

By: Representative Eaton

To: Agriculture

HOUSE BILL NO. 1105

1 AN ACT TO AMEND SECTIONS 69-25-51 THROUGH 69-25-63,
 2 MISSISSIPPI CODE OF 1972, TO REVISE THE ADMINISTRATIVE HEARING
 3 PROCEDURE FOR THE BUREAU OF PLANT INDUSTRY; TO PROVIDE AN
 4 EMERGENCY PROCEDURE WHEN A HERBICIDE OR INSECTICIDE VIOLATION
 5 PRESENTS A CLEAR AND PRESENT DANGER TO THE HEALTH, SAFETY OR
 6 WELFARE OF THE PUBLIC; TO AUTHORIZE THE DEPARTMENT OF AGRICULTURE
 7 AND COMMERCE TO ISSUE EMERGENCY ORDERS BEFORE A HEARING WHEN SUCH
 8 VIOLATIONS OCCUR; TO AMEND SECTION 69-19-15, MISSISSIPPI CODE OF
 9 1972, TO CONFORM REGULATION OF PROFESSIONAL SERVICES TO THE
 10 REVISED ADMINISTRATIVE HEARING PROCEDURE; TO AMEND SECTIONS
 11 69-21-7, 69-21-9 AND 69-21-13, MISSISSIPPI CODE OF 1972, TO
 12 CONFORM THE REGULATION OF AERIAL APPLICATION OF HORMONE-TYPE
 13 HERBICIDES TO THE REVISED ADMINISTRATIVE HEARING PROCEDURE; TO
 14 AMEND SECTION 69-21-5, MISSISSIPPI CODE OF 1972, TO ADD A
 15 DEFINITION; TO AMEND SECTION 69-21-25, MISSISSIPPI CODE OF 1972,
 16 TO CLARIFY THE INSPECTION POWERS OF THE DEPARTMENT OF AGRICULTURE;
 17 TO AMEND SECTIONS 69-23-7, 69-23-9, 69-23-11, 69-23-21, 69-23-27,
 18 AND 69-23-29, MISSISSIPPI CODE OF 1972, TO CONFORM PESTICIDE
 19 REGISTRATION LAWS TO THE REVISED ADMINISTRATIVE HEARING PROCEDURE;
 20 TO AMEND SECTION 69-23-23, MISSISSIPPI CODE OF 1972, TO REVISE
 21 NONRESIDENT BOND REQUIREMENTS; TO AMEND SECTIONS 69-23-101 THROUGH
 22 69-23-127, 69-23-133 AND 69-23-135, MISSISSIPPI CODE OF 1972, TO
 23 CORRECT CODE REFERENCES TO THE PESTICIDE APPLICATION LAW OF 1975;
 24 TO FURTHER AMEND SECTIONS 69-23-117 AND 69-23-135, MISSISSIPPI
 25 CODE OF 1972, TO CONFORM TO REVISED ADMINISTRATIVE HEARING
 26 PROCEDURE; TO FURTHER AMEND SECTION 69-23-115, MISSISSIPPI CODE OF
 27 1972, TO CONFORM TO THE REVISED ADMINISTRATIVE HEARING PROCEDURE
 28 AND TO CLARIFY UNLAWFUL ACTS UNDER THE PESTICIDE APPLICATION LAWS;
 29 TO REPEAL SECTION 69-25-55, MISSISSIPPI CODE OF 1972, WHICH
 30 PROVIDES THAT THE FAILURE TO REQUEST A TIMELY HEARING CONSTITUTES
 31 A WAIVER OR THE RIGHT TO A HEARING; TO REPEAL SECTION 69-25-65,
 32 MISSISSIPPI CODE OF 1972, WHICH PROVIDES THAT THE ADMINISTRATIVE
 33 HEARING PROCEDURE SHALL NOT APPLY TO AERIAL APPLICATORS OF
 34 PESTICIDES; AND FOR RELATED PURPOSES.

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

36 **SECTION 1.** Section 69-25-51, Mississippi Code of 1972, is
 37 amended as follows:

38 69-25-51. (1) When any administrative allegation or charge
 39 is made against a person for violating the rules and regulations
 40 of the Bureau of Plant Industry * * * of the Mississippi
 41 Department of Agriculture and Commerce or the laws under Sections
 42 69-19-1 through 69-19-15, Sections 69-21-1 through 69-21-27, or
 43 Sections 69-23-1 through 69-23-135, Mississippi Code of 1972, the

44 Director of the Bureau of Plant Industry, or his designee, shall
45 act as the reviewing officer. The * * * complaint must be in
46 writing, signed by the person making the charge, and filed in the
47 office of the Bureau of Plant Industry. The department shall send
48 a copy of the complaint and any supporting documents to the person
49 accused along with a summons requiring the accused to respond to
50 the allegations within thirty (30) days. The notification shall
51 be accomplished by any of the methods provided for in Rule 4 of
52 the Mississippi Rules of Civil Procedure or by certified mail. If
53 the accused does not respond within the thirty-day period, he
54 shall be considered to be in default. Upon receipt of the
55 response and any supporting documents from the accused, the
56 reviewing officer shall * * * determine the merits of the
57 complaint * * *. The reviewing officer may meet informally with
58 the accused and discuss the alleged violation with him.

59 (2) If the reviewing officer determines that the complaint
60 lacks merit, he may dismiss the complaint.

61 (3) If the reviewing officer determines that there is
62 substantial evidence that a violation has occurred or if the
63 accused admits to the truth of the allegations upon which the
64 complaint is based, the reviewing officer may impose an
65 appropriate penalty on the accused, which may be any or all of the
66 following:

67 (a) Issue a warning letter.

68 (b) Levy a civil penalty in an amount not to exceed
69 Five Thousand Dollars (\$5,000.00) for each violation.

70 (c) Suspend, modify, deny, cancel or revoke any license
71 or permit granted by the department to the accused.

72 (d) Issue a stop sale order with regard to any
73 pesticide, plant or other material regulated by the department
74 that is mislabeled or otherwise not in compliance with applicable
75 law or regulations.

76 (e) Require the accused to relabel any pesticide, plant
77 or other material regulated by the department that is mislabeled.

78 (f) Seize any pesticide, plant or other material
79 regulated by the department and sell, destroy or otherwise dispose
80 of such material and apply the proceeds of such sale to the
81 state's expenses and any fees or penalties levied hereunder.

82 (g) Refuse to register, or cancel or suspend the
83 registration of a pesticide, plant or other material that is not
84 in compliance with any applicable law or regulation.

85 In determining the amount of the penalty, the reviewing
86 officer shall consider the appropriateness of such penalty for the
87 particular violation, the effect of the penalty on the person's
88 ability to continue in business and the gravity of the violation.

89 (4) If the accused requests a hearing with the department,
90 in writing, within thirty (30) days from receipt of the decision
91 of the reviewing officer, the commissioner or his designee shall
92 serve as a hearing officer and a hearing shall be scheduled. If
93 the accused fails to request a hearing within the thirty-day
94 period, the decision of the reviewing officer is final.

95 * * *

96 **SECTION 2.** Section 69-25-53, Mississippi Code of 1972, is
97 amended as follows:

98 69-25-53. (1) Within a reasonable time after the accused's
99 request for a hearing, the hearing officer shall conduct an
100 evidentiary hearing. For good cause shown, the hearing officer
101 may grant a continuance * * * of the hearing. Written notice of
102 the date, time and place of such hearing shall be delivered to the
103 accused not less than fifteen (15) days prior to the * * *
104 hearing.

105 (2) A * * * court reporter shall be in attendance and shall
106 record the proceedings. * * * The hearing officer shall have the
107 right and duty to impose reasonable restrictions as he may deem
108 necessary or appropriate to insure an orderly, expeditious and

109 impartial proceeding. The parties may offer oral testimony
110 through witnesses and shall have the right of cross-examination.
111 The rules of evidence shall be relaxed.

112 (3) At the hearing, the hearing officer may administer oaths
113 and receive evidence, either oral or documentary * * *. Upon the
114 request of either party, the Department of Agriculture and
115 Commerce may issue subpoenas to compel the attendance of witnesses
116 or the production of books, papers, records or other documentary
117 evidence * * *. If a person fails to comply with a subpoena
118 issued by the department, either party may invoke the aid of any
119 court of general jurisdiction of this state. The court may * * *
120 order such person to comply with the requirements of the subpoena.
121 Failure to comply with the order of the court may be treated as
122 contempt * * *.

123 (4) At the conclusion of the hearing, the hearing officer
124 shall render a written decision incorporating the findings of
125 facts, conclusions of law and * * * penalty, if any. A copy of
126 the decision of the hearing officer shall be delivered to the
127 accused by certified mail.

128 **SECTION 3.** Section 69-25-57, Mississippi Code of 1972, is
129 amended as follows:

130 69-25-57. The Commissioner of Agriculture and Commerce shall
131 have jurisdiction over all persons and property necessary to
132 administer and enforce the provisions of this article and he may
133 adopt rules and regulations to implement the provisions of this
134 article. * * *

135 **SECTION 4.** Section 69-25-59, Mississippi Code of 1972, is
136 amended as follows:

137 69-25-59. (1) Any individual aggrieved by a final decision
138 of the hearing officer shall be entitled to judicial review.

139 (2) An appeal from the * * * decision of the hearing officer
140 shall be made by filing a written notice of appeal with the
141 circuit court clerk of the county where the accused resides, or in

142 the case of a nonresident accused, in the Circuit Court of the
143 First Judicial District of Hinds County * * *. The notice of
144 appeal and the payment of costs must be filed and paid with the
145 circuit clerk, within thirty (30) days of the entry of the order
146 being appealed. The appeal shall otherwise be conducted in
147 accordance with existing laws and rules.

148 * * *

149 (3) Any party aggrieved by the action of the circuit court
150 may appeal to the Mississippi Supreme Court in the manner provided
151 by law and rules.

152 **SECTION 5.** Section 69-25-61, Mississippi Code of 1972, is
153 amended as follows:

154 69-25-61. (1) When a violation occurs, or is about to
155 occur, that presents clear and present danger to the public
156 health, safety or welfare and requires immediate action, the
157 commissioner, department field inspectors, or any person
158 authorized by the commissioner, may issue an order to be effective
159 immediately, before notice and a hearing, that imposes any or all
160 of the following penalties against the accused:

161 (a) A stop sale order for any pesticide, plant or other
162 material regulated by the department that is mislabeled or
163 otherwise not in compliance with applicable law or regulations.

164 (b) Require the accused to relabel any pesticide, plant
165 or other material regulated by the department that is mislabeled.

166 (c) Seize any pesticide, plant or other material
167 regulated by the department and sell, destroy or otherwise dispose
168 of such material and apply the proceeds of such sale to the
169 state's expenses and any fees or penalties levied.

170 (d) Refuse to register, or cancel or suspend the
171 registration of a pesticide, plant or other material that is not
172 in compliance with any applicable law or regulation.

173 The order shall be served upon the accused in the same manner
174 that the summons and complaint may be served upon him, except

175 that, in the alternative, it may be served by giving a copy of the
176 order to the attendant or clerk at the accused's establishment.
177 The accused shall then have thirty (30) days after service of the
178 order to request an informal administrative review before the
179 Director of the Bureau of Plant Industry, or his designee, who
180 shall act as reviewing officer. If the accused requests a review
181 within thirty (30) days, the reviewing officer shall conduct an
182 informal administrative review within ten (10) days after the
183 request is made. If the accused does not request an informal
184 administrative review within thirty (30) days, then he is deemed
185 to have waived his right to a review. At the informal
186 administrative review, subpoena power shall not be available,
187 witnesses shall not be sworn nor be subject to cross-examination
188 and there shall be no court reporter or record made of the
189 proceedings. Each party may present its case in the form of
190 documents or oral statements. The rules of evidence shall not
191 apply. The reviewing officer's decision shall be in writing, and
192 it shall be delivered to the parties by certified mail.

193 If either party is aggrieved by the order of the reviewing
194 officer, he may request a full evidentiary hearing before a
195 hearing officer in accordance with the procedures described in
196 Sections 69-25-51 and 69-25-53. The request for an evidentiary
197 hearing must be made with the department within thirty (30) days
198 of receipt of the decision of the reviewing officer. Failure to
199 request an evidentiary hearing within the thirty (30) days is
200 deemed a waiver of such right. If either party is aggrieved by
201 the decision of the hearing officer, he shall have the right of
202 judicial review in circuit court and, thereafter, in the Supreme
203 Court, as provided in Section 69-25-57.

204 **SECTION 6.** Section 69-25-63, Mississippi Code of 1972, is
205 amended as follows:

206 69-25-63. * * *

207 When any penalty assessed by the hearing officer is not paid,
208 the department may file suit in a court of competent jurisdiction
209 for the purpose of reducing the order of the hearing officer to
210 judgment, and if successful on the merits, the department shall be
211 entitled to an award for reasonable attorney's fees and * * *
212 court costs.

213 * * *

214 **SECTION 7.** Section 69-19-15, Mississippi Code of 1972, is
215 amended as follows:

216 69-19-15. (1) (a) Any person violating * * * this chapter
217 or the rules and regulations issued under this chapter is guilty
218 of a misdemeanor and, upon conviction, shall be punished by a fine
219 of not more than One Thousand Dollars (\$1,000.00), by imprisonment
220 for not more than one (1) year, or by both such fine and
221 imprisonment at the discretion of the court having jurisdiction.

222 (b) Each violation and each day's violation shall
223 constitute a separate offense.

224 (c) Any person violating * * * this chapter or the
225 rules and regulations issued under this chapter in such a way that
226 causes harm or poses a threat to man, animals or the environment
227 is guilty of a felony and, upon conviction, shall be punished by a
228 fine of not more than Twenty-five Thousand Dollars (\$25,000.00) or
229 by imprisonment in the State Penitentiary for a term of not more
230 than twenty (20) years or by both such fine and imprisonment for
231 each violation.

232 (2) Each violation of this chapter or the applicable rules
233 and regulations shall subject the violator to administrative
234 action as provided for in Sections 69-25-51 through 69-25-63.

235 **SECTION 8.** Section 69-21-5, Mississippi Code of 1972, is
236 amended as follows:

237 69-21-5. For purposes of this article, the following terms
238 shall have the meanings ascribed to them in this section:

239 (a) "Commissioner" means Commissioner of Agriculture
240 and Commerce.

241 (b) "Department" means the Department of Agriculture
242 and Commerce.

243 (c) "Hormone-type herbicide" means any substance or
244 mixture of substances producing a physiological change in the
245 plant tissue without burning, intended for preventing, destroying,
246 repelling or mitigating any weed.

247 **SECTION 9.** Section 69-21-7, Mississippi Code of 1972, is
248 amended as follows:

249 69-21-7. (1) The department shall regulate the application
250 of hormone-type herbicides by aircraft within the state.

251 (2) No person, firm or corporation shall apply hormone-type
252 herbicides by aircraft within this state at any time without a
253 license issued by the commissioner through his agent, the State
254 Entomologist. Application for a license shall be made to the
255 commissioner through his agent, the State Entomologist at
256 Mississippi State University, Starkville, Mississippi. Each
257 application for a license shall contain information regarding the
258 applicant's qualifications and proposed operations and other
259 relevant matters as required pursuant to regulations promulgated
260 by the commissioner.

261 (3) The commissioner may require the applicant to show, upon
262 examination, that he possesses adequate knowledge concerning the
263 proper use and application of herbicides and the dangers involved
264 and precautions to be taken in connection with their application.
265 If the applicant is other than an individual, the applicant shall
266 designate an officer, member or technician of the organization to
267 take the examination. The designee is subject to the approval of
268 the commissioner. If the extent of the applicant's operations
269 warrant it, the commissioner may require more than one (1)
270 officer, member or technician to take the examination.

271 (4) If the commissioner finds the applicant qualified, he
272 shall issue a license, for such period as the commissioner may by
273 regulation prescribe, to perform application of herbicides within
274 this state. The license may restrict the applicant to the use of
275 a certain type or types of equipment or materials if the
276 commissioner finds that the applicant is qualified to use only
277 such type or types. If a license is not issued as applied for,
278 the commissioner shall inform the applicant in writing of the
279 reasons therefor.

280 **SECTION 10.** Section 69-21-9, Mississippi Code of 1972, is
281 amended as follows:

282 69-21-9. A person may be the subject of administrative
283 action under Sections 69-25-51 through 69-25-63 when he is no
284 longer qualified to apply hormone-type herbicides by aircraft, has
285 engaged in fraudulent business practices in the application of
286 herbicides, * * * has made any application in a faulty, careless,
287 or negligent manner, or has violated any of the provisions of this
288 article or applicable regulations * * *.

289 **SECTION 11.** Section 69-21-13, Mississippi Code of 1972, is
290 amended as follows:

291 69-21-13. The commissioner shall require each person, firm,
292 association or corporation who is granted a permit to use aircraft
293 in the application of "hormone-type herbicides" to furnish to, and
294 file with, the * * * commissioner a fidelity bond, insurance
295 policy, or other security satisfactory to the commissioner,
296 conditioned that the principal therein named shall pay for * * *
297 all damages suffered by any person, firm, association or
298 corporation, by reason of the negligence of the principal or his
299 or its agents or employees in the conduct of the business
300 authorized by this article, and shall honestly conduct the
301 business and as otherwise conditioned by the commissioner. The
302 bond or other security shall be at least Ten Thousand Dollars
303 (\$10,000.00). Any person, firm or corporation having a right of

304 action, against such person, firm, association or
305 corporation, * * * may bring suit against them or any of them for
306 any damages caused by their negligence in the conduct of the
307 business authorized hereunder * * *.

308 If the surety * * * becomes unsatisfactory, the applicant
309 shall execute a new bond and if he fails to do so, it shall be the
310 duty of the commissioner to cancel his license and give him notice
311 of the cancellation. After the cancellation of the license, it is
312 unlawful * * * for the person to engage in * * * business without
313 obtaining a new license.

314 **SECTION 12.** Section 69-21-25, Mississippi Code of 1972, is
315 amended as follows:

316 69-21-25. To carry out the provisions of this article the
317 commissioner or his employees may enter upon any public or private
318 premises at reasonable times in order to have access for the
319 purpose of inspecting any equipment, herbicide, records, aircraft
320 or other object subject to this article.

321 **SECTION 13.** Section 69-23-7, Mississippi Code of 1972, is
322 amended as follows:

323 69-23-7. (1) Every pesticide which is distributed, sold or
324 offered for sale within this state or delivered for transportation
325 or transported in intrastate commerce or between points within
326 this state through any point outside this state shall be
327 registered in the office of the commissioner, and such
328 registration shall be renewed annually. Products which have the
329 same formula, are manufactured by the same person, the labeling of
330 which contains the same claims, and the labels * * * bear a
331 designation identifying the products as the same pesticide, may be
332 registered as a single pesticide. Additional names and labels
333 shall be added by supplement statements during the current period
334 of registration. The registrant shall file with the commissioner
335 a statement including:

336 (a) The name and address of the registrant and the name
337 and address of the person whose name will appear on the label if
338 other than the registrant;

339 (b) The name of the pesticide;

340 (c) A complete copy of the labeling accompanying the
341 pesticide and a statement of all claims to be made for it,
342 including directions for use and the use classification as
343 provided for in FIFRA;

344 (d) If requested by the commissioner, a full
345 description of the tests made and the results * * * upon which the
346 claims are based. In the case of renewal of registration, a
347 statement shall be required only for information which is
348 different from that furnished when the pesticide was registered or
349 last reregistered; and

350 (e) Any other information required by the commissioner
351 which may be prescribed by regulation.

352 (2) The registrant shall pay an annual fee of Two Hundred
353 Dollars (\$200.00) for each brand or grade of pesticide registered.
354 All of the fees collected under * * * this section shall be
355 deposited in a special fund in the Treasury of the State of
356 Mississippi and subject to appropriation by the Mississippi
357 Legislature. The fees shall be used by the Mississippi Department
358 of Agriculture and Commerce for enforcement of this chapter. The
359 Department of Agriculture and Commerce may contract with the
360 Department of Environmental Quality for a groundwater monitoring
361 program.

362 (3) The commissioner, whenever he deems it necessary in the
363 administration of this chapter, may require the submission of the
364 complete formula of any pesticide. If it appears to the
365 commissioner that the composition of the articles * * * warrants
366 the proposed claims for it, and if the article and its labeling
367 and other material required to be submitted comply with the
368 requirements of Section 69-23-5, he shall register the article, if

369 the article is registered under FIFRA. If the state is certified
370 by the administrator of EPA to register pesticides pursuant to
371 Section 24(c) of FIFRA, the commissioner may register the article
372 to meet special local needs if he determines that the registration
373 will not be in violation of FIFRA.

374 (4) If it does not appear to the commissioner that the
375 article * * * warrants the proposed claims for it or if the
376 article and its labeling and other material required to be
377 submitted do not comply with the provisions of this chapter, * * *
378 the commissioner may refuse to register the article * * *. In
379 order to protect the public, the commissioner * * * may, at any
380 time, cancel or suspend the registration of a pesticide if he
381 determines that it does not comply with this chapter or creates an
382 imminent hazard. If he receives a notice from the Commission on
383 Environmental Quality under Section 49-17-26 in relation to state
384 underground water quality standards, he may order the relabeling
385 of any pesticide, or suspend or cancel the registration of any
386 pesticide or any use of any pesticide, or adopt a regulation in
387 accordance with Section 69-23-9 to protect the underground water
388 resources, as defined in the Federal Safe Drinking Water
389 Act * * *. He may advise EPA of the manner in which a federally
390 registered pesticide fails to comply with FIFRA and suggest the
391 necessary corrections. Regulatory action taken under this
392 subsection shall be conducted in accordance with Sections 69-25-51
393 through 69-25-63.

394 (5) Notwithstanding any other provision of this chapter,
395 registration is not required in case of a pesticide shipped from
396 one plant within this state to another plant within this state
397 operated by the same person.

398 **SECTION 14.** Section 69-23-9, Mississippi Code of 1972, is
399 amended as follows:

400 69-23-9. (1) The commissioner is authorized * * *:

401 (a) To declare as a pest any form of plant or animal
402 life or virus which is injurious to plants, man, domestic animals,
403 articles or substances;

404 (b) To determine whether pesticides registered under
405 authority of Section 24(c) of FIFRA are highly toxic to man as
406 described in * * * federal regulations;

407 (c) To determine standards of coloring or discoloring
408 for pesticides and to subject pesticides to the requirements of
409 Section 69-23-5(1).

410 (2) The commissioner may adopt, amend or repeal rules and
411 regulations for carrying out the provisions of this chapter,
412 including, but not limited to, rules and regulations providing for
413 the collection and examination of samples; the safe handling,
414 transportation, storage, display, distribution and disposal of
415 pesticides and their containers; protecting the environment;
416 labeling and adopting state restricted pesticide uses.

417 (3) In order to avoid confusion endangering the public
418 health resulting from diverse requirements, particularly as to the
419 labeling and coloring of pesticides, and to avoid increased costs
420 to the people of this state due to the necessity of complying with
421 such diverse requirements in the manufacture and sale of such
422 pesticides, it is desirable that there should be uniformity
423 between the requirements of the several states and the federal
424 government relating to such pesticides. To this end the
425 commissioner is authorized * * * to adopt * * * such regulations,
426 applicable to and in conformity with the primary standards
427 established by this chapter, as have been or may be prescribed by
428 the United States government for pesticides.

429 (4) No action taken by the commissioner under * * * this
430 section shall be effective unless and until such action is
431 approved by the advisory board created under * * * Section
432 69-25-3, Mississippi Code of 1972.

433 **SECTION 15.** Section 69-23-11, Mississippi Code of 1972, is
434 amended as follows:

435 69-23-11. (1) The commissioner or his employees, with
436 proper identification and during normal working hours, shall have
437 free access to all places of business, factories, buildings,
438 carriages, cars, stores, warehouses and other places where
439 pesticides are offered for sale or kept for sale or distribution
440 or use and application, and shall have authority to inspect or
441 open any container of pesticide and to take * * * a sample for the
442 purpose of examination and analysis. It shall be the duty of the
443 commissioner to take such samples and deliver them to the State
444 Chemist for examination and analysis.

445 (2) It shall be the duty of the State Chemist to cause as
446 many analyses to be made of samples delivered to him by the
447 commissioner as may be necessary to properly carry into effect the
448 intent of this chapter. He shall make reports of such analysis to
449 the commissioner and to the manufacturer, firm or person
450 responsible for placing on the market the pesticide represented by
451 the samples.

452 (3) If it * * * appears that any pesticide fails to comply
453 with the provisions of this chapter, or if provisions of this
454 chapter are violated, the commissioner may proceed with
455 appropriate action as provided in this chapter or under the
456 administrative hearing procedures provided in Section 69-25-51 et
457 seq. If, in the opinion of the commissioner, it * * * appears
458 that the provisions of the chapter have been violated, the
459 commissioner may refer the facts to the county attorney, district
460 attorney or Attorney General. * * *

461 (4) It shall be the duty of each county attorney, district
462 attorney or Attorney General to whom any such violation is
463 reported to cause appropriate proceedings to be instituted and
464 prosecuted in the appropriate court without delay.

465 (5) The commissioner shall, by publication in such manner as
466 he may prescribe, give notice of all judgments entered in actions
467 instituted under the authority of this chapter.

468 **SECTION 16.** Section 69-23-21, Mississippi Code of 1972, is
469 amended as follows:

470 69-23-21. (1) Any pesticide that is distributed, sold or
471 offered for sale within this state or delivered for transportation
472 or transported to intrastate commerce or between points within
473 this state through any point outside this state shall be liable to
474 be proceeded against in any circuit court in any county of the
475 state where it may be found and seized for confiscation and
476 condemnation:

477 (a) If it is adulterated or misbranded;

478 (b) If it has not been registered under the provisions
479 of Section 69-23-7;

480 (c) If it fails to bear on its label the information
481 required by this chapter;

482 (d) If it is a white powder pesticide and is not
483 colored as required under this chapter.

484 (2) If the article is condemned, it shall, after entry of
485 decree, be disposed of by destruction or sale, as the court may
486 direct, and the proceeds, if such article is sold, less legal
487 costs, shall be paid to the commissioner for transmission to the
488 General Funds of the State Treasury * * *.

489 (3) When a decree of condemnation is entered against the
490 article, court costs and fees and storage and other proper
491 expenses shall be awarded against the person shown to be the
492 claimant of the article.

493 (4) The remedy in this section is supplemental to and not in
494 replacement of the remedies under Sections 69-25-51 through
495 69-25-63.

496 **SECTION 17.** Section 69-23-23, Mississippi Code of 1972, is
497 amended as follows:

498 69-23-23. (1) Any nonresident individual, partnership,
499 association, firm, or corporation desiring to distribute, sell, or
500 offer for sale within this state any product described in this
501 chapter, and any such nonresident who may be subject otherwise to
502 the provisions of such chapter, shall file a written power of
503 attorney designating the Secretary of State as the agent of such
504 nonresident upon whom service of process may be had in the event
505 of any suit against said nonresident individual, partnership,
506 firm, association, or corporation; and such power of attorney
507 shall be so prepared in such form as to render effective the
508 jurisdiction of the courts of Mississippi over such nonresident
509 applicants and make such applicants amenable to the jurisdiction
510 of the courts of this state. Provided, however, that any such
511 nonresident who has a duly appointed resident agent upon whom
512 process may be served as provided by law shall not be required to
513 designate the Secretary of State as such agent. The Secretary of
514 State shall be allowed such fees therefor as provided by law for
515 designating resident agents. The commissioner shall be furnished
516 with a copy of such designation of the Secretary of State or of a
517 resident agent, such copy to be duly certified by the Secretary of
518 State.

519 (2) The commissioner may also require such nonresident
520 subject to the provisions of this chapter to furnish to him a
521 fidelity bond or other security satisfactory to him and
522 conditioned that the principal therein named shall pay for any and
523 all damages suffered by any person by reason of the negligence of
524 the principal or his or its agents in the conduct of said business
525 and shall honestly conduct said business and as otherwise
526 conditioned by said commissioner, provided that in no case shall a
527 bond or other security less than Ten Thousand Dollars (\$10,000.00)
528 be required. A copy of said bond duly certified by the
529 commissioner shall be received as evidence in all courts of this
530 state without further proof. Any person having a right of action

531 against such person, firm, association or corporation may bring
532 suit against the principal and sureties on such bond. Should the
533 surety furnished become unsatisfactory, said applicant shall
534 execute a new bond and should he fail to do so, it shall be the
535 duty of the commissioner to cancel his license and give him notice
536 of said fact, and it shall be unlawful thereafter for such person
537 to engage in said business without obtaining a new license.

538 **SECTION 18.** Section 69-23-27, Mississippi Code of 1972, is
539 amended as follows:

540 69-23-27. (1) It is unlawful for any person to act as a
541 licensed pesticide dealer without being licensed by the
542 commissioner. A license shall be required for each location or
543 outlet located within this state from which such pesticides are
544 distributed. Any dealer who has no pesticide outlet licensed
545 within this state and who distributes such pesticides directly
546 into this state shall obtain a pesticide dealer license for his
547 principal out-of-state location or outlet.

548 (2) Application for a license shall be submitted on a form
549 prescribed by the commissioner, and shall include the name and
550 address of the applicant, the name of the pesticide dealer
551 manager, the address of each outlet, the name of the resident
552 agent if the dealer is not a resident of this state, and any other
553 information required by the commissioner.

554 (3) * * * This section shall not apply to (a) a licensed
555 pesticide applicator who sells pesticides only as an integral part
556 of his pesticide application service where such pesticides are
557 applied by the commercial applicator; or (b) any federal, state,
558 county or municipal agency which provides pesticides only for its
559 own programs.

560 (4) The commissioner may set standards and qualifications
561 for licensing of pesticide dealers and dealer managers to
562 determine their competency.

563 (5) Licenses for pesticide dealers will expire on December
564 31 of each year and must be renewed annually.

565 (6) The commissioner may prescribe rules and regulations
566 pertaining to licensing of pesticide dealers including, but not
567 limited to, record keeping, and may at any time cancel, suspend or
568 revoke a pesticide dealer license when he finds there has been a
569 failure or refusal to comply with the provisions of this chapter
570 or regulations adopted hereunder. The regulatory action
571 authorized in this subsection shall be governed by Sections
572 69-25-51 through 69-25-63.

573 **SECTION 19.** Section 69-23-29, Mississippi Code of 1972, is
574 amended as follows:

575 69-23-29. (1) (a) Any person violating any of the
576 provisions of this chapter or the rules and regulations issued
577 under this chapter is guilty of a misdemeanor and, upon
578 conviction, shall be punished by a fine of not more than One
579 Thousand Dollars (\$1,000.00) or by imprisonment for not more than
580 one (1) year or by both such fine and imprisonment at the
581 discretion of the court having jurisdiction.

582 (b) Each violation and each day's violation for
583 continuing acts, shall constitute a separate offense.

584 (c) Any person violating any of the provisions of this
585 chapter or the rules and regulations issued under this chapter in
586 such a way that causes harm or poses a threat to man, animals or
587 the environment is guilty of a felony and, upon conviction, shall
588 be punished by a fine of not more than Twenty-Five Thousand
589 Dollars (\$25,000.00) or by imprisonment in the State Penitentiary
590 for a term of not more than twenty (20) years or by both such fine
591 and imprisonment for each violation.

592 (2) Each violation of this chapter or the applicable rules
593 and regulations shall subject the violator to administrative
594 action as provided for in Sections 69-25-51 through 69-25-63.

595 **SECTION 20.** Section 69-23-101, Mississippi Code of 1972, is
596 amended as follows:

597 69-23-101. Sections 69-23-101 through 69-23-135 may be known
598 as the "Mississippi Pesticide Application Law of 1975."

599 **SECTION 21.** Section 69-23-103, Mississippi Code of 1972, is
600 amended as follows:

601 69-23-103. Sections 69-23-101 through 69-23-135 shall be
602 administered by the Commissioner of the Mississippi Department of
603 Agriculture and Commerce, or his agent, herein referred to as the
604 "commissioner."

605 **SECTION 22.** Section 69-23-105, Mississippi Code of 1972, is
606 amended as follows:

607 69-23-105. The purpose of Sections 69-23-101 through
608 69-23-135 is to provide a means for the state certification of
609 applicators of restricted use pesticides required under the
610 Federal Insecticide, Fungicide and Rodenticide Act, and to
611 regulate in the public interest the use and application of such
612 pesticides, except as such application is regulated under Sections
613 69-19-1 through 69-19-15, 69-21-1 through 69-21-27, or 69-21-101
614 through 69-21-141, and to designate the Mississippi Department of
615 Agriculture and Commerce as the agency responsible for
616 administering a plan for certification of applicators of
617 restricted use pesticides and to cooperate with the United States
618 Environmental Protection Agency as provided for in the Federal
619 Insecticide, Fungicide and Rodenticide Act, and for other
620 purposes.

621 **SECTION 23.** Section 69-23-107, Mississippi Code of 1972, is
622 amended as follows:

623 69-23-107. When used in the context of Sections 69-23-101
624 through 69-23-135, the following terms shall be ascribed the
625 following meanings:

626 (a) "Commissioner" * * * means the Commissioner of
627 Agriculture and Commerce of the State of Mississippi.

628 (b) "Certification" * * * meansu the recognition by a
629 state that a person is competent and thus authorized to use or
630 supervise the use of restricted use pesticides.

631 (c) "Certified applicator" * * * meansu any person who
632 is certified to use or supervise the use of any restricted use
633 pesticide covered by this certification.

634 (d) "Commercial applicator" * * * meansu a certified
635 applicator (whether or not he is a private applicator with respect
636 to some uses) who uses or supervises the use of any pesticide
637 which is classified for restricted use for any purpose or on any
638 property other than as provided by the definition of "private
639 applicator."

640 (e) "Division" * * * meansu the Bureau of Plant Industry
641 within the Regulatory Office of the Mississippi Department of
642 Agriculture and Commerce.

643 (f) "Division of Plant Industry" * * * meansu the Bureau
644 of Plant Industry within the Regulatory Office of the Mississippi
645 Department of Agriculture and Commerce.

646 (g) "EPA" * * * meansu the United States Environmental
647 Protection Agency.

648 (h) "FIFRA" * * * meansu the Federal Insecticide,
649 Fungicide and Rodenticide Act, as amended.

650 (i) "License" * * * meansu a license, certificate or
651 permit.

652 (j) "Person" * * * meansu any individual, partnership,
653 association, corporation or organized group of persons, whether
654 incorporated or not.

655 (k) "Pest" * * * meansu:

656 (i) Any insects, rodents, nematodes, fungi, weeds;
657 and

658 (ii) Other forms of terrestrial or aquatic plant
659 or animal life or virus, bacteria, or other microorganism (except
660 viruses, bacteria or other microorganism on or in living man or

661 other living animals) which the commissioner declares to be a
662 pest.

663 (l) "Pesticide" * * * means any substance or mixture of
664 substances intended for preventing, destroying, repelling,
665 mitigating or attracting any pests; and shall also include
666 adjuvants intended to enhance the effectiveness of pesticides; and
667 any substance or mixture of substances intended for use as a plant
668 regulator, defoliant or desiccant.

669 (m) "Private applicator" * * * means a certified
670 applicator who uses or supervises the use of any pesticide which
671 is classified for restricted use for purposes of producing any
672 agricultural commodity on property owned, rented or controlled by
673 him or his employer or, if applied without compensation other than
674 trading of personal services between producers of agricultural
675 commodities, on the property of another person, subject to
676 regulations adopted under authority granted by Sections 69-23-101
677 through 69-23-135.

678 (n) "Public applicator" * * * means any individual who
679 applies restricted use pesticides as an employee of a state
680 agency, municipal corporation, public utility, or other
681 governmental agency. This term does not include employees who
682 work under direct "on-the-job" supervision of a public applicator.

683 (o) "Restricted use pesticide" * * * means any
684 pesticide classified for restricted use by EPA or by the
685 commissioner.

686 (p) "State restricted pesticide use" * * * means any
687 pesticide use which, when used as directed or in accordance with a
688 widespread and commonly recognized practice, the commissioner
689 determines subsequent to a hearing, requires additional
690 restrictions for that use to protect the environment including
691 man, lands, beneficial insects, animals, crops and wildlife, other
692 than pests.

693 (q) "Under the direct supervision of a certified
694 applicator" * * * means, unless otherwise prescribed by its
695 labeling, a pesticide which is to be applied by a competent person
696 acting under the instructions and control of a certified
697 applicator who is available if and when needed, even though such
698 certified applicator is not physically present at the time and
699 place the pesticide is applied.

700 (r) "Unreasonable adverse effects on the
701 environment" * * * means any unreasonable risk to man or the
702 environment, taking into account the economic, social and
703 environmental costs and benefits of the use of any pesticide.

704 (s) Words and terms as defined in Sections 69-19-1
705 through 69-19-15, 69-21-1 through 69-21-27, 69-21-101 through
706 69-21-141, and 69-23-1 through 69-23-29, when used in Sections
707 69-23-101 through 69-23-135 shall have the same meaning ascribed
708 therein.

709 **SECTION 24.** Section 69-23-109, Mississippi Code of 1972, is
710 amended as follows:

711 69-23-109. (1) The commissioner may adopt regulations to
712 carry out the provisions of Sections 69-23-1 through 69-23-135.

713 (2) In adopting regulations, the commissioner shall give
714 consideration to pertinent research findings and recommendations
715 of other agencies of this state or federal government. The
716 commissioner shall report to the Legislature on or before February
717 1 of each year any regulation promulgated under this section which
718 is more restrictive than applicable federal regulations.

719 (3) Regulations promulgated by the commissioner under * * *
720 Sections 69-23-1 through 69-23-135 shall not be effective until
721 approved by the advisory board created under * * * Section
722 69-25-3.

723 (4) In order to eliminate inequitable application or
724 establishment of opposing regulations, the authority to regulate
725 any matter pertaining to the registration, sale, handling,

726 distribution, notification of use, application and use of
727 pesticides shall vest solely in the Commissioner of Agriculture
728 and Commerce, except where other state agencies, including the
729 Agricultural Aviation Board, exercise such regulatory authority
730 under state law.

731 **SECTION 25.** Section 69-23-111, Mississippi Code of 1972, is
732 amended as follows:

733 69-23-111. (1) After October 21, 1976, it is unlawful for
734 any person to engage in the application or use of any pesticide
735 which is restricted by EPA or the commissioner, except as provided
736 for and defined in Sections 69-19-1 through 69-19-15, 69-21-1
737 through 69-21-27, 69-21-101 through 69-21-141, and 69-23-1 through
738 69-23-29, without being certified or licensed by the commissioner.

739 (2) The commissioner may classify licenses or permits to be
740 issued under Sections 69-23-101 through 69-23-135. Separate
741 classifications and subclassifications may be specified by the
742 commissioner in conformity with FIFRA. Each classification may be
743 subject to separate requirements of testing procedures.

744 (3) Application for license shall be made on a form provided
745 by the commissioner and shall contain information regarding the
746 applicant's qualifications, proposed operations, and license
747 classification or classifications as prescribed by regulations.

748 (4) The commissioner shall require each applicant for a
749 certified applicator's license to demonstrate competency by a
750 written or oral examination, or such other equivalent procedure as
751 may be adopted by the commissioner by regulation, that he
752 possesses adequate knowledge with respect to the proper use and
753 application of pesticides in the particular categories or
754 classification for which application for license is made. The
755 commissioner may cooperate with other state, federal and private
756 agencies in preparing, administering and evaluating examinations
757 or other equivalent procedures, including training, for
758 determining competency of certified applicators, and shall

759 consider and be guided by certification requirements set forth by
760 EPA.

761 (5) If the commissioner finds the applicant qualified in the
762 classification for which he has applied, he shall issue a
763 certified applicator's license limited to that classification.
764 Expiration dates of licenses may be established by regulation,
765 unless revoked, suspended, denied, cancelled or modified prior
766 thereto by the commissioner for cause as hereinafter provided.

767 **SECTION 26.** Section 69-23-113, Mississippi Code of 1972, is
768 amended as follows:

769 69-23-113. Any nonresident commercial applicator applying
770 for a license under Sections 69-23-101 through 69-23-135 to
771 operate in the state shall file a written power of attorney
772 designating the Secretary of State as the agent of such
773 nonresident upon whom service of process may be had in the event
774 of any suit against the nonresident person, and such power of
775 attorney shall be prepared and in such form as to render effective
776 the jurisdiction of the courts of this state over such nonresident
777 applicant. * * * Any * * * nonresident who has a duly appointed
778 resident agent upon whom process may be served as provided by law
779 shall not be required to designate the Secretary of State as such
780 agent. The Secretary of State shall be allowed such fees therefor
781 as provided by law for designating resident agents. The
782 commissioner shall be furnished with a copy of such designation of
783 the Secretary of State or of a resident agent, such copy to be
784 duly certified by the Secretary of State.

785 **SECTION 27.** Section 69-23-115, Mississippi Code of 1972, is
786 amended as follows:

787 69-23-115. It is unlawful for a person to:

788 (a) Make false or fraudulent claims through any media
789 misrepresenting the effect of materials or methods to be used;

790 (b) Conduct pest control operations in a faulty,
791 careless or negligent manner or to operate faulty or unsafe pest
792 control equipment * * *;

793 (c) Fail to comply with the provisions of Sections
794 69-23-101 through 69-23-135, or the regulations adopted
795 hereunder * * *;

796 (d) Fail to keep and maintain records required by
797 Sections 69-23-101 through 69-23-135 or to make reports when
798 required;

799 (e) Make false or fraudulent records, invoices or
800 reports;

801 (f) Use fraud or misrepresentation in making
802 application for a license or renewal for a license;

803 (g) Aid or abet any person in evading the provisions of
804 Sections 69-23-101 through 69-23-135, or allow one's license to be
805 used by another person;

806 (h) Impersonate any state or federal official;

807 (i) Commit a violation under FIFRA; * * *

808 (j) Use any restricted use pesticide in a manner which
809 is * * * inconsistent with its labeling; or

810 (k) Commit any other act or omission specified in the
811 regulations adopted under Sections 69-23-101 through 69-23-135.

812 * * *

813 **SECTION 28.** Section 69-23-117, Mississippi Code of 1972, is
814 amended as follows:

815 69-23-117. Commercial applicators shall maintain records
816 with respect to the application of pesticides. Such relevant
817 information as the commissioner may deem necessary and the length
818 of time that these records shall be maintained may be specified by
819 the commissioner, and upon request the licensee shall furnish a
820 copy of such records * * *.

821 **SECTION 29.** Section 69-23-119, Mississippi Code of 1972, is
822 amended as follows:

823 69-23-119. (1) Any person duly licensed and certified under
824 Sections 69-19-1 through 69-19-15, 69-21-1 through 69-21-27, or
825 69-21-101 through 69-21-141, is exempted from the licensing
826 provisions of Sections 69-23-101 through 69-23-135.

827 (2) The commissioner may exempt such other persons as may be
828 exempted by federal regulations.

829 (3) The commissioner may exempt public applicators from the
830 requirements of Sections 69-23-113 and 69-23-117.

831 **SECTION 30.** Section 69-23-121, Mississippi Code of 1972, is
832 amended as follows:

833 69-23-121. The Mississippi Cooperative Extension Service
834 shall conduct courses of instruction and training for the purpose
835 of carrying out the provisions of Sections 69-23-101 through
836 69-23-135.

837 **SECTION 31.** Section 69-23-123, Mississippi Code of 1972, is
838 amended as follows:

839 69-23-123. The commissioner may cooperate with or enter into
840 formal cooperative agreements with any public or private agency or
841 educational institution of this state or any other state or
842 federal agency for the purpose of carrying out the provisions of
843 Sections 69-23-101 through 69-23-135, to encourage training of
844 certified applicators and securing uniformity of regulations.

845 **SECTION 32.** Section 69-23-125, Mississippi Code of 1972, is
846 amended as follows:

847 69-23-125. The commissioner shall enforce the provisions of
848 Sections 69-23-101 through 69-23-135. The commissioner or his
849 representative may enter upon public or private premises at
850 reasonable times for the purpose of enforcing said sections, and
851 may investigate complaints of injury or accidents resulting from
852 use of restricted use pesticides.

853 **SECTION 33.** Section 69-23-127, Mississippi Code of 1972, is
854 amended as follows:

855 69-23-127. The commissioner may obtain an injunction to
856 enjoin the violation of Sections 69-23-101 through 69-23-135 or
857 any regulations issued under those sections in the chancery court
858 of the county in which the violation occurs.

859 **SECTION 34.** Section 69-23-133, Mississippi Code of 1972, is
860 amended as follows:

861 69-23-133. The commissioner shall appoint an advisory
862 committee, and by regulation establish the composition of the
863 committee to include representatives from the agriculture,
864 agribusiness and related industries.

865 The purpose of the committee shall be to advise and assist
866 the commissioner in developing regulations and plans for
867 implementing the provisions of Sections 69-23-101 through
868 69-23-135 and a pesticide regulatory program to meet the
869 requirements of FIFRA.

870 **SECTION 35.** Section 69-23-135, Mississippi Code of 1972, is
871 amended as follows:

872 69-23-135. (1) (a) Any person violating any of the
873 provisions of this chapter or the rules and regulations issued
874 under this chapter at a minimum is guilty of a misdemeanor and
875 upon conviction shall be punished by a fine of not more than One
876 Thousand Dollars (\$1,000.00) or by imprisonment for not more than
877 one (1) year or by both such fine and imprisonment at the
878 discretion of the court having jurisdiction.

879 (b) Each violation and each day's violation for
880 continuing acts shall constitute a separate offense.

881 (c) Any person violating any of the provisions of this
882 chapter or the rules and regulations issued under this chapter in
883 such a way that causes harm or poses a threat to man, animals or
884 the environment is guilty of a felony and, upon conviction, shall
885 be punished by a fine of not more than Twenty-Five Thousand
886 Dollars (\$25,000.00) or by imprisonment in the State Penitentiary

887 for a term of not more than twenty (20) years or by both such fine
888 and imprisonment for each violation.

889 (2) Each violation of this chapter or the rules and
890 regulations issued under this chapter shall subject the violator
891 to administrative action as provided for in Sections 69-25-51
892 through 69-25-63.

893 **SECTION 36.** Section 69-25-55, Mississippi Code of 1972,
894 which provides that the failure to request a timely hearing
895 constitutes a waiver or the right to a hearing is repealed.

896 **SECTION 37.** Section 69-25-65, Mississippi Code of 1972,
897 which provides that the administrative hearing procedure shall not
898 apply to aerial applicators of pesticides is repealed.

899 **SECTION 38.** This act shall take effect and be in force from
900 and after July 1, 2005.