

By: Representative Warren

To: Agriculture

HOUSE BILL NO. 585

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

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

7 **SECTION 1.** Section 69-21-101, Mississippi Code of 1972, is  
8 reenacted as follows:

9 69-21-101. This article shall be known and cited as the  
10 "Agricultural Aviation Licensing Law of 2002."

11 **SECTION 2.** Section 69-21-103, Mississippi Code of 1972, is  
12 reenacted as follows:

13 69-21-103. The purpose of this article is to supervise and  
14 regulate for the public good all commercial agricultural aerial  
15 application within the State of Mississippi and to establish and  
16 promote a close working relationship between agricultural aerial  
17 applicators and the Mississippi Department of Agriculture and  
18 Commerce, the licensing of all persons engaged in the aerial  
19 application of pesticides, poisons, seeds and chemicals, and the  
20 registration of all such commercial agricultural aircraft and  
21 pilots. It is the intent of the Legislature that the program  
22 established under this article provide a program of commercial  
23 aerial application control within the State of Mississippi  
24 sufficient to allow the state to retain delegation from the United  
25 States Environmental Protection Agency of the commercial aerial  
26 application regulation program created under the Federal  
27 Insecticide, Fungicide and Rodenticide Act, 7 USCS 136-136y. This  
28 article also establishes an administrative hearing procedure for

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

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

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

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

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

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

42 (d) "Agricultural aircraft operation" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

169 **SECTION 6.** Section 69-21-111, Mississippi Code of 1972, is  
170 reenacted as follows:

171 69-21-111. Nothing in this article shall be construed as to  
172 confer upon the board jurisdiction of the aerial application of  
173 hormone-type herbicides which is conferred on the Mississippi  
174 Department of Agriculture and Commerce by Sections 69-21-7 through  
175 69-21-15.

176 **SECTION 7.** Section 69-21-113, Mississippi Code of 1972, is  
177 reenacted as follows:

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

187 (2) Applicator's and pilot's licenses are not transferable.  
188 Licenses shall be effective for a period of one (1) year. Any  
189 licensee wishing to have a license renewed must submit an  
190 application for renewal with the board no later than ninety (90)  
191 days before the expiration of the license. If the applicant  
192 submits a timely and complete application for renewal, and the  
193 board, through no fault of the applicant, fails to reissue the

194 license on or before the expiration date of the existing license,  
195 the existing license shall remain in effect until final action on  
196 the renewal application is taken by the board. Licenses are  
197 subject to modification, revocation or reissuance for cause at any  
198 time during the effective dates of the license.

199 (3) Any person seeking to obtain a license as an applicator  
200 in this state shall submit proof of payment of all ad valorem and  
201 other taxes which might be applicable on aircraft and other  
202 equipment.

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

206 **SECTION 8.** Section 69-21-115, Mississippi Code of 1972, is  
207 reenacted as follows:

208 69-21-115. Any person seeking to obtain a license as an  
209 applicator in this state shall submit proof of financial  
210 responsibility to the board, and upon obtaining a license, such  
211 person shall maintain proof of financial responsibility at all  
212 times while such license shall be in effect. Proof of financial  
213 responsibility may consist of:

214 (a) The deposit with the board of a surety bond in  
215 favor of any person or persons who may suffer damage by reason of  
216 the operation of an aerial application service, issued by a  
217 corporate surety company authorized to do business in this state,  
218 which surety bond shall be in an amount not less than the amount  
219 of financial responsibility required by the rules and regulations  
220 of the board. However, the aggregate liability of the surety to  
221 all such persons shall not, in any event, exceed the amount of  
222 such bond; or

223 (b) The filing of an insurance policy of an insurer or  
224 surplus line broker authorized to do business in this state  
225 insuring the licensee and any of his agents against liability  
226 resulting from the operation of an aerial application service,

227 which insurance policy shall be in an amount deemed as acceptable  
228 to the board, but not less than Five Thousand Dollars (\$5,000.00).

229 The board shall establish by rules and regulations the amount  
230 of financial responsibility to be required of each licensed  
231 applicator, but in no event shall the amount of financial  
232 responsibility required be less than Five Thousand Dollars  
233 (\$5,000.00).

234 **SECTION 9.** Section 69-21-117, Mississippi Code of 1972, is  
235 reenacted as follows:

236 69-21-117. Any person who is a nonresident of this state and  
237 who intends to perform agricultural aircraft operations in the  
238 state or as a function of flights originating from a departure  
239 point within the state shall obtain an applicator's or pilot's  
240 license under this article. Nonresident licensees shall designate  
241 and maintain a resident agent in this state for service of  
242 process, and shall establish and maintain proof of financial  
243 responsibility and provide proof of payment of all state taxes as  
244 provided in this article and as applied to a resident aerial  
245 applicator. Nothing in this article shall be construed to prevent  
246 the board from issuing reciprocal licenses from other states that  
247 recognize and accept registered aerial applicators of the State of  
248 Mississippi.

249 **SECTION 10.** Section 69-21-119, Mississippi Code of 1972, is  
250 reenacted as follows:

251 69-21-119. (1) A fee of not more than Five Hundred Dollars  
252 (\$500.00) for each aircraft owned, operated, used and employed in  
253 aerial application by an applicator shall be paid to the board for  
254 the issuance or required annual renewal of a license for an  
255 applicator. Each aircraft shall be identified at all times by a  
256 device supplied to the registered applicator by the board.

257 (2) A fee of not more than Two Hundred Fifty Dollars  
258 (\$250.00) for each pilot engaged in aerial application shall be  
259 paid to the board for the issuance or required annual renewal of a



260 license for a pilot. Each pilot shall have in his possession at  
261 all times an identification card supplied by the board.

262 (3) All funds collected under the provisions of this article  
263 shall be kept in the Treasury of the State of Mississippi and  
264 disbursed upon requisitions signed by the chairman of the board.  
265 Such funds shall be subject to audit by the Auditor of the State  
266 of Mississippi. The board shall furnish a copy of its financial  
267 statement and a copy of any proposed license fee adjustments to  
268 the State Auditor no later than sixty (60) days after the end of  
269 each fiscal year. Such financial statement shall reflect all  
270 funds collected and all disbursements made under the provisions of  
271 this article.

272 **SECTION 11.** Section 69-21-121, Mississippi Code of 1972, is  
273 reenacted as follows:

274 69-21-121. (1) Any person found by the board to have  
275 violated any of the provisions of this article, any rule,  
276 regulation or written order of the board or any condition or  
277 limitation of a license issued by the board shall be subject to  
278 disciplinary action. Disciplinary matters shall be conducted as  
279 enforcement proceedings under Section 69-21-129. The board may  
280 discipline a violator in the following manner:

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

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

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

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

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

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

293           (a) The board determines that the licensee has  
294 committed one or more violations of this article, any rule,  
295 regulation or written order of the board or any condition or  
296 limitation of a license issued by the board on three (3) separate  
297 occasions during any twelve-month period, and each of those  
298 occasions, including singular or multiple violations, has resulted  
299 in the issuance of a penalty of One Thousand Dollars (\$1,000.00)  
300 or more by the board; or

301           (b) The board determines that the licensee has  
302 committed one or more violations of this article, any rule,  
303 regulation or written order of the board or any condition or  
304 limitation of a license issued by the board that results in the  
305 issuance of a penalty of One Thousand Dollars (\$1,000.00) or more  
306 by the board while on probation ordered under subsection (1) of  
307 this section.

308           **SECTION 12.** Section 69-21-123, Mississippi Code of 1972, is  
309 reenacted as follows:

310           69-21-123. Any person, firm, or corporation having a right  
311 of action against an applicator, person, firm, association or  
312 corporation, or any other person, may bring suit against them or  
313 either of them for any damages caused by their negligence of the  
314 aerial application regulated by the Agricultural Aviation Board,  
315 but in no event, however, shall a surety be named in or made a  
316 party to such action. No action for such damages may be brought  
317 or maintained, however, unless the person claiming the damages  
318 shall have filed with the Mississippi Department of Agriculture  
319 and Commerce a written statement claiming that he has been  
320 damaged, on a form prescribed by the Mississippi Department of  
321 Agriculture and Commerce, within sixty (60) days after the date  
322 that the damages occurred and prior to the time that twenty-five  
323 percent (25%) of a crop damaged shall have been harvested in the  
324 event claim concerns a crop. Such statement shall contain, but  
325 shall not be limited thereto, the name of the person or persons

326 who operated the aircraft, if known, the permit number of the  
327 aircraft, if known, the name of the owner or lessee of the land on  
328 which the crops are grown and for which damages are claimed, and  
329 the date on which it is alleged that the damage occurred. The  
330 Mississippi Department of Agriculture and Commerce, is required to  
331 prepare a form to be furnished to persons to be used in such  
332 cases, and such form shall contain such other requirements as the  
333 Mississippi Department of Agriculture and Commerce may deem  
334 proper. The Mississippi Department of Agriculture and Commerce,  
335 shall, upon receipt of such statement, notify the licensee and/or  
336 operator of the aircraft, and the owner or lessee of the land or  
337 other person who may be charged with the responsibility for the  
338 damages claimed, and furnish copies of such statements as may be  
339 requested. However, notwithstanding any other provisions of this  
340 article, any person claiming damages hereunder may give notice to  
341 the landowner or lessee of the treated crop claiming that he has  
342 been damaged within sixty (60) days after the date that the damage  
343 occurred and prior to the time that twenty-five percent (25%) of a  
344 crop damaged shall have been harvested in the event claim concerns  
345 a crop, which said notice shall preserve said persons, claiming  
346 damages, cause of action.

347       **SECTION 13.** Section 69-21-125, Mississippi Code of 1972, is  
348 reenacted as follows:

349       69-21-125. (1) Violation of this article, the rules and  
350 regulations adopted by the board, a condition included in a  
351 license issued by the board or an order issued by the board shall  
352 be a misdemeanor punishable by a fine of not less than One Hundred  
353 Dollars (\$100.00) and not more than Five Hundred Dollars  
354 (\$500.00), or by imprisonment in the county jail for not more than  
355 six (6) months, or by both such fine and imprisonment. A  
356 violation of this article, the rules and regulations adopted by  
357 the board, a condition included in a license issued by the board  
358 or an order issued by the board may be cause for the imposition of

359 administrative or civil penalties as allowed by Sections 69-21-129  
360 and 69-21-135. Each violation shall constitute a separate  
361 offense.

362 (2) In addition to the penalties herein provided, the board  
363 is hereby granted the authority to file in any court of competent  
364 jurisdiction injunctive proceedings against any person violating  
365 the provisions of this article or the rules and regulations  
366 promulgated hereunder.

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

370 **SECTION 14.** Section 69-21-127, Mississippi Code of 1972, is  
371 amended as follows:

372 69-21-127. Sections 69-21-101 through 69-21-125, Mississippi  
373 Code of 1972, which create the State Board of Agricultural  
374 Aviation and prescribe its duties and powers, shall stand repealed  
375 as of June 30, 2008.

376 **SECTION 15.** This act shall take effect and be in force from  
377 and after July 1, 2006.