

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 84th General Assembly  
3 Regular Session, 2003  
4

*As Engrossed: H3/3/03 S3/18/03*

# A Bill

Act 1024 of 2003  
HOUSE BILL 1687

5 By: Representative Rankin  
6 *By: Senator J. Jeffress*  
7

## For An Act To Be Entitled

8  
9  
10 AN ACT TO AUTHORIZE THE BUREAU OF STANDARDS OF  
11 THE STATE PLANT BOARD TO ENFORCE LAWS ON THE SALE  
12 AND MARKETING OF FOREIGN FISH; TO CLARIFY THE  
13 DEFINITION OF CATFISH IN MARKETING CATFISH  
14 PRODUCTS AND IN RESTAURANTS; AND FOR OTHER  
15 PURPOSES.  
16

## Subtitle

17  
18 TO ALLOW THE STATE PLANT BOARD TO  
19 ENFORCE LAWS ON THE SALE AND MARKETING  
20 OF FOREIGN FISH AND TO CLARIFY THE  
21 DEFINITION OF CATFISH IN MARKETING  
22 CATFISH PRODUCTS AND IN RESTAURANTS.  
23

24  
25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
26

27 SECTION 1. Arkansas Code § 20-61-101 is amended to read as follows:  
28 20-61-101. Foreign fish.

29 (a) No fresh, cold storage, or frozen fish produced outside this state  
30 or in any foreign country and imported into the United States shall be sold  
31 or offered for sale in this state by any food establishment unless:

32 (1) The package or container containing the food bears a  
33 statement in writing naming thereon the country of origin, the date of  
34 packaging, and the common name of all fish contained therein; and

35 (2) The fish has been packaged and processed under sanitary  
36 conditions equal to the standards required by the laws and regulations of



1 this state for fish processing plants.

2 (b)(1) Outlets serving cooked, fresh, cold storage, or frozen fish at  
3 retail which display on the menu or in some conspicuous public place in the  
4 outlet the identity of the country of origin and the common name of all fish  
5 as reflected on the menu or sold in the outlet shall be deemed as having  
6 satisfied the requirements of subdivision (a)(1) of this section.

7 (2) All suppliers of any fresh, cold storage, or frozen fish  
8 shall furnish to the distributor or retailer to which the products are sold  
9 in this state an affidavit that all products are properly labeled, as  
10 required in this section, with respect to the country of origin of and the  
11 contents of any foreign imported fish. This affidavit shall include a  
12 certificate that the supplier has caused each of the products to be properly  
13 labeled in conformance with the requirements of this section.

14 (3)(A) The Director and enforcement personnel of the Arkansas  
15 Bureau of Standards of the State Plant Board are authorized to enforce the  
16 requirements of subsection (a) and subdivisions (b)(1) and (b)(2) of this  
17 section.

18 (B) The director is authorized to promulgate rules and  
19 regulations necessary to enforce subsection (a) and subdivisions (b)(1) and  
20 (b)(2) of this section.

21 ~~(3)(4)~~ In addition, all suppliers of any fresh, cold storage, or  
22 frozen fish shall furnish to any distributor or retailer to which the product  
23 is sold in this state proof that the fish has been packaged and processed  
24 under sanitary conditions equal to the sanitary conditions required of fish  
25 processing plants in this state. The proof may be upon certification by the  
26 Department of Health or certification by the United States Food and Drug  
27 Administration or other appropriate federal agency that the processing plant  
28 in which the fish was packaged or processed meets sanitary conditions within  
29 at least the minimum requirements of the laws and regulations of this state  
30 for fish processing plants, or proof may be upon the certification of the  
31 supplier that the fish packaged or processed outside this state, or in a  
32 foreign country, was packaged or processed in a fish processing plant that  
33 meets at least the minimum requirements of the laws and regulations of this  
34 state for sanitary conditions for fish processing plants.

35 (c) Any supplier of fresh, cold storage, or frozen fish or any  
36 distributor or retailer who sells any fish in this state in violation of the

1 provisions of this section shall each be individually and severally subject  
2 to the ~~criminal~~ civil penalties as provided in subsection (d) of this  
3 section.

4 ~~(d)(1) Violations of the provisions of this section shall be~~  
5 ~~punishable for a first offense by a fine of not less than twenty five dollars~~  
6 ~~(\$25.00) nor more than one hundred dollars (\$100) or by imprisonment in the~~  
7 ~~county jail for a period not exceeding thirty (30) days.~~

8 ~~(2) Subsequent violations of this section shall be punishable by~~  
9 ~~a fine of not less than one hundred dollars (\$100) nor more than five hundred~~  
10 ~~dollars (\$500) or by imprisonment in the county jail for not more than ninety~~  
11 ~~(90) days, or by both fine and imprisonment.~~

12 ~~(3) Each separate violation of the provisions of this section~~  
13 ~~shall constitute a separate offense and shall be punishable accordingly.~~

14 (d)(1) A violator of this section shall be assessed by the State Plant  
15 Board a civil penalty of:

16 (A) Not less than one hundred dollars (\$100) nor more than  
17 three hundred dollars (\$300) for a first violation.

18 (B) Not less than four hundred dollars (\$400) nor more  
19 than six hundred dollars (\$600) for a second violation within three (3) years  
20 after the date of the first violation, and

21 (C) Not less than seven hundred dollars (\$700) nor more  
22 than one thousand dollars (\$1,000) for a third violation within three (3)  
23 years after the date of the first violation.

24 (2) For a violation to be considered as a second or subsequent  
25 offense, it must be a repeat of a requirement enumerated in subsection (a)  
26 and subdivision (b)(1) and (b)(2) of this section.

27 (3)(A) Any person subject to a civil penalty shall have a right  
28 to request an administrative hearing within ten (10) calendar days after  
29 receipt of the notice of the penalty.

30 (B) The board is authorized to conduct the hearing after  
31 giving appropriate notice and its decision shall be subject to judicial  
32 review.

33 (4)(A) If a violator has exhausted the administrative appeals  
34 and the civil penalty is upheld, the violator shall pay the civil penalty  
35 within twenty (20) calendar days after the date of the final decision.

36 (B) If the violator fails to pay the penalty, a civil

1 action may be brought by the board in any court of competent jurisdiction to  
2 recover the penalty.

3 (C) Any civil penalty collected under this section shall  
4 be transmitted to the State Plant Board Fund.

5 (e) The provisions of this section shall not be applicable to  
6 shellfish.

7  
8 SECTION 2. Arkansas Code § 20-61-202(2), concerning the definitions  
9 under the Arkansas Catfish Marketing Act, is amended to read as follows:

10 (2) "Catfish" means any species ~~of the scientific order, Siluriformes,~~  
11 ~~or family, Anarhichadidae~~ of the scientific family Ictaluridae;

12  
13 SECTION 3. Arkansas Code § 20-61-202(14), concerning the definitions  
14 under the Arkansas Catfish Marketing Act, is amended to read as follows:

15 (14) "Retailer" means any person offering for sale catfish products to  
16 individual consumers and representing the last sale prior to human  
17 consumption ~~except that restaurants and other eating establishments are~~  
18 ~~excluded.~~

19  
20 SECTION 4. Arkansas Code § 20-61-203 is amended to read as follows:

21 20-61-203. Penalties - Injunction.

22 (a)(1)(A) Any person who violates any provision of this subchapter for  
23 which no other civil penalty is provided by this subchapter shall upon  
24 conviction be subject to a fine of not more than five hundred dollars (\$500).

25 (B) However, no person shall be subject to penalties under  
26 this section for receiving for transportation any article in violation of  
27 this subchapter if the receipt was made in good faith unless the person  
28 refuses to furnish, on request of a representative of the Director of the  
29 Arkansas Bureau of Standards, the name and address of the person from whom he  
30 or she received the article and copies of all documents, if there are any,  
31 pertaining to the delivery of the article to him or her.

32 (2) All distributors, processors, wholesalers, or retailers who  
33 are distributing or selling those species of fish as catfish that are not  
34 within the definition of "catfish" under § 20-61-202 shall be in violation of  
35 this subchapter and shall be assessed a civil penalty of:

36 (A) Not less than five hundred dollars (\$500) nor more

1 than one thousand dollars (\$1,000) for a first violation;

2 (B) Not less than eight hundred dollars (\$800) nor more  
3 than two thousand dollars (\$2,000) for a second violation within three (3)  
4 years after the date of the first violation; and

5 (C) Not less than one thousand five hundred dollars  
6 (\$1,500) nor more than two thousand five hundred dollars (\$2,500) for a third  
7 violation within three (3) years after the date of the first violation.

8 (3) For a violation to be considered as a second or subsequent  
9 offense, it must be a repeat of the violation in subdivision (a)(2) of this  
10 section.

11 (4)(A) Any person subject to a civil penalty shall have a right  
12 to request an administrative hearing within ten (10) calendar days after  
13 receipt of the notice of the penalty.

14 (B) The board is authorized to conduct the hearing after  
15 giving appropriate notice and its decision shall be subject to judicial  
16 review.

17 (5)(A) If a violator has exhausted the administrative appeals  
18 and the civil penalty is upheld, the violator shall pay the civil penalty  
19 within twenty (20) calendar days after the date of the final decision.

20 (B) If the violator fails to pay the penalty, a civil  
21 action may be brought by the board in any court of competent jurisdiction to  
22 recover the penalty.

23 (C) Any civil penalty collected under this section shall  
24 be transmitted to the State Plant Board Fund.

25 (b) Nothing in this subchapter shall be construed as requiring the  
26 director to report for prosecution or for the institution of libel or  
27 injunction proceedings any minor violations of this subchapter whenever he or  
28 she believes that the public interest will be adequately served by a suitable  
29 written notice of warning.

30 (c)(1) It shall be the duty of each prosecuting attorney to whom any  
31 violation is reported to cause appropriate proceedings to be instituted and  
32 prosecuted in a court of competent jurisdiction without delay.

33 (2) Before the director reports a violation for prosecution, an  
34 opportunity shall be given the distributor or other affected person to  
35 present his or her views to the director.

36 (d) The director is authorized to apply for and the court to grant a

1 temporary or permanent injunction restraining any person from violating or  
2 continuing to violate any of the provisions of this subchapter or any rule or  
3 regulation promulgated under this subchapter, notwithstanding the existence  
4 of other remedies at law. The injunction shall be issued without bond.

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6 SECTION 5. Arkansas Code § 20-61-302 is amended to read as follows:

7 20-61-302. Identification required.

8 (a) No catfish product shall be offered for direct retail sale for  
9 human consumption by a restaurant or other eating establishment unless the  
10 catfish product name is identified on the menu in the following manner:

11 (1) "Farm-Raised Catfish", if the product has been specifically  
12 produced in fresh water according to the usual and customary techniques of  
13 commercial aquaculture;

14 (2) "River or Lake Catfish", if the product has been produced in  
15 any freshwater lake, river, or stream of the state but has not been produced  
16 according to the usual and customary techniques of commercial aquaculture;

17 (3) "Imported Catfish", if the catfish product is produced from  
18 fresh water, either according to the usual and customary techniques of  
19 aquaculture, in or from freshwater lakes, rivers, or streams of a country  
20 other than the United States; and

21 (4) "Ocean Catfish", if the catfish product is produced from  
22 marine or estuarine waters.

23 (b)(1) Restaurants serving multiple entrees from multiple sources may  
24 make a general disclosure of sources upon the menu and shall not be required  
25 to disclose the source of each entree. The disclosure shall contain these  
26 words: "Upon request of the customer, the origin of each entree will be  
27 disclosed".

28 (2) Upon request of the customer, the specific source shall be  
29 disclosed.

30 (c) As used in this subchapter, "catfish" means the same as defined  
31 under the Arkansas Catfish Marketing Act, §§ 20-61-201 through 20-61-209.

32  
33 /s/ Rankin  
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APPROVED: 4/2/2003