

By: Stogner

To: Agriculture

SENATE BILL NO. 2557
(As Sent to Governor)

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 employed by a producer to
12 sell cotton for and in behalf of the producer, either in his own
13 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 employed to act as an
17 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 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 on the land.

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) (a) Before conducting business in this
34 state, any cotton factor, cotton broker or rice dealer shall
35 register with the department and obtain a license from the
36 commissioner. The commissioner shall prescribe the form of the
37 license. The license shall permit the factor, broker or dealer or
38 his agent to enter into cotton or rice contracts with residents of
39 this state for the purpose of purchasing cotton, purchasing rice
40 or brokering cotton between a farmer and a buyer. The license
41 must be renewed annually. The annual license fee is Ten Dollars
42 (\$10.00).

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

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

57 (2) The granting of a license to a cotton factor, cotton
58 broker or rice dealer shall be conditioned upon the faithful
59 compliance by the factor, broker or dealer with the provisions of
60 this act, the rules and regulations of the department and the good
61 faith performance of contracts entered into with producers.

62 (3) The commissioner, as a condition of issuing a license,
63 may require the factor, broker or dealer to submit to an
64 examination and audit of his accounts, books and records,
65 specifically including a financial statement containing a balance
66 sheet and a profit/loss statement. The cost of any examination
67 and audit shall be borne by the factor, broker or dealer.

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

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

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

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

87 SECTION 5. (1) Any person, found by the commissioner to be
88 in violation of this act or any rule or regulation may be assessed
89 a civil penalty of not more than Five Hundred Dollars (\$500.00)
90 for each violation. Each day the violation occurs shall be a
91 separate offense. In addition to a civil penalty or fine, the
92 commissioner may, in his discretion, suspend or revoke the license
93 of the cotton factor, cotton broker or rice dealer. However,
94 before suspending or revoking a license, the commissioner shall

95 afford a licensee an opportunity for a hearing, to show cause why
96 his license should not be suspended or revoked.

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

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

107 SECTION 7. (1) Administrative proceedings may be brought
108 against a person who violates this act. When a written complaint
109 is made against a person for violation of this act, or any rule or
110 regulation, the commissioner shall conduct a full evidentiary
111 hearing on the charges. The complaint shall be in writing and
112 shall be filed in the office of the department. The commissioner
113 shall serve a copy of the complaint and a summons requiring the
114 accused to file a written answer to the complaint within thirty
115 (30) days after service of the summons and the complaint. The
116 accused shall be notified by serving a copy of the summons and
117 complaint on him by any of the methods set forth in Rule 4 of the
118 Mississippi Rules of Civil Procedure or by certified mail. Upon
119 receipt of the written answer of the accused, the matter shall be
120 set for hearing before the commissioner within a reasonable time.

121 If the accused fails to file an answer within such time, the
122 commissioner may enter an order by default against the accused.
123 The commissioner may issue subpoenas to require the attendance of
124 witnesses and the production of documents. Compliance with
125 subpoenas may be enforced by any court of general jurisdiction in
126 this state. The testimony of witnesses shall be upon oath or
127 affirmation, and they shall be subject to cross-examination. The

128 proceedings shall be recorded. If the commissioner determines
129 that the complaint lacks merit, he may dismiss the complaint. If
130 he finds that there is substantial evidence showing that a
131 violation of any of the statutes or regulations has occurred, he
132 may impose any or all of the following penalties upon the accused:

133 (a) levy a civil penalty in an amount not to exceed Five Hundred
134 Dollars (\$500.00) for each violation; (b) revoke or suspend any
135 license or permit issued to the accused under the terms of this
136 act; or (c) issue an injunction which shall close down the cotton
137 or rice business of the licensee. The decision of the
138 commissioner shall be in writing, and it shall be delivered to the
139 accused by certified mail. If any costs, fees or penalties
140 assessed have not been paid, they may be collected through the
141 court system. All fees, costs and penalties collected by the
142 commissioner shall be expended by the department for its operating
143 expenses.

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

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

157 SECTION 8. In the enforcement of this act and the
158 regulations adopted hereunder, the commissioner shall have
159 available to him all legal and equitable remedies, including, but
160 not limited to, injunction, and he may initiate and defend suits

161 in his own behalf, and he shall have access to all state and
162 federal courts and he shall not be required to make or file a bond
163 in any such proceedings.

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