

By: Representative Holland

To: Agriculture

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 DISTRIBUTE 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.

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

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

27 69-7-605. For purposes of this article, the following terms
28 shall have the meaning ascribed herein unless the context
29 otherwise requires:

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

35 (b) "Catfish" shall include, but not be limited to, any
36 species of the scientific taxonomic family Ictaluridae.



37 (c) "Commissioner" shall mean the Commissioner of
38 Agriculture and Commerce of the State of Mississippi.

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

42 (e) "Distributor" or "wholesaler" shall mean any person
43 offering for sale, exchange, or barter any catfish or other fish
44 product destined ultimately for direct retail sale in the State of
45 Mississippi.

46 (f) "Label" shall mean a display of written, printed or
47 graphic matter upon or affixed to the container in which a catfish
48 or other fish product is offered (i) for direct retail sale or
49 (ii) for sale by a distributor or wholesaler to a retailer or
50 restaurant in the State of Mississippi.

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

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

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

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

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

66 (l) "Producer" shall mean any person engaged in the
67 business of harvesting catfish or other fish, by any method,
68 intended for direct retail sale.



69 (m) "Product" shall mean any catfish product capable of
70 muse as human food which is made wholly or in part from any
71 catfish or portion thereof, except products which contain catfish
72 only in small proportions or historically have not been, in the
73 judgment of the commissioner, considered by consumers as products
74 of the United States commercial catfish industry and which are
75 exempted from definition as a catfish product by the commissioner
76 under such conditions as he may prescribe to assure that the
77 catfish or portions thereof contained therein are not adulterated
78 and that such products are not represented as catfish products.

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

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

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

88 69-7-607. (1) No catfish or other fish product shall be
89 offered for * * * sale for human consumption by a processor,
90 distributor, wholesaler or retailer unless the catfish or other
91 fish product name is specifically labeled in the following manner:

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

96 (b) "RIVER OR LAKE CATFISH, * * * " if the product is a
97 catfish that has been produced in any freshwater lake, river or
98 stream in the United States of America, but has not been produced
99 according to the usual and customary techniques of commercial
100 aquaculture * * *.



101 (c) "IMPORTED CATFISH OR OTHER FISH, A PRODUCT OF
102 _____ (country of origin)" provided the product is a
103 catfish or other fish that is produced from freshwater, either
104 according to the usual and customary techniques of aquaculture, or
105 from freshwater lakes, rivers or streams of a country other than
106 the United States of America.

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

109 (2) Any person selling river or lake catfish exclusively and
110 directly to the consumer may have on his premises a sign
111 reasonably visible to the consumer identifying such product as
112 river or lake catfish, rather than labeling each individual
113 container or package of catfish product, as provided in subsection
114 (1).

115 (3) Any retailer selling catfish or other fish products not
116 wrapped or in a container may comply with this article by placing
117 a sign on the display case or refrigeration unit reasonably
118 visible to the consumer, giving notice that such catfish is either
119 "Farm Raised Catfish," "River or Lake Catfish," "Imported Catfish
120 or Other Fish, a Product of _____ (country of origin)" or
121 "Ocean Catfish," as such products are defined in subsection (1)
122 above.

123 (4) Any advertising as to any catfish or other fish product
124 shall state whether such catfish or other fish product is "Farm
125 Raised Catfish," "River or Lake Catfish," "Imported Catfish or
126 Other Fish, a Product of _____ country of origin)" or
127 "Ocean Catfish," as defined in subsection (1) above.

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

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



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

135 69-7-609. All distributors, processors, or wholesalers of
136 catfish products, distributing or selling catfish or other fish
137 products, shall provide information to the commissioner or his
138 representative, upon request, and to each retailer or restaurant
139 to which such distributor, processor or wholesaler distributes or
140 sells catfish or other fish products as to whether such catfish
141 product is "Farm Raised Catfish," "River or Lake Catfish,"
142 "Imported Catfish or Other Fish a Product of _____ (country
143 of origin)" or "Ocean Catfish," as such terms are defined in
144 subsection (1) of Section 69-7-607. In addition, any wholesaler
145 or distributor shall provide his sales and purchases records of
146 catfish and other fish upon request by the commissioner.

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

149 69-7-613. (1) Any person who violates the provisions of
150 this article, or the rules and regulations promulgated hereunder,
151 shall be guilty of a misdemeanor and, upon conviction, shall be
152 punished by a fine of up to One Thousand Dollars (\$1,000.00) or by
153 imprisonment for not more than six (6) months, or by both such
154 fine and imprisonment.

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

161 * * *

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

164 69-7-614. All persons selling catfish or other fish within
165 this state that are regulated by this article shall preserve and



166 maintain all records of their purchases and sales of catfish,
167 imported catfish and other fish for a period of three (3) years
168 after such purchases and sales have occurred.

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

171 69-7-616. (1) When a written complaint is made against a
172 person for violation of any of the provisions of this article, or
173 any of the rules or regulations promulgated hereunder, the
174 Director of the Regulatory Division of the Mississippi Department
175 of Agriculture and Commerce, or his designee, shall act as
176 reviewing
177 officer. The complaint shall be in writing and shall be filed
178 with the Mississippi Department of Agriculture and Commerce. The
179 reviewing officer shall cause to be delivered to the accused in
180 the manner described herein a copy of the complaint and any
181 supporting documents along with a summons requiring the accused to
182 respond to the allegations within thirty (30) days after service
183 of the summons and complaint upon the accused. The accused shall
184 file with the department a written response to the complaint and
185 any supporting documents within the thirty-day period. The
186 accused may be notified by serving a copy of the summons and
187 complaint on the accused or any of his officers, agents or
188 employees by personal service or by certified mail. Upon the
189 expiration of the thirty-day period, the reviewing officer shall
190 review the complaint, the written response of the accused, if any,
191 and all supporting documents offered by the parties in support of
192 their respective positions. The reviewing officer's decision
193 shall be based solely on the documents provided by the parties as
194 no hearing with live testimony or informal discussions shall be
195 held. If the reviewing officer determines that the complaint
196 lacks merit, he may dismiss the complaint. If he finds that there
197 are reasonable grounds showing that a violation of the statutes or
198 regulations has been committed, he may impose any or all of the



199 following penalties upon the accused: (a) levy a civil penalty in
200 the amount of no more than One Thousand Dollars (\$1,000.00) for
201 each violation; (b) issue a stop sale order; (c) require the
202 accused to relabel any fish that he is offering for sale and which
203 is not labeled in accordance with the provisions of this article;
204 or (d) seize any fish that is not in compliance with this article
205 and destroy, sell or otherwise dispose of the fish and apply the
206 proceeds of any such sale to the costs herein and any civil
207 penalties levied, with the balance to be paid to the accused. The
208 reviewing officer's decision shall be in writing, and it shall be
209 delivered to the accused by any of the methods described herein
210 for service of the summons and complaint on the accused.

211 (2) Either the accused or the department may appeal the
212 decision of the reviewing officer to the Commissioner of
213 Agriculture and Commerce by filing a notice of appeal with the
214 department within thirty (30) days of receipt of the reviewing
215 officer's decision. If no appeal is taken from the order of the
216 reviewing officer within the allotted time, the order shall then
217 become final. In the event of an appeal, the commissioner, or his
218 designee, shall conduct a full evidentiary hearing relative to the
219 charges. The commissioner may issue subpoenas to require the
220 attendance of witnesses and the production of documents.

221 Compliance with such subpoenas may be enforced by any court of
222 general jurisdiction in this state. The testimony of witnesses
223 shall be upon oath or affirmation, and they shall be subject to
224 cross-examination. The proceedings shall be recorded by a court
225 reporter. The commissioner shall have all the powers of the
226 reviewing officer described herein, and the commissioner may
227 affirm, reverse or modify the order of the reviewing officer. The
228 commissioner's decision shall be in writing, and it shall be
229 delivered to the parties in the same manner that the summons and
230 complaint may be served upon the accused.



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

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

244 (5) Where any violation of this article, or the rules and
245 regulations promulgated hereunder, occurs, or is about to occur,
246 that presents a clear and present danger to the public health,
247 safety or welfare requiring immediate action, any of the
248 department's field inspectors, and any other persons authorized by
249 the commissioner, may issue an order to be effective immediately,
250 before notice and a hearing, that imposes any or all of the
251 penalties described herein against the accused. The order shall
252 be served upon the accused in the same manner that the summons and
253 complaint may be served upon him. The accused shall then have
254 thirty (30) days after service of the order upon him within which
255 to request an informal administrative review before the reviewing
256 officer, or his designee, as described herein. The accused shall
257 include within his request all documents that support his
258 position. The department may also submit any documents that
259 support its position. If the accused makes such a request within
260 such time, the reviewing officer, or his designee shall review the
261 documents provided by the parties and render a written decision
262 within thirty (30) days after such request is made. Upon the
263 making of such a request, the procedure described herein shall be



264 followed, except that there is no need for a complaint to be filed
265 against the accused. If the accused does not request an
266 administrative review within such time frame, then he shall have
267 waived his right to an administrative review.

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

