

**SFA**

BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

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**House Bill 4674**

Sponsor: Representative Debbie Stabenow

House Committee: Agriculture and Forestry

Senate Committee: Agriculture and Forestry

Date Completed: 2-4-88

**SUMMARY OF HOUSE BILL 4674 as passed by the House:**

The bill would amend the Pesticide Control Act to:

- Establish licensing requirements for a commercial applicator of general use or restricted use pesticides and expand requirements as to certified applicators.
- Create the category of "registered applicator" for persons who apply pesticides for commercial purposes and who completed a training program.
- Require an apprenticeship for licensed commercial and aerial applicators.
- Authorize the Director of the Department of Agriculture to classify a pesticide by administrative order as a restricted use pesticide, and expand the Director's authority to refuse, cancel, or suspend a pesticide registration.
- Establish the Pesticide Control Fund for the processing of applications and development and improvement of pesticide application training programs.
- Increase the various registration, licensing, and certification fees.
- Require the Director to submit rules pertaining to farm worker protection, use of integrated pest management systems, the duty of commercial applicators to inform customers, standards of competency and experience for trainers, and training program for applicators.
- Restructure the Pesticide Advisory Committee in the Department and outline its responsibilities.
- Increase penalty provisions.

Certification Requirements

Under the bill, a private agricultural applicator, along with a commercial applicator as already specified in the Act, could not use a restricted use pesticide without first complying with the Act's requirements and rules promulgated under the Act. Certification requirements for private agricultural applicators would be the same as those certification requirements already in the Act for private applicators.

"Commercial applicator" would be redefined to exclude a registered applicator. A "private agricultural applicator" would be the same as a "private applicator" already designated in the Act.

A certified applicator would be required to supervise the application of a pesticide by a noncertified applicator under his or her instruction and control even though the certified applicator was not physically present. In addition, a certified applicator would be required to supervise directly the application of a restricted use pesticide if prescribed by the label, the Act, or rules promulgated under the Act.

"Direct supervision" would mean that a certified applicator was physically present at the time and place that he or

she supervised the application of a pesticide. Direct supervision in the application of a restricted use pesticide for an agricultural purpose by a private agricultural applicator who was neither a certified nor a registered applicator would mean either that a certified applicator would have to be in the same field with that applicator as he or she applied a restricted use pesticide or that the certified applicator would have to supervise at all times the applicator and would have to supervise directly representative aspects of each application process, including the calibration, mixing, application, operator safety, and disposal aspects of the process.

A certified applicator also would be required to provide to an agricultural employee who applied a pesticide, and who was not a registered or certified applicator, training and instruction approved by the Department of Agriculture on the safe application of a pesticide prior to its application. Certified and commercial applicators would be subject to the Act's requirements, prohibitions, and penalties for an application of pesticides by the certified or commercial applicator and for an application of pesticides by a person directly or indirectly supervised by the certified or commercial applicator.

A certified commercial applicator would be required to maintain records of restricted use pesticide applications for three years, rather than two years as currently required, from the date of application.

Licensing

A commercial applicator who advertised or held himself or herself out to the public as being in the business of applying either general use or restricted use pesticides would be required to obtain a license for each business and to comply with the bill's requirements before engaging in business.

Beginning on the bill's effective date, a commercial applicator, who was required to be licensed, would have to be certified, as required in the Act, and would have to have at least one of the following in order to be licensed:

- At least three years of service as an employee of one or more licensed commercial applicators. During that period, the employee would have to become trained and obtained experience in pesticide application under the supervision of a commercial applicator.
- A baccalaureate degree from a "recognized" college or university in a discipline that provided education regarding pests and pest control as well as two years of service as an employee of one or more licensed commercial applicators. During the two-year period, the employee would have to have received training and experience, under the supervision of a commercial

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applicator, in the application of pesticides.

- A license issued before the effective date of the bill. A license application would have to be on a form provided by the Director and contain information on the applicant's qualifications, proposed operations, equipment to be used, and other information required by the Director. A license application would have to be accompanied by a fee as specified in the bill as well as proof of sufficient financial responsibility, as prescribed by rule.

A license could restrict the applicant to use a certain type of equipment or pesticide if the Director found that the applicant was qualified to use only that type.

The Director could refuse to issue or renew a license if the applicant demonstrated an insufficient knowledge of items called for in the application or had "unsatisfied judgments" against him or her, or if the equipment that the applicant would use was unsafe or inadequate to apply properly the pesticides to be used. The Director would have to notify the applicant in writing if a license were not issued.

The Director could deny, revoke, or suspend a license at any time for a violation of the Act, or a violation of an order issued under the Act, or upon conviction under Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), or upon conviction under a state pesticide law of a reciprocating state.

#### Temporary Registration

If an applicant successfully completed an approved training program and passed a test administered as a requirement of that program, a trainer could issue a temporary registration. This registration would be valid only from the time it was issued until the applicant received a registration card from the Director. An applicant could receive a valid registration card upon payment of a fee, as specified in the bill, and when certain information as to the applicant's training and test results were submitted to the Director on a program completion form.

#### Registered Applicator

To be eligible to be a registered applicator, an applicant would have to have:

- Completed a training program that had been approved by the Director and was conducted by a trainer who had the minimum qualifications established by rule.
- Passed a test that was approved by the Director and administered by the Director's designee.
- Possessed either a valid temporary registration certificate issued by the Director's designee or a valid registration card issued by the Director.

A registered applicator could apply a pesticide, which was not a restricted use pesticide, under supervision of a certified applicator and could apply a restricted use pesticide when under the direct supervision of a certified applicator. "Registered applicator" would mean a person who was not a certified applicator and who was authorized to apply for commercial purposes general and restricted use pesticides as provided in the Act and its rules, or a person who was not a certified applicator who applied pesticides in the course of his or her employment on the property of another person for any purpose other than a private agricultural purpose.

During a registered applicator's initial three-year registration, a registered applicator could apply categories of restricted use pesticides while not directly supervised after the registered applicator had applied that category of restricted use pesticide under direct supervision for the number of hours required by the Director.

The employer of a registered applicator would have to maintain a record of the hours and location of directly supervised hours of application of restricted use pesticide by each registered applicator for the duration of the applicator's employment and for one year after that person's employment was terminated. When a registered applicator applied a category of restricted use pesticide under direct supervision and for the length of time specified by the Director, the applicator's employer would have to notify the Director. Upon notification, the Director would be required to forward a sticker or symbol to the employer that would have to be attached to the registered applicator's registration card.

A registered applicator who was applying any pesticide would have to show the registration card upon request of a peace officer or employee of the Department of Agriculture.

A registered applicator would be required to complete a refresher training program every three years in order to renew his or her registration. The renewal would allow the applicator to apply only general use pesticides.

The Director could deny, revoke, or suspend at any time a certificate for a violation of the Act, of an order issued under the Act, or upon conviction under Section 14 of FIFRA, or upon conviction under a state pesticide law of a reciprocating state.

#### Aerial Application

As of the bill's effective date, a private agricultural or commercial applicator, in addition to complying with other requirements in the Act, would have to meet either of the following requirements before engaging in the aerial application of pesticides:

- Attained at least three years of experience with at least 200 hours of agricultural aerial application under the supervision of a licensed aerial applicator.
- Be licensed as a commercial aerial applicator before the bill took effect.

A private agricultural or a commercial applicator authorized to make aerial application of pesticides would be required to do either of the following once every three years:

- Demonstrate to the Director the applicator's personal participation in a self-regulating application flight efficiency clinic sponsored by the Michigan Cooperative Extension Service with an aircraft that the applicant operated.
- Retake the certification examinations and submit to an inspection of the applicator's aircraft, equipment, and spray operations by an authorized representative of the Director.

#### Fees

The annual registration fee for pesticides would be raised from \$15 to \$20, while the fee per pesticide product after the first 10 products registered would be raised from \$6 to \$10. The certification fee for all but private agricultural applicators would be raised from \$10 to \$50 and the license fee would be raised from \$20 to \$50. The fee for an initial certificate or certificate renewal for a private agricultural applicator would be \$10. A registered applicator's fee, either for the initial application or renewal of registration, would be set at \$25.

#### Pesticide Control Fund

A Pesticide Control Fund would be established in the

Department of Agriculture and could be expended only as provided in the bill. The Fund would receive as revenue all fees collected under the Act, which would have to be forwarded by the Director to the State Treasurer. The Fund also could receive as revenue money from any other source as appropriated by the Legislature. Revenue in the Fund would have to be spent to process applications and to develop and improve training programs to insure the safe application of pesticides.

#### Pesticide Registration

Currently, every pesticide that is distributed, sold, exposed, or offered for sale in the State must be registered with the Director. In addition to reasons already specified in the Act for refusal, cancellation, or suspension of a pesticide registration, the bill would permit the Director to take such actions under the following conditions:

- A registered pesticide or pesticide proposed for registration violated the Act or its rules.
- Based on substantial scientific evidence, use of a pesticide caused, or was likely to cause, if the pesticide were registered, an unreasonable adverse effect.
- Based on substantial scientific evidence, use of a pesticide caused, or was likely to cause, if the pesticide was registered, an unreasonable, serious, chronic hazard to human health or long-term environmental damage, which could not be controlled by designating the pesticide as a restricted use pesticide, by limiting the uses for which a pesticide could be used or registered, or by other changes to the registration or pesticide label.

#### Pesticide Classification

By administrative order, the Director could classify a pesticide as a restricted use pesticide and could limit the use of a restricted use pesticide to certified applicators based upon specific criteria detailed in the bill as to intended use of the pesticide and effects on humans, animals, and certain aspects of the environment.

Prior to classifying a pesticide as a restricted use pesticide, the Director would be required to issue a preliminary administrative order and provide for a 30-day period for public comment and review pertaining to the preliminary order. Before issuing the final administrative order, the Director would be required to review and consider any public comment received during that period. An administrative order classifying a pesticide as a restricted use pesticide would have to cite each of the provisions, outlined in the bill, that justified that classification.

#### Rules

No later than one year after the bill's effective date, the Director would be required to submit rules to the Joint Committee on Administrative Rules pertaining to:

- The protection of agricultural workers from agricultural pesticides, including establishment of reentry periods after agricultural pesticides had been applied; notification about areas where pesticides had been applied; use of protective clothing; safety devices, hand washing and methods of protection from pesticide exposure; and the posting and notification of agricultural workers on poison treatment facilities.
- The use of integrated pest management systems in schools, public buildings, and health care facilities.
- The duty of commercial applicators to inform customers of potential risk and benefits associated with the application of pesticides.

No later than one year after the bill's effective date, the Director would be required to submit rules to the Joint Committee on Administrative Rules in order to implement the bill's provisions on the commercial application of pesticides, including:

- Minimum standards of competency, experience, or expertise for trainers of registered applicators.
- The development of a training program for applicators on the use of appropriate procedures for the application of pesticides; safety procedures; clothing and protective equipment; detection of common symptoms of pesticide poisoning; means of obtaining emergency medical treatment; hazards posed by pesticides to workers, the public health, and the environment; specific categories of pesticides; and the requirements of applicable laws, rules, and labeling.
- The number of directly supervised application hours required before a registered applicator could apply each category of restricted use pesticide without direct supervision.

#### Pesticide Advisory Committee

The membership of the Pesticide Advisory Committee would be expanded to 15 members. The Director of the Bureau of Aeronautics and the Executive Secretary of the Water Resources Commission would be removed from the committee, while the Director of the Department of Agriculture would be added along with a representative of the Department of Natural Resources who had expertise in water quality programs. The committee also would include two additional appointees by the Director of the Agriculture Department--licensed outdoor commercial and aerial applicators. A member representing licensed commercial applicators would be changed to licensed structural commercial applicators. The Governor would have to appoint two public members who had no economic interest in the area regulated by the Act. At least one of the Governor's appointees would have to be knowledgeable and involved in issues related to environmental preservation.

Terms of office, convening of meetings, and operations of the committee are specified in the bill. All meetings of the Committee would have to be conducted pursuant to the Open Meetings Act.

The committee would be required to consult with and advise the Director in the administration of the Act and would have the following responsibilities:

- To collect, analyze, and summarize information pertaining to pesticide misuse, including, but not limited to, the number and types of pesticide misuse violations, underlying causes and circumstances involving pesticide misuses, and development of a profile of the Act's violators.
- To utilize available information pertaining to the misuse of pesticides to determine whether the training programs offered by the Director were effective in curtailing misuses.
- To review all training requirements for applicators and licensees and to make recommendations to the Director concerning training and testing.
- To publish annually a report to be submitted to the Governor, the Legislature, and the Director. The report would have to include a review of committee recommendations, as well as recommendations on amendments to the Act and resources needed to implement the Act, and a summary of annual enforcement actions.

## Violations

Three months after promulgation of rules, as specified in the bill, it would be a violation for a person to apply any pesticide for a commercial purpose or to apply any pesticide in the course of employment on the property of another for any purpose other than a private agricultural purpose unless the person was either a certified applicator or a registered applicator.

After notice and a hearing, the Director upon finding that a person had violated certain any provision of the Act, except those specifically exempted, could impose an administrative fine of not more than \$1,000 for each violation. If the Director found that a violation occurred despite due care or the violation did not result in significant harm to human health or the environment, the Director could issue a warning instead of imposing an administrative fine.

The Director would be required to advise the Attorney General of any person's failure to pay an administrative fine. The Attorney General would be required to bring an action to recover the fine.

Currently, anyone who violates the Act is guilty of a misdemeanor and subject to a fine of \$500. The bill specifies that a registrant, commercial applicator, registered applicator, restricted use pesticide dealer, or distributor who knowingly violated the Act or a rule promulgated under the Act would be guilty of a misdemeanor and subject to a fine of up to \$5,000 for each offense. If the violation were committed knowingly and with malicious intent, the person would be guilty of a misdemeanor and could be fined up to \$25,000 for each offense. Private agricultural applicators and anyone who knowingly violated the Act or rules promulgated under the Act would be guilty of a misdemeanor, and could be fined not more than \$1,000 for each offense.

The Attorney General could file a civil action in which the court could impose on anyone who violated the Act or rule a civil fine of not more than \$5,000 for each violation. In defense of an action and in addition to any other lawful defense, a person could present evidence as an affirmative defense that, at the time of the alleged violation, he or she was in compliance with label directions and with the Act and its rules. Applicable provisions of the Revised Judicature Act would apply to civil actions filed pursuant to the Act.

MCL 286.553 et al.

Legislative Analyst: L. Arasim

## ***FISCAL IMPACT***

The bill would require an additional expense to the State of \$125,000 per year. The new and increased fees would generate an additional \$200,000 in revenues to the State which would go to the Pesticide Control Fund.

Section 14A of the bill would restrict the use of the revenues in the Pesticide Control Fund. The bill would have no impact on local government.

Fiscal Analyst: A. Rich

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.