

1 HB601  
2 139350-2  
3 By Representative Fincher  
4 RFD: Ways and Means General Fund  
5 First Read: 22-MAR-12

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ENROLLED, An Act,

To amend Section 2-27-9 of the Code of Alabama 1975, as amended by Act 2011-549 of the 2011 Regular Session, relating to the Department of Agriculture and Industries and the fees for registration of pesticides; to increase the fees and to specify the use of the proceeds for the Pesticide Management Division of the department.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 2-27-9 of the 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 during the registrant's renewal year, due January 1 of the renewal year. The applicant shall pay a biennial registration fee established by the Board of Agriculture and Industries not to exceed ~~four hundred dollars (\$400)~~ six hundred dollars (\$600). The fee shall be paid according to the schedule in subsection (i). The fee shall accompany the

1 application for registration and be deposited to the credit of  
2 the Agricultural Fund of the State Treasury for the exclusive  
3 benefit of the Pesticide Management Division of the Department  
4 of Agriculture and Industries. The fees shall be used by the  
5 department for enforcement of Chapters 27 and 28. If the  
6 registration fee is not paid by March 1, or within 60 days  
7 following its due date, a delinquency penalty of one hundred  
8 fifty dollars (\$150) per product to be registered shall be  
9 added to the amount thereof.

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

21 "(1) The name and address of the applicant and the  
22 name and address of the person whose name will appear on the  
23 label, if other than the applicant.

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

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

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

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

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

1 registrant thereof. The commissioner's order shall be based  
2 only on substantial evidence of record taken at the hearing.

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

1           "(e) Upon the advice of the Pesticide Advisory  
2 Committee and with the approval of the board, the commissioner  
3 shall refuse the registration or cancel the registration of  
4 any pesticide or device previously registered where it is  
5 determined that the use of the pesticide according to  
6 directions on the label poses a substantial adverse effect on  
7 humans, animals, or the general environment. Any person upon  
8 being notified of the refusal or cancellation of registration  
9 of a pesticide shall be entitled to the review, hearing, and  
10 appeal rights as provided under subsection (d).

11           "(f) Experimental labels may be required to be  
12 affixed to containers of pesticides if the pesticide is for  
13 experimental use.

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

18           "(h) The registration fee as required under this  
19 section, together with the dealer license fee required under  
20 Section 2-27-10, shall be paid by cooperative marketing and  
21 purchasing associations and any exemption allowed such  
22 organizations pursuant to Section 2-10-105 or any other  
23 exemption statute shall not relieve such associations from the  
24 payment of such fees. Any amount improperly or illegally  
25 collected under the provisions of this article as

1 overpayments, through mistake or otherwise, may be refunded to  
2 the person entitled thereto in accordance with Section 2-1-6.

3 "(i) (1) Except as provided in subdivision (2), all  
4 registrations issued by the department pursuant to subsection  
5 (a) shall be paid according to the following staggered  
6 schedule:

7 "a. All registrations issued to registrants whose  
8 names begin with the letters A through M shall expire on  
9 December 31, ~~2011~~ 2013. Upon expiration of registration on  
10 December 31, ~~2011~~ 2013, a registrant whose name begins with  
11 letters A through M may renew a registration for a period of  
12 two years upon payment of a fee of ~~four hundred dollars (\$400)~~  
13 five hundred dollars (\$500) per product. The registration  
14 shall be valid until December 31, ~~2013~~, and 2015. The  
15 registrant may ~~be renewed~~ renew every two years thereafter  
16 upon payment of the fee of six hundred dollars (\$600).

17 "b. All registrations issued to registrants whose  
18 names begin with the letters N through Z shall expire on  
19 December 31, ~~2011~~ 2012. Upon expiration of the registration on  
20 December 31, ~~2011~~ 2012, a registrant whose name begins with  
21 letters N through Z may renew a registration for a period of  
22 ~~one year~~ two years upon payment of a fee of ~~two hundred~~  
23 ~~dollars (\$200)~~ five hundred dollars (\$500) per product. The  
24 registration shall be valid until December 31, ~~2012~~ 2014.  
25 After December 31, ~~2012~~ 2014, the registrant may renew a

1 registration for a period of two years upon payment of a fee  
2 of ~~four hundred dollars (\$400)~~ six hundred dollars (\$600) per  
3 product.

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

8 "(3) An application for registration shall be  
9 accompanied by a fee of ~~four hundred dollars (\$400)~~ six  
10 hundred dollars (\$600) for each pesticide except as provided  
11 in subdivisions (1) and (2)."

12 Section 2. This act shall become effective  
13 immediately following its passage and approval by the  
14 Governor, or its otherwise becoming law.

