

**Adopted  
COMMITTEE AMENDMENT NO 1 PROPOSED TO**

**Senate Bill No. 2790**

**BY: Committee**

**Amend by striking all after the enacting clause and inserting  
in lieu thereof the following:**

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, and shall stand repealed on July 1, 2006.

**Further, amend by striking the title in its entirety and  
inserting in lieu thereof the following:**

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.