WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1986

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ENROLLED
Committee Substitute for
HOUSE BILL No. 11685

(By Delegate E. Martin)

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Passed March 8, 1986

In Effect Ninety Days from Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 1685
(By Delegate E. Martin)

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

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

Nothing in this article shall be construed as permitting municipalities or counties to enact laws or ordinances regarding the regulation of pesticide use and application.

§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 business 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 suboffice from which the business of applying pesticides is carried on. Each suboffice 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 secretary of state 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 secretary of state as such agent. The commissioner shall be furnished with a copy of such designation of the secretary of state or of a resident agent, such copy to be duly certified by the secretary of state;

(7) The name and address of each certified commercial applicator applying pesticides or supervising the application of pesticides for the licensed pesticide
application business;
(8) State tax number; and
(9) 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-12. License renewals.

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

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

The commissioner shall notify any licensee of viola-
tions 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 applica-
tion 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;
(16) Advertised as proof of professionalism in securing business that the licensee is certified or licensed by
the department of agriculture or the commissioner of agriculture; or

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


(a) Any person violating any provisions of this article or regulations adopted hereunder is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars for the first offense, and for the second offense, 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 five hundred dollars upon a person other than a private applicator for such violation. The civil penalty shall be payable to the state of West Virginia and shall be collectible in any manner now or hereafter provided for collection of debt. If any person liable to pay such civil penalty neglects or refuses to pay the same, the amount of the civil penalty, together with interest at ten percent, shall be a lien in favor of the state of West Virginia upon the property, both real and personal, of such a person after the same has been entered and docketed to record in the county where such property is situated. The county clerk of the county, upon receipt of the certified copy of such, shall enter same to record without requiring the payment of costs as a condition precedent to such recording.
(d) Notwithstanding any other provision of law to the contrary, the commissioner may promulgate and adopt regulations which permit consent agreements or negotiated settlements for the civil penalties assessed as a 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. Wilson
Chairman Senate Committee

Floyd Fuller
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Jeff C. Simms
Clerk of the Senate

Donald T. King
Clerk of the House of Delegates

Don Thomas
President of the Senate

Joseph P. Albritton
Speaker of the House of Delegates

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

Gov. James S.