

By: Representative Patterson

To: Marine Resources

HOUSE BILL NO. 704

1 AN ACT TO REQUIRE AN OPERATOR, FIRM OR CORPORATION ENGAGED IN
2 COMMERCIAL SHRIMPING OR A PROCESSOR, DISTRIBUTOR, WHOLESALER OR
3 RETAILER OF SHRIMP TO LABEL SHRIMP WITH THE COUNTRY OF ORIGIN AND
4 OCEAN OF ORIGIN; TO RESTRICT THE USE OF THE TERM "GULF SHRIMP"; TO
5 PROVIDE PENALTIES FOR SHRIMP WITH A FALSE LABEL OR WITHOUT THE
6 REQUIRED LABEL OR AN INCORRECT LABEL; AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** (1) No shrimp shall be offered for direct retail
9 sale for human consumption by any operator, firm or corporation
10 engaged in commercial shrimping or by any processor, distributor,
11 wholesaler or retailer of shrimp unless the shrimp is labeled with
12 the country of origin and ocean of origin. For purposes of this
13 section, the following terms shall have the meanings ascribed in
14 this subsection:

15 (a) "Country of origin" means the country of the port
16 where the shrimp is first brought in from a freight boat, ice boat
17 or catching boat.

18 (b) "Ocean of origin" means the body of water in which
19 the shrimp is harvested.

20 (c) "False label" means that the "country of origin" or
21 "ocean of origin" listed on a label is not the true "country of
22 origin" or "ocean of origin."

23 (d) "Gulf shrimp" means a shrimp product that is
24 harvested from the Gulf of Mexico or the Mississippi Sound.

25 (2) Any person selling gulf shrimp or any other shrimp
26 exclusively and directly to the consumer may have on his premises
27 a sign reasonably visible to the consumer identifying the shrimp,
28 rather than labeling each individual container or package of
29 shrimp.

30 (3) Any retailer selling shrimp not wrapped or in a
31 container may comply with this article by placing a sign on the
32 display case or refrigeration unit reasonably visible to the
33 consumer, giving notice of the origin of the shrimp.

34 (4) Any advertising as to any shrimp product shall state the
35 country of origin and ocean of origin shrimp product, as defined
36 in this section. The term "gulf shrimp" shall not be used as a
37 common name or in the label name of a shrimp product, except as
38 provided in this section.

39 (5) (a) When a complaint is made against a person for
40 violation of any of the provisions of this section, the complaint
41 shall be filed with the Mississippi Department of Marine Resources
42 or the Mississippi Department of Agriculture and Commerce. The
43 Executive Director of the Department of Marine Resources or the
44 Director of the Regulatory Division of the Department of
45 Agriculture and Commerce, or a designee, shall act as reviewing
46 officer. The reviewing officer shall cause to be delivered to the
47 accused, in the manner described in this subsection, a copy of the
48 complaint and any supporting documents along with a summons
49 requiring the accused to respond to the allegations within thirty
50 (30) days after service of the summons and complaint upon the
51 accused. The accused shall file with the department a written
52 response to the complaint and any supporting documents within the
53 thirty-day period. The accused may be notified by serving a copy
54 of the summons and complaint on the accused or any of his
55 officers, agents or employees by personal service or by certified
56 mail. Upon the expiration of the thirty-day period, the reviewing
57 officer shall review the complaint, the written response of the
58 accused, if any, and all supporting documents offered by the
59 parties in support of their respective positions. The reviewing
60 officer's decision shall be based solely on the documents provided
61 by the parties. If the reviewing officer determines that the
62 complaint lacks merit, he may dismiss the complaint. If he finds

63 that there are reasonable grounds showing that a violation of the
64 statutes or regulations has been committed, he may impose any or
65 all of the following penalties upon the accused: (i) levy a fine
66 of Ten Cents (10¢) per pound for shrimp that does not have a label
67 as required in subsection (1) of this section; (ii) levy a fine of
68 One Dollar (\$1.00) per pound for all shrimp on which is placed a
69 false label; (iii) issue a stop-sale order; (iv) require the
70 accused to relabel any shrimp that he is offering for sale and
71 which is not labeled in accordance with the provisions of this
72 section; or (v) seize any shrimp that is not in compliance with
73 this section, and destroy, sell or otherwise dispose of the
74 shrimp, and apply the proceeds of any such sale to the costs and
75 any penalties levied, with the balance to be paid to the accused.
76 The reviewing officer's decision shall be in writing, and it shall
77 be delivered to the accused by any of the methods described herein
78 for service of the summons and complaint on the accused.

79 (b) Either the accused or the department may appeal the
80 decision of the reviewing officer to the Department of Marine
81 Resources or the Commissioner of Agriculture and Commerce by
82 filing a notice of appeal with the department in which the
83 complaint was filed within thirty (30) days of receipt of the
84 reviewing officer's decision. If no appeal is taken from the
85 order of the reviewing officer within the allotted time, the order
86 shall then become final. In the event of an appeal, the executive
87 director, director or his designee, shall conduct a full
88 evidentiary hearing relative to the charges. The executive
89 director or director may issue subpoenas to require the attendance
90 of witnesses and the production of documents. Compliance with
91 such subpoenas may be enforced by any court of general
92 jurisdiction in this state. The testimony of witnesses shall be
93 upon oath or affirmation, and they shall be subject to
94 cross-examination. The proceedings shall be recorded by a court
95 reporter. The commissioner shall have all the powers of the

96 reviewing officer described herein, and the commissioner may
97 affirm, reverse or modify the order of the reviewing officer. The
98 commissioner's decision shall be in writing, and it shall be
99 delivered to the parties in the same manner that the summons and
100 complaint may be served upon the accused.

101 (c) Either the accused or the department in which the
102 complaint was filed may appeal the decision of the commissioner to
103 the circuit court of the county of residence of the accused, or if
104 the accused is a nonresident of the State of Mississippi, to the
105 Circuit Court of the First Judicial District of Hinds County,
106 Mississippi. The appellant has the obligation of having the
107 record transcribed and filed with the circuit court. The appeal
108 shall otherwise be governed by all applicable laws and rules
109 affecting appeals to the circuit court. If no appeal is perfected
110 within the required time, the decision of the commissioner, or his
111 designee, shall then become final.

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

116 (e) Where any violation of this section occurs, or is
117 about to occur, that presents a clear and present danger to the
118 public health, safety or welfare requiring immediate action, any
119 of the Department of Marine Resources' enforcement officers or the
120 Department of Agriculture and Commerce's field inspectors and any
121 other authorized persons, may issue an order to be effective
122 immediately, before notice and a hearing, that imposes any or all
123 of the penalties described in this subsection against the accused.
124 The order shall be served upon the accused in the same manner that
125 the summons and complaint may be served upon him. The accused
126 shall then have thirty (30) days after service of the order upon
127 him within which to request an informal administrative review
128 before the reviewing officer, or his designee, as described

129 herein. The accused shall include within his request all
130 documents that support his position. The department may also
131 submit any documents that support its position. If the accused
132 makes such a request within such time, the reviewing officer, or
133 his designee, shall review the documents provided by the parties
134 and render a written decision within thirty (30) days after such
135 request is made. Upon the making of such a request, the procedure
136 described in this section shall be followed, except that there is
137 no need for a complaint to be filed against the accused. If the
138 accused does not request an administrative review within such time
139 frame, then he shall have waived his right to an administrative
140 review.

141 (f) Any fines collected from enforcement of this
142 section shall be deposited to the agency that collects the
143 penalties, except as provided in subparagraph (e) of this
144 subsection.

145 **SECTION 2.** The provisions of Section 1 of this act shall be
146 codified as a separate section in Chapter 15, Title 49,
147 Mississippi Code of 1972.

148 **SECTION 3.** This act shall take effect and be in force from
149 and after July 1, 2004.