

EHB 1815

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THE STATE SENATE
Wednesday, April 6, 2005

ENGROSSED

House Bill No. 1815

ENGROSSED HOUSE BILL NO. 1815 - By: ARMES of the House and JUSTICE of the Senate.

An Act relating to pesticides; amending 2 O.S. 2001, Section 3-85, which relates to enforcement of certain pesticide rules; providing for authority to regulate use of pesticides; and providing an effective date.

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

SECTION 1. AMENDATORY 2 O.S. 2001, Section 3-85, is amended to read as follows:

Section 3-85. A. 1. The State Board of Agriculture shall administer and enforce the provisions of this subarticle and shall promulgate rules and standards for the application, use or sale of pesticides, rules for pesticide registration, standards for contracts and recordkeeping, work performance, prescribe standards for the licensing of application of pesticides, issuing pesticide dealer permits, certification, recertification procedures, and storing and disposal of pesticide and pesticide containers.

2. The rules and standards shall conform, ~~as~~ at a minimum, to existing state law, and to the Federal Insecticide, Fungicide and Rodenticide Act.

1 3. The Board shall cooperate with and negotiate reciprocal
2 agreements with the federal government or any state, or any
3 department or agency of either for the purpose of fulfilling the
4 intent of this subarticle and securing uniformity of rules.

5 4. The Board may inspect any work, records, or contracts of
6 each applicator, manufacturer, or dealer to determine whether or not
7 the work is performed according to the provisions of this
8 subarticle.

9 5. For the purpose of securing uniformity of rules, no city,
10 town, county, or other political subdivision of this state shall
11 adopt or continue in effect any ordinance, rule, regulation, or
12 statute regarding pesticide sale or use that is more stringent than
13 the rules of the Board, including, but not limited to, registration,
14 notification, posting, advertising and marketing, distribution,
15 applicator training and certification, storage, transportation,
16 disposal, disclosure of confidential information, or product
17 composition.

18 6. The Board may take samples of pesticide materials in order
19 to determine their concentration or residue level. If the Board
20 finds that such samples are not within established standards, the
21 Board's finding shall be considered prima facie evidence that a
22 violation has occurred.

1 a. The concentration of an active ingredient for a
2 pesticide concentrate, shall not exceed or be less
3 than the concentration of active ingredient stated on
4 the pesticide label by more or less than the tolerance
5 for active ingredient concentration specified by this
6 paragraph. Concentrations above or below the
7 established tolerance shall be prima facie evidence
8 that a pesticide is adulterated or misbranded:
9 (1) pesticides with a stated concentration of active
10 ingredient less than 0.51% shall not exceed 150%
11 or fail to meet 80% of the stated active
12 ingredient on the pesticide label when analyzed,
13 (2) pesticides with a stated concentration of active
14 ingredient not less than 0.51% and not more than
15 1.0% shall not exceed 140% or fail to meet 85% of
16 the stated active ingredient on the pesticide
17 label when analyzed,
18 (3) pesticides with a stated concentration of active
19 ingredient not less than 1.01% and not more than
20 5.00% shall not exceed 140% or fail to meet 90%
21 of the stated active ingredient on the pesticide
22 label when analyzed,

- 1 (4) pesticides with a stated concentration of active
2 ingredient not less than 5.01% and not more than
3 10.00% shall not exceed 130% or fail to meet 92%
4 of the stated active ingredient on the pesticide
5 label when analyzed,
- 6 (5) pesticides with a stated concentration of active
7 ingredient not less than 10.01% and not more than
8 50.00% shall not exceed 125% or fail to meet 94%
9 of the stated active ingredient on the pesticide
10 label when analyzed, and
- 11 (6) ~~Pesticides~~ pesticides with a stated concentration
12 of active ingredient not less than 50.01% and
13 more than 100.00% shall not exceed 115% or fail
14 to meet 96% of the stated active ingredient on
15 the pesticide label when analyzed;
- 16 b. The concentration of an active ingredient for a
17 pesticide concentrate in fertilizer and pesticide
18 mixtures, pressed blocks and non-uniform baits shall
19 not be less than the concentration of active
20 ingredient stated on the pesticide label for the
21 tolerance for active ingredient concentration
22 specified by this paragraph. Concentrations below the

1 established tolerance shall be prima facie evidence
2 that a pesticide is adulterated or misbranded:

3 (1) when the stated concentration of active
4 ingredient on the pesticide label is less than
5 1.26% the minimum amount of active ingredient
6 shall be at least 67.0% of the stated
7 concentration on the pesticide label when
8 analyzed,

9 (2) when the stated concentration of active
10 ingredient on the pesticide label is not less
11 than 1.26% or more than 5.0% the minimum amount
12 of active ingredient shall be at least 80.0% of
13 the stated concentration on the pesticide label
14 when analyzed, and

15 (3) when the stated concentration of active
16 ingredient on the pesticide label is more than
17 5.0% the minimum amount of active ingredient
18 shall be at least 85.0% of the stated
19 concentration on the pesticide label when
20 analyzed.

21 c. The concentration of an active ingredient for a
22 pesticide concentrate in rotenone, pyrethrin and other
23 natural product formulations shall not be less than

1 the concentration of active ingredient stated on the
2 pesticide label for the tolerance for active
3 ingredient concentration specified by this paragraph.
4 Concentrations below the established tolerance shall
5 be prima facie evidence that a pesticide is
6 adulterated or misbranded:

7 (1) when the stated concentration of active
8 ingredient on the pesticide label is less than
9 0.51% the minimum amount of active ingredient
10 shall be at least 70.0% of the state
11 concentration on the pesticide label when
12 analyzed,

13 (2) when the stated concentration of active
14 ingredient on the pesticide label is not less
15 than 0.51% or more than 1.25% the minimum amount
16 of active ingredient shall be at least 80.0% of
17 the stated concentration on the pesticide label
18 when analyzed, and

19 (3) when the stated concentration of active
20 ingredient on the pesticide label is more than
21 1.25% the minimum amount of active ingredient
22 shall be at least 85.0% of the stated

1 concentration on the pesticide label when
2 analyzed;

3 d. The concentration of an active ingredient for a
4 pesticide tank mix, as stated by the applicator and
5 allowed by the pesticide label, shall not exceed or be
6 less than the concentration of active ingredient
7 stated by more or less than the tolerance for active
8 ingredient concentration specified by this paragraph.
9 Concentrations above or below the established
10 tolerance shall be prima facie evidence of a use
11 unsuitable, unsafe or inconsistent with its label or
12 labeling. No pesticide shall be formulated into a
13 tank mix at a concentration in excess of or below that
14 permitted by the pesticide label without written
15 approval from an authorized agent of the State
16 Department of Agriculture:

17 (1) when the stated concentration or that allowed by
18 the pesticide label is less than 0.51% the
19 minimum amount of active ingredient in the tank
20 mix shall be at least 60.0% and not more than
21 150.0% of the stated concentration or that
22 allowed by the pesticide label when analyzed,

- 1 (2) when the stated concentration or that allowed by
2 the pesticide label is not less than 0.51% and
3 not more than 1.0% the minimum amount of active
4 ingredient in the tank mix shall be at least
5 70.0% and not more than 140.0% of the stated
6 concentration or that allowed by the pesticide
7 label when analyzed,
- 8 (3) when the stated concentration or that allowed by
9 the pesticide label is not less than 1.01% and
10 not more than 5.0% the minimum amount of active
11 ingredient in the tank mix shall be at least
12 80.0% and not more than 140.0% of the stated
13 concentration or that allowed by the pesticide
14 label when analyzed,
- 15 (4) when the stated concentration or that allowed by
16 the pesticide label is not less than 5.01% and
17 not more than 10.0% the minimum amount of active
18 ingredient in the tank mix shall be at least
19 84.0% and not more than 130.0% of the stated
20 concentration or that allowed by the pesticide
21 label when analyzed,
- 22 (5) when the stated concentration or that allowed by
23 the pesticide label is not less than 10.01% and

1 not more than 50.0% the minimum amount of active
2 ingredient in the tank mix shall be at least
3 88.0% and not more than 125.0% of the stated
4 concentration or that allowed by the pesticide
5 label when analyzed, and

6 (6) when the stated concentration or that allowed by
7 the pesticide label is not less than 50.01% and
8 not more than 100.0% the minimum amount of active
9 ingredient in the tank mix shall be at least
10 92.0% and not more than 115.0% of the stated
11 concentration or that allowed by the pesticide
12 label when analyzed;

13 e. The threshold level for soil residue of pesticide
14 concentration expressed in parts per million (ppm) for
15 post construction termiticide treatment shall meet or
16 exceed the established concentration specified by this
17 paragraph in soils sampled within one hundred eighty
18 (180) days of treatment for vertical barriers. Soil
19 residue concentration below the threshold level
20 specified by this paragraph shall be prima facie
21 evidence of a use unsuitable, unsafe or inconsistent
22 with its label or labeling:

- 1 (1) the termiticide Torpedo shall have a soil residue
2 threshold level of at least sixty-three (63) ppm,
3 (2) the termiticide Tribute shall have a soil residue
4 threshold level of at least one hundred fifty
5 (150) ppm,
6 (3) the termiticide Prevail FT shall have a soil
7 residue threshold level of at least forty-six
8 (46) ppm,
9 (4) the termiticide Demon TC shall have a soil
10 residue threshold level of at least twenty-eight
11 (28) ppm,
12 (5) the termiticide Dragnet FT shall have a soil
13 residue threshold level of at least eighty-five
14 (85) ppm,
15 (6) the termiticide Dursban TC shall have a soil
16 residue threshold level of at least fifty-one
17 (51) ppm, and
18 (7) the termiticide Premise shall have a soil residue
19 threshold level of at least ten (10) ppm;
20 f. The threshold level for soil residue of pesticide
21 concentration expressed in parts per million (ppm) for
22 preconstruction termiticide treatment shall meet or
23 exceed the established concentration specified by this

1 paragraph in soils sampled within thirty (30) days of
2 treatment for vertical barriers. Soil residue
3 concentration below the threshold level specified by
4 this paragraph shall be prima facie evidence of a use
5 unsuitable, unsafe or inconsistent with its label or
6 labeling:

7 (1) the termiticide Torpedo shall have a soil residue
8 threshold level of at least ninety (90) ppm,

9 (2) the termiticide Tribute shall have a soil residue
10 threshold level of at least two hundred four
11 (204) ppm,

12 (3) the termiticide Prevail FT shall have a soil
13 residue threshold level of at least sixty-four
14 (64) ppm,

15 (4) the termiticide Demon TC shall have a soil
16 residue threshold level of at least forty-one
17 (41) ppm,

18 (5) the termiticide Dragnet FT shall have a soil
19 residue threshold level of at least ninety-seven
20 (97) ppm,

21 (6) the termiticide Dursban TC shall have a soil
22 residue threshold level of at least one hundred
23 (100) ppm, and

1 (7) the termiticide Premise shall have a soil residue
2 threshold level of at least ten (10) ppm;

3 g. The threshold level for soil residue of pesticide
4 concentration expressed in parts per million (ppm) for
5 preconstruction termiticide treatment shall meet or
6 exceed the established concentration specified by this
7 paragraph in soils sampled within one hundred eighty
8 (180) days of treatment for vertical barriers. Soil
9 residue concentration below the threshold level
10 specified by this paragraph shall be prima facie
11 evidence of a use unsuitable, unsafe or inconsistent
12 with its label or labeling:

13 (1) the termiticide Torpedo shall have a soil residue
14 threshold level of at least sixty-three (63) ppm,

15 (2) the termiticide Tribute shall have a soil residue
16 threshold level of at least one hundred fifty
17 (150) ppm,

18 (3) the termiticide Prevail FT shall have a soil
19 residue threshold level of at least forty-six
20 (46) ppm,

21 (4) the termiticide Demon TC shall have a soil
22 residue threshold level of at least twenty-eight
23 (28) ppm,

- 1 (5) the termiticide Dragnet FT shall have a soil
2 residue threshold level of at least eighty-five
3 (85) ppm,
4 (6) the termiticide Dursban TC shall have a soil
5 residue threshold level of at least fifty-one
6 (51) ppm, and
7 (7) the termiticide Premise shall have a soil residue
8 threshold level of at least ten (10) ppm;
- 9 h. The threshold level for soil residue of pesticide
10 concentration expressed in parts per million (ppm) for
11 preconstruction termiticide treatment shall meet or
12 exceed the established concentration specified by this
13 paragraph in soils sampled within thirty (30) days of
14 treatment for horizontal barriers. Soil residue
15 concentration below the threshold level specified by
16 this paragraph shall be prima facie evidence of a use
17 unsuitable, unsafe or inconsistent with its label or
18 labeling:
- 19 (1) the termiticide Torpedo shall have a soil residue
20 threshold level of at least sixty-eight (68) ppm,
21 (2) the termiticide Tribute shall have a soil residue
22 threshold level of at least one hundred fifty
23 three (153) ppm,

- 1 (3) the termiticide Prevail FT shall have a soil
2 residue threshold level of at least forty-eight
3 (48) ppm,
4 (4) the termiticide Demon TC shall have a soil
5 residue threshold level of at least thirty-one
6 (31) ppm,
7 (5) the termiticide Dragnet FT shall have a soil
8 residue threshold level of at least seventy-three
9 (73) ppm,
10 (6) the termiticide Dursban TC shall have a soil
11 residue threshold level of at least seventy-five
12 (75) ppm, and
13 (7) the termiticide Premise shall have a soil residue
14 threshold level of at least five (5) ppm;
15 i. The threshold level for soil residue of pesticide
16 concentration expressed in parts per million (ppm) for
17 preconstruction termiticide treatment shall meet or
18 exceed the established concentration specified by this
19 paragraph in soils sampled within one hundred eighty
20 (180) days of treatment for horizontal barriers. Soil
21 residue concentration below the threshold level
22 specified by this paragraph shall be prima facie

1 evidence of a use unsuitable, unsafe or inconsistent
2 with its label or labeling:

3 (1) the termiticide Torpedo shall have a soil residue
4 threshold level of at least forty-seven (47) ppm,

5 (2) the termiticide Tribute shall have a soil residue
6 threshold level of at least one hundred thirteen
7 (113) ppm,

8 (3) the termiticide Prevail FT shall have a soil
9 residue threshold level of at least thirty-five
10 (35) ppm,

11 (4) the termiticide Demon TC shall have a soil
12 residue threshold level of at least twenty-one
13 (21) ppm,

14 (5) the termiticide Dragnet FT shall have a soil
15 residue threshold level of at least sixty-four
16 (64) ppm,

17 (6) the termiticide Dursban TC shall have a soil
18 residue threshold level of at least thirty-eight
19 (38) ppm, and

20 (7) the termiticide Premise shall have a soil residue
21 threshold level of at least five (5) ppm;

22 j. The State Board of Agriculture may promulgate, by
23 rule, interim maximum and minimum concentrations or

1 thresholds for the other concentrate of pesticides in
2 products, or soil residues.

3 B. Authorized agents of the Board shall have the authority to
4 issue notices of violation, citations, compliance orders, stop
5 sales, or stop work orders to those persons committing violations of
6 the laws or rules relating to pesticides or pesticide application in
7 this state.

8 C. 1. Examinations of pesticides or devices shall be made
9 under the direction of the Board for the purpose of determining if
10 there has been compliance with the requirements of this subarticle.

11 2. If it appears from examination that a pesticide or device
12 fails to comply with the provisions of this subarticle, and the
13 Board contemplates instituting administrative proceedings against
14 any person, the Board shall cause notice and an opportunity for a
15 hearing given to the person pursuant to the Administrative
16 Procedures Act;

17 D. 1. Any pesticide or device distributed, sold, or offered
18 for sale within this state or delivered for transportation or
19 transported in intrastate or interstate commerce may be seized by
20 the State Department of Agriculture in any county of the state where
21 it may be found and if:

22 a. in the case of a pesticide, it is adulterated or
23 misbranded, it has not been registered under the

1 provisions of this subarticle, it fails to bear on its
2 label the information required by this subarticle, or
3 it is a white powder pesticide and it is not colored
4 as required under this subarticle, or

5 b. in the case of a device, it is misbranded.

6 2. If the pesticide or device is condemned it shall, after
7 entry of decree or judgment of a district court, be disposed of by
8 destruction or sale as the court may direct. If the article is
9 sold, the proceeds, less court costs, shall be paid to the State
10 Department of Agriculture Revolving Fund;

11 3. The court shall not order the sale or disposal of a
12 condemned pesticide or device in a manner which would be a violation
13 of this subarticle or rules promulgated thereto;

14 4. The person or entity directed to dispose or sell the
15 condemned pesticide or device shall do so in a manner that complies
16 with the order of the district court and this subarticle and rules
17 promulgated thereto;

18 5. The court may direct that the pesticide or article be
19 delivered to the owner for relabeling or reprocessing;

20 6. If there is a person who is successful in intervening as
21 claimant of the pesticide or device, when a decree of judgment of
22 condemnation is entered against the pesticide or device, court

1 costs, fees, storage, and other proper expenses shall be awarded
2 against such claimant.

3 E. The Board may, by publication in a manner as it may
4 prescribe, give notice of all judgments entered in action,
5 instituted under the authority of this subarticle.

6 F. All authority vested in the Board by the provisions of this
7 subarticle shall with like force and effect be executed by its
8 officers, employees, and authorized agents.

9 G. EXCEPTION - The fines provided for violations of this
10 subarticle may not apply to:

11 1. Any carrier while lawfully engaged in transporting a
12 pesticide within this state, if the carrier permits the Board upon
13 request to copy all records showing the transaction in and movement
14 of the pesticide and devices involved;

15 2. Public officials of this state and of the Federal Government
16 engaged in the performance of official duties;

17 3. The manufacturer or shipper of a pesticide or device for
18 experimental use only, by or under the supervision of an agency of
19 this state or of the Federal Government authorized by law to conduct
20 research in the field of pesticides or devices, or by others if the
21 pesticide or the device is not sold or if the container is plainly
22 and conspicuously marked "for experimental use only-not to be sold",
23 together with the manufacturer's name and address, if a written

1 permit has been obtained from the Board. Pesticides or devices may
2 be sold for experimental purposes subject to restrictions set forth
3 in the permit; and

4 4. Pesticides and devices intended solely for export to a
5 foreign country, and prepared or packed according to the
6 specifications or directions of the purchaser. If not exported, all
7 of the provisions of this subarticle shall apply.

8 H. The Department of Environmental Quality shall have
9 environmental jurisdiction over:

10 1. Commercial manufacturers of fertilizers, grain, and feed
11 products, and chemicals, and over manufacturing of food and kindred
12 products, tobacco, paper, lumber, wood, textile mills, and other
13 agricultural products;

14 2. Slaughterhouses, but not including feedlots at
15 slaughterhouses;

16 3. Animal aquaculture and fish hatcheries, including, but not
17 limited to, discharges of pollutants and storm water to waters of
18 the state, surface impoundment and land application of wastes and
19 sludge, and other pollution originating at these facilities;

20 4. Facilities which store grain, feed, seed, fertilizer, and
21 agricultural chemicals that are required by federal National
22 Pollutant Discharge Elimination Systems regulations to obtain a
23 permit for storm water discharges shall only be subject to the

1 jurisdiction of the Department of Environmental Quality with respect
2 to storm discharges; and

3 5. Any point source and nonpoint source discharges related to
4 agriculture as specified in paragraph 1 of subsection D of Section 6
5 of Title 27A of the Oklahoma Statutes, which require a federal
6 National Pollutant Discharge Elimination Systems permit and which
7 are not specified under this subsection as being subject to the
8 jurisdiction of the Department of Environmental Quality shall
9 continue to be subject to the direct jurisdiction of the federal
10 Environmental Protection Agency for issuance and enforcement of the
11 permit.

12 I. This section shall not prevent any political subdivision
13 from complying with any applicable federal law or regulation. A
14 political subdivision which takes any action prohibited by this
15 title in order to comply with federal requirements shall notify the
16 Board of its compliance plan prior to taking any action. The Board
17 may assist the political subdivision in complying with federal
18 requirements necessary to carry out the policy of this section. The
19 Board may permit a political subdivision to impose standards more
20 stringent than required by the Board if necessary for the political
21 subdivision to comply with federal requirements.

22 SECTION 2. This act shall become effective November 1, 2005.

23 COMMITTEE REPORT BY: COMMITTEE ON AGRICULTURE & RURAL DEVELOPMENT,
24 dated 4-5-05 - DO PASS.