

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
A Bill

HOUSE BILL 1687

5 By: Representative Rankin
6
7

For An Act To Be Entitled

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

Subtitle

15
16 TO ALLOW THE STATE PLANT BOARD TO
17 ENFORCE LAWS ON THE SALE AND MARKETING
18 OF FOREIGN FISH AND TO CLARIFY THE
19 DEFINITION OF CATFISH IN MARKETING
20 CATFISH PRODUCTS AND IN RESTAURANTS.
21
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23

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

26 SECTION 1. Arkansas Code § 20-61-101 is amended to read as follows:

27 20-61-101. Foreign fish.

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

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

34 (2) The fish has been packaged and processed under sanitary
35 conditions equal to the standards required by the laws and regulations of
36 this state for fish processing plants.



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

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

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

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

20 ~~(3)~~(4) In addition, all suppliers of any fresh, cold storage, or
21 frozen fish shall furnish to any distributor or retailer to which the product
22 is sold in this state proof that the fish has been packaged and processed
23 under sanitary conditions equal to the sanitary conditions required of fish
24 processing plants in this state. The proof may be upon certification by the
25 Department of Health or certification by the United States Food and Drug
26 Administration or other appropriate federal agency that the processing plant
27 in which the fish was packaged or processed meets sanitary conditions within
28 at least the minimum requirements of the laws and regulations of this state
29 for fish processing plants, or proof may be upon the certification of the
30 supplier that the fish packaged or processed outside this state, or in a
31 foreign country, was packaged or processed in a fish processing plant that
32 meets at least the minimum requirements of the laws and regulations of this
33 state for sanitary conditions for fish processing plants.

34 (c) Any supplier of fresh, cold storage, or frozen fish or any
35 distributor or retailer who sells any fish in this state in violation of the
36 provisions of this section shall each be individually and severally subject

1 to the ~~criminal~~ civil penalties as provided in subsection (d) of this
2 section.

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

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

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

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

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

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

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

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

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

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

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

35 (B) If the violator fails to pay the penalty, a civil
36 action may be brought by the board in any court of competent jurisdiction to

1 recover the penalty.

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

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

6
7 SECTION 2. Arkansas Code § 20-61-202(2), concerning the definitions
8 under the Arkansas Catfish Marketing Act, is amended to read as follows:

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

11
12 SECTION 3. Arkansas Code § 20-61-202(14), concerning the definitions
13 under the Arkansas Catfish Marketing Act, is amended to read as follows:

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

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

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

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

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

35 (A) Not less than five hundred dollars (\$500) nor more
36 than one thousand dollars (\$1,000) for a first violation;

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

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

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

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

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

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

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

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

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

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

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

35 (d) The director is authorized to apply for and the court to grant a
36 temporary or permanent injunction restraining any person from violating or

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

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

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

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

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

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

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

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

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

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

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32 /s/ Rankin
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