

By: Representative Sullivan

To: Agriculture

HOUSE BILL NO. 634
(As Sent to Governor)

1 AN ACT TO AMEND SECTIONS 69-25-47, 69-25-51 AND 69-25-109,
2 MISSISSIPPI CODE OF 1972, TO INCLUDE CERTAIN VIOLATIONS OF THE LAW
3 REGULATING PLANT DISEASES, PESTS, BEES AND BEE DISEASES UNDER THE
4 ADMINISTRATIVE HEARING PROCEDURES FOR THE BUREAU OF PLANT
5 INDUSTRY; TO CREATE A NEW CODE SECTION TO BE CODIFIED AS SECTION
6 69-25-10, MISSISSIPPI CODE OF 1972, TO PROHIBIT THE CULTIVATION OF
7 CERTAIN NONNATIVE PLANT SPECIES FOR THE PURPOSE OF FUEL PRODUCTION
8 WITHOUT HAVING FIRST OBTAINED A SPECIAL PERMIT FROM THE DEPARTMENT
9 OF AGRICULTURE AND COMMERCE FOR SUCH CULTIVATION; TO ESTABLISH A
10 REMEDY AVAILABLE TO THE DEPARTMENT FOR THE REMOVAL AND DESTRUCTION
11 OF NONNATIVE PLANT SPECIES DETERMINED TO BE A NUISANCE; AND FOR
12 RELATED PURPOSES.

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

14 **SECTION 1.** Section 69-25-47, Mississippi Code of 1972, is
15 amended as follows:

16 69-25-47. (1) Any person who shall violate any provisions
17 or requirements of this article, or of the rules and regulations
18 made or of any notice given pursuant thereto or shall forge,
19 counterfeit, deface, destroy or wrongfully use any certificate
20 provided for herein or in the rules and regulations made pursuant
21 thereto, shall be deemed guilty of a misdemeanor and upon
22 conviction thereof shall be punished by a fine of not more than
23 One Thousand Dollars (\$1,000.00) or by imprisonment for not more
24 than six (6) months or by both such fine and imprisonment at the
25 discretion of the court having jurisdiction.

26 (2) In addition to the criminal penalty imposed under
27 subsection (1) of this section, each violation of this article or
28 the applicable rules and regulations established by the
29 commissioner pertaining hereto shall subject the violator to
30 administrative action as provided in Sections 69-25-51 through
31 69-25-63.



32 **SECTION 2.** Section 69-25-51, Mississippi Code of 1972, is
33 amended as follows:

34 69-25-51. (1) When any administrative allegation or charge
35 is made against a person for violating the rules and regulations
36 of the Bureau of Plant Industry of the Mississippi Department of
37 Agriculture and Commerce or the laws under Sections 69-19-1
38 through 69-19-15, Sections 69-21-101 through 69-21-128, Sections
39 69-23-1 through 69-23-135, Sections 69-25-1 through 69-25-47 or
40 Sections 69-25-101 through 69-25-109, Mississippi Code of 1972,
41 the Director of the Bureau of Plant Industry, or his designee,
42 shall act as the reviewing officer. The complaint must be in
43 writing, signed by the person making the charge, and filed in the
44 office of the Bureau of Plant Industry. The department shall send
45 a copy of the complaint and any supporting documents to the person
46 accused along with a summons requiring the accused to respond to
47 the allegations within thirty (30) days. The notification shall
48 be accomplished by any of the methods provided for in Rule 4 of
49 the Mississippi Rules of Civil Procedure or by certified mail. If
50 the accused does not respond within the thirty-day period, he
51 shall be considered to be in default. Upon receipt of the
52 response and any supporting documents from the accused, the
53 reviewing officer shall determine the merits of the complaint.
54 The reviewing officer may meet informally with the accused and
55 discuss the alleged violation with him.

56 (2) If the reviewing officer determines that the complaint
57 lacks merit, he may dismiss the complaint.

58 (3) If the reviewing officer determines that there is
59 substantial evidence that a violation has occurred or if the
60 accused admits to the truth of the allegations upon which the
61 complaint is based, the reviewing officer may impose an
62 appropriate penalty on the accused, which may be any or all of the
63 following:

64 (a) Issue a warning letter.



65 (b) Suspend, modify, deny, cancel or revoke any license
66 or permit granted by the department to the accused.

67 (c) Issue a stop sale order with regard to any
68 pesticide, plant or other material regulated by the department
69 that is mislabeled or otherwise not in compliance with applicable
70 law or regulations.

71 (d) Require the accused to relabel any pesticide, plant
72 or other material regulated by the department that is mislabeled.

73 (e) Seize any pesticide, plant or other material
74 regulated by the department and sell, destroy or otherwise dispose
75 of the material and apply the proceeds of the sale to the state's
76 expenses and any fees or penalties levied under this article.

77 (f) Refuse to register, cancel or suspend the
78 registration of a pesticide, plant or other material that is not
79 in compliance with any applicable law or regulation.

80 (g) Levy a civil penalty in an amount not to exceed
81 Five Thousand Dollars (\$5,000.00) for each violation.

82 In determining the amount of the penalty, the reviewing
83 officer shall consider the appropriateness of the penalty for the
84 particular violation, the effect of the penalty on the person's
85 ability to continue in business and the gravity of the violation.

86 (4) If the accused requests a hearing with the department,
87 in writing, within thirty (30) days from receipt of the decision
88 of the reviewing officer, the commissioner shall appoint three (3)
89 members of the advisory board to the Bureau of Plant Industry to
90 act as a hearing committee and a hearing shall be scheduled. If
91 the accused fails to request a hearing within the thirty-day
92 period, the decision of the reviewing officer is final.

93 **SECTION 3.** Section 69-25-109, Mississippi Code of 1972, is
94 amended as follows:

95 69-25-109. (1) Any person, firm or corporation violating
96 any of the provisions of this article or of the rules or
97 regulations of the Mississippi Department of Agriculture and



98 Commerce, adopted in accordance with the provisions thereof shall
99 be deemed guilty of a misdemeanor and upon conviction shall be
100 punished by a fine of not more than Five Hundred Dollars (\$500.00)
101 or by imprisonment for not more than six (6) months in the county
102 jail.

103 (2) In addition to the criminal penalty imposed under
104 subsection (1) of this section, each violation of this article or
105 the applicable rules and regulations established by the
106 commissioner pertaining hereto shall subject the violator to
107 administrative action as provided in Sections 69-25-51 through
108 69-25-63.

109 **SECTION 4.** The following shall be codified as Section
110 69-25-10, Mississippi Code of 1972:

111 69-25-10. (1) The purpose and intent of this law is to
112 control and restrict the planting and cultivation of nonnative
113 species of plants in this state which may become invasive or
114 constitute a nuisance. This law shall apply retroactively to
115 existing plantings of nonnative species.

116 (2) No individual or entity, commercial or noncommercial,
117 may cultivate a nonnative plant species, including a genetically
118 engineered plant, for purposes of fuel production or purposes
119 other than agriculture, in plantings greater in size than one (1)
120 acre, except under a special permit issued by the Department of
121 Agriculture and Commerce. Requests for a permit authorized under
122 this section may be denied if the department, in conjunction with
123 specialists at Mississippi State University, determines that the
124 plant is invasive or has potential to constitute a nuisance.

125 (3) Each application for a special permit must be
126 accompanied by a surety bond, the name of the plant to be
127 cultivated, a legal description of the lands to be under
128 cultivation and the estimated cost of removing and destroying such
129 plants. Permits issued under this section shall be effective for
130 one (1) year, and upon the expiration thereof, shall be required



131 to be renewed by the holder of the permit for continued
132 cultivation of the nonnative plant species. If an individual or
133 entity cultivates more than one (1) nonnative plant species, then
134 a permit must be acquired for each nonnative plant species in the
135 manner required by this subsection.

136 (4) The surety bond shall be written by a company qualified
137 to do business in this state and in an amount to be determined by
138 the department. The bond shall be conditioned to secure the
139 payment of all costs incurred in removing and destroying the
140 plants cultivated under this permit.

141 (5) The department shall establish by regulation the
142 circumstances under which it may order the permit holder to remove
143 and destroy the nonnative plant species cultivated under the
144 permit and the procedures to be followed in such cases. The
145 department shall have the right to use the emergency procedures
146 described in Section 69-25-61, in addition to all other rights and
147 remedies available to it, at law or in equity. When the
148 department enters an order requiring the removal and destruction
149 of the subject plants, the permit holder and/or the surety on its
150 bond shall move with dispatch to comply with the order of removal
151 and destruction.

152 (6) The department shall have the right to enter the permit
153 holder's lands or premises at any time and investigate the
154 operations covered by this permit, to include the power to inspect
155 and copy business and cultivation records, inspect plants, take
156 samples of plants, soil or other substances and take photographs.

157 (7) The department shall have the right to adopt any and all
158 rules and regulations as may be necessary or desirable to carry
159 out the purpose and intent of this law.

160 **SECTION 5.** This act shall take effect and be in force from
161 and after July 1, 2012.

