

Chapter No. 304
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HOUSE BILL NO. 606

Originated in House Don Richardson Clerk

HOUSE BILL NO. 606

AN ACT TO REENACT SECTIONS 69-7-601 THROUGH 69-7-617, MISSISSIPPI CODE OF 1972, WHICH CREATE THE "MISSISSIPPI CATFISH MARKETING LAW OF 1975"; TO REPEAL SECTION 69-7-619, MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR THE REPEAL OF THOSE REENACTED SECTIONS; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 69-7-601, Mississippi Code of 1972, is reenacted as follows:

69-7-601. This article shall be known as the "Mississippi Catfish Marketing Law of 1975."

SECTION 2. Section 69-7-602, Mississippi Code of 1972, is reenacted as follows:

69-7-602. The Legislature finds that aquaculture sales and consumption have increased worldwide and that the use of antibiotics or chemicals not approved for use in food-producing animals in the United States is permitted in aquaculture in other countries and that consumers of aquaculture in Mississippi should be provided clear information as to where the aquaculture product originates from to protect the health and welfare of Mississippi consumers; and the Legislature also finds that food-misrepresentation or the passing off of less expensive aquaculture products as pricier aquaculture products to unknowing customers and retailers has become an issue in the marketplace and is a deceitful practice used on consumers and retailers alike and that consumers and retailers should be informed of the country and species of fish.

SECTION 3. Section 69-7-603, Mississippi Code of 1972, is reenacted as follows:

69-7-603. This article shall be administered by the Commissioner of Agriculture and Commerce.

SECTION 4. Section 69-7-605, Mississippi Code of 1972, is reenacted as follows:

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

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

(b) "Catfish" means any species within the family Ictaluridae.

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

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

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

(f) "Farm-raised Catfish" means the catfish product has been specifically produced in fresh water according to the usual and customary techniques of commercial aquaculture and includes fillets, steaks, nuggets and any other flesh from a "Farm-raised Catfish."

(g) "Fish" means species of fish similar to catfish in the families of Siluridae, Clariidae and Pangasiidae.

(h) "Food service establishment" means a restaurant, cafeteria, lunch room, food stand, saloon, tavern, bar, lounge or other similar facility operated as an enterprise engaged in the business of selling food to the public.

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

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

(k) "Menu" means any listing of food and beverage options for a diner or customer to select from regardless of its form.

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

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

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

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

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

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

(r) "Retailer" means any person offering for sale catfish products to individual consumers and representing the last sale prior to human consumption and includes food service establishments unless otherwise stated herein.

(s) "River or Lake Catfish" means the catfish product has been produced in a freshwater lake, river or stream but has not been produced according to the usual and customary techniques of commercial aquaculture.

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

SECTION 5. Section 69-7-607, Mississippi Code of 1972, is reenacted as follows:

69-7-607. (1) Notice of country of origin.

(a) General requirements:

(i) All retailers of catfish products shall inform consumers, at the final point of sale of the catfish to the consumers, of the country of origin of the catfish;

(ii) United States country of origin. A retailer of catfish products may designate the catfish as having a United States country of origin only if:

1. In case of "Farm-raised Catfish," it is hatched, raised, harvested and processed in the United States;

2. In case of "River or Lake Catfish," it is:
a. Harvested in waters of the United States, a territory of the United States or a state, including the waters thereof; and

b. Processed in the United States, a territory of the United States or a state, including the waters thereof.

(iii) Farm-raised and River or Lake Catfish. The notice of country of origin for "Farm-raised Catfish" and "River

or Lake Catfish" shall distinguish between "Farm-raised Catfish" and "River or Lake Catfish."

(b) Method of notification.

(i) Retailers.

1. The information required by paragraph (a) of subsection (1) of this section may be provided to consumers by means of a label, stamp, mark, placard or other clear and visible sign on the catfish or on the package, display, holding unit or bin containing the catfish at the final point of sale to consumers.

2. If the catfish is already individually labeled for retail sale regarding country of origin, the retailer shall not be required to provide any additional information to comply with this section.

(ii) Food service establishments. The information required by paragraph (a) of subsection (1) of this section shall be provided to the consumer on the menu of the food service establishment. For foreign or imported catfish, the information shall be adjacent to the item on the menu and printed in the same font style and size as the item. If the food service establishment offers for sale only catfish having a United States country of origin, then the food service establishment may generally disclose this in a prominent location in the food service establishment in lieu of disclosure on the menu. The signage disclosing the sale of catfish having a United States country of origin, that is to be placed in a prominent location in the food service establishment, shall be approved, as indicated by a stamp or seal, by the Mississippi Department of Agriculture and Commerce, which shall be held harmless in a cause of action for a retail or food service establishment's failure to disclose or fraudulent disclosure. Any liability arising from failure to disclose country of origin shall remain with the wholesaler and the retail or food service establishment.

(c) The commissioner may require that any person that prepares, stores, handles or distributes catfish for retail sale maintain a verifiable record-keeping audit trail that permits the commissioner to verify compliance with this law and any regulations promulgated hereunder.

(d) Any distributor or wholesaler engaged in the business of supplying catfish to a retailer or food service establishment shall provide information to the retailer or food service establishment indicating the country of origin of the catfish. The information shall include certification of origin through a state or federal agency that regulates the processing of catfish or through a federal agency that verifies that catfish and/or other products produced in countries other than the United States meets similar sanitation requirements.

(2) Any advertising as to any catfish product shall state the information required in paragraph (a) of subsection (1) of this section.

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

(4) The commissioner shall have authority to enter the premises of any wholesaler, processor, distributor, retailer or any other person selling catfish products in order to determine compliance with this article.

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

SECTION 6. Section 69-7-608, Mississippi Code of 1972, is reenacted as follows:

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

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

(3) (a) The commissioner shall regulate and inspect retail and food service establishments under this article.

(b) The commissioner shall notify, in writing, any retailer or food service establishment violating this article and shall give the retailer or food service establishment three (3) days to correct the violation. No penalties under this article shall apply to any retailer or food service establishment that corrects the violation within three (3) days from the date notified by the commissioner.

(4) In addition to any other civil or criminal penalties, any person who violates any of the provisions of this chapter or who otherwise misrepresents as catfish any fish or fish product not defined as catfish under this article shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00). For a second offense, a person shall be punished by a fine of not more than Two Thousand Dollars (\$2,000.00). For any subsequent violations, a person shall be punished by a fine of not more than Five Thousand Dollars (\$5,000.00) or by having the license for the retail or food establishment suspended indefinitely or until such establishment has corrected the violation, or both. Any person against whom a complaint is made or who has been made subject to a fine or license suspension as provided by this subsection, may avail themselves of a due process administrative hearing as provided by Section 69-7-616.

SECTION 7. Section 69-7-609, Mississippi Code of 1972, is reenacted as follows:

69-7-609. All distributors, processors or wholesalers of catfish products, distributing or selling catfish products, shall

provide information to each person, firm or corporation to whom they distribute or sell catfish products for resale as to the labeling information required in subsection (1) of Section 69-7-607.

SECTION 8. Section 69-7-610, Mississippi Code of 1972, is reenacted as follows:

69-7-610. (1) All distributors, processors or wholesalers of catfish or other fish products, distributing or selling catfish or other fish products, shall provide information to the commissioner or his representative, upon request, and to each retailer to which such distributor, processor or wholesaler distributes or sells catfish or other fish products as to whether such product is Farm-raised Catfish, River or Lake Catfish, Imported Catfish, or Other Fish a Product of (country of origin). In addition, any wholesaler or distributor shall provide his sales and purchases records of catfish and other fish upon request by the commissioner. Other fish includes those fish in the taxonomic family of Siluridae, Clariidae and Pangasiidae.

(2) The commissioner may disclose to the public the names and addresses of businesses that purchase domestic and/or foreign catfish and other fish from wholesalers, distributors and processors.

SECTION 9. Section 69-7-611, Mississippi Code of 1972, is reenacted as follows:

69-7-611. (1) The commissioner is authorized to promulgate such rules and regulations such as may be necessary for the efficient enforcement of this article.

(2) Before the issuance, amendment, or repeal of any rule or regulation authorized by this article, the commissioner shall publish the proposed regulation, amendment, or notice to repeal an existing regulation in a manner reasonably calculated to give interested parties adequate notice and shall afford all interested persons an opportunity to present their views thereon, orally or

in writing, within a reasonable period of time. After consideration of all views presented by interested persons, the commissioner shall take appropriate action to issue the proposed rules or regulations or to amend or repeal an existing rule or regulation.

SECTION 10. Section 69-7-612, Mississippi Code of 1972, is reenacted as follows:

69-7-612. The commissioner shall have authority to enter the premises of any wholesaler, distributor or retailer to pull samples of catfish and other similar fish for laboratory testing to test for species identification and/or any other testing as may be necessary to determine compliance with this article.

SECTION 11. Section 69-7-613, Mississippi Code of 1972, is reenacted as follows:

69-7-613. (1) Any person who violates any provision of this article for which no other penalty is provided by this article shall upon conviction be subject to a fine of not more than Five Hundred Dollars (\$500.00).

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

SECTION 12. Section 69-7-615, Mississippi Code of 1972, is reenacted as follows:

69-7-615. The commissioner may cooperate with and enter into agreements with governmental agencies of this state, agencies of the federal government, and private associations in order to carry out the purpose and provisions of this article.

SECTION 13. Section 69-7-616, Mississippi Code of 1972, is reenacted as follows:

69-7-616. (1) When a complaint is made against a person for violation of any of the provisions of this article, or any of the rules or regulations promulgated hereunder, the Director of the Regulatory Division of the Mississippi Department of Agriculture and Commerce, or his designee, shall act as reviewing officer. The complaint shall be filed with the Mississippi Department of Agriculture and Commerce. The reviewing officer shall cause to be delivered to the accused, in the manner described herein, a copy of the complaint and any supporting documents along with a summons requiring the accused to respond to the allegations within thirty (30) days after service of the summons and complaint upon the accused. The accused shall file with the department a written response to the complaint and any supporting documents within the thirty-day period. The accused may be notified by serving a copy of the summons and complaint on the accused or any of his officers, agents or employees by personal service or by certified mail. Upon the expiration of the thirty-day period, the reviewing officer shall review the complaint, the written response of the accused, if any, and all supporting documents offered by the parties in support of their respective positions. The reviewing officer's decision shall be based solely on the documents provided by the parties. If the reviewing officer determines that the complaint lacks merit, he may dismiss the complaint. If he finds that there are reasonable grounds showing that a violation of the statutes or regulations has been committed, he may impose any or all of the following penalties upon the accused: (a) levy a civil penalty in the amount of no more than One Thousand Dollars (\$1,000.00) for each violation; (b) issue a stop-sale order; (c) require the accused to relabel any fish that he is offering for sale and which is not labeled in accordance with the provisions of this article; or (d) seize any fish that is not in compliance with this article, and destroy, sell or otherwise dispose of the fish, and apply the

proceeds of any such sale to the costs herein and any civil penalties levied, with the balance to be paid to the accused. The reviewing officer's decision shall be in writing, and it shall be delivered to the accused by any of the methods described herein for service of the summons and complaint on the accused.

(2) Either the accused or the department may appeal the decision of the reviewing officer to the Commissioner of Agriculture and Commerce by filing a notice of appeal with the department within thirty (30) days of receipt of the reviewing officer's decision. If no appeal is taken from the order of the reviewing officer within the allotted time, the order shall then become final. In the event of an appeal, the commissioner, or his designee, shall conduct a full evidentiary hearing relative to the charges. The commissioner may issue subpoenas to require the attendance of witnesses and the production of documents. Compliance with such subpoenas may be enforced by any court of general jurisdiction in this state. The testimony of witnesses shall be upon oath or affirmation, and they shall be subject to cross-examination. The proceedings shall be recorded by a court reporter. The commissioner shall have all the powers of the reviewing officer described herein, and the commissioner may affirm, reverse or modify the order of the reviewing officer. The commissioner's decision shall be in writing, and it shall be delivered to the parties in the same manner that the summons and complaint may be served upon the accused.

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

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

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

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

SECTION 14. Section 69-7-617, Mississippi Code of 1972, is reenacted as follows:

69-7-617. The commissioner shall publish at least biannually, in such form as he may deem proper, information

concerning the sale of catfish products, together with such data on their production and use as he may consider advisable provided that the information concerning production and sales of catfish products shall not disclose the operation of any person.

SECTION 15. Section 69-7-619, Mississippi Code of 1972, which repeals Sections 69-7-601 through 69-7-617, Mississippi Code of 1972, which create the "Mississippi Catfish Marketing Law of 1975," is repealed.

SECTION 16. This act shall take effect and be in force from and after its passage.

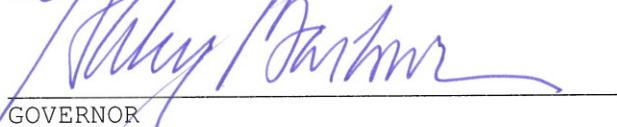
PASSED BY THE HOUSE OF REPRESENTATIVES
January 20, 2010


SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
February 4, 2010


PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR


GOVERNOR

2/17/10

12:15 pm