

State of Arkansas

77th General Assembly

A Bill

SENATE BILL

Third Extraordinary Session, 1989

CALL ITEM

29

By: Senator Gibson

For An Act To Be Entitled

"AN ACT TO AMEND THE ARKANSAS CATFISH PROCESSOR FAIR PRACTICES ACT OF 1987 TO AUTHORIZE THE STATE PLANT BOARD TO ASSESS CIVIL PENALTIES AGAINST CERTAIN PERSONS WHO FAIL TO MAKE TIMELY PAYMENT FOR CATFISH PURCHASED FROM CATFISH PRODUCERS; TO AUTHORIZE THE DIRECTOR OF THE STATE PLANT BOARD TO PETITION THE PROPER COURT FOR APPOINTMENT AS THE RECEIVER TO TAKE CUSTODY OF CATFISH IN A CATFISH PROCESSING FACILITY WHEN THE PROCESSOR'S REGISTRATION HAS BEEN SUSPENDED; AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code 2-6-103 is hereby amended to read as follows:

"2-6-103. Definitions. As used in this chapter, unless the context otherwise requires:

- (1) "Board" means the State Plant Board;
- (2) "Capable of use as human food" means and applies to any catfish or part or product of any catfish unless it is denatured or otherwise identified as required by regulations prescribed by the board to deter its use as human food, or unless it is naturally inedible by humans;
- (3) "Cash sale" means a sale in which the seller does not expressly extend credit to the buyer;
- (4) "Catfish" means any species of the scientific order Ostariophysida, family Ictaluridae;
- (5) "Direct retail sale" means the sale of catfish products directly to the consumer;
- (6) "Director" means the Director of the State Plant Board or his designee;
- (7) "Person" includes any individual, partnership, corporation, and

association or other legal entity;

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

(9) "Producer" means any person engaged in the business of producing catfish, by any method;

(10) "Product" means any catfish product capable of use as human food which is made wholly or in part from any catfish or portion thereof;

(11) "Class A Registrant" means any catfish processor who purchases at least \$50,000 worth of catfish annually from catfish producers.

(12) "Secured party" means a lender who has a perfected security interest pursuant to the Uniform Commercial Code, § 4-1-101 et seq., in the catfish being sold."

SECTION 2. Arkansas Code 2-6-104(b) is hereby amended to read as follows:

"(b) The Board is authorized to promulgate such rules and regulations as may be necessary for the efficient enforcement of this chapter, including the establishment of reasonable fees for registering with the Board."

SECTION 3. Arkansas Code 2-6-105 is hereby amended to read as follows:

"2-6-105. Registration and suspension - Exception. Every catfish processor shall register with the State Plant Board. The board shall promulgate such rules and regulations as necessary to secure the performance of catfish purchasing obligations. Whenever, after due notice and hearing, the board finds any registrant is insolvent or has violated any provisions of this chapter, it may issue an order suspending the registrant for a reasonable specified period. The order of suspension shall take effect within five (5) days unless suspended, modified, or set aside by the board or a court of competent jurisdiction. If the board finds any processor is insolvent, or is issuing invalid or insufficient checks, or is causing a breach of contract with the producer by failure to pay the producer in accordance with the contract, the board, shall issue an order requiring the processor to cease and desist from purchasing catfish except under such conditions as the board may prescribe to effectuate the purposes of this chapter. However, those processors whose average annual purchases do not exceed fifty thousand dollars (\$50,000) and those processors who deliver a sufficiently funded check or U. S.

currency to the producer or his authorized representative in the full amount of the purchase price on the same day the catfish product is purchased and possession of the catfish product is transferred shall be exempt from the provisions of this section."

SECTION 4. Arkansas Code 2-6-106 is hereby amended by inserting a new subsection (d) to read as follows:

"(d) The Board may assess civil penalties against any Class A registrant as follows:

(1) Not more than \$100.00 for each day payment to the producer is late under Arkansas Code 2-6-107(a)(2);

(2) Not more than \$250.00 for each day payment to the producer is late under the contract between the registrant and the producer; and

(3) In instances where the registrant has paid a producer with an invalid or insufficient check, not more than \$500.00 for each day the check is invalid or insufficiently funded."

SECTION 5. Arkansas Code 2-6-107(b) is hereby amended to read as follows:

"(b) Regardless of the method elected under subdivision (a)(2) of this section to purchase catfish products, a Class A registrant, prior to the transaction, shall be required to:

(1) Be bonded in the amount of two hundred fifty thousand dollars (\$250,000) or in an amount which may be determined by the board;

(2) Post a security bond in the amount of two hundred fifty thousand dollars (\$250,000) or in an amount which may be determined by the board; or

(3) Provide cash security, letters of credit, and such other evidences of security as shall be authorized by the board.

SECTION 6. Subchapter (1) of Chapter 6 of Title 2 of the Arkansas Code is hereby amended by adding at the end thereof the following additional sections:

"2-6-108. The Director in his discretion may, following a suspension of a Class A registrant as provided in this chapter, file a verified petition in the proper court requesting that the Director be appointed as a receiver to take custody of catfish in the registrant's facility and to provide for the disposition of those assets in the manner provided in this

chapter and under the supervision of the court. The petition shall be filed in the county in which the registrant is located. The proper court shall appoint the Director as receiver. Upon the filing of the petition the court shall issue ex parte such temporary orders as may be necessary to preserve or protect the assets in receivership, or the value thereof, and the rights of producers, until a plan of disposition is approved.

2-6-109. A petition filed by the Director under section 2-6-108 shall be accompanied by the Director's plan for disposition of the processed catfish. The plan may provide for the pro rata delivery of part or all of the processed catfish to producers holding weigh tickets, or may provide for the sale under the supervision of the Director of part or all of the processed catfish for the benefit of those producers, or may provide for any combination thereof, as the Director in his discretion determines to be necessary to minimize losses.

2-6-110. When a petition is filed by the Director under section 2-6-108 the clerk of court shall set a date for hearing on the Director's proposed plan of disposition at a time not less than ten (10) nor more than fifteen (15) calendar days after the date the petition is filed. Copies of the petition, the notice of hearing, and the Director's plan of disposition shall be served upon the Class A registrant and upon the surety company issuing the Class A registrant's bond in the manner required for service of an original notice. A delay in effecting service upon the Class A registrant or surety shall not be cause for denying the appointment of a receiver and shall not be grounds for invalidating any action or proceeding in connection therewith.

2-6-111. The Director shall cause a copy of each of the documents served upon the Class A registrant under 2-6-110 to be mailed by ordinary mail to every person holding a weigh ticket issued by the Class A registrant, as determined by the records of the Class A registrant or the records of the Director. The failure of any person referred to in this section to receive the required notification shall not invalidate the proceedings on the petition for the appointment of a receiver or any portion thereof. Persons referred to in this section are not parties to the action unless admitted by the court upon application therefor.

2-6-112. When appointed as a receiver under this chapter the Director shall cause notification of the appointment to be published once each week for two (2) consecutive weeks in a newspaper of general circulation in each of the

counties in which the Class A registrant maintains a business location, and in a newspaper of general circulation in this State.

2-6-113. The Director may designate one of his employees to appear on behalf of the Director in any proceedings before the court with respect to the receivership, and to exercise the functions of the Director as receiver, except that the Director shall determine whether or not to petition for the appointment as receiver, shall approve the proposed plan for disposition of processed catfish, shall approve the proposed plan for distribution of any cash proceeds, and shall approve the proposed final report.

2-6-114. The actions of the Director in connection with petitioning for appointment as a receiver, and all actions pursuant to such appointment shall not be subject to the provisions of Subchapter 2 of Chapter 15 of Title 25 of the Arkansas Code, the Administrative Procedure Act.

2-6-115. When the Director is appointed as receiver under this chapter the surety on the bond of the Class A registrant shall be joined as a party defendant by the Director. If required by the court, the surety shall pay the bond proceeds or so much thereof as the court finds necessary into the court, and when so paid the surety shall be absolutely discharged from any further liability under the bond to the extent of the payment.

2-6-116. When appointed as receiver under this chapter the Director is authorized to give notice in the manner specified by the court to persons holding weigh tickets issued by the Class A registrant to file their claims within sixty (60) calendar days after the date of appointment. Failure to timely file a claim shall defeat the claim with respect to the surety bond and any catfish or proceeds from the sale of catfish, except to the extent of any excess remaining after all timely claims are paid in full.

2-6-117. When the court approves the sale of processed catfish the Director shall employ a merchandiser to effect the sale of those commodities. A person employed as a merchandiser must meet the following requirements:

(a) The person shall be experienced or knowledgeable in the operation of processors registered under this chapter, and if the person has ever held a registration certificate issued under this chapter, the person shall never have had the registration suspended.

(b) The person shall be experienced or knowledgeable in the marketing of aquacultural products.

(c) The person shall not be the holder of a weigh ticket issued by the

Class A registrant, and shall not have a claim against the Class A registrant whether as a secured or unsecured creditor, and otherwise shall not have any pecuniary interest in the Class A registrant or the Class A registrant's business. The merchandiser shall be entitled to reasonable compensation as determined by the Director. A sale of processed catfish shall be made in a commercially reasonable manner and under the supervision of the Director. The Director shall have authority to sell the processed catfish, and provisions of Uniform Commercial Code to the contrary notwithstanding, any processed catfish so sold shall be free of all liens and other encumbrances.

2-6-118. The plan of disposition, as approved by the court, shall provide for the distribution of the processed catfish, or the proceeds from the sale of processed catfish or the proceeds from any surety bond, or any combination thereof, less expenses incurred by the Director in connection with the receivership, to producers on a pro rata basis as their interests are determined. Distribution shall be without regard to any setoff, counterclaim, or charge.

2-6-119. The Director may, with the approval of the court, continue the operation of all or any part of the business of the Class A registrant on a temporary basis and take any other course of action or procedure which will serve the interests of the producers.

2-6-120. The Director shall be entitled to reimbursement out of processed catfish or proceeds held in receivership for all expenses incurred as court costs or in handling and disposing of processed catfish, and for all other costs directly attributable to the receivership. The right of reimbursement of the Director shall be prior to any claims against the processed catfish or proceeds of sale thereof, and shall constitute a claim against the surety bond of the Class A registrant.

2-6-121. In the event the approved plan of disposition requires the sale of processed catfish, or the distribution of proceeds from the surety bond, or both, the Director shall submit to the court a proposed plan of distribution of those proceeds. Upon such notice and hearing as may be required by the court, the court shall accept or modify the proposed plan. When the plan is approved by the court and executed by the Director, the Director shall be discharged and the receivership terminated.

2-6-122. At the termination of the receivership the Director shall file a final report containing the details of his actions, together with such

additional information as the court may require."

SECTION 7. All provisions of this Act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 8. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 9. Emergency. It is hereby found and determined by the General Assembly that the Catfish Processors Fair Practices Act of 1987 is in need of strengthening in order to grant additional authority to the State Plant Board to protect Arkansas catfish producers from unfair practices; that this Act grants such authority; and that this Act should go into effect immediately in order to provide additional protection to Arkansas catfish producers as soon as possible. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.