WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1975

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ENROLLED
Committee Substitute for
HOUSE BILL No. 1047

Originating
(By Mr. [Name] in the House Committee on Finance)

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PASSED February 25, 1975

In Effect ninety days from Passage

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1047
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.

This article shall be known by the short title of “the West Virginia pesticide use and application act of 1975”.

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 1047

(Originating in the House Committee on Finance)

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


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 (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons) primarily for sale, consumption, propagation, or other use by man or animals.

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

5 "Certified applicator" means any person who is certified
under this article to use or supervise the use of any restricted use pesticides.

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

“Commissioner” means the commissioner of agriculture of the state of West Virginia and his duly authorized representatives.

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

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

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

“Direct supervision” means that unless otherwise prescribed by its labeling, a pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a competent person acting under the instructions and control of a certified applicator who is available if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied.

“Environment” includes water, air, land and all plants and man and other animals living therein, and the interrelationships which exist among these.

“Fungus” means any nonchlorophyll-bearing thallophytes (that is, any nonchlorophyll-bearing plant of a lower order
than mosses and liverworts), as for example, rust, smut, mildew, mold, yeast and bacteria, except those on or in living man or other animals and except those on or in processed food, beverages, or pharmaceuticals.

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

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

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

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

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

“Permit” means a written certificate, issued by the commissioner authorizing the use of certain restricted use pesticides or state restricted use pesticides.

“Person” means any individual, partnership, association, fiduciary, corporation or any organized group of persons whether incorporated or not.
“Pest” means any insect, rodent, nematode, fungus, weed; or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism (except viruses, bacteria or other microorganisms on or in living man or other living animals) which is declared to be a pest by the commissioner.

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

“Pesticide dealer” means any person who sells, wholesale, distributes, offers or exposes for sale, exchanges, barters or gives away within or into this state any restricted use pesticide.

“Plant regulator” means any substance or mixture of substances, intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant innoculants or soil amendments.

“Private applicator” means a certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or (if applied without compensation other than trading of personal services between producers of agricultural commodities) on property of another person.

“Restricted use pesticide” means any pesticide classified for restricted use by the administrator, United States environmental protection agency.

“State restricted pesticide use” means any pesticide use which, when used as directed or in accordance with a widespread and commonly recognized practice, the commissioner determines, subsequent to a hearing, requires additional restrictions for that use to prevent unreasonable adverse effects
on the environment including man, land, beneficial insects, animals, crops and wildlife, other than pests.

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

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

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

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

(a) The commissioner shall administer and enforce the provisions of this article and shall have authority to issue regulations after a public hearing following due notice to all interested persons in conformance with the provisions of the state administrative procedures set forth in chapter twenty-nine-a of this code to carry out the provisions of this article. Such regulations may prescribe methods to be used in application of pesticides.

(b) In issuing such regulations, the commissioner shall give consideration to pertinent research findings and recommendations of other agencies of the state, the federal government, or other reliable sources.

(c) For the purpose of uniformity and in order to enter into cooperative agreements, the commissioner shall adopt "restricted use pesticide" classifications as determined by the administrator, United States environmental protection agency. The commissioner may also, by regulations, after a public hearing following due notice, determine "state restricted pesticides uses" for the state or for designated areas within the state. If the commissioner determines that the pesticide (when applied in accordance with its directions for use, warnings and cautions, and for uses for which it is registered) may cause, without additional regulatory restrictions, unreasonable adverse effects on the environment, including injury to the applicator or other persons because of acute dermal or inhalation
toxicity of the pesticide, the pesticide shall be applied only by
or under the direct supervision of a certified applicator, or be
subject to such other restrictions as the commissioner may
determine.

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

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

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

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

(h) There is hereby created a pesticide advisory board
consisting of seven persons including the commissioner of
agriculture who shall be chairman, and one of whom shall be
from structural pest control, one of whom shall be a qualified
environmental health specialist, one of whom shall be employed
in the agricultural chemical industry, one of whom shall be
knowledgeable in the area of wildlife resources, one of whom
shall be a producer of agricultural crops on which pesticides
are applied, and one of whom shall be a citizen member who
shall be knowledgeable in the field of pesticides. The six
members not representing government departments shall be
appointed by the commissioner for terms of four years and may
serve successive terms, Provided, That at the inception two
shall be appointed for one year, two for two years, one for three
years, and one for four years. The board shall advise the
commissioner on problems relating to the use and application
of pesticides. The board shall meet at such time and place
as called by the chairman or by a majority of the board. Mem-
bers shall serve without compensation and members not from
governmental departments shall be paid expenses at the same
rate as paid to employees of the state according to the rules
and regulations as promulgated pursuant to the West Virginia
code.

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

§19-16B-5. Information; courses of instruction.
1 The commissioner shall publish information dealing with and
conduct courses of instruction in the areas of knowledge re-
quired by this article, and may provide funds, as required by
cooperating educational institutions and/or agencies, to ac-
complish these purposes including but not limited to salaries,
travel expenses, equipment and publication costs.

§19-16B-6. Classification of licenses; certification standards.
1 (a) The commissioner may further classify or subclassify
certifications or licenses to be issued under this article. Such
classifications or subclassifications may include but not be
limited to agricultural pest control, forest pest control, orna-
tmental and turf pest control, seed treatment, aquatic pest con-
tral, right-of-way pest control, industrial, institutional, struct-
ural and health-related pest control, regulatory pest control
and demonstrational and research pest control. Separate sub-
classifications may be specified as to ground, aerial, or manual
methods used by any licensee to apply pesticides or to the use
of pesticides to control insects and plant diseases, rodents or
weeds. Each classification shall be subject to separate testing
procedures and requirements except that no person shall be
required to pay an additional license fee if such person desires
to be licensed in one or all of the license classifications provid-
ed for by the commissioner under the authority of this section.
The commissioner in issuing regulations under this article shall prescribe standards for the certification of applicators of pesticides. Such standards shall relate to the use and handling of pesticides, or to the use and handling of the pesticide or class of pesticides covered by the person's certification, and shall be relative to the hazards involved. In determining standards, the commissioner shall consider the characteristics of the pesticides formulation such as the acute dermal and inhalation toxicity; the persistence, mobility and susceptibility to biological concentration; the use experience which may reflect an inherent misuse or an established good safety record which does not always follow laboratory toxicological information; the relative hazards of patterns of use such as granular soil applications, ultra low volume or dust aerial applications, or air blast sprayer applications; and the extent of the intended use. Further, the commissioner shall take into consideration standards of the United States environmental protection agency and is authorized to adopt those standards by regulation.

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

(a) No person other than those working under the direct supervision of a certified applicator shall use any “restricted use pesticide” which is restricted to use by “certified applicators” without that person first complying with the certification requirements pursuant to section six of this article or such other restrictions as are determined by the commissioner as necessary to prevent unreasonable adverse effects on the environment, including injury to the applicator or other persons, for that specific pesticide use.

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

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

(b) Application for a licensed applicator's license shall be made in writing to the commissioner on forms approved or supplied by the commissioner. Each application for a license shall contain information regarding the applicant’s qualifica-
tions and proposed operations, license classification or classifications the applicant is applying for and shall include the following:

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

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

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

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

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

(6) Nonresidents applying for a licensed applicator's license in any separate classification under this article to operate in this state shall file a written power of attorney designating the state auditor as the agent of such nonresident upon whom service of process may be had in the event of any suit against said nonresident person, and such power of attorney shall be so prepared and in such form as to render effective the jurisdiction of the courts of this state over such nonresident applicant, except that any such nonresident who has a duly appointed resident agent upon whom process may be served as provided by law shall not be required to designate the state auditor as such agent. The commissioner shall be furnished with a copy of such designation of the state auditor or of a resident agent, such copy to be duly certified by the state auditor.

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

(c) The commissioner shall not issue a licensed applicator's license until the individual engaged in or managing the pesticide application business is qualified by passing an examination to demonstrate to the commissioner his knowledge of how to
apply pesticides under the classification he has applied for
and his knowledge of the nature and effect of pesticides he
may apply under such classifications. Applicants successfully
completing this examination requirement shall be licensed com-
terical applicators for the use of "restricted use pesticides"
covered by the applicant's classification.

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

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

(e) If the commissioner finds the applicant qualified to
apply pesticides in the classifications the applicant has applied
for and if the applicant files the financial security required
under section fourteen of this article, and if the applicant
applying for a license to engage in aerial application of pesti-
cides has met all of the requirements of the federal aviation
agency, the aeronautics commission of this state, and any other
applicable federal or state laws or regulations to operate the
equipment described in the application, the commissioner shall
issue a licensed applicator's license limited to the classifications
for which the applicant is qualified. The license so issued shall
expire at the end of the calendar year of issue, unless it has
been revoked or suspended prior thereto by the commissioner
for cause, except when the financial security required under
section fourteen of this article is dated to expire at an earlier
date, in which case said license shall be dated to expire upon
expiration date of said financial security. The commissioner
may limit the license of the applicant to the use of certain
pesticides, or to certain areas, or to certain types of equipment
if the applicant is only so qualified. If a license is not issued as applied for, the commissioner shall inform the applicant in writing of the reasons therefor.

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

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

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

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

§19-16B-10. Private and commercial applicators license and certificate.

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

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

(2) The principal business address of the applicant.

(3) A listing of agricultural commodities produced or to be produced by the applicant applying for a private applicators license.
(4) Any other necessary information prescribed by the commissioner.

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

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

(d) No private applicator shall use any restricted use pesticide which is restricted to use by certified applicators without that private applicator first complying with the certification requirements determined by the commissioner as necessary to prevent unreasonable adverse effects on the environment, including injury to the applicator or other persons, for that specific pesticide use.

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

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

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

(3) Apply pesticides in accordance with label instructions and warnings, including the ability to prepare the proper concentration of pesticide to be used under particular circum-
stances taking into account such factors as area to be covered,
speed at which application equipment will be driven, and the
quantity dispersed in a given period of operation.

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

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

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

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


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

(1) Secure uniformity of regulations;

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

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

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

(5) Contract for monitoring pesticides for the national plan;
(6) Prepare and submit state plans to meet federal certification standards, as provided for in section four of the Federal Environmental Pesticide Control Act of 1972;

(7) Regulate certified applicators.

§19-16B-12. License renewals.

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


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

(1) Maintain and provide records adequate to identify purchases of restricted use pesticides and the materials purchased.

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

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

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

The commissioner shall notify any licensee of violations of this article by the licensee, and after inquiry, including opportunity for a hearing, may deny, suspend, revoke or modify any provision of any license, permit or certification issued under this article if he finds that the applicant or the
holder of a license, permit or certification has committed any of the following acts, each of which is declared to be a violation of this article:

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

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

(3) Applied unknown ineffective or improper pesticides;

(4) Operated faulty or unsafe equipment;

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

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

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

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

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

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

(11) Used fraud or misrepresentation in making an application for, or renewal of, a license, permit or certification;

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

(13) Aided or abetted a licensed or an unlicensed person to evade the provisions of this article or allowed one's licenses, permit or certification to be used by another person;
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(14) Made false or misleading statements during or after
an inspection concerning any infestation or infection of pests
found on land;

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

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

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

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

(b) The commissioner, taking into consideration the dif-
ferent classifications or categories of licensed applicator's li-
censes, shall establish the amount and kind of financial secur-
ity for property damage and public liability, each separately,
and including loss of damage arising out of the actual use of
any pesticide which each classification of licensed license re-
quires. Such financial security shall be maintained at not less
than that sum at all times during the licensed period. The com-
missioner shall be notified forty-five days prior to any reduction
at the request of the applicant or cancellation of such surety
bond or liability insurance by the surety or insurer. The total
and aggregate of the surety or insurer for all claims shall be
limited to the face of the bond or liability insurance policy. The
commissioner may accept a liability insurance policy or surety
bond in the proper sum which has a deductible clause in the
amount not exceeding that which the commissioner shall es-

tablish separately for aerial applicators and for other commer-
cial applicators for the total amount of financial security re-
quired herein. If the applicant has not satisfied the require-
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.
(b) The filing of such report or the failure to file such a report need not be alleged in any complaint which might be filed in a court of law, and the failure to file the report shall not be considered any bar to the maintenance of any criminal or civil action.

(c) The failure to file such a report shall not be a violation of this article. However, if the person failing to file such report is the only one injured from such use or application of a pesticide by others, the commissioner may, when in the public interest, refuse to hold a hearing for the denial, suspension or revocation of a license or permit issued under this article until such report is filed.

(d) Where damage is alleged to have occurred, the claimant shall permit the commissioner, the licensee and his representatives, such as bondsman or insurer, to observe within reasonable hours the lands or nontarget organism alleged to have been damaged in order that such damage may be examined. Failure of the claimant to permit such observation and examination of the damaged lands shall automatically bar the claim against the licensee.

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

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

§19-16B-18. Reciprocal agreement.

The commissioner may waive all or part of any license examination requirement provided for in this article on a reciprocal basis with any other state which has standards at least
equal to those of West Virginia and with federal agencies whose employees are certified under a government agency plan approved by the administrator of the federal environmental protection agency and may issue a license to the applicant provided all other requirements of this article are complied with by the applicant.


(a) Veterinarian exemption. The provisions of section eight of this article relating to licenses and requirements for their issuance shall not apply to a doctor of veterinary medicine applying pesticides to animals during the normal course of his veterinary practice: Provided, That he is not regularly engaged in the business of applying pesticides for hire amounting to a principal or regular occupation or does not publicly hold himself out as a pesticide applicator.

(b) Landscape gardener exemption. The licensing requirements of section eight of this article shall not apply to any person using handpowered equipment to apply pesticides to lawns, or to ornamental shrubs and trees not in excess of fifteen feet high, as an incidental part of his business of taking care of household lawns and yards, family gardens, and horticulture plots for remuneration: Provided, That such person shall not publicly hold himself out as being in the business of applying pesticides and does not apply "restricted use pesticides" restricted to use only by certified applicators.

(c) Farmer exemption. The provisions of section eight of this article relating to licenses and requirements for their issuance shall not apply to any farmer applying pesticides for himself or with ground equipment or manually for his farmer neighbors: Provided, That (1) he operates farm property and operates and maintains pesticide application equipment primarily for his own use; (2) he is not regularly engaged in the business of applying pesticides for hire amounting to a principal or regular occupation and that he shall not publicly hold himself out as a pesticide applicator; (3) he operates his pesticide application equipment only in the vicinity of his own property and for the accommodation of his neighbors.
Experimental research exemption. The provisions of sections eight and nine of this article relating to licenses and requirements for their issuance shall not apply to research personnel applying pesticides only to bona fide experimental plots.

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

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


Any person aggrieved by any action of the commissioner may obtain a review thereof by filing in a court of competent jurisdiction, within thirty days of notice of the action, a written petition praying that the action of the commissioner be set aside. A copy of such petition shall forthwith be delivered to the commissioner and within thirty days thereafter the commissioner shall certify and file in the court a transcript of any record pertaining thereto, including a transcript of evidence received, whereupon the court shall have jurisdiction to affirm, set aside, or modify the action of the commissioner, except that the findings of the commissioner as to the facts, if supported by substantial evidence shall be conclusive.


(a) Any person violating any provisions of this article or regulations adopted hereunder shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars, and for the second offense, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred nor more than one thousand dollars, or imprisoned in the county jail not more than six months, or both fined and im-
prisoned. Magistrates shall have concurrent jurisdiction with circuit courts to enforce the provisions of this article.

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


The commissioner may issue subpoenas to compel the attendance of witnesses and/or production of books, documents and records anywhere in the state in any hearing affecting the authority or privilege granted by a license, certification or permit issued under the provisions of this article.


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

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

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

(3) Inspect storage or disposal areas; or

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

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

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

(c) The commissioner, with or without the aid and advice of the county prosecuting attorney, is charged with the duty of enforcing the requirements of this article and any rules and
regulations issued hereunder. In the event a county or prose-
cuting attorney refuses to act on behalf of the commissioner,
the attorney general shall so act.

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

§19-16B-25. Fees.

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


If any provision of this article or the application thereof to
any person or circumstance is held invalid, such invalidity
does not affect other provisions or applications of this article
which can be given effect without the invalid provisions or
application, and to this end the provisions of this article
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

Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Georges B. O'Brien  
Clerk of the Senate

Clerk of the House of Delegates

W. L. Bedell  
President of the Senate

Speaker House of Delegates

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

Andr' A. Harrell  
Governor
PRESENTED TO THE GOVERNOR

Date  2/28/75
Time   5:45 p.m.