

Regular Session, 2009

ACT No. 506

HOUSE BILL NO. 439

BY REPRESENTATIVE ELLINGTON AND SENATORS LONG, MCPHERSON,
NEVERS, RISER, SMITH, THOMPSON, AND WALSWORTH

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

1 AN ACT

2 To enact Subpart H of Part II of Chapter 30 of Title 3 of the Louisiana Revised Statutes of
3 1950, to be comprised of R.S. 3:4711 through 4718, relative to country of origin
4 labeling for catfish products; to require retail and food service establishments to
5 notify consumers of the country of origin of catfish; to provide for notification
6 requirements; to provide for definitions; to provide relative to advertising of catfish
7 products; to authorize the commissioner to regulate and inspect retail and food
8 service establishments; to provide for penalties; to provide for testing procedures; to
9 require a cooperative endeavor agreement; to authorize the commissioner to adopt
10 rules and regulations; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. Subpart H of Part II of Chapter 30 of Title 3 of the Louisiana Revised
13 Statutes of 1950, comprised of R.S. 3:4711 through 4718, is hereby enacted to read as
14 follows:

15 SUBPART H. LOUISIANA CATFISH MARKETING LAW

16 §4711. Short title

17 This Subpart shall be cited as the "Louisiana Catfish Marketing Law".

18 §4712. Legislative findings

19 The legislature finds that aquaculture sales and consumption have increased
20 worldwide and that the use of antibiotics or chemicals not approved for use in food-
21 producing animals in the United States is permitted in aquaculture in other countries
22 and that consumers of aquaculture in Louisiana should be provided clear information
23 as to where the aquaculture product originates to protect the health and welfare of

1 Louisiana consumers. The legislature further finds that food-misrepresentation or
2 the passing off of less expensive aquaculture products as pricier aquaculture products
3 to unknowing customers and retailers has become an issue in the marketplace and
4 is a deceitful practice. Consumers and retailers should be informed of the country
5 of origin and species of fish in the marketplace.

6 §4713. Definitions

7 As used in this Subpart, the following terms shall have the meanings ascribed
8 below:

9 (1) "Catfish" means only those species within the family Ictaluridae, Ariidae
10 or Loricariidae.

11 (2) "Catfish product" means any item capable of use as human food which
12 is made wholly or in part from any catfish or portion thereof, except products which
13 contain catfish only in small proportions or historically have not been, in the
14 judgment of the commissioner, considered by consumers as products of the United
15 States commercial catfish industry and which are exempted from definition as a
16 catfish product by the commissioner under such conditions as he may prescribe to
17 assure that the catfish or portions thereof contained therein are not adulterated and
18 that such products are not represented as catfish products. "Catfish product" shall
19 be deemed capable of use as human food unless it is denatured or otherwise
20 identified as required by regulations prescribed by the commissioner to deter its use
21 as human food, or unless it is naturally inedible to humans.

22 (3) "Commissioner" means the Louisiana commissioner of agriculture and
23 forestry.

24 (4) "Department" means the Louisiana Department of Agriculture and
25 Forestry.

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

1 (6) "Distributor" means any person offering for sale, exchange, or barter any
2 catfish, catfish products, siluriformes, or siluriforme products destined for direct
3 retail sale in Louisiana.

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

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

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

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

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

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

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

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

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

29 (16) "Retailer" means any person offering for sale catfish, catfish products,
30 siluriformes, or siluriforme products to individual consumers and representing the

1 last sale prior to human consumption and includes food service establishments unless
2 otherwise stated herein.

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

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

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

14 (20) "Wholesaler" means any person offering for sale any catfish, catfish
15 products, siluriformes, or siluriforme products destined for direct retail sale in
16 Louisiana.

17 §4714. Notice of country of origin

18 A. All retailers of catfish, catfish products, siluriformes, or siluriforme
19 products shall notify consumers, at the final point of sale of the catfish, catfish
20 products, siluriformes, or siluriforme products to the consumers, of the country of
21 origin of the catfish, catfish products, siluriformes, or siluriforme products.

22 B. A retailer of catfish or catfish products may designate the catfish or
23 catfish product as having a United States country of origin only if:

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

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

29 C. The notice of country of origin for catfish shall distinguish between farm
30 raised or wild caught.

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

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

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

16 E.(1) No owner or manager of a restaurant that sells imported catfish shall
17 misrepresent to the public, either verbally, on a menu, or on signs displayed on the
18 premises, that the catfish is domestic.

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

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

27 F. Any distributor or wholesaler engaged in the business of supplying
28 catfish, catfish products, siluriformes, or siluriforme products to a retailer or food
29 service establishment shall provide information to the retailer or food service
30 establishment indicating the country of origin of the catfish or siluriformes or the

1 country of origin of the catfish or siluriformes used in making the catfish product or
2 siluriforme product. The information shall include certification of origin through a
3 state or federal agency that regulates the processing of catfish, catfish products,
4 siluriformes, or suluriforme products or through a federal agency that verifies catfish,
5 catfish products, siluriformes, or siluriforme products produced in countries other
6 than the United States that meet similar sanitation requirements.

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

10 (2) The term "catfish" shall not be used as a common name or used to
11 advertise, distribute, or label any other fish or fish product except for those species
12 defined as catfish in R.S. 3:4713(1) or catfish product in R.S. 3:4713(2).

13 (3) It is unlawful to use the term "catfish" in the advertising, distributing,
14 labeling, or selling of any of those species within the family of Siluridae, Clariidae,
15 and Pangasiidae or any other fish not defined as catfish in R.S. 3:4713(1) or catfish
16 product in R.S. 3:4713(2).

17 (4) The department and the Louisiana Restaurant Association shall employ
18 a marketing campaign that places an emphasis on highlighting the benefits of
19 patronizing Louisiana restaurants and eating domestic catfish.

20 H. The commissioner shall regulate and inspect retail and food service
21 establishments and shall have authority to enter the premises of any wholesaler,
22 processor, distributor, retailer, or any other person selling catfish, catfish products,
23 siluriformes, or siluriforme products in order to determine compliance with this
24 Subpart; however, the commissioner shall only inspect restaurants to determine
25 compliance with this Subpart when the department receives a complaint. In addition,
26 any wholesaler or distributor shall provide his sales and purchases records of catfish,
27 catfish products, siluriformes, or siluriforme products upon request by the
28 commissioner.

29 I. This Subpart shall not apply to catfish or catfish products exported out of
30 the United States.

1 §4715. Penalties

2 A. The commissioner shall notify, in writing, any retailer or food service
3 establishment in violation of this Subpart and shall give the retailer or food service
4 establishment three days to correct the violation. No penalties shall apply to any
5 retailer or food service establishment that corrects the violation within three days
6 from the date of notification by the commissioner.

7 B. In addition to any other civil or criminal penalties, any person who
8 violates any of the provisions of this Subpart or who otherwise misrepresents as
9 catfish any other fish or other fish product not defined as catfish in R.S. 3:4713(1)
10 or as catfish product in R.S. 3:4713(2) shall be punished by a fine of not more than
11 one thousand dollars. For a second offense, a person shall be punished by a fine of
12 not more than two thousand dollars. For any subsequent violations, a person shall
13 be punished by a fine of not more than five thousand dollars or by having the license
14 for the retail or food establishment suspended indefinitely or until such establishment
15 has corrected the violation, or both. Any retailer offering catfish or catfish products
16 for sale that are found to be designated incorrectly as to the country of origin or the
17 method of production shall not be held liable by reason of the conduct of another if
18 the retailer proves they had no knowledge of the violation.

19 C. Any person against whom a complaint is made or who has been made
20 subject to a fine or license suspension as provided by this Section may avail
21 themselves of a due process administrative hearing.

22 D. Any owner or manager of a restaurant who is found guilty of a violation
23 of this Section shall, upon a first offense, be fined one hundred dollars; upon a
24 second offense, be fined two hundred fifty dollars and upon a third or subsequent
25 offense, be fined one thousand dollars.

26 §4716. Testing

27 The commissioner shall have authority to enter the premises of any
28 wholesaler, distributor, or retailer to pull samples of catfish, catfish products,
29 siluriformes, or siluriforme products for laboratory testing to test for species

1 identification or any other testing as may be necessary to determine compliance with
2 this Subpart.

3 §4717. Rules and Regulations

4 The commissioner shall promulgate rules and regulations for the
5 administration and enforcement of this Subpart.

6 §4718. Cooperative endeavor agreement

7 The Department of Health and Hospitals and the Department of Agriculture
8 and Forestry shall enter into a written cooperative endeavor agreement authorizing
9 the Department of Agriculture and Forestry to perform inspections in order to
10 determine compliance with this Subpart.

11 Section 2. The implementation of this Act shall be contingent upon the availability
12 of funds appropriated or otherwise made available.

13 Section 3. This Act shall become effective on November 1, 2009.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____