

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 419 By: Justice of the Senate
3 and
4 Osborn of the House
5
6

7 An Act relating to entomology and plant industry;
8 amending 2 O.S. 2011, Sections 3-32.7 and 3-82, which
9 relate to license, permit, and registration
10 requirements; clarifying statutory language; removing
11 reexamination requirement; requiring certain
12 allocations; and providing an effective date.

11 AMENDMENT NO. 1. Strike the title to read

12 "[entomology and plant industry - license, permit,
13 and registration requirements - removing
14 reexamination requirement - effective date]"

15 Passed the House of Representatives the 13th day of April, 2015.
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18 _____
19 Presiding Officer of the House of
20 Representatives

21 Passed the Senate the ____ day of _____, 2015.
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23 _____
24 Presiding Officer of the Senate

1 ENGROSSED SENATE
BILL NO. 419

By: Justice of the Senate

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6 An Act relating to entomology and plant industry;
7 amending 2 O.S. 2011, Sections 3-32.7 and 3-82, which
8 relate to license, permit, and registration
9 requirements; clarifying statutory language; removing
10 reexamination requirement; requiring certain
11 allocations; and providing an effective date.

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

13 SECTION 1. AMENDATORY 2 O.S. 2011, Section 3-32.7, is
14 amended to read as follows:

15 Section 3-32.7. A. The fee for each grower or dealer, each
16 license issued or renewed, and each inspection conducted shall be as
17 follows:

18 1. Grower's license fee - shall be Twenty-five Dollars (\$25.00)
19 for each business location;

20 2. Grower's inspection fee - shall be One Dollar (\$1.00) per
21 acre or 1000 square feet of greenhouse area inspected; and

22 3. Dealer's license fee - shall be Thirty-eight Dollars
23 (\$38.00) for each business location.

24 B. No fee shall be charged for a grower's license issued to any
scientific, agricultural, or horticultural club, educational or

1 eleemosynary institution, or any department or branch of the state
2 or federal government.

3 C. All licenses shall expire at a date to be determined by the
4 State Board of Agriculture. Failure to remit the license fee by the
5 15th of the month following the expiration month shall result in a
6 penalty fee equal to the cost of the license.

7 D. A person shall obtain a license prior to selling or dealing
8 in nursery stock.

9 E. All licenses are nontransferable upon any change of
10 ownership.

11 F. All penalties, fees, and monies collected under this program
12 shall be paid to the ~~State~~ Oklahoma Department of Agriculture, Food,
13 and Forestry and deposited in the State Department of Agriculture
14 Revolving Fund.

15 SECTION 2. AMENDATORY 2 O.S. 2011, Section 3-82, is
16 amended to read as follows:

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

24

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

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

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

23 4. Each business location shall require a separate license and
24 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~~ section. A
15 certificate in any category shall be valid for five (5) years unless
16 suspended, canceled, or revoked by the Board or until
17 recertification is required for the category, and may be renewed
18 after successful completion of recertification requirements. The
19 Board may require certified applicators to be recertified once in a
20 five-year period.

21 2. A certified service technician identification shall be
22 issued upon application and completion of certification standards
23 determined by the Board. Temporary certified applicators may
24 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
24 Board not later than the 1st day of January of each year. If

1 application is not received by that date, a penalty of twice the
2 amount of the renewal fee shall be charged for renewal of the
3 license. ~~After the 1st day of February, in addition to the penalty,~~
4 ~~a reexamination shall be required.~~

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

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

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

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

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

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

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

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

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

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

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

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

13 D. All fees shall be deposited in the State Department of
14 Agriculture Revolving Fund.

15 E. Fees shall be paid to the Board prior to the processing of
16 any application.

17 F. Failure to pay any fee identified with licenses, permits,
18 pesticide registrations, or certification shall require the Board to
19 deny the application.

20 G. INSURANCE REQUIRED - 1. The Board shall not issue a
21 commercial applicator's license until the applicant has furnished
22 evidence of an insurance policy or certificate by an insurer or
23 broker authorized to do business in this state insuring the
24 commercial applicator and any agents against liability resulting

1 from the operations of the commercial applicator. The insurance
2 shall not be applied to damage or injury to agricultural crops,
3 plants, or land being worked upon by the commercial applicator.

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

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

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

18 a. within ninety (90) calendar days of the date that the
19 alleged damages occurred or prior to the time that
20 twenty-five percent (25%) of the allegedly damaged
21 crops or plants are harvested, whichever occurs first,
22 file a written complaint statement with the Department
23 regarding the alleged damages, and
24

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

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

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

21 2. A permit may be issued by the Board in any category of
22 pesticide sales if the applicant qualifies under the provisions of
23 this ~~subarticle~~ section and the applicant is limited to the category
24

1 of pesticide sales named on the permit. The Board may establish
2 categories of pesticide sales as necessary.

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

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

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

11 6. The Board may require a certified applicator to be present
12 at any location where designated restricted use pesticide sales
13 occur.

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

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

- 20 a. the name and address of the registrant and the name
21 and address of the person whose name shall appear on
22 the label, if other than the registrant,
23 b. the name of the pesticide or device,
24

- 1 c. a complete copy of the labeling accompanying the
2 pesticide or device and a statement of all claims to
3 be made for it, and directions for use, and
4 d. if requested by the Board, a full description of the
5 tests made and the results upon which the claims are
6 based. In renewing a registration, a statement shall
7 be required only with respect to information which is
8 different from the information furnished when the
9 pesticide or device was last registered.

10 3. Each registrant shall pay to the Board an annual
11 registration fee of One Hundred Sixty Dollars (\$160.00) for each
12 pesticide or device label registered. These fees shall be used by
13 the Oklahoma Department of Agriculture, Food, and Forestry for
14 purposes of administering pesticide management programs. A portion
15 of these fees, in the amount of ~~One Hundred Thousand Dollars~~
16 ~~(\$100,000.00)~~ Three Hundred Thousand Dollars (\$300,000.00) annually,
17 shall be dedicated for conducting programs for unwanted pesticide
18 disposal. This amount shall be deposited into the State Department
19 of Agriculture Unwanted Pesticide Disposal Fund and shall be
20 dedicated for this use only.

21 4. The Board may require the submission of the complete formula
22 of any pesticide. Trade secrets and formulations submitted by the
23 registrant may be kept confidential. If it appears to the Board
24 that the composition of the pesticide is adequate to warrant the

1 proposed claims and if the pesticide, its labeling, and other
2 material required to be submitted comply with the requirements of
3 this ~~subarticle~~ section, then the pesticide shall be registered.

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

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

22 7. Registration shall not be required in the case of a
23 pesticide shipped from one plant or place within this state to
24

1 another plant or place within this state that is operated by the
2 same person.

3 K. CATEGORIES OF LICENSES AND PERMITS - The Board may establish
4 any category of license for pesticide application or any category of
5 permit for pesticide sales.

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

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

24

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

3 a. "establishment" means any site where a pesticide
4 product, active ingredient or device is produced
5 within the state,

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

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

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

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

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

- 3 a. the name and address of the company,
- 4 b. the name and address of the establishment as well as
5 the physical location, if different than the mailing
6 address,
- 7 c. the name of any pesticide, active ingredient, or
8 device, and
- 9 d. the name and address and other pertinent contact
10 information for the responsible party.

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

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

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

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

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

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

21 N. COMPLAINT RESOLUTION - Upon receipt of a written complaint,
22 the Board shall notify the person filing the complaint in writing of
23 its receipt and status within two (2) working days. The person whom
24 the complaint is filed against shall also be notified within two (2)

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

8 SECTION 3. This act shall become effective November 1, 2015.

9 Passed the Senate the 10th day of March, 2015.

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11 _____
12 Presiding Officer of the Senate

13 Passed the House of Representatives the ____ day of _____,
14 2015.

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16 _____
17 Presiding Officer of the House
18 of Representatives
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