

By: Representative Watson

To: Forestry

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 294

1 AN ACT TO REENACT SECTION 75-79-7, MISSISSIPPI CODE OF 1972,
2 WHICH PROVIDES FOR THE GENERAL POWERS AND DUTIES OF THE
3 COMMISSIONER OF AGRICULTURE AND COMMERCE; TO REENACT SECTION
4 75-79-13, MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR A FEE FOR
5 EACH PULPWOOD RECEIVING FACILITY OPERATED WITHIN THE STATE; TO
6 REENACT SECTION 75-79-21, MISSISSIPPI CODE OF 1972, WHICH PROVIDES
7 THE GROUNDS FOR DENIAL, SUSPENSION, CANCELLATION OR REVOCATION OF
8 A LICENSE TO OPERATE A PULPWOOD RECEIVING FACILITY; TO REPEAL
9 SECTION 75-79-22, MISSISSIPPI CODE OF 1972, TO REPEAL THE REPEALER
10 ON THE PREVIOUS SECTIONS; AND FOR RELATED PURPOSES.

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

12 **SECTION 1.** Section 75-79-7, Mississippi Code of 1972, is
13 reenacted as follows:

14 75-79-7. It shall be the function and duty of the
15 commissioner to:

16 (a) Issue licenses to operators of pulpwood receiving
17 facilities determined to qualify under the provisions of this
18 chapter, and revoke or suspend licenses previously issued by the
19 commissioner in any case where the licensee is determined to have
20 violated any of the provisions of this chapter.

21 (b) Establish standard procedures and promulgate
22 regulations for the measurement of pulpwood offered for sale, both
23 by weight and by volume, in a manner consistent with the
24 Mississippi Weights and Measures Law of 1964, as amended (Section
25 75-27-1 et seq.). Such standard provisions and regulations shall
26 require that all pulpwood receiving facilities shall give every
27 cutter-hauler a ticket which shall state at the minimum (i) the
28 name of the cutter-hauler; (ii) the name of the landowner from
29 which the wood was severed or the name of the owner of the timber;
30 (iii) the county or county code in which the timber was severed;
31 and (iv) the number of cords or, in the event of weighing, the

32 gross weight on the truck of the cutter-hauler. In the event that
33 neither the cutter-hauler nor the landowner nor the owner of the
34 timber is the person to be paid for such pulpwood, the ticket
35 shall also contain the name of the payee. The ticket shall be
36 prepared upon delivery and acceptance of a load of pulpwood and
37 shall be made available for inspection by the cutter-hauler if the
38 cutter-hauler so desires. All cutter-haulers have the right to
39 inspect the ticket before unloading of the pulpwood. However,
40 where such wood is measured on scales, the ticket shall be issued
41 at the time of the weighing and shall state the gross weight of
42 the wood and truck and the tare weight of the truck after
43 unloading to determine the net weight of the wood; the number of
44 cords is not required on tickets so weighed. The pulpwood
45 facility shall keep a copy of such ticket on file for subsequent
46 inspection by the State Tax Commission and the Department of
47 Agriculture and Commerce for a period not less than three (3)
48 years. The facility operator shall maintain on the facility
49 premises, at a minimum, the following information on the
50 cutter-hauler and the payee for the pulpwood if the payee is
51 someone other than the cutter-hauler: (i) name; (ii) social
52 security number or employer identification number, or both; (iii)
53 address; and (iv) the corresponding identification code used on
54 the scale ticket. The facility operator is required to obtain, in
55 good faith, such information from the cutter-hauler who is liable
56 for the accuracy of this information.

57 (c) Conduct periodic inspections no less than once
58 every six (6) months, and establish and carry out other procedures
59 designed to insure that licensees will comply with the provisions
60 of this chapter.

61 (d) Receive, investigate and take appropriate action
62 with respect to any charge or complaint filed with the
63 commissioner to the effect that any pulpwood receiving facility
64 operator has violated any provision of this chapter.

65 (e) Randomly weigh, at his discretion, any agricultural
66 product being delivered throughout the state to determine the
67 accuracy of the bill of lading. If the weight exceeds or falls
68 below the amount of weight reported on the bill of lading by five
69 percent (5%) or more, then the commissioner shall report the
70 discrepancy, in writing, to the Director of the Agriculture and
71 Livestock Theft Bureau. Such agricultural products shall be
72 weighed on certified scales approved by the Weights and Measures
73 Division of the Department of Agriculture and Commerce.

74 **SECTION 2.** Section 75-79-13, Mississippi Code of 1972, is
75 reenacted as follows:

76 75-79-13. The license fee for each calendar year or part
77 thereof shall be Thirty Dollars (\$30.00) for each pulpwood
78 receiving facility operated within the state. A renewal of the
79 license may be accomplished by submitting the payment of the
80 annual fee and a certification, on a form provided by the
81 commissioner, that none of the information on the original license
82 application has changed.

83 **SECTION 3.** Section 75-79-21, Mississippi Code of 1972, is
84 reenacted as follows:

85 75-79-21. (1) The commissioner may deny an application for
86 a license, or revoke or suspend a license after it has been
87 granted, for any of the following reasons:

88 (a) Any material misstatement in the application for a
89 license.

90 (b) Defrauding any pulpwood cutter-hauler in the
91 measurement of pulpwood to the cutter-hauler's damage.

92 (c) Failure to maintain accurate weighing and measuring
93 devices used in the measurement of pulpwood.

94 (d) Requiring a pulpwood cutter-hauler to deliver or
95 transfer any quantity of pulpwood to the facility operator's
96 control as a condition of the purchase or receipt thereof before
97 the facility operator has notified the cutter-hauler of the total

98 number of cords or the volume for which payment will be made.
99 This does not include out-of-specification wood culled when
100 discovered during unloading.

101 (e) Willful failure to apply standards established by
102 law or by the commissioner in the measurement of pulpwood.

103 (f) Discriminating against a pulpwood cutter-hauler
104 because the cutter-hauler has filed a complaint, given testimony
105 or otherwise sought relief under this chapter.

106 (g) Any violation of the rules and regulations of the
107 Mississippi Department of Agriculture and Commerce or violation of
108 any other of the laws governing pulpwood scaling and practices.

109 (2) If a pulpwood receiving facility operator is convicted
110 of any crime involving fraud under the provisions of this chapter,
111 the commissioner, may, in his discretion, suspend, cancel or
112 revoke the license of such operator.

113 (3) All proceedings for the suspension, cancellation or
114 revocation of licenses shall be before the commissioner, and the
115 proceedings shall be in accordance with rules and regulations
116 which shall be adopted by the commissioner. No license shall be
117 cancelled or revoked, except after a hearing before the
118 commissioner, upon reasonable notice to the licensee and an
119 opportunity to appear and defend. Whenever the commissioner
120 suspends, cancels or revokes a license, he shall prepare an order
121 so providing which shall state the reason or reasons for such
122 suspension, cancellation or revocation. The order shall be sent
123 by certified mail by the commissioner to the licensee at the
124 address of the pulpwood receiving facility licensed. Within
125 thirty (30) days after the mailing of the order, the licensee, if
126 dissatisfied with the order of the commissioner, may appeal to the
127 chancery court of the county in which the pulpwood receiving
128 facility is located by filing a written notice of appeal alleging
129 the pertinent facts upon which such appeal is grounded. At the
130 time of the filing of the appeal, the appellant shall give a bond

131 for costs conditioned upon his prosecution of the appeal without
132 delay and payment of all costs assessed against him. Appeal may
133 be with supersedeas and shall be subject to the provisions of
134 Section 11-51-31.

135 (4) In case a license issued to a pulpwood receiving
136 facility operator expires or is suspended, cancelled or revoked by
137 the commissioner or his designated representative, such license
138 shall be immediately returned to the commissioner.

139 **SECTION 4.** Section 75-79-22, Mississippi Code of 1972, which
140 provides for a repealer on the sections of law allowing the
141 Commissioner of Agriculture to license and regulate the pulpwood
142 industry, is repealed.

143 **SECTION 5.** This act shall take effect and be in force from
144 and after July 1, 2004.