

By: Muegge of the Senate
and
Leist of the House

An Act relating to agriculture; amending 2 O.S. 2001, Sections 3-81 and 3-82, which relate to pesticides; adding definition; adding certain persons to list of persons who have valid pesticide applicator's license; requiring each commercial business location to have a separate commercial license; requiring each noncommercial business location to have a noncommercial license; prohibiting license for pesticide application for persons who have temporary certification; stating standards for certification; requiring additional information for pesticide registration; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 2 O.S. 2001, Section 3-81, is amended to read as follows:

Section 3-81. As used in this subarticle:

1. "Aircraft" means any contrivance used or designed for navigation of or flight in the air over land or water and is designed for or adaptable for use in applying pesticides as sprays, dusts, or other forms;

2. "Active ingredient" means an ingredient, which defoliates plants, prevents fruit drop, inhibits sprouting, or destroys, repels, or mitigates insects, fungi, bacteria, rodents, weeds, or other pests;

3. "Adulterated" means and includes any pesticide if the pesticide strength or purity falls below the professed standard of quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the components of the pesticide, or if any valuable constituent of the components of the pesticide has been wholly or in part abstracted;

4. "Antidote" means the most practical immediate treatment in case of poisoning and includes but is not limited to first aid treatment;

5. "Business location" means any place, site, or facility maintained by a commercial or noncommercial applicator where records, including but not limited to, financial statements, payroll, insurance, and personnel documents are maintained, pesticides are stored, or customers are served. A location serving strictly as a telephone answering service shall not be considered a business location;

6. "Certificate" means a written document issued to an individual by the State Board of Agriculture which indicates that the individual has met the certification standards established by this subarticle for the category of pesticide application shown on the certificate. A certificate does not allow a person to do work as a commercial, noncommercial, service technician, or private applicator unless employed by a licensed entity or has a valid license issued by the Board;

7. "Certification standards" means the standards that a person shall meet to become a certified applicator;

8. "Certified applicator" means a person who has met the certification standards;

9. "Commercial application" means the advertising of services, recommendation for use, the preparation for application, and the physical act of applying a pesticide or employment of a device for hire or compensation;

10. "Commercial applicator" means any person engaging in the commercial application of pesticides or commercial employment of devices. Any farmer while working for a neighbor in agricultural production, not advertising, and not held out to be in the business of applying restricted use of pesticides, shall not be classified by the Board as a commercial applicator;

11. "Contract" means a binding, written agreement between two or more persons spelling out terms and conditions and includes, but is not limited to, warranties or guarantees for pesticide application. For structural pest control applications, the contract shall also include a statement, plat, or diagram showing all locations of visible termites and termite damaged materials which are observed, and how the application was performed;

12. "Defoliant" means any pesticide intended to cause the leaves or foliage to drop from a plant, with or without causing abscission;

13. "Desiccant" means any pesticide intended to artificially accelerate the drying of plant tissues;

14. "Device" means any instrument subject to the United States Environmental Protection Agency regulation intended for trapping, destroying, repelling, or mitigating insects or rodents, or mitigating fungi, bacteria, or weeds, or other pests designated by the Board, but not including equipment used for the application of pesticides when sold separately;

15. "Direct supervision" means that the certified applicator is responsible for assuring that persons working, subject to direct supervision, are qualified to handle pesticides and are instructed in the application of the specific pesticides used in each particular application conducted which is subject to their supervision. Certified applicators shall be accessible to the noncertified applicator at all times during the application of the pesticide by telephone, radio, or any device approved by the Board;

16. "Fungi" means all nonchlorophyll-bearing thallophytes, including but not limited to, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on humans or animals;

17. "Fungicide" means any pesticide intended for preventing, destroying, repelling, or mitigating any fungi or bacteria;

18. "Ground equipment" means any machine, equipment, or device other than aircraft designed for use, adaptable for use, or used on land or water in applying pesticides as sprays, dusts, aerosols, fogs, or other forms;

19. "Herbicide" means any pesticide intended for preventing, destroying, repelling, desiccating, or mitigating any weed, or for defoliating plants, preventing fruitdrop, and inhibiting sprouting;

20. "Inert ingredient" means an ingredient, which is not an active ingredient;

21. "Ingredient statement" means a statement containing the name and percentage of each active ingredient, and the total percentage of all inert ingredients in the pesticide. If the pesticide contains arsenic in any form, the percentages of total and water-soluble arsenic shall each be calculated as elemental arsenic;

22. "Insect" means any of the numerous small invertebrate six-legged animals generally having the body more or less obviously segmented, many belonging to the class Insecta, including, but not limited to, beetles, bugs, and flies as well as allied classes of arthropods including spiders, mites, ticks, centipedes, and wood lice;

23. "Insecticide" means any pesticide intended for preventing, destroying, repelling, or mitigating any insects which may be present in any environment;

24. "Label" means the written, printed, or graphic matter attached to the pesticide, device, or container including the outside container or wrapper of the retail package of the pesticide or device;

25. "Labeling" means all labels and other written, printed, or graphic material:

- a. upon the pesticide, device, or any of its containers or wrappers,
- b. accompanying the pesticide or device at any time, or

c. to which reference is made on the label or in literature accompanying the pesticide or device except when accurate, nonmisleading reference is made to current official publications of the United States Environmental Protection Agency, United States Department of Agriculture, United States Department of the Interior, the United States Public Health Service, State Experiment Stations, State Agricultural Colleges, or other federal institutions or official agencies of this state or other states authorized by law to conduct research in the field of pesticides;

26. "License" means a written document issued to a person by the Board which shows that the person has met all established licensing requirements established by this subarticle and who is authorized to apply pesticides as a commercial, noncommercial, or private applicator pursuant to the license issued;

27. "Minimum standards" means the measures prescribed by the Board to bring appropriate pesticide services to the public;

28. "Misbranded" means and includes:

- a. any pesticide or device if its labeling bears any statement, design, or graphic representation relative to its ingredients which is false or misleading, or
- b. any pesticide or device:
 - (1) if it is an imitation of or is offered for sale under the name of another pesticide or device,
 - (2) if its labeling bears any reference to registration under this subarticle,
 - (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 humans and 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 is 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 the authority of this subarticle to appear on the labeling is not prominently placed with conspicuousness, as compared with other words, statements, designees, or graphic matter in the labeling, and in terms likely to be read and understood by an individual under customary conditions of purchase and use, or
- (7) if in the case of an insecticide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it shall be injurious to humans, vertebrate animals, or vegetation, except weeds, to which it is applied, or to the person applying the pesticide;

29. "Noncommercial applicator" means any person, other than a commercial or private applicator, who uses or supervises the use of a restricted use pesticide. The noncommercial applicator shall be under the supervision of an owner or manager of property and who is certified in the same manner as a commercial applicator. A noncommercial applicator is subject to all requirements except those

pertaining to financial responsibility. Noncommercial applicator includes a government employee applying restricted use pesticides in the discharge of official duties;

30. "Non-restricted use pesticide" means any pesticide, other than a pesticide classified as restricted-use pesticide;

31. "Non-restricted use pesticide dealer" means any person engaged in the sale, storage, or distribution of any pesticide other than those pesticides classified by the United States Environmental Protection Agency or the Board as restricted use pesticides;

32. "Permit" means a written document issued by the Board which shows that a person has met all of the permitting requirements established by this subarticle and is authorized to sell pesticides as a restricted use or non-restricted use pesticide dealer in accordance with the type of permit issued;

33. "Pest" means any organism harmful to man including, but not limited to, insects, mites, nematodes, weeds, and pathogenic organisms. Pathogenic organisms include viruses, mycoplasma, bacteria, rickettsia, and fungi which the Board declares to be a pest;

34. "Pesticide" means a substance or mixture of substances intended for defoliating or desiccating plants, preventing fruitdrop, inhibiting sprouting, or for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, bacteria, weeds, or other forms of plant or animal life or viruses, which the Board declares to be a pest, except viruses on or in humans or animals;

35. "Private applicator" means any person who uses or supervises the use of any restricted pesticide for purposes of producing any agricultural commodity on property owned or rented by the person, or employer, or on the property of another person if applied without compensation other than trading of personal services between producers of agricultural commodities;

36. "Registrant" means the person registering any pesticide or device pursuant to the provisions of this subarticle;

37. "Restricted use pesticide" means any pesticide classified for restricted use by the United States Environmental Protection Agency, either by regulation or through the registration process, or by the Board pursuant to the Oklahoma Agricultural Code;

38. "Restricted use pesticide dealer" means any person engaged in the sale, storage, or distribution of restricted use pesticides;

39. "Rodenticide" means any pesticide intended for preventing, destroying, repelling, or mitigating rodents or any other animal which the Board declares a pest;

40. "Service technician" means a person employed by a licensed commercial or noncommercial applicator who applies the pesticide or employs a device, but is not a certified applicator. A service technician or certified applicator shall be present at each application performed;

41. "Temporary certified applicator" means a person who has successfully completed the written examinations required for certification but has not successfully completed the practical examination;

42. "Use" means transportation, storage, mixing, application, safe handling, waste and container disposal, and other specific instructions contained on the label and labeling;

~~42.~~ 43. "Weed" means any plant or plant part which grows where not wanted; and

~~43.~~ 44. "Wood infestation report" means a document issued with a property transaction which shall, at a minimum, contain statements or certifications as to the presence or absence of termites and any other wood destroying organism, and the presence or absence of damage. The wood infestation report does not include a bid or proposal for treatment.

SECTION 2. AMENDATORY 2 O.S. 2001, Section 3-82, is amended to read as follows:

Section 3-82. A. LICENSE REQUIRED - 1. It shall be unlawful for any person to act, operate, or do business or advertise as a commercial, noncommercial, certified applicator, temporary certified applicator, service technician, or private applicator unless the person has obtained a valid applicator's license issued by the State Board of Agriculture for the category of pesticide application in which the person is engaged.

2. A license may be issued by the Board in any category of pesticide application if the applicant qualifies and the applicant is limited to the category of pesticide application named on the license. The Board may establish categories of pesticide application as necessary. Licenses shall be issued upon application to the Board on a form prescribed by the Board. The application shall contain information regarding the applicant's qualifications, proposed operations, and other information as specified by the Board. An aerial license shall not be issued or be valid unless the applicant files with the Board a copy of a valid document issued by the Federal Aviation Administration showing that the person is qualified to operate or supervise the operation of an aircraft conducting agricultural operations.

3. Each commercial business location shall require a separate commercial license and separate certified applicator.

4. Each noncommercial business location shall require a separate noncommercial license but shall not require a separate certified applicator.

5. A license shall not be issued for the category of pesticide application of any applicant or representative who has a temporary certification.

B. CERTIFICATION REQUIRED - 1. A license shall be issued only after satisfactory completion of the certification standards by the

person who shall be the certified applicator under the license. Temporary certified applicators do not qualify as the certified applicator for a license, nor may they act as a certified applicator. The Board shall deny the application for certification, recertification, issuance, or renewal of a certificate or license for a failure to show proper qualification under the rules or for violations of any provisions of this subarticle. A certificate in any category shall be valid for five (5) years unless suspended, canceled, or revoked by the Board or until recertification is required for the category, and may be renewed after successful completion of recertification requirements. The Board may require certified applicators to be recertified once in a five-year period.

2. A certified service technician identification shall be issued upon application and completion of certification standards determined by the Board. Temporary certified applicators may qualify as a certified service technician. No person shall act, do business as, or advertise as a service technician unless the person has met all the qualifications and standards as required by the Board. The service technicians' identification shall be issued in the name of the licensed entity. The licensee shall ensure that the service technician identification is returned to the Board upon termination of the employee. A service technician identification shall be valid for a period of five (5) years unless suspended, canceled, or revoked by the Board, until recertification is required by the Board, or until the service technician leaves the employ of the licensed entity.

3. Each license, except for private applicators, shall expire on the 31st day of December following issuance or renewal, and may be renewed for the ensuing calendar year, without penalty or reexamination, if a properly completed application is filed with the Board not later than the 1st day of January of each year. If application is not received by that date, a penalty of twice the

amount of the renewal fee shall be charged for renewal of the license. After the 1st day of February, in addition to the penalty, a reexamination shall be required.

All private applicator licenses are in effect for five (5) years and may be renewed by application after completion of a continuing education program or written exam approved by the Board.

C. The following fees shall be paid to the Board:

1. A fee of Fifty Dollars (\$50.00) for each category of pesticide application shall be paid to the Board for the issuance or renewal of a commercial applicator business license, not more than Two Hundred Fifty Dollars (\$250.00) total category fees shall be charged annually to any business location of an applicator;

2. A fee of Twenty Dollars (\$20.00) shall be paid to the Board for each written examination conducted by the Board;

3. A fee of Twenty Dollars (\$20.00) shall be paid to the Board for each practical examination conducted by the Board;

4. A fee of Five Dollars (\$5.00) shall be paid to the Board for the issuance or renewal of a private applicator's license;

5. A fee of Twenty Dollars (\$20.00) shall be paid to the Board for the issuance or renewal of a noncommercial business license;

6. A fee of Ten Dollars (\$10.00) shall be paid to the Board for the issuance or renewal of service technician identification;

7. A fee of Five Dollars (\$5.00) shall be paid to the Board for the issuance of duplicate licenses or certificates or transfer of a service technician identification;

8. No fees shall be charged to governmental agencies or their employees in the discharge of their official duties;

9. A fee of Twenty Dollars (\$20.00) shall be paid to the Board for each recertification procedure; and

10. A fee of Twenty Dollars (\$20.00) shall be paid to the Board for each reciprocal certification procedure for applicator certifications.

D. All fees shall be deposited in the State Department of Agriculture Revolving Fund.

E. Fees shall be paid to the Board prior to the processing of any application.

F. Failure to pay any fee identified with licenses, permits, pesticide registrations, or certification shall require the Board to deny the application.

G. INSURANCE REQUIRED - 1. The Board shall not issue a commercial applicator's license until the applicant has furnished evidence of an insurance policy or certificate by an insurer or broker authorized to do business in this state insuring the commercial applicator and any agents against liability resulting from the operations of the commercial applicator. The insurance shall not be applied to damage or injury to agricultural crops, plants, or land being worked upon by the commercial applicator.

2. The amount of liability shall not be less than that set by the Board for each property damage arising out of actual use of any pesticide. The liability shall be maintained at not less than that sum at all times during the licensing period. The Board shall be notified fifteen (15) days prior to any reduction in liability.

3. If the furnished liability becomes unsatisfactory, the applicant shall immediately execute new liability upon notice from the Board. If new liability is not immediately obtained, the Board shall, upon notice, cancel the license. It shall be unlawful for the person to engage in the business of applying pesticides until the liability is brought into compliance and the license reinstated.

H. DAMAGES - No action for alleged damages to growing annual crops or plants may be brought or maintained unless the person claiming the damages has filed with the Board a written statement of alleged damages on a form prescribed by the Board within ninety (90) days of the date that the alleged damages occurred, or prior to the

time that twenty-five percent (25%) of a damaged crop has been harvested.

I. PERMIT REQUIRED - 1. It shall be unlawful for any person to sell, offer for sale, or distribute within this state any restricted use pesticide without first obtaining a restricted use pesticide dealer's permit issued by the Board;

2. A permit may be issued by the Board in any category of pesticide sales if the applicant qualifies under the provisions of this subarticle and the applicant is limited to the category of pesticide sales named on the permit. The Board may establish categories of pesticide sales as necessary;

3. The permit shall be issued only upon application on a form prescribed by the Board and the application shall contain information regarding the applicant's proposed operation and other information as specified by the Board;

4. Each business location engaged in the sale or distribution of restricted use pesticides shall require a separate permit;

5. The annual permit fee for a restricted use pesticide dealer permit shall be Twenty Dollars (\$20.00) for each location; and

6. The Board may require a certified applicator to be present at any location where designated restricted use pesticide sales occur.

J. PESTICIDE REGISTRATION REQUIRED - 1. Every pesticide or device distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate or interstate commerce shall be registered with the Board.

2. The registrant shall file with the Board a statement including, but not limited to:

- a. the name and address of the registrant and the name and address of the person whose name shall appear on the label, if other than the registrant,
- b. the name of the pesticide or device,

- c. a complete copy of the labeling accompanying the pesticide or device and a statement of all claims to be made for it, and directions for use, and
- d. if requested by the Board, a full description of the tests made and the results upon which the claims are based. ~~In renewing a registration, a statement shall be required only with respect to information which is different from the information furnished when the pesticide or device was last registered.~~

3. Each registrant shall pay to the Board an annual registration fee of One Hundred Dollars (\$100.00) for each pesticide or device label registered. These fees shall be used by the State Department of Agriculture for purposes of administering pesticide management programs.

4. The Board may require the submission of the complete formula of any pesticide. Trade secrets and formulations submitted by the registrant shall be kept confidential. If it appears to the Board that the composition of the pesticide is adequate to warrant the proposed claims and if the pesticide, its labeling, and other material required to be submitted comply with the requirements of this subarticle, then the pesticide shall be registered.

5. If it does not appear to the Board that the pesticide or device is adequate to warrant the proposed claims for it or if the pesticide or device, its labeling, and other material required to be submitted do not comply with the provisions of this subarticle, it shall notify the applicant of the deficiencies in the pesticide, device, labeling, or other material required and afford the applicant an opportunity to make the necessary corrections. If the applicant claims, in writing, that the corrections are not necessary and requests in writing a hearing regarding the registration of the pesticide or device, the Board shall provide an opportunity for a hearing before refusing to issue the registration. In order to

protect the public, the Board may at any time cancel the registration of a product or device. In no event, shall registration of a pesticide or device be considered as a defense or excuse for the commission of any offense prohibited under this subarticle.

6. The Board may require that pesticides be distinctively colored or discolored to protect the public health.

7. Registration shall not be required in the case of a pesticide shipped from one plant or place within this state to another plant or place within this state that is operated by the same person.

K. CATEGORIES OF LICENSES AND PERMITS - The Board may establish any category of license for pesticide application or any category of permit for pesticide sales.

L. PERMIT AND PESTICIDE REGISTRATION EXPIRATION - 1. All permits for pesticide sales shall be issued for a period of one (1) year and the permits shall be renewed annually and shall expire on a date determined by the Board. A permit may be renewed for the ensuing year, without penalty, if a properly completed application is filed with the Board not later than the fifteenth day of the month first following the date of expiration. If the application is not received by that date, a penalty of twice the amount of the renewal fee shall be charged for renewal of the permit.

2. All pesticide registrations shall be issued for a period of one (1) year. The registration shall be renewed annually and shall expire on a date to be determined by the Board. Pesticide registrations may be renewed for the ensuing year, without penalty, if a properly completed application is filed with the Board not later than the fifteenth day of the month first following the date of expiration. If the application is not received by that date, a penalty of twice the amount of the renewal fee shall be charged for renewal of the pesticide registration.

SECTION 3. This act shall become effective July 1, 2002.

SECTION 4. 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.

Passed the Senate the 25th day of February, 2002.

Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____,
2002.

Presiding Officer of the House
of Representatives