

SENATE BILL 3096

By Stewart

AN ACT to amend Tennessee Code Annotated, Title 53,
relative to labeling of fish and fish products.

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

SECTION 1. Tennessee Code Annotated, Title 53, is amended by adding Sections 2 through 8 as a new Chapter 15.

SECTION 2. This chapter shall be known and may be cited as the "Tennessee Catfish Marketing Law".

SECTION 3. The general assembly finds that aquaculture sales and consumption have increased worldwide and that the use of antibiotics or chemicals not approved for use in food-producing animals in the United States is permitted in aquaculture in other countries and that consumers of aquaculture in Tennessee should be provided clear information as to where the aquaculture product originates to protect the health and welfare of Tennessee consumers. The general assembly further finds that food-misrepresentation or the passing off of less expensive aquaculture products as more expensive aquaculture products to unknowing customers and retailers has become an issue in the marketplace and is a deceitful practice. Consumers and retailers should be informed of the country of origin and species of fish in the marketplace.

SECTION 4. As used in this chapter, unless the context clearly requires otherwise:

(1) "Catfish" means only those species within the family Ictaluridae, Ariidae, Anarchichadidae, or Loricariidae;

(2) "Catfish product" means any item capable of use as human food that is made wholly or in part from any catfish or portion thereof, except products that contain catfish only in small proportions or historically have not been, in the judgment of the commissioner, considered by consumers as products of the United States commercial catfish industry and that are exempted

from definition as a catfish product by the commissioner 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. Catfish product shall be deemed capable of use as human food unless it is denatured or otherwise identified as required by regulations prescribed by the commissioner to deter its use as human food, or unless it is naturally inedible to humans;

(3) "Commissioner" means the commissioner of agriculture;

(4) "Department" means the department of agriculture;

(5) "Direct retail sale" means the sale of catfish, catfish products, siluriformes, or siluriforme products individually or in small quantities directly to the consumer;

(6) "Distributor" means any person offering for sale, exchange, or barter any catfish, catfish products, siluriformes, or siluriforme products destined for direct retail sale in this state;

(7) "Farm-raised catfish" means a catfish that has been specifically produced in fresh water according to the usual and customary techniques of commercial aquaculture and includes fillets, steaks, nuggets, and any other flesh from a farm-raised catfish;

(8) "Food service establishment" means a restaurant, cafeteria, lunch room, food stand, saloon, tavern, bar, lounge, or other similar facility operated as an enterprise engaged in the business of selling food to the public;

(9) "Label" means a display of written, printed, or graphic matter upon or affixed to the container or wrapper in which catfish, catfish products, siluriformes, or siluriforme products are offered for direct retail sale;

(10) "Labeling" means all labels and other written, printed, or graphic matter upon a catfish, catfish product, siluriforme, or siluriforme product or any of its containers or wrappers, offered for direct retail sale;

(11) "Menu" means any listing of food and beverage options for a diner or customer to select from regardless of its form;

(12) "Person" includes any individual, partnership, corporation, and association, or other legal entity;

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

(14) "Producer" means any person engaged in the business of harvesting catfish or siluriformes, by any method, intended for direct retail sale;

(15) "Product name" means the name of the catfish, catfish product, siluriforme, or siluriforme product intended for retail sale which identifies it as to kind, class, or specific use;

(16) "Retailer" means any person offering for sale catfish, catfish products, siluriformes, or siluriforme products to individual consumers and representing the last sale prior to human consumption and includes food service establishments unless otherwise stated in this chapter;

(17) "River or lake catfish" means a catfish that has been produced in a freshwater lake, river, or stream, but has not been produced according to the usual and customary techniques of commercial aquaculture;

(18) "Siluriforme" means fish in the taxonomic order Siluriformes and including those within the taxonomic families Siluridae, Clariidae, and Pangasiidae and those commonly known as basa and tra;

(19) "Siluriforme product" means any item capable of use as human food which is made wholly or in part from any siluriforme or portion thereof. "Siluriforme product" shall be deemed capable of use as human food unless it is denatured or otherwise identified as required by regulations prescribed by the commissioner to deter its use as human food, or unless it is naturally inedible to humans; and

(20) "Wholesaler" means any person offering for sale any catfish, catfish products, siluriformes, or siluriforme products destined for direct retail sale in this state.

SECTION 5.

(a) All retailers of catfish, catfish products, siluriformes, or siluriforme products shall notify consumers, at the final point of sale of the catfish, catfish products, siluriformes, or siluriforme products to the consumers, of the country of origin of the catfish, catfish products, siluriformes, or siluriforme products.

(b) A retailer of catfish or catfish products may designate the catfish or catfish product as having a United States country of origin only if:

(1) It is hatched, raised, harvested, and processed in the United States, in the case of farm-raised catfish; or

(2) It is harvested in waters of the United States or a territory of the United States and is processed in the United States or a territory of the United States, in the case of river or lake catfish.

(c) The notice of country of origin for catfish shall distinguish between farm raised or wild caught.

(d)(1) Retailers shall notify consumers of the country of origin of the catfish, catfish products, siluriformes, or siluriforme products by means of a label, stamp, mark, placard, or other clear and visible sign on the catfish, catfish products, siluriformes, or siluriforme products, or on the package, display, holding unit, or bin containing the catfish, catfish products, siluriformes, or siluriforme products at the final point of sale to consumers.

(2) If the catfish, catfish products, siluriformes, or siluriforme products are already individually labeled for retail sale regarding country of origin, the retailer shall not be required to provide any additional information to comply with the requirements of this chapter.

(3) The commissioner may require that any person that prepares, stores, handles, or distributes catfish, catfish products, siluriformes, or siluriforme products for retail sale maintain a verifiable recordkeeping audit trail that permits the commissioner to verify compliance with this chapter and any rules or regulations promulgated under this chapter.

(e)(1) No owner or manager of a food service establishment that sells imported catfish shall misrepresent to the public, either verbally, on a menu, or on signs displayed on the premises, that the catfish is domestic.

(2) If the food service establishment offers for sale only catfish or catfish products having a United States country of origin, it may notify consumers of this information with a sign placed in a prominent location in the food service establishment in lieu of disclosure on the menu.

(3) Signs notifying consumers of the sale of catfish or catfish products having a United States country of origin shall be approved, as indicated by a stamp or seal, by the department. Any liability arising from failure to disclose country of origin shall remain with the wholesaler, retailer, or food service establishment.

(4) If the food service establishment offers for sale imported catfish or catfish products it shall disclose this information to consumers on its menus.

(f) Any distributor or wholesaler engaged in the business of supplying catfish, catfish products, siluriformes, or siluriforme products to a retailer or food service establishment shall provide information to the retailer or food service establishment indicating the country of origin of the catfish or siluriformes or the country of origin of the catfish or siluriformes used in making the catfish product or siluriforme product. The information shall include certification of origin through a state or federal agency that regulates the processing of catfish, catfish products, siluriformes, or suluriforme products or through a federal agency that verifies catfish, catfish products, siluriformes, or siluriforme products produced in countries other than the United States that meet similar sanitation requirements.

(g)(1) Advertising of any catfish, catfish product, siluriformes, or siluriforme products shall notify consumers of the country of origin of the catfish, catfish products, siluriformes, or siluriforme products.

(2) The term "catfish" shall not be used as a common name or brand name or used to advertise, distribute, or label any other fish or fish product except for those species defined as "catfish" or "catfish product" in Section 4.

(3) It is a violation of this chapter to use the term "catfish" in the advertising, distributing, labeling, or selling of any of those species within the family of Siluridae, Clariidae, and Pangasiidae or any other fish not defined as "catfish" or "catfish product" in Section 4 of this act.

(4) The department, in consultation with the Tennessee Restaurant Association, shall employ a marketing campaign that places an emphasis on highlighting the benefits of patronizing Tennessee restaurants and eating domestic catfish.

(h) The commissioner shall regulate and inspect retail and food service establishments and shall have authority to enter the premises of any wholesaler, processor, distributor, retailer, or any other person selling catfish, catfish products, siluriformes, or siluriforme products in order to determine compliance with this chapter; however, the commissioner shall only inspect food service establishments to determine compliance with this act when the department receives a complaint. In addition, any wholesaler or distributor shall provide its sales and purchases records of catfish, catfish products, siluriformes, or siluriforme products upon request by the commissioner.

(i) This chapter shall not apply to catfish or catfish products exported out of the United States.

SECTION 6.

(a) The commissioner shall notify, in writing, any retailer or food service establishment in violation of this chapter and shall give the retailer or food service establishment three (3) days

to correct the violation. No penalties shall apply to any retailer or food service establishment that corrects the violation within (3) three days from the date of notification by the commissioner.

(b) In addition to any other civil or criminal penalties, any person who violates any of the provisions of this chapter or who otherwise misrepresents as catfish any other fish or other fish product not defined as "catfish" or as "catfish product" in Section 4 shall be subject to a civil penalty of not more than one thousand dollars (\$1,000). For a second offense, a person shall be subject to a civil penalty of not more than two thousand dollars (\$2,000). For any subsequent violations, a person shall be subject to a civil penalty of not more than five thousand dollars (\$5,000) or by having the license for the retail or food establishment suspended indefinitely or until such establishment has corrected the violation, or both. Any retailer offering catfish or catfish products for sale that are found to be designated incorrectly as to the country of origin or the method of production shall not be held liable by reason of the conduct of another if the retailer proves such retailer had no knowledge of the violation.

(c) Any person against whom a complaint is made or who has been made subject to a civil penalty or license suspension as provided by this section shall be entitled to a hearing in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(d) Any owner or manager of a food service establishment who violates this section shall, upon a first offense, be subject to a civil penalty of one hundred dollars (\$100); upon a second offense, be subject to a civil penalty of two hundred fifty dollars (\$250); and upon a third or subsequent offense, be subject to a civil penalty of one thousand dollars (\$1,000).

SECTION 7. The commissioner shall have authority to enter the premises of any wholesaler, distributor, or retailer to pull samples of catfish, catfish products, siluriformes, or siluriforme products for laboratory testing to test for species identification or any other testing as may be necessary to determine compliance with this chapter.

SECTION 8. The department of health and the department of agriculture shall enter into a written cooperative endeavor agreement authorizing the department of agriculture to perform inspections in order to determine compliance with this chapter.

SECTION 9. The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the uniform administrative procedure act, compiled in title 4, chapter 5.

SECTION 10. Tennessee Code Annotated, Section 53-1-115, is amended by deleting such section in its entirety.

SECTION 11. This act shall take effect July 1, 2010, the public welfare requiring it.