To: Agriculture

MISSISSIPPI LEGISLATURE  REGULAR SESSION 2002
By: Representative Holland  To: Agriculture

HOUSE BILL NO. 48

AN ACT TO AMEND SECTION 69-7-607, MISSISSIPPI CODE OF 1972, TO REQUIRE THAT CERTAIN CATFISH PRODUCTS OFFERED FOR DIRECT RETAIL SALE FOR HUMAN CONSUMPTION BY A PROCESSOR, DISTRIBUTOR OR RETAILER SHALL BE LABELED AS IMPORTED BASA OR OTHER CATFISH INCLUDING THE COUNTRY OF ORIGIN; TO AMEND SECTION 69-7-609, MISSISSIPPI CODE OF 1972, TO REQUIRE ALL DISTRIBUTORS, PROCESSORS OR WHOLESALERS OF CATFISH PRODUCTS TO PROVIDE INFORMATION TO EACH PERSON, FIRM OR CORPORATION TO WHOM THEY DISTRIBUTE OR SELL CATFISH PRODUCTS FOR RESALE AS TO WHETHER SUCH CATFISH PRODUCT IS IMPORTED BASA OR OTHER CATFISH INCLUDING THE COUNTRY OF ORIGIN; TO AMEND SECTION 69-7-605, MISSISSIPPI CODE OF 1972, TO REVISE DEFINITIONS; TO AMEND SECTION 69-7-613, MISSISSIPPI CODE OF 1972, TO PROVIDE CRIMINAL PENALTIES FOR VIOLATIONS; TO CREATE A NEW CODE SECTION TO BE CODIFIED AS SECTION 69-7-614, MISSISSIPPI CODE OF 1972, TO REQUIRE ALL PERSONS SELLING CATFISH TO MAINTAIN CERTAIN RECORDS OF THEIR PURCHASES AND SALES OF CATFISH AND TO AUTHORIZE THE DEPARTMENT OF AGRICULTURE AND COMMERCE TO INSPECT SUCH RECORDS; TO CREATE A NEW CODE SECTION TO BE CODIFIED AS SECTION 69-7-616, MISSISSIPPI CODE OF 1972, TO PROVIDE CIVIL PENALTIES FOR VIOLATIONS AND TO PROVIDE ADMINISTRATIVE PROCEEDINGS TO BE USED BY THE DEPARTMENT OF AGRICULTURE AND COMMERCE IN HANDLING COMPLAINTS AND HEARINGS; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 69-7-605, Mississippi Code of 1972, is amended as follows:

69-7-605. For purposes of this article, the following terms shall have the meaning ascribed herein unless the context otherwise requires:

(a) "Capable of use as human food" shall mean and shall apply to any catfish or part or product thereof unless it is denatured or otherwise identified as required by regulations prescribed by the commissioner to deter its use as human food, or unless it is naturally inedible by humans.

(b) "Catfish" shall include, but not be limited to, any species of the scientific order, Siluriformes, or family, Anarhichadidae.
(c) "Commissioner" shall mean the Commissioner of Agriculture and Commerce of the State of Mississippi.

(d) "Direct retail sale" shall mean the sale of catfish products individually or in small quantities directly to the consumer.

(e) "Distributor" shall mean any person offering for sale, exchange, or barter any catfish product destined for direct retail sale in the State of Mississippi.

(f) "Label" shall mean a display of written, printed or graphic matter upon or affixed to the container in which a catfish product is offered for direct retail sale.

(g) "Labeling" shall mean all labels and other written, printed or graphic matter upon a catfish product, or any of its containers or wrappers, offered for direct retail sale.

(h) "Pay pond" shall mean a circumscribed body of water owned by a person and operated solely for recreational fishing purposes on a commercial basis for profit.

(i) "Person" shall include any individual, partnership, corporation, and association or other legal entity.

(j) "Processor" shall mean any person engaged in handling, storing, preparing, manufacturing, packing, or holding catfish products.

(k) "Producer" shall mean any person engaged in the business of harvesting catfish, by any method, intended for direct retail sale.

(l) "Product" shall mean any catfish product capable of use as human food which is made wholly or in part from any catfish or portion thereof, except products which contain catfish only in small proportions or historically have not been, in the judgment of the commissioner, considered by consumers as products of the commercial catfish industry and which are exempted from definition as a catfish product by the commissioner under such conditions as he may prescribe to assure that the catfish or portions thereof...
contained therein are not adulterated and that such products are not represented as catfish products.

(m) "Product name" shall mean the name of the catfish item intended for retail sale which identifies it as to kind, class, or specific use.

(n) "Retailer" shall mean any person offering for sale catfish products to individual consumers and representing the last sale prior to human consumption including restaurants and other eating establishments.

SECTION 2. Section 69-7-607, Mississippi Code of 1972, is amended as follows:

69-7-607. (1) No catfish product shall be offered for direct retail sale for human consumption by a processor, distributor or retailer unless the catfish product name is specifically labeled in the following manner:

(a) "FARM-RAISED CATFISH, A PRODUCT OF MISSISSIPPI" if the product has been specifically produced in fresh water according to the usual and customary techniques of commercial aquaculture; except that the appropriate state name or USA or United States of America may be inserted in lieu thereof to accommodate similar catfish products produced in any one of the other states of the United States of America.

(b) "RIVER OR LAKE CATFISH, A PRODUCT OF MISSISSIPPI" if the product has been produced in any freshwater lake, river or stream of the state, but has not been produced according to the usual and customary techniques of commercial aquaculture; except that the appropriate state name or USA or United States of America may be inserted in lieu thereof to accommodate similar catfish products produced in freshwater lakes, rivers or streams of any other state in the United States of America.

(c) "IMPORTED BASA OR OTHER CATFISH, A PRODUCT OF [country of origin]" provided the catfish is produced from freshwater, either according to the usual and
customary techniques of aquaculture, or from freshwater lakes, rivers or streams of a country other than the United States of America.

(d) "OCEAN CATFISH" provided the catfish product is produced from marine or estuarine waters.

(2) Any person selling river or lake catfish exclusively and directly to the consumer may have on his premises a sign reasonably visible to the consumer identifying such product as river or lake catfish, rather than labeling each individual container or package of catfish product, as provided in subsection (1).

(3) Any retailer selling catfish products not wrapped or in a container may comply with this article by placing a sign on the display case or refrigeration unit and on menus reasonably visible to the consumer, giving notice that such catfish is either "Farm Raised Catfish," "River or Lake Catfish," "Imported BASA or Other Catfish, a Product of__________(country of origin)" or "Ocean Catfish," as such products are defined in subsection (1) above.

(4) Any advertising as to any catfish product shall state whether such catfish product is "Farm Raised Catfish," "River or Lake Catfish," "Imported BASA or Other Catfish, a Product of__________(country of origin)" or "Ocean Catfish," as defined in subsection (1) above.

(5) This section shall not apply to catfish products exported out of the United States.

(6) All of the information required by this section to be printed on labels, signs or menus shall be of the same size throughout.

SECTION 3. Section 69-7-609, Mississippi Code of 1972, is amended as follows:

69-7-609. All distributors, processors, or wholesalers of catfish products, distributing or selling catfish products, shall provide information to each person, firm, or corporation to whom
they distribute or sell catfish products for resale as to whether
such catfish product is "Farm Raised Catfish," "River or Lake
Catfish," "Imported BASA or Other Catfish, a Product of__________
(country of origin)" or "Ocean Catfish," as such terms are defined
in subsection (1) of Section 69-7-607.

SECTION 4. Section 69-7-613, Mississippi Code of 1972, is
amended as follows:

69-7-613. (1) Any person who violates the provisions of
this article, or the rules and regulations promulgated hereunder,
shall be guilty of a felony and, upon conviction, shall be
punished by a fine of up to One Thousand Dollars ($1,000.00) or by
imprisonment for not more than one (1) year, or by both such fine
and imprisonment. Any person violating the provisions of this
article, or the rules and regulations promulgated hereunder, upon
conviction for a second or subsequent violation shall be guilty of
a felony and upon convictions, shall be punished by imprisonment
for not more than five (5) years or by a fine of up to Five
Thousand Dollars ($5,000.00), or by both.

(2) The commissioner may apply for and the court may grant a
temporary or permanent injunction restraining any person from
violating or continuing to violate any of the provisions of this
article or any rule or regulation promulgated under this article,
notwithstanding the existence of other remedies at law. The
injunction shall be issued without bond.

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SECTION 5. The following section shall be codified as
Section 69-7-614, Mississippi Code of 1972:

69-7-614. All persons selling catfish within this state that
are regulated by this article shall preserve and maintain all
records of their purchases and sales of catfish for a period of
three (3) years after such purchases and sales have occurred. The
Department of Agriculture and Commerce shall be allowed to enter
the premises of all such persons during regular business hours
without the necessity of a search warrant or court order and
seize, inspect or copy such records.

SECTION 6. The following section shall be codified as
Section 69-7-616, Mississippi Code of 1972:

69-7-616. When a written complaint is made against a person
for violation of any of the provisions of this article, or any of
the rules or regulations promulgated hereunder, the Director of
the Regulatory Division of the Mississippi Department of
Agriculture and Commerce, or his designee, shall act as reviewing
officer. The complaint shall be in writing and shall be filed
with the Mississippi Department of Agriculture and Commerce. The
reviewing officer shall cause to be delivered to the accused in
the manner described herein a copy of the complaint and any
supporting documents along with a summons requiring the accused to
respond to the allegations within thirty (30) days after service
of the summons and complaint upon the accused. The accused shall
file with the department a written response to the complaint and
any supporting documents within the thirty-day period. The
accused may be notified by serving a copy of the summons and
complaint on the accused or any of his officers, agents or
employees by personal service or by certified mail. Upon the
expiration of the thirty-day period, the reviewing officer shall
review the complaint, the written response of the accused, if any,
and all supporting documents offered by the parties in support of
their respective positions. The reviewing officer's decision
shall be based solely on the documents provided by the parties as
no hearing with live testimony or informal discussions shall be
held. If the reviewing officer determines that the complaint
lacks merit, he may dismiss the complaint. If he finds that there
are reasonable grounds showing that a violation of the statutes or
regulations has been committed, he may impose any or all of the
following penalties upon the accused: (a) levy a civil penalty in
the amount of no more than One Thousand Dollars ($1,000.00) for
each violation; (b) issue a stop sale order; (c) require the accused to relabel any fish that he is offering for sale and which is not labeled in accordance with the provisions of this article; or (d) seize any fish that is not in compliance with this article and destroy, sell or otherwise dispose of the fish and apply the proceeds of any such sale to the costs herein and any civil penalties levied, with the balance to be paid to the accused. The reviewing officer's decision shall be in writing, and it shall be delivered to the accused by any of the methods described herein for service of the summons and complaint on the accused.

(2) Either the accused or the department may appeal the decision of the reviewing officer to the Commissioner of Agriculture and Commerce by filing a notice of appeal with the department within thirty (30) days of receipt of the reviewing officer's decision. If no appeal is taken from the order of the reviewing officer within the allotted time, the order shall then become final. In the event of an appeal, the commissioner, or his designee, shall conduct a full evidentiary hearing relative to the charges. The commissioner may issue subpoenas to require the attendance of witnesses and the production of documents. Compliance with such subpoenas may be enforced by any court of general jurisdiction in this state. The testimony of witnesses shall be upon oath or affirmation, and they shall be subject to cross-examination. The proceedings shall be recorded by a court reporter. The commissioner shall have all the powers of the reviewing officer described herein, and the commissioner may affirm, reverse or modify the order of the reviewing officer. The commissioner's decision shall be in writing, and it shall be delivered to the parties in the same manner that the summons and complaint may be served upon the accused.

(3) Either the accused or the department may appeal the decision of the commissioner to the circuit court of the county of residence of the accused, or if the accused is a nonresident of...
the State of Mississippi, to the Circuit Court of the First Judicial District of Hinds County, Mississippi. The appellant has the obligation of having the record transcribed and filed with the circuit court. The appeal shall otherwise be governed by all applicable laws and rules affecting appeals to the circuit court. If no appeal is perfected within the required time, the decision of the commissioner, or his designee, shall then become final.

(4) The decision of the circuit court may then be appealed by either party to the Mississippi Supreme Court in accordance with the existing laws and rules affecting such appeals.

(5) Where any violation of this article, or the rules and regulations promulgated hereunder, occurs, or is about to occur, that presents a clear and present danger to the public health, safety or welfare requiring immediate action, any of the department's field inspectors, and any other persons authorized by the commissioner, may issue an order to be effective immediately, before notice and a hearing, that imposes any or all of the penalties described herein against the accused. The order shall be served upon the accused in the same manner that the summons and complaint may be served upon him. The accused shall then have thirty (30) days after service of the order upon him within which to request an informal administrative review before the reviewing officer, or his designee, as described herein. The accused shall include within his request all documents that support his position. The department may also submit any documents that support its position. If the accused makes such a request within such time, the reviewing officer, or his designee shall review the documents provided by the parties and render a written decision within thirty (30) days after such request is made. Upon the making of such a request, the procedure described herein shall be followed, except that there is no need for a complaint to be filed against the accused. If the accused does not request an
administrative review within such time frame, then he shall have
waived his right to an administrative review.

SECTION 7. This act shall take effect and be in force from
and after its passage.