

1 **REGISTRATION AND LICENSE**
2 **REQUIREMENTS FOR PESTICIDE**
3 **BUSINESSES AND APPLICATORS**

4 2007 GENERAL SESSION

5 STATE OF UTAH

6 **Chief Sponsor: Jack R. Draxler**

7 Senate Sponsor: Kevin T. VanTassell

8
9 **LONG TITLE**

10 **General Description:**

11 This bill requires pesticide businesses to register with the Department of Agriculture
12 and Food.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ defines terms;
- 16 ▶ authorizes the Department of Agriculture and Food to adopt:
 - 17 • rules establishing qualifications to operate a pesticide business; and
 - 18 • a registration fee;
- 19 ▶ authorizes the Department of Agriculture and Food to retain fees as dedicated
20 credits;
- 21 ▶ requires a pesticide business to register with the department;
- 22 ▶ clarifies the license requirements and duration for a pesticide applicator; and
- 23 ▶ makes technical changes.

24 **Monies Appropriated in this Bill:**

25 None

26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 AMENDS:

- 30 4-14-2, as last amended by Chapter 10, Laws of Utah 1997
- 31 4-14-3, as last amended by Chapter 130, Laws of Utah 1985
- 32 4-14-6, as last amended by Chapter 20, Laws of Utah 1995
- 33 4-14-9, as enacted by Chapter 2, Laws of Utah 1979
- 34 4-14-12, as enacted by Chapter 20, Laws of Utah 1991

35 ENACTS:

36 4-14-13, Utah Code Annotated 1953



38 *Be it enacted by the Legislature of the state of Utah:*

39 Section 1. Section 4-14-2 is amended to read:

40 **4-14-2. Definitions.**

41 As used in this chapter:

42 (1) "Active ingredient" means ~~[any]~~ an ingredient ~~[which]~~ that:

43 (a) prevents, destroys, repels, controls, or mitigates pests~~[-];~~ or ~~[which]~~

44 (b) acts as a plant regulator, defoliant, or desiccant.

45 (2) "Adulterated pesticide" means ~~[any]~~ a pesticide ~~[the]~~ with a strength or purity ~~[of~~
46 ~~which]~~ that is below the standard of quality expressed on the label under which it is offered for
47 sale.

48 (3) "Animal" means all vertebrate or invertebrate species.

49 (4) "Beneficial insect" means ~~[any]~~ an insect ~~[which]~~ that is:

50 (a) an effective pollinator of plants~~[-or-which-is];~~

51 (b) a parasite or predator of pests~~[-];~~ or ~~[is]~~

52 (c) otherwise beneficial.

53 (5) "Defoliant" means ~~[any]~~ a substance or mixture intended to cause leaves or foliage
54 to drop from a plant, with or without causing abscission.

55 (6) "Desiccant" means ~~[any]~~ a substance or mixture intended to artificially accelerate
56 the drying of plant or animal tissue.

57 (7) "Distribute" means to offer for sale, sell, barter, ship, deliver for shipment, ~~[or]~~

58 receive ~~[and (having so received)]~~, deliver, or offer to deliver pesticides in this state.

59 (8) "Environment" means all living plants and animals, water, air, land, and the
60 interrelationships ~~[which]~~ that exist between them.

61 (9) (a) "Equipment" means any type of ground, water, or aerial equipment or
62 contrivance using motorized, mechanical, or pressurized power to apply a pesticide.

63 (b) "Equipment" does not mean any pressurized hand-sized household apparatus used
64 to apply a pesticide or any equipment or contrivance used to apply a pesticide ~~[which]~~ that is
65 dependent solely upon energy expelled by the person making the pesticide application.

66 (10) "EPA" means the United States Environmental Protection Agency.

67 (11) "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act.

68 (12) (a) "Fungus" means ~~[any]~~ a nonchlorophyll-bearing thallophyte ~~[(that is, any) or a~~
69 ~~nonchlorophyll-bearing plant of an order lower than mosses and liverworts], for example,~~
70 including rust, smut, mildew, mold, yeast, and bacteria~~[-except those on or in].~~

71 (b) "Fungus" does not include fungus existing on or in:

72 (i) a living [man] person or other [animals, and except those on or in] animal; or

73 (ii) processed food, beverages, or pharmaceuticals.

74 (13) "Insect" means ~~[any]~~ an invertebrate animal generally having a more or less
75 obviously segmented body~~[-for the most part]:~~

76 (a) usually belonging to the Class Insecta, comprising six-legged, usually winged
77 forms~~[-for example], including~~ beetles, bugs, bees, and flies~~[-];~~ and

78 (b) allied classes of arthropods that are wingless usually having more than six legs, ~~[as~~
79 ~~for example,]~~ including spiders, mites, ticks, centipedes, and wood lice.

80 (14) "Label" means any written, printed, or graphic matter on, or attached to, a
81 pesticide or a container or wrapper of a pesticide.

82 (15) (a) "Labeling" means all labels and all other written, printed, or graphic matter:

83 ~~[(a)]~~ (i) accompanying a pesticide or equipment; or

84 ~~[(b)]~~ (ii) to which reference is made on the label or in literature accompanying a
85 pesticide or equipment~~[-except to current official publications of].~~

86 (b) "Labeling" does not include any written, printed, or graphic matter created by the
87 EPA, the United States Departments of Agriculture or Interior, the Department of Health,
88 Education, and Welfare, state experimental stations, state agricultural colleges, and other
89 federal or state institutions or agencies authorized by law to conduct research in the field of
90 pesticides.

91 (16) "Land" means ~~all~~ land, water, air, and ~~all~~ plants, animals, structures, buildings,
92 contrivances, and machinery appurtenant or situated thereon, whether fixed or mobile,
93 including any used for transportation.

94 (17) "Misbranded" means any label or labeling ~~which~~ that is false or misleading or
95 ~~which~~ that does not strictly comport with the label and labeling requirements set forth in
96 Section 4-14-4.

97 (18) "Misuse" means use of any pesticide in a manner inconsistent with its label or
98 labeling.

99 (19) "Nematode" means invertebrate animals of the Phylum Nematelminthes and
100 Class Nematoda, ~~that is,~~ including unsegmented round worms with elongated, fusiform, or
101 saclike bodies covered with cuticle, also known as nemas or eelworms.

102 (20) (a) "Pest" means:

103 ~~(a)~~ (i) any insect, rodent, nematode, fungus, weed; or

104 ~~(b)~~ (ii) any other form of terrestrial or aquatic plant or animal life ~~or~~, virus, bacteria,
105 or other microorganism ~~which~~ that is injurious to health or to the environment or ~~which~~ that
106 the ~~commissioner~~ department declares to be a pest~~;~~ except.

107 (b) "Pest" does not include:

108 (i) viruses, bacteria, or other microorganisms on or in a living ~~man~~ person or other
109 living ~~animals;~~ animal; or

110 (ii) protected wildlife species identified in Section 23-13-2 ~~which~~ that are regulated
111 by the Division of Wildlife Resources in accordance with Sections 23-14-1 through 23-14-3.

112 (21) "Pesticide" means any:

113 (a) substance or mixture of substances including a living organism ~~which~~ that is

114 intended to prevent, destroy, control, repel, attract, or mitigate any insect, rodent, nematode,
115 snail, slug, fungus, weed, or other form of plant or animal life that is normally considered to be
116 a pest or that the commissioner declares to be a pest;

117 (b) any substance or mixture of substances intended to be used as a plant regulator,
118 defoliant, or desiccant;

119 (c) any spray adjuvant, such as a wetting agent, spreading agent, deposit builder,
120 adhesive, or emulsifying agent with deflocculating properties of its own used with a pesticide
121 to aid its application or effect; and

122 (d) any other substance designated by the [~~commissioner~~] department by rule.

123 (22) "Pesticide applicator" is a person who:

124 (a) applies or supervises the application of a pesticide; and

125 (b) is required by this chapter to have a license.

126 (23) (a) "Pesticide applicator business" means an entity that:

127 (i) is authorized to do business in this state; and

128 (ii) offers pesticide application services.

129 (b) "Pesticide applicator business" does not include an individual licensed agricultural
130 applicator who may work for hire.

131 [~~(22)~~] (24) "Pesticide dealer" means any person who distributes restricted use
132 pesticides.

133 [~~(23)~~] (25) (a) "Plant regulator" means any substance or mixture intended, through
134 physiological action, to accelerate or retard the rate of growth or rate of maturation, or
135 otherwise alter the behavior of ornamental or crop plants[~~, but it does not mean~~].

136 (b) "Plant regulator" does not include plant nutrients, trace elements, nutritional
137 chemicals, plant inoculants, or soil amendments.

138 [~~(24)~~] (26) "Restricted use pesticide" means [any]:

139 (a) a pesticide, including a highly toxic pesticide [~~which~~] that is a serious hazard to
140 beneficial insects, animals, or land; or

141 (b) any pesticide or pesticide use restricted by the administrator of EPA or by the

142 commissioner.

143 [(25)] (27) "Weed" means any plant [~~which~~] that grows where not wanted.

144 [(26)] (28) "Wildlife" means all living things that are neither human, domesticated, nor
145 pests.

146 Section 2. Section **4-14-3** is amended to read:

147 **4-14-3. Registration required for distribution -- Application -- Fees -- Renewal --**
148 **Local needs registration -- Distributor or applicator license -- Fees -- Renewal.**

149 (1) (a) No person may distribute a pesticide in this state [~~which~~] that is not registered
150 with the department.

151 (b) Application for registration shall be made to the department upon forms prescribed
152 and furnished by it accompanied with an annual registration fee determined by the department
153 pursuant to Subsection 4-2-2 (2) for each pesticide registered.

154 (c) Upon receipt by the department of a proper application and payment of the
155 appropriate fee, the commissioner shall issue a registration to the applicant allowing
156 distribution of the registered pesticide in this state through June 30 of each year, subject to
157 suspension or revocation for cause.

158 (d) (i) Each registration is renewable for a period of one year upon the payment of an
159 annual registration renewal fee in an amount equal to the current applicable original
160 registration fee.

161 (ii) Each renewal fee shall be paid on or before June 30 of each year.

162 (2) The application shall include the following information:

163 (a) the name and address of the applicant and the name and address of the person
164 whose name will appear on the label, if other than the applicant's name;

165 (b) the name of the pesticide;

166 (c) a complete copy of the label which will appear on the pesticide; and

167 (d) any information prescribed by regulation of the department [~~deemed~~] considered
168 necessary for the safe and effective use of the pesticide.

169 (3) (a) Forms for the renewal of registration shall be mailed to registrants at least 30

170 days before their registration expires.

171 (b) A registration in effect on June 30 for which a renewal application has been filed
172 and the registration fee tendered shall continue in effect until the applicant is notified either
173 that the registration is renewed or that it is suspended or revoked pursuant to Section 4-14-8.

174 (4) The department may, before approval of any registration, require the applicant to
175 submit the complete formula of any pesticide including active and inert ingredients and may
176 also, for any pesticide not registered pursuant to Section (3) of FIFRA or for any pesticide on
177 which restrictions are being considered, require a complete description of all tests and test
178 results that support the claims made by the applicant or the manufacturer of the pesticide.

179 (5) A registrant who desires to register a pesticide to meet special local needs pursuant
180 to Section 24(c) of FIFRA shall, in addition to complying with Subsections (1) and (2), satisfy
181 the department that:

182 (a) a special local need exists;

183 (b) the pesticide warrants the claims made for it;

184 (c) the pesticide, if used in accordance with commonly accepted practices, will not
185 cause unreasonable adverse effects on the environment; and

186 (d) the proposed classification for use conforms with Section 3(d) of FIFRA.

187 (6) No registration is required for a pesticide distributed in this state pursuant to an
188 experimental use permit issued by the EPA or under Section 4-14-5.

189 (7) No pesticide dealer may distribute a restricted use pesticide in this state without a
190 license. [~~No person may apply a pesticide for hire in this state without a license.~~]

191 (8) A person must receive a license before applying:

192 (a) a restricted use pesticide; or

193 (b) a general use pesticide for hire or in exchange for compensation.

194 (9) (a) A license to engage in [either] an activity listed in Subsection (7) or (8)

195 may be obtained [upon] by:

196 (i) submitting an application [from] on a form provided by the department [upon the
197 payment of a];

198 (ii) paying the license fee determined by the department [pursuant] according to
 199 Subsection 4-2-2(2)[, which shall entitle the applicant to engage in the otherwise proscribed
 200 activity through December 31 of the year in which the license is issued. Such a license is
 201 annually renewable upon the payment of an annual license renewal fee determined by the
 202 department pursuant to Subsection 4-2-2 (2).]; and

203 (iii) complying with the rules adopted as authorized by this chapter.

204 (b) A person may apply for a license that expires on December 31:

205 (i) of the calendar year in which the license is issued; or

206 (ii) of the second calendar year after the calendar year in which the license is issued.

207 (c) (i) Notwithstanding Section 63-38-3.2, the department shall retain the fees as
 208 dedicated credits and may only use the fees to administer and enforce this chapter.

209 (ii) The Legislature may annually designate the revenue generated from the fee as
 210 nonlapsing in an appropriations act.

211 Section 3. Section **4-14-6** is amended to read:

212 **4-14-6. Department authorized to make and enforce rules.**

213 The department [~~is authorized, subject to~~] may, by following the procedures and
 214 requirements of Title 63, Chapter 46a, Utah Administrative Rulemaking Act, adopt rules to:

215 (1) declare as a pest any form of plant or animal life [(other than man and other than
 216 bacteria, viruses, and other microorganisms on or in living man or other living animals) which]
 217 that is injurious to health or the environment[;], except:

218 (a) a human being; or

219 (b) a bacteria, virus, or other microorganism on or in a living person or animal;

220 (2) [~~determine~~] establish, in accordance with the regulations promulgated by the EPA
 221 under [~~Section 25(c)(2) of FIFRA~~] 7 U.S.C. Sec. 136w(c)(2), whether pesticides registered for
 222 special local needs under the authority of [~~Section 24(c) of FIFRA~~] 7 U.S.C. Sec. 136v(c) are
 223 highly toxic to man;

224 (3) [~~determine~~] establish, consistent with EPA regulations, that certain pesticides or
 225 quantities of substances contained in these pesticides are injurious to the environment;

226 (4) adopt a list of "restricted use pesticides" for the state or designated areas within the
 227 state if it determines upon substantial evidence presented at a public hearing and upon
 228 recommendation of the pesticide committee that restricted use is necessary to prevent damage
 229 to property or to the environment; ~~or~~

230 (5) establish qualifications for a pesticide applicator business; and

231 ~~[(5)]~~ (6) adopt any rule, not inconsistent with federal regulations promulgated under
 232 FIFRA, considered necessary to administer and enforce this chapter, including ~~[but not limited~~
 233 ~~to;~~] rules relating to the sale, distribution, use, and disposition of pesticides ~~[as deemed]~~ if
 234 necessary to prevent damage and to protect the public health.

235 Section 4. Section **4-14-9** is amended to read:

236 **4-14-9. Examination requirements for license to act as applicator may be waived**
 237 **through reciprocal agreement.**

238 The department may waive any or all examination requirements ~~[which may be~~
 239 ~~specified by regulation]~~ specified in rule for a noncommercial, commercial, ~~[and]~~ or private
 240 ~~[applicators]~~ pesticide applicator through a reciprocal agreement with another state whose
 241 examination requirements and standards for licensure are substantially similar to those of Utah.

242 Section 5. Section **4-14-12** is amended to read:

243 **4-14-12. Defenses.**

244 (1) As an affirmative defense to any action brought as a result of the alleged misuse or
 245 misapplication of a pesticide, a person may present evidence that as of the time of the alleged
 246 violation, ~~[he]~~ the person was in compliance with label directions, this chapter, and any rules
 247 issued in accordance with this chapter.

248 (2) A person is not liable for injuries resulting from the misuse or misapplication of a
 249 pesticide unless the ~~[applicator]~~ the person was negligent.

250 Section 6. Section **4-14-13** is enacted to read:

251 **4-14-13. Registration required for a pesticide business.**

252 (1) A pesticide applicator business shall register with the department by:

253 (a) submitting an application on a form provided by the department;

254 (b) paying the registration fee; and

255 (c) certifying that the business is in compliance with this chapter and departmental
256 rules authorized by this chapter.

257 (2) (a) By following the procedures and requirements of Section 63-38-3.2, the
258 department shall establish a registration fee based on the number of pesticide applicators
259 employed by the pesticide applicator business.

260 (b) (i) Notwithstanding Section 63-38-3.2, the department shall retain the fees as
261 dedicated credits and may only use the fees to administer and enforce this chapter.

262 (ii) The Legislature may annually designate the revenue generated from the fee as
263 nonlapsing in an appropriations act.

264 (3) (a) The department shall issue a pesticide applicator business a registration
265 certificate if the pesticide applicator business:

266 (i) has complied with the requirements of this section; and

267 (ii) meets the qualifications established by rule.

268 (b) The department shall notify the pesticide applicator business in writing that the
269 registration is denied if the pesticide applicator business does not meet the registration
270 qualifications.

271 (4) A registration certificate expires on December 31 of the second calendar year after
272 the calendar year in which the registration certificate is issued.

273 (5) (a) The department may suspend a registration certificate if the pesticide applicator
274 business violates this chapter or any rules authorized by it.

275 (b) A pesticide applicator business whose registration certificate has been suspended
276 may apply to the department for reinstatement of the registration certificate by demonstrating
277 compliance with this chapter and rules authorized by it.

278 (6) A pesticide applicator business shall:

279 (a) only employ a pesticide applicator who has received a license from the department,
280 as required by Section 4-14-3; and

281 (b) ensure that all employees comply with this chapter and the rules authorized by it.

