

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

SENATE BILL 1735

By: Howard

AS INTRODUCED

An Act relating to the Combined Pesticide Law; amending 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), which relates to enforcement and rules and standards; authorizing the use of termite bait systems as a preconstruction treatment; 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. 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,

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.
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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

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

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

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

(5) when the stated concentration or that allowed by the pesticide label is not less than 10.01% and 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

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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