

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 1884 By: Justice of the Senate
3 and
4 Biggs of the House
5
6

7 [agriculture - Oklahoma Combined Pesticide Law -
8 threshold requirements - effective date]
9

10 AMENDMENT NO. 1. Strike the stricken title, enacting clause and
11 entire bill and insert

12 "An Act relating to agriculture; amending 2 O.S.
13 2011, Sections 3-81, 3-84 and 3-85, which relate to
14 the Oklahoma Combined Pesticide Law, modifying
15 references; modifying scope of certain rules;
16 modifying certain uniformity requirements; deleting
17 certain threshold requirements for samples of
18 pesticide materials; and providing an effective
19 date.
20

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

22 SECTION 1. AMENDATORY 2 O.S. 2011, Section 3-81, is
23 amended to read as follows:

24 Section 3-81. As used in ~~this subarticle~~ the Combined Pesticide
Law:

1. "Aircraft" means any contrivance used or designed for
navigation of or flight in the air over land or water and is

1 designed for or adaptable for use in applying pesticides as sprays,
2 dusts, or other forms;

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

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

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

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

23 6. "Certificate" means a written document issued to an
24 individual by the State Board of Agriculture which indicates that

1 the individual has met the certification standards established by
2 ~~this subarticle~~ the Combined Pesticide Law for the category of
3 pesticide application shown on the certificate. A certificate does
4 not allow a person to do work as a commercial, noncommercial,
5 service technician, or private applicator unless employed by a
6 licensed entity or has a valid license issued by the Board;

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

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

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

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

21 11. "Contract" means a binding, written agreement between two
22 or more persons spelling out terms and conditions and includes, but
23 is not limited to, warranties or guarantees for pesticide
24 application. For structural pest control applications, the contract

1 shall also include a statement, plat, or diagram showing all
2 locations of visible termites and termite damaged materials which
3 are observed, and how the application was performed;

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

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

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

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

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

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

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

10 19. "Herbicide" means any pesticide intended for preventing,
11 destroying, repelling, desiccating, or mitigating any weed, or for
12 defoliating plants, preventing fruit drop, and inhibiting sprouting;

13 20. "Inert ingredient" means an ingredient, which is not an
14 active ingredient;

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

20 22. "Insect" means any of the numerous small invertebrate six-
21 legged animals generally having the body more or less obviously
22 segmented, many belonging to the class Insecta, including, but not
23 limited to, beetles, bugs, and flies as well as allied classes of
24

1 arthropods including spiders, mites, ticks, centipedes, and wood
2 lice;

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

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

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

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

24

1 agencies of this state or other states authorized by
2 law to conduct research in the field of pesticides;

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

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

11 28. "Misbranded" means and includes:

12 a. any pesticide or device if its labeling bears any
13 statement, design, or graphic representation relative
14 to its ingredients which is false or misleading, or

15 b. any pesticide or device:

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

18 (2) if its labeling bears any reference to
19 registration under ~~this subarticle~~ the Combined
20 Pesticide Law,

21 (3) if the labeling accompanying it does not contain
22 instructions for use which are necessary and, if
23 complied with, adequate for the protection of the
24 public,

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

1 vegetation, except weeds, to which it is applied,
2 or to the person applying the pesticide;

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

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

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

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

23 33. "Pest" means any organism harmful to man including, but not
24 limited to, insects, mites, nematodes, weeds, and pathogenic

1 organisms. Pathogenic organisms include viruses, mycoplasma,
2 bacteria, rickettsia, and fungi which the Board declares to be a
3 pest;

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

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

17 36. "Registrant" means the person registering any pesticide or
18 device pursuant to the provisions of ~~this subarticle~~ the Combined
19 Pesticide Law;

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

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

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

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

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

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

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

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

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

3 SECTION 2. AMENDATORY 2 O.S. 2011, Section 3-84, is
4 amended to read as follows:

5 Section 3-84. A. The Board shall have the authority to declare
6 any form of plant or animal life or virus which is injurious to
7 plants, humans, domestic animals, articles, or substances as a pest.
8 The Board shall have the authority to classify pesticide uses as
9 being general, restricted, or both, to determine standards of
10 coloring or discoloring for pesticides, and to subject pesticides to
11 the requirements of this ~~subarticle~~ section.

12 B. The Board shall promulgate appropriate rules for carrying
13 out the provisions of this ~~subarticle, including, but not limited~~
14 ~~to, rules providing for the collection and examination of any~~
15 ~~samples necessary to evaluate the quality, quantity, or~~
16 ~~effectiveness of pesticides or devices~~ section.

17 C. ~~There shall be~~ The Board shall, to the extent practical,
18 create uniformity between the requirements of Oklahoma, ~~the several~~
19 ~~states, and the Federal Government relating to the coloring or~~
20 ~~discoloring of pesticides. The Board may promulgate rules~~
21 ~~applicable to and in conformity with the primary standards~~
22 ~~established by this subarticle, as have been or may be~~ those
23 prescribed by the Federal Insecticide, Fungicide and Rodenticide
24 Act, as amended.

1 SECTION 3. AMENDATORY 2 O.S. 2011, Section 3-85, is
2 amended to read as follows:

3 Section 3-85. A. 1. The State Board of Agriculture shall
4 administer and enforce the provisions of ~~this subarticle and the~~
5 Oklahoma Combined Pesticide Law.

6 2. The State Board of Agriculture shall promulgate rules and
7 standards for the application, use or sale of pesticides, rules for
8 pesticide registration, standards for contracts and recordkeeping,
9 work performance, prescribe standards for the licensing of
10 application of pesticides, issuing pesticide dealer permits,
11 certification, recertification procedures, and storing and disposal
12 of pesticide and pesticide containers.

13 ~~2. The rules and standards shall conform, at a minimum, to~~
14 ~~existing state law,~~

15 3. The Board shall, to the extent practical, create uniformity
16 between the requirements of Oklahoma and to those prescribed by the
17 Federal Insecticide, Fungicide and Rodenticide Act.

18 ~~3.~~ 4. The Board ~~shall~~ is empowered to cooperate with and
19 negotiate reciprocal agreements with the federal government or any
20 state, or any department or agency of either for the purpose of
21 fulfilling the intent of this ~~subarticle~~ section and securing
22 uniformity of rules.

23 ~~4.~~ 5. The Board may inspect any work, records, or contracts of
24 each applicator, manufacturer, or dealer to determine whether or not

1 the work is performed according to the provisions of this ~~subarticle~~
2 section or rules promulgated thereunder.

3 ~~5.~~ 6. For the purpose of securing uniformity of rules, no city,
4 town, county, or other political subdivision of this state shall
5 adopt or continue in effect any ordinance, rule, regulation, or
6 statute regarding pesticide sale or use that is more stringent than
7 the rules of the Board, including, but not limited to, registration,
8 notification, posting, advertising and marketing, distribution,
9 applicator training and certification, storage, transportation,
10 disposal, disclosure of confidential information, or product
11 composition.

12 ~~6.~~ 7. The Board may take samples of pesticide materials in
13 order to determine their concentration or residue level. If the
14 Board finds that such samples are not within established standards,
15 the Board's finding shall be considered prima facie evidence that a
16 violation has occurred.

17 a. The concentration of an active ingredient for a
18 pesticide concentrate, shall not exceed or be less
19 than the concentration of active ingredient stated on
20 the pesticide label by more or less than the tolerance
21 for active ingredient concentration specified by this
22 paragraph. Concentrations above or below the
23 established tolerance shall be prima facie evidence
24 that a pesticide is adulterated or misbranded:

- (1) pesticides with a stated concentration of active ingredient less than 0.51% shall not exceed 150% or fail to meet 80% of the stated active ingredient on the pesticide label when analyzed,
- (2) pesticides with a stated concentration of active ingredient not less than 0.51% and not more than 1.0% shall not exceed 140% or fail to meet 85% of the stated active ingredient on the pesticide label when analyzed,
- (3) pesticides with a stated concentration of active ingredient not less than 1.01% and not more than 5.00% shall not exceed 140% or fail to meet 90% of the stated active ingredient on the pesticide label when analyzed,
- (4) pesticides with a stated concentration of active ingredient not less than 5.01% and not more than 10.00% shall not exceed 130% or fail to meet 92% of the stated active ingredient on the pesticide label when analyzed,
- (5) pesticides with a stated concentration of active ingredient not less than 10.01% and not more than 50.00% shall not exceed 125% or fail to meet 94% of the stated active ingredient on the pesticide label when analyzed, and

(6) pesticides with a stated concentration of active ingredient not less than 50.01% and more than 100.00% shall not exceed 115% or fail to meet 96% of the stated active ingredient on the pesticide label when analyzed.

b. The concentration of an active ingredient for a pesticide concentrate in fertilizer and pesticide mixtures, pressed blocks and nonuniform baits shall not be less than the concentration of active ingredient stated on the pesticide label for the tolerance for active ingredient concentration specified by this paragraph. Concentrations below the established tolerance shall be prima facie evidence that a pesticide is adulterated or misbranded:

(1) when the stated concentration of active ingredient on the pesticide label is less than 1.26% the minimum amount of active ingredient shall be at least 67.0% of the stated concentration on the pesticide label when analyzed,

(2) when the stated concentration of active ingredient on the pesticide label is not less than 1.26% or more than 5.0% the minimum amount of active ingredient shall be at least 80.0% of

1 the stated concentration on the pesticide label
2 when analyzed, and

3 (3) when the stated concentration of active
4 ingredient on the pesticide label is more than
5 5.0% the minimum amount of active ingredient
6 shall be at least 85.0% of the stated
7 concentration on the pesticide label when
8 analyzed.

9 c. The concentration of an active ingredient for a
10 pesticide concentrate in rotenone, pyrethrin and other
11 natural product formulations shall not be less than
12 the concentration of active ingredient stated on the
13 pesticide label for the tolerance for active
14 ingredient concentration specified by this paragraph.
15 Concentrations below the established tolerance shall
16 be prima facie evidence that a pesticide is
17 adulterated or misbranded:

18 (1) when the stated concentration of active
19 ingredient on the pesticide label is less than
20 0.51% the minimum amount of active ingredient
21 shall be at least 70.0% of the state
22 concentration on the pesticide label when
23 analyzed,
24

1 (2) when the stated concentration of active
2 ingredient on the pesticide label is not less
3 than 0.51% or more than 1.25% the minimum amount
4 of active ingredient shall be at least 80.0% of
5 the stated concentration on the pesticide label
6 when analyzed, and

7 (3) when the stated concentration of active
8 ingredient on the pesticide label is more than
9 1.25% the minimum amount of active ingredient
10 shall be at least 85.0% of the stated
11 concentration on the pesticide label when
12 analyzed.

13 d. The concentration of an active ingredient for a
14 pesticide tank mix, as stated by the applicator and
15 allowed by the pesticide label, shall not exceed or be
16 less than the concentration of active ingredient
17 stated by more or less than the tolerance for active
18 ingredient concentration specified by this paragraph.
19 Concentrations above or below the established
20 tolerance shall be prima facie evidence of a use
21 unsuitable, unsafe or inconsistent with its label or
22 labeling. No pesticide shall be formulated into a
23 tank mix at a concentration in excess of or below that
24 permitted by the pesticide label without written

1 approval from an authorized agent of the Oklahoma
2 Department of Agriculture, Food, and Forestry:

3 (1) when the stated concentration or that allowed by
4 the pesticide label is less than 0.51% the
5 minimum amount of active ingredient in the tank
6 mix shall be at least 60.0% and not more than
7 150.0% of the stated concentration or that
8 allowed by the pesticide label when analyzed,

9 (2) when the stated concentration or that allowed by
10 the pesticide label is not less than 0.51% and
11 not more than 1.0% the minimum amount of active
12 ingredient in the tank mix shall be at least
13 70.0% and not more than 140.0% of the stated
14 concentration or that allowed by the pesticide
15 label when analyzed,

16 (3) when the stated concentration or that allowed by
17 the pesticide label is not less than 1.01% and
18 not more than 5.0% the minimum amount of active
19 ingredient in the tank mix shall be at least
20 80.0% and not more than 140.0% of the stated
21 concentration or that allowed by the pesticide
22 label when analyzed,

23 (4) when the stated concentration or that allowed by
24 the pesticide label is not less than 5.01% and

1 not more than 10.0% the minimum amount of active
2 ingredient in the tank mix shall be at least
3 84.0% and not more than 130.0% of the stated
4 concentration or that allowed by the pesticide
5 label when analyzed,

6 (5) when the stated concentration or that allowed by
7 the pesticide label is not less than 10.01% and
8 not more than 50.0% the minimum amount of active
9 ingredient in the tank mix shall be at least
10 88.0% and not more than 125.0% of the stated
11 concentration or that allowed by the pesticide
12 label when analyzed, and

13 (6) when the stated concentration or that allowed by
14 the pesticide label is not less than 50.01% and
15 not more than 100.0% the minimum amount of active
16 ingredient in the tank mix shall be at least
17 92.0% and not more than 115.0% of the stated
18 concentration or that allowed by the pesticide
19 label when analyzed.

20 e. ~~The threshold level for soil residue of pesticide~~
21 ~~concentration expressed in parts per million (ppm) for~~
22 ~~post construction termiticide treatment shall meet or~~
23 ~~exceed the established concentration specified by this~~
24 ~~paragraph in soils sampled within one hundred eighty~~

1 ~~(180) days of treatment for vertical barriers. Soil~~
2 ~~residue concentration below the threshold level~~
3 ~~specified by this paragraph shall be prima facie~~
4 ~~evidence of a use unsuitable, unsafe or inconsistent~~
5 ~~with its label or labeling:~~

6 ~~(1) the termiticide Torpedo shall have a soil residue~~
7 ~~threshold level of at least sixty-three (63) ppm,~~

8 ~~(2) the termiticide Tribute shall have a soil residue~~
9 ~~threshold level of at least one hundred fifty~~
10 ~~(150) ppm,~~

11 ~~(3) the termiticide Prevail FT shall have a soil~~
12 ~~residue threshold level of at least forty-six~~
13 ~~(46) ppm,~~

14 ~~(4) the termiticide Demon TC shall have a soil~~
15 ~~residue threshold level of at least twenty-eight~~
16 ~~(28) ppm,~~

17 ~~(5) the termiticide Dragnet FT shall have a soil~~
18 ~~residue threshold level of at least eighty-five~~
19 ~~(85) ppm,~~

20 ~~(6) the termiticide Dursban TC shall have a soil~~
21 ~~residue threshold level of at least fifty-one~~
22 ~~(51) ppm, and~~

23 ~~(7) the termiticide Premise shall have a soil residue~~
24 ~~threshold level of at least ten (10) ppm.~~

1 ~~f. The threshold level for soil residue of pesticide~~
2 ~~concentration expressed in parts per million (ppm) for~~
3 ~~preconstruction termiticide treatment shall meet or~~
4 ~~exceed the established concentration specified by this~~
5 ~~paragraph in soils sampled within thirty (30) days of~~
6 ~~treatment for vertical barriers. Soil residue~~
7 ~~concentration below the threshold level specified by~~
8 ~~this paragraph shall be prima facie evidence of a use~~
9 ~~unsuitable, unsafe or inconsistent with its label or~~
10 ~~labeling:~~

11 ~~(1) the termiticide Torpedo shall have a soil residue~~
12 ~~threshold level of at least ninety (90) ppm,~~

13 ~~(2) the termiticide Tribute shall have a soil residue~~
14 ~~threshold level of at least two hundred four~~
15 ~~(204) ppm,~~

16 ~~(3) the termiticide Prevail FT shall have a soil~~
17 ~~residue threshold level of at least sixty four~~
18 ~~(64) ppm,~~

19 ~~(4) the termiticide Demon TC shall have a soil~~
20 ~~residue threshold level of at least forty one~~
21 ~~(41) ppm,~~

22 ~~(5) the termiticide Dagnet FT shall have a soil~~
23 ~~residue threshold level of at least ninety seven~~
24 ~~(97) ppm,~~

1 ~~(6) the termiticide Dursban TC shall have a soil~~
2 ~~residue threshold level of at least one hundred~~
3 ~~(100) ppm, and~~

4 ~~(7) the termiticide Premise shall have a soil residue~~
5 ~~threshold level of at least ten (10) ppm.~~

6 g. ~~The threshold level for soil residue of pesticide~~
7 ~~concentration expressed in parts per million (ppm) for~~
8 ~~preconstruction termiticide treatment shall meet or~~
9 ~~exceed the established concentration specified by this~~
10 ~~paragraph in soils sampled within one hundred eighty~~
11 ~~(180) days of treatment for vertical barriers. Soil~~
12 ~~residue concentration below the threshold level~~
13 ~~specified by this paragraph shall be prima facie~~
14 ~~evidence of a use unsuitable, unsafe or inconsistent~~
15 ~~with its label or labeling.~~

16 ~~(1) the termiticide Torpedo shall have a soil residue~~
17 ~~threshold level of at least sixty three (63) ppm,~~

18 ~~(2) the termiticide Tribute shall have a soil residue~~
19 ~~threshold level of at least one hundred fifty~~
20 ~~(150) ppm,~~

21 ~~(3) the termiticide Prevail FT shall have a soil~~
22 ~~residue threshold level of at least forty six~~
23 ~~(46) ppm,~~

1 ~~(4) the termiticide Demon TC shall have a soil~~
2 ~~residue threshold level of at least twenty-eight~~
3 ~~(28) ppm,~~

4 ~~(5) the termiticide Dragnet FT shall have a soil~~
5 ~~residue threshold level of at least eighty-five~~
6 ~~(85) ppm,~~

7 ~~(6) the termiticide Dursban TC shall have a soil~~
8 ~~residue threshold level of at least fifty-one~~
9 ~~(51) ppm, and~~

10 ~~(7) the termiticide Premise shall have a soil residue~~
11 ~~threshold level of at least ten (10) ppm.~~

12 ~~h. The threshold level for soil residue of pesticide~~
13 ~~concentration expressed in parts per million (ppm) for~~
14 ~~preconstruction termiticide treatment shall meet or~~
15 ~~exceed the established concentration specified by this~~
16 ~~paragraph in soils sampled within thirty (30) days of~~
17 ~~treatment for horizontal barriers. Soil residue~~
18 ~~concentration below the threshold level specified by~~
19 ~~this paragraph shall be prima facie evidence of a use~~
20 ~~unsuitable, unsafe or inconsistent with its label or~~
21 ~~labeling:~~

22 ~~(1) the termiticide Torpedo shall have a soil residue~~
23 ~~threshold level of at least sixty-eight (68) ppm,~~

- ~~(2) the termiticide Tribute shall have a soil residue threshold level of at least one hundred fifty three (153) ppm,~~
- ~~(3) the termiticide Prevail FT shall have a soil residue threshold level of at least forty-eight (48) ppm,~~
- ~~(4) the termiticide Demon TC shall have a soil residue threshold level of at least thirty-one (31) ppm,~~
- ~~(5) the termiticide Dragnet FT shall have a soil residue threshold level of at least seventy-three (73) ppm,~~
- ~~(6) the termiticide Dursban TC shall have a soil residue threshold level of at least seventy-five (75) ppm, and~~
- ~~(7) the termiticide Premise shall have a soil residue threshold level of at least five (5) ppm.~~

~~i. The threshold level for soil residue of pesticide concentration expressed in parts per million (ppm) for preconstruction termiticide treatment shall meet or exceed the established concentration specified by this paragraph in soils sampled within one hundred eighty (180) days of treatment for horizontal barriers. Soil residue concentration below the threshold level~~

1 ~~specified by this paragraph shall be prima facie~~
2 ~~evidence of a use unsuitable, unsafe or inconsistent~~
3 ~~with its label or labeling.~~

4 ~~(1) the termiticide Torpedo shall have a soil residue~~
5 ~~threshold level of at least forty-seven (47) ppm,~~

6 ~~(2) the termiticide Tribute shall have a soil residue~~
7 ~~threshold level of at least one hundred thirteen~~
8 ~~(113) ppm,~~

9 ~~(3) the termiticide Prevail FT shall have a soil~~
10 ~~residue threshold level of at least thirty-five~~
11 ~~(35) ppm,~~

12 ~~(4) the termiticide Demon TC shall have a soil~~
13 ~~residue threshold level of at least twenty-one~~
14 ~~(21) ppm,~~

15 ~~(5) the termiticide Dagnet FT shall have a soil~~
16 ~~residue threshold level of at least sixty-four~~
17 ~~(64) ppm,~~

18 ~~(6) the termiticide Dursban TC shall have a soil~~
19 ~~residue threshold level of at least thirty-eight~~
20 ~~(38) ppm, and~~

21 ~~(7) the termiticide Premise shall have a soil residue~~
22 ~~threshold level of at least five (5) ppm.~~

23 ~~j.~~ The State Board of Agriculture may promulgate, by
24 rule, ~~interim~~ maximum and minimum concentrations or

1 thresholds for the other concentrate of pesticides in
2 products, or soil residues.

3 B. Authorized agents of the Board shall have the authority to
4 issue notices of violation, citations, compliance orders, stop
5 sales, or stop work orders to those persons committing violations of
6 the laws or rules relating to pesticides or pesticide application in
7 this state.

8 C. 1. Examinations of pesticides or devices shall be made
9 under the direction of the Board for the purpose of determining if
10 there has been compliance with the requirements of this ~~subarticle~~
11 section.

12 2. If it appears from examination that a pesticide or device
13 fails to comply with the provisions of this ~~subarticle~~ section, and
14 the Board contemplates instituting administrative proceedings
15 against any person, the Board shall cause notice and an opportunity
16 for a hearing given to the person pursuant to the Administrative
17 Procedures Act.

18 D. 1. Any pesticide or device distributed, sold, or offered
19 for sale within this state or delivered for transportation or
20 transported in intrastate or interstate commerce may be seized by
21 the Oklahoma Department of Agriculture, Food, and Forestry in any
22 county of the state where it may be found and if:

23 a. in the case of a pesticide, it is adulterated or
24 misbranded, it has not been registered ~~under the~~

1 ~~provisions of this subarticle~~, it fails to bear on its
2 label the required information ~~required by this~~
3 ~~subarticle~~, or it is a white powder pesticide and it
4 is not colored as required ~~under this subarticle~~, or

5 b. in the case of a device, it is misbranded.

6 2. If the pesticide or device is condemned it shall, after
7 entry of decree or judgment of a district court, be disposed of by
8 destruction or sale as the court may direct. If the article is
9 sold, the proceeds, less court costs, shall be paid to the State
10 Department of Agriculture Revolving Fund.

11 3. The court shall not order the sale or disposal of a
12 condemned pesticide or device in a manner which would be a violation
13 of this ~~subarticle~~ section or rules promulgated thereto.

14 4. The person or entity directed to dispose or sell the
15 condemned pesticide or device shall do so in a manner that complies
16 with the order of the district court and this ~~subarticle~~ section and
17 rules promulgated thereto.

18 5. The court may direct that the pesticide or article be
19 delivered to the owner for relabeling or reprocessing.

20 6. If there is a person who is successful in intervening as
21 claimant of the pesticide or device, when a decree of judgment of
22 condemnation is entered against the pesticide or device, court
23 costs, fees, storage, and other proper expenses shall be awarded
24 against such claimant.

1 E. The Board may, by publication in a manner as it may
2 prescribe, give notice of all judgments entered in action,
3 instituted under ~~the~~ its authority ~~of this subarticle~~.

4 F. All authority vested in the Board ~~by the provisions of this~~
5 ~~subarticle~~ shall with like force and effect be executed by its
6 officers, employees, and authorized agents.

7 G. EXCEPTION - The fines provided for violations ~~of this~~
8 ~~subarticle~~ may not apply to:

9 1. Any carrier while lawfully engaged in transporting a
10 pesticide within this state, if the carrier permits the Board upon
11 request to copy all records showing the transaction in and movement
12 of the pesticide and devices involved;

13 2. Public officials of this state and of the Federal Government
14 engaged in the performance of official duties;

15 3. The manufacturer or shipper of a pesticide or device for
16 experimental use only, by or under the supervision of an agency of
17 this state or of the Federal Government authorized by law to conduct
18 research in the field of pesticides or devices, or by others if the
19 pesticide or the device is not sold or if the container is plainly
20 and conspicuously marked "for experimental use only - not to be
21 sold", together with the manufacturer's name and address, if a
22 written permit has been obtained from the Board. Pesticides or
23 devices may be sold for experimental purposes subject to
24 restrictions set forth in the permit; and

1 4. Pesticides and devices intended solely for export to a
2 foreign country, and prepared or packed according to the
3 specifications or directions of the purchaser. If not exported, all
4 of the provisions of this ~~subarticle~~ section shall apply.

5 H. 1. The Department of Environmental Quality shall have
6 environmental jurisdiction over:

- 7 a. commercial manufacturers of fertilizers, grain and
8 feed products, and chemicals, and over manufacturing
9 of food and kindred products, tobacco, paper, lumber,
10 wood, textile mill and other agricultural products,
- 11 b. slaughterhouses, but not including feedlots at these
12 facilities, and
- 13 c. aquaculture and fish hatcheries, including, but not
14 limited to, discharges of pollutants and storm water
15 to waters of the state, surface impoundments and land
16 application of wastes and sludge, and other pollution
17 originating at these facilities; and

18 2. Facilities which store grain, feed, seed, fertilizer, and
19 agricultural chemicals that are required by federal National
20 Pollutant Discharge Elimination Systems (NPDES) regulations to
21 obtain a permit for storm water discharges shall only be subject to
22 the jurisdiction of the Department of Environmental Quality with
23 respect to such storm water discharges.

1 I. This section shall not prevent any political subdivision
2 from complying with any applicable federal law or regulation. A
3 political subdivision which takes any action prohibited by this
4 title in order to comply with federal requirements shall notify the
5 Board of its compliance plan prior to taking any action. The Board
6 may assist the political subdivision in complying with federal
7 requirements necessary to carry out the policy of this section. The
8 Board may permit a political subdivision to impose standards more
9 stringent than required by the Board if necessary for the political
10 subdivision to comply with federal requirements.

11 SECTION 4. This act shall become effective November 1, 2014."

12 Passed the House of Representatives the 23rd day of April, 2014.

13

14

15 _____
Presiding Officer of the House of
16 Representatives

17 Passed the Senate the ____ day of _____, 2014.

18

19

20 _____
Presiding Officer of the Senate

21

22

23

24

1 ENGROSSED SENATE
2 BILL NO. 1884

By: Justice of the Senate

3 and

4 Biggs of the House

5
6 [agriculture - Oklahoma Combined Pesticide Law -
7 threshold requirements - effective date]
8

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

10 SECTION 5. AMENDATORY 2 O.S. 2011, Section 3-81, is
11 amended to read as follows:

12 Section 3-81. As used in ~~this subarticle~~ the Combined Pesticide
13 Law:

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

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

22 3. "Adulterated" means and includes any pesticide if the
23 pesticide strength or purity falls below the professed standard of
24 quality as expressed on labeling or under which it is sold, or if

1 any substance has been substituted wholly or in part for the
2 components of the pesticide, or if any valuable constituent of the
3 components of the pesticide has been wholly or in part abstracted;

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

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

14 6. "Certificate" means a written document issued to an
15 individual by the State Board of Agriculture which indicates that
16 the individual has met the certification standards established by
17 ~~this subarticle~~ the Combined Pesticide Law for the category of
18 pesticide application shown on the certificate. A certificate does
19 not allow a person to do work as a commercial, noncommercial,
20 service technician, or private applicator unless employed by a
21 licensed entity or has a valid license issued by the Board;

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

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

3 9. "Commercial application" means the advertising of services,
4 recommendation for use, the preparation for application, ~~and~~ or the
5 physical act of applying a pesticide or employment of a device for
6 hire or compensation;

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

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

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

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

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

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

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

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

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

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

4 20. "Inert ingredient" means an ingredient, which is not an
5 active ingredient;

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

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

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

20 24. "Label" means the written, printed, or graphic matter
21 attached to the pesticide, device, or container including the
22 outside container or wrapper of the retail package of the pesticide
23 or device;

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

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

17 26. "License" means a written document issued to a person by
18 the Board which shows that the person has met all established
19 licensing requirements established by ~~this subarticle~~ the Combined
20 Pesticide Law and who is authorized to apply pesticides as a
21 commercial, noncommercial, or private applicator pursuant to the
22 license issued;

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

1 28. "Misbranded" means and includes:

2 a. any pesticide or device if its labeling bears any
3 statement, design, or graphic representation relative
4 to its ingredients which is false or misleading, or

5 b. any pesticide or device:

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

8 (2) if its labeling bears any reference to
9 registration under ~~this subarticle~~ the Combined
10 Pesticide Law,

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

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

19 (5) if the label does not bear an ingredient
20 statement on that part of the immediate container
21 and on the outside container or wrapper, if there
22 is one, through which the ingredient statement on
23 the immediate container cannot be clearly read,

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

18 29. "Noncommercial applicator" means any person, other than a
19 commercial or private applicator, who uses or supervises the use of
20 a restricted-use pesticide. The noncommercial applicator shall be
21 under the supervision of an owner or manager of property and who is
22 certified in the same manner as a commercial applicator. A
23 noncommercial applicator is subject to all requirements except those
24 pertaining to financial responsibility. Noncommercial applicator

1 includes a government employee applying restricted-use pesticides in
2 the discharge of official duties;

3 30. "Nonrestricted-use pesticide" means any pesticide, other
4 than a pesticide classified as restricted-use pesticide;

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

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

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

19 34. "Pesticide" means a substance or mixture of substances
20 intended for defoliating or desiccating plants, preventing
21 fruitdrop, inhibiting sprouting, or for preventing, destroying,
22 repelling, or mitigating any insects, rodents, fungi, bacteria,
23 weeds, or other forms of plant or animal life or viruses, which the
24

1 Board declares to be a pest, except viruses on or in humans or
2 animals;

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

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

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
24

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 insects, and the presence or absence of
16 damage. The wood infestation report does not include a bid or
17 proposal for treatment.

18 SECTION 6. AMENDATORY 2 O.S. 2011, Section 3-84, is
19 amended to read as follows:

20 Section 3-84. A. The Board shall have the authority to declare
21 any form of plant or animal life or virus which is injurious to
22 plants, humans, domestic animals, articles, or substances as a pest.
23 The Board shall have the authority to classify pesticide uses as
24 being general, restricted, or both, to determine standards of

1 coloring or discoloring for pesticides, and to subject pesticides to
2 the requirements of this ~~subarticle~~ section.

3 B. The Board ~~shall~~ may promulgate appropriate rules for
4 carrying out the provisions of this ~~subarticle, including, but not~~
5 ~~limited to, rules providing for the collection and examination of~~
6 ~~any samples necessary to evaluate the quality, quantity, or~~
7 ~~effectiveness of pesticides or devices~~ section.

8 C. ~~There shall be~~ The Board shall, to the extent practical,
9 create uniformity between the requirements of Oklahoma, ~~the several~~
10 ~~states, and the Federal Government relating to the coloring or~~
11 ~~discoloring of pesticides. The Board may promulgate rules~~
12 ~~applicable to and in conformity with the primary standards~~
13 ~~established by this subarticle, as have been or may be~~ those
14 prescribed by the Federal Insecticide, Fungicide and Rodenticide
15 Act, as amended.

16 SECTION 7. AMENDATORY 2 O.S. 2011, Section 3-85, is
17 amended to read as follows:

18 Section 3-85. A. 1. The State Board of Agriculture shall
19 administer and enforce the provisions of ~~this subarticle and the~~
20 Oklahoma Combined Pesticide Law.

21 2. The State Board of Agriculture shall promulgate rules and
22 standards for the application, use or sale of pesticides, rules for
23 pesticide registration, standards for contracts and recordkeeping,
24 work performance, prescribe standards for the licensing of

1 application of pesticides, issuing pesticide dealer permits,
2 certification, recertification procedures, and storing and disposal
3 of pesticide and pesticide containers.

4 ~~2. The rules and standards shall conform, at a minimum, to~~
5 ~~existing state law,~~

6 3. The Board shall, to the extent practical, create uniformity
7 between the requirements of Oklahoma and to those prescribed by the
8 Federal Insecticide, Fungicide and Rodenticide Act.

9 ~~3.~~ 4. The Board ~~shall~~ is empowered to cooperate with and
10 negotiate reciprocal agreements with the federal government or any
11 state, or any department or agency of either for the purpose of
12 fulfilling the intent of this ~~subarticle~~ section and securing
13 uniformity of rules.

14 ~~4.~~ 5. The Board may inspect any work, records, or contracts of
15 each applicator, manufacturer, or dealer to determine whether or not
16 the work is performed according to the provisions of this ~~subarticle~~
17 section or rules promulgated thereunder.

18 ~~5.~~ 6. For the purpose of securing uniformity of rules, no city,
19 town, county, or other political subdivision of this state shall
20 adopt or continue in effect any ordinance, rule, regulation, or
21 statute regarding pesticide sale or use that is more stringent than
22 the rules of the Board, including, but not limited to, registration,
23 notification, posting, advertising and marketing, distribution,
24 applicator training and certification, storage, transportation,

1 disposal, disclosure of confidential information, or product
2 composition.

3 ~~6.~~ 7. The Board may take samples of pesticide materials in
4 order to determine their concentration or residue level. If the
5 Board finds that such samples are not within established standards,
6 the Board's finding shall be considered prima facie evidence that a
7 violation has occurred.

8 a. The concentration of an active ingredient for a
9 pesticide concentrate, shall not exceed or be less
10 than the concentration of active ingredient stated on
11 the pesticide label by more or less than the tolerance
12 for active ingredient concentration specified by this
13 paragraph. Concentrations above or below the
14 established tolerance shall be prima facie evidence
15 that a pesticide is adulterated or misbranded:

- 16 (1) pesticides with a stated concentration of active
17 ingredient less than 0.51% shall not exceed 150%
18 or fail to meet 80% of the stated active
19 ingredient on the pesticide label when analyzed,
20 (2) pesticides with a stated concentration of active
21 ingredient not less than 0.51% and not more than
22 1.0% shall not exceed 140% or fail to meet 85% of
23 the stated active ingredient on the pesticide
24 label when analyzed,

1 (3) pesticides with a stated concentration of active
2 ingredient not less than 1.01% and not more than
3 5.00% shall not exceed 140% or fail to meet 90%
4 of the stated active ingredient on the pesticide
5 label when analyzed,

6 (4) pesticides with a stated concentration of active
7 ingredient not less than 5.01% and not more than
8 10.00% shall not exceed 130% or fail to meet 92%
9 of the stated active ingredient on the pesticide
10 label when analyzed,

11 (5) pesticides with a stated concentration of active
12 ingredient not less than 10.01% and not more than
13 50.00% shall not exceed 125% or fail to meet 94%
14 of the stated active ingredient on the pesticide
15 label when analyzed, and

16 (6) pesticides with a stated concentration of active
17 ingredient not less than 50.01% and more than
18 100.00% shall not exceed 115% or fail to meet 96%
19 of the stated active ingredient on the pesticide
20 label when analyzed.

21 b. The concentration of an active ingredient for a
22 pesticide concentrate in fertilizer and pesticide
23 mixtures, pressed blocks and nonuniform baits shall
24 not be less than the concentration of active

1 ingredient stated on the pesticide label for the
2 tolerance for active ingredient concentration
3 specified by this paragraph. Concentrations below the
4 established tolerance shall be prima facie evidence
5 that a pesticide is adulterated or misbranded:

6 (1) when the stated concentration of active
7 ingredient on the pesticide label is less than
8 1.26% the minimum amount of active ingredient
9 shall be at least 67.0% of the stated
10 concentration on the pesticide label when
11 analyzed,

12 (2) when the stated concentration of active
13 ingredient on the pesticide label is not less
14 than 1.26% or more than 5.0% the minimum amount
15 of active ingredient shall be at least 80.0% of
16 the stated concentration on the pesticide label
17 when analyzed, and

18 (3) when the stated concentration of active
19 ingredient on the pesticide label is more than
20 5.0% the minimum amount of active ingredient
21 shall be at least 85.0% of the stated
22 concentration on the pesticide label when
23 analyzed.
24

c. The concentration of an active ingredient for a pesticide concentrate in rotenone, pyrethrin and other natural product formulations shall not be less than the concentration of active ingredient stated on the pesticide label for the tolerance for active ingredient concentration specified by this paragraph. Concentrations below the established tolerance shall be prima facie evidence that a pesticide is adulterated or misbranded:

(1) when the stated concentration of active ingredient on the pesticide label is less than 0.51% the minimum amount of active ingredient shall be at least 70.0% of the state concentration on the pesticide label when analyzed,

(2) when the stated concentration of active ingredient on the pesticide label is not less than 0.51% or more than 1.25% the minimum amount of active ingredient shall be at least 80.0% of the stated concentration on the pesticide label when analyzed, and

(3) when the stated concentration of active ingredient on the pesticide label is more than 1.25% the minimum amount of active ingredient

1 shall be at least 85.0% of the stated
2 concentration on the pesticide label when
3 analyzed.

4 d. The concentration of an active ingredient for a
5 pesticide tank mix, as stated by the applicator and
6 allowed by the pesticide label, shall not exceed or be
7 less than the concentration of active ingredient
8 stated by more or less than the tolerance for active
9 ingredient concentration specified by this paragraph.
10 Concentrations above or below the established
11 tolerance shall be prima facie evidence of a use
12 unsuitable, unsafe or inconsistent with its label or
13 labeling. No pesticide shall be formulated into a
14 tank mix at a concentration in excess of or below that
15 permitted by the pesticide label without written
16 approval from an authorized agent of the Oklahoma
17 Department of Agriculture, Food, and Forestry:

18 (1) when the stated concentration or that allowed by
19 the pesticide label is less than 0.51% the
20 minimum amount of active ingredient in the tank
21 mix shall be at least 60.0% and not more than
22 150.0% of the stated concentration or that
23 allowed by the pesticide label when analyzed,
24

- 1 (2) when the stated concentration or that allowed by
2 the pesticide label is not less than 0.51% and
3 not more than 1.0% the minimum amount of active
4 ingredient in the tank mix shall be at least
5 70.0% and not more than 140.0% of the stated
6 concentration or that allowed by the pesticide
7 label when analyzed,
- 8 (3) when the stated concentration or that allowed by
9 the pesticide label is not less than 1.01% and
10 not more than 5.0% the minimum amount of active
11 ingredient in the tank mix shall be at least
12 80.0% and not more than 140.0% of the stated
13 concentration or that allowed by the pesticide
14 label when analyzed,
- 15 (4) when the stated concentration or that allowed by
16 the pesticide label is not less than 5.01% and
17 not more than 10.0% the minimum amount of active
18 ingredient in the tank mix shall be at least
19 84.0% and not more than 130.0% of the stated
20 concentration or that allowed by the pesticide
21 label when analyzed,
- 22 (5) when the stated concentration or that allowed by
23 the pesticide label is not less than 10.01% and
24 not more than 50.0% the minimum amount of active

ingredient in the tank mix shall be at least 88.0% and not more than 125.0% of the stated concentration or that allowed by the pesticide label when analyzed, and

- (6) when the stated concentration or that allowed by the pesticide label is not less than 50.01% and not more than 100.0% the minimum amount of active ingredient in the tank mix shall be at least 92.0% and not more than 115.0% of the stated concentration or that allowed by the pesticide label when analyzed.

e. ~~The threshold level for soil residue of pesticide concentration expressed in parts per million (ppm) for post construction termiticide treatment shall meet or exceed the established concentration specified by this paragraph in soils sampled within one hundred eighty (180) days of treatment for vertical barriers. Soil residue concentration below the threshold level specified by this paragraph shall be prima facie evidence of a use unsuitable, unsafe or inconsistent with its label or labeling.~~

~~(1) the termiticide Torpedo shall have a soil residue threshold level of at least sixty three (63) ppm,~~

~~(2) the termiticide Tribute shall have a soil residue threshold level of at least one hundred fifty (150) ppm,~~

~~(3) the termiticide Prevail FT shall have a soil residue threshold level of at least forty-six (46) ppm,~~

~~(4) the termiticide Demon TC shall have a soil residue threshold level of at least twenty-eight (28) ppm,~~

~~(5) the termiticide Dragnet FT shall have a soil residue threshold level of at least eighty-five (85) ppm,~~

~~(6) the termiticide Dursban TC shall have a soil residue threshold level of at least fifty-one (51) ppm, and~~

~~(7) the termiticide Premise shall have a soil residue threshold level of at least ten (10) ppm.~~

~~f. The threshold level for soil residue of pesticide concentration expressed in parts per million (ppm) for preconstruction termiticide treatment shall meet or exceed the established concentration specified by this paragraph in soils sampled within thirty (30) days of treatment for vertical barriers. Soil residue concentration below the threshold level specified by~~

1 ~~this paragraph shall be prima facie evidence of a use~~
2 ~~unsuitable, unsafe or inconsistent with its label or~~
3 ~~labeling:~~

4 ~~(1) the termiticide Torpedo shall have a soil residue~~
5 ~~threshold level of at least ninety (90) ppm,~~

6 ~~(2) the termiticide Tribute shall have a soil residue~~
7 ~~threshold level of at least two hundred four~~
8 ~~(204) ppm,~~

9 ~~(3) the termiticide Prevail FT shall have a soil~~
10 ~~residue threshold level of at least sixty-four~~
11 ~~(64) ppm,~~

12 ~~(4) the termiticide Demon TC shall have a soil~~
13 ~~residue threshold level of at least forty one~~
14 ~~(41) ppm,~~

15 ~~(5) the termiticide Dagnet FT shall have a soil~~
16 ~~residue threshold level of at least ninety-seven~~
17 ~~(97) ppm,~~

18 ~~(6) the termiticide Dursban TC shall have a soil~~
19 ~~residue threshold level of at least one hundred~~
20 ~~(100) ppm, and~~

21 ~~(7) the termiticide Premise shall have a soil residue~~
22 ~~threshold level of at least ten (10) ppm.~~

23 ~~g. The threshold level for soil residue of pesticide~~
24 ~~concentration expressed in parts per million (ppm) for~~

1 ~~preconstruction termiticide treatment shall meet or~~
2 ~~exceed the established concentration specified by this~~
3 ~~paragraph in soils sampled within one hundred eighty~~
4 ~~(180) days of treatment for vertical barriers. Soil~~
5 ~~residue concentration below the threshold level~~
6 ~~specified by this paragraph shall be prima facie~~
7 ~~evidence of a use unsuitable, unsafe or inconsistent~~
8 ~~with its label or labeling:~~

9 ~~(1) the termiticide Torpedo shall have a soil residue~~
10 ~~threshold level of at least sixty-three (63) ppm,~~

11 ~~(2) the termiticide Tribute shall have a soil residue~~
12 ~~threshold level of at least one hundred fifty~~
13 ~~(150) ppm,~~

14 ~~(3) the termiticide Prevail FT shall have a soil~~
15 ~~residue threshold level of at least forty-six~~
16 ~~(46) ppm,~~

17 ~~(4) the termiticide Demon TC shall have a soil~~
18 ~~residue threshold level of at least twenty-eight~~
19 ~~(28) ppm,~~

20 ~~(5) the termiticide Dragnet FT shall have a soil~~
21 ~~residue threshold level of at least eighty-five~~
22 ~~(85) ppm,~~

~~(6) the termiticide Dursban TC shall have a soil residue threshold level of at least fifty-one (51) ppm, and~~

~~(7) the termiticide Premise shall have a soil residue threshold level of at least ten (10) ppm.~~

~~h. The threshold level for soil residue of pesticide concentration expressed in parts per million (ppm) for preconstruction termiticide treatment shall meet or exceed the established concentration specified by this paragraph in soils sampled within thirty (30) days of treatment for horizontal barriers. Soil residue concentration below the threshold level specified by this paragraph shall be prima facie evidence of a use unsuitable, unsafe or inconsistent with its label or labeling:~~

~~(1) the termiticide Torpedo shall have a soil residue threshold level of at least sixty-eight (68) ppm,~~

~~(2) the termiticide Tribute shall have a soil residue threshold level of at least one hundred fifty three (153) ppm,~~

~~(3) the termiticide Prevail FT shall have a soil residue threshold level of at least forty-eight (48) ppm,~~

~~(4) the termiticide Demon TC shall have a soil residue threshold level of at least thirty-one (31) ppm,~~

~~(5) the termiticide Dragnet FT shall have a soil residue threshold level of at least seventy-three (73) ppm,~~

~~(6) the termiticide Dursban TC shall have a soil residue threshold level of at least seventy-five (75) ppm, and~~

~~(7) the termiticide Premise shall have a soil residue threshold level of at least five (5) ppm.~~

~~i. The threshold level for soil residue of pesticide concentration expressed in parts per million (ppm) for preconstruction termiticide treatment shall meet or exceed the established concentration specified by this paragraph in soils sampled within one hundred eighty (180) days of treatment for horizontal barriers. Soil residue concentration below the threshold level specified by this paragraph shall be prima facie evidence of a use unsuitable, unsafe or inconsistent with its label or labeling.~~

~~(1) the termiticide Torpedo shall have a soil residue threshold level of at least forty-seven (47) ppm,~~

~~(2) the termiticide Tribute shall have a soil residue threshold level of at least one hundred thirteen (113) ppm,~~
~~(3) the termiticide Prevail FT shall have a soil residue threshold level of at least thirty-five (35) ppm,~~
~~(4) the termiticide Demon TC shall have a soil residue threshold level of at least twenty-one (21) ppm,~~
~~(5) the termiticide Dragnet FT shall have a soil residue threshold level of at least sixty-four (64) ppm,~~
~~(6) the termiticide Dursban TC shall have a soil residue threshold level of at least thirty-eight (38) ppm, and~~
~~(7) the termiticide Premise shall have a soil residue threshold level of at least five (5) ppm.~~

~~j.~~ The State Board of Agriculture may promulgate, by rule, ~~interim~~ maximum and minimum concentrations or thresholds for the other concentrate of pesticides in products, or soil residues.

B. Authorized agents of the Board shall have the authority to issue notices of violation, citations, compliance orders, stop sales, or stop work orders to those persons committing violations of

1 the laws or rules relating to pesticides or pesticide application in
2 this state.

3 C. 1. Examinations of pesticides or devices shall be made
4 under the direction of the Board for the purpose of determining if
5 there has been compliance with the requirements of this ~~subarticle~~
6 section.

7 2. If it appears from examination that a pesticide or device
8 fails to comply with the provisions of this ~~subarticle~~ section, and
9 the Board contemplates instituting administrative proceedings
10 against any person, the Board shall cause notice and an opportunity
11 for a hearing given to the person pursuant to the Administrative
12 Procedures Act.

13 D. 1. Any pesticide or device distributed, sold, or offered
14 for sale within this state or delivered for transportation or
15 transported in intrastate or interstate commerce may be seized by
16 the Oklahoma Department of Agriculture, Food, and Forestry in any
17 county of the state where it may be found and if:

- 18 a. in the case of a pesticide, it is adulterated or
19 misbranded, it has not been registered ~~under the~~
20 ~~provisions of this subarticle~~, it fails to bear on its
21 label the required information ~~required by this~~
22 ~~subarticle~~, or it is a white powder pesticide and it
23 is not colored as required ~~under this subarticle~~, or
24 b. in the case of a device, it is misbranded.

1 2. If the pesticide or device is condemned it shall, after
2 entry of decree or judgment of a district court, be disposed of by
3 destruction or sale as the court may direct. If the article is
4 sold, the proceeds, less court costs, shall be paid to the State
5 Department of Agriculture Revolving Fund.

6 3. The court shall not order the sale or disposal of a
7 condemned pesticide or device in a manner which would be a violation
8 of this ~~subarticle~~ section or rules promulgated thereto.

9 4. The person or entity directed to dispose or sell the
10 condemned pesticide or device shall do so in a manner that complies
11 with the order of the district court and this ~~subarticle~~ section and
12 rules promulgated thereto.

13 5. The court may direct that the pesticide or article be
14 delivered to the owner for relabeling or reprocessing.

15 6. If there is a person who is successful in intervening as
16 claimant of the pesticide or device, when a decree of judgment of
17 condemnation is entered against the pesticide or device, court
18 costs, fees, storage, and other proper expenses shall be awarded
19 against such claimant.

20 E. The Board may, by publication in a manner as it may
21 prescribe, give notice of all judgments entered in action,
22 instituted under ~~the~~ its authority ~~of this subarticle~~.

1 F. All authority vested in the Board ~~by the provisions of this~~
2 ~~subarticle~~ shall with like force and effect be executed by its
3 officers, employees, and authorized agents.

4 G. EXCEPTION - The fines provided for violations ~~of this~~
5 ~~subarticle~~ may not apply to:

6 1. Any carrier while lawfully engaged in transporting a
7 pesticide within this state, if the carrier permits the Board upon
8 request to copy all records showing the transaction in and movement
9 of the pesticide and devices involved;

10 2. Public officials of this state and of the Federal Government
11 engaged in the performance of official duties;

12 3. The manufacturer or shipper of a pesticide or device for
13 experimental use only, by or under the supervision of an agency of
14 this state or of the Federal Government authorized by law to conduct
15 research in the field of pesticides or devices, or by others if the
16 pesticide or the device is not sold or if the container is plainly
17 and conspicuously marked "for experimental use only - not to be
18 sold", together with the manufacturer's name and address, if a
19 written permit has been obtained from the Board. Pesticides or
20 devices may be sold for experimental purposes subject to
21 restrictions set forth in the permit; and

22 4. Pesticides and devices intended solely for export to a
23 foreign country, and prepared or packed according to the
24

1 specifications or directions of the purchaser. If not exported, all
2 of the provisions of this ~~subarticle~~ section shall apply.

3 H. 1. The Department of Environmental Quality shall have
4 environmental jurisdiction over:

- 5 a. commercial manufacturers of fertilizers, grain and
6 feed products, and chemicals, and over manufacturing
7 of food and kindred products, tobacco, paper, lumber,
8 wood, textile mill and other agricultural products,
- 9 b. slaughterhouses, but not including feedlots at these
10 facilities, and
- 11 c. aquaculture and fish hatcheries, including, but not
12 limited to, discharges of pollutants and storm water
13 to waters of the state, surface impoundments and land
14 application of wastes and sludge, and other pollution
15 originating at these facilities; and

16 2. Facilities which store grain, feed, seed, fertilizer, and
17 agricultural chemicals that are required by federal National
18 Pollutant Discharge Elimination Systems (NPDES) regulations to
19 obtain a permit for storm water discharges shall only be subject to
20 the jurisdiction of the Department of Environmental Quality with
21 respect to such storm water discharges.

22 I. This section shall not prevent any political subdivision
23 from complying with any applicable federal law or regulation. A
24 political subdivision which takes any action prohibited by this

1 title in order to comply with federal requirements shall notify the
2 Board of its compliance plan prior to taking any action. The Board
3 may assist the political subdivision in complying with federal
4 requirements necessary to carry out the policy of this section. The
5 Board may permit a political subdivision to impose standards more
6 stringent than required by the Board if necessary for the political
7 subdivision to comply with federal requirements.

8 SECTION 8. This act shall become effective November 1, 2014.

9 Passed the Senate the 13th day of March, 2014.

10

11

Presiding Officer of the Senate

12

13 Passed the House of Representatives the ____ day of _____,
14 2014.

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Presiding Officer of the House
of Representatives

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