

By: Hegar

S.B. No. 751

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of catfish and other siluriform fish intended for human consumption; providing civil and administrative penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 436, Health and Safety Code, is amended by adding Subchapter J to read as follows:

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

Sec. 436.121. DEFINITIONS. In this subchapter:

(1) "Catfish" means a fish that is classified in the taxonomic family Ictaluridae.

(2) "Catfish product" means a food item intended for human consumption that is made wholly or partly from catfish. The term does not include:

(A) a catfish that has been denatured, is inedible, or is designated by the commissioner as unsuitable for human consumption; or

(B) a food item exempted from regulation under this subchapter by the commissioner under Section 436.122.

(3) "Commissioner" means the commissioner of state health services.

(4) "Container" means the physical material in contact with or immediately surrounding catfish, a catfish product,

1 siluriform fish, or a siluriform fish product.

2 (5) "Department" means the Department of State Health
3 Services.

4 (6) "Distributor" means a person offering catfish, a
5 catfish product, siluriform fish, or a siluriform fish product for
6 sale to a retailer.

7 (7) "Executive commissioner" means the executive
8 commissioner of the Health and Human Services Commission.

9 (8) "Farm-raised catfish" means catfish that has been
10 produced and harvested in freshwater using customary methods of
11 commercial aquaculture. The term includes a fillet, steak, nugget,
12 or any other meat from a catfish described by this subdivision.

13 (9) "Food service establishment" means a business that
14 sells or otherwise serves individual portions of food, intended for
15 human consumption, directly to the consumer.

16 (10) "Label" means written, printed, or graphic matter
17 appearing on a container of catfish, a catfish product, siluriform
18 fish, or a siluriform fish product.

19 (11) "Processor" means a person engaged in handling,
20 sorting, storing, preparing, manufacturing, packing, or holding
21 catfish, a catfish product, siluriform fish, or a siluriform fish
22 product.

23 (12) "Producer" means a person engaged in harvesting
24 catfish or siluriform fish intended for sale by a retailer.

25 (13) "Retailer" means a person offering catfish, a
26 catfish product, siluriform fish, or a siluriform fish product for
27 sale to the public. The term includes a food service establishment.

1 (14) "Siluriform fish" means a fish that is classified
2 in the taxonomic order Siluriformes, including the taxonomic
3 families Siluridae, Clariidae, and Pangasiidae and the fish
4 commonly known as basa, tra, and swai.

5 (15) "Siluriform fish product" means a food item
6 intended for human consumption that is made wholly or partly from
7 siluriform fish. The term does not include a siluriform fish that
8 has been denatured, is inedible for a human, or is designated by the
9 commissioner as unsuitable for human consumption.

10 (16) "Wholesaler" means a person who distributes
11 catfish, a catfish product, siluriform fish, or a siluriform fish
12 product for resale either through a retail outlet owned by the
13 wholesaler or another person.

14 (17) "Wild catfish" means catfish that is harvested in
15 the wild. The term includes a fillet, steak, nugget, or any other
16 meat from a catfish described by this subdivision.

17 Sec. 436.122. EXEMPTION OF CATFISH PRODUCTS. The
18 commissioner may exempt from regulation under this subchapter a
19 catfish or catfish product that contains catfish only in small
20 portions or that is not typically considered a product of the United
21 States catfish industry.

22 Sec. 436.123. LABELING REQUIRED. (a) A retailer of
23 catfish, a catfish product, siluriform fish, or a siluriform fish
24 product shall affix a label to the container of the product
25 designating:

26 (1) the country of origin of the catfish or siluriform
27 fish used to make the product; and

1 (2) if the product is made from catfish, whether the
2 product is made from farm-raised catfish or wild catfish.

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

5 (1) for catfish or a catfish product made from
6 farm-raised catfish, the catfish is hatched, raised, harvested, and
7 processed in the United States; or

8 (2) for catfish or a catfish product made from wild
9 catfish, the catfish is harvested and processed in the waters of the
10 United States or a territory of the United States.

11 (c) A distributor or wholesaler of catfish, a catfish
12 product, siluriform fish, or a siluriform fish product at the time
13 of sale to a retailer shall provide the retailer with the
14 information necessary for the retailer to comply with Subsections
15 (a) and (b), including certification of the country of origin of
16 catfish, a catfish product, siluriform fish, or a siluriform fish
17 product from a state or federal agency that regulates the
18 processing or importing of catfish or siluriform fish.

19 Sec. 436.124. REQUIREMENTS FOR FOOD SERVICE
20 ESTABLISHMENTS. (a) In this section, "menu board" means a posted
21 list or pictorial display of food items offered for sale by a food
22 service establishment.

23 (b) Except as provided by Subsection (c), a food service
24 establishment shall disclose before the point of purchase the
25 following information for any catfish or catfish product sold by
26 the establishment by printing the information adjacent to the
27 product on the menu or menu board in the same font style and size as

1 the product:

2 (1) the country of origin of the catfish or catfish
3 product; and

4 (2) whether the catfish or catfish product is made
5 from farm-raised catfish or wild catfish.

6 (c) If a food service establishment offers for sale only
7 catfish or catfish products made from catfish originating in the
8 United States, the establishment may disclose the country of origin
9 information generally in one location in the establishment in lieu
10 of menu or menu board disclosure.

11 Sec. 436.125. CERTAIN MARKETING PROHIBITED. A retailer,
12 distributor, wholesaler, or food service establishment may not use
13 the term "catfish" to label or advertise the sale of a fish that is
14 not included in the definition of catfish under Section 436.121.

15 Sec. 436.126. RECORDS REQUIRED; AUDIT BY DEPARTMENT. (a)
16 For the purpose of verifying the country of origin of catfish, a
17 catfish product, siluriform fish, or a siluriform fish product, the
18 commissioner may require a retailer, distributor, wholesaler, or
19 food service establishment to maintain records of the country of
20 origin of the catfish, catfish product, siluriform fish, or
21 siluriform fish product that the retailer, distributor,
22 wholesaler, or food service establishment handles.

23 (b) The department at any time may conduct an audit of the
24 records maintained by a retailer, distributor, wholesaler, or food
25 service establishment under Subsection (a).

26 Sec. 436.127. INSPECTION. (a) The commissioner, an
27 authorized agent, or a health authority may, on presenting

1 appropriate credentials to the owner, operator, or agent in charge:

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

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

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

14 (b) The inspection of an establishment or location is to
15 determine whether the catfish, a catfish product, siluriform fish,
16 or a siluriform fish product:

17 (1) is adulterated or misbranded;

18 (2) may not be processed, introduced into commerce,
19 sold, or offered for sale under this subchapter or rules adopted by
20 the executive commissioner; or

21 (3) is otherwise in violation of this subchapter.

22 (c) The commissioner, an authorized agent, or a health
23 authority may not inspect:

24 (1) financial data;

25 (2) sales data, other than shipment data;

26 (3) pricing data;

27 (4) personnel data, other than personnel data relating

1 to the qualifications of technical and professional personnel; or

2 (5) research data.

3 Sec. 436.128. VIOLATION; INJUNCTION. (a) The
4 commissioner, an authorized agent, or a health authority may
5 petition the district court for a temporary restraining order to
6 restrain a continuing violation or a threat of a continuing
7 violation of this subchapter if the commissioner, authorized agent,
8 or health authority believes that:

9 (1) a person has violated, is violating, or is
10 threatening to violate a provision of this subchapter; and

11 (2) the violation or threatened violation creates an
12 immediate threat to the health and safety of the public.

13 (b) If the court finds that a person is violating or
14 threatening to violate this subchapter, the court shall grant
15 injunctive relief.

16 (c) Venue for a suit brought under this section is in the
17 county in which the violation or threat of violation is alleged to
18 have occurred or in Travis County.

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

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

1 (c) A retailer of, wholesaler of, or food service
2 establishment that serves catfish, a catfish product, siluriform
3 fish, or a siluriform fish product is liable for damages arising
4 from a civil suit initiated under this subchapter for failure to
5 comply with Section 436.123 or 436.124. A producer, processor, or
6 distributor may not be held liable for damages arising from a civil
7 suit initiated as the result of a failure to disclose the country of
8 origin of catfish or siluriform fish.

9 (d) In determining the amount of the penalty, the court
10 shall consider:

11 (1) the person's history of previous violations under
12 this chapter;

13 (2) the seriousness of the violation;

14 (3) any hazard to the health and safety of the public;

15 (4) the demonstrated good faith of the person; and

16 (5) other matters as justice may require.

17 (e) A civil penalty recovered in a suit instituted by the
18 attorney general under this subchapter shall be deposited in the
19 state treasury to the credit of the general revenue fund. A civil
20 penalty recovered in a suit instituted by a local government under
21 this subchapter shall be paid to the local government.

22 (f) Venue for a suit to collect a civil penalty brought
23 under this section is in the municipality or county in which the
24 violation occurred or in Travis County.

25 Sec. 436.130. WRITTEN NOTIFICATION OF VIOLATION;
26 ADMINISTRATIVE PENALTY. (a) If the commissioner finds that a
27 person has violated this subchapter, the commissioner shall notify

1 the person in writing. If the person corrects the violation by the
2 third day after the date the person receives the written
3 notification, the commissioner may not assess administrative
4 penalties against the person under this subchapter.

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

9 (1) not more than \$1,000 for the person's first
10 violation;

11 (2) not more than \$2,000 for the person's second
12 violation; and

13 (3) not more than \$5,000 for the person's third or
14 subsequent violation.

15 Sec. 436.131. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE.

16 (a) The commissioner may assess an administrative penalty only
17 after a person charged with a violation is given an opportunity for
18 a hearing.

19 (b) If a hearing is held, the commissioner shall make
20 findings of fact and shall issue a written decision regarding the
21 violation and the amount of the penalty.

22 (c) If the person charged with the violation does not
23 request a hearing, the commissioner may assess a penalty after
24 determining that a violation has occurred and the amount of the
25 penalty.

26 (d) The commissioner shall issue an order requiring a person
27 to pay a penalty assessed under this section.

1 (e) The commissioner may consolidate a hearing held under
2 this section with another proceeding.

3 Sec. 436.132. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not
4 later than the 30th day after the date an order is issued under
5 Section 436.131(d), the commissioner shall notify the person
6 against whom the penalty is assessed of the order and the amount of
7 the penalty.

8 (b) Not later than the 30th day after the date notice of the
9 order is given to the person, the person shall:

10 (1) pay the penalty in full; or

11 (2) seek judicial review of the amount of the penalty,
12 the findings of the commissioner, or both.

13 (c) If the person seeks judicial review, the person shall:

14 (1) send the amount of the penalty to the commissioner
15 for placement in an escrow account; or

16 (2) post with the commissioner a bond for the amount of
17 the penalty.

18 (d) A bond posted under this section must be in a form
19 approved by the commissioner and must be effective until judicial
20 review of the order or decision is final.

21 (e) A person who does not send the money to the commissioner
22 or post the bond within the period described by Subsection (b)
23 waives all rights to contest the violation or the amount of the
24 penalty.

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

1 Sec. 436.133. REFUND OF ADMINISTRATIVE PENALTY. Not later
2 than the 30th day after the date of a judicial determination that an
3 administrative penalty against a person should be reduced or not
4 assessed, the commissioner shall:

5 (1) remit to the person the appropriate amount of any
6 penalty payment plus accrued interest; or

7 (2) execute a release of the bond if the person has
8 posted a bond.

9 Sec. 436.134. PUBLIC DISCLOSURE. The department may
10 disclose to the public a list of retailers and food service
11 establishments in this state that purchase catfish, a catfish
12 product, siluriform fish, or a siluriform fish product from a
13 wholesaler, distributor, or processor, including:

14 (1) the countries of origin of catfish, a catfish
15 product, siluriform fish, or a siluriform fish product sold by the
16 listed retailers and food service establishments; and

17 (2) any violation of this subchapter committed by a
18 listed retailer or food service establishment.

19 Sec. 436.135. RULES. The executive commissioner may adopt
20 rules as necessary to administer and enforce this subchapter.

21 SECTION 2. This Act takes effect September 1, 2011.