

1 SB313
2 166064-1
3 By Senator Whatley
4 RFD: Agriculture, Conservation, and Forestry
5 First Read: 31-MAR-15

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8 SYNOPSIS: Under existing law, when tests or analyses
9 are required to be performed to execute a law or
10 rule of the Department of Agriculture and
11 Industries, the tests or analyses are required to
12 be performed by employees of the department.

13 This bill would authorize the Commissioner
14 of Agriculture and Industries to delegate the
15 performance of the tests to any laboratory operated
16 by the federal government or any other state
17 government.

18
19 A BILL
20 TO BE ENTITLED
21 AN ACT
22

23 To amend Sections 2-2-33 and 2-2-35 of the Code of
24 Alabama 1975, relating to the Department of Agriculture and
25 Industries; to authorize tests or analyses required to be
26 performed by the department to be performed by laboratories of
27 the federal government or any other state government; and to

1 amend Sections 2-15-210, 2-16-20, 2-21-26, 2-26-4, 2-27-33,
2 8-16-5, and 8-17-81, Code of Alabama 1975, to conform to this
3 act.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

7 "§2-2-33.

8 "(a) Whenever it shall be necessary to have any
9 tests or analyses made in order to properly execute any law or
10 rule and regulation under authority of law, the execution or
11 administration of which is a duty imposed on the commissioner
12 or the State Board of Agriculture and Industries, the
13 commissioner shall make such tests or analyses or cause to be
14 made such tests or analyses by employees of the Department of
15 Agriculture and Industries or as otherwise provided in
16 subsection (b).

17 "(b) The commissioner, with approval of the State
18 Board of Agriculture and Industries, may enter into agreements
19 delegating the responsibility for laboratory tests or analyses
20 to any laboratory operated by the United States government or
21 any other state government. The commissioner may use the
22 results of tests or analyses performed by these laboratories
23 for the execution or administration of any law or rule imposed
24 on the commissioner or the State Board of Agriculture and
25 Industries.

26 "§2-2-35.

1 "A certificate of analysis or examination by the
2 chemist who is the supervisor or director of the laboratory of
3 the Department of Agriculture and Industries or other
4 laboratory utilized by the commissioner as provided in Section
5 2-2-33 in which ~~such~~ the analysis or examination is made, when
6 properly verified by affidavit, shall be admissible and shall
7 be prima facie evidence of the facts therein stated in any of
8 the courts of this state on the trial of any issue involving
9 the merits, and the quality of the bulk from which the sample
10 was taken shall prima facie be presumed to be the same as the
11 quality of the sample as shown by the analysis or
12 examination."

13 Section 2. Sections 2-15-210, 2-16-20, 2-21-26,
14 2-26-4, 2-27-33, 8-16-5, and 8-17-81, Code of Alabama 1975,
15 are amended to read as follows:

16 "§2-15-210.

17 "(a) The Department of Agriculture and Industries ~~is~~
18 ~~hereby authorized to~~ may establish, conduct and maintain a
19 swine disease diagnostic laboratory for the purpose of
20 diagnosing contagious, infectious and communicable diseases of
21 swine owned by producers of such livestock in Alabama, and the
22 amount appropriated and made available for such purpose in the
23 general appropriations act shall be used and expended by the
24 Department of Agriculture and Industries to establish, operate
25 and conduct such a laboratory.

26 "(b) ~~Any funds appropriated and made available by~~
27 ~~the Legislature to the Department of Agriculture and~~

1 ~~Industries for Testing for swine disease may be performed at a~~
2 ~~swine disease diagnostic laboratory for the purposes set forth~~
3 ~~in this section shall be expended by said department to~~
4 ~~establish and conduct such a laboratory at a location in the~~
5 ~~State of Alabama to be designated by the State Board of~~
6 ~~Agriculture and Industries or as otherwise provided in Section~~
7 ~~2-2-33.~~

8 "§2-16-20.

9 "(a) The Commissioner of Agriculture and Industries,
10 with approval of the State Board of Agriculture and
11 Industries, ~~is authorized and empowered to~~ may establish,
12 conduct and maintain poultry disease diagnostic laboratories
13 for the purpose of diagnosing, treating, eradicating,
14 preventing and controlling infectious and contagious diseases
15 of poultry. The laboratories provided for in this section
16 shall be located at places in the State of Alabama where they
17 will best serve the farmers engaged in the production of
18 poultry, and such locations shall be selected by the
19 Commissioner of Agriculture and Industries with approval of
20 the State Board of Agriculture and Industries. Such
21 laboratories shall be staffed and operated by qualified
22 personnel who are employees of the state Department of
23 Agriculture and Industries.

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

27 "§2-21-26.

1 "(a) For the purpose of enforcement of this chapter
2 and in order to determine whether its provisions have been
3 complied with, including whether or not any operations may be
4 subject to such provisions, officers or employees duly
5 designated by the commissioner, upon presenting appropriate
6 credentials to the owner, operator or agent in charge, are
7 authorized:

8 "(1) To enter, during normal business hours, any
9 factory, warehouse or establishment within the state in which
10 commercial feeds are manufactured, processed, packed or held
11 for distribution, or to enter any vehicle being used to
12 transport or hold such feeds; and

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

22 "(b) Each inspection shall be commenced and
23 completed with reasonable promptness. Upon completion of the
24 inspection, the person in charge of the facility or vehicle
25 shall be so notified and presented a copy of the inspection
26 report, which will include a record of all samples taken.

1 "(c) If the officer or employee making such
2 inspection of a factory, warehouse, or other establishment has
3 obtained a sample in the course of the inspection, upon
4 completion of the inspection and prior to leaving the premises
5 he shall offer to leave with the owner-operator, or agent in
6 charge, a duplicate sample.

7 "(d) If the owner of any factory, warehouse or
8 establishment described in subsection (a) of this section, or
9 his agent, refuses to admit the commissioner or his agent to
10 inspect in accordance with subsections (a) and (b) of this
11 section, the commissioner is authorized to obtain from any
12 state court a warrant directing such owner or his agent to
13 submit the premises described in such warrant to inspection.

14 "(e) For the purpose of the enforcement of this
15 chapter, the commissioner or his duly designated agent is
16 authorized to enter upon any public or private premises
17 including any vehicle of transport during regular business
18 hours to have access to, to obtain samples and to examine
19 records relating to distribution of commercial feeds.

20 "(f) Sampling and analysis shall be conducted in
21 accordance with methods published by the Association of
22 Official Analytical Chemists, or in accordance with other
23 generally recognized methods approved by the commissioner.
24 Testing and analysis may be performed as otherwise authorized
25 in Section 2-2-33.

26 "(g) The results of all analyses of official samples
27 revealing deficiencies shall be forwarded by the commissioner

1 to the person named on the label and to the purchaser when he
2 can be located. When the inspection and analysis of an
3 official sample indicates a commercial feed is in violation of
4 the provisions of this chapter and upon request within 30 days
5 following receipt of the analysis, the commissioner shall
6 furnish to the licensee a portion of the sample concerned.

7 "(h) The commissioner, in determining for
8 administrative purposes whether a commercial feed is deficient
9 in any component, shall be guided by the permitted analytical
10 variation as defined in subdivision (16) of Section 2-21-17
11 and obtained and analyzed as provided for in subsections (c),
12 (e) and (f) of this section.

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

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

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

22 "§2-26-4.

23 "(a) There shall be established within the
24 Department of Agriculture and Industries a seed division which
25 shall maintain facilities, equipment and qualified personnel
26 to perform the seed testing, sampling and analysis work
27 required to execute the provisions and requirements of this

1 article. The seed division established and created under this
2 section shall also perform the administrative, clerical and
3 other work incident to the administration and enforcement of
4 the provisions and requirements of this article and such seed
5 testing and administrative duties shall not be performed by
6 any other division of the Department of Agriculture and
7 Industries; except, that the State Board of Agriculture and
8 Industries shall have the authority to enter into an agreement
9 delegating the responsibility for the testing of tree and
10 shrub seed to the United States Forest Service or any other
11 seed laboratory designated and approved by the State Board of
12 Agriculture and Industries and as otherwise authorized in
13 Section 2-2-33.

14 "(b) The responsibility for the enforcement of the
15 rules and regulations governing the sale or distribution of
16 tree or shrub seed within the state shall be the sole
17 responsibility of the state Department of Agriculture and
18 Industries.

19 "§2-27-33.

20 "(a) In addition to the powers and authority
21 heretofore authorized by law pursuant to Sections 2-27-30,
22 2-27-31 and 2-27-32, the pesticide residue laboratory
23 heretofore established and now operated by the Department of
24 Agriculture and Industries at Auburn University shall also be
25 authorized to obtain reliable analysis of raw and processed
26 agricultural products and other food products, fish, game and
27 other wildlife to detect the presence of any harmful drug

1 residues for the protection of public health, to aid in
2 developing and expanding markets for agricultural products and
3 for the protection and production of fish and wildlife and
4 related purposes, which activities shall be in addition to the
5 duties as now authorized by law for the operation of such
6 laboratory.

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

10 "§8-16-5.

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

15 "(b) With respect to the state standards of weights
16 and measures, the Commissioner of Agriculture and Industries
17 shall have the following duties:

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

19 "(2) He shall replace such standards as are
20 incorrect and purchase such additional standards as shall be
21 necessary to complete and make up a complete standard of
22 weights and measures.

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

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

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

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

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

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

20 "§8-17-81.

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

23 "(1) Determine and adopt standards of minimum
24 specifications for petroleum products, and the various
25 classifications and kinds thereof, as to safety, purity,
26 freedom from objectionable substances, distillation tests,
27 heat-producing qualities, fire tests, and efficiency which are

1 not inconsistent with the specifications for the same products
2 that are published from time to time by the United States
3 Department of Commerce; and

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

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

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

25 "(d) The standards of minimum specifications
26 heretofore promulgated by the Board of Agriculture and
27 Industries pursuant to authorization in either Article 21 of

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

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