

SHORT TITLE: Agriculture; prohibiting application of certain herbicides by easement grantees; emergency.

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

SENATE BILL NO. 952

By: Hendrick

AS INTRODUCED

An Act relating to agriculture; amending 2 O.S. 1991, Section 3-62, which relates to prohibited acts concerning pesticides; prohibiting application of certain herbicides by easement grantees; providing for cause of action; providing for damages; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 2 O.S. 1991, Section 3-62, is amended to read as follows:

Section 3-62. ~~(a)~~ A. It shall be unlawful for any person to distribute, sell or offer for sale within this 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)~~ 1. Any pesticide or device which has not been registered pursuant to the provisions of this subarticle, or 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 its registration, or if the composition differs from its composition as represented in connection with its registration; provided, that, in the discretion of the State Board of Agriculture, a change in the labeling or formula may be made within a registration period without requiring reregistration of the product;

~~(2)~~ 2. Any pesticide 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 such article is sold, and
- c. the net weight or measure of the content subject, however, to such reasonable variations as the Board may permit;

~~(3)~~ 3. Any pesticide which contains any substance or substances in quantities highly toxic to man, determined as provided in this subarticle, unless the label shall bear, in addition to any other matter required by this subarticle:

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

~~(4)~~ 4. Any pesticide which is adulterated or misbranded, or any device which is misbranded.

~~(b)~~ B. It shall be unlawful:

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

~~(2)~~ 2. For any person to use for his own advantage or to reveal other than to the Board or proper officials or employees of the state or to the courts of this state in response to a subpoena,

physicians, or in emergencies to pharmacists and other qualified persons, for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of this subarticle;

~~(3)~~ 3. For any person to distribute, sell, store or use any pesticide or device in a manner inconsistent with its labeling; ~~(4)~~

4. For any person to sell or offer for sale any pesticide or device which has been canceled, suspended or placed under stop sale except that the Board may direct the sale of unused quantities of pesticides whose registrations have been canceled or suspended;

~~(5)~~ 5. For any restricted use pesticide dealer to sell, offer for sale, or distribute within this state any restricted pesticide without first obtaining a restricted use pesticide dealers' permit issued by the Board. Such permit shall be issued on application and payment to the Board a fee of Twenty Dollars (\$20.00) for each business location engaged in the sale and distribution of restricted pesticides. Such permit shall be valid from July 1 of each year through June 30 of the next year; ~~or~~

~~(6)~~ 6. For any restricted use pesticide dealer to fail to keep accurate records, for a period of at least two (2) years at each business location, showing the brand name, EPA registration number, date of sale, person to whom sold, and name of certified applicator if different from the purchaser, who will use or supervise the use of each restricted pesticide sold; or

7. For any easement grantee or his agent to apply growth hormone herbicides without the written permission of the property owner of record. Any property owner of record may enforce the prohibition by initiating civil proceedings against the easement grantee and may recover damages including, but not limited to: treble damages for plants and trees; reimbursement of soil and water testing fees; reimbursement of medical testing and medical costs; including veterinary medical costs; and restitution for soil

replacement and/or water purification for such soil or water damaged by such herbicide application.

~~(e)~~ C. The Board may require, by regulation, that pesticides be distinctively colored or discolored, after investigation and a public hearing on the necessity for such action to protect the public health and the feasibility of one coloring or discoloring of such pesticides.

SECTION 2. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

44-2-1694

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