STATE OF OKLAHOMA

1st Session of the 53rd Legislature (2011)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 228 By: Justice of the Senate

and

Jackson of the House

COMMITTEE SUBSTITUTE

An Act relating to the Oklahoma Agricultural Code; amending 2 O.S. 2001, Section 3-82, as last amended by Section 1, Chapter 42, O.S.L. 2005 (2 O.S. Supp. 2010, Section 3-82), which relates to pesticide applicators; modifying process for filing suit for certain damages; prohibiting suits in certain circumstances; providing notice procedure following receipt of a written complaint; requiring notice be given to certain parties; specifying time period required for notice; requiring notice of resolution to be sent to complainant; 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 42, O.S.L. 2005 (2 O.S. Supp. 2010, 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. The Oklahoma Department of Agriculture, Food, and Forestry may issue a service technician identification upon completion of the following:

a. a determination is made by the Department that the applicant has successfully completed the written examination,

b. the licensed entity provides a completed service technician identification application form at the time of testing, and

c. all appropriate fees are paid at the time of testing.

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 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 more than Five Hundred Dollars ($500.00) total category fees shall be charged annually to any business location of an applicator;

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

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

4. A fee of 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 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 Twenty Dollars ($20.00) shall be paid to the Board for the issuance or renewal of service technician identification;

7. A fee of Ten Dollars ($10.00) shall be paid to the Board for the issuance of duplicate licenses or certificates or transfer of 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 Fifty Dollars ($50.00) shall be paid to the Board for each recertification procedure; and

10. A fee of 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. 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~~ 1. Prior to filing an action against an applicator for damages to growing crops or plants, any person alleging damages to growing crops or plants shall:

a. within ninety (90) calendar days of the date that the alleged damages occurred or prior to the time that twenty-five percent (25%) of the allegedly damaged crops or plants are harvested, whichever occurs first, file a written complaint statement with the Department regarding the alleged damages, and

b. between the date of filing of the written complaint pursuant to subparagraph a of this paragraph and the date harvesting or destruction of the allegedly damaged crops or plants occurs, allow the applicator and the representatives of the applicator reasonable access to the property to inspect and take samples of the allegedly damaged crops or plants during reasonable hours. The representatives of the applicator may include, but not be limited to, crop consultants, bondsmen, and insurers. Nothing in this subparagraph shall limit in any way the harvesting or destruction of the allegedly damaged crops or plants in the ordinary course of business and practice.

2. Any person failing to comply with paragraph 1 of this subsection shall be barred from filing an action for damages against the applicator.

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 Fifty Dollars ($50.00) 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 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 Unwanted Pesticide Disposal 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, manufactures, 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. 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 pesticide 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 any pesticide, active ingredient, or device, 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, Material Safety Data Sheets, 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. In order to determine compliance with state and federal laws, the Board may request a full disclosure of inventory records, sales and distribution records, and any other information deemed necessary by the Board.

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~~ website, or any other electronic media customarily used.

N. COMPLAINT RESOLUTION - Upon receipt of a written complaint, the Board shall notify the person filing the complaint in writing of its receipt and status within two (2) working days. The person whom the complaint is filed against shall also be notified within two (2) working days. Notification that a complaint has been filed may also be given to the landowner or operator when appropriate. The resolution of a complaint is the completion of the appropriate administrative, jurisdictional, or legal remedies to the extent possible by the Department. The complainant shall be notified in writing within seven (7) working days after resolution of the complaint.

SECTION 2. This act shall become effective July 1, 2011.

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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