

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 2394

By: Covey

COMMITTEE SUBSTITUTE

An Act relating to agriculture; amending 2 O.S. 2001, Sections 2-7, 2-16 and 2-18, which relate to State Board of Agriculture; providing for enforcement of civil penalties; establishing procedures for enforcement; giving the Attorney General authority to institute certain proceedings; clarifying proceedings for violations of Oklahoma Agricultural Code; granting jurisdiction; making certain actions a violation of the Oklahoma Agricultural Code; authorizing Board to seek certain penalties; providing for attorney fees; making certain actions a public nuisance; authorizing assessment of penalty; amending Section 17, Chapter 173, O.S.L. 2002 (2 O.S. Supp. 2003, Section 6-403), which relates to quarantine zones; removing obsolete language; providing for codification; and declaring an emergency.

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

SECTION 1. AMENDATORY 2 O.S. 2001, Section 2-7, is amended to read as follows:

Section 2-7. A. The records, files, and books of the State Board of Agriculture shall be receivable as evidence. The rules and orders of the Board, when published, shall be public notice and shall have the force and effect of law and be judicially noticed and considered. When orders of the Board consist of local rules or orders of quarantine, the order may be provable in the same manner as a return of service.

B. Administrative penalties, civil penalties, and other fines imposed pursuant to the provisions of the Oklahoma Agricultural Code shall be enforced in the same manner in which civil judgments may be

enforced. For purposes of enforcement final orders shall be recorded in the office of the clerk of the district court of Oklahoma County and, upon such recording and application therefor, all appropriate writs and process shall be issued and shall be enforced by the court.

SECTION 2. AMENDATORY 2 O.S. 2001, Section 2-16, is amended to read as follows:

Section 2-16. A. ~~It~~ When requested by the State Board of Agriculture it shall be the duty of a district attorney or the Attorney General to whom the State Board of Agriculture reports a violation institute appropriate proceedings in the proper courts in a timely manner and to prosecute in the manner provided by law when violations of the following occur:

1. The Oklahoma Agricultural Code to institute appropriate proceedings in the proper courts without delay and to prosecute in the manner provided by law;

2. Any rule promulgated pursuant to the Oklahoma Agricultural Code; or

3. Any order, license, charter, registration, or permit issued pursuant to the Oklahoma Agricultural Code.

B. Any action to redress or restrain a violation of the Oklahoma Agricultural Code, any promulgated rule or any order, license, charter, registration, or permit issued pursuant to the Oklahoma Agricultural Code or to recover any administrative or civil penalty or other fine assessed pursuant to the Oklahoma Agricultural Code, may be brought by:

1. The district attorney of the appropriate district court of the State of Oklahoma;

2. The Attorney General on behalf of the State of Oklahoma; or

3. The Oklahoma Department of Agriculture, Food, and Forestry on behalf of the State of Oklahoma.

C. The court shall have jurisdiction to determine the action, and to grant the necessary or appropriate relief, including but not limited to mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages.

D. When requested by an authorized agent of the Board, it ~~may~~ shall be the duty of every peace officer to assist in the detection and apprehension of all persons in violation of the Oklahoma Agricultural Code. Failure to perform ~~such~~ this duty shall be cause for removal from office.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-17.1 of Title 2, unless there is created a duplication in numbering, reads as follows:

In addition to other penalties as may be imposed by law, it is a violation of the Oklahoma Agricultural Code for any person to knowingly make or provide any false statement, representation, or certification to the Oklahoma Department of Agriculture, Food, and Forestry or to knowingly render inaccurate any monitoring or measuring device or information thereof.

SECTION 4. AMENDATORY 2 O.S. 2001, Section 2-18, is amended to read as follows:

Section 2-18. A. After notice and opportunity for a hearing in accordance with the Administrative Procedures Act, if the State Board of Agriculture finds any person in violation of the Oklahoma Agricultural Code or any rule promulgated or order issued pursuant thereto, the Board shall have the authority to assess an administrative penalty of not less than One Hundred Dollars (\$100.00) and not more than Ten Thousand Dollars (\$10,000.00) for each violation. Each animal, each action, or each day a violation continues may constitute a separate and distinct violation.

B. The Board may appoint ~~hearing officers~~ administrative law judges to conduct the hearings. Hearings shall be held at a location within the region in which the alleged violator resides or

the violation occurred, or the central offices of the State Board of Agriculture in Oklahoma City, Oklahoma.

C. Any person who fails to comply with the provisions of the Oklahoma Agricultural Code or rules promulgated by the Board shall be deemed guilty of a misdemeanor unless a violation of the Oklahoma Agricultural Code or rules promulgated thereto is specifically identified with a penalty or as a felony in the individual articles of the Oklahoma Agricultural Code.

D. Nothing in the Oklahoma Agricultural Code shall preclude the Board from seeking penalties in district court in the maximum amount allowed by law. The assessment of penalties in an administrative enforcement proceeding shall not prevent the subsequent assessment by a court of the maximum civil or criminal penalties for violations of the Oklahoma Agricultural Code and rules promulgated pursuant thereto.

E. Any person assessed an administrative or civil penalty may be required to pay, in addition to the penalty amount and interest thereon, attorney fees and costs associated with the collection of the penalties.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-18.1 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. It shall be unlawful and a violation of the Oklahoma Agricultural Code for any person to cause pollution of any air, land or waters of the state by persons which are subject to the jurisdiction of the Oklahoma Department of Agriculture, Food, and Forestry pursuant to the Oklahoma Environmental Quality Act.

B. If the State Board of Agriculture finds that any of the air, land, or waters of the state have been or are being polluted, the Board shall make an order requiring that the pollution cease within a time period determined by the Department, or require a manner of treatment or of disposition of the waste or other polluting material

as may in the judgment of the Board be necessary to prevent further pollution. In addition, the Board may assess an administrative penalty pursuant to Section 2-18 of Title 2 of the Oklahoma Statutes. The person to whom the order is directed shall fully comply with the order of the Board and pay any fine and costs assessed.

SECTION 6. AMENDATORY Section 17, Chapter 173, O.S.L. 2002 (2 O.S. Supp. 2003, Section 6-403), is amended to read as follows:

Section 6-403. A. 1. The State Board of Agriculture may issue orders restricting the movement of persons, livestock, machinery, and personal property out of quarantine zones. The President of the Board, the State Veterinarian, or any licensed veterinarian designated by the Board may issue the orders.

2. Any such order shall be issued upon a determination that reasonable cause exists to believe that the movement of persons or personal property out of a quarantine zone will reasonably transport a dangerous, infectious, or communicable disease outside of the quarantine zone.

B. An order restricting the movement of persons, livestock, machinery, and personal property out of quarantine zones:

1. Shall be served upon any person subject to the order;

2. Shall be limited to the greatest extent possible consistent with the paramount disease control objectives as determined by the Board;

3. May be served on any day at any time; and

4. Must include a notice of the person's rights pursuant to this section, including, but not limited to, the ability of the person to enter into an agreement to abide by disease control measures under subsection C of this section and the right to request a court hearing under ~~paragraph~~ subsection D of this section. When an order restricting the movement of persons has been issued, the

physical and emergency medical needs of those persons restricted pursuant to the order shall be addressed in a systematic and competent ~~fashion including, but not limited to, providing adequate food, clothing, shelter, means of communication with persons not so restricted, medication and competent medical care~~ manner.

C. No person may be restricted by an order, issued pursuant to the Animal Disease Outbreak Temporary Emergency Act for longer than seventy-two (72) hours, if the person agrees to abide by the disease control measures established by the Board. Such person shall sign an acknowledgment form prepared by the Board evidencing the person's agreement to abide by the disease control measures established by the Board.

D. Any person whose movements are restricted by an order pursuant to the Animal Disease Outbreak Temporary Emergency Act may seek a district court hearing on the order at any time after it is served on the person. The hearing shall be heard as soon as possible regardless of the time of day and any inconvenience to the court. The hearing may be held by electronic means. The subject of the order may:

1. Contest imposition of the order on grounds that it is an abuse of the Board's discretion pursuant to the Animal Disease Outbreak Temporary Emergency Act; or

2. Seek a variance from the order to allow movement of a person inconsistent with the order, upon a showing that the person would otherwise suffer irreparable harm.

SECTION 7. 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.