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To: Agriculture

HOUSE BILL NO. 1444

1 AN ACT TO CREATE THE "MISSISSIPPI POULTRY BEST PRACTICES ACT;
2 TO PROVIDE DEFINITIONS; TO PROVIDE PROHIBITIONS AND REQUIREMENTS
3 FOR PROCESSORS AND GROWERS; TO PROVIDE PENALTIES FOR VIOLATIONS;
4 AND FOR RELATED PURPOSES.

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

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

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

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

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

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

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

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

32 SECTION 3. (1) No processor or grower shall engage in any
33 unfair, unjustly discriminatory or deceptive act or practice as
34 defined in this act in connection with any poultry or
35 poultry-growing contract.

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

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

44 (b) A processor's canceling a grower's contract based
45 solely upon his ranking as it compares to the other growers;

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

49 (d) A grower's failing to maintain buildings,
50 equipment, ingress or egress in a manner that is acceptable within
51 industry standards;

52 (e) A grower's failing to diligently follow the written
53 day-to-day poultry best practices of the processor.

54 SECTION 4. All processors and growers shall engage in the
55 following best practices:

56 (a) All live birds shall be weighed by a bonded
57 weighmaster on certified scales. Provisions shall be made for
58 alternate certified scales in the event the primary scales are
59 "red tagged" by the State Weights and Measures Department.
60 Growers, their family or employees, with proper identification,

61 shall be allowed to watch, without prior notice, live birds being
62 weighed.

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

66 (c) Processors shall provide growers all documentation
67 that impacts a producer's settlement check, in a legible manner,
68 including, but not limited to:

69 (i) Grower's copy of United States Department of
70 Agriculture form 9061-2.

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

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

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

77 (v) A sample computation of the payment formula,
78 using the growers actual figures. Growers shall produce and
79 provide several sample computation formulas.

80 (d) Processors shall use all available means to insure
81 proper handling of birds from farm to plant. Damage by catching
82 crew of grower's equipment or facilities shall be reimbursed by
83 his processor.

84 (e) Processors shall not require a grower to purchase
85 or 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. A processor
89 shall test, upon request of a grower, new equipment that a grower
90 wishes to be added to the processor's approved equipment list.

91 (f) Growers and their immediate family who are employed
92 by the companies in live production shall not be ranked with other
93 contract growers.

94 (g) Growers may join or assist any organization or
95 association of their choice. A grower's membership in any
96 organization shall not affect his settlement in any way.

97 (h) Where requested and available, the processor shall
98 furnish the grower a copy of veterinary reports within forty-eight
99 (48) hours of the time the report is received by the processor.
100 The processor shall share with the grower all known information
101 and causes dealing with problematic situations that affect farm
102 management, including parent stock and age.

103 (i) Processors shall provide growers with information
104 on feed delivery procedures. When requested, feed delivery trucks
105 shall be sealed at the plant with corresponding, numbered seals
106 that shall be listed on the feed delivery ticket. The seal shall
107 not be broken unless the grower is not available at the time of
108 actual delivery. The grower may request that he be notified by
109 telephone before the truck leaves the feed mill.

110 (j) Processors shall provide producers applicable
111 guidelines for broiler, pullet or breeder best practices.

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

116 SECTION 6. (1) If any person violates any of the provisions
117 of this act, administrative proceedings may be brought against him
118 When a written complaint is made against a person for violation
119 of any of the provisions of the act, or any of the rules or
120 regulations promulgated hereunder, the Commissioner of the
121 Mississippi Department of Agriculture and Commerce
122 ("commissioner"), or his designee, shall conduct a full
123 evidentiary hearing relative to the charges. The complaint shall
124 be in writing and shall be filed in the office of the
125 commissioner. The complaining party shall prepay the court
126 reporter's appearance fee at the same time he files the complaint.

127 The commissioner shall cause to be delivered to the accused in
128 the manner described herein a copy of the complaint and summons
129 requiring the accused to file a written answer to the complaint
130 within thirty (30) days after service of the summons and the
131 complaint on him. The accused shall be notified by serving a copy
132 of the summons and complaint on him by any of the methods set
133 forth in Rule 4 of the Mississippi Rules of Civil Procedure or by
134 certified mail. Upon receipt of the written answer of the
135 accused, the matter shall be set for hearing before the
136 commissioner or his designee within a reasonable time. If the
137 accused fails to file an answer within such time; the commissioner
138 or his designee may enter an order by default against the accused.

139 The commissioner is vested with the power to issue subpoenas to
140 require the attendance of witnesses and the production of
141 documents. Compliance with such subpoenas may be enforced by any
142 court of general jurisdiction in this state. The testimony of
143 witnesses shall be upon oath or affirmation, and they shall be
144 subject to cross-examination. The proceedings shall be recorded.

145 If the commissioner or his designee determines that the complaint
146 lacks merit, he may dismiss the complaint. If he finds that there
147 is substantial evidence showing that a violation of any of the
148 statutes or regulations has occurred, the commissioner may levy a
149 civil penalty in an amount not to exceed Five Thousand Dollars
150 (\$5,000.00) for each violation. The decision of the commissioner
151 or his designee shall be in writing, and it shall be delivered to
152 the accused by certified mail. If any cost, fees or penalties
153 assessed hereunder have not been paid, they may be collected
154 through the court system. All fees, costs and penalties collected
155 by the commissioner shall be placed in the State General Fund.

156 (2) Either the accused or the department may appeal the
157 decision of the commissioner or his designee to the circuit court
158 of the county of residence of the accused, or if the accused is a
159 nonresident of the State of Mississippi, to the circuit court of

160 the First Judicial District of Hinds County, Mississippi. The
161 appellant shall have the obligation of having the record
162 transcribed and filing same with the circuit court. The appeal
163 shall otherwise be governed by all applicable laws and rules
164 affecting appeals to circuit court. If no appeal is perfected
165 within the required time, the decision of the commissioner, or his
166 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 7. The commissioner may promulgate rules and
171 regulations to implement the provisions of this act.

172 SECTION 8. This act shall take effect and be in force from
173 and after its passage.