

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999
4

As Engrossed: S3/8/99

A Bill

Act 790 of 1999
HOUSE BILL 1660

5 By: Representatives Angel, Simmons, B. Johnson, Allison, Bevis, Broadway, Cleveland, Davis, French,
6 Glover, Gullett, Hathorn, J. Jeffress, G. Jeffress, Kidd, Lancaster, Lendall, Milligan, Milum, Morris,
7 Pappas, Simon, M. Steele, L. Thomas, White, Wood
8 By: Senators K. Smith, Scott, Bradford, Edwards, Everett, Mahony
9

For An Act To Be Entitled

12 "AN ACT TO CREATE THE ARKANSAS CATFISH PROMOTION BOARD
13 FOR THE PROMOTION OF THE CATFISH INDUSTRY IN ARKANSAS;
14 TO PROVIDE FOR ITS MEMBERSHIP AND POWERS; TO PROVIDE
15 FOR AN ASSESSMENT ON CATFISH FEED SOLD WITHIN THE
16 STATE, SUBJECT TO APPROVAL OF CATFISH PRODUCERS VOTING
17 IN A REFERENDUM; TO PROVIDE FOR HOLDING THE
18 REFERENDUM; TO PROVIDE FOR THE COLLECTION AND
19 ADMINISTRATION OF THE ASSESSMENT, SHOULD THE
20 ASSESSMENT BE APPROVED; TO PROVIDE FOR REFUNDS OF
21 ASSESSMENTS AND PENALTIES; AND FOR OTHER PURPOSES. "
22

Subtitle

23 "AN ACT TO PROMOTE THE GROWTH AND
24 DEVELOPMENT OF THE CATFISH INDUSTRY IN
25 ARKANSAS. "
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27

28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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30 SECTION 1. The purpose of this act is to promote the growth and
31 development of the catfish industry in Arkansas by research, extension,
32 promotion, and market development, thereby promoting the general welfare of
33 the people of Arkansas.
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35 SECTION 2. For purposes of this act:

36 (a) "Catfish industry" means any person or entity involved in rearing,

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1 processing, or selling of pond raised catfish for potential profit, including
2 any person, group or company involved in a support industry;

3 (b) "Commercial catfish producer" means any person or entity involved
4 in rearing catfish for potential profit;

5 (c) "Feed seller", "Seller" or "Feed Dealer" means any person or
6 entity that sells feed to a commercial catfish producer; and

7 (d) "Processor" means any person, group, or entity that purchases
8 catfish from a commercial producer for the purpose of redistribution.

9
10 SECTION 3. (a)(1) Any seller who fails to file a report, collect
11 assessments, or remit any assessment when due shall pay a penalty not to
12 exceed five percent (5%) of the amount of the assessment that should have been
13 collected or remitted, plus an additional penalty not to exceed one percent
14 (1%) of the amount of the assessment that should have been collected or
15 remitted for each month of delay, or fraction thereof, after the first month
16 the report was required to be filed or the assessment became due.

17 (2) The penalty shall be paid to the director of the Department
18 of Finance and Administration and shall be disposed of in the same manner as
19 funds derived from the payment of assessments as provided in this act.

20 (b) The director shall collect the penalties levied in this section,
21 together with the delinquent assessment, by any or all of the following
22 methods:

23 (1) Voluntary payment;

24 (2) Legal proceedings instituted in a court of competent
25 jurisdiction seeking any remedies available including, but not limited to,
26 injunctive relief to enjoin any seller owing the assessment or penalties from
27 engaging in business as a seller of catfish feed until the amount of the
28 assessment due and all penalties are paid.

29 (c) Any person required to pay the assessment provided for in this act
30 who refuses to allow full inspection of the premises or any books, records, or
31 other documents relating to the liability of the person for the assessment
32 imposed, or who shall hinder or in any way delay or prevent the inspection,
33 shall be guilty of a misdemeanor punishable by a fine not exceeding five
34 hundred dollars (\$500).

35
36 SECTION 4. (a) The Arkansas Catfish Promotion Board is created.

1 The board shall be composed of seven (7) members appointed by the Governor as
2 follows:

3 (1)(A) The Catfish Farmers of Arkansas, Inc. shall submit to the
4 Governor the names of six (6) persons who are members of the catfish industry.
5 Such list of nominees shall include commercial catfish producers, processors
6 and feed dealers, identified as such. The Arkansas Farm Bureau Federation
7 shall submit to the Governor the names of six (6) persons who are commercial
8 catfish producers. All members shall be residents of Arkansas.

9 (B) The Governor shall appoint four (4) members from the
10 list submitted by the Catfish Farmers of Arkansas Association and three (3)
11 members from the list submitted by the Arkansas Farm Bureau Federation to
12 serve on the board.

13 (2) Each year, not less than thirty (30) calendar days prior to
14 the expiration of the terms of the current members of the board whose terms
15 expire, the organizations named in subdivision (a)(1)(A) of this section shall
16 submit to the Governor the names of two (2) nominees for each position to be
17 filled on the board from the respective organizations, subject to the
18 foregoing qualifications, and the Governor shall appoint the new members from
19 each list of nominees. If no lists are submitted, the appointments shall be
20 at the discretion of the Governor.

21 (3) Each member selected shall serve for a term of two (2) years
22 and until his successor is selected as provided in this section. *Provided,*
23 *however, that the initial members of the board shall be appointed for terms*
24 *that will result in three (3) members' terms expiring after one (1) year and*
25 *four members' terms expiring after two (2) years.*

26 (4) Mid-term vacancies on the board shall be filled by appointment
27 by the Governor from a list submitted within thirty (30) calendar days from
28 the organization making the nomination for the position being vacated.

29 (5) Members of the board may be removed by a majority vote of
30 the remaining board members for conviction of a felony, for not attending
31 three (3) consecutive meetings, or if the member no longer meets the
32 qualifications for his initial appointment.

33 (b) The president of the Catfish Farmers of Arkansas, Inc. shall call
34 an organization meeting of the board and shall preside until officers are
35 elected. Members of the board shall organize immediately after their
36 appointment and shall elect a chairman, a vice chairman, and a secretary-

1 treasurer from the membership of the board, whose duties shall be those
2 customarily exercised by those officers or specifically designated by the
3 board. The board may appoint an executive director, who shall be the chief
4 operating officer of the board and whose duties shall be as designated by the
5 board.

6 (c) The board may provide a salary for the executive director and for
7 other necessary employees from funds derived from the assessments imposed in
8 this act. Members of the board shall serve without compensation, but may be
9 reimbursed for reasonable expenses.

10 (d) The principal office of the board shall be located in Little Rock,
11 Pulaski County, Arkansas.

12 (e) The resident agents of the board shall be the executive director of
13 the board and the chairman of the board, or either of them.

14
15 SECTION 5. The Arkansas Catfish Promotion Board may:

16 (1) Plan and conduct a program of research, market development, and
17 advertising designed to promote the catfish industry in Arkansas;

18 (2) Use funds derived from the assessments imposed in this act for
19 research, extension, market development, and advertising designed to promote
20 the catfish industry in Arkansas, including salaries and administration
21 expenses;

22 (3) Have perpetual succession as a body politic and corporate and adopt
23 bylaws for the regulation of its affairs and the conduct of its business;

24 (4) Prescribe rules, regulations, and policies in connection with the
25 performance of its functions and duties;

26 (5) Sue and be sued in its own name;

27 (6) Purchase, sell or lease property of every description, real,
28 personal or mixed, including buildings or other facilities and equipment for
29 the conduct of its business;

30 (7) Execute contracts and other instruments necessary or convenient in
31 the exercise of its powers and functions;

32 (8) Do any and all other acts and things necessary or convenient to
33 carry out the purposes of this act and to exercise the powers granted by this
34 act.

35
36 SECTION 6. Funds derived from the assessments imposed in this act may

1 be applied by the Director of the Department of Finance and Administration as
2 instructed by the Arkansas Catfish Promotion Board as prescribed in this act,
3 within or without Arkansas, including regional, national, and international
4 applications.

5
6 SECTION 7. (a) The Arkansas Catfish Promotion Board shall
7 maintain a list of commercial producers of catfish who are entitled to vote in
8 referenda, shall prepare ballots for the referenda, and shall prescribe voting
9 procedures. The board shall mail a ballot, by registered mail to every
10 commercial catfish producer identified on the list maintained by the board.
11 Each producer shall be entitled to only one vote.

12 (b) In all referenda, in order to be eligible to vote, a commercial
13 catfish producer must have purchased catfish feed in the period from twelve
14 (12) months immediately preceding the date of the referendum to not less than
15 thirty (30) calendar days immediately preceding the date of the referendum.

16 (c) The Director of the Department of Finance and Administration shall
17 be reimbursed from funds collected for the costs of holding referenda.

18
19 SECTION 8. (a)(1) Within a reasonable time after the effective
20 date of this act, the Arkansas Catfish Promotion Board shall cause an election
21 to be held on the question of the levy of an assessment on the sale of catfish
22 feed within the State of Arkansas to commercial catfish producers, at a rate
23 as determined by the board, such rate of assessment not to exceed five dollars
24 (\$5.00) per ton of catfish feed sold.

25 (2) If a majority of the commercial catfish producers voting at
26 the election vote for the levy of the assessment, the assessment shall be
27 applicable to all sales of catfish feed made on and after a date specified by
28 the board, which date shall not be later than ninety (90) calendar days after
29 certification of the results of the election.

30 (3) The assessment shall be a continuing levy until either
31 terminated by the board or until another election is held at which a majority
32 of the commercial catfish producers voting at an election vote against such
33 levy. The rate of assessment approved at an election shall not be increased
34 except pursuant to the majority vote of the commercial catfish producers
35 voting at a subsequent election.

36 (b)(1) When petitions containing the signatures of thirty percent (30%)

1 of the commercial catfish producers in the state, as determined by the latest
2 available agricultural census data, are filed with the board requesting that
3 the question of continuing the assessment be submitted to a vote of the
4 catfish producers, the board shall cause an election to be held within ninety
5 (90) calendar days after the filing of the petitions, to be conducted in the
6 same manner as the initial election held on the question of the levy of the
7 assessment.

8 (2) If a majority of the commercial catfish producers voting at
9 the election vote against the levy of the assessment, the assessment shall not
10 be levied as of the date ten (10) calendar days after the date of the
11 election. The levy may be reapproved, in the same manner as the initial
12 election and subject to the same vote requirements, at an election called by
13 the board not earlier than twelve (12) months after the date of the previous
14 election suspending the levy of the assessment.

15 (c)(1) The assessment imposed and levied by this section shall be
16 collected by the Director of the Department of Finance and Administration from
17 each seller of catfish feed, who shall add the assessment to the purchase
18 price of catfish feed sold in this state to commercial catfish producers.

19 (2) Each seller of catfish feed, when remitting assessments
20 collected to the director, may deduct not more than one percent (1%) of the
21 gross amount of the assessments to cover the cost of compliance.

22
23 SECTION 9. (a) The Arkansas Catfish Promotion Board shall
24 prepare an annual budget, a copy of which shall be maintained at the principal
25 office of the board and shall be open for public inspection during business
26 hours.

27 (b) The board shall be audited annually in accordance with generally
28 accepted auditing procedures and a copy of the audit shall be filed with the
29 Legislative Joint Auditing Committee.

30
31 SECTION 10. (a)(1) Every person required to pay the assessment
32 provided for in this act shall keep a complete and accurate record of all
33 catfish feed handled by him.

34 (2) The records shall be in such form and contain other
35 information as the Arkansas Catfish Promotion Board shall prescribe by rule or
36 regulation.

1 (3) The records shall be preserved for a period of two (2) years
2 and shall be offered for inspection at any time upon written demand by the
3 Director of the Department of Finance and Administration or his authorized
4 agent or representative.

5 (b)(1) At such times as the director may require, every person required
6 to pay the assessment provided for in this act shall submit reports or
7 otherwise document any information deemed necessary for the efficient
8 collection of the assessment imposed in this act.

9 (2) The director shall have the power to cause any authorized
10 agent or representative to enter upon the premises of any person required to
11 pay the assessment provided for in this act and examine or cause to be
12 examined by the agent any books, papers, and records which deal in any way
13 with respect to the payment of the assessment or enforcement of the provisions
14 of this act.

15
16 SECTION 11. (a) So long as the assessment on the sale of catfish feed
17 continues to be levied as provided in this act, any catfish producer may
18 request and receive a refund of such assessment, provided he makes a written
19 application therefor with the Director of the Department of Finance and
20 Administration within sixty (60) calendar days after the date of sale,
21 supported by copies of sales slips from the seller of the catfish feed and a
22 refund form approved by the board.

23 (b) The Director of the Department of Finance and Administration shall
24 create and approve a refund claim form.

25
26 SECTION 12. There is hereby created on the books of the Treasurer of
27 State, Auditor of State and Chief Fiscal Officer of the State, the Arkansas
28 Catfish Promotion Fund. The fund shall consist of those special revenues from
29 assessments as specified in this act, there to be used in such manner as the
30 Arkansas Catfish Promotion Board deems appropriate for Arkansas catfish
31 promotion and research and for the operation and maintenance of the Arkansas
32 Catfish Promotion Board office, and payment of expenses of the board members
33 as set out herein.

34
35 SECTION 13. All provisions of this Act of a general and permanent
36 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas

1 Code Revision Commission shall incorporate the same in the Code.

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3 SECTION 14. If any provision of this Act or the application thereof to
4 any person or circumstance is held invalid, such invalidity shall not affect
5 other provisions or applications of the Act which can be given effect without
6 the invalid provision or application, and to this end the provisions of this
7 Act are declared to be severable.

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9 SECTION 15. All laws and parts of laws in conflict with this Act are
10 hereby repealed.

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/s/ Angel

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APPROVED: 3/23/1999

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