

HOUSE BILL No. 4729

May 22, 2003, Introduced by Rep. Gleason and referred to the Committee on Great Lakes and Tourism.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 8313, 8314, 8327, 8329, and 8333 (MCL 324.8313, 324.8314, 324.8327, 324.8329, and 324.8333), as amended by 2002 PA 418.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 8313. (1) Commercial applicators who hold themselves
2 out to the public as being in the business of applying pesticides
3 shall obtain a commercial applicator license for each place of
4 business.

5 (2) A commercial applicator shall be certified under section
6 8312 and shall have at least 1 of the following in order to
7 qualify for a license:

8 (a) Service for not less than 2 application seasons as an
9 employee of a commercial applicator or comparable education and

1 experience as determined by the director.

2 (b) A baccalaureate degree from a recognized college or
3 university in a discipline that provides education regarding
4 pests and the control of pests and 1 application season of
5 service as an employee of a commercial applicator.

6 (3) The commercial applicator license application shall be on
7 a form provided by the director and shall contain information
8 regarding the applicant's qualifications and proposed operations,
9 the type of equipment to be used by the applicant, and other
10 information considered pertinent by the director.

11 (4) An application for a commercial applicator license shall
12 be accompanied by the appropriate fee as provided in section
13 8317.

14 (5) An application for a commercial applicator license shall
15 be accompanied by proof of sufficient financial responsibility as
16 prescribed by rule.

17 (6) The director may restrict an applicant to use only a
18 certain type of equipment or pesticide upon finding that the
19 applicant is qualified to use only that type.

20 (7) The director may refuse to issue or renew a commercial
21 applicator license if the applicant demonstrates insufficient
22 knowledge of an item in the application, or has unsatisfied
23 judgments under this part, ~~or~~ a rule promulgated under this
24 part, **part 33, or a rule promulgated under part 33** against him or
25 her, or if the equipment used by the applicant is unsafe or
26 inadequate for pesticide applications.

27 (8) The director may at any time deny, revoke, or suspend a

1 commercial applicator license for a violation of this part, ~~or a~~
2 ~~violation of~~ an order issued under this part, **part 33, or an**
3 **order issued under part 33** or upon conviction under this part,
4 **part 33, FIFRA, or a state pesticide law of a reciprocating state**
5 in accordance with section 8320.

6 (9) The director shall inform an applicant who is denied a
7 commercial applicator license the reasons why the license was
8 denied.

9 (10) A person subject to the licensing requirements in this
10 section shall only apply pesticides that are registered with, or
11 subject to, either United States EPA or this state's laws and
12 rules.

13 (11) A person subject to the licensing requirements in this
14 section shall not represent that a pesticide application has
15 characteristics, ingredients, uses, benefits, or qualities that
16 it does not have.

17 (12) A person subject to the licensing requirements in this
18 section shall not represent that a pesticide application is
19 necessary to control a pest when the pest is not present or
20 likely to occur.

21 Sec. 8314. (1) A person shall not apply a pesticide for a
22 commercial purpose or in the course of his or her employment
23 unless that person is either a certified applicator or a
24 registered applicator. A person may apply a general use
25 pesticide for a private agricultural purpose without being a
26 certified applicator or registered applicator.

27 (2) A person who is not subject to the licensing requirement

1 in section 8313 may apply a general use ready-to-use pesticide
2 without being a certified applicator or a registered applicator.

3 (3) A commercial certified or registered applicator must be
4 at least 18 years of age.

5 (4) A person who is not subject to the licensing requirements
6 in section 8313 may apply a general use antimicrobial pesticide
7 without being a certified or registered applicator if there is no
8 potential for movement of an antimicrobial pesticide to affect
9 surface water or groundwater.

10 (5) A commercial applicator shall only make pesticide
11 applications in the category for which he or she is certified or
12 registered.

13 (6) A registered applicator shall do all of the following:

14 (a) Complete a training program that is approved by the
15 director and conducted by a trainer who has the minimum
16 qualifications established by rule. The training program for
17 applicators who apply pesticides for private agricultural
18 purposes may utilize other methods of training and testing as
19 provided in section ~~8311(1)~~ **8311(3)**.

20 (b) Pass a test that is approved by the director.

21 (c) Possess a valid registration certificate issued by the
22 director.

23 (7) A trainer shall issue a temporary registration to an
24 applicant who completes an approved training program and passes a
25 test administered by the director. A temporary registration is
26 valid from the time it is issued until the applicant receives a
27 registration certificate from the director. The department shall

1 provide the applicant with the registration certificate upon
2 payment of the fee provided for in section 8317 and when the
3 approved trainer completes and submits a program completion
4 form.

5 (8) A registered applicator who applies general use
6 pesticides and is not subject to commercial pesticide applicator
7 licensing requirements is exempt from the provisions requiring
8 supervision by a certified applicator.

9 (9) A person shall display his or her registration
10 certificate upon the request of the director.

11 (10) A registered applicator shall complete a training
12 program every 3 years to be eligible to renew his or her
13 registration.

14 (11) The director may at any time deny, revoke, or suspend a
15 certification or registration for a violation of this part **or**
16 **part 33** or upon conviction under this part, **part 33**, FIFRA, or a
17 state pesticide law of a reciprocating state in accordance with
18 section 8320.

19 (12) The director shall develop and provide the documents and
20 forms necessary to implement this section.

21 Sec. 8327. (1) ~~When~~ **If** the director has probable cause to
22 believe that an applicator is using or intending to use a
23 pesticide in an unsafe or inadequate manner or in a manner
24 inconsistent with its labeling, **or in violation of part 33 or**
25 **rules promulgated under part 33**, the director shall order the
26 applicator to cease the use of or refrain from the intended use
27 of the pesticide. The order may be either oral or written and

1 shall inform the applicator of the reason for the order.

2 (2) Upon receipt of the order, the applicator shall
3 immediately comply with the ~~director's~~ order. Failure to
4 comply constitutes cause for revocation of the applicator's
5 license or certification or registration and subjects the
6 applicator to the penalty imposed under section 8333.

7 (3) The director shall rescind the order upon being satisfied
8 that the applicator has complied with the order.

9 Sec. 8329. (1) When the director has reasonable suspicion
10 that a pesticide or device is distributed, stored, transported,
11 offered for sale, or used in violation of this part **or part 33**,
12 the director may issue an order to stop the prohibited conduct.
13 The person shall immediately comply with the order.

14 (2) A pesticide or device that is transported, or is in
15 original unbroken packages, or is sold or offered for sale in
16 this state, or is imported from a foreign country, in violation
17 of this part, is liable to be proceeded against in any district
18 court in the district where it is found and seized for
19 confiscation by a process in rem for condemnation if:

20 (a) In the case of a pesticide, any of the following
21 circumstances exist:

22 (i) It is adulterated or misbranded.

23 (ii) It is not registered pursuant to this part.

24 (iii) Its labeling fails to bear the information required by
25 FIFRA or by regulations promulgated under FIFRA.

26 (iv) Its coloring is different than that required under
27 FIFRA.

1 (v) Any claims or directions for its use differ from the
2 representations made with its registration.

3 (b) In the case of a device, it is misbranded.

4 (c) In the case of a pesticide or device, when used in
5 accordance with the requirements imposed under this part it
6 causes unreasonable adverse effects on the environment.

7 (3) If the pesticide or device is condemned, it shall be
8 disposed of by destruction or sale as the court directs. If the
9 pesticide or device is sold, the proceeds less the court costs
10 shall be credited to the general fund. A pesticide or device
11 shall not be sold contrary to this part or the laws of the
12 jurisdiction in which it is sold. Upon payment of the costs of
13 the condemnation proceedings and the execution and delivery of a
14 sufficient bond conditioned that it shall not be sold or disposed
15 of contrary to this part or the laws of the jurisdiction in which
16 it is sold, the court may direct that it be delivered to the
17 owner. The proceedings of condemnation cases shall conform as
18 nearly as possible to proceedings in admiralty, except that
19 either party may demand trial by jury of an issue of fact joined
20 in a case, and the proceedings shall be brought by and in the
21 name of the people of the state.

22 (4) Court costs, fees, storage, and other proper expenses
23 shall be awarded against the person, intervening as claimant of
24 the pesticide or device upon entry of a decree of condemnation.

25 Sec. 8333. (1) A person who violates this part **or part 33**
26 is subject to the penalties and remedies provided in this part
27 regardless of whether he or she acted alone or through an

1 employee or agent.

2 (2) The director, upon finding after notice and an
3 opportunity for a hearing that a person has violated or attempted
4 to violate any provision of this part **or part 33**, may impose an
5 administrative fine of not more than \$1,000.00 for each
6 violation. ~~of this part.~~

7 (3) If the director finds that a violation or attempted
8 violation occurred despite the exercise of due care or did not
9 result in significant harm to human health or the environment,
10 the director may issue a warning instead of imposing an
11 administrative fine.

12 (4) The director shall advise the attorney general of the
13 failure of a person to pay an administrative fine imposed under
14 this section. The attorney general may bring an action in a
15 court of competent jurisdiction for the failure to pay an
16 administrative fine imposed under this section.

17 (5) A person who violates ~~this part~~ or attempts to violate
18 this part **or part 33** is guilty of a misdemeanor punishable by
19 imprisonment for not more than 90 days or a fine of not more than
20 \$5,000.00, or both, for each offense.

21 (6) The director may bring an action to enjoin a violation
22 ~~of this part~~ or ~~an~~ attempted violation of this part **or part**
23 **33** in a court of competent jurisdiction of the county in which
24 the violation occurs or is about to occur.

25 (7) The attorney general may file a civil action in which the
26 court may impose on any person who violates ~~this part~~ or
27 attempts to violate this part **or part 33** a civil fine of not more

1 than \$5,000.00 for each violation or attempted violation. In
2 addition, the attorney general may bring an action in circuit
3 court to recover the reasonable costs of the investigation from
4 any person who violated ~~this part~~ or attempted to violate this
5 part **or part 33**. Money recovered under this subsection shall be
6 forwarded to the state treasurer for deposit into the pesticide
7 control fund created in section 8318.

8 (8) In defense of an action filed under this section, in
9 addition to any other lawful defense, a person may present
10 evidence as an affirmative defense that, at the time of the
11 alleged violation ~~of this part~~ or attempted violation of this
12 part **or part 33**, he or she was in compliance with label
13 directions, ~~and~~ with this part ~~and~~ **or part 33, respectively,**
14 **and with** rules promulgated under this part **or part 33,**
15 **respectively,** at the time of the alleged violation.

16 (9) A civil cause of action does not arise for injuries to
17 any person or property if a private agricultural applicator, or a
18 registered applicator who stores, handles, or applies pesticides
19 only for a private agricultural purpose, was not grossly
20 negligent and stored, handled, or applied pesticides in
21 compliance **with the pesticide labeling and** with this part ~~— and~~
22 **part 33 and** rules promulgated under this part ~~— and the~~
23 ~~pesticide labeling or part 33~~.

24 (10) Applicable provisions of the revised judicature act of
25 1961, 1961 PA 236, MCL 600.101 to 600.9948, apply to civil
26 actions filed pursuant to this part.

27 Enacting section 1. This amendatory act does not take

1 effect unless Senate Bill No. _____ or House Bill No. 4730
2 (request no. 02915'03) of the 92nd Legislature is enacted into
3 law.