

1 ENGROSSED SENATE AMENDMENT
TO

2 ENGROSSED HOUSE
BILL NO. 2185

By: Lowe (Dick) of the House

and

Kidd of the Senate

7 An Act relating to agriculture; amending 2 O.S. 2021,
8 Section 3-82, as amended by Section 11, Chapter 72,
9 O.S.L. 2023, (2 O.S. Supp. 2023, Section 3-82) which
10 relates to applicator licenses; modifying requirement
11 to receive an aerial license; and providing an
12 effective date.

13 AUTHOR: Remove as principal Senate author Kidd and substitute as
14 principal Senate author Bullard

15 AMENDMENT NO. 1. Page 1, strike the title, enacting clause and
16 entire bill and insert

17 "An Act relating to agriculture; amending 2 O.S.
18 2021, Section 3-82, as amended by Section 11, Chapter
19 72, O.S.L. 2023 (2 O.S. Supp. 2023, Section 3-82),
20 which relates to applicator licenses; modifying
21 requirement to receive an aerial license; amending 2
22 O.S. 2021, Section 3-85, which relates to rule and
23 standards; updating statutory reference; allowing use
24 of certain pesticide under certain conditions;
updating statutory language; and declaring an
emergency.

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

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

4 Section 3-82. A. It shall be unlawful for any person to act,
5 operate, or do business or advertise as a commercial, noncommercial,
6 certified applicator, temporary certified applicator, service
7 technician, or private applicator unless the person has obtained a
8 valid applicator's license issued by the State Board of Agriculture
9 for the category of pesticide application in which the person is
10 engaged, unless the person is applying to ~~their~~ his or her own
11 property.

12 B. A license may be issued by the Board in any category of
13 pesticide application if the applicant qualifies and the applicant
14 is limited to the category of pesticide application named on the
15 license. The Board may establish categories of pesticide
16 application as necessary. Licenses shall be issued upon application
17 to the Board on a form prescribed by the Board. The application
18 shall contain information regarding the applicant's qualifications,
19 proposed operations, and other information as specified by the
20 Board.

21 C. 1. An aerial license shall not be issued or be valid unless
22 the applicant files with the Board a copy of a valid document issued
23 by the Federal Aviation Administration showing that the person is
24 qualified to operate or supervise the operation of an aircraft

1 ~~conducting agricultural operations,~~ and a copy of any other
2 applicable certification as required by the Federal Aviation
3 Administration for pesticide application. Applicants for an aerial
4 license and pilots working under a license may be subject to a
5 complete and thorough background examination.

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

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

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

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

19 Section 3-85. A. 1. The State Board of Agriculture shall
20 administer and enforce the provisions of the ~~Oklahoma~~ Combined
21 Pesticide Law.

22 2. The State Board of Agriculture shall promulgate rules and
23 standards for the application, use or sale of pesticides, rules for
24 pesticide registration, standards for contracts and recordkeeping,

1 work performance, prescribe standards for the licensing of
2 application of pesticides, issuing pesticide dealer permits,
3 certification, recertification procedures, and storing and disposal
4 of pesticide and pesticide containers.

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

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

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

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

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

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

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

20 (2) pesticides with a stated concentration of active
21 ingredient not less than ~~0.51%~~ fifty-one-
22 hundredths of one percent (0.51%) and not more
23 than ~~1.0%~~ one percent (1%) shall not exceed ~~140%~~
24 one hundred forty percent (140%) or fail to meet

1 ~~85%~~ eighty-five percent (85%) of the stated
2 active ingredient on the pesticide label when
3 analyzed,

4 (3) pesticides with a stated concentration of active
5 ingredient not less than ~~1.01%~~ one and one-
6 hundredths of one percent (1.01%) and not more
7 than ~~5.00%~~ five percent (5%) shall not exceed
8 ~~140%~~ one hundred forty percent (140%) or fail to
9 meet ~~90%~~ ninety percent (90%) of the stated
10 active ingredient on the pesticide label when
11 analyzed,

12 (4) pesticides with a stated concentration of active
13 ingredient not less than ~~5.01%~~ five and one-
14 hundredths of one percent (5.01%) and not more
15 than ~~10.00%~~ ten percent (10%) shall not exceed
16 ~~130%~~ one hundred thirty percent (130%) or fail to
17 meet ~~92%~~ ninety-two percent (92%) of the stated
18 active ingredient on the pesticide label when
19 analyzed,

20 (5) pesticides with a stated concentration of active
21 ingredient not less than ~~10.01%~~ ten and one-
22 hundredths of one percent (10.01%) and not more
23 than ~~50.00%~~ fifty percent (50%) shall not exceed
24 ~~125%~~ one hundred twenty-five percent (125%) or

1 fail to meet ~~94%~~ ninety-four percent (94%) of the
2 stated active ingredient on the pesticide label
3 when analyzed, and

4 (6) pesticides with a stated concentration of active
5 ingredient not less than ~~50.01%~~ fifty and one-
6 hundredths of one percent (50.01%) and more than
7 ~~100.00%~~ one hundred percent (100%) shall not
8 exceed ~~115%~~ one hundred fifteen percent (115%) or
9 fail to meet ~~96%~~ ninety-six percent (96%) of the
10 stated active ingredient on the pesticide label
11 when analyzed.

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

21 (1) when the stated concentration of active
22 ingredient on the pesticide label is less than
23 ~~1.26%~~ one and twenty-six-hundredths of one
24 percent (1.26%), the minimum amount of active

1 ingredient shall be at least ~~67.0%~~ sixty-seven
2 percent (67%) of the stated concentration on the
3 pesticide label when analyzed,

4 (2) when the stated concentration of active
5 ingredient on the pesticide label is not less
6 than ~~1.26%~~ one and twenty-six-hundredths of one
7 percent (1.26%) or more than ~~5.0%~~ five percent
8 (5%), the minimum amount of active ingredient
9 shall be at least ~~80.0%~~ eighty percent (80%) of
10 the stated concentration on the pesticide label
11 when analyzed, and

12 (3) when the stated concentration of active
13 ingredient on the pesticide label is more than
14 ~~5.0%~~ five percent (5%), the minimum amount of
15 active ingredient shall be at least ~~85.0%~~ eighty-
16 five percent (85%) of the stated concentration on
17 the pesticide label when analyzed.

18 c. The concentration of an active ingredient for a
19 pesticide concentrate in rotenone, pyrethrin and other
20 natural product formulations shall not be less than
21 the concentration of active ingredient stated on the
22 pesticide label for the tolerance for active
23 ingredient concentration specified by this paragraph.
24 Concentrations below the established tolerance shall

1 be prima facie evidence that a pesticide is
2 adulterated or misbranded:

3 (1) when the stated concentration of active
4 ingredient on the pesticide label is less than
5 ~~0.51%~~ fifty-one-hundredths of one percent
6 (0.51%), the minimum amount of active ingredient
7 shall be at least ~~70.0%~~ seventy percent (70%) of
8 the ~~state~~ stated concentration on the pesticide
9 label when analyzed,

10 (2) when the stated concentration of active
11 ingredient on the pesticide label is not less
12 than ~~0.51%~~ fifty-one-hundredths of one percent
13 (0.51%) or more than ~~1.25%~~ one and twenty-five-
14 hundredths of one percent (1.25%), the minimum
15 amount of active ingredient shall be at least
16 ~~80.0%~~ eighty percent (80%) of the stated
17 concentration on the pesticide label when
18 analyzed, and

19 (3) when the stated concentration of active
20 ingredient on the pesticide label is more than
21 ~~1.25%~~ one and twenty-five-hundredths of one
22 percent (1.25%), the minimum amount of active
23 ingredient shall be at least ~~85.0%~~ eighty-five
24

1 percent (85%) of the stated concentration on the
2 pesticide label when analyzed.

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

17 (1) when the stated concentration or that allowed by
18 the pesticide label is less than ~~0.51%~~ fifty-one-
19 hundredths of one percent (0.51%), the minimum
20 amount of active ingredient in the tank mix shall
21 be at least ~~60.0%~~ sixty percent (60%) and not
22 more than ~~150.0%~~ one hundred fifty percent (150%)
23 of the stated concentration or that allowed by
24 the pesticide label when analyzed,

1 (2) when the stated concentration or that allowed by
2 the pesticide label is not less than ~~0.51%~~ fifty-
3 one-hundredths of one percent (0.51%) and not
4 more than ~~1.0%~~ one percent (1%), the minimum
5 amount of active ingredient in the tank mix shall
6 be at least ~~70.0%~~ seventy percent (70%) and not
7 more than ~~140.0%~~ one hundred forty percent (140%)
8 of the stated concentration or that allowed by
9 the pesticide label when analyzed,

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

19 (4) when the stated concentration or that allowed by
20 the pesticide label is not less than ~~5.01%~~ five
21 and one-hundredths of one percent (5.01%) and not
22 more than ~~10.0%~~ ten percent (10%), the minimum
23 amount of active ingredient in the tank mix shall
24 be at least ~~84.0%~~ eighty-four percent (84%) and

1 not more than ~~130.0%~~ one hundred thirty percent
2 (130%) of the stated concentration or that

3 allowed by the pesticide label when analyzed,

4 (5) when the stated concentration or that allowed by
5 the pesticide label is not less than ~~10.01%~~ ten
6 and one-hundredths of one percent (10.01%) and
7 not more than ~~50.0%~~ fifty percent (50%), the
8 minimum amount of active ingredient in the tank
9 mix shall be at least ~~88.0%~~ eighty-eight percent
10 (88%) and not more than ~~125.0%~~ one hundred
11 twenty-five percent (125%) of the stated
12 concentration or that allowed by the pesticide
13 label when analyzed, and

14 (6) when the stated concentration or that allowed by
15 the pesticide label is not less than ~~50.01%~~ fifty
16 and one-hundredths of one percent (50.01%) and
17 not more than ~~100.0%~~ one hundred percent (100%),
18 the minimum amount of active ingredient in the
19 tank mix shall be at least ~~92.0%~~ ninety-two
20 percent (92%) and not more than ~~115.0%~~ one
21 hundred fifteen percent (115%) of the stated
22 concentration or that allowed by the pesticide
23 label when analyzed.

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1 e. The State Board of Agriculture may promulgate, by
2 rule, maximum and minimum concentrations or thresholds
3 for the other concentrate of pesticides in products,
4 or soil residues.

5 B. If registered by the United States Environmental Protection
6 Agency, registered in Oklahoma, and used in accordance with all
7 requirements as prescribed by the product label, any borate-based
8 pesticide for termite control may be applied as a stand-alone
9 termite treatment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 3. The manufacturer or shipper of a pesticide or device for
23 experimental use only, by or under the supervision of an agency of
24 this state or of the ~~Federal Government~~ federal government

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

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

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

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

1 application of wastes and sludge, and other pollution
2 originating at these facilities; and

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

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

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

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

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3 _____
4 Presiding Officer of the Senate

5 Passed the House of Representatives the ____ day of _____,
6 2024.

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8 _____
9 Presiding Officer of the House
10 of Representatives

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2 BILL NO. 2185

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