

By: Malone, Livingston

To: Agriculture

HOUSE BILL NO. 718

1 AN ACT TO CREATE THE "MISSISSIPPI POULTRY PRODUCTION CONTRACT
2 FAIR PRACTICES ACT"; TO PROVIDE DEFINITIONS; TO CREATE THE FAIR
3 PRACTICES REVIEW BOARD; TO PROVIDE PROHIBITIONS AND REQUIREMENTS
4 FOR PROCESSORS AND GROWERS; TO PROVIDE PENALTIES FOR VIOLATIONS;
5 AND FOR RELATED PURPOSES.

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

7 SECTION 1. This act shall be known and may be cited as the
8 "Mississippi Poultry Production Contract Fair Practices Act."

9 SECTION 2. As used in this act:

10 (a) "Department" means the Mississippi Department of
11 Agriculture and Commerce.

12 (b) "Board" means the Fair Practices Review Board
13 created in this act.

14 (c) "Processor" means a person who, in the ordinary
15 course of business, buys poultry or poultry products grown, raised
16 or produced in this state or who contracts with a producer to
17 grow, raise or produce poultry or poultry products in this state.

18 (d) "Person" means any individual, partnership,
19 association, corporation, limited liability company or any other
20 legal entity.

21 (e) "Grower" means a person who grows, raises or
22 produces poultry or poultry products and contracts with a

23 processor to provide management, labor, machinery, facilities or
24 any other production input for the production of poultry or
25 poultry products.

26 (f) "Commissioner" means the Commissioner of the
27 Department of Agriculture and Commerce.

28 SECTION 3. There is created the Fair Practices Review Board
29 for the purpose of conducting evidentiary hearings and assessing
30 penalties for violations of this act. The board shall consist of
31 the commissioner or his designated representative chosen from
32 within his department, who shall serve as chairman, the
33 Mississippi Attorney General or his designated representative
34 chosen from within his department and a third member, who is an
35 expert in the field of poultry, chosen by agreement of the
36 commissioner or his designated representative and the Mississippi
37 Attorney General or his designated representative.

38 SECTION 4. (1) No processor or grower shall engage in any
39 unfair, unjustly discriminatory or deceptive act or practice as
40 defined in this act in connection with any poultry or poultry
41 products contract.

42 (2) Unfair, unjustly discriminatory or deceptive acts and
43 practices, include, but are not limited to, the following, each of
44 which is declared to be a violation of this act:

45 (a) A processor's using coercion, intimidation, the
46 threat of retaliation or the threat of contract termination or
47 cancellation to impose, demand, compel or dictate the terms,
48 payment or manner of payment or the signing of a contract by a
49 grower;

50 (b) A processor's using coercion, intimidation, the
51 threat of retaliation or the threat of contract termination or
52 cancellation or threat of nonrenewal of a contract in order to
53 require the grower to make capital improvements such as buildings

54 or equipment;

55 (c) A processor's interfering with, restraining or
56 coercing a grower in the exercise of his right to join, form or
57 assist associations of producers or growers and to participate
58 with other growers in contract negotiations;

59 (d) A processor's terminating or cancelling a contract
60 with a grower while the grower is financially obligated for an
61 investment in buildings and equipment that was made to obtain a
62 contract to be a grower unless the grower is in willful violation
63 of the contract and the grower fails to cure such violation within
64 ninety (90) days after written notice from the processor;

65 (e) A processor's refusing to provide to the grower
66 upon request the statistical information and data used to
67 determine compensation paid to the grower by the processor. This
68 statistical information and data includes, but is not limited to,
69 feed conversion rates, averages of other growers, origination and
70 breeder history;

71 (f) A processor's refusing to allow a grower or a
72 grower's representative to physically observe the actual weighing
73 or measuring of any poultry or poultry products, feed or other
74 substance used to determine the grower's compensation or the
75 processor's failing to weigh or measure any poultry or poultry
76 products within a reasonable period of time after it has been
77 obtained from the grower;

78 (g) A processor's cancelling a grower's contract based
79 solely upon his ranking as it compares to the other growers;

80 (h) Any act or omission prohibited by the Packers and
81 Stockyards Act, 7 USCS Section 181 et seq., or the Perishable

82 Agricultural Commodities Act, 7 USCS Section 499a et seq. or the
83 rules and regulations promulgated thereunder;

84 (i) A processor's requiring a grower to purchase or
85 construct additional buildings, equipment or facilities, or
86 additions, modifications or improvements thereto, after the
87 parties have entered into a contract unless fair and equitable
88 premiums are paid by the processor as compensation resulting in
89 the payoff of improvements in that contract period; alternatively,
90 the processor may pay for the improvements in lump sum;

91 (j) Any act or omission by a processor that causes a
92 reduction in production, an increase in morbidity or an increase
93 in mortality on the part of a grower's poultry or poultry
94 products;

95 (k) A grower's failing to maintain buildings,
96 equipment, ingress or egress in a manner that is acceptable within
97 industry standards;

98 (l) A grower's failing to diligently follow the written
99 day-to-day poultry management practices of the processor.

100 SECTION 5. Nothing in this act shall prevent a processor
101 from providing incentives to growers in the production of poultry
102 or poultry products.

103 SECTION 6. (1) The parties may voluntarily cancel the
104 contract by mutual agreement at any time.

105 (2) If either party is convicted of a felony in a court of
106 law for an offense directly related to the business covered by the
107 contract, the other party may immediately cancel the contract. If
108 the processor is the person convicted and the grower cancels the
109 contract, the processor shall be responsible to the grower for the

110 remaining indebtedness on capital cost of all buildings, equipment
111 or other facilities, and any additions, modifications or
112 improvements thereto, that the grower purchased or made for the
113 purpose of growing poultry or poultry products. The processor
114 also shall be obligated to compensate the grower in an amount
115 equal to the remaining value of the contract.

116 (3) Unless and until a contract has been cancelled as
117 provided herein or by a court or by agreement of the parties, the
118 parties shall continue to fulfill their obligations under the
119 contract, including, but not limited to, the delivery of poultry
120 and feed by the processor to the grower and the payment of
121 compensation to the grower.

122 (4) If the processor terminates the contract other than as
123 provided herein, and without limiting the grower's remedies or
124 damages, the processor also shall be obligated to compensate the
125 grower in an amount equal to the remaining value of the contract.

126 (5) If the processor terminates or cancels the contract, the
127 processor shall reimburse the grower for the remaining
128 indebtedness on capital cost of all buildings, equipment or other
129 facilities, and all additions, modifications or improvements
130 thereto, except where the grower is in willful violation of the
131 contract and the grower fails to cure such violation within ninety
132 (90) days after written notice from the processor.

133 (6) The grower may terminate or cancel the contract if the
134 processor is in violation of the contract and the processor fails
135 to cure such violation within ninety (90) days after written
136 notice from the grower.

137 SECTION 7. (1) All contracts shall be entered into with a

138 sense of fairness, and there is an implied promise of good faith
139 as defined in Section 75-1-201(19) by all parties in any poultry
140 or poultry products contract between a processor and a grower.

141 (2) If title to the poultry is retained by the processor,
142 the grower shall not pay for the poultry or have a value of the
143 poultry used in calculating the grower's payment.

144 SECTION 8. A grower may obtain shavings from a supplier of
145 his choice so long as the shavings meet generally accepted
146 industry standards.

147 SECTION 9. The processor shall furnish at no cost to the
148 grower any feed, medications, vaccinations or other supplies and
149 supplements required by the processor or as required by any state
150 or federal regulation, other than as provided for in Section 8 of
151 this act.

152 SECTION 10. Any person violating any of the provisions of
153 this act or the rules and regulations promulgated hereunder shall
154 be guilty of a misdemeanor and shall be fined not more than Five
155 Hundred Dollars (\$500.00) or be imprisoned in the county jail for
156 not more than six (6) months, or both.

157 SECTION 11. Notwithstanding the existence or pursuit of any
158 other remedy, the Mississippi Department of Agriculture and
159 Commerce, or any person, may maintain an action for injunctive
160 relief or other process to prevent violations of this act.

161 SECTION 12. A processor shall pay the grower for the mature
162 poultry or poultry products within fifteen (15) days after the
163 week that the commodity leaves the grower's farm.

164 SECTION 13. If a grower has evidence that inferior quality
165 feed has been delivered, the grower may request an official

166 inspection and analysis by the department.

167 SECTION 14. No contract entered into between a grower and a
168 processor shall abrogate, waive or diminish in any way any of the
169 legal or equitable remedies available to either party in the event
170 of a breach of the contract by the other party. The exercise of a
171 remedy by either party to such contract shall not operate as an
172 election of remedies so as to preclude it from taking any other
173 action available to it under the contract. Remedies are
174 cumulative and not by election.

175 SECTION 15. Every poultry or poultry products production
176 contract subject to this act shall have a term of at least five
177 (5) years.

178 SECTION 16. Before a grower initially builds or makes
179 additions or modifications to his buildings, equipment or
180 facilities, the processor shall provide to the grower written
181 plans and specifications of how the initial buildings, additions
182 or modifications should be constructed or purchased, and the
183 grower may employ the contractor, builder or vendor of his choice
184 to make such additions or modifications. The processor shall not
185 dictate or suggest to the grower which contractor, builder or
186 vendor shall provide such construction services or goods to the
187 grower.

188 SECTION 17. When the mature poultry or poultry products
189 leave the grower's farm for the processor, the processor shall
190 retrieve from the grower, as soon as possible, any leftover feed
191 with no transportation or other charge to the grower, and the
192 grower shall be given proper credit for such leftover feed, which
193 shall be reflected on the settlement statement.

194 SECTION 18. If any person violates any of the provisions of
195 this act, or the rules and regulations promulgated hereunder,
196 administrative proceedings may be brought against him pursuant to
197 a written complaint filed with the department. A full evidentiary
198 hearing may be conducted before the board. At the hearing, the
199 department shall have subpoena power, witnesses shall be placed
200 under oath, parties shall have the right of cross-examination and
201 the right to be represented by counsel and the testimony shall be
202 recorded. Cases may be consolidated for hearing if there is a
203 similarity of issues or parties or in other instances deemed
204 appropriate by the board. The board shall render a written
205 opinion. If the Fair Practices Review Board finds that the
206 accused did not commit a violation, the complaint shall be
207 dismissed. If the board finds that the accused did commit a
208 violation, the board may levy a civil penalty against the accused
209 in an amount not to exceed Twenty-five Thousand Dollars
210 (\$25,000.00) for each violation. If either party is aggrieved by
211 the findings of the board, he may appeal to the circuit court of
212 the county of the residence or domicile of the accused, or, if the
213 accused is a nonresident of the State of Mississippi, to the
214 circuit court of the First Judicial District of Hinds County,
215 Mississippi. If either party is aggrieved by the findings of the
216 circuit court, he may appeal to the Mississippi Supreme Court.
217 All fees, costs and penalties collected hereunder from the accused
218 may be retained by the department for its operating expenses. The
219 department is hereby authorized to expand and amplify the
220 procedures and other matters mentioned in this section in such
221 rules and regulations that the department deems necessary or

222 desirable to carry out the provisions of this section.

223 SECTION 19. The commissioner may promulgate rules and
224 regulations to implement the provisions of this act.

225 SECTION 20. If any section, subsection, paragraph, sentence,
226 clause or provision of this act shall become invalid by order of
227 any court of competent jurisdiction, the same shall not affect the
228 validity of any other section, subsection, paragraph, sentence,
229 clause or provision thereof.

230 SECTION 21. This act shall take effect and be in force from
231 and after its passage.