

HOUSE BILL NO. 221

INTRODUCED BY F. ANDERSON, B. BROWN, W. CURDY, J. DOOLING, B. HAMLETT, L. JONES,
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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LICENSING REQUIREMENTS FOR FARM APPLICATORS OF PESTICIDES; PROVIDING THAT FARM APPLICATOR LICENSING EXAMINATION AND ~~REQUALIFICATION~~ RE-CERTIFICATION REQUIREMENTS MAY BE FULFILLED ONLINE; REQUIRING REPORTING TO THE LEGISLATURE; AND AMENDING ~~SECTION~~ SECTIONS 80-8-105 AND 80-8-209, MCA."

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

SECTION 1. SECTION 80-8-105, MCA, IS AMENDED TO READ:

"80-8-105. Rules. (1) The department may adopt by reference without a public hearing regulations adopted under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended. The department may, after a public hearing, adopt all rules necessary to carry out this chapter.

(2) The rules may prescribe methods of:

(a) registration, suspension or cancellation of registration, application, use or restricting use, prohibiting use, offering or exposing for sale of any pesticide;

(b) determining whether pesticides are highly toxic to humans;

(c) determining standards of coloring or discoloring for pesticides and subjecting pesticides to the requirements of 80-8-202;

(d) licensing commercial applicators, operators, and dealers, establishing methods of recordkeeping for applicators, operators, and dealers, and providing for the review of the records by the department's authorized agent and the submission of the records to the department upon written request;

(e) issuing farm applicator special-use permits and the maintenance and submission of records by farm applicators issued special-use permits;

(f) collection, examination, and standard deviation from guarantee analysis and umpire analysis of pesticides and devices;

(g) operating and maintaining equipment used by applicators;

(h) developing examinations which must be held periodically throughout the state;

- 1 (i) establishing the form and content of all applications for licenses and permits;
- 2 (j) designating pesticides that may be sold at retail for home, yard, garden, and lawn use. The
3 department may also limit retail sale of pesticides, up to a specific number of pounds or gallons and concentration
4 which would be sublethal to humans and animals if small amounts of it were accidentally swallowed, inhaled,
5 sprayed, or dusted on the skin.
- 6 (k) revoking licenses and permits;
- 7 (l) registering or controlling any spray adjuvant, such as a wetting agent, spreading agent, deposit
8 builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent with or without toxic
9 properties of its own intended to be used with any other pesticide as an aid to the application or effect of that other
10 pesticide, whether or not distributed in a package or container separate from that of a pesticide with which it is
11 to be used;
- 12 (m) registering pesticide-fertilizer and other chemical blends or, instead of registration, establishing
13 licensing, inspection, and fees for blending plants;
- 14 (n) establishing registration procedures for devices, with a fee not to exceed \$5 per type of device,
15 specifying classes of devices to be registered and providing for additional requirements;
- 16 (o) imposing conditions for renewal of dealer, applicator, and operator licenses and permits, including
17 ~~requaification~~ recertification training;
- 18 (p) establishing procedures for implementing and administering the civil penalties under 80-8-306;
- 19 (q) establishing fees for training courses and materials;
- 20 (r) establishing standards and procedures for administering a waste pesticide and pesticide container
21 collection, disposal, and recycling program;
- 22 (s) establishing special fees on waste pesticides or pesticide containers collected under the waste
23 pesticide and pesticide container collection, disposal, and recycling program. These fees may be based upon
24 volume, type, classification, or other characteristics of a pesticide or a pesticide container and may include a
25 credit for pesticide applicator, dealer, or operator license or permit fees.
- 26 (t) establishing standards for pesticide storage, pesticide mixing or loading sites, and bulk pesticide
27 facilities.
- 28 (3) (a) Consistent with the provisions of Title 80, chapter 15, whenever the department finds that rules
29 are necessary to carry out the purposes and intent of this chapter, the rules may relate to the time, place, manner,
30 and method of registration, suspension or cancellation of registration, application, or selling of the pesticides, may

1 restrict or prohibit use of pesticides in the state or in designated areas during specified periods of time, and must
2 encompass all reasonable factors that the department considers necessary to prevent damage or injury to:

3 (i) persons, animals, crops, or pollinating insects from the effect of drift or careless application;

4 (ii) the environment;

5 (iii) plants, including forage plants;

6 (iv) wildlife;

7 (v) fish and other aquatic life.

8 (b) In issuing the rules, the department shall give consideration to pertinent research findings and
9 recommendations of other agencies of this state or of the federal government.

10 (4) If the department finds that an emergency exists which requires immediate action with regard to the
11 registration, use, or application of pesticides, the department may, without notice or hearing, issue necessary
12 orders or rules to protect the public health, welfare, and safety. An order or rule issued under this subsection is
13 effective for the period prescribed by the Montana Administrative Procedure Act. If the department determines
14 that the emergency order or rule should remain in effect, a public hearing under 80-8-106 must be held within the
15 above period to determine whether the order or rule should be adopted by the department.

16 (5) All rules and orders issued by the department must be made in writing and must be available at the
17 department for public inspection. Except for orders establishing or changing rules of practice and procedure, all
18 orders made and published by the department must include and be based upon written findings of fact. A copy
19 of any rule or order certified by the department must be received in evidence in all courts of this state with the
20 same effect as the original."

21

22 **Section 2.** Section 80-8-209, MCA, is amended to read:

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

27 (a) \$15 to the department to administer the permitting program;

28 (b) \$5 to the Montana state university-Bozeman extension service:

29 (i) to train extension service agents regarding farm pesticide applicator certification and training; and

30 (ii) to operate farm pesticide applicator certification and training programs; and

1 (c) \$25 to the cooperative extension service for conducting farm pesticide applicator certification and
2 training programs.

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

6 (3) Farm applicators shall qualify for their first permit by either passing a graded written examination,
7 which the applicant may take online or at an examination site designated by the department, or attending a
8 training course approved by the department and then taking an ungraded written examination. The examinations
9 and course must meet the minimum certification standards and procedures established by the environmental
10 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~~ RECERTIFICATION training program. ~~The department shall provide online requalification~~ ONLINE
17 RECERTIFICATION training for farm applicators in order to fulfill all ~~requalification requirements~~. RECERTIFICATION
18 REQUIREMENTS MUST BE AVAILABLE TO FARM APPLICATORS. THE DEPARTMENT AND THE MONTANA STATE
19 UNIVERSITY-BOZEMAN EXTENSION SERVICE SHALL ENTER INTO A COOPERATIVE AGREEMENT TO ESTABLISH AN ONLINE
20 TRAINING PROGRAM FOR FARM APPLICATORS. The department may credit only training related to the standards set
21 forth in subsection (4).

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

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

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

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

30 (7) (a) The department shall assess an additional permit fee of \$15 on farm applicators to fund the waste

1 pesticide and pesticide container collection, disposal, and recycling program.

2 (b) Farm applicators must be assessed the fee at the beginning of the next 5-year permit renewal period.

3 The department may assess a prorated fee for a farm applicator becoming licensed within a 5-year permit
4 renewal period.

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

7 (8) ON OR BEFORE SEPTEMBER 1, 2020, THE DEPARTMENT SHALL PROVIDE THE ECONOMIC AFFAIRS INTERIM
8 COMMITTEE WITH A REPORT IN ACCORDANCE WITH 5-11-210 ON RECERTIFICATION REQUIREMENTS AND EFFORTS TO
9 INITIATE ONLINE TRAINING."

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