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Chapter No. 502
12/HR07/R1214SG
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HOUSE BILL NO. 634

Originated in House _____ Clerk

HOUSE BILL NO. 634

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

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

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

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

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

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

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

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

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

(a) Issue a warning letter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PASSED BY THE HOUSE OF REPRESENTATIVES
March 14, 2012

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
April 10, 2012

PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

GOVERNOR
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