

MAINE STATE LEGISLATURE

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New Draft of: H. P. 821, L. D. 985

ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 1890

H. P. 1611

House of Representatives, May 20, 1975

Reported by Mr. Teague from the Committee on Agriculture and printed under Joint Rules No. 18.

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT to Conform the Pesticide Statutes to Federal Law.

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

Sec. 1. 22 MRSA c. 258, as amended, is repealed.

Sec. 2. 22 MRSA c. 258-A, is enacted to read:

CHAPTER 258-A

BOARD OF PESTICIDES CONTROL

§ 1471-A. Purpose and policy

For the purpose of assuring to the public the benefits to be derived from the safe, scientific and proper use of chemical pesticides while safeguarding the public health, safety and welfare, and for the further purpose of protecting natural resources of the State, it is declared to be the policy of the State of Maine to regulate the sale and application of chemical insecticides, fungicides, herbicides and other chemical pesticides.

§ 1471-B. Board of Pesticides Control

There is established in the Department of Agriculture a Board of Pesticides Control to be composed of the Commissioner of Agriculture, the Commissioner of Health and Welfare, the Director of the Bureau of Forestry, the Commissioner of Inland Fisheries and Game, the Commissioner of Marine Resources, the Chairman of the Public Utilities Commission, the Commissioner of Transportation and the Commissioner of Environmental Protection. The commissioners of the state departments may appoint agents to serve in their absence. The board shall elect annually a chairman from its own membership and be authorized to employ necessary personnel.

§ 1471-C. Definitions

1. Agricultural commodity. "Agricultural commodity" means any plant, or part thereof, or animal or animal product produced by a person, including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters or other comparable persons, primarily for sale, consumption, propagation or other use by humans or animals.

2. Aircraft. "Aircraft" means any machine or device used or designed for navigation of, or flight in, the air.

3. Board. "Board" means the State Board of Pesticides Control as established in section 1471-B.

4. Certified applicator. "Certified applicator" means any individual who is certified pursuant to section 1471-D and authorized to use or supervise the use of any pesticides.

5. Commercial applicator. "Commercial applicator" means a certified applicator, whether or not the applicator is a private applicator with respect to some uses, who uses or supervises the use of any pesticide for any purpose or on any property other than as provided by subsection 22.

6. Defoliant. The term "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. The term "desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

8. 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.

9. FIFRA. "FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 135 et seq., PL 92-516.

10. Fungi. "Fungi" means all nonchlorophyll-bearing thallophytes, that is, all nonchlorophyll-bearing plants, of a lower order than mosses and liverworts, including but not limited to rusts, smuts, mildews and molds, except those on or in living man or other animals or those on or in processed food, beverages or pharmaceuticals.

11. Fungicide. "Fungicide" means any substance or mixture of substances intended for destroying or repelling any fungi or mitigating or preventing damage by any fungi.

12. Ground equipment. "Ground equipment" means any machine or device, other than aircraft, for use on land or water, designed for, or adaptable to, use in applying pesticides as sprays, dusts, aerosols, fogs, or in other forms.

13. Herbicides. "Herbicides" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any weed.

14. 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, including but not limited to beetles, bugs, bees, flies and other allied classes of arthropods whose members are wingless and usually have more than 6 legs, including but not limited to mites, ticks, centipedes and wood lice.

15. Insecticide. "Insecticide" means any substance or mixture of substances intended for destroying or repelling any insect, or mitigating or preventing damage by any insects.

16. Limited use pesticide. "Limited use pesticide" means any pesticide or pesticide use classified for limited use by the board.

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

18. Pest. The term "pest" means any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria or other micro-organism, except viruses, bacteria or other micro-organisms on or in living man or other living animals, which the commissioner declares to be a pest.

19. Pesticide. The term "pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

20. Pesticide dealer. "Pesticide dealer" means any person who distributes limited or restricted use pesticides.

21. Plant regulator. The term "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. Also, the term "plant regulator" shall not be required to include any of such of those nutrient mixtures or soil amendments as are commonly known as vitamin hormone horticultural products, intended for improvement, maintenance, survival, health and propagation of plants, and as are not for pest destruction and are nontoxic and nonpoisonous in the undiluted packaged concentration.

22. Private applicator. "Private applicator" means an individual who uses or supervises the use of any pesticide which is classified for restricted or limited use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.

23. Restricted use pesticide. "Restricted use pesticide" means any pesticide or pesticide use classified for use only by or under the direct supervision of a certified applicator by the Administrator of the United States Environmental Protection Agency or by the Commissioner of Agriculture.

24. Under the direct supervision of a certified applicator. "Under the direct supervision of a certified applicator," unless otherwise prescribed by its labeling, means the act or process by which a pesticide is applied by a

competent person acting under the instructions and control of a certified applicator who is available, if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied.

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

§ 1471-D. Certification and licenses

1. Certification required, commercial applicators. No commercial applicator shall use or supervise the use of any pesticide within the State without prior certification from the board, provided, that a competent person who is not certified may use such a pesticide under the direct supervision of a certified applicator.

2. Certification required, private applicators. No private applicator shall use or supervise the use of any limited or restricted use pesticide without prior certification from the board, provided, that a competent person who is not certified may use such a pesticide under the direct supervision of a certified applicator.

3. License required, pesticide dealers. No pesticide dealer shall:

A. Distribute any limited or restricted use pesticide without a distributor's license from the board; or

B. Distribute limited or restricted use pesticides to any person who is not licensed or certified by the board.

4. Application. Application for licenses or certification shall be accompanied by such a reasonable fee as the board may establish by regulation. The applicant shall provide such information regarding the applicant's qualifications and proposed operations and other relevant matters as required by the board. Commercial applicators shall, and private applicators may, be required by the board to provide proof of financial responsibility as to such amounts as the board may, by regulation, designate. All applicants to the board for certification or licensing shall be required to comply with such standards of competency as are established by the board concerning adequate knowledge of pesticide distribution or use and the related dangers and necessary precautions; provided that in the case of applicants for commercial certification and pesticide dealers' licenses, such compliance shall be demonstrated by written examination in addition to such other criteria, including performance testing, as the board may establish.

5. Issuance. No license or certification shall be issued by the board, unless the board determines that the standards for licensing and certification have been met as to those categories for which the applicant has applied and qualified. If a license or certification is not issued as applied for, the board shall provide written notice to the applicant of the reasons therefor. The license or certificate may be issued upon such terms and conditions as the board deems necessary for the protection of the public health, safety and welfare, and for enforcement and administration of this chapter and the rules and regulations promulgated hereunder.

6. **Renewal.** Certification of commercial applicators and licenses of pesticide dealers shall be valid for one year from the date of issuance. Certification of private applicators shall be valid for such period as prescribed by the board by regulation. Application for renewal shall be accompanied by such reasonable fee as the board may by regulation require. The board may, by regulation, require that such renewal application include reexamination or other procedures designed to assure a continuing level of competence to distribute, use or supervise the use of pesticides safely and properly.

7. **Suspension.**

A. If the board determines that there may be grounds for revocation of a license or certificate, it may temporarily suspend said license or certificate pending inquiry and opportunity for hearing, provided that such suspension shall not extend for a period longer than 45 days.

B. The board shall notify the licensee or certified applicator of the temporary suspension, indicating the basis therefor and informing the licensee or certified applicator of the right to request a public hearing.

C. If the licensee or certified applicator fails to request a hearing within 20 days of the date of suspension, such right shall be deemed waived. If the licensee or certified applicator requests such a hearing, notice shall be given at least 20 days prior to the hearing to the licensee or certified applicator and to appropriate federal and state agencies. In addition, public notice shall be given by publication in a newspaper of general circulation in the State and such other publications as the board deems appropriate.

8. **Revocation.** The board may, after notice and opportunity for hearing as required by subsection 7, revoke the certification or license of an applicator or pesticide dealer upon finding that the applicant:

A. Is no longer qualified;

B. Has engaged in fraudulent business practices in the application or distribution of pesticides;

C. Used or supervised the use of pesticides applied in a careless, negligent or faulty manner or in a manner which is potentially harmful to the public health, safety or welfare or the environment;

D. Has stored, transported or otherwise distributed pesticides in a careless, faulty or negligent manner or in a manner which is potentially harmful to the environment or to the public health, safety or welfare;

E. Has violated the provisions of this chapter or the rules and regulations issued hereunder;

F. Has made a pesticide recommendation, use or application, or has supervised such use or application, inconsistent with the labelling or other restrictions imposed by the board;

G. Has made false or fraudulent records or reports required by the board under this chapter or under regulations pursuant thereto; or

H. Has been subject to a criminal conviction under section 14 (b) of the amended FIFRA or a final order imposing a civil penalty under section 14 (a) of the amended FIFRA.

9. State, federal and local government employees. Individuals who apply pesticides in connection with their duties as officials or employees of federal, state or local governments are subject to the provisions of this chapter concerning licenses and certification, but are exempt from the payment of any fee.

10. Nonresident licenses. The board may issue a license or certificate without examination to nonresidents who are licensed or certified by another state or the Federal Government substantially in accordance with the provisions of this chapter. Licenses or certificates issued pursuant to this subsection may be suspended or revoked in the same manner and on the same grounds as other licenses or certificates issued pursuant to this chapter, or upon suspension or revocation of the license or certificate by the Federal Government or such other state as supplied the basis for the Maine license or certification.

11. Arborists. In the case of persons licensed under Title 32, chapter 29, subchapter II, the board may waive the application fee and may consider the arborist license as prima facie evidence of qualification to use pesticides in the categories of use provided by Title 32, chapter 29.

§ 147I-E. Aquatic application, permit required

No person shall apply pesticides to or in any river or stream or tributary thereof, or any great pond, without a permit from the board. Applications for such permits shall be made on such forms and containing such information as the board may require. If, on the basis of the application for the permit, the board finds that the proposed application of pesticides will conform to applicable laws and regulations and is unlikely to adversely affect any plant or animal life, other than that sought to be controlled, it may grant the permit. Any permit to apply pesticides granted by the board under this section may contain such reasonable terms and conditions with respect to such application as in the board's determination may be necessary to insure compliance with applicable laws and regulations and to protect plant and animal life, other than that sought to be controlled.

§ 147I-F. Critical areas

No person shall apply pesticides to any area of the State which the board has determined to be a critical area, except to the extent such application is within the limits prescribed by the board in establishing the area.

§ 147I-G. Reports

1. Pesticide dealers to maintain certain records. All pesticide dealers shall maintain records of pesticide distribution for a period of at least 2 years and shall provide such reports and information as the board may, by regulation, require.

2. Applicators to maintain certain records. All commercial applicators shall maintain, for a period of at least 2 years, records indicating the type and amount of pesticide used, the area of use and such other information as the board may require. Said applicators shall provide such information, notification and reports as the board, by regulation, may require.

§ 1471-H. Inspection

For the purpose of carrying out the provisions of this chapter, the chairman or any member of the board or any authorized employee or consultant of the board may enter upon any public or private premises at reasonable times for the purpose of inspecting any equipment, device or apparatus used in applying pesticides; inspecting storage and disposal areas; inspecting or investigating complaints of injury to persons or land from pesticides; observing the use and application of pesticides; sampling pesticides in use or storage; sampling pesticide residues on crops, foliage, soil, water or elsewhere in the environment. Upon denial of access to the board or its agents, the board or its agents may seek an appropriate search warrant in a court of competent jurisdiction.

§ 1471-I. Enforcement

This chapter and the rules and regulations promulgated thereunder shall be enforced by such personnel of the state agencies listed in section 1471-B as the board may designate.

§ 1471-J. Penalties

Any person who violates any provision of this chapter or any order, regulation, decision, certificate or license issued by the board or does any act constituting a ground for revocation except in section 1471-B, subsection 8, paragraphs A and H shall be punished by a fine of not more than \$500 for the first offense, and not less than \$500 for each subsequent offense. Each day that any person so operates shall be considered a separate offense.

§ 1471-K. Appeal

Any person aggrieved by any action of the board may obtain a review thereof by filing in the Superior Court, within 30 days of notice of the action, a written petition praying that the action of the board be set aside. A copy of such petition shall forthwith be delivered to the board, and within 30 days thereafter the board shall certify and file in the court a transcript of evidence received, whereupon the court shall have jurisdiction to affirm, set aside or modify the action of the board, except that the findings of the board as to the facts, if supported by substantial evidence, shall be conclusive.

§ 1471-L. Subpoenas

The board may issue subpoenas to compel the attendance of witnesses and production of such books, documents and records anywhere in the State in any hearing affecting the authority or privilege granted by a license or permit issued under this chapter, as may be relevant to proceedings of the board. If any person refuses to obey a subpoena issued by the board under this sec-

tion, the board may apply to any Justice of the Superior Court for an order compelling such person to comply with the requirements of the subpoena. Such justice may issue such order and may punish failure to obey the same as a contempt thereof.

§ 1471-M. Powers of board

1. Establishment of categories and standards. The board shall, by regulation:

A. Establish categories, and where applicable subcategories, of commercial pesticide applicators depending upon the nature and extent of the pesticide use, the type of pesticide equipment, the degree of knowledge or skill required in their application and such other factors as the board deems relevant, provided that such categories shall be consistent with, but not limited to, the categories established by the U. S. Environmental Protection Agency;

B. Establish competency standards for the established categories for the certification and renewal of certification of commercial applicators. Such standards shall require, as a minimum, that the applicant demonstrate, by written examination and, as appropriate, performance testing, knowledge of pests, formulation and labelling of pesticides, equipment and application techniques, safety precautions, potential harmful effects on the environment, and applicable federal and state laws and regulations.

C. Establish standards for the certification and renewal of certification of private applicators. Such standards shall require that the private applicator indicate satisfactory knowledge of pest problems and pest control practices, including as a minimum the ability to recognize common pests and the damage they cause, to understand the pesticide label, to apply pesticides in accordance with label instructions and warnings, to recognize local environmental situations that must be considered to avoid contamination, to recognize poisoning symptoms and corrective procedures, and to understand applicable federal and state laws and regulations.

D. Establish the standards for issuance and renewal of licenses of pesticide dealers. Such standards shall include, but not be limited to, requirements concerning transportation of pesticides, the applicant's knowledge of applicable federal and state statutes and regulations, and the applicant's understanding of the dangers involved and the precautions necessary for the safe storage and distribution of pesticides.

E. Establish guidelines and requirements for reporting of information by commercial applicators and pesticide dealers to the board.

2. Designation of critical areas; cooperation; promulgation of rules and regulations. The board may:

A. Designate critical areas. Such critical areas shall include, but not be limited to, areas where pesticide use would jeopardize endangered species or critical wildlife habitat, would present an unreasonable threat to quality of the water supply, would be contrary to a master plan for the area where

such area is held or managed by an agency of the State or Federal Government, or would otherwise result in unreasonable adverse effects on the environment of the area. The designation of a critical area may prohibit pesticide use or may include such limitations on such use as the board deems appropriate.

B. Cooperate with any other agency of this State or its subdivisions, or with any agency of any other state or the Federal Government for the purpose of administering this chapter and of securing uniformity of regulations.

C. On its own or in cooperation with other persons, publish such information as it deems appropriate, including information concerning injury which might result from improper application or handling of pesticides, and methods and precautions designed to prevent such injury.

D. Promulgate such other rules and regulations and take such other actions as it deems appropriate to control the use and distribution of pesticides within the State and to otherwise provide that the purposes and policies of this chapter are insured.

Sec. 3. Effective date. This Act shall become effective on October 1, 1976, except for section 1471-M, which shall take effect 90 days after the adjournment of the Legislature.