MISSISSIPPI LEGISLATURE
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By: Senator(s) Huggins, Mettetal, Blackmon, Chaney, Jordan, Gordon, Harden, Johnson (19th), Harvey, Carmichael, Little, Chamberlin, Burton, Hyde-Smith, Williamson, Tollison, Dearing, White (29th), Posey, King, Furniss, Jackson, Hamilton, Simmons, Dawkins, Browning

To: Agriculture; Public Health and Welfare

SENATE BILL NO. 2345
(As Sent to Governor)

AN ACT TO AMEND SECTION 69-7-605, MISSISSIPPI CODE OF 1972, TO REVISE THE DEFINITION OF CATFISH; TO DEFINE CERTAIN TERMS; TO AMEND SECTION 69-7-607, MISSISSIPPI CODE OF 1972, TO CLARIFY USE OF THE TERM "CATFISH" IN LABELING REQUIREMENTS; TO INCLUDE WHOLESALERS IN LABELING REQUIREMENTS; TO CREATE A NEW CODE SECTION TO BE CODIFIED AS SECTION 69-7-608, MISSISSIPPI CODE OF 1972, TO MAKE IT UNLAWFUL TO MISREPRESENT FISH PRODUCTS AS "CATFISH" IN VIOLATION OF THIS ACT; TO PROVIDE PENALTIES FOR SUCH VIOLATIONS; TO AUTHORIZE THE STATE DEPARTMENT OF HEALTH TO REGULATE THE SALE OF CATFISH IN RESTAURANTS; TO CREATE A NEW CODE SECTION TO BE CODIFIED AS SECTION 69-7-610, MISSISSIPPI CODE OF 1972, TO REQUIRE DISTRIBUTORS, PROCESSORS OR WHOLESALERS OF CERTAIN FISH PRODUCTS TO PROVIDE RETAILERS AND THE COMMISSIONER OF AGRICULTURE WITH INFORMATION AS TO THE TYPE OF FISH BEING DISTRIBUTED; TO AMEND SECTION 69-7-613, MISSISSIPPI CODE OF 1972, TO REVISE ADMINISTRATIVE PROCEDURES TO CONFORM; TO DELETE EXCEPTION TO CERTAIN PENALTIES; TO CREATE A NEW CODE SECTION TO BE CODIFIED AS SECTION 69-7-614, MISSISSIPPI CODE OF 1972, TO REQUIRE ALL PERSONS SELLING CATFISH OR OTHER FISH TO MAINTAIN CERTAIN RECORDS OF THEIR PURCHASES AND SALES OF CATFISH OR OTHER FISH; 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; TO AMEND SECTION 41-3-15, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE STATE BOARD OF HEALTH TO ADMINISTER THE LABELING OF DOMESTIC AND IMPORTED CATFISH IN RESTAURANTS; 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" means 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" means any species within the family Ictaluridae or the family Anarhichadidae.

(c) "Commissioner" means the Commissioner of Agriculture and Commerce of the State of Mississippi.

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

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

(f) "Label" means 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" means 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" means a circumscribed body of water owned by a person and operated solely for recreational fishing purposes on a commercial basis for profit.

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

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

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

(l) "Product" means 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 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.

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

(n) "Restaurant" means any person offering for sale to a consumer prepared food for immediate consumption.

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

(p) "State Health Officer" means the State Health Officer of the State Board of Health, or his designated representative.

(q) "Wholesaler" means any person offering for sale any catfish product destined for direct retail sale in the State of Mississippi.

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, wholesaler 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 CATFISH" 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 this section.

(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 reasonably visible to the consumer, giving notice that such catfish is either "Farm Raised Catfish," "River or Lake Catfish," "Imported Catfish" or "Ocean Catfish," as such products are defined in this section.

(4) Any advertising as to any catfish product shall state whether such catfish product is "Farm Raised Catfish," "River or Lake Catfish," "Imported Catfish" or "Ocean Catfish," as defined in this section.

(5) The term "catfish" shall not be used as a common name or in the label name of fish product except as provided in this section.
This section shall not apply to catfish products exported out of the United States.

SECTION 3. The following shall be codified as Section 69-7-608, Mississippi Code of 1972:

69-7-608. (1) The term "catfish" shall not be used as a common name or used to advertise, distribute or label any fish or fish product except for those species within the definition of catfish in Section 69-7-605.

(2) It is unlawful to use the term "catfish" in the advertising, distributing, labeling or selling of any of those species within the family of Siluridae, Clariidae and Pangasiidae or any other fish not within the definition of catfish in Section 69-7-605.

(3) (a) The State Health Officer shall regulate and inspect restaurants under this article. To carry out the regulation of restaurants, the State Health Officer shall have all powers and duties granted to the commissioner under this article. The commissioner shall not regulate restaurants under this article.

(b) The State Health Officer shall notify, in writing, any restaurant violating this article and shall give the restaurant three (3) days to correct the violation. No penalties under this article shall apply to any restaurant that corrects the violation within three (3) days from the date notified by the State Health Officer.

(4) In addition to any other civil or criminal penalties, a person who violates this section or who otherwise misrepresents as catfish any fish or fish product not defined as catfish under this article is guilty of a felony and upon conviction shall be punished by a fine of not more than One Thousand Dollars ($1,000.00) or by imprisonment for not more than two (2) years, or both. For subsequent violations, a person shall be punished by a fine of not more than Five Thousand Dollars ($5,000.00) or by imprisonment not to exceed five (5) years, or both.
SECTION 4. The following section shall be codified as

Section 69-7-610, Mississippi Code of 1972:

69-7-610. All distributors, processors, or wholesalers of
catfish or other fish products, distributing or selling catfish or
other fish products, shall provide information to the commissioner
or his representative, upon request, and to each retailer to which
such distributor, processor or wholesaler distributes or sells
catfish or other fish products as to whether such product is "Farm
Raised Catfish," "River or Lake Catfish," "Imported Catfish, Other
Fish a Product of (country of origin)" or "Ocean Catfish." In
addition, any wholesaler or distributor shall provide his sales
and purchases records of catfish and other fish upon request by
the commissioner. "Other fish" includes those fish in the
taxonomic family of Siluridae, Clariidae and Pangasiidae.

SECTION 5. Section 69-7-613, Mississippi Code of 1972, is
amended as follows:

69-7-613. (1) Any person who violates any provision of this
article for which no other *** penalty is provided by this
article shall upon conviction be subject to a fine of not more
than Five Hundred Dollars ($500.00) ***.

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(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 6. The following section shall be codified as

Section 69-7-614, Mississippi Code of 1972:

69-7-614. All persons selling fish within this state that
are regulated by this article shall preserve and maintain all
records of their purchases and sales of catfish and other fish for
a period of two (2) years after such purchases and sales have
occurred. If such records are not kept on the premises, then such
person has fourteen (14) days to produce the records. This
section shall repeal July 1, 2004.

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

69-7-616. (1) When a 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 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. 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 8. Section 41-3-15, Mississippi Code of 1972, is
amended as follows:

41-3-15. (1) There shall be a State Department of Health
which shall be organized into such bureaus and divisions as are
considered necessary by the executive officer, and shall be
assigned appropriate functions as are required of the State Board
of Health by law, subject to the approval of the board.

(2) The State Board of Health shall have the authority to
establish an Office of Rural Health within the department. The
duties and responsibilities of this office shall include the
following:

(a) To collect and evaluate data on rural health
conditions and needs;

(b) To engage in policy analysis, policy development
and economic impact studies with regard to rural health issues;

(c) To develop and implement plans and provide
technical assistance to enable community health systems to respond
to various changes in their circumstances;

(d) To plan and assist in professional recruitment and
retention of medical professionals and assistants; and

(e) To establish information clearinghouses to improve
access to and sharing of rural health care information.

(3) The State Board of Health shall have general supervision
of the health interests of the people of the state and to exercise
the rights, powers and duties of those acts which it is authorized
by law to enforce.

(4) The State Board of Health shall have authority:

(a) To make investigations and inquiries with respect
to the causes of disease and death, and to investigate the effect
of environment, including conditions of employment and other
conditions which may affect health, and to make such other
investigations as it may deem necessary for the preservation and 

improvement of health.

(b) To make such sanitary investigations as it may, 

from time to time, deem necessary for the protection and 

improvement of health and to investigate nuisance questions which 

affect the security of life and health within the state.

(c) To direct and control sanitary and quarantine 

measures for dealing with all diseases within the state possible 

to suppress same and prevent their spread.

(d) To obtain, collect and preserve such information 

relative to mortality, morbidity, disease and health as may be 

useful in the discharge of its duties or may contribute to the 

prevention of disease or the promotion of health in this state.

(e) To enter into contracts or agreements with any 

other state or federal agency, or with any private person, 

organization or group capable of contracting, if it finds such 

action to be in the public interest.

(f) To charge and collect reasonable fees for health 

services, including immunizations, inspections and related 

activities, and the board shall charge fees for such services; 

provided, however, if it is determined that a person receiving 

services is unable to pay the total fee, the board shall collect 

any amount such person is able to pay.

(g) To accept gifts, trusts, bequests, grants, 

dependments or transfers of property of any kind.

(h) To receive monies coming to it by way of fees for 

services or by appropriations.

(i) To establish standards for, issue permits and 

exercise control over, any cafes, restaurants, food or drink 

stands, sandwich manufacturing establishments, and all other 

establishments, other than churches, church-related and private 

schools, and other nonprofit or charitable organizations, where
food or drink is regularly prepared, handled and served for pay;

and

(ii) To require that a permit be obtained from the Department of Health before such persons begin operation.

(j) To promulgate rules and regulations and exercise control over the production and sale of milk pursuant to the provisions of Sections 75-31-41 through 75-31-49.

(k) On presentation of proper authority, to enter into and inspect any public place or building where the State Health Officer or his representative deems it necessary and proper to enter for the discovery and suppression of disease and for the enforcement of any health or sanitary laws and regulations in the state.

(l) To conduct investigations, inquiries and hearings, and to issue subpoenas for the attendance of witnesses and the production of books and records at any hearing when authorized and required by statute to be conducted by the State Health Officer or the State Board of Health.

(m) To employ, subject to the regulations of the State Personnel Board, qualified professional personnel in the subject matter or fields of each bureau, and such other technical and clerical staff as may be required for the operation of the department. The executive officer shall be the appointing authority for the department, and shall have the power to delegate the authority to appoint or dismiss employees to appropriate subordinates, subject to the rules and regulations of the State Personnel Board.

(n) To promulgate rules and regulations, and to collect data and information, on (i) the delivery of services through the practice of telemedicine; and (ii) the use of electronic records for the delivery of telemedicine services.

(o) To enforce and regulate domestic and imported fish as authorized under Section 69-7-601 et seq.
(5) (a) The State Board of Health shall have the authority, in its discretion, to establish programs to promote the public health, to be administered by the State Department of Health. Specifically, such programs may include, but shall not be limited to, programs in the following areas:

(i) Maternal and child health;
(ii) Family planning;
(iii) Pediatric services;
(iv) Services to crippled and disabled children;
(v) Control of communicable and noncommunicable disease;
(vi) Child care licensure;
(vii) Radiological health;
(viii) Dental health;
(ix) Milk sanitation;
(x) Occupational safety and health;
(xi) Food, vector control and general sanitation;
(xii) Protection of drinking water;
(xiii) Sanitation in food handling establishments open to the public;
(xiv) Registration of births and deaths and other vital events;
(xv) Such public health programs and services as may be assigned to the State Board of Health by the Legislature or by executive order; and
(xvi) Regulation of domestic and imported fish for human consumption.

(b) The State Board of Health and State Department of Health shall not be authorized to sell, transfer, alienate or otherwise dispose of any of the home health agencies owned and operated by the department on January 1, 1995, and shall not be authorized to sell, transfer, assign, alienate or otherwise dispose of the license of any of those home health agencies,
except upon the specific authorization of the Legislature by an
amendment to this section. However, this paragraph (b) shall not
prevent the board or the department from closing or terminating
the operation of any home health agency owned and operated by the
department, or closing or terminating any office, branch office or
clinic of any such home health agency, or otherwise discontinuing
the providing of home health services through any such home health
agency, office, branch office or clinic, if the board first
demonstrates that there are other providers of home health
services in the area being served by the department's home health
agency, office, branch office or clinic that will be able to
provide adequate home health services to the residents of the area
if the department's home health agency, office, branch office or
clinic is closed or otherwise discontinues the providing of home
health services. This demonstration by the board that there are
other providers of adequate home health services in the area shall
be spread at length upon the minutes of the board at a regular or
special meeting of the board at least thirty (30) days before a
home health agency, office, branch office or clinic is proposed to
be closed or otherwise discontinue the providing of home health
services.

(c) The State Department of Health may undertake such
technical programs and activities as may be required for the
support and operation of such programs, including maintaining
physical, chemical, bacteriological and radiological laboratories,
and may make such diagnostic tests for diseases and tests for the
evaluation of health hazards as may be deemed necessary for the
protection of the people of the state.

(6) (a) The State Board of Health shall administer the
local governments and rural water systems improvements loan
program in accordance with the provisions of Section 41-3-16.

(b) The State Board of Health shall have authority:
ST: Catfish; revise labeling requirements and require Public Health Department to regulate restaurants.

(i) To enter into capitalization grant agreements with the United States Environmental Protection Agency, or any successor agency thereto;

(ii) To accept capitalization grant awards made under the federal Safe Drinking Water Act, as amended;

(iii) To provide annual reports and audits to the United States Environmental Protection Agency, as may be required by federal capitalization grant agreements; and

(iv) To establish and collect fees to defray the reasonable costs of administering the revolving fund or emergency fund if the State Board of Health determines that such costs will exceed the limitations established in the federal Safe Drinking Water Act, as amended. The administration fees may be included in loan amounts to loan recipients for the purpose of facilitating payment to the board; however, such fees may not exceed five percent (5%) of the loan amount.

SECTION 9. This act shall take effect and be in force from and after its passage.