

By: Senator(s) Thames

To: Agriculture

SENATE BILL NO. 2409
(As Passed the Senate)

1 AN ACT TO REQUIRE COTTON FACTORS AND BROKERS TO OBTAIN AN
2 ANNUAL LICENSE TO ENTER INTO COTTON CONTRACTS WITH RESIDENTS OF
3 THIS STATE AND TO REQUIRE SUCH PERSONS TO FURNISH A BOND OR OTHER
4 SECURITY IN THE AMOUNT OF \$50,000.00; TO PROVIDE PENALTIES FOR
5 VIOLATIONS; AND FOR RELATED PURPOSES.

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

7 SECTION 1. When used in this act:

8 (a) "Cotton factor" or "factor" includes an individual,
9 corporation or partnership or its agent that is employed by a
10 farmer to sell cotton, for and on behalf of the farmer, either in
11 his own name or that of the farmer and is entrusted with the
12 possession, management and control of the cotton.

13 (b) "Cotton broker" or "broker" includes an individual,
14 corporation or partnership or its agent that is employed to act as
15 an intermediary by negotiating or procuring a contract between a
16 farmer and seller for the sale of the farmer's cotton either in
17 his name or the farmer's, and who does not take possession of the
18 cotton.

19 SECTION 2. (1) Before conducting business in this state,
20 any cotton factor or cotton broker shall register with the
21 Commissioner of Agriculture and Commerce and apply for and receive
22 from the commissioner a license, the form of which shall be
23 prescribed by the commissioner. The license shall permit the
24 factor or broker or his agent to enter into cotton contracts with
25 residents of this state for the purpose of purchasing cotton or
26 brokering cotton between a farmer and a buyer. The license must
27 be renewed annually. A fee of One Hundred Dollars (\$100.00) shall

28 be paid upon the issuance of a license and again at the annual
29 renewal of the license.

30 (2) Before such a license shall be granted to a cotton
31 factor or cotton broker, the factor or broker shall give a bond in
32 the amount of Fifty Thousand Dollars (\$50,000.00) to the
33 commissioner executed by the factor or broker as principal and by
34 a corporate surety licensed to do business in this state as a
35 surety. The bond shall be in favor of the commissioner for the
36 benefit of all persons interested, their legal representatives,
37 attorneys or assigns, conditioned upon the faithful compliance by
38 the factor or broker with the provisions of this act and the good
39 faith performance of contracts entered into with cotton farmers
40 for cotton sold or to be sold. The premiums and all expenses of
41 the bond shall be the responsibility of the factor or broker.

42 (3) In lieu of the bond required in subsection (2) of this
43 section, a factor or broker for a license may be a self-insurer by
44 posting with the commissioner any of the following:

45 (a) Cash;

46 (b) Certificates of deposit from any bank or banking
47 corporation insured by the Federal Deposit Insurance Corporation;

48 (c) Irrevocable letters of credit from any bank or
49 banking corporation insured by the Federal Deposit Insurance
50 Corporation;

51 (d) Federal treasury bills; or

52 (e) Notes, securities or bonds secured by the federal
53 government or the State of Mississippi.

54 (4) The Commissioner of Agriculture and Commerce, as a
55 condition of accepting alternate security, may require the factor
56 or broker to submit to an examination and audit of his accounts,
57 books and records. The cost of any examination and audit shall be
58 borne by the factor or broker.

59 (5) The Commissioner of Agriculture and Commerce, for cause,
60 may revoke a license issued under this act.

61 (6) The Commissioner of Agriculture and Commerce may adopt
62 necessary rules and regulations to implement this act.

63 SECTION 3. (1) Any farmer to whom money is due for cotton
64 sold as a result of the nonperformance of the factor or broker

65 shall have recourse on the bond or alternate security required to
66 be furnished by this act to the extent of the loss suffered by the
67 farmer, but such recovery against the bonding company shall not
68 exceed the amount of the bond. In order to recover, the farmer
69 must have a written, signed contract evidencing the relationship
70 between the factor or broker and the farmer. Limitation of
71 liability as to the bonding company or alternate security shall
72 not restrict suits against the factor or broker for losses
73 incurred in excess of the amount of the bond or alternate
74 security. Suit may be brought in any county where the crop or any
75 part thereof was grown. One or more recoveries upon such bond
76 shall not vitiate same, but neither recovery nor the aggregate of
77 multiple recoveries upon such bond shall ever exceed the full
78 amount thereof. Upon suits being filed in excess of the amount of
79 the bond or alternate security, the commissioner may require a new
80 bond or other security in an amount sufficient to secure the
81 aggregate amount of such suits, and if such additional security is
82 not given within thirty (30) days of demand therefor, he may
83 cancel the license.

84 (2) Should the bond or alternate security proceeds be
85 insufficient to satisfy all claims in full, any farmer who has
86 received only partial satisfaction may bring a private action
87 against the particular factor or broker in default under the terms
88 of his contract to recover such remaining sums as are due him,
89 together with court costs and reasonable attorney's fees as
90 determined by the court.

91 SECTION 4. (1) Whoever violates the provisions of this act
92 or the rules and regulations adopted under the provisions of this
93 act shall be subject to a civil penalty of not more than Five
94 Hundred Dollars (\$500.00) for each violation. Each day on which a
95 violation occurs shall be a separate offense. The Commissioner of
96 Agriculture and Commerce may institute legal proceedings to
97 enforce the civil penalty in the circuit court of the county in

98 which the violation occurred.

99 (2) The Commissioner of Agriculture and Commerce may
100 institute civil proceedings seeking injunctive relief to restrain
101 and prevent violations of this act or of the rules and regulations
102 promulgated under this act in a court of competent jurisdiction in
103 the county in which the violation occurred.

104 SECTION 5. This act shall take effect and be in force from
105 and after July 1, 1999.