

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 53rd Legislature (2012)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2715

By: Jackson of the House

and

Anderson of the Senate

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9 COMMITTEE SUBSTITUTE

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

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

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

17 Section 3-86. A. It shall be unlawful for any person, whether
18 or not they hold a commercial or noncommercial license, to violate
19 any part of this subsection or rules promulgated by the State Board
20 of Agriculture. Any license, certificate, or identification issued
21 may be suspended, canceled, revoked, or refused issue or reissue by
22 the Board after a notice and an opportunity to be heard has been
23 given to the holder of the license or certificate. The suspension,
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UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 cancellation, revocation, or refusal to issue or reissue any
2 license, certificate, or identification may be made if the Board
3 finds:

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

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

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

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

15 ~~3.~~ 5. Failure or refusal to furnish the Board, upon request,
16 true information regarding methods, pesticides, and safety measures
17 used, work performed, or other information required by the Board, or
18 for making any false statement or representation in the person's
19 application for issuance or renewal of a permit;

20 ~~4.~~ 6. Any violation of state law or rules or standards
21 prescribed by the Board;

22 ~~5.~~ 7. The issuance of an inaccurate, misleading, or fraudulent
23 wood infestation report;

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1 ~~6.~~ 8. Failure or refusal to keep and maintain complete and
2 accurate records as specified in this subarticle;

3 ~~7.~~ 9. Advertising or offering to perform in a category of
4 pesticide application for which no license is held or under a name
5 for which no license is held;

6 ~~8.~~ 10. Failure or refusal to pay by the specified date any
7 fees, fines, or penalties authorized under this subarticle;

8 ~~9.~~ 11. Failure to explain in writing in a contract signed by
9 the property owner the ways that a pesticide application fails to
10 comply with any minimum requirements or standards authorized by this
11 article;

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

15 ~~11.~~ 13. Falsely stating that a person is employed by or
16 represents another person;

17 ~~12.~~ 14. Falsely stating that a person or methods are
18 recommended by any branch of government or that any specific work
19 shall be inspected by any branch of government;

20 ~~13.~~ 15. Any person to act, operate, do business, or advertise
21 as an applicator unless the person has obtained a valid license
22 issued by the Board for the category in which the person is engaged;

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1 ~~14.~~ 16. Any persons to be employed or represent themselves as
2 certified applicators or service technicians unless they have met
3 the certification standards prescribed by the Board and obtained
4 valid certificates or identifications issued by the Board for the
5 categories for which the persons are to be employed or supervised;

6 ~~15.~~ 17. Any person to act or operate as a private applicator
7 unless the person has obtained a valid private applicator license
8 issued by the Board;

9 ~~16.~~ 18. Any person convicted in any court of a violation of
10 this subarticle, pesticide laws of any other state, or the Federal
11 Insecticide Fungicide and Rodenticide Act;

12 ~~17.~~ 19. Failure to correct substandard work within twenty (20)
13 calendar days of written notification unless an extension has been
14 granted in writing by the Board;

15 ~~18.~~ 20. Failure to comply with the Worker Protection Standard
16 as defined in the Code of Federal Regulations 40 CFR 170;

17 ~~19.~~ 21. Failure to comply with the provisions of a citation,
18 stop work order, or stop sale order issued by the Board; or

19 ~~20.~~ 22. Any other proper cause.

20 B. Any person, holder or nonholder of a valid license violating
21 any of the provisions of this subarticle shall be guilty of a
22 misdemeanor and shall be punishable by a fine of not less than One
23 Hundred Dollars (\$100.00) and not more than Ten Thousand Dollars

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1 (\$10,000.00), imprisonment in the county jail for not less than
2 thirty (30) days and not more than one (1) year, or both.

3 C. It shall be unlawful for any person, whether or not a person
4 holds a permit as a manufacturer, registrant, or distributor, to
5 distribute, sell, or offer for sale within this state, deliver for
6 transportation or transport in intrastate or interstate commerce, or
7 to violate any part of this subarticle or rules promulgated by the
8 Board. Any pesticide registration, permit, certificate, or
9 identification issued may be suspended, canceled, revoked, or
10 refused reissue by the Board after a notice and opportunity to be
11 heard has been given to the holder of the registration, permit,
12 certificate, or identification. Notice shall be given to the holder
13 of the registration, permit, certificate, or identification by
14 registered or certified mail at least ten (10) days prior to the
15 date of hearing. The suspension, cancellation, revocation, or
16 refusal to reissue any registration, permit, certificate or
17 identification may be made if the Board finds that:

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

3 2. A pesticide unless it is in the registrant's or the
4 manufacturer's unbroken original container, does not have a clear
5 and readable label affixed to the original container and to the
6 outside container or wrapper of the retail package, the following
7 information:

- 8 a. the name and address of the manufacturer, registrant,
9 or person for whom manufactured,
- 10 b. the name, brand, or trademark under which the article
11 is sold, and
- 12 c. the net weights or measures of the content subject to
13 reasonable variations as the Board shall permit;

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

- 17 a. the skull and crossbones,
- 18 b. the word "DANGER" prominently in red, on a background
19 of distinctly contrasting color, and
- 20 c. a statement of an antidote for the pesticide;

21 4. An adulterated or misbranded pesticide or device;

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

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

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

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

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

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

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

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

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

8 14. A person has used any information concerning formulas for
9 products acquired by authority of this subarticle for personal
10 advantage or revealed such information to another, other than to the
11 Board or proper officials or employees of the state, to the courts
12 of this state in response to a subpoena, physicians, or in
13 emergencies to pharmacists and other qualified person, for use in
14 the preparation of antidotes;

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

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

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

22 D. If after notice and an opportunity for hearing in accordance
23 with the Administrative Procedures Act, the Board finds any person
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1 to be in violation of any of the provisions of this subarticle or
2 rules promulgated by the Board, the Board has the authority to
3 assess an administrative penalty of not less than One Hundred
4 Dollars (\$100.00) and not more than Ten Thousand Dollars
5 (\$10,000.00) for each violation. It shall also be unlawful and a
6 misdemeanor for any person, whether or not a commercial or
7 noncommercial license holder, to use a pesticide in a manner
8 inconsistent with its labeling unless prior written approval has
9 been obtained by the Board.

10 E. Except as provided for by law, any person, holder or non-
11 holder of a valid license, registration, permit, certificate, or
12 other identification issued by the Board violating any of the
13 provisions of this subarticle shall be guilty of a misdemeanor and
14 shall be punishable by a fine of not less than One Hundred Dollars
15 (\$100.00) and not more than Ten Thousand Dollars (\$10,000.00) or by
16 imprisonment in the county jail for not less than thirty (30) days
17 and not more than one (1) year, or both.

18 SECTION 2. This act shall become effective November 1, 2012.
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20 COMMITTEE REPORT BY: COMMITTEE ON AGRICULTURE, WILDLIFE AND
21 ENVIRONMENT, dated 02/23/2012 - DO PASS, As Amended and Coauthored.
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