

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

To: Agriculture; Judiciary,
Division A

SENATE BILL NO. 2790
(As Sent to Governor)

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 PROVIDE FOR THE REPEAL OF THE
9 ADMINISTRATIVE FINE; TO AMEND SECTION 69-19-15, MISSISSIPPI CODE
10 OF 1972, TO CONFORM REGULATION OF PROFESSIONAL SERVICES TO THE
11 REVISED ADMINISTRATIVE HEARING PROCEDURE; TO AMEND SECTIONS
12 69-21-7, 69-21-9 AND 69-21-13, MISSISSIPPI CODE OF 1972, TO
13 CONFORM THE REGULATION OF AERIAL APPLICATION OF HORMONE-TYPE
14 HERBICIDES TO THE REVISED ADMINISTRATIVE HEARING PROCEDURE; TO
15 AMEND SECTION 69-21-5, MISSISSIPPI CODE OF 1972, TO ADD A
16 DEFINITION; TO AMEND SECTION 69-21-25, MISSISSIPPI CODE OF 1972,
17 TO CLARIFY THE INSPECTION POWERS OF THE DEPARTMENT OF AGRICULTURE;
18 TO AMEND SECTIONS 69-23-7, 69-23-9, 69-23-11, 69-23-21, 69-23-27
19 AND 69-23-29, MISSISSIPPI CODE OF 1972, TO CONFORM PESTICIDE
20 REGISTRATION LAWS TO THE REVISED ADMINISTRATIVE HEARING PROCEDURE;
21 TO AMEND SECTION 69-23-23, MISSISSIPPI CODE OF 1972, TO REVISE
22 NONRESIDENT BOND REQUIREMENTS; TO AMEND SECTIONS 69-23-101 THROUGH
23 69-23-127, 69-23-133 AND 69-23-135, MISSISSIPPI CODE OF 1972, TO
24 CORRECT CODE REFERENCES TO THE PESTICIDE APPLICATION LAW OF 1975;
25 TO FURTHER AMEND SECTIONS 69-23-117 AND 69-23-135, MISSISSIPPI
26 CODE OF 1972, TO CONFORM TO REVISED ADMINISTRATIVE HEARING
27 PROCEDURE; TO FURTHER AMEND SECTION 69-23-115, MISSISSIPPI CODE OF
28 1972, TO CONFORM TO THE REVISED ADMINISTRATIVE HEARING PROCEDURE
29 AND TO CLARIFY UNLAWFUL ACTS UNDER THE PESTICIDE APPLICATION LAWS;
30 TO REPEAL SECTION 69-25-55, MISSISSIPPI CODE OF 1972, WHICH
31 PROVIDES THAT THE FAILURE TO REQUEST A TIMELY HEARING CONSTITUTES
32 A WAIVER OR THE RIGHT TO A HEARING; TO REPEAL SECTION 69-25-65,
33 MISSISSIPPI CODE OF 1972, WHICH PROVIDES THAT THE ADMINISTRATIVE
34 HEARING PROCEDURE SHALL NOT APPLY TO AERIAL APPLICATORS OF
35 PESTICIDES; AND FOR RELATED PURPOSES.

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

37 **SECTION 1.** Section 69-25-51, Mississippi Code of 1972, is
38 amended as follows:

39 69-25-51. (1) When any administrative allegation or charge
40 is made against a person for violating the rules and regulations
41 of the Bureau of Plant Industry * * * of the Mississippi
42 Department of Agriculture and Commerce or the laws under Sections
43 69-19-1 through 69-19-15, * * * Sections 69-21-1 through 69-21-27,

44 or Sections 69-23-1 through 69-23-135, Mississippi Code of 1972,
45 the Director of the Bureau of Plant Industry, or his designee,
46 shall act as the reviewing officer. The * * * complaint must be
47 in writing, signed by the person making the charge, * * * and
48 filed in the office of the Bureau of Plant Industry. * * * The
49 department shall send a copy of the complaint and any supporting
50 documents to the person accused along with a summons requiring the
51 accused to respond to the allegations within thirty (30) days.
52 The notification shall be accomplished by any of the methods
53 provided for in Rule 4 of the Mississippi Rules of Civil Procedure
54 or by certified mail. If the accused does not respond within the
55 thirty-day period, he shall be considered to be in default. Upon
56 receipt of the response and any supporting documents from the
57 accused, the reviewing officer shall * * * determine the merits of
58 the complaint * * *. The reviewing officer may meet informally
59 with the accused and discuss the alleged violation with him.

60 (2) If the reviewing officer determines that the complaint
61 lacks merit, he may dismiss the complaint.

62 (3) If the reviewing officer determines that there is
63 substantial evidence that a violation has occurred or if the
64 accused admits to the truth of the allegations upon which the
65 complaint is based, the reviewing officer may impose * * * an
66 appropriate penalty on the accused, which may be any or all of the
67 following:

68 (a) Issue a warning letter.

69 (b) Suspend, modify, deny, cancel or revoke any license
70 or permit granted by the department to the accused.

71 (c) Issue a stop sale order with regard to any
72 pesticide, plant or other material regulated by the department
73 that is mislabeled or otherwise not in compliance with applicable
74 law or regulations.

75 (d) Require the accused to relabel any pesticide, plant
76 or other material regulated by the department that is mislabeled.

77 (e) Seize any pesticide, plant or other material
78 regulated by the department and sell, destroy or otherwise dispose
79 of such material and apply the proceeds of such sale to the
80 state's expenses and any fees or penalties levied hereunder.

81 (f) Refuse to register, or cancel or suspend the
82 registration of a pesticide, plant or other material that is not
83 in compliance with any applicable law or regulation.

84 (g) Levy a civil penalty in an amount not to exceed
85 Five Thousand Dollars (\$5,000.00) for each violation. This
86 paragraph shall repeal on July 1, 2008.

87 In determining the amount of the penalty, the reviewing
88 officer shall consider the appropriateness of such penalty for the
89 particular violation, the effect of the penalty on the person's
90 ability to continue in business and the gravity of the violation.

91 (4) If the accused requests a hearing with the department,
92 in writing, within thirty (30) days from receipt of the decision
93 of the reviewing officer, the commissioner shall appoint three (3)
94 members of the advisory board to the Bureau of Plant Industry to
95 act as a hearing committee and a hearing shall be scheduled. If
96 the accused fails to request a hearing within the thirty-day
97 period, the decision of the reviewing officer is final.

98 * * *

99 **SECTION 2.** Section 69-25-53, Mississippi Code of 1972, is
100 amended as follows:

101 69-25-53. (1) Within a reasonable time after the accused's
102 request for a hearing, the hearing committee shall conduct an
103 evidentiary hearing. * * * For good cause shown, the hearing
104 committee may grant a continuance * * * of the hearing. Written
105 notice of the date, time and place of such hearing shall be
106 delivered to the accused * * * not less than fifteen (15) days
107 prior to the * * * hearing.

108 (2) A * * * court reporter shall be in attendance and shall
109 record the proceedings. * * * The hearing committee shall have

110 the right and duty to impose reasonable restrictions as it may
111 deem necessary or appropriate to insure an orderly, expeditious
112 and impartial proceeding. The parties may offer oral testimony
113 through witnesses and shall have the right of cross-examination.
114 The rules of evidence shall be relaxed.

115 (3) * * * At the hearing, the hearing committee may
116 administer oaths and * * * receive evidence, either oral or
117 documentary. Upon the request of either party, the Department of
118 Agriculture and Commerce may issue subpoenas to compel the
119 attendance of witnesses or the production of books, papers,
120 records or other documentary evidence * * *. If a person fails to
121 comply with a subpoena issued by the department, either party may
122 invoke the aid of any court of general jurisdiction of this state.
123 The court may * * * order such person to comply with the
124 requirements of the subpoena. Failure to comply with the order of
125 the court may be treated as contempt * * *.

126 (4) At the conclusion of the hearing, the hearing
127 committee * * * shall render a written decision incorporating the
128 findings of facts, conclusions of law and * * * penalty, if any.
129 The hearing committee may impose any penalty authorized under
130 Section 69-25-51. A copy of the decision of the hearing committee
131 shall be delivered to the accused by certified mail.

132 **SECTION 3.** Section 69-25-57, Mississippi Code of 1972, is
133 amended as follows:

134 69-25-57. The Commissioner of Agriculture and Commerce shall
135 have jurisdiction over all persons and property necessary to
136 administer and enforce the provisions of this article and he may
137 adopt rules and regulations to implement the provisions of this
138 article. * * *

139 **SECTION 4.** Section 69-25-59, Mississippi Code of 1972, is
140 amended as follows:

141 69-25-59. (1) Any individual aggrieved by a final decision
142 of the hearing committee shall be entitled to judicial review.

143 (2) An appeal from the * * * decision of the hearing
144 committee shall be made by filing a written notice of appeal with
145 the circuit court clerk of the county where the accused resides,
146 or in the case of a nonresident accused, in the Circuit Court of
147 the First Judicial District of Hinds County * * *. The notice of
148 appeal and the payment of costs must be filed and paid with the
149 circuit clerk, within thirty (30) days of the entry of the order
150 being appealed. The appeal shall otherwise be conducted in
151 accordance with existing laws and rules.

152 * * *

153 (3) Any party aggrieved by the action of the circuit court
154 may appeal to the Mississippi Supreme Court in the manner provided
155 by law and rules.

156 **SECTION 5.** Section 69-25-61, Mississippi Code of 1972, is
157 amended as follows:

158 69-25-61. (1) When a violation occurs, or is about to
159 occur, that presents and clear and present danger to the public
160 health, safety or welfare and requires immediate action, the
161 commissioner, department field inspectors, or any person
162 authorized by the commissioner, may issue an order to be effective
163 immediately, prior to notice and a hearing, that imposes any or
164 all of the following penalties against the accused:

165 (a) A stop sale order for any pesticide, plant or other
166 material regulated by the department that is mislabeled or
167 otherwise not in compliance with applicable law or regulations.

168 (b) Require the accused to relabel any pesticide, plant
169 or other material regulated by the department that is mislabeled.

170 (c) Seize any pesticide, plant or other material
171 regulated by the department and sell, destroy or otherwise dispose
172 of such material and apply the proceeds of such sale to the
173 state's expenses and any fees or penalties levied.

174 (d) Refuse to register, or cancel or suspend the
175 registration of a pesticide, plant or other material that is not
176 in compliance with any applicable law or regulation.

177 The order shall be served upon the accused in the same manner
178 that the summons and complaint may be served upon him, except
179 that, in the alternative, it may be served by giving a copy of the
180 order to the attendant or clerk at the accused's establishment.
181 The accused shall then have thirty (30) days after service of the
182 order to request an informal administrative review before the
183 Director of the Bureau of Plant Industry, or his designee, who
184 shall act as reviewing officer. If the accused requests a review
185 within thirty (30) days, the reviewing officer shall conduct an
186 informal administrative review within ten (10) days after the
187 request is made. If the accused does not request an informal
188 administrative review within thirty (30) days, then he is deemed
189 to have waived his right to a review. At the informal
190 administrative review, subpoena power shall not be available,
191 witnesses shall not be sworn nor be subject to cross-examination
192 and there shall be no court reporter or record made of the
193 proceedings. Each party may present its case in the form of
194 documents or oral statements. The rules of evidence shall not
195 apply. The reviewing officer's decision shall be in writing, and
196 it shall be delivered to the parties by certified mail.

197 If either party is aggrieved by the order of the reviewing
198 officer, he may request a full evidentiary hearing before the
199 hearing committee in accordance with the procedures in Sections
200 69-25-51 and 69-25-53. The request for an evidentiary hearing
201 must be made with the department within thirty (30) days of
202 receipt of the decision of the reviewing officer. Failure to
203 request an evidentiary hearing within the thirty (30) days is
204 deemed a waiver of such right. If either party is aggrieved by
205 the decision of the hearing committee, he shall have the right of

206 judicial review in circuit court and in the Supreme Court as
207 provided in Section 69-25-59.

208 **SECTION 6.** Section 69-25-63, Mississippi Code of 1972, is
209 amended as follows:

210 69-25-63. * * * When any penalty assessed by the hearing
211 officer or committee * * * is not paid, * * * the department may
212 file suit in a court of competent jurisdiction for the purpose of
213 reducing the order of the hearing officer or committee to
214 judgment, and if successful on the merits, the department shall be
215 entitled to an award for reasonable attorney's fees and * * *
216 court costs.

217 * * *

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

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

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

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

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

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

241 69-21-5. For purposes of this article, the following terms
242 shall have the meanings ascribed to them in this section:

243 (a) * * * "Commissioner" means Commissioner of
244 Agriculture and Commerce.

245 (b) "Department" means the Department of Agriculture
246 and Commerce.

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

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

253 69-21-7. (1) The department shall regulate the application
254 of hormone-type herbicides by aircraft within the state.

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

265 (3) The commissioner may require the applicant to show, upon
266 examination, that he possesses adequate knowledge concerning the
267 proper use and application of herbicides and the dangers involved
268 and precautions to be taken in connection with their application.
269 If the applicant is other than an individual, the applicant shall
270 designate an officer, member or technician of the organization to
271 take the examination. The designee is subject to the approval of

272 the commissioner. If the extent of the applicant's operations
273 warrant it, the commissioner may require more than one (1)
274 officer, member or technician to take the examination.

275 (4) If the commissioner finds the applicant qualified, he
276 shall issue a license, for such period as the commissioner may by
277 regulation prescribe, to perform application of herbicides within
278 this state. The license may restrict the applicant to the use of
279 a certain type or types of equipment or materials if the
280 commissioner finds that the applicant is qualified to use only
281 such type or types. If a license is not issued as applied for,
282 the commissioner shall inform the applicant in writing of the
283 reasons therefor.

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

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

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

295 69-21-13. The commissioner shall require each person, firm,
296 association or corporation who is granted a permit to use aircraft
297 in the application of "hormone-type herbicides" to furnish to, and
298 file with, the * * * commissioner a fidelity bond, insurance
299 policy, or other security satisfactory to the commissioner,
300 conditioned that the principal therein named shall pay for * * *
301 all damages suffered by any person, firm, association or
302 corporation, by reason of the negligence of the principal or his
303 or its agents or employees in the conduct of the business
304 authorized by this article, and shall honestly conduct the

305 business and as otherwise conditioned by the commissioner. * * *
306 The bond or other security shall be at least Ten Thousand Dollars
307 (\$10,000.00). Any person, firm * * * or corporation having a
308 right of action * * *, against such person, firm, association or
309 corporation, * * * may bring suit against them or any of them for
310 any damages caused by their negligence in the conduct of the
311 business authorized hereunder * * *.

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

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

320 69-21-25. To carry * * * out the provisions of this article
321 the commissioner or his employees may enter upon any public or
322 private premises at reasonable times in order to have access for
323 the purpose of inspecting any equipment, herbicide, records,
324 aircraft or other object subject to this article.

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

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

338 current period of registration. The registrant shall file with
339 the commissioner a statement including:

340 (a) The name and address of the registrant and the name
341 and address of the person whose name will appear on the label if
342 other than the registrant;

343 (b) The name of the pesticide;

344 (c) A complete copy of the labeling accompanying the
345 pesticide and a statement of all claims to be made for it,
346 including directions for use and the use classification as
347 provided for in FIFRA;

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

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

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

366 (3) The commissioner, whenever he deems it necessary in the
367 administration of this chapter, may require the submission of the
368 complete formula of any pesticide. If it appears to the
369 commissioner that the composition of the articles * * * warrants
370 the proposed claims for it, and if the article and its labeling

371 and other material required to be submitted comply with the
372 requirements of Section 69-23-5, he shall register the article, if
373 the article is registered under FIFRA. If the state is certified
374 by the administrator of EPA to register pesticides pursuant to
375 Section 24(c) of FIFRA, the commissioner may register the article
376 to meet special local needs if he determines that the registration
377 will not be in violation of FIFRA.

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

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

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

404 69-23-9. (1) The commissioner is authorized * * *:

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

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

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

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

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

433 (4) No action taken by the commissioner under * * * this
434 section shall be effective unless and until such action is
435 approved by the advisory board created under * * * Section
436 69-25-3, Mississippi Code of 1972.

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

439 69-23-11. (1) The commissioner or his employees, with
440 proper identification and during normal working hours, shall have
441 free access to all places of business, factories, buildings,
442 carriages, cars, stores, warehouses and other places where
443 pesticides are offered for sale or kept for sale or distribution
444 or use and application, and shall have authority to inspect or
445 open any container of pesticide and to take * * * a sample for the
446 purpose of examination and analysis. It shall be the duty of the
447 commissioner to take such samples and deliver them to the State
448 Chemist for examination and analysis.

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

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

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

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

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

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

481 (a) If it is adulterated or misbranded;

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

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

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

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

493 (3) When a decree of condemnation is entered against the
494 article, court costs and fees and storage and other proper
495 expenses shall be awarded against the person shown to be the
496 claimant of the article.

497 (4) The remedy in this section is supplemental to and not in
498 replacement of the remedies under Sections 69-25-51 through
499 69-25-63.

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

502 69-23-23. (1) Any nonresident individual, partnership,
503 association, firm, or corporation desiring to distribute, sell, or
504 offer for sale within this state any product described in this
505 chapter, and any such nonresident who may be subject otherwise to
506 the provisions of such chapter, shall file a written power of
507 attorney designating the Secretary of State as the agent of such
508 nonresident upon whom service of process may be had in the event
509 of any suit against said nonresident individual, partnership,
510 firm, association, or corporation; and such power of attorney
511 shall be so prepared in such form as to render effective the
512 jurisdiction of the courts of Mississippi over such nonresident
513 applicants and make such applicants amenable to the jurisdiction
514 of the courts of this state. Provided, however, that any such
515 nonresident who has a duly appointed resident agent upon whom
516 process may be served as provided by law shall not be required to
517 designate the Secretary of State as such agent. The Secretary of
518 State shall be allowed such fees therefor as provided by law for
519 designating resident agents. The commissioner shall be furnished
520 with a copy of such designation of the Secretary of State or of a
521 resident agent, such copy to be duly certified by the Secretary of
522 State.

523 (2) The commissioner may also require such nonresident
524 subject to the provisions of this chapter to furnish to him a
525 fidelity bond or other security satisfactory to him and
526 conditioned that the principal therein named shall pay for any and
527 all damages suffered by any person by reason of the negligence of
528 the principal or his or its agents in the conduct of said business
529 and shall honestly conduct said business and as otherwise
530 conditioned by said commissioner, provided that in no case shall a
531 bond or other security less than Ten Thousand Dollars (\$10,000.00)
532 be required. A copy of said bond duly certified by the
533 commissioner shall be received as evidence in all courts of this
534 state without further proof. Any person having a right of action

535 against such person, firm, association or corporation may bring
536 suit against the principal and sureties on such bond. Should the
537 surety furnished become unsatisfactory, said applicant shall
538 execute a new bond and should he fail to do so, it shall be the
539 duty of the commissioner to cancel his license and give him notice
540 of said fact, and it shall be unlawful thereafter for such person
541 to engage in said business without obtaining a new license.

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

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

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

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

564 (4) The commissioner may set standards and qualifications
565 for licensing of pesticide dealers and dealer managers to
566 determine their competency.

567 (5) Licenses for pesticide dealers will expire on December
568 31 of each year and must be renewed annually.

569 (6) The commissioner may prescribe rules and regulations
570 pertaining to licensing of pesticide dealers, including but not
571 limited to record keeping, and may at any time cancel, suspend or
572 revoke a pesticide dealer license when he finds there has been a
573 failure or refusal to comply with the provisions of this chapter
574 or regulations adopted hereunder. The regulatory action
575 authorized in this subsection shall be governed by Sections
576 69-25-51 through 69-25-63.

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

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

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

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

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

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

601 69-23-101. Sections 69-23-101 through 69-23-135 may be known
602 as the "Mississippi Pesticide Application Law of 1975."

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

605 69-23-103. Sections 69-23-101 through 69-23-135 shall be
606 administered by the Commissioner of the Mississippi Department of
607 Agriculture and Commerce, or his agent, herein referred to as the
608 "commissioner."

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

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

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

627 69-23-107. When used in the context of Sections 69-23-101
628 through 69-23-135, the following terms shall be ascribed the
629 following meanings:

630 (a) "Commissioner" means the Commissioner of
631 Agriculture and Commerce of the State of Mississippi.

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

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

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

644 (e) "Division" means the Bureau of Plant Industry
645 within the Regulatory Office of the Mississippi Department of
646 Agriculture and Commerce.

647 (f) "Division of Plant Industry" means the Bureau of
648 Plant Industry within the Regulatory Office of the Mississippi
649 Department of Agriculture and Commerce.

650 (g) "EPA" means the United States Environmental
651 Protection Agency.

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

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

655 (j) "Person" means any individual, partnership,
656 association, corporation or organized group of persons, whether
657 incorporated or not.

658 (k) "Pest" means:

659 (i) Any insects, rodents, nematodes, fungi, weeds;
660 and

661 (ii) Other forms of terrestrial or aquatic plant
662 or animal life or virus, bacteria, or other microorganism (except
663 viruses, bacteria or other microorganism on or in living man or

664 other living animals) which the commissioner declares to be a
665 pest.

666 (l) "Pesticide" means any substance or mixture of
667 substances intended for preventing, destroying, repelling,
668 mitigating or attracting any pests; and shall also include
669 adjuvants intended to enhance the effectiveness of pesticides; and
670 any substance or mixture of substances intended for use as a plant
671 regulator, defoliant or desiccant.

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

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

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

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

695 (q) "Under the direct supervision of a certified
696 applicator" means, unless otherwise prescribed by its labeling, a

697 pesticide which is to be applied by a competent person acting
698 under the instructions and control of a certified applicator who
699 is available if and when needed, even though such certified
700 applicator is not physically present at the time and place the
701 pesticide is applied.

702 (r) "Unreasonable adverse effects on the environment"
703 means any unreasonable risk to man or the environment, taking into
704 account the economic, social and environmental costs and benefits
705 of the use of any pesticide.

706 (s) Words and terms as defined in Sections 69-19-1
707 through 69-19-15, 69-21-1 through 69-21-27, 69-21-101 through
708 69-21-141, and 69-23-1 through 69-23-29, when used in Sections
709 69-23-101 through 69-23-135 shall have the same meaning ascribed
710 therein.

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

713 69-23-109. (1) The commissioner may adopt regulations to
714 carry out the provisions of Sections 69-23-1 through 69-23-135.

715 (2) In adopting regulations, the commissioner shall give
716 consideration to pertinent research findings and recommendations
717 of other agencies of this state or federal government. The
718 commissioner shall report to the Legislature on or before February
719 1 of each year any regulation promulgated under this section which
720 is more restrictive than applicable federal regulations.

721 (3) Regulations promulgated by the commissioner under * * *
722 Sections 69-23-1 through 69-23-135 shall not be effective until
723 approved by the advisory board created under * * * Section
724 69-25-3.

725 (4) In order to eliminate inequitable application or
726 establishment of opposing regulations, the authority to regulate
727 any matter pertaining to the registration, sale, handling,
728 distribution, notification of use, application and use of
729 pesticides shall vest solely in the Commissioner of Agriculture

730 and Commerce, except where other state agencies, including the
731 Agricultural Aviation Board, exercise such regulatory authority
732 under state law.

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

735 69-23-111. (1) After October 21, 1976, it is unlawful for
736 any person to engage in the application or use of any pesticide
737 which is restricted by EPA or the commissioner, except as provided
738 for and defined in Sections 69-19-1 through 69-19-15, 69-21-1
739 through 69-21-27, 69-21-101 through 69-21-141, and 69-23-1 through
740 69-23-29, without being certified or licensed by the commissioner.

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

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

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

763 (5) If the commissioner finds the applicant qualified in the
764 classification for which he has applied, he shall issue a
765 certified applicator's license limited to that classification.
766 Expiration dates of licenses may be established by regulation,
767 unless revoked, suspended, denied, cancelled or modified prior
768 thereto by the commissioner for cause as hereinafter provided.

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

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

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

789 69-23-115. It is unlawful for a person to: * * *

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

792 (b) Conduct pest control operations in a faulty,
793 careless or negligent manner or to * * * operate faulty or unsafe
794 pest control equipment * * *;

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

798 (d) * * * Fail to keep and maintain records required by
799 Sections 69-23-101 through 69-23-135 or to make reports when
800 required;

801 (e) Make false or fraudulent records, invoices or
802 reports;

803 (f) Use fraud or misrepresentation in making
804 application for a license or renewal for a license;

805 (g) Aid or abet any person in evading the provisions of
806 Sections 69-23-101 through 69-23-135, or allow one's license to be
807 used by another person;

808 (h) Impersonate any state or federal official;

809 (i) * * * Commit a violation under FIFRA; * * *

810 (j) * * * Use any restricted use pesticide in a manner
811 which is * * * inconsistent with its labeling; or

812 (k) Commit any other act or omission specified in the
813 regulations adopted under Sections 69-23-101 through 69-23-135.

814 * * *

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

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

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

825 69-23-119. (1) Any person duly licensed and certified under
826 Sections 69-19-1 through 69-19-15, 69-21-1 through 69-21-27, or

827 69-21-101 through 69-21-141, is exempted from the licensing
828 provisions of Sections 69-23-101 through 69-23-135.

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

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

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

835 69-23-121. The Mississippi Cooperative Extension Service
836 shall conduct courses of instruction and training for the purpose
837 of carrying out the provisions of Sections 69-23-101 through
838 69-23-135.

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

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

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

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

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

857 69-23-127. The commissioner may obtain an injunction to
858 enjoin the violation of Sections 69-23-101 through 69-23-135 or

859 any regulations issued under those sections in the chancery court
860 of the county in which the violation occurs.

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

863 69-23-133. The commissioner shall appoint an advisory
864 committee, and by regulation establish the composition of the
865 committee to include representatives from the agriculture,
866 agribusiness and related industries.

867 The purpose of the committee shall be to advise and assist
868 the commissioner in developing regulations and plans for
869 implementing the provisions of Sections 69-23-101 through
870 69-23-135 and a pesticide regulatory program to meet the
871 requirements of FIFRA.

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

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

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

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

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

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

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

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