

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 SENATE BILL 1584

By: Schulz

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5  
6 AS INTRODUCED

7 An Act relating to agriculture; amending 2 O.S. 2001,  
8 Section 3-81, as last amended by Section 4, Chapter  
9 200, O.S.L. 2007 (2 O.S. Supp. 2007, Section 3-81),  
10 which relates to definitions concerning pesticides;  
11 adding definition; requiring certain license for  
12 certain treatments in the structural pest category;  
13 stating qualifications for certain certification;  
14 authorizing fees; requiring records to include  
15 certain application information; providing for  
16 promulgation of rules; providing for codification;  
17 and providing an effective date.

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

19 SECTION 1. AMENDATORY 2 O.S. 2001, Section 3-81, as last  
20 amended by Section 4, Chapter 200, O.S.L. 2007 (2 O.S. Supp. 2007,  
21 Section 3-81), is amended to read as follows:

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

23 1. "Aircraft" means any contrivance used or designed for  
24 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;

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

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

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

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

21           6. "Certificate" means a written document issued to an  
22 individual by the State Board of Agriculture which indicates that  
23 the individual has met the certification standards established by  
24 this subarticle for the category of pesticide application shown on

1 the certificate. A certificate does not allow a person to do work  
2 as a commercial, noncommercial, service technician, or private  
3 applicator unless employed by a licensed entity or has a valid  
4 license issued by the Board;

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

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

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

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

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

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

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

8 14. "Device" means any instrument subject to the United States  
9 Environmental Protection Agency regulation intended for trapping,  
10 destroying, repelling, or mitigating insects or rodents, or  
11 mitigating fungi, bacteria, or weeds, or other pests designated by  
12 the Board, but not including equipment used for the application of  
13 pesticides when sold separately;

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

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

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

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

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

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

12 21. "Ingredient statement" means a statement containing the  
13 name and percentage of each active ingredient, and the total  
14 percentage of all inert ingredients in the pesticide. If the  
15 pesticide contains arsenic in any form, the percentages of total and  
16 water-soluble arsenic shall each be calculated as elemental arsenic;

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

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

4        24. "Label" means the written, printed, or graphic matter  
5 attached to the pesticide, device, or container including the  
6 outside container or wrapper of the retail package of the pesticide  
7 or device;

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

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

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

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

8        28. "Misbranded" means and includes:

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

- 13            (1) if it is an imitation of or is offered for sale  
14            under the name of another pesticide or device,  
15            (2) if its labeling bears any reference to  
16            registration under this subarticle,  
17            (3) if the labeling accompanying it does not contain  
18            instructions for use which are necessary and, if  
19            complied with, adequate for the protection of the  
20            public,  
21            (4) if the label does not contain a warning or  
22            caution statement which may be necessary and, if  
23            complied with, adequate to prevent injury to  
24            humans and vertebrate animals,

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

23 29. "New construction treatment" means the application of a  
24 registered liquid termiticide product that is generally applied to

1 the new existing structure during the construction process that does  
2 not conform by label directions to the minimum standards for termite  
3 work for preconstruction;

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

13 ~~30.~~ 31. "Nonrestricted-use pesticide" means any pesticide,  
14 other than a pesticide classified as restricted-use pesticide;

15 ~~31.~~ 32. "Nonrestricted-use pesticide dealer" means any person  
16 engaged in the sale, storage, or distribution of any pesticide other  
17 than those pesticides classified by the United States Environmental  
18 Protection Agency or the Board as restricted-use pesticides;

19 ~~32.~~ 33. "Permit" means a written document issued by the Board  
20 which shows that a person has met all of the permitting requirements  
21 established by this subarticle and is authorized to sell pesticides  
22 as a restricted-use or nonrestricted-use pesticide dealer in  
23 accordance with the type of permit issued;

1       ~~33.~~ 34. "Pest" means any organism harmful to man including, but  
2 not limited to, insects, mites, nematodes, weeds, and pathogenic  
3 organisms. Pathogenic organisms include viruses, mycoplasma,  
4 bacteria, rickettsia, and fungi which the Board declares to be a  
5 pest;

6       ~~34.~~ 35. "Pesticide" means a substance or mixture of substances  
7 intended for defoliating or desiccating plants, preventing  
8 fruitdrop, inhibiting sprouting, or for preventing, destroying,  
9 repelling, or mitigating any insects, rodents, fungi, bacteria,  
10 weeds, or other forms of plant or animal life or viruses, which the  
11 Board declares to be a pest, except viruses on or in humans or  
12 animals;

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

19       ~~36.~~ 37. "Registrant" means the person registering any pesticide  
20 or device pursuant to the provisions of this subarticle;

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

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

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

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

12       ~~41.~~ 42. "Temporary certified applicator" means a person who has  
13 successfully completed the written examinations required for  
14 certification but has not successfully completed the practical  
15 examination;

16       ~~42.~~ 43. "Use" means transportation, storage, mixing,  
17 application, safe handling, waste and container disposal, and other  
18 specific instructions contained on the label and labeling;

19       ~~43.~~ 44. "Weed" means any plant or plant part which grows where  
20 not wanted; and

21       ~~44.~~ 45. "Wood infestation report" means a document issued with  
22 a property transaction which shall, at a minimum, contain statements  
23 or certifications as to the presence or absence of termites and any  
24 other wood destroying insects, and the presence or absence of

1 damage. The wood infestation report does not include a bid or  
2 proposal for treatment.

3 SECTION 2. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 3-82.1 of Title 2, unless there  
5 is created a duplication in numbering, reads as follows:

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

11 B. CERTIFICATION REQUIRED -

12 1. A license shall be issued only after satisfactory completion  
13 of the certification standards by the person who shall be the  
14 certified applicator, certified in the structural pest category or  
15 under direct supervision as defined in Section 3-81 of Title 2 of  
16 the Oklahoma Statutes;

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

21 C. RECORDKEEPING - In addition to other recordkeeping  
22 requirements contained in Section 3-83 of Title 2 of the Oklahoma  
23 Statutes, the applicator shall keep an application worksheet that  
24 lists the address of the structure, the applicators name, company

1 name, date of application and the calculations determining the  
2 amount of finished termiticide applied to the structure.

3 D. RULES AND STANDARDS - The State Board of Agriculture shall  
4 administer and enforce the provisions of this section and shall  
5 promulgate rules and standards for the application of the new  
6 construction treatments and requirements for use.

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

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