

By: Holland

To: Agriculture

HOUSE BILL NO. 591
(As Sent to Governor)

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

29 foods that are not potentially hazardous;

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

32 (iii) A food processing plant; and

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

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

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

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

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

44 (3) Each retail food establishment, before engaging in
45 business, shall obtain a license from the commissioner. Owners of
46 more than one (1) retail food establishment must obtain a license
47 for each establishment. A license fee of Ten Dollars (\$10.00)
48 must be paid to the department before a license will be issued.
49 Application for such license shall be made on forms prescribed and
50 furnished by the commissioner. Licenses issued under this
51 subsection by the commissioner shall expire on June 30 each year
52 and application for renewals thereof shall be made annually before
53 the expiration date. Licenses shall not be transferable and
54 application must be made for a new license if there is any change
55 in location or ownership of the business.

56 (4) Any person who violates any provision of this law or the
57 regulations adopted hereunder shall be guilty of a misdemeanor,
58 and, upon conviction, shall be punished by the imposition of a
59 fine not to exceed Five Hundred Dollars (\$500.00) or by
60 imprisonment in the county jail for a term not to exceed six (6)
61 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.