

ENROLLED SENATE
BILL NO. 606

By: Easley of the Senate

and

Sweeden and Rice of the
House

An Act relating to agriculture; amending 2 O.S. 2001, Section 3-82, as amended by Section 2, Chapter 383, O.S.L. 2002 (2 O.S. Supp. 2002, Section 3-82), which relates to license, permits and registration requirements; modifying certain fee; authorizing certain fee to be deposited into the State Department of Agriculture Revolving Fund; dedicating fee for certain purpose; amending 2 O.S. 2001, Section 16-28.2, which relates to the Oklahoma Forestry Code; modifying certain notification of controlled burn to certain persons; and providing an effective date.

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

SECTION 1. AMENDATORY 2 O.S. 2001, Section 3-82, as amended by Section 2, Chapter 383, O.S.L. 2002 (2 O.S. Supp. 2002, Section 3-82), is amended to read as follows:

Section 3-82. A. LICENSE REQUIRED - 1. It shall be unlawful for any person to act, operate, or do business or advertise as a commercial, noncommercial, certified applicator, temporary certified applicator, service technician, or private applicator unless the person has obtained a valid applicator's license issued by the State Board of Agriculture for the category of pesticide application in which the person is engaged.

2. A license may be issued by the Board in any category of pesticide application if the applicant qualifies and the applicant is limited to the category of pesticide application named on the license. The Board may establish categories of pesticide application as necessary. Licenses shall be issued upon application to the Board on a form prescribed by the Board. The application shall contain information regarding the applicant's qualifications, proposed operations, and other information as specified by the Board.

3. A. An aerial license shall not be issued or be valid unless the applicant files with the Board a copy of a valid document issued by the Federal Aviation Administration showing that the person is qualified to operate or supervise the operation of an aircraft conducting agricultural operations. Applicants for an aerial

license and pilots working under a license may be subject to a complete and thorough background examination.

B. The Board shall promulgate rules regarding aerial applicators and applications consistent with federal law and shall solicit the assistance of the Federal Aviation Agency in the enforcement of this subsection.

4. Each business location shall require a separate license and separate certified applicator except that a certified applicator for a noncommercial business location may also serve as the certified applicator for one commercial business location.

5. A license shall not be issued for the category of pesticide application of any applicant or representative who has a temporary certification.

B. CERTIFICATION REQUIRED - 1. A license shall be issued only after satisfactory completion of the certification standards by the person who shall be the certified applicator under the license. Temporary certified applicators do not qualify as the certified applicator for a license, nor may they act as a certified applicator. The Board shall deny the application for certification, recertification, issuance, or renewal of a certificate or license for a failure to show proper qualification under the rules or for violations of any provisions of this subarticle. A certificate in any category shall be valid for five (5) years unless suspended, canceled, or revoked by the Board or until recertification is required for the category, and may be renewed after successful completion of recertification requirements. The Board may require certified applicators to be recertified once in a five-year period.

2. A certified service technician identification shall be issued upon application and completion of certification standards determined by the Board. Temporary certified applicators may qualify as a certified service technician. No person shall act, do business as, or advertise as a service technician unless the person has met all the qualifications and standards as required by the Board. The service technicians' identification shall be issued in the name of the licensed entity. The licensee shall ensure that the service technician identification is returned to the Board upon termination of the employee. A service technician identification shall be valid for a period of five (5) years unless suspended, canceled, or revoked by the Board, until recertification is required by the Board, or until the service technician leaves the employ of the licensed entity.

3. Each license, except for private applicators, shall expire on the 31st day of December following issuance or renewal, and may be renewed for the ensuing calendar year, without penalty or reexamination, if a properly completed application is filed with the Board not later than the 1st day of January of each year. If application is not received by that date, a penalty of twice the amount of the renewal fee shall be charged for renewal of the license. After the 1st day of February, in addition to the penalty, a reexamination shall be required.

All private applicator licenses are in effect for five (5) years and may be renewed by application after completion of a continuing education program or written exam approved by the Board.

C. The following fees shall be paid to the Board:

1. A fee of Fifty Dollars (\$50.00) for each category of pesticide application shall be paid to the Board for the issuance or renewal of a commercial applicator business license, not more than Two Hundred Fifty Dollars (\$250.00) total category fees shall be charged annually to any business location of an applicator;

2. A fee of Twenty Dollars (\$20.00) shall be paid to the Board for each written examination conducted by the Board;

3. A fee of Twenty Dollars (\$20.00) shall be paid to the Board for each practical examination conducted by the Board;

4. A fee of Five Dollars (\$5.00) shall be paid to the Board for the issuance or renewal of a private applicator's license;

5. A fee of Twenty Dollars (\$20.00) shall be paid to the Board for the issuance or renewal of a noncommercial business license;

6. A fee of Ten Dollars (\$10.00) shall be paid to the Board for the issuance or renewal of service technician identification;

7. A fee of Five Dollars (\$5.00) shall be paid to the Board for the issuance of duplicate licenses or certificates or transfer of a service technician identification;

8. No fees shall be charged to governmental agencies or their employees in the discharge of their official duties;

9. A fee of Twenty Dollars (\$20.00) shall be paid to the Board for each recertification procedure; and

10. A fee of Twenty Dollars (\$20.00) shall be paid to the Board for each reciprocal certification procedure for applicator certifications.

D. All fees shall be deposited in the State Department of Agriculture Revolving Fund.

E. Fees shall be paid to the Board prior to the processing of any application.

F. Failure to pay any fee identified with licenses, permits, pesticide registrations, or certification shall require the Board to deny the application.

G. INSURANCE REQUIRED - 1. The Board shall not issue a commercial applicator's license until the applicant has furnished evidence of an insurance policy or certificate by an insurer or broker authorized to do business in this state insuring the commercial applicator and any agents against liability resulting from the operations of the commercial applicator. The insurance

shall not be applied to damage or injury to agricultural crops, plants, or land being worked upon by the commercial applicator.

2. The amount of liability shall not be less than that set by the Board for each property damage arising out of actual use of any pesticide. The liability shall be maintained at not less than that sum at all times during the licensing period. The Board shall be notified fifteen (15) days prior to any reduction in liability.

3. If the furnished liability becomes unsatisfactory, the applicant shall immediately execute new liability upon notice from the Board. If new liability is not immediately obtained, the Board shall, upon notice, cancel the license. It shall be unlawful for the person to engage in the business of applying pesticides until the liability is brought into compliance and the license reinstated.

H. DAMAGES - No action for alleged damages to growing annual crops or plants may be brought or maintained unless the person claiming the damages has filed with the Board a written statement of alleged damages on a form prescribed by the Board within ninety (90) days of the date that the alleged damages occurred, or prior to the time that twenty-five percent (25%) of a damaged crop has been harvested.

I. PERMIT REQUIRED - 1. It shall be unlawful for any person to sell, offer for sale, or distribute within this state any restricted use pesticide without first obtaining a restricted use pesticide dealer's permit issued by the Board;

2. A permit may be issued by the Board in any category of pesticide sales if the applicant qualifies under the provisions of this subarticle and the applicant is limited to the category of pesticide sales named on the permit. The Board may establish categories of pesticide sales as necessary;

3. The permit shall be issued only upon application on a form prescribed by the Board and the application shall contain information regarding the applicant's proposed operation and other information as specified by the Board;

4. Each business location engaged in the sale or distribution of restricted use pesticides shall require a separate permit;

5. The annual permit fee for a restricted use pesticide dealer permit shall be Twenty Dollars (\$20.00) for each location; and

6. The Board may require a certified applicator to be present at any location where designated restricted use pesticide sales occur.

J. PESTICIDE REGISTRATION REQUIRED - 1. Every pesticide or device distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate or interstate commerce shall be registered with the Board.

2. The registrant shall file with the Board a statement including, but not limited to:

- a. the name and address of the registrant and the name and address of the person whose name shall appear on the label, if other than the registrant,
- b. the name of the pesticide or device,
- c. a complete copy of the labeling accompanying the pesticide or device and a statement of all claims to be made for it, and directions for use, and
- d. if requested by the Board, a full description of the tests made and the results upon which the claims are based. In renewing a registration, a statement shall be required only with respect to information which is different from the information furnished when the pesticide or device was last registered.

3. Each registrant shall pay to the Board an annual registration fee of ~~One Hundred Dollars (\$100.00)~~ One Hundred Sixty Dollars (\$160.00) for each pesticide or device label registered. These fees shall be used by the State Department of Agriculture for purposes of administering pesticide management programs. A portion of these fees, in the amount of One Hundred Thousand Dollars (\$100,000.00) annually, shall be dedicated for conducting programs for unwanted pesticide disposal. This amount shall be deposited into the State Department of Agriculture Revolving Fund and shall be dedicated for this use only.

4. The Board may require the submission of the complete formula of any pesticide. Trade secrets and formulations submitted by the registrant may be kept confidential. If it appears to the Board that the composition of the pesticide is adequate to warrant the proposed claims and if the pesticide, its labeling, and other material required to be submitted comply with the requirements of this subarticle, then the pesticide shall be registered.

5. If it does not appear to the Board that the pesticide or device is adequate to warrant the proposed claims for it or if the pesticide or device, 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 deficiencies in the pesticide, device, labeling, or other material required and afford the applicant an opportunity to make the necessary corrections. If the applicant claims, in writing, that the corrections are not necessary and requests in writing a hearing regarding the registration of the pesticide or device, the Board shall provide an opportunity for a hearing before refusing to issue the registration. In order to protect the public, the Board may at any time cancel the registration of a product or device. In no event, shall registration of a pesticide or device be considered as a defense or excuse for the commission of any offense prohibited under this subarticle.

6. The Board may require that pesticides be distinctively colored or discolored to protect the public health.

7. 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.

K. CATEGORIES OF LICENSES AND PERMITS - The Board may establish any category of license for pesticide application or any category of permit for pesticide sales.

L. PERMIT AND PESTICIDE REGISTRATION EXPIRATION - 1. All permits for pesticide sales shall be issued for a period of one (1) year and the permits shall be renewed annually and shall expire on a date determined by the Board. A permit may be renewed for the ensuing year, without penalty, if a properly completed application is filed with the Board not later than the fifteenth day of the month first following the date of expiration. If the application is not received by that date, a penalty of twice the amount of the renewal fee shall be charged for renewal of the permit.

2. All pesticide registrations shall be issued for a period of one (1) year. The registration shall be renewed annually and shall expire on a date to be determined by the Board. Pesticide registrations may be renewed for the ensuing year, without penalty, if a properly completed application is filed with the Board not later than the fifteenth day of the month first following the date of expiration. If the application is not received by that date, a penalty of twice the amount of the renewal fee shall be charged for renewal of the pesticide registration.

SECTION 2. AMENDATORY 2 O.S. 2001, Section 16-28.2, is amended to read as follows:

Section 16-28.2 A. 1. The provisions of this section apply to a prescribed ~~burning~~ burn.

2. Any owner wishing to set fire to ~~his or her~~ land in order to conduct a prescribed ~~burning~~ burn shall comply with the provisions of this section.

B. 1. Within sixty (60) days prior to conducting a prescribed burn, the owner of land to be burned shall orally or in writing notify all landowners whose lands adjoin the owner's land to be burned.

2. If any landowner is burning on a large, consolidated tract of land in which there are multiple adjacent owners, only those owners with adjoining land within one (1) mile of the proposed burn area must be notified.

3. The owner shall include in the written notice or shall orally notify the adjoining landowners of the proposed date and location of the burn and a telephone number where the owner can be reached for information regarding the prescribed ~~burning~~ burn.

C. In addition to notification of adjoining property owners pursuant to subsection B of this section, the owner of the land to be burned shall complete the prescribed ~~burning~~ burn notification

plan specified in subsection D of this section and shall submit such plan to the rural fire department nearest the land to be burned. If the land to be burned is in a protection area, the owner shall also submit a copy of the notification plan to the local office or local representative of the Forestry Division nearest to the land to be burned.

D. Any person wishing to conduct a prescribed burn shall complete this form, distributed by the ~~State~~ Oklahoma Department of Agriculture, Food, and Forestry, which shall be in substantially the following form:

PRESCRIBED ~~BURNING~~ BURN NOTIFICATION PLAN

Name _____ Phone _____

Address _____ County _____

City, State, Zip _____

Ranch name, if any _____

Area to be burned _____

Approximate acres to be burned _____

Written distance description of location _____

Projected time frame _____

Date of previous burn _____

Objectives to be accomplished through the prescribed burn:

Contact information:

Rural Fire Department:

Name: _____ Location: _____ Phone No.: _____

Forestry District Office (for protection areas) _____

Adjoining landowners:

You need to file the original copy of the form with the rural fire department nearest to the land to be burned. If you are conducting a prescribed burn within a protection area, you also need to file a copy of the notification plan with the local office or local representative of the Forestry Division nearest to the land to be burned. A copy of the plan shall be retained by the owner of the land to be burned.

E. 1. Whether the land is located within or outside a protection area, the owner of land to be burned shall, within forty-eight (48) hours of conducting a prescribed burn, notify the rural fire department receiving a copy of the prescribed ~~burning~~ burn notification plan that the prescribed burn will be conducted.

2. Within a protection area, the owner of land to be burned shall also, within the time period required by Section 16-28 of ~~Title 2 of the Oklahoma Statutes~~ this title, notify the local office or local representative of the Forestry Division receiving a copy of the prescribed ~~burning~~ burn notification plan.

F. ~~Prescribed burning~~ A prescribed burn conducted pursuant to provisions of this section shall:

1. Be considered in the public interest and shall not constitute a public or private nuisance; and

2. Be considered a property right of the property owner if ~~naturally occurring~~ vegetative fuels are used.

G. 1. Any owner conducting a prescribed burn who is found by a court of law to have caused damages or injury as a result of accident or by ordinary negligence shall only be civilly liable for actual damages resulting from the prescribed burn.

2. Any owner conducting a prescribed burn who is found by a court of law to have committed gross negligence in conducting the prescribed ~~burning~~ burn may be found to be both civilly liable for the amount of damage done by the fire, and criminally liable pursuant to paragraph 3 of this subsection.

3. Any owner setting or causing to be set on fire ~~his or her~~ land as authorized by this section, and as a result of gross

negligence permitting the fire to spread beyond the control of the owner or beyond the bounds of the owner's land, shall be deemed guilty of a misdemeanor, and upon conviction thereof, be fined a sum not more than Five Hundred Dollars (\$500.00), or imprisonment in the county jail for a period not more than six (6) months.

SECTION 3. This act shall become effective July 1, 2003.

Passed the Senate the 21st day of May, 2003.

Presiding Officer of the Senate

Passed the House of Representatives the 27th day of May, 2003.

Presiding Officer of the House
of Representatives