

By: Senator(s) Hyde-Smith, Lee (35th)

To: Agriculture; Judiciary,
Division A

SENATE BILL NO. 2790

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 PRIOR TO A HEARING WHEN
 8 SUCH VIOLATIONS OCCUR; TO AMEND SECTION 69-19-15, MISSISSIPPI CODE
 9 OF 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,
 43 or Sections 69-23-1 through 69-23-135, Mississippi Code of 1972,

44 the Director of the Bureau of Plant Industry, or his designee,
45 shall act as the reviewing officer. The * * * complaint must be
46 in writing, signed by the person making the charge, * * * and
47 filed in the office of the Bureau of Plant Industry. * * * The
48 department shall send a copy of the complaint and any supporting
49 documents to the person accused along with a summons requiring the
50 accused to respond to the allegations within thirty (30) days.
51 The notification shall be accomplished by any of the methods
52 provided for in Rule 4 of the Mississippi Rules of Civil Procedure
53 or by certified mail. If the accused does not respond within the
54 thirty-day period, he shall be considered to be in default. Upon
55 receipt of the response and any supporting documents from the
56 accused, the reviewing officer shall * * * determine the merits of
57 the complaint * * *. The reviewing officer may meet informally
58 with 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
101 officer may grant a continuance * * * of the hearing. Written
102 notice of the date, time and place of such hearing shall be
103 delivered to the accused * * * not less than fifteen (15) days
104 prior to the * * * 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
113 oaths and * * * receive evidence, either oral or documentary.
114 Upon the request of either party, the Department of Agriculture
115 and Commerce may issue subpoenas to compel the attendance of
116 witnesses or the production of books, papers, records or other
117 documentary evidence * * *. If a person fails to comply with a
118 subpoena issued by the department, either party may invoke the aid
119 of any court of general jurisdiction of this state. The court
120 may * * * order such person to comply with the requirements of the
121 subpoena. Failure to comply with the order of the court may be
122 treated as contempt * * *.

123 (4) At the conclusion of the hearing, the hearing
124 officer * * * shall render a written decision incorporating the
125 findings of facts, conclusions of law and * * * penalty, if any.
126 A copy of the decision of the hearing officer shall be delivered
127 to the 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 and 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, prior to notice and a hearing, that imposes any or
160 all 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 describe in
196 Section 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. * * * When any penalty assessed by the hearing
207 officer is not * * * paid, the department may file suit in a court

208 of competent jurisdiction for the purpose of reducing the order of
209 the hearing officer to judgment, and if successful on the merits,
210 the department shall be entitled to an award for reasonable
211 attorney's fees and * * * court costs.

212 * * *

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

215 69-19-15. (1) (a) Any person violating * * * this chapter
216 or the rules and regulations issued under this chapter is guilty
217 of a misdemeanor and, upon conviction, shall be punished by a fine
218 of not more than One Thousand Dollars (\$1,000.00), by imprisonment
219 for not more than one (1) year, or by both such fine and
220 imprisonment at the discretion of the court having jurisdiction.

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

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

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

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

236 69-21-5. For purposes of this article, the following terms
237 shall have the meanings ascribed to them in this section:

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

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

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

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

248 69-21-7. (1) The department shall regulate the application
249 of hormone-type herbicides by aircraft within the state.

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

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

270 (4) If the commissioner finds the applicant qualified, he
271 shall issue a license, for such period as the commissioner may by
272 regulation prescribe, to perform application of herbicides within

273 this state. The license may restrict the applicant to the use of
274 a certain type or types of equipment or materials if the
275 commissioner finds that the applicant is qualified to use only
276 such type or types. If a license is not issued as applied for,
277 the commissioner shall inform the applicant in writing of the
278 reasons therefor.

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

281 69-21-9. * * * A person may be the subject of administrative
282 action under Sections 69-25-51 through 69-25-63 when he is no
283 longer qualified to apply hormone-type herbicides by aircraft, has
284 engaged in fraudulent business practices in the application of
285 herbicides, * * * has made any application in a faulty, careless,
286 or negligent manner, or has violated any of the provisions of this
287 article or applicable regulations * * *.

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

290 69-21-13. The commissioner shall require each person, firm,
291 association or corporation who is granted a permit to use aircraft
292 in the application of "hormone-type herbicides" to furnish to, and
293 file with, the * * * commissioner a fidelity bond, insurance
294 policy, or other security satisfactory to the commissioner,
295 conditioned that the principal therein named shall pay for * * *
296 all damages suffered by any person, firm, association or
297 corporation, by reason of the negligence of the principal or his
298 or its agents or employees in the conduct of the business
299 authorized by this article, and shall honestly conduct the
300 business and as otherwise conditioned by the commissioner. * * *
301 The bond or other security shall be at least Ten Thousand Dollars
302 (\$10,000.00). Any person, firm * * * or corporation having a
303 right of action * * *, against such person, firm, association or
304 corporation, * * * may bring suit against them or any of them for

305 any damages caused by their negligence in the conduct of the
306 business authorized hereunder * * *.

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

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

315 69-21-25. To carry * * * out the provisions of this article
316 the commissioner or his employees may enter upon any public or
317 private premises at reasonable times in order to have access for
318 the purpose of inspecting any equipment, herbicide, records,
319 aircraft or other object subject to this article.

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

322 69-23-7. (1) Every pesticide which is distributed, sold or
323 offered for sale within this state or delivered for transportation
324 or transported in intrastate commerce or between points within
325 this state through any point outside this state shall be
326 registered in the office of the commissioner, and such
327 registration shall be renewed annually. * * * Products which have
328 the same formula, are manufactured by the same person, the
329 labeling of which contains the same claims, and the labels * * *
330 bear a designation identifying the products as the same pesticide,
331 may be registered as a single pesticide. * * * Additional names
332 and labels shall be added by supplement statements during the
333 current period of registration. The registrant shall file with
334 the commissioner a statement including:

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

338 (b) The name of the pesticide;

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

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

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

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

361 (3) The commissioner, whenever he deems it necessary in the
362 administration of this chapter, may require the submission of the
363 complete formula of any pesticide. If it appears to the
364 commissioner that the composition of the articles * * * warrants
365 the proposed claims for it, and if the article and its labeling
366 and other material required to be submitted comply with the
367 requirements of Section 69-23-5, he shall register the article, if
368 the article is registered under FIFRA. If the state is certified
369 by the administrator of EPA to register pesticides pursuant to
370 Section 24(c) of FIFRA, the commissioner may register the article

371 to meet special local needs if he determines that the registration
372 will not be in violation of FIFRA.

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

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

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

399 69-23-9. (1) The commissioner is authorized * * *:

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

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

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

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

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

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

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

434 69-23-11. (1) The commissioner or his employees, with
435 proper identification and during normal working hours, shall have

436 free access to all places of business, factories, buildings,
437 carriages, cars, stores, warehouses and other places where
438 pesticides are offered for sale or kept for sale or distribution
439 or use and application, and shall have authority to inspect or
440 open any container of pesticide and to take * * * a sample for the
441 purpose of examination and analysis. It shall be the duty of the
442 commissioner to take such samples and deliver them to the State
443 Chemist for examination and analysis.

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

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

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

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

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

469 69-23-21. (1) Any pesticide that is distributed, sold or
470 offered for sale within this state or delivered for transportation
471 or transported to intrastate commerce or between points within
472 this state through any point outside this state shall be liable to
473 be proceeded against in any circuit court in any county of the
474 state where it may be found and seized for confiscation * * * and
475 condemnation:

476 (a) If it is adulterated or misbranded;

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

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

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

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

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

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

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

497 69-23-23. (1) Any nonresident individual, partnership,
498 association, firm, or corporation desiring to distribute, sell, or
499 offer for sale within this state any product described in this
500 chapter, and any such nonresident who may be subject otherwise to
501 the provisions of such chapter, shall file a written power of

502 attorney designating the Secretary of State as the agent of such
503 nonresident upon whom service of process may be had in the event
504 of any suit against said nonresident individual, partnership,
505 firm, association, or corporation; and such power of attorney
506 shall be so prepared in such form as to render effective the
507 jurisdiction of the courts of Mississippi over such nonresident
508 applicants and make such applicants amenable to the jurisdiction
509 of the courts of this state. Provided, however, that any such
510 nonresident who has a duly appointed resident agent upon whom
511 process may be served as provided by law shall not be required to
512 designate the Secretary of State as such agent. The Secretary of
513 State shall be allowed such fees therefor as provided by law for
514 designating resident agents. The commissioner shall be furnished
515 with a copy of such designation of the Secretary of State or of a
516 resident agent, such copy to be duly certified by the Secretary of
517 State.

518 (2) The commissioner may also require such nonresident
519 subject to the provisions of this chapter to furnish to him a
520 fidelity bond or other security satisfactory to him and
521 conditioned that the principal therein named shall pay for any and
522 all damages suffered by any person by reason of the negligence of
523 the principal or his or its agents in the conduct of said business
524 and shall honestly conduct said business and as otherwise
525 conditioned by said commissioner, provided that in no case shall a
526 bond or other security less than Ten Thousand Dollars (\$10,000.00)
527 be required. A copy of said bond duly certified by the
528 commissioner shall be received as evidence in all courts of this
529 state without further proof. Any person having a right of action
530 against such person, firm, association or corporation may bring
531 suit against the principal and sureties on such bond. Should the
532 surety furnished become unsatisfactory, said applicant shall
533 execute a new bond and should he fail to do so, it shall be the
534 duty of the commissioner to cancel his license and give him notice

535 of said fact, and it shall be unlawful thereafter for such person
536 to engage in said business without obtaining a new license.

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

539 69-23-27. (1) It is unlawful for any person to act as a
540 licensed pesticide dealer without being licensed by the
541 commissioner. A license shall be required for each location or
542 outlet located within this state from which such pesticides are
543 distributed. Any dealer who has no pesticide outlet licensed
544 within this state and who distributes such pesticides directly
545 into this state shall obtain a pesticide dealer license for his
546 principal out-of-state location or outlet.

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

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

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

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

564 (6) The commissioner may prescribe rules and regulations
565 pertaining to licensing of pesticide dealers, including but not
566 limited to record keeping, and may at any time cancel, suspend or
567 revoke a pesticide dealer license when he finds there has been a

568 failure or refusal to comply with the provisions of this chapter
569 or regulations adopted hereunder. The regulatory action
570 authorized in this subsection shall be governed by Sections
571 69-25-51 through 69-25-63.

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

574 69-23-29. (1) (a) Any person violating any of the
575 provisions of this chapter or the rules and regulations issued
576 under this chapter is guilty of a misdemeanor and, upon
577 conviction, shall be punished by a fine of not more than One
578 Thousand Dollars (\$1,000.00) or by imprisonment for not more than
579 one (1) year or by both such fine and imprisonment at the
580 discretion of the court having jurisdiction.

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

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

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

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

596 69-23-101. Sections 69-23-101 through 69-23-135 may be known
597 as the "Mississippi Pesticide Application Law of 1975."

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

600 69-23-103. Sections 69-23-101 through 69-23-135 shall be
601 administered by the Commissioner of the Mississippi Department of
602 Agriculture and Commerce, or his agent, herein referred to as the
603 "commissioner."

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

606 69-23-105. The purpose of Sections 69-23-101 through
607 69-23-135 is to provide a means for the state certification of
608 applicators of restricted use pesticides required under the
609 Federal Insecticide, Fungicide and Rodenticide Act, and to
610 regulate in the public interest the use and application of such
611 pesticides, except as such application is regulated under Sections
612 69-19-1 through 69-19-15, 69-21-1 through 69-21-27, or 69-21-101
613 through 69-21-141, and to designate the Mississippi Department of
614 Agriculture and Commerce as the agency responsible for
615 administering a plan for certification of applicators of
616 restricted use pesticides and to cooperate with the United States
617 Environmental Protection Agency as provided for in the Federal
618 Insecticide, Fungicide and Rodenticide Act, and for other
619 purposes.

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

622 69-23-107. When used in the context of Sections 69-23-101
623 through 69-23-135, the following terms shall be ascribed the
624 following meanings:

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

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

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

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

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

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

645 (g) "EPA" means the United States Environmental
646 Protection Agency.

647 (h) "FIFRA" means the Federal Insecticide, Fungicide
648 and Rodenticide Act, as amended.

649 (i) "License" means a license, certificate or permit.

650 (j) "Person" means any individual, partnership,
651 association, corporation or organized group of persons, whether
652 incorporated or not.

653 (k) "Pest" means:

654 (i) Any insects, rodents, nematodes, fungi, weeds;
655 and

656 (ii) Other forms of terrestrial or aquatic plant
657 or animal life or virus, bacteria, or other microorganism (except
658 viruses, bacteria or other microorganism on or in living man or
659 other living animals) which the commissioner declares to be a
660 pest.

661 (l) "Pesticide" means any substance or mixture of
662 substances intended for preventing, destroying, repelling,
663 mitigating or attracting any pests; and shall also include
664 adjuvants intended to enhance the effectiveness of pesticides; and

665 any substance or mixture of substances intended for use as a plant
666 regulator, defoliant or desiccant.

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

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

681 (o) "Restricted use pesticide" means any pesticide
682 classified for restricted use by EPA or by the commissioner.

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

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

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

701 (s) Words and terms as defined in Sections 69-19-1
702 through 69-19-15, 69-21-1 through 69-21-27, 69-21-101 through
703 69-21-141, and 69-23-1 through 69-23-29, when used in Sections
704 69-23-101 through 69-23-135 shall have the same meaning ascribed
705 therein.

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

708 69-23-109. (1) The commissioner may adopt regulations to
709 carry out the provisions of Sections 69-23-1 through 69-23-135.

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

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

720 (4) In order to eliminate inequitable application or
721 establishment of opposing regulations, the authority to regulate
722 any matter pertaining to the registration, sale, handling,
723 distribution, notification of use, application and use of
724 pesticides shall vest solely in the Commissioner of Agriculture
725 and Commerce, except where other state agencies, including the
726 Agricultural Aviation Board, exercise such regulatory authority
727 under state law.

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

730 69-23-111. (1) After October 21, 1976, it is unlawful for
731 any person to engage in the application or use of any pesticide
732 which is restricted by EPA or the commissioner, except as provided
733 for and defined in Sections 69-19-1 through 69-19-15, 69-21-1
734 through 69-21-27, 69-21-101 through 69-21-141, and 69-23-1 through
735 69-23-29, without being certified or licensed by the commissioner.

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

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

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

758 (5) If the commissioner finds the applicant qualified in the
759 classification for which he has applied, he shall issue a
760 certified applicator's license limited to that classification.
761 Expiration dates of licenses may be established by regulation,

762 unless revoked, suspended, denied, cancelled or modified prior
763 thereto by the commissioner for cause as hereinafter provided.

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

766 69-23-113. Any nonresident commercial applicator applying
767 for a license under Sections 69-23-101 through 69-23-135 to
768 operate in the state shall file a written power of attorney
769 designating the Secretary of State as the agent of such
770 nonresident upon whom service of process may be had in the event
771 of any suit against the nonresident person, and such power of
772 attorney shall be prepared and in such form as to render effective
773 the jurisdiction of the courts of this state over such nonresident
774 applicant. * * * Any * * * nonresident who has a duly appointed
775 resident agent upon whom process may be served as provided by law
776 shall not be required to designate the Secretary of State as such
777 agent. The Secretary of State shall be allowed such fees therefor
778 as provided by law for designating resident agents. The
779 commissioner shall be furnished with a copy of such designation of
780 the Secretary of State or of a resident agent, such copy to be
781 duly certified by the Secretary of State.

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

784 69-23-115. It is unlawful for a person to: * * *

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

787 (b) Conduct pest control operations in a faulty,
788 careless or negligent manner or to * * * operate faulty or unsafe
789 pest control equipment * * *;

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

- 793 (d) * * * Fail to keep and maintain records required by
794 Sections 69-23-101 through 69-23-135 or to make reports when
795 required;
- 796 (e) Make false or fraudulent records, invoices or
797 reports;
- 798 (f) Use fraud or misrepresentation in making
799 application for a license or renewal for a license;
- 800 (g) Aid or abet any person in evading the provisions of
801 Sections 69-23-101 through 69-23-135, or allow one's license to be
802 used by another person;
- 803 (h) Impersonate any state or federal official;
- 804 (i) * * * Commit a violation under FIFRA; * * *
- 805 (j) * * * Use any restricted use pesticide in a manner
806 which is * * * inconsistent with its labeling; or
- 807 (k) Commit any other act or omission specified in the
808 regulations adopted under Sections 69-23-101 through 69-23-135.

809 * * *

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

812 69-23-117. Commercial applicators shall maintain records
813 with respect to the application of pesticides. Such relevant
814 information as the commissioner may deem necessary and the length
815 of time that these records shall be maintained may be specified by
816 the commissioner, and upon request * * * the licensee shall * * *
817 furnish * * * a copy of such records * * *.

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

820 69-23-119. (1) Any person duly licensed and certified under
821 Sections 69-19-1 through 69-19-15, 69-21-1 through 69-21-27, or
822 69-21-101 through 69-21-141, is exempted from the licensing
823 provisions of Sections 69-23-101 through 69-23-135.

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

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

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

830 69-23-121. The Mississippi Cooperative Extension Service
831 shall conduct courses of instruction and training for the purpose
832 of carrying out the provisions of Sections 69-23-101 through
833 69-23-135.

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

836 69-23-123. The commissioner may cooperate with or enter into
837 formal cooperative agreements with any public or private agency or
838 educational institution of this state or any other state or
839 federal agency for the purpose of carrying out the provisions of
840 Sections 69-23-101 through 69-23-135, to encourage training of
841 certified applicators and securing uniformity of regulations.

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

844 69-23-125. The commissioner shall enforce the provisions of
845 Sections 69-23-101 through 69-23-135. The commissioner or his
846 representative may enter upon public or private premises at
847 reasonable times for the purpose of enforcing said sections, and
848 may investigate complaints of injury or accidents resulting from
849 use of restricted use pesticides.

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

852 69-23-127. The commissioner may obtain an injunction to
853 enjoin the violation of Sections 69-23-101 through 69-23-135 or
854 any regulations issued under those sections in the chancery court
855 of the county in which the violation occurs.

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

858 69-23-133. The commissioner shall appoint an advisory
859 committee, and by regulation establish the composition of the
860 committee to include representatives from the agriculture,
861 agribusiness and related industries.

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

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

869 69-23-135. (1) (a) Any person violating any of the
870 provisions of this chapter or the rules and regulations issued
871 under this chapter at a minimum is guilty of a misdemeanor and
872 upon conviction shall be punished by a fine of not more than One
873 Thousand Dollars (\$1,000.00) or by imprisonment for not more than
874 one (1) year or by both such fine and imprisonment at the
875 discretion of the court having jurisdiction.

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

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

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

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

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

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