

1 HB355  
2 166064-4  
3 By Representatives Sessions, Wilcox and Williams (JW)  
4 RFD: Agriculture and Forestry  
5 First Read: 31-MAR-15

1  
2 ENROLLED, An Act,

3 To amend Sections 2-2-33 and 2-2-35 of the Code of  
4 Alabama 1975, relating to the Department of Agriculture and  
5 Industries; to authorize tests or analyses required to be  
6 performed by the department to be performed by laboratories of  
7 the federal government or any other state government; and to  
8 amend Sections 2-15-210, 2-16-20, 2-21-26, 2-26-4, 2-27-33,  
9 8-16-5, and 8-17-81, Code of Alabama 1975, to conform to this  
10 act.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. Sections 2-2-33 and 2-2-35 of the Code of  
13 Alabama 1975, are amended to read as follows:

14 "§2-2-33.

15 "(a) Whenever it shall be necessary to have any  
16 tests or analyses made in order to properly execute any law or  
17 rule and regulation under authority of law, the execution or  
18 administration of which is a duty imposed on the commissioner  
19 or the State Board of Agriculture and Industries, the  
20 commissioner shall make such tests or analyses or cause to be  
21 made such tests or analyses by employees of the Department of  
22 Agriculture and Industries or as otherwise provided in  
23 subsection (b).

24 "(b) The commissioner, with approval of the State  
25 Board of Agriculture and Industries, may enter into agreements

1 delegating the responsibility for laboratory tests or analyses  
2 to any laboratory operated by the United States government or  
3 any other state government. The commissioner may use the  
4 results of tests or analyses performed by these laboratories  
5 for the execution or administration of any law or rule imposed  
6 on the commissioner or the State Board of Agriculture and  
7 Industries.

8 "§2-2-35.

9 "A certificate of analysis or examination by the  
10 chemist who is the supervisor or director of the laboratory of  
11 the Department of Agriculture and Industries or other  
12 laboratory utilized by the commissioner as provided in Section  
13 2-2-33 in which ~~such~~ the analysis or examination is made, when  
14 properly verified by affidavit, shall be admissible and shall  
15 be prima facie evidence of the facts therein stated in any of  
16 the courts of this state on the trial of any issue involving  
17 the merits, and the quality of the bulk from which the sample  
18 was taken shall prima facie be presumed to be the same as the  
19 quality of the sample as shown by the analysis or  
20 examination."

21 Section 2. Sections 2-15-210, 2-16-20, 2-21-26,  
22 2-26-4, 2-27-33, 8-16-5, and 8-17-81, Code of Alabama 1975,  
23 are amended to read as follows:

24 "§2-15-210.

1           "(a) The Department of Agriculture and Industries ~~is~~  
2 ~~hereby authorized to~~ may establish, conduct and maintain a  
3 swine disease diagnostic laboratory for the purpose of  
4 diagnosing contagious, infectious and communicable diseases of  
5 swine owned by producers of such livestock in Alabama, and the  
6 amount appropriated and made available for such purpose in the  
7 general appropriations act shall be used and expended by the  
8 Department of Agriculture and Industries to establish, operate  
9 and conduct such a laboratory.

10           "~~(b) Any funds appropriated and made available by~~  
11 ~~the Legislature to the Department of Agriculture and~~  
12 ~~Industries for~~ Testing for swine disease may be performed at a  
13 swine disease diagnostic laboratory for the purposes set forth  
14 in this section shall be expended by said department to  
15 establish and conduct such a laboratory at a location in the  
16 State of Alabama to be designated by the State Board of  
17 Agriculture and Industries or as otherwise provided in Section  
18 2-2-33.

19           "§2-16-20.

20           "(a) The Commissioner of Agriculture and Industries,  
21 with approval of the State Board of Agriculture and  
22 Industries, ~~is authorized and empowered to~~ may establish,  
23 conduct and maintain poultry disease diagnostic laboratories  
24 for the purpose of diagnosing, treating, eradicating,  
25 preventing and controlling infectious and contagious diseases

1 of poultry. The laboratories provided for in this section  
2 shall be located at places in the State of Alabama where they  
3 will best serve the farmers engaged in the production of  
4 poultry, and such locations shall be selected by the  
5 Commissioner of Agriculture and Industries with approval of  
6 the State Board of Agriculture and Industries. Such  
7 laboratories shall be staffed and operated by qualified  
8 personnel who are employees of the state Department of  
9 Agriculture and Industries.

10 "(b) In addition to testing and analysis as provided  
11 in subsection (a), testing and analysis may be performed as  
12 otherwise provided in Section 2-2-33.

13 "§2-21-26.

14 "(a) For the purpose of enforcement of this chapter  
15 and in order to determine whether its provisions have been  
16 complied with, including whether or not any operations may be  
17 subject to such provisions, officers or employees duly  
18 designated by the commissioner, upon presenting appropriate  
19 credentials to the owner, operator or agent in charge, are  
20 authorized:

21 "(1) To enter, during normal business hours, any  
22 factory, warehouse or establishment within the state in which  
23 commercial feeds are manufactured, processed, packed or held  
24 for distribution, or to enter any vehicle being used to  
25 transport or hold such feeds; and

1           "(2) To inspect at reasonable times and within  
2 reasonable limits and in a reasonable manner, such factory,  
3 warehouse, establishment or vehicle and all pertinent  
4 equipment, finished and unfinished materials, containers and  
5 labeling therein. The inspection may include the verification  
6 of only such records, and production and control procedures as  
7 may be necessary to determine compliance with the good  
8 manufacturing practice regulations established under  
9 subdivision (4) of Section 2-21-22.

10           "(b) Each inspection shall be commenced and  
11 completed with reasonable promptness. Upon completion of the  
12 inspection, the person in charge of the facility or vehicle  
13 shall be so notified and presented a copy of the inspection  
14 report, which will include a record of all samples taken.

15           "(c) If the officer or employee making such  
16 inspection of a factory, warehouse, or other establishment has  
17 obtained a sample in the course of the inspection, upon  
18 completion of the inspection and prior to leaving the premises  
19 he shall offer to leave with the owner-operator, or agent in  
20 charge, a duplicate sample.

21           "(d) If the owner of any factory, warehouse or  
22 establishment described in subsection (a) of this section, or  
23 his agent, refuses to admit the commissioner or his agent to  
24 inspect in accordance with subsections (a) and (b) of this  
25 section, the commissioner is authorized to obtain from any

1 state court a warrant directing such owner or his agent to  
2 submit the premises described in such warrant to inspection.

3 "(e) For the purpose of the enforcement of this  
4 chapter, the commissioner or his duly designated agent is  
5 authorized to enter upon any public or private premises  
6 including any vehicle of transport during regular business  
7 hours to have access to, to obtain samples and to examine  
8 records relating to distribution of commercial feeds.

9 "(f) Sampling and analysis shall be conducted in  
10 accordance with methods published by the Association of  
11 Official Analytical Chemists, or in accordance with other  
12 generally recognized methods approved by the commissioner.  
13 Testing and analysis may be performed as otherwise authorized  
14 in Section 2-2-33.

15 "(g) The results of all analyses of official samples  
16 revealing deficiencies shall be forwarded by the commissioner  
17 to the person named on the label and to the purchaser when he  
18 can be located. When the inspection and analysis of an  
19 official sample indicates a commercial feed is in violation of  
20 the provisions of this chapter and upon request within 30 days  
21 following receipt of the analysis, the commissioner shall  
22 furnish to the licensee a portion of the sample concerned.

23 "(h) The commissioner, in determining for  
24 administrative purposes whether a commercial feed is deficient  
25 in any component, shall be guided by the permitted analytical

1 variation as defined in subdivision (16) of Section 2-21-17  
2 and obtained and analyzed as provided for in subsections (c),  
3 (e) and (f) of this section.

4 "(i) Penalties may be invoked if the analysis of a  
5 sample shows a deviation from "permitted analytical variation"  
6 established by the commissioner and established in rules and  
7 regulations promulgated pursuant to this chapter.

8 "(j) For repeated or flagrant violations, the  
9 commissioner may cancel the manufacturer's license.

10 "(k) Samples and portions of samples shall be  
11 retained according to sample retention times established by  
12 the commissioner in the rules and regulations.

13 "§2-26-4.

14 "(a) There shall be established within the  
15 Department of Agriculture and Industries a seed division which  
16 shall maintain facilities, equipment and qualified personnel  
17 to perform the seed testing, sampling and analysis work  
18 required to execute the provisions and requirements of this  
19 article. Any testing or analysis required to be performed may  
20 be performed as provided in Section 2-2-33. The seed division  
21 established and created under this section shall also perform  
22 the administrative, clerical and other work incident to the  
23 administration and enforcement of the provisions and  
24 requirements of this article and such seed testing and  
25 administrative duties shall not be performed by any other



1 division of the Department of Agriculture and Industries;  
2 except, that the State Board of Agriculture and Industries  
3 shall have the authority to enter into an agreement delegating  
4 the responsibility for the testing of tree and shrub seed to  
5 the United States Forest Service or any other seed laboratory  
6 designated and approved by the State Board of Agriculture and  
7 Industries ~~and as otherwise authorized in Section 2-2-33.~~

8 "(b) The responsibility for the enforcement of the  
9 rules and regulations governing the sale or distribution of  
10 tree or shrub seed within the state shall be the sole  
11 responsibility of the state Department of Agriculture and  
12 Industries.

13 "§2-27-33.

14 "(a) In addition to the powers and authority  
15 heretofore authorized by law pursuant to Sections 2-27-30,  
16 2-27-31 and 2-27-32, the pesticide residue laboratory  
17 heretofore established and now operated by the Department of  
18 Agriculture and Industries at Auburn University shall also be  
19 authorized to obtain reliable analysis of raw and processed  
20 agricultural products and other food products, fish, game and  
21 other wildlife to detect the presence of any harmful drug  
22 residues for the protection of public health, to aid in  
23 developing and expanding markets for agricultural products and  
24 for the protection and production of fish and wildlife and  
25 related purposes, which activities shall be in addition to the

1 duties as now authorized by law for the operation of such  
2 laboratory.

3 "(b) In addition to the testing and analysis  
4 authorized in subsection (a), testing and analysis may be  
5 performed as authorized in Section 2-2-33.

6 "§8-16-5.

7 "(a) The state standards of weights and measures  
8 shall be kept by the Commissioner of Agriculture and  
9 Industries in a safe and suitable place in his office, from  
10 which they shall not be removed except for repairs.

11 "(b) With respect to the state standards of weights  
12 and measures, the Commissioner of Agriculture and Industries  
13 shall have the following duties:

14 "(1) He shall maintain such standards in good order.

15 "(2) He shall replace such standards as are  
16 incorrect and purchase such additional standards as shall be  
17 necessary to complete and make up a complete standard of  
18 weights and measures.

19 "(3) He shall purchase such apparatus as shall be  
20 found necessary to a proper prosecution of the work of the  
21 office, to be known as working standards.

22 "(4) He shall compare such working standards with  
23 the state standards at such times as he shall deem necessary  
24 to prove the accuracy of the working standards; and

1           "(5) He shall keep a record of all standards and  
2 other apparatus belonging to the state for the purposes of  
3 this chapter.

4           "(6) The commissioner shall maintain traceability of  
5 the state standards to the national bureau of standards.

6           "(c) Weights and measures that are traceable to the  
7 U.S. prototype standards supplied by the federal government,  
8 or approved as being satisfactory by the national bureau of  
9 standards, shall be the state primary standards of weights and  
10 measures, and shall be maintained in such calibration as  
11 prescribed by the national bureau of standards. All secondary  
12 standards may be prescribed by the commissioner and shall be  
13 verified upon their initial receipt, and as often thereafter  
14 as deemed necessary by the commissioner.

15           "(d) Any testing or analysis required to be  
16 performed may be performed as provided in Section 2-2-33.

17           "§8-17-81.

18           "(a) The Board of Agriculture and Industries shall  
19 have the power and duty to:

20           "(1) Determine and adopt standards of minimum  
21 specifications for petroleum products, and the various  
22 classifications and kinds thereof, as to safety, purity,  
23 freedom from objectionable substances, distillation tests,  
24 heat-producing qualities, fire tests, and efficiency which are  
25 not inconsistent with the specifications for the same products

1 that are published from time to time by the United States  
2 Department of Commerce; and

3 "(2) Make changes from time to time in such  
4 standards, all as the board may deem necessary to provide for  
5 the public safety and to provide that such petroleum products  
6 are satisfactory and efficient for the purposes for which they  
7 may be sold, offered for sale, stored, or used in the state;  
8 provided, that such standards shall not be adopted or altered  
9 by the board until after a specified date when any person in  
10 interest may appear before the board with reference to such  
11 standards.

12 "(b) The Board of Agriculture and Industries shall  
13 prescribe the methods of tests to be used in determining  
14 whether or not petroleum products are in compliance with such  
15 standards as shall be adopted as authorized in this section.  
16 Any testing and analysis required to be performed may be  
17 performed as provided in Section 2-2-33.

18 "(c) The Board of Agriculture and Industries shall  
19 have authority to promulgate rules and regulations necessary  
20 to secure the safe handling of petroleum products and other  
21 such rules and regulations not inconsistent with the  
22 provisions of this division as in the judgment of the board  
23 may be necessary to the proper enforcement of this division.

24 "(d) The standards of minimum specifications  
25 heretofore promulgated by the Board of Agriculture and

1 Industries pursuant to authorization in either Article 21 of  
2 Chapter 1 of Title 2 of the Code of Alabama of 1940, or  
3 Division 2 of Article 26 of the said Chapter 1, shall  
4 constitute the standards of minimum specifications applicable  
5 under this division until such time as the board shall adopt  
6 standards pursuant to the provisions of this division."

7 Section 3. This act shall become effective  
8 immediately following its passage and approval by the  
9 Governor, or its otherwise becoming law.

