

1 **SENATE FLOOR VERSION**

2 February 11, 2021

3 SENATE BILL NO. 358

By: Bergstrom of the Senate

4 and

5 Cornwell of the House

6
7
8 An Act relating to the Combined Pesticide Law;
9 amending 2 O.S. 2011, Section 3-81, as amended by
10 Section 1, Chapter 280, O.S.L. 2014, (2 O.S. Supp.
11 2020, Section 3-81), which relates to definitions;
12 modifying definition; and providing an effective
13 date.

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

15 SECTION 1. AMENDATORY 2 O.S. 2011, Section 3-81, as
16 amended by Section 1, Chapter 280, O.S.L. 2014 (2 O.S. Supp. 2020,
17 Section 3-81), is amended to read as follows:

18 Section 3-81. As used in the Combined Pesticide Law:

19 1. "Aircraft" means any contrivance used or designed for
20 navigation of or flight in the air over land or water and is
21 designed for or adaptable for use in applying pesticides as sprays,
22 dusts, or other forms;

23 2. "Active ingredient" means an ingredient, which defoliates
24 plants, prevents fruit drop, inhibits sprouting, or destroys,

1 repels, or mitigates insects, fungi, bacteria, rodents, weeds, or
2 other pests;

3 3. "Adulterated" means and includes any pesticide if the
4 pesticide strength or purity falls below the professed standard of
5 quality as expressed on labeling or under which it is sold, or if
6 any substance has been substituted wholly or in part for the
7 components of the pesticide, or if any valuable constituent of the
8 components of the pesticide has been wholly or in part abstracted;

9 4. "Antidote" means the most practical immediate treatment in
10 case of poisoning and includes but is not limited to first aid
11 treatment;

12 5. "Business location" means any place, site, or facility
13 maintained by a commercial or noncommercial applicator where
14 records, including but not limited to, financial statements,
15 payroll, insurance, and personnel documents are maintained,
16 pesticides are stored, or customers are served. A location serving
17 strictly as a telephone answering service shall not be considered a
18 business location;

19 6. "Certificate" means a written document issued to an
20 individual by the State Board of Agriculture which indicates that
21 the individual has met the certification standards established by
22 the Combined Pesticide Law for the category of pesticide application
23 shown on the certificate. A certificate does not allow a person to
24 do work as a commercial, noncommercial, service technician, or

1 private applicator unless employed by a licensed entity or has a
2 valid license issued by the Board;

3 7. "Certification standards" means the standards that a person
4 shall meet to become a certified applicator;

5 8. "Certified applicator" means a person who has met the
6 certification standards;

7 9. "Commercial application" means the advertising of services,
8 recommendation for use, the preparation for application, or the
9 physical act of applying a pesticide or employment of a device for
10 hire or compensation;

11 10. "Commercial applicator" means any person engaging in the
12 commercial application of pesticides or commercial employment of
13 devices. Any farmer while working for a neighbor in agricultural
14 production, not advertising, and not held out to be in the business
15 of applying restricted-use pesticides, shall not be classified by
16 the Board as a commercial applicator;

17 11. "Contract" means a binding, written agreement between two
18 or more persons spelling out terms and conditions and includes, but
19 is not limited to, warranties or guarantees for pesticide
20 application. For structural pest control applications, the contract
21 shall also include a statement, plat, or diagram showing all
22 locations of visible termites and termite damaged materials which
23 are observed, and how the application was performed;

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1 12. "Defoliant" means any pesticide intended to cause the
2 leaves or foliage to drop from a plant, with or without causing
3 abscission;

4 13. "Desiccant" means any pesticide intended to artificially
5 accelerate the drying of plant tissues;

6 14. "Device" means any instrument subject to the United States
7 Environmental Protection Agency regulation intended for trapping,
8 destroying, repelling, or mitigating insects or rodents, or
9 mitigating fungi, bacteria, or weeds, or other pests designated by
10 the Board, but not including pheromone lures, pheromone traps and
11 pheromone monitoring system components and equipment used for the
12 application of pesticides when sold separately;

13 15. "Direct supervision" means that the certified applicator is
14 responsible for assuring that persons working, subject to direct
15 supervision, are qualified to handle pesticides and are instructed
16 in the application of the specific pesticides used in each
17 particular application conducted which is subject to their
18 supervision. Certified applicators shall be accessible to the
19 noncertified applicator at all times during the application of the
20 pesticide by telephone, radio, or any device approved by the Board;

21 16. "Fungi" means all nonchlorophyll-bearing thallophytes,
22 including, but not limited to, rusts, smuts, mildews, molds, yeasts,
23 and bacteria, except those on humans or animals;

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1 17. "Fungicide" means any pesticide intended for preventing,
2 destroying, repelling, or mitigating any fungi or bacteria;

3 18. "Ground equipment" means any machine, equipment, or device
4 other than aircraft designed for use, adaptable for use, or used on
5 land or water in applying pesticides as sprays, dusts, aerosols,
6 fogs, or other forms;

7 19. "Herbicide" means any pesticide intended for preventing,
8 destroying, repelling, desiccating, or mitigating any weed, or for
9 defoliating plants, preventing fruitdrop, and inhibiting sprouting;

10 20. "Inert ingredient" means an ingredient, which is not an
11 active ingredient;

12 21. "Ingredient statement" means a statement containing the
13 name and percentage of each active ingredient, and the total
14 percentage of all inert ingredients in the pesticide. If the
15 pesticide contains arsenic in any form, the percentages of total and
16 water-soluble arsenic shall each be calculated as elemental arsenic;

17 22. "Insect" means any of the numerous small invertebrate six-
18 legged animals generally having the body more or less obviously
19 segmented, many belonging to the class Insecta, including, but not
20 limited to, beetles, bugs, and flies as well as allied classes of
21 arthropods including spiders, mites, ticks, centipedes, and wood
22 lice;

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1 23. "Insecticide" means any pesticide intended for preventing,
2 destroying, repelling, or mitigating any insects which may be
3 present in any environment;

4 24. "Label" means the written, printed, or graphic matter
5 attached to the pesticide, device, or container including the
6 outside container or wrapper of the retail package of the pesticide
7 or device;

8 25. "Labeling" means all labels and other written, printed, or
9 graphic material:

- 10 a. upon the pesticide, device, or any of its containers
11 or wrappers,
12 b. accompanying the pesticide or device at any time, or
13 c. to which reference is made on the label or in
14 literature accompanying the pesticide or device except
15 when accurate, nonmisleading reference is made to
16 current official publications of the United States
17 Environmental Protection Agency, United States
18 Department of Agriculture, United States Department of
19 the Interior, the United States Public Health Service,
20 State Experiment Stations, State Agricultural
21 Colleges, or other federal institutions or official
22 agencies of this state or other states authorized by
23 law to conduct research in the field of pesticides;

1 26. "License" means a written document issued to a person by
2 the Board which shows that the person has met all established
3 licensing requirements established by the Combined Pesticide Law and
4 who is authorized to apply pesticides as a commercial,
5 noncommercial, or private applicator pursuant to the license issued;

6 27. "Minimum standards" means the measures prescribed by the
7 Board to bring appropriate pesticide services to the public;

8 28. "Misbranded" means and includes:

9 a. any pesticide or device if its labeling bears any
10 statement, design, or graphic representation relative
11 to its ingredients which is false or misleading, or

12 b. any pesticide or device:

13 (1) if it is an imitation of or is offered for sale
14 under the name of another pesticide or device,

15 (2) if its labeling bears any reference to
16 registration under the Combined Pesticide Law,

17 (3) if the labeling accompanying it does not contain
18 instructions for use which are necessary and, if
19 complied with, adequate for the protection of the
20 public,

21 (4) if the label does not contain a warning or
22 caution statement which may be necessary and, if
23 complied with, adequate to prevent injury to
24 humans and vertebrate animals,

- 1 (5) if the label does not bear an ingredient
2 statement on that part of the immediate container
3 and on the outside container or wrapper, if there
4 is one, through which the ingredient statement on
5 the immediate container cannot be clearly read,
6 of the retail package which is presented or
7 displayed under customary conditions of purchase,
8 (6) if any word, statement, or other information
9 required by or under the authority of the
10 Combined Pesticide Law to appear on the labeling
11 is not prominently placed with conspicuousness,
12 as compared with other words, statements,
13 designees, or graphic matter in the labeling, and
14 in terms likely to be read and understood by an
15 individual under customary conditions of purchase
16 and use, or
17 (7) if in the case of an insecticide, fungicide, or
18 herbicide, when used as directed or in accordance
19 with commonly recognized practice, it shall be
20 injurious to humans, vertebrate animals, or
21 vegetation, except weeds, to which it is applied,
22 or to the person applying the pesticide;

23 29. "Noncommercial applicator" means any person, other than a
24 commercial or private applicator, who uses or supervises the use of

1 a restricted-use pesticide. The noncommercial applicator shall be
2 under the supervision of an owner or manager of property and who is
3 certified in the same manner as a commercial applicator. A
4 noncommercial applicator is subject to all requirements except those
5 pertaining to financial responsibility. Noncommercial applicator
6 includes a government employee applying restricted-use pesticides in
7 the discharge of official duties;

8 30. "Nonrestricted-use pesticide" means any pesticide, other
9 than a pesticide classified as restricted-use pesticide;

10 31. "Nonrestricted-use pesticide dealer" means any person
11 engaged in the sale, storage, or distribution of any pesticide other
12 than those pesticides classified by the United States Environmental
13 Protection Agency or the Board as restricted-use pesticides;

14 32. "Permit" means a written document issued by the Board which
15 shows that a person has met all of the permitting requirements
16 established by the Combined Pesticide Law and is authorized to sell
17 pesticides as a restricted-use or nonrestricted-use pesticide dealer
18 in accordance with the type of permit issued;

19 33. "Pest" means any organism harmful to man including, but not
20 limited to, insects, mites, nematodes, weeds, and pathogenic
21 organisms. Pathogenic organisms include viruses, mycoplasma,
22 bacteria, rickettsia, and fungi which the Board declares to be a
23 pest;

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1 34. "Pesticide" means a substance or mixture of substances
2 intended for defoliating or desiccating plants, preventing
3 fruitdrop, inhibiting sprouting, or for preventing, destroying,
4 repelling, or mitigating any insects, rodents, fungi, bacteria,
5 weeds, or other forms of plant or animal life or viruses, which the
6 Board declares to be a pest, except viruses on or in humans or
7 animals;

8 35. "Private applicator" means any person who uses or
9 supervises the use of any restricted pesticide for purposes of
10 producing any agricultural commodity on property owned or rented by
11 the person, or employer, or on the property of another person if
12 applied without compensation other than trading of personal services
13 between producers of agricultural commodities;

14 36. "Registrant" means the person registering any pesticide or
15 device pursuant to the provisions of the Combined Pesticide Law;

16 37. "Restricted-use pesticide" means any pesticide classified
17 for restricted use by the United States Environmental Protection
18 Agency, either by regulation or through the registration process, or
19 by the Board pursuant to the Oklahoma Agricultural Code;

20 38. "Restricted-use pesticide dealer" means any person engaged
21 in the sale, storage, or distribution of restricted-use pesticides;

22 39. "Rodenticide" means any pesticide intended for preventing,
23 destroying, repelling, or mitigating rodents or any other animal
24 which the Board declares a pest;

1 40. "Service technician" means a person employed by a licensed
2 commercial or noncommercial applicator who applies the pesticide or
3 employs a device, but is not a certified applicator. A service
4 technician or certified applicator shall be present at each
5 application performed;

6 41. "Temporary certified applicator" means a person who has
7 successfully completed the written examinations required for
8 certification but has not successfully completed the practical
9 examination;

10 42. "Use" means transportation, storage, mixing, application,
11 safe handling, waste and container disposal, and other specific
12 instructions contained on the label and labeling;

13 43. "Weed" means any plant or plant part which grows where not
14 wanted; and

15 44. "Wood infestation report" means a document issued with a
16 property transaction which shall, at a minimum, contain statements
17 or certifications as to the presence or absence of termites and any
18 other wood destroying insects, and the presence or absence of
19 damage. The wood infestation report does not include a bid or
20 proposal for treatment.

21 SECTION 2. This act shall become effective November 1, 2021.

22 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS, COMMERCE AND TOURISM
23 February 11, 2021 - DO PASS

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