STATE OF OKLAHOMA

2nd Session of the 53rd Legislature (2012)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2715 By: Jackson

COMMITTEE SUBSTITUTE

An Act relating to agriculture; amending 2 O.S. 2011, Section 3-86, which relates to pesticide applicator licenses; modifying prohibited acts; and providing an effective date.

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

SECTION 1. AMENDATORY 2 O.S. 2011, Section 3-86, is amended to read as follows:

Section 3-86. A. It shall be unlawful for any person, whether or not they hold a commercial or noncommercial license, to violate any part of this subsection or rules promulgated by the State Board of Agriculture. Any license, certificate, or identification issued may be suspended, canceled, revoked, or refused issue or reissue by the Board after a notice and an opportunity to be heard has been given to the holder of the license or certificate. The suspension, cancellation, revocation, or refusal to issue or reissue any license, certificate, or identification may be made if the Board finds:

1. A person has made misrepresentations for the purpose of defrauding, or has not satisfactorily performed, without proper cause, any contract into which the person entered;

2. A person has negligently used methods or pesticides ~~not suitable or safe~~ that are ineffective or improper for the purpose for which they have been employed~~, or~~;

3. A person has operated in a negligent manner, thereby causing a pesticide to drift off-target;

4. A person has used a pesticide in a manner inconsistent with its labeling unless prior written approval has been obtained from the Board;

~~3.~~ 5. Failure or refusal to furnish the Board, upon request, true information regarding methods, pesticides, and safety measures used, work performed, or other information required by the Board, or for making any false statement or representation in the person's application for issuance or renewal of a permit;

~~4.~~ 6. Any violation of state law or rules or standards prescribed by the Board;

~~5.~~ 7. The issuance of an inaccurate, misleading, or fraudulent wood infestation report;

~~6.~~ 8. Failure or refusal to keep and maintain complete and accurate records as specified in this subarticle;

~~7.~~ 9. Advertising or offering to perform in a category of pesticide application for which no license is held or under a name for which no license is held;

~~8.~~ 10. Failure or refusal to pay by the specified date any fees, fines, or penalties authorized under this subarticle;

~~9.~~ 11. Failure to explain in writing in a contract signed by the property owner the ways that a pesticide application fails to comply with any minimum requirements or standards authorized by this article;

~~10.~~ 12. Failure to perform work according to minimum standards authorized by this subarticle except as agreed by all parties in writing in the contract;

~~11.~~ 13. Falsely stating that a person is employed by or represents another person;

~~12.~~ 14. Falsely stating that a person or methods are recommended by any branch of government or that any specific work shall be inspected by any branch of government;

~~13.~~ 15. Any person to act, operate, do business, or advertise as an applicator unless the person has obtained a valid license issued by the Board for the category in which the person is engaged;

~~14.~~ 16. Any persons to be employed or represent themselves as certified applicators or service technicians unless they have met the certification standards prescribed by the Board and obtained

valid certificates or identifications issued by the Board for the categories for which the persons are to be employed or supervised;

~~15.~~ 17. Any person to act or operate as a private applicator unless the person has obtained a valid private applicator license issued by the Board;

~~16.~~ 18. Any person convicted in any court of a violation of this subarticle, pesticide laws of any other state, or the Federal Insecticide Fungicide and Rodenticide Act;

~~17.~~ 19. Failure to correct substandard work within twenty (20) calendar days of written notification unless an extension has been granted in writing by the Board;

~~18.~~ 20. Failure to comply with the Worker Protection Standard as defined in the Code of Federal Regulations 40 CFR 170;

~~19.~~ 21. Failure to comply with the provisions of a citation, stop work order, or stop sale order issued by the Board; or

~~20.~~ 22. Any other proper cause.

B. Any person, holder or nonholder of a valid license violating any of the provisions of this subarticle shall be guilty of a misdemeanor and shall be punishable by a fine of not less than One Hundred Dollars ($100.00) and not more than Ten Thousand Dollars ($10,000.00), imprisonment in the county jail for not less than thirty (30) days and not more than one (1) year, or both.

C. It shall be unlawful for any person, whether or not a person holds a permit as a manufacturer, registrant, or distributor, to

distribute, sell, or offer for sale within this state, deliver for transportation or transport in intrastate or interstate commerce, or to violate any part of this subarticle or rules promulgated by the Board. Any pesticide registration, permit, certificate, or identification issued may be suspended, canceled, revoked, or refused reissue by the Board after a notice and opportunity to be heard has been given to the holder of the registration, permit, certificate, or identification. Notice shall be given to the holder of the registration, permit, certificate, or identification by registered or certified mail at least ten (10) days prior to the date of hearing. The suspension, cancellation, revocation, or refusal to reissue any registration, permit, certificate or identification may be made if the Board finds that:

1. A pesticide or device which has not been registered pursuant to the provisions of this subarticle, or any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the composition differs from its composition as represented in connection with its registration. At the discretion of the Board, a change in the labeling or formula may be made within a registration period without requiring reregistration of the product;

2. A pesticide unless it is in the registrant’s or the manufacturer’s unbroken original container, does not have a clear and readable label affixed to the original container and to the

outside container or wrapper of the retail package, the following information:

a. the name and address of the manufacturer, registrant, or person for whom manufactured,

b. the name, brand, or trademark under which the article is sold, and

c. the net weights or measures of the content subject to reasonable variations as the Board shall permit;

3. In addition to any other requirement any pesticide containing a substance in quantities highly toxic to humans, that does not bear a label containing:

a. the skull and crossbones,

b. the word "DANGER" prominently in red, on a background of distinctly contrasting color, and

c. a statement of an antidote for the pesticide;

4. An adulterated or misbranded pesticide or device;

5. That any person intends to or has distributed, sold, stored, or used any pesticide or device in a manner inconsistent with its labeling;

6. That any person has sold or offered for sale any pesticide or device which has been canceled, suspended, or placed under stop sale except when the Board directs the sale of unused quantities of pesticides whose registrations have been canceled or suspended;

7. A pesticide dealer has sold, offered for sale, or distributed within this state any pesticide without first obtaining a valid pesticide dealer's permit in the appropriate category issued by the Board;

8. A pesticide dealer has failed or refused to keep accurate and complete records, as required by the Board, for a period of at least two (2) years at each business location;

9. A pesticide dealer has failed or refused to provide true and complete information to the Board, upon request, regarding pesticide sales, or other information required by the Board;

10. A person has made any false statement or representation in the person’s application for issuance or renewal of a permit;

11. A person has failed or refused to pay by the specified date any fees, fines, or penalties authorized under the Oklahoma Agricultural Code;

12. A person has failed to comply with the provisions of a citation, stop work order, or stop sale order issued by the Board;

13. A person has detached, altered, defaced, or destroyed, in whole or in part, any label or labeling provided for in this subarticle or in rules promulgated by the Board, and added any substance to or taken any substance from a pesticide in a manner that may defeat any of the purposes of this subarticle;

14. A person has used any information concerning formulas for products acquired by authority of this subarticle for personal

advantage or revealed such information to another, other than to the Board or proper officials or employees of the state, to the courts of this state in response to a subpoena, physicians, or in emergencies to pharmacists and other qualified person, for use in the preparation of antidotes;

15. A person has violated the state law or rules promulgated by the Board pursuant thereto;

16. Any person has been convicted in any court of a violation of this act, pesticide laws of any other state, or Federal Insecticide Fungicide and Rodenticide Act; or

17. A person determined by the Board to have violated any provision of this subarticle or rules promulgated by the Board.

D. If after notice and an opportunity for hearing in accordance with the Administrative Procedures Act, the Board finds any person to be in violation of any of the provisions of this subarticle or rules promulgated by the Board, the Board has the authority to assess an administrative penalty of not less than One Hundred Dollars ($100.00) and not more than Ten Thousand Dollars ($10,000.00) for each violation. It shall also be unlawful and a misdemeanor for any person, whether or not a commercial or noncommercial license holder, to use a pesticide in a manner inconsistent with its labeling unless prior written approval has been obtained by the Board.

E. Except as provided for by law, any person, holder or non-holder of a valid license, registration, permit, certificate, or other identification issued by the Board violating any of the provisions of this subarticle shall be guilty of a misdemeanor and shall be punishable by a fine of not less than One Hundred Dollars ($100.00) and not more than Ten Thousand Dollars ($10,000.00) or by imprisonment in the county jail for not less than thirty (30) days and not more than one (1) year, or both.

SECTION 2. This act shall become effective November 1, 2012.

53-2-9658 EK 02/22/12