

By: Representative Capps

To: Agriculture

HOUSE BILL NO. 759
(As Passed the House)

1 AN ACT TO REENACT SECTIONS 69-21-101 THROUGH 69-21-125,
2 MISSISSIPPI CODE OF 1972, WHICH CREATE THE STATE BOARD OF
3 AGRICULTURAL AVIATION AND PRESCRIBE ITS DUTIES AND POWERS; TO
4 AMEND SECTION 69-21-127, MISSISSIPPI CODE OF 1972, TO EXTEND THE
5 REPEALER; 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 1966."

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.

22 SECTION 3. Section 69-21-105, Mississippi Code of 1972, is
23 reenacted as follows:

24 69-21-105. As used in this article, the following terms
25 shall have the meanings hereinafter ascribed to them:

26 (a) "Board" shall mean the Agricultural Aviation Board
27 of the State of Mississippi.

28 (b) "Person" shall mean any individual, corporation,
29 firm, partnership, company, trust, association or other legal
30 entity.

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

33 (d) "Agricultural aircraft operation" means

34 (1) Dispensing any pesticide, seed or fertilizer
35 by aircraft;

36 (2) Dispensing any other substance intended for
37 plant nourishment, soil treatment, propagation of plant life, or
38 pest control by aircraft; or

39 (3) Engaging in dispensing activities directly
40 affecting agriculture, horticulture, or forest preservation by
41 aircraft.

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

46 (f) "Applicator" means any person, as herein defined,
47 who is licensed under this act to engage in agricultural aircraft
48 operations.

49 (g) "Pesticide" means any substance or mixture of
50 substances intended for defoliating or desiccating plants, or for
51 preventing, destroying, repelling or mitigating any insects,
52 fungi, bacteria, weeds, or other forms of plant or animal life
53 which the board shall declare to be a pest.

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

58 (i) "Insect" means any of the numerous small
59 invertebrate animals generally having the body more or less
60 obviously segmented, for the most part belonging to the Class

61 Insecta, comprising six-legged, usually winged forms, as for
62 example, beetles, bugs and flies; and to other classes of
63 arthropods whose members are wingless and usually have more than
64 six (6) legs, as for example, spiders, mites, ticks, centipedes
65 and wood lice.

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

69 (k) "Desiccant" means any substances or mixtures of
70 substances intended for artificially accelerating the drying of
71 plant tissues.

72 SECTION 4. Section 69-21-107, Mississippi Code of 1972, is
73 reenacted as follows:

74 69-21-107. There is hereby created a State Board of
75 Agricultural Aviation composed of five (5) members as follows:
76 one (1) member being the chief of the Bureau of Plant Industry
77 within the Regulatory Office of the Mississippi Department of
78 Agriculture and Commerce; four (4) licensed pilots to be appointed
79 by the Governor from a list of eight (8) agricultural aerial
80 applicators submitted to the Governor by the Mississippi Aerial
81 Applicators Association, commonly known as the Mississippi
82 Agricultural Aviation Association. The term of office of one (1)
83 board member shall be one (1) year; the term of office of the
84 second board member shall be two (2) years; the term of office of
85 the third board member shall be three (3) years; and the term of
86 office of the fourth board member shall be four (4) years. After
87 the initial appointment, succeeding board members shall serve a
88 staggered four-year term of office. Each board member shall serve
89 until his successor is appointed. The chief of the Bureau of
90 Plant Industry, Mississippi Department of Agriculture and
91 Commerce, shall continue to serve each term by virtue of his
92 office.

93 The membership of the board shall elect a chairman at their

94 organizational meeting who shall be one of the four (4) aerial
95 applicators who serve on the board.

96 Vacancies on the said board shall be filled as herein stated
97 by appointment of the Governor.

98 A quorum necessary to conduct business shall be a majority of
99 the five (5) board members. Any member who shall not attend two
100 (2) consecutive meetings of the board shall be subject to removal
101 by the Governor. The chairman of the board shall notify the
102 Governor in writing when any such member has failed to attend two
103 (2) consecutive regular meetings.

104 Each member of the Agricultural Aviation Board shall receive
105 a per diem as is authorized by law and actual expenses as provided
106 by law incidental to attending meetings of said board, and other
107 authorized business as provided by board authorization as spread
108 on the board minutes. Said board shall not be paid for more than
109 fifteen (15) meetings in any one (1) calendar year.

110 SECTION 5. Section 69-21-109, Mississippi Code of 1972, is
111 reenacted as follows:

112 69-21-109. The board, after public hearing duly held, is
113 hereby vested with the authority to adopt such rules and
114 regulations as may be necessary to regulate the application of
115 chemicals and pesticides according to the time of year, manner,
116 form and area of application, wind velocity, and may restrict the
117 use of certain chemicals and pesticides which create an unusual
118 hazard to the health, safety and welfare of the public. The board
119 shall set professional standards for applicators and pilots in the
120 interest of the safety, welfare and general well-being of the
121 public of Mississippi.

122 The board shall have authority to procure samples of spray
123 and dust materials before and after they are mixed in order to
124 determine the concentration of the mixtures.

125 The Agricultural Aviation Board shall have authority to
126 maintain an office and employ necessary personnel within the

framework of fees collected to carry out the purposes of this article.

It shall be the duty of the board to enforce this article and all rules and regulations made and adopted in compliance with this article.

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

The Board of Agricultural Aviation shall maintain a close liaison and spirit of cooperation with the Mississippi Department of Agriculture and Commerce, in the supervision of aurally applied chemicals which are under their jurisdiction as provided by Sections 69-21-7 through 69-21-15. The board, further, shall closely assist the Mississippi Department of Transportation in carrying out its statutory functions to the end that aviation can continue its rapid advance.

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

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

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

69-21-113. (1) It shall be unlawful and a misdemeanor for any person to act, operate or do business as an applicator or pilot, or to engage in agricultural aircraft operations, unless

such person has an applicator's or pilot's license issued by the board. Such license shall be issued only upon application therefor to the board on a form of application prescribed by the board, which application shall contain information regarding the applicant's qualifications and proposed operations, and such other information as may be specified by the board.

(2) All licenses shall expire annually on the thirty-first day of March following their issuance or renewal, and shall be renewed for the ensuing year on or before that date. Any person failing to renew his license within the prescribed time shall be required to submit a new application therefor.

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

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

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

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

(a) The deposit with the board of a surety bond in favor of any person or persons who may suffer damage by reason of the operation of an aerial application service, issued by a corporate surety company authorized to do business in this state, which surety bond shall be in an amount not less than the amount of financial responsibility required by the rules and regulations of the board. However, the aggregate liability of the surety to

193 all such persons shall not, in any event, exceed the amount of
194 such bond; or

195 (b) The filing of an insurance policy of an insurer or
196 surplus line broker authorized to do business in this state
197 insuring the licensee and any of his agents against liability
198 resulting from the operation of an aerial application service,
199 which insurance policy shall be in an amount deemed as acceptable
200 to the board, but not less than Five Thousand Dollars (\$5,000.00).

201 The board shall establish by rules and regulations the amount
202 of financial responsibility to be required of each licensed
203 applicator, but in no event shall the amount of financial
204 responsibility required be less than Five Thousand Dollars
205 (\$5,000.00).

206 SECTION 9. Section 69-21-117, Mississippi Code of 1972, is
207 reenacted as follows:

208 69-21-117. Any person who is a nonresident of this state
209 shall obtain an applicator's license in this state, and such
210 nonresident shall designate and maintain a resident agent in this
211 state for service of process, and establish and maintain proof of
212 financial responsibility and provide proof of payment of all state
213 taxes as provided in this article and as applied to a resident
214 aerial applicator. Nothing in this article shall be construed to
215 prevent the board from issuing reciprocal licenses from other
216 states that recognize and accept registered aerial applicators of
217 the State of Mississippi.

218 SECTION 10. Section 69-21-119, Mississippi Code of 1972, is
219 reenacted as follows:

220 69-21-119. A fee of not more than One Hundred Fifty Dollars
221 (\$150.00) for each aircraft owned, operated, used and employed in
222 aerial application by an applicator shall be paid to the board for
223 the issuance or required annual renewal of a license for an
224 applicator. Each aircraft shall be identified at all times by a
225 device supplied to the registered applicator by the board.

226 A fee of not more than Seventy-five Dollars (\$75.00) for each
227 pilot engaged in aerial application shall be paid to the board for
228 the issuance or required annual renewal of a license for a pilot.

229 Each pilot shall have in his possession at all times an
230 identification card supplied by the board.

231 All funds collected under the provisions of this article
232 shall be kept in the Treasury of the State of Mississippi and
233 disbursed upon requisitions signed by the chairman of the board.
234 Such funds shall be subject to audit by the Auditor of the State
235 of Mississippi. The State Board of Agricultural Aviation shall
236 furnish a copy of its financial statement and a copy of any
237 proposed license fee adjustments to each aerial applicator
238 licensed by the state not less than two (2) weeks before the
239 annual meeting of the aerial applicators. Such financial
240 statement shall reflect all funds collected and all disbursements
241 made under the provisions of this article.

242 SECTION 11. Section 69-21-121, Mississippi Code of 1972, is
243 reenacted as follows:

244 69-21-121. (1) The Agricultural Aviation Board, in
245 exercising its authority to enforce this article and its rules and
246 regulations made and adopted in compliance with this article,
247 shall have the power to discipline the holder of a license after a
248 hearing and opportunity to be heard has been given to the holder
249 of the license. Notice of the time and place of such hearing and
250 the grounds therefor shall be given to the holder of the license
251 by registered or certified mail at least ten (10) days prior to
252 the date of the hearing, and said licensee shall be disciplined as
253 follows, to wit:

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

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

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

259 or

260 (d) By taking any other action in relation to his
261 license as the board may deem proper under the circumstances.

262 (2) Such disciplinary action may be made by the board if it
263 finds that such licensee:

264 (a) Is guilty of misrepresentation for the purpose of
265 defrauding;

266 (b) Has made any false statements or representations in
267 his application for issuance or renewal of a license;

268 (c) Has violated any of the provisions of this article
269 or the rules and regulations promulgated thereunder by the board;
270 or

271 (d) Has made any application in a faulty, careless or
272 negligent manner.

273 (3) Any person aggrieved by action of the Agricultural
274 Aviation Board, may, within thirty (30) days of such action,
275 appeal the decision of the board to the circuit court of the
276 regular domicile of the licensee involved; provided, however, such
277 appeal shall be on the record of the hearing before the board and
278 no additional evidence may be received or considered.

279 SECTION 12. Section 69-21-123, Mississippi Code of 1972, is
280 reenacted as follows:

281 69-21-123. Any person, firm, or corporation having a right
282 of action against an applicator, person, firm, association or
283 corporation, or any other person, may bring suit against them or
284 either of them for any damages caused by their negligence of the
285 aerial application regulated by the Agricultural Aviation Board,
286 but in no event, however, shall a surety be named in or made a
287 party to such action. No action for such damages may be brought
288 or maintained, however, unless the person claiming the damages
289 shall have filed with the Mississippi Department of Agriculture
290 and Commerce a written statement claiming that he has been
291 damaged, on a form prescribed by the Mississippi Department of

Agriculture and Commerce, within sixty (60) days after the date that the damages occurred and prior to the time that twenty-five percent (25%) of a crop damaged shall have been harvested in the event claim concerns a crop. Such statement shall contain, but shall not be limited thereto, the name of the person or persons who operated the aircraft, if known, the permit number of the aircraft, if known, the name of the owner or lessee of the land on which the crops are grown and for which damages are claimed, and the date on which it is alleged that the damage occurred. The Mississippi Department of Agriculture and Commerce, is required to prepare a form to be furnished to persons to be used in such cases, and such form shall contain such other requirements as the Mississippi Department of Agriculture and Commerce may deem proper. The Mississippi Department of Agriculture and Commerce, shall, upon receipt of such statement, notify the licensee and/or operator of the aircraft, and the owner or lessee of the land or other person who may be charged with the responsibility for the damages claimed, and furnish copies of such statements as may be requested. However, notwithstanding any other provisions of this article, any person claiming damages hereunder may give notice to the landowner or lessee of the treated crop claiming that he has been damaged within sixty (60) days after the date that the damage occurred and prior to the time that twenty-five percent (25%) of a crop damaged shall have been harvested in the event claim concerns a crop, which said notice shall preserve said persons, claiming damages, cause of action.

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

69-21-125. (1) Violation of this article or the rules and regulations promulgated thereunder shall be a misdemeanor punishable by a fine of not less than One Hundred Dollars (\$100.00) and not more than Five Hundred Dollars (\$500.00), or by imprisonment in the county jail for not more than six (6) months,

or by both such fine and imprisonment. Each day's violation shall constitute a separate offense. All sums of money collected as a result of fines levied under this section shall be forwarded to the State Treasurer and disbursed upon requisitions signed by the Chairman of the Board of Agricultural Aviation to defray operating expenses of the board and for no other purpose; provided, however, all such funds shall be subject to audit by the State Auditor.

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

(3) The Attorney General, district attorneys, and county attorneys of the state shall assist the Board of Agricultural Aviation upon their request to carry out the penalty section of this article.

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

69-21-127. Sections 69-21-101 through 69-21-125, Mississippi Code of 1972, which create the State Board of Agricultural Aviation and prescribe its duties and powers, shall stand repealed as of December 31, 2004.

SECTION 15. Each section of the Mississippi Code of 1972 that is reenacted but not amended by this act, and that appears in the main volume of the Code, shall not be reprinted in the supplement. Instead, an editor's note shall be placed in the supplement following the section to explain that the section was reenacted, and that it has not been reprinted in the supplement because the language of the section in the main volume was unaffected by the legislation.

SECTION 16. This act shall take effect and be in force from and after July 1, 1999.