

By: Representative Holland

To: Agriculture

HOUSE BILL NO. 1108

1 AN ACT TO REVISE THE MISSISSIPPI COMMERCIAL FEED LAW; TO
2 AMEND SECTION 75-45-153, MISSISSIPPI CODE OF 1972, TO REVISE
3 DEFINITIONS; TO AMEND SECTION 75-45-157, MISSISSIPPI CODE OF 1972,
4 TO PROVIDE THAT ANY AMENDMENT ADOPTED BY THE SECRETARY OF HEALTH
5 AND HUMAN SERVICES SHALL BE AUTOMATICALLY ADOPTED UNDER THIS
6 ARTICLE; TO AMEND SECTION 75-45-159, MISSISSIPPI CODE OF 1972, TO
7 REQUIRE DISTRIBUTORS OF FEED TO FILE WITH THE COMMISSIONER AND
8 STATE CHEMIST AND TO PAY A REGISTRATION FEE FOR EACH LOCATION; TO
9 AMEND SECTION 75-45-161, MISSISSIPPI CODE OF 1972, TO REVISE
10 CERTAIN LABELING REQUIREMENTS; TO AMEND SECTION 75-45-165,
11 MISSISSIPPI CODE OF 1972, TO CLARIFY WHAT CONSTITUTES AN
12 ADULTERATED COMMERCIAL FEED; TO AMEND SECTION 75-45-167,
13 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE PERSON WHOSE NAME
14 APPEARS ON THE LABEL AS THE MANUFACTURER, GUARANTOR OR DISTRIBUTOR
15 SHALL PAY THE INSPECTION FEE; TO AMEND SECTION 75-45-169,
16 MISSISSIPPI CODE OF 1972, TO REQUIRE PERSONS LIABLE FOR INSPECTION
17 FEES TO FILE AN ANNUAL STATEMENT; TO AMEND SECTION 75-45-173,
18 MISSISSIPPI CODE OF 1972, TO ALLOW ORAL NOTICE FOR INSPECTION; TO
19 AMEND SECTION 75-45-175, MISSISSIPPI CODE OF 1972, TO AUTHORIZE
20 THE COMMISSIONER TO ISSUE "WITHDRAWAL FROM DISTRIBUTION" ORDERS
21 WHEN VIOLATIONS ARE DETERMINED; TO AMEND SECTION 75-45-181,
22 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT PERSONS VIOLATING THIS
23 ARTICLE ARE GUILTY OF A MISDEMEANOR AND TO PROVIDE PENALTIES; TO
24 CREATE A NEW CODE SECTION TO BE CODIFIED AS SECTION 75-45-182,
25 MISSISSIPPI CODE OF 1972, TO PROVIDE ADMINISTRATIVE PROCEDURES AND
26 THE APPEAL PROCESS IN HANDLING COMPLAINTS MADE AGAINST PERSONS WHO
27 VIOLATE THIS ARTICLE; TO AMEND SECTIONS 75-45-179, 75-45-183 AND
28 75-45-185, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; TO
29 REPEAL SECTION 75-45-189, MISSISSIPPI CODE OF 1972, WHICH PROVIDES
30 FOR JUDICIAL REVIEW OF AN ORDER MADE UNDER THIS ARTICLE; TO REPEAL
31 SECTION 75-45-195, MISSISSIPPI CODE OF 1972, WHICH REQUIRES THE
32 AGRICULTURE COMMISSIONER TO PUBLISH ANNUALLY INFORMATION
33 CONCERNING SALES OF COMMERCIAL FEED; AND FOR RELATED PURPOSES.

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

35 SECTION 1. Section 75-45-153, Mississippi Code of 1972, is
36 amended as follows:

37 75-45-153. When used in this article the terms:

38 (a) "Person" includes any individual, partnership,
39 corporation or association.

40 (b) "Distribute" means to offer for sale, sell,
41 exchange, give away, or barter, commercial feed or to supply,
42 furnish, or otherwise provide commercial feed to a contract
43 feeder.

44 (c) "Distributor" means any person who distributes
45 commercial feedstuffs as defined herein.

46 (d) "Commercial feed" means all materials distributed
47 for use as feed or for mixing in feed except unmixed seed, whole
48 or processed, when not adulterated within the meaning of paragraph
49 (a) of Section 75-45-165. The commissioner and State Chemist by
50 regulation may exempt from this definition, or from specific
51 provisions of this article, commodities such as hay, straw,
52 stover, silage, cobs, husks, hulls, and individual chemical
53 compounds or substances when such commodities, compounds or
54 substances are not mixed with other materials, and are not
55 adulterated within the meaning of paragraphs (a) through (d) of
56 Section 75-45-165.

57 (e) "Feed ingredient" means each of the constituent
58 materials making up a commercial feed.

59 (f) "Mineral feed" means a commercial feed intended to
60 supply primarily mineral elements or inorganic nutrients.

61 (g) "Drug" means any article intended for use in the
62 diagnosis, cure, mitigation, treatment, or prevention of disease
63 in animals other than man and articles other than feed intended to
64 affect the structure or any function of the animal body.

65 (h) "Customer-formula feed" means commercial feed which
66 consists of a mixture of commercial feeds and/or feed ingredients,
67 each batch of which is manufactured according to the specific
68 instructions of the final purchaser.

69 (i) "Manufacture" means to grind, mix or blend, or
70 further process a commercial feed for distribution.

71 (j) "Brand name" means any word, name, symbol, or
72 device, or any combination thereof, identifying the commercial

73 feed of a distributor or registrant and distinguishing it from
74 that of others.

75 (k) "Product name" means the name of the commercial
76 feed which identifies it as to kind, class or specific use.

77 (l) "Label" means a display of written, printed, or
78 graphic matter upon or affixed to the container in which a
79 commercial feed is distributed, or on the invoice or delivery slip
80 with which a commercial feed is distributed.

81 (m) "Labeling" means all labels and other written,
82 printed, or graphic matter (1) upon a commercial feed or any of
83 its containers or wrappers (2) accompanying such commercial feed.

84 (n) "Ton" means a net weight of two thousand (2,000)
85 pounds avoirdupois.

86 (o) "Percent" or "percentages" mean percentages by
87 weights.

88 (p) "Official sample" means a sample of feed taken by
89 the commissioner or his agent in accordance with the provisions of
90 subsections (3), (4) and (5) of Section 75-45-173.

91 (q) "Contract feeder" means a person who as an
92 independent contractor, feeds commercial feed to animals pursuant
93 to a contract whereby such commercial feed is supplied, furnished,
94 or otherwise provided to such person and whereby such person's
95 remuneration is determined all or in part by feed consumption,
96 mortality, profits, or amount or quality of product.

97 (r) "Pet food" means any commercial feed prepared and
98 distributed for consumption by pets.

99 (s) "Pet" means any domesticated animal normally
100 maintained in or near the household(s) of the owner(s) thereof.

101 (t) "Specialty pet" means any domesticated animal pet
102 normally maintained in a cage or tank, including, but not limited
103 to, gerbils, hamsters, canaries, psittacine, birds, mynahs,
104 finches, tropical fish, goldfish, snakes and turtles.

105 (u) "Specialty pet food" means any commercial feed
106 prepared and distributed for consumption by specialty pets.

107 (v) "Quantity statement" means the net weight (mass),
108 net volume (liquid or dry) or count.

109 SECTION 2. Section 75-45-157, Mississippi Code of 1972, is
110 amended as follows:

111 75-45-157. (1) The commissioner and State Chemist are
112 authorized to promulgate such rules and regulations for commercial
113 feeds and pet foods as are specifically authorized in this article
114 and such other reasonable rules and regulations as may be
115 necessary for the efficient enforcement of this article. In the
116 interest of uniformity the commissioner and State Chemist shall
117 adopt by regulation, unless they determine that they are
118 inconsistent with the provisions of this article or are not
119 appropriate to conditions which exist in this state, the
120 following:

121 (a) The official definitions of feed ingredients and
122 official feed terms adopted by the Association of American Feed
123 Control officials and published in the official publication of
124 that organization; and

125 (b) Any regulation promulgated pursuant to the
126 authority of the Federal Food, Drug, and Cosmetic Act (21 USCS
127 Section 301 et seq.); provided, that the commissioner and State
128 Chemist would have the authority under this article to promulgate
129 such regulations.

130 (2) Before the issuance, amendment, or repeal of any rule or
131 regulation authorized by this article, the commissioner and State
132 Chemist shall publish the proposed rule or regulation, amendment,
133 or notice to repeal an existing rule or regulation in a manner
134 reasonably calculated to give interested parties, including all
135 current registrants, adequate notice and they shall afford all
136 interested persons an opportunity to present their views thereon,
137 orally or in writing, within a reasonable period of time. After

138 consideration of all views presented by interested persons, the
139 commissioner and State Chemist shall take appropriate action to
140 issue the proposed rule or regulation or to amend or repeal an
141 existing rule or regulation. The provisions of this subsection
142 notwithstanding, if the commissioner and State Chemist pursuant to
143 the authority of this article, adopt the official definitions of
144 feed ingredients or official feed terms as adopted by the
145 Association of American Feed Control officials, or regulations
146 promulgated pursuant to the authority of the Federal Food, Drug,
147 and Cosmetic Act, any amendment or modification adopted by said
148 association or by the Secretary of Health and Human Services in
149 the case of regulations promulgated pursuant to the Federal Food,
150 Drug, and Cosmetic Act, shall be adopted automatically under this
151 article without regard to the publications of the notice required
152 by this subsection, unless the commissioner and State Chemist by
153 order specifically determine that said amendment or modification
154 shall not be adopted.

155 SECTION 3. Section 75-45-159, Mississippi Code of 1972, is
156 amended as follows:

157 75-45-159. (1) No person shall manufacture or distribute a
158 commercial or customer-formula feed for sale in this state, unless
159 he has filed with the commissioner and State Chemist on forms
160 provided by the commissioner, his name, place of business and
161 location of each manufacturing facility, has paid his registration
162 fee of One Hundred Dollars (\$100.00) for each location and has
163 been issued his facility registration permit by the department.

164 (2) The registration and fee is due on or before January 1
165 of each year. A late fee of Fifty Dollars (\$50.00) shall be
166 charged for any facility registration that is thirty (30) days or
167 more late. The funds so collected shall be deposited monthly in
168 the State Treasury. * * * A registration shall continue in effect
169 unless it is cancelled by the commissioner and State Chemist
170 pursuant to subsection (3) of this section.

171 (3) The commissioner and the State Chemist are empowered to
172 refuse registration of any feed manufacturing facility not in
173 compliance with the provisions of this article and to cancel any
174 registration subsequently found not to be in compliance with any
175 provision of this article. No registration shall be refused,
176 cancelled or suspended unless the registrant shall have been given
177 an opportunity to be heard before the commissioner and State
178 Chemist and to amend his application in order to comply with the
179 requirements of this article.

180 SECTION 4. Section 75-45-161, Mississippi Code of 1972, is
181 amended as follows:

182 75-45-161. A commercial feed shall be labeled as follows:

183 (a) In case of a commercial feed, except a
184 customer-formula feed, it shall be accompanied by a label bearing
185 the following information:

186 (i) The quantity statement.

187 (ii) The product name and the brand name, if any,
188 under which the commercial feed is distributed.

189 (iii) The guaranteed analysis, stated in such
190 terms which the commissioner and State Chemist by regulation
191 determine are required to advise the user of the composition of
192 the feed or to support claims made in the labeling. In all cases
193 the substances or elements must be determinable by laboratory
194 methods such as the methods published by the AOAC International.

195 (iv) The common or usual name of each ingredient
196 used in the manufacture of the commercial feed; the commissioner
197 and State Chemist by regulation may permit the use of a collective
198 term for a group of ingredients which perform a similar function,
199 or they may exempt such commercial feeds, or any group thereof,
200 from this requirement of an ingredient statement if they find that
201 such statement is not required in the interest of consumers.

202 (v) The name and principal mailing address of the
203 manufacturer or the person responsible for distributing the
204 commercial feed.

205 (vi) Adequate directions for use of all commercial
206 feeds containing drugs and for such other feeds as the
207 commissioner and State Chemist may require by regulation as
208 necessary for their safe and effective use.

209 (vii) Such precautionary statements as the
210 commissioner and State Chemist by regulation determine are
211 necessary for the safe and effective use of the commercial feed.

212 (b) In the case of a customer-formula feed, it shall be
213 accompanied by a label, invoice, delivery slip, or other shipping
214 document, bearing the following information:

215 (i) Name and address of the manufacturer.

216 (ii) Name and address of the purchaser.

217 (iii) Date of delivery.

218 (iv) The product name and brand name, if any, and
219 the net weight of each registered commercial feed used in the
220 mixture, and the net weight of each other ingredient used.

221 (v) Adequate directions for use for all
222 customer-formula feeds containing drugs and for such other feeds
223 as the commissioner and State Chemist may require by regulation as
224 necessary for their safe and effective use of the customer-formula
225 feed.

226 SECTION 5. Section 75-45-165, Mississippi Code of 1972, is
227 amended as follows:

228 75-45-165. A commercial feed shall be deemed to be
229 adulterated:

230 (a) (i) If it bears or contains any poisonous or
231 deleterious substance which may render it injurious to health;
232 however, in case the substance is not an added substance, such
233 commercial feed shall not be considered adulterated under this

234 subsection if the quantity of such substance in such commercial
235 feed does not ordinarily render it injurious to health;

236 (ii) If it bears or contains any added poisonous,
237 added deleterious, or added nonnutritive substance which is unsafe
238 within the meaning of Section 406 of the Federal Food, Drug, and
239 Cosmetic Act, other than one which is * * * a pesticide chemical
240 in or on a raw agricultural commodity, or * * * a food additive;

241 (iii) If it is, or it bears or contains any food
242 additive which is unsafe within the meaning of Section 409 of the
243 Federal Food, Drug, and Cosmetic Act; or

244 (iv) If it is a raw agricultural commodity and it
245 bears or contains a pesticide chemical which is unsafe within the
246 meaning of Section 408(a) of the Federal Food, Drug, and Cosmetic
247 Act. However, where a pesticide chemical has been used in or on a
248 raw agricultural commodity in conformity with an exemption granted
249 or a tolerance prescribed under Section 408 of the Federal Food,
250 Drug, and Cosmetic Act and such raw agricultural commodity has
251 been subjected to processing such as canning, cooking, freezing,
252 dehydrating, or milling, the residue of such pesticide chemical
253 remaining in or on such processed feed shall not be deemed unsafe
254 if such residue in or on the raw agricultural commodity has been
255 removed to the extent possible in good manufacturing practice. In
256 such case the concentration of such residue in the processed feed
257 shall not exceed the tolerance prescribed for the raw agricultural
258 commodity. Feeding of such processed feed shall not result, or be
259 likely to result, in a pesticide residue, unsafe within the
260 meaning of Section 408(a) of the Federal Food, Drug, and Cosmetic
261 Act, in the edible product of the animal.

262 (v) If it is, or it bears or contains, any color
263 additive which is unsafe within the meaning of Section 706 of the
264 Federal Food, Drug and Cosmetic Act.

265 (vi) If it is, or it bears or contains, any new
266 animal drug which is unsafe within the meaning of Section 512 of
267 the Federal Food, Drug and Cosmetic Act.

268 (vii) If it consist in whole or in part of any
269 filthy, putrid or decomposed substance, or it is otherwise unfit
270 for feed;

271 (viii) If it has been prepared, packed or held
272 under unsanitary conditions whereby it may have become
273 contaminated with filth or whereby it may have been rendered
274 injurious to health;

275 (ix) It is, in whole or in part, the product of a
276 diseased animal or of an animal which has died otherwise than by
277 slaughter which is unsafe within the meaning of Section 402(a)(1)
278 or (2) of the Federal Food, Drug and Cosmetic Act;

279 (x) If its container is composed, in whole or in
280 part, of any poisonous or deleterious substance which may render
281 the contents injurious to health; or

282 (xi) If it has been intentionally subjected to
283 radiation, unless the use of the radiation was in conformity with
284 the regulation or exemption in effect pursuant to Section 409 of
285 the Federal Food, Drug and Cosmetic Act.

286 (b) If any valuable constituent has been in whole or in
287 part omitted or abstracted therefrom or any less valuable
288 substance substituted therefor.

289 (c) If its composition or quality falls below or
290 differs from that which it is purported or is represented to
291 possess by its labeling. For the purposes of adjudging
292 adulteration under this paragraph, the commissioner shall be
293 guided by "permitted analytical variations" from the guaranteed
294 value for each feed component or analytically measurable index of
295 the feed quality. Such permitted analytical variations from
296 guaranteed values shall be set forth by regulation by the
297 commissioner and State Chemist.

298 (d) If it contains a drug and the methods used in or
299 the facilities or controls used for its manufacture, processing,
300 or packaging do not conform to current good manufacturing practice
301 regulations promulgated by the commissioner and State Chemist to
302 assure that the drug meets the requirement of this article as to
303 safety and has the identity and strength and meets the quality and
304 purity characteristics which it purports or is represented to
305 possess. In promulgating such regulations, the commissioner and
306 State Chemist shall adopt the current good manufacturing practice
307 regulations for Type A medicated articles and Type B and Type C
308 medicated feed * * * established under authority of the Federal
309 Food, Drug, and Cosmetic Act, unless they determine that they are
310 not appropriate to the conditions which exist in this state.

311 (e) If it contains viable weed seeds in amounts
312 exceeding the limits which the commissioner and State Chemist
313 shall establish by rule or regulation.

314 SECTION 6. Section 75-45-167, Mississippi Code of 1972, is
315 amended as follows:

316 75-45-167. An inspection fee at the rate of Twenty-five
317 Cents (25¢) per ton shall be paid on commercial feeds distributed
318 in this state by the person whose name appears on the label as the
319 manufacturer, guarantor or distributor, subject to the following:

320 (a) No fee shall be paid on a commercial feed if the
321 payment has been made by a previous distributor.

322 (b) No fee shall be paid on customer-formula feeds if
323 the inspection fee is paid on the commercial feeds which are used
324 as ingredients therein.

325 (c) No fee shall be paid on commercial feeds which are
326 used as ingredients for the manufacture of commercial feeds * * *.
327 If the fee has already been paid, credit shall be given for such
328 payment.

329 (d) In the case of a commercial feed which is
330 distributed in the state only in packages of ten (10) pounds or

331 less, an annual fee of Twenty-five Dollars (\$25.00) per brand
332 shall be paid on or before January 1 of each year in lieu of the
333 inspection fee specified above.

334 (e) The minimum inspection fee shall be Twenty Dollars
335 (\$20.00) annually.

336 (f) Any feed manufactured in the state which is used by
337 a distributor or his contract feeders to feed his own livestock,
338 poultry, or fish, or feed which is distributed in tonnage bulk to
339 any commercial grower of an aquatic species, including, but not
340 limited to, catfish, shall be exempt from the inspection fee on
341 both purchased ingredients and finished feed. To qualify for the
342 above exemption, a permit must be obtained from the commissioner
343 annually and the permit used to obtain exemption on feed
344 ingredients. Any services the Mississippi State Chemical
345 Laboratory or the Mississippi Department of Agriculture and
346 Commerce provide for permit holders will be paid for according to
347 mutually agreeable prices between both parties.

348 SECTION 7. Section 75-45-169, Mississippi Code of 1972, is
349 amended as follows:

350 75-45-169. Each person who is liable for the payment of an
351 inspection fee shall:

352 (a) File, not later than the last day of January * * *
353 of each year, an annual statement, setting forth the number of net
354 tons of commercial feeds distributed in this state during the
355 preceding calendar year, and upon filing such statement shall pay
356 the inspection fee at the rate stated in Section 75-45-167.
357 Inspection fees which are due and owing and have not been remitted
358 to the Department of Agriculture and Commerce within fifteen (15)
359 days following the due date shall have a penalty fee of ten
360 percent (10%) (minimum Ten Dollars (\$10.00)) added to the amount
361 due when payment is finally made. The assessment of this penalty
362 fee shall not prevent the department from taking other actions as
363 provided in this article.

364 (b) Keep such records as may be necessary or required
365 by the commissioner to indicate accurately the tonnage of
366 commercial feed distributed in this state; the commissioner shall
367 have the right to examine such records to verify statements of
368 tonnage. Failure to make an accurate statement of tonnage or to
369 pay the inspection fee or comply as provided herein shall
370 constitute sufficient cause for the cancellation of the
371 facilities' permit to sell commercial fees in Mississippi.

372 SECTION 8. Section 75-45-173, Mississippi Code of 1972, is
373 amended as follows:

374 75-45-173. (1) For the purpose of enforcement of this
375 article, and in order to determine whether its provisions have
376 been complied with, including whether or not any operations may be
377 subject to such provisions, officers or employees duly designated
378 by the commissioner, upon presenting appropriate credentials, and
379 a written or oral notice to the owner, operator, or agent in
380 charge, are authorized (a) to enter, during normal business hours,
381 any factory, warehouse, or establishment within the state in which
382 commercial feeds are manufactured, processed, packed or held for
383 distribution, or to enter any vehicle being used to transport or
384 hold such feeds; and (b) to inspect during normal business hours
385 and within reasonable limits and in a reasonable manner, such
386 factory, warehouse, establishment or vehicle and all pertinent
387 equipment, finished and unfinished materials, containers, and
388 labeling thereon. The inspection may include the verification of
389 only such records, and production and control procedures as may be
390 necessary to determine compliance with the good manufacturing
391 practice regulations established under paragraph (d) of Section
392 75-45-165.

393 (2) A separate notice shall be given for each such
394 inspection, but a notice shall not be required for each entry made
395 during the period covered by the inspection. Each such inspection
396 shall be commenced and completed with reasonable promptness. Upon

397 completion of the inspection, the person in charge of the facility
398 or vehicle shall be so notified.

399 (3) If the officer or employee making such inspection of a
400 factory, warehouse, vehicle or other establishment has obtained a
401 sample in the course of the inspection, upon completion of the
402 inspection and prior to leaving the premises or vehicle he, upon
403 request, shall give to the owner, operator, or agent in charge, a
404 receipt describing the samples obtained.

405 (4) If the owner of any factory, warehouse, vehicle or
406 establishment described in subsection (1), or his agent, refuses
407 to admit the commissioner or his agent to inspect in accordance
408 with subsections (1) and (2), the commissioner is authorized to
409 obtain from any state court a warrant directing such owner or his
410 agent to submit the premises described in such warrant to
411 inspection.

412 (5) For the purpose of the enforcement of this article, the
413 commissioner or his duly designated agent is authorized to enter
414 upon any public or private premises including any vehicle of
415 transport during regular business hours to have access to, and to
416 obtain samples, and to examine records relating to distribution of
417 commercial feeds.

418 (6) Sampling and analysis shall be conducted in accordance
419 with methods published by the AOAC International, or in accordance
420 with other generally recognized methods.

421 (7) The results of all analyses of official samples shall be
422 forwarded by the State Chemist to the person named on the label
423 and to the purchaser. When the inspection and analysis of an
424 official sample indicates a commercial feed has been adulterated
425 or misbranded and upon request within thirty (30) days following
426 receipt of the analysis the State Chemist shall furnish to the
427 registrant a portion of the sample concerned.

428 (8) The commissioner and State Chemist, in determining for
429 administrative purposes whether a commercial feed is deficient in

430 any component, shall be guided by the official sample as defined
431 in paragraph (p) of Section 75-45-153 and obtained and analyzed as
432 provided for in subsections (3), (5), and (6) of this section.

433 SECTION 9. Section 75-45-175, Mississippi Code of 1972, is
434 amended as follows:

435 75-45-175. When the commissioner or his authorized agent has
436 reasonable cause to believe any lot of commercial feed is being
437 distributed in violation of any of the provisions of this article
438 or of any of the prescribed regulations under this article, he
439 may, according to his judgment of the gravity of the offense and
440 regulations promulgated by the commissioner and State
441 Chemist * * * issue and enforce a written or printed "withdrawal
442 from distribution" order, warning the distributor not to dispose
443 of the lot of commercial feed in any manner until written
444 permission is given by the commissioner or the court. The
445 commissioner shall release the lot of commercial feed so withdrawn
446 when said provisions and regulations have been complied with. If
447 compliance is not obtained within thirty (30) days, the
448 commissioner may begin, or upon request of the distributor or
449 registrant shall begin, proceedings for condemnation.

450 SECTION 10. Section 75-45-179, Mississippi Code of 1972, is
451 amended as follows:

452 75-45-179. The following acts and the causing thereof within
453 the State of Mississippi are hereby prohibited:

454 (a) The manufacture or distribution of any commercial
455 feed that is adulterated or misbranded.

456 (b) The adulteration or misbranding of any commercial
457 feed.

458 (c) The distribution of agricultural commodities such
459 as whole seed, hay, straw, stover, silage, cobs, husks and hulls,
460 which are adulterated within the meaning of paragraph (a) of
461 Section 75-45-165.

462 (d) The removal or disposal of a commercial feed in
463 violation of an order under Section 75-45-175 or 75-45-177.

464 (e) The failure or refusal to register in accordance
465 with Section 75-45-159.

466 (f) The violation of Section 75-45-191.

467 (g) Failure to pay inspection fees and file reports as
468 required by Sections 75-45-167 and 75-45-169.

469 (h) Failure to pay penalties assessed under * * *
470 Section 75-45-181 or any rules or regulations issued thereunder.

471 SECTION 11. Section 75-45-181, Mississippi Code of 1972, is
472 amended as follows:

473 75-45-181. Any person violating any of the provisions of
474 this article or the rules and regulations made by the commissioner
475 and State Chemist pursuant thereto shall be guilty of a
476 misdemeanor and, upon conviction, shall be punished by a fine not
477 to exceed Five Hundred Dollars (\$500.00) or by imprisonment in the
478 county jail for a term not to exceed six (6) months, or both.

479 SECTION 12. The following section shall be codified as
480 Section 75-45-182, Mississippi Code of 1972:

481 75-45-182. (1) When a complaint is made against a person
482 for violating any of the provisions of this article, or any of the
483 rules and regulations promulgated hereunder, the Director of the
484 Commercial Feed Division within the Mississippi Department of
485 Agriculture and Commerce, or his designee, shall act as the
486 reviewing officer. The complaint shall be in writing and shall be
487 filed in the office of the Mississippi Department of Agriculture
488 and Commerce ("department"). The reviewing officer shall deliver
489 to the accused a copy of the complaint along with any supporting
490 documents and a request for the accused to respond to the charges
491 within thirty (30) days after service of the complaint upon the
492 accused. Notification to the accused may be accomplished by
493 certified mail or by any of the methods provided in Rule 4 of the
494 Mississippi Rules of Civil Procedure. The accused shall respond

495 in the form of a written answer along with all supporting
496 documents. Upon expiration of the thirty-day period, the
497 reviewing officer shall examine all pleadings and documents filed
498 in the case for the purpose of determining the merit of the
499 complaint, or the lack thereof. No evidentiary hearing shall be
500 held at this stage.

501 If the reviewing officer determines that the complaint lacks
502 merit, he may dismiss same. If he finds that there is substantial
503 evidence showing that a violation of this article or the rules and
504 regulations promulgated hereunder has occurred, the reviewing
505 officer may impose any or all of the following penalties upon the
506 accused: (a) levy a civil penalty in an amount of no more than
507 One Thousand Dollars (\$1,000.00) for each violation; (b) revoke or
508 suspend any permit, license or registration issued to the accused
509 under the terms of this article and accompanying regulations; (c)
510 issue a stop sale order; (d) issue a "withdrawal from
511 distribution" order; (e) require the accused to relabel any
512 product offered for sale which is not labeled in accordance with
513 the provisions of this article; or (f) seize any product that is
514 not in compliance with this article and destroy, sell or otherwise
515 dispose of the product and apply the proceeds of any such sale to
516 the costs herein and any civil penalties levied hereunder, with
517 the balance to be paid according to the law. If any costs or
518 penalties assessed hereunder have not been paid, they may be
519 collected through a court system. A copy of the reviewing
520 officer's decision shall be sent to the accused by certified mail.
521 Either the accused or the department may appeal the decision of
522 the reviewing officer to the commissioner by filing a notice of
523 appeal with the department within thirty (30) days of receipt of
524 the reviewing officer's decision. If no appeal is taken from the
525 order of the reviewing officer within the allotted time, the order
526 shall then become final.

527 (2) In the event of an appeal, the commissioner, or his
528 designee, shall conduct a hearing relative to the charges. At the
529 hearing before the commissioner, or his designee, the matter shall
530 be heard de novo; the department shall have subpoena power, the
531 witnesses shall be placed under oath and shall be subject to
532 direct and cross examination and the testimony shall be recorded.
533 Compliance with such subpoenas may be enforced by any court of
534 general jurisdiction in this state. The commissioner, or his
535 designee, shall receive and hear all the evidence and arguments
536 offered by both parties and shall afford the accused a full
537 opportunity to present all his defenses.

538 Within a reasonable time after the hearing, the commissioner,
539 or his designee, shall render an opinion, which either affirms,
540 reverses or amends the order of the reviewing officer in whole or
541 in part, and the order shall be final. A copy of the
542 commissioner's order shall be sent to the accused by certified
543 mail.

544 (3) Either the accused or the department may appeal the
545 decision of the commissioner or his designee to the circuit court
546 of the county of the residence of the accused, or if the accused
547 is a nonresident of the State of Mississippi, to the Circuit Court
548 of the First Judicial District of Hinds County, Mississippi. The
549 appellant shall have the obligation of having the record
550 transcribed and filing same with the circuit court. The appeal
551 shall otherwise be governed by all applicable laws and rules
552 affecting appeals to the circuit court. If no appeal is perfected
553 within the required time, the decision of the commissioner, or his
554 designee, shall then become final.

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

558 (5) Where any violation of this article or the rules and
559 regulations promulgated hereunder occurs or is about to occur that

560 presents a clear and present danger to the public health, safety
561 or welfare requiring immediate action, the commissioner or any of
562 the department's field inspectors may issue an order to be
563 effective immediately before notice and a hearing that imposes any
564 or all of the following penalties upon the accused: (a) a stop
565 sale order; (b) a "withdrawal from distribution" order; (c) a
566 requirement that the accused relabel a product that he is offering
567 for sale which is not labeled in accordance with this article; or
568 (d) the seizure of any product that is not in compliance with this
569 article and the destruction, sale or disposal of the product and
570 the application of the proceeds of such sale to the costs and
571 civil penalties herein, with the balance to be paid according to
572 law. The order shall be served upon the accused in the same
573 manner that the summons and complaint may be served upon him. The
574 accused shall then have thirty (30) days after service of the
575 order upon him within which to request an informal administrative
576 review before the reviewing officer. If the accused makes such a
577 request within the required time, the reviewing officer shall
578 provide an informal administrative review to the accused within
579 ten (10) days after such request is made. If the accused does not
580 request an informal administrative review within such time, then
581 he will be deemed to have waived his right to same. At the
582 informal administrative review, subpoena power shall not be
583 available, witnesses shall not be sworn nor be subject to
584 cross-examination and there shall be no court reporter or record
585 made of the proceedings. Each party may present its case in the
586 form of documents, oral statements or any other method. The rules
587 of evidence shall not apply. The reviewing officer's decision
588 shall be in writing, and it shall be sent to the accused by
589 certified mail. If either party is aggrieved by the order of the
590 reviewing officer, he may appeal to the commissioner for a full
591 evidentiary hearing in accordance with the procedures described in
592 subsection (2) of this section, except that there shall be no

593 requirement for a written complaint or answer to be filed by the
594 parties. Such appeal shall be perfected by filing a notice of
595 appeal with the commissioner within thirty (30) days after the
596 order of the reviewing officer is served on the appealing party.
597 The hearing before the commissioner, or his designee, shall be
598 held within a reasonable time after the appeal has been perfected.
599 Failure to perfect an appeal within the allotted time shall be
600 deemed a waiver of such right.

601 SECTION 13. Section 75-45-183, Mississippi Code of 1972, is
602 amended as follows:

603 75-45-183. Nothing in this article shall be construed as
604 requiring the commissioner or his representative to: (a) report
605 for prosecution; (b) institute seizure proceedings; (c) issue a
606 withdrawal from distribution order; or (d) hold an administrative
607 hearing as a result of minor violations of this article, or when
608 he believes the public interest will best be served by suitable
609 notice of warning in writing * * * .

610 SECTION 14. Section 75-45-185, Mississippi Code of 1972, is
611 amended as follows:

612 75-45-185. It shall be the duty of each prosecuting attorney
613 to whom any violation is reported to cause appropriate proceedings
614 to be instituted and prosecuted in a court of competent
615 jurisdiction without delay. * * *

616 SECTION 15. Section 75-45-189, Mississippi Code of 1972,
617 which provides for judicial review of an order made under the
618 Mississippi Commercial Feed Law, is repealed.

619 SECTION 16. Section 75-45-195, Mississippi Code of 1972,
620 which requires the Commissioner of Agriculture to publish annually
621 information concerning sales of commercial fees, is repealed.

622 SECTION 17. This act shall take effect and be in force from
623 and after July 1, 2001.