

By: Representatives Eubanks, Boyd, Brown,
Criswell, Hopkins, Kinkade, Henley

To: Agriculture

HOUSE BILL NO. 1143

1 AN ACT TO CREATE THE MISSISSIPPI ON-FARM SALES AND FOOD
2 FREEDOM ACT; TO DEFINE TERMS USED HEREIN; TO PROHIBIT ANY COUNTY,
3 MUNICIPALITY OR OTHER POLITICAL SUBDIVISION OF THIS STATE FROM
4 REGULATING CERTAIN PRACTICES INVOLVED IN THE PRODUCTION OF
5 AGRICULTURAL OR FARM PRODUCTS ON ANY PRIVATE PROPERTY; TO PROHIBIT
6 ANY COUNTY, MUNICIPALITY OR OTHER POLITICAL SUBDIVISION FROM
7 RESTRICTING THE RETAIL SALE OR DISTRIBUTION OF UNPROCESSED
8 AGRICULTURAL OR FARM PRODUCTS GROWN OR RAISED IN THIS STATE
9 DIRECTLY FROM THE PRODUCER TO THE CONSUMER; TO PROHIBIT ANY
10 COUNTY, MUNICIPALITY OR OTHER POLITICAL SUBDIVISION FROM REQUIRING
11 ANY PERMIT FOR THE GROWING OR RAISING OF AGRICULTURAL PRODUCTS ON
12 CERTAIN PROPERTIES WHEN THOSE PRODUCTS ARE USED FOR NONCOMMERCIAL
13 PURPOSES; TO PROVIDE THE PROVISIONS OF THIS ACT SHALL NOT BE
14 CONSTRUED TO GIVE INDIVIDUAL RIGHTS TO SUPERSEDE ANY LOCAL ZONING
15 ORDINANCE OR NUISANCE LAW; TO REQUIRE AGRICULTURAL OR FARM
16 PRODUCTS SOLD UNDER THE PROVISIONS OF THIS ACT TO BE CLEARLY
17 MARKED AND LABELED WITH A WARNING IN THE FORM OF A "BUYERS BEWARE
18 LABEL" OUTLINING THE INHERENT RISK ASSOCIATED WITH CONSUMING
19 UNPROCESSED PRODUCTS; TO AMEND SECTION 75-31-65, MISSISSIPPI CODE
20 OF 1972, TO REVISE THE PROVISIONS RELATING TO THE INCIDENTAL SALES
21 OF RAW MILK OR RAW MILK PRODUCTS TO INCLUDE MILK PRODUCED FROM
22 COWS; TO AMEND SECTION 69-3-11, MISSISSIPPI CODE OF 1972, IN
23 CONFORMITY TO THE PRECEDING PROVISIONS; AND FOR RELATED PURPOSES.

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

25 **SECTION 1.** This act shall be known and may be cited as the
26 "Mississippi On-Farm Sales and Food Freedom Act."



27 **SECTION 2.** As used in this act, the following terms shall
28 have the meanings herein ascribed unless the context clearly
29 requires otherwise:

30 (a) "Agricultural product" means any food products
31 grown on Mississippi farms or gardens, and includes, but is not
32 limited to, fruits, vegetables, grains, nuts and all annual or
33 perennial plants, trees and shrubs grown in Mississippi, as well
34 as all animal and animal related bi-products including meat,
35 poultry, eggs, milk and cheese raised, harvested or produced in
36 Mississippi. For purposes of this act, the term "agricultural
37 product" does not include any item considered to be an illegal
38 base, derivative, drug or narcotic.

39 (b) "Buyer beware label" means a statement clearly
40 affixed to the container or packaging of agricultural or farm
41 products which informs the purchaser or consumer of potential
42 risks associated with the consumption of products in their
43 natural, raw or unprocessed form.

44 (c) "Crops" means fruits and products of all annual or
45 perennial plants, trees and shrubs.

46 (d) "Milk goat" means a doe kept for the purpose of
47 producing milk and any unweaned kid goats.

48 (e) "On-farm sales" means the sale, purchase, barter or
49 trade of agricultural or farm products by and for Mississippi
50 residents on the actual grower's or producer's property, at
51 farmers' markets by the actual grower or producer, or any other



52 arm's length transaction by the grower or producer that results in
53 the delivery of the agricultural or farm products directly to the
54 consumer, which such transactions occur within the State of
55 Mississippi. The term does not include the commercial production
56 of agricultural or farm products grown, produced or processed for
57 wholesale or mass distribution for third parties.

58 (f) "Raw milk" means milk that has not been
59 pasteurized.

60 (g) "Resident" means any person domiciled in the State
61 of Mississippi and any other person who maintains a legal or
62 actual residence within the state.

63 (h) "Unprocessed" means agricultural or farm products
64 that have not been canned, cooked, fermented, distilled,
65 preserved, ground, crushed or slaughtered.

66 **SECTION 3.** (1) (a) No county, municipality or other
67 political subdivision of this state shall adopt or enforce any
68 ordinance, rule, regulation or resolution regulating crop
69 management or animal husbandry practices involved in the
70 production of agricultural or farm products on any private
71 property.

72 (b) No county, municipality or other political
73 subdivision of this state shall adopt or enforce any ordinance,
74 rule, regulation or resolution that prohibits or regulates the
75 retail sale or distribution of processed or unprocessed
76 agricultural or farm products grown or raised in this state



77 directly from the producer to the consumer as food for human
78 consumption or seed for replanting.

79 (2) The provisions of subsection (1) of this section shall
80 not prohibit or impair the power of any county or municipal
81 governing authority or other political subdivision of this state
82 to adopt or enforce any zoning ordinance or make any other zoning
83 decision. Neither shall it give any individual to supersede any
84 local zoning ordinance.

85 (3) The provisions of subsection (1) of this section shall
86 not prohibit or impair any existing power of a county or
87 municipality governing authority or other political subdivision of
88 this state to adopt or enforce any ordinance, rule, regulation or
89 resolution regulating land application of human waste.

90 **SECTION 4.** (1) Nothing in this act or any rule or
91 regulation adopted under the authority provided herein shall
92 prohibit or regulate the retail sale or distribution of
93 unprocessed agricultural or farm products grown or raised in this
94 state directly from the producer to the consumer as food for human
95 consumption or seeds for replanting.

96 (2) The seeds produced from crops grown in this state shall
97 remain the sole property of the producer, which may be stored and
98 preserved for replanting or sold without penalty.

99 **SECTION 5.** (1) No county, municipality or other political
100 subdivision of this state shall prohibit or require any permit for



101 the growing or raising of food crops or chickens, rabbits or milk
102 goats in:

103 (a) Home gardens, coops, or pens on private residential
104 property so long as the food crops or animals or the products
105 thereof are used for human consumption by the occupant of the
106 property and members of his or her household and not for
107 commercial purposes; or

108 (b) Community or cooperative gardens, coops or pens on
109 any portion of any private lot made available for the purposes
110 prescribed in this section by the occupant thereof so long as the
111 total lot size is not more than two and three-fourths (2-3/4)
112 acres and the food crops or animals or the products thereof are
113 used for human consumption by the growers and raisers and members
114 of their households and not for commercial purposes. However, the
115 slaughter of goats kept under the authority of this section shall
116 be prohibited.

117 (2) This section shall not prohibit or impair:

118 (a) The authority of a local governmental entity to
119 abate a public nuisance;

120 (b) Any cause of action brought by a private citizen to
121 abate a private nuisance under Section 97-44-15; or

122 (c) Any private covenant or other private agreement
123 restricting the use of real property.



124 (3) This section or any other provision of this act shall
125 not be construed to give individual rights to supersede any local
126 zoning ordinance or nuisance law.

127 **SECTION 6.** (1) The sale of agricultural or farm products
128 under the provisions of this act shall be clearly marked and
129 labeled with a warning in the form of a "Buyers Beware Label"
130 outlining the inherent risk associated with consuming unprocessed
131 products. In each case the label statement shall appear in a
132 conspicuous and easily legible bold-faced print or type in
133 distinct contrast to other matters on the package. The label
134 statement shall appear as a distinct item on the principal display
135 panel, and shall be in letters in a type size established in
136 relationship to the area of the principal display panel of the
137 package and shall be uniform for all packages of substantially the
138 same size by complying with the following type specifications:

139 (a) Not less than one-eighth (1/8) inch in height on
140 packages the principal display panel of which has an area of
141 twenty-five (25) square inches or less;

142 (b) Not less than three-sixteenths (3/16) inch in
143 height on packages the principal display panel of which has an
144 area of more than twenty-five (25) but not more than one hundred
145 (100) square inches;

146 (c) Not less than one-fourth (1/4) inch in height on
147 packages the principal display panel of which has an area of more



148 than one hundred (100) square inches but not more than four
149 hundred (400) square inches; or

150 (d) Not less than one-half (1/2) inch in height on
151 packages the principal display panel of which has an area of more
152 than four hundred (400) square inches.

153 (2) The "Buyers Beware Label" shall contain the following
154 notice of warning:

155 "BUYERS BEWARE

156 The consumption of fruit, vegetable, grain, nut and
157 animal bi-products that have not been irradiated,
158 processed, pasteurized, homogenized or the like, carry
159 with it certain inherent health risks. Consume at your
160 own risk."

161 (3) Raw milk or cream or cottage cheese, butter, buttermilk,
162 kefir or cheeses made from raw milk or cream shall be displayed
163 for sale separately from and shall not be commingled with
164 pasteurized dairy products. The display shall be prominently
165 marked "raw milk" or "raw milk products" on the principal display
166 panel of the label. Any person who shall sell raw milk or raw
167 milk products in violation of this section or who causes any raw
168 milk or raw milk products to be introduced into interstate
169 commerce by selling such products across state lines as prohibited
170 under the Food, Drug, and Cosmetic Act (FDCA) (21 USCS Section
171 331), as regulated by 21 CFR Section 1240.61, shall be punished as
172 provided for under 21 USCS Section 333(a) (1).



173 (4) (a) All sales, purchases, barter or trade exchanges of
174 agricultural and farm products as defined in Section 2 of this act
175 shall occur only within the boundaries of the state and only
176 between residents of the state, with the understanding that the
177 products will be consumed within the state.

178 (b) All transactions for agricultural and farm products
179 described in paragraph (a) of this subsection shall be by and for
180 Mississippi residents, and shall occur on the actual grower's or
181 producer's property, at farmers' markets by the actual grower or
182 producer, or any other arm's length transaction by the grower or
183 producer that results in the delivery of the agricultural or farm
184 products directly to the consumer within the State of Mississippi.

185 **SECTION 7.** Section 75-31-65, Mississippi Code of 1972, is
186 amended as follows:

187 75-31-65. (1) The State Board of Health shall:

188 (a) Exercise general supervision over the production,
189 processing and sale of milk and milk products and the processing
190 and sale of frozen desserts.

191 (b) Adopt, modify, repeal and promulgate rules and
192 regulations, after due notice and hearing, and, where not
193 otherwise prohibited by federal law or state law, make exceptions
194 to, grant exemptions from and enforce rules and regulations
195 implementing or effectuating the duties of the board under this
196 section to protect the public health.



197 (c) Use the most current edition of the Pasteurized
198 Milk Ordinance, or its successor, as the basis for regulation of
199 Grade "A" milk and milk products. Unless as otherwise provided by
200 law, the board, in its discretion, may amend, modify or make
201 additions to the Pasteurized Milk Ordinance if the board
202 determines that such amendment, modification or addition is in the
203 best interest of public health.

204 (2) The board shall assess fees in the following amount and
205 for the following purpose:

206 Milk product processing plant annual permit fee.....\$300.00

207 Frozen dessert processing plant annual permit fee.....\$300.00

208 The fees authorized under this subsection shall not be
209 assessed for milk or frozen dessert processing plants operated by
210 public schools, by public junior colleges or by state agencies or
211 institutions, including, without limitation, the state
212 institutions of higher learning.

213 (3) Incidental sales of raw * * * milk shall be legal if:

214 (a) The milk is sold directly to the consumer on the
215 premises where the milk is produced or at a farmers' market in an
216 on-farm sales transaction as defined in Section 2(e) of this act;

217 (b) No more than nine (9) producing goats are located
218 on the premises where the milk is produced. There shall be no
219 restriction on the number of cows located on the premises where
220 milk is produced for incidental on-farm sales;



221 (c) The person selling the raw milk does not advertise
222 the milk for sale and provides adequate notice to potential
223 consumers of the inherent risks associated with the consumption of
224 unprocessed products as required under Section 6 of this act; and

225 (d) The following conditions, which apply to the
226 milking of goats and cows involved in legal incidental sales of
227 raw goat milk, are satisfied:

228 (i) The milking takes place in a clean environment
229 on a cement or comparable floor;

230 (ii) The milking place is enclosed by a wall
231 and/or a screen to prevent insects from entering the milking area;

232 (iii) A fly strap is located in the milking area;
233 and

234 (iv) Sterile containers are used in the milking
235 process and for storage.

236 It shall not be unlawful to store raw goat or cow milk in a
237 separate sterile place from pasteurized goat or cow milk. The
238 Cooperative Extension Service at Alcorn State University shall
239 publish and make available literature on the requirements of this
240 subsection, and other related milk * * * maintenance, explaining
241 the recommended care of milk goats and cows, * * * the process of
242 goat and cow milk production and other related subjects. For the
243 purposes of this subsection, the term "incidental sales" means
244 sales from a farm where not more than nine (9) goats are producing



245 milk or at a farmers' market, or, in the case of cows, in an
246 on-farm sales transaction as defined in Section 2(e) of this act.

247 (4) For purposes of this section, the term "person" includes
248 an individual, firm, partnership, association or corporation,
249 foreign or domestic. As used in subsection (3) of this section,
250 the term "person" means an individual acting in his or her
251 independent capacity for the incidental sell, purchase or on-farm
252 sale of raw milk for personal consumption and who is not acting as
253 an agent of any firm, partnership, association or corporation,
254 foreign or domestic.

255 (5) All fees collected by the board under this section shall
256 be paid into a special fund within the Department of Health to be
257 used by the department to discharge its duties under this section.

258 (6) Any person coming within the provisions of this section
259 who fails to comply with or violates any of the provisions of this
260 section or regulations promulgated thereunder, unless otherwise
261 specifically provided in this section, is guilty of a misdemeanor
262 and, upon conviction, shall be fined not more than One Hundred
263 Dollars (\$100.00) or confined in jail for not more than sixty (60)
264 days, or both.

265 (7) Any person who sells or offers for sale adulterated milk
266 or milk products or cream or frozen desserts or any milk or cream
267 having therein any foreign substance or coloring matter or any
268 chemicals or preservatives, whether for the purpose of increasing
269 the quantity of milk or cream or for improving its appearance or



270 for the purpose of preserving the condition of sweetness thereof,
271 or for any other purpose whatsoever, or unpasteurized milk or milk
272 products except as otherwise authorized by law, is guilty of a
273 misdemeanor, and, upon conviction, shall be fined not more than
274 Five Hundred Dollars (\$500.00) or confined in jail not more than
275 sixty (60) days, or both; however, nothing in this subsection
276 shall be construed to prevent the addition of vitamins to milk or
277 milk products in accordance with the rules and regulations
278 promulgated by the board or to prohibit the sale of pasteurized
279 milk or cream or frozen desserts except unlawful cream or unlawful
280 milk products or unlawful frozen desserts as defined in the rules
281 and regulations promulgated by the board.

282 (8) (a) Any person doing business in the State of
283 Mississippi and engaged in the production, manufacture, sale or
284 distribution of any dairy products that, for the purpose of
285 destroying the business of a competitor in any locality or
286 creating a monopoly, discriminates between different sections,
287 localities, communities, cities or towns of the state by selling
288 such commodity at a lower rate or price in one (1) section,
289 locality, community, city or town than such commodity is sold by
290 such person in any other section, locality, community, city or
291 town, after making due allowance for the difference, if any, in
292 the grade or quality and in the actual cost of the transportation
293 from the point of production or purchase, if a raw product, to the
294 place of sale, storage or distribution, is guilty of unfair



295 discrimination, which is prohibited and declared unlawful;
296 however, prices made to meet competition in such section,
297 locality, community, city or town shall not be in violation of
298 this subsection.

299 (b) Any person doing business in the State of
300 Mississippi and engaged in the business of purchasing for
301 manufacture, storage, sale or distribution of any dairy product,
302 that, for the purpose of destroying the business of a competitor
303 or creating a monopoly, discriminates between different sections,
304 localities, communities, cities or towns in the state by
305 purchasing such commodity at a higher rate or price in one (1)
306 section, locality, community, city or town than is paid for such
307 commodity by such person in any other section, locality,
308 community, city or town, after making due allowance for the
309 difference, if any, in the grade or quality, and in the actual
310 cost of transportation from the point of purchase to the point of
311 manufacture, sale or distribution or storage, is guilty of unfair
312 discrimination, which is prohibited and declared to be unlawful;
313 however, prices made to meet competition in such locality,
314 section, community, city or town shall not be a violation of this
315 subsection.

316 (c) Any person convicted of a violation of this
317 subsection, shall be fined not less than Five Hundred Dollars
318 (\$500.00) nor more than Five Thousand Dollars (\$5,000.00) or shall
319 be imprisoned in jail not more than twelve (12) months, or both.



320 (9) Nothing in this section shall be construed to apply to
321 any person who does not sell his milk, cream, butter or other
322 products mentioned herein to others.

323 **SECTION 8.** Section 69-3-11, Mississippi Code of 1972, is
324 amended as follows:

325 69-3-11. Agricultural seed or mixtures of same, vegetable
326 seed, flower seed, and tree and shrub seed shall be exempt from
327 provisions of this article:

328 (1) When sold and delivered by a farmer-grower of this
329 state on his own premises or any individual authorized under
330 Sections 1 through 6 of this act, but a farmer-grower or other
331 authorized individual is required to label seed when sold and
332 shipped away from his premises, but is not required to hold the
333 seedsman's permit. These provisions do not apply to commercial
334 growers of seed.

335 (2) When sold or represented to be sold for purposes
336 other than seeding, providing that the vendor shall make it
337 unmistakably clear to the purchaser of such seed that it is not
338 for seeding purposes.

339 (3) When seed for processing is being transported to,
340 or consigned to, or stored in a processing or cleaning
341 establishment, provided that the invoice or labeling accompanying
342 said seed bears the statement "seed for processing." Other
343 labeling or representation which may be made with respect to the
344 uncleaned or unprocessed seed shall be subject to this article.



345 (4) No label shall be required, unless requested by the
346 purchaser, on agricultural seed, mixtures of same, vegetable seed,
347 flower seed, and tree and shrub seed when such seeds are sold
348 directly to and in the presence of the purchaser and taken from a
349 container labeled in accordance with this article.

350 (5) No person shall be subjected to the penalties of
351 this article for having sold, offered or exposed for sale in this
352 state agricultural seed, mixtures of same, vegetable seed, flower
353 seed, or tree and shrub seed which were incorrectly labeled or
354 represented as to kind, variety or origin, which seed cannot be
355 identified by examination thereof, unless he has failed to obtain
356 an invoice or grower's declaration or other labeling information
357 and to take such other precautions as may be reasonable to insure
358 the identity to be that stated.

359 **SECTION 9.** This act shall take effect and be in force from
360 and after July 1, 2016.

