

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

SENATE BILL 494

By: Howard

AS INTRODUCED

An Act relating to damages; amending 2 O.S. 2021, Section 3-82, which relates to the Combined Pesticide Law; updating reference to certain entity; specifying categories of growing crops or plants eligible for award of damages for certain violations; establishing requirements for calculation of certain actual damages; limiting certain damage awards; providing for codification; and declaring an emergency.

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

SECTION 1. AMENDATORY 2 O.S. 2021, 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~~ Administration in the enforcement of
21 this subsection.

22 4. Each business location shall require a separate license and
23 separate certified applicator except that a certified applicator for
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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 section. A certificate in any
15 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
24 business as, or advertise as a service technician unless the person

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

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

19 3. Each license, except for private applicators, shall expire
20 on dates established by the Department in administrative rules and
21 may be renewed for the ensuing calendar year, without penalty or
22 reexamination, if a properly completed application is filed with the
23 Board on a date established by the Department. If the application
24 is not received by the due date, a penalty of twice the amount of

1 the renewal fee shall be charged for renewal of the license. If the
2 application is not received within thirty (30) days following the
3 due date, an additional one-hundred-dollar penalty shall be paid
4 prior to license renewal.

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

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

11 D. All fees shall be deposited in the State Department of
12 Agriculture Revolving Fund.

13 E. Fees shall be paid to the Board prior to the processing of
14 any application.

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

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

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

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

14 H. DAMAGES - 1. An award of damages to growing crops or plants
15 resulting from negligent application or unintentional drift off
16 target that is a violation of the Combined Pesticide Law shall be
17 limited to:

- 18 a. crops or plants that are insurable under the Federal
19 Crop Insurance Corporation program, or
20 b. crops or plants that are directly sold by the producer
21 to the consumer.

22 In a civil action arising from damages to growing crops or
23 plants pursuant to this subsection, an award of actual damages shall
24 not exceed the amount of compensation a producer has received from

1 proven yield from the affected area. If the producer has no proven
2 yield from the affected area, an award of actual damages shall not
3 exceed an amount equal to the county average yield for the specific
4 crop or plant as calculated by the Federal Crop Insurance
5 Corporation program.

6 2. Prior to filing an action against an applicator for damages
7 to growing crops or plants, any person alleging damages to growing
8 crops or plants shall:

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

15 b. between the date of filing of the written complaint
16 pursuant to subparagraph a of this paragraph and the
17 date harvesting or destruction of the allegedly
18 damaged crops or plants occurs, allow the applicator
19 and the representatives of the applicator reasonable
20 access to the property to inspect and take samples of
21 the allegedly damaged crops or plants during
22 reasonable hours. The representatives of the
23 applicator may include, but not be limited to, crop
24 consultants, bondsmen, and insurers. Nothing in this

1 subparagraph shall limit in any way the harvesting or
2 destruction of the allegedly damaged crops or plants
3 in the ordinary course of business and practice.

4 ~~2.~~ 3. Any person failing to comply with paragraph ~~1~~ 2 of this
5 subsection shall be barred from filing an action for damages against
6 the applicator.

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

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

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

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

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

1 6. The Board may require a certified applicator to be present
2 at any location where designated restricted use pesticide sales
3 occur.

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

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

10 a. the name and address of the registrant and the name
11 and address of the person whose name shall appear on
12 the label, if other than the registrant,

13 b. the name of the pesticide or device,

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

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

23 3. Each registrant shall pay to the Board an annual
24 registration fee of Two Hundred Ten Dollars (\$210.00) for each

1 pesticide or device label registered. These fees shall be used by
2 the Oklahoma Department of Agriculture, Food, and Forestry for
3 purposes of administering pesticide management programs. A portion
4 of these fees, in the amount of Three Hundred Thousand Dollars
5 (\$300,000.00) annually, shall be dedicated for conducting programs
6 for unwanted pesticide disposal. This amount shall be deposited
7 into the State Department of Agriculture Unwanted Pesticide Disposal
8 Fund and shall be dedicated for this use only.

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

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

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

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

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

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

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

- 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
23 processes any active ingredient, pesticide, or device
24 as used in producing a pesticide.

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

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

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

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

22 5. All permits for pesticide producer establishments shall be
23 issued for a period of one (1) year and shall be renewed annually.
24 All permits shall expire on June 30 each year and may be renewed

1 without penalty if a properly completed application is filed with
2 the Board not later than the fifteenth day of the month first
3 following the date of expiration. If the application is not
4 received by that date, a penalty of twice the amount of the renewal
5 fee shall be charged for renewal of the permit.

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

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

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

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

20 10. Every producer shall keep accurate records pertaining to
21 pesticide, active ingredient, or device production and distribution
22 as required by the Board. The records of the producer shall be kept
23 intact at the principal producing location in this state for at
24 least two (2) years after the date of production and distribution

1 and copies shall be furnished to any authorized agent of the Board,
2 immediately upon request in person, at any time during the regular
3 business hours of the producer. Copies of records shall be
4 furnished to any authorized agent of the Board within seven (7)
5 working days of a written request, in summary form, by mail, fax,
6 email, website, or any other electronic media customarily used.

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

18 SECTION 2. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 73 of Title 23, unless there is
20 created a duplication in numbering, reads as follows:

21 A. An award of damages to growing crops or plants resulting
22 from negligent application or unintentional drift off target that is
23 a violation of the Combined Pesticide Law shall be limited to:
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1 1. Crops or plants that are insurable under the Federal Crop
2 Insurance Corporation program; or

3 2. Crops or plants that are directly sold by the producer to
4 the consumer.

5 B. In a civil action arising from damages to growing crops or
6 plants pursuant to subsection A of this section, an award of actual
7 damages shall not exceed the amount of compensation a producer has
8 received from proven yield from the affected area. If the producer
9 has no proven yield from the affected area, an award of actual
10 damages shall not exceed an amount equal to the county average yield
11 for the specific crop or plant as calculated by the Federal Crop
12 Insurance Corporation program.

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

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