

STATE OF OKLAHOMA

2nd Session of the 59th Legislature (2024)

COMMITTEE SUBSTITUTE
FOR ENGROSSED

HOUSE BILL NO. 2185

By: Lowe (Dick) of the House

and

Kidd of the Senate

COMMITTEE SUBSTITUTE

An Act relating to agriculture; amending 2 O.S. 2021, Section 3-82, as amended by Section 11, Chapter 72, O.S.L. 2023 (2 O.S. Supp. 2023, Section 3-82), which relates to applicator licenses; modifying requirement to receive an aerial license; amending 2 O.S. 2021, Section 3-85, which relates to rule and standards; updating statutory reference; allowing use of certain pesticide under certain conditions; updating statutory language; and providing an effective date.

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

SECTION 1. AMENDATORY 2 O.S. 2021, Section 3-82, as amended by Section 11, Chapter 72, O.S.L. 2023 (2 O.S. Supp. 2023, Section 3-82), is amended to read as follows:

Section 3-82. A. It shall be unlawful for any person to act, operate, or do business or advertise as a commercial, noncommercial, certified applicator, temporary certified applicator, service technician, or private applicator unless the person has obtained a valid applicator's license issued by the State Board of Agriculture

1 for the category of pesticide application in which the person is
2 engaged, unless the person is applying to ~~their~~ his or her own
3 property.

4 B. A license may be issued by the Board in any category of
5 pesticide application if the applicant qualifies and the applicant
6 is limited to the category of pesticide application named on the
7 license. The Board may establish categories of pesticide
8 application as necessary. Licenses shall be issued upon application
9 to the Board on a form prescribed by the Board. The application
10 shall contain information regarding the applicant's qualifications,
11 proposed operations, and other information as specified by the
12 Board.

13 C. 1. An aerial license shall not be issued or be valid unless
14 the applicant files with the Board a copy of a valid document issued
15 by the Federal Aviation Administration showing that the person is
16 qualified to operate or supervise the operation of an aircraft
17 ~~conducting agricultural operations,~~ and a copy of any other
18 applicable certification as required by the Federal Aviation
19 Administration for pesticide application. Applicants for an aerial
20 license and pilots working under a license may be subject to a
21 complete and thorough background examination.

22 2. The Board shall promulgate rules regarding aerial
23 applicators and applications consistent with federal law and shall
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1 solicit the assistance of the Federal Aviation Administration in the
2 enforcement of this subsection.

3 D. Each business location shall require a separate license and
4 separate certified applicator except that a certified applicator for
5 a noncommercial business location may also serve as the certified
6 applicator for one commercial business location.

7 E. A license shall not be issued for the category of pesticide
8 application of any applicant or representative who has a temporary
9 certification.

10 SECTION 2. AMENDATORY 2 O.S. 2021, Section 3-85, is
11 amended to read as follows:

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

15 2. The State Board of Agriculture shall promulgate rules and
16 standards for the application, use or sale of pesticides, rules for
17 pesticide registration, standards for contracts and recordkeeping,
18 work performance, prescribe standards for the licensing of
19 application of pesticides, issuing pesticide dealer permits,
20 certification, recertification procedures, and storing and disposal
21 of pesticide and pesticide containers.

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

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

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

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

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

23 a. The concentration of an active ingredient for a
24 pesticide concentrate~~7~~ shall not exceed or be less

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

7 (1) pesticides with a stated concentration of active
8 ingredient less than ~~0.51%~~ fifty-one-hundredths
9 of one percent (0.51%) shall not exceed ~~150%~~ one
10 hundred fifty percent (150%) or fail to meet ~~80%~~
11 eighty percent (80%) of the stated active
12 ingredient on the pesticide label when analyzed,

13 (2) pesticides with a stated concentration of active
14 ingredient not less than ~~0.51%~~ fifty-one-
15 hundredths of one percent (0.51%) and not more
16 than ~~1.0%~~ one percent (1%) shall not exceed ~~140%~~
17 one hundred forty percent (140%) or fail to meet
18 ~~85%~~ eighty-five percent (85%) of the stated
19 active ingredient on the pesticide label when
20 analyzed,

21 (3) pesticides with a stated concentration of active
22 ingredient not less than ~~1.01%~~ one and one-
23 hundredths of one percent (1.01%) and not more
24 than ~~5.00%~~ five percent (5%) shall not exceed

~~140%~~ one hundred forty percent (140%) or fail to meet ~~90%~~ ninety percent (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%~~ five and one-hundredths of one percent (5.01%) and not more than ~~10.00%~~ ten percent (10%) shall not exceed ~~130%~~ one hundred thirty percent (130%) or fail to meet ~~92%~~ ninety-two percent (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%~~ ten and one-hundredths of one percent (10.01%) and not more than ~~50.00%~~ fifty percent (50%) shall not exceed ~~125%~~ one hundred twenty-five percent (125%) or fail to meet ~~94%~~ ninety-four percent (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%~~ fifty and one-hundredths of one percent (50.01%) and more than ~~100.00%~~ one hundred percent (100%) shall not

1 exceed ~~115%~~ one hundred fifteen percent (115%) or
2 fail to meet ~~96%~~ ninety-six percent (96%) of the
3 stated active ingredient on the pesticide label
4 when analyzed.

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

14 (1) when the stated concentration of active
15 ingredient on the pesticide label is less than
16 ~~1.26%~~ one and twenty-six-hundredths of one
17 percent (1.26%), the minimum amount of active
18 ingredient shall be at least ~~67.0%~~ sixty-seven
19 percent (67%) of the stated concentration on the
20 pesticide label when analyzed,

21 (2) when the stated concentration of active
22 ingredient on the pesticide label is not less
23 than ~~1.26%~~ one and twenty-six-hundredths of one
24 percent (1.26%) or more than ~~5.0%~~ five percent

1 (5%), the minimum amount of active ingredient
2 shall be at least ~~80.0%~~ eighty percent (80%) of
3 the stated concentration on the pesticide label
4 when analyzed, and

5 (3) when the stated concentration of active
6 ingredient on the pesticide label is more than
7 ~~5.0%~~ five percent (5%), the minimum amount of
8 active ingredient shall be at least ~~85.0%~~ eighty-
9 five percent (85%) of the stated concentration on
10 the pesticide label when analyzed.

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

20 (1) when the stated concentration of active
21 ingredient on the pesticide label is less than
22 ~~0.51%~~ fifty-one-hundredths of one percent
23 (0.51%), the minimum amount of active ingredient
24 shall be at least ~~70.0%~~ seventy percent (70%) of

1 the ~~state~~ stated concentration on the pesticide
2 label when analyzed,

3 (2) when the stated concentration of active
4 ingredient on the pesticide label is not less
5 than ~~0.51%~~ fifty-one-hundredths of one percent
6 (0.51%) or more than ~~1.25%~~ one and twenty-five-
7 hundredths of one percent (1.25%), the minimum
8 amount of active ingredient shall be at least
9 ~~80.0%~~ eighty percent (80%) of the stated
10 concentration on the pesticide label when
11 analyzed, and

12 (3) when the stated concentration of active
13 ingredient on the pesticide label is more than
14 ~~1.25%~~ one and twenty-five-hundredths of one
15 percent (1.25%), the minimum amount of active
16 ingredient shall be at least ~~85.0%~~ eighty-five
17 percent (85%) of the stated concentration on the
18 pesticide label when analyzed.

19 d. The concentration of an active ingredient for a
20 pesticide tank mix, as stated by the applicator and
21 allowed by the pesticide label, shall not exceed or be
22 less than the concentration of active ingredient
23 stated by more or less than the tolerance for active
24 ingredient concentration specified by this paragraph.

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

9 (1) when the stated concentration or that allowed by
10 the pesticide label is less than ~~0.51%~~ fifty-one-
11 hundredths of one percent (0.51%), the minimum
12 amount of active ingredient in the tank mix shall
13 be at least ~~60.0%~~ sixty percent (60%) and not
14 more than ~~150.0%~~ one hundred fifty percent (150%)
15 of the stated concentration or that allowed by
16 the pesticide label when analyzed,

17 (2) when the stated concentration or that allowed by
18 the pesticide label is not less than ~~0.51%~~ fifty-
19 one-hundredths of one percent (0.51%) and not
20 more than ~~1.0%~~ one percent (1%), the minimum
21 amount of active ingredient in the tank mix shall
22 be at least ~~70.0%~~ seventy percent (70%) and not
23 more than ~~140.0%~~ one hundred forty percent (140%)
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1 of the stated concentration or that allowed by
2 the pesticide label when analyzed,

3 (3) when the stated concentration or that allowed by
4 the pesticide label is not less than ~~1.01%~~ one
5 and one-hundredths of one percent (1.01%) and not
6 more than ~~5.0%~~ five percent (5%), the minimum
7 amount of active ingredient in the tank mix shall
8 be at least ~~80.0%~~ eighty percent (80%) and not
9 more than ~~140.0%~~ one hundred forty percent (140%)
10 of the stated concentration or that allowed by
11 the pesticide label when analyzed,

12 (4) when the stated concentration or that allowed by
13 the pesticide label is not less than ~~5.01%~~ five
14 and one-hundredths of one percent (5.01%) and not
15 more than ~~10.0%~~ ten percent (10%), the minimum
16 amount of active ingredient in the tank mix shall
17 be at least ~~84.0%~~ eighty-four percent (84%) and
18 not more than ~~130.0%~~ one hundred thirty percent
19 (130%) of the stated concentration or that
20 allowed by the pesticide label when analyzed,

21 (5) when the stated concentration or that allowed by
22 the pesticide label is not less than ~~10.01%~~ ten
23 and one-hundredths of one percent (10.01%) and
24 not more than ~~50.0%~~ fifty percent (50%), the

1 minimum amount of active ingredient in the tank
2 mix shall be at least ~~88.0%~~ eighty-eight percent
3 (88%) and not more than ~~125.0%~~ one hundred
4 twenty-five percent (125%) of the stated
5 concentration or that allowed by the pesticide
6 label when analyzed, and

7 (6) when the stated concentration or that allowed by
8 the pesticide label is not less than ~~50.01%~~ fifty
9 and one-hundredths of one percent (50.01%) and
10 not more than ~~100.0%~~ one hundred percent (100%),
11 the minimum amount of active ingredient in the
12 tank mix shall be at least ~~92.0%~~ ninety-two
13 percent (92%) and not more than ~~115.0%~~ one
14 hundred fifteen percent (115%) of the stated
15 concentration or that allowed by the pesticide
16 label when analyzed.

17 e. The State Board of Agriculture may promulgate, by
18 rule, maximum and minimum concentrations or thresholds
19 for the other concentrate of pesticides in products,
20 or soil residues.

21 B. If registered by the United States Environmental Protection
22 Agency, registered in Oklahoma, and used in accordance with all
23 requirements as prescribed by the product label, any borate-based
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1 pesticide for termite control may be applied as a stand-alone
2 termite treatment.

3 C. 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.~~ D. 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 section.

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

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

- 22 a. in the case of a pesticide, it is adulterated or
23 misbranded, it has not been registered, it fails to
24 bear on its label the required information, or it is a

1 white powder pesticide and it is not colored as
2 required, or

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

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

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

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

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

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

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

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

7 ~~G.~~ H. EXCEPTION - The fines provided for violations may not
8 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 federal government 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~~ federal government
18 authorized by law to conduct research in the field of pesticides or
19 devices, or by others if the pesticide or the device is not sold or
20 if the container is plainly and conspicuously marked "for
21 experimental use only - not to be sold", together with the
22 manufacturer's name and address, if a written permit has been
23 obtained from the Board. Pesticides or devices may be sold for
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1 experimental purposes subject to restrictions set forth in the
2 permit; and

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

7 ~~H.~~ I. 1. The Department of Environmental Quality shall have
8 environmental jurisdiction over:

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

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

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

13 SECTION 3. This act shall become effective November 1, 2024.

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