HOUSE BILL NO. 722

1 AN ACT TO AMEND SECTION 69-7-607, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE CATFISH LABELING LAWS AND TO REQUIRE THAT CERTAIN
3 CATFISH OR OTHER FISH PRODUCTS OFFERED FOR SALE FOR HUMAN
4 CONSUMPTION BY A PROCESSOR, DISTRIBUTOR OR RETAILER SHALL BE
5 LABELED AS IMPORTED CATFISH OR OTHER FISH INCLUDING THE COUNTRY OF
6 ORIGIN; TO AMEND SECTION 69-7-609, MISSISSIPPI CODE OF 1972, TO
7 REQUIRE ALL DISTRIBUTORS, PROCESSORS OR WHOLESALERS OF CATFISH OR
8 OTHER FISH PRODUCTS TO PROVIDE INFORMATION TO THE COMMISSIONER,
9 UPON REQUEST, AND TO EACH RETAILER OR RESTAURANT TO WHICH THEY
10 DISTIBUTE OR SELL CATFISH OR OTHER FISH PRODUCTS FOR RESALE AS TO
11 WHETHER SUCH CATFISH OR OTHER FISH PRODUCT IS IMPORTED CATFISH OR
12 OTHER FISH INCLUDING THE COUNTRY OF ORIGIN; TO AMEND SECTION
13 69-7-605, MISSISSIPPI CODE OF 1972, TO REVISE DEFINITIONS; TO
14 AMEND SECTION 69-7-613, MISSISSIPPI CODE OF 1972, TO PROVIDE
15 CRIMINAL PENALTIES FOR VIOLATIONS; TO CREATE A NEW CODE SECTION TO
16 BE CODIFIED AS SECTION 69-7-614, MISSISSIPPI CODE OF 1972, TO
17 REQUIRE ALL PERSONS SELLING CATFISH OR OTHER FISH TO MAINTAIN
18 CERTAIN RECORDS OF THEIR PURCHASES AND SALES OF CATFISH OR OTHER
19 FISH; TO CREATE A NEW CODE SECTION TO BE CODIFIED AS SECTION
20 69-7-616, MISSISSIPPI CODE OF 1972, TO PROVIDE CIVIL PENALTIES FOR
21 VIOLATIONS AND TO PROVIDE ADMINISTRATIVE PROCEEDINGS TO BE USED BY
22 THE DEPARTMENT OF AGRICULTURE AND COMMERCE IN HANDLING COMPLAINTS
23 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 other fish 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 taxonomic family Ictaluridae.
(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 or other fish products individually or in small quantities directly to the consumer.

(e) "Distributor" or "wholesaler" shall mean any person offering for sale, exchange, or barter any catfish or other fish product destined ultimately 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 or other fish product is offered (i) for direct retail sale or (ii) for sale by a distributor or wholesaler to a retailer or restaurant in the State of Mississippi.

(g) "Labeling" shall mean all labels and other written, printed or graphic matter upon a catfish or other fish product, or any of its containers or wrappers, offered (i) for direct retail sale or (ii) for sale by a distributor or wholesaler to a retailer or restaurant in the State of Mississippi.

(h) "Other fish shall mean those fish in the taxonomic family of Siluridae, Clariidae and Pangasiidae.

(i) "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.

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

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

(l) "Producer" shall mean any person engaged in the business of harvesting catfish or other fish, by any method, intended for direct retail sale.
(m) "Product" shall mean any catfish product capable of being classified 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 United States 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.

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

(o) "Retailer" shall mean any person offering for sale catfish or other fish products to individual consumers and representing the last sale prior to human consumption except that restaurants and other eating establishments are hereby excluded.

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

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

   (a) "FARM-RAISED CATFISH, ** * " if the product is a catfish that has been specifically produced in fresh water in the United States of America according to the usual and customary techniques of commercial aquaculture ** * .

   (b) "RIVER OR LAKE CATFISH, ** * " if the product is a catfish that has been produced in any freshwater lake, river or stream in the United States of America, but has not been produced according to the usual and customary techniques of commercial aquaculture ** * .
(c) "IMPORTED CATFISH OR OTHER FISH, A PRODUCT OF ______________ (country of origin)" provided the product is a catfish or other fish that 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 product is a catfish that 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 or other fish products not wrapped or in a container may comply with this article by placing a sign on the display case or refrigeration unit reasonably visible to the consumer, giving notice that such catfish is either "Farm Raised Catfish," "River or Lake Catfish," "Imported Catfish or Other Fish, 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 or other fish product shall state whether such catfish or other fish product is "Farm Raised Catfish," "River or Lake Catfish," "Imported Catfish or Other Fish, 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 and 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 or other fish products, shall provide information to the commissioner or his representative, upon request, and to each retailer or restaurant to which such distributor, processor or wholesaler distributes or sells catfish or other fish products as to whether such catfish product is "Farm Raised Catfish," "River or Lake Catfish," "Imported Catfish or Other Fish a Product of [country of origin]" or "Ocean Catfish," as such terms are defined in subsection (1) of Section 69-7-607. In addition, any wholesaler or distributor shall provide his sales and purchases records of catfish and other fish upon request by the commissioner.

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 misdemeanor 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 six (6) months, or by both such fine and imprisonment.

(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 or other fish within this state that are regulated by this article shall preserve and
maintain all records of their purchases and sales of catfish, imported catfish and other fish for a period of three (3) years after such purchases and sales have occurred.

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

69-7-616. (1) 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.