

By: Holland

To: Agriculture

HOUSE BILL NO. 596

1 AN ACT TO REQUIRE THAT COTTON FACTORS, COTTON BROKERS AND
 2 RICE DEALERS SHALL OBTAIN AN ANNUAL LICENSE FROM THE COMMISSIONER
 3 OF AGRICULTURE AND COMMERCE BEFORE CONDUCTING BUSINESS IN THIS
 4 STATE; TO PROVIDE DEFINITIONS; TO PROVIDE REQUIREMENTS AND FEES
 5 FOR THE LICENSES; TO PROVIDE PENALTIES FOR VIOLATIONS OF THIS ACT;
 6 TO PROVIDE THE OPPORTUNITY FOR A HEARING CONCERNING VIOLATIONS;
 7 AND FOR RELATED PURPOSES.

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

9 SECTION 1. When used in this act:

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

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

21 (c) "Rice dealer" or "dealer" means any individual,
 22 corporation or partnership or its agent engaged in the business of
 23 buying rice from producers thereof for resale or processing.

24 (d) "Producer" means the owner, tenant or operator of
25 land in this state who has an interest in and receives all or any
26 part of the proceeds from the sale of the cotton or rice produced
27 thereon.

28 (e) "Department" means the Mississippi Department of
29 Agriculture and Commerce.

30 (f) "Commissioner" means the Commissioner of the
31 Mississippi Department of Agriculture and Commerce, or his
32 designated representative.

33 SECTION 2. (1) Before conducting business in this state,
34 any cotton factor, cotton broker or rice dealer shall register
35 with the Department of Agriculture and Commerce and apply for and
36 receive from the commissioner a license, the form of which shall
37 be prescribed by the commissioner. The license shall permit the
38 factor, broker or dealer or his agent to enter into cotton or rice
39 contracts with residents of this state for the purpose of
40 purchasing cotton, purchasing rice or brokering cotton between a
41 farmer and a buyer. The license must be renewed annually. A fee
42 of One Hundred Dollars (\$100.00) shall be paid upon the issuance
43 of a license and again at the annual renewal of the license.

44 (2) The granting of a license to a cotton factor, cotton
45 broker or rice dealer shall be conditioned upon the faithful
46 compliance by the factor, broker or dealer with the provisions of
47 this act, the rules and regulations of the department and the good
48 faith performance of contracts entered into with producers for
49 cotton or rice sold or to be sold.

50 (3) The commissioner, as a condition of issuing a license,
51 may require the factor, broker or dealer to submit to an
52 examination and audit of his accounts, books and records,
53 specifically including a financial statement containing a balance
54 sheet and a profit/loss statement. The cost of any examination

55 and audit shall be borne by the factor, broker or dealer.

56 (4) If the department is satisfied that the applicant is of
57 good business reputation; that the applicant maintains a permanent
58 business location in this state; and that the applicant has
59 sufficient financial resources to guarantee payment to producers
60 for grain purchased from them, the Commissioner shall issue a
61 license to the applicant or shall renew the applicant's license.

62 (5) Licenses shall be issued or renewed annually, and shall
63 be renewed for the ensuing year on or before July 1 of that year.

64 One Hundred Dollars (\$100.00) shall be paid upon the issuance or
65 renewal of a license. The license or renewal thereof issued by
66 the department under this section shall be posted in the principal
67 office of the licensee in this state. A certificate shall be
68 posted in each location listed on a licensee's application where
69 he engages in the business of buying cotton or rice. Upon request
70 of a licensee and payment of the fee thereof, the commissioner
71 shall issue to the licensee a certificate that a license has been
72 issued or renewed as required by this article.

73 (6) The commissioner may prescribe and adopt regulations
74 establishing additional requirements or qualifications for
75 factors, brokers and dealers.

76 SECTION 3. (1) If a cotton factor, cotton broker or rice
77 dealer should fail or refuse to make payment to a producer for
78 grain purchased when such payment is requested by the producer and
79 the request is made within a reasonable amount of time from the
80 date of the sale or the date of delivery to the factor, broker or
81 dealer, whichever is later, but in no event later than the time
82 set by contract between the parties, the producer may notify the

83 commissioner in writing, by certified mail, of such failure or
84 refusal. The commissioner upon receiving such notice shall take
85 action as provided herein.

86 (2) The commissioner shall set by rule or regulation the
87 time period, in days, that constitutes a "reasonable amount of
88 time."

89 SECTION 4. The commissioner shall carry out and enforce the
90 provisions of this act and may promulgate rules and regulations to
91 carry out necessary inspections and to appoint and fix the duties
92 of his personnel and provide such equipment as may be necessary to
93 assist him in enforcing the provisions thereof.

94 SECTION 5. (1) Any person, found by the commissioner to be
95 in violation of any provision of this act or any rule or
96 regulation adopted thereunder may be assessed a civil penalty of
97 not more than Five Hundred Dollars (\$500.00) for each violation.
98 Each day on which a violation occurs shall be a separate offense.

99 In addition to fines as provided herein, the commissioner may, in
100 his discretion, suspend or revoke the license of such cotton
101 factor, cotton broker or rice dealer. However, the commissioner
102 shall afford a licensee an opportunity for a hearing, before
103 suspension or revocation of a license, to show cause why his
104 license should not be suspended or revoked.

105 (2) In addition to the penalties herein provided, the
106 commissioner may issue an injunction restraining any factor,
107 broker or dealer from violating or continuing to violate any of
108 the provisions of this act or any rule or regulation promulgated
109 under this act, notwithstanding the existence of other remedies at
110 law.

111 SECTION 6. Any person who violates any of the provisions of
112 this act or the rules and regulations adopted hereunder is guilty
113 of a misdemeanor and, upon conviction, shall be punished by a fine
114 not to exceed Five Hundred Dollars (\$500.00) or by imprisonment in
115 the county jail for a term not to exceed six (6) months, or both.

116 SECTION 7. (1) If any person violates any of the provisions
117 of this act, administrative proceedings may be brought against
118 him. When a written complaint is made against a person for
119 violation of any of the provisions of this act, or any of the
120 rules or regulations promulgated hereunder, the commissioner, or
121 his designee, shall conduct a full evidentiary hearing relative to
122 the charges. The complaint shall be in writing and shall be filed
123 in the office of the department. The commissioner shall cause to
124 be delivered to the accused in the manner described herein a copy
125 of the complaint and a summons requiring the accused to file a
126 written answer to the complaint within thirty (30) days after
127 service of the summons and the complaint on him. The accused
128 shall be notified by serving a copy of the summons and complaint
129 on him by any of the methods set forth in Rule 4 of the
130 Mississippi Rules of Civil Procedure or by certified mail. Upon
131 receipt of the written answer of the accused, the matter shall be
132 set for hearing before the commissioner or his designee within a
133 reasonable time. If the accused fails to file an answer within
134 such time; the commissioner or his designee may enter an order by
135 default against the accused. The commissioner may issue subpoenas
136 to require the attendance of witnesses and the production of
137 documents. Compliance with such subpoenas may be enforced by any
138 court of general jurisdiction in this state. The testimony of

139 witnesses shall be upon oath or affirmation, and they shall be
140 subject to cross-examination. The proceedings shall be recorded.

141 If the commissioner or his designee determines that the complaint
142 lacks merit, he may dismiss the complaint. If he finds that there
143 is substantial evidence showing that a violation of any of the
144 statutes or regulations has occurred, he may impose any or all of
145 the following penalties upon the accused: (a) levy a civil
146 penalty in an amount not to exceed Five Hundred Dollars (\$500.00)
147 for each violation; (b) revoke or suspend any license or permit
148 issued to the accused under the terms of this act; or (c) issue an
149 injunction which shall close down the cotton or rice business of
150 the licensee. The decision of the commissioner or his designee
151 shall be in writing, and it shall be delivered to the accused by
152 certified mail. If any costs, fees or penalties assessed
153 hereunder have not been paid, they may be collected through the
154 court system. All fees, costs and penalties collected by the
155 commissioner shall be expended by the department for its operating
156 expenses.

157 (2) Either the accused or the department may appeal the
158 decision of the commissioner or his designee to the circuit court
159 of the county of residence of the accused or, if the accused is a
160 nonresident of the State of Mississippi, to the Circuit Court of
161 the First Judicial District of Hinds County, Mississippi. The
162 appellant shall have the record transcribed and filed with the
163 circuit court. The appeal shall otherwise be governed by all
164 applicable laws and rules affecting appeals to the circuit court.

165 If no appeal is perfected within the required time, the decision
166 of the commission, or his designee, shall then become final.

167 (3) The decision of the circuit court may then be appealed
168 by either party to the Mississippi Supreme Court in accordance
169 with the existing law and rules affecting such appeals.

170 SECTION 8. In the enforcement of this act and the
171 regulations adopted hereunder, the commissioner shall have
172 available to him all legal and equitable remedies, including, but
173 not limited to, injunction, and he may initiate and defend suits
174 in his own behalf, and he shall have access to all state and
175 federal courts and he shall not be required to make or file a bond
176 in any such proceedings.

177 SECTION 9. This act shall take effect and be in force from
178 and after July 1, 2000.