

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 56th Legislature (2017)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2392

By: Osborn (Leslie) and Wallace
of the House

and

David and Fields of the
Senate

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10 COMMITTEE SUBSTITUTE

11 An Act relating to agriculture; amending 2 O.S. 2011,
12 Section 3-82, which relates to licenses for certain
13 pesticide applications; modifying references;
14 providing for penalty based on late filing of
15 application; modifying provisions related to certain
16 fees; modifying fee amounts; modifying portion of
17 fees used for pesticide disposal; and providing an
18 effective date.

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

20 SECTION 1. AMENDATORY 2 O.S. 2011, Section 3-82, is
21 amended to read as follows:

22 Section 3-82. A. LICENSE REQUIRED - 1. It shall be unlawful
23 for any person to act, operate, or do business or advertise as a
24 commercial, noncommercial, certified applicator, temporary certified

1 applicator, service technician, or private applicator unless the
2 person has obtained a valid applicator's license issued by the State
3 Board of Agriculture for the category of pesticide application in
4 which the person is engaged.

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

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

23 b. The Board shall promulgate rules regarding aerial
24 applicators and applications consistent with federal

1 law and shall solicit the assistance of the Federal
2 Aviation Agency in the enforcement of this subsection.

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

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

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

1 2. A certified service technician identification shall be
2 issued upon application and completion of certification standards
3 determined by the Board. Temporary certified applicators may
4 qualify as a certified service technician. No person shall act, do
5 business as, or advertise as a service technician unless the person
6 has met all the qualifications and standards as required by the
7 Board. The service technicians' identification shall be issued in
8 the name of the licensed entity. The licensee shall ensure that the
9 service technician identification is returned to the Board upon
10 termination of the employee. A service technician identification
11 shall be valid for a period of five (5) years unless suspended,
12 canceled, or revoked by the Board, until recertification is required
13 by the Board, or until the service technician leaves the employ of
14 the licensed entity. The Oklahoma Department of Agriculture, Food,
15 and Forestry may issue a service technician identification upon
16 completion of the following:

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

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1 3. Each license, except for private applicators, shall expire
2 on the 31st day of December following issuance or renewal, and may
3 be renewed for the ensuing calendar year, without penalty or
4 reexamination, if a properly completed application is filed with the
5 Board not later than the 1st day of January of each year. If
6 application is not received by ~~that date~~ January 1, a penalty of
7 twice the amount of the renewal fee shall be charged for renewal of
8 the license. ~~After the 1st day of February, in addition to the~~
9 ~~penalty, a reexamination shall be required~~ If the application is not
10 received by February 1, an additional one-hundred-dollar penalty
11 shall be paid prior to license renewal.

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

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

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

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

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

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

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

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

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

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

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

17 ~~10.~~ 9. A fee of One Hundred Dollars (\$100.00) shall be paid to
18 the Board for each reciprocal certification procedure for applicator
19 certifications.

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

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

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

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

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

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

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

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

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

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

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~~ section and the applicant is limited to the category
11 of 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)~~ Two Hundred
22 Ten Dollars (\$210.00) for each pesticide or device label registered.
23 These fees shall be used by the Oklahoma Department of Agriculture,
24 Food, and Forestry for purposes of administering pesticide

1 management programs. A portion of these fees, in the amount of ~~One~~
2 ~~Hundred Thousand Dollars (\$100,000.00)~~ Three Hundred Thousand
3 Dollars (\$300,000.00) annually, shall be dedicated for conducting
4 programs for unwanted pesticide disposal. This amount shall be
5 deposited into the State Department of Agriculture 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~~ section, 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~~
18 section, it shall notify the applicant of the deficiencies in the
19 pesticide, device, labeling, or other material required and afford
20 the applicant an opportunity to make the necessary corrections. If
21 the applicant claims, in writing, that the corrections are not
22 necessary and requests in writing a hearing regarding the
23 registration of the pesticide or device, the Board shall provide an
24 opportunity for a hearing before refusing to issue the registration.

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

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

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

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

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

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

10 M. PESTICIDE PRODUCING ESTABLISHMENTS - 1. Definitions as used
11 in this ~~subarticle~~ subsection:

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

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

19 c. "producer" means any person who produces,
20 manufactures, prepares, compounds, propagates or
21 processes any active ingredient, pesticide, or device
22 as used in producing a pesticide.

23 2. It shall be unlawful for any person to produce within this
24 state any pesticide, active ingredient or device without first

1 obtaining a pesticide producer establishment permit issued by the
2 Board.

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

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

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

20 5. All permits for pesticide producer establishments shall be
21 issued for a period of one (1) year and shall be renewed annually.
22 All permits shall expire on June 30 each year and may be renewed
23 without penalty if a properly completed application is filed with
24 the Board not later than the fifteenth day of the month first

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

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

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

9 8. If requested by the Board, a complete copy of all labeling,
10 Material Safety Data Sheets, technical information associated with
11 the pesticide, active ingredient, or device and a statement of all
12 claims to be made as well as directions and use must be submitted to
13 the Board.

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

18 10. Every producer shall keep accurate records pertaining to
19 pesticide, active ingredient, or device production and distribution
20 as required by the Board. The records of the producer shall be kept
21 intact at the principal producing location in this state for at
22 least two (2) years after the date of production and distribution
23 and copies shall be furnished to any authorized agent of the Board,
24 immediately upon request in person, at any time during the regular

1 business hours of the producer. Copies of records shall be
2 furnished to any authorized agent of the Board within seven (7)
3 working days of a written request, in summary form, by mail, fax, e-
4 mail, website, or any other electronic media customarily used.

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

16 SECTION 2. This act shall become effective November 1, 2017.

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18 COMMITTEE REPORT BY: COMMITTEE ON JOINT COMMITTEE ON APPROPRIATIONS
19 AND BUDGET, dated 04/27/2017 - DO PASS, As Amended.
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