

No: 1685



**WEST VIRGINIA LEGISLATURE**

REGULAR SESSION, 1986



**ENROLLED**

Committee Substitute for  
**HOUSE BILL No. 1685**

(By ~~the~~ Delegate E. Martin )



Passed March 8, 1986

In Effect Ninety Days from Passage

**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**H. B. 1685**  
(By DELEGATE E. MARTIN)

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[Passed March 8, 1986; in effect ninety days from passage.]

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AN ACT to amend and reenact sections two, eight, twelve, fourteen and twenty-two, article sixteen-b, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia pesticide use and application act; procedure for renewals; increasing civil penalties; changing criminal penalties; authorizing commissioner of agriculture to promulgate regulations permitting consent agreements or negotiated settlements for civil penalties; and prohibiting municipalities and counties from enacting laws or ordinances regulating pesticide use and application.

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

That sections two, eight, twelve, fourteen 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.**

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

1     The purpose of this article is to regulate in the public

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

28 Nothing in this article shall be construed as permit-  
29 ting municipalities or counties to enact laws or ordinan-  
30 ces regarding the regulation of pesticide use and  
31 application.

**§19-16B-8. Licensed pesticide application business  
license.**

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

7 (b) Application for a licensed pesticide application  
8 business license shall be made in writing to the

9 commissioner on forms approved or supplied by the  
10 commissioner. Each application for a license shall  
11 contain information regarding the applicant's qualifica-  
12 tions and proposed operations, license classification or  
13 classifications the applicant is applying for and shall  
14 include the following:

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

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

19 (3) If the applicant is a person other than an individ-  
20 ual, the full name of each member of the firm or  
21 partnership, or the names of the officers of the associ-  
22 ation, corporation or group;

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

25 (5) The address of each branch office or suboffice  
26 from which the business of applying pesticides is carried  
27 on. Each suboffice shall be licensed;

28 (6) Nonresidents applying for a licensed pesticide  
29 application business license in any separate classifica-  
30 tion under this article to operate in this state shall file  
31 a written power of attorney designating the secretary of  
32 state as the agent of such nonresident upon whom  
33 service of process may be had in the event of any suit  
34 against said nonresident person, and such power of  
35 attorney shall be so prepared and in such form as to  
36 render effective the jurisdiction of the courts of this  
37 state over such nonresident applicant, except that any  
38 such nonresident who has a duly appointed resident  
39 agent upon whom process may be served as provided by  
40 law shall not be required to designate the secretary of  
41 state as such agent. The commissioner shall be furnished  
42 with a copy of such designation of the secretary of state  
43 or of a resident agent, such copy to be duly certified by  
44 the secretary of state;

45 (7) The name and address of each certified commer-  
46 cial applicator applying pesticides or supervising the  
47 application of pesticides for the licensed pesticide

48 application business;

49 (8) State tax number; and

50 (9) Any other necessary information prescribed by the  
51 commissioner.

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

61 (d) If the commissioner finds the applicant qualified  
62 to apply pesticides in the classifications the applicant  
63 has applied for and if the applicant files the financial  
64 security required under section fifteen of this article,  
65 and if the applicant applying for a license to engage in  
66 aerial application of pesticides has met all of the  
67 requirements of the federal aviation agency, the  
68 aeronautics commission of this state, and any other  
69 applicable federal or state laws or regulations to operate  
70 the equipment described in the application, the commis-  
71 sioner shall issue a licensed pesticide application  
72 business license. The license so issued shall expire at the  
73 end of the calendar year of issue, unless it has been  
74 revoked or suspended prior thereto by the commissioner  
75 for cause, except when the financial security required  
76 under section fifteen of this article is dated to expire at  
77 an earlier date, in which case said license shall be dated  
78 to expire upon expiration date of said financial security.  
79 The commissioner may limit the license of the applicant  
80 to certain classifications of pest control work, or to  
81 certain areas, or to certain types of equipment, or to  
82 certain specific pesticides, if the applicant is only so  
83 qualified. If a license is not issued as applied for, the  
84 commissioner shall inform the applicant in writing of  
85 the reasons therefor.

86 (e) All persons applying pesticides as a licensed  
87 pesticide application business, whether or not they are

88 applying restricted use pesticides, must be certified as  
89 a commercial applicator in the appropriate category or  
90 subcategory, or must be under the direct supervision of  
91 a certified commercial applicator.

**§19-16B-12. License renewals.**

1 Any person holding a current valid license, permit or  
2 certification may renew such license, permit or certifi-  
3 cation for the next year without taking another exam-  
4 ination, except as is provided in subsection (d), section  
5 eight, unless the license, permit or certification is not  
6 renewed by the first day of April of any year in which  
7 case such licensee, permittee or certificate holder shall  
8 be required to take another examination: *Provided*, That  
9 no person holding an expired license, permit or certi-  
10 fication shall engage in any activity for which such  
11 license, permit or certification is required until such  
12 license, permit or certification has been renewed.

**§19-16B-14. Denial, suspension or revocation of license,  
permit or certification; civil penalty.**

1 The commissioner shall notify any licensee of viola-  
2 tions of this article by the licensee, and after inquiry,  
3 including opportunity for a hearing, may deny, suspend,  
4 revoke or modify any provision of any license, permit or  
5 certification issued under this article or he may impose  
6 a civil penalty as provided in section twenty-two of this  
7 article, if he finds that the applicant or the holder of a  
8 license, permit or certification has committed any of the  
9 following acts, each of which is declared to be a violation  
10 of this article:

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

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

- 21 (3) Applied unknown ineffective or improper  
22 pesticides;
- 23 (4) Operated faulty or unsafe equipment;
- 24 (5) Operated in a faulty, carelesss or negligent  
25 manner;
- 26 (6) Neglected or, after notice, refused to comply with  
27 the provisions of this article, the rules adopted here-  
28 under, or of any lawful order of the commissioner;
- 29 (7) Refused or neglected to keep and maintain the  
30 records required by this article, or to make reports  
31 when and as required;
- 32 (8) Made false or fraudulent records, invoices or  
33 reports;
- 34 (9) Engaged in the business of applying a pesticide on  
35 the lands of another without having a licensed pesticide  
36 application business license;
- 37 (10) Engaged in the business of applying a restricted  
38 use pesticide on the lands of another without having a  
39 licensed certified applicator in direct supervision;
- 40 (11) Used fraud or misrepresentation in making an  
41 application for, or renewal of, a license, permit or  
42 certification;
- 43 (12) Refused or neglected to comply with any limita-  
44 tions or restrictions on or in a duly issued license, permit  
45 or certification;
- 46 (13) Aided or abetted a licensed or an unlicensed  
47 person to evade the provisions of this article or allowed  
48 one's license, permit or certification to be used by  
49 another person;
- 50 (14) Made false or misleading statements during or  
51 after an inspection concerning any infestation or  
52 infection of pests found on land;
- 53 (15) Impersonated any federal, state, county or city  
54 inspector or official;
- 55 (16) Advertised as proof of professionalism in secur-  
56 ing business that the licensee is certified or licensed by

57 the department of agriculture or the commissioner of  
58 agriculture; or

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

**§19-16B-22. Penalties.**

1 (a) Any person violating any provisions of this article  
2 or regulations adopted hereunder is guilty of a misde-  
3 meanor, and, upon conviction thereof, shall be fined not  
4 less than one hundred dollars nor more than five  
5 hundred dollars for the first offense, and for the second  
6 offense, shall be fined not less than five hundred nor  
7 more than one thousand dollars, or imprisoned in the  
8 county jail not more than six months, or both fined and  
9 imprisoned. Magistrates shall have concurrent jurisdic-  
10 tion with circuit courts to enforce the provisions of this  
11 article.

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

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

35 (d) Notwithstanding any other provision of law to the  
36 contrary, the commissioner may promulgate and adopt  
37 regulations which permit consent agreements or nego-  
38 tiated settlements for the civil penalties assessed as a  
39 result of violation of the provisions of this article.

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

*Bruce O. Williams*  
.....  
Chairman Senate Committee

*Floyd Fuller*  
.....  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

*Jack C. Steels*  
.....  
Clerk of the Senate

*Donald L. Kopp*  
.....  
Clerk of the House of Delegates

*Don Tomkins*  
.....  
President of the Senate

*Joseph P. Allright*  
.....  
Speaker of the House of Delegates

The within *approved* ..... this the *25th*  
*March* day of ....., 1986.

*Hubert H. Brown*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/20/86

Time 2:57 p.m.

RECEIVED

1986 MAR 26 PM 6 57

SECRETARY OF STATE

FILED IN THE OFFICE OF  
SECRETARY OF STATE OF  
WEST VIRGINIA

THIS DATE 3/26/86