

"AN ACT TO BE KNOWN AS THE 'ARKANSAS CATFISH MARKETING ACT'; TO ALLOW FOR THE ORDERLY MARKETING AND EASY CONSUMER IDENTIFICATION IN THE RETAIL MARKET PLACE OF CATFISH PRODUCTS PRODUCED OR PROCESSED IN THE STATE OF ARKANSAS; AND FOR OTHER PURPOSES."

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

SECTION 1. This act shall be known as the "Arkansas Catfish Marketing Act".

SECTION 2. This act shall be administered by the Director of the State Plant Board, Division of Weights and Measures.

SECTION 3. For purposes of this act, the following terms shall have the meanings ascribed herein unless the context otherwise requires:

(a) "Capable of use as human food" shall mean 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 Director to deter its use as human food, or unless it is naturally inedible by humans.

(b) "Catfish" shall mean any species of the scientific order, Siluriformes or family, Anarhichadidae.

(c) "Director" shall mean the Director of the State Plant Board, Division of Weights and Measures of the State of Arkansas.

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

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

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

(g) "Labeling" shall mean 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.

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

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

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

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

(l) "Product" shall mean 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 judgement of the Director, considered by consumers as products of the commercial catfish industry and which are exempted from definition as a catfish product by the Director 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.

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

(n) "Retailer" shall mean any person offering for sale catfish products to individual consumers and representing the last sale prior to human consumption except that restaurants and other eating establishments are hereby excluded.

SECTION 4. (1) No catfish product shall be offered for direct retail sale for human consumption by a processor, distributor or retailer unless the catfish product name is specifically labeled in the following manner:

(a) "Farm-Raised Catfish," if the product has been specifically produced in fresh water according to the usual and customary techniques of commercial aquiculture.

(b) "River or Lake Catfish," if the product has been produced in any freshwater lake, river or stream of the state, but has not been produced according to the usual and customary techniques of commercial aquiculture.

(c) "Imported Catfish," provided the catfish is produced from freshwater, either according to the usual and customary techniques of aquiculture, or from freshwater lakes, rivers or streams of a country other than the United States of America.

(d) "Ocean Catfish," provided the catfish product is produced from marine or estuarine waters.

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

(3) Any retailer selling catfish products not wrapped or in a container may comply with this act by placing a sign on the display case or refrigeration unit reasonably visible to the consumer, giving notice that such catfish is either "Farm Raised Catfish," "River or Lake Catfish," "Imported Catfish," or "Ocean Catfish," as such products are defined in subsection (1) above.

(4) Any advertising as to any catfish product shall state whether such catfish product is "Farm Raised Catfish," "River or Lake Catfish," "Imported Catfish," or "Ocean Catfish," as defined in subsection (1) above.

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

SECTION 5. 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 whether such catfish product is "Farm Raised Catfish," "River or Lake Catfish," "Imported Catfish," or "Ocean Catfish," as such terms are defined in Section 4, subsection (1).

SECTION 6. (1) The Director is authorized to promulgate such rules and regulations as may be necessary for the efficient enforcement of this act.

(2) Before the issuance, amendment, or repeal of any rule or regulation authorized by this act, the Director 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 Director shall take appropriate action to issue the proposed rules or regulations or to amend or repeal an existing rule or regulation.

SECTION 7. (1) Any person who violates any provision of this act for which no other civil penalty is provided by this act shall upon conviction be subject to a fine of not more than five hundred dollars (\$500); provided, no person shall be subject to penalties under this section for receiving for transportation any article in violation of this act if such receipt was made in good faith, unless such person refuses to furnish, on request of a representative of the Director, the name and address of the person from whom he received such article, and copies of all documents, if any there be, pertaining to the delivery of the article to him.

(2) Nothing in this act shall be construed as requiring the Director to report for prosecution or for the institution of libel or injunction proceedings minor violations of this act whenever he believes that the public interest will be adequately served by a suitable written notice of warning.

(3) It shall be the duty of each prosecuting attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the Director reports a violation for such prosecution, an opportunity shall be given the distributor or other affected person to present his views to the Director.

(4) The Director is hereby authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this act or any rule or regulation promulgated under this act, notwithstanding the existence of other remedies at law. Said injunction shall be issued without bond.

(5) Any person adversely affected by an act, order or ruling made by the Director pursuant to the provisions of this act may, within forty-five (45) days thereafter, bring action in the Circuit Court of Pulaski County, Arkansas, for judicial review of such actions. The form of the proceeding shall be any which may be provided by statutes of this state to review decisions of administrative agencies or in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgements or writs of prohibitory or mandatory injunctions.

SECTION 8. The Director 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 act.

SECTION 9. The Director 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 10. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 11. It is hereby found and determined by the General Assembly that because of the case *Ricarte v. State*, CR 86-31, a question has arisen over the validity of Act 1209 of the Extended Session of 1976; that this Act is a reenactment of the former law; and that the immediate passage of this Act is necessary to clarify the state of the law on this issue. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval.

APPROVED: April 14, 1987
