

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 SENATE BILL 451

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. 2008, 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 by the State Board of
17 Agriculture; providing for codification; and
18 providing an effective date.

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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 applied to a new

1 structure during the construction process to provide preventative
2 protection against subterranean termites. The application of this
3 treatment shall:

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

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

19 ~~30.~~ 31. "Nonrestricted-use pesticide" means any pesticide,
20 other than a pesticide classified as restricted-use pesticide;

21 ~~31.~~ 32. "Nonrestricted-use pesticide dealer" means any person
22 engaged in the sale, storage, or distribution of any pesticide other
23 than those pesticides classified by the United States Environmental
24 Protection Agency or the Board as restricted-use pesticides;

1 ~~32.~~ 33. "Permit" means a written document issued by the Board
2 which shows that a person has met all of the permitting requirements
3 established by this subarticle and is authorized to sell pesticides
4 as a restricted-use or nonrestricted-use pesticide dealer in
5 accordance with the type of permit issued;

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

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

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

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1 ~~36.~~ 37. "Registrant" means the person registering any pesticide
2 or device pursuant to the provisions of this subarticle;

3 ~~37.~~ 38. "Restricted-use pesticide" means any pesticide
4 classified for restricted use by the United States Environmental
5 Protection Agency, either by regulation or through the registration
6 process, or by the Board pursuant to the Oklahoma Agricultural Code;

7 ~~38.~~ 39. "Restricted-use pesticide dealer" means any person
8 engaged in the sale, storage, or distribution of restricted-use
9 pesticides;

10 ~~39.~~ 40. "Rodenticide" means any pesticide intended for
11 preventing, destroying, repelling, or mitigating rodents or any
12 other animal which the Board declares a pest;

13 ~~40.~~ 41. "Service technician" means a person employed by a
14 licensed commercial or noncommercial applicator who applies the
15 pesticide or employs a device, but is not a certified applicator. A
16 service technician or certified applicator shall be present at each
17 application performed;

18 ~~41.~~ 42. "Temporary certified applicator" means a person who has
19 successfully completed the written examinations required for
20 certification but has not successfully completed the practical
21 examination;

22 ~~42.~~ 43. "Use" means transportation, storage, mixing,
23 application, safe handling, waste and container disposal, and other
24 specific instructions contained on the label and labeling;

1 ~~43.~~ 44. "Weed" means any plant or plant part which grows where
2 not wanted; and

3 ~~44.~~ 45. "Wood infestation report" means a document issued with
4 a property transaction which shall, at a minimum, contain statements
5 or certifications as to the presence or absence of termites and any
6 other wood destroying insects, and the presence or absence of
7 damage. The wood infestation report does not include a bid or
8 proposal for treatment.

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

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

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

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

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

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

13 SECTION 3. This act shall become effective November 1, 2009.

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15 52-1-942 JT 3/6/2009 4:38:53 AM

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