

HOUSE BILL No. 4763

May 10, 2005, Introduced by Rep. Whitmer and referred to the Committee on Agriculture.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 8302, 8304, 8305, and 8333 (MCL 324.8302,
324.8304, 324.8305, and 324.8333), sections 8302, 8305, and 8333 as
amended by 2002 PA 418 and section 8304 as amended by 2004 PA 24,
and by adding sections 8315a, 8315b, 8316a, and 8321a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

1 frame for implementation.

2 (3) "Adulterated", ~~applies to a pesticide if its~~ **IN**
3 **REFERENCE TO A PESTICIDE, MEANS THAT THE PESTICIDE'S** strength or
4 purity is less than, or significantly greater than, the professed
5 standard or quality as expressed on its labeling or under which it
6 is sold; ~~if~~ **THAT** a substance was substituted wholly or in part
7 for a pesticide; or ~~if~~ **THAT** a valuable constituent of the
8 pesticide was wholly or in part abstracted.

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

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

15 (6) "Antimicrobial pesticide" means a pesticide that is
16 intended to disinfect, sanitize, reduce, or mitigate growth or
17 development of microbial organisms, as defined under ~~the federal~~
18 ~~insecticide, fungicide, and rodenticide act, chapter 125, 86 Stat.~~
19 ~~973, 7 U.S.C. 136 to 136i, 136j to 136r, and 136s to 136y~~ **FIFRA**.

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

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

26 (9) "Aquifer sensitivity" means a hydrogeologic function
27 representing the inherent abilities of materials surrounding the

1 aquifer to attenuate the movement of pesticides into that aquifer.

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

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

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

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

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

19 (15) **"COMMERCIAL LAWN APPLICATION" MEANS LAWN APPLICATION ON**
20 **PROPERTY THAT IS NOT OWNED BY OR LEASED TO THE INDIVIDUAL MAKING**
21 **THE LAWN APPLICATION.**

22 (16) ~~(15)~~ "Confirmed contaminant" means a contaminant that
23 has been detected in at least 2 groundwater samples collected from
24 the same groundwater sampling point at an interval of greater than
25 14 days.

26 (17) ~~(16)~~ "Contaminant" means any pesticide originated
27 chemical, radionuclide, ion, synthetic organic compound,

1 microorganism, or waste that does not occur naturally in
2 groundwater or that naturally occurs at a lower concentration than
3 detected.

4 (18) ~~(17)~~ "Contamination" means the direct or indirect
5 introduction into groundwater of any contaminant caused in whole or
6 in part by human activity.

7 Sec. 8304. (1) **"HEALTH CARE FACILITY" MEANS A FACILITY WHICH**
8 **IS NOT A PRIVATE HOME AND AT WHICH PEOPLE MAY STAY 1 OR MORE NIGHTS**
9 **AND RECEIVE MEDICAL CARE, SUCH AS A HOSPITAL OR NURSING HOME.**

10 (2) ~~(1)~~ "Inert ingredient" means an ingredient that is not
11 active.

12 (3) ~~(2)~~ "Ingredient statement" means ~~:(a) A~~ **A** statement
13 of the name and percentage of each active ingredient ~~together with~~
14 **IN A PESTICIDE**, the total percentage of the inert ingredients in
15 the pesticide, ~~.(b) When~~ **AND, IF** the pesticide contains arsenic
16 in any form, the ~~ingredient statement shall include~~ percentages
17 of total and water soluble arsenic, each calculated as elemental
18 arsenic.

19 (4) ~~(3)~~ "Insect" means any of the numerous small
20 invertebrate animals generally having the body more or less
21 obviously segmented, for the most part belonging to the class
22 insecta, comprising 6-legged, usually winged forms, as for example
23 beetles, bugs, bees, and flies, and to other allied classes or
24 arthropods whose members are wingless and usually have more than 6
25 legs, as for example spiders, mites, ticks, centipedes, and wood
26 lice.

27 (5) ~~(4)~~ "Insecticide" means a pesticide intended for

1 preventing, destroying, repelling, or mitigating an insect.

2 (6) "INSTITUTION OF HIGHER EDUCATION" MEANS A PUBLIC OR
3 PRIVATE INSTITUTION IN THIS STATE WHICH OFFERS A DEGREE OR COURSE
4 OF STUDY BEYOND THE TWELFTH GRADE.

5 (7) ~~(5)~~ "Integrated pest management" means a pest management
6 system that uses all suitable techniques in a total management
7 system to prevent pests from reaching unacceptable levels or to
8 reduce existing pest populations to acceptable levels.

9 (8) ~~(6)~~ "Integrated pest management program" means a program
10 for integrated pest management that includes at least all of the
11 following elements:

12 (a) The following integrated pest management practices and
13 principles:

14 (i) Site evaluation, including site description, inspection,
15 and monitoring and the concept of threshold levels.

16 (ii) Consideration of the relationship between pest biology and
17 pest management methods.

18 (iii) Consideration of all available pest management methods,
19 including population reduction techniques, such as mechanical,
20 biological, and chemical techniques and pest prevention techniques,
21 such as habitat modification.

22 (iv) Pest control method selection, including consideration of
23 the impact on human health and the environment.

24 (v) Continual evaluation of the integrated pest management
25 program to determine the program's effectiveness and the need for
26 program modification.

27 (b) Recordkeeping which shall be maintained by the applicator

1 and which shall include all of the following:

2 (i) The site address.

3 (ii) The date of service.

4 (iii) The target pest or pests.

5 (iv) The inspection report, including the number of pests found
6 or reported, and the conditions conducive to pest infestation.

7 (v) The pest management recommendations made by the
8 applicator, such as structural or habitat modification.

9 (vi) The structural or habitat modification or other measures
10 that were initiated as a part of the pest management program.

11 (vii) The name of each pesticide used.

12 (viii) Quantity of each pesticide used.

13 (ix) The location of the area or room or rooms where pesticides
14 were applied.

15 (x) The name of the applicator.

16 (xi) The name of the pest control firm, if a firm is employed,
17 and the emergency telephone number.

18 (c) Provision of the following information to the building
19 manager:

20 (i) The integrated pest management program and initial service
21 inspection record, which shall be provided at the time of, or made
22 available electronically within 48 hours after, the initial
23 service.

24 (ii) A record that includes the information specified in
25 subdivision (b), which shall be provided upon or made available
26 electronically within 48 hours after the completion of each
27 inspection, application, or service call.

1 (d) The acceptance of responsibility by the building manager
2 to post signs provided by the pesticide applicator in compliance
3 with rules promulgated under section 8325.

4 (9) ~~-(7)-~~ "Label" means the written, printed, or graphic
5 matter on or attached to the pesticide or device or any of its
6 containers or wrappers.

7 (10) ~~-(8)-~~ "Labeling" means the label and all other written,
8 printed, or graphic matter accompanying the pesticide or device, or
9 to which reference is made on the label or in literature
10 accompanying the pesticide or device, and all applicable
11 modifications or supplements to official publications of the EPA,
12 the United States departments of agriculture and interior, the
13 United States departments of education and health and human
14 services, state experiment stations, state agricultural colleges,
15 and other similar federal or state institutions or agencies
16 authorized by law to conduct research in the field of pesticides.

17 (11) "LAWN APPLICATION" MEANS THE APPLICATION OF GENERAL USE
18 PESTICIDES TO GROUND, TREES, OR SHRUBS BUT DOES NOT INCLUDE ANY OF
19 THE FOLLOWING:

20 (A) THE APPLICATION OF PESTICIDES FOR THE PURPOSE OF PRODUCING
21 AN AGRICULTURAL COMMODITY.

22 (B) THE APPLICATION OF PESTICIDES AROUND OR NEAR THE
23 FOUNDATION OF A BUILDING FOR THE PURPOSE OF INDOOR PEST CONTROL.

24 (C) THE APPLICATION OF PESTICIDES BY OR ON BEHALF OF AGENCIES,
25 EXCEPT THAT AGENCIES SHALL BE SUBJECT TO VISUAL NOTIFICATION
26 REQUIREMENTS APPLICABLE TO COMMERCIAL LAWN APPLICATIONS UNDER
27 SECTION 8315A(7) IF THE APPLICATION IS WITHIN 100 FEET OF A

1 DWELLING, PUBLIC BUILDING, OR PUBLIC PARK.

2 (D) THE APPLICATION OF PESTICIDES ON GOLF COURSES OR TURF
3 FARMS.

4 (12) ~~-(9)-~~ "Maximum contaminant level" means that term as it
5 is defined in title XIV of the public health service act, 42 USC
6 300f to 300j-25, and regulations promulgated under that act.

7 (13) ~~-(10)-~~ "Method detection limit" means the minimum
8 concentration of a substance that can be measured and reported with
9 99% confidence that the analyte concentration is greater than 0 and
10 is determined from analysis of a sample in a given matrix that
11 contains the analyte.

12 (14) ~~-(11)-~~ "Minor use" means the use of a pesticide on a
13 crop, animal, or site where any of the following ~~exist~~ **APPLY**:

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

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

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

21 (15) ~~-(12)-~~ "Misbranded", ~~applies to any~~ **IN REFERENCE TO A**
22 **PESTICIDE OR DEVICE, MEANS THAT THE** pesticide or device ~~if it~~ is
23 an imitation of or is offered for sale under the name of another
24 pesticide ~~—~~ or ~~if~~ **THAT** its labeling does not comply with
25 labeling requirements of this part, the rules promulgated under
26 this part, FIFRA, or regulations promulgated under FIFRA.

27 (16) ~~-(13)-~~ "Molluscicide" means a pesticide intended for

1 preventing, destroying, repelling, or mitigating a mollusk.

2 (17) "MULTIPLE FAMILY DWELLING" MEANS A DWELLING WHICH IS OR
3 IS TO BE OCCUPIED AS THE RESIDENCE OR HOME FOR THE MEMBERS OF 3 OR
4 MORE HOUSEHOLDS LIVING INDEPENDENTLY OF EACH OTHER.

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

10 (2) "NONCOMMERCIAL LAWN APPLICATION" MEANS LAWN APPLICATION ON
11 PROPERTY OWNED BY OR LEASED TO THE INDIVIDUAL MAKING THE LAWN
12 APPLICATION.

13 (3) "1- OR 2-FAMILY DWELLING" IS ANY STRUCTURE OR PORTION
14 THEREOF WHICH IS OR IS TO BE OCCUPIED IN WHOLE OR IN PART AS THE
15 RESIDENCE OR HOME FOR 1 HOUSEHOLD OR FOR 2 HOUSEHOLDS LIVING
16 INDEPENDENTLY OF EACH OTHER.

17 (4) ~~(2)~~ "Person" means an individual, partnership,
18 corporation, association, governmental entity, or other legal
19 entity.

20 (5) ~~(3)~~ "Pest" means an insect, rodent, nematode, fungus,
21 weed, and other forms of terrestrial or aquatic plant or animal
22 life or virus, bacteria, or other microorganism, or any other
23 organism that the director declares to be a pest under section
24 8322, except viruses, fungi, bacteria, nematodes, or other
25 microorganisms in or on living animals.

26 (6) ~~(4)~~ "Pesticide" means a substance or mixture of
27 substances intended for preventing, destroying, repelling, or

1 mitigating pests or intended for use as a plant regulator,
2 defoliant, or desiccant. Pesticide does not include liquid chemical
3 sterilant products, including any sterilant or subordinate
4 disinfectant claims on such products, for use on a critical or
5 semi-critical device, as defined in section 201 of the federal
6 food, drug, and cosmetic act, chapter 675, ~~52 Stat. 1040,~~ 21
7 ~~U.S.C.~~ **USC** 321. As used in this subsection:

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

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

15 (7) ~~(5)~~ "Pesticide registration renewal" means the
16 registration of any pesticide that was previously registered by the
17 department.

18 (8) ~~(6)~~ "Place of business" means a location that is staffed
19 by at least 1 person who independently, without supervision, sells
20 or uses pesticides within this state or where a person exercises
21 the right to control others in the sale or use of pesticides within
22 this state.

23 (9) ~~(7)~~ "Plant regulator" means a substance or mixture of
24 substances intended through physiological action for accelerating
25 or retarding the rate of growth or rate of maturation or for
26 otherwise altering the behavior of plants or the produce of plants.
27 Plant regulator does not include substances to the extent that they

1 are intended as plant nutrients, trace elements, nutritional
2 chemicals, plant inoculants, and soil amendments.

3 (10) ~~-(8)-~~ "Private agricultural applicator" means a certified
4 applicator who uses or supervises the use of a restricted use
5 pesticide for a private agricultural purpose.

6 (11) ~~-(9)-~~ "Private agricultural purpose" means the
7 application of a pesticide for the production of an agricultural
8 commodity on either of the following:

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

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

14 (12) ~~-(10)-~~ "Protect health and environment" means ~~protection~~
15 **TO PROTECT** against any unreasonable adverse effects on the
16 environment.

17 (13) ~~-(11)-~~ "Public building" means a building that is owned
18 or operated by a federal, state, or local government, including
19 public universities.

20 **SEC. 8315A. (1) A RETAIL ESTABLISHMENT THAT SELLS GENERAL USE**
21 **PESTICIDES FOR LAWN APPLICATION SHALL DISPLAY A SIGN MEETING**
22 **STANDARDS ESTABLISHED BY THE DIRECTOR UNDER SECTION 8315B(1). THE**
23 **SIGN SHALL BE DISPLAYED IN A CONSPICUOUS PLACE AS CLOSE AS POSSIBLE**
24 **TO THE PLACE WHERE THE PESTICIDES ARE DISPLAYED.**

25 **(2) AT LEAST 48 HOURS BEFORE ANY COMMERCIAL LAWN APPLICATION**
26 **OF A PESTICIDE, THE PERSON MAKING THE APPLICATION SHALL SUPPLY**
27 **WRITTEN NOTICE TO OCCUPANTS OF ALL 1- OR 2-FAMILY DWELLINGS, AND TO**

1 OWNERS, OWNERS' AGENTS, OR OTHER PERSONS IN A POSITION OF AUTHORITY
2 FOR ALL OTHER TYPES OF PREMISES, THAT ARE ON ABUTTING PROPERTY WITH
3 A BOUNDARY THAT IS WITHIN 150 FEET OF THE SITE OF THE COMMERCIAL
4 LAWN APPLICATION. THE DIRECTOR SHALL SPECIFY THE MANNER IN WHICH A
5 PERSON MAKING A COMMERCIAL LAWN APPLICATION SHALL SUPPLY THE
6 WRITTEN NOTICE INCLUDING, BUT NOT LIMITED TO, MAILING THE NOTICE,
7 OR LEAVING THE NOTICE WITH A RESPONSIBLE ADULT OR IN A CONSPICUOUS
8 LOCATION ON THE ABUTTING PROPERTY. THE DIRECTOR SHALL SPECIFY A
9 MANNER IN WHICH A PERSON MAKING A COMMERCIAL LAWN APPLICATION MAY
10 PROVIDE AN OPTION TO OCCUPANTS OF 1- OR 2-FAMILY DWELLINGS TO
11 DECLINE FURTHER NOTICES.

12 (3) THE OWNER OF A MULTIPLE FAMILY DWELLING OR THE OWNER'S
13 AGENT SHALL SUPPLY THE WRITTEN NOTICE UNDER SUBSECTION (2) TO THE
14 OCCUPANTS OF THE MULTIPLE FAMILY DWELLING IN A MANNER SPECIFIED BY
15 THE DIRECTOR. FOR ALL OTHER TYPES OF PREMISES, THE OWNER, OWNER'S
16 AGENT, OR OTHER PERSON IN A POSITION OF AUTHORITY SHALL POST THE
17 WRITTEN NOTICE UNDER SUBSECTION (2) IN A MANNER SPECIFIED BY THE
18 DIRECTOR.

19 (4) THE DIRECTOR SHALL SPECIFY THE CONTENT AND FORM OF THE
20 WRITTEN NOTICE UNDER SUBSECTION (2). THE NOTICE SHALL INCLUDE AT
21 LEAST ALL OF THE FOLLOWING:

22 (A) THE ADDRESS WHERE THE PESTICIDE APPLICATION IS TO BE MADE.

23 (B) THE NAME AND TELEPHONE NUMBER OF THE PERSON MAKING THE
24 PESTICIDE APPLICATION.

25 (C) THE SPECIFIC DATE OF EACH PESTICIDE APPLICATION AND 2
26 ALTERNATIVE DATES TO THE PROPOSED DATE OF APPLICATION IF WEATHER
27 CONDITIONS PREVENT THE PESTICIDE APPLICATION ON THE PROPOSED DATE.

1 (D) THE PRODUCT NAME OR NAMES AND THE EPA REGISTRATION NUMBER
2 OR NUMBERS OF THE PESTICIDE OR PESTICIDES TO BE APPLIED.

3 (E) A PROMINENT STATEMENT THAT READS SUBSTANTIALLY AS FOLLOWS:
4 "THIS NOTICE IS TO INFORM YOU OF A PENDING PESTICIDE APPLICATION TO
5 NEIGHBORING PROPERTY. YOU MAY WISH TO TAKE PRECAUTIONS TO MINIMIZE
6 PESTICIDE EXPOSURE TO YOURSELF, FAMILY MEMBERS, PETS, OR FAMILY
7 POSSESSIONS. FURTHER INFORMATION ABOUT THE PRODUCT OR PRODUCTS
8 BEING APPLIED, INCLUDING ANY WARNINGS THAT APPEAR ON THE LABELS OF
9 SUCH PESTICIDE OR PESTICIDES THAT ARE PERTINENT TO THE PROTECTION
10 OF HUMANS, ANIMALS, OR THE ENVIRONMENT, CAN BE OBTAINED BY CALLING
11 THE NATIONAL PESTICIDE INFORMATION CENTER AT 1-800-858-7378."

12 (5) SUBSECTIONS (2) AND (3) DO NOT APPLY TO ANY OF THE
13 FOLLOWING:

14 (A) THE APPLICATION OF EITHER OF THE FOLLOWING:

15 (i) ANTIMICROBIAL PESTICIDES AS DEFINED IN SECTION 2(MM) OF THE
16 FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT, 7 USC 136.

17 (ii) ANTIMICROBIAL PRODUCTS DESCRIBED IN SECTION 19(H)(2) OF
18 THE FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT, 7 USC
19 136Q, AND EXEMPT FROM SECTION 19(A), (E), AND (F) OF THE FEDERAL
20 INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT, 7 USC 136Q.

21 (B) THE USE OF AN AEROSOL PRODUCT WITH A DIRECTED SPRAY, IN
22 CONTAINERS OF 18 FLUID OUNCES OR LESS, TO PROTECT INDIVIDUALS FROM
23 AN IMMINENT THREAT FROM STINGING AND BITING INSECTS, INCLUDING
24 VENOMOUS SPIDERS, BEES, WASPS, AND HORNETS. THIS SUBDIVISION DOES
25 NOT EXEMPT FROM NOTIFICATION THE USE OF ANY FOGGER PRODUCT OR
26 AEROSOL PRODUCT THAT DISCHARGES TO A WIDE AREA.

27 (C) THE USE OF NONVOLATILE INSECTICIDES OR RODENTICIDES IN A

1 TAMPER-RESISTANT BAIT STATION OR IN AREAS INACCESSIBLE TO CHILDREN.

2 (D) THE APPLICATION OF A PESTICIDE CLASSIFIED BY THE EPA AS AN
3 EXEMPT MATERIAL UNDER 40 CFR 152.25.

4 (E) THE APPLICATION OF BORIC ACID AND DISODIUM OCTABORATE
5 TETRAHYDRATE.

6 (F) THE APPLICATION OF HORTICULTURAL SOAP AND OILS THAT DO NOT
7 CONTAIN SYNTHETIC PESTICIDES OR SYNERGISTS.

8 (G) THE APPLICATION OF A PESTICIDE BY DIRECT INJECTION INTO A
9 PLANT OR THE GROUND.

10 (H) THE APPLICATION OF A PESTICIDE TO THE GROUND OR TURF OF A
11 CEMETERY.

12 (I) AN EMERGENCY PESTICIDE APPLICATION WHEN NECESSARY TO
13 PROTECT AGAINST AN IMMINENT THREAT TO HUMAN HEALTH. HOWEVER, BEFORE
14 MAKING AN EMERGENCY PESTICIDE APPLICATION, A PERSON SHALL MAKE A
15 GOOD FAITH EFFORT TO SUPPLY THE WRITTEN NOTICE UNDER SUBSECTION
16 (2). UPON MAKING AN EMERGENCY PESTICIDE APPLICATION, A PERSON SHALL
17 NOTIFY THE DIRECTOR, USING A FORM DEVELOPED BY THE DIRECTOR FOR
18 SUCH PURPOSES. THE NOTICE TO THE DIRECTOR SHALL INCLUDE AT LEAST
19 ALL OF THE FOLLOWING:

20 (i) THE ADDRESS WHERE THE APPLICATION WAS MADE.

21 (ii) THE NAME AND TELEPHONE NUMBER OF THE PERSON MAKING THE
22 PESTICIDE APPLICATION.

23 (iii) THE DATE OF THE PESTICIDE APPLICATION.

24 (iv) THE PRODUCT NAME AND EPA REGISTRATION NUMBER OF THE
25 PESTICIDE OR PESTICIDES APPLIED.

26 (v) THE REASON FOR THE PESTICIDE APPLICATION.

27 (6) THE DIRECTOR SHALL REVIEW AN EMERGENCY NOTICE SUBMITTED

1 UNDER SUBSECTION (5)(I) TO ENSURE THAT THE CIRCUMSTANCE DID WARRANT
2 THE EMERGENCY PESTICIDE APPLICATION. THE EMERGENCY NOTICE SHALL BE
3 KEPT ON FILE AT THE DEPARTMENT FOR 3 YEARS FROM THE DATE OF THE
4 PESTICIDE APPLICATION AND SHALL BE MADE AVAILABLE TO ANY PERSON
5 UPON REQUEST.

6 (7) A PERSON PERFORMING A NONCOMMERCIAL LAWN APPLICATION
7 TREATING AN AREA MORE THAN 100 SQUARE FEET OR PERFORMING A
8 COMMERCIAL LAWN APPLICATION SHALL PLACE MARKERS WITHIN OR ALONG THE
9 PERIMETER OF THE AREA WHERE PESTICIDES WILL BE APPLIED. MARKERS
10 SHALL BE PLACED SO AS TO BE CLEARLY VISIBLE TO PERSONS IMMEDIATELY
11 OUTSIDE THE PERIMETER. THE MARKERS SHALL BE POSTED AT LEAST 12
12 INCHES ABOVE THE GROUND AND SHALL BE AT LEAST 4 INCHES BY 5 INCHES
13 IN SIZE. THE MARKERS SHALL BE PLACED BEFORE THE LAWN APPLICATION ON
14 THE DAY OF THE LAWN APPLICATION AND SHALL INSTRUCT PERSONS NOT TO
15 ENTER THE AREA WHERE PESTICIDES WERE APPLIED AND NOT TO REMOVE THE
16 MARKERS, FOR A PERIOD OF AT LEAST 24 HOURS. THE INSTRUCTION SHALL
17 BE PRINTED BOLDLY IN LETTERS AT LEAST 3/8 OF AN INCH IN HEIGHT.

18 SEC. 8315B. (1) THE DIRECTOR SHALL ESTABLISH UNIFORM STANDARDS
19 FOR A CONSUMER PESTICIDE USE INFORMATION SIGN PROVIDED FOR UNDER
20 SECTION 8315A(1). THIS SIGN SHALL CONTAIN ALL OF THE FOLLOWING
21 INFORMATION:

22 (A) A WARNING NOTICE DIRECTING CONSUMERS TO FOLLOW DIRECTIONS
23 ON LABELS.

24 (B) A PROVISION TO INFORM CONSUMERS OF THE POSTING
25 REQUIREMENTS SET FORTH IN SECTION 8315A(7).

26 (C) A RECOMMENDATION THAT THE CONSUMER NOTIFY NEIGHBORS BEFORE
27 THE APPLICATION OF PESTICIDES SO THAT THE NEIGHBORS MAY TAKE

1 PRECAUTIONS TO AVOID PESTICIDE EXPOSURE.

2 (2) THE DIRECTOR SHALL PREPARE AND PUBLISH, IN CONSULTATION
3 WITH THE DIRECTOR OF THE DEPARTMENT OF COMMUNITY HEALTH,
4 EDUCATIONAL MATERIALS EXPLAINING ALL OF THE FOLLOWING:

5 (A) THE REQUIREMENTS OF SECTION 8315A.

6 (B) THE REQUIREMENTS OF SECTION 8316A WITH RESPECT TO DAY CARE
7 CENTERS.

8 (C) THE HUMAN AND ENVIRONMENTAL HEALTH EFFECTS OF LAWN CARE
9 PESTICIDES.

10 (3) THE DIRECTOR MAY SPECIFY PROCEDURES, NOT INCONSISTENT WITH
11 ANY OTHER PROVISIONS OF LAW, FOR THE DEPARTMENT'S INVESTIGATION AND
12 PROCESSING OF ALLEGED VIOLATIONS OF SECTION 8315A(7). THE UNIFORM
13 PROCEDURES MAY REQUIRE COMPLAINTS TO BE IN THE FORM OF A SWORN
14 STATEMENT CONTAINING THE FACTS UPON WHICH AN ALLEGED VIOLATION IS
15 BASED AND MAY PROVIDE THAT THE DEPARTMENT IS NOT REQUIRED TO
16 PERFORM ANY TESTING OR SAMPLING IN RELATION TO THE INVESTIGATION OF
17 ANY SUCH ALLEGED VIOLATIONS.

18 SEC. 8316A. BEGINNING 1 YEAR AFTER THE EFFECTIVE DATE OF THIS
19 SECTION, A PERSON SHALL NOT APPLY A PESTICIDE IN A HEALTH FACILITY
20 BUILDING OR PUBLIC BUILDING UNLESS THE HEALTH FACILITY OR THE OWNER
21 OR OPERATOR OF THE PUBLIC BUILDING HAS AN INTEGRATED PEST
22 MANAGEMENT PROGRAM IN PLACE FOR THE BUILDING.

23 SEC. 8321A. THE DEPARTMENT SHALL MAINTAIN A DATABASE OF HUMAN
24 PESTICIDE POISONINGS THAT OCCUR IN THIS STATE AFTER THE EFFECTIVE
25 DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION. THE DATA SHALL
26 INCLUDE, BUT NEED NOT BE LIMITED TO, ALL OF THE FOLLOWING:

27 (A) HOW THE POISONING OCCURRED.

1 (B) THE PESTICIDE THAT CAUSED THE POISONING.

2 (C) THE NUMBER AND AGE OF THE PEOPLE AFFECTED.

3 (D) THE ADVERSE HEALTH EFFECTS SUFFERED BY THE PEOPLE
4 AFFECTED.

5 (E) ANY ENFORCEMENT ACTION TAKEN.

6 Sec. 8333. (1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS
7 SECTION, A PERSON WHO VIOLATES SECTION 8315A(1) FOR THE FIRST TIME
8 SHALL BE ISSUED A WARNING AND SHALL BE PROVIDED 7 DAYS TO CORRECT
9 THE VIOLATION. A PERSON WHO VIOLATES SECTION 8315A(1) A SECOND OR
10 SUBSEQUENT TIME IS RESPONSIBLE FOR A STATE CIVIL INFRACTION AND MAY
11 BE FINED NOT MORE THAN \$250.00 FOR EACH SUCH VIOLATION.

12 (2) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, A
13 PERSON WHO VIOLATES SECTION 8315A(3) FOR THE FIRST TIME OR SECTION
14 8315A(7) FOR THE FIRST TIME SHALL BE ISSUED A WRITTEN WARNING AND
15 EDUCATIONAL MATERIALS PREPARED UNDER SECTION 8315B(2). A PERSON WHO
16 VIOLATES SECTION 8315A(3) A SECOND TIME OR WHO VIOLATES SECTION
17 8315A(7) A SECOND TIME IS RESPONSIBLE FOR A STATE CIVIL INFRACTION
18 AND MAY BE FINED NOT MORE THAN \$100.00. A PERSON WHO VIOLATES
19 SECTION 8315A(3) A THIRD OR SUBSEQUENT TIME OR WHO VIOLATES SECTION
20 8315A(7) A THIRD OR SUBSEQUENT TIME IS RESPONSIBLE FOR A STATE
21 CIVIL INFRACTION AND MAY BE FINED NOT MORE THAN \$250.00.

22 (3) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, A
23 PERSON WHO VIOLATES SECTION 8316A(4) SHALL, FOR THE FIRST
24 VIOLATION, BE ISSUED A WRITTEN WARNING AND EDUCATIONAL MATERIALS
25 PREPARED UNDER SECTION 8315B(2). THE DIRECTOR, UPON FINDING AFTER
26 NOTICE AND AN OPPORTUNITY FOR A HEARING THAT A PERSON HAS COMMITTED
27 A SECOND OR SUBSEQUENT VIOLATION OF SECTION 8316A(4), MAY IMPOSE AN

1 ADMINISTRATIVE FINE OF NOT MORE THAN \$100.00 FOR A SECOND VIOLATION
2 OR NOT MORE THAN \$250.00 FOR A SUBSEQUENT VIOLATION.

3 (4) ~~—(1)—~~ A person who violates this part is subject to the
4 penalties and remedies provided in this part regardless of whether
5 he or she acted alone or through an employee or agent.

6 (5) ~~—(2)—~~ The director, upon finding after notice and an
7 opportunity for a hearing that a person has violated or attempted
8 to violate any provision of this part **EXCEPT SECTION 8311(4), 8312,**
9 **8315A(1), 8315A(3), 8315A(7), OR 8316,** may impose an administrative
10 fine of not more than \$1,000.00 for each violation of this part.

11 (6) ~~—(3)—~~ If the director finds that a violation or attempted
12 violation occurred despite the exercise of due care or did not
13 result in significant harm to human health or the environment, the
14 director may issue a warning instead of imposing an administrative
15 fine.

16 (7) ~~—(4)—~~ The director shall advise the attorney general of
17 the failure of a person to pay an administrative fine imposed under
18 this section. The attorney general may bring an action in a court
19 of competent jurisdiction for the failure to pay an administrative
20 fine imposed under this section.

21 (8) ~~—(5)—~~ A person who violates this part or attempts to
22 violate this part is guilty of a misdemeanor punishable by
23 imprisonment for not more than 90 days or a fine of not more than
24 \$5,000.00, or both, for each offense.

25 (9) ~~—(6)—~~ The director may bring an action to enjoin a
26 violation of this part or an attempted violation of this part in a
27 court of competent jurisdiction of the county in which the

1 violation occurs or is about to occur.

2 (10) ~~-(7)-~~ The attorney general may file a civil action in
3 which the court may impose on any person who violates this part or
4 attempts to violate this part a civil fine of not more than
5 \$5,000.00 for each violation or attempted violation. In addition,
6 the attorney general may bring an action in circuit court to
7 recover the reasonable costs of the investigation from any person
8 who violated this part or attempted to violate this part. Money
9 recovered under this subsection shall be forwarded to the state
10 treasurer for deposit into the pesticide control fund created in
11 section 8318.

12 (11) ~~-(8) In defense of an action filed under this section, in~~
13 **IN** addition to any other lawful defense, ~~a person may present~~
14 ~~evidence as~~ **IT IS** an affirmative defense **TO AN ACTION FILED UNDER**
15 **THIS SECTION** that, at the time of ~~the~~ **A PERSON'S** alleged
16 violation of this part or attempted violation of this part, he or
17 she was in compliance with label directions and with this part and
18 rules promulgated under this part at the time of the alleged
19 violation.

20 (12) ~~-(9)-~~ A civil cause of action does not arise for injuries
21 to any person or property if a private agricultural applicator, or
22 a registered applicator who stores, handles, or applies pesticides
23 only for a private agricultural purpose, was not grossly negligent
24 and stored, handled, or applied pesticides in compliance with this
25 part, rules promulgated under this part, and the pesticide
26 labeling.

27 (13) ~~-(10)-~~ Applicable provisions of the revised judicature

- 1 act of 1961, 1961 PA 236, MCL 600.101 to ~~600.9948~~ **600.9947**, apply
- 2 to civil actions filed pursuant to this part.