

ARKANSAS CODE OF 1987  
“CATFISH PROCESSOR FAIR PRACTICES ACT”

**CHAPTER 6**

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**2-6-101. Title.**

This chapter shall be known and may be cited as the "Arkansas Catfish Processor Fair Practices Act of 1987".

**HISTORY:** Acts 1987, No. 365, § 1.

**2-6-102. Purpose.**

The General Assembly finds that a burden on and an obstruction to intrastate commerce in the catfish farming industry is caused when payment is not made for the catfish and that these arrangements are contrary to the public interest. This chapter is intended to remedy this burden on and obstruction to intrastate commerce in catfish and to protect the public interest.

**HISTORY:** Acts 1987, No. 365, § 3.

**2-6-103. Definitions.**

As used in this chapter:

- (1) "Board" means the State Plant Board;
- (2) "Capable of use as human food" means and applies to any catfish or part or product of any catfish unless it is denatured or otherwise identified as required by regulations prescribed by the board to deter its use as human food, or unless it is naturally inedible by humans;
- (3) "Cash sale" means a sale in which the seller does not expressly extend credit to the buyer;
- (4) "Catfish" means any species of the scientific order Ostariophysida, family Ictaluridae;
- (5) "Class A registrant" means any catfish processor who purchases at least fifty thousand dollars (\$ 50,000) worth of catfish annually from catfish producers;
- (6) "Direct retail sale" means the sale of catfish products directly to the consumer;
- (7) "Director" means the Director of the State Plant Board or his or her designee;
- (8) "Owner" means a person or a producer that owns an equity interest, directly or indirectly, in a catfish processor;

**(9)** "Person" includes any individual, partnership, corporation, and association, or other legal entity;

**(10)** "Processor" means any person engaged in handling, storing, preparing, manufacturing, packing, or holding catfish products;

**(11)** "Producer" means any person engaged in the business of producing catfish by any method;

**(12)** "Product" means any catfish product capable of use as human food which is made wholly or in part from any catfish or portion thereof; and

**(13)** "Secured party" means a lender who has a perfected security interest pursuant to the Uniform Commercial Code, § 4-1-101 et seq., in the catfish being sold.

**HISTORY:** Acts 1987, No. 365, § 4; 1989 (3rd Ex. Sess.), No. 53, § 1; 2003, No. 128, § 1.

#### **2-6-104. Administration.**

**(a)** This chapter shall be administered by the State Plant Board.

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

**HISTORY:** Acts 1987, No. 365, §§ 2, 8; 1989 (3rd Ex. Sess.), No. 53, § 2.

#### **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.

**(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.

**(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, and any further information the director may by regulation require.

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

**(c)** Whenever, after due notice and hearing, the board 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 or a court of competent jurisdiction.

**(d)** If the board 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 shall issue an order requiring the processor to

cease and desist from purchasing catfish *except* under such conditions as the board 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.

**HISTORY:** Acts 1987, No. 365, § 6; 1989 (3rd Ex. Sess.), No. 53, § 3; 1995, No. 190, § 1; 1995, No. 191, § 1.

### **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 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 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 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 or regulation promulgated under this chapter, notwithstanding the existence of other remedies at law. The injunction shall be issued without bond.

**(d)** The board 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.

**HISTORY:** Acts 1987, No. 365, §§ 7, 9, 10; 1989 (3rd Ex. Sess.), No. 53, § 4.

### **2-6-107. Purchase methods -- Delays.**

**(a)** Each processor shall use one (1) of the following methods to purchase catfish products:

**(1)** The processor may deliver to the producer or his or her authorized representative and any secured parties the full amount of the purchase price on the same day the catfish product is purchased and possession is transferred;

**(2) (A)** Before the close of the fourteenth calendar day following the purchase of the catfish products and transfer or possession of the catfish products, the processor may deliver to the producer or his or her authorized representative and any secured parties the full amount of the purchase price.

**(B)** If the producer or his or her authorized representative or secured parties are not present to receive payment at the point of transfer or possession, as provided in subdivision (a)(1) of this section, the processor shall wire transfer funds or place a check in the United States mail for the full amount of the purchase price, properly addressed to the producer and any secured parties, within the time limits specified in this subsection. This action shall be deemed in compliance with the requirement for prompt payment under this subdivision (a)(2); or

**(3)** The parties to the purchase and sale of catfish products may expressly agree in writing before the purchase or sale to effect payment in a manner other than that required in subdivision (a)(1) or (2) of this section if the manner of payment does not interfere with the rights of secured parties. Any agreement shall be disclosed in the records of any producer selling the catfish and in the processors' records and on the accounts or other documents issued by the processors relating to the transaction.

**(b) (1)** Regardless of the method elected under subdivision (a)(2) of this section to purchase catfish products, a Class A registrant, prior to 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;

**(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; or

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

**(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.

**(c)** Any delay or attempt to delay, by a processor purchasing catfish products, the collection of funds as provided in this chapter or otherwise for the purpose of or resulting in extending the normal period of payment for the catfish shall be considered an unfair practice in violation of this chapter.

**(d) (1)** At the time catfish are delivered to a processor and unloaded from a live-haul truck, the processor shall weigh the catfish using a device that is of a type suitable for the weighing of catfish.

**(2)** Deductions for trash fish, turtles, and other foreign material except water shall be determined by a separate weighing of the same.

**(3)** There shall be no water tare nor deductions made for water in weighing baskets.

**(4)** Processors are responsible for draining water from weighing baskets.

**(e) (1)** Scales used to weigh catfish and foreign material under this section must be capable of electronically printing a ticket that provides an exact duplicate of the weight indicated.

**(2)** A copy of the ticket shall be provided to the producer at the time of weighing.

**(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 deems necessary for the lawful and accurate recording of the weight of the catfish.

**(f)** Processors who process less than seventeen thousand five hundred pounds (17,500 lbs.) of catfish per week are not required to use the electronic printing scales otherwise required by this section.

**(g)** The board 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.

**HISTORY:** Acts 1987, No. 365, § 5; 1989 (3rd Ex. Sess.), No. 53, § 5; 1991, No. 764, § 1; 2003, No. 128, § 2.

## **2-6-108. [Repealed.]**

## **2-6-109. Receivership -- Petition -- Assets.**

**(a)** The Director of the State Plant Board 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 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 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.

**HISTORY:** Acts 1989 (3rd Ex. Sess.), No. 53, § 7.

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

A petition filed by the Director of the State Plant Board under § 2-6-109 shall be accompanied by the director'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 of part or all of the processed catfish for the benefit of those producers, or may provide for any combination thereof, as the director in his or her discretion determines to be necessary to minimize losses.

**HISTORY:** Acts 1989 (3rd Ex. Sess.), No. 53, § 7.

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

**(a)** When a petition is filed by the Director of the State Plant Board under § 2-6-109 the clerk of court shall set a date for hearing on the director'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 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.

**HISTORY:** Acts 1989 (3rd Ex. Sess.), No. 53, § 7.

**2-6-112. Receivership -- Notification to weigh ticket holders.**

**(a)** The Director of the State Plant Board 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.

**(b)** The failure of any person referred to in this section to receive the required notification shall not invalidate the proceedings on the petition for the appointment of a receiver or any portion thereof.

**(c)** Persons referred to in this section are not parties to the action unless admitted by the court upon application therefor.

**HISTORY:** Acts 1989 (3rd Ex. Sess.), No. 53, § 7.

**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 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.

**HISTORY:** Acts 1989 (3rd Ex. Sess.), No. 53, § 7.

**2-6-114. Receivership -- Designee -- Duties of director.**

The Director of the State Plant Board may designate one (1) of his or her employees to appear on behalf of the director in any proceedings before the court with respect to the receivership, and to exercise the functions of the director as receiver, except that the director 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.

**HISTORY:** Acts 1989 (3rd Ex. Sess.), No. 53, § 7.

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

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

**HISTORY:** Acts 1989 (3rd Ex. Sess.), No. 53, § 7.

**2-6-116. Receivership -- Sureties.**

When the Director of the State Plant Board 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. 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.

**HISTORY:** Acts 1989 (3rd Ex. Sess.), No. 53, § 7.

**2-6-117. Receivership -- Notice of claims filing deadline.**

**(a)** When appointed as receiver under this chapter, the Director of the State Plant Board 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.

(b) Failure to timely file a claim shall defeat the claim with respect to the surety bond and any catfish, or proceeds from the sale of catfish, except to the extent of any excess remaining after all timely claims are paid in full.

**HISTORY:** Acts 1989 (3rd Ex. Sess.), No. 53, § 7.

**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 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.

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

(e) The director 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.

**HISTORY:** Acts 1989 (3rd Ex. Sess.), No. 53, § 7.

**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 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.

**HISTORY:** Acts 1989 (3rd Ex. Sess.), No. 53, § 7.



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

The Director of the State Plant Board 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.

**HISTORY:** Acts 1989 (3rd Ex. Sess.), No. 53, § 7.

**2-6-121. Receivership -- Reimbursement.**

The Director of the State Plant Board 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 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.

**HISTORY:** Acts 1989 (3rd Ex. Sess.), No. 53, § 7.

**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 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, the director shall be discharged and the receivership terminated.

**HISTORY:** Acts 1989 (3rd Ex. Sess.), No. 53, § 7.

**2-6-123. Receivership -- Final report.**

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

**HISTORY:** Acts 1989 (3rd Ex. Sess.), No. 53, § 7

# **RULES ON CATFISH PROCESSORS IN ARKANSAS**

**(Promulgated and adopted under authority of Act 365 of 1987  
The Arkansas Catfish Processor Fair Practices Law)**

## **SECTION I. GENERAL PURPOSE AND INTENT**

The Arkansas Catfish Processor Fair Practices Act charges the State Plant Board with the responsibility of registering, auditing and regulating those catfish processors who receive or purchase catfish from producers. The principal objective and intent of this law is to provide any catfish producer who delivers catfish to a processor in Arkansas some measure of protection from unlawful or fraudulent processing and payment practices.

## **SECTION II. ORGANIZATION AND DESIGNATION OF DUTIES**

The Arkansas Catfish Processor Fair Practices Act will be administered as a Section of the Division of Marketing of the State Plant Board. The Director of Marketing and the Manager of the Grain Warehouse Section are designated the authority and duties assigned by the Commissioner in Act 365 of 1987, and will be carried out under general supervision from the Commissioner in Act 365 of 1987 and Act 434 of 1967 and amended (The Administrative Procedures Act).

## **SECTION III. REGISTRATION**

All "persons" as defined by law engaged in the handling, storing, preparing, manufacturing, packaging, or holding of catfish products shall register with the State Plant Board. The registration shall be for a period of one (1) year which runs from July 1 through June 30 of each year. Registration shall be on forms provided by the State Plant Board.

Each registration form shall be accompanied by a financial statement and a certificate of fact. The financial statement shall be a signed report of a Certified Public Accountant or a Registered Public Accountant which must be a representation of an examined audit report, review report, or a compilation report.

## **SECTION IV. SECURITY**

Catfish processors who elect to pay for the fish they purchase as specified in Section 5(1)(b) of Act 365 of 1987 (taking up to 14 days to pay) shall provide security in the form of cash, bond, certificate of deposit, letter of credit, or such other evidences of security as authorized by the Board. Processors who elect to pay for fish the day of delivery (Section 5 (l) (a)), or as specified in a written contract or agreement (Section 5 (1) (c)) are exempt from this section.

The issuing institution of a bond, certificate of deposit, letter of credit, or any other securities shall not cancel the security unless a thirty (30) day written notice of cancellation is sent by certified mail to the Director of the State Plant Board, P. O. Box 1069, Little Rock, AR 72203. Cancellation notice must be received at least thirty (30) days prior to the cancellation or termination date of said security.

All renewal or replacement bonds, certificates of deposit, letters of credit, or other securities specified by the Board shall be in the State Plant Board office five (5) business days prior to the effective cancellation or termination date of said security. If renewal or replacement documents are not received within the five (5) days time frame, the original security shall be drawn on by the State Plant Board staff. All monies received from the drawing shall be held by the State Plant Board for the purpose of paying producers and/or secured creditors for non-payment by the processor.

The minimum security shall be set at \$20,000 for any person(s) (as defined by Law) deemed as being a processor. All bonds or combinations of securities shall be set at a rate of .20¢ per pound of catfish purchased by the processor. Increments of security shall be set in the following amounts:

<b>LBS. OF CATFISH PURCHASED PER MONTH</b>	<b>AMOUNT OF SECURITY</b>
0 - 99,00	\$20,000
100,000 - 199,0	\$40,000
200,000 - 299,0	\$60,000
300,000 - 399,0	\$80,000
400,000 - 499,0	\$100,000
500,000 - 599,0	\$120,000
600,000 - 699,0	\$140,000
700,000 - 799,0	\$160,000
800,000 - 899,0	\$180,000
900,000 - 999,0	\$200,000
Amounts Over - 1,000	Maximum \$250,000

Security documents shall be included with registration forms.

#### **SECTION V. CONTRACTS OR AGREEMENTS BETWEEN PRODUCERS AND BUYERS**

Catfish processors who elect to pay for the fish they purchase as specified in Section 5(1)(c) of Act 365 of 1987 (written contracts and agreements) shall have their contracts/agreements prepared in advance and approved by the State Plant Board. Each contract/agreement shall contain a statement informing the producer or seller that he is relinquishing all rights and title to the buyer or processor upon delivery of catfish. Each contract/agreement shall include a lien holder statement. The Director may require any additional information deemed necessary to protect the interest of the producer or seller or secured creditor in these transactions. All contracts/agreements shall be pre-numbered with no duplication of numbers.

#### **SECTION VI. SCALES FOR WEIGHING CATFISH**

As a matter of fair practice, all scales used for the weighing of catfish by a processor shall be calibrated, tested, and officially approved by the Arkansas Bureau of Standards. It shall be the duty of the catfish processor to contact the Arkansas Bureau of Standards annually for the testing and approval of their scales used for weighing catfish. If a processor's scale is not approved, the processor shall not engage in the business of buying catfish from producers.

## **SECTION VII. WEIGH TICKETS**

Weigh tickets used for the weighing of catfish shall be pre-numbered and in the form prescribed by the State Plant Board. All records shall be maintained on a daily basis by the catfish processor which the State Plant Board deems necessary for auditing purposes. The State Plant Board shall require change in weigh tickets and other record keeping forms anytime deemed necessary while auditing and regulating catfish processors.

## **SECTION VIII. AUDITING**

Auditors of the State Plant Board's Public Grain Warehouse Section shall audit the records of Arkansas catfish processors periodically to determine:

1. Volume of catfish purchased.
2. Payment of producers as specified, contracted, or agreed to.
3. Solvency of the processor (Section 6 of Act 365 of 1987).

All registrants shall maintain on a daily basis bookkeeping records required by the State Plant Board as deemed necessary for auditing purposes.