

1 HB197
2 127722-3
3 By Representatives Fincher, Davis, Lindsey, Faust, Chesteen,
4 Lee, Grimsley, McCampbell and Hurst
5 RFD: Agriculture and Forestry
6 First Read: 08-MAR-11

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ENGROSSED

A BILL
TO BE ENTITLED
AN ACT

To amend Section 2-27-9, Code of Alabama 1975; to provide that registration of pesticides and pesticide devices shall be biennially; and to provide for the implementation of the new fee schedule.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 2-27-9, Code of Alabama 1975, is amended to read as follows:

"§2-27-9.

"(a) Every pesticide or device which is distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state shall be registered with the commissioner upon application forms prescribed and furnished by the commissioner, and such registration or registrations shall be renewed annually during the registrant's renewal year, due January 1 of ~~each~~ the renewal year. The applicant shall pay ~~an annual~~ a biennial registration fee established by the Board of Agriculture and Industries not to exceed ~~two hundred dollars~~ ~~(\$200)~~ four hundred dollars (\$400). The fee shall be paid

1 ~~according to the schedule in subsection (i). The fee structure~~
2 ~~shall remain in effect until October 1, 2011, and thereafter~~
3 ~~in no event shall the product registration fee exceed the~~
4 ~~national average of the product as determined by the board in~~
5 ~~consultation with registrants, for each product registered.~~
6 The fee shall accompany the application for registration and
7 be deposited to the credit of the Agricultural Fund of the
8 State Treasury. If the registration fee is not paid by March
9 1, or within 60 days following its due date, a ~~delinquent~~
10 delinquency penalty of ~~\$50.00~~ one hundred fifty dollars (\$150)
11 per product to be registered shall be added to the amount
12 thereof.

13 "Pesticides may also be registered for special local
14 needs as provided under duly adopted regulations of the board
15 and pursuant to the requirements of the federal Insecticide,
16 Fungicide, and Rodenticide Act, as amended. Special local need
17 registration means registration of a pesticide for use under
18 conditions of special local need as defined by the federal
19 Insecticide, Fungicide, and Rodenticide Act, as amended. The
20 fee and other requirements for special local need pesticide
21 registration shall be the same as other pesticide registration
22 requirements. The application for registration shall contain a
23 statement containing all of the following information:

24 "(1) The name and address of the applicant and the
25 name and address of the person whose name will appear on the
26 label, if other than the applicant.

1 "(2) The name of the pesticide with an ingredient
2 statement.

3 "(3) A complete copy of the labeling accompanying
4 the pesticide and a statement of all claims to be made for it
5 including directions for use.

6 "(4) If requested by the commissioner, a full
7 description of the tests made, and the results thereof, upon
8 which the claims are based. In the case of renewal of
9 registration, a statement shall be required only with respect
10 to information which is different from that furnished when the
11 pesticide was registered or last reregistered.

12 "(b) The commissioner, whenever deemed necessary in
13 the administration of this article, may require the submission
14 of the complete formula and method of analysis of any
15 pesticide. If it appears to the commissioner that the
16 composition of the article is such as to warrant the proposed
17 claims for it and if the article and its labeling and other
18 material required to be submitted comply with the requirements
19 of Section 2-27-14, he or she shall register the article.

20 "(c) If it is determined as provided under
21 subsection (d) of Section 2-27-6 that a pesticide, based upon
22 its formulation and directions for use, warnings and cautions
23 contained in its registered labeling, may not, without
24 additional restrictions, be applied for its intended use
25 without substantial adverse effects on the environment,
26 including injury to the applicator, such a pesticide shall be
27 designated as a restricted-use pesticide.

1 "(d) If it does not appear to the commissioner that
2 the article is such as to warrant the proposed claims for it
3 or if the article and its labeling and other material required
4 to be submitted do not comply with the provisions of this
5 article, he or she shall notify the applicant of the manner in
6 which the article, labeling, or other material required to be
7 submitted fail to comply with the article so as to afford the
8 applicant an opportunity to make the necessary corrections.

9 "If, upon receipt of such notice, the applicant does
10 not make the corrections, the commissioner may refuse to
11 register the article. The commissioner, in accordance with the
12 procedures specified in this section, may suspend or cancel
13 the registration of a pesticide whenever it does not appear
14 that the article or its labeling complies with the provisions
15 of this article. Whenever an application for registration is
16 refused or the commissioner proposes to suspend or cancel a
17 registration as authorized under subsections (c), (d), and (e)
18 of this section, notice of such action shall be given to the
19 applicant or registrant who shall have 20 days from the date
20 of such notice to request a hearing on the proposed action of
21 the commissioner. The hearing shall be conducted by the
22 commissioner, or his or her designee, for the purpose of
23 receiving evidence relevant and material to the issues,
24 following the conclusion of which the commissioner shall issue
25 an order with findings of fact and notify the applicant or
26 registrant thereof. The commissioner's order shall be based
27 only on substantial evidence of record taken at the hearing.

1 "Any person adversely affected by such an order of
2 the commissioner may obtain judicial review thereof by filing
3 in the Circuit Court of Montgomery County, within 30 days
4 after the entry of the order, a complaint requesting that the
5 order be set aside in whole or in part. A copy of the petition
6 shall be forthwith served upon the commissioner, and within 20
7 days from the date of service of the complaint, the
8 commissioner shall file an answer accompanied by the record of
9 the proceedings on which the order was based. The court shall
10 have jurisdiction to affirm or set aside the order complained
11 of, in whole or in part, following a hearing upon the
12 complaint and answer. The findings of the commissioner with
13 respect to questions of fact shall be sustained if supported
14 by substantial evidence when considered on the record as a
15 whole. The court may sustain the order of the commissioner,
16 set aside or reverse the action of the commissioner, or it may
17 remand the matter to the commissioner to take further
18 testimony if there are reasonable grounds for the failure to
19 adduce such evidence in the prior hearing. The commissioner
20 may modify findings and the order by reason of the additional
21 evidence so taken and shall file the additional record and any
22 modification of the findings or order with the register or
23 clerk of the court.

24 "(e) Upon the advice of the Pesticide Advisory
25 Committee and with the approval of the board, the commissioner
26 shall refuse the registration or cancel the registration of
27 any pesticide or device previously registered where it is

1 determined that the use of the pesticide according to
2 directions on the label poses a substantial adverse effect on
3 humans, animals, or the general environment. Any person upon
4 being notified of the refusal or cancellation of registration
5 of a pesticide shall be entitled to the review, hearing, and
6 appeal rights as provided under subsection (d).

7 "(f) Experimental labels may be required to be
8 affixed to containers of pesticides if the pesticide is for
9 experimental use.

10 "(g) Notwithstanding any other provisions of this
11 article, registration is not required in the case of a
12 pesticide shipped from one plant within this state to another
13 plant within this state operated by the same person.

14 "(h) The registration fee as required under this
15 section, together with the dealer license fee required under
16 Section 2-27-10, shall be paid by cooperative marketing and
17 purchasing associations and any exemption allowed such
18 organizations pursuant to Section 2-10-105 or any other
19 exemption statute shall not relieve such associations from the
20 payment of such fees. Any amount improperly or illegally
21 collected under the provisions of this article as
22 overpayments, through mistake or otherwise, may be refunded to
23 the person entitled thereto in accordance with Section 2-1-6.

24 "(i) (1) Except as provided in subdivision (2), all
25 registrations issued by the department pursuant to subsection
26 (a) shall be paid according to the following schedule:

1 "a. All registrations issued to registrants whose
2 names begin with the letters A through M shall expire on
3 December 31, 2011. Upon expiration of registration on December
4 31, 2011, a registrant whose name begins with letters A
5 through M may renew a registration for a period of two years
6 upon payment of a fee of four hundred dollars (\$400) per
7 product. The registration shall be valid until December 31,
8 2013, and may be renewed every two years thereafter upon
9 payment of the fee.

10 "b. All registrations issued to registrants whose
11 names begin with the letters N through Z shall expire on
12 December 31, 2011. Upon expiration of the registration on
13 December 31, 2011, a registrant whose name begins with letters
14 N through Z may renew a registration for a period of one year
15 upon payment of a fee of two hundred dollars (\$200) per
16 product. The registration shall be valid until December 31,
17 2012. After December 31, 2012, the registrant may renew a
18 registration for a period of two years upon payment of a fee
19 of four hundred dollars (\$400) per product.

20 "(2) All registrations issued by the department to a
21 registrant who is applying to register an additional pesticide
22 during the second year of the registrant's registration period
23 shall expire December 31 of that year.

24 "(3) An application for registration shall be
25 accompanied by a fee of four hundred dollars (\$400) for each
26 pesticide except as provided in subdivisions (1) and (2)
27 above."

1 Section 2. This act shall become effective on the
2 first day of the third month following its passage and
3 approval by the Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Agriculture and
Forestry..... 08-MAR-11

Read for the second time and placed
on the calendar with 1 substitute
and..... 24-MAR-11

Read for the third time and passed
as amended..... 14-APR-11

Yeas 94, Nays 0, Abstains 0

Greg Pappas
Clerk