

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

HOUSE BILL HB2402:

Covey

AS INTRODUCED

An Act relating to agriculture; creating Pest Control Compact; establishing administrator of compact; providing for assistance from Insurance Fund of the compact; providing for reimbursement; establishing findings; defining terms; providing for establishment of Pest Control Insurance Fund; providing for funding; establishing operation and management of Fund; providing for compact and insurance fund administration; providing for process for assistance under compact; providing for reimbursement of expenditures under compact; authorizing establishment of committees; providing for relations with nonparty jurisdictions; providing for submission of budgets; providing for entry into effect; providing for construction; providing for severability; amending 2 O.S. 2001, Sections 3-82, as last amended by Section 1, Chapter 410, O.S.L. 2003, 3-84 and 3-86 (2 O.S. Supp. 2003, Section 3-82), which relate to pesticide licensing; modifying certain fees; restricting sale of license; defining terms; providing for permits for pesticide producing establishments; providing for disclosure of certain records; requiring maintenance of certain records; deleting hearing for certain spraying; authorizing the Board to refuse reissuance of certain licenses; amending 2 O.S. 2001, Section 8-26, which relates to inspection of seeds; modifying fees; amending 2 O.S. 2001, Section 8-41.4, which relates to commercial feed; deleting maximum license fee; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-35 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The Pest Control Compact is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

1. Consistent with law and within available appropriations, the departments, agencies and officers of this state may cooperate with the Insurance Fund established by the Pest Control Compact;

2. Pursuant to this section, copies of bylaws and amendments thereto shall be filed with the Compact administrator;

3. The Compact administrator for this state shall be the Commissioner of Agriculture. The duties of the Compact administrator shall be deemed a regular part of the duties of this office;

4. Within the meaning of this section, a request or application for assistance from the Insurance Fund may be made by the Compact administrator whenever in their judgment the conditions qualifying this state for such assistance exist and it would be in the best interest of this state to make such request; and

5. The department, agency, or officer expending or becoming liable for an expenditure on account of a control or eradication program undertaken or intensified pursuant to the Compact shall have credited the appropriate agency fund in the State Treasury the amount or amounts of any payments made to this state to defray the cost of such program, or any part thereof, or as reimbursement thereof.

B. 1. FINDINGS - The party states find that:

- a. in the absence of the higher degree of cooperation among them possible under this Compact, the annual loss of approximately One Hundred Thirty-seven Billion Dollars (\$137,000,000,000.00) from the depredations of pests is virtually certain to continue, if not to increase,
- b. because of the varying climatic, geographic and economic factors, each state may be affected differently by particular species of pests, but all states share the inability to protect themselves fully

against those pests which present serious dangers to them,

- c. the migratory character of pest infestations makes it necessary for states both adjacent to and distant from one another to complement activities of each other when faced with conditions of infestation and reinfestation, and
- d. while every state is seriously affected by a substantial number of pests, and every state is susceptible of infestation by many species of pests not now causing damage to its crops and plant life and products, the fact that relatively few species of pests present equal danger to or are of interest to all states makes the establishment and operation of an Insurance Fund, from which individual states may obtain financial support for pest control programs of benefit to them in other states and to which they may contribute in accordance with their relative interest, the most equitable means of financing cooperative pest eradication and control programs.

2. DEFINITIONS - As used in this Compact, unless the context clearly requires a different construction:

- a. "state" means a state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico,
- b. "requesting state" means a state which invokes the procedures of the Compact to secure the undertaking or intensification of measures to control or eradicate one or more pests within one or more other states,
- c. "responding state" means a state requested to undertake or intensify the measures referred to in subparagraph b of this paragraph,

- d. "pest" means any invertebrate animal, pathogen, parasitic plant or similar or allied organism which can cause disease or damage in any crops, trees, shrubs, grasses, or other plants of substantial value,
- e. "Insurance Fund" means the Pest Control Insurance Fund established pursuant to this Compact,
- f. "Governing Board" means the administrators of this Compact representing all of the party states when such administrators are acting as a body in pursuance of authority vested in them by this Compact,
- g. "Executive Committee" means the committee established pursuant to subparagraph e of paragraph 5 of this subsection, and
- h. "executive head" means the Governor of the State of Oklahoma.

3. THE INSURANCE FUND - There is hereby established a Pest Control Insurance Fund for the purpose of financing extraordinary pest control operations which states may be called upon to engage in pursuant to this Compact. The Insurance Fund shall contain monies appropriated to it by the party states and any donations and grants accepted by it. All appropriations, except as conditioned by the rights and obligations of party states expressly set forth in this Compact, shall be unconditional and may not be restricted by the appropriating state to use in the control of any specified pest or pests. Donations and grants may be conditional or unconditional, provided that the Insurance Fund shall not accept any donation or grant whose terms are inconsistent with any provision of this Compact.

4. THE INSURANCE FUND, INTERNAL OPERATIONS AND MANAGEMENT

- a. The Insurance Fund shall be administered by a Governing Board and Executive Committee as hereinafter provided. The actions of the Governing Board and the

Executive Committee pursuant to this Compact shall be deemed the actions of the Insurance Fund.

- b. The members of the Governing Board shall be entitled to one vote on such board. No action of the Governing Board shall be binding unless taken at a meeting at which a majority of the total number of votes on the Governing Board is cast in favor thereof. Action of the Governing Board shall be only at a meeting at which a majority of the members are present.
- c. The Insurance Fund shall have a seal which may be employed as an official symbol and which may be affixed to documents and otherwise used as the Governing Board may provide.
- d. The Governing Board shall elect annually, from among its members, a chair, a vice-chair, a secretary and a treasurer. The chair may not serve successive terms. The Governing Board may appoint an executive director and fix the duties and compensation of the director, if any. Such executive director shall serve at the pleasure of the Governing Board. The Governing Board shall make provision for the bonding of such of the officers and employees of the Insurance Fund as may be appropriate.
- e. Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director, or if there be no executive director, the chair, in accordance with such procedures as the bylaws may provide, shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the Insurance Fund and shall fix the duties and compensation of such personnel. The Governing Board in its bylaws shall

provide for the personnel policies and programs of the Insurance Fund.

- f. The Insurance Fund may borrow, accept or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation.
- g. The Insurance Fund may accept for any of its purposes and functions under this Compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation, and may receive, utilize and dispose of the same. Any donation, gift, or grant accepted by the Governing Board pursuant to this paragraph or services borrowed pursuant to subparagraph f of this paragraph shall be reported in the annual report of the Insurance Fund. Such report shall include the nature, amount and conditions, if any, of the donation, gift, grant, or services borrowed and the identity of the donor or lender.
- h. The Governing Board shall adopt bylaws for the conduct of the business of the Insurance Fund and shall have the power to amend and to rescind these bylaws. The Insurance Fund shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto with the appropriate agency or officer in each of the party states.
- i. The Insurance Fund annually shall make to the Governor and Legislature of each party state a report covering its activities for the preceding year. The Insurance

Fund may make such additional reports as it may deem desirable.

- j. In addition to the powers and duties specifically authorized and imposed, the Insurance Fund may do such other things as are necessary and incidental to the conduct of its affairs pursuant to this Compact.

5. COMPACT AND INSURANCE FUND ADMINISTRATION

- a. In each party state there shall be a Compact administrator, who shall be selected and serve in such manner as the laws of their state may provide, and who shall:

- (1) assist in the coordination of activities pursuant to the Compact in their state, and
- (2) represent their state on the Governing Board of the Insurance Fund.

- b. If the laws of the United States specifically so provide, or if administrative provision is made therefor within the federal government, the United States may be represented on the Governing Board of the Insurance Fund by not to exceed three representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to federal law, but no such representative shall have a vote on the Governing Board or the Executive Committee thereof.

- c. The Governing Board shall meet at least once each year for the purpose of determining policies and procedures in the administration of the Insurance Fund and, consistent with the provisions of the Compact, supervising and giving direction to the expenditure of monies from the Insurance Fund. Additional meetings

of the Governing Board shall be held on call of the chair, the Executive Committee, or a majority of the membership of the Governing Board.

- d. At such times as it may be meeting, the Governing Board shall pass upon applications for assistance from the Insurance Fund and authorize disbursements. When the Governing Board is not in session, the Executive Committee thereof shall act as agent of the Governing Board, with full authority to act for it in passing upon such applications.
- e. The Executive Committee shall be composed of the chair of the Governing Board and four additional members of the Governing Board chosen by it so that there shall be one member representing each of four geographic groupings of party states. The Governing Board shall make such geographic groupings. If there is representation of the United States on the Governing Board, one such representative may meet with the Executive Committee. The chair of the Governing Board shall be chair of the Executive Committee. No action of the Executive Committee shall be binding unless taken at a meeting at which at least four members of such Committee are present and vote in favor thereof. Necessary expenses of each of the five members of the Executive Committee incurred in attending meetings of such Committee, when not held at the same time and place as a meeting of the Governing Board, shall be charges against the Insurance Fund.

6. ASSISTANCE AND REIMBURSEMENT

- a. Each party state pledges to each other party state that it will employ its best efforts to eradicate, or control within the strictest practicable limits, any

and all pests. It is recognized that performance of this responsibility involves:

- (1) the maintenance of pest control and eradication activities of interstate significance by a party state at a level that would be reasonable for its own protection in the absence of this Compact, and
- (2) the meeting of emergency outbreaks or infestations of interstate significance to no less an extent than would have been done in the absence of this Compact.

b. Whenever a party state is threatened by a pest not present within its borders but present within another party state, or whenever a party state is undertaking or engaged in activities for the control or eradication of a pest or pests, and finds that such activities are or would be impracticable or substantially more difficult of success by reason of failure of another party state to cope with infestation or threatened infestation, that state may request the Governing Board to authorize expenditures from the Insurance Fund for eradication or control measures to be taken by one or more of such other party states at a level sufficient to prevent, or to reduce to the greatest practicable extent, infestation or reinfestation of the requesting state. Upon such authorization the responding state or states shall take or increase such eradication or control measures as may be warranted. A responding state shall use monies available from the Insurance Fund expeditiously and efficiently to assist in affording the protection requested.

c. In order to apply for expenditures from the Insurance Fund, a requesting state shall submit the following in writing:

- (1) a detailed statement of the circumstances which occasion the request for the invoking of the Compact,
- (2) evidence that the pest on account of whose eradication or control assistance is requested constitutes a danger to an agricultural or forest crop, product, tree, shrub, grass, or other plant having a substantial value to the requesting state,
- (3) a statement of the extent of the present and projected program of the requesting state and its subdivisions, including full information as to the legal authority for the conduct of such program or programs and the expenditures being made or budgeted therefor, in connection with the eradication, control, or prevention of introduction of the pest concerned,
- (4) proof that the expenditures being made or budgeted as detailed in division 3 do not constitute a reduction of the effort for the control or eradication of the pest concerned or, if there is a reduction, the reasons why the level of program detailed in division 3 constitutes a normal level of pest control activity,
- (5) a declaration as to whether, to the best of its knowledge and belief, the conditions which in its view occasion the invoking of the Compact in the particular instance can be abated by a program

undertaken with the aid of monies from the Insurance Fund in one (1) year or less, or whether the request is for an installment in a program which is likely to continue for a longer period of time, and

(6) such other information as the Governing Board may require consistent with the provisions of this Compact.

- d. The Governing Board or Executive Committee shall give due notice of any meeting at which an application for assistance from the Insurance Fund is to be considered. Such notice shall be given to the Compact administrator of each party state and to such other officers and agencies as may be designated by the laws of the party states. The requesting state and any other party state shall be entitled to be represented and present evidence and argument at such meeting.
- e. Upon the submission as required by subparagraph c of this paragraph and such other information as it may have or acquire, and upon determining that an expenditure of funds is within the purposes of this Compact and justified thereby, the Governing Board or Executive Committee shall authorize support of the program. The Governing Board or Executive Committee may meet at any time or place for the purpose of receiving and considering an application. Any and all determinations of the Governing Board or Executive Committee, with respect to an application, together with the reasons therefor shall be recorded and subscribed in such manner as to show and preserve the votes of the individual members thereof.

- f. A requesting state which is dissatisfied with a determination of the Executive Committee shall upon notice in writing given within twenty (20) days of the determination with which it is dissatisfied, be entitled to receive a review thereof at the next meeting of the Governing Board. Determinations of the Executive Committee shall be reviewable only by the Governing Board at one of its regular meetings, or at a special meeting held in such manner as the Governing Board may authorize.
- g. Responding states required to undertake or increase measures pursuant to this Compact may receive monies from the Insurance Fund, either at the time or times when such state incurs expenditures on account of such measures, or as reimbursement for expenses incurred and chargeable to the Insurance Fund. The Governing Board shall adopt and, from time to time, may amend or revise procedures for submission of claims upon it and for payment thereof.
- h. Before authorizing the expenditure of monies from the Insurance Fund pursuant to an application of a requesting state, the Insurance Fund shall ascertain the extent and nature of any timely assistance or participation which may be available from the federal government and shall request the appropriate agency or agencies of the federal government for such assistance and participation.
- i. The Insurance Fund may negotiate and execute a memorandum of understanding or other appropriate instrument defining the extent and degree of assistance or participation between and among the

Insurance Fund, cooperating federal agencies, states, and any other entities concerned.

7. ADVISORY AND TECHNICAL COMMITTEES - The Governing Board may establish advisory and technical committees composed of state, local, and federal officials, and private persons to advise it with respect to any one or more of its functions. Any such advisory or technical committee, or any member or members thereof may meet with and participate in its deliberations upon request of the Governing Board or Executive Committee. An advisory or technical committee may furnish information and recommendations with respect to any application for assistance from the Insurance Fund being considered by such Board or Committee and the Board or Committee may receive and consider the same; provided, that any participant in a meeting of the Governing Board or Executive Committee held pursuant to subparagraph d of paragraph 6 of this subsection shall be entitled to know the substance of any such information and recommendations, at the time of the meeting if made prior thereto or as a part thereof or, if made thereafter, no later than the time at which the Governing Board or Executive Committee makes its disposition of the application.

8. RELATIONS WITH NONPARTY JURISDICTIONS

- a. A party state may make application for assistance from the Insurance Fund in respect of a pest in a nonparty state. Such application shall be considered and disposed of by the Governing Board or Executive Committee in the same manner as an application with respect to a pest within a party state, except as provided in this paragraph.
- b. At or in connection with any meeting of the Governing Board or Executive Committee held pursuant to subparagraph d of paragraph 6 of this subsection, a nonparty state shall be entitled to appear,

participate, and receive information only to such extent as the Governing Board or Executive Committee may provide. A nonparty state shall not be entitled to review of any determination made by the Executive Committee.

- c. The Governing Board or Executive Committee shall authorize expenditures from the Insurance Fund to be made in a nonparty state only after determining that the conditions in such state and the value of such expenditures to the party states as a whole justify them. The Governing Board or Executive Committee may set any conditions which it deems appropriate with respect to the expenditure of monies from the Insurance Fund in a nonparty state and may enter into such agreement or agreements with nonparty states and other jurisdictions or entities as it may deem necessary or appropriate to protect the interests of the Insurance Fund with respect to expenditures and activities outside of party states.

9. FINANCE

- a. The Insurance Fund shall submit to the executive head or designated officer or officers of each party state a budget for the Insurance Fund for such period as may be required by the laws of that party state for a presentation to the Legislature.
- b. Each of the budgets shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The request for appropriations shall be apportioned among the party states as follows: one-tenth (1/10) of the total budget in equal shares and the remainder in proportion to the value of agricultural and forest crops and

products, excluding animals and animal products, produced in each party state. In determining the value of such crops and products the Insurance Fund may employ such source or sources of information as in its judgment present the most equitable and accurate comparisons among the party states. Each of the budgets and requests for appropriations shall indicate the source or sources used in obtaining information concerning value of products.

- c. The financial assets of the Insurance Fund shall be maintained in two accounts to be designated respectively as the "Operating Account" and the "Claims Account". The Operating Account shall consist only of those assets necessary for the administration of the Insurance Fund during the next ensuing two-year period. The Claims Account shall contain all monies not included in the Operating Account and shall not exceed the amount reasonably estimated to be sufficient to pay all legitimate claims on the Insurance Fund for a period of three (3) years. At any time when the Claims Account has reached its maximum limit or would reach its maximum limit by the addition of monies requested for appropriation by the party states, the Governing Board shall reduce its budget requests on a pro rata basis in such manner as to keep the Claims Account within such maximum limit. Any monies in the Claims Account by virtue of conditional donations, grants, or gifts shall be included in calculations made pursuant to this subparagraph only to the extent that such monies are available to meet demands arising out of the claims.

- d. The Insurance Fund shall not pledge the credit of any party state. The Insurance Fund may meet any of its obligations in whole or in part with monies available to it under subparagraph g of paragraph 4 of this subsection, provided that the Governing Board take specific action setting aside such monies prior to incurring any obligation to be met in whole or in part in such manner. Except where the Insurance Fund makes use of monies available to it under subparagraph g of paragraph 4 of this subsection, the Insurance Fund shall not incur any obligation prior to the allotment of monies by the party states adequate to meet the same.
- e. The Insurance Fund shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Insurance Fund shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Insurance Fund shall be audited yearly by a certified or licensed public accountant and report of the audit shall be included in and become part of the annual report of the Insurance Fund.
- f. The accounts of the Insurance Fund shall be open at any reasonable time for inspection by duly authorized officers of the party states and by any persons authorized by the Insurance Fund.

10. ENTRY INTO FORCE AND WITHDRAWAL

- a. This Compact shall enter into force when enacted into law by any five or more states. Thereafter, this Compact shall become effective as to any other state upon its enactment thereof.

- b. Any party state may withdraw from this Compact by enacting a statute repealing the same, but no such withdrawal shall take effect until two (2) years after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

11. CONSTRUCTION AND SEVERABILITY - This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence, or provision of this Compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state participating herein the Compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

SECTION 2. AMENDATORY 2 O.S. 2001, Section 3-82, as last amended by Section 1, Chapter 410, O.S.L. 2003 (2 O.S. Supp. 2003, 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.~~ 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.~~ 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)~~ One Hundred Dollars (\$100.00) for each category of pesticide application shall be paid to the Board for the issuance or renewal of a commercial applicator business license, ~~not.~~ Not more than ~~Two Hundred Fifty Dollars (\$250.00)~~ Five Hundred Dollars (\$500.00) total category fees shall be charged annually to any business location of an applicator;

2. A fee of ~~Twenty Dollars (\$20.00)~~ Fifty Dollars (\$50.00) shall be paid to the Board for each written examination conducted by the Board;

3. A fee of ~~Twenty Dollars (\$20.00)~~ Fifty Dollars (\$50.00) shall be paid to the Board for each practical examination conducted by the Board;

4. A fee of ~~Five Dollars (\$5.00)~~ Twenty Dollars (\$20.00) 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)~~ Fifty Dollars (\$50.00) shall be paid to the Board for the issuance or renewal of a noncommercial business license. Not more than Two Hundred Fifty Dollars (\$250.00) total category fees shall be charged annually to any noncommercial business location of an applicator;

6. A fee of ~~Ten Dollars (\$10.00)~~ Forty Dollars (\$40.00) shall be paid to the Board for the issuance or renewal of service technician identification;

7. A fee of ~~Five Dollars (\$5.00)~~ Ten Dollars (\$10.00) 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)~~ Fifty Dollars (\$50.00) shall be paid to the Board for each recertification procedure; and

10. A fee of ~~Twenty Dollars (\$20.00)~~ One Hundred Dollars (\$100.00) 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. It shall be unlawful for any person to sell, offer for sale, or distribute within this state any nonrestricted use pesticide without first obtaining a permit for nonrestricted use pesticide dealer issued by the Board.

3. 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.~~ 4. 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~~+~~.

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 Sixty Dollars (\$160.00) for each pesticide or device label registered. These fees shall be used by the ~~State~~ Oklahoma Department of Agriculture, Food, and Forestry 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.

M. PESTICIDE PRODUCING ESTABLISHMENTS - 1. Definitions as used in this subarticle:

- a. "establishment" means any site where a pesticide product, active ingredient or device is produced within the state,
- b. "produce" means to manufacture, prepare, propagate, compound or process any pesticide or to package, repackage, label, relabel or otherwise change the container of any pesticide or device, and
- c. "producer" means any person who produces, manufacturers, prepares, compounds, propagates or processes any active ingredient, pesticide, or device as used in producing a pesticide.

2. It shall be unlawful for any person to produce within this state any pesticide, active ingredient or device without first obtaining a pesticide producer establishment permit issued by the Board.

3. The permit shall be issued only upon application on a form prescribed by the Board and the application shall contain information regarding the proposed operation of the applicant and other information as specified by the Board. If at any time there is a change of the information provided in or on the application for a producer establishment permit, the producer must notify the Board in writing within thirty (30) calendar days of the change.

4. The producer shall file a statement with the Board including but not limited to:

- a. the name and address of the company,
- b. the name and address of the establishment as well as the physical location, if different than the mailing address,
- c. the name of the pesticide(s), active ingredient(s), or device(s), and
- d. the name and address and other pertinent contact information for the responsible party.

5. All permits for pesticide producer establishments shall be issued for a period of one (1) year and shall be renewed annually. All permits shall expire on June 30 each year and may be renewed 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.

6. Each pesticide producer establishment location engaged in the production of pesticides, active ingredients or devices shall require a separate permit.

7. The annual permit fee for a pesticide producer establishment shall be One Hundred Dollars (\$100.00) for each location.

8. If requested by the Board, a complete copy of all labeling, MSDS, technical information associated with the pesticide, active ingredient, or device and a statement of all claims to be made as well as directions and use must be submitted to the Board.

9. If requested by the Board, a full disclosure of inventory records, sales and distribution records, and any other information the Board may require to determine if applicable state and federal laws are being complied with.

10. Every producer shall keep accurate records pertaining to pesticide, active ingredient, or device production and distribution as required by the Board. The records of the producer shall be kept intact at the principal producing location in this state for at least two (2) years after the date of production and distribution and copies shall be furnished to any authorized agent of the Board, immediately upon request in person, at any time during the regular business hours of the producer. Copies of records shall be furnished to any authorized agent of the Board within seven (7) working days of a written request, in summary form, by mail, fax, e-mail, web site, or any other electronic media customarily used.

SECTION 3. AMENDATORY 2 O.S. 2001, Section 3-84, is amended to read as follows:

~~Section 3-84. A. Upon receipt of a petition bearing the signatures of not less than twenty-five (25) actual occupants of the agricultural lands of a county, the State Board of Agriculture or an authorized agent thereof shall hold a public hearing in the county to determine whether dates should be established after which no hormone-type spray may be applied by commercial applicators or whether established dates restricting applications of hormone-type herbicide by commercial applicators should be removed. Notice of the hearing shall be published in one issue of a daily, weekly, or~~

~~biweekly newspaper having general circulation in the county. After the hearing, the Board shall have the authority to establish dates after which no hormone-type pesticide may be sprayed in the county, or any designated part, for a period specified by the Board or to remove the restrictions previously established. The Board shall not be required to hold more than one hearing each calendar year concerning any county or part.~~

~~B.~~ The Board shall have the authority to declare any form of plant or animal life or virus which is injurious to plants, humans, domestic animals, articles, or substances as a pest. The Board shall have the authority to classify pesticide uses as being general, restricted, or both, to determine standards of coloring or discoloring for pesticides, and to subject pesticides to the requirements of this subarticle.

~~C.~~ B. The Board shall promulgate appropriate rules for carrying out the provisions of this subarticle, including, but not limited to, rules providing for the collection and examination of any samples necessary to evaluate the quality, quantity, or effectiveness of pesticides or devices.

~~D.~~ C. There shall be uniformity between the requirements of Oklahoma, the several states, and the Federal Government relating to the coloring or discoloring of pesticides. The Board may promulgate rules applicable to and in conformity with the primary standards established by this subarticle, as have been or may be prescribed by the Federal Insecticide, Fungicide and Rodenticide Act, as amended.

SECTION 4. AMENDATORY 2 O.S. 2001, Section 3-86, is amended to read as follows:

Section 3-86. A. It shall be unlawful for any person, whether or not they hold a commercial or noncommercial license, to violate any part of this subsection or rules promulgated by the State Board of Agriculture. Any license, certificate, or identification issued may be suspended, canceled, revoked, or refused issue or reissue by

the Board after a notice and an opportunity to be heard has been given to the holder of the license or certificate. The suspension, cancellation, revocation, or refusal to issue or reissue any license, certificate, or identification may be made if the Board finds:

1. A person has made misrepresentations for the purpose of defrauding, or has not satisfactorily performed, without proper cause, any contract into which the person entered;

2. A person has used methods or pesticides not suitable or safe for the purpose for which they have been employed, or has used a pesticide in a manner inconsistent with its labeling unless prior written approval has been obtained from the Board;

3. Failure or refusal to furnish the Board, upon request, true information regarding methods, pesticides, and safety measures used, work performed, or other information required by the Board, or for making any false statement or representation in the person's application for issuance or renewal of a permit;

4. Any violation of state law or rules or standards prescribed by the Board;

5. The issuance of an inaccurate, misleading, or fraudulent wood infestation report;

6. Failure or refusal to keep and maintain complete and accurate records as specified in this subarticle;

7. Advertising or offering to perform in a category of pesticide application for which no license is held or under a name for which no license is held;

8. Failure or refusal to pay by the specified date any fees, fines, or penalties authorized under this subarticle;

9. Failure to explain in writing in a contract signed by the property owner the ways that a pesticide application fails to comply with any minimum requirements or standards authorized by this article;

10. Failure to perform work according to minimum standards authorized by this subarticle except as agreed by all parties in writing in the contract;

11. Falsely stating that a person is employed by or represents another person;

12. Falsely stating that a person or methods are recommended by any branch of government or that any specific work shall be inspected by any branch of government;

13. Any person to act, operate, do business, or advertise as an applicator unless the person has obtained a valid license issued by the Board for the category in which the person is engaged;

14. Any persons to be employed or represent themselves as certified applicators or service technicians unless they have met the certification standards prescribed by the Board and obtained valid certificates or identifications issued by the Board for the categories for which the persons are to be employed or supervised;

15. Any person to act or operate as a private applicator unless the person has obtained a valid private applicator license issued by the Board;

16. Any person convicted in any court of a violation of this subarticle, pesticide laws of any other state, or the Federal Insecticide Fungicide and Rodenticide Act;

17. Failure to correct substandard work within twenty (20) calendar days of written notification unless an extension has been granted in writing by the Board;

18. Failure to comply with the Worker Protection Standard as defined in the Code of Federal Regulations 40 CFR 170;

19. Failure to comply with the provisions of a citation, stop work order, or stop sale order issued by the Board; or

20. Any other proper cause.

B. Any person, holder or nonholder of a valid license violating any of the provisions of this subarticle shall be guilty of a

misdemeanor and shall be punishable by a fine of not less than One Hundred Dollars (\$100.00) and not more than Ten Thousand Dollars (\$10,000.00), imprisonment in the county jail for not less than thirty (30) days and not more than one (1) year, or both.

C. It shall be unlawful for any person, whether or not a person holds a permit as a manufacturer, registrant, or distributor, to distribute, sell, or offer for sale within this state, deliver for transportation or transport in intrastate or interstate commerce, or to violate any part of this subarticle or rules promulgated by the Board. Any pesticide registration, permit, certificate, or identification issued may be suspended, canceled, revoked, or refused reissue by the Board after a notice and opportunity to be heard has been given to the holder of the registration, permit, certificate, or identification. Notice shall be given to the holder of the registration, permit, certificate, or identification by registered or certified mail at least ten (10) days prior to the date of hearing. The suspension, cancellation, revocation, or refusal to reissue any registration, permit, certificate or identification may be made if the Board finds that:

1. A pesticide or device which has not been registered pursuant to the provisions of this subarticle, or any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the composition differs from its composition as represented in connection with its registration. At the discretion of the Board, a change in the labeling or formula may be made within a registration period without requiring reregistration of the product;

2. A pesticide unless it is in the registrant's or the manufacturer's unbroken original container, does not have a clear and readable label affixed to the original container and to the outside container or wrapper of the retail package, the following information:

- a. the name and address of the manufacturer, registrant, or person for whom manufactured,
- b. the name, brand, or trademark under which the article is sold, and
- c. the net weights or measures of the content subject to reasonable variations as the Board shall permit;

3. In addition to any other requirement any pesticide containing a substance in quantities highly toxic to humans, that does not bear a label containing:

- a. the skull and crossbones,
- b. the word "DANGER" prominently in red, on a background of distinctly contrasting color, and
- c. a statement of an antidote for the pesticide;

4. An adulterated or misbranded pesticide or device;

5. That any person intends to or has distributed, sold, stored, or used any pesticide or device in a manner inconsistent with its labeling;

6. That any person has sold or offered for sale any pesticide or device which has been canceled, suspended, or placed under stop sale except when the Board directs the sale of unused quantities of pesticides whose registrations have been canceled or suspended;

7. A pesticide dealer has sold, offered for sale, or distributed within this state any pesticide without first obtaining a valid pesticide dealer's permit in the appropriate category issued by the Board;

8. A pesticide dealer has failed or refused to keep accurate and complete records, as required by the Board, for a period of at least two (2) years at each business location;

9. A pesticide dealer has failed or refused to provide true and complete information to the Board, upon request, regarding pesticide sales, or other information required by the Board;

10. A person has made any false statement or representation in the person's application for issuance or renewal of a permit;

11. A person has failed or refused to pay by the specified date any fees, fines, or penalties authorized under the Oklahoma Agricultural Code;

12. A person has failed to comply with the provisions of a citation, stop work order, or stop sale order issued by the Board;

13. A person has detached, altered, defaced, or destroyed, in whole or in part, any label or labeling provided for in this subarticle or in rules promulgated by the Board, and added any substance to or taken any substance from a pesticide in a manner that may defeat any of the purposes of this subarticle;

14. A person has used any information concerning formulas for products acquired by authority of this subarticle for personal advantage or revealed such information to another, other than to the Board or proper officials or employees of the state, to the courts of this state in response to a subpoena, physicians, or in emergencies to pharmacists and other qualified person, for use in the preparation of antidotes;

15. A person has violated the state law or rules promulgated by the Board pursuant thereto;

16. Any person has been convicted in any court of a violation of this act, pesticide laws of any other state, or Federal Insecticide Fungicide and Rodenticide Act; or

17. A person determined by the Board to have violated any provision of this subarticle or rules promulgated by the Board.

D. If after notice and an opportunity for hearing in accordance with the Administrative Procedures Act, the Board finds any person to be in violation of any of the provisions of this subarticle or rules promulgated by the Board, the Board has the authority to assess an administrative penalty of not less than One Hundred Dollars (\$100.00) and not more than Ten Thousand Dollars

(\$10,000.00) for each violation. It shall also be unlawful and a misdemeanor for any person, whether or not a commercial or noncommercial license holder, to use a pesticide in a manner inconsistent with its labeling unless prior written approval has been obtained by the Board.

E. Except as provided for by law, any person, holder or non-holder of a valid license, registration, permit, certificate, or other identification issued by the Board violating any of the provisions of this subarticle shall be guilty of a misdemeanor and shall be punishable by a fine of not less than One Hundred Dollars (\$100.00) and not more than Ten Thousand Dollars (\$10,000.00) or by imprisonment in the county jail for not less than thirty (30) days and not more than one (1) year, or both.

SECTION 5. AMENDATORY 2 O.S. 2001, Section 8-26, is amended to read as follows:

Section 8-26. The State Board of Agriculture shall have authority:

1. To sample, test, make analysis of, and inspect any agricultural seed or vegetable seed transported, sold, offered or exposed for sale within this state for planting purposes, at any time and place and to any extent necessary to determine whether the agricultural seed or vegetable seed are in compliance with the provisions of this subarticle and rules promulgated thereto;

2. To issue and enforce a written or printed "stop-sale" order to the person or vendor of any agricultural seed or vegetable seed which is in violation of any of the provisions of this subarticle or rules promulgated thereto; provided, that no "stop-sale" order shall be issued or attached to any seed without first giving the vendor an opportunity to comply with the provisions of this subarticle or to withdraw the seed from sale;

3. To furnish adequate facilities for seed testing and to employ qualified persons for making the tests;

4. To publish or cause to be published the results of the examination, analysis, and test of any agricultural or vegetable seed sampled in accordance with the provisions of this subarticle, together with any other information that the Board may deem advisable;

5. To cooperate with the United States Department of Agriculture in the enforcement of the Federal Seed Act where mutual understanding is reached by written cooperative agreement;

6. To issue a license to any person upon payment of ~~Five Dollars (\$5.00)~~ Twenty-five Dollars (\$25.00) for each license of a retail seed ~~dealer's license~~ and ~~Twenty-five Dollars (\$25.00)~~ for each ~~wholesale seed dealer's license~~ dealer or ~~Thirty Dollars (\$30.00)~~ One Hundred Dollars (\$100.00) for each license of a retail-wholesale seed ~~dealer's license~~ dealer to be applied for by each seed dealer upon forms furnished for that purpose. Out-of-state wholesale and retail seed dealers who sell or ship agricultural or vegetable seed into this state shall obtain a license in the same manner. A separate license shall be required for each place of business. Each license shall expire on a date to be determined by the Board. Any license issued under the provisions of this subarticle may be revoked by the Board upon satisfactory proof that the licensee has violated any of the provisions of this subarticle or any of the rules;

7. To provide that any person in this state shall have the privilege of submitting seed samples for test, subject to the charges made for samples submitted as prescribed in rules promulgated by the Board;

8. To provide that any agricultural or vegetable seeds sold, distributed, offered for sale, or exposed for sale in this state, the person or vendor responsible for labeling and distributing the seed shall pay an inspection fee of not to exceed eight cents (\$0.08) per hundred-pound weight. Every person responsible for

labeling and distributing seed to a retail seed licensee in Oklahoma, or each retail seed licensee who processes and sells seed to the consumer on which the inspection fee has not been paid, shall file not later than the last day of January and July a semiannual affidavit, setting forth the number of pounds of seed sold for the preceding six (6) calendar months; and upon filing this statement shall pay the inspection fee required. Each person labeling and distributing seed shall keep records required by the Board to indicate accurately the number of pounds of seed sold;

9. To examine records and to verify the statement of the number of pounds of seed sold and the inspection fee reported. The form of the statement for reporting and paying the seed inspection fees on a semiannual basis shall be prescribed in rules of the Board. Failure to make an accurate statement of the number of pounds of seed sold and payment of the inspection fee shall be a misdemeanor, and constitute sufficient cause for the revocation of the person's Oklahoma Seed License and to take any other appropriate action provided under the law. An inspection fee penalty of ten percent (10%) of the amount due or Ten Dollars (\$10.00), whichever is greater, shall be assessed if the semiannual statement is not submitted when due; and

10. To collect all fees and other money as provided in this subarticle and deposit the monies in the State Department of Agriculture Revolving Fund.

SECTION 6. AMENDATORY 2 O.S. 2001, Section 8-41.4, is amended to read as follows:

Section 8-41.4 A. 1. Valid licenses are required by all persons whose name appears on the label or invoice as the guarantor manufacturing or distributing of a commercial feed product in this state. The license application must list each manufacturing and distribution facility which is or will be engaged in distributing any feed sold, offered for sale, or distributed by the applicant.

No license is required of a person retailing or wholesaling commercial feed labeled and guaranteed by another manufacturer. Any out-of-state person who has no distribution facility within this state shall obtain a license for the entity's principal out-of-state office if the out-of-state person or other entity sells, offers or exposes for sale, or distributes any commercial feed in this state.

2. Application shall be made on a form furnished by the State Board of Agriculture.

3. The Board may establish an annual fee for licensing distributors pursuant to the provisions of the Oklahoma Commercial Feed Law. ~~The maximum license fee shall not exceed Twenty Dollars (\$20.00), but in no case shall the fee exceed the reasonable costs of review and inspection services rendered by the Department in connection with implementing the provisions of the Oklahoma Commercial Feed Law.~~ The Board shall follow the procedures required by the Administrative Procedures Act for promulgation of rules in establishing the licensing fees.

4. Licenses shall be renewed on a date to be determined by the Board. Commercial feed license renewal applications received thirty (30) days or more after the renewal date shall be subject to a late filing fee of Fifty Dollars (\$50.00).

B. Any license may be suspended, canceled, revoked, or refused reissue by the Board after notice and opportunity for a hearing has been given to the holder of the license in accordance with the Administrative Procedures Act. Notice shall be given to the holder of the license by registered or certified mail at least twenty (20) days prior to the date of the hearing. The suspension, cancellation, revocation, refusal to issue, or reissue may be made if the Board finds any violation of the Oklahoma Commercial Feed Law or of rules or standards prescribed by the Board.

C. When the Board has reasonable cause to believe a violation of the law may exist, copies of labels and labeling of commercial

feed being distributed may be requested in order to determine compliance with the provisions of the Oklahoma Commercial Feed Law, Section 8-41.1 et seq. of this title.

SECTION 7. This act shall become effective November 1, 2004.

49-2-7593 SB 01/21/04