

THE HOUSE OF REPRESENTATIVES
Thursday, March 6, 2008

Committee Substitute for
House Bill No. 2728

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 2728 - By: ARMES of the House.

An Act relating to agriculture; amending 2 O.S. 2001, Section 3-81, as last amended by Section 4, Chapter 200, O.S.L. 2007 (2 O.S. Supp. 2007, Section 3-81), which relates to definitions concerning pesticides; adding definition; requiring certain license for certain treatments in the structural pest category; stating qualifications for certain certification; authorizing fees; requiring records to include certain application information; providing for promulgation of rules by the State Board of Agriculture; providing for codification; and providing an effective date.

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

- 1 SECTION 1. AMENDATORY 2 O.S. 2001, Section 3-81, as last amended by
2 Section 4, Chapter 200, O.S.L. 2007 (2 O.S. Supp. 2007, Section 3-81), is amended to read
3 as follows:
4 Section 3-81. As used in this subarticle:
5 1. "Aircraft" means any contrivance used or designed for navigation of or flight in
6 the air over land or water and is designed for or adaptable for use in applying pesticides
7 as sprays, dusts, or other forms;
8 2. "Active ingredient" means an ingredient, which defoliates plants, prevents fruit
9 drop, inhibits sprouting, or destroys, repels, or mitigates insects, fungi, bacteria, rodents,
10 weeds, or other pests;

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

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

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

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

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

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

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

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

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

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

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

19 14. "Device" means any instrument subject to the United States Environmental
20 Protection Agency regulation intended for trapping, destroying, repelling, or mitigating
21 insects or rodents, or mitigating fungi, bacteria, or weeds, or other pests designated by

1 the Board, but not including equipment used for the application of pesticides when sold
2 separately;

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

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

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

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

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

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

21 21. "Ingredient statement" means a statement containing the name and percentage
22 of each active ingredient, and the total percentage of all inert ingredients in the

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

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

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

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

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

- 13 a. upon the pesticide, device, or any of its containers or wrappers,
- 14 b. accompanying the pesticide or device at any time, or
- 15 c. to which reference is made on the label or in literature accompanying
16 the pesticide or device except when accurate, nonmisleading reference
17 is made to current official publications of the United States
18 Environmental Protection Agency, United States Department of
19 Agriculture, United States Department of the Interior, the United
20 States Public Health Service, State Experiment Stations, State
21 Agricultural Colleges, or other federal institutions or official agencies

1 of this state or other states authorized by law to conduct research in
2 the field of pesticides;

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

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

9 28. "Misbranded" means and includes:

10 a. any pesticide or device if its labeling bears any statement, design, or
11 graphic representation relative to its ingredients which is false or
12 misleading, or

13 b. any pesticide or device:

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

16 (2) if its labeling bears any reference to registration under this
17 subarticle,

18 (3) if the labeling accompanying it does not contain instructions for
19 use which are necessary and, if complied with, adequate for the
20 protection of the public,

- 1 (4) if the label does not contain a warning or caution statement
2 which may be necessary and, if complied with, adequate to
3 prevent injury to humans and vertebrate animals,
- 4 (5) if the label does not bear an ingredient statement on that part of
5 the immediate container and on the outside container or
6 wrapper, if there is one, through which the ingredient statement
7 on the immediate container cannot be clearly read, of the retail
8 package which is presented or displayed under customary
9 conditions of purchase,
- 10 (6) if any word, statement, or other information required by or
11 under the authority of this subarticle to appear on the labeling
12 is not prominently placed with conspicuousness, as compared
13 with other words, statements, designees, or graphic matter in
14 the labeling, and in terms likely to be read and understood by an
15 individual under customary conditions of purchase and use, or
- 16 (7) if in the case of an insecticide, fungicide, or herbicide, when used
17 as directed or in accordance with commonly recognized practice,
18 it shall be injurious to humans, vertebrate animals, or
19 vegetation, except weeds, to which it is applied, or to the person
20 applying the pesticide;

21 29. “New construction treatment” means the application of a registered liquid
22 termiteicide product that is applied to a new structure during the construction process to

1 provide preventative protection against subterranean termites. The application of this
2 treatment shall:

- 3 a. be during the construction process.
4 b. provide a barrier of protection for the structure when applied to
5 structure wood, pipe protrusions, concrete, and expansion joints, and
6 c. not be required to conform to the minimum standards for termite work
7 for preconstruction treatment;

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

15 ~~30.~~ 31. "Nonrestricted-use pesticide" means any pesticide, other than a pesticide
16 classified as restricted-use pesticide;

17 ~~31.~~ 32. "Nonrestricted-use pesticide dealer" means any person engaged in the sale,
18 storage, or distribution of any pesticide other than those pesticides classified by the
19 United States Environmental Protection Agency or the Board as restricted-use
20 pesticides;

21 ~~32.~~ 33. "Permit" means a written document issued by the Board which shows that a
22 person has met all of the permitting requirements established by this subarticle and is

1 authorized to sell pesticides as a restricted-use or nonrestricted-use pesticide dealer in
2 accordance with the type of permit issued;

3 ~~33.~~ 34. "Pest" means any organism harmful to man including, but not limited to,
4 insects, mites, nematodes, weeds, and pathogenic organisms. Pathogenic organisms
5 include viruses, mycoplasma, bacteria, rickettsia, and fungi which the Board declares to
6 be a pest;

7 ~~34.~~ 35. "Pesticide" means a substance or mixture of substances intended for
8 defoliating or desiccating plants, preventing fruitdrop, inhibiting sprouting, or for
9 preventing, destroying, repelling, or mitigating any insects, rodents, fungi, bacteria,
10 weeds, or other forms of plant or animal life or viruses, which the Board declares to be a
11 pest, except viruses on or in humans or animals;

12 ~~35.~~ 36. "Private applicator" means any person who uses or supervises the use of any
13 restricted pesticide for purposes of producing any agricultural commodity on property
14 owned or rented by the person, or employer, or on the property of another person if
15 applied without compensation other than trading of personal services between producers
16 of agricultural commodities;

17 ~~36.~~ 37. "Registrant" means the person registering any pesticide or device pursuant
18 to the provisions of this subarticle;

19 ~~37.~~ 38. "Restricted-use pesticide" means any pesticide classified for restricted use
20 by the United States Environmental Protection Agency, either by regulation or through
21 the registration process, or by the Board pursuant to the Oklahoma Agricultural Code;

1 ~~38.~~ 39. "Restricted-use pesticide dealer" means any person engaged in the sale,
2 storage, or distribution of restricted-use pesticides;

3 ~~39.~~ 40. "Rodenticide" means any pesticide intended for preventing, destroying,
4 repelling, or mitigating rodents or any other animal which the Board declares a pest;

5 ~~40.~~ 41. "Service technician" means a person employed by a licensed commercial or
6 noncommercial applicator who applies the pesticide or employs a device, but is not a
7 certified applicator. A service technician or certified applicator shall be present at each
8 application performed;

9 ~~41.~~ 42. "Temporary certified applicator" means a person who has successfully
10 completed the written examinations required for certification but has not successfully
11 completed the practical examination;

12 ~~42.~~ 43. "Use" means transportation, storage, mixing, application, safe handling,
13 waste and container disposal, and other specific instructions contained on the label and
14 labeling;

15 ~~43.~~ 44. "Weed" means any plant or plant part which grows where not wanted; and

16 ~~44.~~ 45. "Wood infestation report" means a document issued with a property
17 transaction which shall, at a minimum, contain statements or certifications as to the
18 presence or absence of termites and any other wood destroying insects, and the presence
19 or absence of damage. The wood infestation report does not include a bid or proposal for
20 treatment.

1 SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma
2 Statutes as Section 3-82.2 of Title 2, unless there is created a duplication in numbering,
3 reads as follows:

4 A. LICENSE REQUIRED. It shall be unlawful for any person to act, operate, or do
5 business or advertise as a commercial or noncommercial applicator unless the person has
6 obtained a valid applicator's license issued by the State Board of Agriculture for new
7 construction treatment in the structural pest category.

8 B. CERTIFICATION REQUIRED. 1. A license shall be issued only after
9 satisfactory completion of the certification standards by the person who shall be the
10 certified applicator, certified in the structural pest category or under direct supervision
11 as defined in Section 3-81 of Title 2 of the Oklahoma Statutes.

12 2. Each person who receives a certified applicator license, certified in the new
13 construction treatment, shall be licensed pursuant to Section 3-81 et seq. of Title 2 of the
14 Oklahoma Statutes and shall be subject to all fees authorized by the Board.

15 C. RECORDKEEPING. In addition to other recordkeeping requirements contained
16 in Section 3-83 of Title 2 of the Oklahoma Statutes, the applicator shall keep an
17 application worksheet that lists the address of the structure, the applicator's name,
18 company name, date of application and the calculations determining the amount of
19 finished termiticide applied to the structure.

20 D. RULES AND STANDARDS. The State Board of Agriculture shall administer
21 and enforce the provisions of this section and shall promulgate rules and standards for
22 the application of the new construction treatments and requirements for use.

1 SECTION 3. This act shall become effective November 1, 2008.

2 COMMITTEE REPORT BY: COMMITTEE ON NATURAL RESOURCES, dated 03-05-
3 08 - DO PASS, As Amended.