WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1981

ENROLLED

HOUSE BILL No. 1302

(By Mr. Ballou)

Passed .................................................. March 30, 1981
In Effect ............................................ ninety days from Passage
AN ACT to amend and reenact sections three, four, eight, nine, eleven, fourteen, fifteen, seventeen and twenty-two, article sixteen-b, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to definitions of licensed pesticide application business and certified public applicators; administration and enforcement; certification requirements; cooperative agreements; unlawful acts or grounds for denial; suspension or revocation of license; imposition of civil penalties; penalties as lien.

Be it enacted by the Legislature of West Virginia:

That sections, three, four, eight, nine, eleven, fourteen, fifteen, seventeen and twenty-two, article sixteen-b, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

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


1 As used in this article:

2 "Agricultural commodity" means any plant, or part thereof, or animal, or animal product, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, forest-ers, or other comparable persons) primarily for sale, consumption, propagation, or other use by man or animals.
“Animal” means all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish and shellfish.

“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 pesticide application business” 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) and means each place for which the business of applying pesticides for hire is carried on, including a branch office, franchise location or sub-office of a larger business entity.

“Certified public applicator” 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 certified public applicator.

“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, wholesales, distributes, offers or exposes for sale, exchanges, barter 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 inoculants 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 in-
halation toxicity of the pesticide, the pesticide shall be applied
only by or under the direct supervision of a certified appli-
cator, or be subject to such other restrictions as the com-
misioner may determine.

(d) Regulations adopted under this article shall not permit
any pesticide use which is prohibited by the Federal Insecti-
cide, Fungicide and Rodenticide Act, as amended, and guide-
lines or rules issued thereunder.

(e) Regulations adopted under this article as to certified
applicators of “restricted use pesticides” as designated under
the Federal Insecticide, Fungicide and Rodenticide Act, as
amended, and regulations adopted as to experimental use
permits as authorized by such act shall not be inconsistent
with the requirements of the Federal Insecticide, Fungicide
and Rodenticide Act, as amended and regulations issued there-
under.

(f) The commissioner, after notice and opportunity for
hearing, 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
Insecticide, Fungicide and Rodenticide Act, the commissioner
is authorized to make such reports to the United States environ-
mental 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. Members shall serve without
compensation and members not from governmental depart-
ments shall be paid expenses at the same rate as paid to em-
ployees 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-8. Licensed pesticide application business license.

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

(b) Application for a licensed pesticide application busi-
ness 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 qualifications 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 address of each branch office or sub-office from which the business of applying pesticides is carried on. Each sub-office shall be licensed;

(6) Nonresidents applying for a licensed pesticide application business 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) The name and address of each certified commercial applicator applying pesticides or supervising the application of pesticides for the licensed pesticide application business; and

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

(c) The commissioner shall not issue a licensed pesticide application business license until the owner, manager, partner or corporate officer is qualified by passing an examination to demonstrate to the commissioner his knowledge of the state and federal pesticide laws, safe use and storage of pesticides and the bases of the work to be done under the classification
or classifications for which application for license is being made.

(d) 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 fifteen of this article, and if the applicant applying for a license to engage in aerial application of pesticides 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 pesticide application business license. 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 fifteen 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 certain classifications of pest control work, or to certain areas, or to certain types of equipment, or to certain specific pesticides, 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.

(e) All persons applying pesticides as a licensed pesticide application business, whether or not they are applying restricted use pesticides, must be certified as a commercial applicator in the appropriate category or subcategory, or must be under the direct supervision of a certified commercial applicator.

§19-16B-9. Application of this article to governmental entities; public applicator's certification 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 applicator
who has qualified for such certification. The public ap-
plicator's certification shall be valid only when such applicator
is acting as a certified applicator applying or supervising
application of pesticides used by such entities. Individuals
certified pursuant to this section shall be certified commercial
applicators for the use of restricted use pesticides covered by
the applicant's classification.

(c) Such governmental agencies and municipal corpora-
tions 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.


(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
control laws through the use of state and/or federal en-
forcement personnel and facilities and to implement coopera-
tive enforcement 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 ap-
plicators;

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

(6) Prepare and submit state plans to meet federal certi-
fication standards, as provided for in section four of the
Federal Insecticide, Fungicide and Rodenticide Act, as amended; and

(7) Regulate certified applicators.

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

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 or he may impose a civil penalty as provided in section twenty-two of 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 pesticide application business 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 license, permit or certification to be used by another person;

(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 inspector or official; or

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


(a) The commissioner shall not issue a licensed pesticide application business license as required in section eight of this article until the applicant has filed evidence of financial security with the commissioner which may consist of a surety bond or liability insurance policy or certification thereof in an amount no less than twenty-five thousand dollars protecting persons who may suffer legal damages as a result of the operations of the applicant or applicant's employees. 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 different classifications or categories of licensed pesticide application business licenses, shall establish the amount and kind of financial security 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 licensee requires. Such financial security shall be maintained at not less than that sum at all times during the licensed period. The commissioner 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 establish separately for aerial applicators and for other commercial applicators for the total amount of financial security required herein. If the applicant has not satisfied the requirement of the deductible amount in any prior legal claim such deductible clause shall not be accepted by the commissioner unless such applicant furnishes the commissioner with a surety bond or liability insurance which shall satisfy the amount of the deductible as to all claims that may arise in his application of pesticides.

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

(c) Nothing in this article shall be construed to relieve any person from liability for any damage to the person or lands of another caused by the use of pesticides even though such use conforms to the rules and regulations of the commissioner.
§19-16B-17. Licensee or certified commercial applicators to keep records; duration; submission to commissioner.

The commissioner shall require licensed pesticide application businesses to maintain records with respect to applications of any pesticide. Certified commercial applicators shall maintain records with respect to applications of 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.


(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 imprisoned. 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.

(c) In addition to proceeding under any other remedy available at law or in equity for a violation of a provision of this act or a rule or regulation adopted thereunder, or any order issued pursuant to, the commissioner may, after hearing, assess a civil penalty not to exceed two hundred dollars upon a person other than a private applicator for such violation. The civil penalty shall be payable to the
21 state of West Virginia and shall be collectible in any manner
22 now or hereafter provided for collection of debt. If any
23 person liable to pay such civil penalty neglects or refuses to
24 pay the same, the amount of the civil penalty, together with
25 interest at ten percent, shall be a lien in favor of the state of
26 West Virginia upon the property, both real, and personal,
27 of such a person after the same has been entered and docketed
28 to record in the county where such property is situated. The
29 county clerk of the county, upon receipt of the certified copy
30 of such, shall enter same to record without requiring the pay-
31 ment of costs as a condition precedent to such recording.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within [inaugurated] this the 9 day of April, 1981.

[Signature]
Governor