

Utah Pesticide Control Act (Chapter 14)

4-14-1. Short title.

This chapter shall be known and may be cited as the "Utah Pesticide Control Act."

4-14-2. Definitions.

As used in this chapter:

- (1) "Active ingredient" means any ingredient which prevents, destroys, repels, controls, or mitigates pests, or which acts as a plant regulator, defoliant, or desiccant.
- (2) "Adulterated pesticide" means any pesticide the strength or purity of which is below the standard of quality expressed on the label under which it is offered for sale.
- (3) "Animal" means all vertebrate or invertebrate species.
- (4) "Beneficial insect" means any insect which is an effective pollinator of plants, or which is a parasite or predator of pests, or is otherwise beneficial.
- (5) "Defoliant" means any substance or mixture intended to cause leaves or foliage to drop from a plant, with or without causing abscission.
- (6) "Desiccant" means any substance or mixture intended to artificially accelerate the drying of plant or animal tissue.
- (7) "Distribute" means to offer for sale, sell, barter, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver pesticides in this state.
- (8) "Environment" means all living plants and animals, water, air, land, and the interrelationships which exist between them.
- (9) (a) "Equipment" means any type of ground, water, or aerial equipment or contrivance using motorized, mechanical, or pressurized power to apply a pesticide.
(b) "Equipment" does not mean any pressurized hand-sized household apparatus used to apply a pesticide or any equipment or contrivance used to apply a pesticide which is dependent solely upon energy expelled by the person making the pesticide application.
- (10) "EPA" means the United States Environmental Protection Agency.
- (11) "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act.
- (12) "Fungus" means any nonchlorophyll-bearing thallophyte (that is, any nonchlorophyll-bearing plant of an order lower than mosses and liverworts), for example, rust, smut, mildew, mold, yeast and bacteria, except those on or in living man or other animals, and except those on or in processed food, beverages, or pharmaceuticals.
- (13) "Insect" means any invertebrate animal generally having a more or less obviously segmented body, for the most part belonging to the Class Insecta, comprising six-legged, usually winged forms; for example, beetles, bugs, bees, flies, and allied classes of arthropods that are wingless usually having more than six legs, as for example, spiders, mites, ticks, centipedes, and wood lice.
- (14) "Label" means any written, printed, or graphic matter on, or attached to, a pesticide or a container or wrapper of a pesticide.
- (15) "Labeling" means all labels and all other written, printed, or graphic matter:
 - (a) accompanying a pesticide or equipment; or
 - (b) to which reference is made on the label or in literature accompanying a pesticide or equipment, except to current official publications of the EPA, the United States Departments of Agriculture or Interior, the Department of Health, Education, and Welfare, state experimental stations, state agricultural colleges, and other federal or state

institutions or agencies authorized by law to conduct research in the field of pesticides.

(16) "Land" means all land, water, air, and all plants, animals, structures, buildings, contrivances, and machinery appurtenant or situated thereon, whether fixed or mobile, including any used for transportation.

(17) "Misbranded" means any label or labeling which is false or misleading or which does not strictly comport with the label and labeling requirements set forth in Section **4-14-4**.

(18) "Misuse" means use of any pesticide in a manner inconsistent with its label or labeling.

(19) "Nematode" means invertebrate animals of the Phylum Nematelminthes and Class Nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, also known as nemas or eelworms.

(20) "Pest" means:

(a) any insect, rodent, nematode, fungus, weed; or

(b) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism which is injurious to health or to the environment or which the commissioner declares to be a pest; except, viruses, bacteria, or other microorganisms on or in living man or other living animals, or protected wildlife species identified in Section **23-13-2** which are regulated by the Division of Wildlife Resources in accordance with Sections **23-14-1** through **23-14-3**.

(21) "Pesticide" means any:

(a) substance or mixture of substances including a living organism which is intended to prevent, destroy, control, repel, attract, or mitigate any insect, rodent, nematode, snail, slug, fungus, weed, or other form of plant or animal life that is normally considered to be a pest or that the commissioner declares to be a pest;

(b) any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant;

(c) any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, adhesive, or emulsifying agent with deflocculating properties of its own used with a pesticide to aid its application or effect; and

(d) any other substance designated by the commissioner by rule.

(22) "Pesticide dealer" means any person who distributes restricted use pesticides.

(23) "Plant regulator" means any substance or mixture intended, through physiological action, to accelerate or retard the rate of growth or rate of maturation, or otherwise alter the behavior of ornamental or crop plants, but it does not mean plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments.

(24) "Restricted use pesticide" means any pesticide, including a highly toxic pesticide which is a serious hazard to beneficial insects, animals, or land; or any pesticide or pesticide use restricted by the administrator of EPA or by the commissioner.

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

(26) "Wildlife" means all living things that are neither human, domesticated, nor pests.

4-14-3. Registration required for distribution -- Application -- Fees -- Renewal -- Local needs registration -- Distributor or applicator license -- Fees -- Renewal.

(1) No person may distribute a pesticide in this state which is not registered with the department. Application for registration shall be made to the department upon forms

prescribed and furnished by it accompanied with an annual registration fee determined by the department pursuant to Subsection **4-2-2** (2) for each pesticide registered. Upon receipt by the department of a proper application and payment of the appropriate fee, the commissioner shall issue a registration to the applicant allowing distribution of the registered pesticide in this state through June 30 of each year, subject to suspension or revocation for cause. Each registration is renewable for a period of one year upon the payment of an annual registration renewal fee in an amount equal to the current applicable original registration fee. Each renewal fee shall be paid on or before June 30 of each year.

(2) The application shall include the following information:

- (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 the applicant's name;
- (b) the name of the pesticide;
- (c) a complete copy of the label which will appear on the pesticide; and
- (d) any information prescribed by regulation of the department deemed necessary for the safe and effective use of the pesticide.

(3) Forms for the renewal of registration shall be mailed to registrants at least 30 days before their registration expires. A registration in effect on June 30 for which a renewal application has been filed and the registration fee tendered shall continue in effect until the applicant is notified either that the registration is renewed or that it is suspended or revoked pursuant to Section **4-14-8**.

(4) The department may, before approval of any registration, require the applicant to submit the complete formula of any pesticide including active and inert ingredients and may also, for any pesticide not registered pursuant to Section (3) of FIFRA or for any pesticide on which restrictions are being considered, require a complete description of all tests and test results that support the claims made by the applicant or the manufacturer of the pesticide.

(5) A registrant who desires to register a pesticide to meet special local needs pursuant to Section 24(c) of FIFRA shall, in addition to complying with Subsections (1) and (2), satisfy the department that:

- (a) a special local need exists;
- (b) the pesticide warrants the claims made for it;
- (c) the pesticide, if used in accordance with commonly accepted practices, will not cause unreasonable adverse effects on the environment; and
- (d) the proposed classification for use conforms with Section 3(d) of FIFRA.

(6) No registration is required for a pesticide distributed in this state pursuant to an experimental use permit issued by the EPA or under Section **4-14-5**.

(7) No pesticide dealer may distribute a restricted use pesticide in this state without a license. No person may apply a pesticide for hire in this state without a license. A license to engage in either activity may be obtained upon application from the department upon the payment of a license fee determined by the department pursuant to Subsection **4-2-2** (2), which shall entitle the applicant to engage in the otherwise proscribed activity through December 31 of the year in which the license is issued. Such a license is annually renewable upon the payment of an annual

license renewal fee determined by the department pursuant to Subsection **4-2-2** (2).

4-14-4. Labeling requirement for pesticides specified.

- (1) Each container of pesticide distributed in this state shall bear a label setting forth:
 - (a) the name, brand, or trademark under which it is distributed;
 - (b) an accurate statement of the ingredients 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;
 - (c) a warning or caution statement if necessary, which, if complied with together with any requirements imposed under Section 3(d) of FIFRA, is adequate to protect the health and environment;
 - (d) the net weight or measure of the content;
 - (e) the name and address of the manufacturer, registrant, or person for whom manufactured;
 - (f) 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;
 - (g) the federal use classification under which the pesticide is registered or designated for "experimental use only"; and
 - (h) directions for use of the pesticide sufficient to effectuate the purposes for which the product is intended and which, if complied with together with any requirements imposed under Section 3(d) of FIFRA, are adequate to protect health and the environment.
- (2) If the pesticide is highly toxic the label shall, in addition to the other label requirements, display:
 - (a) the skull and crossbones;
 - (b) the word "POISON" in red prominently displayed on a background of distinctly contrasting color; and
 - (c) a statement of a practical treatment (first aid or otherwise) in case of poisoning by the pesticide.

4-14-5. Issuance of experimental use permits -- Application -- Terms and conditions for issuance.

- (1) The department upon application may:
 - (a) issue an experimental use permit to any person if it determines that the applicant needs such a permit in order to accumulate information necessary to register a pesticide under Section **4-14-3**; or
 - (b) refuse to issue an experimental permit if it determines that issuance is not warranted or that the pesticide use to be made under the proposed terms and conditions may cause unreasonable adverse effects on the environment.
- (2) The department may also with respect to issuance of an experimental use permit:
 - (a) prescribe the terms and conditions for the conduct of the experimental use which in all events shall be under the supervision of the department; and

(b) revoke or modify any experimental use permit if it determines that the terms or conditions of the experimental use are being violated, or that the terms and conditions prescribed are inadequate to avoid unreasonable adverse effects to the environment.

(3) Application for an experimental use permit may be made before, after, or simultaneously with an application for registration.

4-14-6. Department authorized to make and enforce rules.

The department is authorized, subject to Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to:

(1) declare as a pest any form of plant or animal life (other than man and other than bacteria, viruses, and other microorganisms on or in living man or other living animals) which is injurious to health or the environment;

(2) determine in accordance with the regulations promulgated by the EPA under Section 25(c)(2) of FIFRA whether pesticides registered for special local needs under the authority of Section 24(c) of FIFRA are highly toxic to man;

(3) determine, consistent with EPA regulations, that certain pesticides or quantities of substances contained in these pesticides are injurious to the environment;

(4) adopt a list of "restricted use pesticides" for the state or designated areas within the state if it determines upon substantial evidence presented at a public hearing and upon recommendation of the pesticide committee that restricted use is necessary to prevent damage to property or to the environment; or

(5) adopt any rule, not inconsistent with federal regulations promulgated under FIFRA, considered necessary to administer and enforce this chapter, including but not limited to, rules relating to the sale, distribution, use, and disposition of pesticides as deemed necessary to prevent damage and to protect the public health.

4-14-7. Enforcement -- Inspection and sampling authorized -- Notice of deficiency to be given registrant -- Objects of inspection delineated -- Warrants.

(1) The department to determine compliance with this chapter, shall periodically sample, inspect, and analyze pesticides distributed within this state; observe and investigate the use and application of pesticides within this state; and inspect equipment used to apply pesticides in this state to determine if they comply with this chapter.

(2) If a pesticide sample, upon analysis, fails to comply with this chapter, the department shall give written notice to that effect to the registrant or owner of the pesticide. Nothing in this chapter, however, shall be construed as requiring the department to refer minor violations for criminal prosecution or for the institution of condemnation proceedings if it believes the public interest will best be served through informal action.

(3) The department, for the purpose of enforcing this section, is authorized at reasonable times, to enter any private or public premises for the purpose of:

(a) inspecting any equipment used in applying pesticides;

(b) inspecting or sampling lands actually or reported to be exposed to pesticides;

(c) inspecting storage or disposal areas;

(d) investigating complaints of injury to animals or lands;

(e) sampling pesticides wherever located including in vehicles; or

(f) observing the use and application of a pesticide.

(4) The department may proceed immediately, if admittance is refused, to obtain an ex parte warrant from the nearest court of competent jurisdiction to allow entry upon the premises for any purpose specified in Subsection (3) of this section.

4-14-8. Suspension or revocation -- Grounds -- Stop sale, use, or removal order authorized -- Court action -- Procedure -- Award of costs authorized.

(1) The department may revoke or suspend the registration of any pesticide upon satisfactory evidence that the registrant has used fraudulent or deceptive practices in the registration of the pesticide or in its distribution in this state.

(2) The department may issue a "stop sale, use, or removal order" to the owner or distributor of any designated pesticide or lot of pesticide which it finds or has reason to believe is being offered or exposed for sale in violation of this chapter. The order shall be in writing and no pesticide subject to it shall be moved, offered, or exposed for sale, except upon the subsequent written release by the department. Before a release is issued, the department may require the owner or distributor of the "stopped" pesticide or lot to pay the expense incurred by the department in connection with the withdrawal of the product from the market.

(3) The department is authorized in a court of competent jurisdiction to seek an order of seizure or condemnation of a pesticide which violates this chapter or, upon proper grounds, to obtain a temporary restraining order or permanent injunction to prevent the violation of this chapter. No bond shall be required of the department in an injunctive proceeding brought under this section.

(4) If condemnation is ordered, the pesticide or equipment shall be disposed of as the court directs; provided, that in no event shall it order condemnation without giving the registrant or other person an opportunity to apply to the court for permission to relabel, reprocess, or otherwise bring the pesticide into conformance, or for permission to remove it from the state.

(5) If the court orders condemnation, court costs, fees, storage, and other costs shall be awarded against the claimant of the pesticide or equipment.

4-14-9. Examination requirements for license to act as applicator may be waived through reciprocal agreement.

The department may waive any or all examination requirements which may be specified by regulation for noncommercial, commercial, and private applicators through a reciprocal agreement with another state whose examination requirements and standards for licensure are substantially similar to those of Utah.

4-14-10. Pesticide Committee created -- Composition -- Terms -- Compensation -- Duties.

(1) There is created a Pesticide Committee comprising nine persons appointed by the governor to four-year terms of office, one member from each of the following state agencies and organizations:

- (a) Utah State Agricultural Extension Service;
- (b) Department of Agriculture and Food;
- (c) Department of Health;

- (d) Division of Wildlife Resources;
- (e) Department of Environmental Quality;
- (f) Utah Pest Control Association;
- (g) agricultural chemical industry;
- (h) Utah Farmers Union; and
- (i) Utah Farm Bureau Federation.

(2) Notwithstanding the requirements of Subsection (1), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.

(3) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(4) The committee shall elect one of its members to serve as chair. The chair is responsible for the call and conduct of meetings of the Pesticide Committee.

(5) Attendance of a simple majority of the members constitutes a quorum for the transaction of official business.

(6) (a) (i) Members who are not government employees shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections **63A-3-106** and **63A-3-107**.

(ii) Members may decline to receive per diem and expenses for their service.

(b) (i) State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the committee at the rates established by the Division of Finance under Sections **63A-3-106** and **63A-3-107**.

(ii) State government officer and employee members may decline to receive per diem and expenses for their service.

(c) (i) Higher education members who do not receive salary, per diem, or expenses from the entity that they represent for their service may receive per diem and expenses incurred in the performance of their official duties from the committee at the rates established by the Division of Finance under Sections **63A-3-106** and **63A-3-107**.

(ii) Higher education members may decline to receive per diem and expenses for their service.

(7) The Pesticide Committee shall make recommendations to the commissioner regarding making rules pertaining to the sale, distribution, use, and disposal of pesticides.

4-14-12. Defenses.

(1) As an affirmative defense to any action brought as a result of the alleged misuse or misapplication of a pesticide, a person may present evidence that as of the time of the alleged violation, he was in compliance with label directions, this chapter, and any rules issued in accordance with this chapter.

(2) A person is not liable for injuries resulting from the misuse or misapplication of a pesticide unless the applicator was negligent.