Mr./Madame President:

I move to amend Senate Bill No. 1272, by substituting the attached floor substitute for the title, enacting clause and entire body of the measure.

Submitted by:

_________________________________
Senator Bergstrom

Bergstrom-QD-FS-Req#4004
3/4/2020 4:49 PM
STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

FLOOR SUBSTITUTE
FOR
SENATE BILL NO. 1272

By: Bergstrom of the Senate
and
Cornwell of the House

FLOOR SUBSTITUTE

[ Combined Pesticide Law - definitions and licensure, permit and certification categories and requirements - pesticide registration exemption - effective date ]

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

SECTION 1. AMENDATORY 2 O.S. 2011, Section 3-81, as amended by Section 1, Chapter 280, O.S.L. 2014 (2 O.S. Supp. 2019, Section 3-81), is amended to read as follows:

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

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

2. “Active ingredient” means an ingredient, which defoliates plants, prevents fruit drop, inhibits sprouting, or destroys,
repels, or mitigates insects, fungi, bacteria, rodents, weeds, or other pests;

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

4. “Antidote” means the most practical immediate treatment in case of poisoning and includes but is not limited to first aid treatment;

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

6. “Certificate” means a written document issued to an individual by the State Board of Agriculture which indicates that the individual has met the certification standards established by the Combined Pesticide Law for the category of pesticide application shown on the certificate. A certificate does not allow a person to do work as a commercial, noncommercial, service technician, or
private applicator unless employed by a licensed entity or has a
valid license issued by the Board;

7. “Certification standards” means the standards that a person
shall meet to become a certified applicator;

8. “Certified applicator” means a person who has met the
certification standards;

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

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

11. “Contract” means a binding, written agreement between two
or more persons spelling out terms and conditions and includes, but
is not limited to, warranties or guarantees for pesticide
application. For structural pest control applications, the contract
shall also include a statement, plat, or diagram showing all
locations of visible termites and termite damaged materials which
are observed, and how the application was performed;
12. “Defoliant” means any pesticide intended to cause the leaves or foliage to drop from a plant, with or without causing abscission;

13. “Desiccant” means any pesticide intended to artificially accelerate the drying of plant tissues;

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

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

16. “Fungi” means all nonchlorophyll-bearing thallophytes, including, but not limited to, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on humans or animals;
17. “Fungicide” means any pesticide intended for preventing, destroying, repelling, or mitigating any fungi or bacteria;

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

19. “Herbicide” means any pesticide intended for preventing, destroying, repelling, desiccating, or mitigating any weed, or for defoliating plants, preventing fruitdrop, and inhibiting sprouting;

20. “Inert ingredient” means an ingredient, which is not an active ingredient;

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

22. “Insect” means any of the numerous small invertebrate six-legged animals generally having the body more or less obviously segmented, many belonging to the class Insecta, including, but not limited to, beetles, bugs, and flies as well as allied classes of arthropods including spiders, mites, ticks, centipedes, and wood lice;
23. “Insecticide” means any pesticide intended for preventing, destroying, repelling, or mitigating any insects which may be present in any environment;

24. “Label” means the written, printed, or graphic matter attached to the pesticide, device, or container including the outside container or wrapper of the retail package of the pesticide or device;

25. “Labeling” means all labels and other written, printed, or graphic material:
   a. upon the pesticide, device, or any of its containers or wrappers,
   b. accompanying the pesticide or device at any time, or
   c. to which reference is made on the label or in literature accompanying the pesticide or device except when accurate, nonmisleading reference is made to current official publications of the United States Environmental Protection Agency, United States Department of Agriculture, United States Department of the Interior, the United States Public Health Service, State Experiment Stations, State Agricultural Colleges, or other federal institutions or official agencies of this state or other states authorized by law to conduct research in the field of pesticides;
26. “License” means a written document issued to a person by the Board which shows that the person has met all established licensing requirements established by the Combined Pesticide Law and who is authorized to apply pesticides as a commercial, noncommercial, or private applicator pursuant to the license issued;

27. “Minimum standards” means the measures prescribed by the Board to bring appropriate pesticide services to the public;

28. “Misbranded” means and includes:

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

b. any pesticide or device:

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

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

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

(4) if the label does not contain a warning or caution statement which may be necessary and, if complied with, adequate to prevent injury to humans and vertebrate animals,
(5) if the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there is one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase,

(6) if any word, statement, or other information required by or under the authority of the Combined Pesticide Law to appear on the labeling is not prominently placed with conspicuousness, as compared with other words, statements, designees, or graphic matter in the labeling, and in terms likely to be read and understood by an individual under customary conditions of purchase and use, or

(7) if in the case of an insecticide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it shall be injurious to humans, vertebrate animals, or vegetation, except weeds, to which it is applied, or to the person applying the pesticide;

29. “Noncommercial applicator” means any person, other than a commercial or private applicator, who uses or supervises the use of
a restricted-use pesticide. The noncommercial applicator shall be
under the supervision of an owner or manager of property and who is
certified in the same manner as a commercial applicator. A
noncommercial applicator is subject to all requirements except those
pertaining to financial responsibility. Noncommercial applicator
includes a government employee applying restricted-use pesticides in
the discharge of official duties;

30. “Nonrestricted-use pesticide” means any pesticide, other
than a pesticide classified as restricted-use pesticide;

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

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

33. “Pest” means any organism harmful to man including, but not
limited to, insects, mites, nematodes, weeds, and pathogenic
organisms. Pathogenic organisms include viruses, mycoplasma,
bacteria, rickettsia, and fungi which the Board declares to be a
pest;
34. “Pesticide” means a substance or mixture of substances intended for defoliating or desiccating plants, preventing fruitdrop, inhibiting sprouting, or for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, bacteria, weeds, or other forms of plant or animal life or viruses, which the Board declares to be a pest, except viruses on or in humans or animals;

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

36. “Registrant” means the person registering any pesticide or device pursuant to the provisions of the Combined Pesticide Law;

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

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

39. “Rodenticide” means any pesticide intended for preventing, destroying, repelling, or mitigating rodents or any other animal which the Board declares a pest;
40. “Service technician” means a person employed by a licensed commercial or noncommercial applicator who applies the pesticide or employs a device, but is not a certified applicator. A service technician or certified applicator shall be present at each application performed;

41. “Temporary certified applicator” means a person who has successfully completed the written examinations required for certification but has not successfully completed the practical examination;

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

43. “Weed” means any plant or plant part which grows where not wanted; and

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

SECTION 2. This act shall become effective November 1, 2020.