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OFFICE OF  
SECRETARY OF STATE  
STATE OF WEST VIRGINIA

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1975



# ENROLLED

*Committee Substitute for*

HOUSE BILL No. 1047

*Originating*  
(By *Mr.* in the House Committee on Finance)



PASSED February 25, 1975

In Effect ninety days from Passage



1047

**ENROLLED**

**COMMITTEE SUBSTITUTE**

**FOR**

**H. B. 1047**

(Originating in the House Committee on Finance)

[Passed February 25, 1975; in effect ninety days from passage.]

AN ACT to amend chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article sixteen-b, relating to the use and application of pesticides to control pests, declaration of purpose, definitions, commissioner of agriculture to administer and enforce, promulgation of regulations, limitations, publishing of information and courses of instruction, licensing and certification of pesticide users and dealers, license renewals, retesting, license fees, financial security required, cooperative agreements, prohibited acts, pesticide accidents and damage claims, record keeping requirements, reciprocity, exemptions, improper storage and disposal of pesticides and pesticide containers, legal recourse, penalties, subpoenas, enforcement and fee disposition.

*Be it enacted by the Legislature of West Virginia:*

That chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended, by adding thereto a new article, designated article sixteen-b to read as follows:

**ARTICLE 16B. WEST VIRGINIA PESTICIDE USE AND APPLICATION ACT.**

**§19-16B-1. Title.**

- 1 This article shall be known by the short title of "the West
- 2 Virginia pesticide use and application act of 1975".

**§19-16B-2. Declaration of purpose, legislative findings.**

1 The purpose of this article is to regulate in the public interest  
2 the use and application of pesticides. The Legislature finds that  
3 pesticides perform a vital function in modern society because  
4 they control insects, fungi, nematodes, rodents, and other  
5 pests which ravage and destroy our food and fiber, which  
6 serve as vectors of disease, and which otherwise constitute  
7 a nuisance in the environment or the home; they control  
8 weeds which compete in the production of foods and fiber  
9 and which otherwise are unwanted elements in our environ-  
10 ment; and they regulate plant growth to enhance both the  
11 quality and quantity of our food and fiber and to facilitate  
12 its harvest. Pesticides, however, may be rendered ineffective,  
13 may cause injury to man or may cause unreasonable adverse  
14 effects on the environment if not properly used. They may  
15 injure man or animals either by direct poisoning or by the  
16 gradual accumulation of pesticide residues in their tissues.  
17 Crops or other plants may be affected by their improper use.  
18 The drifting or washing of pesticides into streams or lakes  
19 may cause appreciable damage to aquatic life. And, a pesticide  
20 applied for the purpose of killing pests in a crop, which is  
21 not itself injured by the pesticide, may drift and injure other  
22 crops or nontarget organisms with which it comes in contact.  
23 Therefore, it is deemed necessary to provide for regulation of  
24 the use and application of such pesticides.

**§19-16B-3. Definitions.**

1 As used in this article:

2 "Agricultural commodity" means any plant, or part thereof,  
3 or animal, or animal product, produced by a person (includ-  
4 ing farmers, ranchers, vineyardists, plant propagators, Christ-  
5 mas tree growers, aquaculturists, floriculturists, orchardists,  
6 foresters, or other comparable persons) primarily for sale,  
7 consumption, propagation, or other use by man or animals.

8 "Animal" means all vertebrate and invertebrate species,  
9 including but not limited to man and other mammals, birds,  
10 fish and shellfish.

11 "Certified applicator" means any person who is certified

12 under this article to use or supervise the use of any restricted  
13 use pesticides.

14 “Commercial applicator” means a certified applicator  
15 (whether or not he is a private applicator with respect to  
16 some uses) who uses or supervises the use of any pesticide  
17 which is classified for restricted use for any purpose or on  
18 any property other than as defined under the definition of  
19 “private applicator.”

20 “Commissioner” means the commissioner of agriculture of  
21 the state of West Virginia and his duly authorized representa-  
22 tives.

23 “Defoliant” means any substance or mixture of substances  
24 intended for causing the leaves of foliage to drop from a  
25 plant, with or without causing abscission.

26 “Desiccant” means any substance or mixture of substances  
27 intended for artificially accelerating the drying of plant tissue.

28 “Device” means any instrument or contrivance (other than  
29 a firearm) which is intended for trapping, destroying, repelling  
30 or mitigating any pest or any other form of plant or animal  
31 life (other than man and other than bacteria, viruses or  
32 other microorganisms on or in living man or other living  
33 animals); but not including equipment used for the application  
34 of pesticides when sold separately therefrom.

35 “Direct supervision” means that unless otherwise pre-  
36 scribed by its labeling, a pesticide shall be considered to be  
37 applied under the direct supervision of a certified applicator  
38 if it is applied by a competent person acting under the instruc-  
39 tions and control of a certified applicator who is available  
40 if and when needed, even though such certified applicator is  
41 not physically present at the time and place the pesticide is  
42 applied.

43 “Environment” includes water, air, land and all plants and  
44 man and other animals living therein, and the interrelation-  
45 ships which exist among these.

46 “Fungus” means any nonchlorophyll-bearing thallophytes  
47 (that is, any nonchlorophyll-bearing plant of a lower order

48 than mosses and liverworts), as for example, rust, smut,  
49 mildew, mold, yeast and bacteria, except those on or in  
50 living man or other animals and except those on or in pro-  
51 cessed food, beverages, or pharmaceuticals.

52 "Insect" means any of the numerous small invertebrate  
53 animals generally having the body more or less obviously  
54 segmented, for the most part belonging to the class insecta,  
55 comprising six-legged, usually winged forms, as for example,  
56 beetles, bugs, bees, flies and to other allied classes of arthri-  
57 pods whose members are wingless and usually have more than  
58 six legs, as for example, spiders, mites, ticks, centipedes and  
59 wood lice.

60 "Land" means all land and water areas, including airspace  
61 and all plants, animals, structures, buildings, contrivances and  
62 machinery, appurtenant thereto or situated thereon, fixed or  
63 mobile, including any used for transportation.

64 "Licensed applicator" means any person who owns or  
65 manages a pesticide application business which is engaged  
66 in the business of applying pesticides upon the lands of  
67 another (whether or not such person applies restricted use  
68 pesticides).

69 "Licensed public operator" means a licensed applicator  
70 who applies "restricted use pesticides" as an employee of a  
71 state agency, municipal corporation or other governmental  
72 agency. This term does not include employees who work  
73 only under the direct supervision of a licensed public operator.

74 "Nematode" means invertebrate animals of the phylum  
75 nemathelminthes and class nematoda, that is, unsegmented  
76 round worms with elongated, fusiform or sac-like bodies  
77 covered with cuticle and inhabiting soil, water, plants or  
78 plant parts; may also be called nemas or eelworms.

79 "Permit" means a written certificate, issued by the com-  
80 missioner authorizing the use of certain restricted use pesticides  
81 or state restricted use pesticides.

82 "Person" means any individual, partnership, association,  
83 fiduciary, corporation or any organized group of persons  
84 whether incorporated or not.

85 “Pest” means any insect, rodent, nematode, fungus, weed;  
86 or any other form of terrestrial or aquatic plant or animal  
87 life or virus, bacteria, or other microorganism (except viruses,  
88 bacteria or other microorganisms on or in living man or  
89 other living animals) which is declared to be a pest by the  
90 commissioner.

91 “Pesticide” means any substance or mixture of substances  
92 intended for preventing, destroying, repelling or mitigating  
93 any pest; any substance or mixture of substances intended  
94 for use as a plant regulator, defoliant or desiccant.

95 “Pesticide dealer” means any person who sells, whole-  
96 sales, distributes, offers or exposes for sale, exchanges,  
97 barter or gives away within or into this state any restricted  
98 use pesticide.

99 “Plant regulator” means any substance or mixture of sub-  
100 stances, intended, through physiological action, for accelerat-  
101 ing or retarding the rate of growth or rate of maturation, or  
102 for otherwise altering the behavior of ornamental or crop  
103 plants or the produce thereof, but shall not include substances  
104 to the extent that they are intended as plant nutrients, trace  
105 elements, nutritional chemicals, plant inoculants or soil  
106 amendments.

107 “Private applicator” means a certified applicator who uses  
108 or supervises the use of any pesticide which is classified for  
109 restricted use for purposes of producing any agricultural com-  
110 modity on property owned or rented by him or his employer  
111 or (if applied without compensation other than trading of  
112 personal services between producers of agricultural commodi-  
113 ties) on property of another person.

114 “Restricted use pesticide” means any pesticide classified for  
115 restricted use by the administrator, United States environ-  
116 mental protection agency.

117 “State restricted pesticide use” means any pesticide use  
118 which, when used as directed or in accordance with a wide-  
119 spread and commonly recognized practice, the commissioner  
120 determines, subsequent to a hearing, requires additional re-  
121 strictions for that use to prevent unreasonable adverse effects

122 on the environment including man, land, beneficial insects,  
123 animals, crops and wildlife, other than pests.

124 "Unreasonable adverse effects on the environment" means  
125 any unreasonable risk to man or the environment, taking into  
126 account the economic, social and environmental costs and  
127 benefits of the use of any pesticide.

128 "Weed" means any plant which grows where not wanted.

129 "Wildlife" means all living things that are neither human,  
130 domesticated nor, as defined in this article, pests, including  
131 but not limited to mammals, birds and aquatic life.

**§19-16B-4. Administration and enforcement of article; adoption of regulations, limitations.**

1 (a) The commissioner shall administer and enforce the pro-  
2 visions of this article and shall have authority to issue regula-  
3 tions after a public hearing following due notice to all inter-  
4 ested persons in conformance with the provisions of the state  
5 administrative procedures set forth in chapter twenty-nine-a of  
6 this code to carry out the provisions of this article. Such regu-  
7 lations may prescribe methods to be used in application of  
8 pesticides.

9 (b) In issuing such regulations, the commissioner shall give  
10 consideration to pertinent research findings and recommenda-  
11 tions of other agencies of the state, the federal government, or  
12 other reliable sources.

13 (c) For the purpose of uniformity and in order to enter in-  
14 to cooperative agreements, the commissioner shall adopt "re-  
15 stricted use pesticide" classifications as determined by the  
16 administrator, United States environmental protection agency.  
17 The commissioner may also, by regulations, after a public  
18 hearing following due notice, determine "state restricted pesti-  
19 cides uses" for the state or for designated areas within the  
20 state. If the commissioner determines that the pesticide (when  
21 applied in accordance with its directions for use, warnings and  
22 cautions, and for uses for which it is registered) may cause,  
23 without additional regulatory restrictions, unreasonable ad-  
24 verse effects on the environment, including injury to the ap-  
25 plicator or other persons because of acute dermal or inhalation

26 toxicity of the pesticide, the pesticide shall be applied only by  
27 or under the direct supervision of a certified applicator, or be  
28 subject to such other restrictions as the commissioner may  
29 determine.

30 (d) Regulations adopted under this article shall not per-  
31 mit any pesticide use which is prohibited by the Federal En-  
32 vironmental Pesticide Control Act of 1972 and regulations,  
33 guidelines or rules issued thereunder.

34 (e) Regulations adopted under this article as to certified  
35 applicators of "restricted use pesticides" as designated under  
36 the Federal Environmental Pesticide Control Act of 1972 and  
37 regulations adopted as to experimental use permits as autho-  
38 rized by such act shall not be inconsistent with the requirements  
39 of the Federal Environmental Pesticide Control Act of 1972  
40 and regulations issued thereunder.

41 (f) The commissioner, after notice and opportunity for hear-  
42 ing, is authorized to declare a pest, a form of plant or animal  
43 life (other than man and other than bacteria, viruses and other  
44 microorganisms on or in living man or other living animals)  
45 which is injurious to health or the environment.

46 (g) In order to comply with section four of the Federal En-  
47 vironmental Pesticide Control Act of 1972, the commissioner  
48 is authorized to make such reports to the United States en-  
49 vironmental protection agency in such form and containing  
50 such information as that agency may from time to time require.

51 (h) There is hereby created a pesticide advisory board  
52 consisting of seven persons including the commissioner of  
53 agriculture who shall be chairman, and one of whom shall be  
54 from structural pest control, one of whom shall be a qualified  
55 environmental health specialist, one of whom shall be employed  
56 in the agricultural chemical industry, one of whom shall be  
57 knowledgeable in the area of wildlife resources, one of whom  
58 shall be a producer of agricultural crops on which pesticides  
59 are applied, and one of whom shall be a citizen member who  
60 shall be knowledgeable in the field of pesticides. The six  
61 members not representing government departments shall be  
62 appointed by the commissioner for terms of four years and may  
63 serve successive terms, *Provided*, That at the inception two



64 shall be appointed for one year, two for two years, one for three  
65 years, and one for four years. The board shall advise the  
66 commissioner on problems relating to the use and application  
67 of pesticides. The board shall meet at such time and place  
68 as called by the chairman or by a majority of the board. Mem-  
69 bers shall serve without compensation and members not from  
70 governmental departments shall be paid expenses at the same  
71 rate as paid to employees of the state according to the rules  
72 and regulations as promulgated pursuant to the West Virginia  
73 code.

74 (i) Except as may be otherwise specifically authorized in  
75 this article, the requirements of the commissioner and all  
76 regulatory and other exercises of his powers herein shall  
77 conform to but be no more stringent than those of the federal  
78 environmental protection agency.

**§19-16B-5. Information; courses of instruction.**

1 The commissioner shall publish information dealing with and  
2 conduct courses of instruction in the areas of knowledge re-  
3 quired by this article, and may provide funds, as required by  
4 cooperating educational institutions and/or agencies, to ac-  
5 complish these purposes including but not limited to salaries,  
6 travel expenses, equipment and publication costs.

**§19-16B-6. Classification of licenses; certification standards.**

1 (a) The commissioner may further classify or subclassify  
2 certifications or licenses to be issued under this article. Such  
3 classifications or subclassifications may include but not be  
4 limited to agricultural pest control, forest pest control, orna-  
5 mental and turf pest control, seed treatment, aquatic pest con-  
6 trol, right-of-way pest control, industrial, institutional, struct-  
7 ural and health-related pest control, regulatory pest control  
8 and demonstrational and research pest control. Separate sub-  
9 classifications may be specified as to ground, aerial, or manual  
10 methods used by any licensee to apply pesticides or to the use  
11 of pesticides to control insects and plant diseases, rodents or  
12 weeds. Each classification shall be subject to separate testing  
13 procedures and requirements except that no person shall be  
14 required to pay an additional license fee if such person desires  
15 to be licensed in one or all of the license classifications provid-  
16 ed for by the commissioner under the authority of this section.

17 (b) The commissioner in issuing regulations under this arti-  
 18 cle shall prescribe standards for the certification of applicators  
 19 of pesticides. Such standards shall relate to the use and hand-  
 20 ling of pesticides, or to the use and handling of the pesticide  
 21 or class of pesticides covered by the person's certification, and  
 22 shall be relative to the hazards involved. In determining stan-  
 23 dards, the commissioner shall consider the characteristics of the  
 24 pesticides formulation such as the acute dermal and inhalation  
 25 toxicity; the persistence, mobility and subceptibility to biolog-  
 26 ical concentration; the use experience which may reflect an  
 27 inherent misuse or an established good safety record which  
 28 does not always follow laboratory toxicological information;  
 29 the relative hazards of patterns of use such as granular soil  
 30 applications, ultra low volume or dust aerial applications, or  
 31 air blast sprayer applications; and the extent of the intended  
 32 use. Further, the commissioner shall take into consideration  
 33 standards of the United States environmental protection agency  
 34 and is authorized to adopt those standards by regulation.

**§19-16B-7. Certification requirements; prohibition.**

1 (a) No person other than those working under the direct  
 2 supervision of a certified applicator shall use any "restricted  
 3 use pesticide" which is restricted to use by "certified applica-  
 4 tors" without that person first complying with the certification  
 5 requirements pursuant to section six of this article or such  
 6 other restrictions as are determined by the commissioner as  
 7 necessary to prevent unreasonable adverse effects on the en-  
 8 vironment, including injury to the applicator or other persons,  
 9 for that specific pesticide use.

**§19-16B-8. Licensed applicator's license.**

1 (a) No person shall engage in the business of applying  
 2 pesticides to the lands of another at any time without a licensed  
 3 applicator's license issued by the commissioner. The commis-  
 4 sioner shall require an annual fee of fifty dollars for each  
 5 licensed applicator's license issued.

6 (b) Application for a licensed applicator's license shall  
 7 be made in writing to the commissioner on forms approved  
 8 or supplied by the commissioner. Each application for a license  
 9 shall contain information regarding the applicant's qualifica-

10 tions and proposed operations, license classification or classifi-  
11 cations the applicant is applying for and shall include the  
12 following:

13 (1) The full name of the person applying for the license;

14 (2) If different than (1) the full name of the individual  
15 qualifying under subsection (c) of this section;

16 (3) If the applicant is a person other than an individual,  
17 the full name of each member of the firm or partnership, or  
18 the names of the officers of the association, corporation or  
19 group;

20 (4) The principal business address of the applicant in the  
21 state and elsewhere;

22 (5) The name and address of a person, who may be the  
23 state auditor, whose domicile is in the state, and who is  
24 authorized to receive and accept services of summons and legal  
25 notice of all kinds for the applicant.

26 (6) Nonresidents applying for a licensed applicator's license  
27 in any separate classification under this article to operate in  
28 this state shall file a written power of attorney designating  
29 the state auditor as the agent of such nonresident upon whom  
30 service of process may be had in the event of any suit against  
31 said nonresident person, and such power of attorney shall be  
32 so prepared and in such form as to render effective the juris-  
33 diction of the courts of this state over such nonresident appli-  
34 cant, except that any such nonresident who has a duly ap-  
35 pointed resident agent upon whom process may be served as  
36 provided by law shall not be required to designate the state  
37 auditor as such agent. The commissioner shall be furnished  
38 with a copy of such designation of the state auditor or of a  
39 resident agent, such copy to be duly certified by the state  
40 auditor.

41 (7) Any other necessary information prescribed by the  
42 commissioner.

43 (c) The commissioner shall not issue a licensed applicator's  
44 license until the individual engaged in or managing the pesticide  
45 application business is qualified by passing an examination  
46 to demonstrate to the commissioner his knowledge of how to

47 apply pesticides under the classification he has applied for  
48 and his knowledge of the nature and effect of pesticides he  
49 may apply under such classifications. Applicants successfully  
50 completing this examination requirement shall be licensed com-  
51 mercial applicators for the use of "restricted use pesticides"  
52 covered by the applicant's classification.

53 The examination shall require a level of competency no more  
54 stringent than the standard approved by the United States  
55 environmental protection agency for each license classification  
56 and the commissioner shall take these standards into account  
57 in the development of examinations.

58 (d) The commissioner may renew any applicant's license  
59 under the classification(s) for which such applicant is licensed,  
60 however the applicant may at no less than three year intervals  
61 be required to present a certificate indicating he has attended  
62 a workshop or training session approved by the commissioner,  
63 if the commissioner determines, after consultation with the  
64 federal environmental protection agency, that a significant  
65 change in technology has occurred and that additional training  
66 is vital to the protection of the environment.

67 (e) If the commissioner finds the applicant qualified to  
68 apply pesticides in the classifications the applicant has applied  
69 for and if the applicant files the financial security required  
70 under section fourteen of this article, and if the applicant  
71 applying for a license to engage in aerial application of pesti-  
72 cides has met all of the requirements of the federal aviation  
73 agency, the aeronautics commission of this state, and any other  
74 applicable federal or state laws or regulations to operate the  
75 equipment described in the application, the commissioner shall  
76 issue a licensed applicator's license limited to the classifications  
77 for which the applicant is qualified. The license so issued shall  
78 expire at the end of the calendar year of issue, unless it has  
79 been revoked or suspended prior thereto by the commissioner  
80 for cause, except when the financial security required under  
81 section fourteen of this article is dated to expire at an earlier  
82 date, in which case said license shall be dated to expire upon  
83 expiration date of said financial security. The commissioner  
84 may limit the license of the applicant to the use of certain  
85 pesticides, or to certain areas, or to certain types of equipment

86 if the applicant is only so qualified. If a license is not issued  
87 as applied for, the commissioner shall inform the applicant in  
88 writing of the reasons therefor.

**§19-16B-9. Application of this article to governmental entities;  
licensed public operator's license required; liability.**

1 (a) All state agencies, municipal corporations, or any other  
2 governmental agency shall be subject to the provisions of this  
3 article and rules adopted thereunder concerning the application  
4 of pesticides.

5 (b) Public operators for agencies listed in subsection (a)  
6 shall be subject to examinations as provided for in section  
7 eight of this article. However, the commissioner shall issue a  
8 limited license without a fee to such public operator who has  
9 qualified for such license. The licensed public operator's li-  
10 cense shall be valid only when such operator is acting as an  
11 operator applying or supervising application of pesticides used  
12 by such entities. Individuals licensed pursuant to this section  
13 shall be certified applicators for the use of restricted use pesti-  
14 cides covered by the applicant's classification.

15 (c) Such governmental agencies and municipal corporations  
16 shall be subject to legal recourse by any person damaged by  
17 such application of any pesticide, and such action may be  
18 brought in the county where the damage or some part thereof  
19 occurred.

**§19-16B-10. Private and commercial applicators license and certi-  
ficate.**

1 (a) Application for a private or commercial applicators  
2 license shall be made in writing to the commissioner on forms  
3 approved or supplied by the commissioner. Each application  
4 shall contain:

5 (1) The full name of the person applying for the license.

6 (2) The principal business address of the applicant.

7 (3) A listing of agricultural commodities produced or to be  
8 produced by the applicant applying for a private applicators  
9 license.

10 (4) Any other necessary information prescribed by the  
11 commissioner.

12 (b) Private or commercial applicators licenses shall be  
13 issued for an initial fee of one dollar.

14 (c) The commissioner may renew any applicant's license  
15 under the classification(s) for which such applicant is licensed,  
16 however the applicant may at no less than three years intervals  
17 be required to present a certificate indicating he has attended  
18 a workshop or training session approved by the commissioner,  
19 if the commissioner determines, after consultation with the  
20 federal environmental protection agency, that a significant  
21 change in technology has occurred and that additional training  
22 is vital to the protection of the environment.

23 (d) No private applicator shall use any restricted use pesti-  
24 cide which is restricted to use by certified applicators without  
25 that private applicator first complying with the certification  
26 requirements determined by the commissioner as necessary  
27 to prevent unreasonable adverse effects on the environment, in-  
28 cluding injury to the applicator or other persons, for that  
29 specific pesticide use.

30 (e) As a minimum requirement for certification, a private  
31 applicator must show that he possesses a practical knowledge  
32 of the pest problems and pest control practices associated with  
33 his agricultural operations; proper storage, use, handling and  
34 disposal of the pesticides and containers, and his related legal  
35 responsibility. This practical knowledge includes ability to:

36 (1) Recognize common pests to be controlled and damage  
37 caused by them.

38 (2) Read and understand the label and labeling information  
39 including the common name of pesticides he uses; the crop,  
40 animal, or site to which they will be applied; pest(s) to be  
41 controlled; timing and methods of application; safety precau-  
42 tions; any preharvest or reentry restrictions; and any specific  
43 disposal procedures.

44 (3) Apply pesticides in accordance with label instructions  
45 and warnings, including the ability to prepare the proper con-  
46 centration of pesticide to be used under particular circum-

47 stances taking into account such factors as area to be covered,  
48 speed at which application equipment will be driven, and the  
49 quantity dispersed in a given period of operation.

50 (4) Recognize local environmental situations that must be  
51 considered during application to avoid contamination.

52 (5) Recognize poisoning symptoms and procedures to fol-  
53 low in case of a pesticide accident.

54 (f) If the commissioner should require a written test prior  
55 to the certification of a private or commercial applicator, that  
56 test may not be more stringent than the minimum requirements  
57 for such certification of the federal environmental protection  
58 agency. If there are not such minimum requirements of the  
59 environmental protection agency then the commissioner shall  
60 not require the written test for certification.

61 (g) If the commissioner does not certify the private or  
62 commercial applicator under this section, he shall inform  
63 the applicant in writing of the reasons therefor.

**§19-16B-11. Cooperative agreements.**

1 (a) The commissioner may cooperate, receive grants-in-aid,  
2 and enter into agreements with any agency of the federal  
3 government, of this state or its subdivisions, or with any  
4 agency of another state, to obtain assistance in the implementa-  
5 tion of this article in order to:

6 (1) Secure uniformity of regulations;

7 (2) Cooperate in the enforcement of federal pesticide con-  
8 trol laws through the use of state and/or federal enforcement  
9 personnel and facilities and to implement cooperative en-  
10 forcement programs;

11 (3) Develop and administer state plans for training and  
12 for certification of licensed applicators consistent with federal  
13 standards;

14 (4) Contract for training with educational institutions or  
15 with other agencies for the purpose of training certified  
16 applicators;

17 (5) Contract for monitoring pesticides for the national plan;

18 (6) Prepare and submit state plans to meet federal certifi-  
19 cation standards, as provided for in section four of the  
20 Federal Environmental Pesticide Control Act of 1972;

21 (7) Regulate certified applicators.

**§19-16B-12. License renewals.**

1 Any person holding a current valid license, permit or certifi-  
2 cation may renew such license, permit or certification for the  
3 next year without taking another examination, except as is  
4 provided in subsection (d), section eight, unless the license,  
5 permit or certification is not renewed by the first day of March  
6 of any year in which case such licensee, permittee or certificate  
7 holder shall be required to take another examination.

**§19-16B-13. Pesticide dealers.**

1 (a) No pesticide dealer shall engage in the business of  
2 dispensing restricted use pesticides without first qualifying  
3 for and obtaining a pesticide dealer's license from the com-  
4 missioner. Application for such a license shall be on a form  
5 approved or provided by the commissioner and shall be  
6 accompanied by an initial fee of five dollars. The commissioner  
7 shall issue regulations requiring the pesticide dealer to:

8 (1) Maintain and provide records adequate to identify  
9 purchases of restricted use pesticides and the materials pur-  
10 chased.

11 (2) Demonstrate a knowledge and understanding of safe  
12 and accepted methods of handling, storage and distribution of  
13 restricted use pesticides.

14 (3) Demonstrate a knowledge and understanding of the  
15 state pesticide law and regulations.

**§19-16B-14. Unlawful acts or grounds for denial, suspending or  
revocation of a license, permit or certification.**

1 The commissioner shall notify any licensee of violations  
2 of this article by the licensee, and after inquiry, including  
3 opportunity for a hearing, may deny, suspend, revoke or  
4 modify any provision of any license, permit or certification  
5 issued under this article if he finds that the applicant or the



6 holder of a license, permit or certification has committed  
7 any of the following acts, each of which is declared to be a  
8 violation of this article:

9 (1) Made false or fraudulent claims through any media  
10 misrepresenting the effect of pesticides or methods to be  
11 utilized;

12 (2) Made a pesticide use recommendation or application  
13 inconsistent with the labeling as registered by the United  
14 States environmental protection agency or commissioners' state  
15 registration for that pesticide, or in violation of the United  
16 States environmental protection agency or commissioners state  
17 restrictions for the use of that pesticide;

18 (3) Applied unknown ineffective or improper pesticides;

19 (4) Operated faulty or unsafe equipment;

20 (5) Operated in a faulty, careless or negligent manner;

21 (6) Neglected or, after notice, refused to comply with the  
22 provisions of this article, the rules adopted hereunder, or of  
23 any lawful order of the commissioner;

24 (7) Refused or neglected to keep and maintain the records  
25 required by this article, or to make reports when and as  
26 required;

27 (8) Made false or fraudulent records, invoices or reports;

28 (9) Engaged in the business of applying a pesticide on the  
29 lands of another without having a licensed applicator's license;

30 (10) Engaged in the business of applying a restricted use  
31 pesticide on the lands of another without having a licensed  
32 certified applicator in direct supervision;

33 (11) Used fraud or misrepresentation in making an applica-  
34 tion for, or renewal of, a license, permit or certification;

35 (12) Refused or neglected to comply with any limitations  
36 or restrictions on or in a duly issued license, permit or  
37 certification;

38 (13) Aided or abetted a licensed or an unlicensed person  
39 to evade the provisions of this article or allowed one's licenses,  
40 permit or certification to be used by another person;

41 (14) Made false or misleading statements during or after  
42 an inspection concerning any infestation or infection of pests  
43 found on land;

44 (15) Impersonated any federal, state, county or city in-  
45 spector or official; or

46 (16) Failed to comply with any provision of this article or  
47 any regulation issued thereunder.

**§19-16B-15. Financial security required of licensed applicator li-  
censee.**

1 (a) The commissioner shall not issue a licensed applicator's  
2 license as required in section eight of this article until the ap-  
3 plicant has filed evidence of financial security with the com-  
4 missioner which may consist of a surety bond or liability in-  
5 surance policy or certification thereof in an amount no less  
6 than \$25,000 protecting persons who may suffer legal damages  
7 as a result of the operations of the applicant. Such financial  
8 security need not apply to damages or injury to agricultural  
9 crops, plants or land being worked upon by the applicant.

10 (b) The commissioner, taking into consideration the dif-  
11 ferent classifications or categories of licensed applicator's li-  
12 censes, shall establish the amount and kind of financial secur-  
13 ity for property damage and public liability, each separately,  
14 and including loss of damage arising out of the actual use of  
15 any pesticide which each classification of licensed license re-  
16 quires. Such financial security shall be maintained at not less  
17 than that sum at all times during the licensed period. The com-  
18 missioner shall be notified forty-five days prior to any reduction  
19 at the request of the applicant or cancellation of such surety  
20 bond or liability insurance by the surety or insurer. The total  
21 and aggregate of the surety or insurer for all claims shall be  
22 limited to the face of the bond or liability insurance policy. The  
23 commissioner may accept a liability insurance policy or surety  
24 bond in the proper sum which has a deductible clause in the  
25 amount not exceeding that which the commissioner shall es-  
26 tablish separately for aerial applicators and for other commer-  
27 cial applicators for the total amount of financial security re-  
28 quired herein. If the applicant has not satisfied the require-  
29 ment of the deductible amount in any prior legal claim such

30 deductible clause shall not be accepted by the commissioner  
31 unless such applicant furnishes the commissioner with a surety  
32 bond or liability insurance which shall satisfy the amount of  
33 the deductible as to all claims that may arise in his application  
34 of pesticides.

35 Should the surety furnished become unsatisfactory, said  
36 applicant shall upon notice immediately establish new evidence  
37 of financial security and should he fail to do so, it shall be  
38 unlawful thereafter for such person to engage in said business  
39 of applying pesticides until the financial security is brought in-  
40 to compliance with the requirements as established by the  
41 commissioner and the person's license is reinstated.

42 (c) Nothing in this article shall be construed to relieve any  
43 person from liability for any damage to the person or lands of  
44 another caused by the use of pesticides even though such use  
45 conforms to the rules and regulations of the commissioner.

**§19-16B-16. Pesticide accidents; incidents or loss.**

1 (a) Any person claiming damages for a pesticide application  
2 shall file with the commissioner on a form provided by the  
3 commissioner a written statement claiming that he has been  
4 damaged. This report shall have been filed within sixty days  
5 after the date that damages occurred. If a growing crop is  
6 alleged to have been damaged, the report must be filed prior to  
7 the time that twenty-five percent of the crop has been har-  
8 vested. Such statement shall contain, but shall not be limited to  
9 the name of the person allegedly responsible for the applica-  
10 tion of said pesticide, the name of the owner or lessee of the  
11 land on which the crop is grown and for which damage is al-  
12 leged to have occurred, and the date on which the alleged dam-  
13 age occurred. The commissioner shall, upon receipt of such  
14 statement, notify the licensee and the owner or lessee of the  
15 land or other person who may be charged with the responsi-  
16 bility of the damages claimed, and furnish copies of such  
17 statements as may be requested. The commissioner shall in-  
18 spect damages whenever possible and when he determines that  
19 the complaint has sufficient merit he shall make such informa-  
20 tion available to the person claiming damage and to the per-  
21 son who is alleged to have caused the damage.

22 (b) The filing of such report or the failure to file such a  
 23 report need not be alleged in any complaint which might be  
 24 filed in a court of law, and the failure to file the report shall  
 25 not be considered any bar to the maintenance of any criminal  
 26 or civil action.

27 (c) The failure to file such a report shall not be a violation  
 28 of this article. However, if the person failing to file such report  
 29 is the only one injured from such use or application of a pesti-  
 30 cide by others, the commissioner may, when in the public in-  
 31 terest, refuse to hold a hearing for the denial, suspension or  
 32 revocation of a license or permit issued under this article un-  
 33 til such report is filed.

34 (d) Where damage is alleged to have occurred, the claim-  
 35 ant shall permit the commissioner, the licensee and his repre-  
 36 sentatives, such as bondsman or insurer, to observe within  
 37 reasonable hours the lands or nontarget organism alleged to  
 38 have been damaged in order that such damage may be exam-  
 39 ined. Failure of the claimant to permit such observation and  
 40 examination of the damaged lands shall automatically bar the  
 41 claim against the licensee.

**§19-16B-17. Licensee to keep records; duration; submission to commissioner.**

1 The commissioner shall require licensed applicators to  
 2 maintain records with respect to applications of restricted use  
 3 and state restricted use pesticides. Such relevant information as  
 4 the commissioner may deem necessary may be specified by  
 5 regulation. Such records shall be kept for a period of three  
 6 years from the date of the application of the pesticide to which  
 7 such records refer, and the commissioner shall, upon request  
 8 in writing, be furnished with a copy of such records forthwith  
 9 by the licensee or certified commercial applicator. No regula-  
 10 tion issued by the commissioner for carrying out provisions of  
 11 this article shall require any private applicator to maintain any  
 12 records or file any reports or other documents.

**§19-16B-18. Reciprocal agreement.**

1 The commissioner may waive all or part of any license ex-  
 2 amination requirement provided for in this article on a recip-  
 3 rocal basis with any other state which has standards at least

4 equal to those of West Virginia and with federal agencies  
5 whose employees are certified under a government agency  
6 plan approved by the administrator of the federal environ-  
7 mental protection agency and may issue a license to the appli-  
8 cant provided all other requirements of this article are com-  
9 plied with by the applicant.

**§19-16B-19. Exemptions.**

1 (a) Veterinarian exemption. The provisions of section eight  
2 of this article relating to licenses and requirements for their  
3 issuance shall not apply to a doctor of veterinary medicine ap-  
4 plying pesticides to animals during the normal course of his  
5 veterinary practice: *Provided*, That he is not regularly engag-  
6 ed in the business of applying pesticides for hire amounting to  
7 a principal or regular occupation or does not publicly hold  
8 himself out as a pesticide applicator.

9 (b) Landscape gardener exemption. The licensing re-  
10 quirements of section eight of this article shall not apply  
11 to any person using handpowered equipment to apply pesti-  
12 cides to lawns, or to ornamental shrubs and trees not  
13 in excess of fifteen feet high, as an incidental part of his  
14 business of taking care of household lawns and yards, family  
15 gardens, and horticulture plots for remuneration: *Provided*,  
16 That such person shall not publicly hold himself out as  
17 being in the business of applying pesticides and does not  
18 apply "restricted use pesticides" restricted to use only by  
19 certified applicators.

20 (c) Farmer exemption. The provisions of section eight  
21 of this article relating to licenses and requirements for their  
22 issuance shall not apply to any farmer applying pesticides  
23 for himself or with ground equipment or manually for his  
24 farmer neighbors: *Provided*, That (1) he operates farm  
25 property and operates and maintains pesticide application  
26 equipment primarily for his own use; (2) he is not regularly  
27 engaged in the business of applying pesticides for hire amount-  
28 ing to a principal or regular occupation and that he shall  
29 not publicly hold himself out as a pesticide applicator; (3)  
30 he operates his pesticide application equipment only in the  
31 vicinity of his own property and for the accommodation of  
32 his neighbors.

33 (d) Experimental research exemption. The provisions of  
34 sections eight and nine of this article relating to licenses and  
35 requirements for their issuance shall not apply to research per-  
36 sonnel applying pesticides only to bona fide experimental plots.

**§19-16B-20. Storing and disposal of pesticides and pesticide containers.**

1 No person shall transport, store or dispose of any pesticide  
2 or pesticide containers in such a manner as to cause injury to  
3 humans, vegetation, crops, livestock, wildlife, beneficial insects  
4 or to pollute any waterway in a way harmful to any wildlife  
5 therein. The commissioner may promulgate rules and regula-  
6 tions governing the storing and disposal of such pesticides or  
7 pesticide containers. In determining these standards, the com-  
8 missioner shall take into consideration any regulations issued  
9 by the United States environmental protection agency.

**§19-16B-21. Legal recourse.**

1 Any person aggrieved by any action of the commissioner  
2 may obtain a review thereof by filing in a court of competent  
3 jurisdiction, within thirty days of notice of the action, a  
4 written petition praying that the action of the commissioner  
5 be set aside. A copy of such petition shall forthwith be  
6 delivered to the commissioner and within thirty days there-  
7 after the commissioner shall certify and file in the court a  
8 transcript of any record pertaining thereto, including a trans-  
9 script of evidence received, whereupon the court shall have  
10 jurisdiction to affirm, set aside, or modify the action of the  
11 commissioner, except that the findings of the commissioner  
12 as to the facts, if supported by substantial evidence shall  
13 be conclusive.

**§19-16B-22. Penalties.**

1 (a) Any person violating any provisions of this article or  
2 regulations adopted hereunder shall be guilty of a misde-  
3 meanor, and, upon conviction thereof, shall be fined not less  
4 than one hundred dollars nor more than five hundred dollars,  
5 and for the second offense, shall be guilty of a misdemeanor,  
6 and, upon conviction thereof, shall be fined not less than five  
7 hundred nor more than one thousand dollars, or imprisoned in  
8 the county jail not more than six months, or both fined and im-

9 prisoned. Magistrates shall have concurrent jurisdiction with  
10 circuit courts to enforce the provisions of this article.

11 (b) No state court shall allow the recovery of damages for  
12 administrative action taken if the court finds that there was  
13 probable cause for such action.

**§19-16B-23. Subpoenas.**

1 The commissioner may issue subpoenas to compel the  
2 attendance of witnesses and/or production of books, docu-  
3 ments and records anywhere in the state in any hearing  
4 affecting the authority or privilege granted by a license, cer-  
5 tification or permit issued under the provisions of this article.

**§19-16B-24. Enforcement.**

1 (a) For the purpose of carrying out the provisions of this  
2 article the commissioner may enter upon any public or private  
3 premises other than a dwelling house and the curtilage thereof,  
4 at reasonable times, after reasonable notification to the owner,  
5 tenant or agent, in order to:

6 (1) Have access for the purpose of inspecting any equip-  
7 ment subject to this article and such premises on which such  
8 equipment is kept or stored; or

9 (2) Inspect lands actually or reported to be exposed to  
10 pesticides; or

11 (3) Inspect storage or disposal areas; or

12 (4) Inspect or investigate complaints of injury to humans  
13 or land; or

14 (5) Sample pesticides being applied or to be applied.

15 (b) Should the commissioner be denied access to any land  
16 where such access was sought for the purpose set forth in this  
17 article, he may apply to any court of competent jurisdiction for  
18 a search warrant authorizing access to such land for said pur-  
19 poses. The court may upon such application issue the search  
20 warrant for the purposes requested.

21 (c) The commissioner, with or without the aid and advice  
22 of the county prosecuting attorney, is charged with the duty of  
23 enforcing the requirements of this article and any rules and

24 regulations issued hereunder. In the event a county or prose-  
25 cuting attorney refuses to act on behalf of the commissioner,  
26 the attorney general shall so act.

27 (d) The commissioner may bring an action to enjoin the  
28 violation or threatened violation of any provisions of this article  
29 or any rule made pursuant to this article in a court of competent  
30 jurisdiction of the county in which such violation occurs or is  
31 about to occur.

**§19-16B-25. Fees.**

1 All fees collected by the commissioner under the provision  
2 of this article shall be deposited in the general revenue fund  
3 of the state of West Virginia.

**§19-16B-26. Severability.**

1 If any provision of this article or the application thereof to  
2 any person or circumstance is held invalid, such invalidity  
3 does not affect other provisions or applications of this article  
4 which can be given effect without the invalid provisions or  
5 application, and to this end the provisions of this article  
6 are declared to be severable.



The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis  
Chairman Senate Committee

Clarence K. Buntin  
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

James L. Davis  
Clerk of the Senate

C. A. Blankenship  
Clerk of the House of Delegates

W. T. Buntin  
President of the Senate

Louis F. O'Kearney  
Speaker House of Delegates

The within approved this the 5th  
March day of \_\_\_\_\_, 1975.

Arthur A. Hanes, Jr.  
Governor

PRESENTED TO THE  
GOVERNOR

Date 2/28/75

Time 5:45 p.m.