; or (c) an order that the retail food  
83 establishment or any department within such establishment cease  
84 operations until it is in compliance with this section. The order  
85 shall be served upon the accused in accordance with Rule 4 of the  
86 Mississippi Rules of Civil Procedure or certified mail or it may  
87 be served by giving a copy of the order to the manager of the  
88 retail food establishment or, where no manager is present, an  
89 employee of the establishment. The accused shall then have twenty  
90 (20) days after service of the order upon him within which to  
91 request an informal administrative review before the Director of  
92 the Bureau of Regulatory Services in the department, or the  
93 director's designee, who shall act as reviewing officer. If the  
94 accused makes such a request within such time, the reviewing

95 officer shall provide an informal administrative review to the  
96 accused within ten (10) days after such request is made. If the  
97 accused does not request an informal administrative review within  
98 twenty (20) days, then he shall have waived his right to such  
99 review. At the informal administrative review, there shall be no  
100 court reporter or record made of the proceedings. Each party may  
101 present its case in the form of documents, oral statements or any  
102 other method. The rules of evidence shall not apply. The  
103 reviewing officer's decisions shall be in writing, and it shall be  
104 delivered by certified mail. If the accused is aggrieved by the  
105 order of the hearing officer, he may appeal to the commissioner  
106 for a full evidentiary hearing. Such appeal shall be perfected by  
107 filing a notice of appeal with the commissioner within thirty (30)  
108 days after the order of the reviewing officer is served on the  
109 appealing party. The hearing before the commissioner or his  
110 designee shall be held within a reasonable time after the appeal  
111 has been perfected. Failure to perfect an appeal within the  
112 allotted time shall be deemed a waiver of such right.

113       SECTION 2. This act shall take effect and be in force from  
114 and after July 1, 2000.