

House Bill 361 (AS PASSED HOUSE AND SENATE)

By: Representatives Floyd of the 138th, Ray of the 128th, Purcell of the 147th and Hudson of the 156th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 19 of Title 2 of the Official Code of Georgia Annotated, relating to the
2 Georgia Cotton Producers Indemnity Fund of 1999, so as to change the provisions relating
3 to payment of funds from the Georgia Cotton Producers Indemnity Fund of 1999; to provide
4 for a definition; to provide for payment of claims for certain additional losses; to provide for
5 practices, procedures, qualifications, and requirements; to provide for and to change certain
6 time limits; to provide for severability; to provide an effective date; to repeal conflicting
7 laws; and for other purposes.

8 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

9 **SECTION 1.**

10 Chapter 19 of Title 2 of the Official Code of Georgia Annotated, relating to the Georgia
11 Cotton Producers Indemnity Fund of 1999, is amended by striking Code Section 2-19-1,
12 relating to the enactment of said chapter, and inserting in its place a new Code section to read
13 as follows:

14 "2-19-1.

15 This chapter is enacted pursuant to the authority granted to the General Assembly by
16 Article III, Section VI, Paragraph II(a)(3) of the Constitution of the State of Georgia and
17 section 1121 of the federal Omnibus Consolidated and Emergency Supplemental
18 Appropriations Act for Fiscal Year 1999, Public Law 105-277, as amended, and is for the
19 purpose of creating an indemnity fund and making expenditures from such fund to
20 indemnify cotton producers in this state for losses incurred in 1998 or 1999 from the loss
21 of certain properly stored, harvested cotton."

22 **SECTION 2.**

23 Said chapter is further amended by striking subsection (f) of Code Section 2-19-5, relating
24 to the creation of the Georgia Cotton Producers Indemnity Fund of 1999, and inserting in its
25 place the following:

1 "(f) If more than \$5 million has been paid to cotton producers prior to January 1, 2000, and
 2 ~~the total amount of eligible claims is less than \$10 million~~, any excess funds in the Georgia
 3 Cotton Producers Indemnity Fund of 1999 shall be expended as provided in Code Section
 4 2-19-5.1."

5 SECTION 3.

6 Said chapter is further amended by striking Code Section 2-19-5.1, relating to cotton ginner
 7 and payment of excess funds, and inserting in its place the following:

8 "2-19-5.1.

9 (a) As used in this Code section, the term:

10 (1) 'Contingent claim' means a claim filed because a trustee in bankruptcy had asserted,
 11 on or before March 1, 2001, a preference claim against the claimant to recover payments
 12 without which the claimant would have suffered a loss compensable under this chapter.

13 'Contingent claim' also means a claim that would have been contingent, if it had been
 14 filed by a producer on or before May 1, 2000, or by a ginner on or before July 1, 2000.

15 (2) 'cotton Cotton ginner' means any person, firm, partnership, limited liability company,
 16 or corporation which operated a cotton gin in this state on May 1, 2000, and which
 17 incurred a loss as described in this Code section on or before May 1, 2000.

18 (b) ~~Notwithstanding~~ If Congress so requires before January 1, 2002, notwithstanding any
 19 other provision of this chapter, ~~any moneys remaining in the Georgia Cotton Producers~~
 20 ~~Indemnity Fund of 1999 on January 1, 2000~~, after all valid and properly filed
 21 noncontingent claims of cotton producers filed on or before May 1, 2000, have been paid
 22 and after all valid and properly filed contingent claims of cotton producers filed on or
 23 before August 1, 2001, have been paid, any moneys remaining in the Georgia Cotton
 24 Producers Indemnity Fund of 1999, shall be paid to cotton ginner who:

25 (1) Incurred a loss as the result of the business failure of any cotton buyer doing business
 26 in this state or the failure or refusal of any such cotton buyer to pay the contracted price
 27 which had been agreed upon by the ginner and the buyer for cotton grown in this state on
 28 or after January 1, 1997, and which had been purchased or contracted by the ginner from
 29 cotton producers in this state;

30 (2) Paid cotton producers the amount which the cotton ginner had agreed to pay for such
 31 cotton received from such cotton producers in this state;

32 (3) Notified the Commissioner on or before May 1, 2000, either orally or in writing, of
 33 a loss sustained by such cotton ginner as a result of the business failure of any cotton
 34 buyer doing business in this state or the failure or refusal of such cotton buyer to pay the
 35 contracted price which had been agreed upon by the ginner and the buyer for cotton

1 grown in this state on or after January 1, 1997, and which had been purchased or
2 contracted by the ginner from cotton producers in this state; and

3 (4) ~~File~~ Filed any noncontingent claim for indemnification from the Georgia Cotton
4 Producers Indemnity Fund of 1999 with the Commissioner, in writing and accompanied
5 by sufficient proof of such losses, on or before July 1, 2000, or filed any contingent claim
6 on or before August 1, 2001.

7 (c) Claims shall be filed by cotton ginners, shall contain the same information, and shall
8 be verified in the same manner as provided in Code Section 2-19-4 for claims by cotton
9 producers. The Commissioner shall have the same powers and duties to investigate,
10 process, and pay claims of cotton ginners as provided in Code Section 2-19-3 for claims
11 of cotton producers. Claims and the acceptance of payments on such claims shall be
12 subject to Code Sections 2-19-6 and 2-19-7. Properly filed, verified, and proven claims
13 ~~filed~~ by cotton ginners ~~on or before July 1, 2000~~, shall be paid by the Commissioner from
14 the fund on or before December 31, ~~2000~~ 2001, or as soon as administratively practical
15 thereafter. ~~Such claims shall be paid only from moneys remaining in the fund on January~~
16 ~~1, 2000.~~ The payment of such claims shall not affect any payments which have previously
17 been made to cotton producers from the fund. If insufficient moneys remain in the fund
18 to pay the total amount of all claims filed by cotton ginners, claims shall be paid on a
19 proportional basis, based on the ratio of each cotton ginner's properly filed and proven
20 claim to the total of all cotton ginners' claims properly filed and proven. Any moneys
21 remaining in the Georgia Cotton Producers Indemnity Fund of 1999 on January 1, ~~2001~~
22 2002, after the payment of claims shall be paid into the general fund of the state treasury.

23 (d) Also notwithstanding any other provision of this chapter, including subsection (c) of
24 this Code section, any moneys remaining in the Georgia Cotton Producers Indemnity Fund
25 of 1999 after all valid and properly filed noncontingent claims of cotton producers have
26 been paid, shall also be paid to eligible cotton producers who filed contingent but otherwise
27 valid claims on or before August 1, 2001.

28 (e) For a contingent claim to be paid, the claimant must tender proof acceptable to the
29 Commissioner no later than November 30, 2001, that the contingency has occurred and the
30 claimant has suffered the loss which would have been eligible but for the alleged
31 preference payments. A contingent claim may be paid from the fund only to the extent of
32 the actual recovery by the trustee. The Commissioner shall consider the reasonableness of
33 any settlement or any apparent failure to litigate in good faith with the trustee. The
34 Commissioner may cast upon contingent claimants the burden of proving the
35 reasonableness of any settlement or apparent failure to litigate in good faith."

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SECTION 7.

2 All laws and parts of laws in conflict with this Act are repealed.