

By: Senator(s) Stogner

To: Agriculture

SENATE BILL NO. 2689
(As Sent to Governor)

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

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

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

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

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

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

156 75-45-159. (1) No person shall manufacture or distribute a
157 commercial or customer-formula feed for sale in this state, unless
158 he has filed with the commissioner and State Chemist on forms
159 provided by the commissioner, his name, place of business and
160 location of each manufacturing facility, has paid his registration
161 fee of One Hundred Dollars (\$100.00) for each location and has
162 been issued his facility registration permit by the department.

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

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

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

181 75-45-161. A commercial feed shall be labeled as follows:

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

185 (a) The quantity statement.

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

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

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

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

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

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

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

214 (a) Name and address of the manufacturer.

215 (b) Name and address of the purchaser.

216 (c) Date of delivery.

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

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

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

227 75-45-165. A commercial feed shall be deemed to be
228 adulterated:

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

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

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

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

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

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

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

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

269 (h) If it has been prepared, packed or held under
270 unsanitary conditions whereby it may have become contaminated with
271 filth or whereby it may have been rendered injurious to health;

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

276 (j) If its container is composed, in whole or in part,
277 of any poisonous or deleterious substance which may render the
278 contents injurious to health; or

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

283 (l) If any valuable constituent has been in whole or in
284 part omitted or abstracted therefrom or any less valuable
285 substance substituted therefor.

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

295 (n) If it contains a drug and the methods used in or
296 the facilities or controls used for its manufacture, processing,

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

308 (o) If it contains viable weed seeds in amounts
309 exceeding the limits which the commissioner and State Chemist
310 shall establish by rule or regulation.

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

313 75-45-167. (1) An inspection fee at the rate of Twenty-five
314 Cents (25¢) per ton shall be paid on commercial feeds distributed
315 in this state by the person whose name appears on the label as the
316 manufacturer, guarantor or distributor, subject to the following:

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

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

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

326 (2) In the case of a commercial feed which is distributed in
327 the state only in packages of ten (10) pounds or less, an annual
328 fee of Twenty-five Dollars (\$25.00) per brand shall be paid on or

329 before January 1 of each year in lieu of the inspection fee
330 specified in subsection (1).

331 (3) The minimum inspection fee shall be Twenty Dollars
332 (\$20.00) annually.

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

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

347 75-45-169. Each person who is liable for the payment of an
348 inspection fee shall:

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

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

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

371 75-45-173. (1) For the purpose of enforcement of this
372 article, and in order to determine whether its provisions have
373 been complied with, including whether or not any operations may be
374 subject to such provisions, officers or employees duly designated
375 by the commissioner, upon presenting appropriate credentials, and
376 a written or oral notice to the owner, operator, or agent in
377 charge, are authorized: (a) to enter, during normal business
378 hours, any factory, warehouse, or establishment within the state
379 in which commercial feeds are manufactured, processed, packed or
380 held for distribution, or to enter any vehicle being used to
381 transport or hold such feeds; and (b) to inspect during normal
382 business hours and within reasonable limits and in a reasonable
383 manner, such factory, warehouse, establishment or vehicle and all
384 pertinent equipment, finished and unfinished materials,
385 containers, and labeling thereon. The inspection may include the
386 verification of only such records, and production and control
387 procedures as may be necessary to determine compliance with the
388 good manufacturing practice regulations established under
389 paragraph (d) of Section 75-45-165.

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

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

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

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

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

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

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

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

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

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

432 75-45-175. When the commissioner or his authorized agent has
433 reasonable cause to believe any lot of commercial feed is being
434 distributed in violation of any of the provisions of this article
435 or of any of the prescribed regulations under this article, he
436 may, according to his judgment of the gravity of the offense and
437 regulations promulgated by the commissioner and State
438 Chemist * * * issue and enforce a written or printed "withdrawal
439 from distribution" order, warning the distributor not to dispose
440 of the lot of commercial feed in any manner until written
441 permission is given by the commissioner or the court. The
442 commissioner shall release the lot of commercial feed so withdrawn
443 when said provisions and regulations have been complied with. If
444 compliance is not obtained within thirty (30) days, the
445 commissioner may begin, or upon request of the distributor or
446 registrant shall begin, proceedings for condemnation.

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

449 75-45-179. The following acts and the causing thereof within
450 the State of Mississippi are hereby prohibited:

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

453 (b) The adulteration or misbranding of any commercial
454 feed.

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

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

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

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

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

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

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

470 75-45-181. Any person violating any of the provisions of
471 this article or the rules and regulations made by the commissioner
472 and State Chemist pursuant thereto is guilty of a misdemeanor and,
473 upon conviction, shall be punished by a fine not to exceed Five
474 Hundred Dollars (\$500.00) or by imprisonment in the county jail
475 for a term not to exceed six (6) months, or both.

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

478 75-45-182. (1) When a complaint is made against a person
479 for violating any of the provisions of this article, or any of the
480 rules and regulations promulgated hereunder, the Director of the
481 Commercial Feed Division within the Mississippi Department of
482 Agriculture and Commerce, or his designee, shall act as the
483 reviewing officer. The complaint shall be in writing and shall be
484 filed in the office of the Mississippi Department of Agriculture
485 and Commerce ("department"). The reviewing officer shall deliver
486 to the accused a copy of the complaint along with any supporting
487 documents and a request for the accused to respond to the charges
488 within thirty (30) days after service of the complaint upon the
489 accused. Notification to the accused may be accomplished by
490 certified mail or by any of the methods provided in Rule 4 of the
491 Mississippi Rules of Civil Procedure. The accused shall respond

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

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

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

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

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

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

555 (5) When any violation of this article or the rules and
556 regulations promulgated hereunder occurs or is about to occur that

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

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

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

600 75-45-183. Nothing in this article shall be construed as
601 requiring the commissioner or his representative to: (a) report
602 for prosecution; (b) institute seizure proceedings; (c) issue a
603 withdrawal from distribution order; or (d) hold an administrative
604 hearing as a result of minor violations of this article, or when
605 he believes the public interest will best be served by suitable
606 notice of warning in writing * * *.

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

609 75-45-185. It shall be the duty of each prosecuting attorney
610 to whom any violation is reported to cause appropriate proceedings
611 to be instituted and prosecuted in a court of competent
612 jurisdiction without delay. * * *

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

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

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