

By: Stogner

To: Agriculture

SENATE BILL NO. 2560  
(As Passed the Senate)

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 Ten Dollars (\$10.00)  
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.