

By: Holland

To: Agriculture;
Judiciary BHOUSE BILL NO. 292
(As Sent to Governor)

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; TO CREATE SECTION 69-3-20, MISSISSIPPI CODE OF
7 1972, TO RECODIFY AND TO REVISE THE METHOD OF APPOINTMENT TO THE
8 ARBITRATION COUNCIL; TO CREATE SECTION 69-3-22, MISSISSIPPI CODE
9 OF 1972, TO RECODIFY PROCEDURE FOR COMPLAINT BEFORE THE COUNCIL;
10 TO REVISE THE FILING FEE; TO AMEND SECTION 69-3-25, MISSISSIPPI
11 CODE OF 1972, TO REVISE THE PENALTIES FOR VIOLATIONS; TO CREATE A
12 NEW CODE SECTION TO BE CODIFIED AS SECTION 69-3-29, MISSISSIPPI
13 CODE OF 1972, TO PROVIDE ADMINISTRATIVE PROCEDURES FOR THE
14 HANDLING OF COMPLAINTS AND EVIDENTIARY HEARINGS CONCERNING
15 VIOLATIONS OF THE SEED LAW; TO AMEND SECTION 25-41-3, MISSISSIPPI
16 CODE OF 1972, TO EXEMPT THE SEED ARBITRATION COUNCIL FROM THE OPEN
17 MEETINGS ACT; TO AMEND SECTION 69-3-7, MISSISSIPPI CODE OF 1972,
18 IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

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

22 69-3-1. Wherever the following terms or similar terms are
23 used in this article, they shall have the following meanings,
24 unless the context clearly indicates otherwise:

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

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

33 (c) * * * "Bulk" or "in bulk" means seed when loose
34 either in vehicles of transportation, bins, cribs or tanks, and

35 not seed in bags, boxes, cartons, bulk/super bags or other
36 containers.

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

42 (e) * * * "Commercial grower" means a person, firm or
43 corporation engaged primarily in the production of seed for
44 planting purposes for sale or trade.

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

47 (g) * * * "Commission merchant" or "agent" means a
48 person, firm or corporation engaged in the selling of packet seed
49 of less than four (4) ounces to consumers.

50 (h) * * * "Consumer" means any person who purchases or
51 otherwise obtains seed for sowing but not for resale.

52 (i) * * * "Council" means the seed arbitration council
53 created under Section 63-3-20.

54 (j) * * * "Date of test" means the month and year the
55 percentage of germination appearing on the label was obtained by
56 laboratory test.

57 (k) * * * "Department" means the Mississippi Department
58 of Agriculture and Commerce.

59 (l) * * * "Federal Seed Act" means the laws codified at
60 7 USCS 1551 et seq., and all regulations promulgated thereunder.

61 (m) * * * "Firm ungerminated seed" means live seed,
62 other than hard seed, which neither germinate nor decay during the
63 period and under the conditions prescribed for germination of such
64 seed by the rules and regulations promulgated pursuant to
65 provisions of this article. * * *

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

70 (o) * * * "Hybrid" means the first generation seed of a
71 cross produced by controlling the pollination and combining: (i)

72 two (2) or more inbred lines; or (ii) one (1) inbred line or a
73 single cross with an open-pollinated variety; or (iii) two (2)
74 varieties or species, except open-pollinated varieties of corn.
75 The second generation and subsequent generations of such crosses
76 shall not be regarded as hybrids.

77 (p) * * * "Kind" means one or more related species or
78 subspecies which singly or collectively is known by one (1) common
79 name; for example: soybeans, crimson clover, striate lespedeza,
80 tall fescue.

81 (q) "Label" means the display or displays of written,
82 printed or graphic matter upon or attached to the container of
83 seed pertaining to the contents of the container.

84 (r) "Labeler" means the person, firm, corporation or
85 the registered code number whose name appears on the label or
86 container of seed.

87 (s) * * * "Labeling" includes all labels and other
88 written, printed or graphic representations made by the labeler
89 accompanying and * * * pertaining to the seed product whether in
90 bulk or in containers, and any product use guides for the
91 technology of the seed, that may be distributed in any manner
92 including representations on invoices except for current official
93 publications of the United States Department of Agriculture, state
94 extension services, state experiment stations, state agricultural
95 colleges and other similar federal or state institutions or
96 agencies authorized by law to conduct research.

97 (t) * * * "Lot of seed" means a definite quantity of
98 seed identified by a lot number or other identification mark,
99 every portion or bag of which is uniform for the factors which
100 appear on the label, within permitted tolerances.

101 (u) * * * "Mixed" or "mixture" means seeds consisting
102 of more than one (1) kind, or kind and variety, or strain, each
103 present in excess of five percent (5%) of the whole.

104 (v) * * * "Official certifying agency" means an agency

105 authorized or recognized and designated as a certifying agency by
106 the laws of a state, the United States, a province of Canada, or
107 the government of a foreign country.

108 (w) * * * "Origin" means the state, District of
109 Columbia, Puerto Rico, or possessions of the United States, or the
110 foreign country where the seeds were grown.

111 (x) * * * "Processing" means cleaning, scarifying,
112 blending or treating to obtain uniform quality and other
113 operations which would change the purity or germination of the
114 seed and therefore require retesting to determine the quality of
115 the seed.

116 (y) "Product use guide" means any written information
117 prepared by the labeler and distributed to the consumer,
118 containing specific information concerning a seed product or a
119 technology.

120 (z) "Prohibited noxious weed seed" means the seeds of
121 weeds that reproduce by seed, and/or spread by underground roots
122 or stems, and which, when established, are highly destructive and
123 difficult to control in this state by ordinary good cultural
124 practice, or constitute a peculiar hazard to the agriculture of
125 this state. * * *

126 (aa) * * * "Pure seed," "germination," "other crop
127 seed," "inert matter" and other seed labeling and testing terms in
128 common usage not defined herein are defined as in the Federal Seed
129 Act and the rules and regulations promulgated under that act.

130 (bb) "Recognized professional" means a person who is a
131 licensed consultant, a certified crop advisor or any other person
132 recognized by the arbitration council to be qualified to provide
133 expert advise and opinion on seed performances.

134 (cc) "Restricted noxious weed seed" means the seeds of
135 weeds that are particularly objectionable in fields, lawns or
136 gardens of this state, but which can ordinarily be controlled by
137 good cultural practice. * * *

138 (dd) * * * "Seed record" means information which
139 relates to the origin, treatment, germination and purity of each
140 lot of agricultural seed sold, offered or exposed for sale in this
141 state, or which relates to the treatment, germination and variety
142 of each lot of vegetable, flower, or tree and shrub seed sold,
143 offered or exposed for sale in this state. Such information
144 includes seed samples and records of declarations, labels,
145 purchases, sales, cleaning, bulking, handling, storage, analyses,
146 tests and examinations.

147 (ee) * * * "Seedsman" means a person, firm or
148 corporation engaged in the buying, selling or exchanging, offering
149 or exposing for sale agricultural seeds or mixtures thereof,
150 vegetable, flower, tree and shrub seeds as defined in this
151 article.

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

160 (gg) * * * "Strain" means the subdivision of a variety;
161 for example: Clemson nonshattering soybeans, Strain 4.

162 (hh) * * * "Treated" means that the seed has been given
163 an application of a substance or subjected to a process designed
164 to control or repel certain disease organisms, insects or other
165 pests attacking such seeds or seedlings grown therefrom to improve
166 its planting value or to serve any other purpose.

167 (ii) * * * "Tree and shrub seeds" means the seeds of
168 woody plants, including transgenic seeds, commonly known and sold
169 as tree and shrub seeds in this state.

170 (jj) * * * "Tolerance" means the allowance for sampling

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

173 (kk) "Transgenic seed" means seed from a plant whose
174 genetic composition has been altered by methods other than those
175 used in conventional plant breeding to produce seed that contains
176 selected genes from other plants or species that will produce
177 results such as herbicide tolerance, or resistance, insect
178 tolerance, or resistance, or other traits derived from
179 biotechnology.

180 (ll) * * * "Variety" means a subdivision of a kind
181 which is characterized by growth, plant, fruit, seed or other
182 characteristics by which it can be differentiated in successive
183 generations from other sorts of the same kind; for example: Lee
184 soybeans, Frontier crimson clover, Kobe striate lespedeza,
185 Kentucky 31 tall fescue.

186 (mm) * * * "Vegetable seeds" means the seeds of those
187 crops which are grown in gardens or on truck farms, including
188 transgenic seeds, and are generally known and sold under the name
189 of vegetable seeds in this state.

190 (nn) * * * "Weed seed" means the seeds, bulblets or
191 tubers of all plants generally recognized as weeds within the
192 state and includes noxious weed seeds.

193 * * *

194 (oo) * * * "Wholesale distributor" means a person, firm
195 or corporation engaged in the selling of seed to a seedsman
196 holding a permit as required by subsection (1)(c) of Section
197 69-3-3.

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

200 69-3-5. (1) Each container of agricultural, vegetable,
201 flower, or tree and shrub seeds sold, offered for sale, or exposed
202 for sale, or transported within this state for seeding purposes
203 shall bear thereon or have attached * * * in a conspicuous place a

204 plainly written or printed label or tag in the English language,
205 giving the following information:

206 (a) For agricultural seed:

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

217 (ii) Lot number or other designation.

218 (iii) Net weight.

219 (iv) Origin.

220 (v) Percentage by weight of all weed seed,
221 including noxious weed seed.

222 (vi) Percentage by weight of inert matter.

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

224 (viii) For each named agricultural seed:

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

227 2. Percentage of hard seed, if present.

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

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

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

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

237 (xi) In addition to the above label requirements,
238 the commissioner may, by regulation, require certain additional
239 information * * * for the label.

240 (b) For vegetable seed in containers of * * * more than
241 one (1) pound:

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

243 (ii) Net weight.

244 (iii) Lot number or other identification.

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

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

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

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

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

257
258 (c) For vegetable seed in containers of one (1) pound
259 or less:

260 (i) Name of kind and variety.

261 (ii) The name and address, or the registered code
262 number, of the person who labeled the seed, or who sells, offers
263 or exposes the seed for sale within this state.

264 (iii) For seed which germinate less than the
265 standards * * * prescribed for such seed under rules and
266 regulations * * *, the following additional information must be
267 shown:

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

270 2. Percentage of hard seed, if present.

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

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

275 (d) For flower seed:

276 Flower seed shall be labeled to comply with rules and
277 regulations promulgated under this article.

278 (e) For tree and shrub seed:

279 Tree and shrub seed shall be labeled to comply with the rules
280 and regulations promulgated under this article.

281 (f) For treated seed:

282 All seed treated * * * shall be labeled to comply with the
283 rules and regulations promulgated under this article.

284 (2) The labeler shall keep records of the year of production
285 and blending components of all agricultural or vegetable seed in
286 each lot labeled, distributed or offered for sale within the
287 state. Upon request the records of each lot of seed shall be made
288 available to the purchaser of seed from such lots either through
289 information on the label, the container or other means that may be
290 required by regulation to provide the information requested in a
291 timely manner.

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

294 69-3-7. (1) Each person handling seed * * * shall keep for
295 a period of two (2) years a complete seed record of agricultural,
296 vegetable, flower, or tree and shrub seeds handled.

297 (2) The records shall include the information for seed
298 records as defined in * * * Section 69-3-1.

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

302 SECTION 4. Section 69-3-19, Mississippi Code of 1972, is

303 amended as follows:

304 69-3-19. (1) It shall be the duty of the Commissioner of
305 Agriculture and Commerce, acting either directly or through his
306 duly authorized agents:

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

326 (b) To prescribe and adopt reasonable rules and
327 regulations governing the methods of sampling, inspecting, making
328 analysis tests and examinations of agricultural, vegetable, flower
329 and tree and shrub seeds, including standards, and the tolerances
330 to be followed in the administration of this article, and any
331 other reasonable rules and regulations as may be necessary to
332 secure efficient enforcement of this article.

333 (c) To adopt and publish prohibited and restricted
334 noxious weed seed lists.

335 (d) To publish list of kinds of seeds known and

336 recognized to contain firm seeds.

337 * * *

338 (2) * * * For the purpose of carrying out * * * this
339 article, the commissioner individually or through his designated
340 agents is authorized:

341 (a) To enter upon any public or private premises where
342 agricultural, vegetable, flower, or tree and shrub seeds are sold,
343 offered or exposed for sale or distribution, during regular
344 business hours in order to have access to seeds or records subject
345 to this article and the rules and regulations * * *, and to take
346 samples of seed or copies of records in conformity therewith; and

347 (b) To establish, maintain and support a state seed
348 testing laboratory with such facilities and personnel as may be
349 deemed necessary. The laboratory shall be located at Mississippi
350 State University of Agriculture and Applied Science. Such seed
351 laboratory and equipment shall be in cooperation with Mississippi
352 State University of Agriculture and Applied Science and under the
353 supervision of the Director of the Bureau of Plant Industry, who
354 shall be the state seed analyst; and

355 (c) To provide that any person, firm or corporation in
356 this state shall have the privilege of submitting service seed
357 samples for test to the state seed testing laboratory, subject to
358 the charges as specified in the rules and regulations * * *. Any
359 person receiving a statement for seed analysis which is not paid
360 in ninety (90) days will be in violation of this article. Any
361 resident farmer may have one (1) sample of each kind tested free
362 in any calendar year. A signed request by a farmer or individual
363 must accompany the sample when it is sent in by a dealer;
364 otherwise, the sample will be recorded and charges for analysis
365 will be made to the dealer. Official seed samples drawn by
366 inspectors in the enforcement of * * * this article shall have
367 first priority for testing in the state seed testing laboratory.
368 The state seed analyst shall not be obligated to analyze

369 uncleaned, unprocessed, and other time-consuming samples which
370 obviously do not meet seed law requirements, except as time and
371 facilities will permit; and

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

376 (e) To issue and enforce a written or printed "stop
377 sale" or "seizure" order to the owner or custodian of any lot of
378 agricultural, vegetable, flower, or tree and shrub seeds which the
379 commissioner or his authorized agent finds is in violation
380 of * * * this article or the rules and regulations * * *,
381 which * * * shall prohibit further sale or movement of such seed
382 until the officer has evidence that the law has been complied with
383 and a written release has been issued to the owner or custodian of
384 the seed * * *; and

385 (f) To issue and enforce a "stop sale" or "seizure"
386 order with respect to a particular variety of agricultural,
387 vegetable, flower or tree and shrub seeds if the producer or
388 distributor of such variety is found to have violated * * * this
389 article or the rules and regulations * * * with respect to the
390 particular variety, which * * * shall remain in effect until the
391 producer or distributor is in compliance with the law and has
392 taken any action required by the commissioner to correct the
393 effect of the violation in the marketplace; and

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

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

397 SECTION 5. The following shall be codified as Section
398 69-3-20, Mississippi Code of 1972:

399 69-3-20. (1) The commissioner shall appoint an arbitration
400 council composed of six (6) members to hear and decide each
401 complaint. The Director of the Mississippi Agricultural and

402 Forestry Experiment Station, the Director of the Mississippi
403 Cooperative Extension Service, the President of the Mississippi
404 Seedsmen's Association, the President of the Mississippi Farm
405 Bureau Federation, and the Alcorn State University Divisional
406 Director of Agriculture and Applied Sciences shall supply to the
407 commissioner a list of four (4) candidates from their respective
408 organizations. The commissioner shall choose one (1) candidate
409 from each organization's list in selecting a council to hear each
410 complaint. On or before January 1 of each year the respective
411 recommending organizations shall submit member recommendations if
412 they want to make changes from their previous recommendations.
413 The commissioner, or his designee, shall be a member of and serve
414 as chairman of the council and he may appoint a secretary for the
415 council. It shall be the duty of the chairman to call the council
416 into session to conduct all meetings and deliberations and to
417 direct all other activities of the council. It shall be the duty
418 of the secretary to keep accurate and correct records of all
419 meetings and deliberations and perform such other duties for the
420 council as directed by the chairman. The commissioner shall
421 prescribe and adopt reasonable rules and regulations governing the
422 arbitration process to include conditions and circumstances
423 associated with seed to which arbitration is applicable.

424 (2) The purpose of the arbitration council is to assist
425 consumers and seedsmen in determining the validity of complaints
426 made by consumers against seedsmen and recommend cost damages
427 resulting from failure of the seed to properly perform or produce,
428 whether related to specific representations on the label or the
429 labeling, other information on the seed container or conditions
430 attributed to the quality of the seed.

431 (3) (a) When the department refers a complaint made by a
432 consumer against a seedsman to the arbitration council, the
433 council shall make a full and complete investigation of the
434 matters complained of, and at the conclusion of the investigation,

435 report its findings and make its recommendations of cost damages
436 and file them with the department. Council findings and
437 recommendations may be admissible as evidence in a court of law.
438 When a complaint involving transgenic seeds is filed for
439 arbitration, the seedsman shall furnish the commissioner the
440 technology and procedures necessary to conduct any test to
441 determine whether the seeds will perform as represented by the
442 seedsman. The commissioner shall ensure that all technology and
443 procedural information submitted to the department by the seedsman
444 shall be kept confidential to ensure the proprietary rights of the
445 seedsman. After a final disposition of all judicial proceedings
446 or expiration of any applicable statute of limitation, the
447 commissioner shall return all technology, records, test data or
448 procedural information to the seedsman. In addition, remedies for
449 misappropriation of a trade secret shall be governed by the
450 Mississippi Uniform Trade Secrets Act in Sections 75-26-1 through
451 75-26-19.

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

462 (c) Any investigation made by less than the entire
463 membership of the council shall be made by authority of a written
464 directive by the chairman and the investigation shall be
465 summarized in writing and considered by the council in its
466 findings and in making its recommendations.

467 (d) If the council holds an informal hearing to allow

468 each party an opportunity to present their side of the dispute,
469 attorneys may be present at the hearings to confer with their
470 clients. However, no attorney may participate directly in the
471 proceedings.

472 (4) A majority of the six-member council shall constitute a
473 quorum and action by a majority of a quorum shall be the official
474 act of the council.

475 (5) The commissioner may issue subpoenas to require the
476 attendance of witnesses and the production of documents. Any
477 court of general jurisdiction in this state may enforce compliance
478 with such subpoenas.

479 (6) The deliberations of the council at which the merits of
480 a seed arbitration claim are under consideration shall not be
481 subject to Section 25-41-1 et seq.

482 (7) The members of the council shall receive no compensation
483 for the performance of their duties but shall be reimbursed for
484 travel expenses in the manner and amount provided in Section
485 25-3-41, Mississippi Code of 1972.

486 (8) In lieu of a hearing by the council, informal hearings
487 for arbitration may be conducted by an independent arbitrator
488 appointed by the commissioner. The consumer filing a complaint or
489 the seedsmen named in the complaint may request arbitration by an
490 independent arbitrator. When a request is made, both parties
491 shall be notified and consent to arbitration by an independent
492 arbitrator. The commissioner shall appoint the arbitrator from a
493 list of six (6) persons who shall be qualified to conduct
494 arbitration proceedings. The commissioner shall publish the lists
495 of qualified arbitrations every other year. The arbitrator
496 appointed by the commissioner shall conduct all proceedings and
497 hearings as provided in Section 69-3-20 and applicable rules and
498 regulations and shall report the findings and recommendations to
499 the commissioner.

500 SECTION 6. The following shall be codified as Section

501 69-3-22, Mississippi Code of 1972:

502 69-3-22. (1) As a prerequisite to filing a cause of action
503 in court against a seedsman, a consumer who is damaged by the
504 failure of agricultural, vegetable, flower or forest tree seed to
505 properly produce or perform, as represented by the label or
506 labeling whether related to specific representations on the label,
507 other information on the seed container or conditions attributed
508 to the quality of the seed, shall make a sworn complaint against
509 such seedsman alleging damages sustained. The complaint shall be
510 accompanied by documentation from a recognized professional
511 verifying that there is a connection between the seed and the
512 performance or production problem. The complaint shall be filed
513 with the department and the department shall send a copy of the
514 complaint to the seedsman by certified mail, within such time as
515 to permit inspection of the crops, plants or trees by the seed
516 arbitration council or its representatives and by the seedsman
517 from whom the seed was purchased.

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

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

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

532 (3) A filing fee of Two Hundred Fifty Dollars (\$250.00)
533 shall be paid to the department with each complaint filed. The

534 fee shall be recovered from the dealer upon the recommendation of
535 the arbitration council.

536 (4) Within fifteen (15) days after receipt of a copy of the
537 complaint, the seedsman shall file with the department his answer
538 to the complaint and serve a copy of the answer on the consumer by
539 certified mail.

540 (5) The department shall refer the complaint and the answer
541 to the council for investigation, findings and recommendations on
542 the matters set out in the complaint. Upon receipt of the
543 findings and recommendations of the council, the department shall
544 transmit them to the consumer by certified mail.

545 (6) The consumer and seedsman shall give written notice to
546 the department of the acceptance or rejection of the council's
547 recommended terms of settlement within thirty (30) calendar days
548 from the date the recommended terms of settlement are issued by
549 the arbitration council.

550 SECTION 7. Section 69-3-25, Mississippi Code of 1972, is
551 amended as follows:

552 69-3-25. Any person who knowingly, or as a result either of
553 gross negligence or of a failure to make a reasonable effort to
554 inform himself of the pertinent facts, violates any provision of
555 this act or the rules and regulations made and promulgated
556 thereunder shall be deemed guilty of a misdemeanor and, upon
557 conviction thereof, shall pay a fine of not less than One Hundred
558 Dollars (\$100.00) and not more than Five Hundred Dollars
559 (\$500.00). Funds collected from such fines shall be deposited
560 into the special fund created in Section 69-3-29(6). Nothing in
561 this act shall be construed as requiring the commissioner to
562 recommend prosecution for minor violations of this act or the
563 rules and regulations made and promulgated thereunder whenever he
564 believes that the public interest will be adequately served by
565 suitable written notice or warning.

566 SECTION 8. The following section shall be codified as

567 Section 69-3-29, Mississippi Code of 1972:

568 69-3-29. (1) When a written complaint is made against a
569 person for violation of this article, or any of the rules or
570 regulations, the commissioner, or his designee, shall conduct a
571 full evidentiary hearing. The complaint shall be in writing and
572 shall be filed in the office of the department. The commissioner
573 shall serve the accused with a copy of the complaint and a summons
574 by any of the methods set forth in Rule 4 of the Mississippi Rules
575 of Civil Procedure or by certified mail. Within thirty (30) days
576 after receipt of the summons and a copy of the complaint, the
577 accused shall file a written answer with the department. Upon
578 receipt of the written answer of the accused, the matter shall be
579 set for hearing before the commissioner within a reasonable time.
580 If the accused fails to file an answer within the thirty (30)
581 days, the commissioner may enter an order by default against the
582 accused. The commissioner may issue subpoenas to require the
583 attendance of witnesses and the production of documents.
584 Compliance with the subpoenas may be enforced by any court of
585 general jurisdiction in this state. The testimony of witnesses
586 shall be upon oath or affirmation, and they shall be subject to
587 cross-examination. The proceedings shall be recorded. If the
588 commissioner determines that the complaint lacks merit, he may
589 dismiss same. If he finds that there is substantial evidence
590 showing that a violation has occurred, he may impose any or all of
591 the following penalties upon the accused: (a) levy a civil
592 penalty in the amount of no more than Five Thousand Dollars
593 (\$5,000.00) for each violation; (b) revoke or suspend any license
594 or permit issued to the accused under the terms of this article;
595 (c) issue a stop sale order; (d) require the accused to relabel a
596 lot of seed that he is offering or exposing for sale which is not
597 labeled in accordance with this article; or (e) seize any lot of
598 seed that is not in compliance with this article and destroy, sell
599 or otherwise dispose of the seed and apply the proceeds of the

600 sale to the costs and civil penalties levied with the balance to
601 be paid to the accused. The decision of the commissioner, or his
602 designee, shall be in writing, and it shall be delivered to the
603 accused by certified mail.

604 (2) Either the accused or the department may appeal the
605 decision of the commissioner to the circuit court of the county of
606 residence of the accused or, if the accused is a nonresident of
607 the State of Mississippi, to the Circuit Court of the First
608 Judicial District of Hinds County, Mississippi. The appellant
609 shall have the record transcribed and file it with the circuit
610 court. The appeal shall otherwise be governed by all applicable
611 laws and rules affecting appeals to circuit court. If no appeal
612 is perfected within the required time, the decision of the
613 commissioner shall then become final.

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

617 (4) When any violation of this article, or the rules and
618 regulations occurs, or is about to occur, that presents a clear
619 and present danger to the public health, safety or welfare
620 requiring immediate action, any of the department's field
621 inspectors, and any other persons authorized by the commissioner
622 may issue an order to be effective immediately before notice and a
623 hearing that imposes any or all of the following penalties against
624 the accused: (a) issue a stop sale order; (b) require the accused
625 to relabel a lot of seed that he is offering or exposing for sale
626 and which is not labeled in accordance with this article; or (c)
627 seize any lot of seed that is not in compliance with this article
628 and destroy, sell or otherwise dispose of the seed and apply the
629 proceeds of the sale to the cost and any civil penalties levied
630 with the balance to be paid to the accused. The order shall be
631 served upon the accused in the same manner that the summons and
632 complaint may be served upon him. The accused shall then have

633 thirty (30) days after service of the order upon him within which
634 to request an informal administrative review before the Director
635 of the Bureau of Plant Industry in the department, or his
636 designee, who shall act as reviewing officer. If the accused
637 makes a timely request, the reviewing officer shall conduct an
638 informal administrative review within ten (10) days after the
639 request is made. If the accused does not request an informal
640 administrative review within the thirty (30) days, then he will be
641 deemed to have waived his right to the review. At the informal
642 administrative review, subpoena power shall not be available,
643 witnesses shall not be sworn nor be subject to cross-examination
644 and there shall be no court reporter or record made of the
645 proceedings. Each party may present its case in the form of
646 documents, oral statements or any other method. The rules of
647 evidence shall not apply. The reviewing officer's decision shall
648 be in writing, and it shall be delivered to the parties by
649 certified mail. If either party is aggrieved by the order of the
650 reviewing officer, he may appeal to the commissioner for a full
651 evidentiary hearing in accordance with the procedures in
652 subsection (1) of this section, except that there shall be no
653 requirement for a written complaint or answer to be filed by the
654 parties. The appeal shall be perfected by filing a notice of
655 appeal with the commissioner within thirty (30) days after the
656 order of the reviewing officer is served on the appealing party.
657 The hearing before the commissioner, or his designee, shall be
658 held within a reasonable time after the appeal has been perfected.
659 Failure to perfect an appeal within the allotted time shall be
660 deemed a waiver of such right.

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

665 SECTION 9. Section 25-41-3, Mississippi Code of 1972, is

666 amended as follows:[BD3]

667 25-41-3. For purposes of this chapter, the following words
668 shall have the meaning ascribed herein, to wit:

669 (a) "Public body" means: (i) any executive or
670 administrative board, commission, authority, council, department,
671 agency, bureau or any other policymaking entity, or committee
672 thereof, of the State of Mississippi, or any political subdivision
673 or municipal corporation of the state, whether such entity be
674 created by statute or executive order, which is supported wholly
675 or in part by public funds or expends public funds, and (ii) any
676 standing, interim or special committee of the Mississippi
677 Legislature. There shall be exempted from the provisions of this
678 chapter the judiciary, including all jury deliberations, public
679 and private hospital staffs, public and private hospital boards
680 and committees thereof, law enforcement officials, the military,
681 the State Probation and Parole Board, the Workers' Compensation
682 Commission, legislative subcommittees and legislative conference
683 committees, the arbitration council established in Section 69-3-19
684 and license revocation, suspension and disciplinary proceedings
685 held by the Mississippi State Board of Dental Examiners.

686 (b) "Meeting" means an assemblage of members of a
687 public body at which official acts may be taken upon a matter over
688 which the public body has supervision, control, jurisdiction or
689 advisory power.

690 SECTION 10. This act shall take effect and be in force from
691 and after July 1, 2000.