

By: Representative Holland

To: Agriculture

HOUSE BILL NO. 48

1 AN ACT TO AMEND SECTION 69-7-607, MISSISSIPPI CODE OF 1972,  
 2 TO REQUIRE THAT CERTAIN CATFISH PRODUCTS OFFERED FOR DIRECT RETAIL  
 3 SALE FOR HUMAN CONSUMPTION BY A PROCESSOR, DISTRIBUTOR OR RETAILER  
 4 SHALL BE LABELED AS IMPORTED BASA OR OTHER CATFISH INCLUDING THE  
 5 COUNTRY OF ORIGIN; TO AMEND SECTION 69-7-609, MISSISSIPPI CODE OF  
 6 1972, TO REQUIRE ALL DISTRIBUTORS, PROCESSORS OR WHOLESALERS OF  
 7 CATFISH PRODUCTS TO PROVIDE INFORMATION TO EACH PERSON, FIRM OR  
 8 CORPORATION TO WHOM THEY DISTRIBUTE OR SELL CATFISH PRODUCTS FOR  
 9 RESALE AS TO WHETHER SUCH CATFISH PRODUCT IS IMPORTED BASA OR  
 10 OTHER CATFISH INCLUDING THE COUNTRY OF ORIGIN; TO AMEND SECTION  
 11 69-7-605, MISSISSIPPI CODE OF 1972, TO REVISE DEFINITIONS; TO  
 12 AMEND SECTION 69-7-613, MISSISSIPPI CODE OF 1972, TO PROVIDE  
 13 CRIMINAL PENALTIES FOR VIOLATIONS; TO CREATE A NEW CODE SECTION TO  
 14 BE CODIFIED AS SECTION 69-7-614, MISSISSIPPI CODE OF 1972, TO  
 15 REQUIRE ALL PERSONS SELLING CATFISH TO MAINTAIN CERTAIN RECORDS OF  
 16 THEIR PURCHASES AND SALES OF CATFISH AND TO AUTHORIZE THE  
 17 DEPARTMENT OF AGRICULTURE AND COMMERCE TO INSPECT SUCH RECORDS; TO  
 18 CREATE A NEW CODE SECTION TO BE CODIFIED AS SECTION 69-7-616,  
 19 MISSISSIPPI CODE OF 1972, TO PROVIDE CIVIL PENALTIES FOR  
 20 VIOLATIONS AND TO PROVIDE ADMINISTRATIVE PROCEEDINGS TO BE USED BY  
 21 THE DEPARTMENT OF AGRICULTURE AND COMMERCE IN HANDLING COMPLAINTS  
 22 AND HEARINGS; AND FOR RELATED PURPOSES.

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

24 **SECTION 1.** Section 69-7-605, Mississippi Code of 1972, is  
 25 amended as follows:

26 69-7-605. For purposes of this article, the following terms  
 27 shall have the meaning ascribed herein unless the context  
 28 otherwise requires:

29 (a) "Capable of use as human food" shall mean and shall  
 30 apply to any catfish or part or product thereof unless it is  
 31 denatured or otherwise identified as required by regulations  
 32 prescribed by the commissioner to deter its use as human food, or  
 33 unless it is naturally inedible by humans.

34 (b) "Catfish" shall include, but not be limited to, any  
 35 species of the scientific order, Siluriformes, or family,  
 36 Anarhichadidae.



37 (c) "Commissioner" shall mean the Commissioner of  
38 Agriculture and Commerce of the State of Mississippi.

39 (d) "Direct retail sale" shall mean the sale of catfish  
40 products individually or in small quantities directly to the  
41 consumer.

42 (e) "Distributor" shall mean any person offering for  
43 sale, exchange, or barter any catfish product destined for direct  
44 retail sale in the State of Mississippi.

45 (f) "Label" shall mean a display of written, printed or  
46 graphic matter upon or affixed to the container in which a catfish  
47 product is offered for direct retail sale.

48 (g) "Labeling" shall mean all labels and other written,  
49 printed or graphic matter upon a catfish product, or any of its  
50 containers or wrappers, offered for direct retail sale.

51 (h) "Pay pond" shall mean a circumscribed body of water  
52 owned by a person and operated solely for recreational fishing  
53 purposes on a commercial basis for profit.

54 (i) "Person" shall include any individual, partnership,  
55 corporation, and association or other legal entity.

56 (j) "Processor" shall mean any person engaged in  
57 handling, storing, preparing, manufacturing, packing, or holding  
58 catfish products.

59 (k) "Producer" shall mean any person engaged in the  
60 business of harvesting catfish, by any method, intended for direct  
61 retail sale.

62 (l) "Product" shall mean any catfish product capable of  
63 use as human food which is made wholly or in part from any catfish  
64 or portion thereof, except products which contain catfish only in  
65 small proportions or historically have not been, in the judgment  
66 of the commissioner, considered by consumers as products of the  
67 commercial catfish industry and which are exempted from definition  
68 as a catfish product by the commissioner under such conditions as  
69 he may prescribe to assure that the catfish or portions thereof



70 contained therein are not adulterated and that such products are  
71 not represented as catfish products.

72 (m) "Product name" shall mean the name of the catfish  
73 item intended for retail sale which identifies it as to kind,  
74 class, or specific use.

75 (n) "Retailer" shall mean any person offering for sale  
76 catfish products to individual consumers and representing the last  
77 sale prior to human consumption including restaurants and other  
78 eating establishments \* \* \*.

79 **SECTION 2.** Section 69-7-607, Mississippi Code of 1972, is  
80 amended as follows:

81 69-7-607. (1) No catfish product shall be offered for  
82 direct retail sale for human consumption by a processor,  
83 distributor or retailer unless the catfish product name is  
84 specifically labeled in the following manner:

85 (a) "FARM-RAISED CATFISH, A PRODUCT OF MISSISSIPPI" if  
86 the product has been specifically produced in fresh water  
87 according to the usual and customary techniques of commercial  
88 aquaculture; except that the appropriate state name or USA or  
89 United States of America may be inserted in lieu thereof to  
90 accommodate similar catfish products produced in any one of the  
91 other states of the United States of America.

92 (b) "RIVER OR LAKE CATFISH, A PRODUCT OF MISSISSIPPI"  
93 if the product has been produced in any freshwater lake, river or  
94 stream of the state, but has not been produced according to the  
95 usual and customary techniques of commercial aquaculture; except  
96 that the appropriate state name or USA or United States of America  
97 may be inserted in lieu thereof to accommodate similar catfish  
98 products produced in freshwater lakes, rivers or streams of any  
99 other state in the United States of America.

100 (c) "IMPORTED BASA OR OTHER CATFISH, A PRODUCT OF  
101 \_\_\_\_\_ (country of origin)" provided the catfish is  
102 produced from freshwater, either according to the usual and



103 customary techniques of aquaculture, or from freshwater lakes,  
104 rivers or streams of a country other than the United States of  
105 America.

106 (d) "OCEAN CATFISH" provided the catfish product is  
107 produced from marine or estuarine waters.

108 (2) Any person selling river or lake catfish exclusively and  
109 directly to the consumer may have on his premises a sign  
110 reasonably visible to the consumer identifying such product as  
111 river or lake catfish, rather than labeling each individual  
112 container or package of catfish product, as provided in subsection  
113 (1).

114 (3) Any retailer selling catfish products not wrapped or in  
115 a container may comply with this article by placing a sign on the  
116 display case or refrigeration unit and on menus reasonably visible  
117 to the consumer, giving notice that such catfish is either "Farm  
118 Raised Catfish," "River or Lake Catfish," "Imported BASA or Other  
119 Catfish, a Product of \_\_\_\_\_ (country of origin)" or "Ocean  
120 Catfish," as such products are defined in subsection (1) above.

121 (4) Any advertising as to any catfish product shall state  
122 whether such catfish product is "Farm Raised Catfish," "River or  
123 Lake Catfish," "Imported BASA or Other Catfish, a Product  
124 of \_\_\_\_\_ (country of origin)" or "Ocean Catfish," as defined  
125 in subsection (1) above.

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

128 (6) All of the information required by this section to be  
129 printed on labels, signs or menus shall be of the same size  
130 throughout.

131 **SECTION 3.** Section 69-7-609, Mississippi Code of 1972, is  
132 amended as follows:

133 69-7-609. All distributors, processors, or wholesalers of  
134 catfish products, distributing or selling catfish products, shall  
135 provide information to each person, firm, or corporation to whom



136 they distribute or sell catfish products for resale as to whether  
137 such catfish product is "Farm Raised Catfish," "River or Lake  
138 Catfish," "Imported BASA or Other Catfish, a Product of  
139 (country of origin)" or "Ocean Catfish," as such terms are defined  
140 in subsection (1) of Section 69-7-607.

141 **SECTION 4.** Section 69-7-613, Mississippi Code of 1972, is  
142 amended as follows:

143 69-7-613. (1) Any person who violates the provisions of  
144 this article, or the rules and regulations promulgated hereunder,  
145 shall be guilty of a felony and, upon conviction, shall be  
146 punished by a fine of up to One Thousand Dollars (\$1,000.00) or by  
147 imprisonment for not more than one (1) year, or by both such fine  
148 and imprisonment. Any person violating the provisions of this  
149 article, or the rules and regulations promulgated hereunder, upon  
150 conviction for a second or subsequent violation shall be guilty of  
151 a felony and upon convictions, shall be punished by imprisonment  
152 for not more than five (5) years or by a fine of up to Five  
153 Thousand Dollars (\$5,000.00), or by both.

154 (2) The commissioner may apply for and the court may grant a  
155 temporary or permanent injunction restraining any person from  
156 violating or continuing to violate any of the provisions of this  
157 article or any rule or regulation promulgated under this article,  
158 notwithstanding the existence of other remedies at law. The  
159 injunction shall be issued without bond.

160 \* \* \*

161 **SECTION 5.** The following section shall be codified as  
162 Section 69-7-614, Mississippi Code of 1972:

163 69-7-614. All persons selling catfish within this state that  
164 are regulated by this article shall preserve and maintain all  
165 records of their purchases and sales of catfish for a period of  
166 three (3) years after such purchases and sales have occurred. The  
167 Department of Agriculture and Commerce shall be allowed to enter  
168 the premises of all such persons during regular business hours



169 without the necessity of a search warrant or court order and  
170 seize, inspect or copy such records.

171 **SECTION 6.** The following section shall be codified as  
172 Section 69-7-616, Mississippi Code of 1972:

173 69-7-616. When a written complaint is made against a person  
174 for violation of any of the provisions of this article, or any of  
175 the rules or regulations promulgated hereunder, the Director of  
176 the Regulatory Division of the Mississippi Department of  
177 Agriculture and Commerce, or his designee, shall act as reviewing  
178 officer. The complaint shall be in writing and shall be filed  
179 with the Mississippi Department of Agriculture and Commerce. The  
180 reviewing officer shall cause to be delivered to the accused in  
181 the manner described herein a copy of the complaint and any  
182 supporting documents along with a summons requiring the accused to  
183 respond to the allegations within thirty (30) days after service  
184 of the summons and complaint upon the accused. The accused shall  
185 file with the department a written response to the complaint and  
186 any supporting documents within the thirty-day period. The  
187 accused may be notified by serving a copy of the summons and  
188 complaint on the accused or any of his officers, agents or  
189 employees by personal service or by certified mail. Upon the  
190 expiration of the thirty-day period, the reviewing officer shall  
191 review the complaint, the written response of the accused, if any,  
192 and all supporting documents offered by the parties in support of  
193 their respective positions. The reviewing officer's decision  
194 shall be based solely on the documents provided by the parties as  
195 no hearing with live testimony or informal discussions shall be  
196 held. If the reviewing officer determines that the complaint  
197 lacks merit, he may dismiss the complaint. If he finds that there  
198 are reasonable grounds showing that a violation of the statutes or  
199 regulations has been committed, he may impose any or all of the  
200 following penalties upon the accused: (a) levy a civil penalty in  
201 the amount of no more than One Thousand Dollars (\$1,000.00) for



202 each violation; (b) issue a stop sale order; (c) require the  
203 accused to relabel any fish that he is offering for sale and which  
204 is not labeled in accordance with the provisions of this article;  
205 or (d) seize any fish that is not in compliance with this article  
206 and destroy, sell or otherwise dispose of the fish and apply the  
207 proceeds of any such sale to the costs herein and any civil  
208 penalties levied, with the balance to be paid to the accused. The  
209 reviewing officer's decision shall be in writing, and it shall be  
210 delivered to the accused by any of the methods described herein  
211 for service of the summons and complaint on the accused.

212 (2) Either the accused or the department may appeal the  
213 decision of the reviewing officer to the Commissioner of  
214 Agriculture and Commerce by filing a notice of appeal with the  
215 department within thirty (30) days of receipt of the reviewing  
216 officer's decision. If no appeal is taken from the order of the  
217 reviewing officer within the allotted time, the order shall then  
218 become final. In the event of an appeal, the commissioner, or his  
219 designee, shall conduct a full evidentiary hearing relative to the  
220 charges. The commissioner may issue subpoenas to require the  
221 attendance of witnesses and the production of documents.

222 Compliance with such subpoenas may be enforced by any court of  
223 general jurisdiction in this state. The testimony of witnesses  
224 shall be upon oath or affirmation, and they shall be subject to  
225 cross-examination. The proceedings shall be recorded by a court  
226 reporter. The commissioner shall have all the powers of the  
227 reviewing officer described herein, and the commissioner may  
228 affirm, reverse or modify the order of the reviewing officer. The  
229 commissioner's decision shall be in writing, and it shall be  
230 delivered to the parties in the same manner that the summons and  
231 complaint may be served upon the accused.

232 (3) Either the accused or the department may appeal the  
233 decision of the commissioner to the circuit court of the county of  
234 residence of the accused, or if the accused is a nonresident of



235 the State of Mississippi, to the Circuit Court of the First  
236 Judicial District of Hinds County, Mississippi. The appellant has  
237 the obligation of having the record transcribed and filed with the  
238 circuit court. The appeal shall otherwise be governed by all  
239 applicable laws and rules affecting appeals to the circuit court.  
240 If no appeal is perfected within the required time, the decision  
241 of the commissioner, or his designee, shall then become final.

242 (4) The decision of the circuit court may then be appealed  
243 by either party to the Mississippi Supreme Court in accordance  
244 with the existing laws and rules affecting such appeals.

245 (5) Where any violation of this article, or the rules and  
246 regulations promulgated hereunder, occurs, or is about to occur,  
247 that presents a clear and present danger to the public health,  
248 safety or welfare requiring immediate action, any of the  
249 department's field inspectors, and any other persons authorized by  
250 the commissioner, may issue an order to be effective immediately,  
251 before notice and a hearing, that imposes any or all of the  
252 penalties described herein against the accused. The order shall  
253 be served upon the accused in the same manner that the summons and  
254 complaint may be served upon him. The accused shall then have  
255 thirty (30) days after service of the order upon him within which  
256 to request an informal administrative review before the reviewing  
257 officer, or his designee, as described herein. The accused shall  
258 include within his request all documents that support his  
259 position. The department may also submit any documents that  
260 support its position. If the accused makes such a request within  
261 such time, the reviewing officer, or his designee shall review the  
262 documents provided by the parties and render a written decision  
263 within thirty (30) days after such request is made. Upon the  
264 making of such a request, the procedure described herein shall be  
265 followed, except that there is no need for a complaint to be filed  
266 against the accused. If the accused does not request an





267 administrative review within such time frame, then he shall have  
268 waived his right to an administrative review.

269           **SECTION 7.** This act shall take effect and be in force from  
270 and after its passage.

