

CHAPTER 260

HEALTH AND ENVIRONMENT

SENATE BILL 96-086

BY SENATOR Mutzebaugh;
also REPRESENTATIVES Nichol, Acquafresca, and Entz.

AN ACT

CONCERNING THE REGULATION OF PESTICIDE APPLICATIONS BY THE COMMISSIONER OF AGRICULTURE, AND, IN CONNECTION THEREWITH, CONTINUING THE AUTHORITY OF THE COMMISSIONER OF AGRICULTURE TO LICENSE COMMERCIAL APPLICATORS OF PESTICIDES, QUALIFIED SUPERVISORS, AND CERTIFIED OPERATORS THROUGH THE YEAR 2006.

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

SECTION 1. 35-10-103 (8) and (15) (a) (II), Colorado Revised Statutes, 1995 Repl. Vol., are amended, and the said 35-10-103 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

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

(8) "Limited commercial applicator" means any person engaged in applying pesticides in the course of conducting a business; except that such application shall be only in or on property owned OR LEASED by the person or the person's employer.

(8.5) "LOCAL GOVERNMENT" MEANS A COUNTY, HOMERULE COUNTY, CITY, TOWN, CITY AND COUNTY, HOME RULE CITY, SPECIAL DISTRICT, OR OTHER POLITICAL SUBDIVISION OF THE STATE.

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

(II) Mixes, LOADS, or applies general use pesticides under the supervision of a qualified supervisor, MIXES OR LOADS RESTRICTED USE PESTICIDES UNDER THE SUPERVISION OF A QUALIFIED SUPERVISOR, or APPLIES restricted use pesticides under the on-site supervision of a qualified supervisor; or

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

(18) "USE" MEANS ALL ASPECTS OF THE HANDLING OF PESTICIDES, INCLUDING BUT NOT LIMITED TO THE MIXING, LOADING, APPLICATION OR ADMINISTRATION, SPILL CONTROL, AND DISPOSAL OF A PESTICIDE OR ITS CONTAINER.

SECTION 2. 35-10-112 (1) (a), (1) (c), and (3), Colorado Revised Statutes, 1995 Repl. Vol., are amended to read:

35-10-112. Notification requirements - registry of pesticide-sensitive persons - preemption. (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 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 BE UPDATED EVERY TWO YEARS. ~~and shall pay an administrative fee in an amount to be determined by the commissioner.~~ Said registry shall be updated at least annually and the published registry shall be provided 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) 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 person who resides on property which abuts the property to be treated and whose name is on the published registry. 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.

(3) No county, city and county, ~~or~~ municipality, HOME RULE COUNTY, HOME RULE CITY AND COUNTY, OR HOME RULE MUNICIPALITY shall enact or impose any notification requirements upon commercial applicators which are more stringent than those imposed by this article; except that each county, city and county, ~~and~~ municipality, HOME RULE COUNTY, HOME RULE CITY AND COUNTY, AND HOME RULE MUNICIPALITY shall retain the authority to impose any notification requirements upon private individuals, property owners, and the general public. Any such notification requirement imposed by any county, city and county, ~~or~~ municipality, HOME RULE COUNTY, HOME RULE CITY AND COUNTY, OR HOME RULE MUNICIPALITY on private individuals, property owners, or the general public shall not be held to be applicable to any commercial applicator, nor shall any commercial applicator be exposed to any liability for a failure to comply with any such notification requirement.

SECTION 3. 35-10-112 (2), Colorado Revised Statutes, 1995 Repl. Vol., is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

35-10-112. Notification requirements - registry of pesticide-sensitive persons - preemption. (2) (d) IF A COMMERCIAL OR LIMITED COMMERCIAL APPLICATOR MAKES A PESTICIDE APPLICATION ON A COMMERCIAL PROPERTY SITE PURSUANT TO PARAGRAPHS (a) OR (b) OF THIS SUBSECTION (2) AND AN OWNER OF THE SITE OR AN AGENT OF AN OWNER OF THE SITE IS NOT PRESENT AT THE SITE, THEN, IN ADDITION TO

THE INFORMATION REQUIRED BY PARAGRAPH (c) OF THIS SUBSECTION (2), THE NOTICE-OF-APPLICATION SIGNS POSTED BY THE APPLICATOR AT THE SITE SHALL ALSO CONTAIN THE FOLLOWING INFORMATION IN BLACK LETTERING AND SYMBOLS ON A BRIGHT YELLOW BACKGROUND IN AT LEAST EIGHTEEN-POINT BOLDFACED TYPE:

- (I) THE TELEPHONE NUMBER OF THE APPLICATOR;
- (II) THE NAME OF THE PESTICIDE APPLIED; AND
- (III) THE DATE THE PESTICIDE WAS APPLIED.

SECTION 4. Article 10 of title 35, Colorado Revised Statutes, 1995 Repl. Vol., is amended BY THE ADDITION OF A NEW SECTION to read:

35-10-112.5. Statewide uniformity of pesticide control and regulation - exceptions. (1) THE GENERAL ASSEMBLY HEREBY DETERMINES THAT THE CITIZENS OF THIS STATE BENEFIT FROM A SYSTEM OF SAFE, EFFECTIVE, AND SCIENTIFICALLY SOUND PESTICIDE REGULATION. THE GENERAL ASSEMBLY FURTHER FINDS THAT A SYSTEM OF PESTICIDE REGULATION THAT IS CONSISTENT AND COORDINATED, THAT CREATES STATEWIDE UNIFORM STANDARDS, AND THAT CONFORMS WITH BOTH STATE AND FEDERAL TECHNICAL STANDARDS AND REQUIREMENTS IS ESSENTIAL TO THE PUBLIC HEALTH, SAFETY, AND WELFARE, AND FINDS THAT LOCAL REGULATION OF PESTICIDES THAT IS INCONSISTENT WITH AND ADOPTS DIFFERENT STANDARDS FROM FEDERAL AND STATE REQUIREMENTS DOES NOT ASSIST IN ACHIEVING THESE BENEFITS. THE GENERAL ASSEMBLY ALSO FINDS AND DECLARES THAT, THROUGH STATUTE AND REGULATION, THE STATE HAS CREATED A SYSTEM OF PESTICIDE REGULATION BASED UPON SCIENTIFIC STANDARDS THAT PROTECTS THE CITIZENS OF THIS STATE. THE GENERAL ASSEMBLY EXPRESSLY FINDS AND DECLARES THAT PESTICIDE REGULATION IS A MATTER OF STATEWIDE CONCERN.

(2) NO LOCAL GOVERNMENT SHALL ADOPT OR CONTINUE IN EFFECT ANY ORDINANCE, RULE, RESOLUTION, CHARTER PROVISION, OR STATUTE REGARDING THE USE OF ANY PESTICIDE BY PERSONS REGULATED BY THIS ARTICLE OR FEDERAL LAW AND PERTAINING TO:

(a) ANY LABELING OR REGISTRATION REQUIREMENTS FOR PESTICIDES, INCLUDING REQUIREMENTS REGARDING THE NAME OF THE PRODUCT, THE NAME AND ADDRESS OF THE MANUFACTURER, AND ANY APPLICABLE REGISTRATION NUMBERS;

(b) USE AND APPLICATION OF PESTICIDES BY PERSONS REGULATED BY THIS ARTICLE OR FEDERAL LAW, INCLUDING, BUT NOT LIMITED TO, DIRECTIONS FOR USE, CLASSIFICATION OF PESTICIDES AS GENERAL OR RESTRICTED USE, MIXING AND LOADING, SITE OF APPLICATION, TARGET PEST, DOSAGE RATE, METHOD OF APPLICATION, APPLICATION EQUIPMENT, FREQUENCY AND TIMING OF APPLICATIONS, APPLICATION RATE, REENTRY INTERVALS, WORKER SPECIFICATIONS, CONTAINER STORAGE AND DISPOSAL, REQUIRED INTERVALS BETWEEN APPLICATION AND HARVEST OF FOOD OR FEED CROPS, ROTATIONAL CROP RESTRICTIONS, AND WARNINGS AGAINST USE ON CERTAIN CROPS, ANIMALS, OR OBJECTS OR AGAINST USE IN OR ADJACENT TO CERTAIN AREAS;

(c) EXCEPT AS SPECIFICALLY PROVIDED IN THIS ARTICLE, ANY WARNINGS AND

PRECAUTIONARY STATEMENTS, NOTIFICATIONS, OR STATEMENTS OF PRACTICAL TREATMENT; OR

(d) LICENSURE, TRAINING, OR CERTIFICATION REQUIREMENTS FOR PERSONS REGULATED UNDER THIS ARTICLE, INCLUDING ANY INSURANCE AND RECORD-KEEPING REQUIREMENTS.

(3) (a) NOTHING IN THIS ARTICLE MAY BE CONSTRUED TO LIMIT THE AUTHORITY OF A LOCAL GOVERNMENT AS DEFINED BY STATE LAW TO:

(I) ZONE FOR THE SALE OR STORAGE OF ANY PESTICIDE, PROVIDE OR DESIGNATE SITES FOR DISPOSAL OF ANY PESTICIDE OR PESTICIDE CONTAINER, ADOPT OR ENFORCE BUILDING AND FIRE CODE REQUIREMENTS, REGULATE THE TRANSPORTATION OF PESTICIDES CONSISTENTLY WITH AND IN NO MORE STRICT OF A MANNER THAN STATE AND FEDERAL LAW, ADOPT REGULATIONS PURSUANT TO A STORM WATER MANAGEMENT PROGRAM THAT IS CONSISTENT WITH FEDERAL OR STATE LAW, OR ADOPT REGULATIONS TO PROTECT SURFACE OR GROUNDWATER DRINKING WATER SUPPLIES CONSISTENT WITH STATE OR FEDERAL LAW CONCERNING THE PROTECTION OF DRINKING WATER SUPPLIES;

(II) TAKE ANY ACTION SPECIFICALLY AUTHORIZED OR REQUIRED BY ANY FEDERAL OR STATE LAW OR REGULATION WITH RESPECT TO PESTICIDES, OR TO TAKE ANY ACTION OTHERWISE PROHIBITED BY THIS ARTICLE IN ORDER TO COMPLY WITH ANY SPECIFIC FEDERAL OR STATE REQUIREMENT OR IN ORDER TO AVOID A FINE OR OTHER PENALTY UNDER FEDERAL OR STATE LAW;

(III) REGULATE THE USE OF PESTICIDES ON PROPERTY OWNED OR LEASED BY THE LOCAL GOVERNMENT;

(IV) ISSUE LOCAL GENERAL OCCUPATIONAL LICENSES TO PERSONS REGULATED BY THIS ARTICLE.

(b) THIS SUBSECTION (3) MAY NOT BE CONSTRUED TO AUTHORIZE A LOCAL GOVERNMENT TO UTILIZE THE AUTHORITY TO ZONE, TO PROVIDE OR DESIGNATE DISPOSAL SITES, TO ADOPT AND ENFORCE BUILDING AND FIRE CODES, OR TO REGULATE THE TRANSPORTATION OF PESTICIDES AS DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (3) TO DIRECTLY OR INDIRECTLY REGULATE OR PROHIBIT THE APPLICATION OF PESTICIDES BY PERSONS REGULATED BY THIS ARTICLE OR BY FEDERAL LAW.

(c) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO BE AN IMPLICIT GRANT OF AUTHORITY TO A LOCAL GOVERNMENT THAT IS NOT OTHERWISE GRANTED BY STATE LAW.

(4) ANY LOCAL GOVERNMENT THAT PROMULGATES AN ORDINANCE THAT CONCERNS PESTICIDES, THAT IS PROMULGATED PURSUANT TO SECTION 31-15-707 (1) (b), C.R.S., OR THAT IS PROMULGATED PURSUANT TO ANY AUTHORITY DESCRIBED IN PARAGRAPH (a) OF SUBSECTION (3) OF THIS SECTION CONCERNING PESTICIDES SHALL FILE THE FOLLOWING WITH THE DEPARTMENT OF AGRICULTURE:

(a) A CERTIFIED COPY OF THE ORDINANCE; AND

(b) A MAP OR LEGAL DESCRIPTION OF THE GEOGRAPHIC AREA THAT THE LOCAL GOVERNMENT INTENDS TO REGULATE UNDER THE ORDINANCE.

SECTION 5. 35-10-114, Colorado Revised Statutes, 1995 Repl. Vol., is amended to read:

35-10-114. Certified operator - license required. ~~On and after a date determined by the commissioner pursuant to rules and regulations;~~ Any individual acting as a certified operator ~~must~~ SHALL possess a valid certified operator license issued by the commissioner in accordance with this article and any rules and regulations adopted pursuant thereto.

SECTION 6. 35-10-118 (2) (c) and (3), Colorado Revised Statutes, 1995 Repl. Vol., are 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. (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:

(c) The issuance and reinstatement of any license authorized under this article and the grounds for any disciplinary actions authorized under this article, including letters of admonition, other discipline through stipulation, or the RESTRICTION, PROBATION, denial, suspension, or revocation of any license authorized under this article;

(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. ~~He~~ 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.

(8.5) (a) THE DEPARTMENT MAY PROVIDE THE FOLLOWING ONLY TO THE EXTENT OF FUNDING RECEIVED PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (8.5):

(I) EDUCATION PROGRAMS FOR URBAN RESIDENTS REGARDING THE PROPER USE OF PESTICIDES AND REGARDING THE DANGERS OF MISUSE OR OVERUSE OF PESTICIDES; AND

(II) EDUCATION PROGRAMS FOR FIREFIGHTERS REGARDING PRECAUTIONS AND PROCEDURES THAT ARE NECESSARY WHEN FIGHTING FIRES THAT INVOLVE OR ARE IN THE VICINITY OF PESTICIDES OR FERTILIZERS.

(b) THE COMMISSIONER IS AUTHORIZED TO ACCEPT GIFTS, GRANTS, AND DONATIONS OF ANY KIND FROM ANY PRIVATE OR PUBLIC SOURCE FOR THE PURPOSES OF THIS SUBSECTION (8.5). THE COMMISSIONER SHALL TRANSMIT ALL SUCH GIFTS, GRANTS, OR DONATIONS TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE COMMERCIAL PESTICIDE APPLICATOR FUND CREATED IN SECTION 35-10-126.

SECTION 7. 35-10-120 (2), Colorado Revised Statutes, 1995 Repl. Vol., is

amended to read:

35-10-120. Enforcement. (2) Whenever the commissioner has reasonable cause to believe a violation of any provision of this article or any rule made pursuant to this article has occurred and immediate enforcement is deemed necessary, ~~he~~ THE COMMISSIONER may issue a cease and desist order, which may require any person to cease violating any provision of this article or any rule made pursuant to this article. Such cease and desist order shall set forth the provisions alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all actions cease forthwith. At any time after service of the order to cease and desist, the person may request, at ~~his~~ THE PERSON'S discretion, ~~an immediate~~ A hearing TO BE HELD WITHIN A REASONABLE PERIOD OF TIME to determine whether or not such violation has occurred. Such hearing shall be conducted pursuant to the provisions of article 4 of title 24, C.R.S., and shall be determined promptly.

SECTION 8. The introductory portion to 35-10-121 (1), Colorado Revised Statutes, 1995 Repl. Vol., is amended, and the said 35-10-121 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

35-10-121. Disciplinary actions - denial of license. (1) The commissioner ~~pursuant to the provisions of article 4 of title 24, C.R.S.;~~ may issue letters of admonition, IMPOSE OTHER DISCIPLINE THROUGH STIPULATION, or RESTRICT, IMPOSE PROBATION ON, deny, suspend, refuse to renew, or revoke any license authorized under this article if the applicant or licensee:

(2.5) PROCEEDINGS UNDER THIS SECTION SHALL BE CONDUCTED PURSUANT TO THE PROVISIONS OF ARTICLE 4 OF TITLE 24, C.R.S.; EXCEPT THAT SECTION 24-4-104 (3), C.R.S., SHALL NOT APPLY TO SUCH PROCEEDINGS IN CASES OF DELIBERATE OR WILLFUL VIOLATION; IN CASES OF VIOLATION OF LABELING DIRECTIONS OR REQUIREMENTS; OR IN CASES IN WHICH THE ACTIONS OR OMISSIONS OF THE LICENSEE IN VIOLATIONS OF THIS ARTICLE HAVE CAUSED OR THREATENED TO CAUSE SUBSTANTIAL DANGER OR HARM TO PUBLIC HEALTH AND SAFETY, TO PROPERTY, OR TO THE ENVIRONMENT, AS DEFINED BY THE COMMISSIONER PURSUANT TO SECTION 35-10-118 (2). IN SUCH CASES, NO REVOCATION, SUSPENSION, LIMITATION, OR MODIFICATION OF A LICENSE SHALL BE LAWFUL UNLESS THE COMMISSIONER HAS GIVEN THE LICENSEE NOTICE IN WRITING REGARDING ANY FACTS OR CONDUCT THAT MAY WARRANT SUCH ACTION AND HAS AFFORDED THE LICENSEE OPPORTUNITY TO SUBMIT WRITTEN DATA, VIEWS, AND ARGUMENTS WITH RESPECT TO SUCH FACTS OR CONDUCT.

(4) ANY PERSON AGGRIEVED BY A FINAL DISCIPLINARY ACTION TAKEN BY THE COMMISSIONER MAY APPEAL SUCH ACTION TO THE COLORADO COURT OF APPEALS IN ACCORDANCE WITH SECTION 24-4-106 (11), C.R.S.

SECTION 9. 35-10-122 (1), (2), and (4), Colorado Revised Statutes, 1995 Repl. Vol., are amended to read:

35-10-122. Civil penalties. (1) Any person who violates any provision of this article or any rule or regulation adopted pursuant to this article is subject to a civil penalty, as determined by the commissioner OR A COURT OF COMPETENT JURISDICTION. The maximum penalty shall not exceed one thousand dollars per

violation; except that such penalty may be doubled if it is determined, after notice and an opportunity for hearing, that the person has violated the provision, rule, or regulation for the second time.

(2) No civil penalty may be imposed BY THE COMMISSIONER unless the person charged is given notice and opportunity for a hearing pursuant to article 4 of title 24, C.R.S.

(4) Before imposing any civil penalty, the commissioner OR A COURT OF COMPETENT JURISDICTION may consider the effect of such penalty on the ability of the person charged to stay in business.

SECTION 10. 35-10-128, Colorado Revised Statutes, 1995 Repl. Vol., is amended to read:

35-10-128. Repeal of article - termination of functions. Effective ~~July 1, 1996,~~ JULY 1, 2006, this article shall be repealed. The licensing function of the commissioner of agriculture shall also terminate on ~~July 1, 1996~~ JULY 1, 2006. 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 11. 24-34-104 (25.1) (f), Colorado Revised Statutes, 1988 Repl. Vol., as amended, is repealed as follows:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (25.1) The following functions of the specified agencies shall terminate on July 1, 1996:

(f) ~~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 12. 24-34-104, Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (37) THE FOLLOWING FUNCTIONS OF THE SPECIFIED AGENCY SHALL TERMINATE ON JULY 1, 2006: 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 13. Effective date - applicability. This act shall take effect July 1, 1996, and shall apply to acts occurring on or after said date.

SECTION 14. 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: June 1, 1996