HOUSE BILL NO. 464

AN ACT TO AMEND SECTION 69-21-107, MISSISSIPPI CODE OF 1972, TO REVISE THE MEMBERSHIP OF THE AGRICULTURAL AVIATION BOARD; TO AMEND SECTION 69-21-109, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE BOARD TO COOPERATE WITH OR ENTER INTO FORMAL COOPERATIVE AGREEMENTS WITH ANY PUBLIC OR PRIVATE AGENCY OR EDUCATIONAL INSTITUTION OF THIS STATE OR ANY OTHER STATE OR FEDERAL AGENCY FOR THE PURPOSE OF CARRYING OUT THE PROVISIONS OF THIS ACT; TO AMEND SECTION 69-21-127, MISSISSIPPI CODE OF 1972, TO EXTEND THE REPEALER; TO AMEND SECTIONS 69-21-125, 69-21-153, 69-21-155 AND 69-21-163, MISSISSIPPI CODE OF 1972, TO REVISE PENALTIES FOR VIOLATIONS; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 69-21-107, Mississippi Code of 1972, is amended as follows:

69-21-107. There is hereby created a State Board of Agricultural Aviation composed of five (5) members as follows: Director of the Department of Environmental Quality; two (2) licensed pilots to be appointed by the Governor from a list of eight (8) agricultural aerial applicators submitted to the Governor by the Mississippi Aerial Applicators Association, commonly known as the Mississippi Agricultural Aviation Association; the Director of the Mississippi Cooperative Extension Service at Mississippi State University; and the Director of the Mississippi Cooperative Extension Service at Alcorn State University. The term of office of one (1) pilot board member shall be one (1) year and the term of office of the second pilot board member shall be two (2) years **. After the initial appointment, succeeding pilot board members shall serve a staggered four-year term of office. Each pilot board member shall serve until his successor is appointed. The Director of the Department of Environmental Quality, the Director of the
Mississippi Cooperative Extension Service at Mississippi State University and the Director of the Mississippi Cooperative Extension Service at Alcorn State University shall continue to serve each term by virtue of their offices.

The membership of the board shall elect a chairman at their organizational meeting.

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

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

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

SECTION 2. Section 69-21-109, Mississippi Code of 1972, is amended as follows:

69-21-109. The board, after public hearing duly held, is hereby vested with the authority to adopt such rules and regulations as may be necessary to regulate the application of chemicals and pesticides according to the time of year, manner, form and area of application, wind velocity, and may restrict the use of certain chemicals and pesticides which create an unusual hazard to the health, safety and welfare of the public. The board shall set professional standards for applicators and pilots in the interest of the safety, welfare and general well-being of the public of Mississippi.
The board shall have authority to procure samples of spray and dust materials before and after they are mixed in order to determine the concentration of the mixtures.

The Agricultural Aviation Board shall have authority to maintain an office and employ necessary personnel within the framework of fees collected to carry out the purposes of this article. The board may cooperate with or enter into formal cooperative agreements with any public or private agency or educational institution of this state or any other state or federal agency for the purpose of carrying out the provisions of this article.

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

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

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

SECTION 3. Section 69-21-125, Mississippi Code of 1972, is amended as follows:
69-21-125. (1) Violation of this article or the rules and regulations promulgated thereunder shall be a misdemeanor punishable by a fine of not less than One Hundred Dollars ($100.00) and not more than One Thousand Dollars ($1,000.00), or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment. Each day's violation shall constitute a separate offense. All sums of money collected as a result of fines levied under this section shall be forwarded to the State Treasurer and disbursed upon requisitions signed by the Chairman of the Board of Agricultural Aviation to defray operating expenses of the board and for no other purpose; provided, however, all such funds shall be subject to audit by the State Auditor.

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

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

SECTION 4. Section 69-21-127, Mississippi Code of 1972, is amended as follows:


SECTION 5. Section 69-21-153, Mississippi Code of 1972, is amended as follows:

69-21-153. (1) When any allegation or charge has been made against a person for violating the rules and regulations of the
Board of Agricultural Aviation or Sections 69-21-101 through 69-21-127, the Board of Agricultural Aviation shall:

(a) Cause the complaint to be in writing and signed by the person making the charge;

(b) Insure that the complaint is filed in the office of the Board of Agricultural Aviation;

(c) Cause the complaint to be investigated by an inspector of the Agricultural Aviation Board or the Bureau of Plant Industry; and

(d) Send a copy of the complaint and any supporting documents to the person accused along with a request for the accused to respond to the allegations within thirty (30) days. Such notification shall be accomplished by any of the methods provided for in Rule 4 of the Mississippi Rules of Civil Procedure. Upon receipt of the response and any supporting documents from the accused, the Board of Agricultural Aviation shall screen all information on file to determine the merit of the complaint or lack thereof.

(2) If the Board of Agricultural Aviation determines that the complaint lacks merit, it may recommend that the complaint be dismissed.

(3) If the Board of Agricultural Aviation determines that there are reasonable grounds to indicate that a violation has occurred or if the accused admits to the truth of the allegations upon which the complaint is based, the Board of Agricultural Aviation may recommend a fine not to exceed Five Thousand Dollars ($5,000.00) for each violation.

(4) (a) In determining the amount of the penalty, the Board of Agricultural Aviation may consider the appropriateness of such penalty to the size of the business of the person charged, the effect on the person's ability to continue in business and the gravity of the violation. Whenever the Board of Agricultural Aviation finds that the violation occurred, despite the exercise...
of due care, if the violation did not cause significant harm to
the public health or the environment, the Board of Agricultural
Aviation may issue a warning in lieu of proposing a penalty.

(b) The accused shall have thirty days (30) from
receipt of the recommendation of the Board of Agricultural
Aviation within which to file with the Board of Agricultural
Aviation a written request for an informal settlement conference.
If the accused requests a conference as provided herein, the Board
of Agricultural Aviation shall meet with the accused to discuss
the proposed penalty and the possibility of an agreed settlement.
If, in the judgment of the Board of Agricultural Aviation, a
reasonable settlement is reached, the Board of Agricultural
Aviation may revise its penalty recommendation accordingly.

(c) The accused shall have thirty (30) days from the
receipt of the decision of the Board of Agricultural Aviation to
request a hearing.

SECTION 6. Section 69-21-155, Mississippi Code of 1972, is
amended as follows:

69-21-155. (1) The Board of Agricultural Aviation shall,
within thirty (30) days of notification from the accused, schedule
a hearing at a date, time and place to be determined by the Board
of Agricultural Aviation. For good cause shown the board may
grant a continuance or continuances of such hearings. Written
notice of the date, time and place of such hearing shall be mailed
to the accused by registered mail, return receipt requested, no
less than fifteen (15) days before the time of the hearing.

(2) A duly qualified court reporter shall be in attendance
and shall make a full and complete transcript of the proceedings.
The hearing shall be closed unless the accused shall request a
public hearing. The Board of Agricultural Aviation shall have the
right and duty to impose reasonable restrictions as it may deem
necessary or appropriate to insure an orderly, expeditious and
impartial proceeding, and shall admit all relevant and material
evidence except evidence which is unduly repetitious. Hearsay
shall be admissible to the extent permitted by the board.

(3) For purposes of such hearing, the board is hereby
empowered to require the attendance of witnesses, administer oaths
and hear testimony, either oral or documentary, for and against
the accused. The Board of Agricultural Aviation shall have the
authority to issue subpoenas to compel the attendance of witnesses
and the production of books, papers, records or other documentary
evidence at a hearing. Subpoenas to be issued shall be delivered
to the sheriff of the county where they are to be executed and the
sheriff shall cause them to be served. In case of the failure of
any person to comply with any subpoena issued by the board, the
board or its authorized representative may invoke the aid of any
court of general jurisdiction of this state. The court may
thereupon order such person to comply with the requirements of the
subpoena. Failure to comply with the order of the court may be
treated as contempt thereof.

(4) At the conclusion of the hearing, the Board of
Agricultural Aviation upon the majority vote of the members shall
issue a written opinion incorporating its findings of facts and
conclusions of law and any penalty that it may assess not to
exceed Five Thousand Dollars ($5,000.00) per violation. The
executive officer shall notify the accused violator of the Board
of Agricultural Aviation's decision.

SECTION 7. Section 69-21-163, Mississippi Code of 1972, is
amended as follows:

69-21-163. Each violation of the rules and regulations of
the Board of Agricultural Aviation or violations of the statutes
set forth in Section 69-21-151 shall be subject to the imposition
of a civil penalty up to Five Thousand Dollars ($5,000.00).

SECTION 8. This act shall take effect and be in force from
and after July 1, 2002.