

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 59th Legislature (2023)

4 HOUSE BILL 2060

 By: Roberts

7 AS INTRODUCED

8 An Act relating to professions and occupations;
9 creating the Oklahoma Landscaper Act; providing
10 definitions; requiring landscaper license; Oklahoma
11 Board of Agriculture may promulgate administrative
12 rules; amending 2 O.S. 2021, Section 3-82, which
13 relates pesticide dealer's permit; providing penalty
14 for violation; providing for codification; and
15 providing an effective date.

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

15 SECTION 1. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 7000 of Title 59, unless there
17 is created a duplication in numbering, reads as follows:

18 This act shall be known and may be cited as the "Oklahoma
19 Landscaper Act".

20 SECTION 2. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 7001 of Title 59, unless there
22 is created a duplication in numbering, reads as follows:

23 As used in this act:

24 1. "Board" means the Oklahoma State Board of Agriculture;

1 2. "Landscaper" means a person who:

2 a. is a pesticide applicator, gardener, landscape
3 gardener, garden or lawn caretaker or a grader or
4 cultivator of land involved in the selection,
5 placement, planting and maintenance of plant material,
6 and

7 b. services listed in division (1) of this paragraph
8 constitutes the primary source of income for this
9 person.

10 3. A landscaper under this act does not include:

11 a. persons who perform landscaping services that does not
12 offer restricted use pesticide application pursuant to
13 Sections 3-82 through 3-86 of Title 2 of the Oklahoma
14 Statutes, and

15 b. person who performs landscaping services as
16 supplemental income while attending school.

17 4. "Person" means an individual, partnership, corporation,
18 joint venture, trust, association or any other legal entity,
19 however, organized that employs more than four (4) people; and

20 5. "Primary source of income" means that such services
21 performed more than six (6) months out of the year and represent
22 more than fifty percent (50%) of the total income for that person.
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1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 7002 of Title 59, unless there
3 is created a duplication in numbering, reads as follows:

4 No person shall engage in landscaping business without first
5 obtaining a license from the Oklahoma Board of Agriculture.

6 SECTION 4. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 7003 of Title 59, unless there
8 is created a duplication in numbering, reads as follows:

9 The Oklahoma Board of Agriculture may promulgate administrative
10 rules to implement the provisions of the Oklahoma Landscaper Act.

11 SECTION 5. AMENDATORY 2 O.S. 2021, Section 3-82, is
12 amended to read as follows:

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

20 2. A license may be issued by the Board in any category of
21 pesticide application if the applicant qualifies and the applicant
22 is limited to the category of pesticide application named on the
23 license. The Board may establish categories of pesticide
24 application as necessary. Licenses shall be issued upon application

1 to the Board on a form prescribed by the Board. The application
2 shall contain information regarding the applicant's qualifications,
3 proposed operations, and other information as specified by the
4 Board.

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

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

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

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

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

15 2. A certified service technician identification shall be
16 issued upon application and completion of certification standards
17 determined by the Board. Temporary certified applicators may
18 qualify as a certified service technician. No person shall act, do
19 business as, or advertise as a service technician unless the person
20 has met all the qualifications and standards as required by the
21 Board. The service technicians' identification shall be issued in
22 the name of the licensed entity. The licensee shall ensure that the
23 service technician identification is returned to the Board upon
24 termination of the employee. A service technician identification

1 shall be valid for a period of five (5) years unless suspended,
2 canceled, or revoked by the Board, until recertification is required
3 by the Board, or until the service technician leaves the employ of
4 the licensed entity. The Oklahoma Department of Agriculture, Food,
5 and Forestry may issue a service technician identification upon
6 completion of the following:

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

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

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

14 3. Each license, except for private applicators, shall expire
15 on dates established by the Department in administrative rules and
16 may be renewed for the ensuing calendar year, without penalty or
17 reexamination, if a properly completed application is filed with the
18 Board on a date established by the Department. If the application
19 is not received by the due date, a penalty of twice the amount of
20 the renewal fee shall be charged for renewal of the license. If the
21 application is not received within thirty (30) days following the
22 due date, an additional one-hundred-dollar penalty shall be paid
23 prior to license renewal.

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

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

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

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

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

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

16 5. A fee of Fifty Dollars (\$50.00) shall be paid to the Board
17 for the issuance or renewal of a noncommercial business license.
18 Not more than Two Hundred Fifty Dollars (\$250.00) total category
19 fees shall be charged annually to any noncommercial business
20 location of an applicator;

21 6. A fee of Twenty Dollars (\$20.00) shall be paid to the Board
22 for the issuance or renewal of service technician identification;
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1 7. A fee of Ten Dollars (\$10.00) shall be paid to the Board for
2 the issuance of duplicate licenses or certificates or transfer of
3 service technician identification;

4 8. A fee of Fifty Dollars (\$50.00) shall be paid to the Board
5 for each recertification procedure; and

6 9. A fee of One Hundred Dollars (\$100.00) shall be paid to the
7 Board for each reciprocal certification procedure for applicator
8 certifications.

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

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

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

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

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

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

12 H. DAMAGES - 1. Prior to filing an action against an
13 applicator for damages to growing crops or plants, any person
14 alleging damages to growing crops or plants shall:

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

21 b. between the date of filing of the written complaint
22 pursuant to subparagraph a of this paragraph and the
23 date harvesting or destruction of the allegedly
24 damaged crops or plants occurs, allow the applicator

1 and the representatives of the applicator reasonable
2 access to the property to inspect and take samples of
3 the allegedly damaged crops or plants during
4 reasonable hours. The representatives of the
5 applicator may include, but not be limited to, crop
6 consultants, bondsmen, and insurers. Nothing in this
7 subparagraph shall limit in any way the harvesting or
8 destruction of the allegedly damaged crops or plants
9 in the ordinary course of business and practice.

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

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

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

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

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

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

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

10 7. A holder of a restricted-use pesticide dealer's permit shall
11 only sell restricted-use pesticides to holders of a valid
12 applicator's license or another restricted-use pesticide dealer's
13 permit holder. Holders of a restricted-use pesticide dealer's
14 permit who violate this provision shall receive a fine of One
15 Thousand Five Hundred Dollars (\$1,500.00) per violation to be issued
16 by the State Board of Agriculture or authorized agents of the Board.

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

21 2. The registrant shall file with the Board a statement
22 including, but not limited to:
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- 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 Two Hundred Ten Dollars (\$210.00) 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 Three Hundred Thousand Dollars (\$300,000.00) 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.

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

8 5. If it does not appear to the Board that the pesticide or
9 device is adequate to warrant the proposed claims for it or if the
10 pesticide or device, its labeling, and other material required to be
11 submitted do not comply with the provisions of this section, it
12 shall notify the applicant of the deficiencies in the pesticide,
13 device, labeling, or other material required and afford the
14 applicant an opportunity to make the necessary corrections. If the
15 applicant claims, in writing, that the corrections are not necessary
16 and requests in writing a hearing regarding the registration of the
17 pesticide or device, the Board shall provide an opportunity for a
18 hearing before refusing to issue the registration. In order to
19 protect the public, the Board may at any time cancel the
20 registration of a product or device. In no event, shall
21 registration of a pesticide or device be considered as a defense or
22 excuse for the commission of any offense prohibited under this
23 section.

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

3 7. Registration shall not be required in the case of a
4 pesticide shipped from one plant or place within this state to
5 another plant or place within this state that is operated by the
6 same person.

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

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

19 2. All pesticide registrations shall be issued for a period of
20 one (1) year. The registration shall be renewed annually and shall
21 expire on a date to be determined by the Board. Pesticide
22 registrations may be renewed for the ensuing year, without penalty,
23 if a properly completed application is filed with the Board not
24 later than the fifteenth day of the month first following the date

1 of expiration. If the application is not received by that date, a
2 penalty of twice the amount of the renewal fee shall be charged for
3 renewal of the pesticide registration.

4 M. PESTICIDE PRODUCING ESTABLISHMENTS - 1. Definitions as used
5 in this subsection:

6 a. "establishment" means any site where a pesticide
7 product, active ingredient or device is produced
8 within the state,

9 b. "produce" means to manufacture, prepare, propagate,
10 compound or process any pesticide or to package,
11 repackage, label, relabel or otherwise change the
12 container of any pesticide or device, and

13 c. "producer" means any person who produces,
14 manufactures, prepares, compounds, propagates or
15 processes any active ingredient, pesticide, or device
16 as used in producing a pesticide.

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

21 3. The permit shall be issued only upon application on a form
22 prescribed by the Board. The application shall contain information
23 regarding the proposed operation of the applicant and other
24 information as specified by the Board. If at any time there is a

1 change of the information provided in or on the application for a
2 pesticide producer establishment permit, the producer must notify
3 the Board in writing within thirty (30) calendar days of the change.

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

6 a. the name and address of the company,

7 b. the name and address of the establishment as well as
8 the physical location, if different than the mailing
9 address,

10 c. the name of any pesticide, active ingredient, or
11 device, and

12 d. the name and address and other pertinent contact
13 information for the responsible party.

14 5. All permits for pesticide producer establishments shall be
15 issued for a period of one (1) year and shall be renewed annually.

16 All permits shall expire on June 30 each year and may be renewed
17 without penalty if a properly completed application is filed with
18 the Board not later than the fifteenth day of the month first
19 following the date of expiration. If the application is not
20 received by that date, a penalty of twice the amount of the renewal
21 fee shall be charged for renewal of the permit.

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

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

3 8. If requested by the Board, a complete copy of all labeling,
4 Material Safety Data Sheets, technical information associated with
5 the pesticide, active ingredient, or device and a statement of all
6 claims to be made as well as directions and use must be submitted to
7 the Board.

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

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

23 N. COMPLAINT RESOLUTION - Upon receipt of a written complaint,
24 the Board shall notify the person filing the complaint in writing of

1 its receipt and status within two (2) working days. The person whom
2 the complaint is filed against shall also be notified within two (2)
3 working days. Notification that a complaint has been filed may also
4 be given to the landowner or operator when appropriate. The
5 resolution of a complaint is the completion of the appropriate
6 administrative, jurisdictional, or legal remedies to the extent
7 possible by the Department. The complainant shall be notified in
8 writing within seven (7) working days after resolution of the
9 complaint.

10 SECTION 6. This act shall become effective November 1, 2023.

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12 COMMITTEE REPORT BY: COMMITTEE ON RULES, dated 03/01/2023 - DO PASS.
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