

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

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8 SYNOPSIS: This bill would increase the fees for
9 pesticide registration with the Department of
10 Agriculture and Industries and would specify the
11 use of the proceeds for the Pesticide Management
12 Division of the department.

13
14 A BILL
15 TO BE ENTITLED
16 AN ACT

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

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. Section 2-27-9 of the Code of Alabama
26 1975, is amended to read as follows:

27 "§2-27-9.

1 "(a) Every pesticide or device which is distributed,
2 sold, or offered for sale within this state or delivered for
3 transportation or transported in intrastate commerce or
4 between points within this state through any point outside
5 this state shall be registered with the commissioner upon
6 application forms prescribed and furnished by the
7 commissioner, and such registration or registrations shall be
8 renewed during the registrant's renewal year, due January 1 of
9 the renewal year. The applicant shall pay a biennial
10 registration fee established by the Board of Agriculture and
11 Industries not to exceed ~~four hundred dollars (\$400)~~ six
12 hundred dollars (\$600). The fee shall be paid according to the
13 schedule in subsection (i). The fee shall accompany the
14 application for registration and be deposited to the credit of
15 the Agricultural Fund of the State Treasury for the exclusive
16 benefit of the Pesticide Management Division of the Department
17 of Agriculture and Industries. The fees shall be used by the
18 department for enforcement of Chapters 27 and 28. If the
19 registration fee is not paid by March 1, or within 60 days
20 following its due date, a delinquency penalty of one hundred
21 fifty dollars (\$150) per product to be registered shall be
22 added to the amount thereof.

23 "Pesticides may also be registered for special local
24 needs as provided under duly adopted regulations of the board
25 and pursuant to the requirements of the federal Insecticide,
26 Fungicide, and Rodenticide Act, as amended. Special local need
27 registration means registration of a pesticide for use under

1 conditions of special local need as defined by the federal
2 Insecticide, Fungicide, and Rodenticide Act, as amended. The
3 fee and other requirements for special local need pesticide
4 registration shall be the same as other pesticide registration
5 requirements. The application for registration shall contain a
6 statement containing all of the following information:

7 "(1) The name and address of the applicant and the
8 name and address of the person whose name will appear on the
9 label, if other than the applicant.

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

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

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

21 "(b) The commissioner, whenever deemed necessary in
22 the administration of this article, may require the submission
23 of the complete formula and method of analysis of any
24 pesticide. If it appears to the commissioner that the
25 composition of the article is such as to warrant the proposed
26 claims for it and if the article and its labeling and other

1 material required to be submitted comply with the requirements
2 of Section 2-27-14, he or she shall register the article.

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

11 "(d) If it does not appear to the commissioner that
12 the article is such as to warrant the proposed claims for it
13 or if the article and its labeling and other material required
14 to be submitted do not comply with the provisions of this
15 article, he or she shall notify the applicant of the manner in
16 which the article, labeling, or other material required to be
17 submitted fail to comply with the article so as to afford the
18 applicant an opportunity to make the necessary corrections.

19 "If, upon receipt of such notice, the applicant does
20 not make the corrections, the commissioner may refuse to
21 register the article. The commissioner, in accordance with the
22 procedures specified in this section, may suspend or cancel
23 the registration of a pesticide whenever it does not appear
24 that the article or its labeling complies with the provisions
25 of this article. Whenever an application for registration is
26 refused or the commissioner proposes to suspend or cancel a
27 registration as authorized under subsections (c), (d), and (e)

1 of this section, notice of such action shall be given to the
2 applicant or registrant who shall have 20 days from the date
3 of such notice to request a hearing on the proposed action of
4 the commissioner. The hearing shall be conducted by the
5 commissioner, or his or her designee, for the purpose of
6 receiving evidence relevant and material to the issues,
7 following the conclusion of which the commissioner shall issue
8 an order with findings of fact and notify the applicant or
9 registrant thereof. The commissioner's order shall be based
10 only on substantial evidence of record taken at the hearing.

11 "Any person adversely affected by such an order of
12 the commissioner may obtain judicial review thereof by filing
13 in the Circuit Court of Montgomery County, within 30 days
14 after the entry of the order, a complaint requesting that the
15 order be set aside in whole or in part. A copy of the petition
16 shall be forthwith served upon the commissioner, and within 20
17 days from the date of service of the complaint, the
18 commissioner shall file an answer accompanied by the record of
19 the proceedings on which the order was based. The court shall
20 have jurisdiction to affirm or set aside the order complained
21 of, in whole or in part, following a hearing upon the
22 complaint and answer. The findings of the commissioner with
23 respect to questions of fact shall be sustained if supported
24 by substantial evidence when considered on the record as a
25 whole. The court may sustain the order of the commissioner,
26 set aside or reverse the action of the commissioner, or it may
27 remand the matter to the commissioner to take further

1 testimony if there are reasonable grounds for the failure to
2 adduce such evidence in the prior hearing. The commissioner
3 may modify findings and the order by reason of the additional
4 evidence so taken and shall file the additional record and any
5 modification of the findings or order with the register or
6 clerk of the court.

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

17 "(f) Experimental labels may be required to be
18 affixed to containers of pesticides if the pesticide is for
19 experimental use.

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

24 "(h) The registration fee as required under this
25 section, together with the dealer license fee required under
26 Section 2-27-10, shall be paid by cooperative marketing and
27 purchasing associations and any exemption allowed such

1 organizations pursuant to Section 2-10-105 or any other
2 exemption statute shall not relieve such associations from the
3 payment of such fees. Any amount improperly or illegally
4 collected under the provisions of this article as
5 overpayments, through mistake or otherwise, may be refunded to
6 the person entitled thereto in accordance with Section 2-1-6.

7 "(i) (1) Except as provided in subdivision (2), all
8 registrations issued by the department pursuant to subsection
9 (a) shall be paid according to the following staggered
10 schedule:

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

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

1 registration shall be valid until December 31, ~~2012~~ 2014.
2 After December 31, ~~2012~~ 2014, the registrant may renew a
3 registration for a period of two years upon payment of a fee
4 of ~~four hundred dollars (\$400)~~ six hundred dollars (\$600) per
5 product.

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

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

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