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February 24, 2020

AS AMENDED

SENATE BILL NO. 1735

By: Howard

[Combined Pesticide Law - enforcement and rules and standards - termite bait systems as a preconstruction treatment - 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. 2019, 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, certification, recertification procedures, and storing and disposal of pesticide and pesticide containers.

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

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

8 5. The Board may inspect any work, records, or contracts of
9 each applicator, manufacturer, or dealer to determine whether or not
10 the work is performed according to the provisions of this section or
11 rules promulgated thereunder.

12 6. For the purpose of securing uniformity of rules, no city,
13 town, county, or other political subdivision of this state shall
14 adopt or continue in effect any ordinance, rule, regulation, or
15 statute regarding pesticide sale or use that is more stringent than
16 the rules of the Board, including, but not limited to, registration,
17 notification, posting, advertising and marketing, distribution,
18 applicator training and certification, storage, transportation,
19 disposal, disclosure of confidential information, or product
20 composition.

21 7. The Board may take samples of pesticide materials in order
22 to determine their concentration or residue level. If the Board
23 finds that such samples are not within established standards, the
24

1 Board's finding shall be considered prima facie evidence that a
2 violation has occurred.

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

11 (1) pesticides with a stated concentration of active
12 ingredient less than 0.51% shall not exceed 150%
13 or fail to meet 80% of the stated active
14 ingredient on the pesticide label when analyzed,

15 (2) pesticides with a stated concentration of active
16 ingredient not less than 0.51% and not more than
17 1.0% shall not exceed 140% or fail to meet 85% of
18 the stated active ingredient on the pesticide
19 label when analyzed,

20 (3) pesticides with a stated concentration of active
21 ingredient not less than 1.01% and not more than
22 5.00% shall not exceed 140% or fail to meet 90%
23 of the stated active ingredient on the pesticide
24 label when analyzed,

1 (4) pesticides with a stated concentration of active
2 ingredient not less than 5.01% and not more than
3 10.00% shall not exceed 130% or fail to meet 92%
4 of the stated active ingredient on the pesticide
5 label when analyzed,

6 (5) pesticides with a stated concentration of active
7 ingredient not less than 10.01% and not more than
8 50.00% shall not exceed 125% or fail to meet 94%
9 of the stated active ingredient on the pesticide
10 label when analyzed, and

11 (6) pesticides with a stated concentration of active
12 ingredient not less than 50.01% and more than
13 100.00% shall not exceed 115% or fail to meet 96%
14 of the stated active ingredient on the pesticide
15 label when analyzed.

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

- 1 (1) when the stated concentration of active
2 ingredient on the pesticide label is less than
3 1.26% the minimum amount of active ingredient
4 shall be at least 67.0% of the stated
5 concentration on the pesticide label when
6 analyzed,
- 7 (2) when the stated concentration of active
8 ingredient on the pesticide label is not less
9 than 1.26% or more than 5.0% the minimum amount
10 of active ingredient shall be at least 80.0% of
11 the stated concentration on the pesticide label
12 when analyzed, and
- 13 (3) when the stated concentration of active
14 ingredient on the pesticide label is more than
15 5.0% the minimum amount of active ingredient
16 shall be at least 85.0% of the stated
17 concentration on the pesticide label when
18 analyzed.

19 c. The concentration of an active ingredient for a
20 pesticide concentrate in rotenone, pyrethrin and other
21 natural product formulations shall not be less than
22 the concentration of active ingredient stated on the
23 pesticide label for the tolerance for active
24 ingredient concentration specified by this paragraph.

1 Concentrations below the established tolerance shall
2 be prima facie evidence that a pesticide is
3 adulterated or misbranded:

4 (1) when the stated concentration of active
5 ingredient on the pesticide label is less than
6 0.51% the minimum amount of active ingredient
7 shall be at least 70.0% of the state
8 concentration on the pesticide label when
9 analyzed,

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

16 (3) when the stated concentration of active
17 ingredient on the pesticide label is more than
18 1.25% the minimum amount of active ingredient
19 shall be at least 85.0% of the stated
20 concentration on the pesticide label when
21 analyzed.

22 d. The concentration of an active ingredient for a
23 pesticide tank mix, as stated by the applicator and
24 allowed by the pesticide label, shall not exceed or be

1 less than the concentration of active ingredient
2 stated by more or less than the tolerance for active
3 ingredient concentration specified by this paragraph.
4 Concentrations above or below the established
5 tolerance shall be prima facie evidence of a use
6 unsuitable, unsafe or inconsistent with its label or
7 labeling. No pesticide shall be formulated into a
8 tank mix at a concentration in excess of or below that
9 permitted by the pesticide label without written
10 approval from an authorized agent of the Oklahoma
11 Department of Agriculture, Food, and Forestry:

12 (1) when the stated concentration or that allowed by
13 the pesticide label is less than 0.51% the
14 minimum amount of active ingredient in the tank
15 mix shall be at least 60.0% and not more than
16 150.0% of the stated concentration or that
17 allowed by the pesticide label when analyzed,

18 (2) when the stated concentration or that allowed by
19 the pesticide label is not less than 0.51% and
20 not more than 1.0% the minimum amount of active
21 ingredient in the tank mix shall be at least
22 70.0% and not more than 140.0% of the stated
23 concentration or that allowed by the pesticide
24 label when analyzed,

- 1 (3) when the stated concentration or that allowed by
2 the pesticide label is not less than 1.01% and
3 not more than 5.0% the minimum amount of active
4 ingredient in the tank mix shall be at least
5 80.0% and not more than 140.0% of the stated
6 concentration or that allowed by the pesticide
7 label when analyzed,
- 8 (4) when the stated concentration or that allowed by
9 the pesticide label is not less than 5.01% and
10 not more than 10.0% the minimum amount of active
11 ingredient in the tank mix shall be at least
12 84.0% and not more than 130.0% of the stated
13 concentration or that allowed by the pesticide
14 label when analyzed,
- 15 (5) when the stated concentration or that allowed by
16 the pesticide label is not less than 10.01% and
17 not more than 50.0% the minimum amount of active
18 ingredient in the tank mix shall be at least
19 88.0% and not more than 125.0% of the stated
20 concentration or that allowed by the pesticide
21 label when analyzed, and
- 22 (6) when the stated concentration or that allowed by
23 the pesticide label is not less than 50.01% and
24 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.

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

D. 1. Any pesticide or device distributed, sold, or offered for sale within this state or delivered for transportation or

1 transported in intrastate or interstate commerce may be seized by
2 the Oklahoma Department of Agriculture, Food, and Forestry in any
3 county of the state where it may be found and if:

4 a. in the case of a pesticide, it is adulterated or
5 misbranded, it has not been registered, it fails to
6 bear on its label the required information, or it is a
7 white powder pesticide and it is not colored as
8 required, or

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

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

15 3. The court shall not order the sale or disposal of a
16 condemned pesticide or device in a manner which would be a violation
17 of this section or rules promulgated thereto.

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

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

1 6. If there is a person who is successful in intervening as
2 claimant of the pesticide or device, when a decree of judgment of
3 condemnation is entered against the pesticide or device, court
4 costs, fees, storage, and other proper expenses shall be awarded
5 against such claimant.

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

9 F. All authority vested in the Board shall with like force and
10 effect be executed by its officers, employees, and authorized
11 agents.

12 G. EXCEPTION - The fines provided for violations may not apply
13 to:

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

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

20 3. The manufacturer or shipper of a pesticide or device for
21 experimental use only, by or under the supervision of an agency of
22 this state or of the Federal Government authorized by law to conduct
23 research in the field of pesticides or devices, or by others if the
24 pesticide or the device is not sold or if the container is plainly

1 and conspicuously marked "for experimental use only - not to be
2 sold", together with the manufacturer's name and address, if a
3 written permit has been obtained from the Board. Pesticides or
4 devices may be sold for experimental purposes subject to
5 restrictions set forth in the permit; and

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

10 H. 1. The Department of Environmental Quality shall have
11 environmental jurisdiction over:

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

23 2. Facilities which store grain, feed, seed, fertilizer, and
24 agricultural chemicals that are required by federal National

1 Pollutant Discharge Elimination Systems (NPDES) regulations to
2 obtain a permit for storm water discharges shall only be subject to
3 the jurisdiction of the Department of Environmental Quality with
4 respect to such storm water discharges.

5 I. Termite bait or baiting systems may be used as a treatment
6 for structural pests prior to construction of a new structure.

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

17 SECTION 2. This act shall become effective November 1, 2020.

18 COMMITTEE REPORT BY: COMMITTEE ON AGRICULTURE AND WILDLIFE
19 February 24, 2020 - DO PASS AS AMENDED
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