ENROLLED SENATE
BILL NO. 240

By: Easley of the Senate

and

Rice of the House

An Act relating to agriculture; amending 2 O.S. 1991, Section 3-63, which relates to pesticides; authorizing the Board of Agriculture to determine certain date of permit expirations; providing for certain fee increase; providing that certain fees be used for administration of certain program; amending Section 19, Chapter 404, O.S.L. 1998 (2 O.S. Supp. 1998, Section 9-212.1), which relates to poultry operations; requiring certain licensed poultry operations to be conducted pursuant to certain State Department of Agriculture rules; modifying certain poultry complaint process; amending 2 O.S. 1991, Section 11-1, which relates to administrative penalties; modifying certain administrative penalty; stating certain actions constitute separate violations; amending Section 3, Chapter 393, O.S.L. 1998 (2 O.S. Supp. 1998, Section 1301-502), which relates to certain pension and retirement systems; modifying date for certain documentation; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 2 O.S. 1991, Section 3-63, is amended to read as follows:

Section 3-63. ~~(a)~~ A. Every pesticide or device which is distributed, sold or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state shall be registered with the ~~State~~ Board of Agriculture; and such registration shall be renewed annually and shall expire on ~~the 31st day of December next following its issuance~~ a date to be determined by rule promulgated by the Board. The registrant shall file with the Board a statement including:

~~(1)~~ 1. The name and address of the registrant and the name and address of the person whose name will appear on the label, if other than the registrant;

~~(2)~~ 2. The name of the pesticide or device;

~~(3)~~ 3. A complete copy of the labeling accompanying the pesticide or device and a statement of all claims to be made for it including directions for use; and

~~(4)~~ 4. If requested by the Board a full description of the tests made and the results thereof upon which the claims are based. In the case of renewal registration, a statement shall be required only with respect to information which is different from that furnished when the pesticide or device was registered or last reregistered.

~~(b)~~ B. Each registrant shall pay to the Board an annual registration fee of ~~Fifty Dollars ($50.00)~~ One Hundred Dollars ($100.00) for each pesticide or device label registered, and such fee, when collected, shall be deposited in the State Department of Agriculture Revolving Fund. Such fees shall be used by the Department for purposes of administering pesticide management programs.

~~(c)~~ C. The Board, whenever it deems it to be necessary in the administration of this subarticle, may require the submission of the complete formula of any pesticide. If it appears to the Board that the composition of the article is such as to warrant the proposed claims for it and if the article and its labeling and other material required to be submitted comply with the requirements of this subarticle, then such article shall be registered.

~~(d)~~ D. If it does not appear to the Board that the article is such as to warrant the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with the provisions of this subarticle, it shall notify the applicant of the manner in which the article, labeling or other material required to be submitted fails to comply, so as to afford the applicant an opportunity to make the necessary corrections. If, upon receipt of such notice, the applicant insists that such corrections are not necessary and requests in writing that the article be registered, the Board, after receiving a written request for a hearing, shall provide him or her an opportunity for such hearing before refusing to issue registration. In order to protect the public, the Board, on its own motion, after hearing, may at any time cancel the registration of a pesticide or device. In no event shall registration of an article be considered as a defense or excuse for the commission of any offense prohibited under Section 3-62 of this title.

~~(e)~~ E. Notwithstanding any other of the provisions of this subarticle, registration shall not be required in the case of a pesticide shipped from one plant or place within this state to another plant or place within this state that is operated by the same person.

SECTION 2. AMENDATORY Section 19, Chapter 404, O.S.L. 1998 (2 O.S. Supp. 1998, Section 9-212.1), is amended to read as follows:

Section 9-212.1 A. Due to the inherently unique nature of poultry-laying operations, and the increased propensity for vector

propagation at such facilities, ~~land application of waste by operators of a licensed managed feeding operation which houses~~ poultry-laying operations licensed pursuant to the Oklahoma Concentrated Animal Feeding Operations Act, ~~may~~ shall be conducted only in a manner as prescribed by the State Department of Agriculture by rule promulgated pursuant to this section and the Oklahoma Concentrated Animal Feeding Operations Act.

B. If three ~~(3)~~ valid complaints are received by the Department against a ~~facility~~ poultry-laying operation, licensed pursuant to the Oklahoma Concentrated Animal Feeding Operations Act, within a period of sixty (60) days, the Department, upon inspection and verification of the complaint, shall declare that an emergency exists.

C. Whenever the Department finds that an emergency exists requiring immediate action to protect the public health or welfare or the environment pursuant to this subsection, the Department may without notice or hearing issue an order, effective upon issuance, reciting the existence of such an emergency and requiring that such action be taken as deemed necessary to meet the emergency. Any person to whom such an order is directed shall comply therewith immediately but may request an administrative enforcement hearing thereon within fifteen (15) days after the order is served. Such hearing shall be held by the Department within ten (10) days after receipt of the request. On the basis of the hearing record, the Department shall sustain or modify such order.

D. If, at the hearing, it is determined that the operator is in violation of the provisions of this section and rules promulgated thereto, in addition to other administrative penalties authorized by law, the Department may order that the operator be prohibited from land applying waste for one hundred sixty (160) days after determination that the facility is in violation.

E. Any party aggrieved by a final order may petition the Department for rehearing, reopening or reconsideration within ten (10) days from the date of the entry of the final order. Any party aggrieved by a final order, including the Attorney General on behalf of the state, may, pursuant to the Administrative Procedures Act, petition for a judicial review thereof.

F. The provisions of this section may be enforced pursuant to the provisions of Section 9-212 of Title 2 of the Oklahoma Statutes.

SECTION 3. AMENDATORY 2 O.S. 1991, Section 11-1, is amended to read as follows:

Section 11-1. A. Any person, firm or corporation who:

1. Fails, refuses or neglects to pay any fee or charge that is required or authorized by the provisions of the Oklahoma Agricultural Code;

2. Fails, refuses or neglects to obtain a license or permit or to make any registration as provided, authorized or required by the Oklahoma Agricultural Code;

3. Does any act requiring a license, permit or registration, or the payment of a fee or charge, as a prerequisite thereto, without first obtaining such license, permit or registration or paying such fee or charge; or

4. Violates any provision of the Oklahoma Agricultural Code or rules and regulations promulgated thereunder shall be civilly liable to the State Board of Agriculture for all such fees and charges.

B. If, after hearing and notice in accordance with the Administrative Procedures Act, the Board finds any person to be in violation of the Oklahoma Agricultural Code or any rule, regulation, or order promulgated thereunder, the Board shall have the authority to assess an administrative penalty of ~~up to~~ not less than One Hundred Dollars ($100.00) and not more than Five Hundred Dollars ($500.00) for each violation. Each day a violation continues ~~shall~~ may constitute a separate violation and each animal brought into the state may constitute a separate and distinct violation. The Board may appoint hearing officers for purposes of conducting the hearing provided in this subsection.

The Board shall prepare and institute a plan whereby the state shall be divided into four (4) quarters for the purpose of conducting hearings for violations of the provisions of this act. Any such hearing shall be held in a central location within the quarter in which the alleged violator resides or the violation occurred.

Any proceeding for review of an administrative order issued pursuant to this act shall be instituted by filing a petition in the district court of the county in which the hearing was held.

SECTION 4. AMENDATORY Section 3, Chapter 393, O.S.L. 1998 (2 O.S. Supp. 1998, Section 1301-502), is amended to read as follows:

Section 1301-502. A. The Oklahoma Firefighters Pension and Retirement System shall determine the number of persons who are eligible members of the Oklahoma Firefighters Pension and Retirement System pursuant to the provisions of subsection D of Section 351 of Title 19 of the Oklahoma Statutes.

B. For each person who has become a member as described by subsection A of this section, the Oklahoma Firefighters Pension and Retirement System shall provide invoice documentation to the State Department of Agriculture. Upon adequate documentation of membership in the Oklahoma Firefighters Pension and Retirement System pursuant to the provisions of subsection D of Section 351 of Title 19 of the Oklahoma Statutes, the State Department of Agriculture shall make a transfer payment from the Volunteer Firefighter Employer Contribution Payment Revolving Fund to the Oklahoma Firefighters Pension and Retirement System by ~~December 31, 1998~~ May 31, 1999, and ~~December~~ May 31 of every year thereafter. The amount transferred shall equal the sum of Sixty Dollars ($60.00) multiplied by the number of members as certified by the System to the Department.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 18th day of May, 1999.

President of the Senate

Passed the House of Representatives the 19th day of May, 1999.

Speaker of the House of Representatives