

An Act

ENROLLED HOUSE
BILL NO. 2185

By: Lowe (Dick) of the House

and

Bullard of the Senate

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; allowing use of certain pesticide under certain conditions; updating statutory language; and declaring an emergency.

SUBJECT: Agriculture

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

B. A license may be issued by the Board in any category of pesticide application if the applicant qualifies and the applicant is limited to the category of pesticide application named on the license. The Board may establish categories of pesticide

application as necessary. Licenses shall be issued upon application to the Board on a form prescribed by the Board. The application shall contain information regarding the applicant's qualifications, proposed operations, and other information as specified by the Board.

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

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

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

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

SECTION 2. AMENDATORY 2 O.S. 2021, 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.

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

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

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

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

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

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

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

- (2) pesticides with a stated concentration of active ingredient not less than ~~0.51%~~ fifty-one-hundredths of one percent (0.51%) and not more than ~~1.0%~~ one percent (1%) shall not exceed ~~140%~~ one hundred forty percent (140%) or fail to meet ~~85%~~ eighty-five percent (85%) of the stated active ingredient on the pesticide label when analyzed,
- (3) pesticides with a stated concentration of active ingredient not less than ~~1.01%~~ one and one-hundredths of one percent (1.01%) and not more 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 exceed ~~115%~~ one hundred fifteen percent (115%) or fail to meet ~~96%~~ ninety-six percent (96%) of the stated active ingredient on the pesticide label when analyzed.

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

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

(2) when the stated concentration of active ingredient on the pesticide label is not less than ~~1.26%~~ one and twenty-six-hundredths of one percent (1.26%) or more than ~~5.0%~~ five percent (5%), the minimum amount of active ingredient shall be at least ~~80.0%~~ eighty percent (80%) of the stated concentration on the pesticide label when analyzed, and

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

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

- (1) when the stated concentration of active ingredient on the pesticide label is less than ~~0.51%~~ fifty-one-hundredths of one percent (0.51%), the minimum amount of active ingredient shall be at least ~~70.0%~~ seventy percent (70%) of the ~~state~~ stated concentration on the pesticide label when analyzed,
- (2) when the stated concentration of active ingredient on the pesticide label is not less than ~~0.51%~~ fifty-one-hundredths of one percent (0.51%) or more than ~~1.25%~~ one and twenty-five-hundredths of one percent (1.25%), the minimum amount of active ingredient shall be at least ~~80.0%~~ eighty percent (80%) of the stated concentration on the pesticide label when analyzed, and
- (3) when the stated concentration of active ingredient on the pesticide label is more than ~~1.25%~~ one and twenty-five-hundredths of one percent (1.25%), the minimum amount of active ingredient shall be at least ~~85.0%~~ eighty-five percent (85%) of the stated concentration on the pesticide label when analyzed.

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

- (1) when the stated concentration or that allowed by the pesticide label is less than ~~0.51%~~ fifty-one-hundredths of one percent (0.51%), the minimum amount of active ingredient in the tank mix shall

be at least ~~60.0%~~ sixty percent (60%) and not more than ~~150.0%~~ one hundred fifty percent (150%) of the stated concentration or that allowed by the pesticide label when analyzed,

- (2) when the stated concentration or that allowed by the pesticide label is not less than ~~0.51%~~ fifty-one-hundredths of one percent (0.51%) and not more than ~~1.0%~~ one percent (1%), the minimum amount of active ingredient in the tank mix shall be at least ~~70.0%~~ seventy percent (70%) and not more than ~~140.0%~~ one hundred forty percent (140%) 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%~~ one and one-hundredths of one percent (1.01%) and not more than ~~5.0%~~ five percent (5%), the minimum amount of active ingredient in the tank mix shall be at least ~~80.0%~~ eighty percent (80%) and not more than ~~140.0%~~ one hundred forty percent (140%) 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%~~ five and one-hundredths of one percent (5.01%) and not more than ~~10.0%~~ ten percent (10%), the minimum amount of active ingredient in the tank mix shall be at least ~~84.0%~~ eighty-four percent (84%) and not more than ~~130.0%~~ one hundred thirty percent (130%) 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%~~ ten and one-hundredths of one percent (10.01%) and not more than ~~50.0%~~ fifty percent (50%), the minimum amount of active ingredient in the tank mix shall be at least ~~88.0%~~ eighty-eight percent (88%) and not more than ~~125.0%~~ one hundred twenty-five percent (125%) 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% fifty and one-hundredths of one percent (50.01%) and not more than 100.0% one hundred percent (100%), the minimum amount of active ingredient in the tank mix shall be at least 92.0% ninety-two percent (92%) and not more than 115.0% one hundred fifteen percent (115%) 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. If registered by the United States Environmental Protection Agency, registered in Oklahoma, and used in accordance with all requirements as prescribed by the product label, any borate-based pesticide for termite control may be applied as a stand-alone termite treatment.

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

- a. in the case of a pesticide, it is adulterated or misbranded, it has not been registered, it fails to bear on its label the required information, or it is a white powder pesticide and it is not colored as required, or
- b. in the case of a device, it is misbranded.

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

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

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

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

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

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

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

~~G.~~ H. EXCEPTION - The fines provided for violations may not apply to:

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

2. Public officials of this state and of the ~~Federal Government~~ federal government engaged in the performance of official duties;

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

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

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

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

2. Facilities which store grain, feed, seed, fertilizer, and agricultural chemicals that are required by federal National Pollutant Discharge Elimination ~~Systems~~ System (NPDES) regulations

to obtain a permit for storm water discharges shall only be subject to the jurisdiction of the Department of Environmental Quality with respect to such storm water discharges.

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

SECTION 3. It being immediately necessary for the preservation of the public peace, health or safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 15th day of May, 2024.

Presiding Officer of the House
of Representatives

Passed the Senate the 24th day of April, 2024.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____