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Amending "The Pesticide Act"

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CHAPTER 39

AGRICULTURE I—GENERAL PROVISIONS

PESTICIDE ACT

Senate Bill No. 172. By Senators Anderson, Kinnie, Noble, Chance, Garnsey, Ruland, Schieffelin, Strickland, and Wunsch; also Representatives Younglund, Porter, Showalter, Sonnenberg, Edmonds, Fentress, Horst, Lucero, Moore, Mullen, Quinlan, Safran, and Sooter.

A N A C T

AMENDING "THE PESTICIDE ACT".

Be it enacted by the General Assembly of the State of Colorado:

Section 1. 6-12-2 (24) (d), Colorado Revised Statutes 1963 (1965 Supp.), is amended, and the said 6-12-2, Colorado Revised Statutes 1963, as amended, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

6-12-2. Definitions. (24) (d) To which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, nonmisleading reference is made to current official publications of the United States departments of agriculture or interior, the United States public health service, state experiment stations, state agricultural colleges, other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the field of pesticides, or any person who has conducted research in this state in the field of pesticides for at least five years and whose research activities have received the approval of the Colorado department of agriculture.

(27) "Restricted used pesticide" means any pesticide, which the department of agriculture has found and determined, subsequent to a hearing, to create an undue hazard, when used as directed on the registered label, to persons, pollinating insects, bees, animals, crops, wildlife, or lands, other than the pests it is intended to prevent, destroy, control, or mitigate.

(28) "Pesticide dealer" means any person who is engaged in the business of distributing, selling, offering for sale, or holding for sale, any pesticide, but shall not include public carriers, or those persons whose sales are limited only to products defined under regulation as bactericides, disinfectants, germicides, or sanitizers.

Section 2. 6-12-4 (1) (a), Colorado Revised Statutes 1963 (1967

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

Supp.), is amended, and the said 6-12-4 (1), Colorado Revised Statutes 1963, as amended, is further amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

6-12-4. Registration. (1) (a) Every pesticide which is advertised, distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state shall be registered by the manufacturer, wholesaler, jobber, or distributor thereof in the office of the department of agriculture. Such registration shall be renewed annually, and shall expire on the thirty-first day of December following issuance. Pesticides which have the same formula; are manufactured by the same person; the labeling of which contains the same claims; and the labels of which bear designation identifying the pesticide as the same pesticide may be registered as a single pesticide; and additional names and labels shall be added by supplemental statements during the current period of registration. No distributor of any pesticide shall be required to register such pesticide under this article if such pesticide is registered by the manufacturer, wholesaler, or jobber thereof, at the time such pesticide is purchased by the distributor thereof. The registrant shall file with the department of agriculture a statement including:

(g) Nonresidents applying for registration of pesticides under this article shall file a written power of attorney designating the secretary of state as the agent of such nonresident upon whom service of process may be had in the event of any suit against said nonresident person, and such power of attorney shall be so prepared and in such form as to render effective the jurisdiction of the courts of the state of Colorado over such nonresident applicant; but any such nonresident who has a duly-appointed resident agent upon whom process may be served as provided by law shall not be required to designate the secretary of state as such agent. Service on the secretary of state of any such process shall be made by delivering to and leaving with him, or with his deputy, an assistant, or clerk, for filing in the secretary of state office, a copy of such process. The person so serving the secretary of state shall immediately send or give to the commissioner a notice of such service and a copy of the process. The secretary of state shall collect at the time of any service of process on him as resident agent a fee of five dollars.

(h) The department of agriculture shall refuse application for registration of any pesticide or any combination of pesticides for which the applicant is unable, upon request, to provide analytical standards and methods of analysis for each formulation of said pesticide or combinations thereof, and analytical methods for determining any residues of said pesticides at levels suspected harmful to plants, animals, or the environment.

(i) The department of agriculture may, on and after January 1, 1972, cancel the registration of any pesticide for which the registrant, upon request, is unable to provide analytical standards and method of analysis for each formulation, and method of analysis for residue at levels suspected to be harmful to plants or animals.

Section 3. 6-12-5 (1) (a), Colorado Revised Statutes 1963 (1965 Supp.), is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

6-12-5. Determinations — rules and regulations. (1) (a) The department of agriculture is authorized, after opportunity for hearing,

to promulgate appropriate rules and regulations, including, but not limited to, rules and regulations.

Section 4. 6-12-5 (2), Colorado Revised Statutes 1963 (1965 Supp.), is amended, and the said 6-12-5, Colorado Revised Statutes 1963 (1965 Supp.), is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

6-12-5. Determination — rules and regulations. (2) The department of agriculture is authorized, after due public hearing, to make appropriate rules and regulations for carrying out the provisions of this article, including rules and regulations providing for the collection and examination of samples of pesticides or devices, AND THE SAFE HANDLING, TRANSPORTATION, STORAGE, DISPLAY, DISTRIBUTION, AND DISPOSAL OF PESTICIDES AND THEIR CONTAINERS, AND RESTRICTING OR PROHIBITING THE USE OF CERTAIN TYPES OF CONTAINERS OR PACKAGES FOR SPECIFIC PESTICIDES. SUCH RESTRICTIONS MAY APPLY TO TYPE OF CONSTRUCTION, STRENGTH, OR SIZE, TO ALLEVIATE DANGER OF SPILLAGE, BREAKAGE, OR MISUSE.

(4) The department of agriculture, by regulation after a public hearing following due notice thereof, may adopt a list of restricted use pesticides for the state or for designated areas within the state. The department may include in the regulation the time and conditions of sale, distribution, or use of such restricted use pesticides and may, if deemed necessary to carry out the provisions of this article, require that any or all restricted use pesticides shall be purchased, possessed, or used only under permit of the department of agriculture and under supervision of the department of agriculture; any person licensed to sell such pesticides may purchase and possess such pesticides without a permit; and the department may require all persons issued such permits to maintain records as to the use of restricted use pesticides.

Section 5. 6-12-7 (1) (b), Colorado Revised Statutes 1963 (1965 Supp.), is amended to read:

6-12-7. Enforcement. (1) (b) It shall be the duty of the department of agriculture to issue and enforce a written or printed "stop sale, use, or removal" order to the owner or custodian of any lot of pesticides or device and to hold at a designated place when the department of agriculture finds HAS REASONABLE CAUSE TO BELIEVE said pesticide or device is being offered or exposed for sale in violation of any of the provisions of this article OR ANY RULE OR REGULATION PROMULGATED HEREUNDER until the law OR RULE OR REGULATION has been complied with, and said pesticide or device is released in writing by the department of agriculture or said violation has been otherwise legally disposed of by written authority. The department of agriculture shall release the pesticide or device so withdrawn ONLY when the requirements of the provisions of this article have been complied with and upon payment of all costs and expenses incurred in connection with the withdrawal. IT SHALL ALSO BE THE DUTY OF THE DEPARTMENT TO ISSUE A WRITTEN OR PRINTED "STOP SALE, USE, OR REMOVAL" ORDER TO THE OWNER OR CUSTODIAN OF ANY LOT OF PESTICIDES FOUND IN DAMAGED OR FAULTY CONTAINERS THAT MAY BE CONSIDERED UNSAFE; and

Section 6. 6-12-8 (1) (d), Colorado Revised Statutes 1963 (1965 Supp.); is amended to read:

6-12-8. Exemptions. (1) (d) 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, or by others if the pesticide is not sold and if the container thereof is plainly and conspicuously marked "For experimental use only not to be sold", together with the manufacturer's name and address; provided, that if a written permit has been obtained from the department of agriculture, pesticides may be sold for experimental purposes, subject to such restrictions and conditions as may be set forth in the permit.

Section 7. 6-12-9 (4), Colorado Revised Statutes 1963 (1965 Supp.), is amended to read:

6-12-9. Penalties. (4) No distributor of any pesticide shall be prosecuted under the provisions of this article if such pesticide was registered in conformity with this article at the time it was purchased by such distributor providing IF the pesticide is transported, sold, or offered for sale in the registrant's original unbroken container and the label has not been altered or defaced in any manner; BUT ANY DISTRIBUTOR OR CUSTODIAN OF ANY LOT OF PESTICIDES WHO HAS BEEN NOTIFIED IN WRITING IN ACCORDANCE WITH THE PROVISIONS OF SECTION 6-12-7 THAT SAID LOT OF PESTICIDES IS IN VIOLATION OF ANY PROVISION OF THIS ARTICLE OR RULES AND REGULATIONS PROMULGATED HEREUNDER SHALL BE SUBJECT TO ALL PROVISIONS OF THIS SECTION AND SECTION 6-12-10 FOR FAILING TO COMPLY WITH THE "STOP SALE, USE, OR REMOVAL" ORDER.

Section 8. Article 12 of chapter 6, Colorado Revised Statutes 1963, as amended, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

6-12-15. Pesticide dealer license. (1) No person shall act in the capacity of a pesticide dealer or shall engage in the business of, advertise as, or assume to act as a pesticide dealer unless he has obtained an annual license from the commissioner of agriculture which shall expire on December 31 of each year. A license shall be required for each location or outlet from which such pesticides are distributed, sold, held for sale, or offered for sale. An effective applicator's license issued under article 14 of chapter 6, C.R.S. 1963, shall satisfy the requirement of this section.

(2) Application for a license shall be accompanied by an annual license fee of five dollars and shall be on a form prescribed by the commissioner and shall include the full name of the person applying for such license. Such application shall further state the principal business address of the applicant in the state, and elsewhere, and the name of a person domiciled in this state authorized to receive and accept service of process for the applicant, and any other necessary information prescribed by the commissioner. The provisions of this section shall not apply to a pesticide applicator who sells pesticides only as an integral part of his pesticide application service when such pesticides are dispensed only through apparatuses used for such pesticide application. The provisions of this section shall not apply to

any federal, state, or county agency which provides pesticides for their own programs, providing such pesticides are not sold to participants in such programs by said agency.

(3) If an application for renewal of a pesticide dealer license is not filed on or prior to January 1 of any one year, an additional fee of five dollars shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued.

(4) The dealer's license shall be subject to denial, suspension, or revocation after a hearing for any violation of this article or rules and regulations promulgated hereunder, whether committed by the dealer, or by the dealer's officer, agent, or employee.

(5) Every licensed pesticide dealer who changes his address or place of business shall immediately notify the department of his new address.

6-12-16. Handling and storage. No person shall handle, transport, store, display, or distribute pesticides in such a manner as to endanger human life or to endanger any products that may be transported, stored, displayed, or distributed with such pesticides.

6-12-17. Disposal. No person shall dispose of, discard, or store any pesticides or pesticide containers in such a manner as may cause injury to human life, vegetation, crops, livestock, wildlife, pollinating insects, or to pollute any water supply or waterway.

Section 9. Repeal. 6-12-5 (1) (b), Colorado Revised Statutes 1963 (1965 Supp.), is repealed.

Section 10. Effective date. This act shall take effect January 1, 1972.

Section 11. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 24, 1971