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February 28, 2017

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 634

By: Brecheen

An Act relating to pesticides; amending 2 O.S. 2011, Section 3-85, as amended by Section 3, Chapter 280, O.S.L. 2014 (2 O.S. Supp. 2016, Section 3-85), which relates to the Combined Pesticide Law; directing the Department of Agriculture, Food, and Forestry to promulgate rules and standards for the use of warfarin-based pesticide; and providing an effective date.

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

SECTION 1. AMENDATORY 2 O.S. 2011, Section 3-85, as amended by Section 3, Chapter 280, O.S.L. 2014 (2 O.S. Supp. 2016, Section 3-85), is amended to read as follows:

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

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

1 certification, recertification procedures, and storing and disposal
2 of pesticide and pesticide containers.

3 3. The Board may promulgate rules and standards for the
4 application, use, and sale of warfarin-based pesticides to be used
5 for exterminating feral swine.

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

9 ~~4.~~ 5. The Board is empowered to cooperate with and negotiate
10 reciprocal agreements with the federal government or any state, or
11 any department or agency of either for the purpose of fulfilling the
12 intent of this section and securing uniformity of rules.

13 ~~5.~~ 6. The Board may inspect any work, records, or contracts of
14 each applicator, manufacturer, or dealer to determine whether or not
15 the work is performed according to the provisions of this section or
16 rules promulgated thereunder.

17 ~~6.~~ 7. For the purpose of securing uniformity of rules, no city,
18 town, county, or other political subdivision of this state shall
19 adopt or continue in effect any ordinance, rule, regulation, or
20 statute regarding pesticide sale or use that is more stringent than
21 the rules of the Board, including, but not limited to, registration,
22 notification, posting, advertising and marketing, distribution,
23 applicator training and certification, storage, transportation,
24

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

3 ~~7.~~ 8. 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

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

10 (1) when the stated concentration of active
11 ingredient on the pesticide label is less than
12 0.51% the minimum amount of active ingredient
13 shall be at least 70.0% of the state
14 concentration on the pesticide label when
15 analyzed,

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

22 (3) when the stated concentration of active
23 ingredient on the pesticide label is more than
24 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 State Board of Agriculture may promulgate, by rule, 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 the laws or rules relating to pesticides or pesticide application in this state.

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

1 2. If it appears from examination that a pesticide or device
2 fails to comply with the provisions of this section, and the Board
3 contemplates instituting administrative proceedings against any
4 person, the Board shall cause notice and an opportunity for a
5 hearing given to the person pursuant to the Administrative
6 Procedures Act.

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

12 a. in the case of a pesticide, it is adulterated or
13 misbranded, it has not been registered, it fails to
14 bear on its label the required information, or it is a
15 white powder pesticide and it is not colored as
16 required, or

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

18 2. If the pesticide or device is condemned it shall, after
19 entry of decree or judgment of a district court, be disposed of by
20 destruction or sale as the court may direct. If the article is
21 sold, the proceeds, less court costs, shall be paid to the State
22 Department of Agriculture Revolving Fund.
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1 3. The court shall not order the sale or disposal of a
2 condemned pesticide or device in a manner which would be a violation
3 of this section or rules promulgated thereto.

4 4. The person or entity directed to dispose or sell the
5 condemned pesticide or device shall do so in a manner that complies
6 with the order of the district court and this section and rules
7 promulgated thereto.

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

10 6. If there is a person who is successful in intervening as
11 claimant of the pesticide or device, when a decree of judgment of
12 condemnation is entered against the pesticide or device, court
13 costs, fees, storage, and other proper expenses shall be awarded
14 against such claimant.

15 E. The Board may, by publication in a manner as it may
16 prescribe, give notice of all judgments entered in action,
17 instituted under its authority .

18 F. All authority vested in the Board shall with like force and
19 effect be executed by its officers, employees, and authorized
20 agents.

21 G. EXCEPTION - The fines provided for violations may not apply
22 to:

23 1. Any carrier while lawfully engaged in transporting a
24 pesticide within this state, if the carrier permits the Board upon

1 request to copy all records showing the transaction in and movement
2 of the pesticide and devices involved;

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

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

15 4. Pesticides and devices intended solely for export to a
16 foreign country, and prepared or packed according to the
17 specifications or directions of the purchaser. If not exported, all
18 of the provisions of this section shall apply.

19 H. 1. The Department of Environmental Quality shall have
20 environmental jurisdiction over:

21 a. commercial manufacturers of fertilizers, grain and
22 feed products, and chemicals, and over manufacturing
23 of food and kindred products, tobacco, paper, lumber,
24 wood, textile mill and other agricultural products,

1 b. slaughterhouses, but not including feedlots at these
2 facilities, and

3 c. aquaculture and fish hatcheries, including, but not
4 limited to, discharges of pollutants and storm water
5 to waters of the state, surface impoundments and land
6 application of wastes and sludge, and other pollution
7 originating at these facilities; and

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

14 I. This section shall not prevent any political subdivision
15 from complying with any applicable federal law or regulation. A
16 political subdivision which takes any action prohibited by this
17 title in order to comply with federal requirements shall notify the
18 Board of its compliance plan prior to taking any action. The Board
19 may assist the political subdivision in complying with federal
20 requirements necessary to carry out the policy of this section. The
21 Board may permit a political subdivision to impose standards more
22 stringent than required by the Board if necessary for the political
23 subdivision to comply with federal requirements.

SECTION 2. This act shall become effective November 1, 2017.

COMMITTEE REPORT BY: COMMITTEE ON AGRICULTURE AND WILDLIFE
February 28, 2017 - DO PASS AS AMENDED