

By: Representative Ford

To: Agriculture

HOUSE BILL NO. 654

1 AN ACT TO REENACT SECTIONS 69-21-101 THROUGH 69-21-125,  
2 MISSISSIPPI CODE OF 1972, WHICH CREATE THE STATE BOARD OF  
3 AGRICULTURAL AVIATION AND PRESCRIBE ITS DUTIES AND POWERS; TO  
4 AMEND SECTION 69-21-127, MISSISSIPPI CODE OF 1972, TO EXTEND THE  
5 REPEALER; AND FOR RELATED PURPOSES.

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

7 SECTION 1. Section 69-21-101, Mississippi Code of 1972, is  
8 reenacted as follows:

9 69-21-101. This article shall be known and cited as the  
10 "Agricultural Aviation Licensing Law of 1966."

11 SECTION 2. Section 69-21-103, Mississippi Code of 1972, is  
12 reenacted as follows:

13 69-21-103. The purpose of this article is to supervise and  
14 regulate for the public good all commercial agricultural aerial  
15 application within the State of Mississippi and to establish and  
16 promote a close working relationship between agricultural aerial  
17 applicators and the Mississippi Department of Agriculture and  
18 Commerce, the licensing of all persons engaged in the aerial  
19 application of pesticides, poisons, seeds and chemicals, and the  
20 registration of all such commercial agricultural aircraft and  
21 pilots.

22 SECTION 3. Section 69-21-105, Mississippi Code of 1972, is  
23 reenacted as follows:

24 69-21-105. As used in this article, the following terms  
25 shall have the meanings hereinafter ascribed to them:

26 (a) "Board" shall mean the Agricultural Aviation Board  
27 of the State of Mississippi.

28           (b) "Person" shall mean any individual, corporation,  
29 firm, partnership, company, trust, association or other legal  
30 entity.

31           (c) "Aerial application" means the practice of engaging  
32 in agricultural aircraft operations for remuneration.

33           (d) "Agricultural aircraft operation" means

34                 (1) Dispensing any pesticide, seed or fertilizer  
35 by aircraft;

36                 (2) Dispensing any other substance intended for  
37 plant nourishment, soil treatment, propagation of plant life, or  
38 pest control by aircraft; or

39                 (3) Engaging in dispensing activities directly  
40 affecting agriculture, horticulture, or forest preservation by  
41 aircraft.

42           (e) "Aircraft" means any contrivance now known or  
43 hereafter invented that is used or designed for navigation of or  
44 flight in the air over land and water, and that is designed for or  
45 adaptable for use in agricultural aircraft operation.

46           (f) "Applicator" means any person, as herein defined,  
47 who is licensed under this act to engage in agricultural aircraft  
48 operations.

49           (g) "Pesticide" means any substance or mixture of  
50 substances intended for defoliating or desiccating plants, or for  
51 preventing, destroying, repelling or mitigating any insects,  
52 fungi, bacteria, weeds, or other forms of plant or animal life  
53 which the board shall declare to be a pest.

54           (h) "Pilot" means the operator of an aircraft used in  
55 agricultural aircraft operation; provided, however, a pilot may  
56 also be a person who is licensed as an applicator under the  
57 provisions of this article.

58           (i) "Insect" means any of the numerous small  
59 invertebrate animals generally having the body more or less  
60 obviously segmented, for the most part belonging to the Class

61 Insecta, comprising six-legged, usually winged forms, as for  
62 example, beetles, bugs and flies; and to other classes of  
63 arthropods whose members are wingless and usually have more than  
64 six (6) legs, as for example, spiders, mites, ticks, centipedes  
65 and wood lice.

66 (j) "Defoliant" means any substance or mixture of  
67 substances intended for causing the leaves or foliage to drop from  
68 a plant, with or without causing abscission.

69 (k) "Desiccant" means any substances or mixtures of  
70 substances intended for artificially accelerating the drying of  
71 plant tissues.

72 SECTION 4. Section 69-21-107, Mississippi Code of 1972, is  
73 reenacted as follows:

74 69-21-107. There is hereby created a State Board of  
75 Agricultural Aviation composed of five (5) members as follows: one  
76 (1) member being the chief of the Bureau of Plant Industry within  
77 the Regulatory Office of the Mississippi Department of Agriculture  
78 and Commerce; four (4) licensed pilots to be appointed by the  
79 Governor from a list of eight (8) agricultural aerial applicators  
80 submitted to the Governor by the Mississippi Aerial Applicators  
81 Association, commonly known as the Mississippi Agricultural  
82 Aviation Association. The term of office of one (1) board member  
83 shall be one (1) year; the term of office of the second board  
84 member shall be two (2) years; the term of office of the third  
85 board member shall be three (3) years; and the term of office of  
86 the fourth board member shall be four (4) years. After the  
87 initial appointment, succeeding board members shall serve a  
88 staggered four-year term of office. Each board member shall serve  
89 until his successor is appointed. The chief of the Bureau of  
90 Plant Industry, Mississippi Department of Agriculture and  
91 Commerce, shall continue to serve each term by virtue of his  
92 office.

93 The membership of the board shall elect a chairman at their

94 organizational meeting who shall be one of the four (4) aerial  
95 applicators who serve on the board.

96 Vacancies on the said board shall be filled as herein stated  
97 by appointment of the Governor.

98 A quorum necessary to conduct business shall be a majority of  
99 the five (5) board members. Any member who shall not attend two  
100 (2) consecutive meetings of the board shall be subject to removal  
101 by the Governor. The chairman of the board shall notify the  
102 Governor in writing when any such member has failed to attend two  
103 (2) consecutive regular meetings.

104 Each member of the Agricultural Aviation Board shall receive  
105 a per diem as is authorized by law and actual expenses as provided  
106 by law incidental to attending meetings of said board, and other  
107 authorized business as provided by board authorization as spread  
108 on the board minutes. Said board shall not be paid for more than  
109 fifteen (15) meetings in any one (1) calendar year.

110 SECTION 5. Section 69-21-109, Mississippi Code of 1972, is  
111 reenacted as follows:

112 69-21-109. The board, after public hearing duly held, is  
113 hereby vested with the authority to adopt such rules and  
114 regulations as may be necessary to regulate the application of  
115 chemicals and pesticides according to the time of year, manner,  
116 form and area of application, wind velocity, and may restrict the  
117 use of certain chemicals and pesticides which create an unusual  
118 hazard to the health, safety and welfare of the public. The board  
119 shall set professional standards for applicators and pilots in the  
120 interest of the safety, welfare and general well-being of the  
121 public of Mississippi.

122 The board shall have authority to procure samples of spray  
123 and dust materials before and after they are mixed in order to  
124 determine the concentration of the mixtures.

125 The Agricultural Aviation Board shall have authority to  
126 maintain an office and employ necessary personnel within the

127 framework of fees collected to carry out the purposes of this  
128 article.

129         It shall be the duty of the board to enforce this article and  
130 all rules and regulations made and adopted in compliance with this  
131 article.

132         The board or its representatives shall have access to any  
133 premises where there is reason to believe that a chemical or  
134 pesticide is being or has been applied by an applicator, or where  
135 any applicator is based, or preparing to apply any of the  
136 materials herein stated, for the purpose of enforcement of this  
137 article. The board shall have authority to inspect equipment used  
138 for application of chemicals and pesticides as stated in this  
139 article.

140         The Board of Agricultural Aviation shall maintain a close  
141 liaison and spirit of cooperation with the Mississippi Department  
142 of Agriculture and Commerce, in the supervision of aerially  
143 applied chemicals which are under their jurisdiction as provided  
144 by Sections 69-21-7 through 69-21-15. The board, further, shall  
145 closely assist the Mississippi Department of Transportation in  
146 carrying out its statutory functions to the end that aviation can  
147 continue its rapid advance.

148         SECTION 6. Section 69-21-111, Mississippi Code of 1972, is  
149 reenacted as follows:

150         69-21-111. Nothing in this article shall be construed as to  
151 confer upon the board jurisdiction of the aerial application of  
152 hormone-type herbicides which is conferred on the Mississippi  
153 Department of Agriculture and Commerce by Sections 69-21-7 through  
154 69-21-15.

155         SECTION 7. Section 69-21-113, Mississippi Code of 1972, is  
156 reenacted as follows:

157         69-21-113. (1) It shall be unlawful and a misdemeanor for  
158 any person to act, operate or do business as an applicator or  
159 pilot, or to engage in agricultural aircraft operations, unless

160 such person has an applicator's or pilot's license issued by the  
161 board. Such license shall be issued only upon application  
162 therefor to the board on a form of application prescribed by the  
163 board, which application shall contain information regarding the  
164 applicant's qualifications and proposed operations, and such other  
165 information as may be specified by the board.

166 (2) All licenses shall expire annually on the thirty-first  
167 day of March following their issuance or renewal, and shall be  
168 renewed for the ensuing year on or before that date. Any person  
169 failing to renew his license within the prescribed time shall be  
170 required to submit a new application therefor.

171 (3) Any person seeking to obtain a license as an applicator  
172 in this state shall submit proof of payment of all ad valorem and  
173 other taxes which might be applicable on aircraft and other  
174 equipment.

175 (4) All persons licensed under the provisions of this  
176 article shall be known as registered applicators or pilots, and  
177 shall be issued a certificate by the board as proof thereof.

178 SECTION 8. Section 69-21-115, Mississippi Code of 1972, is  
179 reenacted as follows:

180 69-21-115. Any person seeking to obtain a license as an  
181 applicator in this state shall submit proof of financial  
182 responsibility to the board, and upon obtaining a license, such  
183 person shall maintain proof of financial responsibility at all  
184 times while such license shall be in effect. Proof of financial  
185 responsibility may consist of:

186 (a) The deposit with the board of a surety bond in  
187 favor of any person or persons who may suffer damage by reason of  
188 the operation of an aerial application service, issued by a  
189 corporate surety company authorized to do business in this state,  
190 which surety bond shall be in an amount not less than the amount  
191 of financial responsibility required by the rules and regulations  
192 of the board. However, the aggregate liability of the surety to

193 all such persons shall not, in any event, exceed the amount of  
194 such bond; or

195 (b) The filing of an insurance policy of an insurer or  
196 surplus line broker authorized to do business in this state  
197 insuring the licensee and any of his agents against liability  
198 resulting from the operation of an aerial application service,  
199 which insurance policy shall be in an amount deemed as acceptable  
200 to the board, but not less than Five Thousand Dollars (\$5,000.00).

201 The board shall establish by rules and regulations the amount  
202 of financial responsibility to be required of each licensed  
203 applicator, but in no event shall the amount of financial  
204 responsibility required be less than Five Thousand Dollars  
205 (\$5,000.00).

206 SECTION 9. Section 69-21-117, Mississippi Code of 1972, is  
207 reenacted as follows:

208 69-21-117. Any person who is a nonresident of this state  
209 shall obtain an applicator's license in this state, and such  
210 nonresident shall designate and maintain a resident agent in this  
211 state for service of process, and establish and maintain proof of  
212 financial responsibility and provide proof of payment of all state  
213 taxes as provided in this article and as applied to a resident  
214 aerial applicator. Nothing in this article shall be construed to  
215 prevent the board from issuing reciprocal licenses from other  
216 states that recognize and accept registered aerial applicators of  
217 the State of Mississippi.

218 SECTION 10. Section 69-21-119, Mississippi Code of 1972, is  
219 reenacted as follows:

220 69-21-119. A fee of not more than One Hundred Fifty Dollars  
221 (\$150.00) for each aircraft owned, operated, used and employed in  
222 aerial application by an applicator shall be paid to the board for  
223 the issuance or required annual renewal of a license for an  
224 applicator. Each aircraft shall be identified at all times by a  
225 device supplied to the registered applicator by the board.

226 A fee of not more than Seventy-five Dollars (\$75.00) for each  
227 pilot engaged in aerial application shall be paid to the board for  
228 the issuance or required annual renewal of a license for a pilot.

229 Each pilot shall have in his possession at all times an  
230 identification card supplied by the board.

231 All funds collected under the provisions of this article  
232 shall be kept in the Treasury of the State of Mississippi and  
233 disbursed upon requisitions signed by the chairman of the board.  
234 Such funds shall be subject to audit by the Auditor of the State  
235 of Mississippi. The State Board of Agricultural Aviation shall  
236 furnish a copy of its financial statement and a copy of any  
237 proposed license fee adjustments to each aerial applicator  
238 licensed by the state not less than two (2) weeks before the  
239 annual meeting of the aerial applicators. Such financial  
240 statement shall reflect all funds collected and all disbursements  
241 made under the provisions of this article.

242 SECTION 11. Section 69-21-121, Mississippi Code of 1972, is  
243 reenacted as follows:

244 69-21-121. (1) The Agricultural Aviation Board, in  
245 exercising its authority to enforce this article and its rules and  
246 regulations made and adopted in compliance with this article,  
247 shall have the power to discipline the holder of a license after a  
248 hearing and opportunity to be heard has been given to the holder  
249 of the license. Notice of the time and place of such hearing and  
250 the grounds therefor shall be given to the holder of the license  
251 by registered or certified mail at least ten (10) days prior to  
252 the date of the hearing, and said licensee shall be disciplined as  
253 follows, to wit:

254 (a) By placing him upon probation, the terms of which  
255 may be set by the board;

256 (b) By suspending his right to do business as an  
257 applicator or pilot for a time deemed proper by the board;

258 (c) By revoking, cancelling or suspending his license;



259 or

260 (d) By taking any other action in relation to his  
261 license as the board may deem proper under the circumstances.

262 (2) Such disciplinary action may be made by the board if it  
263 finds that such licensee:

264 (a) Is guilty of misrepresentation for the purpose of  
265 defrauding;

266 (b) Has made any false statements or representations in  
267 his application for issuance or renewal of a license;

268 (c) Has violated any of the provisions of this article  
269 or the rules and regulations promulgated thereunder by the board;  
270 or

271 (d) Has made any application in a faulty, careless or  
272 negligent manner.

273 (3) Any person aggrieved by action of the Agricultural  
274 Aviation Board, may, within thirty (30) days of such action,  
275 appeal the decision of the board to the circuit court of the  
276 regular domicile of the licensee involved; provided, however, such  
277 appeal shall be on the record of the hearing before the board and  
278 no additional evidence may be received or considered.

279 SECTION 12. Section 69-21-123, Mississippi Code of 1972, is  
280 reenacted as follows:

281 69-21-123. Any person, firm, or corporation having a right  
282 of action against an applicator, person, firm, association or  
283 corporation, or any other person, may bring suit against them or  
284 either of them for any damages caused by their negligence of the  
285 aerial application regulated by the Agricultural Aviation Board,  
286 but in no event, however, shall a surety be named in or made a  
287 party to such action. No action for such damages may be brought  
288 or maintained, however, unless the person claiming the damages  
289 shall have filed with the Mississippi Department of Agriculture  
290 and Commerce a written statement claiming that he has been  
291 damaged, on a form prescribed by the Mississippi Department of

292 Agriculture and Commerce, within sixty (60) days after the date  
293 that the damages occurred and prior to the time that twenty-five  
294 percent (25%) of a crop damaged shall have been harvested in the  
295 event claim concerns a crop. Such statement shall contain, but  
296 shall not be limited thereto, the name of the person or persons  
297 who operated the aircraft, if known, the permit number of the  
298 aircraft, if known, the name of the owner or lessee of the land on  
299 which the crops are grown and for which damages are claimed, and  
300 the date on which it is alleged that the damage occurred. The  
301 Mississippi Department of Agriculture and Commerce, is required to  
302 prepare a form to be furnished to persons to be used in such  
303 cases, and such form shall contain such other requirements as the  
304 Mississippi Department of Agriculture and Commerce may deem  
305 proper. The Mississippi Department of Agriculture and Commerce,  
306 shall, upon receipt of such statement, notify the licensee and/or  
307 operator of the aircraft, and the owner or lessee of the land or  
308 other person who may be charged with the responsibility for the  
309 damages claimed, and furnish copies of such statements as may be  
310 requested. However, notwithstanding any other provisions of this  
311 article, any person claiming damages hereunder may give notice to  
312 the landowner or lessee of the treated crop claiming that he has  
313 been damaged within sixty (60) days after the date that the damage  
314 occurred and prior to the time that twenty-five percent (25%) of a  
315 crop damaged shall have been harvested in the event claim concerns  
316 a crop, which said notice shall preserve said persons, claiming  
317 damages, cause of action.

318 SECTION 13. Section 69-21-125, Mississippi Code of 1972, is  
319 reenacted as follows:

320 69-21-125. (1) Violation of this article or the rules and  
321 regulations promulgated thereunder shall be a misdemeanor  
322 punishable by a fine of not less than One Hundred Dollars  
323 (\$100.00) and not more than Five Hundred Dollars (\$500.00), or by  
324 imprisonment in the county jail for not more than six (6) months,

325 or by both such fine and imprisonment. Each day's violation shall  
326 constitute a separate offense. All sums of money collected as a  
327 result of fines levied under this section shall be forwarded to  
328 the State Treasurer and disbursed upon requisitions signed by the  
329 Chairman of the Board of Agricultural Aviation to defray operating  
330 expenses of the board and for no other purpose; provided, however,  
331 all such funds shall be subject to audit by the State Auditor.

332 (2) In addition to the penalties herein provided, the board  
333 is hereby granted the authority to file in any court of competent  
334 jurisdiction injunctive proceedings against any person violating  
335 the provisions of this article or the rules and regulations  
336 promulgated hereunder.

337 (3) The Attorney General, district attorneys, and county  
338 attorneys of the state shall assist the Board of Agricultural  
339 Aviation upon their request to carry out the penalty section of  
340 this article.

341 SECTION 14. Section 69-21-127, Mississippi Code of 1972, is  
342 amended as follows:

343 69-21-127. Sections 69-21-101 through 69-21-125, Mississippi  
344 Code of 1972, which create the State Board of Agricultural  
345 Aviation and prescribe its duties and powers, shall stand repealed  
346 as of December 31, 2000.

347 SECTION 15. Each section of the Mississippi Code of 1972  
348 that is reenacted but not amended by this act, and that appears in  
349 the main volume of the Code, shall not be reprinted in the  
350 supplement. Instead, an editor's note shall be placed in the  
351 supplement following the section to explain that the section was  
352 reenacted, and that it has not been reprinted in the supplement  
353 because the language of the section in the main volume was  
354 unaffected by the legislation.

355 SECTION 16. This act shall take effect and be in force from  
356 and after July 1, 1999.