

By: Representative Eubanks

To:

1 AN ACT TO CREATE THE MISSISSIPPI ON-FARM SALES AND FOOD
 2 FREEDOM ACT; TO DEFINE CERTAIN TERMS; 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 CLARIFY THAT THIS ACT MAY NOT BE CONSTRUED TO GIVE
 14 INDIVIDUAL RIGHTS THAT SUPERSEDE ANY LOCAL ZONING ORDINANCE OR
 15 NUISANCE LAW; TO REQUIRE AGRICULTURAL OR FARM PRODUCTS SOLD UNDER
 16 THIS ACT TO BE CLEARLY MARKED AND LABELED WITH A "BUYERS BEWARE
 17 LABEL" OUTLINING THE INHERENT RISK ASSOCIATED WITH CONSUMING
 18 UNPROCESSED PRODUCTS; TO AMEND SECTION 75-31-65, MISSISSIPPI CODE
 19 OF 1972, TO REVISE THE PROVISIONS RELATING TO THE INCIDENTAL SALES
 20 OF RAW MILK OR RAW MILK PRODUCTS TO INCLUDE MILK PRODUCED FROM
 21 COWS; TO AMEND SECTION 69-3-11, MISSISSIPPI CODE OF 1972, IN
 22 CONFORMITY TO THE PRECEDING PROVISIONS; AND FOR RELATED PURPOSES.

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

24 **SECTION 1.** Sections 1 through 6 of this act shall be known
 25 and may be cited as the "Mississippi On-Farm Sales and Food
 26 Freedom Act."



27 SECTION 2. As used in Sections 1 through 6 of this act, the
28 following words and phrases have the meanings ascribed in this
29 section unless the context clearly requires otherwise:

30 (a) "Agricultural product" means any food product grown
31 on Mississippi farms or gardens and includes, but is not limited
32 to, fruits, vegetables, grains, nuts and all annual or perennial
33 plants, trees and shrubs grown in Mississippi, as well as all
34 animal and animal related bi-products, including meat, poultry,
35 eggs, milk and cheese raised, harvested or produced in
36 Mississippi. The term "agricultural product" does not include any
37 item considered to be an illegal base, derivative, drug or
38 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 within that State of
50 Mississippi by and for Mississippi residents on the actual
51 grower's or producer's property, at farmers' markets by the actual



52 grower or producer, or any other arm's length transaction by the
53 grower or producer which results in the delivery of the
54 agricultural or farm products directly to the consumer. The term
55 "on-farm sales" does not include the commercial production of
56 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) A county, municipality or other
67 political subdivision of this state may not 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) A county, municipality or other political
73 subdivision of this state may not 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) Subsection (1) of this section may not be interpreted to
80 prohibit or impair the power of any county or municipal governing
81 authority or other political subdivision to adopt or enforce any
82 zoning ordinance or make any other zoning decision. Or to
83 authorize any individual to supersede any local zoning ordinance.

84 (3) Subsection (1) of this section may not be interpreted to
85 prohibit or impair the power of a county or municipal governing
86 authority or other political subdivision to adopt or enforce any
87 ordinance, rule, regulation or resolution regulating land
88 application of human waste.

89 **SECTION 4.** (1) This act and any rule or regulation adopted
90 under the authority provided in this act does not prohibit or
91 regulate the retail sale or distribution of unprocessed
92 agricultural or farm products grown or raised in this state
93 directly from the producer to the consumer as food for human
94 consumption or seeds for replanting.

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

98 **SECTION 5.** (1) A county, municipality or other political
99 subdivision of this state may not prohibit or require any permit
100 for the growing or raising of food crops or chickens, rabbits or
101 milk goats in:



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

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

115 (2) This section does not prohibit or impair:

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

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

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

122 (3) This act may not be construed to give individual rights
123 that supersede any local zoning ordinance or nuisance law.

124 **SECTION 6.** (1) Agricultural and farm products sold under
125 this act must be marked and labeled clearly with a warning in the
126 form of a "Buyers Beware Label" outlining the inherent risk



127 associated with consuming unprocessed products. In each case, the
128 label statement must appear in a conspicuous and easily legible
129 bold-faced print or type in distinct contrast to other matters on
130 the package. The label statement must appear as a distinct item
131 on the principal display panel in letters in a type size
132 established in relationship to the area of the principal display
133 panel of the package. The label must be uniform for all packages
134 of substantially the same size and must comply with the following
135 type specifications:

136 (a) Not less than one-eighth (1/8) inch in height on
137 packages that have a principal display panel that is twenty-five
138 (25) square inches or less;

139 (b) Not less than three-sixteenths (3/16) inch in
140 height on packages that have a principal display panel that is
141 more than twenty-five (25) but not more than one hundred (100)
142 square inches;

143 (c) Not less than one-fourth (1/4) inch in height on
144 packages that have a principal display panel that is more than one
145 hundred (100) square inches but not more than four hundred (400)
146 square inches; or

147 (d) Not less than one-half (1/2) inch in height on
148 packages that have a principal display panel that is more than
149 four hundred (400) square inches.

150 (2) The "Buyers Beware Label" must contain the following
151 notice of warning:



152 "BUYERS BEWARE

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

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

170 (4) (a) All sales, purchases, barter or trade exchanges of
171 agricultural and farm products may occur only within the
172 boundaries of the state and only between residents of the state,
173 with the understanding that the products will be consumed within
174 the state.

175 (b) All transactions for agricultural and farm products
176 under this act must be by and for Mississippi residents and may



177 occur only on the actual grower's or producer's property, at
178 farmers' markets by the actual grower or producer, or by any other
179 arm's length transaction by the grower or producer which results
180 in the delivery of the agricultural or farm products directly to
181 the consumer within the State of Mississippi.

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

184 75-31-65. (1) The State Board of Health shall:

185 (a) Exercise general supervision over the production,
186 processing and sale of milk and milk products and the processing
187 and sale of frozen desserts.

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

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



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

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

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

205 Any increase in the fees charged by the board under this
206 subsection shall be in accordance with the provisions of Section
207 41-3-65.

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 House Bill
217 No. 12, 2018 Regular Session;

218 (b) No more than nine (9) producing goats are located
219 on the premises where the milk is produced; However, there is no
220 restriction on the number of cows located on the premises where
221 milk is produced for incidental on-farm sales;

222 (c) The person selling the raw milk does not advertise
223 the milk for sale and provides adequate notice to potential
224 consumers of the inherent risks associated with the consumption of



225 unprocessed products, as required under Section 6 of House Bill
226 No. 12, 2018 Regular Session; and

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

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

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

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

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

238 It shall not be unlawful to store raw goat or cow milk in a
239 separate sterile place from pasteurized goat or cow milk. The
240 Cooperative Extension Service at Alcorn State University shall
241 publish and make available literature on the requirements of this
242 subsection, and other related milk * * * maintenance, explaining
243 the recommended care of milk goats * * * and cows, the process of
244 goat and cow milk production and other related subjects. For the
245 purposes of this subsection, the term "incidental sales" means
246 sales from a farm where not more than nine (9) goats are producing
247 milk or at a farmers' market, or, in the case of cows, in an
248 on-farm sales transaction as defined in Section 2(e) of House Bill
249 No. 12, 2018 Regular Session.



250 (4) For purposes of this section, the term "person" includes
251 an individual, firm, partnership, association or corporation,
252 foreign or domestic * * * ; however, as used in subsection (3) of
253 this section, the term "person" only means an individual acting in
254 his or her independent capacity for the incidental sell, purchase
255 or on-farm sale of raw milk for personal consumption and who is
256 not acting as an agent of any firm, partnership, association or
257 corporation, 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
272 the quantity of milk or cream or for improving its appearance or
273 for the purpose of preserving the condition of sweetness thereof,
274 or for any other purpose whatsoever, or unpasteurized milk or milk



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

285 (8) (a) Any person doing business in the State of
286 Mississippi and engaged in the production, manufacture, sale or
287 distribution of any dairy products that, for the purpose of
288 destroying the business of a competitor in any locality or
289 creating a monopoly, discriminates between different sections,
290 localities, communities, cities or towns of the state by selling
291 such commodity at a lower rate or price in one (1) section,
292 locality, community, city or town than such commodity is sold by
293 such person in any other section, locality, community, city or
294 town, after making due allowance for the difference, if any, in
295 the grade or quality and in the actual cost of the transportation
296 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
321 (\$500.00) nor more than Five Thousand Dollars (\$5,000.00) or shall
322 be imprisoned in jail not more than twelve (12) months, or both.



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

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

328 69-3-11. Agricultural seed or mixtures of same, vegetable
329 seed, flower seed, and tree and shrub seed shall be exempt from
330 provisions of this article:

331 (1) When sold and delivered by a farmer-grower of this
332 state on his own premises or any individual authorized under
333 Sections 1 through 6 of House Bill No. 12, 2018 Regular Session,
334 but a farmer-grower or other authorized individual is required to
335 label seed when sold and shipped away from his premises, but is
336 not required to hold the seedsman's permit. These provisions do
337 not apply to commercial growers of seed.

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

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



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

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

362 **SECTION 9.** This act shall take effect and be in force from
363 and after July 1, 2018.

