

BILL ANALYSIS

Senate Research Center
82R3897 SJM-D

S.B. 751
By: Hegar
Health & Human Services
3/17/2011
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Many fish imports from China, Vietnam, and parts of Asia's aquaculture pose a serious health risk because of the unsanitary conditions of some Chinese fish farms, including water polluted by untreated sewage; fish contaminated by bacteria, viruses, and parasites; and fish treated with antibiotics and other veterinary medicines that are banned in the United States (U.S.) as dangerous to human health. Imported catfish from China, Vietnam, and parts of Asia have been tested and found by the Food and Drug Administration (FDA) to contain banned drugs and chemical residues which are illegal in the U.S. These drugs and chemicals are linked to cancer, anemia, and birth defects.

Consumers have the right to know where their catfish is from and S.B. 751 would require Texas restaurants to disclose if their catfish is of foreign origin; a disclosure statement would be printed on the menu (when reprinting occurs) or on a sign displayed in the restaurant. There is no current law requiring this disclosure.

As proposed, S.B. 751 amends current law relating to the regulation of catfish and other siluriform fish intended for human consumption and provides civil and administrative penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Section 436.135, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 436, Health and Safety Code, by adding Subchapter J, as follows:

SUBCHAPTER J. LABELING AND MARKETING OF CATFISH AND OTHER SILURIFORM FISH

Sec. 436.121. DEFINITIONS. Defines "catfish," "catfish product," "commissioner," "container," "department," "distributor," "executive commissioner," "farm-raised catfish," "food service establishment," "label," "processor," "producer," "retailer," "siluriform fish," "siluriform fish product," "wholesaler," and "wild catfish," in this subchapter.

Sec. 436.122. EXEMPTION OF CATFISH PRODUCTS. Authorizes the commissioner of state health services (commissioner) to exempt from regulation under this subchapter a catfish or catfish product that contains catfish only in small portions or that is not typically considered a product of the United States catfish industry.

Sec. 436.123. LABELING REQUIRED. (a) Requires a retailer of catfish, a catfish product, siluriform fish, or a siluriform fish product to affix a label to the container of the product designating the country of origin of the catfish or siluriform fish used to make the product, and if the product is made from catfish, whether the product is made from farm-raised catfish or wild catfish.

(b) Authorizes the retailer to designate the United States as the country of origin of catfish or catfish product only if, for catfish or a catfish product made from farm-raised catfish, the catfish is hatched, raised, harvested, and processed in the United States, or for catfish or catfish product made from wild catfish, the catfish is harvested and processed in the waters of the United States or a territory of the United States.

(c) Requires a distributor or wholesaler of catfish, a catfish product, siluriform fish, or a siluriform fish product at the time of sale to a retailer to provide the retailer with the information necessary for the retailer to comply with Subsections (a) and (b), including certification of the country of origin of catfish, a catfish product, siluriform fish, or a siluriform fish product from a state or federal agency that regulates the processing or importing of catfish or siluriform fish.

Sec. 436.124. **REQUIREMENTS FOR FOOD SERVICE ESTABLISHMENTS.** (a) Provides that in this section "menu board" means a posted list or pictorial display of food items offered for sale by a food service establishment.

(b) Requires that a food service establishment, except as provided by Subsection (c), disclose before the point of purchase the following information for any catfish or catfish product sold by the establishment by printing the information adjacent to the product on the menu or menu board in the same font style and size as the product the country of origin of the catfish or catfish product, and whether the catfish or catfish product is made from farm-raised catfish or wild catfish.

(c) Authorizes the establishment, if a food service establishment offers for sale only catfish or catfish products made from catfish originating in the United States, to disclose the country of origin information generally in one location in the establishment in lieu of menu or menu board disclosure.

Sec. 436.125. **CERTAIN MARKETING PROHIBITED.** Prohibits a retailer, distributor, wholesaler, or food service establishment from using the term "catfish" to label or advertise the sale of a fish that is not included in the definition of catfish under Section 436.121.

Sec. 436.126. **RECORDS REQUIRED; AUDIT BY DEPARTMENT.** (a) Authorizes the commissioner, for the purpose of verifying the country of origin of catfish, a catfish product, siluriform fish, or a siluriform fish product, to require a retailer, distributor, wholesaler, or food service establishment to maintain records of the country of origin of the catfish, catfish product, siluriform fish, or siluriform fish product that the retailer, distributor, wholesaler, or food service establishment handles.

(b) Authorizes the Department of State Health Services (DSHS) at any time to conduct an audit of the records maintained by a retailer, distributor, wholesaler, or food service establishment under Subsection (a).

Sec. 436.127. **INSPECTION.** (a) Authorizes the commissioner, an authorized agent, or a health authority to, on presenting appropriate credentials to the owner, operator, or agent in charge:

(1) enter at reasonable times, including when processing is conducted, an establishment or location in which catfish, a catfish product, siluriform fish, or a siluriform fish product is processed, packed, pasteurized, or held for introduction into commerce or held after introduction into commerce;

(2) enter a vehicle being used to transport or hold the catfish, a catfish product, siluriform fish, or a siluriform fish product in commerce; or

(3) inspect the establishment, location, or vehicle, including equipment, records, files, papers, materials, containers, labels, or other items, and obtain samples necessary for enforcement of this subchapter.

(b) Provides that the inspection of an establishment or location is to determine whether the catfish, a catfish product, siluriform fish, or a siluriform fish product is adulterated or misbranded; may not be processed, introduced into commerce, sold, or offered for sale under this subchapter or rules adopted by the executive commissioner of the Health and Human Services Commission (executive commissioner); or is otherwise in violation of this subchapter.

(c) Prohibits the commissioner, an authorized agent, or a health authority from inspecting:

(1) financial data;

(2) sales data, other than shipment data;

(3) pricing data;

(4) personnel data, other than personnel data relating to the qualifications of technical and professional personnel; or

(5) research data.

Sec. 436.128. VIOLATION; INJUNCTION. (a) Authorizes the commissioner, an authorized agent, or a health authority to petition the district court for a temporary restraining order to restrain a continuing violation or a threat of continuing violation of this subchapter if the commissioner, authorized agent, or health authority believes that a person has violated, is violating, or is threatening to violate a provision of this subchapter; and the violation or threatened violation creates an immediate threat to the health and safety of the public.

(b) Requires the court, if the court finds that a person is violating or threatening to violate this subchapter, to grant injunctive relief.

(c) Provides that a venue for a suit brought under this section is in the county in which the violation or threat of violation is alleged to have occurred or in Travis County.

Sec. 436.129. CIVIL PENALTY; CIVIL LIABILITY. (a) Requires, at the request of the commissioner, the attorney general or a district, county, or municipal attorney to institute an action in district or county court to collect a civil penalty from a person who has violated this subchapter.

(b) Provides that a person who violates this subchapter is liable for a civil penalty not to exceed \$25,000 a day for each violation. Provides that each day of continuing violation constitutes a separate violation for purposes of penalty assessment.

(c) Provides that a retailer of, wholesaler of, or food service establishment that serves catfish, a catfish product, siluriform fish, or a siluriform fish product is liable for damages arising from a civil suit initiated under this subchapter for failure to comply with Section 436.123 or 436.124. Prohibits a producer, processor, or distributor from being held liable for damages arising from a civil suit initiated as the result of a failure to disclose the country of origin of catfish or siluriform fish.

(d) Requires the court, in determining the amount of the penalty, to consider:

- (1) the person's history of previous violations under this chapter;
- (2) the seriousness of the violation;
- (3) any hazard to the health and safety of the public;
- (4) the demonstrated good faith of the person; and
- (5) other matters as justice may require.

(e) Requires that a civil penalty recovered in a suit instituted by the attorney general under this subchapter be deposited in the state treasury to the credit of the general revenue fund. Requires a civil penalty recovered in suit instituted by a local government under this subchapter to be paid to the local government.

(f) Provides that venue for a suit to collect a civil penalty brought under this section is in the municipality or county in which the violation occurred or in Travis County.

Sec. 436.130. WRITTEN NOTIFICATION OF VIOLATION; ADMINISTRATIVE PENALTY. (a) Requires the commissioner, if the commissioner finds that a person has violated this subchapter, to notify the person in writing. Prohibits the commissioner, if the person corrects the violation by the third day after the date the person receives the written notification, from assessing administrative penalties against the person under this subchapter.

(b) Authorizes the commissioner, in addition to a penalty imposed by Subchapter C, to assess an administrative penalty against a person who violates this subchapter and fails to correct the violation under Subsection (a) in the amount of:

- (1) not more than \$1,000 for the person's first violation;
- (2) not more than \$2,000 for the person's second violation; and
- (3) not more than \$5,000 for the person's third or subsequent violation.

Sec. 436.131. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE. (a) Authorizes the commissioner to assess an administrative penalty only after a person charged with a violation is given an opportunity for a hearing.

(b) Requires the commissioner, if a hearing is held, to make findings of fact and to issue a written decision regarding the violation and the amount of the penalty.

(c) Authorizes the commissioner, if the person charged with the violation does not request a hearing, to assess a penalty after determining that a violation has occurred and the amount of the penalty.

(d) Requires the commissioner to issue an order requiring a person to pay a penalty assessed under this section.

(e) Authorizes the commissioner to consolidate a hearing held under this section with another proceeding.

Sec. 436.132. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Requires the commissioner, not later than the 30th day after the date an order is issued under Section 436.131(d), to notify the person against whom the penalty is assessed of the order and the amount of the penalty.

(b) Requires the person, not later than the 30th day after the date notice of the order is given to the person, to pay the penalty in full, or seek judicial review of the amount of the penalty, the findings of the commissioner, or both.

(c) Requires the person, if the person seeks judicial review, to send the amount of the penalty to the commissioner for placement in an escrow account, or post with the commissioner a bond for the amount of the penalty.

(d) Requires that a bond posted under this section be in a form approved by the commissioner and to be effective until judicial review of the order or decision is final.

(e) Provides that a person who does not send the money to the commissioner or post the bond within the period described by Subsection (b) waives all rights to contest the violation or the amount of the penalty.

(f) Authorizes the attorney general, at the request of the commissioner, to bring a civil action to recover an administrative penalty assessed under this subchapter.

Sec. 436.133. REFUND OF ADMINISTRATIVE PENALTY. Requires the commissioner, not later than the 30th day after the date of a judicial determination that an administrative penalty against a person should be reduced or not assessed, to remit to the person the appropriate amount of any penalty payment plus accrued interest, or execute a release of the bond if the person has posted a bond.

Sec. 436.134. PUBLIC DISCLOSURE. Authorizes the DSHS to disclose to the public a list of retailers and food service establishments in this state that purchase catfish, a catfish product, siluriform fish, or a siluriform fish product from a wholesaler, distributor, or processor, including the countries of origin of catfish, a catfish product, siluriform fish, or a siluriform product sold by the listed retailers and food service establishments; and any violation of this subchapter committed by a listed retailer or food service establishment.

Sec. 436.135. RULES. Authorizes the executive commissioner to adopt rules as necessary to administer and enforce this subchapter.

SECTION 2. Effective date: September 1, 2011.