

By: Representative Eubanks

To: Agriculture

HOUSE BILL NO. 17

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."



SECTION 2.

As used in this act, the following terms shall have the meanings herein ascribed unless the context clearly requires otherwise:

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

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

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

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

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



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

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

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

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

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

(b) No county, municipality or other political subdivision of this state shall adopt or enforce any ordinance, rule, regulation or resolution that prohibits or regulates the retail sale or distribution of processed or unprocessed 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



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

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

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

(2) This section shall not prohibit or impair:

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

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

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



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

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

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

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

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



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

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

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

"BUYERS BEWARE

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

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



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

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

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

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

Any increase in the fees charged by the board under this subsection shall be in accordance with the provisions of Section 41-3-65.

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

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

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

(b) No more than nine (9) producing goats are located on the premises where the milk is produced. There shall be no



222 restriction on the number of cows located on the premises where
223 milk is produced for incidental on-farm sales;

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

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

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

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

235 (iii) A fly strap is located in the milking area;
236 and

237 (iv) Sterile containers are used in the milking
238 process and for storage.

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



247 sales from a farm where not more than nine (9) goats are producing
248 milk or at a farmers' market, or, in the case of cows, in an on-
249 farm sales transaction as defined in Section 2(e) of this act.

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

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

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

268 (7) Any person who sells or offers for sale adulterated milk
269 or milk products or cream or frozen desserts or any milk or cream
270 having therein any foreign substance or coloring matter or any
271 chemicals or preservatives, whether for the purpose of increasing



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

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



297 place of sale, storage or distribution, is guilty of unfair
298 discrimination, which is prohibited and declared unlawful;
299 however, prices made to meet competition in such section,
300 locality, community, city or town shall not be in violation of
301 this subsection.

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

319 (c) Any person convicted of a violation of this
320 subsection, shall be fined not less than Five Hundred Dollars



(\$500.00) nor more than Five Thousand Dollars (\$5,000.00) or shall be imprisoned in jail not more than twelve (12) months, or both.

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

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

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

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

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

(3) When seed for processing is being transported to, or consigned to, or stored in a processing or cleaning establishment, provided that the invoice or labeling accompanying said seed bears the statement "seed for processing." Other



labeling or representation which may be made with respect to the
uncleaned or unprocessed seed shall be subject to this article.

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

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

SECTION 9. This act shall take effect and be in force from
and after July 1, 2017.

