

Chapter 14 Utah Pesticide Control Act

4-14-1 Short title.

This chapter shall be known and may be cited as the "Utah Pesticide Control Act."

Enacted by Chapter 2, 1979 General Session

4-14-2 Definitions.

As used in this chapter:

- (1) "Active ingredient" means an ingredient that:
 - (a) prevents, destroys, repels, controls, or mitigates pests; or
 - (b) acts as a plant regulator, defoliant, or desiccant.
- (2) "Adulterated pesticide" means a pesticide with a strength or purity that is below the standard of quality expressed on the label under which it is offered for sale.
- (3) "Animal" means all vertebrate or invertebrate species.
- (4) "Beneficial insect" means an insect that is:
 - (a) an effective pollinator of plants;
 - (b) a parasite or predator of pests; or
 - (c) otherwise beneficial.
- (5) "Defoliant" means a substance or mixture intended to cause leaves or foliage to drop from a plant, with or without causing abscission.
- (6) "Desiccant" means a substance or mixture intended to artificially accelerate the drying of plant or animal tissue.
- (7) "Distribute" means to offer for sale, sell, barter, ship, deliver for shipment, receive, deliver, or offer to deliver pesticides in this state.
- (8) "Environment" means all living plants and animals, water, air, land, and the interrelationships that exist between them.
- (9)
 - (a) "Equipment" means any type of ground, water, or aerial equipment or contrivance using motorized, mechanical, or pressurized power to apply a pesticide.
 - (b) "Equipment" does not mean any pressurized hand-sized household apparatus used to apply a pesticide or any equipment or contrivance used to apply a pesticide that is dependent solely upon energy expelled by the person making the pesticide application.
- (10) "EPA" means the United States Environmental Protection Agency.
- (11) "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act.
- (12)
 - (a) "Fungus" means a nonchlorophyll-bearing thallophyte or a nonchlorophyll-bearing plant of an order lower than mosses and liverworts, including rust, smut, mildew, mold, yeast, and bacteria.
 - (b) "Fungus" does not include fungus existing on or in:
 - (i) a living person or other animal; or
 - (ii) processed food, beverages, or pharmaceuticals.
- (13) "Insect" means an invertebrate animal generally having a more or less obviously segmented body:
 - (a) usually belonging to the Class Insecta, comprising six-legged, usually winged forms, including beetles, bugs, bees, and flies; and

- (b) allied classes of arthropods that are wingless usually having more than six legs, including spiders, mites, ticks, centipedes, and wood lice.
- (14) "Label" means any written, printed, or graphic matter on, or attached to, a pesticide or a container or wrapper of a pesticide.
- (15)
 - (a) "Labeling" means all labels and all other written, printed, or graphic matter:
 - (i) accompanying a pesticide or equipment; or
 - (ii) to which reference is made on the label or in literature accompanying a pesticide or equipment.
 - (b) "Labeling" does not include any written, printed, or graphic matter created by the EPA, the United States Departments of Agriculture or Interior, the Department of Health, Education, and Welfare, state experimental stations, state agricultural colleges, and other federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.
- (16) "Land" means land, water, air, and plants, animals, structures, buildings, contrivances, and machinery appurtenant or situated thereon, whether fixed or mobile, including any used for transportation.
- (17) "Misbranded" means any label or labeling that is false or misleading or that does not strictly comport with the label and labeling requirements set forth in Section 4-14-4.
- (18) "Misuse" means use of any pesticide in a manner inconsistent with its label or labeling.
- (19) "Nematode" means invertebrate animals of the Phylum Nematelminthes and Class Nematoda, including unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, also known as nemas or eelworms.
- (20)
 - (a) "Pest" means:
 - (i) any insect, rodent, nematode, fungus, weed; or
 - (ii) any other form of terrestrial or aquatic plant or animal life, virus, bacteria, or other microorganism that is injurious to health or to the environment or that the department declares to be a pest.
 - (b) "Pest" does not include:
 - (i) viruses, bacteria, or other microorganisms on or in a living person or other living animal; or
 - (ii) protected wildlife species identified in Section 23-13-2 that are regulated by the Division of Wildlife Resources in accordance with Sections 23-14-1 through 23-14-3.
- (21) "Pesticide" means any:
 - (a) substance or mixture of substances including a living organism that is intended to prevent, destroy, control, repel, attract, or mitigate any insect, rodent, nematode, snail, slug, fungus, weed, or other form of plant or animal life that is normally considered to be a pest or that the commissioner declares to be a pest;
 - (b) any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant;
 - (c) any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, adhesive, or emulsifying agent with deflocculating properties of its own used with a pesticide to aid its application or effect; and
 - (d) any other substance designated by the department by rule.
- (22) "Pesticide applicator" is a person who:
 - (a) applies or supervises the application of a pesticide; and
 - (b) is required by this chapter to have a license.
- (23)
 - (a) "Pesticide applicator business" means an entity that:

- (i) is authorized to do business in this state; and
- (ii) offers pesticide application services.
- (b) "Pesticide applicator business" does not include an individual licensed agricultural applicator who may work for hire.
- (24) "Pesticide dealer" means any person who distributes restricted use pesticides.
- (25)
 - (a) "Plant regulator" means any substance or mixture intended, through physiological action, to accelerate or retard the rate of growth or rate of maturation, or otherwise alter the behavior of ornamental or crop plants.
 - (b) "Plant regulator" does not include plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments.
- (26) "Restricted use pesticide" means:
 - (a) a pesticide, including a highly toxic pesticide that is a serious hazard to beneficial insects, animals, or land; or
 - (b) any pesticide or pesticide use restricted by the administrator of EPA or by the commissioner.
- (27) "Weed" means any plant that grows where not wanted.
- (28) "Wildlife" means all living things that are neither human, domesticated, nor pests.

Amended by Chapter 370, 2007 General Session

4-14-3 Registration required for distribution -- Application -- Fees -- Renewal -- Local needs registration -- Distributor or applicator license -- Fees -- Renewal.

- (1)
 - (a) No person may distribute a pesticide in this state that is not registered with the department.
 - (b) Application for registration shall be made to the department upon forms prescribed and furnished by it accompanied with an annual registration fee determined by the department pursuant to Subsection 4-2-2(2) for each pesticide registered.
 - (c) Upon receipt by the department of a proper application and payment of the appropriate fee, the commissioner shall issue a registration to the applicant allowing distribution of the registered pesticide in this state through June 30 of each year, subject to suspension or revocation for cause.
 - (d)
 - (i) Each registration is renewable for a period of one year upon the payment of an annual registration renewal fee in an amount equal to the current applicable original registration fee.
 - (ii) Each renewal fee shall be paid on or before June 30 of each year.
- (2) The application shall include the following information:
 - (a) the name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant's name;
 - (b) the name of the pesticide;
 - (c) a complete copy of the label which will appear on the pesticide; and
 - (d) any information prescribed by rule of the department considered necessary for the safe and effective use of the pesticide.
- (3)
 - (a) Forms for the renewal of registration shall be mailed to registrants at least 30 days before their registration expires.
 - (b) A registration in effect on June 30 for which a renewal application has been filed and the registration fee tendered shall continue in effect until the applicant is notified either that the registration is renewed or that it is suspended or revoked pursuant to Section 4-14-8.

- (4) The department may, before approval of any registration, require the applicant to submit the complete formula of any pesticide including active and inert ingredients and may also, for any pesticide not registered according to 7 U.S.C. Sec. 136a or for any pesticide on which restrictions are being considered, require a complete description of all tests and test results that support the claims made by the applicant or the manufacturer of the pesticide.
- (5) A registrant who desires to register a pesticide to meet special local needs according to 7 U.S.C. Sec. 136v(c) shall, in addition to complying with Subsections (1) and (2), satisfy the department that:
 - (a) a special local need exists;
 - (b) the pesticide warrants the claims made for it;
 - (c) the pesticide, if used in accordance with commonly accepted practices, will not cause unreasonable adverse effects on the environment; and
 - (d) the proposed classification for use conforms with 7 U.S.C. Sec. 136a(d).
- (6) No registration is required for a pesticide distributed in this state pursuant to an experimental use permit issued by the EPA or under Section 4-14-5.
- (7) No pesticide dealer may distribute a restricted use pesticide in this state without a license.
- (8) A person shall receive a license before applying:
 - (a) a restricted use pesticide; or
 - (b) a general use pesticide for hire or in exchange for compensation.
- (9)
 - (a) A license to engage in an activity listed in Subsection (7) or (8) may be obtained by:
 - (i) submitting an application on a form provided by the department;
 - (ii) showing evidence of competence in the pesticide profession, as established by rule, and complying with the rules adopted by the department under this chapter;
 - (iii) demonstrating good character;
 - (iv) having no outstanding infractions and owing no money to the department; and
 - (v) paying the license fee determined by the department according to Subsection 4-2-2(2).
 - (b) A person may apply for a triennial license that expires on December 31 of the second calendar year after the calendar year in which the license is issued.
 - (c) Notwithstanding Section 63J-1-504, the department shall retain the fees as dedicated credits and may only use the fees to administer and enforce this title.

Amended by Chapter 411, 2014 General Session

4-14-4 Labeling requirement for pesticides specified.

- (1) Each container of pesticide distributed in this state shall bear a label setting forth:
 - (a) the name, brand, or trademark under which it is distributed;
 - (b) an accurate statement of the ingredients on that part of the immediate container (and on the outside container and wrapper of the retail package, if there be one, through which the ingredient statement on the immediate container cannot be clearly read) which is presented or displayed under customary conditions of purchase; provided, that the ingredient statement may appear prominently on another part of the container as permitted pursuant to Section 2(q)(2)(A) of FIFRA if the size or form of the container makes it impracticable to place it on the part of the retail package which is presented or displayed under customary conditions of purchase;
 - (c) a warning or caution statement if necessary, which, if complied with together with any requirements imposed under Section 3(d) of FIFRA, is adequate to protect the health and environment;

- (d) the net weight or measure of the content;
 - (e) the name and address of the manufacturer, registrant, or person for whom manufactured;
 - (f) the EPA registration number assigned to each establishment in which it was produced and the EPA registration number assigned to the pesticide, if required by regulations under FIFRA;
 - (g) the federal use classification under which the pesticide is registered or designated for "experimental use only"; and
 - (h) directions for use of the pesticide sufficient to effectuate the purposes for which the product is intended and which, if complied with together with any requirements imposed under Section 3(d) of FIFRA, are adequate to protect health and the environment.
- (2) If the pesticide is highly toxic the label shall, in addition to the other label requirements, display:
- (a) the skull and crossbones;
 - (b) the word "POISON" in red prominently displayed on a background of distinctly contrasting color; and
 - (c) a statement of a practical treatment (first aid or otherwise) in case of poisoning by the pesticide.

Amended by Chapter 3, 1981 General Session

4-14-5 Issuance of experimental use permits -- Application -- Terms and conditions for issuance.

- (1) The department upon application may:
- (a) issue an experimental use permit to any person if it determines that the applicant needs such a permit in order to accumulate information necessary to register a pesticide under Section 4-14-3; or
 - (b) refuse to issue an experimental permit if it determines that issuance is not warranted or that the pesticide use to be made under the proposed terms and conditions may cause unreasonable adverse effects on the environment.
- (2) The department may also with respect to issuance of an experimental use permit:
- (a) prescribe the terms and conditions for the conduct of the experimental use which in all events shall be under the supervision of the department; and
 - (b) revoke or modify any experimental use permit if it determines that the terms or conditions of the experimental use are being violated, or that the terms and conditions prescribed are inadequate to avoid unreasonable adverse effects to the environment.
- (3) Application for an experimental use permit may be made before, after, or simultaneously with an application for registration.

Enacted by Chapter 2, 1979 General Session

4-14-6 Department authorized to make and enforce rules.

The department may, by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, adopt rules to:

- (1) declare as a pest any form of plant or animal life that is injurious to health or the environment, except:
- (a) a human being; or
 - (b) a bacteria, virus, or other microorganism on or in a living person or animal;
- (2) establish, in accordance with the regulations promulgated by the EPA under 7 U.S.C. Sec. 136w(c)(2), whether pesticides registered for special local needs under the authority of 7 U.S.C. Sec. 136v(c) are highly toxic to man;

- (3) establish, consistent with EPA regulations, that certain pesticides or quantities of substances contained in these pesticides are injurious to the environment;
- (4) adopt a list of "restricted use pesticides" for the state or designated areas within the state if it determines upon substantial evidence presented at a public hearing and upon recommendation of the pesticide committee that restricted use is necessary to prevent damage to property or to the environment;
- (5) establish qualifications for a pesticide applicator business; and
- (6) adopt any rule, not inconsistent with federal regulations promulgated under FIFRA, considered necessary to administer and enforce this chapter, including rules relating to the sale, distribution, use, and disposition of pesticides if necessary to prevent damage and to protect the public health.

Amended by Chapter 382, 2008 General Session

4-14-7 Enforcement -- Inspection and sampling authorized -- Notice of deficiency to be given registrant -- Objects of inspection delineated -- Warrants.

- (1) The department to determine compliance with this chapter, shall periodically sample, inspect, and analyze pesticides distributed within this state; observe and investigate the use and application of pesticides within this state; and inspect equipment used to apply pesticides in this state to determine if they comply with this chapter.
- (2) If a pesticide sample, upon analysis, fails to comply with this chapter, the department shall give written notice to that effect to the registrant or owner of the pesticide. Nothing in this chapter, however, shall be construed as requiring the department to refer minor violations for criminal prosecution or for the institution of condemnation proceedings if it believes the public interest will best be served through informal action.
- (3) The department, for the purpose of enforcing this section, is authorized at reasonable times, to enter any private or public premises for the purpose of:
 - (a) inspecting any equipment used in applying pesticides;
 - (b) inspecting or sampling lands actually or reported to be exposed to pesticides;
 - (c) inspecting storage or disposal areas;
 - (d) investigating complaints of injury to animals or lands;
 - (e) sampling pesticides wherever located including in vehicles; or
 - (f) observing the use and application of a pesticide.
- (4) The department may proceed immediately, if admittance is refused, to obtain an ex parte warrant from the nearest court of competent jurisdiction to allow entry upon the premises for any purpose specified in Subsection (3) of this section.

Enacted by Chapter 2, 1979 General Session

4-14-8 Suspension or revocation -- Grounds -- Stop sale, use, or removal order authorized -- Court action -- Procedure -- Award of costs authorized.

- (1) The department may revoke or suspend the registration of any pesticide upon satisfactory evidence that the registrant has used fraudulent or deceptive practices in the registration of the pesticide or in its distribution in this state.
- (2) The department may issue a "stop sale, use, or removal order" to the owner or distributor of any designated pesticide or lot of pesticide which it finds or has reason to believe is being offered or exposed for sale in violation of this chapter. The order shall be in writing and no pesticide subject to it shall be moved, offered, or exposed for sale, except upon the subsequent

written release by the department. Before a release is issued, the department may require the owner or distributor of the "stopped" pesticide or lot to pay the expense incurred by the department in connection with the withdrawal of the product from the market.

- (3) The department is authorized in a court of competent jurisdiction to seek an order of seizure or condemnation of a pesticide which violates this chapter or, upon proper grounds, to obtain a temporary restraining order or permanent injunction to prevent the violation of this chapter. No bond shall be required of the department in an injunctive proceeding brought under this section.
- (4) If condemnation is ordered, the pesticide or equipment shall be disposed of as the court directs; provided, that in no event shall it order condemnation without giving the registrant or other person an opportunity to apply to the court for permission to relabel, reprocess, or otherwise bring the pesticide into conformance, or for permission to remove it from the state.
- (5) If the court orders condemnation, court costs, fees, storage, and other costs shall be awarded against the claimant of the pesticide or equipment.

Enacted by Chapter 2, 1979 General Session

4-14-9 Examination requirements for license to act as applicator may be waived through reciprocal agreement.

The department may waive any or all examination requirements specified in rule for a noncommercial, commercial, or private pesticide applicator through a reciprocal agreement with another state whose examination requirements and standards for licensure are substantially similar to those of Utah.

Amended by Chapter 179, 2007 General Session

Amended by Chapter 370, 2007 General Session

4-14-12 Defenses.

- (1) As an affirmative defense to any action brought as a result of the alleged misuse or misapplication of a pesticide, a person may present evidence that as of the time of the alleged violation, the person was in compliance with label directions, this chapter, and any rules issued in accordance with this chapter.
- (2) A person is not liable for injuries resulting from the misuse or misapplication of a pesticide unless the person was negligent.

Amended by Chapter 370, 2007 General Session

4-14-13 Registration required for a pesticide business.

- (1) A pesticide applicator business shall register with the department by:
 - (a) submitting an application on a form provided by the department;
 - (b) paying the registration fee; and
 - (c) certifying that the business is in compliance with this chapter and departmental rules authorized by this chapter.
- (2)
 - (a) By following the procedures and requirements of Section 63J-1-504, the department shall establish a registration fee based on the number of pesticide applicators employed by the pesticide applicator business.
 - (b)

- (i) Notwithstanding Section 63J-1-504, the department shall deposit the fees as dedicated credits and may only use the fees to administer and enforce this chapter.
 - (ii) The Legislature may annually designate the revenue generated from the fee as nonlapsing in an appropriations act.
- (3) The department shall issue a business registration certificate to a pesticide applicator business if the individual or entity:
- (a) has complied with the requirements of this section;
 - (b) has shown evidence of competence in the pesticide profession and meets the certification requirements established by rule;
 - (c) demonstrates good character;
 - (d) has no outstanding infractions and owes no money to the department; and
 - (e) pays the licensing fee established by the department.
- (4) A registration certificate expires on December 31 of the second calendar year after the calendar year in which the registration certificate is issued.
- (5)
- (a) The department may suspend a registration certificate if the pesticide applicator business violates this chapter or any rules authorized by it.
 - (b) A pesticide applicator business whose registration certificate has been suspended may apply to the department for reinstatement of the registration certificate by demonstrating compliance with this chapter and rules authorized by it.
- (6) A pesticide applicator business shall:
- (a) only employ a pesticide applicator who has received a license from the department, as required by Section 4-14-3; and
 - (b) ensure that all employees comply with this chapter and the rules authorized by it.

Amended by Chapter 411, 2014 General Session