

State of Arkansas

76th General Assembly

Regular Session, 1987

SENATE BILL 335

By: Senators Gibson and Nelson

As engrossed 3-16-87

"AN ACT TO PRESCRIBE CERTAIN TRADE PRACTICES BY CATFISH PROCESSORS IN THE STATE OF ARKANSAS WHICH SHALL BE REGULATED BY THE STATE PLANT BOARD; TO REQUIRE DELIVERY TO THE CATFISH PRODUCER OF THE FULL AMOUNT OF THE PURCHASE PRICE BY THE CATFISH PROCESSOR WITHIN TWENTY-EIGHT CALENDAR DAYS FOLLOWING THE PURCHASE OR IN THE ALTERNATIVE TO POST A BOND TO SECURE SUCH PAYMENT; TO AUTHORIZE THE STATE PLANT BOARD TO REQUIRE REGISTRATION BY CATFISH PROCESSORS; TO AUTHORIZE SAID BOARD TO UTILIZE JUDICIAL PROCEDURES TO ENJOIN ANY VIOLATION OF THIS ACT; TO CREATE A CAUSE OF ACTION ON BEHALF OF ANY PERSON FOR DAMAGES CAUSED BY A VIOLATION OF THIS ACT; AND FOR OTHER PURPOSES."

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

SECTION 1. This Act shall be known and may be cited as the "Arkansas Catfish Processor Fair Practices Act of 1987".

SECTION 2. This Act shall be administered by the State Plant Board.

SECTION 3. The General Assembly finds that a burden on and an obstruction to intrastate commerce in the catfish farming industry is caused when payment is not made for the catfish and that such arrangements are contrary to the public interest. This Act is intended to remedy such burden on and obstruction to intrastate commerce in catfish and to protect the public interest.

SECTION 4. For purposes of this Act, the following terms shall have the meaning ascribed herein unless the context otherwise requires:

- (a) "Board" shall mean the State Plant Board.
- (b) "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 Board to deter its use as human food, or unless it is naturally inedible by humans.
- (c) "Cash sale" shall mean a sale in which the seller does not expressly extend credit to the buyer.
- (d) "Catfish" shall mean any species of the scientific order, Siluriformes, or family, Anarhichadidae.
- (e) "Direct retail sale" shall mean the sale of catfish products directly to the consumer.
- (f) "Person" shall include any individual partnership, corporation and association or other legal entity.
- (g) "Processor" shall mean any person engaged in handling, storing, preparing, manufacturing, packing or holding catfish products.
- (h) "Producer" shall mean any person engaged in the business of producing catfish, by any method.
- (i) "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.
- (j) "Secured party" shall mean a lender who has a perfected security interest pursuant to the Uniform Commercial Code in the catfish being sold.

SECTION 5. (1) Each processor shall use one of the following methods to purchase catfish products:

(a) The processor may deliver to the producer or his duly authorized representative and any secured parties the full amount of the purchase price on the same day the catfish product is purchased and possession is transferred.

(b) The processor may before the close of the fourteenth (14th) calendar day following the purchase of the catfish products and transfer or possession thereof, deliver to the producer or his duly authorized representative and any secured parties the full amount of the purchase price. If the producer or his duly authorized representative or secured parties are not present to receive payment at the point of transfer or possession, as herein provided, the processor shall wire transfer funds or place a check in the United States mail for the full amount of the

purchase price, properly addressed to the producer and any secured parties, within the time limits specified in this subsection. Such action shall be deemed in compliance with the requirement for prompt payment under this paragraph.

(c) The parties to the purchase and sale of catfish products may expressly agree in writing, before such purchase or sale, to effect payment in a manner other than that required in paragraphs (a) or (b) provided the manner of payment does not interfere with the rights of secured parties. Any such agreement shall be disclosed in the records of any producer selling the catfish, and in the processors records and on the accounts or other documents issued by the processors relating to the transaction.

(2) In the event the processor shall elect the method prescribed in subparagraph (1)(b) of this section, to purchase catfish products, such processor shall, prior to such transaction, be required to:

(a) Be bonded in the amount of two hundred fifty thousand dollars (\$250,000.00) or in an amount which may be determined by the Board;

(b) post a security bond in the amount of two hundred fifty thousand dollars (\$250,000.00) or in an amount which may be determined by the Board; or

(c) Provide cash security, letters of credit and/or such other evidences of security as shall be authorized by the Board.

(3) Any delay or attempt to delay, by a processor purchasing catfish products, the collection of funds as herein provided, or otherwise, for the purpose of or resulting in extending the normal period of payment for such catfish shall be considered an "unfair practice" in violation of this Act.

SECTION 6. On and after July 1, 1987, every catfish processor shall register with the State Plant Board. The Board shall promulgate such rules and regulations as it may deem necessary to secure the performance of catfish purchasing obligations, and whenever, after due notice and hearing, the Board finds any registrant is insolvent or has violated any provisions of this Act he may issue an order suspending such registrant for a reasonable specified period. Such order of suspension shall take effect within five (5) days, unless suspended or modified or set aside by the Board or a court of competent jurisdiction. If the Board finds any processor is insolvent, it may after

notice and hearing issue an order requiring such processor to cease and desist from purchasing catfish while insolvent except under such conditions as the Board may prescribe to effectuate the purposes of this Act. Provided, however, that (a) those processors whose average annual purchases do not exceed fifty thousand dollars (\$50,000.00), and (b) those processors who deliver to the producer or his duly authorized representative the full amount of the purchase price on the same day the catfish product is purchased and possession thereof is transferred, shall be exempt from the provisions of this Section.

SECTION 7. It shall be unlawful, with respect to catfish or catfish products, for any processor to engage in or use any unfair, unjustly discriminatory, or deceptive practice.

SECTION 8. The Board is authorized to promulgate such rules and regulations as may be necessary for the efficient enforcement of this Act.

SECTION 9. The Board 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.

SECTION 10. (1) If any person subject to this Act violates any of the provisions of this Act, or of any order of the Board under this Act, relating to the purchase, sale or handling of catfish, he shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of such violation.

(2) Such liability may be enforced either (a) by complaint to the Board or (b) by suit in any circuit court of competent jurisdiction; but this section shall not in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this Act are in addition to such remedies.

SECTION 11. This Act shall take effect and be in force from and after July 1, 1987.

