By: Representative Anderson (122nd)

To: Agriculture

# HOUSE BILL NO. 103

AN ACT TO CREATE THE "MISSISSIPPI SEAFOOD MARKETING LAW OF 2021"; TO PROVIDE FOR GENERAL NOTIFICATION REQUIREMENTS FOR COUNTRY OF ORIGIN BY RETAILERS OFFERING FOR SALE AND SUPPLIERS PROVIDING SEAFOOD AND SEAFOOD PRODUCTS TO RETAILERS; TO PROVIDE FOR THE DESIGNATION OF COUNTRY OF ORIGIN FOR SEAFOOD AND SEAFOOD PRODUCTS; TO PROVIDE THE METHOD OF NOTIFICATION TO BE EMPLOYED BY RETAILERS AND SUPPLIERS OF SEAFOOD AND SEAFOOD PRODUCTS; TO REQUIRE RETAIL AND FOOD SERVICE ESTABLISHMENTS TO POST SIGNAGE IN A VISIBLY PROMINENT LOCATION DISCLOSING THAT SEAFOOD OFFERED FOR SALE THEREIN MAY BE IMPORTED; TO PROVIDE THAT PUBLICATION OF NOTICE MAY BE ON WINDOWS, PLACARDS OR MENUS; TO AUTHORIZE THE COMMISSIONER OF AGRICULTURE AND THE EXECUTIVE DIRECTOR OF THE MISSISSIPPI DEPARTMENT OF MARINE RESOURCES TO PROMULGATE RULES AND REGULATIONS FOR THE ENFORCEMENT OF THIS ACT; TO AUTHORIZE THE COMMISSIONER AND THE EXECUTIVE DIRECTOR TO ENTER INTO COOPERATIVE AGREEMENTS WITH STATE AGENCIES, THE FEDERAL GOVERNMENT AND PRIVATE ASSOCIATIONS TO CARRY OUT THE PURPOSE AND PROVISIONS OF THIS ACT; TO AUTHORIZE THE COMMISSIONER AND THE EXECUTIVE DIRECTOR TO ENTER THE PREMISES OF A RETAILER TO CONDUCT A LABEL REVIEW TO DETERMINE COMPLIANCE WITH THIS ACT; TO AUTHORIZE THE COMMISSIONER OR EXECUTIVE DIRECTOR TO REQUIRE A VERIFIABLE AUDIT OF A RETAILER OF ANY SEAFOOD OR SEAFOOD PRODUCT; TO REQUIRE THAT A PERSON OR BUSINESS PROVIDE INFORMATION TO THE COMMISSIONER OR EXECUTIVE DIRECTOR VERIFYING THE SEAFOOD OR SEAFOOD PRODUCT'S COUNTRY OF ORIGIN; TO REQUIRE THE COMMISSIONER OR THE EXECUTIVE DIRECTOR TO PROVIDE WRITTEN NOTICE TO ANY RETAILER OR SUPPLIER IN VIOLATION OF THIS ACT AND PROVIDE THE TIME IN WHICH THE VIOLATOR SHALL HAVE TO CORRECT THE VIOLATION OR BE SUBJECT TO PENALTIES; TO PROVIDE FOR ADMINISTRATIVE HEARINGS, PROCEDURES, THE LEVELING OF SANCTION AND AN APPEALS PROCESS; AND FOR RELATED PURPOSES.

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

**SECTION 1.** This act shall be known as the "Mississippi Seafood Marketing Law of 2021."

**SECTION 2.** The Legislature finds that aquaculture sales and consumption have increased worldwide and that the use of antibiotics, radiation, toxins and numerous other chemicals found in seafood products, including, but not limited to, crawfish and shrimp that originate outside of the United States, which are not approved for use in food-producing animals in the United States, are permitted in aquaculture practices in other countries. It remains the intent of the Legislature to protect Mississippi consumers from potentially harmful chemicals and residues in seafood products that are imported from foreign countries and sold or served in retail and food service establishments in this state. The Legislature therefore declares that consumers of seafood products in Mississippi should be provided clear information as to where the seafood product originates to protect the health and welfare of Mississippi consumers. The Legislature also finds that food-misrepresentation or the passing off of less expensive seafood products as pricier seafood products to unknowing customers and retailers has become an issue in the marketplace and is a deceitful practice used on consumers and retailers alike and that consumers and retailers should be informed of the country of origin and species of the seafood product.

**SECTION 3.** This act shall be jointly administered by the Commissioner of Agriculture and Commerce and the Executive Director of the Department of Marine Resources.

**SECTION 4.** For purposes of this act, the following terms shall have the meaning ascribed herein unless the context otherwise requires:

(a) "Capable of use as human food" means and shall apply to any molluscan shell fish, crustacean or fish or part or product thereof classified as seafood or seafood product, whose natural marine habitats are within the brackish or saltwater environments of the inter-coastal and international waterways of the Gulf of Mexico, Atlantic Ocean, Pacific Ocean, or which are sustainably farmed through aquaculture practices, unless it is denatured or otherwise identified as required by regulations prescribed by the commissioner and executive director to deter its use as human food, or unless it is naturally inedible by humans.

(b) "Commissioner" means the Commissioner of Agriculture and Commerce of the State of Mississippi.

(c) "Direct retail sale" means the sale of seafood products individually or in small quantities directly to the consumer.

(d) "Distributor" means any person offering for sale, exchange or barter any seafood product destined for direct retail sale in the State of Mississippi.

(e) "Executive Director" means the Executive Director of the Mississippi Department of Marine Resources.

(f) "Farm-raised seafood" means seafood product that has been specifically produced in a controlled water environment according to the usual and customary techniques of commercial aquaculture.

(g) "Fish" means any species of saltwater fish which can be classified as marine pelagic, marine demersal or diadromous.

(h) "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.

(i) "Label" means a display of written, printed or graphic matter upon or affixed to the container in which a seafood product is offered for direct retail sale.

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

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

(l) "Molluscan shellfish" means any edible species of fresh or frozen oysters, clams, mussels, and scallops or edible

portions thereof, except when the product consists entirely of the shucked adductor muscle.

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

(n) "Processor" means any person engaged in handling, storing, preparing, manufacturing, packing or holding seafood products.

(o) "Producer" means any person engaged in the business of harvesting seafood, by any method, intended for direct retail sale.

(p) "Product" means any seafood product capable of use as human food which is made wholly or in part from any seafood or portion thereof, except products which contain only small proportions of seafood or historically have not been, in the judgment of the commissioner and executive director, considered by consumers as products of the United States commercial seafood industry and which are exempted from definition as a seafood product by the commissioner and executive director under such conditions as they may prescribe to assure that the seafood or portions thereof contained therein are not adulterated and that such products are not represented as seafood products.

(q) "Product name" means the name of the seafood item intended for retail sale which identifies it as to kind, class or specific use.

(r) "Retailer" means any person offering for sale seafood products to individual consumers and representing the last sale prior to human consumption and includes food service establishments, unless otherwise stated herein.

(s) "Seafood" means any form of sea life regarded as food by humans, prominently including various species of:

(i) Fish (e.g. marine pelagic, marine demersal and diadromous);

(ii) Mollusks (e.g. bivalve mollusks, such as clams, oysters and mussels;

(iii) Cephalopods, such as octopus and squid;

(iv) Gastropods;

(v) Crustaceans (e.g. shrimp, crabs, lobster and krill); and

(vi) Echinoderms (e.g. sea urchins).

(t) "Seafood product" means seafood that has been converted to various other product forms after having been generally processed or packaged for distribution to retail stores and restaurants. The converted forms of seafood include: fresh fish fillets or steaks, frozen products, breaded fish portions, canned or smoked products, or heat and serve or ready-to-eat products like seafood salads, entrees or other items.

(u) "Wholesaler" means any person offering for sale any seafood product destined for direct retail sale in the State of Mississippi.

(v) "Wild-captured seafood" means seafood product harvested from its natural marine environment using a variety of fishing methods.

**SECTION 5.** (1) Notice of country of origin.

(a) General requirements:

(i) All retailers of seafood and seafood products, as defined in Section 4 of this act, shall inform consumers, at the final point-of-sale of the seafood or seafood product to the consumers, of the country of origin of the seafood or seafood product;

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

1. In case of "Farm-raised seafood," it is hatched, raised, harvested and processed in the United States;

2. In case of "Wild-captured seafood," it is:

a. Harvested in the brackish or saltwater environments of the inter-coastal and international waterways of the Gulf of Mexico, Atlantic Ocean and Pacific Ocean, a territory of the United States or a state, including the waters thereof; and

b. Processed in the United States, a territory of the United States or a state, including the marine waters thereof;

(iii) Farm-raised and Wild-captured seafood. The notice of country of origin for "Farm-raised seafood" and "Wild-captured seafood" shall distinguish between "Farm-raised seafood" and "Wild-captured seafood."

(b) Method of notification.

(i) Retailers.

1. The information required by paragraph (a) of subsection (1) of this section may be provided to consumers by means of a label, stamp, mark, placard or other clear and visible sign on the seafood or seafood product or on the package, display, holding unit or bin containing the seafood or seafood product at the final point-of-sale to consumers.

2. If the seafood or seafood product is already individually labeled for retail sale regarding country of origin, the retailer shall not be required to provide any additional information to comply with this section.

(ii) Food service establishments. The information required by paragraph (a) of subsection (1) of this section shall be provided to the consumer on the menu of the food service establishment. For foreign or imported seafood or seafood products, the information shall be adjacent to the item on the menu and printed in the same font style and size as the item. If the food service establishment offers for sale only seafood or seafood products having a United States country of origin, then the food service establishment may generally disclose this in a

prominent location in the food service establishment in lieu of disclosure on the menu. The signage disclosing the sale of seafood or seafood product having a United States country of origin, that is to be placed in a prominent location in the food service establishment, shall be jointly approved by the Mississippi Department of Agriculture and Commerce and the Mississippi Department of Marine Resources, which shall be held harmless in a cause of action for a retail or food service establishment's failure to disclose or fraudulent disclosure. Any liability arising from failure to disclose country of origin shall remain with the wholesaler and the retail or food service establishment.

(iii) Retail and food service establishments shall post signage in a visibly prominent location within the retail establishment or food service establishment, whether in the container or refrigerator where the seafood or seafood product is kept, or in the window of such retail establishments, or, in the case of food service establishments, in the window, on the menu or on a placard placed upon each table, with the following notice of disclose: "Seafood offered for direct retail sale or for consumption as a menu item in this establishment may be imported. Inquire further of management."

However, if the retail establishment or food service establishment only offers seafood or seafood products with a United States country of origin, the notice of disclosure required

in this subparagraph (iii) shall not be required, and the retail establishment or food service establishment shall adhere to the notification provisions of subparagraphs (i) and (ii) of this paragraph (b).

(c) The commissioner and executive director may require any person who prepares, stores, handles or distributes seafood or seafood products for retail sale to maintain a verifiable recordkeeping audit trail that permits the commissioner and executive director to verify compliance with this law and any regulations promulgated hereunder.

(d) Any distributor or wholesaler engaged in the business of supplying seafood or seafood 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 seafood or seafood products. The information shall include certification of origin through a state or federal agency that regulates the processing of seafood or seafood products or through a federal agency that verifies that seafood or seafood products and/or other products produced in countries other than the United States meets similar sanitation requirements.

(2) Any advertising as to any seafood or seafood product shall state the information required in paragraph (a) of subsection (1) of this section.

(3) The term "seafood" shall not be used as a common name or in the label name of seafood products except as provided in this section.

(4) The commissioner and the executive director shall have authority to enter the premises of any wholesaler, processor, distributor, retailer or any other person selling seafood or seafood products in order to determine compliance with this act.

(5) This section shall not apply to seafood or seafood products exported out of the United States.

**SECTION 6.** (1) (a) The commissioner and the executive director shall regulate and inspect retail and food service establishments under this act.

(b) The commissioner or executive director shall notify, in writing, any retailer or food service establishment violating this act and shall give the retailer or food service establishment three (3) days to correct the violation. No penalties under this act shall apply to any retailer or food service establishment that corrects the violation within three (3) days from the date notified by the commissioner or the executive director.

(2) 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 seafood any product not defined as seafood under this act shall be punished by a fine of not more than One Thousand Dollars ($1,000.00). For a second offense, a

person shall be punished by a fine of not more than Two Thousand Dollars ($2,000.00). For any subsequent violations, a person shall be punished by a fine of not more than Five Thousand Dollars ($5,000.00) or by having the license for the retail or food establishment suspended indefinitely or until such establishment has corrected the violation, or both. Any person against whom a complaint is made or who has been made subject to a fine or license suspension as provided by this subsection, may avail themselves of a due process administrative hearing as provided by Section 14 of this act.

**SECTION 7.** All distributors, processors or wholesalers of seafood and seafood products, distributing or selling seafood and seafood products, shall provide information to each person, firm or corporation to whom they distribute or sell seafood and seafood products for resale as to the labeling information required in subsection (1) of Section 5 of this act.

**SECTION 8.** (1) All distributors, processors or wholesalers of seafood or other seafood products, distributing or selling seafood or other seafood products, shall provide information to the commissioner or the executive director or their designated representative, upon request, and to each retailer to which such distributor, processor or wholesaler distributes or sells seafood or other seafood products as to whether such product is Farm-raised seafood, Wild-captured seafood, Imported seafood, or other seafood product a product of (country of origin). In

addition, any wholesaler or distributor shall provide his or her sales and purchases records of seafood and other seafood product upon request by the commissioner or executive director.

(2) The commissioner or the executive director may disclose to the public the names and addresses of businesses that purchase domestic and/or foreign seafood and other seafood products from wholesalers, distributors and processors.

**SECTION 9.** (1) The commissioner and the executive director are authorized to promulgate any rules and regulations that may be necessary for the efficient enforcement of this act.

(2) Before the issuance, amendment or repeal of any rule or regulation authorized by this act, the commissioner and executive director shall jointly publish the proposed regulation, amendment or notice to repeal an existing regulation in a manner reasonably calculated to give interested parties adequate notice and shall afford all interested persons an opportunity to present their views thereon, orally or in writing, within a reasonable period of time. After consideration of all views presented by interested persons, the commissioner and executive director shall take appropriate action to issue the proposed rules or regulations or to amend or repeal an existing rule or regulation.

**SECTION 10.** The commissioner and executive director shall have authority to enter the premises of any wholesaler, distributor or retailer to pull samples of seafood and other seafood products for laboratory testing to test for species

identification and/or any other testing as may be necessary to determine compliance with this act.

**SECTION 11.** (1) Any person who violates any provision of this act for which no other penalty is provided by this act shall, upon conviction, be subject to a fine of not more than Five Hundred Dollars ($500.00).

(2) The commissioner or the executive director may apply for and the court may grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this act or any rule or regulation promulgated under this act, notwithstanding the existence of other remedies at law. The injunction shall be issued without bond.

**SECTION 12.** All persons selling seafood and seafood products within this state that are regulated by this act shall preserve and maintain all records of their purchases and sales of seafood and seafood products for a period of two (2) years after the purchases and sales have occurred. If the records are not kept on the premises, then the person has fourteen (14) days to produce the records.

**SECTION 13.** The commissioner and executive director may cooperate with and enter into agreements with governmental agencies of this state, agencies of the federal government, and private associations in order to carry out the purpose and provisions of this act.

**SECTION 14.** (1) When a complaint is made against a person for violation of any of the provisions of this act, or any of the rules or regulations promulgated hereunder, the Director of the Regulatory Division of the Mississippi Department of Agriculture and Commerce, the Director of the Office of Marine Fisheries, or their respective designees, shall act as reviewing officers. The complaint shall be filed with the Mississippi Department of Agriculture and Commerce or the Mississippi Department of Marine Resources. The reviewing officer shall cause to be delivered to the accused, in the manner described herein, a copy of the complaint and any supporting documents along with a summons requiring the accused to respond to the allegations within thirty (30) days after service of the summons and complaint upon the accused. The accused shall file with the reviewing department a written response to the complaint and any supporting documents within the thirty-day period. The accused may be notified by serving a copy of the summons and complaint on the accused or any of his or her officers, agents or employees by personal service or by certified mail. Upon the expiration of the thirty-day period, the reviewing officer shall review the complaint, the written response of the accused, if any, and all supporting documents offered by the parties in support of their respective positions. The reviewing officer's decision shall be based solely on the documents provided by the parties. If the reviewing officer determines that the complaint lacks merit, he or she may dismiss

the complaint. If he or she finds that there are reasonable grounds showing that a violation of the statutes or regulations has been committed, he or she may impose any or all of the following penalties upon the accused: (a) levy a civil penalty in the amount of no more than One Thousand Dollars ($1,000.00) for each violation; (b) issue a stop-sale order; (c) require the accused to re-label any seafood that he or she is offering for sale and which is not labeled in accordance with the provisions of this act; or (d) seize any seafood that is not in compliance with this act, and destroy, sell or otherwise dispose of the fish, and apply the proceeds of any such sale to the costs herein and any civil penalties levied, with the balance to be paid to the accused. The reviewing officer's decision shall be in writing, and it shall be delivered to the accused by any of the methods described herein for service of the summons and complaint on the accused.

(2) Either the accused or the reviewing department may appeal the decision of the reviewing officer to the Commissioner of Agriculture and Commerce or to the Executive Director of the Department of Marine Resources, respectively, by filing a notice of appeal with the reviewing department within thirty (30) days of receipt of the reviewing officer's decision. If no appeal is taken from the order of the reviewing officer within the allotted time, the order shall then become final. In the event of an appeal, the commissioner, the executive director, or their

designee, shall conduct a full evidentiary hearing relative to the charges. The commissioner or executive director may issue subpoenas to require the attendance of witnesses and the production of documents. Compliance with such subpoenas may be enforced by any court of general jurisdiction in this state. The testimony of witnesses shall be upon oath or affirmation, and they shall be subject to cross-examination. The proceedings shall be recorded by a court reporter. The commissioner and the executive director shall have all the powers of the reviewing officer of their respective departments described herein, and the commissioner or executive director may affirm, reverse or modify the order of the reviewing officer. The commissioner's or the executive director's decision shall be in writing, and it shall be delivered to the parties in the same manner that the summons and complaint may be served upon the accused.

(3) Either the accused or the reviewing department may appeal the decision of the commissioner or executive director to the circuit court of the county of residence of the accused, or if the accused is a nonresident of the State of Mississippi, to the Circuit Court of the First Judicial District of Hinds County, Mississippi. The appellant has the obligation of having the record transcribed and filed with the circuit court. The appeal shall otherwise be governed by all applicable laws and rules affecting appeals to the circuit court. If no appeal is perfected

within the required time, the decision of the commissioner, the executive director, or their designee, shall then become final.

(4) The decision of the circuit court may then be appealed by either party to the Mississippi Supreme Court in accordance with the existing laws and rules affecting such appeals.

(5) Where any violation of this act, or the rules and regulations promulgated hereunder, occurs, or is about to occur, that presents a clear and present danger to the public health, safety or welfare requiring immediate action, any of the department's field inspectors and any other persons authorized by the commissioner or the executive director, may issue an order to be effective immediately, before notice and a hearing, that imposes any or all of the penalties described herein against the accused. The order shall be served upon the accused in the same manner that the summons and complaint may be served upon him or her. The accused shall then have thirty (30) days after service of the order upon him or her within which to request an informal administrative review before the reviewing officer, or his or her designee, as described herein. The accused shall include within his or her request all documents that support his or her position. The department may also submit any documents that support its position. If the accused makes such a request within such time, the reviewing officer, or his or her designee, shall review the documents provided by the parties and render a written decision within thirty (30) days after such request is made. Upon the

making of such a request, the procedure described herein shall be followed, except that there is no need for a complaint to be filed against the accused. If the accused does not request an administrative review within such time frame, then he or she shall have waived his or her right to an administrative review.

**SECTION 15.** The commissioner and executive director shall jointly publish, at least biannually, in such form as they may deem proper, information concerning the sale of seafood and seafood products, together with such data on their production and use as they may consider advisable provided that the information concerning production and sales of seafood and seafood products shall not disclose the operation of any person.

**SECTION 16.** This act shall take effect and be in force from and after July 1, 2021.