

By: Representatives Whittington, Bailey,
Jones, Hines, Coleman (29th), Aldridge, Reed,
Huddleston (15th), Perkins

To: Agriculture

HOUSE BILL NO. 728
(As Sent to Governor)

1 AN ACT TO AMEND THE "MISSISSIPPI CATFISH MARKETING LAW OF
2 1975," TO CREATE A NEW CODE SECTION TO BE CODIFIED AS SECTION
3 69-7-602, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR LEGISLATIVE
4 FINDINGS; TO AMEND SECTION 69-7-605, MISSISSIPPI CODE OF 1972, FOR
5 PURPOSES OF ADDING TERMS AND DEFINITIONS; TO AMEND SECTION
6 69-7-607, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR GENERAL
7 NOTIFICATION REQUIREMENTS BY RETAIL AND FOOD SERVICE
8 ESTABLISHMENTS OFFERING FOR SALE CATFISH PRODUCTS AS TO THE
9 PRODUCTS' COUNTRY OF ORIGIN, TO PROVIDE FOR THE METHOD OF
10 NOTIFICATION BY SUCH ESTABLISHMENTS, TO AUTHORIZE THE COMMISSIONER
11 TO REQUIRE A VERIFIABLE AUDIT OF SUCH BUSINESSES, TO REQUIRE
12 DISTRIBUTORS AND WHOLESALERS TO SUPPLY INFORMATION TO SUCH RETAIL
13 AND FOOD SERVICE ESTABLISHMENTS AS TO CERTIFICATION OF ORIGIN; TO
14 AMEND SECTION 69-7-608, MISSISSIPPI CODE OF 1972, TO REMOVE THE
15 STATE HEALTH OFFICER'S RESPONSIBILITIES; TO AMEND SECTION
16 69-7-609, MISSISSIPPI CODE OF 1972, TO REFLECT CHANGES IN THE
17 LABELING REQUIREMENTS, IN CONFORMITY THERETO; TO AMEND SECTION
18 69-7-610, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE COMMISSIONER
19 TO DISCLOSE TO THE PUBLIC THE NAMES AND ADDRESSES OF BUSINESSES
20 PURCHASING DOMESTIC OR FOREIGN CATFISH FROM WHOLESALERS,
21 DISTRIBUTORS AND PROCESSORS; TO CREATE A NEW CODE SECTION TO BE
22 CODIFIED AS SECTION 69-7-612, MISSISSIPPI CODE OF 1972, TO
23 AUTHORIZE THE COMMISSIONER OF AGRICULTURE TO INSPECT BUSINESSES
24 ENGAGED IN PROVIDING CATFISH FOR PURPOSES OF TESTING THE PRODUCT;
25 AND FOR RELATED PURPOSES.

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

27 **SECTION 1.** The following shall be codified as Section
28 69-7-602, Mississippi Code of 1972:

29 69-7-602. The Legislature finds that aquaculture sales and
30 consumption have increased worldwide and that the use of
31 antibiotics or chemicals not approved for use in food-producing
32 animals in the United States is permitted in aquaculture in other
33 countries and that consumers of aquaculture in Mississippi should
34 be provided clear information as to where the aquaculture product
35 originates from to protect the health and welfare of Mississippi
36 consumers; and the Legislature also finds that
37 food-misrepresentation or the passing off of less expensive



38 aquaculture products as pricier aquaculture products to unknowing
39 customers and retailers has become an issue in the marketplace and
40 is a deceitful practice used on consumers and retailers alike and
41 that consumers and retailers should be informed of the country and
42 species of fish.

43 **SECTION 2.** Section 69-7-605, Mississippi Code of 1972, is
44 amended as follows:

45 69-7-605. For purposes of this article, the following terms
46 shall have the meaning ascribed herein unless the context
47 otherwise requires:

48 (a) "Capable of use as human food" means and shall
49 apply to any catfish or part or product thereof unless it is
50 denatured or otherwise identified as required by regulations
51 prescribed by the commissioner to deter its use as human food, or
52 unless it is naturally inedible by humans.

53 (b) "Catfish" means any species within the family
54 Ictaluridae.

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

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

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

63 (f) "Farm-raised Catfish" means the catfish product has
64 been specifically produced in fresh water according to the usual
65 and customary techniques of commercial aquaculture and includes
66 fillets, steaks, nuggets and any other flesh from a "Farm-raised
67 Catfish."

68 (g) "Fish" means species of fish similar to catfish in
69 the families of Siluridae, Clariidae and Pangasiidae.



70 (h) "Food service establishment" means a restaurant,
71 cafeteria, lunch room, food stand, saloon, tavern, bar, lounge or
72 other similar facility operated as an enterprise engaged in the
73 business of selling food to the public.

74 (i) "Label" means a display of written, printed or
75 graphic matter upon or affixed to the container in which a catfish
76 product is offered for direct retail sale.

77 (j) "Labeling" means all labels and other written,
78 printed or graphic matter upon a catfish product, or any of its
79 containers or wrappers, offered for direct retail sale.

80 (k) "Menu" means any listing of food and beverage
81 options for a diner or customer to select from regardless of its
82 form.

83 (l) "Pay pond" means a circumscribed body of water
84 owned by a person and operated solely for recreational fishing
85 purposes on a commercial basis for profit.

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

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

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

94 (p) "Product" means any catfish product capable of use
95 as human food which is made wholly or in part from any catfish or
96 portion thereof, except products which contain catfish only in
97 small proportions or historically have not been, in the judgment
98 of the commissioner, considered by consumers as products of the
99 United States commercial catfish industry and which are exempted
100 from definition as a catfish product by the commissioner under
101 such conditions as he may prescribe to assure that the catfish or



102 portions thereof contained therein are not adulterated and that
103 such products are not represented as catfish products.

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

107 * * *

108 (r) "Retailer" means any person offering for sale
109 catfish products to individual consumers and representing the last
110 sale prior to human consumption and includes food service
111 establishments unless otherwise stated herein.

112 (s) "River or Lake Catfish" means the catfish product
113 has been produced in a freshwater lake, river or stream but has
114 not been produced according to the usual and customary techniques
115 of commercial aquaculture.

116 * * *

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

120 **SECTION 3.** Section 69-7-607, Mississippi Code of 1972, is
121 amended as follows:

122 69-7-607. (1) Notice of country of origin.

123 (a) General requirements:

124 (i) All retailers of catfish products shall inform
125 consumers, at the final point of sale of the catfish to the
126 consumers, of the country of origin of the catfish;

127 (ii) United States country of origin. A retailer
128 of catfish products may designate the catfish as having a United
129 States country of origin only if:

130 1. In case of "Farm-raised Catfish," it is
131 hatched, raised, harvested and processed in the United States;

132 2. In case of "River or Lake Catfish," it is:



133 a. Harvested in waters of the United
134 States, a territory of the United States or a state, including the
135 waters thereof; and

136 b. Processed in the United States, a
137 territory of the United States or a state, including the waters
138 thereof.

139 (iii) Farm-raised and River or Lake Catfish. The
140 notice of country of origin for "Farm-raised Catfish" and "River
141 or Lake Catfish" shall distinguish between "Farm-raised Catfish"
142 and "River or Lake Catfish."

143 (b) Method of notification.

144 (i) Retailers.

145 1. The information required by paragraph (a)
146 of subsection (1) of this section may be provided to consumers by
147 means of a label, stamp, mark, placard or other clear and visible
148 sign on the catfish or on the package, display, holding unit or
149 bin containing the catfish at the final point of sale to
150 consumers.

151 2. If the catfish is already individually
152 labeled for retail sale regarding country of origin, the retailer
153 shall not be required to provide any additional information to
154 comply with this section.

155 (ii) Food service establishments. The information
156 required by paragraph (a) of subsection (1) of this section shall
157 be provided to the consumer on the menu of the food service
158 establishment. For foreign or imported catfish, the information
159 shall be adjacent to the item on the menu and printed in the same
160 font style and size as the item. If the food service
161 establishment offers for sale only catfish having a United States
162 country of origin, then the food service establishment may
163 generally disclose this in a prominent location in the food
164 service establishment in lieu of disclosure on the menu. The
165 signage disclosing the sale of catfish having a United States



166 country of origin, that is to be placed in a prominent location in
167 the food service establishment, shall be approved, as indicated by
168 a stamp or seal, by the Mississippi Department of Agriculture and
169 Commerce, which shall be held harmless in a cause of action for a
170 retail or food service establishment's failure or fraudulent
171 disclosure. Any liability arising from failure to disclose
172 country of origin shall remain with the wholesaler and the retail
173 or food service establishment.

174 (c) The commissioner may require that any person that
175 prepares, stores, handles or distributes catfish for retail sale
176 maintain a verifiable record-keeping audit trail that permits the
177 commissioner to verify compliance with this law and any
178 regulations promulgated hereunder.

179 (d) Any distributor or wholesaler engaged in the
180 business of supplying catfish to a retailer or food service
181 establishment shall provide information to the retailer or food
182 service establishment indicating the country of origin of the
183 catfish. The information shall include certification of origin
184 through a state or federal agency that regulates the processing of
185 catfish or through a federal agency that verifies that catfish
186 and/or other products produced in countries other than the United
187 States meets similar sanitation requirements.

188 * * *

189 (2) Any advertising as to any catfish product shall state
190 the information required in paragraph (a) of subsection (1) of
191 this section.

192 (3) The term "catfish" shall not be used as a common name or
193 in the label name of fish product except as provided in this
194 section.

195 (4) The commissioner shall have authority to enter the
196 premises of any wholesaler, processor, distributor, retailer or
197 any other person selling catfish products in order to determine
198 compliance with this article.



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

201 **SECTION 4.** Section 69-7-608, Mississippi Code of 1972, is
202 amended as follows:

203 69-7-608. (1) The term "catfish" shall not be used as a
204 common name or used to advertise, distribute or label any fish or
205 fish product except for those species within the definition of
206 catfish in Section 69-7-605.

207 (2) It is unlawful to use the term "catfish" in the
208 advertising, distributing, labeling or selling of any of those
209 species within the family of Siluridae, Clariidae and Pangasiidae
210 or any other fish not within the definition of catfish in Section
211 69-7-605.

212 (3) (a) The commissioner shall regulate and inspect retail
213 and food service establishments under this article. * * *

214 (b) The commissioner shall notify, in writing, any
215 retailer or food service establishment violating this article and
216 shall give the retailer or food service establishment three (3)
217 days to correct the violation. No penalties under this article
218 shall apply to any retailer or food service establishment that
219 corrects the violation within three (3) days from the date
220 notified by the commissioner.

221 (4) In addition to any other civil or criminal penalties,
222 any person who violates any of the provisions of this chapter or
223 who otherwise misrepresents as catfish any fish or fish product
224 not defined as catfish under this article * * * shall be punished
225 by a fine of not more than One Thousand Dollars (\$1,000.00) * * *.
226 For a second offense, a person shall be punished by a fine of not
227 more than Two Thousand Dollars (\$2,000.00). For any subsequent
228 violations, a person shall be punished by a fine of not more than
229 Five Thousand Dollars (\$5,000.00) or by having the license for the
230 retail or food establishment suspended indefinitely or until such
231 establishment has corrected the violation, or both. Any person



232 against whom a complaint is made or who has been made subject to a
233 fine or license suspension as provided by this subsection, may
234 avail themselves of a due process administrative hearing as
235 provided by Section 69-7-616.

236 **SECTION 5.** Section 69-7-609, Mississippi Code of 1972, is
237 amended as follows:

238 69-7-609. All distributors, processors or wholesalers of
239 catfish products, distributing or selling catfish products, shall
240 provide information to each person, firm or corporation to whom
241 they distribute or sell catfish products for resale as to the
242 labeling information required in subsection (1) of Section
243 69-7-607.

244 **SECTION 6.** Section 69-7-610, Mississippi Code of 1972, is
245 amended as follows:

246 69-7-610. (1) All distributors, processors or wholesalers
247 of catfish or other fish products, distributing or selling catfish
248 or other fish products, shall provide information to the
249 commissioner or his representative, upon request, and to each
250 retailer to which such distributor, processor or wholesaler
251 distributes or sells catfish or other fish products as to whether
252 such product is Farm-raised Catfish, River or Lake Catfish,
253 Imported Catfish, or Other Fish a Product of (country of origin).
254 In addition, any wholesaler or distributor shall provide his sales
255 and purchases records of catfish and other fish upon request by
256 the commissioner. Other fish includes those fish in the taxonomic
257 family of Siluridae, Clariidae and Pangasiidae.

258 (2) The commissioner may disclose to the public the names
259 and addresses of businesses that purchase domestic and/or foreign
260 catfish and other fish from wholesalers, distributors and
261 processors.

262 **SECTION 7.** The following shall be codified as Section
263 69-7-612, Mississippi Code of 1972:



264 69-7-612. The commissioner shall have authority to enter the
265 premises of any wholesaler, distributor or retailer to pull
266 samples of catfish and other similar fish for laboratory testing
267 to test for species identification and/or any other testing as may
268 be necessary to determine compliance with this article.

269 **SECTION 8.** Sections 69-7-601 through 69-7-617, Mississippi
270 Code of 1972, which create the Mississippi Catfish Marketing Law
271 of 1975, shall stand repealed as of June 30, 2010.

272 **SECTION 9.** This act shall take effect and be in force from
273 and after July 1, 2008.

