

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
94th General Assembly
Regular Session, 2023

A Bill

HOUSE BILL 1618

By: Representative Wing
By: Senator Hill

For An Act To Be Entitled

AN ACT TO AMEND THE LAW REGARDING CATFISH PROCESSORS AND COMMERCIAL BAIT AND ORNAMENTAL FISH; TO TRANSFER THE POWERS, DUTIES, AND RESPONSIBILITIES OF THE STATE PLANT BOARD REGARDING CATFISH PROCESSORS AND COMMERCIAL BAIT AND ORNAMENTAL FISH TO THE DEPARTMENT OF AGRICULTURE; AND FOR OTHER PURPOSES.

Subtitle

TO TRANSFER THE POWERS, DUTIES, AND RESPONSIBILITIES OF THE STATE PLANT BOARD REGARDING CATFISH PROCESSORS AND COMMERCIAL BAIT AND ORNAMENTAL FISH TO THE DEPARTMENT OF AGRICULTURE.

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

SECTION 1. DO NOT CODIFY. TEMPORARY LANGUAGE. Rules.

(a)(1) The transfer of duties from the State Plant Board to the Department of Agriculture under this act does not affect the orders, rules, directives, registration, licensing, or standards made or promulgated by the State Plant Board under § 2-5-201 et seq. and § 2-6-101 et seq. before the effective date of this act.

(2) The orders, rules, directives, registration, licensing, or standards of the State Plant Board promulgated under § 2-5-201 et seq. and § 2-6-101 et seq. shall continue to be in effect until they are amended or repealed under authority given by this law.



(b) A proposed rule that has been initiated by the State Plant Board under § 2-5-201 et seq. and § 2-6-101 et seq. but is not final shall be transferred to the Department of Agriculture to continue through the rule promulgation process under the Administrative Procedure Act, § 25-15-201 et seq.

SECTION 2. Arkansas Code § 2-5-203 is amended to read as follows:

2-5-203. Definitions.

As used in this subchapter+,

~~(1) "Board" means the State Plant Board; and~~

~~(2) "Person" "person" means an individual, partnership, limited liability company, corporation, association, or two (2) or more individuals having a joint or common interest.~~

SECTION 3. Arkansas Code §§ 2-5-204 through 2-5-208 are amended to read as follows:

2-5-204. Powers and duties of ~~State Plant Board~~ Department of Agriculture.

(a) The ~~State Plant Board~~ Department of Agriculture shall:

(1) Administer this subchapter and the ~~Commercial Bait and Ornamental Fish Fund~~ Livestock and Poultry Special Revenue Fund;

(2) Certify the commercial bait and ornamental fish that meet the standards and qualifications of the ~~board~~ department under this subchapter;

(3) Investigate methods of production and the occurrence of certain diseases, undesirable plants, undesirable animals, and other contaminants of commercial bait and ornamental fish and fisheries;

(4) Conduct marketing programs to promote the use and sale of certified bait and ornamental fish raised in Arkansas; ~~and~~

~~(5)(A)~~ Promulgate all rules the ~~board~~ department considers necessary or desirable to implement this subchapter+; ~~and~~

~~(B) The board shall establish~~ (6) Establish in its rules the management practices, testing procedures, and appropriate science criteria required for certification under this subchapter.

~~(b) The board may authorize the Director of the State Plant Board to appoint any deputy the board considers necessary to implement this subchapter~~

If necessary to prevent the spread of disease, the State Veterinarian in consultation with the Secretary of the Department of Agriculture may issue orders under this subchapter for the:

- (1) Isolation or quarantine of infected fish;
- (2) Disinfection of premises;
- (3) Destruction of incurably-diseased fish; and
- (4) Disposal of fish.

2-5-205. Certificates.

(a) A person that has met the standards and qualifications established by the ~~State Plant Board~~ Department of Agriculture under this subchapter shall receive from the ~~board~~ department a commercial bait and ornamental fish certificate.

(b) The certificate shall be in the form prescribed by the ~~board~~ department and shall attest that the commercial bait and ornamental fish covered by the certificate have met the standards and qualifications established by the ~~board~~ department under this subchapter.

(c) The certificate shall be displayed only by a person who is certified under this subchapter.

2-5-206. Fees.

(a) The ~~State Plant Board~~ Department of Agriculture may prescribe application, certification, and other fees to cover the costs of inspection, certification, and marketing under this subchapter.

(b) All fees collected under this subchapter shall be deposited into the ~~Commercial Bait and Ornamental Fish~~ Livestock and Poultry Special Revenue Fund to be used by the ~~board~~ department to administer this subchapter.

2-5-207. Unlawful acts – Penalties – Revocation of certificate.

(a) It is unlawful for any person to:

(1) Use the term “Arkansas certified” or any similar term concerning the quality of bait or ornamental fish without the proper certification from the ~~State Plant Board~~ Department of Agriculture;

(2) Falsely advertise or represent any bait or ornamental fish as being certified by the ~~board~~ department;

(3) Use any emblem, label, or language for the purpose of

misleading a person into believing that any bait or ornamental fish has been certified by the ~~board~~ department when the certification has not been obtained;

(4) Misuse any tag, label, or certificate issued by the ~~board~~ department;

(5) Obtain or attempt to obtain the certification of any bait or ornamental fish by making a false statement or misrepresentation to the ~~board~~ department or to the ~~board's~~ department's inspectors, deputies, or agents;

(6) Violate any rule of the ~~board~~ department under this subchapter; or

(7) Violate any agreement made as a condition for receiving a certificate.

(b) ~~Any person who pleads guilty or nolo contendere to or is found guilty of violating this section is guilty of a violation and shall be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500) for each offense~~ A person who violates this subchapter or the rules promulgated under this subchapter is subject to suspension or revocation of certification or a civil penalty as provided by rule, or both.

(c)(1) A certificate issued under this subchapter may be revoked by the ~~Director of the State Plant Board~~ Secretary of the Department of Agriculture after a hearing before the ~~director~~ secretary or his or her designee, regardless of whether a prosecution is commenced.

~~(2)(A) Any person whose certificate is revoked by the director is entitled to an appeal to the board.~~

~~(B) The decision of the board on appeal is final~~ department may be appealed as provided in the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

2-5-208. Intergovernmental cooperation.

In administering this subchapter, the ~~State Plant Board~~ Department of Agriculture shall cooperate to the fullest extent possible with other agencies of the state and the federal government.

SECTION 4. Arkansas Code § 2-6-103(1), concerning the definition of "board" under the Arkansas Catfish Processor Fair Practices Act of 1987, is

repealed.

~~(1) "Board" means the State Plant Board;~~

SECTION 5. Arkansas Code § 2-6-103(7), concerning the definition of "board" under the Arkansas Catfish Processor Fair Practices Act of 1987, is repealed.

~~(7) "Director" means the Director of the State Plant Board or his or her designee;~~

SECTION 6. Arkansas Code § 2-6-104 is amended to read as follows:

2-6-104. Administration.

(a) This chapter shall be administered by the ~~State Plant Board~~ Department of Agriculture.

(b) The ~~board~~ department is authorized to promulgate such rules as may be necessary for the efficient enforcement of this chapter, including the establishment of reasonable fees for registering with the ~~board~~ department.

(c) If necessary to prevent the spread of disease, the State Veterinarian in consultation with the Secretary of the Department of Agriculture may issue orders under this subchapter for the:

- (1) Isolation or quarantine of infected fish;
- (2) Disinfection of premises;
- (3) Destruction of incurably-diseased fish; and
- (4) Disposal of fish.

SECTION 7. Arkansas Code § 2-6-105 is amended to read as follows:

2-6-105. Registration and suspension – Exception.

(a)(1) Except as provided in subsection (e) of this section, every catfish processor in the state shall register with the ~~State Plant Board~~ Department of Agriculture.

(2) Applications for registration as a catfish processor under this chapter shall be made on forms prescribed by the ~~Director of the State Plant Board~~ department.

(3) Every application is to be accompanied by an application fee of one hundred fifty dollars (\$150), a certified financial statement in a form prescribed by the ~~director~~ department, and any further information the ~~director~~ department may by rule require.

(b) The ~~board~~ department shall promulgate such rules as necessary to secure the performance of catfish purchasing obligations.

(c) Whenever, after due notice and hearing, the ~~board~~ department finds any registrant is insolvent or has violated any provisions of this chapter, it may issue an order suspending the registrant for a reasonable specified period. The order of suspension shall take effect within five (5) days unless suspended, modified, or set aside by the ~~board~~ department or a court of competent jurisdiction.

(d) If the ~~board~~ department finds any processor is insolvent, is issuing invalid or insufficient checks, or is causing a breach of contract with the producer by failure to pay the producer in accordance with the contract, the ~~board~~ department shall issue an order requiring the processor to cease and desist from purchasing catfish except under such conditions as the ~~board~~ department may prescribe to effectuate the purposes of this chapter.

(e) Those processors whose average annual purchases from catfish producers do not exceed one hundred thousand dollars (\$100,000) shall be exempt from the provisions of this section.

SECTION 8. Arkansas Code § 2-6-106 is amended to read as follows:

2-6-106. Unlawful practices – Penalties.

(a)(1) With respect to catfish or catfish products, it shall be unlawful for any processor to engage in or use any unfair, unjustly discriminatory, or deceptive practice.

(2) If any person subject to this chapter violates any of the provisions of this chapter or of any order of the ~~State Plant Board~~ Department of Agriculture under this chapter relating to the purchase, sale, or handling of catfish, he or she shall be liable to the person injured for the full amount of damages sustained in consequence of the violation.

(b) This liability may be enforced either by complaint to the ~~board~~ department or by suit in any circuit court of competent jurisdiction. This section shall not in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this section are in addition to those remedies.

(c) The ~~board~~ department is authorized to apply for and the court is authorized to grant a temporary or permanent injunction restraining any

person from violating or continuing to violate any of the provisions of this chapter or any rule promulgated under this chapter, notwithstanding the existence of other remedies at law. The injunction shall be issued without bond.

(d) The ~~board~~ department may assess civil penalties against any Class A registrant as follows:

(1) Not more than fifty dollars (\$50.00) for each day payment to the producer is late under § 2-6-107(a)(2);

(2) Not more than one hundred dollars (\$100) for each day payment to the producer is late under the contract between the registrant and the producer; and

(3) In instances where the registrant has paid a producer with an invalid or insufficient check, not more than two hundred dollars (\$200) for each day the check is invalid or insufficiently funded.

(e) Civil penalties collected under this subchapter shall be deposited into the Livestock and Poultry Special Revenue Fund.

SECTION 9. Arkansas Code § 2-6-107(b), concerning the requirement related to bonding by a Class A registrant, is amended to read as follows:

(b)(1) Regardless of the method elected under subdivision (a)(2) of this section to purchase catfish products, a Class A registrant, before the transaction, shall be required to:

(A) Be bonded in the amount of two hundred fifty thousand dollars (\$250,000) or in an amount which may be determined by the ~~State Plant Board~~ Department of Agriculture;

(B) Post a security bond in the amount of two hundred fifty thousand dollars (\$250,000) or in an amount which may be determined by the ~~board~~ department; or

(C) Provide cash security, letters of credit, and such other evidences of security as shall be authorized by the ~~board~~ department.

(2) However, if a Class A registrant purchases catfish solely and exclusively from producers that are also the owners of the processor, then the Class A registrant is exempt from the bonding or security requirements imposed under subdivision (b)(1) of this section.

SECTION 10. Arkansas Code § 2-6-107(e)(3), concerning the contents of

the ticket related to the weight of catfish, is amended to read as follows:

(3) The ticket shall also contain the following:

- (A) The name and address of the processor;
- (B) The name of the owner of the catfish being weighed;
- (C) The date the catfish are weighed;
- (D) The signature of the individual who weighs the

catfish; and

(E) Any additional information as the ~~board~~ department deems necessary for the lawful and accurate recording of the weight of the catfish.

SECTION 11. Arkansas Code § 2-6-107(g), concerning the responsibility for enforcement of methods related to the purchase of catfish, is amended to read as follows:

(g) The ~~board~~ department shall be responsible for the enforcement of this section, and its agents shall perform periodic inspections of processing plants to ensure that the provisions of this section are being carried out and that all deductions for foreign material are legitimate and fair to the producer.

SECTION 12. Arkansas Code § 2-6-109 is amended to read as follows:

2-6-109. Receivership – Petition – Assets.

(a) The ~~Director of the State Plant Board~~ Secretary of the Department of Agriculture or his or her designee in his or her discretion may, following a suspension of a Class A registrant as provided in this chapter, file a verified petition in the proper court requesting that the ~~director~~ secretary be appointed as a receiver to take custody of catfish in the registrant's facility and to provide for the disposition of those assets in the manner provided in this chapter and under the supervision of the court.

(b) The petition shall be filed in the county in which the registrant is located. The proper court shall appoint the ~~director~~ secretary as receiver.

(c) Upon the filing of the petition, the court shall issue ex parte such temporary orders as may be necessary to preserve or protect the assets in receivership, or the value thereof, and the rights of producers, until a plan of disposition is approved.

SECTION 13. Arkansas Code § 2-6-110 is amended to read as follows:

2-6-110. Receivership – Plan for disposition of catfish.

A petition filed by the ~~Director of the State Plant Board~~ Secretary of the Department of Agriculture under § 2-6-109 shall be accompanied by the ~~director's~~ secretary's plan for disposition of the processed catfish. The plan may provide for the pro rata delivery of part or all of the processed catfish to producers holding weigh tickets, or may provide for the sale under the supervision of the ~~director~~ secretary of part or all of the processed catfish for the benefit of those producers, or may provide for any combination thereof, as the ~~director~~ secretary in his or her discretion determines to be necessary to minimize losses.

SECTION 14. Arkansas Code § 2-6-111 is amended to read as follows:

2-6-111. Receivership – Hearings on plan – Notice – Service.

(a) When a petition is filed by the ~~Director of the State Plant Board~~ Secretary of Department of Agriculture or his or her designee under § 2-6-109 the clerk of court shall set a date for hearing on the ~~director's~~ secretary's proposed plan of disposition at a time not less than ten (10) nor more than fifteen (15) calendar days after the date the petition is filed.

(b) Copies of the petition, the notice of hearing, and the ~~director's~~ secretary's plan of disposition shall be served upon the Class A registrant and upon the surety company issuing the Class A registrant's bond in the manner required for service of an original notice.

(c) A delay in effecting service upon the Class A registrant or surety shall not be cause for denying the appointment of a receiver and shall not be grounds for invalidating any action or proceeding in connection therewith.

SECTION 15. Arkansas Code § 2-6-112(a), concerning receivership and notification to weigh ticket holders, is amended to read as follows:

(a) The ~~Director of the State Plant Board~~ Secretary of the Department of Agriculture shall cause a copy of each of the documents served upon the Class A registrant under § 2-6-111 to be mailed by ordinary mail to every person holding a weigh ticket issued by the Class A registrant, as determined by the records of the Class A registrant or the records of the ~~director~~ secretary.

SECTION 16. Arkansas Code §§ 2-6-113 through 2-6-116 are amended to read as follows:

2-6-113. Receivership – Publication of notification of receiver’s appointment.

When appointed as a receiver under this chapter the ~~Director of the State Plant Board~~ Secretary of the Department of Agriculture shall cause notification of the appointment to be published once each week for two (2) consecutive weeks in a newspaper of general circulation in each of the counties in which the Class A registrant maintains a business location, and in a newspaper of general circulation in this state.

2-6-114. Receivership – Designee – Duties of ~~director~~ secretary.

The ~~Director of the State Plant Board~~ Secretary of the Department of Agriculture may designate ~~one (1) of his or her employees~~ an employee to appear on behalf of the ~~director~~ secretary in any proceedings before the court with respect to the receivership, and to exercise the functions of the ~~director~~ secretary as receiver, except that the ~~director~~ secretary shall determine whether or not to petition for the appointment as receiver, shall approve the proposed plan for disposition of processed catfish, shall approve the proposed plan for distribution of any cash proceeds, and shall approve the proposed final report.

2-6-115. Receivership – Applicability of administrative procedures.

The actions of the ~~Director of the State Plant Board~~ Secretary of the Department of Agriculture in connection with petitioning for appointment as a receiver, and all actions under such appointment, shall not be subject to the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

2-6-116. Receivership – Sureties.

When the ~~Director of the State Plant Board~~ Secretary of the Department of Agriculture or his or her designee is appointed as receiver under this chapter, the surety on the bond of the Class A registrant shall be joined as a party defendant by the ~~director~~ secretary. If required by the court, the surety shall pay the bond proceeds, or so much thereof as the court finds necessary, into the court, and when so paid the surety shall be absolutely

discharged from any further liability under the bond to the extent of the payment.

SECTION 17. Arkansas Code § 2-6-117(a), concerning receivership and the notice of claims filing deadline, is amended to read as follows:

(a) When appointed as receiver under this chapter, the ~~Director of the State Plant Board~~ Secretary of the Department of Agriculture or his or her designee is authorized to give notice in the manner specified by the court to persons holding weigh tickets issued by the Class A registrant to file their claims within sixty (60) calendar days after the date of appointment.

SECTION 18. Arkansas Code §§ 2-6-118 through 2-6-123 is amended to read as follows:

2-6-118. Receivership – Sale of processed catfish – Merchandiser.

(a) When the court approves the sale of processed catfish the ~~Director of the State Plant Board~~ Secretary of the Department of Agriculture shall employ a merchandiser to effect the sale of those commodities.

(b) A person employed as a merchandiser must meet the following requirements:

(1) The person shall be experienced or knowledgeable in the operation of processors registered under this chapter, and if the person has ever held a registration certificate issued under this chapter, the person shall never have had the registration suspended;

(2) The person shall be experienced or knowledgeable in the marketing of aquacultural products;

(3) The person shall not be the holder of a weigh ticket issued by the Class A registrant and shall not have a claim against the Class A registrant, whether as a secured or unsecured creditor, and otherwise shall not have any pecuniary interest in the Class A registrant or the Class A registrant's business.

(c) The merchandiser shall be entitled to reasonable compensation as determined by the ~~director~~ secretary.

(d) A sale of processed catfish shall be made in a commercially reasonable manner and under the supervision of the ~~director~~ secretary.

(e) The ~~director~~ secretary shall have authority to sell the processed catfish, and provisions of the Uniform Commercial Code, § 4-1-101 et seq., to

the contrary notwithstanding, any processed catfish so sold shall be free of all liens and other encumbrances.

2-6-119. Receivership – Distribution to producers.

The plan of disposition, as approved by the court, shall provide for the distribution of the processed catfish, or the proceeds from the sale of processed catfish or the proceeds from any surety bond, or any combination thereof, less expenses incurred by the ~~Director of the State Plant Board~~ Secretary of the Department of Agriculture in connection with the receivership, to producers on a pro rata basis as their interests are determined. Distribution shall be without regard to any setoff, counterclaim, or charge.

2-6-120. Receivership – Continued operation of business.

The ~~Director of the State Plant Board~~ Secretary of the Department of Agriculture or his or her designee may, with the approval of the court, continue the operation of all or any part of the business of the Class A registrant on a temporary basis and take any other course of action or procedure which will serve the interests of the producers.

2-6-121. Receivership – Reimbursement.

The ~~Director of the State Plant Board~~ Secretary of the Department of Agriculture shall be entitled to reimbursement out of processed catfish or proceeds held in receivership for all expenses incurred as court costs or in handling and disposing of processed catfish, and for all other costs directly attributable to the receivership. The right of reimbursement of the ~~director~~ secretary shall be prior to any claims against the processed catfish or proceeds of sale thereof and shall constitute a claim against the surety bond of the Class A registrant.

2-6-122. Receivership – Proceeds – Termination.

In the event the approved plan of disposition requires the sale of processed catfish, or the distribution of proceeds from the surety bond, or both, the ~~Director of the State Plant Board~~ Secretary of the Department of Agriculture or his or her designee shall submit to the court a proposed plan of distribution of those proceeds. Upon such notice and hearing as may be

required by the court, the court shall accept or modify the proposed plan. When the plan is approved by the court and executed by the ~~director~~ secretary or his or her designee, the ~~director~~ secretary or his or her designee shall be discharged and the receivership terminated.

2-6-123. Receivership – Final report.

At the termination of the receivership, the ~~Director of the State Plant Board~~ Secretary of the Department of Agriculture shall file a final report containing the details of his or her actions, together with such additional information as the court may require.

SECTION 19. Arkansas Code § 19-6-301(34), concerning the enumeration of special revenues related to the Arkansas Livestock and Poultry Commission, is amended to add additional subdivisions to read as follows:

(I) Commercial bait and ornamental fish fees collected under the Commercial Bait and Ornamental Fish Act, § 2-5-201 et seq.; and

(J) Catfish processor civil penalties collected under the Arkansas Catfish Processor Fair Practices Act of 1987, § 2-6-101 et seq.;

SECTION 20. Arkansas Code § 19-6-480 is amended to read as follows:

19-6-480. Livestock and Poultry Special Revenue Fund.

(a) The Livestock and Poultry Special Revenue Fund shall consist of those special revenues as specified in § 19-6-301(33) and (34), and §§ 2-5-204, 2-5-206, and 2-6-106 ~~which that~~ are not required for support of the Arkansas Livestock and Poultry Commission Poultry and Egg Grading Program, there to be used for those purposes as set out by law.

(b) The Director of the Arkansas Livestock and Poultry Commission, with the approval of the Chief Fiscal Officer of the State, shall have the authority to transfer funds from the Livestock and Poultry Special Revenue Fund to the Livestock and Poultry Fund Account.

SECTION 21. Arkansas Code § 19-6-801 is repealed.

~~19-6-801. Commercial Bait and Ornamental Fish Fund.~~

~~(a) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Commercial Bait and Ornamental Fish Fund".~~

~~(b) The fund is to be used by the State Plant Board to administer the Commercial Bait and Ornamental Fish Act, § 2-5-201 et seq.~~