

AGRICULTURE

CHAPTER 27

PESTICIDES

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Article 1.

Alabama Pesticide Act.

§ Section 2-27-1. Short title.

This article shall be known as the "Alabama Pesticide Act of 1971."

(Acts 1971, No. 1949, p. 3151, §1.)

§ Section 2-27-2. Definitions.

For the purposes of this article, unless otherwise indicated, the following terms shall have the meanings respectively ascribed to them by this section:

(1) PESTICIDE.

a. Any substance or mixture of substances intended for preventing, destroying, repelling, attracting or mitigating any insects, rodents, nematodes, fungi, weeds or other forms of plant or animal life and/or bacteria and viruses, except bacteria or viruses on or in living man or other animals, which the commissioner shall declare to be a pest; and

b. Any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

(2) INSECTICIDE. Any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any insects which may be present in any environment whatsoever.

(3) FUNGICIDE. Any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any fungi, except those living on or in man or other animals.

(4) RODENTICIDE. Any substance or mixture of substances intended for preventing, destroying, repelling or mitigating rodents or any other vertebrate animals which the commissioner shall declare to be a pest in any environment whatsoever.

(5) HERBICIDE. Any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any weed.

(6) NEMATOCIDE. Any substance or mixture of substances intended for preventing, destroying, repelling or mitigating nematodes.

(7) PLANT REGULATOR. Any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation or for otherwise altering the behavior of ornamental or crop plants, or the produce thereof, but shall not include substances intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants and soil amendments.

(8) DEFOLIANT. Any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

- (9) **DESICCANT.** Any substance or mixture of substances intended for artificially accelerating the drying of plant tissues.
- (10) **DEVICE.** Any instrument or contrivance intended for trapping, destroying, repelling or mitigating insects, birds, predators or rodents or destroying, repelling or mitigating fungi, nematodes or such other pests as may be designated by the commissioner, but not including equipment used for the application of pesticides when sold separately therefrom.
- (11) **NEMATODES.** Invertebrate animals of the phylum nemathelminthes and class Nematoda, that is, unsegmented round worms with elongated fusiform or saclike bodies covered with cuticle and inhabiting soil, water, plants or plant parts; such animals may also be called nemas or eelworms.
- (12) **INSECT.** Any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class Insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, bees, flies and other allied classes of arthropods whose members are wingless and usually have more than six legs, as for example, spiders, mites, ticks, centipedes and wood lice.
- (13) **FUNGI.** All nonchlorophyll-bearing thallophytes, that is, all nonchlorophyll-bearing plants of a lower order than mosses and liverworts, as, for example, rusts, smuts, mildews, molds, yeasts and bacteria, except those on or in living man or other animals.
- (14) **WEED.** Any plant which grows where not wanted.
- (15) **INGREDIENT STATEMENT.** A statement of the name and percentage of each active ingredient, the total percentage of the inert ingredients and the name and percentage of each ingredient in the pesticide and, when the pesticide contains arsenic in any form, a statement of the percentage of total and water-soluble arsenic, each calculated as elemental arsenic; provided, however, that in the case of a household pesticide which is not highly toxic to man, the ingredient statement may name each active ingredient in descending order of its predominance, together with the name of each, and the total percentage of the inert ingredients.
- (16) **ACTIVE INGREDIENT.**
- a. In the case of a pesticide other than a plant regulator, defoliant or desiccant, an ingredient which will prevent, destroy, repel or mitigate insects, nematodes, fungi, rodents, weeds or other pests;
 - b. In the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants, or the produce thereof;
 - c. In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant; and
 - d. In the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.
- (17) **INERT INGREDIENT.** An ingredient which is not an active ingredient.

(18) ANTIDOTE. The most practical immediate treatment in case of poisoning, including first aid treatment.

(19) PERSON. Any individual, partnership, association, corporation or organized group of persons, whether incorporated or not.

(20) REGISTRANT. The person who has registered any pesticide or devices pursuant to the provisions of this article.

(21) LABEL. The written, printed or graphic matter on, or attached to, the pesticide, or device, or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the pesticide.

(22) LABELING. All written, printed or graphic matter upon or accompanying any pesticide or device and all advertisements, brochures, posters or television or radio announcements used in promoting the sale of pesticides or devices.

(23) ADULTERATED. Such term applies to any pesticide if its strength or purity falls below the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the article or if any valuable constituent of the article has been wholly or in part abstracted.

(24) MISBRANDED. Such term applies:

a. To any pesticide or device if its labeling bears any statement, design or graphic representation relative thereto or to its ingredients which is false or misleading in any particular; and

b. To any pesticide:

1. If it is an imitation of, or is offered for sale under the name of, another pesticide;

2. If its labeling bears any reference to registration under this article, other than a permanent registration number, which may be authorized by rules and regulations;

3. If the labeling accompanying it does not contain instructions for use which are necessary and, if complied with, adequate for the protection of the public;

4. If the label does not contain a warning or caution statement which may be necessary and, if complied with, adequate to prevent injury to living man and other vertebrate animals;

5. If the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase;

6. If any word, statement or other information required by or under authority of this law to appear on the labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs or graphic matter in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

7. If, in the case of an insecticide, nematocide, fungicide or herbicide, when used as directed or in accordance with commonly recognized practice, it shall be injurious to living man or other vertebrate animals or vegetation, except weeds, to which it is applied or to the person applying such pesticide;

8. If, in the case of a plant regulator, defoliant or desiccant, when used as directed, it shall be injurious to living man or other vertebrate animals or to vegetation to which it is applied or to the person applying such pesticide; provided, however, that physical or physiological effects on plants, or parts thereof, shall not be deemed to be injury when this is the purpose for which the plant regulator, defoliant or desiccant was applied, in accordance with the label claims and recommendations; or

9. If an ingredient, which is present in amounts which are not likely to be effective when used according to directions, is given undue prominence or conspicuousness, as compared with ingredients which are present in effective amounts, in its labeling; such ingredient shall appear only in the ingredient statement.

(25) ULTRA LOW VOLUME. Such term signifies that the total volume of spray to be applied per acre is one-half gallon or less and is to be applied undiluted.

(26) LOW VOLUME. Such term signifies that the total volume of spray to be applied is adequate to cover uniformly the area being treated, but not to the point of runoff.

(27) LICENSED PESTICIDE DEALER. A person who has a license issued by the commissioner to sell restricted-use pesticides.

(28) RESTRICTED-USE PESTICIDE. A pesticide or device found by the commissioner, with the advice of the Pesticide Advisory Committee, to be hazardous when used by the general public and may be used only by special permit from the commissioner.

(29) BACTERICIDE. Any chemical used to repel, destroy or mitigate any bacteria except on or in animal and man.

(30) CONTAMINATION. The pesticide contains one or more active ingredients which is not shown as an active ingredient on the label.

(31) PESTICIDE-USE PERMIT. A permit to purchase and use restricted-use pesticides.

(32) OFFICIAL SAMPLE. Any sample of a pesticide taken by the commissioner or his agent in accordance with the provisions of this article or rules and regulations adopted under this article, and designated as official by the commissioner.

(33) COMMISSIONER. The state Commissioner of Agriculture and Industries.

(Acts 1951, No. 908, p. 1548, §1; Acts 1971, No. 1949, p. 3151, §2.)

§ Section 2-27-3. Purpose of article.

The purpose of this article is to regulate the registration, sale and use of pesticides intended for use on farm, garden, lawn, golf course or in the home and other uses for which pesticides are ordinarily and customarily used.

(Acts 1971, No. 1949, p. 3151, §1.)

§ **Section 2-27-4. Administration and enforcement.**

The provisions of this article shall be administered and enforced by the Commissioner of Agriculture and Industries of the State of Alabama.

(Acts 1971, No. 1949, p. 3151, §1.)

§ **Section 2-27-5. Exceptions to applicability of article.**

(a) The provisions and requirements of this article shall not apply to:

(1) Any carrier while lawfully engaged in transporting a pesticide within this state if such carrier shall, upon request, permit the commissioner or his designated agent to copy all records showing the transactions in and movement of the articles;

(2) Any bona fide public or private research institution or agency; or

(3) The manufacturer or shipper of a pesticide for bona fide experimental use only, provided the manufacturer or shipper obtains a permit from the commissioner for such use which will be conducted under supervision of a qualified person and other conditions and requirements prescribed by rules and regulations adopted for this purpose, which shall require the quantity of pesticides to be used, location of use, crops or other objects of use, results of findings and other information deemed to be necessary for protection of the public.

(b) No article shall be deemed in violation of this article when intended solely for export to a foreign country and when prepared or packed according to the specifications or directions of the purchaser.

(c) Notwithstanding any other provision of this article, registration and labeling are not required in the case of a pesticide stored or shipped from one manufacturing plant within this state to another manufacturing plant within this state operated by the same person or from one manufacturer to another manufacturer, provided they are properly labeled whenever poison labels are required under subsection (a)(3) of Section 2-27-14.

(Acts 1951, No. 908, p. 1548, §6; Acts 1971, No. 1949, p. 3151, §9; Acts 1977, No. 580, p. 769, §3.)

§ **Section 2-27-5.1. Local governments prohibited from passing ordinances regulating pesticides.**

(a)(1) The term "pesticides" as used herein shall have the same meaning as set forth in the Alabama Pesticide Act, Section 2-27-2(1).

(2) Except as provided in subsection (b), no county, municipal corporation, or other political subdivision of this state shall adopt or continue in effect any ordinance, rule, regulation, or resolution regulating the use, sale, distribution, storage, transportation, disposal, formulation, labeling, registration, manufacturing, or application of pesticides.

(b) This section shall not prohibit or affect the right of any county, municipal corporation, or other political subdivision of this state to adopt and enforce the provisions of the Standard

Building Code, Standard Fire Prevention Code, or the codes, standards, and recommended practices of the National Fire Protection Association.

(c) Any local law or general law of local application regulating pesticide use, sale, distribution, storage, transportation, disposal, formulation, labeling, registration, manufacturing, or application is repealed.

(Acts 1993, No. 93-259, p. 387, §§1-3.)

§ Section 2-27-6. Pesticide Advisory Committee.

(a) Creation. A pesticide advisory committee is hereby created and established to consist of 13 members to be appointed from and by certain agencies, departments, institutions, and organizations as provided in this section. The Pesticide Advisory Committee's membership, their term of service, method of appointment, authority, duties, and functions shall be as follows:

(1) Two members from the School of Agriculture and the Agricultural Experiment Station of Auburn University, to be appointed by its dean and director;

(2) Two members from the Cooperative Agricultural Extension Service of Auburn University, to be appointed by its director;

(3) Two members in the employ of the state Department of Agriculture and Industries, to be appointed by its commissioner;

(4) Two members in the employ of the State Department of Public Health, to be appointed by the State Health Officer;

(5) Two members in the employ of the state Department of Conservation and Natural Resources, to be appointed by its director;

(6) Two members from the Alabama Pesticide Institute, to be appointed by its board of directors; and

(7) One member appointed by the Commissioner of Agriculture and Industries from a list of five nominees submitted by the Alabama Farmers Federation who are primarily and actively engaged in farming.

The term of service of the members of said committee shall be at the pleasure of the appointing authority. The chairman and secretary of the Pesticide Advisory Committee shall be elected annually from and by the committee members, and each shall serve until their successors are elected.

(b) Meetings. The Pesticide Advisory Committee shall meet at the call of its chairman or upon call of a majority of its members. There shall be at least two regular meetings of the committee during each calendar year to be held not less than five months apart, and call meetings may be held as the duties and business of the committee may require. In the absence of the chairman, the committee shall elect a temporary chairman.

(c) Official action. Official action of the Pesticide Advisory Committee requires a majority vote of the members of the committee present and voting. Seven members of the committee shall

constitute a quorum, which is the number necessary to transact official business of the committee.

(d) Powers and duties. The Pesticide Advisory Committee, with respect to its field of work, shall have the powers and duties:

- (1) To consider and study the entire field of pesticides;
- (2) To review and make recommendations to the commissioner on any pesticide registration submitted to it by the commissioner;
- (3) To advise, counsel, and consult with the commissioner upon his request in connection with the promulgation, administration, and enforcement of all laws, rules, and regulations relating to pesticides;
- (4) To consider all matters submitted to it by the commissioner, other members of the committee, or any person affected by the provisions and to offer suggestions and make recommendations to the commissioner on its own initiative in regard to changes in the laws, rules, and regulations relating to pesticides, as may be deemed advisable for the effective administration and enforcement of said laws and rules and regulations;
- (5) To suggest or recommend, on its own initiative, policies or practices for the administration and enforcement of this article, which suggestions and recommendations the commissioner shall duly consider; and
- (6) To review registered pesticides as to their safety and/or efficacy and make recommendations to the commissioner as to its findings and to make recommendations as to which pesticides should be prohibited or restricted in use. The commissioner shall duly consider these recommendations as to the registration cancellation and as to restricted-use pesticides, the decision so arrived at shall not be final until approved by the State Board of Agriculture and Industries.

(e) Records of meetings. In conducting its meetings, the Pesticide Advisory Committee shall use accepted rules of procedures, and the secretary shall keep a complete record of the proceedings of each meeting of the committee, which proceedings shall show the names of the members present at each meeting and the actions taken at committee meetings. Such record of proceedings of the committee shall be kept on file with the secretary and in the office of the commissioner, which shall be open for public inspection.

(Acts 1971, No. 1949, p. 3151, §7; Acts 1992, No. 92-108, p. 178, §4.)

§ **Section 2-27-7. Intergovernmental cooperation and agreements.**

The commissioner is authorized to cooperate with and enter into agreements with any other agency, department or institution of this state, the United States government or any of its departments, and any other state or agency thereof, for the purpose of carrying out the provisions of this article and to provide for uniformity of regulations insofar as may be practicable.

(Acts 1971, No. 1949, p. 3151, §11.)

§ **Section 2-27-8. Rules and regulations.**

In addition to the express authority of the commissioner, with approval of the Board of Agriculture and Industries, to adopt rules and regulations and establish fees for the administration and enforcement of the provisions of this article as provided in this article, the commissioner, with approval of the State Board of Agriculture and Industries, may also adopt and promulgate such other rules and regulations as may be necessary to carry out the evident intent and purpose of this article. A public hearing with due notice thereof shall be given before rules and regulations are approved and adopted as authorized in this section.

(Acts 1951, No. 908, p. 1548, §4; Acts 1971, No. 1949, p. 3151, §14; Act 2004-516, p. 996, §1.)

§ **Section 2-27-9. Registration, application, and fees; registration powers of commissioner; appeal and review.**

(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 six hundred dollars (\$600). The fee shall be paid according to the schedule in subsection (i). The fee shall accompany the application for registration and be deposited to the credit of the Agricultural Fund of the State Treasury for the exclusive benefit of the Pesticide Management Division of the Department of Agriculture and Industries. The fees shall be used by the department for enforcement of Chapters 27 and 28. If the registration fee is not paid by March 1, or within 60 days following its due date, a delinquency penalty of one hundred fifty dollars (\$150) per product to be registered shall be added to the amount thereof.

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

- (1) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant.
- (2) The name of the pesticide with an ingredient statement.
- (3) A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it including directions for use.
- (4) If requested by the commissioner, a full description of the tests made, and the results thereof, upon which the claims are based. In the case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the pesticide was registered or last reregistered.

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

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

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

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

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

(e) Upon the advice of the Pesticide Advisory Committee and with the approval of the board, the commissioner shall refuse the registration or cancel the registration of any pesticide or device previously registered where it is determined that the use of the pesticide according to directions on the label poses a substantial adverse effect on humans, animals, or the general environment.

Any person upon being notified of the refusal or cancellation of registration of a pesticide shall be entitled to the review, hearing, and appeal rights as provided under subsection (d).

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

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

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

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

a. All registrations issued to registrants whose names begin with the letters A through M shall expire on December 31, 2013. Upon expiration of registration on December 31, 2013, a registrant whose name begins with letters A through M may renew a registration for a period of two years upon payment of a fee of five hundred dollars (\$500) per product. The registration shall be valid until December 31, 2015. The registrant may renew every two years thereafter upon payment of the fee of six hundred dollars (\$600).

b. All registrations issued to registrants whose names begin with the letters N through Z shall expire on December 31, 2012. Upon expiration of the registration on December 31, 2012, a registrant whose name begins with letters N through Z may renew a registration for a period of two years upon payment of a fee of five hundred dollars (\$500) per product. The registration shall be valid until December 31, 2014. After December 31, 2014, the registrant may renew a registration for a period of two years upon payment of a fee of six hundred dollars (\$600) per product.

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

(3) An application for registration shall be accompanied by a fee of six hundred dollars (\$600) for each pesticide except as provided in subdivisions (1) and (2).

(Acts 1951, No. 908, p. 1548, §3; Acts 1971, No. 1949, p. 3151, §4; Acts 1989, No. 89-743, p. 1473; Acts 1991, No. 91-556, p. 1025, §1; Act 2004-516, p. 996, §1; Act 2011-549, p. 1010, §1; Act 2012-403, p. 1102, §1.)

§ **Section 2-27-10. License to sell.**

(a) Before any person sells or offers for sale any restricted-use pesticide in this state for use therein or before any person sells such restricted pesticide for importation into this state where such sale is directly to the user, custom applicator, aerial applicator, or pest-control operator, the

person shall apply for and obtain from the commissioner an annual license which authorizes the sale of restricted-use pesticides to persons who have been issued certified pesticide-use permits as required by Section 2-27-11. The license required by this section shall be posted in a conspicuous place in licensee's sales outlet. Application forms for this purpose shall be furnished by the commissioner, which shall be accompanied by a license fee established by the Board of Agriculture and Industries. All such licenses shall expire December 31 of each year and shall be renewed annually as of January 1, upon payment of the required annual license fee. Any person who has more than one sales outlet or establishment in Alabama shall pay an additional license fee established by the board for each such additional sales outlet. If the license fee is not paid by February 15, or within 45 days following its due date, a delinquent penalty of 10 percent shall be added to the license fee. License fees collected under this section shall be deposited to the credit of the Agricultural Fund of the State Treasury.

(b) Before any person is issued a license under this section authorizing the sale of restricted-use pesticides, the person shall comply with all requirements of this article and rules and regulations as may be promulgated and approved for the sale of such pesticides.

(c) It is hereby intended that every person who sells or offers for sale restricted-use pesticides directly to farmer users, custom applicators, aerial applicators, pest-control operators, or other users of restricted-use pesticides shall be subject to licensing requirements of this section except as exempt under Section 2-27-5. The Commissioner of Agriculture and Industries, with approval of the board, may promulgate rules and regulations for the purpose of determining whether dealers who apply for a license as required in this section are qualified and equipped to safely handle, keep, store, deliver, transport, and sell or offer for sale restricted-use pesticides, to the end that such pesticides will be sold, stored, and otherwise handled by such dealers in a manner that will not endanger or be hazardous or cause injury or damage to human health, nontarget animals, wildlife, crops, water, or be detrimental to the general environment. Any person denied a license as required in this section shall be entitled to the review, hearing, and appeal rights provided under subsection (d) of Section 2-27-9.

(Acts 1971, No. 1949, p. 3151, §5; Act 2004-516, p. 996, §1.)

§ **Section 2-27-11**. Use permits.

(a) Each person shall obtain a pesticide-use permit from the commissioner before the person is eligible to purchase and use a restricted-use pesticide. Application forms for such permits shall be furnished by the commissioner, and the permit shall be valid and effective for a period of time to be established by rules and regulations of the State Board of Agriculture and Industries unless sooner revoked by the commissioner for cause as specified in rules and regulations promulgated by the commissioner with approval of the board.

(b) Before any person is authorized to purchase and use restricted-use pesticides for application or use thereof, the person shall meet certain qualifications to be prescribed pursuant to rules and regulations of the commissioner approved by the board. The regulations shall be designed to satisfy the requirements of the federal Insecticide, Fungicide, and Rodenticide Act, as amended, and to determine whether the user or applicator of restricted-use pesticides can use and apply such products in a manner that will not endanger or be injurious to human health and nontarget animals, wildlife, vegetation, crops, and water or be detrimental to the general environment and whether such user is familiar with methods of safe storage, handling, use, applications, and disposal of such pesticides and pesticide containers so as to avoid hazardous effects that may result from any improper use, handling, or application of such products.

(c) In addition to any other requirement, the applicant, for initial issuance or any reissuance of a permit to purchase and use restricted-use pesticides, shall pay to the commissioner a permit fee of not less than \$15 nor more than \$60 per category of certification for a commercial pesticide applicator permit, nor more than \$40 for certification as a private pesticide applicator to be determined by the board through the adoption of rules and regulations. In determining the exact amount of the fee, the board shall take into consideration whether the permit holder is purchasing and using restricted-use pesticides for private or commercial purposes. Pending the adoption of rules, the permit fee shall be \$15. All moneys collected under this section shall be deposited in the State Treasury to the credit of the Agricultural Fund.

(Acts 1971, No. 1949, p. 3151, §6; Acts 1977, No. 580, p. 769, §2; Acts 1989, No. 89-653, p. 1295, §1; Acts 1993, No. 93-755, p. 1509, §1; Act 2004-516, p. 996, §1.)

§ **Section 2-27-12. Sampling and inspection.**

(a) The commissioner or his agent is authorized to enter upon any public or private premise or carrier at reasonable times during regular business hours in the performance of his duties relating to pesticides, devices and records pertaining to same. It shall be a violation of the penalty provisions of this article for any person to refuse to allow such entrance for sampling and inspection purposes.

(b) The commissioner or his agent is authorized and directed to sample, test, inspect and make analyses of pesticides sold or offered for sale or distributed within this state, at a time and place and to such an extent as he may deem necessary to determine whether such pesticides are in compliance with the provisions of this article.

(c) The official analysis shall be made from the official sample. The registrant may obtain upon request a portion of said official sample. If the official analysis conforms to the provisions of this article, the official sample may be destroyed. If the official analysis does not conform to the provisions of this article, then the official sample shall be retained for a period to be determined by the State Board of Agriculture and Industries pursuant to regulations.

(d) If any pesticide, pesticide container or device fails to comply with or is otherwise in violation of any of the provisions and requirements of this article, or rules and regulations promulgated thereunder, and the commissioner contemplates possible legal proceedings against the person responsible for any such violation, the commissioner shall, after due notice, accord such person an informal hearing or an opportunity to present his views, either orally or in writing, with regard to such violation or contemplated legal proceedings; and, if in the opinion of the commissioner the facts so warrant, the commissioner may refer the facts to the Attorney General of Alabama for appropriate legal action pursuant to the enforcement and penalty provisions of this article; provided, that nothing in this article shall be construed as requiring the commissioner to report for any legal action or prosecution minor violations whenever he believes that the public interest will be best served by a suitable notice of warning in writing. It shall be the duty of each district attorney, assistant district attorney or deputy district attorney to whom any violation is reported and referred to by the Attorney General to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction to the end that appropriate legal action may be taken against persons who do not comply with the provisions of this article.

(Acts 1951, No. 908, p. 1548, §5; Acts 1971, No. 1949, p. 3151, §8.)

§ **Section 2-27-13. Deficiencies in analysis.**

No deficiency shall exist in connection with the analysis or report on the analysis of any sample of a pesticide unless the deviation from guarantee is greater than plus or minus three percent of the amount guaranteed of one or more of the active ingredients or added ingredients claimed, except as provided by the commissioner by regulation approved by the State Board of Agriculture and Industries.

(Acts 1971, No. 1949, p. 3151, §10.)

§ **Section 2-27-14. Prohibited acts.**

(a) It shall be unlawful for any person to distribute, sell, offer for sale or keep for sale within the state or deliver for transportation or transport in intrastate commerce or between points within this state through any point outside this state any of the following:

(1) Any pesticide or device which has not been registered pursuant to the provisions of Section 2-27-9, or any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with the registration or if the composition of a pesticide differs from its composition as represented in connection with its registration; provided, that in the discretion of the commissioner, a change in the labeling of a pesticide may be made within a registration period without requiring reregistration of the pesticide.

(2) Any pesticide or device, unless it is in the registrant's or the manufacturer's unbroken immediate container and there is affixed to such container and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing:

- a. The name and address of the manufacturer, registrant or person for whom manufactured;
- b. The name, brand or trademark under which said article is sold;
- c. The net weight or measure of the content, subject, however, to such reasonable variations as the commissioner may permit; and
- d. Any other mandatory labeling requirements.

(3) Any pesticide which contains any substance or substances in quantities highly toxic to man, determined by the commissioner as provided in subsection (c) of Section 2-27-9, unless the label shall bear, in addition to any other matter required by this article:

- a. The skull and crossbones;
- b. The word "Poison" prominently in red on a background of distinctly contrasting color; and
- c. A statement of an antidote for the pesticide.

(4) The pesticides commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate and barium fluosilicate, unless they have been distinctly colored or discolored as provided by

regulations issued in accordance with this article, or any other white powder pesticide which the commissioner, after investigation of and after public hearing on the necessity of such action for the protection of the public health and the feasibility of such coloration or discoloration, shall, by regulation, require to be distinctly colored or discolored, unless it has been so colored or discolored.

(5) Any pesticide which is adulterated, contaminated or misbranded, or any device which is misbranded.

(b) It shall be unlawful:

(1) For any person to detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this article or regulations promulgated under this article or to add any substance to, or take any substance from, a pesticide in a manner that may defeat the purpose of this article.

(2) For any person to use to his own advantage or to reveal, other than to the commissioner or proper officials or employees of the state or to the courts of this state in response to a subpoena, or to physicians, or in emergencies to pharmacists and other qualified persons for use in the preparation of antidotes, any information relative to formulas or products acquired by authority of Section 2-27-9.

(3) To disseminate any false advertisement.

(4) To hold or offer for sale, sell or distribute to the user any restricted-use pesticide or device without a license and unless the person to whom sale is made for use thereof, or his agent, to whom delivery is made holds a valid restricted pesticide-use permit issued by the commissioner.

(5) To purchase, use or possess a restricted-use pesticide without a pesticide-use permit.

(6) To purchase, use or dispose of a restricted-use pesticide or its container in a manner other than that stated on the purchase or use permit or in labeling or to use any pesticide in a manner inconsistent with its label or any other written, printed or graphic matter accompanying the pesticide or device at any time or to which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of the Environmental Protection Agency, the United States Departments of Agriculture and Interior, the Department of Health, Education, and Welfare, state experiment stations, state agricultural colleges and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

(7) To hold or offer for sale, sell or distribute any pesticide where it has been determined that the use of the pesticide under subsection (e) of Section 2-27-9 is dangerous or harmful to humans, animals or the general environment and registration thereof has been refused or cancelled.

(8) To offer for sale, sell, purchase or transport any pesticide in any quantity, bulk or otherwise, in any container which fails to meet the specifications determined and established by the commissioner pursuant to regulations approved by the State Board of Agriculture and Industries. Such rules and regulations with respect to the movement or transportation of any pesticide shall be consistent with rules, regulations or other requirements of the federal Department of Transportation, Interstate Commerce Commission or other federal agency or department.

(Acts 1951, No. 908, p. 1548, §2; Acts 1971, No. 1949, p. 3151, §3; Acts 1977, No. 580, p. 769, §1.)

§ **Section 2-27-15. Suspension from sale, seizure and condemnation.**

Any pesticide, pesticide container or device that 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 in violation of any of the provisions of this article shall be subject to suspension from sale, seizure and condemnation in accordance with the provisions of Article 2 of Chapter 2 of this title.

(Acts 1951, No. 908, p. 1548, §8; Acts 1971, No. 1949, p. 3151, §12.)

§ **Section 2-27-16. Penalty for violation of article; injunctions.**

(a) Any person who shall violate any of the provisions of this article declared to be unlawful or who shall fail or refuse to perform any duty or requirement imposed by the provisions of this article, or who shall violate any rule or regulation duly promulgated under this article or who shall sell or offer for sale or distribute for sale any pesticide or device in violation of any of the requirements of this article shall be guilty of a misdemeanor and, upon conviction, shall be punished as now prescribed by law for such an offense. Fines imposed under this article shall be paid into the Agricultural Fund of the State Treasury.

(b) In addition to the penalty and other enforcement remedies of this article and notwithstanding the existence of an adequate legal remedy, the circuit court, or any judge thereof, shall have jurisdiction and for cause shown and upon a hearing to grant a temporary restraining order or preliminary or permanent injunction, or both, restraining and enjoining any person from violating or continuing to violate any of the provisions of this article or any rule or regulation promulgated under authority of this article. Said injunction shall be issued without bond. Any action commenced under this subsection based upon facts furnished by the commissioner or others having knowledge thereof shall be brought in the name of the State of Alabama; provided, that such action shall be brought upon the relation of the Attorney General and with his approval who shall be assisted by the district attorney or deputy district attorney for the county in which injunctive proceedings are filed.

(Acts 1951, No. 908, p. 1548, §7; Acts 1971, No. 1949, p. 3151, §13.)

Article 2.

State Laboratory.

§ **Section 2-27-30. Establishment and operation; policy committee and executive committee therefor.**

The commissioner and state Department of Agriculture and Industries shall have authority to provide for the establishment and operation of a laboratory to obtain reliable analysis of raw and processed agricultural products, the materials used in production of agricultural products for harmful pesticide residues for the protection of public health and interest, to aid in developing and expanding markets for agricultural products, the protection and production of fish and wildlife, and the use of recreational areas as related to pesticide residues. In connection therewith, there shall be established a policy committee to be composed of the following:

- (1) The Director, Alabama Cooperative Extension Service, who shall be chairman of the committee;

- (2) The Commissioner of the Department of Agriculture and Industries;
- (3) The Director, Alabama Experiment Station System;
- (4) The State Health Officer;
- (5) The Commissioner of the Department of Conservation and Natural Resources;
- (6) The president, or a representative named by him, of the following organizations or associations:
 - a. Alabama Farmers Federation;
 - b. Alabama Dairy Products Association;
 - c. Alabama Feed Dealers Association;
 - d. Alabama Poultry Industry Association;
 - e. Alabama Fisheries Association;
 - f. Alabama Cattlemen's Association;
 - g. Alabama Pesticide Institute; and
 - h. A representative of the Alabama Farmers Federation Dairy Committee and one person engaged in the production and/or marketing of fruits and vegetables, to be appointed by the Commissioner of Agriculture and Industries.

The advisory committee may select from among their number an executive committee, who shall have and exercise such authority as the advisory committee may determine. The members of the advisory committee and executive committee shall not be entitled to any remuneration whatever for the performance of their functions. Members of such committee may be represented at meetings by their proxies.

(Acts 1965, 2nd Ex. Sess., No. 132, p. 185, §1; Acts 1966, Ex. Sess., No. 399, p. 538, §1; Acts 1992, No. 92-108, p. 178, §5.)

§ **Section 2-27-31. Location.**

Any laboratory established under the provisions of this article shall be located on property owned by Auburn University, which shall be leased to the Department of Agriculture and Industries by the trustees of the university.

(Acts 1965, 2nd Ex. Sess., No. 132, p. 185, §2.)

§ **Section 2-27-32. Director.**

The laboratory established under the provisions of this article shall be under the supervision and charge of a director appointed by the Commissioner of Agriculture and Industries, with the advice and consent of the policy committee, subject to the provisions of the state Merit System

law, and his salary shall be fixed by the State Personnel Board, upon recommendation of the Commissioner of Agriculture and Industries, with the approval of the policy committee.

(Acts 1965, 2nd Ex. Sess., No. 132, p. 185, §5; Acts 1966, Ex. Sess., No. 399, p. 538, §2.)

§ **Section 2-27-33.** **Additional powers and authority.**

In addition to the powers and authority heretofore authorized by law pursuant to Sections 2-27-30, 2-27-31 and 2-27-32, the pesticide residue laboratory heretofore established and now operated by the Department of Agriculture and Industries at Auburn University shall also be authorized to obtain reliable analysis of raw and processed agricultural products and other food products, fish, game and other wildlife to detect the presence of any harmful drug residues for the protection of public health, to aid in developing and expanding markets for agricultural products and for the protection and production of fish and wildlife and related purposes, which activities shall be in addition to the duties as now authorized by law for the operation of such laboratory.

(Acts 1979, No. 79-702, p. 1250.)

Article 3.

Application.

§ **Section 2-27-50.** **Definitions.**

For the purposes of this article, the following terms shall have the meanings respectively ascribed to them by this section.

(1) PESTICIDE.

a. Any substance or mixture of substances intended to prevent, destroy, control, repel or mitigate any insect, rodent, nematode, predatory animal, snail, slug, fungus, bacteria, weed or any other form of plant or animal life or virus, except virus on or in living man or other animal, that may infest, infect or be detrimental to vegetation, man, animal, structure or household or be present in any environment or which the commissioner may declare to be a pest;

b. Any substance or mixture of substances intended to be used as a plant regulator, defoliant or desiccant;

c. Any spray adjuvant such as a wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier or similar agent, with or without toxic properties of its own, intended to be used with any other pesticide as an aid to the application or effect thereof, whether or not sold separately from that of the pesticide with which it is to be used; and

d. Any other similar substance designated by the commissioner which is used or intended to be used for any of the above purposes.

(2) WEED. Any plant which grows where not wanted.

(3) PERSON. Any individual, firm, partnership, corporation, association or other legal entity or organization.

(4) COMMISSIONER. The Commissioner of Agriculture and Industries of the State of Alabama.

(5) BOARD. The State Board of Agriculture and Industries of the State of Alabama.

(6) CUSTOM APPLICATION OF PESTICIDES. Any application of pesticides to growing agricultural, horticultural or floricultural crops, rights-of-way or woodlands by aircraft or ground equipment for remuneration.

(7) AIRCRAFT. Any mechanism used in flight in the air that is designed for use, adaptable for use or that is used in applying pesticides as sprays, dusts, aerosols, fogs or in other forms.

(8) GROUND EQUIPMENT. Any machine, equipment or device other than aircraft that is designed for use, adaptable for use or that is used on land or water in applying pesticides as sprays, dusts, aerosols, fogs or in other forms.

(Acts 1971, No. 1957, p. 3177, §2.)

§ **Section 2-27-51. Purpose of article.**

The purpose of this article is to regulate, in the public interest, the application of pesticides. In recent years many new materials have been discovered or synthesized which are valuable and necessary for the control of insects, plant diseases and weeds; however, such materials when misused may seriously injure health, property, crops, wildlife, bees and fish. Pesticides may also injure man or animals, either by direct poisoning or by gradual accumulation of poisons in the tissues. The drifting or washing of pesticides into streams or lakes can cause appreciable damage to aquatic life. A pesticide applied by aircraft or ground equipment for the purpose of controlling diseases, insects or weeds in a crop which is not itself injured by the pesticide may drift, sometimes for miles, and injure or contaminate other crops and other things with which it comes in contact. Therefore, it is deemed necessary and in the public interest to provide some means of regulating the application of pesticides.

(Acts 1971, No. 1957, p. 3177, §1.)

§ **Section 2-27-52. Exceptions to applicability of article.**

This article shall not apply to the application of pesticides to lawns, trees or shrubs immediately adjacent to a dwelling or building nor to the use of pesticides or other chemicals for the control, eradication or prevention of termites or household pests. In no event shall this article be construed so as to apply to persons engaged in farming activities who use their own aircraft or ground equipment for the application of pesticides, unless such persons use this equipment for hire to service property not owned or leased by them, nor shall this article apply to municipalities, counties or the state or federal agencies, or subdivisions thereof, where such governmental agencies engage in the custom application of pesticides through employees of such agencies; provided, that nothing in this section shall be construed to exempt any person from the requirements of this article where such person performs custom application of pesticides by contract for any governmental agency. Any person issued a license pursuant to the requirements of this article shall not be required to procure a permit required by Chapter 28 of this title unless

such person engages in work regulated, controlled and governed by the provisions and requirements thereof; but none of the provisions of this section shall be construed to exempt any person from being required to procure a license under requirements of this article and also a permit under requirements of Chapter 28 of this title where such persons engage in work regulated and governed by both of said statutes.

(Acts 1971, No. 1957, p. 3177, §12.)

§ Section 2-27-53. License - Required; fees; examination and certification; license restrictions.

(a) No person may engage in the custom application of pesticides within this state at any time without first procuring an annual license from the commissioner. The fee for such license which shall accompany the application for a license shall be established by the Board of Agriculture and Industries for the custom application of pesticides by the use of ground equipment. The fee for a license where the applicant will perform the custom application of pesticides by the use of a single aircraft shall be established by the Board of Agriculture and Industries. An applicant planning to use more than one aircraft for the custom application of pesticides, shall pay a fee established by the board for each additional aircraft used in such work; provided, that the total amount required to be paid for a license issued under this section shall not exceed \$120.00, regardless of the number of planes to be used by the applicant. Any person who engages in the custom application of pesticides by the use of both ground equipment and aircraft shall pay an annual license fee established by the board to engage in such work where the applicant will use only one aircraft. If the applicant will use more than one aircraft, then a fee established by the board for each additional aircraft so used shall be paid as provided in this section, subject to the maximum amount therein specified. The license required under this section shall expire on December 31 of the year for which it is issued, and shall be renewable as of January 1 of the following year by payment of the annual license fee as prescribed in this section and upon compliance with the other requirements of this article. If the license fee is not paid by February 15, or within 45 days from the due date, a delinquent penalty of 10 percent shall be added to the amount thereof. The application for a license shall be on forms furnished by the commissioner and accompanied by the required license fee. The application shall give all of the following information:

- (1) The name and address of applicant.
- (2) The type of equipment he or she proposes to use, including the number of aircraft, if such equipment is to be used.
- (3) Information regarding the applicant's qualifications and proposed operation.
- (4) Such other information as may be necessary for the commissioner to determine whether or not he or she qualifies for a license.

Any amount improperly or illegally collected under this section as an overpayment may be refunded to the person entitled thereto in accordance with Section 2-1-6.

(b) The commissioner shall require the applicant to show upon written examination, given by the examining board created and existing under the provisions of Section 2-28-2, that he or she possesses adequate knowledge concerning the proper use and application of pesticides and the dangers involved and the precautions to be taken in connection with their safe use, handling and

application, together with other factors related thereto. An applicant may also be required to demonstrate knowledge and ability of the effective use of pesticides for control, prevention, or eradication of diseases and insects as authorized under authority of Chapter 28 of this title. The examining board as presently constituted may consult others on the scientific staff of Auburn University for advice and assistance relating to requirements and qualifications for persons to engage in custom application of pesticides. An examination fee established by the Board of Agriculture and Industries shall be paid and shall accompany each application for an examination before any applicant for a license is entitled to take the examination for a license as required under this section. Before a license is issued to any applicant, the applicant must be certified by the examining board as qualified to perform the custom application of pesticides. A full-time employee of the applicant, who has been certified by the examining board as qualified to perform the custom application of pesticides, may be designated by the applicant as supervisor to be in charge of and responsible for applicant's custom application of pesticides, and the license may be issued designating the employee as supervisor, provided the applicant otherwise qualifies for a license. License fees and examination fees collected under this section, together with the amount of any fines levied under Section 2-27-62, shall be deposited in the State Treasury to the credit of the Agricultural Fund for use and expenditure for the administration and enforcement of this article.

(c) If the commissioner finds the applicant qualified, he or she shall issue an annual license to perform custom application of pesticides within this state. The license may restrict the applicant to the use of a certain type or types of equipment or pesticide, material, substance, or mixture thereof if the commissioner finds that the applicant is qualified to use only such equipment or pesticides. If the license is not issued as applied for, the commissioner shall inform the applicant in writing of the reasons therefor. In the event a license is refused or revoked by the commissioner, the applicant may appeal the action of the commissioner as provided in subsection (b) of Section 2-27-54.

(Acts 1971, No. 1957, p. 3177, §3; Act 2004-516, p. 996, §1.)

Section 2-27-54

License - Suspension, revocation or modification; appeals from actions of commissioner.

(a) The commissioner may suspend, pending inquiry, for not longer than 10 days and, after opportunity for a hearing, may revoke or modify the provision of any license issued under this section if he finds that the licensee is no longer qualified, has engaged in fraudulent business practices in the custom application of pesticides or has made any custom application of pesticides in a faulty, careless or negligent manner or has violated or fails or refuses to comply with any of the provisions and requirements of this article, or regulations promulgated thereunder.

(b) Any person aggrieved by any action of the commissioner in refusing to issue a license or in revoking any license may obtain a review thereof by filing an appeal to the board within 15 days after notice of denial or revocation of the license has been received by the applicant or licensee, which appeal must be heard by the board at its next regular meeting or at a special called meeting for this purpose; provided, that such appeal must be heard by the board not later than 30 days following the date on which an appeal is filed. The filing of an appeal shall not suspend the action of the commissioner in the revocation or denial of any license. The action of the board in denying or revoking any license may be reviewed by the Circuit Court of Montgomery County, Alabama, upon a complaint being filed in said court, accompanied by a bond for payment of all

court costs, which bond must be approved by the register or clerk, and such appeal must be filed within 20 days after notice to the applicant or licensee of the board's decision. The commissioner shall have 20 days in which to enter his appearance after the petition is served upon him. The court shall have jurisdiction to affirm, set aside or modify the action of the commissioner and the board, and such proceedings in the circuit court shall determine by trial de novo whether the applicant is entitled to the license under the requirements of this article.

(Acts 1971, No. 1957, p. 3177, §3.)

§ **Section 2-27-55. License - Nonresidents.**

Any person who performs the custom application of pesticides who is a nonresident of this state shall be required to obtain a license as required under Section 2-27-53 and comply with all of the other requirements of this article. Nothing herein shall prevent the commissioner, with approval of the board, from providing for issuing reciprocal licenses to residents of other states that recognize and accept licenses issued under this article to residents of this state who perform custom application of pesticides.

(Acts 1971, No. 1957, p. 3177, §9.)

§ **Section 2-27-56. Surety bond or liability insurance.**

Each applicant for a license to perform the custom application of pesticides shall, before a license is issued to him, furnish and file with the commissioner a surety bond in which the State of Alabama is named as obligee in the sum of \$3,000.00 for each applicant operating ground equipment or not more than two aircraft. Where an applicant operates more than two aircraft, the amount of the bond required to be furnished shall be increased by the sum of \$3,000.00 for each additional aircraft, provided the total amount of any bond required under this section shall not exceed the sum of \$12,000.00. The bond shall be conditioned for the protection of, and that the licensee will answer in damages to, persons who may suffer legal damages as a result of licensee's custom application of pesticides or drift to plants, animals or property or by failure of licensee to comply with any of the requirements of this article, and rules and regulations duly adopted under authority thereof. Any person having a right of action against the principal named in such bond for damages caused by his application of pesticides may maintain an action against the principal and surety in such bond in the county where the work was performed; provided, that the aggregate liability of the surety to all such persons shall, in no event, exceed the amount of such bond. The filing of such bond shall not serve as a limitation of any liability for which he may be subject. Such bond as required in this section shall be written by a corporate surety company qualified to do business in Alabama. A liability insurance policy in an amount equal to not less than the amount of the bond insuring the licensee against legal liability proximately caused by his custom application of pesticides and written by an insurance company qualified and authorized to do business in the State of Alabama or by an eligible surplus line insurer or insurers, acceptable to the Commissioner of Insurance, may be filed with the commissioner in lieu of the surety bond as required in this section. The total and aggregate of the insurer for all claims shall be limited to the face amount of the liability insurance policy. A reasonable deductible clause may be included therein in an amount acceptable to the commissioner. The liability insurance policy need not apply to damages or injury to agricultural crops, plants or land being worked upon by licensee.

(Acts 1971, No. 1957, p. 3177, §5; Acts 1971, 3rd Ex. Sess., No. 79, p. 4288.)

§ **Section 2-27-57. Rules and regulations - Generally.**

The commissioner, with the approval of the board, is hereby authorized to promulgate such rules and regulations as are reasonable and necessary to carry out the evident intent and purpose of the provisions and requirements of this article; provided, that any such regulations shall not be inconsistent with regulations by the state or federal government respecting safety in air navigation or operation of aircraft. The commissioner shall consult with other officials before issuing regulations directly related to any matter within the jurisdiction of any other official of this state. Before any rules or regulations are promulgated or any existing rules and regulations are amended, as provided in this section, the commissioner shall give at least 10 days' notice to persons engaged in custom application of pesticides by aircraft or ground equipment that such rules and regulations are to be considered for adoption or for amendment by the board, in order that such persons may appear and be heard concerning the adoption or amending of any rules and regulations.

(Acts 1971, No. 1957, p. 3177, §10.)

§ **Section 2-27-58. Rules and regulations - Type, time and method of application of pesticides.**

The commissioner may, by rules and regulations, after public hearing, with approval of the board, prescribe the pesticides or methods to be used for application thereof and prohibit or limit the use of certain pesticides during certain seasons of the year and the methods of application to such an extent as may be necessary to provide protection to health, the environment and property. In issuing such regulations, consideration shall be given to pertinent research findings and recommendations of other agencies or institutions of this state or of the federal government. Each aircraft and ground equipment used in the custom application of pesticides shall have attached thereto a decal or other identifying mark issued by the commissioner.

(Acts 1971, No. 1957, p. 3177, §6.)

§ **Section 2-27-59. Rules and regulations - Disposal and handling of pesticides.**

No person shall discard, dispose of or otherwise handle any pesticide or pesticide containers in such manner as to cause direct injury or damage to man, animals, wildlife or other property or to pollute any stream, water or waterway in any manner harmful or injurious to any wildlife or other things. The commissioner, with the approval of the board, is authorized to promulgate rules and regulations governing and controlling the discarding and handling of such pesticides and pesticide containers.

(Acts 1971, No. 1957, p. 3177, §7.)

§ **Section 2-27-60. Records and reports.**

The commissioner, with approval of the board, may, by rules and regulations, require any licensee to maintain such records and to furnish reports giving such information with respect to a particular application of pesticides and such other relevant information as may be deemed necessary for the administration and enforcement of this article.

(Acts 1971, No. 1957, p. 3177, §8.)

§ **Section 2-27-61. Inspections; enforcement of article.**

(a) For the purpose of carrying out the provisions of this article, the commissioner or his inspectors and agents may enter upon any public or private premises at reasonable times in order to have access for the purpose of inspecting any aircraft or ground equipment used in custom application of pesticides as regulated by this article. Inspectors and authorized agents of the commissioner shall also be authorized and empowered to inspect, examine and review the books and records as may be required to be kept and maintained by a licensee under requirements of Section 2-27-60. Any person who shall refuse, hinder or obstruct any authorized agent of the commissioner by refusing to allow entrance or access to equipment or books and records of a licensee shall be guilty of a misdemeanor and punishable under Section 2-27-62.

(b) When it is determined that legal action is necessary for the enforcement or compliance with the requirements of this article, the commissioner shall refer the facts to the Attorney General for appropriate legal action pursuant to Section 2-27-62.

(Acts 1971, No. 1957, p. 3177, §11.)

§ **Section 2-27-62. Penalty for violations of article; injunctions.**

(a) General penalty. Any person who shall violate the provisions or requirements of this article, or rules and regulations promulgated under this article, or who engages in the custom application of pesticides without having a license therefor or who shall fail or refuse to perform any duty or requirement imposed by the provisions of this article shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than \$25.00 nor more than \$500.00 and, within the discretion of the court, may also be imprisoned for a term not to exceed six months.

(b) Remedy by injunction. In addition to the penalty prescribed in subsection (a) of this section and notwithstanding the existence of an adequate legal remedy, the circuit court, or any judge thereof, shall have jurisdiction and for cause shown and upon a hearing to grant a temporary restraining order or a preliminary or permanent injunction, or all, restraining and enjoining any person from performing the custom application of pesticides, as same is defined in this article, without having a valid permit as required by said article or after such a permit has been revoked or violating, or continuing to violate, any of the requirements of this article, or any rule or regulation adopted under authority thereof. Complaints for injunctive relief as authorized under this subsection shall be filed in the circuit court of the county of residence of the person who performs work or services in violation of this article or in the county where such unauthorized work is performed. Any restraining order or injunction issued under this subsection shall be issued without a bond. Any action commenced under this subsection based upon facts furnished by the Commissioner of Agriculture and Industries or others having knowledge thereof may be brought in the name of the State of Alabama; provided, that such action shall be brought upon the relation of the Attorney General and with his approval, and such officer shall, upon his request, be assisted by the district attorney of the judicial circuit or deputy district attorney for the county in which injunctive proceedings are filed.

(Acts 1971, No. 1957, p. 3177, § 13; Act 2001-344, p. 446, § 1.)

§ **Section 2-27-63. Article deemed cumulative.**

The provisions of this article are cumulative and shall not repeal any other laws or parts of laws unless such laws or parts of laws are in direct conflict with the provisions of this article, and,

then such laws or parts of laws are repealed only to the extent that same conflict with the provisions of this article. The provisions of this article shall not be construed to repeal, amend or modify the provisions or requirements of Chapter 28 of this title, as it is hereby intended that the provisions of this article are cumulative and supplemental to the provisions and requirements of said provisions.

(Acts 1971, No. 1957, p. 3177, §14.)