

**REGISTRATION AND LICENSE
REQUIREMENTS FOR PESTICIDE
BUSINESSES AND APPLICATORS**

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jack R. Draxler

Senate Sponsor: Kevin T. Van Tassell

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ authorizes the Department of Agriculture and Food to adopt:
 - rules establishing qualifications to operate a pesticide business; and
 - a registration fee;
- ▶ requires a pesticide business to register with the department;
- ▶ clarifies the license requirements for a pesticide applicator; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



- 28 4-14-2, as last amended by Chapter 10, Laws of Utah 1997
- 29 4-14-3, as last amended by Chapter 130, Laws of Utah 1985
- 30 4-14-6, as last amended by Chapter 20, Laws of Utah 1995
- 31 4-14-9, as enacted by Chapter 2, Laws of Utah 1979
- 32 4-14-12, as enacted by Chapter 20, Laws of Utah 1991

33 ENACTS:

- 34 4-14-13, Utah Code Annotated 1953

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

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

38 **4-14-2. Definitions.**

39 As used in this chapter:

40 (1) "Active ingredient" means ~~any~~ an ingredient ~~which~~ that:

41 (a) prevents, destroys, repels, controls, or mitigates pests~~;~~₂ or ~~which~~

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

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

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

47 (4) "Beneficial insect" means ~~any~~ an insect ~~which~~ that is:

48 (a) an effective pollinator of plants~~;~~₂ ~~or which is~~;

49 (b) a parasite or predator of pests~~;~~₂ or ~~is~~

50 (c) otherwise beneficial.

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

53 (6) "Desiccant" means ~~any~~ a substance or mixture intended to artificially accelerate
54 the drying of plant or animal tissue.

55 (7) "Distribute" means to offer for sale, sell, barter, ship, deliver for shipment, ~~or~~
56 receive ~~and (having so received)~~₂, deliver₂ or offer to deliver pesticides in this state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

89 (16) "Land" means ~~[all]~~ land, water, air, and ~~[all]~~ plants, animals, structures, buildings,

90 contrivances, and machinery appurtenant or situated thereon, whether fixed or mobile,
91 including any used for transportation.

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

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

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

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

101 [~~(a)~~] (i) any insect, rodent, nematode, fungus, weed; or

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

105 (b) "Pest" does not include:

106 (i) viruses, bacteria, or other microorganisms on or in a living [~~man~~] person or other
107 living [~~animals;~~] animal; or

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

110 (21) "Pesticide" means any:

111 (a) substance or mixture of substances including a living organism [~~which~~] that is
112 intended to prevent, destroy, control, repel, attract, or mitigate any insect, rodent, nematode,
113 snail, slug, fungus, weed, or other form of plant or animal life that is normally considered to be
114 a pest or that the commissioner declares to be a pest;

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

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

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

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

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

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

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

125 (a) is authorized to do business in this state; and

126 (b) offers pesticide application services.

127 [~~(22)~~] (24) "Pesticide dealer" means any person who distributes restricted use
128 pesticides.

129 [~~(23)~~] (25) (a) "Plant regulator" means any substance or mixture intended, through
130 physiological action, to accelerate or retard the rate of growth or rate of maturation, or
131 otherwise alter the behavior of ornamental or crop plants[~~, but it does not mean~~].

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

134 [~~(24)~~] (26) "Restricted use pesticide" means [any]:

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

137 (b) any pesticide or pesticide use restricted by the administrator of EPA or by the
138 commissioner.

139 [~~(25)~~] (27) "Weed" means any plant [which] that grows where not wanted.

140 [~~(26)~~] (28) "Wildlife" means all living things that are neither human, domesticated, nor
141 pests.

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

143 **4-14-3. Registration required for distribution -- Application -- Fees -- Renewal --**
144 **Local needs registration -- Distributor or applicator license -- Fees -- Renewal.**

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

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

150 (c) Upon receipt by the department of a proper application and payment of the
151 appropriate fee, the commissioner shall issue a registration to the applicant allowing

152 distribution of the registered pesticide in this state through June 30 of each year, subject to
153 suspension or revocation for cause.

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

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

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

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

161 (b) the name of the pesticide;

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

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

165 (3) (a) Forms for the renewal of registration shall be mailed to registrants at least 30
166 days before their registration expires.

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

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

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

178 (a) a special local need exists;

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

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

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

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

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

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

188 (a) a restricted use pesticide; or

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

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

191 may be obtained ~~[upon]~~ by:

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

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

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

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

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

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

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

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

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

208 **4-14-6. Department authorized to make and enforce rules.**

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

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

214 (a) a human being; or

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

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

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

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

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

227 [~~(5)~~] (6) adopt any rule, not inconsistent with federal regulations promulgated under
228 FIFRA, considered necessary to administer and enforce this chapter, including [~~but not limited~~
229 ~~to;~~] rules relating to the sale, distribution, use, and disposition of pesticides [~~as deemed~~] if
230 necessary to prevent damage and to protect the public health.

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

232 **4-14-9. Examination requirements for license to act as applicator may be waived**
233 **through reciprocal agreement.**

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

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

239 **4-14-12. Defenses.**

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

244 (2) A person is not liable for injuries resulting from the misuse or misapplication of a

245 pesticide unless the ~~[applicator]~~ the person was negligent.

246 Section 6. Section ~~4-14-13~~ is enacted to read:

247 **4-14-13. Registration required for a pesticide business.**

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

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

250 (b) paying the registration fee; and

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

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

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

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

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

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

263 (ii) meets the qualifications established by rule.

264 (b) The department shall notify the pesticide applicator business in writing that the
265 registration is denied if the pesticide applicator business does not meet the registration
266 qualifications.

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

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

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

274 (6) A pesticide applicator business shall:

275 (a) only employ a pesticide applicator who has received a license from the department.

276 as required by Section 4-14-3; and

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

Legislative Review Note
as of 1-17-07 6:30 PM

Office of Legislative Research and General Counsel

Fiscal Note**H.B. 132 - Registration and License Requirements for Pesticide Businesses and
Applicators**

2007 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations. Fees, to be recommended by the Department and later approved by the Legislature, could provide about \$20,300 in additional dedicated credit revenues to be used to enforce provisions of this bill. The bill creates non-lapsing authority for these additional dedicated credits.

Individual, Business and/or Local Impact

Enactment of this bill will require registration and license fees to be paid by pesticide businesses and applicators.

1/24/2007, 9:31:34 AM, Lead Analyst: Djambov, I.

Office of the Legislative Fiscal Analyst