

By: Representative Holland

To: Agriculture

HOUSE BILL NO. 866

1 AN ACT TO AMEND SECTION 69-21-101, MISSISSIPPI CODE OF 1972,
 2 TO CREATE THE AGRICULTURAL AVIATION LICENSING LAW OF 2002; TO
 3 AMEND SECTION 69-21-103, MISSISSIPPI CODE OF 1972, TO STATE THE
 4 PURPOSE OF THE STATE COMMERCIAL AERIAL APPLICATION CONTROL
 5 PROGRAM; TO AMEND SECTION 69-21-105, MISSISSIPPI CODE OF 1972, TO
 6 REVISE DEFINITIONS; TO AMEND SECTION 69-21-107, MISSISSIPPI CODE
 7 OF 1972, TO REVISE THE MEMBERSHIP OF THE STATE BOARD OF
 8 AGRICULTURAL AVIATION; TO AMEND SECTION 69-21-109, MISSISSIPPI
 9 CODE OF 1972, TO REVISE THE POWERS AND DUTIES OF THE BOARD; TO
 10 AMEND SECTION 69-21-113, MISSISSIPPI CODE OF 1972, TO REVISE
 11 REGULATIONS FOR AERIAL APPLICATOR LICENSES; TO AMEND SECTION
 12 69-21-117, MISSISSIPPI CODE OF 1972, TO REQUIRE CERTAIN
 13 NONRESIDENTS WHO PERFORM AGRICULTURAL AIRCRAFT OPERATIONS IN THE
 14 STATE TO OBTAIN AN APPLICATOR'S OR PILOT'S LICENSE; TO AMEND
 15 SECTION 69-21-119, MISSISSIPPI CODE OF 1972, TO REQUIRE THE BOARD
 16 TO FURNISH A COPY OF ITS FINANCIAL STATEMENT AND A COPY OF ANY
 17 PROPOSED LICENSE FEE ADJUSTMENTS TO THE STATE AUDITOR NO LATER
 18 THAN SIXTY DAYS AFTER THE END OF EACH FISCAL YEAR; TO AMEND
 19 SECTION 69-21-121, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR
 20 DISCIPLINARY ACTION AGAINST PERSONS WHO VIOLATE THIS ARTICLE; TO
 21 AMEND SECTION 69-21-125, MISSISSIPPI CODE OF 1972, TO PROVIDE
 22 CRIMINAL PENALTIES FOR CERTAIN VIOLATIONS; TO AMEND SECTION
 23 69-21-127, MISSISSIPPI CODE OF 1972, TO REVISE THE REPEALER; TO
 24 CREATE NEW CODE SECTION 69-21-129, MISSISSIPPI CODE OF 1972, TO
 25 PROVIDE FOR BOARD HEARINGS FOR ALLEGED VIOLATORS; TO CREATE NEW
 26 CODE SECTION 69-21-131, MISSISSIPPI CODE OF 1972, TO ESTABLISH THE
 27 JURISDICTION OF THE BOARD; TO CREATE NEW CODE SECTION 69-21-133,
 28 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR JUDICIAL REVIEW FOR ANY
 29 INDIVIDUAL AGGRIEVED BY A FINAL DECISION OF THE BOARD; TO CREATE
 30 NEW CODE SECTION 69-21-135, MISSISSIPPI CODE OF 1972, TO PROVIDE
 31 CIVIL PENALTIES FOR VIOLATIONS OF THE RULES AND REGULATIONS OF THE
 32 BOARD; TO CREATE NEW CODE SECTION 69-21-137, MISSISSIPPI CODE OF
 33 1972, TO PROVIDE FOR THE PAYMENT OF PENALTIES, ATTORNEY'S FEES AND
 34 COURT COSTS; TO CREATE NEW CODE SECTION 69-21-139, MISSISSIPPI
 35 CODE OF 1972, TO REQUIRE THE BOARD TO COMPLY WITH THE OPEN
 36 MEETINGS ACT, THE PUBLIC RECORDS ACT AND THE ADMINISTRATIVE
 37 PROCEDURES LAW; TO CREATE NEW CODE SECTION 69-21-141, MISSISSIPPI
 38 CODE OF 1972, TO PROVIDE THAT THE ATTORNEY GENERAL SHALL BE
 39 COUNSEL AND ATTORNEY FOR THE BOARD; TO REPEAL SECTIONS 69-21-151
 40 THROUGH 69-21-165, MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR
 41 ADMINISTRATIVE HEARING PROCEDURES TO ENFORCE RULES AND REGULATIONS
 42 OF THE BOARD OF AGRICULTURAL AVIATION; AND FOR RELATED PURPOSES.

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

44 **SECTION 1.** Section 69-21-101, Mississippi Code of 1972, is
 45 amended as follows:

46 69-21-101. This article shall be known and cited as the
 47 "Agricultural Aviation Licensing Law of 2002."



48 **SECTION 2.** Section 69-21-103, Mississippi Code of 1972, is
49 amended as follows:

50 69-21-103. The purpose of this article is to supervise and
51 regulate for the public good all commercial agricultural aerial
52 application within the State of Mississippi and to establish and
53 promote a close working relationship between agricultural aerial
54 applicators and the Mississippi Department of Agriculture and
55 Commerce, the licensing of all persons engaged in the aerial
56 application of pesticides, poisons, seeds and chemicals, and the
57 registration of all such commercial agricultural aircraft and
58 pilots. It is the intent of the Legislature that the program
59 established under this article provide a program of commercial
60 aerial application control within the State of Mississippi
61 sufficient to allow the state to retain delegation from the United
62 States Environmental Protection Agency of the commercial aerial
63 application regulation program created under the Federal
64 Insecticide, Fungicide and Rodenticide Act, 7 USCS 136-136y. This
65 article also establishes an administrative hearing procedure for
66 the board's use in enforcing the rules and regulations of the
67 board.

68 **SECTION 3.** Section 69-21-105, Mississippi Code of 1972, is
69 amended as follows:

70 69-21-105. As used in this article, the following terms
71 shall have the meanings hereinafter ascribed to them:

72 (a) "Board" shall mean the State Board of Agricultural
73 Aviation * * *.

74 (b) "Person" shall mean any individual, corporation,
75 firm, partnership, company, trust, association or other legal
76 entity.

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

79 (d) "Agricultural aircraft operation" means:



80 (i) Dispensing any pesticide, seed or fertilizer
81 by aircraft;

82 (ii) Dispensing any other substance intended for
83 plant nourishment, soil treatment, propagation of plant life, or
84 pest control by aircraft; or

85 (iii) Engaging in dispensing activities directly
86 affecting agriculture, horticulture, or forest preservation by
87 aircraft.

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

92 (f) "Applicator" means any person, as herein defined,
93 who is licensed under this article to engage in agricultural
94 aircraft operations.

95 (g) "Pesticide" means any substance or mixture of
96 substances, except as set forth in Section 69-21-111, intended for
97 defoliating or desiccating plants, or for preventing, destroying,
98 repelling or mitigating any insects, fungi, bacteria, weeds, or
99 other forms of plant or animal life which the board shall declare
100 to be a pest.

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

105 (i) "Insect" means any of the numerous small
106 invertebrate animals generally having the body more or less
107 obviously segmented, for the most part belonging to the Class
108 Insecta, comprising six-legged, usually winged forms, as for
109 example, beetles, bugs and flies; and to other classes of
110 arthropods whose members are wingless and usually have more than
111 six (6) legs, as for example, spiders, mites, ticks, centipedes
112 and wood lice.



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

116 (k) "Desiccant" means any substances or mixtures of
117 substances intended for artificially accelerating the drying of
118 plant tissues.

119 **SECTION 4.** Section 69-21-107, Mississippi Code of 1972, is
120 amended as follows:

121 69-21-107. There is hereby created a State Board of
122 Agricultural Aviation composed of five (5) members as follows:
123 two (2) licensed applicators to be appointed by the Governor with
124 the advice and consent of the Senate from a list of four (4)
125 applicators submitted to the Governor by the * * * Mississippi
126 Agricultural Aviation Association, the Executive Director of the
127 Department of Environmental Quality, or his designee, a registered
128 forester and a licensed engineer with agricultural emphasis to be
129 appointed by the Governor with the advice and consent of the
130 Senate. The term of office of one (1) board member shall be one
131 (1) year; the term of office of the second board member shall be
132 two (2) years; the term of office of the third board member shall
133 be three (3) years; * * * the term of office of the fourth board
134 member shall be four (4) years as specified by the Governor in his
135 initial appointments to the board. After the initial appointment,
136 succeeding board members shall serve a staggered four-year term of
137 office. The Executive Director of the Department of Environmental
138 Quality, or his designee, shall continue to serve each term by
139 virtue of his office. Each board member shall serve until his
140 successor is appointed. * * *

141 * * *

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

144 A quorum necessary to conduct business shall be a majority of
145 the five (5) board members. Any member who shall not attend three



146 (3) consecutive meetings of the board shall be subject to removal
147 by the Governor. The chairman of the board shall notify the
148 Governor in writing when any such member has failed to attend
149 three (3) consecutive regular meetings.

150 Each member of the Agricultural Aviation Board shall receive
151 a per diem as is authorized by law and actual expenses as provided
152 by law incidental to attending meetings of the board, and other
153 authorized business as provided by board authorization as spread
154 on the board minutes. * * *

155 **SECTION 5.** Section 69-21-109, Mississippi Code of 1972, is
156 amended as follows:

157 69-21-109. (1) The board may adopt such rules and
158 regulations as may be necessary to regulate the application of
159 chemicals and pesticides according to the time of year, manner,
160 form and area of application, wind velocity and other pertinent
161 factors and may restrict the use of certain chemicals and
162 pesticides which create an unusual hazard to the health, safety
163 and welfare of the public. The board shall set professional
164 standards for applicators and pilots in the interest of the
165 safety, welfare and general well-being of the public of
166 Mississippi and for the protection of the state's fish and
167 wildlife, air, water and soil.

168 (2) The board shall have authority to procure samples of
169 pesticide, seed or fertilizer or of pesticide or fertilizer spray
170 and dust materials before and after they are mixed in order to
171 determine the concentration of the mixtures.

172 (3) The * * * board shall have authority to maintain an
173 office and employ necessary personnel within its budget to carry
174 out the purposes of this article.

175 (4) It shall be the duty of the board, and the board shall
176 have the authority, to enforce this article and all rules and
177 regulations made and adopted in compliance with this article. The



178 board shall not have jurisdiction to determine liability between
179 private parties.

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

188 (6) The board * * * shall maintain a close liaison and
189 spirit of cooperation with the Mississippi Department of
190 Agriculture and Commerce, in the supervision of aeriually applied
191 chemicals which are under their jurisdiction as provided by
192 Sections 69-21-7 through 69-21-15. The board and the Mississippi
193 Department of Agriculture and Commerce shall enter a memorandum of
194 agreement stating their plans to cooperate toward these purposes.
195 In adopting regulations regarding agricultural aircraft operation,
196 in providing training and requiring testing and certification of
197 applicators and in enforcing this article, the board shall strive
198 to regulate and train applicators in an a manner that is not
199 inconsistent with the training and regulation of ground-based
200 pesticide applicators provided by the Department of Agriculture
201 and Commerce.

202 (7) The board may cooperate with or enter into formal
203 cooperative agreements with any public or private agency or
204 educational institution of this state or any other state or
205 federal agency for the purpose of carrying out the provisions of
206 this article.

207 **SECTION 6.** Section 69-21-113, Mississippi Code of 1972, is
208 amended as follows:

209 69-21-113. (1) It shall be unlawful and a misdemeanor for
210 any person to act, operate or do business as an applicator or



211 pilot, or to engage in agricultural aircraft operations, unless
212 such person has an applicator's or pilot's license issued by the
213 board. Such license shall be issued only upon application
214 therefor to the board on a form * * * prescribed by the board.
215 The application shall contain information regarding the
216 applicant's qualifications and proposed operations, and such other
217 information as may be specified by the board.

218 (2) Applicator's and pilot's licenses are not transferable.
219 Licenses shall be effective for a period of one (1) year. Any
220 licensee wishing to have a license renewed must submit an
221 application for renewal with the board no later than ninety (90)
222 days before the expiration of the license. If the applicant
223 submits a timely and complete application for renewal, and the
224 board, through no fault of the applicant, fails to reissue the
225 license on or before the expiration date of the existing license,
226 the existing license shall remain in effect until final action on
227 the renewal application is taken by the board. Licenses are
228 subject to modification, revocation or reissuance for cause at any
229 time during the effective dates of the license.

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

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

237 **SECTION 7.** Section 69-21-117, Mississippi Code of 1972, is
238 amended as follows:

239 69-21-117. Any person who is a nonresident of this state and
240 who intends to perform agricultural aircraft operations in the
241 state or as a function of flights originating from a departure
242 point within the state shall obtain an applicator's or pilot's
243 license under this article. Nonresident licensees shall designate



244 and maintain a resident agent in this state for service of
245 process, and shall establish and maintain proof of financial
246 responsibility and provide proof of payment of all state taxes as
247 provided in this article and as applied to a resident aerial
248 applicator. Nothing in this article shall be construed to prevent
249 the board from issuing reciprocal licenses from other states that
250 recognize and accept registered aerial applicators of the State of
251 Mississippi.

252 **SECTION 8.** Section 69-21-119, Mississippi Code of 1972, is
253 amended as follows:

254 69-21-119. (1) A fee of not more than Five Hundred Dollars
255 (\$500.00) for each aircraft owned, operated, used and employed in
256 aerial application by an applicator shall be paid to the board for
257 the issuance or required annual renewal of a license for an
258 applicator. Each aircraft shall be identified at all times by a
259 device supplied to the registered applicator by the board.

260 (2) A fee of not more than Two Hundred Fifty Dollars
261 (\$250.00) for each pilot engaged in aerial application shall be
262 paid to the board for the issuance or required annual renewal of a
263 license for a pilot. Each pilot shall have in his possession at
264 all times an identification card supplied by the board.

265 (3) All funds collected under the provisions of this article
266 shall be kept in the Treasury of the State of Mississippi and
267 disbursed upon requisitions signed by the chairman of the board.
268 Such funds shall be subject to audit by the Auditor of the State
269 of Mississippi. The * * * board * * * shall furnish a copy of its
270 financial statement and a copy of any proposed license fee
271 adjustments to the State Auditor no later than sixty (60) days
272 after the end of each fiscal year. Such financial statement shall
273 reflect all funds collected and all disbursements made under the
274 provisions of this article.

275 **SECTION 9.** Section 69-21-121, Mississippi Code of 1972, is
276 amended as follows:



277 69-21-121. (1) Any person found by the board to have
278 violated any of the provisions of this article, any rule,
279 regulation or written order of the board or any condition or
280 limitation of a license issued by the board shall be subject to
281 disciplinary action. Disciplinary matters shall be conducted as
282 enforcement proceedings under Section 69-21-129. The board may
283 discipline a violator in the following manner:

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

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

288 (c) By revoking, cancelling or suspending his
289 license; * * *

290 (d) By levying a penalty against him in accordance with
291 Section 69-21-135; and

292 (e) By taking any other action in relation to his
293 license as the board may deem proper under the circumstances.

294 (2) The board shall suspend the license of an applicator or
295 pilot for at least one (1) year if either of the following has
296 occurred:

297 (a) The board determines that the licensee has
298 committed one or more violations of this article, any rule,
299 regulation or written order of the board or any condition or
300 limitation of a license issued by the board on three (3) separate
301 occasions during any twelve-month period, and each of those
302 occasions, including singular or multiple violations, has resulted
303 in the issuance of a penalty of One Thousand Dollars (\$1,000.00)
304 or more by the board; or

305 (b) The board determines that the licensee has
306 committed one or more violations of this article, any rule,
307 regulation or written order of the board or any condition or
308 limitation of a license issued by the board that results in the
309 issuance of a penalty of One Thousand Dollars (\$1,000.00) or more



310 by the board while on probation ordered under subsection (1) of
311 this section.

312 * * *

313 **SECTION 10.** Section 69-21-125, Mississippi Code of 1972, is
314 amended as follows:

315 69-21-125. (1) Violation of this article, the rules and
316 regulations adopted by the board, a condition included in a
317 license issued by the board or an order issued by the board shall
318 be a misdemeanor punishable by a fine of not less than One Hundred
319 Dollars (\$100.00) and not more than Five Hundred Dollars
320 (\$500.00), or by imprisonment in the county jail for not more than
321 six (6) months, or by both such fine and imprisonment. A
322 violation of this article, the rules and regulations adopted by
323 the board, a condition included in a license issued by the board
324 or an order issued by the board may be cause for the imposition of
325 administrative or civil penalties as allowed by Sections 69-21-129
326 and 69-21-135. Each * * * violation shall constitute a separate
327 offense. All sums of money collected as a result of fines levied
328 under this section shall be forwarded to the State Treasurer and
329 shall be expended by the board to defray operating expenses of the
330 board and for no other purpose; provided, however, all such funds
331 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 * * * upon its
339 request to carry out the penalty section of this article.

340 **SECTION 11.** Section 69-21-127, Mississippi Code of 1972, is
341 amended as follows:



342 69-21-127. Sections 69-21-101 through 69-21-125, Mississippi
343 Code of 1972, which create the State Board of Agricultural
344 Aviation and prescribe its duties and powers, shall stand repealed
345 as of June 30, 2004.

346 **SECTION 12.** The following section shall be codified as
347 Section 69-21-129, Mississippi Code of 1972:

348 69-21-129. (1) Whenever the board, an employee of the board
349 or the Bureau of Plant Industry has reason to believe that a
350 violation of this article, the rules and regulations adopted by
351 the board, a condition included in a license issued by the board
352 or an order issued by the board has occurred, the board may cause
353 a written notice of violation to be served upon the alleged
354 violator or violators. The notice of violation shall specify the
355 statute, regulation, license or order alleged to be violated and
356 the facts alleged to constitute a violation thereof and shall
357 require that the alleged violator appear before the board at a
358 time and place specified in the notice and answer the charges
359 complained of. The time of appearance before the board shall not
360 be less than fifteen (15) days from the date of the receipt by the
361 alleged violator of the notice of violation, as proven by
362 testimony, affidavit of the person delivering the notice of
363 violation to the alleged violator, entry into evidence of a United
364 States Postal Service return receipt or similar evidence of
365 receipt.

366 (2) The board shall afford an opportunity for a hearing to
367 the alleged violator at the time and place specified in the notice
368 of violation. A certified court reporter shall be present at the
369 hearing who shall make a transcription of the proceedings. At the
370 hearing, both the alleged violator and the staff, or their legal
371 representatives, shall be allowed to present legal arguments,
372 factual evidence and witnesses relevant to the allegations and
373 shall be allowed to cross-examine witnesses for the opposing
374 party. Board hearings may be conducted by the board itself, or



375 the board may appoint a hearing officer who shall be authorized to
376 conduct the hearing and to have the record of the hearing prepared
377 and delivered to the board along with that hearing officer's
378 recommended findings of fact and conclusions of law. On the basis
379 of the evidence produced at the hearing, the board shall make
380 findings of fact and conclusions of law and enter an order that in
381 its opinion will best further the purposes of this article. The
382 board's order may include an assessment of penalties, the
383 imposition of injunctive relief, or both. If the board has
384 utilized a hearing officer in the matter, the board may, upon
385 review of the hearing record, issue an order accepting the hearing
386 officer's recommended findings of fact and conclusions of law or
387 may include in its order the board's own findings of fact and
388 conclusions of law. The board shall give written notice of the
389 order to the alleged violator and to other persons who make
390 written request for notice of the order, and the board may assess
391 such penalties as provided in this article.

392 (3) For purposes of such hearing, the board or its hearing
393 officer may require the attendance of witnesses, administer oaths
394 and hear testimony, either oral or documentary, for and against
395 the accused. The board may issue subpoenas to compel the
396 attendance of witnesses and the production of books, papers,
397 records or other documentary evidence at a hearing. Subpoenas may
398 be served by any method allowed by the Mississippi Rules of Civil
399 Procedure or may be served by certified mail, return receipt
400 requested. In case of the failure of any person to comply with
401 any subpoena issued by the board, the board or its authorized
402 representative may invoke the aid of any court of general
403 jurisdiction of this state. The court may thereupon order such
404 person to comply with the requirements of the subpoena. Failure
405 to comply with the order of the court may be treated as contempt
406 thereof.



407 (4) The board may adopt rules of practice and procedure
408 governing its proceedings and hearings.

409 (5) The board may settle an enforcement matter before a
410 hearing. The settlement of any enforcement matter shall be
411 memorialized in an order approved by the board and subject to
412 review under Section 69-21-133.

413 (6) In assessing penalties under this article, the board may
414 consider at least the following:

415 (a) The willfulness of the violation;

416 (b) Any damage to air, water, land or other natural
417 resources of the state or to their uses;

418 (c) Costs of restoration and abatement borne by
419 governmental bodies;

420 (d) Economic benefit as a result of noncompliance;

421 (e) The seriousness of the violation, including any
422 harm to public health, safety and welfare, harm to the environment
423 and the importance of the provision violated to the agricultural
424 aviation regulatory system; and

425 (f) Past performance history.

426 (7) Any interested person has the right to request the board
427 to call a hearing for the purpose of taking action in respect to
428 any matter within the jurisdiction of the board by making a
429 request therefor in writing. Upon receipt of any such request,
430 the board shall conduct such investigations as it deems necessary.
431 On the basis of its investigations, the board shall schedule the
432 matter for hearing or shall determine in writing that no hearing
433 is warranted. Any hearing held under this subsection shall
434 conform to the requirements of this section regarding hearing
435 notice and procedure.

436 **SECTION 13.** The following section shall be codified as
437 Section 69-21-131, Mississippi Code of 1972:

438 69-21-131. The board shall have jurisdiction over all
439 persons and property within the state necessary to administer and



440 enforce the provisions of this article and the rules and
441 regulations of the board. The board may adopt rules and
442 regulations to implement the provisions of this article.

443 **SECTION 14.** The following section shall be codified as
444 Section 69-21-133, Mississippi Code of 1972:

445 69-21-133. (1) Any individual aggrieved by a final decision
446 of the board shall be entitled to judicial review. Any final
447 decision of the board made in a contested licensing or enforcement
448 matter and the final promulgation of regulations by the board
449 shall be memorialized in an order issued by the board.

450 (2) Any appeal from a final decision of the board shall be
451 filed in the chancery court of the county in which the violation
452 occurred on the record made before the board, including a verbatim
453 transcript of the testimony at the hearing held before the board.
454 The appeal shall be filed within thirty (30) days after execution
455 of the order by the board. The appeal shall be perfected upon
456 filing notice of the appeal with the board and by the prepayment
457 to the board of all costs, including the cost of preparation of
458 the record of the proceedings before the board and the filing of a
459 bond in an amount set by the board, conditioned that if the action
460 of the board is affirmed, the aggrieved party shall pay the costs
461 of the appeal to the court of appeals.

462 (3) The scope of review of the court of appeals shall be
463 limited to a review of the record made before the board to
464 determine if the action of the board is unlawful for the reason
465 that it was:

- 466 (a) Not supported by any substantial evidence;
467 (b) Arbitrary or capricious; or
468 (c) In violation of some statutory or constitutional
469 right of the individual.

470 (4) No relief shall be granted based upon the court's
471 finding of harmless error by the board in complying with the
472 procedural requirements of this article. If there is a finding of



473 prejudicial error in the proceedings, the cause may be remanded
474 for a rehearing consistent with the findings of the court.

475 (5) Any party aggrieved by action of the chancery court may
476 appeal to the State Supreme Court in the manner provided by law.

477 **SECTION 15.** The following section shall be codified as
478 Section 69-21-135, Mississippi Code of 1972:

479 69-21-135. Each violation of the rules and regulations of
480 the board, violations of this article and violations of licenses
481 and orders issued by the board shall be subject to the imposition
482 of a civil penalty of up to Five Thousand Five Hundred Dollars
483 (\$5,500.00) per violation per day.

484 **SECTION 16.** The following section shall be codified as
485 Section 69-21-137, Mississippi Code of 1972:

486 69-21-137. (1) Any penalty assessed by the board shall be
487 due and payable within thirty (30) days of the receipt of the
488 board's order in the matter by the person owing the penalty unless
489 the board agrees to allow a longer period for payment. All sums
490 of money collected as a result of fines levied under this section
491 shall be disbursed as provided in Section 69-21-125(1).

492 (2) If the judgment is not paid within thirty (30) days, or
493 within such additional time as the board may allow, the board
494 through its designated representative may file suit in the circuit
495 court of the county where the defendant resides or in the case of
496 a nonresident defendant in the Circuit Court of the First Judicial
497 District of Hinds County or any other court with appropriate
498 jurisdiction to enforce the decision of the board and recover
499 reasonable attorney's fees and all court costs.

500 (3) A copy of the notification sent by the board to the
501 violator shall be sufficient proof as to the judgment of the
502 board, and a copy of the United States Postal Service return
503 receipt, or a similar indicia of delivery or service, shall be
504 sufficient to prove receipt of the board's order by the person
505 owing the penalties.



506 **SECTION 17.** The following section shall be codified in
507 Section 69-21-139, Mississippi Code of 1972:

508 69-21-139. (1) The board shall conduct all meetings,
509 including meetings regarding enforcement matters, under the
510 Mississippi Open Meetings Act, Section 25-41-1 et seq.

511 (2) The board shall keep minutes of its meetings, including
512 all orders, rules and regulations promulgated, in a record book,
513 or books, especially prepared for that purpose. All minutes of
514 board meetings and hearings and all rules, regulations and orders
515 made by the board shall be in writing and shall be filed in full
516 by the board in a book for such purposes, to be kept by the board,
517 which shall be a public record and open to inspection by the
518 public at all times during reasonable hours. The board shall
519 compile and publish annually the rules and regulations promulgated
520 by the board in current consolidated version. The board shall
521 provide the consolidated compilation of the rules and regulations
522 to the public for a cost sufficient to cover printing and postage
523 and administrative expenses, including the cost of any contractual
524 services necessary to compile and publish such rules and
525 regulations on an annual basis. A copy of any rule, minutes,
526 regulation or order certified by the board shall be received in
527 evidence in all courts of this state with the same effect as the
528 original. The board shall compile and index on a current date
529 basis all orders of the board in a book for such purposes that
530 shall be available for inspection and copying by the public. All
531 responsibilities of the board under this section may be delegated
532 by the board to its staff.

533 (3) The board shall maintain its records and make its
534 records available to the public upon request in accordance with
535 the Mississippi Public Records Act, Section 25-61-1 et seq.

536 (4) The board shall be subject to the provisions of the
537 Mississippi Administrative Procedures Law, Section 25-43-1 et seq.



538 **SECTION 18.** The following section shall be codified as
539 Section 69-21-141, Mississippi Code of 1972:

540 69-21-141. The Attorney General shall be counsel and
541 attorney for the board and shall provide such legal services as
542 may be requested from time to time, including, but not limited to,
543 the provision of hearing officers and legal representation.

544 **SECTION 19.** Sections 69-21-151, 69-21-153, 69-21-155,
545 69-21-157, 69-21-159, 69-21-161, 69-21-163 and 69-21-165,
546 Mississippi Code of 1972, which provide for administrative hearing
547 procedures to enforce rules and regulations of the Board of
548 Agricultural Aviation, are repealed.

549 **SECTION 20.** This act shall take effect and be in force from
550 and after its passage.

