

By: Holland

To: Agriculture;
Judiciary BHOUSE BILL NO. 292
(As Passed the House)

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 PROVIDE THAT IF BOTH THE CONSUMER AND THE
8 SEEDSMAN CONSENT, THEY MAY USE AN INDEPENDENT ARBITRATOR IN LIEU
9 OF A HEARING BY THE COUNCIL; TO PROVIDE FOR THE CONFIDENTIALITY OF
10 CERTAIN TRADE SECRETS; TO AMEND SECTION 69-3-25, MISSISSIPPI CODE
11 OF 1972, TO REVISE THE PENALTIES FOR VIOLATIONS; TO CREATE A NEW
12 CODE SECTION TO BE CODIFIED AS SECTION 69-3-29, MISSISSIPPI CODE
13 OF 1972, TO PROVIDE ADMINISTRATIVE PROCEDURES FOR THE HANDLING OF
14 COMPLAINTS AND EVIDENTIARY HEARINGS CONCERNING VIOLATIONS OF THE
15 SEED LAW; TO CREATE A SPECIAL FUND IN THE STATE TREASURY TO BE
16 DESIGNATED THE "SEED ARBITRATION FUND" INTO WHICH SHALL BE
17 DEPOSITED FUNDS FROM PENALTIES FOR VIOLATIONS OF THIS ACT; TO
18 AMEND SECTION 25-41-3, MISSISSIPPI CODE OF 1972, TO EXEMPT THE
19 SEED ARBITRATION COUNCIL FROM THE OPEN MEETINGS ACT; TO AMEND
20 SECTION 69-3-7, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO;
21 AND FOR RELATED PURPOSES.

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

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

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

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

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

34 (c) The term "seedsman" means a person, firm or
35 corporation engaged in the buying, selling or exchanging, offering

or exposing for sale agricultural seeds or mixtures thereof,
vegetable, flower, tree and shrub seeds as defined in this
article. For the purpose of this article:

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

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

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

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

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

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

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

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

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

73 (i) The term "seed lot" or "lot of seed" means a
74 definite quantity of seed identified by a lot number or other
75 identification mark, every portion or bag of which is uniform for
76 the factors which appear on the label, within permitted
77 tolerances.

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

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

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

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

97 (n) The terms "pure seed," "germination," "other crop
98 seed," "inert matter" and other seed labeling and testing terms in
99 common usage not defined herein are defined as in the Federal Seed
100 Act and the rules and regulations promulgated thereunder and any
101 subsequent amendments thereto.

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

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

(2) classes, as follows:

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

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

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

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

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

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

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

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

142 (w) The term "labeling" includes all labels and other
143 written, printed or graphic representations made by the labeler
144 accompanying and pertaining to the seed product, whether in bulk
145 or in containers, and any product use guides for the technology or
146 the seed that may be distributed in any manner including
147 representations on invoices except for current official
148 publications of the United States Department of Agriculture, state
149 extension services, state experiment stations, state agricultural
150 colleges and other similar federal or state institutions or
151 agencies authorized by law to conduct research.

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

157 (y) The term "records" or "seed records" means
158 information which relates to the origin, treatment, germination
159 and purity of each lot of agricultural seed sold, offered or
160 exposed for sale in this state, or which relates to the treatment,
161 germination and variety of each lot of vegetable, flower, or tree
162 and shrub seed sold, offered or exposed for sale in this state.
163 Such information includes seed samples and records of
164 declarations, labels, purchases, sales, cleaning, bulking,
165 handling, storage, analyses, tests and examinations.

166 (z) The term "processing" means cleaning, scarifying,
167 blending or treating to obtain uniform quality and other
168 operations which would change the purity or germination of the
169 seed and therefore require retesting to determine the quality of
170 the seed.

171 (aa) The term "tolerance" means the allowance for

sampling variation specified under rules and regulations promulgated pursuant to the provisions of this article.

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

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

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

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

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

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

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

(ii) The term "recognized professional" means a person

who is a licensed consultant, a certified crop advisor or any other person recognized by the arbitration council to be qualified to provide expert advice and opinion on seed performance.

(jj) The term "product use guide" means any written information prepared by the labeler and distributed to the consumer containing specific information concerning a seed product or a technology.

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

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

(a) For agricultural seeds:

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

(ii) Lot number or other designation.

(iii) Net weight.

(iv) Origin.

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

(vi) Percentage by weight of inert matter.

(vii) Percentage by weight of other crop seed.

238 (viii) Year grown, with kinds of seed to be
239 established by regulation.

240 (ix) The number of years from breeder seed. For
241 hybrids, the generation of hybrid must be stated. The kinds of
242 seed to be subject to this requirement are to be named by
243 regulation.

244 (x) For each named agricultural seed:

245 1. Percentage of germination, exclusive of
246 hard seed or firm seed.

247 2. Percentage of hard seed, if present.

248 3. Percentage of firm ungerminated seed, if
249 present.

250 4. The calendar month and year the test was
251 completed to determine such percentages.

252 (xi) The name and number per pound of each kind of
253 "restricted" noxious weed seed.

254 (xii) The name and address, or the registered code
255 number, of the person who labeled said seed, or who sells, offers
256 or exposes said seed for sale within this state.

257 (xiii) In addition to the above label
258 requirements, certain additional information may, through the
259 promulgation of regulations by the commissioner, be required for
260 the label.

261 (b) For vegetable seeds in containers of * * * more
262 than one (1) pound:

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

264 (ii) Net weight.

265 (iii) Lot number or other identification.

266 (iv) Percentage of germination, exclusive of hard
267 seed.

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

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

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

274 (viii) For seeds which germinate less than
275 standards prescribed under rules and regulations promulgated
276 pursuant to the provisions of this article, the words "below
277 standard" in not less than 12-point type must be written or
278 printed on face of tag in addition to other information required.

279
280 (c) For vegetable seeds in containers of one (1) pound
281 or less:

282 (i) Name of kind and variety.

283 (ii) The name and address, or the registered code
284 number, of the person who labeled said seed, or who sells, offers
285 or exposes said seed for sale within this state.

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

290 1. Percentage of germination, exclusive of
291 hard seed.

292 2. Percentage of hard seed, if present.

293 3. Calendar month and year the test was
294 completed to determine such percentage.

295 4. The words "below standard" in not less
296 than 12-point type.

297 (d) For flower seed:

298 Flower seed shall be labeled to comply with rules and
299 regulations promulgated by the commissioner pursuant to the
300 provisions of this article.

301 (e) For tree and shrub seed:

302 Tree and shrub seed shall be labeled to comply with the rules
303 and regulations promulgated by the commissioner pursuant to the

304 provisions of this article.

305 (f) For treated seed:

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

310 (2) The labeler shall keep records of the year of production
311 and blending components of all agricultural or vegetable seeds in
312 each lot labeled, distributed or offered for sale within the
313 state. Upon request, the records of each lot of seed shall be
314 made available to the purchaser of such lots, either through
315 information on the label, the container or such other means that
316 may be required by regulation in order to provide the information
317 requested in a timely manner.

318 SECTION 3. Section 69-3-7, Mississippi Code of 1972, is
319 amended as follows:[BD2]

320 69-3-7. (1) Each person handling seed subject to this
321 article shall keep for a period of two (2) years a complete record
322 of agricultural, vegetable, flower, or tree and shrub seeds
323 handled.

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

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

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

331 69-3-19. It shall be the duty of the Commissioner of
332 Agriculture and Commerce, acting either directly or through his
333 duly authorized agents:

334 (1) To sample, inspect, make analyses of and test
335 agricultural, vegetable, flower, and tree and shrub seeds,
336 including transgenic seeds, transported, held in storage, sold,

337 offered for sale or exposed for sale, or distributed within this
338 state for seeding purposes, at such time and place, and to such
339 extent as he may deem necessary to determine whether the seeds are
340 in compliance with the provisions of this article, and to notify
341 promptly the person who transported, distributed, had in his
342 possession, sold, offered or exposed the seed for sale, of any
343 violation. Such test results shall be sufficient to be used by
344 the Mississippi * * * Department of Transportation to determine
345 whether or not seed so tested meets the * * * requirements of the
346 Department of Transportation as set out in its contract
347 specifications. No further testing shall be required unless
348 the * * * Department of Transportation determines that more than
349 nine (9) months has elapsed, exclusive of the calendar month in
350 which the test was completed, between the germination test data
351 and the time of planting, or if by visual inspection the * * *
352 Department of Transportation determines that the seed was
353 improperly stored or handled prior to planting.

354 (2) To prescribe and adopt reasonable rules and regulations
355 governing the methods of sampling, inspecting, making analysis
356 tests and examinations of agricultural, vegetable, flower and tree
357 and shrub seeds, including standards, and the tolerances to be
358 followed in the administration of this article, and any other
359 reasonable rules and regulations as may be necessary to secure
360 efficient enforcement of this article.

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

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

368 the Director of the Mississippi Agricultural and Forestry
369 Experiment Station; the Director of the Mississippi Cooperative

370 Extension Service; the President of the Mississippi Seedsmen's
371 Association; the President of the Mississippi Farm Bureau
372 Federation; the Alcorn State University Divisional Director of
373 Agriculture and Applied Sciences. The commissioner shall choose
374 one (1) candidate from each organization's list in selecting a
375 council to hear each complaint. On or before January 1 of each
376 year the respective recommending organizations shall submit member
377 recommendations if they want to make changes from their previous
378 recommendations. The commissioner or his designee shall be a
379 member of and serve as chairman of the council * * * and he may
380 appoint a secretary for the council * * *. It shall be the duty
381 of the chairman to call the council into session to conduct all
382 meetings and deliberations and to direct all other activities of
383 the council. It shall be the duty of the secretary to keep
384 accurate and correct records of all meetings and deliberations and
385 perform such other duties for the council as directed by the
386 chairman. The commissioner shall prescribe and adopt reasonable
387 rules and regulations governing the arbitration process to include
388 conditions and circumstances associated with seed to which
389 arbitration is applicable.

390 (b) The purpose of the arbitration council shall be to
391 assist consumers and seedsmen in determining the validity of
392 complaints made by consumers against seedsmen and recommend cost
393 damages resulting from alleged failure of the seed to properly
394 perform or produce, whether related to specific representations on
395 the label or the labeling, other information on the seed container
396 or conditions attributed to the seed.

397 (c) (i) When the department refers to the arbitration
398 council any complaint made by a consumer against a seedsman, the
399 council shall make a full and complete investigation of the
400 matters complained of, and at the conclusion of the investigation,
401 report its findings and make its recommendations of cost damages
402 and file them with the department. Council findings and

recommendations may be admissible as evidence in a court of law. When a complaint involving transgenic seeds is filed for arbitration, the seedsman shall furnish the commissioner the technology and procedures necessary to conduct any test to determine whether the seeds will perform as represented by the seedsman. The commissioner shall ensure that all technology and procedural information submitted to the department by the seedsman shall be kept confidential to ensure the proprietary rights of the seedsman. After a final disposition of all judicial proceedings or expiration of any applicable statute of limitation, the commissioner shall return all technology, records, test data or procedural information to the seedsman. In addition, remedies for misappropriation of a trade secret shall be governed by the Mississippi Uniform Trade Secrets Act in Section 75-26-1 through 75-26-19.

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

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

(iv) If the council determines that an informal hearing should be conducted to allow each party an opportunity to present their respective side of the dispute, attorneys may be

present at the hearings to confer with their clients. However, no attorney may participate directly in the proceedings. A majority of the six-member arbitration council shall constitute a quorum at any legally called meeting, hearing or other proceeding conducted by the council, and the act of a majority present at any such meeting, hearing or proceeding shall be the act of the council. The deliberations of the council at which the merits of a seed arbitration claim are under consideration shall not be subject to Section 25-41-1, et seq. The commissioner may issue subpoenas to require the attendance of witnesses and the production of documents. Any court of general jurisdiction in this state may enforce compliance with such subpoenas.

(v) In lieu of a hearing by the council, informal hearings for arbitration may be conducted by an independent arbitrator appointed by the commissioner. The consumer filing a complaint or the seedsman named in the complaint may request arbitration by an independent arbitrator. When such request is made, both parties shall be notified and consent to arbitration by an independent arbitrator. The commissioner shall name the arbitrator from a list of six (6) persons published by the commissioner every two (2) years who shall be qualified to conduct arbitration proceedings. The arbitrator appointed by the commissioner shall conduct all proceedings and hearings as provided for in Section 69-3-19 and all rules and regulations promulgated under this act and report the findings and recommendations to the commissioner.

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

(e) (i) As a prerequisite to filing a cause of action in court against a seedsman, a consumer who is damaged by the failure of agricultural, vegetable, flower or forest tree seed to

properly produce or perform as represented by the label or labeling, whether related to specific representations on the label, other information on the seed container or conditions attributed to the seed, shall make a sworn complaint against such seedsman alleging damages sustained. The complaint shall be accompanied by documentation from a recognized professional verifying a problem. The complaint shall be filed with the department and the department shall send a copy of the complaint to the seedsman by certified mail, within such time as to permit inspection of the crops, plants or trees by the seed arbitration council or its representatives and by the seedsman from whom the seed was purchased.

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

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

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

(iii) A filing fee of One Hundred Fifty Dollars (\$150.00) shall be paid to the department with each complaint filed. The fee shall be recovered from the dealer upon the recommendation of the arbitration council.

(iv) Within fifteen (15) days after receipt of a copy of the complaint, the seedsman shall file with the department his answer to the complaint and serve a copy of the answer on the

502 consumer by certified mail.

503 (v) The department shall refer the complaint and
504 the answer thereto to the arbitration council, as provided herein
505 for investigation, findings, and recommendations on the matters
506 set out in the complaint. Upon receipt of the findings and
507 recommendations of the arbitration council, the department shall
508 transmit them to the consumer by certified mail.

509 (vi) The consumer and seedsman shall give written
510 notice to the department of the acceptance or rejection of the
511 arbitration council's recommended terms of settlement within
512 thirty (30) calendar days from the date such recommended terms of
513 settlement are issued by the arbitration council.

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

517 (a) To enter upon any public or private premises where
518 agricultural, vegetable, flower, or tree and shrub seeds are sold,
519 offered or exposed for sale or distribution, during regular
520 business hours in order to have access to seeds or records subject
521 to this article and the rules and regulations thereunder, and to
522 take samples of seed or copies of records in conformity therewith;
523 and

524 (b) To establish, maintain and support a state seed
525 testing laboratory with such facilities and personnel as may be
526 deemed necessary, such laboratory to be located at Mississippi
527 State University of Agriculture and Applied Science. Such seed
528 laboratory and equipment shall be in cooperation with Mississippi
529 State University of Agriculture and Applied Science and under the
530 supervision of the Director of the Bureau of Plant Industry, who
531 shall be the state seed analyst; and

532 (c) To provide that any person, firm or corporation in
533 this state shall have the privilege of submitting service seed
534 samples for test to the state seed testing laboratory, subject to

the charges as specified in the rules and regulations promulgated pursuant to the provisions of this article. Any person receiving a statement for seed analysis which is not paid in ninety (90) days will be in violation of this article. Any resident farmer may have one (1) sample of each kind tested free in any calendar year. A signed request by a farmer or individual must accompany the sample when same is sent in by a dealer; otherwise, the sample will be recorded and charges for analysis will be made to the dealer. Official seed samples drawn by inspectors in the enforcement of the provisions of this article shall have first priority for testing in the state seed testing laboratory. The state seed analyst shall not be obligated to analyze uncleaned, unprocessed, and other time-consuming samples which obviously do not meet seed law requirements, except as time and facilities will permit; and

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

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

(f) To issue and enforce a "stop sale" or "seizure" order with respect to a particular variety of agricultural, vegetable, flower or tree and shrub seeds if the producer or distributor of such variety is found to have violated any of the provisions of this article or the rules and regulations

promulgated thereunder with respect to the particular variety,
which order shall remain in effect until the producer or
distributor is in compliance with the law and has taken any action
required by the commissioner to correct the effect of the
violation in the marketplace; and

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

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

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

69-3-25. Any person who knowingly, or as a result either of
gross negligence or of a failure to make a reasonable effort to
inform himself of the pertinent facts, violates any provision of
this act or the rules and regulations made and promulgated
thereunder shall be deemed guilty of a misdemeanor and, upon
conviction thereof, shall pay a fine of not less than One Hundred
Dollars (\$100.00) and not more than Five Hundred Dollars
(\$500.00). Funds collected from such fines shall be deposited
into the special fund created in Section 69-3-29 (6). Nothing in
this act shall be construed as requiring the commissioner to
recommend prosecution for minor violations of this act or the
rules and regulations made and promulgated thereunder whenever he
believes that the public interest will be adequately served by
suitable written notice or warning.

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

69-3-29. (1) When a written complaint is made against a
person, corporation or other entity for violation of any of the
provisions of this article, or any of the rules or regulations
promulgated hereunder, the Commissioner of Agriculture and
Commerce, or his designee, shall conduct a full evidentiary
hearing relative to the charges. The complaint shall be in
writing and shall be filed in the Office of the Mississippi

601 Department of Agriculture and Commerce. The commissioner shall
602 cause to be delivered to the accused in the manner described
603 herein a copy of the complaint and a summons requiring the accused
604 to file a written answer to the complaint within thirty (30)
605 calendar days after service of the summons and the complaint on
606 him. The accused may be notified by serving a copy of the summons
607 and complaint on the accused by any of the methods set forth in
608 Rule 4 of the Mississippi Rules of Civil Procedure or by certified
609 mail. Upon receipt of the written answer of the accused, the
610 matter shall be set for hearing before the commissioner or his
611 designee within a reasonable time. If the accused fails to file
612 an answer within such time, the commissioner or his designee may
613 enter an order by default against the accused. The commissioner
614 may issue subpoenas to require the attendance of witnesses and the
615 production of documents. Compliance with such subpoenas may be
616 enforced by any court of general jurisdiction in this state. The
617 testimony of witnesses shall be upon oath or affirmation, and they
618 shall be subject to cross-examination. The proceedings shall be
619 recorded. If the commissioner or his designee determines that the
620 complaint lacks merit, he may dismiss same. If he finds that
621 there is substantial evidence showing that a violation has
622 occurred, he may impose any or all of the following penalties upon
623 the accused: (a) levy a civil penalty in the amount of no more
624 than Five Thousand Dollars (\$5,000.00) for each violation; (b)
625 revoke or suspend any license or permit issued to the accused
626 under the terms of this article; (c) issue a stop sale order; (d)
627 require the accused to relabel a lot of seed that he is offering
628 or exposing for sale and which is not labeled in accordance with
629 the provisions of this article; or (e) seize any lot of seed that
630 is not in compliance with this article and destroy, sell or
631 otherwise dispose of the seed and apply the proceeds of any such
632 sale to the costs herein and any civil penalties levied with the
633 balance to be paid to the accused. The decision of the

commissioner or his designee shall be in writing, and it shall be delivered to the accused by certified mail. Funds collected from penalties assessed under this subsection shall be deposited into the special fund created in subsection (6) of this section.

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

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

(4) Where any violation of this article, or the rules and regulations promulgated hereunder occurs, or is about to occur, that presents a clear and present danger to the public health, safety or welfare requiring immediate action, any of the department's field inspectors, and any other persons authorized by the commissioner may issue an order to be effective immediately before notice and a hearing that imposes any or all of the following penalties against the accused: (a) issue a stop sale order; (b) require the accused to relabel a lot of seed that he is offering or exposing for sale and which is not labeled in accordance with the provisions of this article; or (c) seize any lot of seed that is not in compliance with this article and destroy, sell or otherwise dispose of the seed and apply the proceeds of any such sale to the cost herein and any civil penalties levied with the balance to be paid to the accused. The

667 order shall be served upon the accused in the same manner that the
668 summons and complaint may be served upon him. The accused shall
669 then have thirty (30) days after service of the order upon him
670 within which to request an informal administrative review before
671 the Director of the Bureau of Plant Industry in the department, or
672 his designee, who shall act as reviewing officer. If the accused
673 makes such a request within such time, the reviewing officer shall
674 provide an informal administrative review to the accused within
675 ten (10) days after such request is made. If the accused does not
676 request an informal administrative review within such time frame,
677 then he will be deemed to have waived his right to the review. At
678 the informal administrative review, subpoena power shall not be
679 available, witnesses shall not be sworn nor be subject to
680 cross-examination and there shall be no court reporter or record
681 made of the proceedings. Each party may present its case in the
682 form of documents, oral statements or any other method. The rules
683 of evidence shall not apply. The reviewing officer's decision
684 shall be in writing, and it shall be delivered to the parties by
685 certified mail. If either party is aggrieved by the order of the
686 reviewing officer, he may appeal to the commissioner for a full
687 evidentiary hearing in accordance with the procedures described in
688 subsection (1) of this section, except that there shall be no
689 requirement for a written complaint or answer to be filed by the
690 parties. Such appeal shall be perfected by filing a notice of
691 appeal with the commissioner within thirty (30) days after the
692 order of the reviewing officer is served on the appealing party.
693 The hearing before the commissioner or his designee shall be held
694 within a reasonable time after the appeal has been perfected.
695 Failure to perfect an appeal within the allotted time shall be
696 deemed a waiver of such right.

697 (5) The procedures described herein shall not apply to seed
698 arbitration claims which are described in Section 69-3-19, as such
699 claims shall be governed by the procedures set forth in that

700 statute.

701 (6) A special fund, to be designated the "Seed Arbitration
702 Fund," is created within the State Treasury. The fund shall be
703 maintained by the State Treasurer as a separate and special fund,
704 separate and apart from the General Fund of the state. The fund
705 shall consist of monies deposited into the fund from fines
706 assessed under this section and under Section 69-3-25 and any
707 other monies made available for the fund. Unexpended amounts
708 remaining in the fund at the end of the fiscal year shall not
709 lapse into the State General Fund, and any interest earned or
710 investment earnings or amounts in the fund shall be deposited into
711 such fund. Monies in the fund shall be expended, upon
712 appropriation by the Legislature, to pay the costs incurred by the
713 Department of Agriculture and Commerce and administering the
714 provisions of this article.

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

717 25-41-3. For purposes of this chapter, the following words
718 shall have the meaning ascribed herein, to-wit:

719 (a) "Public body" shall mean: (i) any executive or
720 administrative board, commission, authority, council, department,
721 agency, bureau or any other policymaking entity, or committee
722 thereof, of the State of Mississippi, or any political subdivision
723 or municipal corporation of the state, whether such entity be
724 created by statute or executive order, which is supported wholly
725 or in part by public funds or expends public funds, and (ii) any
726 standing, interim or special committee of the Mississippi
727 Legislature. There shall be exempted from the provisions of this
728 chapter the judiciary, including all jury deliberations, public
729 and private hospital staffs, public and private hospital boards
730 and committees thereof, law enforcement officials, the military,
731 the State Probation and Parole Board, the Workers' Compensation
732 Commission, legislative subcommittees and legislative conference

733 committees, the deliberations of the arbitration council
734 established in Section 69-3-19 regarding seed arbitration claims
735 and license revocation, suspension and disciplinary proceedings
736 held by the Mississippi State Board of Dental Examiners.

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

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