

By: Senator(s) Stogner, Jordan

To: Agriculture; Public Health and Welfare

SENATE BILL NO. 2378

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 WHOM 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 AND TO AUTHORIZE THE DEPARTMENT OF AGRICULTURE AND COMMERCE
 20 TO INSPECT SUCH RECORDS AND TO AUTHORIZE THE DEPARTMENT OF
 21 AGRICULTURE AND COMMERCE TO OBTAIN SAMPLES OF CATFISH OR OTHER
 22 FISH, AT NO COST TO THE DEPARTMENT, TO DETERMINE TRUENESS OF
 23 SPECIES THROUGH PROTEIN ANALYSIS; TO CREATE A NEW CODE SECTION TO
 24 BE CODIFIED AS SECTION 69-7-616, MISSISSIPPI CODE OF 1972, TO
 25 PROVIDE CIVIL PENALTIES FOR VIOLATIONS AND TO PROVIDE
 26 ADMINISTRATIVE PROCEEDINGS TO BE USED BY THE DEPARTMENT OF
 27 AGRICULTURE AND COMMERCE IN HANDLING COMPLAINTS AND HEARINGS; AND
 28 FOR RELATED PURPOSES.

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

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

32 69-7-605. For purposes of this article, the following terms
 33 shall have the meaning ascribed herein unless the context
 34 otherwise requires:

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



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

42 (c) "Commissioner" shall mean the Commissioner of
43 Agriculture and Commerce of the State of Mississippi.

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

47 (e) "Distributor" or "wholesaler" shall mean any person
48 offering for sale, exchange, or barter any catfish or other fish
49 product destined ultimately for direct retail sale in the State of
50 Mississippi.

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

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

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

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

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

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



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

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

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

87 (o) "Retailer" shall mean any person offering for sale
88 catfish or other fish products to individual consumers and
89 representing the last sale prior to human consumption * * *.

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

92 69-7-607. (1) No catfish or other fish product shall be
93 offered for * * * sale for human consumption by a processor,
94 distributor, wholesaler or retailer unless the catfish or other
95 fish product name is specifically labeled in the following manner:

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

100 (b) "RIVER OR LAKE CATFISH, * * * " if the product is a
101 catfish that has been produced in any freshwater lake, river or
102 stream in the United States of America, but has not been produced



103 according to the usual and customary techniques of commercial
104 aquaculture * * *.

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

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

113 (2) Any person selling river or lake catfish exclusively and
114 directly to the consumer may have on his premises a sign
115 reasonably visible to the consumer identifying such product as
116 river or lake catfish, rather than labeling each individual
117 container or package of catfish product, as provided in subsection
118 (1).

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

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

132 (5) Any restaurant or eating establishment offering imported
133 catfish or other fish to its patrons shall state on its menu the
134 following: "Imported Catfish or Other Fish, a Product of
135 _____ (country of origin)."



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

138 (7) All of the information required by this section to be
139 printed on labels, signs and menus shall be of the same size
140 throughout.

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

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

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

157 69-7-613. (1) Any person who violates the provisions of
158 this article, or the rules and regulations promulgated hereunder,
159 shall be guilty of a misdemeanor and, upon conviction, shall be
160 punished by a fine of up to One Thousand Dollars (\$1,000.00) or by
161 imprisonment for not more than one (1) year, or by both such fine
162 and imprisonment. Any person violating the provisions of this
163 article, or the rules and regulations promulgated hereunder, upon
164 conviction for a second or subsequent violation shall be guilty of
165 a misdemeanor and, upon conviction, shall be punished by
166 imprisonment for not more than one (1) year or by a fine of up to
167 Five Thousand Dollars (\$5,000.00), or by both.

168 * * *



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

175 * * *

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

178 69-7-614. All persons selling catfish or other fish within
179 this state that are regulated by this article shall preserve and
180 maintain all records of their purchases and sales of catfish,
181 imported catfish and other fish for a period of three (3) years
182 after such purchases and sales have occurred. The Department of
183 Agriculture and Commerce shall be allowed to enter the premises of
184 all such persons during regular business hours without the
185 necessity of a search warrant or court order to inspect or copy
186 such records and to obtain samples of catfish or other fish at no
187 cost to the department for the purpose of determining the trueness
188 of species of the sample through protein analysis at the Bureau of
189 Plant Industry.

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

192 69-7-616. When a written complaint is made against a person
193 for violation of any of the provisions of this article, or any of
194 the rules or regulations promulgated hereunder, the Director of
195 the Regulatory Division of the Mississippi Department of
196 Agriculture and Commerce, or his designee, shall act as reviewing
197 officer. The complaint shall be in writing and shall be filed
198 with the Mississippi Department of Agriculture and Commerce. The
199 reviewing officer shall cause to be delivered to the accused in
200 the manner described herein a copy of the complaint and any
201 supporting documents along with a summons requiring the accused to



202 respond to the allegations within thirty (30) days after service
203 of the summons and complaint upon the accused. The accused shall
204 file with the department a written response to the complaint and
205 any supporting documents within the thirty-day period. The
206 accused may be notified by serving a copy of the summons and
207 complaint on the accused or any of his officers, agents or
208 employees by personal service or by certified mail. Upon the
209 expiration of the thirty-day period, the reviewing officer shall
210 review the complaint, the written response of the accused, if any,
211 and all supporting documents offered by the parties in support of
212 their respective positions. The reviewing officer's decision
213 shall be based solely on the documents provided by the parties as
214 no hearing with live testimony or informal discussions shall be
215 held. If the reviewing officer determines that the complaint
216 lacks merit, he may dismiss the complaint. If he finds that there
217 are reasonable grounds showing that a violation of the statutes or
218 regulations has been committed, he may impose any or all of the
219 following penalties upon the accused: (a) levy a civil penalty in
220 the amount of no more than One Thousand Dollars (\$1,000.00) for
221 each violation; (b) issue a stop sale order; (c) require the
222 accused to relabel any fish that he is offering for sale and which
223 is not labeled in accordance with the provisions of this article;
224 or (d) seize any fish that is not in compliance with this article
225 and destroy, sell or otherwise dispose of the fish and apply the
226 proceeds of any such sale to the costs herein and any civil
227 penalties levied, with the balance to be paid to the accused. The
228 reviewing officer's decision shall be in writing, and it shall be
229 delivered to the accused by any of the methods described herein
230 for service of the summons and complaint on the accused.

231 (2) Either the accused or the department may appeal the
232 decision of the reviewing officer to the Commissioner of
233 Agriculture and Commerce by filing a notice of appeal with the
234 department within thirty (30) days of receipt of the reviewing



235 officer's decision. If no appeal is taken from the order of the
236 reviewing officer within the allotted time, the order shall then
237 become final. In the event of an appeal, the commissioner, or his
238 designee, shall conduct a full evidentiary hearing relative to the
239 charges. The commissioner may issue subpoenas to require the
240 attendance of witnesses and the production of documents.
241 Compliance with such subpoenas may be enforced by any court of
242 general jurisdiction in this state. The testimony of witnesses
243 shall be upon oath or affirmation, and they shall be subject to
244 cross-examination. The proceedings shall be recorded by a court
245 reporter. The commissioner shall have all the powers of the
246 reviewing officer described herein, and the commissioner may
247 affirm, reverse or modify the order of the reviewing officer. The
248 commissioner's decision shall be in writing, and it shall be
249 delivered to the parties in the same manner that the summons and
250 complaint may be served upon the accused.

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

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

264 (5) Where any violation of this article, or the rules and
265 regulations promulgated hereunder, occurs, or is about to occur,
266 that presents a clear and present danger to the public health,
267 safety or welfare requiring immediate action, any of the



268 department's field inspectors, and any other persons authorized by
269 the commissioner, may issue an order to be effective immediately,
270 before notice and a hearing, that imposes any or all of the
271 penalties described herein against the accused. The order shall
272 be served upon the accused in the same manner that the summons and
273 complaint may be served upon him. The accused shall then have
274 thirty (30) days after service of the order upon him within which
275 to request an informal administrative review before the reviewing
276 officer, or his designee, as described herein. The accused shall
277 include within his request all documents that support his
278 position. The department may also submit any documents that
279 support its position. If the accused makes such a request within
280 such time, the reviewing officer, or his designee shall review the
281 documents provided by the parties and render a written decision
282 within thirty (30) days after such request is made. Upon the
283 making of such a request, the procedure described herein shall be
284 followed, except that there is no need for a complaint to be filed
285 against the accused. If the accused does not request an
286 administrative review within such time frame, then he shall have
287 waived his right to an administrative review.

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

