

House Bill 292

AN ACT TO AMEND SECTION 69-3-1, MISSISSIPPI CODE OF 1972, TO REVISE DEFINITIONS UNDER THE AGRICULTURAL SEED LAW; TO AMEND SECTION 69-3-5, MISSISSIPPI CODE OF 1972, TO REVISE LABELING REQUIREMENTS FOR SEEDS; TO AMEND SECTION 69-3-19, MISSISSIPPI CODE OF 1972, TO REVISE THE METHOD AND FEE FOR FILING COMPLAINTS WITH THE DEPARTMENT; TO CREATE SECTION 69-3-20, MISSISSIPPI CODE OF 1972, TO RECODIFY AND TO REVISE THE METHOD OF APPOINTMENT TO THE ARBITRATION COUNCIL; TO CREATE SECTION 69-3-22, MISSISSIPPI CODE OF 1972, TO RECODIFY PROCEDURE FOR COMPLAINT BEFORE THE COUNCIL; TO REVISE THE FILING FEE; TO AMEND SECTION 69-3-25, MISSISSIPPI CODE OF 1972, TO REVISE THE PENALTIES FOR VIOLATIONS; TO CREATE A NEW CODE SECTION TO BE CODIFIED AS SECTION 69-3-29, MISSISSIPPI CODE OF 1972, TO PROVIDE ADMINISTRATIVE PROCEDURES FOR THE HANDLING OF COMPLAINTS AND EVIDENTIARY HEARINGS CONCERNING VIOLATIONS OF THE SEED LAW; TO AMEND SECTION 25-41-3, MISSISSIPPI CODE OF 1972, TO EXEMPT THE SEED ARBITRATION COUNCIL FROM THE OPEN MEETINGS ACT; TO AMEND SECTION 69-3-7, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(jj) * * * "Tolerance" means the allowance for sampling variation specified under rules and regulations promulgated pursuant to the provisions of this article.

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

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

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

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

* * *

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

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

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

(a) For agricultural seed:

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

(ii) Lot number or other designation.

(iii) Net weight.

(iv) Origin.

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

(vi) Percentage by weight of inert matter.

(vii) Percentage by weight of other crop seed.

(viii) For each named agricultural seed:

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

2. Percentage of hard seed, if present.

3. Percentage of firm ungerminated seed, if present.

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

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

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

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

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

(i) Name of kind and variety of seed.

(ii) Net weight.

(iii) Lot number or other identification.

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

(v) Percentage of hard seed, if present.

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

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

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

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

(i) Name of kind and variety.

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

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

1. Percentage of germination, exclusive of hard seed.

2. Percentage of hard seed, if present.

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

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

(d) For flower seed:

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

(e) For tree and shrub seed:

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

(f) For treated seed:

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

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

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

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

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

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

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

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

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

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

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

(d) To publish list of kinds of seeds known and recognized to contain firm seeds.

* * *

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

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

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

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

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

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

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

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

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

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

69-3-20. (1) The commissioner shall appoint an arbitration council composed of six (6) members to hear and decide each complaint. The Director of the Mississippi Agricultural and Forestry Experiment Station, the Director of the Mississippi Cooperative Extension Service, the President of the Mississippi Seedsmen's Association, the President of the Mississippi Farm Bureau Federation, and the Alcorn State University Divisional Director of Agriculture and Applied Sciences shall supply to the commissioner a list of four (4) candidates from their respective organizations. The commissioner shall choose one (1) candidate from each organization's list in selecting a council to hear each complaint. On or before January 1 of each year the respective recommending organizations shall submit member recommendations if they want to make changes from their previous recommendations. The commissioner, or his designee, shall be a member of and serve as chairman of the council and he may appoint a secretary for the council. It shall be the duty of the chairman to call the council into session to conduct all meetings and deliberations and to direct all other activities of the council. It shall be the duty of the secretary to keep accurate and correct records of all meetings and deliberations and perform such other duties for the council as directed by the chairman. The commissioner shall prescribe and adopt reasonable rules and regulations governing the arbitration process to include conditions and circumstances associated with seed to which arbitration is applicable.

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

(3) (a) When the department refers a complaint made by a consumer against a seedsman to the arbitration council, the council shall make a full and complete investigation of the matters complained of, and at the conclusion of the investigation, report its findings and make its recommendations of cost damages and file them with the department. Council findings and recommendations may be admissible as evidence in a court of law. When a complaint involving transgenic seeds is filed for arbitration, the seedsman shall furnish the commissioner the technology and procedures necessary to conduct any test to determine whether the seeds will perform as represented by the seedsman. The commissioner shall ensure that all technology and procedural information submitted to the department by the seedsman shall be kept confidential to ensure the proprietary rights of the seedsman. After a final disposition of all judicial proceedings or expiration of any applicable statute of limitation, the commissioner shall return all technology, records, test data or procedural information to the seedsman. In addition, remedies for misappropriation of a trade secret shall be governed by the Mississippi Uniform Trade Secrets Act in Sections 75-26-1 through 75-26-19.

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

(c) Any investigation made by less than the entire membership of the council shall be made by authority of a written directive by the chairman

and the investigation shall be summarized in writing and considered by the council in its findings and in making its recommendations.

(d) If the council holds an informal hearing to allow each party an opportunity to present their side of the dispute, attorneys may be present at the hearings to confer with their clients. However, no attorney may participate directly in the proceedings.

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

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

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

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

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

SECTION 6. The following shall be codified as Section 69-3-22, Mississippi Code of 1972:

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

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

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

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

(3) A filing fee of Two Hundred Fifty Dollars (\$250.00) shall be paid to the department with each complaint filed. The fee shall be recovered from the dealer upon the recommendation of the arbitration council.

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

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

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

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

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

SECTION 8. The following section shall be codified as Section 69-3-29, Mississippi Code of 1972:

69-3-29. (1) When a written complaint is made against a person for violation of this article, or any of the rules or regulations, the commissioner, or his designee, shall conduct a full evidentiary hearing. The complaint shall be in writing and shall be filed in the office of the department. The commissioner shall serve the accused with a copy of the complaint and a summons by any of the methods set forth in Rule 4 of the Mississippi Rules of Civil Procedure or by certified mail. Within thirty (30) days after receipt of the summons and a copy of the complaint, the accused shall file a written answer with the department. Upon receipt of the written answer of the accused, the matter shall be set for hearing before the commissioner within a reasonable time. If the accused fails to file an answer within the thirty (30) days, the commissioner may enter an order by default against the accused. The commissioner may issue subpoenas to require the attendance of witnesses and the production of documents. Compliance with the subpoenas may be enforced by any court of general jurisdiction in this state. The testimony of witnesses shall be upon oath or affirmation, and they shall be subject to cross-examination. The proceedings shall be recorded. If the commissioner determines that the complaint lacks merit, he may dismiss same. If he finds that there is substantial evidence showing that a violation has occurred, he may impose any or all of the following penalties upon the accused: (a) levy a civil penalty in the amount of no more than Five Thousand Dollars (\$5,000.00) for each violation; (b) revoke or suspend any license or permit issued to the accused under the terms of this article; (c) issue a stop sale order;

(d) require the accused to relabel a lot of seed that he is offering or exposing for sale which is not labeled in accordance with this article; or (e) seize any lot of seed that is not in compliance with this article and destroy, sell or otherwise dispose of the seed and apply the proceeds of the sale to the costs and civil penalties levied with the balance to be paid to the accused. The decision of the commissioner, or his designee, shall be in writing, and it shall be delivered to the accused by certified mail.

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

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

(4) When any violation of this article, or the rules and regulations occurs, or is about to occur, that presents a clear and present danger to the public health, safety or welfare requiring immediate action, any of the department's field inspectors, and any other persons authorized by the commissioner may issue an order to be effective immediately before notice and a hearing that imposes any or all of the following penalties against the accused: (a) issue a stop sale order; (b) require the accused to relabel a lot of seed that he is offering or exposing for sale and which is not labeled in accordance with this article; or (c) seize any lot of seed that is not in compliance with this article and destroy, sell or otherwise dispose of the seed and apply the proceeds of the sale to the cost and any civil penalties levied with the balance to be paid to the accused. The order shall be served upon the accused in the same manner that the summons and complaint may be served upon him. The accused shall then have thirty (30) days after service of the order upon him within which to request an informal administrative review before the Director of the Bureau of Plant Industry in the department, or his designee, who shall act as reviewing officer. If the accused makes a timely request, the reviewing officer shall conduct an informal administrative review within ten (10) days after the request is made. If the accused does not request an informal administrative review within the thirty (30) days, then he will be deemed to have waived his right to the review. At the informal administrative review, subpoena power shall not be available, witnesses shall not be sworn nor be subject to cross-examination and there shall be no court reporter or record made of the proceedings. Each party may present its case in the form of documents, oral statements or any other method. The rules of evidence shall not apply. The reviewing officer's decision shall be in writing, and it shall be delivered to the parties by certified mail. If either party is aggrieved by the order of the reviewing officer, he may appeal to the commissioner for a full evidentiary hearing in accordance with the procedures in subsection (1) of this section, except that there shall be no requirement for a written complaint or answer to be filed by the parties. The appeal shall be perfected by filing a notice of appeal with the commissioner within thirty (30) days after the order of the reviewing officer is served on the appealing party. The hearing before the commissioner, or his designee, shall be held within a reasonable time after the appeal has been perfected. Failure to perfect an appeal within the allotted time shall be deemed a waiver of such right.

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

SECTION 9. Section 25-41-3, Mississippi Code of 1972, is amended as follows:

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

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

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

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

Passed State Senate
May 2, 2000

Passed House of Representatives
May 1, 2000

APPROVED BY GOVERNOR

GOVERNOR