

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990

ENROLLED

SENATE BILL NO. 419

(By Senator Herman)

PASSED March 10, 1990

In Effect from Passage

614. 419

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AN ACT to repeal article sixteen-b, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact article sixteen-a of said chapter, relating to the "West Virginia Pesticide Control Act of 1990"; declaration of purpose; legislative finding; definitions; powers and duties of the commissioner of agriculture; registration of pesticides and fees; confidentiality of trade secrets; refusal or cancellation of registration; annual pesticide business license; financial security requirement; businesses required to keep records; restricted use pesticides; application of this article to government entities; liability; private and commercial applicator's license and certificate; registered technician certificate; renewals; exemptions; reexamination or special examinations; employee training program; reciprocal agreement; denial, suspension or revocation of license, permit or certification; civil penalty; pesticide accidents; incidents or loss; legal recourse of aggrieved persons; violations; criminal penalties; civil penalties; negotiated agreements; creation of pesticide control fund in state treasury; disposition of certain fees in the general revenue fund; issuance of subpoenas; right of commissioner to enter and inspect; enforcement of article; issuance of stop-sale, use or renewal orders; judicial review; and issuing warnings.

Be it enacted by the Legislature of West Virginia:

That article sixteen-b, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that article sixteen-a, chapter nineteen of said code be amended and reenacted to read as follows:

ARTICLE 16A. WEST VIRGINIA PESTICIDE CONTROL ACT.

§19-16A-1. Short title.

- 1 This article shall be known as the "West Virginia
- 2 Pesticide Control Act of 1990".

§19-16A-2. Declaration of purpose; legislative finding.

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

29 control of pesticides.

30 Nothing in this article shall be construed as permit-
31 ting municipalities or counties to enact laws or ordi-
32 nances regarding pesticide control.

§19-16A-3. Definitions.

1 As used in this article:

2 (1) "Active ingredient" means:

3 (A) In the case of pesticides other than a plant
4 regulator, defoliant or desiccant, an ingredient which
5 will prevent, destroy, repel or mitigate insects, nema-
6 todes, fungi, rodents, weeds or other pests;

7 (B) In the case of a plant regulator, an ingredient
8 which, through physiological action, will accelerate or
9 retard the rate of growth or rate of maturation or
10 otherwise alter the behavior of ornamental or crop
11 plants or the produce thereof;

12 (C) In the case of a defoliant, an ingredient which
13 will cause the leaves or foliage to drop from a plant;
14 and

15 (D) In the case of a desiccant, an ingredient which
16 will artificially accelerate the drying of plant tissues.

17 (2) "Agriculture commodity" means any plant, or
18 part thereof, or animal, or animal product, produced
19 by a person (including farmers, ranchers, vineyardists,
20 plant propagators, Christmas tree growers, aquacultu-
21 rists, floriculturists, orchardists, foresters or other
22 comparable persons) primarily for sale, consumption,
23 propagation or other use by man or animals.

24 (3) "Animal" means all vertebrate and invertebrate
25 species, including, but not limited to, man and other
26 mammals, birds, fish and shell fish.

27 (4) "Adulterated" means when the strength or
28 purity of any pesticide falls below or is in excess of the
29 professed standard or quality as expressed on labeling
30 under which it is sold, or if any substance has been
31 substituted wholly or in part for the article, or if any
32 valuable constituent of the article has been wholly or

33 in part abstracted.

34 (5) "Antidote" means the most practical immediate
35 treatment in case of poisoning and includes first-aid
36 treatment.

37 (6) "Certified applicator" means any person who is
38 certified under this article to use or supervise the use
39 of any restricted use pesticides or general use pesti-
40 cides for hire.

41 (7) "Certified public applicator" means a licensed
42 applicator who applies "restricted use pesticides or
43 general use pesticides for hire" as an employee of a
44 state agency, municipal corporation or other govern-
45 mental agency. This term does not include employees
46 who work only under the direct supervision of a
47 certified public applicator.

48 (8) "Commercial applicator" means a certified
49 applicator (whether or not he or she is a private
50 applicator with respect to some uses) who uses or
51 supervises the use of any pesticide which is classified
52 for restricted use for any purpose or on any property
53 other than as defined under the definition of "private
54 applicator".

55 (9) "Commissioner" means the commissioner of
56 agriculture of the state of West Virginia and his or her
57 duly authorized representatives.

58 (10) "Defoliant" means any substance or mixture of
59 substances intended for causing the leaves of foliage to
60 drop from a plant, with or without causing abscission.

61 (11) "Desiccant" means any substance or mixture of
62 substances intended for artificially accelerating the
63 drying of plant tissue.

64 (12) "Device" means any instrument or contrivance
65 (other than a firearm) intended for trapping, destroy-
66 ing, repelling or mitigating insects or rodents or
67 destroying, repelling or mitigating fungi, nematodes or
68 such other pests as may be designated by the commis-
69 sioner, but not including treated wood products or
70 equipment used for the application of pesticides when

71 sold separately therefrom.

72 (13) "Direct supervision" means that unless other-
73 wise prescribed by its labeling, a pesticide shall be
74 considered to be applied under the direct supervision
75 of a certified applicator if it is applied by a competent
76 person acting under the verifiable instructions and
77 control of a certified applicator who is available when
78 needed, even though such certified applicator is not
79 physically present at the time and place the pesticide
80 is applied.

81 (14) "Environment" includes water, air, land and all
82 plants and man and other animals living therein, and
83 the interrelationships which exist among these.

84 (15) "Fumigant or fumigation" means any substance
85 which, by itself or in combination with any other
86 substance, emits or liberates a gas or gases, fumes or
87 vapors, which gas or gases, fumes or vapors, when
88 liberated and used, will destroy vermin, rodents,
89 insects and other pests, and are usually lethal, poison-
90 ous, noxious or dangerous to human life.

91 (16) "Fungicide" means any substance or mixture of
92 substances intended for preventing, destroying, repel-
93 ling or mitigating any fungi or plant disease.

94 (17) "Fungus" means any nonchlorophyll-bearing
95 thallophytes (that is, any nonchlorophyll-bearing plant
96 of a lower order than mosses and liverworts), as, for
97 example, rust, smut, mildew, mold, yeast, bacteria and
98 virus, except those on or in living man or other
99 animals and except those on or in processed food,
100 beverages or pharmaceuticals.

101 (18) "General use pesticide" means any pesticide not
102 designated as restricted use by the administrator,
103 United States environmental protection agency or a
104 state restricted use pesticide by the commissioner.

105 (19) "Herbicide" means any substance or mixture of
106 substances intended for preventing, destroying, repel-
107 ling or mitigating any weed.

108 (20) "Inert ingredient" means an ingredient which is

109 not an active ingredient.

110 (21) "Ingredient statement" means a statement of
111 the name of each active ingredient, together with the
112 name of each and total percentage of the inert ingre-
113 dients, if any, in the pesticide, and in case the pesticide
114 contains arsenic in any form, a statement of the
115 percentages of total and water soluble arsenic, each
116 calculated as elemental arsenic.

117 (22) "Insect" means any of the numerous small
118 invertebrate animals generally having the body more
119 or less obviously segmented, for the most part belong-
120 ing to the class insecta, comprising six-legged, either
121 winged or wingless forms, as, for example, beetles,
122 bugs, bees, flies, aphids and termites, and to other
123 allied classes of arthropods whose members are wing-
124 less and usually have more than six legs, as, for
125 example, spiders, mites, ticks, centipedes and wood
126 lice.

127 (23) "Insecticide" means any substance or mixture
128 of substances intended for preventing, destroying,
129 repelling or mitigating any insects which may be
130 present in any environment whatsoever.

131 (24) "Label" means the written, printed or graphic
132 matter on, or attached to, the pesticide or device, or
133 the immediate container thereof, and the outside
134 container or wrapper of the retail package, if any
135 there be, of the pesticide or device.

136 (25) "Labeling" means all labels and other written,
137 printed, graphic matter or advertising:

138 (A) Upon the pesticide or device or any of its
139 containers or wrappers;

140 (B) Accompanying the pesticide or device at any
141 time;

142 (C) To which reference is made on the label or in
143 literature accompanying the pesticide or device, except
144 when accurate, nonmisleading reference is made to
145 current official publications of the United States
146 departments of agriculture or interior, the United

147 States public health service, state experiment stations,
148 state agricultural colleges or other similar federal
149 institutions or official agencies of this state or other
150 states authorized by law to conduct research in the
151 field of pesticides; and

152 (D) Conveyed in any public media such as newspaper-
153 ers, periodicals, radio or television, relative to the
154 offering for sale of any pesticide or device.

155 (26) "Land" means all land and water areas, includ-
156 ing airspace and all plants, animals, structures, build-
157 ings, contrivances and machinery, appurtenant thereto
158 or situated thereon, fixed or mobile, including any
159 used for transportation.

160 (27) "Misbranded" means any pesticide or device if
161 its labeling bears any statement, design or graphic
162 representation relative thereto or to its ingredients
163 which is false or misleading in any particular; or,

164 (A) If it is an imitation of or is offered for sale under
165 the name of another pesticide;

166 (B) If its labeling bears any reference to registration
167 under this article;

168 (C) If the labeling accompanying it does not contain
169 directions for use which are necessary and, if complied
170 with, adequate for the protection of the public;

171 (D) If the label does not contain a warning or
172 caution statement which may be necessary and, if
173 complied with, adequate to prevent injury to living
174 man and other vertebrate animals, vegetation and
175 useful invertebrate animals;

176 (E) If the label does not bear an ingredient state-
177 ment on that part of the immediate container of the
178 retail package which is presented or displayed under
179 customary conditions of purchase, and on the outside
180 container or wrapper, if any, through which the
181 ingredient statement on the immediate container
182 cannot be clearly read;

183 (F) If any word, statement or other information
184 required by or under authority of this article to appear

185 on the label or labeling is not prominently placed
186 thereon with such conspicuousness (as compared with
187 other words, statement, designs or graphic matter in
188 the labeling) and in such terms as to render it likely
189 to be read and understood by the ordinary individual
190 under customary conditions of purchase and use;

191 (G) If in the case of an insecticide, nematocide,
192 fungicide or herbicide when used as directed or in
193 accordance with commonly recognized practice it is
194 injurious to living man or other vertebrate animals,
195 except weeds to which it is applied, or to the person
196 applying such pesticide; or

197 (H) If in the case of a plant regulator, defoliant or
198 desiccant when used as directed it is injurious to living
199 man or other vertebrate animals, or vegetation to
200 which it is applied, or to the person applying such
201 pesticide: *Provided*, That physical or physiological
202 effects on plants or parts thereof are not deemed to be
203 injury, when this is the purpose for which the plant
204 regulator, defoliant or desiccant was applied, in
205 accordance with the label claims and
206 recommendations.

207 (28) "Name" as applied to the active ingredient shall
208 be designated by an accepted chemical name and in
209 addition the accepted common name, or by a common
210 name promulgated by the commissioner. It is recom-
211 mended that the commissioner adopt the nomencla-
212 ture approved by the interdepartmental committee on
213 pest control or the American standards committee or
214 any national committee similarly functioning.

215 (29) "Nematode" means invertebrate animals of the
216 phylum nemathelminthes and class nematoda, that is,
217 unsegmented round worms with elongated, fusiform
218 or sac like bodies covered with cuticle and inhabiting
219 soil, water, plants or plant parts; may also be called
220 nemas or eelworms.

221 (30) "Nematocide" means any substance or mixture
222 of substances intended for preventing, destroying,
223 repelling or mitigating nematodes.

224 (31) "Permit" means a written certificate, issued by
225 the commissioner authorizing the use of certain
226 restricted use pesticides or state restricted use
227 pesticides.

228 (32) "Person" means any individual, partnership,
229 association, fiduciary, corporation or any organized
230 group of persons whether incorporated or not.

231 (33) "Pest" means any insect, rodent, nematode,
232 fungus, weed or any other form of terrestrial or
233 aquatic plant or animal life or virus, bacteria or other
234 microorganism (except viruses, bacteria or other
235 microorganisms on or in living man or other living
236 animals) which is declared to be a pest by the
237 commissioner.

238 (34) "Pesticide" means any substance or mixture of
239 substances intended for preventing, destroying, repel-
240 ling or mitigating any undesirable insects, rodents,
241 nematodes, fungi, weeds and other forms of plant or
242 animal life or viruses, except viruses on or in living
243 man or other animals or which the commissioner may
244 declare to be a pest and any substance or mixture of
245 substances intended for use as a plant regulator,
246 defoliant, desiccant or herbicide.

247 (35) "Pesticide application business" means any
248 person who owns or manages a pesticide application
249 business which is engaged in the business of applying
250 pesticides upon the lands of another (whether such
251 person applies restricted use pesticides or other
252 pesticides) and means each place for which the busi-
253 ness of applying pesticides for hire is carried on,
254 including a branch office, franchise location, suboffice
255 or worker location of a larger business entity.

256 (36) "Pesticide business" means any person engaged
257 in the business of distributing, applying or recom-
258 mending the use of a product, storing, selling or
259 offering for sale pesticides for distribution to the user.
260 The term does not include wood treaters not for hire
261 or businesses exempted by rule adopted pursuant to
262 this article.

263 (37) "Pesticide dealer" means any person who sells,
264 wholesales, distributes, offers or exposes for sale,
265 exchanges, barter or gives away within or into this
266 state any restricted use pesticide.

267 (38) "Plant regulator" means any substance or
268 mixture of substances, intended, through physiological
269 action, for accelerating or retarding the rate of growth
270 or rate of maturation or for otherwise altering the
271 behavior of ornamental or crop plants or the produce
272 thereof, but does not include substances to the extent
273 that they are intended as plant nutrients, trace
274 elements, nutritional chemicals, plant inoculants or
275 soil amendments.

276 (39) "Private applicator" means a certified applicator
277 who uses or supervises the use of any pesticide which
278 is classified for restricted use for purposes of produc-
279 ing any agricultural commodity on property owned or
280 rented by him or her or his or her employer or if
281 applied without compensation other than trading of
282 personal services between producers of agricultural
283 commodities on property of another person.

284 (40) "Registered technician" means an individual
285 who renders services similar to those of a certified
286 commercial applicator, but who has not completed all
287 the training or time in service requirements to be
288 eligible for examination as a commercial applicator
289 and is limited to application of general use pesticides.
290 However, if he or she applies restricted use pesticides,
291 he or she may do so only under the direct supervision
292 of a certified commercial applicator.

293 (41) "Registrant" means the person registering any
294 pesticide pursuant to the provisions of this article.

295 (42) "Repellent" means a substance, not a fumigant,
296 under whatever name known, which may be toxic to
297 insects and related pests, but is generally employed
298 because of its capacity for preventing the entrance or
299 attack of pests.

300 (43) "Restricted use pesticide" means any pesticide
301 classified for restricted use by the administrator,

302 United States environmental protection agency or any
303 pesticide declared to be state restricted by the
304 commissioner.

305 (44) "Rodenticide" means any substance or mixture
306 of substances intended for preventing, destroying,
307 repelling or mitigating any undesirable rodents or any
308 other vertebrate animals or others which the commis-
309 sioner may declare to be a pest.

310 (45) "Serious violation" means a violation of this
311 article or rule promulgated by the commissioner
312 where there is a substantial probability that death or
313 serious physical harm to persons, serious harm to
314 property or serious harm to the environment could
315 have resulted from the violation unless the person or
316 licensee did not or could not with the exercise of
317 reasonable diligence know of the violation.

318 (46) "State restricted use pesticide" means any
319 pesticide that the commissioner determines subse-
320 quent to a hearing, when used as directed or in
321 accordance with a widespread and commonly recog-
322 nized practice, requires additional restrictions for that
323 use to prevent unreasonable adverse effects on the
324 environment including man, land, beneficial insects,
325 animals, crops and wildlife, other than pests.

326 (47) "Unreasonable adverse effects on the environ-
327 ment" means any unreasonable risk to man or the
328 environment, taking into account the economic, social
329 and environmental costs and benefits of the use of any
330 pesticide.

331 (48) "Weed" means any plant which grows where
332 not wanted.

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

§19-16A-4. Powers and duties of the commissioner.

1 The commissioner of agriculture has the power and
2 duty to carry out the provisions of this article and is

3 authorized to:

4 (1) Delegate to employees of the department of
5 agriculture the authority vested in the commissioner
6 by virtue of the provisions of this article.

7 (2) Cooperate, receive grants in aid and enter into
8 agreements with any other agency of the state, the
9 United States department of agriculture, United States
10 environmental protection agency or any other federal
11 agency or any other state or agency thereof for the
12 purpose of carrying out the provisions of this article.

13 (3) Contract for research projects.

14 (4) Require that pesticides used in this state are
15 adequately tested and are safe for use under local
16 conditions.

17 (5) Require that individuals who sell, store, dispose
18 or apply pesticides are adequately trained and observe
19 appropriate safety practices.

20 (6) Promulgate rules pursuant to chapter twenty-
21 nine-a of this code, including, but not limited to, the
22 following:

23 (A) Licensing of businesses that sell, store, recom-
24 mend for use, mix or apply pesticides;

25 (B) Registration of pesticides for manufacture,
26 distribution, sale, storage or use in this state;

27 (C) Requiring reporting and recordkeeping related
28 to licensing and registration;

29 (D) Establishing training, testing and standards for
30 certification of commercial application, public applica-
31 tion, registered technician and private applicator;

32 (E) Revoking, suspending or denying licenses, regis-
33 tration and certification or certificate or permits;

34 (F) Creating advisory committees made up of both
35 pesticide industry representatives and consumers as
36 deemed necessary to implement this article;

37 (G) Establishing a fee structure for licenses, registra-
38 tion and certificate to defray the costs of implementing

39 this article;

40 (H) Classifying or subclassifying certificate or certifi-
41 cates to be issued under this article. Such classifica-
42 tion may include, but not be limited to, agricultural,
43 forest, ornamental, aquatic, right-of-way, industrial,
44 institutional, structural or health-related pest control;

45 (I) Restricting or prohibiting the sale or use and
46 disposal of any pesticide, pesticide container or residue
47 which is extremely hazardous;

48 (J) Coordinating and supporting pesticide monitor-
49 ing programs;

50 (K) Developing a program for registration of persons
51 with health sensitivity to pesticide drift;

52 (L) Establishing guidelines and requirements, as
53 deemed necessary, for licenses, certificate holders and
54 permittees for the identification of pests and their
55 methods of inspection of property to determine the
56 presence of pests;

57 (M) Establishing procedures for reporting spills,
58 accidents or incidents; and

59 (N) Such other rules necessary or convenient to
60 carry out the purpose of this article.

61 (7) Design and conduct an appropriate educational
62 program on the use of pesticides and the necessity for
63 care when applying the same.

**§19-16A-5. Registration of pesticides; fees; confidentiality of
trade secrets.**

1 (a) Every pesticide which is manufactured, distrib-
2 uted, sold or offered for sale, used or offered for use
3 within this state, or delivered for transportation or
4 transported in intrastate commerce or between points
5 within this state through any point outside this state
6 shall be registered in the office of the commissioner,
7 and such registration shall be renewed annually. The
8 commissioner may register and permit the sale and
9 use of any pesticide which has been registered under
10 the provisions of 7 U.S.C. §§ 136 *et seq.*, as the same is

11 in effect on the effective date of this article: *Provided*,
12 That such pesticides are subject to registration fees
13 and all other provisions of this article.

14 (b) Products which have the same formula, and are
15 manufactured by the same person, the labeling of
16 which contain the same claims and which have
17 designation identifying the products as the same
18 pesticide may be registered as a single pesticide
19 without an additional fee.

20 (c) Within the discretion of the commissioner or his
21 or her authorized representative, a change in labeling
22 or formulas of a pesticide may be made within the
23 current period of registration, without requiring a new
24 registration of the product. The period of registration
25 shall be for one year, commencing on the first day of
26 January and ending on the thirty-first day of Decem-
27 ber of each year.

28 (d) The registrant shall file with the commissioner a
29 statement including:

30 (1) The name and address of the registrant and the
31 name and address of the person whose name will
32 appear on the label, if other than the registrant;

33 (2) The name of the pesticide;

34 (3) A complete copy of the labeling accompanying
35 the pesticide and a statement of all claims to be made
36 for it including directions for use; and

37 (4) If requested by the commissioner, a full descrip-
38 tion of the tests made and the results thereof upon
39 which the claims are based and the analytical method
40 or methods employed in determining the percentage
41 of each active ingredient listed on the label to be
42 registered. In the case of renewal of registration, a
43 statement is required only with respect to information
44 which is different from that furnished when the
45 pesticide was registered or last registered.

46 (e) The registrant shall pay an annual fee as pres-
47 cribed by rules promulgated hereunder for each brand
48 and grade of pesticide. The fees shall be deposited in

49 the state treasury and to the credit of a special fund
50 to be used only for carrying out the provisions of this
51 article, and shall be expended upon order of the
52 commissioner of agriculture, pursuant to section
53 twenty-three of this article.

54 (f) The commissioner may require the submission of
55 the complete formula of any pesticide. If it appears to
56 the commissioner that the composition of the item is
57 such as to warrant the proposed claims for it and if the
58 item and its labeling and other material required to be
59 submitted to comply with the requirements of this
60 article, he or she shall register the item.

61 (g) If it does not appear to the commissioner that the
62 item is such as to warrant the proposed claims for it
63 or if the item and its labeling and other material
64 required to be submitted do not comply with the
65 provisions of this article, he or she shall notify the
66 registrant of the manner in which the item, labeling
67 or other material required to be submitted fails to
68 comply with this article so as to afford the registrant
69 an opportunity to make the necessary corrections.

70 (h) The commissioner may not make public, infor-
71 mation which, in his or her judgment, contains or
72 relates to trade secrets, commercial or financial
73 information obtained from a person and privileged or
74 confidential, except that, when necessary to carry out
75 the provisions of this article, information relating to
76 formulas of products acquired by authorization of this
77 article may be revealed to any federal, state or local
78 agency consultant and may be revealed at a public
79 hearing or in findings of fact issued by the commis-
80 sioner when it is in the public's best interest.

81 (i) The commissioner shall provide the necessary
82 forms to register pesticides.

§19-16A-6. Refusal or cancellation of registration.

1 The commissioner may refuse or cancel the registra-
2 tion of a pesticide if he or she finds, after a hearing,
3 that use of the pesticide has demonstrated unreason-
4 able adverse effects on the environment; or, a false or

5 misleading statement about the pesticide has been
6 made or implied by the registrant or the registrant's
7 agent, in writing, verbally or through any form of
8 advertising or literature or the registrant has not
9 complied or the pesticide does not comply with the
10 requirements of this article or any rule adopted
11 pursuant to this article.

§19-16A-7. Annual pesticide business license.

1 (a) No person may engage in the application of
2 pesticides for hire at any time without a pesticide
3 application business license issued by the commis-
4 sioner. The commissioner shall require an annual fee
5 for each pesticide application business license issued as
6 prescribed by rules promulgated hereunder.

7 (b) Application for a pesticide application business
8 license shall be made in writing to the commissioner
9 on forms approved or supplied by the commissioner.
10 Each application for a license shall contain information
11 regarding the applicant's qualifications and proposed
12 operations, license classification or classifications the
13 applicant is applying for and shall include the
14 following:

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

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

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

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

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

29 (6) The name and address of each certified commer-
30 cial applicator applying pesticides or supervising the

31 application of pesticides for the pesticide application
32 business;

33 (7) State tax number; and

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

36 (c) The commissioner may not issue a pesticide
37 application business license until the owner, manager,
38 partner or corporate officer is qualified by passing an
39 examination to demonstrate to the commissioner his
40 or her knowledge of the state and federal pesticide
41 laws, safe use and storage of pesticides. The pesticide
42 application business shall be limited to the classifica-
43 tion or classifications for which the business maintains
44 certified commercial applicators in their employ.

45 (d) If the commissioner finds the applicant qualified
46 to apply pesticides in the classifications the applicant
47 has applied for, and if the applicant files the financial
48 security required by this article, and if the applicant
49 applying for a license to engage in aerial application of
50 pesticides has met all the requirements of the federal
51 aviation agency, the aeronautics commission of this
52 state, and any other applicable federal or state laws or
53 regulations to operate the equipment described in the
54 application, the commissioner shall issue a pesticide
55 application business license. The license so issued
56 expires at the end of the calendar year of issue, unless
57 it has been revoked or suspended prior thereto by the
58 commissioner for cause. When the financial security
59 required under this article is dated to expire at an
60 earlier date, the license shall be dated to expire upon
61 expiration date of said financial security. The commis-
62 sioner may limit the license of the applicant to certain
63 classifications of pest control work, or to certain areas
64 or to certain types of equipment or to certain specific
65 pesticides, if the applicant is only so qualified. If a
66 license is not issued as applied for, the commissioner
67 shall inform the applicant in writing of the reasons
68 therefor.

69 (e) All persons applying pesticides as a pesticide
70 business, whether or not they are applying restricted

71 use pesticides, must be a certified applicator in the
72 appropriate category or subcategory, or must be a
73 registered technician under the direct supervision of a
74 certified commercial applicator.

75 (f) All funds collected pursuant to this section shall
76 be deposited in the general revenue fund of the state,
77 pursuant to section twenty-three of this article.

**§19-16A-8. Financial security requirement for licensed
pesticide business.**

1 (a) The commissioner may not issue a pesticide
2 application business license until the business has
3 furnished evidence of financial security with the
4 commissioner consisting of either:

5 (1) A surety bond to the benefit of the state of West
6 Virginia; or

7 (2) A liability insurance policy from a person auth-
8 orized to do business within this state or a certificate
9 thereof protecting persons who may suffer legal
10 damages as a result of the operation of licensee's
11 business operation.

12 (b)(1) The commissioner, taking into consideration
13 the different classifications or categories of pesticide
14 application business licenses, shall establish the
15 amount and kind of financial security for property
16 damage and public liability and including loss of
17 damage arising out of the actual use of any pesticide
18 for each classification of license required. The finan-
19 cial security shall be maintained at not less than that
20 sum at all times during the licensed period. The
21 commissioner shall be notified forty-five days prior to
22 any reduction at the request of the applicant or
23 cancellation of such surety bond or liability insurance
24 by the surety or insurer. The total and aggregate
25 liability of the surety or insurer for all claims is
26 limited to the face of the bond or liability insurance
27 policy. The commissioner may accept a liability
28 insurance policy or surety bond in the proper sum
29 which has a deductible clause in the amount not
30 exceeding that which the commissioner shall establish

31 separately for aerial applicators and for other commer-
32 cial applicators for the total amount of financial
33 security required herein. If the applicant has not
34 satisfied the requirement of the deductible amount in
35 any prior legal claim, the deductible clause may not be
36 accepted by the commissioner unless the applicant
37 furnishes the commissioner with a surety bond or
38 liability insurance which satisfies the amount of the
39 deductible as to all claims that may arise in his or her
40 application of pesticides.

41 (2) If the surety furnished becomes unsatisfactory,
42 the applicant shall, upon notice, immediately establish
43 new evidence of financial security and if he or she
44 fails to do so, it is unlawful thereafter for such person
45 to engage in said business of applying pesticides until
46 the financial security is brought into compliance with
47 the requirements as established by the commissioner
48 and the person's license is reinstated.

49 (c) Nothing in this article may be construed to
50 relieve any person from liability for any damage to the
51 person or lands of another caused by the use of
52 pesticides even though the use conforms to the rules
53 of the commissioner.

§19-16A-9. Records of pesticide businesses.

1 As a condition of obtaining or renewing a license,
2 each pesticide business shall maintain such records as
3 required by the rules promulgated hereunder. The
4 commissioner may require a licensed pesticide busi-
5 ness to submit records to his or her office and failure
6 to submit requested records is grounds for revocation
7 of a license.

§19-16A-10. Restricted use pesticides.

1 No person may use any pesticide classified for
2 restricted use unless that person has first complied
3 with the certification requirements of the rules
4 promulgated pursuant to this article, unless such
5 person is acting under the direct supervision of a
6 certified applicator.

§19-16A-11. Application of this article to government entities; liability.

1 All state agencies, municipal corporations or any
2 other governmental agency are subject to the provi-
3 sions of this article and rules adopted thereunder
4 concerning the registration or application of pesticides.

5 These agencies are exempt from any fees prescribed
6 by this article.

7 The governmental agencies and municipal corpora-
8 tions are subject to legal recourse by any person
9 damaged by the application of any pesticide, and the
10 action may be brought in the county where the
11 damage or some part thereof occurred.

§19-16A-12. Private and commercial applicator's license and certificate; registered technician certificate.

1 (a) Application for a private or commercial applica-
2 tor's license shall be made in writing to the commis-
3 sioner on forms approved or supplied by the commis-
4 sioner. Each application shall contain:

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

7 (2) The principal business address of the applicant;

8 (3) A listing of agricultural commodities produced or
9 to be produced by the applicant applying for a private
10 applicator's license;

11 (4) Any other necessary information prescribed by
12 the commissioner; and

13 (5) Payment of required fees.

14 (b) The commissioner may renew any applicant's
15 license under each classification for which such
16 applicant is licensed. However, the applicant may, at
17 no greater than three-year intervals, be required to
18 present evidence or documentation indicating he or
19 she has attended a workshop or training session
20 approved by the commissioner.

21 (c) No private applicator may use any restricted use

22 pesticide which is restricted to use by certified appli-
23 cators without having first complied with the certifica-
24 tion requirements determined by the commissioner as
25 necessary to prevent unreasonable adverse effects on
26 the environment, including injury to the applicator or
27 other persons, for that specific pesticide use.

28 (d) As a minimum requirement for certification, a
29 private or commercial applicator must show that he or
30 she possesses a practical knowledge of the pest prob-
31 lems and pest control practices associated with his or
32 her agricultural operations, proper storage, use,
33 handling and disposal of the pesticides and containers
34 and his or her related legal responsibility. This
35 practical knowledge includes ability to:

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

38 (2) Read and understand the label and labeling
39 information including the common name of pesticides
40 he or she uses; the crop, animal or site to which they
41 will be applied; pests to be controlled; timing and
42 methods of application; safety precautions; any pre-
43 harvest or reentry restrictions; and any specified
44 disposal procedures;

45 (3) Apply pesticides in accordance with label instruc-
46 tions and warnings, including the ability to prepare
47 the proper concentration of pesticide to be used under
48 particular circumstances, taking into account such
49 factors as area to be covered, speed at which applica-
50 tion equipment will be driven, and the quantity
51 dispersed in a given period of operation;

52 (4) Recognize local environmental situations that
53 must be considered during application to avoid con-
54 tamination; and

55 (5) Recognize poisoning symptoms and procedures to
56 follow in case of a pesticide accident.

57 (e) If the commissioner does not certify the private
58 or commercial application under this section, he or she
59 shall inform the applicant in writing of the reasons
60 therefor.

61 (f) Any written examinations required of private or
62 commercial applicators may not be more stringent
63 than the requirements for such examinations by the
64 United States environmental protection agency.

§19-16A-13. Renewals.

1 Any person holding a current valid license, permit
2 or certification may renew such license, permit or
3 certification for the next year without taking another
4 examination, unless the license, permit or certification
5 is not renewed by the first day of April of any year in
6 which case such licensee, permittee or certificate
7 holder shall be required to take another examination:
8 *Provided*, That no person holding an expired license,
9 permit or certification may engage in any activity for
10 which such license, permit or certification is required
11 until such license, permit or certification has been
12 renewed. Any person renewing after the fifteenth day
13 of January of each year shall pay a penalty of twenty-
14 five percent of the established license, permit or
15 certificate fee. A penalty of fifty percent of the
16 established fee shall be levied after the first day of
17 February of each year. Persons delinquent after the
18 first day of February shall be so notified.

§19-16A-14. Exemptions.

1 (a) *Veterinarian exemption.*—The provisions of
2 section seven of this article relating to licenses and
3 requirements for their issuance do not apply to a
4 doctor of veterinary medicine applying pesticides to
5 animals during the normal course of his or her
6 veterinary practice: *Provided*, That he or she is not
7 regularly engaged in the business of applying pesti-
8 cides for hire amounting to a principal or regular
9 occupation and does not publicly hold himself or
10 herself out as a pesticide applicator.

11 (b) *Farmer exemption.*—The provisions of section
12 seven of this article relating to licenses and require-
13 ments for their issuance do not apply to any farmer
14 applying pesticides for himself or herself or with
15 ground equipment or manually for his or her farmer
16 neighbors: *Provided*, That he or she:

17 (1) Operated farm property and operates and main-
18 tains pesticide application equipment primarily for his
19 or her own use;

20 (2) Is not regularly engaged in the business of
21 applying pesticides for hire amounting to a principal
22 or regular occupation and that he or she does not
23 publicly hold himself or herself out as a pesticide
24 applicator; and

25 (3) Operates his or her pesticide application equip-
26 ment only in the vicinity of his or her own property
27 and for the accommodation of his or her neighbors.

28 (c) *Experimental research exemption.*—The provi-
29 sions of section seven of this article relating to licenses
30 and requirements for their issuance do not apply to
31 research personnel applying pesticides only to bona
32 fide experimental plots.

§19-16A-15. Reexamination or special examinations.

1 Any applicator, whose certificate has been sus-
2 pended, revoked or modified or if significant techno-
3 logical developments have occurred requiring addi-
4 tional knowledge related to the classification or
5 subclassification for which the applicator has applied,
6 or when required by additional standards established
7 by the United States environmental protection agency,
8 or when required by rules of the commissioner, is
9 required to be reexamined or to take special examina-
10 tions and furnish satisfactory evidence of completion
11 of educational courses, programs or seminars approved
12 by rules relating to applicator's certification.

§19-16A-16. Employee training program.

1 A licensee shall register with the commissioner any
2 employee who performs pest control within thirty
3 days after employment. The employee must have
4 successfully completed training approved by the
5 department. An employee who has not successfully
6 completed training may only apply pesticides if a
7 certified applicator is physically present at the time
8 and place the pesticide is applied. The commissioner
9 shall adopt rules that establish the criteria for

10 approved training programs for such registered
11 technicians.

§19-16A-17. Reciprocal agreement.

1 The commissioner may waive all or part of any
2 license examination requirement provided for in this
3 article on a reciprocal basis with any other state which
4 has standards at least equal to those of West Virginia
5 and with federal agencies whose employees are certi-
6 fied under a government agency plan approved by the
7 administrator of the federal environmental protection
8 agency and may issue a license to the applicant:
9 *Provided*, That all other requirements of this article
10 are complied with by the applicant.

**§19-16A-18. Denial, suspension or revocation of license,
permit or certification; civil penalty.**

1 The commissioner shall notify any licensee of
2 violations of this article by the licensee, and after
3 inquiry, including opportunity for a hearing, may
4 deny, suspend, revoke or modify any provision of any
5 license, permit or certification issued under this
6 article, or he or she may impose a civil penalty as
7 provided hereafter by this article, if he or she finds
8 that the applicant or the holder of a license, permit or
9 certification has violated any provision of the act or
10 any rule promulgated hereunder.

§19-16A-19. Pesticide accidents; incidents or loss.

1 (a) Any person claiming damages for a pesticide
2 application shall file with the commissioner, on a form
3 provided by the commissioner, a written statement
4 claiming that he or she has been damaged. This report
5 must be filed within sixty days after the date that
6 damages occurred. If a growing crop is alleged to have
7 been damaged, the report must be filed prior to the
8 time that twenty-five percent of the crop has been
9 harvested. The statement shall contain, but not be
10 limited to, the name of the person allegedly responsi-
11 ble for the application of said pesticide, the name of
12 the owner or lessee of the land on which the crop is
13 grown and for which damage is alleged to have

14 occurred and the date on which the alleged damage
15 occurred. The commissioner shall, upon receipt of the
16 statement, notify the licensee and the owner or lessee
17 of the land or other person who may be charged with
18 the responsibility of the damages claimed and furnish
19 copies of statements as requested. The commissioner
20 shall inspect damages whenever possible and when he
21 or she determines that the complaint has sufficient
22 merit he or she shall make the information available
23 to the person claiming damage and to the person who
24 is alleged to have caused the damage.

25 (b) The filing of the report or the failure to file a
26 report need not be alleged in any complaint which is
27 filed in a court of law, and the failure to file the report
28 may not be considered a bar to the maintenance of
29 any criminal or civil action.

30 (c) The failure to file a report is not a violation of
31 the provisions of this article. However, if the person
32 failing to file a report is the only one injured from
33 such use or application of a pesticide by others, the
34 commissioner may, when in the public interest, refuse
35 to hold a hearing for the denial, suspension or revoca-
36 tion of a license or permit issued under this article
37 until a report is filed.

38 (d) Where damage is alleged to have occurred, the
39 claimant shall permit the commissioner, the licensee
40 and his or her representative, such as bondsman or
41 insurer, to observe within reasonable hours the lands
42 or nontarget organism alleged to have been damaged
43 in order that the damage may be examined. Failure of
44 the claimant to permit the observation and examina-
45 tion of the damaged lands automatically bars the claim
46 against the licensee.

§19-16A-20. Legal recourse of aggrieved persons.

1 Any person aggrieved by any action of the commis-
2 sioner may obtain a review thereof by filing in a court
3 of competent jurisdiction, within thirty days of notice
4 of the action, a written petition praying that the action
5 of the commissioner be set aside. A copy of such
6 petition shall forthwith be delivered to the commis-

7 sioner and within thirty days thereafter the commis-
8 sioner shall certify and file in the court a transcript of
9 any record pertaining thereto, including a transcript of
10 evidence received, whereupon the court has jurisdic-
11 tion to affirm, set aside or modify the action of the
12 commissioner, except that the findings of the commis-
13 sioner as to the facts, if supported by substantial
14 evidence, are conclusive.

§19-16A-21. Violations.

1 It is unlawful for any person to manufacture,
2 distribute, sell or offer for sale, use or offer to use:

3 (1) *Product registration.*—(A) Any pesticide which is
4 not registered pursuant to the provisions of this
5 article, or any pesticide if any of the claims made for
6 it or any of the directions for its use differ in sub-
7 stance from the representation made in connection
8 with its registration, or if the composition of a pesti-
9 cide differs from its composition as represented in
10 connection with its registration, in the discretion of
11 the commissioner, a change in the labeling or formula
12 of a pesticide may be made, within a registration
13 period, without requiring registration of the product,
14 however, changes are not permissible if they lower the
15 efficiency of the product.

16 (B) Any pesticide sold, offered for sale or offered for
17 use which is not in the registrant's or the manufactur-
18 er's unbroken container and to which there is not
19 affixed a label, visible to the public, bearing the
20 following information:

21 (i) The name and address of the manufacturer,
22 registrant or person for whom manufactured;

23 (ii) The name, brand or trademark under which the
24 pesticide is sold; and

25 (iii) The net weight or measure of the content,
26 subject to such reasonable variation as the commis-
27 sioner may permit.

28 (C) Any pesticide which contains any substance or
29 substances in quantities highly toxic to man, unless

30 the label bears, in addition to any other matter
31 required by this article:

32 (i) A skull and crossbones;

33 (ii) The word "poison" prominently in red, on a
34 background of distinctly contrasting color; and

35 (iii) A statement of an antidote for the pesticide.

36 (D) The pesticides commonly known as lead arse-
37 nate, basic lead arsenate, calcium arsenate, magne-
38 sium arsenate, zinc arsenate, sodium fluoride, sodium
39 fluosilicate and barium fluosilicate unless they have
40 been distinctly colored or discolored as provided by
41 rules issued in accordance with this article, or any
42 other white powder pesticide which the commissioner,
43 after investigation of and after public hearing on the
44 necessity for such action for the protection of the
45 public health and the feasibility of coloration or
46 discoloration, by rules, requires to be distinctly colored
47 or discolored, unless it has been so colored or disco-
48 lored. The commissioner may exempt any pesticide to
49 the extent that it is intended for a particular use or
50 uses from the coloring or discoloring required or
51 authorized by this subsection if he or she determines
52 that such coloring or discoloring for such use or uses
53 is not necessary for the protection of the public health.

54 (E) Any pesticide which is adulterated or mis-
55 branded, or any device which is misbranded.

56 (F) Any pesticide that is subject of a stop sale, use
57 or removal order provided for hereinafter in this
58 article until such time as the provisions of that section
59 hereafter have been met.

60 (2) *Business/applicator violations.*—In addition to
61 imposing civil penalties or referring certain violations
62 for criminal prosecution the commissioner may, after
63 providing an opportunity for a hearing, deny, suspend,
64 modify or revoke a license issued under this article, if
65 he or she finds that the applicant, or licensee or his or
66 her employee has committed any of the following acts,
67 each of which is declared to be a violation:

68 (A) Made false or fraudulent claims through any
69 media, misrepresenting the effect of materials or
70 methods to be utilized or sold;

71 (B) Used or caused to be used any pesticide in a
72 manner inconsistent with its labeling or rules of the
73 commissioner: *Provided*, That such deviation may
74 include provisions set forth in section 2(ee) of the
75 federal insecticide, fungicide and rodenticide act (7
76 U.S.C. §§ 136 *et seq.*), as the same is in effect on the
77 effective date of this article, disposed of containers or
78 unused portions of pesticide inconsistent with label
79 directions or the rules of the commissioner in the
80 absence of label directions if those rules further
81 restrict such disposal;

82 (C) Acted in a manner to exhibit negligence, incom-
83 petence or misconduct in acting as a pesticide business;

84 (D) Made false or fraudulent records, invoices or
85 reports;

86 (E) Failed or refused to submit records required by
87 the commissioner;

88 (F) Used fraud or misrepresentation, or presented
89 false information in making application for a license or
90 renewal of a license, or in selling or offering to sell
91 pesticides;

92 (G) Stored or disposed of containers or pesticides by
93 means other than those prescribed on the label or
94 adopted rules;

95 (H) Provided or made available any restricted use
96 pesticide to any person not certified under the provi-
97 sions of this article or rules issued hereunder;

98 (I) Made application of any pesticide in a negligent
99 manner;

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

103 (K) Refused or neglected to keep and maintain
104 records or reports required under the provisions of

105 this article or required pursuant to rules adopted
106 under the provisions of this article or refused to
107 furnish or permit access for copying by the commis-
108 sioner any such records or reports;

109 (L) Used or caused to be used any pesticide classified
110 for restricted use on any property unless by or under
111 the direct supervision of a certified applicator;

112 (M) Made false or misleading statements during or
113 after an inspection concerning any infestation of pests
114 found on land;

115 (N) Refused or neglected to comply with any limita-
116 tions or restrictions on or in a duly issued certification;

117 (O) Aided, abetted or conspired with any person to
118 violate the provisions of this article, or permitted one's
119 certification or registration to be used by another
120 person;

121 (P) Impersonated any federal, state, county or city
122 inspector or official;

123 (Q) Made any statement, declaration or representa-
124 tion through any media implying that any person
125 certified or registered under the provisions of this
126 article is recommended or endorsed by any agency of
127 this state;

128 (R) Disposed of containers or unused portions of
129 pesticide inconsistent with label directions or the rules
130 of the commissioner in the absence of label directions
131 if those rules further restrict such disposal;

132 (S) Detach, alter, deface or destroy, in whole or in
133 part, any label or labeling provided for in this article
134 or the rules promulgated under the provisions of this
135 article; or

136 (T) Refuse, upon a request in writing specifying the
137 nature or kind of pesticide or device to which such
138 request relates, to furnish to or permit any person
139 designated by the commissioner to have access to and
140 to copy such records of business transactions as may
141 be essential in carrying out the purposes of this article.

§19-16A-22. Criminal penalties; civil penalties; negotiated agreement.

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

12 (b) *Civil penalties.*—(1) Any person violating a
13 provision of this article or rule adopted hereunder
14 may be assessed a civil penalty by the commissioner.
15 In determining the amount of any civil penalty, the
16 commissioner shall give due consideration to the
17 history of previous violations of any person, the
18 seriousness of the violation, including any irreparable
19 harm to the environment and any hazards to the
20 health and safety of the public and the demonstrated
21 good faith of any person charged in attempting to
22 achieve compliance with this article after written
23 notification of the violation.

24 (2) The commissioner may assess a penalty of not
25 more than five hundred dollars for each first offense,
26 nonserious violation, and not more than one thousand
27 dollars for a serious violation, or for a repeat or
28 intentional violation.

29 (3) The civil penalty is payable to the state of West
30 Virginia and is collectible in any manner now or
31 hereafter provided for collection of debt. If any person
32 liable to pay the civil penalty neglects or refuses to pay
33 the same, the amount of the civil penalty, together
34 with interest at ten percent, is a lien in favor of the
35 state of West Virginia upon the property, both real and
36 personal, of such a person after the same has been
37 entered and docketed to record in the county where
38 such property is situated. The clerk of the county,

39 upon receipt of the certified copy of such, shall enter
40 same to record without requiring the payment of costs
41 as a condition precedent to recording.

42 (c) Notwithstanding any other provision of law to
43 the contrary, the commissioner may promulgate and
44 adopt rules which permit consent agreements or
45 negotiated settlements for the civil penalties assessed
46 as a result of violation of the provisions of this article.

47 (d) No state court may allow the recovery of dam-
48 ages for administrative action taken if the court finds
49 that there was probable cause for such action.

**§19-16A-23. Creation of pesticide control fund in state
treasury; disposition of certain fees to gen-
eral revenue fund.**

1 There is hereby created a special fund in the state
2 treasury to be known as "pesticide control fund" and
3 may be expended on order of the commissioner. All
4 product registration fees, nondedicated fees or civil
5 penalties collected hereunder shall be placed in the
6 pesticide control fund. The proceeds of the pesticide
7 control fund may be used in carrying out the purpose
8 of this article. Dealer, commercial and private applica-
9 tor license fees and pesticide application business
10 license fees shall be deposited in the general revenue
11 fund of the state.

§19-16A-24. Issuance of subpoenas.

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

**§19-16A-25. Right of commissioner to enter and inspect;
enforcement of article.**

1 (a) For the purpose of carrying out the provisions of
2 this article, the commissioner may enter upon any
3 public or private premises, other than a dwelling
4 house and the curtilage thereof, at reasonable times,

5 after reasonable notification to the owner, tenant or
6 agent, in order to:

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

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

12 (3) Inspect storage or disposal areas;

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

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

16 (b) If the commissioner is denied access to any land
17 where such access was sought for the purpose set forth
18 in this article, he or she may apply to any court of
19 competent jurisdiction for a search warrant authoriz-
20 ing access to such land for said purposes. The court
21 may, upon such application, issue the search warrant
22 for the purposes requested.

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

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

**§19-16A-26. Issuance of stop-sale; use or renewal orders;
judicial review.**

1 The commissioner shall issue and enforce a written
2 or printed "stop-sale, use or renewal" order directed
3 to the owner or custodian of any lot of pesticide,
4 requiring him or her to hold the lot of pesticide at a
5 designated place, when the commissioner finds the
6 pesticide is being offered or exposed for sale or use or

7 is being used in violation of any of the provisions of
8 this article, until the law has been complied with and
9 the pesticide is released in writing by the commis-
10 sioner, or the violation has been otherwise legally
11 disposed of by written authority. The owner or custo-
12 dian of such pesticide has the right to judicial review
13 of such order in accordance with the provisions of
14 article five, chapter twenty-nine-a of this code. The
15 provisions of this section may not be construed as
16 limiting the right of the commissioner to proceed as
17 authorized by other provisions of this chapter. The
18 commissioner shall release the pesticide so withdrawn
19 when the requirements of the provisions of this
20 chapter have been complied with and upon payment
21 of all costs and expenses incurred in connection with
22 the withdrawal.

§19-16A-27. Issuing warnings.

1 Nothing in this article requires the commissioner to
2 report, for the institution of proceedings under this
3 article, minor violations of this article whenever the
4 commissioner believes that the public interest will be
5 adequately served by a suitable written notice or
6 warning to the person violating the provisions of this
7 article.

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

Frederick J. Riva
.....
Chairman Senate Committee

Bernard V. Kelly
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Harrell E. Holmes
.....
Clerk of the Senate

Donald A. Kopp
.....
Clerk of the House of Delegates

Keith Bennett
.....
President of the Senate

Bob Cole
.....
Speaker House of Delegates

The within *is approved* this the *30th*
day of *March*, 1990.

Winston Caperton
.....
Governor

PRESENTED TO THE
GOVERNOR

Date

3/22/90

Time

9:26 am

RECEIVED

1990 MAR 30 AM 11:24

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GOVERNOR
STATE OF NEW YORK