

ENROLLED SENATE
BILL NO. 710

By: Justice of the Senate
and
Hickman of the House

An Act relating to agriculture; amending 2 O.S. 2001, Section 3-32.1, which relates to horticulture regulation; modifying definitions; amending 2 O.S. 2001, Section 3-32.2, which relates to inspections; expanding authority of the Department of Agriculture, Food, and Forestry; amending 2 O.S. 2001, Section 3-32.8, which relates to violations; expanding violations to include falsifying certain information; amending 2 O.S. 2001, Section 3-81, as amended by Section 1, Chapter 383, O.S.L. 2002 (2 O.S. Supp. 2006, Section 3-81), which relates to pesticides; clarifying certain definition; amending 2 O.S. 2001, Section 14-38, which relates to unlawful misrepresentation; clarifying certain unlawful act; and providing an effective date.

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

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

Section 3-32.1 As used in this subarticle:

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

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

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

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

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

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

~~7. "Facilities" means and includes all buildings, greenhouses, storage places, cellars, pits, trenches, bins, containers, packing materials, crates, packing rooms, display bins, refrigerators, ice boxes, and any other structures and materials used in storing, transporting, and distributing nursery stock. The nursery, dealer, or agent shall maintain the facilities as are necessary for the proper care and conservation of nursery stock;~~

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

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

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

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

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

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

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

~~12.~~ 14. "Nursery stock" means and includes, whether in field or container, all trees, shrubs, vines, rosebushes, turfgrass, cuttings, grafts, scions, fruit pits, herbaceous plants, evergreens and other ornamental trees, bushes, collected wild plants and trees, decorative plants, tropical plants, flowering plants, bedding plants, vegetable plants for transplanting, aquatic plants, roots, corms, rhizomes, bulbs, and ferns grown for propagation, all packing materials, and other things used in the handling, storing, crating, and shipping of nursery stock. "Nursery stock" does not include cut Christmas trees, wreaths, seeds, vegetables or fruits, agronomic crops, cut or dried flowers, and cut or dried herbs;

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

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

either a State Phytosanitary Certificate or Federal Phytosanitary Certificate;

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

17. "Plant pest" means any pest ~~of~~ known to cause damage or harm to plants, agricultural commodities, horticultural products, nursery stock, silvicultural interests, or non cultivated plants the environment. Plant pest includes, but is not limited to, insects, snails, nematodes, fungi, viruses, bacterium, microorganisms, mycoplasma-like organisms, weeds, plants, or other parasitic higher plants;

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

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

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

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

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

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

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

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

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

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

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

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

C. Any nursery stock distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate or interstate commerce may be seized or caused to be destroyed by the Department in any county of the state where it may be found if:

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

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

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

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

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

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

1. Misrepresenting to another their connection with a nursery, or to:
 - a. misrepresent the grade, character, variety, or quality of any nursery stock,
 - b. make a false declaration of acreage,
 - c. conceal any nursery stock from inspection, or
 - d. offer for sale nursery stock which is seriously or substantially devitalized;
2. Failing to furnish the ~~Board~~ Oklahoma Department of Agriculture, Food, and Forestry with true and exact copies of order forms, contracts, and agreements with customers;
3. Failing to furnish each purchaser, upon request, a true and correct invoice of each purchase, stating the variety, quality, age, or size of the stock to which the invoice applies;

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

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

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

7. Misrepresenting or falsifying information on a license application;

8. Doing business without a valid license;

9. Allowing a license to be used by any person other than the person to whom it was issued;

10. Failing to notify the Board of the legal description of all growing locations of nursery stock or sod;

11. Failing to allow an authorized agent to complete an inspection or collect adequate samples;

12. Selling nursery stock restricted by a stop sale order;

13. Selling, moving, or distributing nursery stock or other material under a quarantine;

14. Mislabeling nursery stock by using the wrong common name or botanical name;

15. Transporting any regulated article into the state from a quarantined area of any other state or country when the article has not been treated or handled as provided by the requirements of the quarantine;

16. Interfering with, hindering, or impeding, by any method, any authorized agent of the Board in the performance of duties; ~~or~~

17. Falsifying or using false information to ship nursery stock out of Oklahoma into any other state in the United States or any country outside of the United States or making a false statement

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

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

SECTION 4. AMENDATORY 2 O.S. 2001, Section 3-81, as amended by Section 1, Chapter 383, O.S.L. 2002 (2 O.S. Supp. 2006, 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~~ restricted-use 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. "Nonrestricted-use pesticide" means any pesticide, other than a pesticide classified as restricted-use pesticide;

31. "Nonrestricted-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~~ nonrestricted-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;

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

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~~ insects, and the presence or absence of damage. The wood infestation report does not include a bid or proposal for treatment.

SECTION 5. AMENDATORY 2 O.S. 2001, Section 14-38, is amended to read as follows:

Section 14-38. It shall be unlawful for any person to:

1. Sell, offer, or expose for sale any item for less than the quantity represented or take more than the represented quantity when the buyer furnishes the weight or measure which determines the quantity; or

2. ~~Represent~~ Misrepresent the price or quantity of any commodity or service sold, offered, exposed, or advertised for sale by weight, measure, or count in any manner ~~calculated or intended to mislead or deceive a person.~~

SECTION 6. This act shall become effective November 1, 2007.

Passed the Senate the 22nd day of May, 2007.

Presiding Officer of the Senate

Passed the House of Representatives the 23rd day of May, 2007.

Presiding Officer of the House
of Representatives