

1 ENGROSSED SENATE
BILL NO. 710

By: Justice of the Senate
and
Hickman of the House

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5
6 [agriculture - horticulture regulation - expanding
7 authority -
8 effective date]
9

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

11 SECTION 1. AMENDATORY 2 O.S. 2001, Section 3-32.1, is
12 amended to read as follows:

13 Section 3-32.1 As used in this subarticle:

14 1. "Broker" means any person who negotiates the purchase or
15 sale of any nursery stock. A broker may or may not handle ~~either~~
16 the nursery stock ~~which is involved~~ or the proceeds of a sale;

17 2. "Certificate" means a document authorized or prepared by a
18 duly authorized federal or state regulatory official that affirms,
19 declares, or verifies that an article, nursery stock, plant,
20 product, shipment, or any other officially regulated items meet
21 phytosanitary, quarantine, nursery inspection, pest freedom, plant
22 registration or certification, or any other set of legal
23 requirements;

24

1 3. "Compliance agreement" means any written document between a
2 person and the State Oklahoma Department of Agriculture, Food, and
3 Forestry or the United States Department of Agriculture to achieve
4 compliance with any set of requirements being enforced by the
5 Department;

6 4. "Cultivar" means a horticulturally, silviculturally, or
7 agriculturally derived cultivated variety of a plant, as
8 distinguished from a natural variety;

9 5. "Dealer" means any person who sells, brokers, or distributes
10 nursery stock that was not grown from seeds, cuttings, liners, or
11 similar propagative material by ~~the~~ that person but ~~which~~ was
12 bought, received on consignment, or acquired and in the person's
13 possession for the purposes of resale;

14 6. ~~"Dangerously injurious plant pest" means a plant pest that~~
15 ~~constitutes a significant threat to the agricultural, silvicultural,~~
16 ~~or horticultural interests of this state, or the state's general~~
17 ~~environmental quality as determined by the State Board of~~
18 ~~Agriculture;~~

19 7. "Facilities" means and includes all buildings, greenhouses,
20 storage places, cellars, pits, trenches, bins, containers, packing
21 materials, crates, packing rooms, display bins, refrigerators, ice
22 boxes, and any other structures and materials used in storing,
23 transporting, and distributing nursery stock. The nursery, dealer,
24

1 or agent shall maintain the facilities as are necessary for the
2 proper care and conservation of nursery stock;

3 7. "Grower" means any person who raises, grows, or propagates
4 for profit or other reasons any nursery stock or plant;

5 8. "Heel yard" means any plant holding area;

6 9. "Horticulture" means the discipline of agriculture science
7 relating to the cultivation of gardens or orchards, including, but
8 not limited to the growing of vegetables, flowers, and ornamental
9 trees and shrubs;

10 ~~9-~~ 10. "Landscape" means a person who purchases nursery stock
11 and offers that stock for sale or planting through landscape
12 services and typically does not hold and maintain plants in a heel
13 yard or nursery;

14 11. "Native species" means a species that, other than due to an
15 introduction, historically occurred or currently occurs in that
16 ecosystem;

17 ~~10-~~ 12. "Nursery" means and includes any field, ground,
18 greenhouse, bin, pit, plot, or premise where nursery or floral stock
19 is grown, propagated, or sold;

20 ~~11-~~ 13. "Nursery operator" means the person who owns, leases,
21 manages, or is in control of a nursery, and is further defined as
22 any person who is a grower of nursery stock;

23 ~~12-~~ 14. "Nursery stock" means and includes, whether in field or
24 container, all trees, shrubs, vines, rosebushes, turfgrass,

1 cuttings, grafts, scions, fruit pits, herbaceous plants, evergreens
2 and other ornamental trees, bushes, collected wild plants and trees,
3 decorative plants, tropical plants, flowering plants, bedding
4 plants, vegetable plants for transplanting, aquatic plants, roots,
5 corms, rhizomes, bulbs, and ferns grown for propagation, all packing
6 materials, and other things used in the handling, storing, crating,
7 and shipping of nursery stock. "Nursery stock" does not include cut
8 Christmas trees, wreaths, seeds, vegetables or fruits, agronomic
9 crops, cut or dried flowers, and cut or dried herbs;

10 ~~13. "Pest" means any living agent that is known to cause damage~~
11 ~~or harm to agriculture or the environment;~~

12 ~~14.~~ 15. "Phytosanitary certificate" means a document issued by
13 the ~~State Board of Agriculture~~ Department indicating that the
14 specified live plants or plant products comply with the legal
15 requirements of the importing state or country. The document may be
16 either a State Phytosanitary Certificate or Federal Phytosanitary
17 Certificate;

18 ~~15.~~ 16. "Place of business" means each separate store, stand,
19 sales lot, or any other place at or from which nursery stock is
20 being sold or offered for sale;

21 17. "Plant pest" means any pest known to cause damage or harm
22 to ~~of~~ plants, agricultural commodities, horticultural products,
23 nursery stock, silvicultural interests, or ~~non-cultivated plants~~ the
24 environment. Plant pest includes, but is not limited to, insects,

1 snails, nematodes, fungi, viruses, bacterium, microorganisms,
2 mycoplasma-like organisms, weeds, plants, or other parasitic higher
3 plants;

4 ~~16.~~ 18. "Sales location" means any principal business location
5 where nursery stock is sold directly to a customer;

6 ~~17.~~ 19. "Sell" means to offer for sale, expose for sale,
7 possess for sale, exchange, barter, or trade;

8 ~~18.~~ ~~"Seasonal sales operations" means business operations~~
9 ~~engaged in the nursery business for not more than a total of one~~
10 ~~hundred eighty days (180) in a calendar year;~~

11 ~~19.~~ 20. "Silviculture" means the development and care of
12 forests;

13 ~~20.~~ 21. "Stop sale" means a legal document issued by the State
14 Board of Agriculture that prevents the production of or sale of
15 nursery stock due to an infestation of a ~~dangerously injurious~~ plant
16 pest; and

17 ~~21.~~ 22. "Turfgrass sod" means a strip or section of one or more
18 grasses or other plants acceptable for lawn plantings which, when
19 severed from its growing site, contains sufficient plant roots to
20 remain intact, and does not contain weeds in excess of the amount
21 specified by the Board;

22 ~~22.~~ ~~"Vegetable plant" means any plant grown from seed or other~~
23 ~~vegetative parts and sold as a transplant for the purpose of food~~
24 ~~production.~~

1 SECTION 2. AMENDATORY 2 O.S. 2001, Section 3-32.2, is
2 amended to read as follows:

3 Section 3-32.2 ~~Authorized agents of the State Board of~~
4 Agriculture A. 1. The Oklahoma Department of Agriculture, Food,
5 and Forestry shall have the authority to inspect any orchard, fruit,
6 ~~or~~ garden, park, cemetery, private premises, public place, or any
7 place ~~which~~ that may be infested with a plant pest that may be a
8 threat to plants belonging to other property owners or the health or
9 safety of the general public.

10 2. The Department may inspect any nursery stock, shipping
11 documents, treatment records, sales records, or other relevant
12 documents of any person, whether licensed with the Department or
13 not, to determine the distribution of nursery stock.

14 3. The Department may take samples removed of nursery stock in
15 order to determine compliance with this subarticle. If the
16 Department finds that the samples are not in compliance with this
17 subarticle, the Department's finding shall be considered prima facie
18 evidence that a violation has occurred.

19 B. The Department shall have the authority to issue notices of
20 violation, citations, compliance orders, conditional orders, stop
21 sales orders, stop work orders, quarantines, or any other order
22 authorized pursuant to the Oklahoma Agricultural Code.

23 C. Any nursery stock distributed, sold, or offered for sale
24 within this state or delivered for transportation or transported in

1 intrastate or interstate commerce may be seized or caused to be
2 destroyed by the Department in any county of the state where it may
3 be found if:

4 1. The nursery stock is devitalized or infested with a plant
5 pest and may become a threat to plants belonging to other persons or
6 the health, safety, or welfare of the general public; or

7 2. The nursery stock does not bear the proper certificate,
8 plant tag information, or the required inspection or shipping
9 information.

10 D. The Board, after notice and opportunity for a hearing as
11 provided in the Administrative Procedures Act, Department shall also
12 have the authority to order the owner, occupant, or person in charge
13 to take any necessary action including, but not limited to, the
14 proper treatment or destruction of infested or diseased plants
15 pursuant to the Oklahoma Agricultural Code and the Administrative
16 Procedures Act.

17 E. For the purpose of securing uniformity of rules, no city,
18 town, county, or other political subdivision of this state shall
19 adopt or continue in effect any ordinance, rule, regulation, or
20 statute regarding nursery stock sales or distribution that is more
21 stringent than the rules of the State Board of Agriculture.

22 SECTION 3. AMENDATORY 2 O.S. 2001, Section 3-32.8, is
23 amended to read as follows:
24

1 Section 3-32.8 It shall be unlawful for any person to knowingly
2 or willfully violate any of the provisions of this subarticle or any
3 rules of the State Board of Agriculture by:

4 1. Misrepresenting to another their connection with a nursery,
5 or to:

- 6 a. misrepresent the grade, character, variety, or quality
7 of any nursery stock,
- 8 b. make a false declaration of acreage,
- 9 c. conceal any nursery stock from inspection, or
- 10 d. offer for sale nursery stock which is seriously or
11 substantially devitalized;

12 2. Failing to furnish the ~~Board~~ Oklahoma Department of
13 Agriculture, Food, and Forestry with true and exact copies of order
14 forms, contracts, and agreements with customers;

15 3. Failing to furnish each purchaser, upon request, a true and
16 correct invoice of each purchase, stating the variety, quality, age,
17 or size of the stock to which the invoice applies;

18 4. Selling, offering for sale, or distributing any nursery
19 stock infected or infested with a plant pest;

20 5. Selling, offering for sale, or distributing nursery stock
21 that is not healthy, sound, and capable of growth;

22 6. Failing to carry out treatment or destruction of nursery
23 stock as ordered by the Board;

- 1 7. Misrepresenting or falsifying information on a license
2 application;
- 3 8. Doing business without a valid license;
- 4 9. Allowing a license to be used by any person other than the
5 person to whom it was issued;
- 6 10. Failing to notify the Board of the legal description of all
7 growing locations of nursery stock or sod;
- 8 11. Failing to allow an authorized agent to complete an
9 inspection or collect adequate samples;
- 10 12. Selling nursery stock restricted by a stop sale order;
- 11 13. Selling, moving, or distributing nursery stock or other
12 material under a quarantine;
- 13 14. Mislabeling nursery stock by using the wrong common name or
14 botanical name;
- 15 15. Transporting any regulated article into the state from a
16 quarantined area of any other state or country when the article has
17 not been treated or handled as provided by the requirements of the
18 quarantine;
- 19 16. Interfering with, hindering, or impeding, by any method,
20 any authorized agent of the Board in the performance of duties; ~~or~~
- 21 17. Falsifying or using false information to ship nursery stock
22 out of Oklahoma into any other state in the United States or any
23 country outside of the United States or making false statement

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1 regarding the condition, quality, grade, character, variety, or
2 treatment used; or

3 18. Failing to comply with any order of the Board.

4 SECTION 4. AMENDATORY 2 O.S. 2001, Section 3-81, as
5 amended by Section 1, Chapter 383, O.S.L. 2002 (2 O.S. Supp. 2006,
6 Section 3-81), is amended to read as follows:

7 Section 3-81. As used in this subarticle:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 21. "Ingredient statement" means a statement containing the
24 name and percentage of each active ingredient, and the total

1 percentage of all inert ingredients in the pesticide. If the
2 pesticide contains arsenic in any form, the percentages of total and
3 water-soluble arsenic shall each be calculated as elemental arsenic;

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

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

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

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

- 19 a. upon the pesticide, device, or any of its containers
- 20 or wrappers,
- 21 b. accompanying the pesticide or device at any time, or
- 22 c. to which reference is made on the label or in
- 23 literature accompanying the pesticide or device except
- 24 when accurate, nonmisleading reference is made to

1 current official publications of the United States
2 Environmental Protection Agency, United States
3 Department of Agriculture, United States Department of
4 the Interior, the United States Public Health Service,
5 State Experiment Stations, State Agricultural
6 Colleges, or other federal institutions or official
7 agencies of this state or other states authorized by
8 law to conduct research in the field of pesticides;

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

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

16 28. "Misbranded" means and includes:

17 a. any pesticide or device if its labeling bears any
18 statement, design, or graphic representation relative
19 to its ingredients which is false or misleading, or

20 b. any pesticide or device:

21 (1) if it is an imitation of or is offered for sale
22 under the name of another pesticide or device,

23 (2) if its labeling bears any reference to
24 registration under this subarticle,

- 1 (3) if the labeling accompanying it does not contain
2 instructions for use which are necessary and, if
3 complied with, adequate for the protection of the
4 public,
- 5 (4) if the label does not contain a warning or
6 caution statement which may be necessary and, if
7 complied with, adequate to prevent injury to
8 humans and vertebrate animals,
- 9 (5) if the label does not bear an ingredient
10 statement on that part of the immediate container
11 and on the outside container or wrapper, if there
12 is one, through which the ingredient statement on
13 the immediate container cannot be clearly read,
14 of the retail package which is presented or
15 displayed under customary conditions of purchase,
- 16 (6) if any word, statement, or other information
17 required by or under the authority of this
18 subarticle to appear on the labeling is not
19 prominently placed with conspicuousness, as
20 compared with other words, statements, designees,
21 or graphic matter in the labeling, and in terms
22 likely to be read and understood by an individual
23 under customary conditions of purchase and use,
24 or

1 (7) if in the case of an insecticide, fungicide, or
2 herbicide, when used as directed or in accordance
3 with commonly recognized practice, it shall be
4 injurious to humans, vertebrate animals, or
5 vegetation, except weeds, to which it is applied,
6 or to the person applying the pesticide;

7 29. "Noncommercial applicator" means any person, other than a
8 commercial or private applicator, who uses or supervises the use of
9 a restricted use pesticide. The noncommercial applicator shall be
10 under the supervision of an owner or manager of property and who is
11 certified in the same manner as a commercial applicator. A
12 noncommercial applicator is subject to all requirements except those
13 pertaining to financial responsibility. Noncommercial applicator
14 includes a government employee applying restricted use pesticides in
15 the discharge of official duties;

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

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

22 32. "Permit" means a written document issued by the Board which
23 shows that a person has met all of the permitting requirements
24 established by this subarticle and is authorized to sell pesticides

1 as a restricted use or ~~non-restricted~~ nonrestricted use pesticide
2 dealer in accordance with the type of permit issued;

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

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

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

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

23 37. "Restricted use pesticide" means any pesticide classified
24 for restricted use by the United States Environmental Protection

1 Agency, either by regulation or through the registration process, or
2 by the Board pursuant to the Oklahoma Agricultural Code;

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

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

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

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

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

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

22 44. "Wood infestation report" means a document issued with a
23 property transaction which shall, at a minimum, contain statements
24 or certifications as to the presence or absence of termites and any

1 other wood destroying ~~organism~~ insects, and the presence or absence
2 of damage. The wood infestation report does not include a bid or
3 proposal for treatment.

4 SECTION 5. This act shall become effective November 1, 2007.

5 Passed the Senate the 12th day of March, 2007.

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7 _____
8 Presiding Officer of the Senate

9 Passed the House of Representatives the ____ day of _____,
10 2007.

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12 _____
13 Presiding Officer of the House
14 of Representatives