

By: Stogner

To: Agriculture

SENATE BILL NO. 2560

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

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

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

11 68-1-18. (1) The following words and phrases shall have the
12 meanings ascribed herein unless the context clearly requires
13 otherwise:

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

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

29 (i) An establishment that offers only prepackaged
30 foods that are not potentially hazardous;

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

33 (iii) A food processing plant; and

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

36 (2) The commissioner shall have the 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 information pertaining to violations of this section as he deems
43 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 Fifty Dollars (\$50.00)
48 must be paid to the department before a license will be issued.
49 Application for the 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 renewal shall be made annually before the
53 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 this section or regulations is
57 guilty of a misdemeanor, and, upon conviction, shall be punished
58 by the imposition of a fine not to exceed Five Hundred Dollars
59 (\$500.00) or by imprisonment in the county jail for a term not to
60 exceed six (6) months, or both.

61 (5) The commissioner may impose administrative penalties for

62 violation of this section.

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

70 (7) When any violation of this section or the rules and
71 regulations occurs, or is about to occur, that presents a clear
72 and present danger to the public health, safety or welfare
73 requiring immediate action, the commissioner or any of the
74 department's field inspectors, or any other persons authorized by
75 the commissioner, may issue an order to be effective immediately
76 before notice and a hearing, that imposes any or all of the
77 following penalties against the accused: (a) a stop sale order on
78 any product in violation of this section; (b) an order to seize
79 any product that is not in compliance with this section and
80 require it to be denatured or destroyed under the supervision of
81 the department's inspectors; or (c) an order that the retail food
82 establishment or any department within such establishment cease
83 operations until it is in compliance with this section. The order
84 shall be served upon the accused in accordance with Rule 4 of the
85 Mississippi Rules of Civil Procedure or certified mail or it may
86 be served by giving a copy of the order to the manager of the
87 retail food establishment or, if the manager is not present, an
88 employee of the establishment. The accused shall then have twenty
89 (20) days after service of the order upon him to request an
90 informal administrative review before the Director of the Bureau
91 of Regulatory Services in the department, or the director's
92 designee, who shall act as reviewing officer. If the accused
93 makes a request within the twenty (20) days, the reviewing officer
94 shall provide an informal administrative review to the accused

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

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