

HOUSE BILL NO. 126

INTRODUCED BY R. SHAW

BY REQUEST OF THE DEPARTMENT OF AGRICULTURE

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4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA PESTICIDES ACT;  
6 REVISING PESTICIDE REGISTRATION REQUIREMENTS; REVISING CERTAIN DEFINITIONS, FEES, AND  
7 REQUIREMENTS FOR COMMERCIAL APPLICATORS, COMMERCIAL OPERATORS, DEALERS, FARM  
8 APPLICATORS, AND GOVERNMENT AGENCIES; PROVIDING FOR ADDITIONAL FEES FOR CERTAIN  
9 CERTIFICATION AND TRAINING PROGRAMS; ~~PROVIDING THAT ONLY INDIVIDUALS MAY RECEIVE~~  
10 ~~PESTICIDE DEALER LICENSES~~; CLARIFYING PESTICIDE DEALER REQUIREMENTS; REVISING THE  
11 METHODS OF SAMPLING AND ANALYSIS; EXTENDING THE INTEGRATED PEST AND PESTICIDE  
12 MANAGEMENT SAFETY PROGRAM TO OTHER FACILITIES; EXTENDING RULEMAKING AUTHORITY;  
13 AMENDING SECTIONS 80-8-102, 80-8-107, 80-8-111, 80-8-201, ~~80-8-202~~, 80-8-203, 80-8-207, 80-8-209,  
14 80-8-213, 80-8-302, 80-8-303, 80-8-401, 80-8-404, AND 80-15-302, MCA; ~~REPEALING SECTIONS 80-8-208~~  
15 ~~AND 80-8-214, MCA~~; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

16  
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18  
19 **Section 1.** Section 80-8-102, MCA, is amended to read:

20 **"80-8-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions  
21 apply:

- 22 (1) "Active ingredient" means:
- 23 (a) in the case of a pesticide, other than a plant regulator, defoliant, or desiccant, an ingredient that will
  - 24 prevent, destroy, repel, alter life processes, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests;
  - 25 (b) in the case of a plant regulator, an ingredient that acts upon the physiology to accelerate or retard
  - 26 the rate of growth or rate of maturation or otherwise alter the normal processes of ornamental or crop plants or
  - 27 their produce;
  - 28 (c) in the case of a defoliant, an ingredient that will cause the leaves or foliage to drop from a plant;
  - 29 (d) in the case of a desiccant, an ingredient that will artificially accelerate the drying of plant tissue.
- 30 (2) "Adulterated" applies to a pesticide if its strength of purity falls below the professed standard or quality

1 as expressed on labeling or under which it is sold, if any substance has been substituted wholly or in part for the  
 2 pesticide, or if any valuable constituent of the pesticide has been wholly or in part abstracted.

3 ~~(3) "Antidote" means the most practical immediate treatment in case of poisoning and includes first-aid~~  
 4 ~~treatment.~~

5 ~~(4)(3)~~ "Applicator" means a person who applies pesticides by any method.

6 ~~(5) "Beneficial insects" means those insects that, in the course of their life cycle, carry, transmit, or~~  
 7 ~~spread pollen to and from vegetation, act as parasites and predators on other insects, or are otherwise beneficial.~~

8 (4) "BENEFICIAL INSECTS" MEANS THOSE INSECTS THAT, IN THE COURSE OF THEIR LIFE CYCLE, CARRY, TRANSMIT,  
 9 OR SPREAD POLLEN TO AND FROM VEGETATION, ACT AS PARASITES AND PREDATORS ON OTHER INSECTS, OR ARE  
 10 OTHERWISE BENEFICIAL.

11 ~~(6)(4)(5)~~ "Commercial applicator" means a person who by contract or for hire applies by aerial, ground,  
 12 or hand equipment pesticides to land, plants, seed, animals, waters, structures, or vehicles.

13 ~~(7)(5)(6)~~ "Commercial operator" means a person who applies pesticides under the supervision of a  
 14 commercial applicator.

15 ~~(8)(6)(7)~~ "Crop" means a food intended for human or animal consumption or a fiber product.

16 ~~(9)(7)(8)~~ "Dealer" means a person who sells, wholesales, offers or exposes for sale, exchanges, barter,  
 17 or gives away within this state any pesticide except those pesticides that are to be used for home, yard, garden,  
 18 ~~home orchard, shade trees, ornamental trees, bushes,~~ and lawn.

19 ~~(10)(8)(9)~~ "Defoliant" means a substance or mixture of substances for causing the leaves or foliage to  
 20 drop from a plant, with or without causing abscission.

21 ~~(11)(9)(10)~~ "Desiccant" means a substance or mixture of substances for artificially accelerating the drying  
 22 of plant tissue.

23 ~~(12)(10)(11)~~ (a) "Device" means any instrument or contrivance intended for destroying, controlling,  
 24 repelling, or mitigating pests.

25 (b) The term does not include equipment used for the application of pesticides.

26 ~~(13)(11)(12)~~ "Environment" means the soil, air, water, plants, and animals.

27 ~~(14)(12)(13)~~ "Equipment" means equipment used in the actual application of pesticides, including aircraft,  
 28 ground sprayers and dusters, hand-held applicators, and water surface equipment.

29 ~~(15)(13)(14)~~ "Farm applicator" means a person applying pesticides to the person's own crops or land.

30 ~~(16)(14)(15)~~ "Fungi" means all nonchlorophyll-bearing thallophytes (all nonchlorophyll-bearing plants of

1 a lower order than mosses and liverworts), such as rusts, smuts, mildews, molds, and yeasts, ~~and bacteria,~~  
 2 except those resident on or in living humans or other animals.

3 ~~(17) "Fungicide" means a substance or mixture of substances for preventing, destroying, repelling, or~~  
 4 ~~mitigating any fungus.~~

5 ~~(18)(15)(16)~~ "Herbicide" means a substance or mixture of substances for preventing, destroying,  
 6 repelling, or mitigating any weed.

7 ~~(19)(16)(17)~~ "Inert ingredient" means an ingredient that is not an active ingredient.

8 ~~(20)(17)(18)~~ "Ingredient statement" means either:

9 (a) a statement of the chemical name and common name and percentage of each active ingredient,  
 10 together with the total percentage of the inert ingredients, in the pesticide; or

11 (b) a statement of the chemical name and common name of each active ingredient, together with the  
 12 name of each and total percentage of the inert ingredients, if any, in the pesticide. However, subsection ~~(20)(a)~~  
 13 ~~(17)(a)~~ (18)(A) applies if the preparation is highly toxic to humans, determined as provided in 80-8-105, ~~and if,~~  
 14 if the pesticide contains arsenic in any form, the ingredient statement must also include a statement of the  
 15 percentage of total and water-soluble arsenic, each calculated as elemental arsenic.

16 ~~(21)(18)(19)~~ "Insect" means any of the numerous small invertebrate animals generally having the body  
 17 more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, winged  
 18 and wingless forms, such as beetles, bugs, wasps, flies, and keds, and to other classes of arthropods whose  
 19 members are wingless and usually have more than six legs, such as spiders, mites, ticks, centipedes, and wood  
 20 lice.

21 ~~(22)(19)(20)~~ "Insecticide" means any substance or mixture of substances for preventing, destroying,  
 22 repelling, or mitigating any insects present in any environment.

23 ~~(23)(20)(21)~~ "Label" means the written, printed, or graphic matter on or attached to the pesticide or device  
 24 or to its immediate container and any outside container or wrapper of any retail package of the pesticide or  
 25 device.

26 ~~(24)(21)(22)~~ "Labeling" means all labels and other written, printed, or graphic matter:

27 (a) ~~upon~~ on the pesticide or device or any of its containers or wrappers;

28 (b) accompanying the pesticide or device at any time;

29 (c) to which reference is made on the label or in literature accompanying the pesticide or device, except  
 30 when accurate, nonmisleading reference is made to current official publications of:

- 1 (i) the United States environmental protection agency;
- 2 (ii) federal departments of agriculture, interior, or health and human services;
- 3 (iii) state experiment stations;
- 4 (iv) state agricultural colleges; or
- 5 (v) other similar federal institutions or official agencies of this state or other states authorized by law to
- 6 conduct research in the field of pesticides.
- 7 ~~(25)(22)(23)~~ "Misbranded" applies:
- 8 (a) to a pesticide or device if its labeling bears any statement, design, or graphic representation relative
- 9 to its ingredients that is false or misleading;
- 10 (b) to a pesticide if:
- 11 (i) it is an imitation of or is offered for sale under the name of another pesticide;
- 12 (ii) its labeling ~~bears any reference to registration under this chapter~~ fails to bear the NECESSARY
- 13 information required by this chapter;
- 14 (iii) the labeling accompanying it does not contain instructions for use ~~necessary and, if complied with,~~
- 15 adequate for the protection of the public that when followed provide adequate public protection;
- 16 (iv) the label does not contain a warning or caution statement necessary and, if complied with, adequate
- 17 to prevent injury to living humans or undue hazard to the environment;
- 18 (v) the label of the retail package that is presented or displayed under customary conditions of purchase
- 19 does not bear an ingredient statement on that part of the immediate container and on the outside or on a wrapper
- 20 through which the ingredient statement on the immediate container cannot be clearly read;
- 21 (vi) any word, statement, or other information required to appear on the labeling is not prominently placed
- 22 on the labeling with a conspicuousness (as compared with other words, statements, designs, or graphic matter
- 23 in the labeling) and in terms rendering it likely to be read and understood by the ordinary individual under
- 24 customary conditions of purchase and use;
- 25 (vii) in the case of an insecticide, ~~nematocide~~ nematicide, fungicide, or herbicide, when used as directed
- 26 or in accordance with commonly recognized practice, it is injurious to living humans or other vertebrate animals
- 27 or vegetation, except weeds, to which it is applied or to the person applying the pesticide;
- 28 (viii) in the case of a plant regulator, defoliant, or desiccant, when used as directed, it is injurious to
- 29 humans or other vertebrate animals or vegetation to which it is applied or to the person applying the pesticide.
- 30 Physical or physiological effects on plants or parts of plants are not injurious when this is the purpose for which

1 the plant regulator, defoliant, or desiccant is applied in accordance with the label claims and recommendations.

2 ~~(26) "Nematocide" means any substance or mixture of substances intended for preventing, destroying,~~  
3 ~~repelling, or mitigating nematodes.~~

4 ~~(27) "Nematodes", "nemas", or "eelworms" means invertebrate animals of the phylum nemathelminthes~~  
5 ~~and class nematoda, that is, unsegmented round worms with elongated, fusiform, or sac-like bodies covered with~~  
6 ~~cuticle and inhabiting soil, water, animals, plants, or plant parts.~~

7 ~~(28)(23)(24)~~ "Person" means any natural person, individual, firm, partnership, association, corporation,  
8 company, joint-stock association, body politic, or organized group of persons, whether incorporated or not, and  
9 any trustee, receiver, assignee, or similar representative.

10 ~~(29)(24)(25)~~ "Pest" ~~means~~ includes any insect, rodent, nematode, snail, slug, or weed and any form of  
11 plant or animal life or virus, ~~except a virus on or in living humans or other animals, that is normally considered~~  
12 ~~a pest or that the department declares a pest~~ a plant, animal, microorganism, or infectious agent:

13 ~~—— (a) that is detrimental to humans or human concerns, other than internal parasites and pathogens; or~~

14 ~~—— (b) that the department by rule defines as a pest~~ INCLUDES ANY INSECT, RODENT, NEMATODE, SNAIL, SLUG,  
15 OR WEED AND ANY FORM OF PLANT OR ANIMAL LIFE OR VIRUS, EXCEPT A VIRUS ON OR IN LIVING HUMANS OR OTHER  
16 ANIMALS, THAT IS NORMALLY CONSIDERED A PEST OR THAT THE DEPARTMENT DECLARES A PEST.

17 ~~(30)(25)(26)~~ "Pesticide" means any:

18 (a) substance or mixture of substances, including any living organism or any product derived from a living  
19 organism, intended for preventing, destroying, controlling, repelling, altering life processes, or mitigating any  
20 insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on  
21 or in living humans or other animals, that may infect or be detrimental to persons, vegetation, crops, animals,  
22 structures, or households or be present in any environment or that the department declares a pest;

23 (b) substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and

24 (c) other substances intended for that use named by the department by a rule ~~adopted~~ by it.

25 ~~(31)(26)(27)~~ (a) "Plant regulator" means any substance or mixture of substances affecting the rate of  
26 growth or rate of maturation or for otherwise altering physiological condition of plants.

27 (b) The term does not include substances to the extent that they are intended as plant nutrients, trace  
28 elements, nutritional chemicals, plant inoculants, and soil amendments.

29 ~~(32)(27)(28)~~ "Public utility applicator" means a person applying pesticides to land and structures owned  
30 or leased by a public utility.

1           ~~(33)(28)~~(29) "Registrant" means the person registering any pesticide or device under the provisions of  
2 this chapter.

3           ~~(34)(29)~~(30) "Restricted-use pesticide" means any pesticide, including highly toxic pesticides, that the  
4 department or the environmental protection agency has found and determined, ~~subsequent to a hearing~~, to be  
5 injurious, when used in accordance with registration, label, directions, and cautions, to persons, beneficial insects,  
6 animals, crops, or the environment other than the pests it is intended to prevent, destroy, control, or mitigate.

7           ~~(35)(30)~~(31) "Retailer" means a person who sells, offers or exposes for sale, exchanges, barter, or gives  
8 away within this state any pesticide for home, yard, lawn, and garden use in quantities or concentrations as  
9 determined by the department.

10           ~~(36)(31)~~(32) "Waste pesticide" means a pesticide that:

11           (a) may not be used legally because the environmental protection agency or the department has  
12 canceled or suspended the pesticide's registration or has taken other administrative action to prohibit use of the  
13 pesticide;

14           (b) will not be used for reasons including but not limited to product damage, toxicity, or obsolescence;  
15 or

16           (c) cannot be disposed of in a legal or economically feasible manner.

17           ~~(37)(32)~~(33) "Weed" means any plant or part of the plant that grows where it is not wanted."  
18

19           **Section 2.** Section 80-8-107, MCA, is amended to read:

20           **"80-8-107. Notice -- public information.** (1) As used in this section, the following definitions apply:

21           (a) "Building operator" means the owner, the owner's agent, or the building manager of any public  
22 building or, in the case of a public building that is leased to a tenant who is responsible for the operation of the  
23 building, the tenant or the tenant's building manager.

24           (b) "Public building" means a building that is owned or leased by a public agency, as defined in 18-1-101,  
25 and that is open to the public, including but not limited to:

26           (i) a building that is used for educational, office, or institutional purposes; or

27           (ii) a library, museum, school, hospital, auditorium, dormitory, or university building.

28           (2) The building operator who for indoor treatment personally applies or who contracts for or orders the  
29 application of a pesticide, excluding an antimicrobial, a disinfectant, a sanitizer, a pest bait, paste, or gel, or other  
30 pesticide that is designated by the department pursuant to 80-8-212 for retail sale, shall post a notice at each

1 access to the public building or, if only a room has been treated, at each access to the room in a manner that  
 2 allows the notice to be read before entering the building or room. However, if a room from which a heating or  
 3 air-conditioning system draws air has been treated, the notice required by this section must be posted at each  
 4 access to the public building. The notice must:

- 5 (a) be permanently displayed if the pesticide is applied on a regular basis;
- 6 (b) be posted at the time of the application if the pesticide is not applied on a regular basis;
- 7 (c) contain the name of the pesticide applied; and
- 8 (d) contain the phone number at which a person may obtain information, the label, and the material  
 9 safety data sheet on the pesticide applied.

10 (3) The applicator or building operator may not remove a notice posted pursuant to this section until the  
 11 pesticide is dry or the reentry interval stated on the pesticide label has expired, whichever is later.

12 (4) A building operator shall keep, for 2 years, records of the pesticide applications and the material  
 13 safety data sheet for each pesticide.

14 (5) A local government may not adopt standards that are more stringent than the standards established  
 15 in subsections (2) through (4).

16 (6) (a) Except as provided in Title 80, chapter 15, the department may, alone or in cooperation with other  
 17 state or federal agencies, publish information regarding aspects of the use and application sections or registration  
 18 sections of this chapter. This information ~~cannot~~ may not disclose operations of selling, production, or use of  
 19 pesticides by any person.

20 (b) When designating a pesticide as a state restricted-use pesticide, the department shall list the state  
 21 restricted-use pesticide by rule."

22

23 **Section 3.** Section 80-8-111, MCA, is amended to read:

24 **"80-8-111. Waste pesticide and pesticide container collection, disposal, and recycling program.**

25 (1) The department shall establish a waste pesticide and pesticide container collection, disposal, and recycling  
 26 program. The program must be funded by license, permit, and special fees designated for that purpose in this  
 27 chapter. The department may also establish waste pesticide and pesticide container fees and accept grants, gifts,  
 28 and other funds to finance this program.

29 (2) The department may cooperate and contract with a person to conduct and manage the waste  
 30 pesticide and pesticide container collection, disposal, and recycling program.

1 (3) (a) The department shall establish a collection program for waste pesticides and pesticide containers.

2 In order to participate in this program, a person shall:

3 (i) notify the department in advance of the type and amount of waste pesticide or pesticide containers  
4 that will be delivered for collection; and

5 (ii) deliver the waste pesticide or pesticide containers for collection by the department at a time and  
6 location designated by the department.

7 (b) A person may not be subject to an administrative or judicial penalty or action under this chapter as  
8 a result of participation in the waste pesticide or pesticide container collection, disposal, and recycling program  
9 pursuant to this section.

10 (4) The department may designate types of waste pesticides or pesticide containers that it will not collect  
11 for disposal and recycling under this program.

12 ~~(5) The department shall provide pesticide applicators, dealers, and operators who participate in the  
13 waste pesticide and pesticide container collection, disposal, and recycling program and who are subject to a  
14 license or permit fee under 80-8-203, 80-8-205, 80-8-207, 80-8-209, or 80-8-213 with a credit against the fees  
15 levied pursuant to 80-8-105(2)(s), provided that:~~

16 ~~—— (a) the credit does not exceed the amount of the license or permit fee paid by the applicator, dealer, or  
17 operator under 80-8-203, 80-8-205, 80-8-207, 80-8-209, or 80-8-213; and~~

18 ~~—— (b) each applicator, dealer, or operator may receive only one credit for each permit or license period.~~

19 ~~(6)(5)~~ The department shall consult affected local governments before implementing the collection  
20 program under this section."

21

22 **Section 4.** Section 80-8-201, MCA, is amended to read:

23 **"80-8-201. Registration.** (1) Each pesticide distributed, sold, or offered for sale within the state or  
24 delivered for transportation or transported in intrastate commerce or between points within the state must be  
25 registered with the department. The registration must be renewed annually by the manufacturer, formulator, or  
26 distributor of the pesticide. The department shall register all federally approved pesticides, and those registered  
27 are subject to registration fees and all other provisions of this chapter. All registrations of pesticides expire on  
28 December 31 following the date of issuance unless otherwise terminated.

29 (2) The applicant for registration shall file with the department a statement that includes:

30 (a) the name and address of the applicant and the name and address of the person whose name will

1 appear on the label, if other than the registrant;

2 (b) a complete copy of the pesticide label of the pesticide, the United States environmental protection  
 3 agency registration number if the pesticide is registered, and a statement of all claims to be made for it, including  
 4 directions for use;

5 (c) the trade and chemical name of the pesticide; and

6 (d) if requested by the department, a full description of tests made and the results ~~upon~~ on which the  
 7 claims are based. In the case of renewal of registration, a statement is required only for information that is  
 8 different from that furnished when the pesticide was registered or last reregistered.

9 (3) A pesticide imported into the state that is subject to and has been registered under the provisions  
 10 of a federal act providing for the registration of pesticides must be registered in the state. However, the state may  
 11 restrict the sale or use and application of the pesticide by type of dealer, applicator, time, and place and may  
 12 establish special registrations of pesticides as outlined in 80-8-105(3) and in subsection ~~(8)~~ (9) of this section.  
 13 The annual registration fee must also be paid, and registration information required by the department must be  
 14 provided.

15 (4) ~~(a)~~ (a) The applicant shall pay an annual pesticide registration fee of ~~\$90 for each pesticide registered.~~  
 16 ~~The applicant shall pay an annual fee of \$90 for:~~ for:

17 (i) each pesticide registered;

18 ~~(a)(ii)~~ (ii) each emergency exemption requested by the state, as provided in the Federal Insecticide,  
 19 Fungicide, and Rodenticide Act, 7 U.S.C. 136p;

20 ~~(b)(iii)~~ (iii) a each special local need registration, as provided in the Federal Insecticide, Fungicide, and  
 21 Rodenticide Act, 7 U.S.C. 136v(c)(1); ~~or~~ and

22 ~~(c)(iv)~~ (iv) ~~an~~ each experimental-use permit registration, as provided in 7 U.S.C. 136c.

23 (b) The annual pesticide registration fee may not be less than \$130 a year or more than \$145 a year.  
 24 The department may adjust by rule the registration fee to maintain adequate funding for the purposes of this  
 25 chapter.

26 (5) (a) The department shall assess a special needs fee for each pesticide registered, emergency  
 27 exemption requested, special local need registration, or experimental-use permit registration to fund BE USED FOR  
 28 the Montana state university extension service PESTICIDE EDUCATION PROGRAM FOR THE PURPOSE OF COORDINATING  
 29 THE CERTIFICATION AND TRAINING OF FARM APPLICATORS. ~~The fee must be used for farm pesticide applicator~~  
 30 certification and training programs.

1           **(b)** The department may adjust by rule the special needs fee to maintain adequate funding for farm  
2 pesticide applicator certification and training programs. The fee may not be less than \$8 a year or more than \$11  
3 a year.

4           ~~(c) Farm pesticide applicator certification and training programs must be coordinated with the~~  
5 ~~department's commercial certification and training program to provide consistency for the industry.~~

6           ~~(d) The Montana state university extension service shall submit a farm pesticide applicator certification~~  
7 ~~and training programs report on projects, accomplishments, and future plans to the department by June 30 of~~  
8 ~~each year.~~

9           **(5)(6)** The department may require the submission of the complete formula and certified analytical  
10 standards of any pesticide. If it appears to the department that the composition of the pesticide warrants the  
11 proposed claims for it and if the pesticide, its labeling, and other material required to be submitted comply with  
12 the requirements of 80-8-202, the department shall register the pesticide.

13           **(6)(7)** If it does not appear to the department that the pesticide warrants the proposed claims for it or if  
14 the pesticide, its labeling, and other material required to be submitted do not comply with this chapter, the  
15 department shall notify the applicant of the manner in which the pesticide, labeling, or other material required to  
16 be submitted fails to comply with the chapter to provide the applicant an opportunity to make the necessary  
17 corrections. If the applicant does not make the corrections upon receipt of the notice, the department may refuse  
18 to register the pesticide. The department may suspend or cancel the registration of a pesticide whenever it does  
19 not appear that the pesticide or its labeling comply with this chapter or whenever scientific evidence proves that  
20 the pesticide endangers humans or the general environment afforded protection under 80-8-105(3)(a). When an  
21 application for registration is refused or the department proposes to suspend or cancel a registration, the  
22 registrant may pursue administrative remedies under the Montana Administrative Procedure Act and rules of the  
23 department.

24           **(7)(8)** Registration is not required in the case of a pesticide shipped from one plant in the state to another  
25 plant in the state by the same person.

26           **(8)(9)** (a) The department, the department of public health and human services, and the department of  
27 fish, wildlife, and parks shall review all applications for registration of an experimental-use permit or a registration  
28 for special local needs. The departments shall use the same requirements and standards for reviewing  
29 registrations established by the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, and regulations  
30 adopted under the act. The department shall provide the departments of public health and human services and

1 fish, wildlife, and parks with a complete copy of the application, related correspondence, and a statement of the  
 2 department's proposed action on the application. The department, the department of public health and human  
 3 services, and the department of fish, wildlife, and parks shall approve or disapprove the application within 10 days  
 4 after the receipt of the application. If the department, the department of public health and human services, and  
 5 the department of fish, wildlife, and parks are in agreement with the proposed registration, the department shall  
 6 issue the registration.

7 (b) The department shall establish a time and place for an interagency conference for the purposes of  
 8 resolving the registration of any pesticide or device. If two of the departments approve the proposed registration,  
 9 the department ~~shall~~ may issue the registration.

10 (c) The registrant applying for registration must be notified as to proposed changes in registration. If the  
 11 departments cannot resolve the proposed registration following the interagency conference, the registrant may  
 12 request a joint administrative hearing before the departments of agriculture, public health and human services,  
 13 and fish, wildlife, and parks.

14 (d) Following the interagency conference and, if requested, the administrative hearing, if the proposed  
 15 registration of a pesticide or device has not been resolved, the department of agriculture shall appoint an advisory  
 16 council as outlined in 80-8-108 to resolve by majority vote the registration of ~~any~~ the pesticide or device. The  
 17 advisory council's recommendations on the registration must be accepted by the departments and implemented  
 18 by the department of agriculture.

19 ~~(9)(10)~~ (a) Pesticides registered under any federal law when canceled for sale and use in total or in part  
 20 by a federal agency responsible for registration are considered canceled in total or in part for sale and use in  
 21 Montana. The cancellation is effective on the final date of sale or use allowed under the federal law and rules or  
 22 orders of the federal agency. Except as provided in subsection ~~(9)(b)~~ (10)(b), if the federal cancellation allows  
 23 existing stock to be used past the final date of cancellation, the sale or use in this state may not exceed 2 years.  
 24 The department shall provide technical assistance to any person in possession of the products to ensure their  
 25 proper disposal, relabeling, or removal.

26 (b) Pesticide products canceled under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C.  
 27 136a-1(i)(5), ~~may be sold and used according to environmental protection agency labeling requirements or other~~  
 28 requirements for a period not to exceed 6 years from the date that distribution from the registrant, manufacturer,  
 29 formulator, or distributor is terminated."  
 30

1 ~~Section 5.~~ Section 80-8-202, MCA, is amended to read:

2 ~~"80-8-202. Prohibited acts.~~ (1) It is unlawful for a person to distribute, sell, ~~hold in commercial storage,~~  
3 or offer for sale within this state or deliver for transportation or transport in intrastate commerce between points  
4 within this state any of the following:

5 ~~(a) a pesticide that has not been registered pursuant to the provisions of 80-8-201 or any pesticide if any~~  
6 ~~of the claims made for it or any of the directions for its use differ in substance from the representations made in~~  
7 ~~connection with its registration or if the composition of a pesticide differs from its composition as represented in~~  
8 ~~connection with its registration or if registration or reregistration has been refused, revoked, canceled, or~~  
9 ~~suspended. The department may allow a change in the labeling or formula of a pesticide within a registration~~  
10 ~~period without requiring reregistration of the product when the change does not adversely affect the product for~~  
11 ~~its intended use and if proper application for the change is made.~~

12 ~~(b) a pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container and~~  
13 ~~there is affixed to the container and to the outside container or wrapper of the retail package, if there is one,~~  
14 ~~through which the required information on the immediate container cannot be clearly read, a label bearing:~~

15 ~~(i) the name and address of the manufacturer, registrant, or person for whom manufactured;~~

16 ~~(ii) the trade and chemical name, brand, or trademark under which the article is sold;~~

17 ~~(iii) the net weight or measure of the content, subject to reasonable variations that the department may~~  
18 ~~permit;~~

19 ~~(c) a pesticide that contains any substance or substances in quantities highly toxic to humans,~~  
20 ~~determined as provided in 80-8-105, unless the label bears, in addition to any other matter required by this~~  
21 ~~chapter:~~

22 ~~(i) the skull and crossbones;~~

23 ~~(ii) the word "poison" prominently in red on a background of distinctly contrasting color;~~

24 ~~(iii) a statement of an antidote for the pesticide;~~

25 ~~(d) pesticides commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate,~~  
26 ~~magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate~~  
27 ~~unless they have been distinctly colored or discolored, as provided by regulations issued in accordance with this~~  
28 ~~chapter, or any other white powder pesticide that the department, after investigation of and after public hearing~~  
29 ~~on the necessity for the action for the protection of the public health and the environment and the feasibility of the~~  
30 ~~coloration or discoloration, by regulations requires to be distinctly colored or discolored, unless it has been so~~

1 colored or discolored. The department may exempt any pesticide to the extent that it is intended for a particular  
 2 use from the coloring or discoloring required or authorized by this section if it determines that the coloring or  
 3 discoloring for the use is not necessary for the protection of the public health and the environment.

4 ~~—— (e) a pesticide that is adulterated or misbranded or any device that is misbranded.~~

5 ~~—— (2) It is unlawful for a person to:~~

6 ~~—— (a) detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this chapter~~  
 7 ~~or rules adopted under this chapter or to add any substance to or take any substance from a pesticide in a~~  
 8 ~~manner that may defeat the purpose of this chapter;~~

9 ~~—— (b) use for the person's own advantage or reveal, other than to the department or proper officials or~~  
 10 ~~employees of the state or the courts of this state in response to a subpoena, to physicians or to veterinarians or~~  
 11 ~~in emergencies to pharmacists and other qualified persons for use in the preparation of antidotes, any information~~  
 12 ~~relative to formulas of products acquired by authority of 80-8-201."~~

13

14 **Section 5.** Section 80-8-203, MCA, is amended to read:

15 **"80-8-203. Commercial applicator.** (1) It is unlawful for a person to engage in the business of applying  
 16 pesticides for another without a pesticide applicator's license obtained from the department of agriculture. An  
 17 application for a pesticide applicator's license must be accompanied by a fee of ~~\$45~~ \$75. The provisions of this  
 18 subsection do not apply to a person employed only to operate equipment used for the application of a pesticide  
 19 if the person has no financial interest or other control over the equipment other than its day-to-day mechanical  
 20 operation for the purpose of applying any pesticide.

21 (2) Public utility applicators must be licensed in the same manner as commercial applicators, provided  
 22 that public utility operators working under public utility applicators are not required to be licensed except as  
 23 provided in 80-8-205.

24 (3) A veterinarian licensed as provided in Title 37, chapter 18, part 3, is not required to ~~be licensed to~~  
 25 ~~apply nonrestricted pesticides, provided that the veterinarian registers with the department each year. The~~  
 26 ~~veterinarian must meet all other requirements and rules of the Montana Pesticides Act. The department shall~~  
 27 ~~consider the professional licensing requirements for veterinarians when adopting rules~~ hold a pesticide license  
 28 BE LICENSED TO APPLY NONRESTRICTED PESTICIDES, PROVIDED THAT THE VETERINARIAN REGISTERS WITH THE  
 29 DEPARTMENT EACH YEAR. THE VETERINARIAN MUST MEET ALL OTHER REQUIREMENTS AND RULES OF THE MONTANA  
 30 PESTICIDES ACT. THE DEPARTMENT SHALL CONSIDER THE PROFESSIONAL LICENSING REQUIREMENTS FOR VETERINARIANS

1 WHEN ADOPTING RULES IN RELATION TO TRANSACTIONS AND ACTIVITIES OF A VETERINARY PRACTICE.

2 (4) An applicator is responsible for the use of any pesticide by an operator or employee under the  
3 applicator's supervision or employment.

4 (5) The department shall assess an additional annual license fee of \$10 on applicators to fund the waste  
5 pesticide and pesticide container collection, disposal, and recycling program. The department may by rule adjust  
6 the disposal fee to maintain adequate funding for the administration of the waste pesticide and pesticide container  
7 collection, disposal, and recycling program. The fee may not be less than \$10 a year or more than \$15 a year.  
8 Fees collected under this subsection must be deposited in the state special revenue account pursuant to  
9 80-8-112."

10

11 **Section 6.** Section 80-8-207, MCA, is amended to read:

12 **"80-8-207. Dealers.** (1) A person may not sell, offer for sale, deliver, or have delivered within the state  
13 a pesticide without first obtaining a license from the department for each calendar year or portion of a year. ~~The~~  
14 ~~department shall issue a dealer's license only to individuals.~~ A separate dealer's license and fee is required for  
15 each location or outlet from which pesticides are distributed, sold, held for sale, ~~held in commercial storage,~~ or  
16 offered for sale. Pesticide field personnel or salespeople employed directly out of the same location or outlet and  
17 under a licensed dealer are not required to obtain a license. The dealer shall furnish the department with the  
18 names and addresses of the dealer's field personnel and salespeople selling pesticides within the state.

19 ~~(2) The department shall require an applicant for a dealer's license to show, upon written examination,~~  
20 ~~that the person possesses adequate knowledge related to the responsibilities of a pesticide dealer. Licensed~~  
21 ~~dealers are not required to repeat an examination to renew their license provided they have earned the required~~  
22 ~~recertification credits for renewal of that license.~~

23 ~~(3) A dealer is responsible for the professional conduct of salespeople who make pesticide use~~  
24 ~~recommendations under the dealer's supervision or employment. The dealer is responsible for providing and~~  
25 ~~documenting training of salespeople who make pesticide use recommendations. The department may establish~~  
26 ~~by rule requirements and procedures for dealer salespeople.~~

27 ~~(2)(4)(3)~~ The application for a license must be accompanied by a fee of ~~\$45~~ \$75. A dealer applying for  
28 renewal of a license shall apply on or before March 1 of the calendar year. A dealer applying for renewal of a  
29 license after March 1 must be assessed a \$25 late licensing fee.

30 ~~(3)(5)(4)~~ The dealer shall require the purchaser of a restricted pesticide to exhibit the purchaser's license

1 or permit issued under authority of this chapter, or the dealer may verify, under procedures authorized by the  
 2 department, the purchaser's license or permit through a department list or by electronic means before completing  
 3 a sale. The department may adopt rules concerning dealer verification of licenses and permits.

4 ~~(4)(6)(5)~~ The department shall assess an additional annual license fee of \$10 on dealers to fund the  
 5 waste pesticide and pesticide container collection, disposal, and recycling program. The department may by rule  
 6 adjust the disposal fee to maintain adequate funding for the administration of the waste pesticide and pesticide  
 7 container collection, disposal, and recycling program. The fee may not be less than \$10 a year or more than \$15  
 8 a year. Fees collected under this subsection must be deposited in an account in the state special revenue fund  
 9 pursuant to 80-8-112.

10 ~~(5)(7)(6)~~ Pharmacists licensed as provided for in 37-7-302, veterinarians licensed as provided for in  
 11 37-18-302, and certified pharmacies licensed under 37-7-321 are not required to be licensed to sell pesticides  
 12 if the certified pharmacies and veterinarians register with the department each year. However, the certified  
 13 pharmacies and veterinarians must meet all other requirements concerning the commercial sale of pesticides.  
 14 The department shall take into account the professional licensing requirements of pharmacists, certified  
 15 pharmacies, and veterinarians when adopting rules IF THE CERTIFIED PHARMACIES AND VETERINARIANS REGISTER  
 16 WITH THE DEPARTMENT EACH YEAR. HOWEVER, THE CERTIFIED PHARMACIES AND VETERINARIANS MUST MEET ALL OTHER  
 17 REQUIREMENTS CONCERNING THE COMMERCIAL SALE OF PESTICIDES. THE DEPARTMENT SHALL TAKE INTO ACCOUNT THE  
 18 PROFESSIONAL LICENSING REQUIREMENTS OF PHARMACISTS, CERTIFIED PHARMACIES, AND VETERINARIANS WHEN  
 19 ADOPTING RULES."

20  
 21 **Section 7.** Section 80-8-209, MCA, is amended to read:  
 22 **"80-8-209. Farm applicators.** (1) Farm applicators shall obtain a special-use permit prior to purchasing  
 23 and using a pesticide designated by the department as a restricted-use pesticide. The fee for the permit is ~~\$35~~  
 24 \$45. The special-use permit is effective for 5 calendar years. The department may establish a staggered years  
 25 system of issuing permits. Revenue generated by the permit fee must be expended in the following manner:

- 26 (a) \$15 to the department to administer the permitting program;  
 27 (b) \$5 to the Montana state university-Bozeman extension service; ~~for the development of educational~~  
 28 ~~materials for farm pesticide applicators operating~~  
 29 (i) TO TRAIN EXTENSION SERVICE AGENTS REGARDING FARM PESTICIDE APPLICATOR CERTIFICATION AND  
 30 TRAINING; AND

1           (ii) TO OPERATE farm pesticide applicator certification and training programs; and

2           (c) ~~\$15~~ \$25 to the cooperative extension service of the county in which the permit applicant resides for  
3 for conducting farm pesticide applicator certification and training programs.

4           (2) Restricted pesticides may not be utilized by farm applicators or their employees except for the  
5 purpose of producing or protecting an agricultural commodity on property owned, leased, or rented by the  
6 applicator.

7           (3) Farm applicators shall qualify for their first permit by either passing a graded written examination, or  
8 attending a training course approved by the department and then taking an ungraded written examination. The  
9 examinations and course must meet the minimum certification standards and procedures established by the  
10 environmental protection agency except as otherwise provided by this chapter.

11           (4) The department may require farm applicators to attend a mandatory training session and pass a  
12 written examination for those restricted pesticides that are extremely toxic or for which an effective antidote is not  
13 available. The department may require farm applicators handling these pesticides to maintain use records.

14           (5) The department shall require farm applicators to requalify for renewal of the 5-year permit by  
15 attending an approved training program. The department shall establish by rule a uniform system of administering  
16 the requalification training program. The department may credit only training related to the standards set forth  
17 in subsection ~~(3)~~ (4).

18           (6) Provisions of this chapter relating to certification of farm applicators do not apply to a farm applicator  
19 applying nonrestricted pesticides on the applicator's own land or on lands of neighbors if the farm applicator:

20           (a) operates farm property and operates and maintains pesticide application equipment primarily for the  
21 applicator's own use;

22           (b) is not regularly engaged in the business of applying pesticides for hire and does not represent to the  
23 public that the farm applicator is a pesticide applicator;

24           (c) operates pesticide application equipment only in the vicinity of the applicator's own property and for  
25 the accommodation of immediate neighbors.

26           (7) (a) The department shall assess an additional permit fee of \$15 on farm applicators to fund the waste  
27 pesticide and pesticide container collection, disposal, and recycling program.

28           (b) Farm applicators must be assessed the fee at the beginning of the next 5-year permit renewal period.  
29 The department may assess a prorated fee for a farm applicator becoming licensed within a 5-year permit  
30 renewal period.

1 (c) Fees collected under this subsection (7) must be deposited in the state special revenue account  
2 pursuant to 80-8-112."

3

4 **Section 8.** Section 80-8-213, MCA, is amended to read:

5 **"80-8-213. Government agencies.** (1) All state agencies, municipal corporations, or any other  
6 governmental agencies are subject to the provisions of this chapter and rules adopted under this chapter  
7 concerning the application or sale of pesticides. Applicators and operators applying pesticides and dealers selling  
8 pesticides for agencies, municipal corporations, or any governmental agencies are subject to the provisions of  
9 80-8-203 through ~~80-8-208~~ 80-8-207 80-8-208.

10 (2) The department shall issue a limited commercial applicator's or dealer's license for an annual fee of  
11 \$50, which is valid only when an applicator or dealer is applying or selling pesticides for a state agency, municipal  
12 corporation, or any other governmental agency, provided that the jurisdictional health officer, state veterinarian,  
13 their duly authorized representatives, or governmental research personnel are exempt from this licensing  
14 requirement when applying pesticides to experimental areas.

15 (3) (a) A governmental agency shall pay for each of its first four employee applicators:

16 (i) an annual applicator's fee of ~~\$50~~ \$60; and

17 (ii) an additional fee of \$10 to fund the waste pesticide and pesticide container collection, disposal, and  
18 recycling program. The department may by rule adjust the disposal fee to maintain adequate funding for the  
19 administration of the waste pesticide and pesticide container collection, disposal, and recycling program. The fee  
20 may not be less than \$10 a year or more than \$15 a year.

21 (b) A governmental agency shall pay for each additional employee applicator:

22 (i) an annual applicator's fee of \$5; and

23 (ii) an additional fee of \$10 to fund the waste pesticide and pesticide container collection, disposal, and  
24 recycling program. The department may by rule adjust the disposal fee to maintain adequate funding for the  
25 administration of the waste pesticide and pesticide container collection, disposal, and recycling program. The fee  
26 may not be less than \$10 a year or more than \$15 a year.

27 (c) A government agency may not be required to pay more than ~~\$600~~ \$895 annually for the licensing  
28 of employees as applicators and operators.

29 (d) Fees collected pursuant to this subsection (3) for the purpose of funding the waste pesticide and  
30 pesticide container collection, disposal, and recycling program must be deposited in the state special revenue

1 account pursuant to 80-8-112.

2 (4) Government employees becoming certified applicators only to qualify for conducting pesticide  
3 education courses may not be charged a license fee but are limited to providing the courses. Government  
4 operators are subject to rules adopted pursuant to 80-8-205, including the license fee."

5

6 **SECTION 9. SECTION 80-8-214, MCA, IS AMENDED TO READ:**

7 **"80-8-214. Liability.** The department shall annually require from each commercial pesticide applicator  
8 proof of financial responsibility in amounts to be determined under rules promulgated by the department. The  
9 financial responsibility is pesticide activity-related liability insurance of at least \$250,000 total and no less than  
10 \$50,000 per incident."

11

12 **Section 10.** Section 80-8-302, MCA, is amended to read:

13 **"80-8-302. Sampling and analysis.** (1) The department shall have the authority to sample, inspect,  
14 ~~make analysis of and analyze~~ pesticides or devices distributed within this state ~~at such time and place and to~~  
15 ~~such extent as it may deem~~ wherever and whenever and to the extent necessary to determine whether ~~such~~ the  
16 pesticides or devices are in compliance with the provisions of this chapter. The department is authorized with a  
17 warrant or the consent of the inhabitant or owner to enter ~~upon any~~ public or private premises, including ~~any~~  
18 ~~vehicle of transport in order~~ vehicles, to have access to pesticides or devices and to records relating to their  
19 distribution.

20 (2) The methods of sampling and analysis ~~shall be those adopted by the department from sources such~~  
21 ~~as the Journal of the Association of Official Analytical Chemists~~ must be based on:

22 (a) validated methods for the laboratory; and

23 (b) standard methods and guidance for the sampling.

24 (3) In all administrative or legal actions involving the composition, identification, or quantification of a  
25 pesticide, a certified copy of the official analysis signed by the department's authorized chemist ~~shall~~ must be  
26 accepted as prima facie evidence of the determinations ~~set forth therein~~ the official analysis contains."

27

28 **Section 11.** Section 80-8-303, MCA, is amended to read:

29 **"80-8-303. Embargo.** (1) Whenever a duly authorized agent of the department of agriculture finds or  
30 has probable cause to believe that any pesticide or device is adulterated or misbranded, has not been registered

1 under the provisions of ~~80-8-201(5)~~ 80-8-201, fails to bear on its label the information required by this chapter,  
2 or is a white powder pesticide and is not colored as required under this chapter, the agent shall affix to the article  
3 a tag or other appropriate marking giving notice of the failure and stating that the article has been detained or  
4 embargoed and warning all persons not to remove or dispose of the article by sale or otherwise until permission  
5 for removal or disposal is given by the agent or the court. A person who removes or disposes of a detained or  
6 embargoed article by sale or otherwise without prior permission or who removes or alters the tag or marking is  
7 guilty of a misdemeanor and may be charged accordingly or may be subjected to appropriate administrative  
8 proceedings, or both.

9 (2) When an article detained or embargoed under subsection (1) has been found by the agent to be in  
10 violation of subsection (1) and after 30 days the violation has not been resolved, the agent may petition the district  
11 court in whose jurisdiction the article is detained or embargoed for a condemnation of the article. When the agent  
12 has found that an article detained or embargoed is not adulterated or misbranded, the agent shall remove the  
13 tag or other marking.

14 (3) If the court finds that a detained or embargoed article is in violation of this chapter or rules adopted  
15 under this chapter, the article must after entry of the decree be destroyed at the expense of the claimant of the  
16 article, under the supervision of the agent, and all court costs and fees and storage and other proper expenses  
17 must be assessed against the claimant of the pesticide or device or the claimant's agent. However, when the  
18 adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry  
19 of the decree and after costs, fees, and expenses have been paid and a good and sufficient bond has been  
20 executed, conditioned upon the proper labeling or processing of the pesticide or device, may by order direct that  
21 the article be delivered to the claimant of the article for labeling or processing under the supervision of an agent  
22 of the department. The expense of supervision must be paid by the claimant. The article must be returned to the  
23 claimant of the pesticide or device on the representation to the court by the department that the article is no longer  
24 in violation of this chapter and that the expenses of supervision have been paid."

25

26 **Section 12.** Section 80-8-401, MCA, is amended to read:

27 "**80-8-401. Short title.** This part may be cited as the "Model School Integrated Pest and Pesticide  
28 Management Safety Program Act"."

29

30 **Section 13.** Section 80-8-404, MCA, is amended to read:

1           **"80-8-404. Model school integrated pest and pesticide management safety program.** (1) The  
 2 department shall ~~develop a model school integrated pest and pesticide management safety program and~~  
 3 ~~distribute the program to school districts by July 1, 1994~~ may develop a model integrated pest and pesticide  
 4 management safety program for facilities under supervision, including but not limited to schools, day-care  
 5 facilities, nursing homes, hospitals, and other education and health care facilities. The model ~~program~~ programs  
 6 must provide guidance and recommendations ~~to school districts~~ on management of pests and pesticides and on  
 7 alternatives within ~~schools and on school grounds~~ a facility and on facility grounds.

8           (2) The model program guidelines and recommendations must include information on pests, alternative  
 9 and pesticide control methods and their integration, environmental concerns, and protection of public health.  
 10 Special information and recommendations for protecting ~~school children~~ the affected populations from exposure  
 11 to pesticides and from the acute or chronic potential adverse health effects of pesticides must be emphasized.  
 12 The department may periodically revise the model program guidelines, policies, and recommendations as new  
 13 integrated pest, pesticide, or alternative management techniques and methods are developed and as new  
 14 information on protecting ~~school children~~ the affected populations from pesticides is developed.

15           (3) The director may consult and obtain advice from pest and pesticide specialists, ~~school~~ facility  
 16 personnel, and the public on any aspect of the model ~~school~~ integrated pest and pesticide management safety  
 17 program."  
 18

19           **Section 14.** Section 80-15-302, MCA, is amended to read:

20           **"80-15-302. Special funding.** (1) A fee of \$95 is assessed for the registration of pesticides in addition  
 21 to the fee imposed by ~~80-8-201(4)~~ 80-8-201.

22           (2) The money collected from the registration fee established by subsection (1) must be deposited in the  
 23 state special revenue fund as follows:

24           (a) Each of the following state agencies must be credited \$15,000 for purposes of administering or  
 25 assisting the department in administering this chapter:

- 26           (i) department of environmental quality; and
- 27           (ii) Montana state university-Bozeman extension service.

28           (b) The department must be credited with the remainder of the registration fee money to use in  
 29 administering this chapter.

30           (3) A fee of \$10 is assessed for the registration of fertilizers in addition to the fees imposed by  
 31 80-10-201(1)(a)(i) and (1)(a)(ii). The additional fee must be used for the ground water protection responsibilities

1 of the department relating to fertilizers. Revenues collected from this fee must be credited to the commercial  
2 fertilizer agricultural chemical ground water account within the state special revenue fund for the administration  
3 of this chapter.

4 (4) The department may direct the board of investments to invest the portion of the money collected  
5 under this section that is credited to the department pursuant to the provisions of 17-6-201. The income from the  
6 investments must be deposited in the state special revenue fund and credited to the department."

7  
8 ~~NEW SECTION. Section 15. Repealer.~~ The following sections of the Montana Code Annotated are  
9 repeated:

10 ~~80-8-208. Dealer's examination.~~

11 ~~80-8-214. Liability.~~

12  
13 NEW SECTION. Section 15. Saving clause. [This act] does not affect rights and duties that matured,  
14 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

15  
16 NEW SECTION. Section 16. Severability. If a part of [this act] is invalid, all valid parts that are  
17 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
18 the part remains in effect in all valid applications that are severable from the invalid applications.

19  
20 NEW SECTION. Section 17. Effective date. [This act] is effective on passage and approval.

21 - END -