

By: Livingston, Malone, Miles, Hamilton,
Eaton

To: Agriculture

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1444

1 AN ACT TO CREATE THE "MISSISSIPPI POULTRY FAIR PRACTICES
2 ACT"; TO PROVIDE DEFINITIONS; TO PROVIDE PROHIBITIONS AND
3 REQUIREMENTS FOR PROCESSORS AND PRODUCERS; TO CREATE THE
4 MISSISSIPPI POULTRY INDUSTRY RESOLUTIONS BOARD WHICH SHALL
5 PROMULGATE RULES AND REGULATIONS TO IMPLEMENT THE PROVISIONS OF
6 THIS ACT; TO PROVIDE PENALTIES FOR VIOLATIONS; AND FOR RELATED
7 PURPOSES.

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

9 SECTION 1. The Legislature finds that the production of
10 poultry constitutes an important and significant portion of the
11 state's economy and that it is beneficial to the citizens of this
12 state to protect the vitality of this enterprise.

13 SECTION 2. For the purposes of this section, the following
14 words and phrases shall have the meanings ascribed herein:

15 (a) "Producer" means any person engaged in the business
16 of raising or caring for live poultry under a poultry-growing
17 arrangement, whether the poultry is owned by such person or by
18 another.

19 (b) "Poultry" means any domesticated bird, whether live
20 or dead, and includes laying hens, broiler breeding hens, broiler
21 breeder pullets, commercial egg hens, commercial egg pullets,
22 broilers, roasters, turkey hens, turkey toms and ducks.

23 (c) "Poultry products" means eggs, poultry carcasses,
24 poultry by-products or any part thereof.

25 (d) "Processor" means any person engaged in the
26 business of obtaining live poultry or poultry products by purchase
27 or under a poultry-growing arrangement for the purpose of
28 slaughter by such person or by another, or any person engaged in

29 the business of obtaining poultry eggs or the care of live poultry
30 under a poultry-growing arrangement.

31 (e) "Poultry-growing arrangement" means any grow-out
32 contract, marketing agreement or other arrangement under which a
33 poultry producer raises or cares for live poultry or poultry
34 products in accord with another's instructions.

35 SECTION 3. (1) No processor or producer shall engage in any
36 unfair, unjustly discriminatory or deceptive act or practice as
37 defined in this act in connection with any poultry or
38 poultry-growing contract.

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

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

47 (b) A processor's canceling a producer's contract based
48 solely upon his ranking as it compares to the other producers;

49 (c) Any act or omission prohibited by the Packers and
50 Stockyards Act, 7 USCS Section 181 et seq., or the rules and
51 regulations promulgated thereunder;

52 (d) A producer's failing to maintain buildings,
53 equipment, ingress or egress in a manner that is acceptable within
54 industry standards;

55 (e) A producer's failing to follow the written
56 day-to-day poultry fair practices of the processor.

57 SECTION 4. All processors and producers shall engage in the
58 following fair practices:

59 (a) All live birds shall be weighed by a bonded
60 weighmaster on certified scales. Provisions shall be made for
61 alternate certified scales in the event the primary scales are
62 "red tagged" by the State Weights and Measures Department.
63 Producers, their family or employees, with proper identification,
64 shall be allowed to watch, without prior notice, live birds being
65 weighed.

66 (b) All feed shall be weighed under the same
67 arrangement as provided in paragraph (a) of this section,
68 including the observation of the weighing.

69 (c) Processors shall provide producers all
70 documentation that impacts a producer's settlement check, in a
71 legible manner, including, but not limited to:

72 (i) Producer's copy of United States Department of
73 Agriculture form 9061-2.

74 (ii) A loading ticket, at the time of catching,
75 that gives truck number, trailer number, number of birds per coop
76 and number of full coops.

77 (iii) Copy of weigh tickets for live birds.

78 (iv) A copy of medication charges, either at the
79 time of delivery or with settlement check.

80 (v) A sample computation of the payment formula,
81 using the producer's actual figures. Producers shall produce and
82 provide several sample computation formulas.

83 (d) Processors shall use all available means to insure
84 proper handling of birds from farm to plant. Damage by the
85 catching crew of the producer's equipment or facilities shall be
86 reimbursed by his processor.

87 (e) Processors shall not require a producer to purchase
88 or construct additional buildings, equipment or facilities, or
89 additions, modifications or improvements thereto, after the
90 parties have entered into a contract unless fair and equitable
91 premiums are paid by the processor as compensation. A processor
92 shall test, upon request of a producer, new equipment that a
93 producer wishes to be added to the processor's approved equipment
94 list.

95 (f) Producers and their immediate family who are
96 employed by the companies in live production shall not be ranked
97 with other contract producers.

98 (g) Producers may join or assist any organization or

99 association of their choice. A producer's membership in any
100 organization shall not affect his settlement or contract in any
101 way.

102 (h) When requested by the producer, the processor shall
103 furnish the producer a copy of veterinary reports within
104 forty-eight (48) hours of the time the report is received by the
105 processor.

106 (i) Processors shall provide producers with information
107 on feed delivery procedures. Feed delivery trucks shall be sealed
108 at the plant with corresponding, numbered seals that shall be
109 listed on the feed delivery ticket. The seal shall not be broken
110 unless the producer is not available at the time of actual
111 delivery. The producer may request that he be notified by
112 telephone before the truck leaves the feed mill.

113 (j) Processors shall provide producers applicable
114 guidelines for broiler, pullet or breeder production.

115 SECTION 5. All contracts shall be entered into with a sense
116 of fairness, and there is an implied promise of good faith as
117 defined in Section 75-1-201(19) by all parties in any poultry or
118 poultry products contract between a processor and a producer.

119 SECTION 6. (1) There is created the Mississippi Poultry
120 Industry Resolutions Board. The board shall be composed of one
121 (1) member appointed by the Governor who has agricultural
122 interests and who is neither a producer nor a processor and whose
123 initial term is six (6) years; one (1) member appointed by the
124 Lieutenant Governor who has agricultural interests and who is
125 neither a producer nor a processor and whose initial term is four
126 (4) years; the Commissioner of Agriculture and Commerce; one (1)
127 processor, or his designee, appointed by the Governor and whose
128 initial term is two (2) years; and one (1) producer appointed by
129 the Lieutenant Governor and whose initial term is two (2) years.
130 After the initial appointments, each appointed member of the board
131 shall serve a term of four (4) years. Any person who is a party

132 to a poultry-growing arrangement may file a claim for resolution
133 of any dispute pertaining to the poultry-growing arrangement with
134 the Department of Agriculture and Commerce that may refer the
135 claim for resolution to the board. The board shall promulgate
136 rules and regulations to implement the provisions of this act and
137 shall operate in accordance with the Administrative Procedures
138 Law. If it is determined by a majority of the board that there is
139 substantial evidence showing that a violation of this act has
140 occurred, the commissioner, upon recommendation of the board, may
141 levy a civil penalty in an amount not to exceed Five Thousand
142 Dollars (\$5,000.00) for each violation. The decision of the board
143 shall be in writing, and it shall be delivered to the accused by
144 certified mail. If any cost, fees or penalties assessed hereunder
145 have not been paid, they may be collected through the court
146 system. All fees, costs and penalties collected by the
147 commissioner shall be placed in the State General Fund.

148 (2) Either party may appeal the decision of the board to the
149 circuit court of the First Judicial District of Hinds County,
150 Mississippi. The appellant shall have the obligation of having
151 the record transcribed and filing same with the circuit court.
152 The appeal shall otherwise be governed by all applicable laws and
153 rules affecting appeals to circuit court. If no appeal is
154 perfected within the required time, the decision of the board
155 shall then become final.

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

159 SECTION 7. This act shall take effect and be in force from
160 and after its passage and shall stand repealed on July 1, 2003.