

CHAPTER 93

AGRICULTURE

HOUSE BILL 06-1239

BY REPRESENTATIVE(S) Hoppe, Carroll M., Paccione, Stafford, Todd, and Curry;
also SENATOR(S) Isgar, Entz, and Taylor.

AN ACT

CONCERNING CONTINUATION OF THE "PESTICIDE APPLICATORS' ACT".

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

SECTION 1. 35-10-103 (2), (13), and (15) (a) (I), Colorado Revised Statutes, are amended to read:

35-10-103. Definitions. As used in this article, unless the context otherwise requires:

(2) "Commercial applicator" means any person who engages in the business of applying pesticides FOR HIRE or operating a device for hire THAT IS DESIGNATED BY THE COMMISSIONER AS REQUIRING LICENSURE FOR USE UNDER THIS ARTICLE.

(13) "Qualified supervisor" means any individual who, without supervision, evaluates pest problems or recommends pest controls using pesticides or devices ~~or~~ THAT REQUIRE LICENSURE UNDER THIS ARTICLE FOR USE; mixes, ~~or~~ loads, or applies any pesticide; ~~or~~ sells PESTICIDE application services; ~~or~~ operates devices THAT REQUIRE LICENSURE UNDER THIS ARTICLE FOR USE; or supervises others in any of these functions.

(15) (a) "Technician" means any individual who:

(I) Uses, UNDER THE SUPERVISION OF A QUALIFIED SUPERVISOR, a device ~~under the supervision of a qualified supervisor~~ THAT REQUIRES LICENSURE UNDER THIS ARTICLE FOR USE;

SECTION 2. 35-10-106 (1) (b) and (5), Colorado Revised Statutes, are amended

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

to read:

35-10-106. Commercial applicator - license requirements - application - fees.

(1) As requisites for licensure, the applicant for a commercial applicator business license shall:

(b) Employ or secure the services by documented agreement of a qualified supervisor who is licensed in the class or subclass of pesticide application OR DEVICE USE performed by the business;

(5) THE EXPIRATION DATE OF each commercial applicator business license shall ~~expire on January 1 of each year~~ BE DETERMINED BY THE COMMISSIONER, BUT THE DURATION OF SUCH LICENSE SHALL NOT EXCEED THREE YEARS.

SECTION 3. 35-10-107, Colorado Revised Statutes, is amended to read:

35-10-107. Commercial applicator business license - renewals. (1) Each commercial applicator shall make an application to renew its business license on or before the ~~first working day of January for the year of renewal~~ EXPIRATION DATE OF THE LICENSE. Said application shall be in the form and manner prescribed by the commissioner and shall be accompanied by the renewal fee.

(2) If the application for renewal is not postmarked on or before the ~~first working day of January for the year of renewal~~ EXPIRATION DATE OF THE LICENSE, a penalty fee of ten percent of the renewal fee shall be assessed and added to the renewal fee. No license shall be renewed until the total fee is paid.

(3) If the application and fee for renewal are not postmarked on or before ~~February 1~~ THE THIRTIETH DAY FOLLOWING THE EXPIRATION DATE OF THE LICENSE, the business license shall not be renewed, and the commercial applicator shall apply for a new license.

SECTION 4. 35-10-112 (1) (a) and (1) (c), Colorado Revised Statutes, are amended, and the said 35-10-112 (1) is further amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

35-10-112. Notification requirements - registry of pesticide-sensitive persons - preemption - rules. (1) (a) The commissioner shall promulgate rules ~~and regulations~~ for the establishment of a registry of pesticide-sensitive persons to be maintained by the department. Pesticide-sensitive persons may apply to be placed on the registry ~~provided~~ IF they can provide proof of medical justification by a physician licensed in Colorado in the form and manner prescribed by the commissioner. ~~This letter needs to~~ THE PROOF OF MEDICAL JUSTIFICATION SHALL be updated every two years. Said registry shall be updated at least annually, and the published registry shall be ~~provided~~ MADE READILY ACCESSIBLE, IN A FORM AND MANNER PRESCRIBED BY THE COMMISSIONER, to all commercial, limited commercial, and public applicators on record with the commissioner. ~~Names added after the most recently published registry shall be available from the department upon request.~~

(c) (I) A commercial, limited commercial, or public applicator, prior to applying

a pesticide in any turf or ornamental category, shall take reasonable actions to give notice of the date and approximate time of any such pesticide application, prior to the application, to any PESTICIDE-SENSITIVE person ~~who resides on property which abuts the property to be treated and whose name is on the published registry~~ WHOSE NAME IS ON THE PUBLISHED REGISTRY AND:

(A) WHO RESIDES ON THE PROPERTY TO BE TREATED;

(B) RESIDES ON PROPERTY THAT ABUTS THE PROPERTY TO BE TREATED; OR

(C) RESIDES IN A MULTI-UNIT DWELLING THAT ABUTS A COMMON AREA TO BE TREATED.

(II) If two property sites would be considered to be abutting but for the fact that such sites are separated by an alley, for the purposes of this section such sites are deemed to be abutting.

(d) A COMMERCIAL, LIMITED COMMERCIAL, OR PUBLIC APPLICATOR IN THE WOOD-DESTROYING ORGANISM PEST CONTROL, RESIDENTIAL OR COMMERCIAL PEST CONTROL, OR INTERIOR PLANT PEST CONTROL CATEGORIES, PRIOR TO MAKING A STRUCTURAL PESTICIDE APPLICATION TO A MULTI-UNIT DWELLING, SHALL TAKE REASONABLE ACTIONS TO GIVE NOTICE OF THE DATE AND APPROXIMATE TIME OF ANY SUCH PESTICIDE APPLICATION, PRIOR TO THE APPLICATION, TO ANY PESTICIDE-SENSITIVE PERSON WHOSE NAME IS ON THE PUBLISHED REGISTRY AND WHO RESIDES AT THAT MULTI-UNIT DWELLING.

(e) THE COMMISSIONER MAY ESTABLISH RULES TO FURTHER CLARIFY THE CIRCUMSTANCES AND MANNER IN WHICH NOTICE SHALL BE GIVEN TO PESTICIDE-SENSITIVE PERSONS.

SECTION 5. 35-10-115 (1) (a), Colorado Revised Statutes, is amended to read:

35-10-115. Qualified supervisor and certified operator licenses - examination - application - fees. (1) Each applicant for a qualified supervisor or certified operator license shall:

(a) Pass a written examination in each class or subclass of pesticide application, OR DEVICE USE, in which he OR SHE wishes to be licensed;

SECTION 6. 35-10-116 (1), Colorado Revised Statutes, is amended, and the said 35-10-116 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

35-10-116. Qualified supervisor and certified operator licenses - expiration - renewal of licenses - reinstatement. (1) Licenses issued pursuant to section 35-10-115 shall be valid for ~~three years and shall expire on the anniversary date of such license~~ A PERIOD DETERMINED BY THE COMMISSIONER, BUT THE DURATION OF SUCH LICENSE SHALL NOT EXCEED THREE YEARS.

(6) NOTWITHSTANDING SUBSECTION (5) OF THIS SECTION, ANY LICENSE ISSUED PURSUANT TO THIS SECTION THAT IS NOT RENEWED ON OR BEFORE THE EXPIRATION

DATE OF THE LICENSE MAY BE REINSTATED WITHIN ONE HUNDRED EIGHTY DAYS AFTER THE EXPIRATION DATE UPON:

(a) APPLICATION AND PAYMENT OF A REINSTATEMENT FEE AS DETERMINED BY THE COMMISSIONER; AND

(b) PROOF THAT ALL RENEWAL REQUIREMENTS HAVE BEEN SATISFIED AS OF THE EXPIRATION DATE OF THE LICENSE.

(7) LICENSES NOT REINSTATED WITHIN ONE HUNDRED EIGHTY DAYS AFTER THE EXPIRATION DATE SHALL NOT BE REINSTATED. THE FORMER HOLDER OF SUCH A LICENSE WHO WISHES TO BE LICENSED SHALL APPLY FOR A NEW LICENSE.

SECTION 7. 35-10-117 (2) (b), (2) (c), (2) (d), (3) (b), (3) (c) (I), and (4) (a), Colorado Revised Statutes, are amended, and the said 35-10-117 (2) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

35-10-117. Unlawful acts. (2) It is unlawful and a violation of this article for any person acting as a commercial, limited commercial, or public applicator, or as a qualified supervisor, or as a certified operator:

(b) To use or recommend the use of any pesticide ~~or device~~ not registered with the department pursuant to article 9 of this title or to use or recommend the use of a pesticide ~~or device~~ in any manner inconsistent with the restrictions of the commissioner or the administrator;

(b.5) TO USE OR RECOMMEND THE USE OF ANY DEVICE THAT REQUIRES LICENSURE FOR USE IN ANY MANNER INCONSISTENT WITH THE RESTRICTIONS OF THE COMMISSIONER OR THE ADMINISTRATOR;

(c) To use any device THAT REQUIRES LICENSURE FOR USE or ANY pesticide, or to direct or recommend such use, without providing appropriate supervision, including, but not limited to, the application of any pesticide without providing the supervision of a qualified supervisor licensed in that class or subclass of pesticide application;

(d) To maintain or supervise the maintenance of any device THAT REQUIRES LICENSURE FOR USE or pesticide application equipment, including, but not limited to, loading pumps, hoses, or metering devices, in an unsafe or negligent manner;

(3) It is unlawful and a violation of this article for any commercial applicator, qualified supervisor, or certified operator:

(b) To use or supervise or recommend the use of any device THAT REQUIRES LICENSURE FOR USE, or ANY pesticide, which, including but not limited to generally accepted standards of practice, would be ineffective or inappropriate for the pest problem being treated;

(c) (I) To use any device THAT REQUIRES LICENSURE FOR USE or apply any pesticide or to recommend or supervise such acts in any manner ~~which~~ THAT fails to meet generally accepted standards for such use or application except as provided

by subparagraph (II) of this paragraph (c).

(4) It is unlawful and a violation of this article for any commercial applicator:

(a) To operate any device THAT REQUIRES LICENSURE FOR USE, or to apply any pesticide, if the insurance required by section 35-10-106 (1) (a) is not in full force and effect at the time of such use or application, or if it does not have on file with the department, in the form and manner designated by the commissioner, verification that said insurance is in full force and effect;

SECTION 8. The introductory portion to 35-10-118 (2) and 35-10-118 (2) (a) and (2) (d), Colorado Revised Statutes, are amended to read:

35-10-118. Powers and duties of the commissioner. (2) The commissioner is authorized to adopt all reasonable rules ~~and regulations~~ for the administration and enforcement of this article, including, but not limited to:

(a) The regulation of all aspects of pesticide application, including, but not limited to, the storage, use, application, and disposal of any pesticide or device THAT REQUIRES LICENSURE FOR USE by any person subject to this article;

~~(d) The amount of the license fee for a commercial applicator business license, not to exceed two hundred fifty dollars through licensing year 1991 and three hundred fifty dollars thereafter, and such fee may be less than that in effect on May 31, 1990~~ THE CONTENT OF THE EXAMINATION REQUIRED FOR THE ADMINISTRATION OF THIS ARTICLE AND THE AMOUNT OF ANY EXAMINATION AND EXAMINATION GRADING FEE.

SECTION 9. 35-10-118 (3), Colorado Revised Statutes, is amended, and the said 35-10-118 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

35-10-118. Powers and duties of the commissioner. (3) ~~The commissioner shall determine the content of each such examination required for the administration of this article and the amount of any examination and examination grading fee. Any examination grading fee established by the commissioner is limited to the actual administrative costs incurred in the grading of examinations. The commissioner shall establish a passing score for each examination which reflects a minimum level of competency in the class or subclass for which the applicant is being tested. THE COMMISSIONER SHALL, FOR EXAMINATIONS REQUIRED FOR ANY LICENSE UNDER THIS ARTICLE:~~

(a) DEVELOP EACH SUCH EXAMINATION, OR ADOPT A COMMERCIALY STANDARDIZED EXAMINATION, REQUIRED FOR THE ADMINISTRATION OF THIS ARTICLE AND THE AMOUNT OF ANY EXAMINATION AND EXAMINATION GRADING FEE;

(b) ESTABLISH A PASSING SCORE FOR EACH EXAMINATION THAT REFLECTS A MINIMUM LEVEL OF COMPETENCY IN THE CLASS OR SUBCLASS FOR WHICH THE APPLICANT IS BEING TESTED;

(c) ADMINISTER EACH SUCH EXAMINATION OR CONTRACT WITH A PERSON,

CORPORATION, OR OTHER ENTITY TO ADMINISTER EACH SUCH EXAMINATION.

(9.5) THE COMMISSIONER SHALL DESIGNATE BY RULE WHICH DEVICES, WHEN OPERATED FOR HIRE, REQUIRE THE OPERATOR TO BE LICENSED AS A COMMERCIAL APPLICATOR. LICENSURE SHALL BE REQUIRED ONLY FOR THE USE OF THOSE DEVICES THAT, AS DETERMINED BY THE COMMISSIONER, MAY CONSTITUTE A SIGNIFICANT RISK TO PUBLIC HEALTH OR SAFETY.

SECTION 10. 35-10-119 (1) and (4) (a), Colorado Revised Statutes, are amended to read:

35-10-119. Inspections - investigations - access - subpoena. (1) The commissioner shall provide for the inspection and analysis of pesticides being used and for the inspection of equipment, devices THAT REQUIRE LICENSURE FOR USE, or apparatus used for the application of pesticides, and ~~he~~ THE COMMISSIONER may require proper repairs or other changes before further use.

(4) At any reasonable time during regular business hours, the commissioner shall have free and unimpeded access upon consent or upon obtaining an administrative search warrant:

(a) To all buildings, yards, warehouses, and storage facilities in which any devices THAT REQUIRE LICENSURE FOR USE, pesticides, containers, rinsates, or other related materials are kept, used, stored, handled, processed, disposed of, or transported for the purpose of carrying out any provision of this article or any rule made pursuant to this article;

SECTION 11. 35-10-125 (2)(h), Colorado Revised Statutes, is amended to read:

35-10-125. Advisory committee - sunset review. (2) The committee shall consist of the following members:

(h) A representative from the COLORADO department of PUBLIC health AND ENVIRONMENT; and

SECTION 12. Repeal. 35-10-127, Colorado Revised Statutes, is repealed as follows:

35-10-127. Deadline for promulgation of rules and regulations for implementation of article, as amended. ~~Any rules and regulations necessary for the implementation of this article, as amended at the second regular session of the fifty-seventh general assembly, shall be promulgated by the commissioner no later than December 31, 1991.~~

SECTION 13. 35-10-128, Colorado Revised Statutes, is amended to read:

35-10-128. Repeal of article - termination of functions. Effective July 1, 2006 2015, this article ~~shall be~~ IS repealed. The licensing function of the commissioner of agriculture shall also terminate on July 1, 2006 2015. Prior to such repeal and termination, the licensing function shall be reviewed as provided for in section 24-34-104, C.R.S., and, as part of such review, the department of regulatory

agencies shall report on the extent of local regulation of pesticides pursuant to section 31-15-707 (1) (b), C.R.S., or under the police power of any political subdivision of the state.

SECTION 14. Repeal. 24-34-104 (37) (b), Colorado Revised Statutes, is repealed as follows:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (37) The following agencies, functions, or both, shall terminate on July 1, 2006:

(b) ~~The licensing of commercial applicators, qualified supervisors, and certified operators through the commissioner of agriculture in accordance with article 10 of title 35, C.R.S.;~~

SECTION 15. 24-34-104 (46), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (46) The following agencies, functions, or both, shall terminate on July 1, 2015:

(i) THE LICENSING OF COMMERCIAL APPLICATORS, QUALIFIED SUPERVISORS, AND CERTIFIED OPERATORS THROUGH THE COMMISSIONER OF AGRICULTURE IN ACCORDANCE WITH ARTICLE 10 OF TITLE 35, C.R.S.

SECTION 16. Effective date - applicability. This act shall take effect July 1, 2006, and shall apply to acts committed on or after said date.

SECTION 17. 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: March 31, 2006