

*****Adopted*****

AMENDMENT No. 1 PROPOSED TO

Senate Bill NO. 2345

By Representative(s) Committee

**Amend by striking all after the enacting clause and inserting
in lieu thereof the following:**

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

31 69-7-605. For purposes of this article, the following terms
32 shall have the meaning ascribed herein unless the context
33 otherwise requires:

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

39 (b) "Catfish" means any species within the family
40 Ictaluridae or the family Anarhichadidae.

41 (c) "Commissioner" means the Commissioner of
42 Agriculture and Commerce of the State of Mississippi.

43 (d) "Direct retail sale" means the sale of catfish
44 products individually or in small quantities directly to the
45 consumer.

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

49 (f) "Label" means a display of written, printed or
50 graphic matter upon or affixed to the container in which a catfish
51 product is offered for direct retail sale.

52 (g) "Labeling" means all labels and other written,
53 printed or graphic matter upon a catfish product, or any of its
54 containers or wrappers, offered for direct retail sale.

55 (h) "Pay pond" means a circumscribed body of water
56 owned by a person and operated solely for recreational fishing
57 purposes on a commercial basis for profit.

58 (i) "Person" includes any individual, partnership,
59 corporation and association or other legal entity.

60 (j) "Processor" means any person engaged in handling,
61 storing, preparing, manufacturing, packing or holding catfish
62 products.

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

66 (l) "Product" means any catfish product capable of use
67 as human food which is made wholly or in part from any catfish or
68 portion thereof, except products which contain catfish only in
69 small proportions or historically have not been, in the judgment
70 of the commissioner, considered by consumers as products of the
71 United States commercial catfish industry and which are exempted
72 from definition as a catfish product by the commissioner under
73 such conditions as he may prescribe to assure that the catfish or
74 portions thereof contained therein are not adulterated and that
75 such products are not represented as catfish products.

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

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

81 (o) "Retailer" means any person offering for sale
82 catfish products to individual consumers and representing the last
83 sale prior to human consumption except that restaurants and other

84 eating establishments are hereby excluded.

85 (p) "State Health Officer" means the State Health
86 Officer of the State Board of Health, or his designated
87 representative.

88 (q) "Wholesaler" means any person offering for sale any
89 catfish product destined for direct retail sale in the State of
90 Mississippi.

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

93 69-7-607. (1) No catfish product shall be offered for
94 direct retail sale for human consumption by a processor,
95 distributor, wholesaler or retailer unless the catfish product
96 name is specifically labeled in the following manner:

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

104 (b) "RIVER OR LAKE CATFISH, A PRODUCT OF MISSISSIPPI"
105 if the product has been produced in any freshwater lake, river or
106 stream of the state, but has not been produced according to the
107 usual and customary techniques of commercial aquaculture; except
108 that the appropriate state name or USA or United States of America
109 may be inserted in lieu thereof to accommodate similar catfish
110 products produced in freshwater lakes, rivers or streams of any
111 other state in the United States of America.

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

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

118 (2) Any person selling river or lake catfish exclusively and

119 directly to the consumer may have on his premises a sign
120 reasonably visible to the consumer identifying such product as
121 river or lake catfish, rather than labeling each individual
122 container or package of catfish product, as provided in this
123 section.

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

130 (4) Any advertising as to any catfish product shall state
131 whether such catfish product is "Farm Raised Catfish," "River or
132 Lake Catfish," "Imported Catfish" or "Ocean Catfish," as defined
133 in this section.

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

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

139 **SECTION 3.** The following shall be codified as Section
140 69-7-608, Mississippi Code of 1972:

141 69-7-608. (1) The term "catfish" shall not be used as a
142 common name or used to advertise, distribute or label any fish or
143 fish product except for those species within the definition of
144 catfish in Section 69-7-605.

145 (2) It is unlawful to use the term "catfish" in the
146 advertising, distributing, labeling or selling of any of those
147 species within the family of Siluridae, Clariidae and Pangasiidae
148 or any other fish not within the definition of catfish in Section
149 69-7-605.

150 (3) (a) The State Health Officer shall regulate and inspect
151 restaurants under this article. To carry out the regulation of
152 restaurants, the State Health Officer shall have all powers and
153 duties granted to the commissioner under this article. The

154 commissioner shall not regulate restaurants under this article.

155 (b) The State Health Officer shall notify, in writing,
156 any restaurant violating this article and shall give the
157 restaurant three (3) days to correct the violation. No penalties
158 under this article shall apply to any restaurant that corrects the
159 violation within three (3) days from the date notified by the
160 State Health Officer.

161 (4) In addition to any other civil or criminal penalties, a
162 person who violates this section or who otherwise misrepresents as
163 catfish any fish or fish product not defined as catfish under this
164 article is guilty of a felony and upon conviction shall be
165 punished by a fine of not more than One Thousand Dollars
166 (\$1,000.00) or by imprisonment for not more than two (2) years, or
167 both. For subsequent violations, a person shall be punished by a
168 fine of not more than Five Thousand Dollars (\$5,000.00) or by
169 imprisonment not to exceed five (5) years, or both.

170 **SECTION 4.** The following section shall be codified as
171 Section 69-7-610, Mississippi Code of 1972:

172 69-7-610. All distributors, processors, or wholesalers of
173 catfish or other fish products, distributing or selling catfish or
174 other fish products, shall provide information to the commissioner
175 or his representative, upon request, and to each retailer to which
176 such distributor, processor or wholesaler distributes or sells
177 catfish or other fish products as to whether such product is "Farm
178 Raised Catfish," "River or Lake Catfish," "Imported Catfish, Other
179 Fish a Product of (country of origin)" or "Ocean Catfish." In
180 addition, any wholesaler or distributor shall provide his sales
181 and purchases records of catfish and other fish upon request by
182 the commission. "Other fish" includes those fish in the taxonomic
183 family of Siluridae, Clariidae and Pangasiidae.

184 **SECTION 5.** Section 69-7-613, Mississippi Code of 1972, is
185 amended as follows:

186 69-7-613. (1) Any person who violates any provision of this
187 article for which no other * * * penalty is provided by this
188 article shall upon conviction be subject to a fine of not more

189 than Five Hundred Dollars (\$500.00) * * *.

190 * * *

191 (2) The commissioner may apply for and the court may grant a
192 temporary or permanent injunction restraining any person from
193 violating or continuing to violate any of the provisions of this
194 article or any rule or regulation promulgated under this article,
195 notwithstanding the existence of other remedies at law. The
196 injunction shall be issued without bond.

197 * * *

198 **SECTION 6.** The following section shall be codified as
199 Section 69-7-614, Mississippi Code of 1972:

200 69-7-614. All persons selling fish within this state that
201 are regulated by this article shall preserve and maintain all
202 records of their purchases and sales of catfish and other fish for
203 a period of two (2) years after such purchases and sales have
204 occurred. If such records are not kept on the premises, then such
205 person has fourteen (14) days to produce the records. This
206 section shall repeal July 1, 2004.

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

209 69-7-616. (1) When a complaint is made against a person for
210 violation of any of the provisions of this article, or any of the
211 rules or regulations promulgated hereunder, the Director of the
212 Regulatory Division of the Mississippi Department of Agriculture
213 and Commerce, or his designee, shall act as reviewing
214 officer. The complaint shall be filed with the Mississippi
215 Department of Agriculture and Commerce. The reviewing officer
216 shall cause to be delivered to the accused, in the manner
217 described herein, a copy of the complaint and any supporting
218 documents along with a summons requiring the accused to respond to
219 the allegations within thirty (30) days after service of the
220 summons and complaint upon the accused. The accused shall file
221 with the department a written response to the complaint and any
222 supporting documents within the thirty-day period. The accused
223 may be notified by serving a copy of the summons and complaint on

224 the accused or any of his officers, agents or employees by
225 personal service or by certified mail. Upon the expiration of the
226 thirty-day period, the reviewing officer shall review the
227 complaint, the written response of the accused, if any, and all
228 supporting documents offered by the parties in support of their
229 respective positions. The reviewing officer's decision shall be
230 based solely on the documents provided by the parties. If the
231 reviewing officer determines that the complaint lacks merit, he
232 may dismiss the complaint. If he finds that there are reasonable
233 grounds showing that a violation of the statutes or regulations
234 has been committed, he may impose any or all of the following
235 penalties upon the accused: (a) levy a civil penalty in the
236 amount of no more than One Thousand Dollars (\$1,000.00) for each
237 violation; (b) issue a stop-sale order; (c) require the accused to
238 relabel any fish that he is offering for sale and which is not
239 labeled in accordance with the provisions of this article; or (d)
240 seize any fish that is not in compliance with this article, and
241 destroy, sell or otherwise dispose of the fish, and apply the
242 proceeds of any such sale to the costs herein and any civil
243 penalties levied, with the balance to be paid to the accused. The
244 reviewing officer's decision shall be in writing, and it shall be
245 delivered to the accused by any of the methods described herein
246 for service of the summons and complaint on the accused.

247 (2) Either the accused or the department may appeal the
248 decision of the reviewing officer to the Commissioner of
249 Agriculture and Commerce by filing a notice of appeal with the
250 department within thirty (30) days of receipt of the reviewing
251 officer's decision. If no appeal is taken from the order of the
252 reviewing officer within the allotted time, the order shall then
253 become final. In the event of an appeal, the commissioner, or his
254 designee, shall conduct a full evidentiary hearing relative to the
255 charges. The commissioner may issue subpoenas to require the
256 attendance of witnesses and the production of documents.
257 Compliance with such subpoenas may be enforced by any court of
258 general jurisdiction in this state. The testimony of witnesses

259 shall be upon oath or affirmation, and they shall be subject to
260 cross-examination. The proceedings shall be recorded by a court
261 reporter. The commissioner shall have all the powers of the
262 reviewing officer described herein, and the commissioner may
263 affirm, reverse or modify the order of the reviewing officer. The
264 commissioner's decision shall be in writing, and it shall be
265 delivered to the parties in the same manner that the summons and
266 complaint may be served upon the accused.

267 (3) Either the accused or the department may appeal the
268 decision of the commissioner to the circuit court of the county of
269 residence of the accused, or if the accused is a nonresident of
270 the State of Mississippi, to the Circuit Court of the First
271 Judicial District of Hinds County, Mississippi. The appellant has
272 the obligation of having the record transcribed and filed with the
273 circuit court. The appeal shall otherwise be governed by all
274 applicable laws and rules affecting appeals to the circuit court.

275 If no appeal is perfected within the required time, the decision
276 of the commissioner, or his designee, shall then become final.

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

280 (5) Where any violation of this article, or the rules and
281 regulations promulgated hereunder, occurs, or is about to occur,
282 that presents a clear and present danger to the public health,
283 safety or welfare requiring immediate action, any of the
284 department's field inspectors and any other persons authorized by
285 the commissioner, may issue an order to be effective immediately,
286 before notice and a hearing, that imposes any or all of the
287 penalties described herein against the accused. The order shall
288 be served upon the accused in the same manner that the summons and
289 complaint may be served upon him. The accused shall then have
290 thirty (30) days after service of the order upon him within which
291 to request an informal administrative review before the reviewing
292 officer, or his designee, as described herein. The accused shall
293 include within his request all documents that support his

294 position. The department may also submit any documents that
295 support its position. If the accused makes such a request within
296 such time, the reviewing officer, or his designee, shall review
297 the documents provided by the parties and render a written
298 decision within thirty (30) days after such request is made. Upon
299 the making of such a request, the procedure described herein shall
300 be followed, except that there is no need for a complaint to be
301 filed against the accused. If the accused does not request an
302 administrative review within such time frame, then he shall have
303 waived his right to an administrative review.

304 **SECTION 8.** Section 41-3-15, Mississippi Code of 1972, is
305 amended as follows:

306 41-3-15. (1) There shall be a State Department of Health
307 which shall be organized into such bureaus and divisions as are
308 considered necessary by the executive officer, and shall be
309 assigned appropriate functions as are required of the State Board
310 of Health by law, subject to the approval of the board.

311 (2) The State Board of Health shall have the authority to
312 establish an Office of Rural Health within the department. The
313 duties and responsibilities of this office shall include the
314 following:

315 (a) To collect and evaluate data on rural health
316 conditions and needs;

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

319 (c) To develop and implement plans and provide
320 technical assistance to enable community health systems to respond
321 to various changes in their circumstances;

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

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

326 (3) The State Board of Health shall have general supervision
327 of the health interests of the people of the state and to exercise
328 the rights, powers and duties of those acts which it is authorized

329 by law to enforce.

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

331 (a) To make investigations and inquiries with respect
332 to the causes of disease and death, and to investigate the effect
333 of environment, including conditions of employment and other
334 conditions which may affect health, and to make such other
335 investigations as it may deem necessary for the preservation and
336 improvement of health.

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

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

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

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

352 (f) To charge and collect reasonable fees for health
353 services, including immunizations, inspections and related
354 activities, and the board shall charge fees for such services;
355 provided, however, if it is determined that a person receiving
356 services is unable to pay the total fee, the board shall collect
357 any amount such person is able to pay.

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

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

362 (i) (i) To establish standards for, issue permits and
363 exercise control over, any cafes, restaurants, food or drink

364 stands, sandwich manufacturing establishments, and all other
365 establishments, other than churches, church-related and private
366 schools, and other nonprofit or charitable organizations, where
367 food or drink is regularly prepared, handled and served for pay;
368 and

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

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

374 (k) On presentation of proper authority, to enter into
375 and inspect any public place or building where the State Health
376 Officer or his representative deems it necessary and proper to
377 enter for the discovery and suppression of disease and for the
378 enforcement of any health or sanitary laws and regulations in the
379 state.

380 (l) To conduct investigations, inquiries and hearings,
381 and to issue subpoenas for the attendance of witnesses and the
382 production of books and records at any hearing when authorized and
383 required by statute to be conducted by the State Health Officer or
384 the State Board of Health.

385 (m) To employ, subject to the regulations of the State
386 Personnel Board, qualified professional personnel in the subject
387 matter or fields of each bureau, and such other technical and
388 clerical staff as may be required for the operation of the
389 department. The executive officer shall be the appointing
390 authority for the department, and shall have the power to delegate
391 the authority to appoint or dismiss employees to appropriate
392 subordinates, subject to the rules and regulations of the State
393 Personnel Board.

394 (n) To promulgate rules and regulations, and to collect
395 data and information, on (i) the delivery of services through the
396 practice of telemedicine; and (ii) the use of electronic records
397 for the delivery of telemedicine services.

398 (o) To enforce and regulate domestic and imported fish

399 as authorized under Section 69-7-601 et seq.

400 (5) (a) The State Board of Health shall have the authority,
401 in its discretion, to establish programs to promote the public
402 health, to be administered by the State Department of Health.
403 Specifically, such programs may include, but shall not be limited
404 to, programs in the following areas:

405 (i) Maternal and child health;

406 (ii) Family planning;

407 (iii) Pediatric services;

408 (iv) Services to crippled and disabled children;

409 (v) Control of communicable and noncommunicable
410 disease;

411 (vi) Child care licensure;

412 (vii) Radiological health;

413 (viii) Dental health;

414 (ix) Milk sanitation;

415 (x) Occupational safety and health;

416 (xi) Food, vector control and general sanitation;

417 (xii) Protection of drinking water;

418 (xiii) Sanitation in food handling establishments
419 open to the public;

420 (xiv) Registration of births and deaths and other
421 vital events;

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

425 (xvi) Regulation of domestic and imported fish for
426 human consumption.

427 (b) The State Board of Health and State Department of
428 Health shall not be authorized to sell, transfer, alienate or
429 otherwise dispose of any of the home health agencies owned and
430 operated by the department on January 1, 1995, and shall not be
431 authorized to sell, transfer, assign, alienate or otherwise
432 dispose of the license of any of those home health agencies,
433 except upon the specific authorization of the Legislature by an

434 amendment to this section. However, this paragraph (b) shall not
435 prevent the board or the department from closing or terminating
436 the operation of any home health agency owned and operated by the
437 department, or closing or terminating any office, branch office or
438 clinic of any such home health agency, or otherwise discontinuing
439 the providing of home health services through any such home health
440 agency, office, branch office or clinic, if the board first
441 demonstrates that there are other providers of home health
442 services in the area being served by the department's home health
443 agency, office, branch office or clinic that will be able to
444 provide adequate home health services to the residents of the area
445 if the department's home health agency, office, branch office or
446 clinic is closed or otherwise discontinues the providing of home
447 health services. This demonstration by the board that there are
448 other providers of adequate home health services in the area shall
449 be spread at length upon the minutes of the board at a regular or
450 special meeting of the board at least thirty (30) days before a
451 home health agency, office, branch office or clinic is proposed to
452 be closed or otherwise discontinue the providing of home health
453 services.

454 (c) The State Department of Health may undertake such
455 technical programs and activities as may be required for the
456 support and operation of such programs, including maintaining
457 physical, chemical, bacteriological and radiological laboratories,
458 and may make such diagnostic tests for diseases and tests for the
459 evaluation of health hazards as may be deemed necessary for the
460 protection of the people of the state.

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

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

465 (i) To enter into capitalization grant agreements
466 with the United States Environmental Protection Agency, or any
467 successor agency thereto;

468 (ii) To accept capitalization grant awards made

469 under the federal Safe Drinking Water Act, as amended;

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

473 (iv) To establish and collect fees to defray the
474 reasonable costs of administering the revolving fund or emergency
475 fund if the State Board of Health determines that such costs will
476 exceed the limitations established in the federal Safe Drinking
477 Water Act, as amended. The administration fees may be included in
478 loan amounts to loan recipients for the purpose of facilitating
479 payment to the board; however, such fees may not exceed five
480 percent (5%) of the loan amount.

481 **SECTION 9.** This act shall take effect and be in force from
482 and after its passage.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

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 CREATE A NEW CODE SECTION TO BE
11 CODIFIED AS SECTION 69-7-610, MISSISSIPPI CODE OF 1972, TO REQUIRE
12 DISTRIBUTORS, PROCESSORS OR WHOLESALERS OF CERTAIN FISH PRODUCTS
13 TO PROVIDE RETAILERS AND THE COMMISSIONER OF AGRICULTURE WITH
14 INFORMATION AS TO THE TYPE OF FISH BEING DISTRIBUTED; TO AMEND
15 SECTION 69-7-613, MISSISSIPPI CODE OF 1972, TO REVISE
16 ADMINISTRATIVE PROCEDURES TO CONFORM; TO DELETE EXCEPTION TO
17 CERTAIN PENALTIES; TO CREATE A NEW CODE SECTION TO BE CODIFIED AS
18 SECTION 69-7-614, MISSISSIPPI CODE OF 1972, TO REQUIRE ALL PERSONS
19 SELLING CATFISH OR OTHER FISH TO MAINTAIN CERTAIN RECORDS OF THEIR
20 PURCHASES AND SALES OF CATFISH OR OTHER FISH; TO CREATE A NEW CODE
21 SECTION TO BE CODIFIED AS SECTION 69-7-616, MISSISSIPPI CODE OF
22 1972, TO PROVIDE CIVIL PENALTIES FOR VIOLATIONS AND TO PROVIDE
23 ADMINISTRATIVE PROCEEDINGS TO BE USED BY THE DEPARTMENT OF
24 AGRICULTURE AND COMMERCE IN HANDLING COMPLAINTS AND HEARINGS; TO
25 AMEND SECTION 41-3-15, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE
26 STATE BOARD OF HEALTH TO ADMINISTER THE LABELING OF DOMESTIC AND
27 IMPORTED CATFISH IN RESTAURANTS; AND FOR RELATED PURPOSES.