

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 SENATE BILL 710

By: Justice

4
5
6 AS INTRODUCED

7 An Act relating to agriculture; amending 2 O.S. 2001,
8 Sections 3-32.1, 3-32.2, 3-32.7, and 3-32.8, 3-81, as
9 amended by Section 1, Chapter 383, O.S.L. 2002 and 3-
10 82, as last amended by Section 1, Chapter 42, O.S.L.
11 2005, (2 O.S. Supp. 2006, Sections 3-81 and 3-82),
12 which relate to horticulture regulation; adding,
13 deleting, and modifying definitions; expanding
14 authority of the Oklahoma Department of Agriculture,
15 Food, and Forestry to inspect, take samples, issue
16 certain notices, and seize or destroy nursery stock;
17 limiting authority of political divisions to regulate
18 nursery stock; requiring a license from the
19 Department to conduct certain activities; authorizing
20 the Department to establish certain fees; making
21 certain activity a violation; increasing certain fee;
22 modifying distribution of certain monies; and
23 providing an effective date.

24 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;

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

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

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

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

21 6. ~~"Dangerously injurious plant pest" means a plant pest that~~
22 ~~constitutes a significant threat to the agricultural, silvicultural,~~
23 ~~or horticultural interests of this state, or the state's general~~

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1 ~~environmental quality as determined by the State Board of~~
2 ~~Agriculture;~~

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

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

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

13 ~~8.~~ 9. "Horticulture" means the discipline of agriculture
14 science relating to the cultivation of gardens or orchards,
15 including, but not limited to the growing of vegetables, flowers,
16 and ornamental trees and shrubs;

17 10. "Landscaper" means a person who purchases nursery stock and
18 offers that stock for sale or planting through landscape services
19 and typically does not hold and maintain plants in a heel yard or
20 nursery;

21 ~~9.~~ 11. "Native species" means a species that, other than due to
22 an introduction, historically occurred or currently occurs in that
23 ecosystem;

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1 ~~10.~~ 12. "Nursery" means and includes any field, ground,
2 greenhouse, bin, pit, plot, or premise where nursery or floral stock
3 is grown, propagated, or sold;

4 ~~11.~~ 13. "Nursery operator" means the person who owns, leases,
5 manages, or is in control of a nursery, and ~~is further defined as~~
6 any person who is a grower of nursery stock;

7 ~~12.~~ 14. "Nursery stock" means and includes, whether in field or
8 container, all trees, shrubs, vines, rosebushes, turfgrass,
9 cuttings, grafts, scions, fruit pits, herbaceous plants, evergreens
10 and other ornamental trees, bushes, collected wild plants and trees,
11 decorative plants, tropical plants, flowering plants, bedding
12 plants, vegetable plants for transplanting, aquatic plants, roots,
13 corms, rhizomes, bulbs, and ferns grown for propagation, all packing
14 materials, and other things used in the handling, storing, crating,
15 and shipping of nursery stock. "Nursery stock" does not include cut
16 Christmas trees, wreaths, seeds, vegetables or fruits, agronomic
17 crops, cut or dried flowers, and cut or dried herbs;

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

20 ~~14.~~ 15. "Phytosanitary certificate" means a document issued by
21 the ~~State Board of Agriculture~~ Department indicating that the
22 specified live plants or plant products comply with the legal
23 requirements of the importing state or country. The document may be
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1 either a State Phytosanitary Certificate or Federal Phytosanitary
2 Certificate;

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

6 ~~15.~~ 17. "Plant pest" means any pest known to cause damage or
7 harm to ~~of~~ plants, agricultural commodities, horticultural products,
8 nursery stock, silvicultural interests, or non-cultivated plants the
9 environment. Plant pest includes, but is not limited to, insects,
10 snails, nematodes, fungi, viruses, bacterium, microorganisms,
11 mycoplasma-like organisms, weeds, plants, or other parasitic higher
12 plants;

13 ~~16.~~ 18. "Sales location" means any principal business location
14 where nursery stock is sold directly to a customer;

15 ~~17.~~ 19. "Sell" means to offer for sale, expose for sale,
16 possess for sale, exchange, barter, or trade;

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

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

22 ~~20.~~ 21. "Stop sale" means a legal document issued by the State
23 Board of Agriculture that prevents the production of or sale of

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1 nursery stock due to an infestation of a ~~dangerously injurious~~ plant
2 pest;

3 ~~21.~~ 22. "Turfgrass sod" means a strip or section of one or more
4 grasses or other plants acceptable for lawn plantings which, when
5 severed from its growing site, contains sufficient plant roots to
6 remain intact, and does not contain weeds in excess of the amount
7 specified by the Board;

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

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

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

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

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

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

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

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

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

21 D. The Board, after notice and opportunity for a hearing as
22 provided in the Administrative Procedures Act, Department shall also
23 have the authority to order the owner, occupant, or person in charge
24 to take any necessary action including, but not limited to, the

1 proper treatment or destruction of infested or diseased plants
2 pursuant to the Oklahoma Agricultural Code and the Administrative
3 Procedures Act.

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

9 SECTION 3. AMENDATORY 2 O.S. 2001, Section 3-32.7, is
10 amended to read as follows:

11 Section 3-32.7 A. ~~The fee for each grower or dealer, license~~
12 ~~issued or renewed and inspection conducted shall be as follows:~~

13 1. ~~Grower's license fee - Twenty five Dollars (\$25.00) for each~~
14 ~~business location;~~

15 2. ~~Grower's inspection fee - One Dollar (\$1.00) per acre or~~
16 ~~1000 square feet of greenhouse area inspected; and~~

17 3. ~~Dealer's license fee - Thirty eight Dollars (\$38.00) for~~
18 ~~each business location~~ It shall be unlawful for any person to act,

19 operate, or do business or advertise as a grower, landscaper, or
20 dealer unless the person has obtained a valid license issued by the
21 Oklahoma Department of Agriculture, Food, and Forestry for the
22 category of nursery sales in which the person is engaged.

23 B. A license may be issued by the Department in any category of
24 nursery sales if the applicant qualifies and the applicant is

1 limited to the category of nursery sales specified in the license.

2 The Department may establish categories of nursery sales as
3 necessary. Licenses shall be issued upon application to the
4 Department. The application shall contain information regarding the
5 applicant's qualifications, proposed operations, and other
6 information as specified on the Department's prescribed form.

7 C. Each business location shall require a separate license.

8 D. The State Board of Agriculture shall establish fees for
9 licenses, renewals, and inspections.

10 ~~B.~~ E. No fee shall be charged for a grower's license issued to
11 any scientific, agricultural, or horticultural club, educational or
12 eleemosynary institution, or any department or branch of the state
13 or federal government.

14 ~~C.~~ F. All licenses shall expire at a date to be determined by
15 the ~~State Board of Agriculture~~. Failure to remit the license fee by
16 the 15th of the month following the expiration month shall result in
17 a penalty fee equal to the cost of the license.

18 ~~D.~~ G. A person shall obtain a license prior to selling or
19 dealing in nursery stock.

20 ~~E.~~ H. All licenses are nontransferable upon any change of
21 ownership.

22 ~~F.~~ I. All penalties, fees, and monies collected ~~under this~~
23 ~~program~~ pursuant to this subarticle shall be paid to the State
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1 Department of ~~Agriculture~~ and deposited in the State Department of
2 Agriculture Revolving Fund.

3 J. Appropriate fees shall be paid to the Department prior to
4 the processing of any application.

5 K. Failure to pay any fee identified with a license or an
6 inspection shall require the Department to deny the application.

7 L. Inspection fees shall be established by the Department for
8 each type of inspection conducted, whether they are used for
9 licensing requirements or for sales of nursery stock.

10 SECTION 4. AMENDATORY 2 O.S. 2001, Section 3-32.8, is
11 amended to read as follows:

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

15 1. Misrepresenting to another their connection with a nursery,
16 or to:

- 17 a. misrepresent the grade, character, variety, or quality
18 of any nursery stock,
19 b. make a false declaration of acreage,
20 c. conceal any nursery stock from inspection, or
21 d. offer for sale nursery stock which is seriously or
22 substantially devitalized;

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- 1 2. Failing to furnish the ~~Board~~ Oklahoma Department of
2 Agriculture, Food, and Forestry with true and exact copies of order
3 forms, contracts, and agreements with customers;
- 4 3. Failing to furnish each purchaser, upon request, a true and
5 correct invoice of each purchase, stating the variety, quality, age,
6 or size of the stock to which the invoice applies;
- 7 4. Selling, offering for sale, or distributing any nursery
8 stock infected or infested with a plant pest;
- 9 5. Selling, offering for sale, or distributing nursery stock
10 that is not healthy, sound, and capable of growth;
- 11 6. Failing to carry out treatment or destruction of nursery
12 stock as ordered by the Board;
- 13 7. Misrepresenting or falsifying information on a license
14 application;
- 15 8. Doing business without a valid license;
- 16 9. Allowing a license to be used by any person other than the
17 person to whom it was issued;
- 18 10. Failing to notify the Board of the legal description of all
19 growing locations of nursery stock or sod;
- 20 11. Failing to allow an authorized agent to complete an
21 inspection or collect adequate samples;
- 22 12. Selling nursery stock restricted by a stop sale order;
- 23 13. Selling, moving, or distributing nursery stock or other
24 material under a quarantine;

1 14. Mislabeled nursery stock by using the wrong common name or
2 botanical name;

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

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

9 17. Falsifying or using false information to ship nursery stock
10 out of Oklahoma into any other state in the United States or any
11 country outside of the United States or making false statement
12 regarding the condition, quality, grade, character, variety, or
13 treatment used.

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

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

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

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

23 2. "Active ingredient" means an ingredient, which defoliates
24 plants, prevents fruit drop, inhibits sprouting, or destroys,

1 repels, or mitigates insects, fungi, bacteria, rodents, weeds, or
2 other pests;

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

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

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

19 6. "Certificate" means a written document issued to an
20 individual by the State Board of Agriculture which indicates that
21 the individual has met the certification standards established by
22 this subarticle for the category of pesticide application shown on
23 the certificate. A certificate does not allow a person to do work
24 as a commercial, noncommercial, service technician, or private

1 applicator unless employed by a licensed entity or has a valid
2 license issued by the Board;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 26. "License" means a written document issued to a person by
22 the Board which shows that the person has met all established
23 licensing requirements established by this subarticle and who is

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1 authorized to apply pesticides as a commercial, noncommercial, or
2 private applicator pursuant to the license issued;

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

5 28. "Misbranded" means and includes:

6 a. any pesticide or device if its labeling bears any
7 statement, design, or graphic representation relative
8 to its ingredients which is false or misleading, or

9 b. any pesticide or device:

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

12 (2) if its labeling bears any reference to
13 registration under this subarticle,

14 (3) if the labeling accompanying it does not contain
15 instructions for use which are necessary and, if
16 complied with, adequate for the protection of the
17 public,

18 (4) if the label does not contain a warning or
19 caution statement which may be necessary and, if
20 complied with, adequate to prevent injury to
21 humans and vertebrate animals,

22 (5) if the label does not bear an ingredient
23 statement on that part of the immediate container
24 and on the outside container or wrapper, if there

1 is one, through which the ingredient statement on
2 the immediate container cannot be clearly read,
3 of the retail package which is presented or
4 displayed under customary conditions of purchase,

5 (6) if any word, statement, or other information
6 required by or under the authority of this
7 subarticle to appear on the labeling is not
8 prominently placed with conspicuousness, as
9 compared with other words, statements, designees,
10 or graphic matter in the labeling, and in terms
11 likely to be read and understood by an individual
12 under customary conditions of purchase and use,
13 or

14 (7) if in the case of an insecticide, fungicide, or
15 herbicide, when used as directed or in accordance
16 with commonly recognized practice, it shall be
17 injurious to humans, vertebrate animals, or
18 vegetation, except weeds, to which it is applied,
19 or to the person applying the pesticide;

20 29. "Noncommercial applicator" means any person, other than a
21 commercial or private applicator, who uses or supervises the use of
22 a restricted use pesticide. The noncommercial applicator shall be
23 under the supervision of an owner or manager of property and who is
24 certified in the same manner as a commercial applicator. A

1 noncommercial applicator is subject to all requirements except those
2 pertaining to financial responsibility. Noncommercial applicator
3 includes a government employee applying restricted use pesticides in
4 the discharge of official duties;

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

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

11 32. "Permit" means a written document issued by the Board which
12 shows that a person has met all of the permitting requirements
13 established by this subarticle and is authorized to sell pesticides
14 as a restricted use or non-restricted use pesticide dealer in
15 accordance with the type of permit issued;

16 33. "Pest" means any organism harmful to man including, but not
17 limited to, insects, mites, nematodes, weeds, and pathogenic
18 organisms. Pathogenic organisms include viruses, mycoplasma,
19 bacteria, rickettsia, and fungi which the Board declares to be a
20 pest;

21 34. "Pesticide" means a substance or mixture of substances
22 intended for defoliating or desiccating plants, preventing
23 fruitdrop, inhibiting sprouting, or for preventing, destroying,
24 repelling, or mitigating any insects, rodents, fungi, bacteria,

1 weeds, or other forms of plant or animal life or viruses, which the
2 Board declares to be a pest, except viruses on or in humans or
3 animals;

4 35. "Private applicator" means any person who uses or
5 supervises the use of any restricted pesticide for purposes of
6 producing any agricultural commodity on property owned or rented by
7 the person, or employer, or on the property of another person if
8 applied without compensation other than trading of personal services
9 between producers of agricultural commodities;

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

12 37. "Restricted use pesticide" means any pesticide classified
13 for restricted use by the United States Environmental Protection
14 Agency, either by regulation or through the registration process, or
15 by the Board pursuant to the Oklahoma Agricultural Code;

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

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

21 40. "Service technician" means a person employed by a licensed
22 commercial or noncommercial applicator who applies the pesticide or
23 employs a device, but is not a certified applicator. A service
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1 technician or certified applicator shall be present at each
2 application performed;

3 41. "Temporary certified applicator" means a person who has
4 successfully completed the written examinations required for
5 certification but has not successfully completed the practical
6 examination;

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

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

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

18 SECTION 6. AMENDATORY 2 O.S. 2001, Section 3-82, as last
19 amended by Section 1, Chapter 42, O.S.L. 2005 (2 O.S. Supp. 2006,
20 Section 3-82), is amended to read as follows:

21 Section 3-82. A. LICENSE REQUIRED - 1. It shall be unlawful
22 for any person to act, operate, or do business or advertise as a
23 commercial, noncommercial, certified applicator, temporary certified
24 applicator, service technician, or private applicator unless the

1 person has obtained a valid applicator's license issued by the State
2 Board of Agriculture for the category of pesticide application in
3 which the person is engaged.

4 2. A license may be issued by the Board in any category of
5 pesticide application if the applicant qualifies and the applicant
6 is limited to the category of pesticide application named on the
7 license. The Board may establish categories of pesticide
8 application as necessary. Licenses shall be issued upon application
9 to the Board on a form prescribed by the Board. The application
10 shall contain information regarding the applicant's qualifications,
11 proposed operations, and other information as specified by the
12 Board.

13 3. a. An aerial license shall not be issued or be valid
14 unless the applicant files with the Board a copy of a
15 valid document issued by the Federal Aviation
16 Administration showing that the person is qualified to
17 operate or supervise the operation of an aircraft
18 conducting agricultural operations. Applicants for an
19 aerial license and pilots working under a license may
20 be subject to a complete and thorough background
21 examination.

22 b. The Board shall promulgate rules regarding aerial
23 applicators and applications consistent with federal
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1 law and shall solicit the assistance of the Federal
2 Aviation Agency in the enforcement of this subsection.

3 4. Each business location shall require a separate license and
4 separate certified applicator except that a certified applicator for
5 a noncommercial business location may also serve as the certified
6 applicator for one commercial business location.

7 5. A license shall not be issued for the category of pesticide
8 application of any applicant or representative who has a temporary
9 certification.

10 B. CERTIFICATION REQUIRED - 1. A license shall be issued only
11 after satisfactory completion of the certification standards by the
12 person who shall be the certified applicator under the license.
13 Temporary certified applicators do not qualify as the certified
14 applicator for a license, nor may they act as a certified
15 applicator. The Board shall deny the application for certification,
16 recertification, issuance, or renewal of a certificate or license
17 for a failure to show proper qualification under the rules or for
18 violations of any provisions of this subarticle. A certificate in
19 any category shall be valid for five (5) years unless suspended,
20 canceled, or revoked by the Board or until recertification is
21 required for the category, and may be renewed after successful
22 completion of recertification requirements. The Board may require
23 certified applicators to be recertified once in a five-year period.

1 2. A certified service technician identification shall be
2 issued upon application and completion of certification standards
3 determined by the Board. Temporary certified applicators may
4 qualify as a certified service technician. No person shall act, do
5 business as, or advertise as a service technician unless the person
6 has met all the qualifications and standards as required by the
7 Board. The service technicians' identification shall be issued in
8 the name of the licensed entity. The licensee shall ensure that the
9 service technician identification is returned to the Board upon
10 termination of the employee. A service technician identification
11 shall be valid for a period of five (5) years unless suspended,
12 canceled, or revoked by the Board, until recertification is required
13 by the Board, or until the service technician leaves the employ of
14 the licensed entity. The Oklahoma Department of Agriculture, Food,
15 and Forestry may issue a service technician identification upon
16 completion of the following:

- 17 a. a determination is made by the Department that the
18 applicant has successfully completed the written
19 examination,
- 20 b. the licensed entity provides a completed service
21 technician identification application form at the time
22 of testing, and
- 23 c. all appropriate fees are paid at the time of testing.

24

1 3. Each license, except for private applicators, shall expire
2 on the 31st day of December following issuance or renewal, and may
3 be renewed for the ensuing calendar year, without penalty or
4 reexamination, if a properly completed application is filed with the
5 Board not later than the 1st day of January of each year. If
6 application is not received by that date, a penalty of twice the
7 amount of the renewal fee shall be charged for renewal of the
8 license. After the 1st day of February, in addition to the penalty,
9 a reexamination shall be required.

10 All private applicator licenses are in effect for five (5) years
11 and may be renewed by application after completion of a continuing
12 education program or written exam approved by the Board.

13 C. The following fees shall be paid to the Board:

14 1. A fee of One Hundred Dollars (\$100.00) for each category of
15 pesticide application shall be paid to the Board for the issuance or
16 renewal of a commercial applicator business license. Not more than
17 Five Hundred Dollars (\$500.00) total category fees shall be charged
18 annually to any business location of an applicator;

19 2. A fee of Fifty Dollars (\$50.00) shall be paid to the Board
20 for each written examination conducted by the Board;

21 3. A fee of Fifty Dollars (\$50.00) shall be paid to the Board
22 for each practical examination conducted by the Board;

23 4. A fee of Twenty Dollars (\$20.00) shall be paid to the Board
24 for the issuance or renewal of a private applicator's license;

1 5. A fee of Fifty Dollars (\$50.00) shall be paid to the Board
2 for the issuance or renewal of a noncommercial business license.
3 Not more than Two Hundred Fifty Dollars (\$250.00) total category
4 fees shall be charged annually to any noncommercial business
5 location of an applicator;

6 6. A fee of Twenty Dollars (\$20.00) shall be paid to the Board
7 for the issuance or renewal of service technician identification;

8 7. A fee of Ten Dollars (\$10.00) shall be paid to the Board for
9 the issuance of duplicate licenses or certificates or transfer of
10 service technician identification;

11 8. No fees shall be charged to governmental agencies or their
12 employees in the discharge of their official duties;

13 9. A fee of Fifty Dollars (\$50.00) shall be paid to the Board
14 for each recertification procedure; and

15 10. A fee of One Hundred Dollars (\$100.00) shall be paid to the
16 Board for each reciprocal certification procedure for applicator
17 certifications.

18 D. All fees shall be deposited in the State Department of
19 Agriculture Revolving Fund.

20 E. Fees shall be paid to the Board prior to the processing of
21 any application.

22 F. Failure to pay any fee identified with licenses, permits,
23 pesticide registrations, or certification shall require the Board to
24 deny the application.

1 G. INSURANCE REQUIRED - 1. The Board shall not issue a
2 commercial applicator's license until the applicant has furnished
3 evidence of an insurance policy or certificate by an insurer or
4 broker authorized to do business in this state insuring the
5 commercial applicator and any agents against liability resulting
6 from the operations of the commercial applicator. The insurance
7 shall not be applied to damage or injury to agricultural crops,
8 plants, or land being worked upon by the commercial applicator.

9 2. The amount of liability shall not be less than that set by
10 the Board for each property damage arising out of actual use of any
11 pesticide. The liability shall be maintained at not less than that
12 sum at all times during the licensing period. The Board shall be
13 notified fifteen (15) days prior to any reduction in liability.

14 3. If the furnished liability becomes unsatisfactory, the
15 applicant shall immediately execute new liability upon notice from
16 the Board. If new liability is not immediately obtained, the Board
17 shall, upon notice, cancel the license. It shall be unlawful for
18 the person to engage in the business of applying pesticides until
19 the liability is brought into compliance and the license reinstated.

20 H. DAMAGES - No action for alleged damages to growing annual
21 crops or plants may be brought or maintained unless the person
22 claiming the damages has filed with the Board a written statement of
23 alleged damages on a form prescribed by the Board within ninety (90)
24 days of the date that the alleged damages occurred, or prior to the

1 time that twenty-five percent (25%) of a damaged crop has been
2 harvested.

3 I. PERMIT REQUIRED - 1. It shall be unlawful for any person to
4 sell, offer for sale, or distribute within this state any restricted
5 use pesticide without first obtaining a restricted use pesticide
6 dealer's permit issued by the Board.

7 2. A permit may be issued by the Board in any category of
8 pesticide sales if the applicant qualifies under the provisions of
9 this subarticle and the applicant is limited to the category of
10 pesticide sales named on the permit. The Board may establish
11 categories of pesticide sales as necessary.

12 3. The permit shall be issued only upon application on a form
13 prescribed by the Board and the application shall contain
14 information regarding the applicant's proposed operation and other
15 information as specified by the Board.

16 4. Each business location engaged in the sale or distribution
17 of restricted use pesticides shall require a separate permit.

18 5. The annual permit fee for a restricted use pesticide dealer
19 permit shall be Fifty Dollars (\$50.00) for each location.

20 6. The Board may require a certified applicator to be present
21 at any location where designated restricted use pesticide sales
22 occur.

23 J. PESTICIDE REGISTRATION REQUIRED - 1. Every pesticide or
24 device distributed, sold, or offered for sale within this state or

1 delivered for transportation or transported in intrastate or
2 interstate commerce shall be registered with the Board.

3 2. The registrant shall file with the Board a statement
4 including, but not limited to:

5 a. the name and address of the registrant and the name
6 and address of the person whose name shall appear on
7 the label, if other than the registrant,

8 b. the name of the pesticide or device,

9 c. a complete copy of the labeling accompanying the
10 pesticide or device and a statement of all claims to
11 be made for it, and directions for use, and

12 d. if requested by the Board, a full description of the
13 tests made and the results upon which the claims are
14 based. In renewing a registration, a statement shall
15 be required only with respect to information which is
16 different from the information furnished when the
17 pesticide or device was last registered.

18 3. Each registrant shall pay to the Board an annual
19 registration fee of ~~One Hundred Sixty Dollars (\$160.00)~~ Two Hundred
20 Dollars (\$200.00) for each pesticide or device label registered.

21 These fees shall be used by the Oklahoma Department of Agriculture,
22 Food, and Forestry for purposes of administering pesticide
23 management programs. A portion of these fees, in the amount of One
24 Hundred Thousand Dollars (\$100,000.00) annually, shall be dedicated

1 for conducting programs for unwanted pesticide disposal. This
2 amount shall be deposited into the State Department of Agriculture
3 Unwanted Pesticide Disposal Fund and shall be dedicated for this use
4 only. An additional portion of these fees, in the amount of Four
5 Hundred Thousand Dollars (\$400,000.00) annually, shall be dedicated
6 for conducting programs for applicator education, training and
7 pesticide drift management.

8 4. The Board may require the submission of the complete formula
9 of any pesticide. Trade secrets and formulations submitted by the
10 registrant may be kept confidential. If it appears to the Board
11 that the composition of the pesticide is adequate to warrant the
12 proposed claims and if the pesticide, its labeling, and other
13 material required to be submitted comply with the requirements of
14 this subarticle, then the pesticide shall be registered.

15 5. If it does not appear to the Board that the pesticide or
16 device is adequate to warrant the proposed claims for it or if the
17 pesticide or device, its labeling, and other material required to be
18 submitted do not comply with the provisions of this subarticle, it
19 shall notify the applicant of the deficiencies in the pesticide,
20 device, labeling, or other material required and afford the
21 applicant an opportunity to make the necessary corrections. If the
22 applicant claims, in writing, that the corrections are not necessary
23 and requests in writing a hearing regarding the registration of the
24 pesticide or device, the Board shall provide an opportunity for a

1 hearing before refusing to issue the registration. In order to
2 protect the public, the Board may at any time cancel the
3 registration of a product or device. In no event, shall
4 registration of a pesticide or device be considered as a defense or
5 excuse for the commission of any offense prohibited under this
6 subarticle.

7 6. The Board may require that pesticides be distinctively
8 colored or discolored to protect the public health.

9 7. Registration shall not be required in the case of a
10 pesticide shipped from one plant or place within this state to
11 another plant or place within this state that is operated by the
12 same person.

13 K. CATEGORIES OF LICENSES AND PERMITS - The Board may establish
14 any category of license for pesticide application or any category of
15 permit for pesticide sales.

16 L. PERMIT AND PESTICIDE REGISTRATION EXPIRATION - 1. All
17 permits for pesticide sales shall be issued for a period of one (1)
18 year and the permits shall be renewed annually and shall expire on a
19 date determined by the Board. A permit may be renewed for the
20 ensuing year, without penalty, if a properly completed application
21 is filed with the Board not later than the fifteenth day of the
22 month first following the date of expiration. If the application is
23 not received by that date, a penalty of twice the amount of the
24 renewal fee shall be charged for renewal of the permit.

1 2. All pesticide registrations shall be issued for a period of
2 one (1) year. The registration shall be renewed annually and shall
3 expire on a date to be determined by the Board. Pesticide
4 registrations may be renewed for the ensuing year, without penalty,
5 if a properly completed application is filed with the Board not
6 later than the fifteenth day of the month first following the date
7 of expiration. If the application is not received by that date, a
8 penalty of twice the amount of the renewal fee shall be charged for
9 renewal of the pesticide registration.

10 M. PESTICIDE PRODUCING ESTABLISHMENTS - 1. Definitions as used
11 in this subarticle:

- 12 a. "establishment" means any site where a pesticide
13 product, active ingredient or device is produced
14 within the state,
- 15 b. "produce" means to manufacture, prepare, propagate,
16 compound or process any pesticide or to package,
17 repackage, label, relabel or otherwise change the
18 container of any pesticide or device, and
- 19 c. "producer" means any person who produces,
20 manufactures, prepares, compounds, propagates or
21 processes any active ingredient, pesticide, or device
22 as used in producing a pesticide.

23 2. It shall be unlawful for any person to produce within this
24 state any pesticide, active ingredient or device without first

1 obtaining a pesticide producer establishment permit issued by the
2 Board.

3 3. The permit shall be issued only upon application on a form
4 prescribed by the Board. The application shall contain information
5 regarding the proposed operation of the applicant and other
6 information as specified by the Board. If at any time there is a
7 change of the information provided in or on the application for a
8 pesticide producer establishment permit, the producer must notify
9 the Board in writing within thirty (30) calendar days of the change.

10 4. The producer shall file a statement with the Board including
11 but not limited to:

- 12 a. the name and address of the company,
- 13 b. the name and address of the establishment as well as
14 the physical location, if different than the mailing
15 address,
- 16 c. the name of any pesticide, active ingredient, or
17 device, and
- 18 d. the name and address and other pertinent contact
19 information for the responsible party.

20 5. All permits for pesticide producer establishments shall be
21 issued for a period of one (1) year and shall be renewed annually.
22 All permits shall expire on June 30 each year and may be renewed
23 without penalty if a properly completed application is filed with
24 the Board not later than the fifteenth day of the month first

1 following the date of expiration. If the application is not
2 received by that date, a penalty of twice the amount of the renewal
3 fee shall be charged for renewal of the permit.

4 6. Each pesticide producer establishment location engaged in
5 the production of pesticides, active ingredients or devices shall
6 require a separate permit.

7 7. The annual permit fee for a pesticide producer establishment
8 shall be One Hundred Dollars (\$100.00) for each location.

9 8. If requested by the Board, a complete copy of all labeling,
10 Material Safety Data Sheets, technical information associated with
11 the pesticide, active ingredient, or device and a statement of all
12 claims to be made as well as directions and use must be submitted to
13 the Board.

14 9. In order to determine compliance with state and federal
15 laws, the Board may request a full disclosure of inventory records,
16 sales and distribution records, and any other information deemed
17 necessary by the Board.

18 10. Every producer shall keep accurate records pertaining to
19 pesticide, active ingredient, or device production and distribution
20 as required by the Board. The records of the producer shall be kept
21 intact at the principal producing location in this state for at
22 least two (2) years after the date of production and distribution
23 and copies shall be furnished to any authorized agent of the Board,
24 immediately upon request in person, at any time during the regular

1 business hours of the producer. Copies of records shall be
2 furnished to any authorized agent of the Board within seven (7)
3 working days of a written request, in summary form, by mail, fax, e-
4 mail, web site, or any other electronic media customarily used.

5 SECTION 7. This act shall become effective November 1, 2007.

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