

By: Representatives Pigott, Paden, Sykes

To: Agriculture

HOUSE BILL NO. 665

1 AN ACT TO CREATE NEW SECTION 69-1-56, MISSISSIPPI CODE OF
 2 1972, TO DESIGNATE THE MISSISSIPPI DEPARTMENT OF AGRICULTURE AND
 3 COMMERCE AS THE STATE AGENCY RESPONSIBLE FOR ADMINISTERING THE
 4 PROVISIONS OF THE PRODUCE SAFETY RULE PROGRAM PROVISIONS OF THE
 5 FOOD SAFETY MODERNIZATION ACT FOR THE STATE OF MISSISSIPPI AS
 6 AGENTS OF THE FOOD AND DRUG ADMINISTRATION; TO PERMIT THE
 7 COMMISSIONER OF AGRICULTURE AND COMMERCE TO ENTER INTO COOPERATIVE
 8 AGREEMENTS WITH THE FOOD AND DRUG ADMINISTRATION AND TO ACCEPT ANY
 9 ADVISORY, TECHNICAL AND FINANCIAL ASSISTANCE THEREFROM FOR THE
 10 ADMINISTRATION OF ENFORCEMENT OF THE PRODUCE SAFETY RULE PROGRAM;
 11 TO BRING FORWARD SECTION 69-1-18, MISSISSIPPI CODE OF 1972, FOR
 12 THE PURPOSE OF POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

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

14 **SECTION 1.** The following shall be codified as Section
 15 69-1-56, Mississippi Code of 1972:

16 69-1-56. (1) The Department of Agriculture and Commerce is
 17 designated as the authorized state agency responsible for
 18 cooperating with the Food and Drug Administration of the United
 19 States under the provisions of 21 CFR Part 112, governing the Food
 20 Safety Modernization Act as statutorily authorized by 21 USCS
 21 Section 321, 21 USCS Section 331, 21 USCS Section 342, 21 USCS
 22 Section 350h, 42 USCS Section 243, 42 USCS Section 264 and 42 USCS
 23 Section 271, and to enforce those provisions as agents of the Food



24 and Drug Administration. The department shall cooperate with the
25 Food and Drug Administration in administering the Produce Safety
26 Rule Program provisions of the Food Safety Modernization Act for
27 the State of Mississippi under the authority of this section. The
28 requirements of the Produce Safety Rule Program of this state
29 shall be at least equal to those requirements imposed under 21 CFR
30 Part 112, and shall be administered in such a manner that will
31 effectuate the purposes of this section and the applicable federal
32 rules in order to prevent or remediate the adulteration of raw
33 agricultural commodities on farms.

34 (2) In such cooperative efforts, the department is
35 authorized to accept from the Food and Drug Administration:

36 (a) Advisory assistance in planning and otherwise
37 developing the state program;

38 (b) Technical and laboratory assistance and training,
39 including necessary curricular and instructional materials and
40 equipment; and

41 (c) Financial and other aid for administration of the
42 program.

43 (3) The department is further authorized to recommend to the
44 Food and Drug Administration any officials or employees of the
45 department as enforcement agents as the department shall
46 designate. The Commissioner of Agriculture and Commerce, or his
47 or her designee, shall serve as the representative of the Office



48 of the Governor for consultation with the Food and Drug
49 Administration.

50 (4) The commissioner shall have access to any covered farm
51 for the purpose of:

52 (a) Inspecting such farm to determine if any provision
53 of this chapter is being violated; and

54 (b) Securing samples or specimens to determine if any
55 provision of this section is being violated.

56 (5) The commissioner may seize, condemn or destroy any
57 produce that is being grown, kept, exposed for sale, held in
58 possession or under the control of any person on a covered farm if
59 that produce is in violation of this section.

60 (6) No person shall impede, obstruct, hinder or otherwise
61 prevent or attempt to prevent the Commissioner of Agriculture and
62 Commerce, an inspector or any other person employed or contracted
63 by the department in the performance of his or her duty in
64 administering the program functions as authorized under this
65 section.

66 (7) The commissioner may promulgate regulations as may be
67 necessary to carry out the provisions of this section.

68 (8) The Department of Agriculture and Commerce may enter
69 into cooperative agreements as may be necessary to carry out the
70 provisions of a Produce Safety Program.

71 (9) The commissioner may impose administrative penalties for
72 violations of this section not to exceed Five Thousand Dollars



73 (\$5,000.00) for each violation. Any person against whom a
74 complaint is made or who has been made subject to a fine or
75 license suspension may avail themselves of a due process
76 administrative hearing as provided by Section 69-1-18.

77 (10) The provisions of this section shall stand repealed
78 upon the effective date of the repeal of 21 CFR Part 112, or when
79 the federal funds required to implement this section are no longer
80 allocated to the department by the Food and Drug Administration,
81 whichever shall occur first.

82 **SECTION 2.** Section 69-1-18, Mississippi Code of 1972, is
83 brought forward as follows:

84 69-1-18. (1) The following words and phrases shall have the
85 meanings ascribed herein unless the context clearly requires
86 otherwise:

87 (a) "Potentially hazardous food" means a food that is
88 natural or synthetic and that requires temperature control because
89 it is in a form capable of supporting: the growth of infectious
90 or toxigenic microorganisms; the growth and toxin production of
91 *Clostridium botulinum*; or in raw shell eggs, the growth of
92 salmonella enteritis. "Potentially hazardous food" includes an
93 animal food (of animal origin) that is raw or heat-treated; a food
94 of plant origin that is heat-treated or consists of raw seed
95 sprouts; and cut melons.

96 (b) "Retail food establishment" means any establishment
97 where food and food products are offered for sale to the ultimate



98 consumer and intended for off-premise consumption. Such food or
99 food products may be exposed to varying degrees of preparation and
100 may often need further preparation or processing after it has been
101 purchased. A retail food establishment does not include:

102 (i) An establishment that offers only prepackaged
103 foods that are not potentially hazardous;

104 (ii) A produce stand that only offers whole, uncut
105 fresh fruits and vegetables;

106 (iii) A food processing plant; and

107 (iv) A food establishment as defined by the
108 Mississippi State Department of Health.

109 (2) The commissioner and his agents shall have the
110 authority:

111 (a) To promulgate rules and regulations establishing
112 certain sanitation requirements for retail food establishments;

113 (b) To conduct sanitation inspections in retail food
114 establishments; and

115 (c) To publish the names and addresses of violators and
116 such information pertaining to violation(s) of this section as he
117 deems appropriate.

118 (3) Each retail food establishment, before engaging in
119 business, shall obtain a license from the commissioner. Owners of
120 more than one (1) retail food establishment must obtain a license
121 for each establishment. A license fee of Ten Dollars (\$10.00)
122 must be paid to the department before a license will be issued.



123 Application for such license shall be made on forms prescribed and
124 furnished by the commissioner. Licenses issued under this
125 subsection by the commissioner shall expire on June 30 each year
126 and application for renewals thereof shall be made annually before
127 the expiration date. Licenses shall not be transferable and
128 application must be made for a new license if there is any change
129 in location or ownership of the business.

130 (4) Any person who violates any provision of this law or the
131 regulations adopted hereunder shall be guilty of a misdemeanor,
132 and, upon conviction, shall be punished by the imposition of a
133 fine not to exceed Five Hundred Dollars (\$500.00) or by
134 imprisonment in the county jail for a term not to exceed six (6)
135 months, or both.

136 (5) The commissioner may impose administrative penalties for
137 violation of this section.

138 (6) Any person found by the commissioner to be in violation
139 of this section may be assessed a penalty in an amount of not more
140 than Five Hundred Dollars (\$500.00) and subsequent violations
141 within a six-month period at a penalty of not more than One
142 Thousand Dollars (\$1,000.00). In addition to, or in lieu of, such
143 penalties the commissioner may suspend or revoke the permit issued
144 to such person under terms of this section.

145 (7) When any violation of this section or the rules and
146 regulations promulgated hereunder occurs, or is about to occur,
147 that presents a clear and present danger to the public health,



148 safety or welfare requiring immediate action, the commissioner or
149 any of the department's field inspectors, or any other persons
150 authorized by the commissioner, may issue an order to be effective
151 immediately before notice and a hearing, that imposes any or all
152 of the following penalties against the accused: (a) a stop sale
153 order on any product in violation of this section; (b) an order to
154 seize any product that is not in compliance with this section and
155 require it to be denatured or destroyed under the supervision of
156 the department's inspectors; or (c) an order that the retail food
157 establishment or any department within such establishment cease
158 operations until it is in compliance with this section. The order
159 shall be served upon the accused in accordance with Rule 4 of the
160 Mississippi Rules of Civil Procedure or certified mail or it may
161 be served by giving a copy of the order to the manager of the
162 retail food establishment or, where no manager is present, an
163 employee of the establishment. The accused shall then have twenty
164 (20) days after service of the order upon him within which to
165 request an informal administrative review before the Director of
166 the Bureau of Regulatory Services in the department, or the
167 director's designee, who shall act as reviewing officer. If the
168 accused makes such a request within such time, the reviewing
169 officer shall provide an informal administrative review to the
170 accused within ten (10) days after such request is made. If the
171 accused does not request an informal administrative review within
172 twenty (20) days, then he shall have waived his right to such



173 review. At the informal administrative review, there shall be no
174 court reporter or record made of the proceedings. Each party may
175 present its case in the form of documents, oral statements or any
176 other method. The rules of evidence shall not apply. The
177 reviewing officer's decisions shall be in writing, and it shall be
178 delivered by certified mail. If the accused is aggrieved by the
179 order of the hearing officer, he may appeal to the commissioner
180 for a full evidentiary hearing. Such appeal shall be perfected by
181 filing a notice of appeal with the commissioner within thirty (30)
182 days after the order of the reviewing officer is served on the
183 appealing party. The hearing before the commissioner or his
184 designee shall be held within a reasonable time after the appeal
185 has been perfected. Failure to perfect an appeal within the
186 allotted time shall be deemed a waiver of such right.

187 **SECTION 3.** This act shall take effect and be in force from
188 and after its passage.

