

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 826

H. P. 653

House of Representatives, February 26, 1975

Referred to Committee on Agriculture. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Berry of Buxton.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT Creating the Maine Pesticide Control Act of 1975.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 7 MRSA, § 485, as last amended by PL 1969, c. 42, § 1, is further amended to read:

§ 485. Annual analysis

The Director of the Maine Agricultural Experiment Station shall annually analyze, or cause to be analyzed, samples of articles of agricultural, vegetable or tree and shrub seeds, commercial feeding stuff, commercial fertilizer, drugs and foods ~~and economic poisons~~ at such times and to such extent as the commissioner may determine. Said commissioner, in person or by deputy, shall have free access, ingress and egress at all reasonable hours to any place or any building wherein articles of agricultural, vegetable or tree and shrub seeds, commercial feeding stuff, commercial fertilizer, drugs or food ~~or economic poisons~~ are manufactured, stored, transported, sold, offered or exposed for sale. He may, in person or by deputy, open any case, package or other container, and may, upon tendering the market price, take samples for analysis. The results of all analyses of agricultural, vegetable or tree and shrub seeds, commercial feeding stuff, commercial fertilizer, drugs and food ~~and~~ seeds, commercial feeding stuff, commercial fertilizer, drugs and food ~~and~~ bulletins or reports of the experiment station, together with the names of the persons from whom the samples were obtained, the names of the manufacturers thereof and such additional information as to him may seem advisable.

Sec. 2. 7 MRSA c. 103, sub-c II, as amended by PL 1973, c. 245, is repealed.

Sec. 3. 7 MRSA, c. 103, sub-c. II-A, is enacted to read:

SUBCHAPTER II-A

MAINE PESTICIDE CONTROL ACT OF 1975

§ 601. Title

This subchapter shall be known as the "Maine Pesticide Control Act of 1975."

§ 602. Enforcing official

This subchapter shall be administered by the Commissioner of Agriculture, hereinafter referred to as the "commissioner."

§ 603. Declaration of purpose

The purpose of this subchapter is to regulate in the public interest, the labeling, distribution, storage, transportation, use and disposal of pesticides as hereinafter defined. The Legislature hereby finds that pesticides are valuable to our State's agricultural production and to the protection of man and the environment from insects, rodents, weeds and other forms of life which may be pests; but it is essential to the public health and welfare that they be regulated to prevent adverse effects on human life and the environment. New pesticides are continually being discovered or synthesized which are valuable to the control of pests and for use as defoliant, desiccant, plant regulators, and related purposes. The dissemination of accurate scientific information as to the proper use of any pesticide is vital to the public health and welfare and the environment, both immediate and future. Therefore, it is deemed necessary to provide for regulation of such pesticides.

§ 604. Definitions

As used in this subchapter, unless the context otherwise indicates, the following words shall have the following meanings.

1. **Active ingredient.** "Active ingredient" means any ingredient which will prevent, destroy, repel, control or mitigate pests, or which will act as a plant regulator, defoliant or desiccant.

2. **Adulterated.** "Adulterated" shall apply to any pesticide if its strength or purity falls below the professed standard or quality as expressed on its labeling or under which it is sold, or if any substance has been substituted wholly or in part for the pesticide, or if any valuable constituent of the pesticide has been wholly or in part abstracted.

3. **Animal.** "Animal" means all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish and shellfish.

4. **Beneficial insects.** "Beneficial insects" means those insects which, during their life cycle, are effective pollinators of plants, are parasites or predators of pests or are otherwise beneficial.

5. **Commissioner.** "Commissioner" means the Commissioner of Agriculture or his authorized agents.

6. Defoliant. "Defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

7. Desiccant. "Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

8. Device. "Device" means any instrument or contrivance, other than a firearm, which is intended for trapping, destroying, repelling or mitigating any pest or any other form of plant or animal life, other than man and other bacteria, virus or other microorganism on or in living man or other living animals, but not including equipment used for the application of pesticides when sold separately therefrom.

9. Distribute. "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver for shipment or receive and, having so received, deliver or offer to deliver, pesticides in this State.

10. Environment. "Environment" includes water, air, land and all plants and man and other animals living therein, and the interrelationships which exist among these.

11. EPA. "EPA" means the United States Environmental Protection Agency.

12. FIFRA. "FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act.

13. Fungi. "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 on or in living man or other living animals, and except those in or on processed food, beverages or pharmaceuticals.

14. Highly toxic pesticide. "Highly toxic pesticide" means any pesticide determined to be a highly toxic pesticide under the authority of Section 25 (c) (2) of FIFRA or by the commissioner under section 610, subsection 1, paragraph B.

15. Imminent hazard. "Imminent hazard" means a situation which exists when the continued use of a pesticide during the time required for cancellation proceedings pursuant to section 609 would likely result in unreasonable adverse effects on the environment or will involve unreasonable hazard to the survival of a species declared endangered by the United States Secretary of the Interior under United States Public Law 91-135.

16. Inert ingredient. "Inert ingredient" means an ingredient which is not an active ingredient.

17. Ingredient statement. "Ingredient statement" means statement of the name and percentage of each active ingredient together with the total percentage of the inert ingredients in the pesticide, and when the pesticide contains arsenic in any form, the ingredient statement shall also include percentages of total and water soluble arsenic, each calculated as elemental arsenic.

18. Insect. "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, 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.

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

20. Labeling. "Labeling" means the label and all other written, printed or graphic matter accompanying the pesticide or device at any time, or to which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of EPA; the United States Departments of Agriculture and Interior and United States Department of Health, Education and Welfare; 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.

21. Land. "Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, contrivances and machinery appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.

22. Nematode. "Nematode" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated fusiform or sac-like bodies covered with cuticle, and inhabiting soil, water, plants or plant parts; may also be called nemas or eelworms.

23. Person. "Person" means any individual, partnership, association, fiduciary, corporation or any organized group of persons whether incorporated or not.

24. Pest. "Pest" means any insects, rodents, nematodes, fungi, weeds, and other forms of terrestrial or aquatic plant or animal life or virus, bacteria or other microorganism, except viruses, bacteria or other microorganisms on or in living man or other living animals, which the commissioner declares to be a pest under section 610, subsection 1, paragraph A.

25. Pesticide. "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pests, and any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

26. Plant regulator. "Plant regulator" means any 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 thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants and soil amendments.

27. Protect health and the environment. "Protect health and the environment" means protection against any unreasonable adverse effects on the environment.

28. Registrant. "Registrant" means a person who has registered any pesticide pursuant to the provisions of this subchapter.

29. Registration. "Registration" also means reregistration.

30. Restricted use pesticide. "Restricted use pesticide" means any pesticide or pesticide use classified for restricted use by the Administrator, EPA.

31. Unreasonable adverse effects on the environment. "Unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide.

32. Weed. "Weed" means any plant which grows where not wanted.

33. Wildlife. "Wildlife" means all living things that are neither human, domesticated nor, as defined in this subchapter, pests, including but not limited to mammals, birds and aquatic life.

§ 605. Misbranded

The term "misbranded" applies :

1. False, misleading or inconspicuous labelling. To any pesticide subject to this subchapter :

A. If its labeling bears any statement, design or graphic representation relative thereto or to its ingredients which is false or misleading in any particular ;

B. If it is an imitation of or is distributed under the name of another pesticide ;

C. If any word, statement or other information required to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs or graphic matter in the labeling and in such terms, as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

2. Lack of certain information. To any pesticide :

A. If the labeling does not contain a statement of the use classification under which the product is registered ;

B. If the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and, if complied with, together with any requirements imposed under Section 3 (d) of FIFRA, are adequate to protect health and the environment ;

C. If the label does not bear :

(1) Name, brand or trademark under which the pesticide is distributed ;

(2) An ingredient statement on that part of the immediate container, and on the outside container and wrapper of the retail package, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, which is presented or displayed under customary conditions of purchase; provided that the ingredient statement may appear prominently on another part of the container as permitted pursuant to Section 2 (q) (2) (A) of FIFRA if the size or form of the container makes it impracticable to place it on the part of the retail package which is presented or displayed under customary conditions of purchase;

(3) A warning or caution statement which may be necessary and which, if complied with together with any requirements imposed under Section 3 (d) of FIFRA, would be adequate to protect the health and environment;

(4) The net weight or measure of the content;

(5) The name and address of the manufacturer, registrant or person for whom manufactured; and

(6) The EPA registration number assigned to each establishment in which it was produced and the EPA registration number assigned to the pesticide, if required by regulations under FIFRA.

D. If that pesticide contains any substance or substances in quantities highly toxic to man unless the label bears, in addition to other label requirements:

(1) The skull and crossbones;

(2) The word "POISON" in red prominently displayed on a background of distinctly contrasting color; and

(3) A statement of a practical treatment, including first aid or otherwise, in case of poisoning by the pesticide.

E. If the pesticide container does not bear a registered label or if the label does not contain all the information required by this subchapter or the regulations adopted under this subchapter.

§ 606. Prohibited acts.

1. Unlawful distribution. It is unlawful for any person to distribute in the state any of the following:

A. Any pesticide which has not been registered pursuant:

(1) To the provisions of this subchapter, or

(2) To the provisions of FIFRA;

B. Any pesticide if any of the claims made for it or any of the directions for its use or other labeling differs from the representations made in connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration;

provided that a change in the labeling or formulation of a pesticide may be made within a registration period without requiring reregistration of the product, if the registration is amended to reflect such change and if such change will not violate any provision of FIFRA or this subchapter;

C. Any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container and there is affixed to such container, and to the outside container or wrapper of the retail package, if there is one through which the required information on the immediate container cannot be clearly read, a label bearing the information required in this subchapter and the regulations adopted under this subchapter;

D. Any pesticide which has not been colored or discolored pursuant to the provisions of section 610, subsection 1, paragraph D;

E. Any pesticide which is adulterated or misbranded or any device which is misbranded;

F. Any pesticide in containers which are unsafe due to damage.

2. Unlawful alteration, misuse, divulging of formulae, transportation, disposal and noncompliance. It shall be unlawful:

A. For any person to detach, alter, deface or destroy, wholly or in part, any label or labeling provided for in this subchapter or regulations adopted under this subchapter, or to add any substance to, or take any substance from, a pesticide in a manner that may defeat the purpose of this subchapter or the regulations adopted thereunder;

B. For any person to use or cause to be used any pesticide in a manner inconsistent with its labeling or to regulations of the commissioner, if those regulations further restrict the uses provided on the labeling;

C. For any person to use for his own advantage or to reveal, other than to the commissioner or proper officials or employees of the state or federal executive agencies, or to the courts of this State in response to a subpoena, or to physicians, or in emergencies to pharmacists and other qualified persons for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of section 607 or any information judged by the commissioner as containing or relating to trade secrets or commercial or financial information obtained by authority of this subchapter and marked as privileged or confidential by the registrant;

D. For any person to handle, transport, store, display or distribute pesticides in such a manner as to endanger man and his environment or to endanger food, feed or any other products that may be transported, stored, displayed or distributed with such pesticides;

E. For any person to dispose of, discard or store any pesticides or pesticide containers in such a manner as may cause injury to humans, vegetation, crops, livestock, wildlife, beneficial insects or pollute any water supply or waterway;

F. For any person to refuse or otherwise fail to comply with the provisions of this subchapter, the regulations adopted hereunder, or of any lawful order of the commissioner.

§ 607. Registration

1. Conditions requiring registration. Every pesticide which is distributed in this State shall be registered with the commissioner subject to the provisions of this subchapter. Such registration shall be renewed annually prior to January 1, provided that registration is not required if a pesticide is shipped from one plant or warehouse to another plant or warehouse operated by the same person and used solely at such plant or warehouse as a constituent part to make a pesticide which is registered under the provisions of this subchapter; or if the pesticide is distributed under the provisions of an experimental use permit issued under section 608 or an experimental use permit issued by EPA.

2. Contents of statement made by applicant. The applicant for registration shall file a statement with the commissioner which shall include:

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 applicant's;

B. The name of the pesticide;

C. Other necessary information required for completion of the department's application for registration forms;

D. A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it, including the directions for use and the use classification as provided for in FIFRA.

3. Submission of formula. The commissioner, when he deems it necessary in the administration of this subchapter, may require the submission of the complete formula of any pesticide, including the active and inert ingredients.

4. Test results. The commissioner may require a full description of the tests made and the results thereof upon which the claims are based on any pesticide not registered pursuant to Section 3 of FIFRA or on any pesticide on which restrictions are being considered. In the case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the pesticide was registered or last reregistered.

5. Power to require other information. The commissioner may prescribe other necessary information by regulation.

6. Registration fee; validity. The applicant desiring to register a pesticide shall pay an annual registration fee of \$10 to the commissioner for each pesticide registered for such applicant. All such registrations shall expire on December 31st of any one year.

7. Renewal of registration. Any registration approved by the commissioner and in effect on the 31st day of December, for which a renewal appli-

cation has been made and the proper fee paid, shall continue in full force and effect until such time as the commissioner notifies the applicant that the registration has been renewed, or otherwise denied, in accordance with the provisions of section 609. Forms for reregistration shall be mailed to registrants at least 30 days prior to the due date.

8. Approval of application for registration. Provided the State is certified by the Administrator of EPA to register pesticides pursuant to Section 24 (c) of FIFRA, the commissioner shall consider the information set forth under subsections 2, 3, 4 and 5 and shall register such pesticide if he determines that:

- A. Its composition is such as to warrant the proposed claims for it;
- B. Its labeling and other material required to be submitted comply with the requirements of this subchapter;
- C. It will perform its intended function without unreasonable adverse effects on the environment;
- D. When used in accordance with widespread and commonly recognized practice, it will not generally cause unreasonable adverse effects on the environment;
- E. The classification for general or restricted use is in conformity with Section 3 (d) of FIFRA, provided that the commissioner shall not make any lack of essentiality a criterion for denying registration of any pesticide. Where 2 pesticides meet the requirements of this paragraph, one should not be registered in preference to the other.

9. Adverse environmental effects. If at any time after the registration of a pesticide, the registrant has additional factual information regarding unreasonable adverse effects on the environment of the pesticide, he shall submit such information to the commissioner.

§ 608. Experimental use permits

Provided the State is authorized by the Administrator of EPA to issue experimental use permits, the commissioner may:

1. Experimental information needed. Issue an experimental use permit to any person applying for an experimental use permit, if he determines that the applicant needs such permit in order to accumulate information necessary to register a pesticide under section 607. An application for an experimental use permit may be filed at the time of or before or after an application for registration is filed.

2. Terms of use. Prescribe terms, conditions and period of time for the experimental use permit, which shall be under the supervision of the commissioner.

3. Revocation. Revoke any experimental use permit, at any time, if he finds that its terms or conditions are being violated, or that its terms and conditions are inadequate to avoid unreasonable adverse effects on the environment.

§ 609. Refusal to register, cancellation, suspension, legal recourse

1. Procedure. Provided the State is certified by the Administrator of EPA to register pesticides formulated to meet special local needs, the commissioner shall consider the following for refusal to register; for cancellation; for suspension; or for legal recourse for such pesticides:

A. If it does not appear to the commissioner that the pesticide is such as to warrant the proposed claims for it or if the pesticide and its labeling and other material required to be submitted do not comply with the provisions of this subchapter or regulations adopted thereunder, he shall notify the applicant of the manner in which the pesticide, labeling or other material required to be submitted fails to comply with the provisions of this subchapter so as to afford the applicant an opportunity to make the necessary corrections. If, upon receipt of such notice, the applicant does not make the required changes, the commissioner may refuse to register the pesticide. The applicant may petition the commissioner for a hearing and must file within 10 days after notice of refusal to register is received.

B. When the commissioner determines that a pesticide or its labeling does not comply with the provisions of this subchapter or the regulations adopted thereunder, he may cancel the registration of a pesticide, after a hearing has been conducted.

C. When the commissioner determines that there is an imminent hazard, he may, on his own motion, suspend the registration of a pesticide pending decisions reached at a hearing. Hearings shall be held with the utmost possible expedition.

D. When the commissioner becomes cognizant of any possible hazard or violation involving either a registered or unregistered product, he shall cause notice of such fact, stating the date, hour and place of hearing, with a copy of the findings or charge to be preferred, to be delivered by registered mail, return receipt requested, to the person concerned, who shall be given an opportunity to be heard under such rules and regulations as may be prescribed by the commissioner.

E. Any person who will be adversely affected by such order in this section may obtain judicial review thereof by filing in the District Court, within 60 days after the entry of such order, a petition praying that the order be set aside in whole or in part. A copy of the petition shall be forthwith transmitted by the clerk of the court to the commissioner and thereupon the commissioner shall file in the court the record of the proceedings on which he based his order. The court shall have jurisdiction to affirm or set aside the order complained of in whole or in part. The findings of the commissioner with respect to questions of fact shall be sustained, if supported by substantial evidence when considered on the record as a whole. Upon application, the court may remand the matter to the commissioner to take further testimony, if there are reasonable grounds for the failure to adduce such evidence in the prior hearing. The commissioner may modify his findings and his order by reason of the additional evidence so taken and shall file the additional record and any modification of the findings or order with the clerk of the court.

2. Commissioner to advise EPA. If the commissioner determines that the federally registered pesticide, with respect to the use of such pesticide within this State, does not warrant the proposed claims for it, or if the pesticide and its labeling and other material required to be submitted does not comply with the provisions of FIFRA or the regulations adopted thereunder, he shall advise EPA of the manner in which the pesticide, labeling or other material required to be submitted fails to comply with the provisions of FIFRA, and suggest necessary corrections.

§ 610. Determinations; rules and regulations; restricted use pesticides; uniformity

1. Determinations. The commissioner is authorized, after due notice and an opportunity for a hearing:

A. To declare as a pest any form of plant or animal life, except virus, bacteria or other microorganisms on or in living man or other living animals, which is injurious to health or the environment;

B. To determine whether pesticides registered under the authority of Section 24 (c) of FIFRA are highly toxic to man. The definition of highly toxic, as defined in Title 40, Code of Federal Regulations 162.8 as issued or hereafter amended, shall govern the commissioner's determination;

C. To determine pesticides and quantities of substances contained in pesticides, which are injurious to the environment, the commissioner shall be guided by EPA regulations in this determination; and

D. To prescribe regulations requiring any pesticide to be colored or discolored, if he determines that such requirement is feasible and is necessary for the protection of health and the environment.

2. Rule making powers. The commissioner is authorized, after due notice and a public hearing, to make appropriate regulations for carrying out the provisions of this subchapter, including but not limited to regulations providing for:

A. The collection, examination and reporting of samples of pesticides or devices;

B. The safe handling, transportation, storage, display, distribution and disposal of pesticides and their containers;

C. Labeling requirements of all pesticides required to be registered under provisions of this subchapter, provided that such regulations shall not impose any requirements for federally registered labels in addition to or different from those required pursuant to FIFRA.

D. Specifying classes of devices which shall be subject to the provisions of section 605, subsection 1.

3. Uniformity of requirements; restricted uses. For the purpose of uniformity of requirements between the states and the Federal Government, the commissioner may, after a public hearing, adopt regulations in conformity

with the primary pesticide standards, particularly as to labeling, registration requirements and "restricted use pesticides" as established by EPA or other federal or state agencies.

§ 611. Enforcement

1. Commissioner powers. Notwithstanding any other provisions of law, the sampling and examination of pesticides or devices shall be made under the direction of the commissioner for the purpose of determining whether they comply with the requirements of this subchapter. The commissioner is authorized, upon presentation of proper identification, to enter any distributor's premises, including any vehicle of transport, at all reasonable times in order to have access to labeled pesticides or devices packaged for distribution, and to open any case, package or other container, and may upon tendering the market price take samples for analysis. If it appears from such examination that a pesticide or device fails to comply with the provisions of this subchapter or regulations adopted thereunder, and the commissioner contemplates instituting criminal proceedings against any person, the commissioner shall cause appropriate notice to be given to such person. Any person so notified shall be given an opportunity within a reasonable time to present his views, either orally or in writing, with regard to the contemplated proceedings. If thereafter in the opinion of the commissioner it appears that the provisions of this subchapter or regulations adopted thereunder have been violated by such person, the commissioner shall refer a copy of the results of the analysis or the examination of such pesticide or device to the attorney for the district in which the violation occurred.

2. Minor violations. Nothing in this subchapter shall be construed as requiring the commissioner to report minor violations of this subchapter for prosecution or for the institution of condemnation proceedings when he believes that the public interest will be served best by a suitable notice of warning in writing.

§ 612. "Stop sale, use or removal" order

When the commissioner has reasonable cause to believe a pesticide or device is being distributed, stored, transported or used in violation of any of the provisions of this subchapter or of any of the prescribed regulations under this subchapter, he may issue and serve a written "stop sale, use or removal" order upon the owner or custodian of any such pesticide or device. If the owner or custodian is not available for service of the order upon him, the commissioner may attach the order to the pesticide or device and notify the owner or custodian and the registrant. The pesticide or device shall not be sold, used or removed until the provisions of this subchapter have been complied with and the pesticide or device has been released in writing under conditions specified by the commissioner or the violation has been otherwise disposed of as provided in this subchapter by a court of competent jurisdiction.

§ 613. Judicial action after "stop sale, use or removal" order

1. Adjudication; court powers. After service of a "stop sale, use or removal" order is made upon any person, either that person, the registrant or the commissioner may file an action in a court of competent jurisdiction in

the district in which a violation of this subchapter or regulations adopted thereunder is alleged to have occurred for an adjudication of the alleged violation. The court in such action may issue temporary or permanent injunctions, mandatory or restraining, and such intermediate orders as it deems necessary or advisable. The court may order condemnation of any pesticide or device which does not meet the requirements of this subchapter or regulations adopted thereunder.

2. Disposition of condemned pesticide. If the pesticide or device is condemned, it shall, after entry of decree, be disposed of by destruction or sale as the court directs, and if such pesticide or device is sold, the proceeds, less costs including legal costs, shall be paid to the Treasurer of State as provided in section 621, provided that the pesticide or device shall not be sold contrary to the provisions of this subchapter or regulations adopted thereunder. Upon payment of costs and execution and delivery of a good and sufficient bond conditioned that the pesticide or device shall not be disposed of unlawfully, the court may direct that the pesticide or device be delivered to the owner thereof for relabeling, reprocessing or otherwise bringing the product into compliance.

3. Award of court costs and fees. When a decree of condemnation is entered against the pesticide or device, court costs, fees, storage and other proper expenses shall be awarded against the person, if any, appearing as claimant of the pesticide.

§ 614. Denial, suspension, revocation of license

The commissioner is authorized to deny, suspend or revoke any license, registration or permit provided for in this subchapter, subject to a hearing in any case in which he finds there has been a failure or refusal to comply with the provisions of this subchapter or regulations adopted thereunder.

§ 615. Subpoenas

The commissioner may issue subpoenas to compel the attendance of witnesses and the production of books, documents and records in the State in any hearing affecting the authority or privilege granted by a license, registration or permit issued under the provisions of this subchapter.

§ 616. Penalties

1. Criminal penalties. Any person violating any provisions of this subchapter, or regulations adopted thereunder is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than \$500 for the first offense and not more than \$1,000 for each subsequent offense.

2. Injunction. The commissioner may bring an action to enjoin the violation or threatened violation of any provision of this subchapter or any regulation made pursuant to this subchapter in a court of competent jurisdiction of the district in which such violation occurs or is about to occur.

3. No damages from administrative action if probable cause exists. No state court shall allow the recovery of damages from administrative action taken or for a "stop sale, use or removal order," if the court finds that there was probable cause for such action.

§ 617. Exemptions

1. Exemptions from penalties. The penalties provided for violations of section 606, subsection 1, paragraphs A, B, C, D and E shall not apply to:

A. Any carrier while lawfully engaged in transporting a pesticide within this State, if such carrier shall, upon request, permit the commissioner to copy all records showing the transactions in and movement of the pesticides or devices;

B. Public officials of this State and the Federal Government while engaged in the performance of their official duties in administering state or federal pesticide laws or regulations or while engaged in pesticide research;

C. The manufacturer or shipper of a pesticide for experimental use only by or under the supervision of an agency of this State or of the Federal Government authorized by law to conduct research in the field of pesticides, provided that such manufacturer or shipper holds a valid experimental use permit as provided for by section 608 or by EPA.

D. Any person who ships a substance or mixture of substances being put through tests in which the purpose is only to determine its value for pesticide purposes or to determine its toxicity or other properties and from which the user does not expect to receive any benefit in pest control from its use.

2. Exemption for pesticides for export. No pesticide or device shall be deemed in violation of this subchapter when intended solely for export to a foreign country, and when prepared or packed according to the specifications or directions of the purchaser. If not so exported, all the provisions of this subchapter shall apply.

§ 618. Publication of information

The commissioner may publish at least annually and in such form as he may deem proper, results of analyses based on official samples as compared with the analyses guaranteed and information concerning the distribution of pesticides, provided that individual distribution information shall not be a public record.

§ 619. Delegation of duties

All authority vested in the commissioner by virtue of the provisions of this subchapter may, with like force and effort, be executed by such employees of the commissioner as the commissioner may from time to time designate for said purpose.

§ 620. Cooperation

The commissioner may cooperate, receive grants-in-aid and enter into cooperative agreements with any agency of the Federal Government, of this State or its subdivisions, or with any agency of another state, in order, but not limited, to:

1. Uniformity. Secure uniformity of regulations;

2. Cooperative agreements with EPA. Enter into cooperative agreements with EPA to register pesticides under the authority of this subchapter and FIFRA;

3. Use of state and federal facilities. Cooperate in the enforcement of the federal pesticide control laws through the use of state or federal personnel, or both, and facilities and to implement cooperative enforcement programs including, but not limited to, the registration and inspection of establishments;

4. Contracts for monitoring pesticides. Enter into contracts for monitoring pesticides for the national plan; and

5. Preparation of state plans. Prepare and submit state plans to meet federal certification standards for issuing experimental use permits, or both.

§ 621. Disposition of funds

All moneys received by the commissioner under the provisions of this subchapter shall be deposited in the State Treasury to the credit of a special fund to be used only for carrying out the provisions of this subchapter.

§ 622. Separability

If any provision of this subchapter is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of this subchapter and applicability thereof to other persons and circumstances shall not be affected thereby.

§ 623. Prior liability

The enactment of this subchapter shall not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which shall already be in existence on the effective date of this Act.

§ 624. Repealers

Jurisdiction in all matters pertaining to the registration, distribution and disposal of pesticides and devices is by this subchapter vested exclusively in the commissioner and all acts and parts of acts inconsistent with this subchapter are hereby expressly repealed.

STATEMENT OF FACT

The purpose of this Act is to provide legislative authority compatible with the requirements of the 1972 amendments of the Federal Insecticide, Fungicide and Rodenticide Act in order that Maine may continue the regulation of the sale and distribution of pesticides through a registration process, provide for experimental use and provide for registration of pesticides for special local needs.