

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 SENATE BILL 1735

By: Howard

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6 AS INTRODUCED

7 An Act relating to the Combined Pesticide Law;  
8 amending 2 O.S. 2011, Section 3-85, as amended by  
9 Section 3, Chapter 280, O.S.L. 2014 (2 O.S. Supp.  
10 2019, Section 3-85), which relates to enforcement and  
11 rules and standards; authorizing the use of termite  
12 bait systems as a preconstruction treatment; and  
13 providing an effective date.

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

15 SECTION 1. AMENDATORY 2 O.S. 2011, Section 3-85, as  
16 amended by Section 3, Chapter 280, O.S.L. 2014 (2 O.S. Supp. 2019,  
17 Section 3-85), is amended to read as follows:

18 Section 3-85. A. 1. The State Board of Agriculture shall  
19 administer and enforce the provisions of the Oklahoma Combined  
20 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  
25 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 shall, to the extent practical, create uniformity  
4 between the requirements of Oklahoma and those prescribed by the  
5 Federal Insecticide, Fungicide and Rodenticide Act.

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

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

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

23 7. The Board may take samples of pesticide materials in order  
24 to determine their concentration or residue level. If the Board

1 finds that such samples are not within established standards, the  
2 Board's finding shall be considered prima facie evidence that a  
3 violation has occurred.

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

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

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

21 (3) pesticides with a stated concentration of active  
22 ingredient not less than 1.01% and not more than  
23 5.00% shall not exceed 140% or fail to meet 90%

1 of the stated active ingredient on the pesticide  
2 label when analyzed,

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

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

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

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

3 (1) when the stated concentration of active  
4 ingredient on the pesticide label is less than  
5 1.26% the minimum amount of active ingredient  
6 shall be at least 67.0% of the stated  
7 concentration on the pesticide label when  
8 analyzed,

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

15 (3) when the stated concentration of active  
16 ingredient on the pesticide label is more than  
17 5.0% the minimum amount of active ingredient  
18 shall be at least 85.0% of the stated  
19 concentration on the pesticide label when  
20 analyzed.

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

6 (1) when the stated concentration of active  
7 ingredient on the pesticide label is less than  
8 0.51% the minimum amount of active ingredient  
9 shall be at least 70.0% of the state  
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 0.51% or more than 1.25% 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 1.25% 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.

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

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

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

1 70.0% and not more than 140.0% of the stated  
2 concentration or that allowed by the pesticide  
3 label when analyzed,

4 (3) when the stated concentration or that allowed by  
5 the pesticide label is not less than 1.01% and  
6 not more than 5.0% the minimum amount of active  
7 ingredient in the tank mix shall be at least  
8 80.0% and not more than 140.0% of the stated  
9 concentration or that allowed by the pesticide  
10 label when analyzed,

11 (4) when the stated concentration or that allowed by  
12 the pesticide label is not less than 5.01% and  
13 not more than 10.0% the minimum amount of active  
14 ingredient in the tank mix shall be at least  
15 84.0% and not more than 130.0% of the stated  
16 concentration or that allowed by the pesticide  
17 label when analyzed,

18 (5) when the stated concentration or that allowed by  
19 the pesticide label is not less than 10.01% and  
20 not more than 50.0% the minimum amount of active  
21 ingredient in the tank mix shall be at least  
22 88.0% and not more than 125.0% of the stated  
23 concentration or that allowed by the pesticide  
24 label when analyzed, and

1 (6) when the stated concentration or that allowed by  
2 the pesticide label is not less than 50.01% and  
3 not more than 100.0% the minimum amount of active  
4 ingredient in the tank mix shall be at least  
5 92.0% and not more than 115.0% of the stated  
6 concentration or that allowed by the pesticide  
7 label when analyzed.

8 e. The State Board of Agriculture may promulgate, by  
9 rule, maximum and minimum concentrations or thresholds  
10 for the other concentrate of pesticides in products,  
11 or soil residues.

12 B. Authorized agents of the Board shall have the authority to  
13 issue notices of violation, citations, compliance orders, stop  
14 sales, or stop work orders to those persons committing violations of  
15 the laws or rules relating to pesticides or pesticide application in  
16 this state.

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

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

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

8 a. in the case of a pesticide, it is adulterated or  
9 misbranded, it has not been registered, it fails to  
10 bear on its label the required information, or it is a  
11 white powder pesticide and it is not colored as  
12 required, or

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

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

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

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

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

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

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

13 F. All authority vested in the Board shall with like force and  
14 effect be executed by its officers, employees, and authorized  
15 agents.

16 G. EXCEPTION - The fines provided for violations may not apply  
17 to:

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

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

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

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

15           H. 1. The Department of Environmental Quality shall have  
16 environmental jurisdiction over:

- 17           a. commercial manufacturers of fertilizers, grain and  
18           feed products, and chemicals, and over manufacturing  
19           of food and kindred products, tobacco, paper, lumber,  
20           wood, textile mill and other agricultural products,
- 21           b. slaughterhouses, but not including feedlots at these  
22           facilities, and
- 23           c. aquaculture and fish hatcheries, including, but not  
24           limited to, discharges of pollutants and storm water

1 to waters of the state, surface impoundments and land  
2 application of wastes and sludge, and other pollution  
3 originating at these facilities; and

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

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

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

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