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Harden

To: Agriculture

SENATE BILL NO. 2807

1 AN ACT TO ENACT THE MISSISSIPPI POULTRY PRODUCTION CONTRACT
2 FAIR PRACTICES ACT; TO PROVIDE FOR A FAIR PRACTICES REVIEW BOARD;
3 TO PROHIBIT DISCRIMINATORY AND COERCIVE PRACTICES; TO PROVIDE
4 REMEDIES FOR CANCELLATION OF CONTRACTS; TO PROVIDE AN
5 ADMINISTRATIVE REVIEW OF VIOLATIONS; TO PRESCRIBE PENALTIES FOR
6 VIOLATIONS; AND FOR RELATED PURPOSES.

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

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

10 SECTION 2. As used in this act:

11 (a) "Board" means the Fair Practices Review Board
12 created in this act.

13 (b) "Commissioner" means the Commissioner of the
14 Department of Agriculture and Commerce.

15 (c) "Department" means the Mississippi Department of
16 Agriculture and Commerce.

17 (d) "Grower" means a person who grows, raises or
18 produces poultry or poultry products and contracts with a
19 processor to provide management, labor, machinery, facilities or
20 any other production input for the production of poultry or
21 poultry products.

22 (e) "Person" means any individual, partnership,
23 association, corporation, limited liability company, or any other
24 legal entity.

25 (f) "Processor" means a person who in the ordinary
26 course of business, buys poultry or poultry products grown, raised
27 or produced in this state or who contracts with a grower to grow,
28 raise or produce poultry or poultry products in this state.

29 SECTION 3. There is created the Fair Practices Review Board
30 consisting of three (3) members. The members are the
31 commissioner, or his designated representative, from within his
32 department, who shall serve as chairman; the Mississippi Attorney
33 General, or his designated representative from within his
34 department; and a third member, who is an expert in the field of
35 poultry, chosen by agreement of the commissioner, or his
36 designated representative, and the Mississippi Attorney General,
37 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 provided 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 and each
44 is a violation of this act:

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

49 (b) Using coercion, intimidation, the threat of
50 retaliation or the threat of contract termination or cancellation
51 or threat of nonrenewable of a contract in order to require the
52 grower to make capital improvements such as buildings or
53 equipment;

54 (c) For a processor to interfere with, restrain or
55 coerce a grower in the exercise of his right to join, form or
56 assist associations of producers or growers and to participate
57 with other growers in contract negotiations;

58 (d) For a processor to terminate or cancel a contract
59 with a grower while the grower is financially obligated for an
60 investment in buildings and equipment which was made to obtain a
61 contract to be a grower, except when the grower is in willful

62 violation of the contract and the grower fails to cure the
63 violation within ninety (90) days after written notice from the
64 processor;

65 (e) For a processor to refuse 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) For a processor to refuse 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 for the
75 processor to fail 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) To cancel a grower's contract based solely upon his
79 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 under those acts;

84 (i) For a processor to require a grower to purchase or
85 construct additional buildings, equipment or facilities or
86 additions, modifications or improvements, after the parties have
87 entered into a contract, unless fair and equitable premiums are
88 paid by the processor as compensation resulting in the payoff of
89 improvements in that contract period, or the processor may pay for
90 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) For a grower to fail to maintain buildings,
96 equipment, ingress or egress in a manner that is acceptable within
97 industry standards;

98 (1) For a grower to fail to diligently follow the
99 written day-to-day poultry management practices of the processor.

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

103 SECTION 5. (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 one convicted, and the grower cancels the
109 contract, the processor shall be responsible to the grower for the
110 remaining indebtedness or capital cost of all buildings, equipment
111 or other facilities, and any additions, modifications or
112 improvements that the grower purchased or made for the purpose of
113 growing poultry or poultry products. The processor will also be
114 obligated to compensate the grower in an amount equal to the
115 remaining value of the contract.

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

122 (4) If the processor terminates the contract other than as
123 provided in this section, and without limiting the grower's
124 damages, the processor will also 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 except when the grower is in willful violation of the contract and
131 the grower fails to cure such violation within ninety (90) days
132 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 the violation within ninety (90) days after written notice
136 from the grower.

137 (7) If title to the poultry is retained by the processor,
138 the grower shall not pay for the poultry or have a value of the
139 poultry used in calculating the grower's payment.

140 SECTION 6. (1) All contracts will be entered into with a
141 sense of fairness and there is an implied promise of good faith as
142 defined in Section 75-1-201(19), Mississippi Code of 1972, by all
143 parties in any poultry or poultry product contract between a
144 processor and a grower.

145 (2) Every poultry or poultry products production contract
146 subject to this act shall have a term of at least five (5) years.

147 (3) A grower shall have the right to obtain shavings from a
148 supplier of his choice so long as the shavings meet generally
149 accepted industry standards.

150 (4) The processor shall furnish at no cost to the grower any
151 feed, medications, vaccinations or other supplies and supplements
152 required by the processor or as required by any state or federal
153 regulation, other than as provided for in subsection (3).

154 (5) A processor shall pay the grower for the mature poultry
155 or poultry product within fifteen (15) days after the week that
156 the poultry or poultry product leave the grower's farm.

157 (6) If a grower has evidence that inferior quality feed has
158 been delivered, the grower may request an official inspection and
159 analysis by the department.

160 (7) When the mature poultry or poultry product leaves the

161 grower's farm for the processor, the processor shall retrieve from
162 the grower, as soon as possible, any leftover feed with no
163 transportation or other charge to the grower, and the grower shall
164 be given proper credit for such leftover feed, which shall be
165 reflected on the settlement statement.

166 SECTION 7. No contract entered into between a grower and a
167 processor shall abrogate, waive or diminish in any way any of the
168 legal or equitable remedies available to either party in the event
169 of a breach of the contract by the other party. The exercise of a
170 remedy by either party to the contract shall not operate as an
171 election of remedies, so as to preclude it from taking any other
172 action available to it under the contract. Remedies are
173 cumulative and not by election.

174 SECTION 8. Before a grower initially builds or makes
175 additions or modifications to his buildings, equipment or
176 facilities, the processor shall provide the grower with written
177 plans and specifications of how the initial buildings, additions
178 or modifications should be constructed or purchased. The grower
179 may employ the contractor, builder or vendor of his choice to make
180 the additions or modifications. The processor shall not dictate
181 or suggest to the grower which contractor, builder or vendor shall
182 provide construction services or goods to the grower.

183 SECTION 9. Any person violating this act or rules and
184 regulations is guilty of a misdemeanor and shall be fined not more
185 than Five Hundred Dollars (\$500.00) or be imprisoned in the county
186 jail for not more than six (6) months, or both.

187 SECTION 10. Notwithstanding the existence or pursuit of any
188 other remedy, the Mississippi Department of Agriculture and
189 Commerce, or any person, may maintain an action for injunctive
190 relief or other process to prevent violations of this act.

191 SECTION 11. If any person violates this chapter, or rules
192 and regulations, administrative proceedings may be brought against
193 him pursuant to a written complaint filed with the department. A

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

218 SECTION 12. The commissioner may promulgate rules and
219 regulations to implement the provisions of this act.

220 SECTION 13. If any section, subsection, paragraph, sentence,
221 clause or provision of this act shall become invalid by order of
222 any court of competent jurisdiction, the same shall not affect the
223 validity of any other section, subsection, paragraph, sentence,
224 clause or provision thereof.

225 SECTION 14. This act shall take effect and be in force from
226 and after its passage.