

By: Senator(s) Thames

To: Agriculture

SENATE BILL NO. 2406

1
2 AN ACT TO AMEND SECTION 69-3-1, MISSISSIPPI CODE OF 1972, TO
3 REVISE THE DEFINITIONS AS THEY RELATE TO THE AGRICULTURAL SEED
4 LAW; TO AMEND SECTION 69-3-5, MISSISSIPPI CODE OF 1972, TO REVISE
5 THE LABELING REQUIREMENTS FOR AGRICULTURAL SEEDS; TO AMEND SECTION
6 69-3-7, MISSISSIPPI CODE OF 1972, TO CORRECT AN INCORRECT
7 SUBSECTION REFERENCE; TO AMEND SECTION 69-3-19, MISSISSIPPI CODE
8 OF 1972, TO INCREASE THE FILING FEE FOR FILING A COMPLAINT AGAINST
9 A SEEDSMAN BEFORE REFERRAL TO ARBITRATION, AND TO AUTHORIZE THE
10 COMMISSIONER OF AGRICULTURE AND COMMERCE TO PROMULGATE RULES AND
11 REGULATIONS GOVERNING THE ARBITRATION PROCESS OF THE SEED
12 ARBITRATION COUNCIL; TO AMEND SECTION 69-3-25, MISSISSIPPI CODE OF
13 1972, TO REVISE THE CRIMINAL PENALTIES FOR VIOLATIONS OF THE
14 AGRICULTURAL SEED LAW; TO CREATE A NEW CODE SECTION TO BE CODIFIED
15 AS SECTION 69-3-29, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE
16 COMMISSIONER OF AGRICULTURE AND COMMERCE TO CONDUCT A FULL
17 EVIDENTIARY HEARING AND IMPOSE CIVIL PENALTIES IN LIEU OF
18 REFERRING THE COMPLAINT TO AN ARBITRATION COUNCIL; AND FOR RELATED
19 PURPOSES.

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

21 SECTION 1. Section 69-3-1, Mississippi Code of 1972, is
22 amended as follows:

23 69-3-1. Wherever the following terms or similar terms are
24 used in this article, they shall have the following meanings,
25 unless the context clearly indicates otherwise:

26 (1) "Advertisement" means all representations, other than
27 those on the label, disseminated in any manner or by any means,
28 relating to seed within the scope of this article.

29 (2) "Agricultural seeds" means the seed of grass, forage,
30 cereal and fiber crops, lawn seed, and any other kinds of seed,
31 including genetically engineered seeds, recognized within this
32 state as agricultural or field seeds, and mixtures of such seeds.

33 (3) "Arbitration council" or "council" means a six-member
34 body appointed by the Commissioner of Agriculture and Commerce to

35 determine the validity and recommend settlements of complaints
36 made by consumers against seedsmen.

37 (4) "Bulk" or "in bulk" means seed when loose either in
38 vehicles of transportation, bins, cribs or tanks, and not seed in
39 bags, boxes, cartons, bulk/super bags or other containers.

40 (5) "Certified seed," "registered seed" and "foundation
41 seed" mean seed that has been produced and labeled in accordance
42 with the procedures and in compliance with the rules and
43 regulations of an official certifying agency authorized by the
44 laws of this state or the laws of another state or country.

45 (6) "Commissioner" means the Commissioner of Agriculture and
46 Commerce of the State of Mississippi.

47 (7) "Date of test" means the month and year the percentage
48 of germination appearing on the label was obtained by laboratory
49 test.

50 (8) "Department" means the Mississippi Department of
51 Agriculture and Commerce.

52 (9) "Federal Seed Act" means an act of the Senate and House
53 of Representatives of August 9, 1939, and any subsequent
54 amendments thereto, and includes rules and regulations under the
55 Federal Seed Act of the Secretary of Agriculture and joint rules
56 and regulations of the Secretary of Agriculture and the Secretary
57 of the Treasury promulgated thereunder, and any subsequent
58 amendments thereto.

59 (10) "Firm ungerminated seed" means live seed, other than
60 hard seed, which neither germinate nor decay during the period and
61 under the conditions prescribed for germination of such seed by
62 the rules and regulations promulgated pursuant to provisions of
63 this article. Kinds of seeds known and recognized to contain firm
64 seeds shall be published by regulation.

65 (11) "Flower seed" means the seeds of herbaceous plants
66 grown for their blooms, ornamental foliage or other ornamental
67 parts, including genetically engineered seeds, and commonly known
68 and sold under the name of flower seeds in this state.

69 (12) "Gene stacking" means combining traits in seed through
70 genetic engineering such as herbicide resistance, insect
71 resistance and other physiological characteristics.

72 (13) "Genetic engineering" means the formation of new
73 combinations of heritable material by the isolation of nucleic
74 acid molecules, produced by whatever means outside of the cell,
75 into any virus, bacterial plasmid, or other vector system so as to
76 allow their incorporation into a host organism in which they do
77 not naturally occur, but in which they are capable of continued
78 propagation.

79 (14) "Herbicide tolerant" means a plant whose genetic
80 composition has been altered to allow application of certain
81 herbicides, specific to the amount of herbicide and stage of plant
82 growth.

83 (15) "Hybrid" means the first generation seed of a cross
84 produced by controlling the pollination and combining: (a) two
85 (2) or more inbred lines, or (b) one (1) inbred line or a single
86 cross with an open-pollinated variety, or (c) two (2) varieties of
87 species, except open-pollinated varieties of corn. The second
88 generation and subsequent generations of such crosses shall not be
89 regarded as hybrids.

90 (16) "Insect resistant" means a plant whose genetic
91 composition has been altered to produce toxins that disrupt the
92 feeding of certain pests.

93 (17) "Kind" means one or more related species or subspecies
94 which singly or collectively is known by one common name; for
95 example: soybeans, crimson clover, striate lespedeza, tall
96 fescue.

97 (18) "Label" means the display or displays of written,
98 printed or graphic matter upon or attached to the container of
99 seed.

100 (19) "Labeling" includes all labels, advertisements and
101 other written, printed or graphic representations in any manner
102 whatsoever pertaining to any seed, whether in bulk or in
103 containers, and includes representations on invoices, except to
104 current official publications of the United States Department of

105 Interior, state experiment stations, state agricultural colleges,
106 and other similar federal or state institutions or agencies
107 authorized by law to conduct research.

108 (20) "Mixed" or "mixture" means seeds consisting of more
109 than one (1) kind, or kind and variety, or strain, each present in
110 excess of five percent (5%) of the whole.

111 (21) "Noxious weed seeds" shall consist of two (2) classes,
112 as follows:

113 (a) "Prohibited noxious weed seeds" means the seeds of
114 weeds that reproduce by seed, and/or spread by underground roots
115 or stems, and which, when established, are highly destructive and
116 difficult to control in this state by ordinary good cultural
117 practice, or constitute a peculiar hazard to the agriculture of
118 this state. Names of such weed seeds shall be published by
119 regulations promulgated pursuant to the provisions of this
120 article.

121 (b) "Restricted noxious weed seeds" means the seeds of
122 weeds that are particularly objectionable in fields, lawns or
123 gardens of this state, but which can ordinarily be controlled by
124 good cultural practice. Names of such weed seeds shall be
125 published by regulations promulgated pursuant to the provisions of
126 this article.

127 (22) "Official certifying agency" means an agency authorized
128 or recognized and designated as a certifying agency by the laws of
129 a state, the United States, a province of Canada, or the
130 government of a foreign country.

131 (23) "Origin" means the state, District of Columbia, Puerto
132 Rico, or possessions of the United States, or the foreign country
133 where the seeds were grown.

134 (24) "Processing" means cleaning, scarifying, blending or
135 treating to obtain uniform quality and other operations which
136 would change the purity or germination of the seeds and therefore
137 require retesting to determine the quality of the seed.

138 (25) "Pure seed," "germination," "other crop seed," "inert
139 matter" and other seed labeling and testing terms in common usage
140 not defined herein are defined as in the Federal Seed Act, and the
141 rules and regulations promulgated thereunder, and any subsequent
142 amendments thereto.

143 (26) "Recognized professional" means a person who is a
144 licensed consultant, a certified crop consultant, a university
145 employee or any other person recognized by the arbitration council
146 to be qualified to fit this definition.

147 (27) "Seed lot" or "lot of seed" means a definite quantity
148 of seed identified by a lot number or other identification mark,
149 every portion or bag of which is uniform for the factors which
150 appear on the label, within permitted tolerances.

151 (28) "Records" or "seed records" means information which
152 relates to the origin, treatment, germination and purity of each
153 lot of agricultural seed sold, offered or exposed for sale in this
154 state, or which relates to the treatment, germination and variety
155 of each lot of vegetable, flower, or tree and shrub seed sold,
156 offered or exposed for sale in this state. Such information
157 includes seed samples and records of declarations, labels,
158 purchases, sales, cleaning, bulking, handling, storage, analyses,
159 tests and examinations.

160 (29) "Seedsman" means a person, firm or corporation engaged
161 in the buying, selling or exchanging, offering or exposing for
162 sale agricultural seeds or mixtures thereof, vegetable, flower,
163 tree and shrub seeds as defined in this article. For the purpose
164 of this article:

165 (a) "Commission merchant" or "agent" means a person,
166 firm or corporation engaged in the selling of packet seed of less
167 than four (4) ounces to consumers.

168 (b) "Wholesale distributor" means a person, firm or
169 corporation engaged in the selling of seed to a seedsman holding a
170 permit as required by subsection (1)(c) of Section 69-3-3.

171 (c) "Consumer" means any person who purchases or
172 otherwise obtains seed for sowing but not for resale.

173 (d) "Commercial grower" means a person, firm or
174 corporation engaged primarily in the production of seed for
175 planting purposes for sale or trade.

176 (30) "Stop sale order" means any written or printed notice
177 or order given or issued by the commissioner or his authorized
178 agents to the owner or custodian of any lot of agricultural,
179 vegetable, flower or tree and shrub seeds in this state, directing
180 such owner or custodian not to sell, offer or expose such seeds
181 for sale for planting purposes, within this state until
182 requirements of this article shall have been complied with and a
183 written release has been issued.

184 (31) "Strain" means the subdivision of a variety; for
185 example: Clemson nonshattering soybeans, Strain 4.

186 (32) "Tolerance" means the allowance for sampling variation
187 specified under rules and regulations promulgated pursuant to the
188 provisions of this article.

189 (33) "Transgenic seed" means seed from a plant whose genetic
190 composition has been altered to produce seed that contain selected
191 genes from other plants or species by methods other than those
192 used in conventional plant breeding.

193 (34) "Treated" means that the seed has been given an
194 application of a substance or subjected to a process designed to
195 control or repel certain disease organisms, insects or other pests
196 attacking such seeds or seedlings grown therefrom to improve its
197 planting value or to serve any other purpose.

198 (35) "Tree and shrub seeds" means the seeds of woody plants,
199 including genetically engineered seeds, commonly known and sold as
200 tree and shrub seeds in this state.

201 (36) "Variety" means a subdivision of a kind which is
202 characterized by growth, plant, fruit, seed or other
203 characteristics by which it can be differentiated in successive

204 generations from other sorts of the same kind; for example: Lee
205 soybeans, Frontier crimson clover, Kobe striate lespedeza,
206 Kentucky 31 tall fescue.

207 (37) "Vegetable seeds" means the seeds of those crops which
208 are grown in gardens or on truck farms, including genetically
209 engineered seeds, and are generally known and sold under the name
210 of vegetable seeds in this state.

211 (38) "Weed seeds" means the seeds, bulblets or tubers of all
212 plants generally recognized as weeds within the state and includes
213 noxious weed seeds.

214 SECTION 2. Section 69-3-5, Mississippi Code of 1972, is
215 amended as follows:

216 69-3-5. Each container of agricultural, vegetable, flower,
217 or tree and shrub seeds sold, offered for sale, or exposed for
218 sale, or transported within this state for seeding purposes shall
219 bear thereon or have attached thereto in a conspicuous place a
220 plainly written or printed label or tag in the English language,
221 giving the following information:

222 I. **For agricultural seeds.**

223 (a) The commonly accepted name of kind and variety of
224 each agricultural seed present in excess of five percent (5%) of
225 the whole and the percentage by weight of each in the order of its
226 predominance. When more than one (1) kind and variety is required
227 to be named, the word "mixture" or the word "mixed" shall be shown
228 conspicuously on the label, provided that the commissioner may
229 through the promulgation of regulations permit certain kinds of
230 seed to be labeled "mixed" without showing the percentage of each
231 variety present. Hybrids shall be labeled with the name and/or
232 number by which the hybrid is commonly designated.

233 (b) Lot number or other designation.

234 (c) Net weight.

235 (d) Origin.

236 (e) Percentage by weight of all weed seeds, including

237 noxious weed seeds.

238 (f) Percentage by weight of inert matter.

239 (g) Percentage by weight of other crop seed.

240 (h) For each named agricultural seed.

241 (1) Percentage of germination, exclusive of hard
242 seed or firm seed.

243 (2) Percentage of hard seed, if present.

244 (3) Percentage of firm ungerminated seed, if
245 present.

246 (4) The calendar month and year the test was
247 completed to determine such percentages.

248 (i) The name and number per pound of each kind of
249 "restricted" noxious weed seed.

250 (j) The name and address, or the registered code
251 number, of the person who labeled said seed, or who sells, offers
252 or exposes said seed for sale within this state.

253 (k) In addition to the above labeling requirements,
254 certain additional information may, through the promulgation of
255 regulations by the commissioner, be required for labeling * * *.

256 **II. For vegetable seeds in containers of * * * more**
257 **than one (1) pound.**

258 (a) Name of kind and variety of seed.

259 (b) Net weight.

260 (c) Lot number or other identification.

261 (d) Percentage of germination, exclusive of hard
262 seed.

263 (e) Percentage of hard seed, if present.

264 (f) Calendar month and year the test was completed
265 to determine such percentages.

266 (g) The name and address, or the registered code
267 number, of the person who labeled said seed, or who sells, offers
268 or exposes said seed for sale within this state.

269 (h) For seeds which germinate less than standards

270 prescribed under rules and regulations promulgated pursuant to the
271 provisions of this article, the words "below standard" in not less
272 than 8-point type must be written or printed on face of tag in
273 addition to other information required.

274 **III. For vegetable seeds in containers of one (1) pound**
275 **or less * * ***.

276 (a) Name of kind and variety.

277 (b) The name and address, or the registered code
278 number, of the person who labeled said seed, or who sells, offers
279 or exposes said seed for sale within this state.

280 (c) For seeds which germinate less than the standards
281 last prescribed for such seed under rules and regulations
282 promulgated pursuant to the provisions of this article, the
283 following additional information must be shown:

284 (1) Percentage of germination, exclusive of hard
285 seed.

286 (2) Percentage of hard seed, if present.

287 (3) Calendar month and year the test was completed
288 to determine such percentage.

289 (4) The words "below standard" in not less than
290 8-point type.

291 **IV. For flower seed.**

292 Flower seed shall be labeled to comply with rules
293 and regulations promulgated by the commissioner pursuant to the
294 provisions of this article.

295 **V. For tree and shrub seed.**

296 Tree and shrub seed shall be labeled to comply with
297 the rules and regulations promulgated by the commissioner pursuant
298 to the provisions of this article.

299 **VI. For treated seed.**

300 All seeds treated as defined in this article (for
301 which a separate label may be used) shall be labeled in accordance
302 with the rules and regulations promulgated pursuant to the

303 provisions of this article.

304 SECTION 3. Section 69-3-7, Mississippi Code of 1972, is
305 amended as follows:

306 69-3-7. (1) Each person handling seed subject to this
307 article shall keep for a period of two (2) years a complete record
308 of agricultural, vegetable, flower or tree and shrub seeds
309 handled.

310 (2) Such records shall include the information as defined in
311 paragraph (28) of Section 69-3-1.

312 (3) The commissioner or his duly authorized agents shall
313 have the right to inspect such records for the purpose of the
314 effective administration of this article.

315 SECTION 4. Section 69-3-19, Mississippi Code of 1972, is
316 amended as follows:

317 69-3-19. It shall be the duty of the Commissioner of
318 Agriculture and Commerce, acting either directly or through his
319 duly authorized agents:

320 (1) To sample, inspect, make analyses of and test
321 agricultural, vegetable, flower, and tree and shrub seeds,
322 including genetically engineered seeds, transported, held in
323 storage, sold, offered for sale or exposed for sale, or
324 distributed within this state for seeding purposes, at such time
325 and place, and to such extent as he may deem necessary to
326 determine whether the seeds are in compliance with the provisions
327 of this article, and to notify promptly the person who
328 transported, distributed, had in his possession, sold, offered or
329 exposed the seed for sale, of any violation. Such test results
330 shall be sufficient to be used by the Mississippi Department of
331 Transportation to determine whether or not seed so tested meets
332 the transportation department's requirements as set out in its
333 contract specifications. No further testing shall be required
334 unless the transportation department determines that more than
335 nine (9) months has elapsed, exclusive of the calendar month in

336 which the test was completed, between the germination test data
337 and the time of planting, or if by visual inspection the
338 transportation department determines that the seed was improperly
339 stored or handled prior to planting.

340 (2) To prescribe and adopt reasonable rules and regulations
341 governing the methods of sampling, inspecting, making analysis
342 tests and examinations of agricultural, vegetable, flower and tree
343 and shrub seeds, including standards, and the tolerances to be
344 followed in the administration of this article, and any other
345 reasonable rules and regulations as may be necessary to secure
346 efficient enforcement of this article.

347 (3) To appoint an arbitration council, receive complaints,
348 conduct investigations and issue findings and recommendations
349 prerequisite to legal action as follows:

350 (a) The commissioner shall appoint an arbitration
351 council composed of six (6) members * * * for each complaint.
352 Each of the following organizations shall supply the commissioner
353 with a list of four (4) candidates from which to select a council
354 for a complaint: the Director of the Mississippi Agricultural and
355 Forestry Experiment Station; the Director of the Mississippi
356 Cooperative Extension Service; the President of the Mississippi
357 Seedsmen's Association; the President of the Mississippi Farm
358 Bureau Federation; the Alcorn State University Divisional Director
359 of Agriculture and Applied Sciences. The original council shall
360 be appointed as follows: one (1) member for a term of one (1)
361 year, one (1) member for a term of two (2) years, one (1) member
362 for a term of three (3) years, and one (1) member for a term of
363 four (4) years. All subsequent terms shall be for five (5) years.

364 Each year the respective recommending organizations shall submit
365 member recommendations not less than thirty (30) days prior to the
366 expiration day of an expiring term. * * * The commissioner shall
367 be a member of and serve as chairman of the council. The
368 commissioner shall select his agency's member. The commissioner

369 shall appoint a secretary from the council membership. He may
370 appoint a member of the council to serve as chairman in his
371 absence. It shall be the duty of the chairman to call the council
372 into session to conduct all meetings and deliberations and to
373 direct all other activities of the council. It shall be the duty
374 of the secretary to keep accurate and correct records of all
375 meetings and deliberations and perform such other duties for the
376 council as directed by the chairman. The commissioner shall
377 prescribe and adopt reasonable rules and regulations governing the
378 arbitration process.

379 (b) The purpose of the arbitration council shall be to
380 assist consumers and seedsmen in determining the validity of
381 complaints made by consumers against seedsmen and recommend cost
382 damages resulting from the alleged failure of seed to perform as
383 represented by labeling.

384 (c) (i) When the department refers to the arbitration
385 council any complaint made by a consumer against a seedsman, the
386 council shall make a full and complete investigation of the
387 matters complained of, and at the conclusion of the investigation,
388 report its findings and make its recommendations of cost damages
389 and file them with the department. Council findings and
390 recommendations may be admissible as evidence in a court of law.
391 When a complaint involving genetically engineered seeds is filed
392 for arbitration, the seedsman shall furnish the commissioner the
393 technology and procedures necessary to conduct any test to
394 determine whether the seeds will perform as represented by the
395 seedsman.

396 (ii) In conducting its investigation the
397 arbitration council or any member or members shall be authorized
398 to examine the consumer on his farming operation of which he
399 complains; to examine the seedsman on his packaging, labeling and
400 selling operation of the seed alleged to be faulty; to conduct an
401 appropriate test of a representative sample of the alleged faulty

402 seed through the facilities of the state and under the supervision
403 of the department when such action is deemed to be necessary; and
404 to hold informal hearings at a time and place designated by the
405 chairman upon reasonable notice to the consumer and the seedsman.

406 (iii) Any investigation made by less than the
407 entire membership of the council shall be made by authority of a
408 written directive by the chairman and such investigation shall be
409 summarized in writing and considered by the council in its
410 findings and in making its recommendations.

411 (iv) If the council determines that an informal
412 hearing should be conducted to allow each party an opportunity to
413 present their respective side of the dispute, attorneys may be
414 present at the hearings to confer with their clients. However, no
415 attorney may participate directly in the proceedings. A majority
416 of the council shall constitute a quorum at any legally called
417 meeting of, or hearing conducted by, the council, and the act of a
418 majority present at any such meeting or hearing shall be the act
419 of the council. The deliberations of the council at which the
420 merits of a seed arbitration claim are under consideration shall
421 not be subject to the Mississippi Open Meetings Act, Section
422 25-41-1 et seq.

423 (d) The members of the council shall receive no
424 compensation for the performance of their duties but shall be
425 reimbursed for travel expenses in the manner and amount provided
426 in Section 25-3-41, Mississippi Code of 1972.

427 (e) (i) As a prerequisite to filing a cause of action
428 against a seedsman, a consumer who is damaged by the failure of
429 agricultural, vegetable, flower or forest tree seed to produce or
430 perform as represented by labeling shall make a sworn complaint
431 against such seedsman alleging damages sustained. The complaint
432 shall include documentation from a recognized professional
433 verifying the problem exists. The complaint shall be filed with
434 the department and the department shall send a copy of the

435 complaint to the seedsman by certified mail, within such time as
436 to permit inspection of the crops, plants or trees by the seed
437 arbitration council or its representatives and by the seedsman
438 from whom the seed was purchased.

439 (ii) Language setting forth the requirement for
440 filing and serving such complaint shall be legibly typed or
441 printed on the seed packages or the analysis label attached to the
442 package containing such seed at the time of purchase by the
443 consumer as follows:

444 "NOTICE: As a prerequisite to maintaining a legal action
445 based upon the failure of seed to which this label is attached to
446 produce as represented, a consumer shall file a sworn complaint
447 with the Commissioner of Agriculture and Commerce within such time
448 as to permit inspection of the crops, plants or trees."

449 If language setting forth the requirement is not so placed on
450 the seed package or analysis label, the filing and serving of a
451 complaint under this paragraph is not required.

452 (iii) A filing fee of Two Hundred Fifty Dollars
453 (\$250.00) plus a One Dollar (\$1.00) per acre assessment shall be
454 paid to the department with each complaint filed. The fee shall
455 be recovered from the dealer upon the recommendation of the
456 arbitration council.

457 (iv) Within fifteen (15) days after receipt of a
458 copy of the complaint, the seedsman shall file with the department
459 his answer to the complaint and serve a copy of the answer on the
460 consumer by certified mail.

461 (v) The department shall refer the complaint and
462 the answer thereto to the arbitration council, as provided herein
463 for investigation, findings and recommendations on the matters set
464 out in the complaint. Upon receipt of the findings and
465 recommendations of the arbitration council, the department shall
466 transmit them to the consumer by certified mail.

467 (vi) The consumer and seedsman shall give written

468 notice to the department of the acceptance or rejection of the
469 arbitration council's recommended terms of settlement within
470 thirty (30) calendar days from the date such recommended terms of
471 settlement are issued by the arbitration council.

472 (4) Further, for the purpose of carrying out the provisions
473 of this article, the commissioner individually or through his
474 designated agents is authorized:

475 (a) To enter upon any public or private premises where
476 agricultural, vegetable, flower or tree and shrub seeds are sold,
477 offered or exposed for sale or distribution, during regular
478 business hours in order to have access to seeds or records subject
479 to this article and the rules and regulations thereunder, and to
480 take samples of seed or copies of records in conformity therewith;
481 and

482 (b) To establish, maintain and support a state seed
483 testing laboratory with such facilities and personnel as may be
484 deemed necessary, such laboratory to be located at Mississippi
485 State University of Agriculture and Applied Science. Such seed
486 laboratory and equipment shall be in cooperation with Mississippi
487 State University of Agriculture and Applied Science and under the
488 supervision of an agronomist of said university, who shall be the
489 state seed analyst; and

490 (c) To provide that any person, firm or corporation in
491 this state shall have the privilege of submitting service seed
492 samples for test to the state seed testing laboratory, subject to
493 the charges as specified in the rules and regulations promulgated
494 pursuant to the provisions of this article. Any person receiving
495 a statement for seed analysis which is not paid in ninety (90)
496 days will be in violation of this article. Any resident farmer
497 may have one (1) sample of each kind tested free in any calendar
498 year. A signed request by a farmer or individual must accompany
499 the sample when same is sent in by a dealer; otherwise, the sample
500 will be recorded and charges for analysis will be made to the

501 dealer. Official seed samples drawn by inspectors in the
502 enforcement of the provisions of this article shall have first
503 priority for testing in the state seed testing laboratory. The
504 state seed analyst shall not be obligated to analyze uncleaned,
505 unprocessed, and other time-consuming samples which obviously do
506 not meet seed law requirements, except as time and facilities will
507 permit; and

508 (d) To publish, in his discretion, the results of
509 analyses, tests, examinations, field trials and investigations of
510 any seed sampled under this article, together with any information
511 he may deem advisable; and

512 (e) To issue and enforce an immediate written or
513 printed "stop sale" or "seizure" order to the owner or custodian
514 of any lot of agricultural, vegetable, flower or tree and shrub
515 seeds which the commissioner or his authorized agent finds is in
516 violation of any of the provisions of this article or the rules
517 and regulations promulgated thereunder, which order shall prohibit
518 further sale or movement of such seed until such officer has
519 evidence that the law has been complied with and a written release
520 has been issued to the owner or custodian of said seed by an
521 enforcement officer; and

522 (f) To issue and enforce an immediate "stop sale" or
523 "seizure" order with respect to a particular variety of
524 agricultural, vegetable, flower or tree and shrub seeds if the
525 producer or distributor of such variety is found to have violated
526 any of the provisions of this article or the rules and regulations
527 promulgated thereunder with respect to the particular variety,
528 which order shall remain in effect until the producer or
529 distributor is in compliance with the law and has taken any action
530 required by the commissioner to correct the effect of the
531 violation in the marketplace; and

532 (g) To cooperate with the United States Department of
533 Agriculture in seed law enforcement.

534 (5) This section shall stand repealed on July 1, 2002.

535 SECTION 5. Section 69-3-25, Mississippi Code of 1972, is
536 amended as follows:

537 69-3-25. (1) Any person violating any of the provisions of
538 this article, or the rules and regulations promulgated hereunder,
539 shall be guilty of a misdemeanor and shall be punished by a fine
540 of not more than One Thousand Dollars (\$1,000.00) or by
541 imprisonment for not more than one (1) year, or by both such fine
542 and imprisonment.

543 (2) In addition to the criminal penalties provided in
544 subsection (1), any person violating any of the provisions of this
545 article, or the rules and regulations promulgated hereunder, may
546 be subject to civil penalties as provided in Section 69-3-29.

547 SECTION 6. The following provision shall be codified as
548 Section 69-3-29, Mississippi Code of 1972:

549 69-3-29. (1) In lieu of referring the complaint to an
550 arbitration council, the Commissioner of Agriculture and Commerce,
551 or his designee, may conduct a full evidentiary hearing when a
552 written complaint is made against a person, corporation or other
553 entity for violation of this article, or any of the rules or
554 regulations promulgated hereunder. The complaint shall be in
555 writing and shall be filed with the Department of Agriculture and
556 Commerce. The commissioner shall deliver to the accused in the
557 manner described below a copy of the complaint and a summons
558 requiring the accused to file a written answer to the complaint
559 within twenty (20) days after the date of service of the summons
560 and the complaint. The accused may be notified by serving a copy
561 of the summons and complaint on the accused or any of his
562 officers, agents or employees by personal service or by certified
563 mail. Upon receipt of the written answer of the accused, the
564 matter shall be set for hearing before the commissioner, or his
565 designee, within a reasonable time. If the accused fails to file
566 an answer within such time, the commissioner, or his designee, may

567 enter an order by default against the accused. The commissioner
568 is hereby vested with the power to issue subpoenas to require the
569 attendance of witnesses and the production of documents.
570 Compliance with the subpoenas may be enforced by any court of
571 general jurisdiction in this state. The testimony of witnesses
572 shall be upon oath or affirmation, and they shall be subjected to
573 cross-examination. The proceedings shall be recorded. If the
574 commissioner, or his designee, determines that the complaint lacks
575 merit, he may dismiss same. If he finds that there is substantial
576 evidence showing that a violation of any of the statutes or
577 regulations has occurred, he shall have the authority to impose
578 any or all of the following penalties upon the accused: (a) to
579 levy a civil penalty in an amount not to exceed Five Thousand
580 Dollars (\$5,000.00) for each violation; (b) to revoke or suspend
581 any license or permit issued to the accused under the terms of
582 this article; (c) to issue a stop sale order; (d) to require the
583 accused to relabel a lot of seed that he is offering or exposing
584 for sale and which is not labeled in accordance with the
585 provisions of this article; or (e) to seize any lot of seed that
586 is not in compliance with this article and destroy, sell or
587 otherwise dispose of the seed and apply the proceeds of the sale
588 to the costs incurred herein and to any civil penalties levied,
589 with the balance to be paid to the accused. The decision of the
590 commissioner, or his designee, shall be in writing and shall be
591 delivered to the accused in the same manner that the summons and
592 complaint was served.

593 (2) Either the accused or the department shall have the
594 right to appeal the decision of the commissioner, or his designee,
595 to the circuit court of the county of residence of the accused, or
596 if the accused is a nonresident of the State of Mississippi, to
597 the Circuit Court of the First Judicial District of Hinds County,
598 Mississippi. The appellant shall have the obligation of having
599 the record transcribed and filing it with the circuit court. The

600 appeal shall otherwise be governed by all applicable laws and
601 rules affecting appeals to circuit court. If no appeal is
602 perfected within the required time, the decision of the
603 commissioner, or his designee, shall become final.

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

607 (4) Where any violation of this article, or the rules and
608 regulations promulgated hereunder, occurs, or is about to occur,
609 that presents a clear and present danger to the public health,
610 safety or welfare requiring immediate action, any of the
611 department's field inspectors, and any other persons authorized by
612 the commissioner, may issue an order to be effective immediately,
613 prior to notice and a hearing, that imposes any or all of the
614 following penalties against the accused: (a) a stop sale order;
615 (b) require the accused to relabel a lot of seed that he is
616 offering or exposing for sale and which is not labeled in
617 accordance with the provisions of this article; or (c) seize any
618 lot of seed that is not in compliance with this article and
619 destroy, sell or otherwise dispose of the seed and apply the
620 proceeds of the sale to the cost incurred herein and to any civil
621 penalties levied, with the balance to be paid to the accused. The
622 order shall be served upon the accused in the same manner that the
623 summons and complaint was served. The accused shall then have
624 thirty (30) days after service of the order upon him within which
625 to request an informal administrative review before the Director
626 of the Bureau of Plant Industry within the department, or his
627 designee, who shall act as reviewing officer. If the accused
628 makes such a request within such time, the reviewing officer shall
629 provide an informal administrative review to the accused within
630 ten (10) days after such request is made. If the accused does not
631 request an informal administrative review within such time frame,
632 then he will be deemed to have waived his right to same. At the

633 informal administrative review, subpoena power shall not be
634 available, witnesses shall not be sworn nor be subjected to
635 cross-examination, and there shall be no court reporter or record
636 made of the proceedings. Each party may present its case in the
637 form of documents, oral statements or any other method. The rules
638 of evidence shall not apply. The reviewing officer's decision
639 shall be in writing, and it shall be delivered to the parties by
640 any of the methods described above for service of summons and
641 complaint on the accused. If either party is aggrieved by the
642 order of the reviewing officer, he may appeal to the commissioner
643 for a full evidentiary hearing in accordance with the procedures
644 described in subsection (1), except that there will be no
645 requirement for a written complaint or answer to be filed by the
646 parties. Such appeal shall be perfected by filing a notice of
647 appeal with the commissioner within thirty (30) days after the
648 order of the reviewing officer is served on the appealing party.
649 The hearing before the commissioner, or his designee, shall be
650 held within a reasonable time after the appeal has been perfected.
651 Failure to perfect an appeal within the allotted time will be
652 deemed a waiver of such right.

653 (5) This section shall not apply to complaints referred to
654 an arbitration council as such complaints are governed by the
655 procedures set forth in Section 69-3-19, Mississippi Code of 1972.

656 SECTION 7. This act shall take effect and be in force from
657 and after July 1, 1999.