

CS for SB 653

THE STATE SENATE
Monday, February 21, 2005

Committee Substitute for
Senate Bill No. 653

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 653 - By: COFFEE of the Senate and SMALIGO of the House.

An Act relating to agriculture; amending 2 O.S. 2001, Section 3-82, as last amended by Section 1, Chapter 109, O.S.L. 2004 (2 O.S. Supp. 2004, Section 3-82), which relates to licenses and permits; adding requirements for a service technician identification; modifying certain fee; creating certain fund; providing for transfer of money to certain fund; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 2 O.S. 2001, Section 3-82, as last amended by Section 1, Chapter 109, O.S.L. 2004 (2 O.S. Supp. 2004, 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

1 is limited to the category of pesticide application named on the
2 license. The Board may establish categories of pesticide
3 application as necessary. Licenses shall be issued upon application
4 to the Board on a form prescribed by the Board. The application
5 shall contain information regarding the applicant's qualifications,
6 proposed operations, and other information as specified by the
7 Board.

8 3. a. An aerial license shall not be issued or be valid
9 unless the applicant files with the Board a copy of a
10 valid document issued by the Federal Aviation
11 Administration showing that the person is qualified to
12 operate or supervise the operation of an aircraft
13 conducting agricultural operations. Applicants for an
14 aerial license and pilots working under a license may
15 be subject to a complete and thorough background
16 examination.

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

21 4. Each business location shall require a separate license and
22 separate certified applicator except that a certified applicator for

1 a noncommercial business location may also serve as the certified
2 applicator for one commercial business location.

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

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

20 2. A certified service technician identification shall be
21 issued upon application and completion of certification standards
22 determined by the Board. Temporary certified applicators may
23 qualify as a certified service technician. No person shall act, do

1 business as, or advertise as a service technician unless the person
2 has met all the qualifications and standards as required by the
3 Board. The service technicians' identification shall be issued in
4 the name of the licensed entity. The licensee shall ensure that the
5 service technician identification is returned to the Board upon
6 termination of the employee. A service technician identification
7 shall be valid for a period of five (5) years unless suspended,
8 canceled, or revoked by the Board, until recertification is required
9 by the Board, or until the service technician leaves the employ of
10 the licensed entity. The Oklahoma Department of Agriculture, Food,
11 and Forestry may issue a service technician identification upon
12 completion of the following:

- 13 a. a determination is made by the Department that the
14 applicant has successfully completed the written
15 examination,
- 16 b. the licensed entity provides a completed service
17 technician identification application form at the time
18 of testing, and
- 19 c. all appropriate fees are paid at the time of testing.

20 3. Each license, except for private applicators, shall expire
21 on the 31st day of December following issuance or renewal, and may
22 be renewed for the ensuing calendar year, without penalty or
23 reexamination, if a properly completed application is filed with the

1 Board not later than the 1st day of January of each year. If
2 application is not received by that date, a penalty of twice the
3 amount of the renewal fee shall be charged for renewal of the
4 license. After the 1st day of February, in addition to the penalty,
5 a reexamination shall be required.

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

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

10 1. A fee of One Hundred Dollars (\$100.00) for each category of
11 pesticide application shall be paid to the Board for the issuance or
12 renewal of a commercial applicator business license. Not more than
13 Five Hundred Dollars (\$500.00) total category fees shall be charged
14 annually to any business location of an applicator;

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

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

19 4. A fee of Twenty Dollars (\$20.00) shall be paid to the Board
20 for the issuance or renewal of a private applicator's license;

21 5. A fee of Fifty Dollars (\$50.00) shall be paid to the Board
22 for the issuance or renewal of a noncommercial business license.

23 Not more than Two Hundred Fifty Dollars (\$250.00) total category

1 fees shall be charged annually to any noncommercial business
2 location of an applicator;

3 6. A fee of ~~Forty Dollars (\$40.00)~~ Twenty Dollars (\$20.00)
4 shall be paid to the Board for the issuance or renewal of service
5 technician identification;

6 7. A fee of Ten Dollars (\$10.00) shall be paid to the Board for
7 the issuance of duplicate licenses or certificates or transfer of
8 service technician identification;

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

11 9. A fee of Fifty Dollars (\$50.00) shall be paid to the Board
12 for each recertification procedure; and

13 10. A fee of One Hundred Dollars (\$100.00) shall be paid to the
14 Board for each reciprocal certification procedure for applicator
15 certifications.

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

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

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

1 G. INSURANCE REQUIRED - 1. The Board shall not issue a
2 commercial applicator's license until the applicant has furnished
3 evidence of an insurance policy or certificate by an insurer or
4 broker authorized to do business in this state insuring the
5 commercial applicator and any agents against liability resulting
6 from the operations of the commercial applicator. The insurance
7 shall not be applied to damage or injury to agricultural crops,
8 plants, or land being worked upon by the commercial applicator.

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

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

20 H. DAMAGES - No action for alleged damages to growing annual
21 crops or plants may be brought or maintained unless the person
22 claiming the damages has filed with the Board a written statement of
23 alleged damages on a form prescribed by the Board within ninety (90)

1 days of the date that the alleged damages occurred, or prior to the
2 time that twenty-five percent (25%) of a damaged crop has been
3 harvested.

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

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

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

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

19 5. The annual permit fee for a restricted use pesticide dealer
20 permit shall be Fifty Dollars (\$50.00) for each location.

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

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

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

7 a. the name and address of the registrant and the name
8 and address of the person whose name shall appear on
9 the label, if other than the registrant,

10 b. the name of the pesticide or device,

11 c. a complete copy of the labeling accompanying the
12 pesticide or device and a statement of all claims to
13 be made for it, and directions for use, and

14 d. if requested by the Board, a full description of the
15 tests made and the results upon which the claims are
16 based. In renewing a registration, a statement shall
17 be required only with respect to information which is
18 different from the information furnished when the
19 pesticide or device was last registered.

20 3. Each registrant shall pay to the Board an annual
21 registration fee of One Hundred Sixty Dollars (\$160.00) for each
22 pesticide or device label registered. These fees shall be used by
23 the Oklahoma Department of Agriculture, Food, and Forestry for

1 purposes of administering pesticide management programs. A portion
2 of these fees, in the amount of One Hundred Thousand Dollars
3 (\$100,000.00) annually, shall be dedicated for conducting programs
4 for unwanted pesticide disposal. This amount shall be deposited
5 into the State Department of Agriculture ~~Revolving~~ Unwanted
6 Pesticide Disposal Fund and shall be dedicated for this use only.

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

14 5. If it does not appear to the Board that the pesticide or
15 device is adequate to warrant the proposed claims for it or if the
16 pesticide or device, its labeling, and other material required to be
17 submitted do not comply with the provisions of this subarticle, it
18 shall notify the applicant of the deficiencies in the pesticide,
19 device, labeling, or other material required and afford the
20 applicant an opportunity to make the necessary corrections. If the
21 applicant claims, in writing, that the corrections are not necessary
22 and requests in writing a hearing regarding the registration of the
23 pesticide or device, the Board shall provide an opportunity for a

1 hearing before refusing to issue the registration. In order to
2 protect the public, the Board may at any time cancel the
3 registration of a product or device. In no event, shall
4 registration of a pesticide or device be considered as a defense or
5 excuse for the commission of any offense prohibited under this
6 subarticle.

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

9 7. Registration shall not be required in the case of a
10 pesticide shipped from one plant or place within this state to
11 another plant or place within this state that is operated by the
12 same person.

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

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

1 not received by that date, a penalty of twice the amount of the
2 renewal fee shall be charged for renewal of the permit.

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

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

14 a. "establishment" means any site where a pesticide
15 product, active ingredient or device is produced
16 within the state,

17 b. "produce" means to manufacture, prepare, propagate,
18 compound or process any pesticide or to package,
19 repackage, label, relabel or otherwise change the
20 container of any pesticide or device, and

21 c. "producer" means any person who produces,
22 manufactures, prepares, compounds, propagates or

1 processes any active ingredient, pesticide, or device
2 as used in producing a pesticide.

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

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

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

- 16 a. the name and address of the company,
- 17 b. the name and address of the establishment as well as
18 the physical location, if different than the mailing
19 address,
- 20 c. the name of any pesticide, active ingredient, or
21 device, and
- 22 d. the name and address and other pertinent contact
23 information for the responsible party.

1 5. All permits for pesticide producer establishments shall be
2 issued for a period of one (1) year and shall be renewed annually.
3 All permits shall expire on June 30 each year and may be renewed
4 without penalty if a properly completed application is filed with
5 the Board not later than the fifteenth day of the month first
6 following the date of expiration. If the application is not
7 received by that date, a penalty of twice the amount of the renewal
8 fee shall be charged for renewal of the permit.

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

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

14 8. If requested by the Board, a complete copy of all labeling,
15 Material Safety Data Sheets, technical information associated with
16 the pesticide, active ingredient, or device and a statement of all
17 claims to be made as well as directions and use must be submitted to
18 the Board.

19 9. In order to determine compliance with state and federal
20 laws, the Board may request a full disclosure of inventory records,
21 sales and distribution records, and any other information deemed
22 necessary by the Board.

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

12 SECTION 2. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 3-82.1 of Title 2, unless there
14 is created a duplication in numbering, reads as follows:

15 There is hereby created in the State Treasury a fund for the
16 State Board of Agriculture to be designated the State Department of
17 Agriculture " Unwanted Pesticide Disposal Fund". The fund shall be
18 a continuing fund, not subject to fiscal year limitations, and shall
19 consist of all monies received by the State Board of Agriculture to
20 implement and maintain the Unwanted Pesticide Disposal Program. On
21 July 1, 2005, the Oklahoma Department of Agriculture, Food, and
22 Forestry shall transfer all money in the State Department of
23 Agriculture Revolving Fund which has been designated by law for

1 conducting programs for unwanted pesticide disposal to the Unwanted
2 Pesticide Disposal Fund.

3 SECTION 3. This act shall become effective July 1, 2005.

4 SECTION 4. It being immediately necessary for the preservation
5 of the public peace, health and safety, an emergency is hereby
6 declared to exist, by reason whereof this act shall take effect and
7 be in full force from and after its passage and approval.

8 COMMITTEE REPORT BY: COMMITTEE ON AGRICULTURE & RURAL DEVELOPMENT,
9 dated 2-15-05 - DO PASS, As Amended and Coauthored.