

Act No. 418  
Public Acts of 2002  
Approved by the Governor  
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**STATE OF MICHIGAN  
91ST LEGISLATURE  
REGULAR SESSION OF 2002**

Introduced by Senators McManus, Stille, Gougeon and Gast

# **ENROLLED SENATE BILL No. 989**

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," by amending sections 8302, 8303, 8304, 8305, 8306, 8309, 8310, 8311, 8312, 8313, 8314, 8317, 8318, 8319, 8322, 8327, 8329, 8330, and 8333 (MCL 324.8302, 324.8303, 324.8304, 324.8305, 324.8306, 324.8309, 324.8310, 324.8311, 324.8312, 324.8313, 324.8314, 324.8317, 324.8318, 324.8319, 324.8322, 324.8327, 324.8329, 324.8330, and 324.8333), section 8319 as amended by 1996 PA 312, and by adding sections 8307a, 8307b, 8307c, 8307d, 8307e, and 8307f; and to repeal acts and parts of acts.

*The People of the State of Michigan enact:*

Sec. 8302. (1) "Active ingredient" means an ingredient that will prevent, destroy, repel, or mitigate pests, or that will act as a plant regulator, defoliant, or desiccant or otherwise alter the behavior of plants or products.

(2) "Activity plan" means a plan for the mitigation of groundwater contamination at a specific location, including a time frame for implementation.

(3) "Adulterated" applies to a pesticide if its strength or purity is less than, or significantly greater than, the professed standard or quality as expressed on its labeling or under which it is sold; if a substance was substituted wholly or in part for a pesticide; or if a valuable constituent of the pesticide was wholly or in part abstracted.

(4) "Agricultural commodity" means a plant or part of a plant, or an animal or animal product, produced primarily for sale, consumption, propagation, or other use by human beings or animals.

(5) "Animal" means all vertebrate and invertebrate species, including, but not limited to, human beings and other mammals, birds, fish, and shellfish.

(6) "Antimicrobial pesticide" means a pesticide that is intended to disinfect, sanitize, reduce, or mitigate growth or development of microbial organisms, as defined under the federal insecticide, fungicide, and rodenticide act, chapter 125, 86 Stat. 973, 7 U.S.C. 136 to 136i, 136j to 136r, and 136s to 136y.

(7) "Application season" means a time period of pesticide application, consistent with the category of application, within a calendar year.

(8) "Aquifer" means a geologic formation, a group of formations, or a part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(9) "Aquifer sensitivity" means a hydrogeologic function representing the inherent abilities of materials surrounding the aquifer to attenuate the movement of pesticides into that aquifer.

(10) "Avicide" means a pesticide intended for preventing, destroying, repelling, or mitigating pest birds.

(11) "Building manager" means the person who is designated as being responsible for the building's pest management program and to whom any reporting and notification shall be made pursuant to this part or rules promulgated under this part.

(12) "Certified applicator" means an individual who is authorized under this part to use and supervise the use of a restricted use pesticide.

(13) "Commercial applicator" means a person who is required to be a registered or certified applicator under this part, or who holds himself or herself out to the public as being in the business of applying pesticides. A commercial applicator does not include a person using a pesticide for a private agricultural purpose.

(14) "Commercial building" means any portion of a building that is not a private residence where a business is located and that is frequented by the public.

(15) "Confirmed contaminant" means a contaminant that has been detected in at least 2 groundwater samples collected from the same groundwater sampling point at an interval of greater than 14 days.

(16) "Contaminant" means any pesticide originated chemical, radionuclide, ion, synthetic organic compound, microorganism, or waste that does not occur naturally in groundwater or that naturally occurs at a lower concentration than detected.

(17) "Contamination" means the direct or indirect introduction into groundwater of any contaminant caused in whole or in part by human activity.

Sec. 8303. (1) "Defoliant" means a substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(2) "Department" means the department of agriculture.

(3) "Desiccant" means a substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

(4) "Device" means an instrument or contrivance, other than a firearm, which is intended for trapping, destroying, repelling, or mitigating a pest; but does not include equipment used for the application of pesticides when sold separately.

(5) "Direct supervision" means directing the application of a pesticide while being physically present during the application. However, direct supervision by a private agricultural applicator means either of the following:

(a) The private agricultural applicator is in the same field or location directing the application of a restricted use pesticide by an uncertified applicator.

(b) The private agricultural applicator supervises the uncertified applicator and is physically present during the initial restricted use pesticide application on an agricultural commodity or agricultural structure, including calibration, mixing, application, operator safety, and disposal.

(6) "Director" means the director of the department of agriculture or his or her authorized representative.

(7) "Distribute" means to offer for sale, hold for sale, sell, barter, ship, or deliver pesticides in this state.

(8) "Envelope monitoring" means monitoring of groundwater in areas adjacent to properties where groundwater is contaminated to determine the concentration and spatial distribution of the contaminant in the aquifer.

(9) "Environment" includes water, air, land, and all plants and human beings and other animals living therein, and the interrelationships that exist among them.

(10) "EPA" means the United States environmental protection agency.

(11) "FIFRA" means the federal insecticide, fungicide, and rodenticide act, chapter 125, 86 Stat. 973, 7 U.S.C. 136 to 136i and 136j to 136r and 136s to 136y.

(12) "Fungi" means all nonchlorophyll bearing thallophytes; that is, all nonchlorophyll bearing plants of a lower order than mosses and liverworts, as for example rusts, smuts, mildews, molds, yeasts, and bacteria, except those in or on other animals, and except those in or on processed foods, beverages, or pharmaceuticals.

(13) "General use pesticide" means a pesticide that is not a restricted use pesticide.

(14) "Groundwater" means underground water within the zone of saturation.

(15) "Groundwater protection rule" means a rule promulgated under this part that defines a minimum operational standard for structures, activities, and procedures that may have or may contribute to the contamination of groundwater and that defines the scope of a groundwater protection rule, the region of implementation of a groundwater protection rule, and implementation period for those rules. As used in this subsection:

(a) "Structures, activities, and procedures" includes, but is not limited to, mixing, loading, and rinse pads, application equipment, application timing, application rates, crop rotation, and pest control thresholds.

(b) "The scope of a groundwater protection rule" may define a particular pesticide, structure, activity, or procedure or may define pesticides containing specific ingredients.

(c) "The region of implementation of a groundwater protection rule" may include specific soil types or aquifer sensitivity regions or any other geographic boundary.

(16) "Groundwater resource protection level" means a maximum contaminant level, health advisory level, or, if the EPA has not established a maximum contaminant level or a health advisory level, a level established by the director of public health using risk assessment protocol established by rule under this part.

(17) "Groundwater resource response level" means 20% of the groundwater resource protection level. In cases where 20% of the groundwater resource protection level is less than the method detection limit, the method detection limit shall serve as the groundwater resource response level.

Sec. 8304. (1) "Inert ingredient" means an ingredient that is not active.

(2) "Ingredient statement" means:

(a) A statement of the name and percentage of each active ingredient together with the total percentage of the inert ingredients in the pesticide.

(b) When the pesticide contains arsenic in any form, the ingredient statement shall include percentages of total and water soluble arsenic, each calculated as elemental arsenic.

(3) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising 6-legged, usually winged forms, as for example beetles, bugs, bees, and flies, and to other allied classes or arthropods whose members are wingless and usually have more than 6 legs, as for example spiders, mites, ticks, centipedes, and wood lice.

(4) "Insecticide" means a pesticide intended for preventing, destroying, repelling, or mitigating an insect.

(5) "Integrated pest management" means a pest management system that uses all suitable techniques in a total management system to prevent pests from reaching unacceptable levels or to reduce existing pest populations to acceptable levels.

(6) "Label" means the written, printed, or graphic matter on or attached to the pesticide or device or any of its containers or wrappers.

(7) "Labeling" means the label and all other written, printed, or graphic matter accompanying the pesticide or device, or to which reference is made on the label or in literature accompanying the pesticide or device, and all applicable modifications or supplements to official publications of the EPA, the United States departments of agriculture and interior, the United States departments of education and health and human services, state experiment stations, state agricultural colleges, and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

(8) "Maximum contaminant level" means that term as it is defined in title XIV of the public health service act, chapter 373, 88 Stat. 1660, 42 U.S.C. 300f to 300j-3, 300j-4 to 300j-9 and 300j-11 to 300j-25, and regulations promulgated under that act.

(9) "Method detection limit" means the minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is greater than 0 and is determined from analysis of a sample in a given matrix that contains the analyte.

(10) "Minor use" means the use of a pesticide on a crop, animal, or site where any of the following exist:

(a) The total United States acreage for the crop or site is less than 300,000 acres.

(b) The acreage expected to be treated nationally as a result of that use is less than 300,000 acres annually.

(c) The use does not provide sufficient economic incentive to support the initial registration or continuing registration of the use.

(11) "Misbranded" applies to any pesticide or device if it is an imitation of or is offered for sale under the name of another pesticide, or if its labeling does not comply with labeling requirements of this part, the rules promulgated under this part, FIFRA, or regulations promulgated under FIFRA.

(12) "Molluscicide" means a pesticide intended for preventing, destroying, repelling, or mitigating a mollusk.

Sec. 8305. (1) "Nematode" means invertebrate animals of the phylum nemathelminthes and class nematoda, which are unsegmented roundworms with elongated, fusiform, or sac-like bodies covered with cuticle that inhabit soil, water, plants, or plant parts. A nematode may also be called a nema or eelworm.

(2) "Person" means an individual, partnership, corporation, association, governmental entity, or other legal entity.

(3) "Pest" means an insect, rodent, nematode, fungus, weed, and other forms of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism, or any other organism that the director declares to be a pest under section 8322, except viruses, fungi, bacteria, nematodes, or other microorganisms in or on living animals.

(4) "Pesticide" means a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating pests or intended for use as a plant regulator, defoliant, or desiccant. Pesticide does not include liquid chemical sterilant products, including any sterilant or subordinate disinfectant claims on such products, for use on a critical or semi-critical device, as defined in section 201 of the federal food, drug, and cosmetic act, chapter 675, 52 Stat. 1040, 21 U.S.C. 321. As used in this subsection:

(a) "Critical device" includes any device that is introduced directly into the human body, either into or in contact with the bloodstream or normally sterile areas of the body.

(b) "Semi-critical device" includes any device that contacts intact mucous membranes but that does not ordinarily penetrate the blood barrier or otherwise enter normally sterile areas of the body.

(5) "Pesticide registration renewal" means the registration of any pesticide that was previously registered by the department.

(6) "Place of business" means a location that is staffed by at least 1 person who independently, without supervision, sells or uses pesticides within this state or where a person exercises the right to control others in the sale or use of pesticides within this state.

(7) "Plant regulator" means a substance or mixture of substances intended through physiological action for accelerating or retarding the rate of growth or rate of maturation or for otherwise altering the behavior of plants or the produce of plants. Plant regulator does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

(8) "Private agricultural applicator" means a certified applicator who uses or supervises the use of a restricted use pesticide for a private agricultural purpose.

(9) "Private agricultural purpose" means the application of a pesticide for the production of an agricultural commodity on either of the following:

(a) Property owned or rented by the person applying the pesticide or by his or her employer.

(b) Property of another person if applied without compensation, other than trading of personal services between producers of agricultural commodities.

(10) "Protect health and environment" means protection against any unreasonable adverse effects on the environment.

(11) "Public building" means a building that is owned or operated by a federal, state, or local government, including public universities.

Sec. 8306. (1) "Registered applicator" means an individual who is authorized to apply general use pesticides for a private or commercial purpose as provided in this part and in the rules promulgated under this part.

(2) "Ready-to-use pesticide" means a pesticide that is applied directly from its original container consistent with label directions, such as an aerosol insecticide or rodenticide bait pack that does not require mixing or loading prior to application.

(3) "Registrant" means a person who is required to register a pesticide pursuant to this part.

(4) "Restricted use pesticide" means a pesticide classified for restricted use by the EPA or the director.

(5) "Restricted use pesticide dealer" means a person engaged in distributing, selling, or offering for sale restricted use pesticides to the ultimate user.

(6) "Rodenticide" means a pesticide intended for preventing, destroying, repelling, or mitigating rodents.

(7) "School" means public and private schools, grades kindergarten through the twelfth grade.

(8) "Supervise" means directing the application of a pesticide with or without being physically present during the application.

(9) "Unreasonable adverse effect on the environment" means any unreasonable risk to human beings or the environment, taking into account the economic, social, and environmental costs and benefits of the use of a pesticide.

(10) "Use of a pesticide" means the loading, mixing, applying, storing, transporting, and disposing of a pesticide.

(11) "Vendor" means a person who sells or distributes pesticides.

(12) "Violates this part" or "violation of this part" means a violation of this part, a rule promulgated under this part, or an order issued under this part.

(13) "Weed" means a plant which grows where it is not wanted.

Sec. 8307a. (1) Every pesticide distributed, sold, exposed, or offered for sale in this state shall be registered with the director pursuant to this part. The registration shall be submitted on a form provided by the director and shall be renewed annually before July 1. The director shall not register a pesticide under this part unless the registrant has paid

all groundwater protection fees and late fees required under part 87, registration fees under this part, and any administrative fines imposed under this part.

(2) A pesticide is considered distributed, sold, exposed, or offered for sale in this state when the offer to sell either originates within this state or is directed by the offeror to persons in this state and received by those persons.

(3) If a registrant distributes identical pesticides under more than 1 brand name, or distributes more than 1 pesticide formulation, each brand or formulation shall be registered as a separate product.

(4) A registrant shall not register a pesticide that contains a substance that is required to be registered with the department unless that substance is also registered with the department.

(5) A pesticide registration applicant shall submit to the director a complete copy of the pesticide labeling and the following, in a format prescribed by the director:

(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.

(b) The full product name of the pesticide and the EPA registration number.

(c) Other information considered necessary by the director.

(6) The applicant shall submit a complete formula of the pesticide proposed for registration, including the active and inert ingredients, when requested by the director and necessary for the director to execute his or her duties under this part. The director shall not use any information relative to formulas of products, trade secrets, or other information obtained under this part for his or her own advantage or reveal such information, other than to his or her authorized representative, the EPA, the department of environmental quality, the department of community health, a court of the state in response to a subpoena, a licensed physician, or in an emergency to a pharmacist or other persons qualified to administer antidotes.

Sec. 8307b. (1) A pesticide that has been registered with the department must continue to be registered as long as the pesticide remains in the channels of trade in this state. It is the registrant's responsibility to maintain the pesticide registration.

(2) It is a violation of this part to continue to distribute a pesticide for which a renewal application, including the required fee, has not been received by the director on or before the last day in June. It is the responsibility of the registrant to obtain and submit an application for renewal of a pesticide registration before the expiration date.

(3) A registrant who intends to discontinue a pesticide registration shall do either of the following:

(a) Terminate further distribution within the state and continue to register the pesticide annually for 2 successive years.

(b) Initiate a recall of the pesticide from distribution in the state prior to the expiration of the registration of the pesticide. Pesticides that do not go through a 2-year discontinuance period and that are found in the channels of trade are subject to registration penalties and all related fees since the product's last year of registration.

Sec. 8307c. Registration is not required under this part if a pesticide is shipped from 1 plant or warehouse to another plant or warehouse operated by the same person and used to make a pesticide that is registered under this part, or if the pesticide is distributed pursuant to an EPA experimental use permit.

Sec. 8307d. (1) No person who uses, distributes, exposes, or offers to sell a pesticide shall make claims that the pesticide can be used on sites that are not included in the pesticide labeling.

(2) No person who uses, distributes, exposes, or offers to sell a pesticide shall make claims that the pesticide has characteristics, ingredients, uses, benefits, or qualities that it does not have or that are not allowed under FIFRA.

Sec. 8307e. To register a pesticide for special local needs pursuant to section 24(c) of FIFRA, 7 U.S.C. 136v, or the regulations promulgated under that section, the director shall require the information required under section 8307a(5). A pesticide may be registered for special local needs if the director determines that all of the following conditions are met:

(a) A special local need exists.

(b) The pesticide's composition warrants the proposed claims for it.

(c) The pesticide's labeling and other submitted material comply with the labeling requirements of FIFRA or regulations promulgated under that act.

(d) It does not cause unreasonable adverse effects on the environment.

(e) The classification for general or restricted use conforms with section 3(d) of FIFRA, 7 U.S.C. 136a.

Sec. 8307f. (1) Upon the director's request, a person who has registered a pesticide shall provide the information necessary to determine its mobility in the environment and its potential to contaminate groundwater. This information may include any of the following:

- (a) Water solubility.
- (b) Vapor pressure.
- (c) Octanol-water partition coefficient.
- (d) Soil absorption coefficient.
- (e) Henry's law constant.
- (f) Dissipation studies including the rate of hydrolysis, photolysis, or aerobic or anaerobic soil metabolism.
- (g) Product formulation.
- (h) Other information considered necessary by the director.

(2) Information requested under subsection (1) shall be consistent with product registration information required under FIFRA.

(3) As used in this section:

- (a) "Aerobic soil metabolism" means chemical degradation in soil in the presence of oxygen.
- (b) "Anaerobic soil metabolism" means chemical degradation in soil in the absence of oxygen.
- (c) "Henry's law constant" means the ratio of the partial pressure of a compound in air to the concentration of the compound in water at a given temperature.
- (d) "Hydrolysis" means a chemical reaction in which water combines with and splits the original chemical creating degradation products.
- (e) "Octanol-water partition coefficient" means the ratio of a chemical's concentration in the water-saturated octanol phase to the chemical's concentration in the octanol-saturated water phase.
- (f) "Photolysis" means a chemical reaction in which light or radiant energy serves to split the original compound creating degradation products.
- (g) "Soil absorption coefficient" means the ratio of absorbed chemical per unit weight of soil or organic carbon to the aqueous solute concentration.
- (h) "Vapor pressure" means the pressure exerted by the vapor of a substance when it is under equilibrium conditions.
- (i) "Water solubility" means the maximum amount of a material that can be dissolved in water to give a stable solution.

Sec. 8309. The director may refuse to register or may cancel or suspend registration of a pesticide if any of the following circumstances exist:

- (a) The pesticide does not meet its EPA registration and labeling claims.
- (b) The pesticide labeling and other material required to be submitted does not comply with this part or the rules promulgated under this part.
- (c) The pesticide is in violation of this part.
- (d) Based on substantial scientific evidence, the director determines that the use of the pesticide is likely to cause an unreasonable adverse effect on the environment, which cannot be controlled by designating the pesticide as a restricted use pesticide, by limiting the uses for which a pesticide may be used or registered, or by other changes to the registration or pesticide label.

Sec. 8310. (1) A restricted use pesticide dealer shall obtain an annual license for each place of business.

(2) The applicant for a license under subsection (1) shall be the person in charge of each business location. The applicant shall demonstrate by written examination his or her knowledge of laws and rules governing the use and sale of restricted use pesticides.

(3) A restricted use pesticide dealer shall forward to the director a record of all sales of restricted use pesticides on forms provided by the director as required by rule. Restricted use pesticide dealers shall keep copies of the records on file for 2 years. These records are subject to inspection by an authorized agent of the director. The records shall, upon request, be supplied in summary form to other state agencies. The summary shall include the name and address of the restricted use pesticide dealer, the name and address of the purchaser, the name of the pesticide sold, and, in an emergency, the quantity sold. Information may not be made available to the public if, in the discretion of the director, release of that information could have a significant adverse effect on the competitive position of the dealer, distributor, or manufacturer.

(4) A restricted use pesticide dealer shall sell or distribute restricted use pesticides for use only by applicators certified under this part.

(5) The director may deny, suspend, or revoke a restricted use pesticide dealer's license for any violation of this part committed by the dealer or the dealer's officer, agent, or employee.

(6) A restricted use pesticide dealer shall maintain and submit to the department records of all restricted use pesticide sales to private applicators and the intended county of application for those pesticides.

(7) Information collected in subsection (6) is confidential business information and is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

Sec. 8311. (1) A person shall not use a restricted use pesticide without first complying with the certification requirements of this part.

(2) A person is not required to be a certified applicator to apply a restricted use pesticide for a private agricultural purpose if the person is under the direct supervision of a certified applicator, unless prohibited by the pesticide label.

(3) Certification requirements for commercial applicators shall include completion of written examinations prescribed by the director. Certification requirements for private agricultural applicators shall provide optional methods of certification to include 1 of the following:

(a) Self-study and examination.

(b) Classroom training and examination.

(c) An oral fact-finding interview administered by an authorized representative of the director when a person is unable to demonstrate competence by examination or classroom training.

(4) At the time of sale, private applicators shall identify the intended county of application of a restricted use pesticide.

(5) A certified commercial applicator shall maintain records of restricted use pesticide applications for 3 years from the date of application and make those records available upon request to an authorized representative of the director during normal business hours.

(6) A commercial applicator shall keep for 3 years from the date of application a record of the pesticide registration number, product name, the formulated amount applied, and application location for all restricted use pesticides used by the commercial applicator. A summary of this information indicating the pesticide registration number, product name, and total formulated amount of pesticide applied to each county during the previous calendar year shall be transmitted to the director before March 1. This summary shall be submitted on forms provided by or approved by the director. Information collected under this subsection is confidential business information and is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(7) A certified applicator shall directly supervise the application of a restricted use pesticide if prescribed by the label, this part, or rules promulgated under this part.

(8) A commercial applicator is responsible for pesticide applications made by persons under his or her supervision.

(9) Each person shall follow recommended and accepted good practices in the use of pesticides, including, but not limited to, use of a pesticide in a manner consistent with its labeling.

(10) A federal agency, state agency, municipality, county road commission, or any other governmental agency that uses a pesticide classified for restricted use is subject to this part and the rules promulgated under this part.

Sec. 8312. (1) To become a certified applicator, an applicant must satisfactorily complete the certification requirements prescribed by the director and categorized according to the various types of pesticide applications prescribed by rule and consistent with the regulations of the EPA.

(2) The application for a certified applicator certificate shall contain information considered to be pertinent by the director.

(3) A certified applicator applicant shall pay the appropriate fee as provided in section 8317.

(4) The director shall issue a certificate to applicants that successfully comply with all certification requirements under this part.

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

(6) The director may refuse to issue or renew a certificate if an applicant demonstrates an insufficient knowledge of any item called for in the application or has unsatisfied judgments under this part or rules promulgated under this part against him or her or if the equipment to be used by the applicant is unsafe or inadequate to properly apply pesticides.

(7) The director may at any time deny, revoke, or suspend a private agricultural applicator certificate or a commercial applicator certificate for a violation of this part or upon conviction under section 14 of FIFRA, 7 U.S.C. 136l, or upon conviction under a state pesticide law of a reciprocating state in accordance with section 8320.

(8) The director shall inform an applicant who is denied an applicator certificate the reasons why the certificate was denied.

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

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

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

(a) Service for not less than 2 application seasons as an employee of a commercial applicator or comparable education and experience as determined by the director.

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

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

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

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

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

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

(8) The director may at any time deny, revoke, or suspend a commercial applicator license for a violation of this part or a violation of an order issued under this part, or upon conviction under this part, FIFRA, or a state pesticide law of a reciprocating state in accordance with section 8320.

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

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

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

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

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

(2) A person who is not subject to the licensing requirement in section 8313 may apply a general use ready-to-use pesticide without being a certified applicator or a registered applicator.

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

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

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

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

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

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

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



(7) A trainer shall issue a temporary registration to an applicant who completes an approved training program and passes a test administered by the director. A temporary registration is valid from the time it is issued until the applicant receives a registration certificate from the director. The department shall provide the applicant with the registration certificate upon payment of the fee provided for in section 8317 and when the approved trainer completes and submits a program completion form.

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

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

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

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

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

Sec. 8317. (1) An application submitted under this part shall be accompanied by the following application fee:

(a) For a commercial applicator certification, \$75.00.

(b) For a private agricultural applicator certification, \$10.00.

(c) For a commercial registered applicator, \$45.00.

(d) For a private registered applicator, \$10.00.

(2) Certificates for commercial applicators, private agricultural applicators, and registered applicators shall be valid for a period of time of not less than 3 years to be established by rule by the director.

(3) The license application fee for a commercial applicator license is \$100.00. The license shall expire on December 31 annually.

(4) The registration application fee for the registration of pesticides sold, offered, exposed for sale, or distributed is \$40.00 per product.

(5) The license application fee for a restricted use pesticide dealer's license is \$100.00. The license shall expire annually on December 31.

(6) Application fees submitted under this section are not refundable.

Sec. 8318. (1) The pesticide control fund is established in the state treasury. The pesticide control fund shall be expended only as provided in this section.

(2) The pesticide control fund shall receive as revenue all fees, penalties, administrative or civil fines, and any payments for costs or reimbursements for expenses of investigations incurred by the department collected under this part, which shall be forwarded by the director to the state treasurer, and the fund may receive as revenue money appropriated by the legislature or from any other source.

(3) The revenue in the pesticide control fund shall be expended to administer and enforce this part, to process applications received under this section, and to develop and improve training programs to ensure the safe and effective use of pesticides.

(4) Money in the fund that is unexpended at the end of the fiscal year shall be carried over to the succeeding fiscal year and shall be expended as provided in subsection (3).

Sec. 8319. (1) The certification and registration of applicators and licensing requirements do not apply to any of the following:

(a) Employees of a certified private agricultural applicator while acting under the level of supervision required in this part.

(b) Persons applying general use pesticides for a private agricultural purpose.

(c) Commercial applicators applying general use microbicides indoors where there is no potential for movement of an antimicrobial pesticide to affect surface water or groundwater. However, this subdivision does not exempt from these requirements the application of antimicrobial pesticides by commercial applicators to plants or planting medium indoors.

(d) Persons not subject to licensing requirements in section 8313 that apply general use pesticides to swimming pools.

(e) Indoor applications of general use antimicrobial pesticides by persons on their own premises or employees of those persons when making applications on those premises as a scheduled and required work assignment in the course of their employment, where there is no potential for movement of an antimicrobial pesticide to affect surface water or groundwater.

(f) Allopathic or osteopathic physicians and doctors of veterinary medicine applying pesticides during the course of their normal practice and their employees and people working under their control while acting under the level of supervision required in subsections (2) and (3).

(g) Persons conducting laboratory type research involving restricted use pesticides.

(2) An allopathic or osteopathic physician or a doctor of veterinary medicine shall supervise the application of a general use pesticide by a competent employee under his or her instruction and control during the course of the normal practice of the allopathic or osteopathic physician or the doctor of veterinary medicine even if the allopathic or osteopathic physician or the doctor of veterinary medicine is not physically present. An allopathic or osteopathic physician or a doctor of veterinary medicine shall directly supervise the application of a restricted use pesticide by an employee under his or her instruction or control during the course of the normal practice of the allopathic or osteopathic physician or doctor of veterinary medicine by being physically present at the time and place the restricted use pesticide is being applied.

(3) An allopathic or osteopathic physician or doctor of veterinary medicine is subject to the requirements, prohibitions, and penalties of this part and rules promulgated under this part for an application of pesticides by the allopathic or osteopathic physician or the doctor of veterinary medicine and for an application of pesticides by an employee directly or indirectly supervised by the allopathic or osteopathic physician or the doctor of veterinary medicine during the course of the normal practice of the allopathic or osteopathic physician or the doctor of veterinary medicine.

Sec. 8322. (1) The director may do all of the following:

(a) Declare as a pest any form of plant or animal life, except viruses, nematodes, bacteria, or other microorganisms on or in living human beings or other animals, that is injurious to health or the environment.

(b) Determine the toxicity of pesticides to human beings. The director shall use the data in support of registration and classification as a guide in this determination.

(c) Determine pesticides, and quantities of substances contained in pesticides, that are injurious to the environment. The director shall use the EPA regulations as a guide in this determination.

(d) Enter into cooperative agreements with agencies of the federal government or any other agency of this state, or an agency of another state, for the purpose of implementing this part and securing uniformity of rules.

(e) Enter and conduct inspections upon any public or private premises or other place, including vehicles of transport, where pesticides or devices are being used or held for distribution or sale, for the purposes of inspecting records, inspecting and obtaining samples of pesticides or devices, and to inspect equipment or methods of application, to assure compliance with this part and the rules promulgated under this part.

(f) Allow only certified applicators to apply a pesticide that is classified as a restricted use pesticide pursuant to subsection (2).

(g) Conduct investigations when there is reasonable cause to believe that a pesticide has been used in violation of this part or the rules promulgated under this part.

(2) In addition to any other authority provided by this part, the director, by administrative order, may:

(a) Classify a pesticide as a restricted use pesticide in accordance with any 1 of the restrictive criteria in 40 C.F.R. 152.170.

(b) Create certification categories in addition to those promulgated by rule.

(3) Prior to classifying a pesticide as a restricted use pesticide under subsection (2), the director shall issue a preliminary administrative order and provide for a 30-day period for public comment and review pertaining to the preliminary order. Prior to issuing the final administrative order, the director shall review and consider any public comments received during the 30-day period. An administrative order classifying a pesticide as a restricted use pesticide shall cite each of the provisions of subsection (2) that justify that classification.

(4) The department shall develop a program on pesticide container recycling and disposal to be approved by the commission of agriculture. The program shall be limited to licensed pesticide dealers and other persons seeking approval from the department for participation in the program.

Sec. 8327. (1) When the director has probable cause to believe that an applicator is using or intending to use a pesticide in an unsafe or inadequate manner or in a manner inconsistent with its labeling, the director shall order the applicator to cease the use of or refrain from the intended use of the pesticide. The order may be either oral or written and shall inform the applicator of the reason for the order.

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

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

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

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

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

(i) It is adulterated or misbranded.

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

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

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

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

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

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

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

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

Sec. 8330. (1) Pesticides distributed, transported, sold, or exposed or offered for sale in this state shall be in the registrant's or manufacturer's unbroken immediate container and shall have attached to it a label conforming to the labeling requirements as prescribed under this part or the rules promulgated under this part. The unbroken container requirement of this subsection does not apply to an applicator who is transporting a pesticide between the place of storage and the area of application.

(2) A pesticide container shall be free from damage that renders the pesticide unsafe.

(3) A pesticide that is required to be colored shall not be distributed, sold, exposed, or offered for sale unless the pesticide is colored as prescribed.

(4) A pesticide shall be handled, stored, displayed, or transported so that it will not endanger human beings and the environment or endanger food, feed, or other products that are stored, displayed, or transported with the pesticide.

(5) A person shall not detach, alter, deface, or destroy any portion of a label or labeling provided for in this part or rules promulgated under this part, or add a substance to or take a substance from a pesticide in a manner that may defeat the purpose of this part or FIFRA.

(6) A pesticide vendor shall keep on file, subject to inspection by an authorized agent of the director for a period of 1 year, all invoices, freight bills, truckers' receipts, waybills, and similar shipping data pertaining to pesticides that would establish date and origin of the shipments.

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

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

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

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

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

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

(7) The attorney general may file a civil action in which the court may impose on any person who violates this part or attempts to violate this part a civil fine of not more than \$5,000.00 for each violation or attempted violation. In addition, the attorney general may bring an action in circuit court to recover the reasonable costs of the investigation from any person who violated this part or attempted to violate this part. Money recovered under this subsection shall be forwarded to the state treasurer for deposit into the pesticide control fund created in section 8318.

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

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

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

Enacting section 1. Section 8307 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.8307, is repealed.

Enacting section 2. Section 8333 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.8333, as amended by this amendatory act, takes effect 90 days after the date this amendatory act is enacted.

This act is ordered to take immediate effect.

*Carol Morey Viventi*

Secretary of the Senate.

*Ray E. Randall*

Clerk of the House of Representatives.

Approved .....

.....  
Governor.