



**Ninety-Seventh Legislature - First Session - 2001
Committee Statement
LB 436**

Hearing Date: January 30, 2001
Committee On: Agriculture

Introducers: (Dierks)
Title: Change the Pesticide Act and apiary provisions

Roll Call Vote – Final Committee Action:

- Advanced to General File
- X Advanced to General File with Amendments
- Indefinitely Postponed

Vote Results:

- 6 Yes Senators Burling, Chambers, Cunningham, Dierks, Schimek, Schrock
- 0 No
- 0 Present, not voting
- 2 Absent Senators McDonald, Vrtiska

Proponents:

Rick Leonard, Research Analyst
Merlyn Carlson, Director
Rich Reiman
Jerry Keown
Ed Woepfel
Alice Licht

Richard Penn
Chris Shubert

Representing:

Agriculture Committee
Nebraska Department of Agriculture
Nebraska Department of Agriculture
Nebraska Pest Management Association
Nebraska Cooperative Council
Nebraska Fertilizer & Ag Chemical Institute,
Nebraska Aviation Trades Association
Self
Nebraska Department of Agriculture

Opponents:

Representing:

Summary of purpose and/or changes:

LB 436 is brought at the request of the Department of Agriculture to update provisions of the Nebraska Pesticide Act and to remove requirements relating to bee colonies. The proposed amendments to the Pesticide Act contain a number of clarifications of the Department's duties under the Act, adoption of consistent administrative procedures for disciplining licensed applicators and other handlers of restricted use pesticides, and clarification of terminology used throughout the Act. Amendments to the Apiary Act change from mandatory to discretionary a requirement to obtain a disease and pest free certification of bee colonies and eliminates a registration fee.

Section 1 Amends §2-2622 to include new sections in the act (See Sections 12 and 18-22).

Section 2 Amends §2-2623 and, throughout the bill, the term "applied" is changed to "use," so that all uses of pesticides are covered.

Section 3 Amends §2-2624 to reflect the bill drafter's style and changes defined terms.

- A. "Certified applicator" is no longer defined, but is replaced with "licensed certified applicator" which is then the term used throughout. The definitions for "commercial applicator," "noncommercial applicator," and "private applicator" were also modified and a definition for "license holder" was added. These changes were made to make the act clearer regarding when an applicator must be licensed with the Department.
- B. The term "land" is replaced with "property" to clear up some confusion regarding the term.
- C. The definition for "noncommercial applicator" is modified to include employees of political subdivisions who apply pesticides for outdoor vector control. A definition is added for "vector" based on the federal act (with the addition of mice). This change was made because the Department receives numerous complaints about these types of applications which indicate they need to be regulated.
- D. A definition is added for "pesticide management plan." Provisions for pesticide management plans are added throughout the bill so the Department is authorized to set up management plans for specific pesticides.

Section 4 Amends §2-2625 so the act would no longer preempt political subdivisions from regulating the disposal of pesticides. This change is needed because the larger local authorities are better equipped to handle emergencies caused by the hazardous disposing of pesticides.

Section 5 Amends §2-2626 which sets duties for the Department:

- A. Adds provisions for pesticide management plans.
- B. Allows the Department to adopt regulations regarding record keeping under the act and examples of appropriate pesticide applications so those regulated can have a clearer understanding of what is expected of them.
- C. Allows the Department to establish pesticide categories for licensed applicators in addition to those listed in 40 CFR Part 171 to include currently uncertified individuals who need to be monitored.
- D. Allows the Department to establish a permit process for the use of pesticides under Section 18 of FIFRA for emergency use because the Department already issues such permits.

- E. Clarifies that administrative fines may be imposed for the violation of regulations adopted pursuant to the act.
- F. Removes procedural requirements for warning letters from this section (they are placed in Section 21).
- G. Allows the Department to do inspections and review records of pesticide firms that are manufacturing and/or repackaging pesticide products so the Department can perform such inspections without using federal credentials.
- H. Adds that the Department may enter into agreements with other entities to get consistency with the act.
- I. Includes in this section explicit authority for the Department to issue cease and desist orders and to regulate pesticide registrations.

Sections 6 and 7 Amend §§2-2629 and 2-2632 by removing language regarding resident agents for persons registering pesticides in the state so there are no conflicts with the new procedural language of Section 22. Other changes were made in order to clarify the process for taking regulatory action on a pesticide registration.

Section 8 Amends §2-2635 to more explicitly require a pesticide dealer to sell pesticide products which are restricted only to certified applicators licensed in the appropriate category for the pesticide use. The Department already requires this. The section is also changed so the language more explicitly refers to setting fees by regulation rather than just requiring a public hearing.

Section 9 Amends §2-2636 to require all licensed certified applicators or temporary applicators working under the direction of a licensed applicator to be at least 16 years of age. This requirement is similar to surrounding states except that Missouri and Kansas require commercial applicators to be 18 years of age. The section also clarifies that, if an employee applies lawn care or structural pest control pesticides, the employee must be a commercial applicator or under a commercial applicator's direction. An employee of a political subdivision must be a commercial or noncommercial applicator to apply outdoor vector control pesticides. The section also clarifies that the Department may waive certification requirements if an applicator is licensed by another state or federal agency with similar certification and procedural requirements.

Section 10 Amends §2-2637 by adding that certification examinations are state property and must be returned to the Department. This addition is needed to keep applicants from taking tests and memorizing the answers or giving the tests to others to do so.

Section 11 Amends §2-2638 to require applicators who use restricted-use pesticides to meet certification requirements. The section also allows that the Department does not have to charge a commercial applicator license fee. The Department currently does not charge such a fee. The section also removes language which is replaced by Section 12.

Section 12 Adds new language which clarifies that a business which employs persons to apply pesticides is responsible for the violations of all such employees regardless of whether or not the employees are licensed.

Section 13 Amends §2-2639 to clarify that noncommercial applicators must meet certification requirements.

Section 14 Amends §2-2640 by adding the phrase "certification requirements" to the licensing requirements.

Section 15 Amends §2-2641 by clarifying that private applicators must meet certification requirements and adds that they may be certified by completing a self-study manual.

Section 16 Amends §2-2642 by removing the reference to a license renewal fee because the Department does not charge such a fee. The section also clarifies the language regarding noncertified applicators and removes a reference to licenses issued by E.P.A. because they are no longer valid.

Section 17 Amends §2-2643 by changing the term “licensee” to the defined term “license holder.”

Section 18 Replaces the existing §2-2644 which contains confusing procedural provisions.

Sections 19 and 20 Clarify when and how license holders may be placed on probation or ordered to cease and desist, or licenses may be suspended, modified, or revoked. These provisions are very similar to other acts enforced by the Department.

Section 21 Clarifies when and how violation warning letters may be issued.

Section 22 Clarifies the procedures the Department must follow to give notices and hearings to those who have violated the act.

Section 23 Amends §2-2645 to allow the Department to determine that a complaint is too old, outside the Department’s scope, or too frivolous to investigate so the Department may concentrate resources on more pressing complaints.

Section 24 Amends §2-2646 regarding unlawful acts:

- A. Specifies that recommendations on labels must be followed.
- B. Allows the Department to regulate the under application of termiticides because consumers are not protected under current labeling requirements.
- C. Allows for pesticide uses not specified on the label and mixing with fertilizers so long as the use is not specifically prohibited and does not increase pesticide exposure.
- D. Adds that it is a violation to use a pesticide at a greater dosage, rate, or concentration than recommended on the label because some pesticide labels do not prohibit over application.
- E. Adds that it is a violation to use a pesticide in a manner likely to cause adverse effects.
- F. Clarifies that it is a violation to not comply with regulations adopted pursuant to the Environmental Protection Act.
- G. Adds violating a pesticide management plan to the list of unlawful acts.
- H. Adds knowingly using or disposing of pesticides on someone’s property without the owner or tenant’s permission to the list of unlawful acts.

Section 25 Amends §2-2649 by providing that Section 22 notice and hearing requirements apply to cease and desist orders. Clarifies that such orders do not preclude other actions being taken by the Department.

Section 26 Amends §81-2,173 of the Nebraska Apiary Act by removing the requirement for persons selling 25 or more colonies of bees to obtain a certificate from the Department stating that the bees are free of diseases, parasites, and pests.

Section 27 Amends §81-2,177.01 so the registration fee for bees is removed.

Sections 28 and 29 Repeal original sections.

Explanation of amendments, if any:

The committee amendments make four revisions.

1. As introduced, LB 436 strikes the preemption of local government regulation of pesticide disposal. The amendment retains this preemption but adds authority of Department to delegate responsibility for regulating pesticide disposal
2. Clarifies standards of supervision required for noncertified applicator employees applying pesticides during a training period. Current law states that a certified applicator who supervises the employees must be “reasonably available.” Dept. of Agriculture regulations define this to mean the supervisor must be able to be at application site within 20 minutes.

The amendment defines availability to mean immediately accessible by “voice or electronic means” and able to be physically on the site within 3 hours.

3. Adds procedural clarification in the event a license is immediately suspended. Currently, the bill provides that the alleged violator may request a hearing within 15 days of the suspension to show cause why the suspension is in error but is not specific about how quickly the Department must hold a hearing when requested.

The proposed amendment stipulates that the Department shall hold a show cause hearing with 48 hours of a request for hearing when requested by the licensee who license is suspended.

4. reinstates a requirement that a third party complaint of damage from an alleged pesticide misapplication be in writing.

Senator Merton L. Dierks, Chairperson