

By: Holland

To: Agriculture;  
Judiciary B

## HOUSE BILL NO. 292

1 AN ACT TO AMEND SECTION 69-3-1, MISSISSIPPI CODE OF 1972, TO  
2 REVISE DEFINITIONS UNDER THE AGRICULTURAL SEED LAW; TO AMEND  
3 SECTION 69-3-5, MISSISSIPPI CODE OF 1972, TO REVISE LABELING  
4 REQUIREMENTS FOR SEEDS; TO AMEND SECTION 69-3-19, MISSISSIPPI CODE  
5 OF 1972, TO REVISE THE METHOD AND FEE FOR FILING COMPLAINTS WITH  
6 THE DEPARTMENT AND TO REVISE THE METHOD OF APPOINTMENT TO THE  
7 ARBITRATION COUNCIL; TO AMEND SECTION 69-3-25, MISSISSIPPI CODE OF  
8 1972, TO REVISE THE PENALTIES FOR VIOLATIONS; TO CREATE A NEW CODE  
9 SECTION TO BE CODIFIED AS SECTION 69-3-29, MISSISSIPPI CODE OF  
10 1972, TO PROVIDE ADMINISTRATIVE PROCEDURES FOR THE HANDLING OF  
11 COMPLAINTS AND EVIDENTIARY HEARINGS CONCERNING VIOLATIONS OF THE  
12 SEED LAW; TO AMEND SECTION 25-41-3, MISSISSIPPI CODE OF 1972, TO  
13 EXEMPT THE SEED ARBITRATION COUNCIL FROM THE OPEN MEETINGS ACT; TO  
14 AMEND SECTION 69-3-7, MISSISSIPPI CODE OF 1972, IN CONFORMITY  
15 THERETO; AND FOR RELATED PURPOSES.

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

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

19 69-3-1. Wherever the following terms or similar terms are  
20 used in this article, they shall have the following meanings,  
21 unless the context clearly indicates otherwise:

22 (a) The term "advertisement" means all representations  
23 made by the labeler, other than those on the label, disseminated  
24 in any manner or by any means, relating to seed within the scope  
25 of this article.

26 (b) The term "commissioner" means the Commissioner of  
27 Agriculture and Commerce of the State of Mississippi.

28 (c) The term "seedsman" means a person, firm or  
29 corporation engaged in the buying, selling or exchanging, offering  
30 or exposing for sale agricultural seeds or mixtures thereof,  
31 vegetable, flower, tree and shrub seeds as defined in this  
32 article. For the purpose of this article:

33           (i) The term "commission merchant" or "agent"  
34 means a person, firm or corporation engaged in the selling of  
35 packet seed of less than four (4) ounces to consumers.

36           (ii) The term "wholesale distributor" means a  
37 person, firm or corporation engaged in the selling of seed to a  
38 seedsman holding a permit as required by subsection (1)(c) of  
39 Section 69-3-3.

40           (iii) The term "consumer" means any person who  
41 purchases or otherwise obtains seed for sowing but not for resale.

42           (iv) The term "commercial grower" means a person,  
43 firm or corporation engaged primarily in the production of seed  
44 for planting purposes for sale or trade.

45           (d) The term "agricultural seeds" means the seed of  
46 grass, forage, cereal and fiber crops, lawn seed, and any other  
47 kinds of seed, including transgenic seeds, recognized within this  
48 state as agricultural or field seeds, and mixtures of such seeds.

49           (e) The term "vegetable seeds" means the seeds of those  
50 crops which are grown in gardens or on truck farms, including  
51 transgenic seeds, and are generally known and sold under the name  
52 of vegetable seeds in this state.

53           (f) The term "flower seed" means the seeds of  
54 herbaceous plants grown for their blooms, ornamental foliage or  
55 other ornamental parts, including transgenic seeds, and commonly  
56 known and sold under the name of flower seeds in this state.

57           (g) The term "tree and shrub seeds" means the seeds of  
58 woody plants, including transgenic seeds, commonly known and sold  
59 as tree and shrub seeds in this state.

60           (h) "The term transgenic seed" means seed from a plant  
61 whose genetic composition has been altered by methods other than  
62 those used in conventional plant breeding to produce seed that  
63 contains selected genes from other plants or species that will  
64 produce results such as herbicide tolerance, insect tolerance or  
65 other traits derived from biotechnology.

66           (i) The term "seed lot" or "lot of seed" means a  
67 definite quantity of seed identified by a lot number or other  
68 identification mark, every portion or bag of which is uniform for  
69 the factors which appear on the label, within permitted  
70 tolerances.

71           (j) The term "kind" means one or more related species  
72 or subspecies which singly or collectively is known by one (1)  
73 common name; for example: soybeans, crimson clover, striate  
74 lespedeza, tall fescue.

75           (k) The term "variety" means a subdivision of a kind  
76 which is characterized by growth, plant, fruit, seed or other  
77 characteristics by which it can be differentiated in successive  
78 generations from other sorts of the same kind; for example: Lee  
79 soybeans, Frontier crimson clover, Kobe striate lespedeza,  
80 Kentucky 31 tall fescue.

81           (l) The term "strain" means the subdivision of a  
82 variety; for example: Clemson nonshattering soybeans, Strain 4.

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

90           (n) The terms "pure seed," "germination," "other crop  
91 seed," "inert matter" and other seed labeling and testing terms in  
92 common usage not defined herein are defined as in the Federal Seed  
93 Act and the rules and regulations promulgated thereunder and any  
94 subsequent amendments thereto.

95           (o) The term "weed seeds" means the seeds, bulblets or  
96 tubers of all plants generally recognized as weeds within the  
97 state and includes noxious weed seeds.

98           (p) The term "noxious weed seeds" shall consist of two

99 (2) classes, as follows:

100 (i) "Prohibited noxious weed seeds" means the  
101 seeds of weeds that reproduce by seed, and/or spread by  
102 underground roots or stems, and which, when established, are  
103 highly destructive and difficult to control in this state by  
104 ordinary good cultural practice, or constitute a peculiar hazard  
105 to the agriculture of this state. Names of such weed seeds shall  
106 be published by regulations promulgated pursuant to the provisions  
107 of this article.

108 (ii) "Restricted noxious weed seeds" means the  
109 seeds of weeds that are particularly objectionable in fields,  
110 lawns or gardens of this state, but which can ordinarily be  
111 controlled by good cultural practice. Names of such weed seeds  
112 shall be published by regulations promulgated pursuant to the  
113 provisions of this article.

114 (q) The term "firm ungerminated seed" means live seed,  
115 other than hard seed, which neither germinate nor decay during the  
116 period and under the conditions prescribed for germination of such  
117 seed by the rules and regulations promulgated pursuant to  
118 provisions of this article. Kinds of seeds known and recognized  
119 to contain firm seeds shall be published by regulation.

120 (r) The term "date of test" means the month and year  
121 the percentage of germination appearing on the label was obtained  
122 by laboratory test.

123 (s) The term "mixed" or "mixture" means seeds  
124 consisting of more than one (1) kind, or kind and variety, or  
125 strain, each present in excess of five percent (5%) of the whole.

126 (t) The term "origin" means the state, District of  
127 Columbia, Puerto Rico, or possessions of the United States, or the  
128 foreign country where the seeds were grown.

129 (u) The term "label" means the display or displays of  
130 written, printed or graphic matter upon or attached to the  
131 container of seed pertaining to the contents of the container.

132           (v) The term "labeler" means the person, firm,  
133 corporation or the registered code number whose name appears on  
134 the label or container of seed.

135           (w) The term "labeling" includes all labels and other  
136 written, printed or graphic representations in any manner  
137 whatsoever \* \* \* pertaining to the contents, whether in bulk or in  
138 containers, and includes representations on invoices except for  
139 current official publications of the United States Department of  
140 Agriculture, state experiment stations, state agricultural  
141 colleges and other similar federal or state institutions or  
142 agencies authorized by law to conduct research.

143           (x) The term "treated" means that the seed has been  
144 given an application of a substance or subjected to a process  
145 designed to control or repel certain disease organisms, insects or  
146 other pests attacking such seeds or seedlings grown therefrom to  
147 improve its planting value or to serve any other purpose.

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

157           (z) The term "processing" means cleaning, scarifying,  
158 blending or treating to obtain uniform quality and other  
159 operations which would change the purity or germination of the  
160 seed and therefore require retesting to determine the quality of  
161 the seed.

162           (aa) The term "tolerance" means the allowance for  
163 sampling variation specified under rules and regulations  
164 promulgated pursuant to the provisions of this article.

165           **(bb)** The terms "certified seed," "registered seed" and  
166 "foundation seed" mean seed that has been produced and labeled in  
167 accordance with the procedures and in compliance with the rules  
168 and regulations of an official certifying agency authorized by the  
169 laws of this state or the laws of another state or country.

170           **(cc)** The term "official certifying agency" means an  
171 agency authorized or recognized and designated as a certifying  
172 agency by the laws of a state, the United States, a province of  
173 Canada, or the government of a foreign country.

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

182           **(ee)** The term "Federal Seed Act" means the laws  
183 codified at 7 USCS 1551, et seq., and all regulations promulgated  
184 thereunder.

185           **(ff)** The term "bulk" or "in bulk" means seed when loose  
186 either in vehicles of transportation, bins, cribs or tanks, and  
187 not seed in bags, boxes, cartons, bulk/super bags or other  
188 containers.

189           **(gg)** The term "department" means the Mississippi  
190 Department of Agriculture and Commerce.

191           **(hh)** The term "arbitration council" or "council" means  
192 a six-member body appointed by the Commissioner of Agriculture and  
193 Commerce to determine the validity and recommend settlements of  
194 complaints made by consumers against seedsmen.

195           **(ii)** The term "recognized professional" means a person  
196 who is a licensed consultant, a certified crop advisor or any  
197 other person recognized by the arbitration council to be qualified

198 to fit this definition.

199 SECTION 2. Section 69-3-5, Mississippi Code of 1972, is  
200 amended as follows:[BD1]

201 69-3-5. (1) Each container of agricultural, vegetable,  
202 flower, or tree and shrub seeds sold, offered for sale, or exposed  
203 for sale, or transported within this state for seeding purposes  
204 shall bear thereon or have attached thereto in a conspicuous place  
205 a plainly written or printed label or tag in the English language,  
206 giving the following information:

207 (a) For agricultural seeds:

208 (i) The commonly accepted name of kind and variety  
209 of each agricultural seed present in excess of five per cent (5%)  
210 of the whole and the percentage by weight of each in the order of  
211 its predominance. When more than one (1) kind and variety is  
212 required to be named, the word "mixture" or the word "mixed" shall  
213 be shown conspicuously on the label, provided that the  
214 commissioner may through the promulgation of regulations permit  
215 certain kinds of seed to be labeled "mixed" without showing the  
216 percentage of each variety present. Hybrids shall be labeled with  
217 the name and/or number by which the hybrid is commonly designated.

218 (ii) Lot number or other designation.

219 (iii) Net weight.

220 (iv) Origin.

221 (v) Percentage by weight of all weed seeds,  
222 including noxious weed seeds.

223 (vi) Percentage by weight of inert matter.

224 (vii) Percentage by weight of other crop seed.

225 (viii) For each named agricultural seed:

226 1. Percentage of germination, exclusive of  
227 hard seed or firm seed.

228 2. Percentage of hard seed, if present.

229 3. Percentage of firm ungerminated seed, if  
230 present.

231                   4. The calendar month and year the test was  
232 completed to determine such percentages.

233                   (ix) The name and number per pound of each kind of  
234 "restricted" noxious weed seed.

235                   (x) The name and address, or the registered code  
236 number, of the person who labeled said seed, or who sells, offers  
237 or exposes said seed for sale within this state.

238                   (xi) In addition to the above label requirements,  
239 certain additional information may, through the promulgation of  
240 regulations by the commissioner, be required for the label.

241                   (b) For vegetable seeds in containers of \* \* \* more  
242 than one (1) pound:

243                   (i) Name of kind and variety of seed.

244                   (ii) Net weight.

245                   (iii) Lot number or other identification.

246                   (iv) Percentage of germination, exclusive of hard  
247 seed.

248                   (v) Percentage of hard seed, if present.

249                   (vi) Calendar month and year the test was  
250 completed to determine such percentages.

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

254                   (viii) For seeds which germinate less than  
255 standards prescribed under rules and regulations promulgated  
256 pursuant to the provisions of this article, the words "below  
257 standard" in not less than 8-point type must be written or printed  
258 on face of tag in addition to other information required.

259                   (c) For vegetable seeds in containers of one (1) pound  
260 or less:

261                   (i) Name of kind and variety.

262                   (ii) The name and address, or the registered code  
263 number, of the person who labeled said seed, or who sells, offers



264 or exposes said seed for sale within this state.

265           (iii) For seeds which germinate less than the  
266 standards last prescribed for such seed under rules and  
267 regulations promulgated pursuant to the provisions of this  
268 article, the following additional information must be shown:

269           1. Percentage of germination, exclusive of  
270 hard seed.

271           2. Percentage of hard seed, if present.

272           3. Calendar month and year the test was  
273 completed to determine such percentage.

274           4. The words "below standard" in not less  
275 than 8-point type.

276           (d) For flower seed:

277           Flower seed shall be labeled to comply with rules and  
278 regulations promulgated by the commissioner pursuant to the  
279 provisions of this article.

280           (e) For tree and shrub seed:

281           Tree and shrub seed shall be labeled to comply with the  
282 rules and regulations promulgated by the commissioner pursuant to  
283 the provisions of this article.

284           (f) For treated seed:

285           All seeds treated as defined in this article (for which  
286 a separate label may be used) shall be labeled in accordance with  
287 the rules and regulations promulgated pursuant to the provisions  
288 of this article.

289           (2) The labeler shall keep records of the year of production  
290 and blending components of all agricultural or vegetable seeds in  
291 each lot labeled, distributed or offered for sale within the  
292 state. The records shall be made available to any purchaser  
293 either through the label, the container or such other means that  
294 may be required by regulation in order to provide the information  
295 requested in a timely manner.

296           SECTION 3. Section 69-3-7, Mississippi Code of 1972, is

297 amended as follows:[BD2]

298           69-3-7. (1) Each person handling seed subject to this  
299 article shall keep for a period of two (2) years a complete record  
300 of agricultural, vegetable, flower, or tree and shrub seeds  
301 handled.

302           (2) Such records shall include the information as defined in  
303 paragraph (y) of Section 69-3-1.

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

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

309           69-3-19. It shall be the duty of the Commissioner of  
310 Agriculture and Commerce, acting either directly or through his  
311 duly authorized agents:

312           (1) To sample, inspect, make analyses of and test  
313 agricultural, vegetable, flower, and tree and shrub seeds,  
314 including transgenic seeds, transported, held in storage, sold,  
315 offered for sale or exposed for sale, or distributed within this  
316 state for seeding purposes, at such time and place, and to such  
317 extent as he may deem necessary to determine whether the seeds are  
318 in compliance with the provisions of this article, and to notify  
319 promptly the person who transported, distributed, had in his  
320 possession, sold, offered or exposed the seed for sale, of any  
321 violation. Such test results shall be sufficient to be used by  
322 the Mississippi \* \* \* Department of Transportation to determine  
323 whether or not seed so tested meets the \* \* \* requirements of the  
324 Department of Transportation as set out in its contract  
325 specifications. No further testing shall be required unless  
326 the \* \* \* Department of Transportation determines that more than  
327 nine (9) months has elapsed, exclusive of the calendar month in  
328 which the test was completed, between the germination test data  
329 and the time of planting, or if by visual inspection the \* \* \*

330 Department of Transportation determines that the seed was  
331 improperly stored or handled prior to planting.

332 (2) To prescribe and adopt reasonable rules and regulations  
333 governing the methods of sampling, inspecting, making analysis  
334 tests and examinations of agricultural, vegetable, flower and tree  
335 and shrub seeds, including standards, and the tolerances to be  
336 followed in the administration of this article, and any other  
337 reasonable rules and regulations as may be necessary to secure  
338 efficient enforcement of this article.

339 (3) To appoint an arbitration council, which is authorized  
340 to receive complaints, conduct investigations and issue findings  
341 and recommendations prerequisite to legal action as follows:

342 (a) The commissioner shall appoint an arbitration  
343 council composed of six (6) members to hear and decide each  
344 complaint. Each of the following shall supply to the commissioner  
345 a list of four (4) candidates from their respective organization:

346 the Director of the Mississippi Agricultural and Forestry  
347 Experiment Station; the Director of the Mississippi Cooperative  
348 Extension Service; the President of the Mississippi Seedsmen's  
349 Association; the President of the Mississippi Farm Bureau  
350 Federation; the Alcorn State University Divisional Director of  
351 Agriculture and Applied Sciences. The commissioner shall choose  
352 one (1) candidate from each organization's list in selecting a  
353 council to hear each complaint. On or before January 1 of each  
354 year the respective recommending organizations shall submit member  
355 recommendations if they want to make changes from their previous  
356 recommendations. The commissioner or his designee shall be a  
357 member of and serve as chairman of the council \* \* \* and he may  
358 appoint a secretary for the council \* \* \*. It shall be the duty  
359 of the chairman to call the council into session to conduct all  
360 meetings and deliberations and to direct all other activities of  
361 the council. It shall be the duty of the secretary to keep  
362 accurate and correct records of all meetings and deliberations and

363 perform such other duties for the council as directed by the  
364 chairman. The commissioner shall prescribe and adopt reasonable  
365 rules and regulations governing the arbitration process to include  
366 conditions and circumstances associated with seed to which  
367 arbitration is applicable.

368 (b) The purpose of the arbitration council shall be to  
369 assist consumers and seedsmen in determining the validity of  
370 complaints made by consumers against seedsmen and recommend cost  
371 damages resulting from alleged failure of the seed to properly  
372 perform or produce, whether related to specific representations on  
373 the label, other information on the seed container or conditions  
374 attributed to the seed.

375 (c) (i) When the department refers to the arbitration  
376 council any complaint made by a consumer against a seedsman, the  
377 council shall make a full and complete investigation of the  
378 matters complained of, and at the conclusion of the investigation,  
379 report its findings and make its recommendations of cost damages  
380 and file them with the department. Council findings and  
381 recommendations may be admissible as evidence in a court of law.  
382 When a complaint involving transgenic seeds is filed for  
383 arbitration, the seedsman shall furnish the commissioner the  
384 technology and procedures necessary to conduct any test to  
385 determine whether the seeds will perform as represented by the  
386 seedsman.

387 (ii) In conducting its investigation the  
388 arbitration council or any member or members shall be authorized  
389 to examine the consumer on his farming operation of which he  
390 complains; to examine the seedsman on his packaging, labeling and  
391 selling operation of the seed alleged to be faulty; to conduct an  
392 appropriate test of a representative sample of the alleged faulty  
393 seed through the facilities of the state and under the supervision  
394 of the department when such action is deemed to be necessary; and  
395 to hold informal hearings at a time and place designated by the

396 chairman upon reasonable notice to the consumer and the seedsman.

397 (iii) Any investigation made by less than the  
398 entire membership of the council shall be made by authority of a  
399 written directive by the chairman and such investigation shall be  
400 summarized in writing and considered by the council in its  
401 findings and in making its recommendations.

402 (iv) If the council determines that an informal  
403 hearing should be conducted to allow each party an opportunity to  
404 present their respective side of the dispute, attorneys may be  
405 present at the hearings to confer with their clients. However, no  
406 attorney may participate directly in the proceedings. A majority  
407 of the six-member arbitration council shall constitute a quorum at  
408 any legally called meeting, hearing or other proceeding conducted  
409 by the council, and the act of a majority present at any such  
410 meeting, hearing or proceeding shall be the act of the council.  
411 The deliberations of the council at which the merits of a seed  
412 arbitration claim are under consideration shall not be subject to  
413 Section 25-41-1, et seq. The commissioner may issue subpoenas to  
414 require the attendance of witnesses and the production of  
415 documents. Any court of general jurisdiction in this state may  
416 enforce compliance with such subpoenas.

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

421 (e) (i) As a prerequisite to filing a cause of action  
422 in court against a seedsman, a consumer who is damaged by the  
423 failure of agricultural, vegetable, flower or forest tree seed to  
424 properly produce or perform, whether related to specific  
425 representations on the label, other information on the seed  
426 container or conditions attributed to the seed, shall make a sworn  
427 complaint against such seedsman alleging damages sustained. The  
428 complaint shall be accompanied by documentation from a recognized

429 professional verifying that there is a connection between the seed  
430 and the performance or production problem. The complaint shall be  
431 filed with the department and the department shall send a copy of  
432 the complaint to the seedsman by certified mail, within such time  
433 as to permit inspection of the crops, plants or trees by the seed  
434 arbitration council or its representatives and by the seedsman  
435 from whom the seed was purchased.

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

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

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

450 (iii) A filing fee of Two Hundred Fifty Dollars  
451 (\$250.00) shall be paid to the department with each complaint  
452 filed. The fee shall be recovered from the dealer upon the  
453 recommendation of the arbitration council.

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

458 (v) The department shall refer the complaint and  
459 the answer thereto to the arbitration council, as provided herein  
460 for investigation, findings, and recommendations on the matters  
461 set out in the complaint. Upon receipt of the findings and

462 recommendations of the arbitration council, the department shall  
463 transmit them to the consumer by certified mail.

464 (vi) The consumer and seedsman shall give written  
465 notice to the department of the acceptance or rejection of the  
466 arbitration council's recommended terms of settlement within  
467 thirty (30) calendar days from the date such recommended terms of  
468 settlement are issued by the arbitration council.

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

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

479 (b) To establish, maintain and support a state seed  
480 testing laboratory with such facilities and personnel as may be  
481 deemed necessary, such laboratory to be located at Mississippi  
482 State University of Agriculture and Applied Science. Such seed  
483 laboratory and equipment shall be in cooperation with Mississippi  
484 State University of Agriculture and Applied Science and under the  
485 supervision of the Director of the Bureau of Plant Industry, who  
486 shall be the state seed analyst; and

487 (c) To provide that any person, firm or corporation in  
488 this state shall have the privilege of submitting service seed  
489 samples for test to the state seed testing laboratory, subject to  
490 the charges as specified in the rules and regulations promulgated  
491 pursuant to the provisions of this article. Any person receiving  
492 a statement for seed analysis which is not paid in ninety (90)  
493 days will be in violation of this article. Any resident farmer  
494 may have one (1) sample of each kind tested free in any calendar

495 year. A signed request by a farmer or individual must accompany  
496 the sample when same is sent in by a dealer; otherwise, the sample  
497 will be recorded and charges for analysis will be made to the  
498 dealer. Official seed samples drawn by inspectors in the  
499 enforcement of the provisions of this article shall have first  
500 priority for testing in the state seed testing laboratory. The  
501 state seed analyst shall not be obligated to analyze uncleaned,  
502 unprocessed, and other time-consuming samples which obviously do  
503 not meet seed law requirements, except as time and facilities will  
504 permit; and

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

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

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



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

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

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

533 69-3-25. Any person violating any of the provisions of this  
534 article or the rules and regulations made by the commissioner  
535 pursuant thereto at a minimum is guilty of a misdemeanor and, upon  
536 conviction, shall be punished by a fine of not less than One  
537 Hundred Dollars (\$100.00) and not more than Five Hundred Dollars  
538 (\$500.00) at the discretion of the court having jurisdiction.

539 SECTION 6. The following section shall be codified as  
540 Section 69-3-29, Mississippi Code of 1972:

541 69-3-29. (1) When a written complaint is made against a  
542 person, corporation or other entity for violation of any of the  
543 provisions of this article, or any of the rules or regulations  
544 promulgated hereunder, the Commissioner of Agriculture and  
545 Commerce, or his designee, shall conduct a full evidentiary  
546 hearing relative to the charges. The complaint shall be in  
547 writing and shall be filed in the Office of the Mississippi  
548 Department of Agriculture and Commerce. The commissioner shall  
549 cause to be delivered to the accused in the manner described  
550 herein a copy of the complaint and a summons requiring the accused  
551 to file a written answer to the complaint within thirty (30)  
552 calendar days after service of the summons and the complaint on  
553 him. The accused may be notified by serving a copy of the summons  
554 and complaint on the accused by any of the methods set forth in  
555 Rule 4 of the Mississippi Rules of Civil Procedure or by certified  
556 mail. Upon receipt of the written answer of the accused, the  
557 matter shall be set for hearing before the commissioner or his  
558 designee within a reasonable time. If the accused fails to file  
559 an answer within such time, the commissioner or his designee may  
560 enter an order by default against the accused. The commissioner

561 may issue subpoenas to require the attendance of witnesses and the  
562 production of documents. Compliance with such subpoenas may be  
563 enforced by any court of general jurisdiction in this state. The  
564 testimony of witnesses shall be upon oath or affirmation, and they  
565 shall be subject to cross-examination. The proceedings shall be  
566 recorded. If the commissioner or his designee determines that the  
567 complaint lacks merit, he may dismiss same. If he finds that  
568 there is substantial evidence showing that a violation has  
569 occurred, he may impose any or all of the following penalties upon  
570 the accused: (a) levy a civil penalty in the amount of no more  
571 than Five Thousand Dollars (\$5,000.00) for each violation; (b)  
572 revoke or suspend any license or permit issued to the accused  
573 under the terms of this article; (c) issue a stop sale order; (d)  
574 require the accused to relabel a lot of seed that he is offering  
575 or exposing for sale and which is not labeled in accordance with  
576 the provisions of this article; or (e) seize any lot of seed that  
577 is not in compliance with this article and destroy, sell or  
578 otherwise dispose of the seed and apply the proceeds of any such  
579 sale to the costs herein and any civil penalties levied with the  
580 balance to be paid to the accused. The decision of the  
581 commissioner or his designee shall be in writing, and it shall be  
582 delivered to the accused by certified mail.

583 (2) Either the accused or the Department may appeal the  
584 decision of the commissioner or his designee to the circuit court  
585 of the county of residence of the accused or, if the accused is a  
586 nonresident of the State of Mississippi, to the Circuit Court of  
587 the First Judicial District of Hinds County, Mississippi. The  
588 appellant shall have the obligation of having the record  
589 transcribed and filing it with the circuit court. The appeal  
590 shall otherwise be governed by all applicable laws and rules  
591 affecting appeals to circuit court. If no appeal is perfected  
592 within the required time, the decision of the commissioner, or his  
593 designee shall then become final.

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

597           (4) Where any violation of this article, or the rules and  
598 regulations promulgated hereunder occurs, or is about to occur,  
599 that presents a clear and present danger to the public health,  
600 safety or welfare requiring immediate action, any of the  
601 department's field inspectors, and any other persons authorized by  
602 the commissioner may issue an order to be effective immediately  
603 before notice and a hearing that imposes any or all of the  
604 following penalties against the accused: (a) issue a stop sale  
605 order; (b) require the accused to relabel a lot of seed that he is  
606 offering or exposing for sale and which is not labeled in  
607 accordance with the provisions of this article; or (c) seize any  
608 lot of seed that is not in compliance with this article and  
609 destroy, sell or otherwise dispose of the seed and apply the  
610 proceeds of any such sale to the cost herein and any civil  
611 penalties levied with the balance to be paid to the accused. The  
612 order shall be served upon the accused in the same manner that the  
613 summons and complaint may be served upon him. The accused shall  
614 then have thirty (30) days after service of the order upon him  
615 within which to request an informal administrative review before  
616 the Director of the Bureau of Plant Industry in the department, or  
617 his designee, who shall act as reviewing officer. If the accused  
618 makes such a request within such time, the reviewing officer shall  
619 provide an informal administrative review to the accused within  
620 ten (10) days after such request is made. If the accused does not  
621 request an informal administrative review within such time frame,  
622 then he will be deemed to have waived his right to the review. At  
623 the informal administrative review, subpoena power shall not be  
624 available, witnesses shall not be sworn nor be subject to  
625 cross-examination and there shall be no court reporter or record  
626 made of the proceedings. Each party may present its case in the

627 form of documents, oral statements or any other method. The rules  
628 of evidence shall not apply. The reviewing officer's decision  
629 shall be in writing, and it shall be delivered to the parties by  
630 certified mail. If either party is aggrieved by the order of the  
631 reviewing officer, he may appeal to the commissioner for a full  
632 evidentiary hearing in accordance with the procedures described in  
633 subsection (1) of this section, except that there shall be no  
634 requirement for a written complaint or answer to be filed by the  
635 parties. Such appeal shall be perfected by filing a notice of  
636 appeal with the commissioner within thirty (30) days after the  
637 order of the reviewing officer is served on the appealing party.  
638 The hearing before the commissioner or his designee shall be held  
639 within a reasonable time after the appeal has been perfected.  
640 Failure to perfect an appeal within the allotted time shall be  
641 deemed a waiver of such right.

642 (5) The procedures described herein shall not apply to seed  
643 arbitration claims which are described in Section 69-3-19, as such  
644 claims shall be governed by the procedures set forth in that  
645 statute.

646 SECTION 7. Section 25-41-3, Mississippi Code of 1972, is  
647 amended as follows:[BD3]

648 25-41-3. For purposes of this chapter, the following words  
649 shall have the meaning ascribed herein, to-wit:

650 (a) "Public body" shall mean: (i) any executive or  
651 administrative board, commission, authority, council, department,  
652 agency, bureau or any other policymaking entity, or committee  
653 thereof, of the State of Mississippi, or any political subdivision  
654 or municipal corporation of the state, whether such entity be  
655 created by statute or executive order, which is supported wholly  
656 or in part by public funds or expends public funds, and (ii) any  
657 standing, interim or special committee of the Mississippi  
658 Legislature. There shall be exempted from the provisions of this  
659 chapter the judiciary, including all jury deliberations, public

660 and private hospital staffs, public and private hospital boards  
661 and committees thereof, law enforcement officials, the military,  
662 the State Probation and Parole Board, the Workers' Compensation  
663 Commission, legislative subcommittees and legislative conference  
664 committees, the arbitration council established in Section 69-3-19  
665 and license revocation, suspension and disciplinary proceedings  
666 held by the Mississippi State Board of Dental Examiners.

667 (b) "Meeting" shall mean an assemblage of members of a  
668 public body at which official acts may be taken upon a matter over  
669 which the public body has supervision, control, jurisdiction or  
670 advisory power.

671 SECTION 8. This act shall take effect and be in force from  
672 and after July 1, 2000.