

By: Representative Holland

To: Agriculture

HOUSE BILL NO. 464

1 AN ACT TO AMEND SECTION 69-21-107, MISSISSIPPI CODE OF 1972,  
 2 TO REVISE THE MEMBERSHIP OF THE AGRICULTURAL AVIATION BOARD; TO  
 3 AMEND SECTION 69-21-109, MISSISSIPPI CODE OF 1972, TO AUTHORIZE  
 4 THE BOARD TO COOPERATE WITH OR ENTER INTO FORMAL COOPERATIVE  
 5 AGREEMENTS WITH ANY PUBLIC OR PRIVATE AGENCY OR EDUCATIONAL  
 6 INSTITUTION OF THIS STATE OR ANY OTHER STATE OR FEDERAL AGENCY FOR  
 7 THE PURPOSE OF CARRYING OUT THE PROVISIONS OF THIS ACT; TO AMEND  
 8 SECTION 69-21-127, MISSISSIPPI CODE OF 1972, TO EXTEND THE  
 9 REPEALER; TO AMEND SECTIONS 69-21-125, 69-21-153, 69-21-155 AND  
 10 69-21-163, MISSISSIPPI CODE OF 1972, TO REVISE PENALTIES FOR  
 11 VIOLATIONS; AND FOR RELATED PURPOSES.

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

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

15 69-21-107. There is hereby created a State Board of  
 16 Agricultural Aviation composed of five (5) members as follows:  
 17 Director of the Department of Environmental Quality; two (2)  
 18 licensed pilots to be appointed by the Governor from a list of  
 19 eight (8) agricultural aerial applicators submitted to the  
 20 Governor by the Mississippi Aerial Applicators Association,  
 21 commonly known as the Mississippi Agricultural Aviation  
 22 Association; the Director of the Mississippi Cooperative Extension  
 23 Service at Mississippi State University; and the Director of the  
 24 Mississippi Cooperative Extension Service at Alcorn State  
 25 University. The term of office of one (1) pilot board member  
 26 shall be one (1) year and the term of office of the second pilot  
 27 board member shall be two (2) years \* \* \*. After the initial  
 28 appointment, succeeding pilot board members shall serve a  
 29 staggered four-year term of office. Each pilot board member shall  
 30 serve until his successor is appointed. The Director of the  
 31 Department of Environmental Quality, the Director of the



32 Mississippi Cooperative Extension Service at Mississippi State  
33 University and the Director of the Mississippi Cooperative  
34 Extension Service at Alcorn State University shall continue to  
35 serve each term by virtue of their offices.

36 The membership of the board shall elect a chairman at their  
37 organizational meeting \* \* \*.

38 Vacancies on the \* \* \* board shall be filled as herein stated  
39 by appointment of the Governor.

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

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

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

54 69-21-109. The board, after public hearing duly held, is  
55 hereby vested with the authority to adopt such rules and  
56 regulations as may be necessary to regulate the application of  
57 chemicals and pesticides according to the time of year, manner,  
58 form and area of application, wind velocity, and may restrict the  
59 use of certain chemicals and pesticides which create an unusual  
60 hazard to the health, safety and welfare of the public. The board  
61 shall set professional standards for applicators and pilots in the  
62 interest of the safety, welfare and general well-being of the  
63 public of Mississippi.



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

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

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

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

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

94           **SECTION 3.** Section 69-21-125, Mississippi Code of 1972, is  
95 amended as follows:



96           69-21-125. (1) Violation of this article or the rules and  
97 regulations promulgated thereunder shall be a misdemeanor  
98 punishable by a fine of not less than One Hundred Dollars  
99 (\$100.00) and not more than One Thousand Dollars (\$1,000.00), or  
100 by imprisonment in the county jail for not more than six (6)  
101 months, or by both such fine and imprisonment. Each day's  
102 violation shall constitute a separate offense. All sums of money  
103 collected as a result of fines levied under this section shall be  
104 forwarded to the State Treasurer and disbursed upon requisitions  
105 signed by the Chairman of the Board of Agricultural Aviation to  
106 defray operating expenses of the board and for no other purpose;  
107 provided, however, all such funds shall be subject to audit by the  
108 State Auditor.

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

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

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

120           69-21-127. Sections 69-21-101 through 69-21-125, Mississippi  
121 Code of 1972, which create the State Board of Agricultural  
122 Aviation and prescribe its duties and powers, shall stand repealed  
123 as of December 31, 2007.

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

126           69-21-153. (1) When any allegation or charge has been made  
127 against a person for violating the rules and regulations of the



128 Board of Agricultural Aviation or Sections 69-21-101 through  
129 69-21-127, the Board of Agricultural Aviation shall:

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

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

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

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

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

149 (3) If the Board of Agricultural Aviation determines that  
150 there are reasonable grounds to indicate that a violation has  
151 occurred or if the accused admits to the truth of the allegations  
152 upon which the complaint is based, the Board of Agricultural  
153 Aviation may recommend a fine not to exceed Five Thousand Dollars  
154 (\$5,000.00) for each violation.

155 (4) (a) In determining the amount of the penalty, the Board  
156 of Agricultural Aviation may consider the appropriateness of such  
157 penalty to the size of the business of the person charged, the  
158 effect on the person's ability to continue in business and the  
159 gravity of the violation. Whenever the Board of Agricultural  
160 Aviation finds that the violation occurred, despite the exercise



161 of due care, if the violation did not cause significant harm to  
162 the public health or the environment, the Board of Agricultural  
163 Aviation may issue a warning in lieu of proposing a penalty.

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

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

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

179 69-21-155. (1) The Board of Agricultural Aviation shall,  
180 within thirty (30) days of notification from the accused, schedule  
181 a hearing at a date, time and place to be determined by the Board  
182 of Agricultural Aviation. For good cause shown the board may  
183 grant a continuance or continuances of such hearings. Written  
184 notice of the date, time and place of such hearing shall be mailed  
185 to the accused by registered mail, return receipt requested, no  
186 less than fifteen (15) days before the time of the hearing.

187 (2) A duly qualified court reporter shall be in attendance  
188 and shall make a full and complete transcript of the proceedings.  
189 The hearing shall be closed unless the accused shall request a  
190 public hearing. The Board of Agricultural Aviation shall have the  
191 right and duty to impose reasonable restrictions as it may deem  
192 necessary or appropriate to insure an orderly, expeditious and  
193 impartial proceeding, and shall admit all relevant and material



194 evidence except evidence which is unduly repetitious. Hearsay  
195 shall be admissible to the extent permitted by the board.

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

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

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

220 69-21-163. Each violation of the rules and regulations of  
221 the Board of Agricultural Aviation or violations of the statutes  
222 set forth in Section 69-21-151 shall be subject to the imposition  
223 of a civil penalty up to Five Thousand Dollars (\$5,000.00).

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

