

By: Holland

To: Agriculture

HOUSE BILL NO. 467
(As Sent to Governor)

1 AN ACT TO AMEND SECTIONS 75-40-107 THROUGH 75-40-117,
2 MISSISSIPPI CODE OF 1972, TO PLACE THE MISSISSIPPI BIRD DEALERS
3 LICENSING ACT UNDER THE AUTHORITY OF THE STATE VETERINARIAN AND
4 THE BOARD OF ANIMAL HEALTH; TO AMEND SECTION 75-40-103,
5 MISSISSIPPI CODE OF 1972, TO REVISE DEFINITIONS; AND FOR RELATED
6 PURPOSES.

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

8 SECTION 1. Section 75-40-103, Mississippi Code of 1972, is
9 amended as follows:

10 75-40-103. For the purposes of this article, the following
11 words shall have the meanings ascribed herein unless the context
12 clearly requires otherwise:

13 (a) "Bird dealer" shall mean any person engaged in the
14 business of dealing in, purchasing, breeding or offering for sale,
15 whether at wholesale or retail, any exotic or pet birds or birds
16 customarily kept as pets. For purposes of this article, ratites,
17 including the ostrich, the rhea and the emu, are classified as
18 commercial birds or livestock and not as exotic or pet birds.

19 (b) "Board" shall mean the Mississippi Board of Animal
20 Health.

21 (c) "Person" shall mean any individual, firm,
22 partnership, corporation, estate, trust, fiduciary or other group
23 or combination acting as a unit.

24 (d) "State Veterinarian" shall mean the officer
25 appointed by the Board of Animal Health as provided by Section
26 69-15-7.

27 SECTION 2. Section 75-40-107, Mississippi Code of 1972, is
28 amended as follows:

29 75-40-107. Bird dealers' licenses shall be issued by the
30 board for a period of one (1) year and shall be annually
31 renewable. The board may establish separate classes of licenses,
32 including wholesale and retail licenses. The board shall fix fees
33 for licenses so that the revenue derived therefrom shall
34 approximate the total direct and indirect costs of administering
35 this article; provided, however, that the annual cost of a
36 wholesale license shall not exceed Twenty-five Dollars (\$25.00)
37 and the annual cost of a retail license shall not exceed Ten
38 Dollars (\$10.00).

39 SECTION 3. Section 75-40-109, Mississippi Code of 1972, is
40 amended as follows:

41 75-40-109. (1) Every bird dealer shall keep records
42 sufficient to identify:

43 (a) Each exotic or pet bird in his possession or sold
44 by him by species and description;

45 (b) The name, address and telephone number of the
46 person from whom each such bird was acquired and, if such person
47 is a licensed bird dealer, his license number, or if such person
48 is not a licensed dealer, his driver's license number or social
49 security number or federal tax identification number, if any, or
50 other such identification as may be available;

51 (c) The name, address and telephone number of the
52 person to whom each such bird is transferred and, if that person
53 is a licensed bird dealer, his license number, or, if that person
54 is not a licensed bird dealer, his driver's license number or
55 social security number, if any, or other such identification as
56 may be available; and

57 (d) Any bird which the dealer knows to be or have been
58 sick or diseased or to have died.

59 (2) The board may require periodic reports of any or all of
60 the records required by subsection (1) of this section and may
61 require the keeping of additional records. All required records

62 shall be made available for inspection by the board. Failure to
63 keep or make available any required records shall be grounds for
64 revocation of a license.

65 (3) Every bird dealer shall keep all of such records for at
66 least one (1) year.

67 SECTION 4. Section 75-40-111, Mississippi Code of 1972, is
68 amended as follows:

69 75-40-111. The * * * State Veterinarian may quarantine,
70 seize and destroy any birds which present a hazard of carrying
71 exotic or untreatable disease as determined by rules and
72 regulations promulgated by the board. The board shall pay an
73 indemnity to the owner of any seized or destroyed birds from any
74 federal funds made available for that purpose or any state funds
75 hereafter appropriated for that purpose.

76 SECTION 5. Section 75-40-113, Mississippi Code of 1972, is
77 amended as follows:

78 75-40-113. The board may make any rules and regulations not
79 inconsistent with this article governing the business of dealing
80 in or the transportation of exotic or pet birds.

81 SECTION 6. Section 75-40-115, Mississippi Code of 1972, is
82 amended as follows:

83 75-40-115. (1) Whenever it may appear to the Commissioner
84 of Agriculture and Commerce or to his agent, either upon
85 investigation or otherwise, that any person has engaged in, or is
86 engaging in, or is about to engage in any act, practice or
87 transaction which is prohibited by any law or regulation governing
88 activities for which a license from the Board of Animal Health is
89 required by this article, whether or not the person has so
90 registered or obtained such a license or permit, the State
91 Veterinarian may issue an order, if he deems it to be in the
92 public interest or necessary for the protection of the citizens of
93 this state, prohibiting such person from continuing such act,
94 practice or transaction or suspending or revoking any such

95 registration, license or permit held by such person.

96 (2) In situations where persons otherwise would be entitled
97 to a hearing prior to an order entered pursuant to subsection (1)
98 of this section, the State Veterinarian may issue such an order to
99 be effective upon a later date without hearing unless a person
100 subject to the order requests a hearing within ten (10) days after
101 receipt of the order. Failure to make such request shall
102 constitute a waiver of any provision of law for a hearing. The
103 order shall contain or shall be accompanied by a notice of
104 opportunity for hearing stating that a hearing must be requested
105 within ten (10) days of receipt of the notice and order. The order
106 and notice shall be served in person by the State Veterinarian or
107 his agent or by certified mail, return receipt requested. In the
108 case of an individual registered with or issued a license or
109 permit by the Board of Animal Health, receipt of the order and
110 notice will be conclusively presumed five (5) days after the
111 mailing of the order by certified mail, return receipt requested,
112 to the address provided by such person in his most recent
113 registration or license or permit application.

114 (3) In situations where persons otherwise would be entitled
115 to a hearing prior to an order, the State Veterinarian may issue
116 an order to be effective immediately if the State Veterinarian or
117 his agent has reasonable cause to believe that an act, practice or
118 transaction is occurring or is about to occur; that the situation
119 constitutes a situation of imminent peril to the public safety or
120 welfare; and that the situation therefore requires emergency
121 action. The emergency order shall contain findings to this effect
122 and reasons for the determination. The order shall contain or be
123 accompanied by a notice of opportunity for hearing which may
124 provide that a hearing will be held if and only if a person
125 subject to the order requests a hearing within ten (10) days of
126 the receipt of the order and notice. The order and notice shall
127 be served by the State Veterinarian, or his agent, by certified

128 mail, return receipt requested. In the case of an individual
129 registered with or issued a license or permit by the Board of
130 Animal Health, receipt of the order and notice will be
131 conclusively presumed five (5) days after the mailing of the order
132 by certified mail, return receipt requested, to the address
133 provided by such person in his most recent registration or license
134 or permit application.

135 (4) Any request for hearing made pursuant to subsections (2)
136 and (3) of this section shall specify: (a) in what respects such
137 person is aggrieved, (b) any and all defenses such person intends
138 to assert at the hearing, (c) affirmation or denial of all the
139 facts and findings alleged in the order, and (d) an address to
140 which any further correspondence or notices in the proceeding may
141 be mailed. Upon such a request for hearing, the State
142 Veterinarian shall schedule and hold the hearing, unless postponed
143 by mutual consent, within thirty (30) days after receipt by the
144 State Veterinarian of the request therefor. The State
145 Veterinarian shall give the person requesting the hearing notice
146 of the time and place of the hearing by certified mail to the
147 address specified in the request for hearing at least fifteen (15)
148 days prior to the time of the hearing.

149 SECTION 7. Section 75-40-117, Mississippi Code of 1972, is
150 amended as follows:

151 75-40-117. (1) The State Veterinarian may institute suits
152 or other legal proceedings in any court of proper venue as may be
153 required for the enforcement of any law or regulation governing
154 activities for which registration with or a license or permit from
155 the board is required by this article.

156 (2) The State Veterinarian may institute an action in any
157 court of proper venue to enforce any order made by him pursuant to
158 the provisions of Section 75-40-115.

159 (3) In cases in which the State Veterinarian institutes a
160 suit or other legal proceeding to enforce his order, the court

161 may, among other appropriate relief, issue a temporary restraining
162 order or a preliminary, interlocutory or permanent injunction
163 restraining or enjoining persons, and those in active concert with
164 them, from engaging in any acts, practices or transactions
165 prohibited by orders of the State Veterinarian or any law or
166 regulation governing activities for which registration with or a
167 license or permit from the Board of Animal Health is required.

168 SECTION 8. This act shall take effect and be in force from
169 and after July 1, 2000.