

State of Arkansas

76th General Assembly

Regular Session, 1987

SENATE BILL 417

By: Public Health, Welfare & Labor Committee

"AN ACT TO AMEND VARIOUS SECTIONS OF ACT 8 OF THE SECOND EXTRAORDINARY SESSION OF 1961, AS AMENDED, [ARK. STAT. 82-1514 ET SEQ.] THE IONIZING RADIATION CONTROL ACT, TO ESTABLISH FEES FOR LICENSING AND REGISTRATION FOR USE OF RADIOACTIVE MATERIALS AND X-RAY EQUIPMENT TO OFF-SET PROGRAM COSTS AT THE STATE DEPARTMENT OF HEALTH; AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Section 3 of Act 8 of the Second Extraordinary Session of 1961, as amended, the same being Arkansas Statute 82-1514, is hereby amended to read as follows:

"Section 3 (a) 'By-product material' means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

(b) 'Ionizing radiation' means gamma rays and x-rays; alpha and beta particles, high-speed electrons, neutrons, protons, and other nuclear particles; but not sound or radio waves, or visible, infrared, or ultraviolet light.

(c) (1) 'General License' means a license effective pursuant to regulations promulgated by the Agency without the filing of an application with the Department or the issuance of licensing documents to particular persons, to transfer, acquire, own, possess, or use quantities of radioactive material or devices or equipment utilizing radioactive material.

(2) 'Specific License' means a license issued to a named person, upon application filed pursuant to regulations promulgated under Act 8 of the Second Extraordinary Session of 1961, as amended, to use, manufacture, pro-

duce, transfer, receive, acquire, own, or possess quantities of radioactive material or equipment utilizing radioactive material.

(3) 'Academic Broad License' means any radioactive material license issued to a college or university and subject to the special requirements for "Specific Licenses of Broad Scope" as set forth in Rules and Regulations for Control of Sources of Ionizing Radiation promulgated by the State Board of Health.

(4) 'Academic Radioactive Material License' means any radioactive material license issued to a college or university, excluding Broad Academic Licenses.

(d) 'Person' means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this State, any other state or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing, other than the United States Atomic Energy Commission, or any successor thereto, and other than federal government agencies licensed by the United States Atomic Energy Commission, or any successor thereto.

(e) 'Source material' means (1) uranium, thorium, or any other material which the Governor declares by order to be source material after the United States Atomic Energy Commission, or any successor thereto, has determined the material to be such; or (2) ores containing one or more of the foregoing materials, in such concentration as the Governor declares by order to be source material after the United States Atomic Energy Commission, or any successor thereto, has determined the material in such concentration to be source material.

(f) 'Special nuclear material' means (1) plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Governor declares by order to be special nuclear material after the United States Atomic Energy Commission, or any successor thereto, has determined the material to be such, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

(g) 'Board' means the State Board of Health.

(h) 'State Health Officer' or 'Director of the Department of Health' means the Secretary of the State Board of Health, or his designated agent.

(i) 'Registration' means registration with the State Department of

Health by any person possessing source of ionizing radiation in accordance with rules, regulations and standards adopted by the Board.

(j) 'Accelerator-produced radioactive material' means any material made radioactive (so as to emit radiation spontaneously) by a particle accelerator.

(k) 'Assembler' means any person who is engaged in the business of installing or offering to install radiation machines or components associated with radiation machines.

(l) 'Civil penalty' means any monetary penalty levied on a licensee or registrant because of violation of statutes, regulations, licenses, or registration certificates; but does not include criminal penalties.

(m) 'Decommissioning' means final operational activities at a facility to dismantle site structures, to decontaminate site surfaces and remaining structures, to stabilize and contain residual radioactive material, and to carry out any other activities to prepare the site for post-operational care.

(n) 'Agency' means the state Radiation Control Agency established by Act 8 of the Second Extraordinary Session of 1961, as amended.

(o) 'High-level radioactive waste' means:

(1) Irradiated reactor fuel;

(2) Liquid wastes resulting from the operation of the first cycle solvent extraction system, or equivalent, and the concentrated wastes from subsequent extraction cycles, or equivalent, in a facility for reprocessing irradiated reactor fuel;

(3) Solids into which such liquid wastes have been converted.

(p) 'Low-Level radioactive waste' means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or by-product material as defined in Section 11e. (2) [42 U.S.C. § 2014(e)(2)] of the (federal) Atomic Energy Act of 1954.

(q) 'Naturally occurring radioactive material' means any material of natural origin that emits radiation spontaneously, excluding uranium, thorium, and the tailings produced in their extraction or concentration.

(r) 'Radiation equipment' means any manufactured product or device, or any machine or system which during operation can generate or emit ionizing radiation, except those which emit radiation only from radioactive material.

(s) 'Radioactive material' means any material (solid, liquid, or gas) which emits radiation spontaneously. It includes accelerator-produced, by-product, naturally occurring, source, and special nuclear materials.

(t) 'Radioactive waste management' means storage, treatment, or disposal of radioactive wastes.

(u) 'Service personnel' means any person who is engaged in the business of offering or performing:

(1) Repair and/or service of radiation machines and associated radiation machine components;

(2) Calibration of radiation machines;

(3) Calibration of radiation instrumentation or devices; and/or

(4) Furnishing personal dosimetry services to Agency licensees and/registrants.

(v) 'Sources of radiation' means, collectively, radioactive material and radiation equipment.

(w) 'Department' means the Arkansas Department of Health.

(x) 'Accelerator or Particle Accelerator, Non-Medical' means a device used to impart kinetic energy of not greater than 100 MeV to electrically charged particles such as electrons, protons, deuterons, helium ions, and that is not used for medical purposes.

(y) 'Accelerator or Particle Accelerator, Medical' means a device used to impart kinetic energy of not greater than 100 MeV to electrically charged particles such as electrons, protons, deuterons, helium ions and is used for medical purposes.

(z) 'Calibration Sources/Consulting Services' means any individual, group of individuals or company possessing a sealed radioactive source used for the calibration of radiation measuring instruments or radiation machines as authorized by a Radioactive Material License.

(aa) 'Chiropractor' means a person licensed by the Arkansas State Board of Chiropractic.

(bb) 'Dental Radiographic Unit' means any x-ray device that is subject to requirements for 'Intraoral Dental Radiographic Systems' set forth in the Rules and Regulations for Control of Sources of Ionizing Radiation promulgated by the State Board of Health.

(cc) 'Gas Chromatograph and X-ray Fluorescence Devices' means analytical laboratory instruments designed for qualitative and quantitative analysis using radioactive material as a component of the instrument detector or as a fluorescence excitation source.

(dd) 'In Vitro Laboratory Testing' means non-human use of radioactive

material for laboratory testing in accordance with a general license authorized by the Rules and Regulations for Control of Sources of Ionizing Radiation promulgated by the State Board of Health.

(ee) 'Industrial Units' means x-ray machines used within the manufacturing industry and other industries and in industrial radiography.

(ff) 'Irradiator' means a device or facility which contains and uses sealed sources for the irradiation of objects or materials. See Panoramic Wet Source Storage Irradiator.

(gg) 'Mobile Nuclear Medicine Service' means the transportation and medical use of by-product material and diagnostic instrumentation.

(hh) 'Nuclear Gauge' means a device that uses radioactive material as a means of measurement or testing.

(ii) 'Nuclear Medicine' means human use of radioactive material for diagnostic and/or therapeutic purposes, not including radioisotope teletherapy.

(jj) 'Nuclear Pharmacy' means a facility licensed by a State Board of Pharmacy for the purpose of compounding and dispensing prescription drugs which contain, or are intended to be used with, radioactive material. In addition, the facility is intended to provide service for more than one medical licensee.

(kk) 'Panoramic Wet Source Storage Irradiator' means a controlled human access irradiator in which the sealed source is contained in a storage pool (usually containing water), and the sealed source is fully shielded when not in use; the sealed source is exposed within a radiation room that is maintained inaccessible during use by interlocked controls.

(ll) 'Physician' means any individual possessing a valid physician's and surgeon's certificate issued by this State.

(mm) 'Podiatrist' means a person licensed by the Arkansas State Board of Podiatry.

(nn) 'Private Practice' means any use of radioactive material subject to the requirements for 'Licensing of Individual Physicians for Human Use of Radioactive Materials' as set forth in the Rules and Regulations for Control of Sources of Ionizing Radiation promulgated by the State Board of Health; excluding those installations subject to the requirements for "X-ray and Electron Therapy Systems with Energies of One MeV and Above" and for "Teletherapy" as set forth in the same rules and regulations.

(oo) 'Radiography' means the examination of the macroscopic structure of materials by nondestructive methods utilizing sources of ionizing radiation.

(pp) 'Radioisotope Teletherapy' means the use of radiation from a sealed radioactive source for medical treatment. This does not include radiation from sealed radioactive sources implanted within individuals or on surface contact with individuals.

(qq) 'Reciprocity' means the reciprocal recognition of licenses issued by the U.S. Nuclear Regulatory Commission or any Agreement State (other than Arkansas); subject to provisions for "Reciprocal Recognition of Licenses" set forth in the Rules and Regulations for Control of Sources of Ionizing Radiation promulgated by the State Board of Health.

(rr) 'Veterinary Medicine Radiographic Systems' means any x-ray device that is subject to the requirements for 'Veterinary Medicine Radiographic Installations' set forth in the Rules and Regulations for Control of Sources of Ionizing Radiation promulgated by the State Board of Health.

(ss) 'Wireline Service Operation' means any evaluation or mechanical service which is performed in the well-bore using devices on a wireline.

(tt) 'X-ray Tube' means any electron tube which is designed to be used primarily for the production of x-rays.

(uu) 'Others' as used in the contexts of registration means any x-ray machine which is not otherwise included in the definitions in this section."

SECTION 2. Section 5 of Act 8 of the Second Extraordinary Session of 1961, as amended, the same being Arkansas Statute 82-1516, is hereby amended to read as follows:

"Section 5. (a) The Agency shall provide by rule or regulation for general or specific licensing of by-product, source, special nuclear materials, or devices or equipment utilizing such materials. Such rule or regulation shall provide for amendment, suspension or revocation of licenses. Such rule or regulation shall provide that:

(1) Each application for a specific license shall be in writing and shall state such information as the Agency by rule or regulation, may determine to be necessary to decide the technical, insurance and financial qualifications or any other qualifications of the applicant as the Agency may deem

reasonable and necessary to protect the occupational and public health and safety. The Agency may at any time after the filing of the application, and before the expiration of the license, require further written statements and may make such inspections as the Agency may deem necessary in order to determine whether the license should be granted or denied or whether the license should be modified, suspended, or revoked. All applications and statements shall be signed by the applicant or licensee. The Agency may require any applications or statements to be made under oath or affirmation;

(2) Each license shall be in such form and contain such terms and conditions as the Agency may by rule or regulation prescribe;

(3) No license issued under the authority of Act 8 of the Second Extraordinary Session of 1961, as amended, and no right to possess or utilize sources of ionizing radiation granted by any license shall be assigned or in any manner disposed of; and

(4) The terms and conditions of all licenses shall be subject to amendment, revision, or modification by rules, regulations or orders issued in accordance with the provisions of this Act.

(b) The Agency shall require registration or licensing of other sources of ionizing radiation.

(c) The Agency is authorized to exempt certain sources of ionizing radiation or kinds of uses or users from the licensing or registration requirements set forth in this section when the Agency makes a finding that the exemption of such sources of ionizing radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public.

(d) Rules and regulations promulgated pursuant to this Act may provide for recognition of other state or federal licenses as the Agency shall deem desirable, subject to such registration requirements as the Agency may prescribe.

(e) (1) Any radioactive materials license issued or renewed after July 4, 1983 for any activity which results in the production of radioactive material as defined in Section 3(s) shall contain such terms and conditions as the Agency determines to be necessary to assure that, prior to termination of such license:

(A) The licensee will comply with decontamination, decommissioning, and reclamation standards prescribed by the Agency, which shall be equivalent to, or more stringent than, those of the U.S. Nuclear Regulatory

Commission or any successor thereto, for sites at which ores were processed primarily for their source material content, and at which such radioactive material is deposited; and

(B) Ownership of any disposal site and such radioactive material which resulted from the licensed activity shall be transferred to either the United States or the State, if the State exercises the option to acquire land used for the disposal of such radioactive material.

(C) Any license which is in effect on the effective date of this Act and which is subsequently terminated without renewal shall comply with subsections (A) and (B) upon termination.

(2) The Agency shall require by rule, regulation, or order that prior to the termination of any license which is issued after the effective date of this Section, title to the land, including any interests therein (other than land held in trust by the United States for any Indian tribe or owned by an Indian tribe subject to a restriction against alienation imposed by the United States, or land already owned by the United States or by the State) which is used pursuant to such license for the disposal of radioactive material as defined in Section 3(s) shall be transferred to either the United States or to the State, unless the U. S. Nuclear Regulatory Commission (or any successor thereto) determines prior to such termination that transfer of title to such land and such material is not necessary or desirable to protect the public health, safety or welfare, or to minimize danger to life or property.

(3) If transfer to the State of title to such radioactive material and land is required, the Agency shall, following the U. S. Nuclear Regulatory Commission's determination that the licensee has complied with applicable standards and requirements under his license, assume title to such material and/or land and maintain such material and land in such manner as will protect the public health and safety and the environment.

(4) The Agency is authorized to undertake such monitoring, maintenance and emergency measures as are necessary to protect the public health and safety for those materials and property for which it has assumed custody pursuant to Act 8 of the Second Extraordinary Session of 1961, as amended.

(5) The transfer of title to land or radioactive materials to the United States or to the State shall not relieve any licensee of liability for any fraudulent or negligent acts done prior to such transfer.

(6) Other than administrative and legal costs incurred by the United

States or by the State in carrying out such transfer, radioactive materials and/or land transferred to the United States or to the State in accordance with this Subsection (a) shall be transferred without cost.

(f) In licensing and regulation of radioactive material as defined in Section 3(s) or of any activity which results in the production of radioactive materials as so defined, the Agency shall require compliance with applicable standards promulgated by the Agency which are equivalent to, or more stringent than, standards adopted and enforced by the U. S. Nuclear Regulatory Commission for the same purpose, including requirements and standards promulgated by the U. S. Environmental Protection Agency.

(g) (1) The Agency is hereby authorized to charge and collect the following annual fees for licensing and registration of sources of ionizing radiation:

(A) X-Ray Registrations

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| (i) | Physicians' Units | \$40.00 per tube up to a | \$120.00 maximum |
| (ii) | Dental Radiographic Units | 30.00 per tube up to a | 90.00 maximum |
| (iii) | Chiropractors' Units | 40.00 per tube up to a | 120.00 maximum |
| (iv) | Veterinarians' Units | 30.00 per tube up to a | 90.00 maximum |
| (v) | Podiatrists' Units | 30.00 per tube up to a | 90.00 maximum |
| (vi) | Colleges' and Universities' Units | 30.00 per tube up to a | 90.00 maximum |
| (vii) | Industrial Units | 30.00 per tube up to a | 90.00 maximum |
| (viii) | Hospital Units | 150.00 per hospital facility | |
| (ix) | Others | 30.00 per tube up to a | 90.00 maximum |

(B) Radioactive Material Licenses

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| (i) | Private Practice, other than teletherapy units or particle accelerators | \$ 50.00 |
| (ii) | Radiography: | |
| | a. In Plant | 225.00 |
| | b. Field | 500.00 |
| (iii) | Wireline Service Operation | 250.00 |
| (iv) | Academic: | |
| | a. Broad | 500.00 |

b. Other	200.00
(v) Gas Chromatograph Devices	75.00
(vi) Nuclear Gauges	150.00
(vii) Particle Accelerators, Non-Medical	80.00
(viii) "In Vitro" Laboratory Testing	25.00
(ix) Irradiators	500.00
(x) Nuclear Pharmacy	300.00
(xi) Mobile Nuclear Medicine Service	300.00
(xii) Calibration Sources/Consulting Services	50.00
(xiii) Radioisotope Teletherapy	150.00
(xiv) Nuclear Medicine	150.00
(xv) Particle Accelerator, Medical	150.00

(C) Reciprocity

Each applicant for reciprocal recognition of an out-of-state license or of an out-of-state registration shall be accompanied by the applicable annual fee provided that no such fee has been submitted during the calendar year of the application.

(2) (A) The annual fee shall be based upon the calendar year (January 1 through December 31) with fees for any given year due by December 31 of the previous year.

(B) Applications for new licenses or registrations shall be accompanied by the appropriate fee. Said applicants shall be charged for a full calendar year regardless of the month the license or registration is issued.

(C) Applications for amendments to licenses or registration certificates which result in a change to a more costly category shall be accompanied by a fee equal to the difference between the fee for the current category and the one to which the amended license or certificate will escalate.

(D) Fee payments shall be by check, draft, or money order made payable to the Arkansas Department of Health.

(E) In any case where the Agency finds that an applicant for a new license or new certificate of registration has failed to pay the fee prescribed in this Act, the Agency will not process that application until such fee is paid.

(F) In any case where the Agency finds that a person has failed to pay a fee prescribed by this part within ninety (90) days of the date due, the Agency may issue an order to show cause why that registration, license, or other service should not be revoked, suspended, or terminated, as appropriate.

(3) No annual fees shall be required for those applicants, licensees, registrants, or other applicable persons whose use of sources of radiation is certified as financed by the General Revenue Fund of the State of Arkansas.

(4) All fees levied and collected under this subsection are hereby declared to be "special revenues" and shall be deposited in the State Treasury, there to be credited to the Public Health Fund."

(5) Subject to such rules and regulations as may be implemented by the Chief Fiscal Officer of the State, the Disbursing Officer for the Department of Health is hereby authorized to transfer all unexpended funds relative to licensing and registration for use of radioactive materials and X-ray equipment that pertain to fees collected, as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for expenditures for the same purpose for any following fiscal year.

SECTION 3. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 4. EMERGENCY. It is hereby found and determined by the General Assembly that due to current revenue short falls the services offered by the Department of Health to the citizens of this State are threatened; that an equitable method of maintaining these services is to provide for a fee to be paid by those citizens who request the assistance of the State Department of Health; that this Act is designed to provide for the collection of such fees and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.

