

By: Stogner

To: Agriculture

SENATE BILL NO. 2557
(As Passed the Senate)

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 to guarantee payment to
47 producers for grain purchased from them, the commissioner shall
48 issue a license to the applicant or shall renew the applicant's
49 license.

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

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

61 (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 assessed 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 injunction 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. The 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 expenses.

(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

161 federal courts and he shall not be required to make or file a bond
162 in any such proceedings.

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