

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.