SENATE BILL NO. 2557
(As Sent to Governor)

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

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

SECTION 1. When used in this act:

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

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

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

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

(e) "Department" means the Mississippi Department of

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Agriculture and Commerce.

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

SECTION 2. (1) (a) Before conducting business in this state, any cotton factor, cotton broker or rice dealer shall register with the department and obtain a license from the commissioner. The commissioner shall prescribe the form of the license. The license shall permit the factor, broker or dealer or his agent to enter into cotton or rice contracts with residents of this state for the purpose of purchasing cotton, purchasing rice or brokering cotton between a farmer and a buyer. The license must be renewed annually. The annual license fee is Ten Dollars ($10.00).

(b) If the department is satisfied that the applicant is of good business reputation; that the applicant maintains a permanent business location in this state; and that the applicant has sufficient financial resources and has furnished the department a fidelity bond in the amount of One Hundred Thousand Dollars ($100,000.00) to guarantee payment to producers for grain purchased from them, the commissioner shall issue a license to the applicant or shall renew the applicant’s license.

(c) Licenses shall be issued or renewed annually, and shall be renewed for the ensuing year on or before July 1 of that year. The license shall be posted in the principal office of the licensee in this state. A certificate shall be posted in each location listed on a licensee’s application where he engages in the business of buying cotton or rice.

(2) The granting of a license to a cotton factor, cotton broker or rice dealer shall be conditioned upon the faithful compliance by the factor, broker or dealer with the provisions of this act, the rules and regulations of the department and the good faith performance of contracts entered into with producers.
(3) The commissioner, as a condition of issuing a license, may require the factor, broker or dealer to submit to an examination and audit of his accounts, books and records, specifically including a financial statement containing a balance sheet and a profit/loss statement. The cost of any examination and audit shall be borne by the factor, broker or dealer.

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

SECTION 3. (1) If a cotton factor, cotton broker or rice dealer fails or refuses to pay a producer for grain purchased when payment is requested by the producer within a reasonable amount of time from the date of the sale or the date of delivery, whichever is later, but no later than the time set by contract between the parties, the producer may notify the commissioner in writing, by certified mail, of such failure or refusal. The commissioner upon receiving notice shall take action as provided in this act.

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

SECTION 4. The commissioner shall carry out and enforce this act and may promulgate rules and regulations to carry out necessary inspections and to appoint and fix the duties of his personnel and provide any equipment as may be necessary to enforce this act.

SECTION 5. (1) Any person, found by the commissioner to be in violation of this act or any rule or regulation may be accessed a civil penalty of not more than Five Hundred Dollars ($500.00) for each violation. Each day the violation occurs shall be a separate offense. In addition to a civil penalty or fine, the commissioner may, in his discretion, suspend or revoke the license of the cotton factor, cotton broker or rice dealer. However, before suspending or revoking a license, the commissioner shall
afford a licensee an opportunity for a hearing, to show cause why
his license should not be suspended or revoked.

(2) In addition to the penalties, the commissioner may issue
an injuction restraining any factor, broker or dealer from
violating or continuing to violate this act or any rule or
regulation, notwithstanding the existence of other remedies at
law.

SECTION 6. A person who violates this act or a rule or
regulation is guilty of a misdemeanor and, upon conviction, shall
be punished by a fine not to exceed Five Hundred Dollars ($500.00)
or by imprisonment in the county jail for a term not to exceed six
(6) months, or both.

SECTION 7. (1) Administrative proceedings may be brought
against a person who violates this act. When a written complaint
is made against a person for violation of this act, or any rule or
regulation, the commissioner shall conduct a full evidentiary
hearing on the charges. The complaint shall be in writing and
shall be filed in the office of the department. The commissioner
shall serve a copy of the complaint and a summons requiring the
accused to file a written answer to the complaint within thirty
(30) days after service of the summons and the complaint. The
accused shall be notified by serving a copy of the summons and
complaint on him by any of the methods set forth in Rule 4 of the
Mississippi Rules of Civil Procedure or by certified mail. Upon
receipt of the written answer of the accused, the matter shall be
set for hearing before the commissioner within a reasonable time.
If the accused fails to file an answer within such time, the
commissioner may enter an order by default against the accused.
The commissioner may issue subpoenas to require the attendance of
witnesses and the production of documents. Compliance with
subpoenas may be enforced by any court of general jurisdiction in
this state. The testimony of witnesses shall be upon oath or
affirmation, and they shall be subject to cross-examination.
proceedings shall be recorded. If the commissioner determines
that the complaint lacks merit, he may dismiss the complaint. If
he finds that there is substantial evidence showing that a
violation of any of the statutes or regulations has occurred, he
may impose any or all of the following penalties upon the accused:
(a) levy a civil penalty in an amount not to exceed Five Hundred
Dollars ($500.00) for each violation; (b) revoke or suspend any
license or permit issued to the accused under the terms of this
act; or (c) issue an injunction which shall close down the cotton
or rice business of the licensee. The decision of the
commissioner shall be in writing, and it shall be delivered to the
accused by certified mail. If any costs, fees or penalties
assessed have not been paid, they may be collected through the
court system. All fees, costs and penalties collected by the
commissioner shall be expended by the department for its operating
taxes.

(2) Either the accused or the department may appeal the
decision of the commissioner to the circuit court of the county of
residence of the accused or, if the accused is a nonresident of
the State of Mississippi, to the Circuit Court of the First
Judicial District of Hinds County, Mississippi. The appellant
shall have the record transcribed and filed with the circuit
court. The appeal shall otherwise be governed by all applicable
laws and rules affecting appeals to the circuit court. If no
appeal is perfected within the required time, the decision of the
commissioner, shall then become final.

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

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

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