

By: Representative Watson

To: Agriculture

HOUSE BILL NO. 409
(As Sent to Governor)

1 AN ACT TO REENACT SECTIONS 69-21-101 THROUGH 69-21-125,
2 MISSISSIPPI CODE OF 1972, WHICH PROVIDE THE AGRICULTURAL AVIATION
3 LICENSING LAW OF 2002; TO AMEND SECTION 69-21-127, MISSISSIPPI
4 CODE OF 1972, TO EXTEND THE DATE OF REPEAL ON THOSE REENACTED
5 SECTIONS; 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 2002."

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. It is the intent of the Legislature that the program
22 established under this article provide a program of commercial
23 aerial application control within the State of Mississippi
24 sufficient to allow the state to retain delegation from the United
25 States Environmental Protection Agency of the commercial aerial
26 application regulation program created under the Federal
27 Insecticide, Fungicide and Rodenticide Act, 7 USCS 136-136y. This
28 article also establishes an administrative hearing procedure for

29 the board's use in enforcing the rules and regulations of the
30 board.

31 **SECTION 3.** Section 69-21-105, Mississippi Code of 1972, is
32 reenacted as follows:

33 69-21-105. As used in this article, the following terms
34 shall have the meanings hereinafter ascribed to them:

35 (a) "Board" shall mean the State Board of Agricultural
36 Aviation.

37 (b) "Person" shall mean any individual, corporation,
38 firm, partnership, company, trust, association or other legal
39 entity.

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

42 (d) "Agricultural aircraft operation" means:

43 (i) Dispensing any pesticide, seed or fertilizer
44 by aircraft;

45 (ii) Dispensing any other substance intended for
46 plant nourishment, soil treatment, propagation of plant life, or
47 pest control by aircraft; or

48 (iii) Engaging in dispensing activities directly
49 affecting agriculture, horticulture, or forest preservation by
50 aircraft.

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

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

58 (g) "Pesticide" means any substance or mixture of
59 substances, except as set forth in Section 69-21-111, intended for
60 defoliating or desiccating plants, or for preventing, destroying,
61 repelling or mitigating any insects, fungi, bacteria, weeds, or

62 other forms of plant or animal life which the board shall declare
63 to be a pest.

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

68 (i) "Insect" means any of the numerous small
69 invertebrate animals generally having the body more or less
70 obviously segmented, for the most part belonging to the Class
71 Insecta, comprising six-legged, usually winged forms, as for
72 example, beetles, bugs and flies; and to other classes of
73 arthropods whose members are wingless and usually have more than
74 six (6) legs, as for example, spiders, mites, ticks, centipedes
75 and wood lice.

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

79 (k) "Desiccant" means any substances or mixtures of
80 substances intended for artificially accelerating the drying of
81 plant tissues.

82 **SECTION 4.** Section 69-21-107, Mississippi Code of 1972, is
83 reenacted as follows:

84 69-21-107. There is hereby created a State Board of
85 Agricultural Aviation composed of five (5) members as follows:
86 two (2) licensed applicators to be appointed by the Governor with
87 the advice and consent of the Senate from a list of four (4)
88 applicators submitted to the Governor by the Mississippi
89 Agricultural Aviation Association, the Executive Director of the
90 Department of Environmental Quality, or his designee, a registered
91 forester and a licensed engineer with agricultural emphasis to be
92 appointed by the Governor with the advice and consent of the
93 Senate. The term of office of one (1) board member shall be one
94 (1) year; the term of office of the second board member shall be

95 two (2) years; the term of office of the third board member shall
96 be three (3) years; the term of office of the fourth board member
97 shall be four (4) years as specified by the Governor in his
98 initial appointments to the board. After the initial appointment,
99 succeeding board members shall serve a staggered four-year term of
100 office. The Executive Director of the Department of Environmental
101 Quality, or his designee, shall continue to serve each term by
102 virtue of his office. Each board member shall serve until his
103 successor is appointed.

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

106 A quorum necessary to conduct business shall be a majority of
107 the five (5) board members. Any member who shall not attend three
108 (3) consecutive meetings of the board shall be subject to removal
109 by the Governor. The chairman of the board shall notify the
110 Governor in writing when any such member has failed to attend
111 three (3) consecutive regular meetings.

112 Each member of the Agricultural Aviation Board shall receive
113 a per diem as is authorized by law and actual expenses as provided
114 by law incidental to attending meetings of the board, and other
115 authorized business as provided by board authorization as spread
116 on the board minutes.

117 **SECTION 5.** Section 69-21-109, Mississippi Code of 1972, is
118 reenacted as follows:

119 69-21-109. (1) The board may adopt such rules and
120 regulations as may be necessary to regulate the application of
121 chemicals and pesticides according to the time of year, manner,
122 form and area of application, wind velocity and other pertinent
123 factors and may restrict the use of certain chemicals and
124 pesticides which create an unusual hazard to the health, safety
125 and welfare of the public. The board shall set professional
126 standards for applicators and pilots in the interest of the
127 safety, welfare and general well-being of the public of

128 Mississippi and for the protection of the state's fish and
129 wildlife, air, water and soil.

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

134 (3) The board shall have authority to maintain an office and
135 employ necessary personnel within its budget to carry out the
136 purposes of this article.

137 (4) It shall be the duty of the board, and the board shall
138 have the authority, to enforce this article and all rules and
139 regulations made and adopted in compliance with this article. The
140 board shall not have jurisdiction to determine liability between
141 private parties.

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

150 (6) The board shall maintain a close liaison and spirit of
151 cooperation with the Mississippi Department of Agriculture and
152 Commerce, in the supervision of aeriually applied chemicals which
153 are under their jurisdiction as provided by Sections 69-21-7
154 through 69-21-15. The board and the Mississippi Department of
155 Agriculture and Commerce shall enter a memorandum of agreement
156 stating their plans to cooperate toward these purposes. In
157 adopting regulations regarding agricultural aircraft operation, in
158 providing training and requiring testing and certification of
159 applicators and in enforcing this article, the board shall strive
160 to regulate and train applicators in a manner that is not

161 inconsistent with the training and regulation of ground-based
162 pesticide applicators provided by the Department of Agriculture
163 and Commerce.

164 (7) The board may cooperate with or enter into formal
165 cooperative agreements with any public or private agency or
166 educational institution of this state or any other state or
167 federal agency for the purpose of carrying out the provisions of
168 this article.

169 **SECTION 6.** Section 69-21-113, Mississippi Code of 1972, is
170 reenacted as follows:

171 69-21-113. (1) It shall be unlawful and a misdemeanor for
172 any person to act, operate or do business as an applicator or
173 pilot, or to engage in agricultural aircraft operations, unless
174 such person has an applicator's or pilot's license issued by the
175 board. Such license shall be issued only upon application
176 therefor to the board on a form prescribed by the board. The
177 application shall contain information regarding the applicant's
178 qualifications and proposed operations, and such other information
179 as may be specified by the board.

180 (2) Applicator's and pilot's licenses are not transferable.
181 Licenses shall be effective for a period of one (1) year. Any
182 licensee wishing to have a license renewed must submit an
183 application for renewal with the board no later than ninety (90)
184 days before the expiration of the license. If the applicant
185 submits a timely and complete application for renewal, and the
186 board, through no fault of the applicant, fails to reissue the
187 license on or before the expiration date of the existing license,
188 the existing license shall remain in effect until final action on
189 the renewal application is taken by the board. Licenses are
190 subject to modification, revocation or reissuance for cause at any
191 time during the effective dates of the license.

192 (3) Any person seeking to obtain a license as an applicator
193 in this state shall submit proof of payment of all ad valorem and

194 other taxes which might be applicable on aircraft and other
195 equipment.

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

199 **SECTION 7.** Section 69-21-117, Mississippi Code of 1972, is
200 reenacted as follows:

201 69-21-117. Any person who is a nonresident of this state and
202 who intends to perform agricultural aircraft operations in the
203 state or as a function of flights originating from a departure
204 point within the state shall obtain an applicator's or pilot's
205 license under this article. Nonresident licensees shall designate
206 and maintain a resident agent in this state for service of
207 process, and shall establish and maintain proof of financial
208 responsibility and provide proof of payment of all state taxes as
209 provided in this article and as applied to a resident aerial
210 applicator. Nothing in this article shall be construed to prevent
211 the board from issuing reciprocal licenses from other states that
212 recognize and accept registered aerial applicators of the State of
213 Mississippi.

214 **SECTION 8.** Section 69-21-119, Mississippi Code of 1972, is
215 reenacted as follows:

216 69-21-119. (1) A fee of not more than Five Hundred Dollars
217 (\$500.00) for each aircraft owned, operated, used and employed in
218 aerial application by an applicator shall be paid to the board for
219 the issuance or required annual renewal of a license for an
220 applicator. Each aircraft shall be identified at all times by a
221 device supplied to the registered applicator by the board.

222 (2) A fee of not more than Two Hundred Fifty Dollars
223 (\$250.00) for each pilot engaged in aerial application shall be
224 paid to the board for the issuance or required annual renewal of a
225 license for a pilot. Each pilot shall have in his possession at
226 all times an identification card supplied by the board.

227 (3) All funds collected under the provisions of this article
228 shall be kept in the Treasury of the State of Mississippi and
229 disbursed upon requisitions signed by the chairman of the board.
230 Such funds shall be subject to audit by the Auditor of the State
231 of Mississippi. The board shall furnish a copy of its financial
232 statement and a copy of any proposed license fee adjustments to
233 the State Auditor no later than sixty (60) days after the end of
234 each fiscal year. Such financial statement shall reflect all
235 funds collected and all disbursements made under the provisions of
236 this article.

237 **SECTION 9.** Section 69-21-121, Mississippi Code of 1972, is
238 reenacted as follows:

239 69-21-121. (1) Any person found by the board to have
240 violated any of the provisions of this article, any rule,
241 regulation or written order of the board or any condition or
242 limitation of a license issued by the board shall be subject to
243 disciplinary action. Disciplinary matters shall be conducted as
244 enforcement proceedings under Section 69-21-129. The board may
245 discipline a violator in the following manner:

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

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

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

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

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

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

258 (a) The board determines that the licensee has
259 committed one or more violations of this article, any rule,

260 regulation or written order of the board or any condition or
261 limitation of a license issued by the board on three (3) separate
262 occasions during any twelve-month period, and each of those
263 occasions, including singular or multiple violations, has resulted
264 in the issuance of a penalty of One Thousand Dollars (\$1,000.00)
265 or more by the board; or

266 (b) The board determines that the licensee has
267 committed one or more violations of this article, any rule,
268 regulation or written order of the board or any condition or
269 limitation of a license issued by the board that results in the
270 issuance of a penalty of One Thousand Dollars (\$1,000.00) or more
271 by the board while on probation ordered under subsection (1) of
272 this section.

273 **SECTION 10.** Section 69-21-125, Mississippi Code of 1972, is
274 reenacted as follows:

275 69-21-125. (1) Violation of this article, the rules and
276 regulations adopted by the board, a condition included in a
277 license issued by the board or an order issued by the board shall
278 be a misdemeanor punishable by a fine of not less than One Hundred
279 Dollars (\$100.00) and not more than Five Hundred Dollars
280 (\$500.00), or by imprisonment in the county jail for not more than
281 six (6) months, or by both such fine and imprisonment. A
282 violation of this article, the rules and regulations adopted by
283 the board, a condition included in a license issued by the board
284 or an order issued by the board may be cause for the imposition of
285 administrative or civil penalties as allowed by Sections 69-21-129
286 and 69-21-135. Each violation shall constitute a separate
287 offense.

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

293 (3) The Attorney General, district attorneys, and county
294 attorneys of the state shall assist the board upon its request to
295 carry out the penalty section of this article.

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

298 69-21-127. Sections 69-21-101 through 69-21-125, Mississippi
299 Code of 1972, which create the State Board of Agricultural
300 Aviation and prescribe its duties and powers, shall stand repealed
301 as of June 30, 2006.

302 **SECTION 12.** This act shall take effect and be in force from
303 and after its passage.