

By: Senator(s) Hyde-Smith

To: Judiciary, Division A

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2410

1 AN ACT TO AMEND SECTIONS 69-23-9, 69-24-27, 75-27-19 AND
2 75-33-5, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE MISSISSIPPI
3 ADMINISTRATIVE PROCEDURES ACT BY REMOVING THE REQUIREMENT THAT A
4 PUBLIC HEARING MUST BE HELD BY THE DEPARTMENT OF AGRICULTURE AND
5 COMMERCE BEFORE ADOPTING REGULATIONS; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 69-23-9, Mississippi Code of 1972, is
8 amended as follows:

9 69-23-9. (1) The commissioner is authorized, after
10 opportunity for a hearing:

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

14 (b) To determine whether pesticides registered under
15 authority of Section 24(c) of FIFRA are highly toxic to man in
16 conformity with federal regulations;

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

20 (2) The commissioner may adopt, amend or repeal rules and
21 regulations for carrying out the provisions of this chapter,
22 including, but not limited to, rules and regulations providing for
23 the collection and examination of samples; the safe handling,
24 transportation, storage, display, distribution and disposal of
25 pesticides and their containers; protecting the environment;
26 labeling and adopting state restricted pesticide uses.

27 (3) In order to avoid confusion endangering the public
28 health resulting from diverse requirements, particularly as to the

labeling and coloring of pesticides, and to avoid increased costs to the people of this state due to the necessity of complying with such diverse requirements in the manufacture and sale of such pesticides, it is desirable that there should be uniformity between the requirements of the several states and the federal government relating to such pesticides. To this end the commissioner is authorized, after due public hearing, to adopt by regulation such regulations, applicable to and in conformity with the primary standards established by this chapter, as have been or may be prescribed by the United States government with respect to pesticides.

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

SECTION 2. Section 69-24-27, Mississippi Code of 1972, is amended as follows:

69-24-27. The commissioner and State Chemist may adopt, amend or repeal rules and regulations relating to sampling, analytical methods, forms, minimum percentage, soil or plant amending ingredients, exempted materials, investigational allowances, definitions, records, labels, labeling, liability bond, misbranding, mislabeling and the distribution of soil or plant amendments as may be necessary to carry into effect the full intent and meaning of this chapter.

SECTION 3. Section 75-27-19, Mississippi Code of 1972, is amended as follows:

75-27-19. The director may adopt, amend or repeal regulations for the enforcement of this article, which regulations shall have the force and effect of law. These regulations may include (1) standards of net weight, measure or count, and reasonable standards of fill, for any commodity in package form, (2) rules governing the technical and reporting procedures to be

62 followed and the report and record forms and marks of approval and
63 rejection to be used by inspectors of weights and measures in the
64 discharge of their official duties, and (3) exemptions from the
65 sealing or marking requirements of Section 75-27-31 with respect
66 to weights and measures of such character or size that such
67 sealing or marking would be inappropriate, impracticable, or
68 damaging to the apparatus in question. These regulations shall
69 include specifications, tolerances and regulations for weights and
70 measures of the character of those specified in Section 75-27-23,
71 designed to eliminate from use, without prejudice to apparatus
72 that conforms as closely as practicable to the official standards,
73 those (1) that are not accurate, (2) that are of such construction
74 that they are faulty-that is, that are not reasonably permanent in
75 their adjustment or will not repeat their indications correctly,
76 or (3) that facilitate the perpetration of fraud. The
77 specifications, tolerances and regulations for commercial weighing
78 and measuring devices, together with amendments thereto, as
79 recommended by the National Institute of Standards and Technology
80 and published in Handbook 44 and supplements thereto, or in any
81 publication revising or superseding Handbook 44, shall be the
82 specifications, tolerances, and regulations for commercial
83 weighing and measuring devices of the State of Mississippi, except
84 insofar as specifically modified, amended or rejected by a
85 regulation issued by the director. For the purposes of this
86 article, apparatus shall be deemed to be "correct" when it
87 conforms to all applicable requirements promulgated as specified
88 in this section; other apparatus shall be deemed to be
89 "incorrect." The division shall levy no charges or fees for the
90 field tests or inspections made under this article; however, the
91 director shall adopt a schedule of fees for calibration and
92 testing services provided by the State Metrology Laboratory. Fees
93 collected for such calibration and testing shall be deposited in
94 the State Treasury in the special fund for the Department of

95 Agriculture and Commerce. The director shall require persons
96 installing scales with a weight capacity of ten thousand (10,000)
97 pounds or more to secure a permit for each such scale installed,
98 establish a fee not to exceed Fifty Dollars (\$50.00) for such
99 permit and require such person to supply the director with scale
100 and scale foundation blueprints and specifications for each
101 installation before installation of the scale. Applications for
102 permit shall be made on forms prescribed and furnished by the
103 director. The director shall establish and adopt scale pit and
104 approach specifications for scales with a capacity of ten thousand
105 (10,000) pounds or more. However, weighing devices with a
106 capacity of ten thousand (10,000) pounds or more used to weigh
107 road construction materials shall be exempt from the requirements
108 of this article. Such weighing devices for road construction
109 materials shall have a tolerance of one-half of one percent (1/2
110 of 1%) in lieu of the requirements of Handbook 44 and shall be
111 regulated by the Mississippi Department of Transportation instead
112 of the Department of Agriculture and Commerce. For purposes of
113 this section, the term "road construction materials" shall
114 include, but not be limited to, sand, gravel, asphalt, fill dirt,
115 topsoil and concrete. The term "road construction materials"
116 shall not include timber or timber products.

117 **SECTION 4.** Section 75-33-5, Mississippi Code of 1972, is
118 amended as follows:

119 75-33-5. * * *

120 * * * The commissioner may adopt, amend or repeal rules and
121 regulations for the * * * administration and enforcement of this
122 article * * *.

123 * * * The commissioner shall not promulgate any rules and
124 regulations which are inconsistent with the rules and regulations
125 of the U.S. Department of Agriculture governing the businesses
126 covered by this article.

127 * * * Every licensee * * * shall be furnished a copy of
128 such rules and regulations when a license is issued. The
129 commissioner shall prescribe and supply the forms to be used to
130 comply with this article.

131 **SECTION 5.** This act shall take effect and be in force from
132 and after July 1, 2005.