

AMENDMENTS TO LB 436

(Amendments to Standing Committee amendments, AM0286)

1 1. Insert the following amendments:

2 "1. Strike original sections 8, 11, and 15 and insert the
3 following new sections:

4 'Sec. 8. Section 2-2635, Revised Statutes Supplement,
5 2001, is amended to read:

6 2-2635. (1) Except as provided in subsection (2) of this
7 section, a person shall not distribute at wholesale or retail or
8 possess pesticides with an intent to distribute them without a
9 pesticide dealer license for each distribution location. Any
10 manufacturer, registrant, or distributor who has no pesticide
11 dealer outlet licensed within this state and who distributes such
12 pesticides directly into this state shall obtain a pesticide dealer
13 license for his, her, or its principal out-of-state location or
14 outlet.

15 (2) The requirements of subsection (1) of this section
16 shall not apply to:

17 (a) A commercial applicator or noncommercial applicator
18 licensed under sections 2-2636 to 2-2642 who uses restricted-use
19 pesticides only as an integral part of a pesticide application
20 service and does not distribute any unapplied pesticide;

21 (b) A federal, state, county, or municipal agency using
22 restricted-use pesticides only for its own program;

23 (c) Persons who sell only pesticide products in

1 containers holding fifty pounds or less by weight or one gallon or
2 less by volume and do not sell any restricted-use pesticides or
3 bulk pesticides; or

4 (d) Persons who sell only general-use specialty
5 pesticides.

6 (3) A pesticide dealer may distribute restricted-use
7 pesticides only to:

8 (a) A licensed pesticide dealer;

9 (b) A licensed certified applicator issued a license with
10 the appropriate category for using the restricted-use pesticide
11 being distributed;

12 (c) An applicator issued a license by another state with
13 the appropriate category for using the restricted-use pesticide
14 being distributed;

15 (d) A noncertified applicator authorized by the act to
16 apply restricted-use pesticides if the licensed certified
17 applicator supervising the noncertified applicator is issued a
18 license with the appropriate category for using the restricted-use
19 pesticide being distributed; or

20 (e) Any other person if the pesticide dealer maintains
21 records set out in rules and regulations adopted and promulgated
22 pursuant to the act requiring the person to verify in writing that:

23 (i) The restricted-use pesticide will be delivered to an
24 applicator described in subdivision (3) (b), (c), or (d) of this
25 section; and

26 (ii) The applicator receiving the restricted-use
27 pesticide acknowledges and agrees to the distribution. a certified

1 applicator, a licensed pesticide dealer, or, under rules and
2 regulations adopted by the department, a person who is not a
3 certified applicator for application by a certified applicator.

4 (4) A pesticide dealer license shall expire on December
5 31 of each year, unless it is suspended or revoked before that
6 date. Such license shall not be transferable to another person or
7 location and shall be prominently displayed to the public in the
8 pesticide dealer's place of business.

9 (5) If the pesticide dealer has had a license suspended
10 or revoked, or has otherwise had a history of violations of the
11 Pesticide Act, the department may require an additional
12 demonstration of dealer qualifications prior to issuance or renewal
13 of a license to such person.

14 (6) Application for an initial pesticide dealer license
15 shall be submitted to the department prior to commencing business
16 as a pesticide dealer. Application for renewal of a pesticide
17 dealer license shall be submitted to the department by January 1 of
18 each year. All applications shall be accompanied by an annual
19 license fee of twenty-five dollars. The fee may be increased by
20 the director after a public hearing is held outlining the reason
21 for any proposed change in the fee. In no event shall the by rules
22 and regulations adopted and promulgated pursuant to the act. The
23 fee shall not exceed one hundred dollars per license. Application
24 shall be on a form prescribed by the department and shall include
25 the full name of the person applying for such license. If such
26 applicant is an individual, the application shall include the
27 applicant's social security number. If such applicant is a

1 partnership, limited liability company, association, corporation,
2 or organized group of persons, the full name of each member of the
3 firm, partnership, or limited liability company or of the principal
4 officers of the association or corporation shall be given on the
5 application. Such application shall further state the address of
6 each outlet to be licensed, the principal business address of the
7 applicant, the name of the person domiciled in this state
8 authorized to receive and accept service of summons of legal
9 notices of all kinds for the applicant, and any other necessary
10 information prescribed by the department.

11 An applicant located outside this state shall file with
12 the department a ~~written instrument designating~~ designation of a
13 resident agent for service of process in actions taken in the
14 administration and enforcement of the act. In lieu of designating
15 a resident agent, the applicant may designate the Secretary of
16 State as the recipient of service of process for the applicant in
17 this state.

18 If an application for renewal of a pesticide dealer
19 license is not filed before January 1 of the year for which the
20 license is to be issued, an additional fee equal to twenty-five
21 percent of the fee due and owing per month, not to exceed one
22 hundred percent, shall be paid by the applicant before the license
23 may be issued.

24 An application for a duplicate pesticide dealer's license
25 shall be accompanied by a nonrefundable application fee of ten
26 dollars.

27 All fees collected shall be remitted to the State

1 Treasurer for credit to the Pesticide Administrative Cash Fund.

2 (7) Each licensed pesticide dealer shall be responsible
3 for the acts of each person employed by him or her in the
4 solicitation and distribution of pesticides and all claims and
5 recommendations for use of pesticides. The dealer's license shall
6 be subject to denial, suspension, modification, or revocation after
7 a hearing for any violation of the act, whether committed by the
8 dealer or by the dealer's officer, agent, or employee.

9 (8) The department shall require each pesticide dealer to
10 maintain records of the dealer's purchases and distribution of all
11 restricted-use pesticides and may require such records to be kept
12 separate from other business records. The department may prescribe
13 by rules and regulations the information to be included in the
14 records. The dealer shall keep such records for a period of three
15 years and shall provide the department access to examine such
16 records and a copy of any record on request.

17 Sec. 11. Section 2-2638, Revised Statutes Supplement,
18 2001, is amended to read:

19 2-2638. (1) An individual who ~~applies~~ uses
20 restricted-use pesticides ~~to~~ on the land property of another person
21 for hire or compensation shall meet all certification requirements
22 of the Pesticide Act and apply to the department for a commercial
23 applicator license issued for the categories and subcategories in
24 which the pesticide ~~application~~ use is to be made.

25 (2) Any person who ~~applies~~ uses lawn care or structural
26 pest control pesticides ~~to~~ on the land property of another person
27 for hire or compensation shall apply to the department for a

1 commercial applicator license, regardless of whether such ~~business~~
2 ~~applies~~ person uses any restricted-use pesticide.

3 (3) Application for an original or renewal commercial
4 applicator license shall be on forms prescribed by the department.
5 The application shall include information as required by the
6 director and be accompanied by a license fee of ninety dollars. If
7 the applicant is an individual, the application shall include the
8 applicant's social security number. The fee may be increased by
9 the director by rules and regulations adopted and promulgated
10 pursuant to the act. ~~The fee shall not after a public hearing is~~
11 ~~held outlining the reasons for any proposed change. In no event~~
12 ~~shall the fee~~ exceed one hundred fifty dollars per license. All
13 fees collected shall be remitted to the State Treasurer for credit
14 to the Natural Resources Water Quality Fund.

15 (4) The department may deny a commercial applicator
16 license if it has determined that:

17 (a) The applicant has had a license as a licensed
18 certified applicator issued by this state or another state revoked
19 within the last two years;

20 (b) The applicant has been unable to satisfactorily
21 fulfill certification or licensing requirements;

22 (c) The applicant for any other reason cannot be expected
23 to be able to fulfill the provisions of the Pesticide Act
24 applicable to the category for which application is made; or

25 (d) An applicant for an original commercial applicator
26 license has not passed an examination under sections 2-2637 and
27 2-2640.

1 (5) An individual to whom a commercial applicator license
2 is issued shall be a licensed certified applicator authorized to
3 use restricted-use pesticides in the categories and subcategories
4 in which the individual is licensed.

5 (6) As a condition to issuance of a commercial applicator
6 license, an applicant located outside this state shall file with
7 the department a ~~written instrument designating~~ designation of a
8 resident agent for service of process in actions taken in the
9 administration and enforcement of the act. In lieu of designating
10 a resident agent, the applicant may designate in writing the
11 Secretary of State as the recipient of service of process for the
12 applicant in this state.

13 ~~(7) Any person who operates a business that applies~~
14 ~~pesticides to the land of another person for hire or compensation~~
15 ~~shall be responsible for the acts of each certified applicator~~
16 ~~employed by him or her in the application of a pesticide. Such~~
17 ~~person shall be subject to the same penalties and violations as the~~
18 ~~applicator.~~

19 Sec. 15. Section 2-2641, Revised Statutes Supplement,
20 2001, is amended to read:

21 2-2641. (1) A person shall be deemed to be a private
22 applicator if the person uses a restricted-use pesticide for the
23 purpose of producing an agricultural commodity:

24 (a) On property owned or rented by the person or person's
25 employer or under the person's general control; or

26 (b) On the property of another person if applied without
27 compensation other than the trading of personal services between

1 producers of agricultural commodities.

2 (2) An employee shall qualify as a private applicator
3 under subdivision (1) (a) of this section only if he or she provides
4 labor for the pesticide ~~application~~ use but does not provide the
5 necessary equipment or pesticides.

6 (3) Every person applying for a license as a private
7 applicator shall ~~(a) undertake~~ meet the certification requirement
8 of (a) undertaking a training session approved by the department,
9 ~~or (b) pass~~ completing a self-study training manual, or (c) passing
10 an examination showing that the person is properly qualified to
11 perform functions associated with pesticide ~~application~~ use to a
12 degree directly related to the nature of the activity and the
13 associated responsibility. If the applicant is an individual, the
14 application shall include the applicant's social security number.

15 (4) Application for an original or renewal private
16 applicator license shall be accompanied by a license fee of
17 twenty-five dollars. All fees collected shall be remitted to the
18 State Treasurer for credit to the Natural Resources Water Quality
19 Fund.".

20 3. On page 37, line 9, reinstate the stricken matter;
21 and in line 10 reinstate beginning with 'license' through '2-2638'
22 and after the reinstated '2-2638' insert 'for commercial applicator
23 licenses or section 2-2639 for noncommercial applicator licenses,
24 if any'.

25 7. On page 53, line 26, strike '2-2635 to' and insert
26 '2-2636, 2-2637, 2-2639, 2-2640, 2-2642, '; in line 27 strike 'and';
27 and in line 28 before 'are' insert 'and sections 2-2635, 2-2638,

AM2372
LB 436
DCC-01-22

AM2372
LB 436
DCC-01-22

1 and 2-2641, Revised Statutes Supplement, 2001, '.".

2 2. Renumber the remaining amendments accordingly.