

By: Senator(s) Huggins, Mettetal, Blackmon, Chaney, Jordan, Gordon, Harden, Johnson (19th), Harvey, Carmichael, Little, Chamberlin, Burton, Hyde-Smith, Williamson, Tollison, Dearing, White (29th), Posey, King, Furniss, Jackson, Hamilton, Simmons, Dawkins, Browning

To: Agriculture; Public Health and Welfare

SENATE BILL NO. 2345

1 AN ACT TO AMEND SECTION 69-7-605, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE DEFINITION OF CATFISH; TO DEFINE CERTAIN TERMS; TO
3 AMEND SECTION 69-7-607, MISSISSIPPI CODE OF 1972, TO CLARIFY USE
4 OF THE TERM "CATFISH" IN LABELING REQUIREMENTS; TO INCLUDE
5 WHOLESALERS IN LABELING REQUIREMENTS; TO CREATE A NEW CODE SECTION
6 TO BE CODIFIED AS SECTION 69-7-608, MISSISSIPPI CODE OF 1972, TO
7 MAKE IT UNLAWFUL TO MISREPRESENT FISH PRODUCTS AS "CATFISH" IN
8 VIOLATION OF THIS ACT; TO PROVIDE PENALTIES FOR SUCH VIOLATIONS;
9 TO AUTHORIZE THE STATE DEPARTMENT OF HEALTH TO REGULATE THE SALE
10 OF CATFISH IN RESTAURANTS; TO AMEND SECTION 69-7-613, MISSISSIPPI
11 CODE OF 1972, TO REVISE ADMINISTRATIVE PROCEDURES TO CONFORM; TO
12 DELETE EXCEPTION TO CERTAIN PENALTIES; TO CREATE A NEW CODE
13 SECTION TO BE CODIFIED AS SECTION 69-7-614, MISSISSIPPI CODE OF
14 1972, TO REQUIRE ALL PERSONS SELLING CATFISH OR OTHER FISH TO
15 MAINTAIN CERTAIN RECORDS OF THEIR PURCHASES AND SALES OF CATFISH
16 OR OTHER FISH; TO CREATE A NEW CODE SECTION TO BE CODIFIED AS
17 SECTION 69-7-616, MISSISSIPPI CODE OF 1972, TO PROVIDE CIVIL
18 PENALTIES FOR VIOLATIONS AND TO PROVIDE ADMINISTRATIVE PROCEEDINGS
19 TO BE USED BY THE DEPARTMENT OF AGRICULTURE AND COMMERCE IN
20 HANDLING COMPLAINTS AND HEARINGS; TO AMEND SECTION 41-3-15,
21 MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE STATE BOARD OF HEALTH
22 TO ADMINISTER THE LABELING OF DOMESTIC AND IMPORTED CATFISH IN
23 RESTAURANTS; AND FOR RELATED PURPOSES.

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

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

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

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

35 (b) "Catfish" means any species within the family
36 Ictaluridae or the family Anarhichadidae.



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

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

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

45 (f) "Label" means 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" means 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" means 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" includes any individual, partnership,
55 corporation and association or other legal entity.

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

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

62 (l) "Product" means any catfish product capable of use
63 as human food which is made wholly or in part from any catfish or
64 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 United States commercial catfish industry and which are exempted
68 from definition as a catfish product by the commissioner under
69 such conditions as he may prescribe to assure that the catfish or



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

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

75 (n) "Restaurant" means any person offering for sale to
76 a consumer prepared food for immediate consumption.

77 (o) "Retailer" means any person offering for sale
78 catfish products to individual consumers and representing the last
79 sale prior to human consumption except * * * restaurants * * *.

80 (p) "State Health Officer" means the State Health
81 Officer of the State Board of Health, or his designated
82 representative.

83 (q) "Wholesaler" means any person offering for sale any
84 catfish product destined for direct retail sale in the State of
85 Mississippi.

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

88 69-7-607. (1) No catfish product shall be offered for
89 direct retail sale for human consumption by a processor,
90 distributor, wholesaler or retailer unless the catfish product
91 name is specifically labeled in the following manner:

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

99 (b) "RIVER OR LAKE CATFISH, A PRODUCT OF MISSISSIPPI"
100 if the product has been produced in any freshwater lake, river or
101 stream of the state, but has not been produced according to the
102 usual and customary techniques of commercial aquaculture; except



103 that the appropriate state name or USA or United States of America
104 may be inserted in lieu thereof to accommodate similar catfish
105 products produced in freshwater lakes, rivers or streams of any
106 other state in the United States of America.

107 (c) "IMPORTED CATFISH" provided the catfish is produced
108 from freshwater, either according to the usual and customary
109 techniques of, aquaculture, or from freshwater lakes, rivers or
110 streams of a country other than the United States of America.

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

113 (2) Any person selling river or lake catfish exclusively and
114 directly to the consumer may have on his premises a sign
115 reasonably visible to the consumer identifying such product as
116 river or lake catfish, rather than labeling each individual
117 container or package of catfish product, as provided in this
118 section.

119 (3) Any retailer selling catfish products not wrapped or in
120 a container may comply with this article by placing a sign on the
121 display case or refrigeration unit reasonably visible to the
122 consumer, giving notice that such catfish is either "Farm Raised
123 Catfish," "River or Lake Catfish," "Imported Catfish" or "Ocean
124 Catfish," as such products are defined in this section.

125 (4) Any advertising as to any catfish product shall state
126 whether such catfish product is "Farm Raised Catfish," "River or
127 Lake Catfish," "Imported Catfish" or "Ocean Catfish," as defined
128 in this section.

129 (5) The term "catfish" shall not be used as a common name or
130 in the label name of fish product except as provided in this
131 section.

132 (6) This section shall not apply to catfish products
133 exported out of the United States.

134 **SECTION 3.** The following shall be codified as Section
135 69-7-608, Mississippi Code of 1972:



136 69-7-608. (1) The term "catfish" shall not be used as a
137 common name or used to advertise, distribute or label any fish or
138 fish product except for those species within the definition of
139 catfish in Section 69-7-605.

140 (2) It is unlawful to use the term "catfish" in the
141 advertising, distributing, labeling or selling of any of those
142 species within the family of Siluridae, Clariidae and Pangasiidae
143 or any other fish not within the definition of catfish in Section
144 69-7-605.

145 (3) (a) The State Health Officer shall regulate and inspect
146 restaurants under this article. To carry out the regulation of
147 restaurants, the State Health Officer shall have all powers and
148 duties granted to the commissioner under this article. The
149 commissioner shall not regulate restaurants under this article.

150 (b) The State Health Officer shall notify, in writing,
151 any restaurant violating this article and shall give the
152 restaurant thirty (30) days to correct the violation. No
153 penalties under this article shall apply to any restaurant that
154 corrects the violation within thirty (30) days from the date
155 notified by the State Health Officer.

156 (4) In addition to any other civil or criminal penalties, a
157 person who violates this section or who otherwise misrepresents as
158 catfish any fish or fish product not defined as catfish under this
159 article is guilty of a felony and upon conviction shall be
160 punished by a fine of not more than One Thousand Dollars
161 (\$1,000.00) or by imprisonment for not more than two (2) years, or
162 both. For subsequent violations, a person shall be punished by a
163 fine of not more than Five Thousand Dollars (\$5,000.00) or by
164 imprisonment not to exceed five (5) years, or both.

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

167 69-7-613. (1) Any person who violates any provision of this
168 article for which no other * * * penalty is provided by this



169 article shall upon conviction be subject to a fine of not more
170 than Five Hundred Dollars (\$500.00) * * *.

171 * * *

172 (2) The commissioner may apply for and the court may grant a
173 temporary or permanent injunction restraining any person from
174 violating or continuing to violate any of the provisions of this
175 article or any rule or regulation promulgated under this article,
176 notwithstanding the existence of other remedies at law. The
177 injunction shall be issued without bond.

178 * * *

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

181 69-7-614. All persons selling fish within this state that
182 are regulated by this article shall preserve and maintain all
183 records of their purchases and sales of catfish and other fish for
184 a period of three (3) years after such purchases and sales have
185 occurred. This section shall repeal July 1, 2006.

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

188 69-7-616. When a complaint is made against a person for
189 violation of any of the provisions of this article, or any of the
190 rules or regulations promulgated hereunder, the Director of the
191 Regulatory Division of the Mississippi Department of Agriculture
192 and Commerce, or his designee, shall act as reviewing
193 officer. The complaint shall be filed with the Mississippi
194 Department of Agriculture and Commerce. The reviewing officer
195 shall cause to be delivered to the accused, in the manner
196 described herein, a copy of the complaint and any supporting
197 documents along with a summons requiring the accused to respond to
198 the allegations within thirty (30) days after service of the
199 summons and complaint upon the accused. The accused shall file
200 with the department a written response to the complaint and any
201 supporting documents within the thirty-day period. The accused



202 may be notified by serving a copy of the summons and complaint on
203 the accused or any of his officers, agents or employees by
204 personal service or by certified mail. Upon the expiration of the
205 thirty-day period, the reviewing officer shall review the
206 complaint, the written response of the accused, if any, and all
207 supporting documents offered by the parties in support of their
208 respective positions. The reviewing officer's decision shall be
209 based solely on the documents provided by the parties. If the
210 reviewing officer determines that the complaint lacks merit, he
211 may dismiss the complaint. If he finds that there are reasonable
212 grounds showing that a violation of the statutes or regulations
213 has been committed, he may impose any or all of the following
214 penalties upon the accused: (a) levy a civil penalty in the
215 amount of no more than One Thousand Dollars (\$1,000.00) for each
216 violation; (b) issue a stop-sale order; (c) require the accused to
217 relabel any fish that he is offering for sale and which is not
218 labeled in accordance with the provisions of this article; or (d)
219 seize any fish that is not in compliance with this article, and
220 destroy, sell or otherwise dispose of the fish, and apply the
221 proceeds of any such sale to the costs herein and any civil
222 penalties levied, with the balance to be paid to the accused. The
223 reviewing officer's decision shall be in writing, and it shall be
224 delivered to the accused by any of the methods described herein
225 for service of the summons and complaint on the accused.

226 (2) Either the accused or the department may appeal the
227 decision of the reviewing officer to the Commissioner of
228 Agriculture and Commerce by filing a notice of appeal with the
229 department within thirty (30) days of receipt of the reviewing
230 officer's decision. If no appeal is taken from the order of the
231 reviewing officer within the allotted time, the order shall then
232 become final. In the event of an appeal, the commissioner, or his
233 designee, shall conduct a full evidentiary hearing relative to the
234 charges. The commissioner may issue subpoenas to require the



235 attendance of witnesses and the production of documents.
236 Compliance with such subpoenas may be enforced by any court of
237 general jurisdiction in this state. The testimony of witnesses
238 shall be upon oath or affirmation, and they shall be subject to
239 cross-examination. The proceedings shall be recorded by a court
240 reporter. The commissioner shall have all the powers of the
241 reviewing officer described herein, and the commissioner may
242 affirm, reverse or modify the order of the reviewing officer. The
243 commissioner's decision shall be in writing, and it shall be
244 delivered to the parties in the same manner that the summons and
245 complaint may be served upon the accused.

246 (3) Either the accused or the department may appeal the
247 decision of the commissioner to the circuit court of the county of
248 residence of the accused, or if the accused is a nonresident of
249 the State of Mississippi, to the Circuit Court of the First
250 Judicial District of Hinds County, Mississippi. The appellant has
251 the obligation of having the record transcribed and filed with the
252 circuit court. The appeal shall otherwise be governed by all
253 applicable laws and rules affecting appeals to the circuit court.
254 If no appeal is perfected within the required time, the decision
255 of the commissioner, or his designee, shall then become final.

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

259 (5) Where any violation of this article, or the rules and
260 regulations promulgated hereunder, occurs, or is about to occur,
261 that presents a clear and present danger to the public health,
262 safety or welfare requiring immediate action, any of the
263 department's field inspectors and any other persons authorized by
264 the commissioner, may issue an order to be effective immediately,
265 before notice and a hearing, that imposes any or all of the
266 penalties described herein against the accused. The order shall
267 be served upon the accused in the same manner that the summons and



268 complaint may be served upon him. The accused shall then have
269 thirty (30) days after service of the order upon him within which
270 to request an informal administrative review before the reviewing
271 officer, or his designee, as described herein. The accused shall
272 include within his request all documents that support his
273 position. The department may also submit any documents that
274 support its position. If the accused makes such a request within
275 such time, the reviewing officer, or his designee, shall review
276 the documents provided by the parties and render a written
277 decision within thirty (30) days after such request is made. Upon
278 the making of such a request, the procedure described herein shall
279 be followed, except that there is no need for a complaint to be
280 filed against the accused. If the accused does not request an
281 administrative review within such time frame, then he shall have
282 waived his right to an administrative review.

283 **SECTION 7.** Section 41-3-15, Mississippi Code of 1972, is
284 amended as follows:

285 41-3-15. (1) There shall be a State Department of Health
286 which shall be organized into such bureaus and divisions as are
287 considered necessary by the executive officer, and shall be
288 assigned appropriate functions as are required of the State Board
289 of Health by law, subject to the approval of the board.

290 (2) The State Board of Health shall have the authority to
291 establish an Office of Rural Health within the department. The
292 duties and responsibilities of this office shall include the
293 following:

294 (a) To collect and evaluate data on rural health
295 conditions and needs;

296 (b) To engage in policy analysis, policy development
297 and economic impact studies with regard to rural health issues;

298 (c) To develop and implement plans and provide
299 technical assistance to enable community health systems to respond
300 to various changes in their circumstances;



301 (d) To plan and assist in professional recruitment and
302 retention of medical professionals and assistants; and

303 (e) To establish information clearinghouses to improve
304 access to and sharing of rural health care information.

305 (3) The State Board of Health shall have general supervision
306 of the health interests of the people of the state and to exercise
307 the rights, powers and duties of those acts which it is authorized
308 by law to enforce.

309 (4) The State Board of Health shall have authority:

310 (a) To make investigations and inquiries with respect
311 to the causes of disease and death, and to investigate the effect
312 of environment, including conditions of employment and other
313 conditions which may affect health, and to make such other
314 investigations as it may deem necessary for the preservation and
315 improvement of health.

316 (b) To make such sanitary investigations as it may,
317 from time to time, deem necessary for the protection and
318 improvement of health and to investigate nuisance questions which
319 affect the security of life and health within the state.

320 (c) To direct and control sanitary and quarantine
321 measures for dealing with all diseases within the state possible
322 to suppress same and prevent their spread.

323 (d) To obtain, collect and preserve such information
324 relative to mortality, morbidity, disease and health as may be
325 useful in the discharge of its duties or may contribute to the
326 prevention of disease or the promotion of health in this state.

327 (e) To enter into contracts or agreements with any
328 other state or federal agency, or with any private person,
329 organization or group capable of contracting, if it finds such
330 action to be in the public interest.

331 (f) To charge and collect reasonable fees for health
332 services, including immunizations, inspections and related
333 activities, and the board shall charge fees for such services;



334 provided, however, if it is determined that a person receiving
335 services is unable to pay the total fee, the board shall collect
336 any amount such person is able to pay.

337 (g) To accept gifts, trusts, bequests, grants,
338 endowments or transfers of property of any kind.

339 (h) To receive monies coming to it by way of fees for
340 services or by appropriations.

341 (i) (i) To establish standards for, issue permits and
342 exercise control over, any cafes, restaurants, food or drink
343 stands, sandwich manufacturing establishments, and all other
344 establishments, other than churches, church-related and private
345 schools, and other nonprofit or charitable organizations, where
346 food or drink is regularly prepared, handled and served for pay;
347 and

348 (ii) To require that a permit be obtained from the
349 Department of Health before such persons begin operation.

350 (j) To promulgate rules and regulations and exercise
351 control over the production and sale of milk pursuant to the
352 provisions of Sections 75-31-41 through 75-31-49.

353 (k) On presentation of proper authority, to enter into
354 and inspect any public place or building where the State Health
355 Officer or his representative deems it necessary and proper to
356 enter for the discovery and suppression of disease and for the
357 enforcement of any health or sanitary laws and regulations in the
358 state.

359 (l) To conduct investigations, inquiries and hearings,
360 and to issue subpoenas for the attendance of witnesses and the
361 production of books and records at any hearing when authorized and
362 required by statute to be conducted by the State Health Officer or
363 the State Board of Health.

364 (m) To employ, subject to the regulations of the State
365 Personnel Board, qualified professional personnel in the subject
366 matter or fields of each bureau, and such other technical and



367 clerical staff as may be required for the operation of the
368 department. The executive officer shall be the appointing
369 authority for the department, and shall have the power to delegate
370 the authority to appoint or dismiss employees to appropriate
371 subordinates, subject to the rules and regulations of the State
372 Personnel Board.

373 (n) To promulgate rules and regulations, and to collect
374 data and information, on (i) the delivery of services through the
375 practice of telemedicine; and (ii) the use of electronic records
376 for the delivery of telemedicine services.

377 (o) To enforce and regulate domestic and imported fish
378 as authorized under Section 69-7-601 et seq.

379 (5) (a) The State Board of Health shall have the authority,
380 in its discretion, to establish programs to promote the public
381 health, to be administered by the State Department of Health.
382 Specifically, such programs may include, but shall not be limited
383 to, programs in the following areas:

- 384 (i) Maternal and child health;
- 385 (ii) Family planning;
- 386 (iii) Pediatric services;
- 387 (iv) Services to crippled and disabled children;
- 388 (v) Control of communicable and noncommunicable
389 disease;
- 390 (vi) Child care licensure;
- 391 (vii) Radiological health;
- 392 (viii) Dental health;
- 393 (ix) Milk sanitation;
- 394 (x) Occupational safety and health;
- 395 (xi) Food, vector control and general sanitation;
- 396 (xii) Protection of drinking water;
- 397 (xiii) Sanitation in food handling establishments
398 open to the public;



399 (xiv) Registration of births and deaths and other
400 vital events;

401 (xv) Such public health programs and services as
402 may be assigned to the State Board of Health by the Legislature or
403 by executive order; and

404 (xvi) Regulation of domestic and imported fish for
405 human consumption.

406 (b) The State Board of Health and State Department of
407 Health shall not be authorized to sell, transfer, alienate or
408 otherwise dispose of any of the home health agencies owned and
409 operated by the department on January 1, 1995, and shall not be
410 authorized to sell, transfer, assign, alienate or otherwise
411 dispose of the license of any of those home health agencies,
412 except upon the specific authorization of the Legislature by an
413 amendment to this section. However, this paragraph (b) shall not
414 prevent the board or the department from closing or terminating
415 the operation of any home health agency owned and operated by the
416 department, or closing or terminating any office, branch office or
417 clinic of any such home health agency, or otherwise discontinuing
418 the providing of home health services through any such home health
419 agency, office, branch office or clinic, if the board first
420 demonstrates that there are other providers of home health
421 services in the area being served by the department's home health
422 agency, office, branch office or clinic that will be able to
423 provide adequate home health services to the residents of the area
424 if the department's home health agency, office, branch office or
425 clinic is closed or otherwise discontinues the providing of home
426 health services. This demonstration by the board that there are
427 other providers of adequate home health services in the area shall
428 be spread at length upon the minutes of the board at a regular or
429 special meeting of the board at least thirty (30) days before a
430 home health agency, office, branch office or clinic is proposed to



431 be closed or otherwise discontinue the providing of home health
432 services.

433 (c) The State Department of Health may undertake such
434 technical programs and activities as may be required for the
435 support and operation of such programs, including maintaining
436 physical, chemical, bacteriological and radiological laboratories,
437 and may make such diagnostic tests for diseases and tests for the
438 evaluation of health hazards as may be deemed necessary for the
439 protection of the people of the state.

440 (6) (a) The State Board of Health shall administer the
441 local governments and rural water systems improvements loan
442 program in accordance with the provisions of Section 41-3-16.

443 (b) The State Board of Health shall have authority:

444 (i) To enter into capitalization grant agreements
445 with the United States Environmental Protection Agency, or any
446 successor agency thereto;

447 (ii) To accept capitalization grant awards made
448 under the federal Safe Drinking Water Act, as amended;

449 (iii) To provide annual reports and audits to the
450 United States Environmental Protection Agency, as may be required
451 by federal capitalization grant agreements; and

452 (iv) To establish and collect fees to defray the
453 reasonable costs of administering the revolving fund or emergency
454 fund if the State Board of Health determines that such costs will
455 exceed the limitations established in the federal Safe Drinking
456 Water Act, as amended. The administration fees may be included in
457 loan amounts to loan recipients for the purpose of facilitating
458 payment to the board; however, such fees may not exceed five
459 percent (5%) of the loan amount.

460 **SECTION 8.** This act shall take effect and be in force from
461 and after its passage.

