Jill Rowland *Legislative Service Commission*

Sub. S.B. 217*

124th General Assembly
(As Reported by H. Agriculture & Natural Resources)

Sens. Mumper, Carnes, Harris

BILL SUMMARY

Effective dates

- Specifies that the bill has a delayed effective date of July 1, 2004, with the exception of one provision that will take effect on the normal effective date and that involves the responsibility of an owner or operator of a pesticide application business for the acts of each employee in the handling, application, and use of pesticides.

Licensure of pesticide applicators

- Consolidates the licenses of custom applicators, custom operators, public operators, and limited commercial applicators into a commercial applicator license, and establishes application requirements for the licensure of commercial applicators.

- Requires private applicators to be licensed rather than certified.

- Requires private applicators to use or directly supervise the use of a restricted use pesticide only for agricultural purposes on property that is owned or rented by the applicator or the applicator's employer.

- Requires the Director of Agriculture to examine applicants for licensure as commercial or private applicators on the applicants' knowledge and competency in specified areas, and provides that a person who fails to

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* *This analysis was prepared before the report of the House Agriculture and Natural Resources Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

pass an examination for licensure is not entitled to an adjudication under the Administrative Procedure Act for that failure.

- Authorizes the Director to require a person holding a commercial applicator license or a private applicator license to complete a training program instead of being required to complete a re-examination, authorizes the training to be provided by persons who do not work at the Department of Agriculture, and requires the Director to adopt rules establishing standards, requirements, and procedures governing examinations, re-examinations, and training.

- Authorizes the Director to prescribe standards for the licensure of pesticide applicators that are more restrictive than those prescribed by federal law.

- Authorizes the Director to adopt rules specifying circumstances under which a trained serviceperson is considered to be acting under the instructions and control of a commercial applicator, and requires the Director to adopt rules establishing training requirements for trained servicepersons.

- Revises the record-keeping requirements for pesticide applications and diagnostic inspections, and requires the employers of commercial applicators, rather than the applicators, to maintain the records for specified time periods.

- Revises the nonresident applicator requirements.

Licensure of pesticide businesses

- Replaces the requirement that an applicant must license each pesticide application business with a requirement that an applicant must obtain a license to own or operate a pesticide business and must register each location that is owned by the applicant and used for the purpose of engaging in the pesticide business.

- Requires an owner or operator of a pesticide business to employ one commercial applicator for each pesticide business registered location that the owner or operator owns or operates.

- Revises the Director's authority to deny, suspend, or revoke a pesticide business's license, and allows the Director to modify such a license.

- Eliminates the provision under which the license of a pesticide business is automatically suspended if the business's required evidence of financial responsibility expires without renewal prior to the expiration of the license.

Registration of pesticides

- Authorizes the Director to refuse to register a pesticide if the application for registration fails to comply with the requirements governing registration.

- Authorizes the Director to suspend or revoke a registration under specified circumstances.

Licensure of pesticide dealers

- Prohibits anyone from distributing restricted use pesticides to the ultimate user without a pesticide dealer's license, distributing an unregistered pesticide, distributing a misbranded or adulterated pesticide, or, except as provided under the bill, distributing restricted use pesticides to an ultimate user who is not licensed under the Pesticides Law.

- Exempts from the last prohibition, above, a pesticide dealer who distributes restricted use pesticides to nonresident pesticide applicators meeting specified requirements.

Political subdivisions subject to specified requirements

- Provides that political subdivisions, state agencies, and other public agencies are subject to the Pesticides Law and rules adopted under it with respect to the application, handling, and use of pesticides and that each such governmental entity is responsible for those activities of its employees.

Fees

- Requires the amounts of all license fees and related fees that must be paid under the Pesticides Law to be established by rule rather than by statute.

- Specifies that the aggregate amount of the fees that initially are established by rule after the bill's applicable effective date must be designed to cover, but not exceed, the costs incurred by the Department

of Agriculture in administering the Pesticides Law, and prohibits the fees from being increased thereafter without the approval of the General Assembly.

Enforcement

- Revises and expands the prohibitions against the violation of specified provisions of the Pesticides Law.

- Removes the Director's authority to assess a civil penalty, and the Attorney General's authority to bring a civil action, against a violator's employer in addition to the violator under specified circumstances, and instead authorizes the Director and the Attorney General to so act against an employer instead of, rather than against, the violator.

- Establishes that a person who violates the Pesticides Law or rules adopted under it is liable for the violation and that the person's employer is liable for and may be convicted of the violation if the person was acting on behalf of the employer.

- Increases the criminal penalty for subsequent violations of certain prohibitions.

- Authorizes the Director to suspend, rather than deny, modify, suspend, revoke, or refuse to renew, a license, permit, or registration issued under the Pesticides Law under specified circumstances.

- Authorizes the Director to issue a written warning to a person who violates the Pesticides Law or any rule adopted under it instead of initiating enforcement procedures.

- Specifies that the penalties for violations of the Pesticides Law do not apply to persons who incidentally use general use pesticides, and defines "incidental use."

- Specifies that the bill's provisions relating to pesticide businesses do not apply to an individual who uses only ground equipment for himself or for his neighbors, provided that he meets certain requirements.

- Revises the Director's right-of-entry authority.

- Specifies that the Director's authorized agent has the same authority as the Director to issue an order requiring a pesticide or device to be held due to possible violation of the Pesticides Law.

Pesticide Program Fund

- Eliminates the requirement that the Director of Budget and Management transfer excess money from the Pesticide Program Fund to the General Revenue Fund.

Other provisions

- Requires the Director to establish standards for the development and implementation of integrated pest management practices that are designed to prevent unreasonable adverse effects on human health and the environment, and authorizes the Director to enter into cooperative agreements with other state agencies for the implementation of voluntary or mandatory integrated pest management practices.

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CONTENT AND OPERATION

Licensure of pesticide applicators

Overview

Existing law requires an individual who wishes to use pesticides under specified conditions to be licensed to do so by the Director of Agriculture as a custom applicator, custom operator, public operator, limited commercial applicator, or private applicator. A licensed custom applicator may apply or directly supervise the application of general use and restricted use pesticides in his specified categories of pesticide application.[1] A licensed custom operator may apply general use and restricted use pesticides and may directly supervise a trained serviceperson in activities that include recommending control, handling, mixing, and applying pesticides and the disposal of pesticide waste, excess, or containers. An individual licensed as a public operator may apply or directly supervise the application of pesticides by a trained serviceperson while acting as an employee of the federal government, a state, county, township, or municipal governmental agency, or a park district, port authority, or sanitary district. A licensed limited commercial applicator only may apply or directly supervise the application of pesticides to his own property or to that of his principal employer. A licensed private applicator may apply restricted use pesticides or directly supervise the

[1] *A restricted use pesticide is a pesticide or pesticide use that has been classified by the Administrator of the United States Environmental Protection Agency for use only by certain persons. Under existing law, those persons are certified applicators and individuals working under their direct supervision. Under the bill, they are pesticide applicators or individuals working under their direct supervision. "Pesticide applicator" is defined to mean a commercial applicator or a private applicator. (Sec. 921.01(I) and (SS).)*

application of those pesticides for the production of agricultural commodities on his own or certain other properties.

The bill consolidates the licenses of custom applicators, custom operators, public operators, and limited commercial applicators into a commercial applicator license and makes conforming changes throughout the Pesticides Law. The bill also makes changes in the licensure procedures for both commercial applicators and private applicators.

Definitions

Under current law, "commercial applicator" means an individual who is certified as a custom applicator, custom operator, or public operator, whether or not he is a private applicator with respect to some uses, and who uses or directly supervises the use of any pesticide. "Commercial applicator" includes an individual who provides diagnostic inspections to determine infestations of pests on property, or who offers pest control services, other than as provided by the definition of "private applicator" (see below). The bill instead defines "commercial applicator" as an individual who is licensed as a commercial applicator under the bill to apply pesticides or to conduct authorized diagnostic inspections. (Sec. 921.01(K).) "Authorized diagnostic inspection" means a diagnostic inspection conducted by a commercial applicator in the pesticide-use category in which the commercial applicator is licensed (sec. 921.01(F)).

Existing law defines "pesticide" as any substance or mixture of substances intended either for preventing, destroying, repelling, or mitigating any pest or for use as a plant regulator, defoliant, or desiccant. The bill retains the existing definition and adds that "pesticide" includes a pest monitoring system designated by rule. (Sec. 921.01(JJ).)

Existing law defines "trained serviceman" as an employee of a commercial applicator or limited commercial applicator whom the applicator has instructed in the proper use of the equipment and all pesticides with which the employee is to work. Under the bill, "trained serviceperson" means an employee of a pesticide business (see "***Trained servicepersons***," below), other business, agency of the United States government, state agency, or political subdivision who has been trained to apply pesticides while under the direct supervision of a commercial applicator. (Sec. 921.01(XX).)

Under current law, "direct supervision" means either of the following, as applicable:

(1) Unless otherwise prescribed by its labeling, a pesticide is considered to be applied under the direct supervision of a commercial or limited commercial

applicator if it is applied by a trained serviceman acting under the instructions and control of a commercial or limited commercial applicator who is responsible for the actions of that trained serviceman and who is available when needed, even though the commercial or limited commercial applicator is not physically present at the time and place the pesticide is applied; or

(2) Unless otherwise prescribed by its labeling, a restricted use pesticide is considered to be applied under the direct supervision of a private applicator if it is applied by an employee or immediate family member of that private applicator acting under the instructions and control of the private applicator who is responsible for the actions of that employee or immediate family member and who is available when needed, even though the private applicator is not physically present at the time and place the restricted use pesticide handling activities are occurring. Restricted use pesticide handling activities include equipment calibration, mixing, loading, application, operator safety, and disposal.

The bill revises the first type of direct supervision by providing that a trained serviceperson is under direct supervision if the serviceperson is acting under the instructions and control of a commercial applicator and by eliminating the references to the responsibility of the commercial applicator and the availability of that person, including the provision that the commercial applicator need not be physically present. It revises the second type of direct supervision by referring to an immediate family member or a subordinate employee of a private applicator and by removing the reference to and the description of restricted use pesticide handling activities. (Sec. 921.01(Q).) The bill then defines "immediate family" as a person's spouse residing in the person's household, brothers and sisters of the whole or of the half blood, children, including adopted children, parents, and grandparents (sec. 921.01(X)).

Under current law, "competent" means properly qualified to perform the functions that are prescribed by the Director of Agriculture and under the Federal Insecticide, Fungicide and Rodenticide Act and that are associated with pesticide application. The bill instead defines "competent" as properly qualified as evidenced by passing the general examination and each applicable pesticide-use category examination for the pesticide-use categories in which a person applies pesticides and, in the case of a person who is a commercial applicator, conducts diagnostic inspections and by meeting any other criteria established by rule. (Sec. 921.01(L).) "Pesticide-use category" means a specialized field of pesticide application or of diagnostic inspection as defined by rule (sec. 921.01(OO)).

<u>Licensure of commercial applicators</u>

Under existing law, the licensure requirements for custom applicators, custom operators, public operators, and limited commercial applicators are

generally the same with minor differences. The Director must adopt rules for the administration and enforcement of the licensure of each of those types of applicators. In consolidating the licensure of custom applicators, custom operators, public operators, and limited commercial applicators into the licensure of commercial applicators, the bill, with some changes, generally retains the current law licensure requirements for the various types of applicators, eliminates duplication, and applies the requirements to commercial applicators.

Under the bill, no individual can do any of the following without having a commercial applicator license issued by the Director:

(1) Apply pesticides for a pesticide business without direct supervision;

(2) Apply pesticides as part of the individual's duties while acting as an employee of the federal government, a state, county, township, or municipal corporation, or a park district, port authority, or sanitary district;

(3) Apply restricted use pesticides, except that this provision does not apply to a private applicator or an immediate family member or a subordinate employee of a private applicator who is acting under the direct supervision of that private applicator;

(4) If the individual is the owner of a business other than a pesticide business or an employee of such an owner, apply pesticides at any of the following publicly accessible sites that are located on the property: food service operations, retail food establishments, golf courses, rental properties of more than four apartment units at one location, hospitals or medical facilities, child day-care centers or school child day-care centers, facilities owned or operated by a school district, a community school, or a chartered or nonchartered nonpublic school that meets minimum state standards, wholesale food establishments, or any other site designated by rule; or

(5) Conduct authorized diagnostic inspections. (Sec. 921.06(A)(1).)

However, an individual acting as a trained serviceperson under the direct supervision of a commercial applicator may apply pesticides under the above circumstances without a commercial applicator's license (sec. 921.06(A)(2)).

The bill prohibits a person from acting as a commercial applicator without being licensed to do so (sec. 921.24(B)). Whenever the Director has cause to believe that any person has violated, or is violating, this prohibition, he may proceed as authorized under the bill (see "***Enforcement***," below) (sec. 921.25).

Under the bill, the Director must establish by rule the period of time that a license is valid and the license fee. The fee for each license or renewal does not

apply to an applicant who is an employee of the Department of Agriculture. Additionally, the Director must classify licenses by pesticide-use category. A single license may include more than one pesticide-use category. (Sec. 921.06(A)(3).) Each application for a license must state the pesticide-use category or categories of license for which the applicant is applying (sec. 921.06(B)). The bill requires the Director to adopt rules that determine the pesticide use categories of diagnostic inspections that must be conducted by a commercial applicator (sec. 921.16(C)(7)).

If the Director finds that an applicant is competent to apply pesticides and conduct diagnostic inspections and that the applicant has passed both the general examination and each applicable pesticide-use category examination as required under the bill (see "***Licensure examinations and standards for commercial applicators and private applicators***," below), the Director must issue a commercial applicator license limited to the pesticide-use category or categories for which the applicant is found to be competent. If the Director rejects an application, he may explain why the application was rejected, describe the additional requirements necessary for the applicant to obtain a license, and return the application. The applicant may resubmit the application without payment of an additional fee. (Sec. 921.06(C).)

Under the bill, a person who is a commercial applicator is deemed to hold a private applicator's license for purposes of applying pesticides on agricultural commodities that are produced by the commercial applicator (sec. 921.06(D)(1)).[2] A commercial applicator must apply pesticides only in the pesticide-use category or categories in which the applicator is licensed (sec. 921.06(D)(2)).

Licensure of private applicators

Existing law defines "private applicator" as an individual who is certified under existing law and who uses or directly supervises the use of any restricted use pesticide for purposes of producing any agricultural commodity on property owned or rented by him or his employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person. The bill instead defines "private applicator" as

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[2] *Law unchanged by the bill defines "agricultural commodity" as any plant or part thereof or animal or animal product produced for commercial use by a person, including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons, primarily for the sale, consumption, propagation, or other use by humans or animals (sec. 921.01(C)).*

an individual who is licensed as such under the bill as discussed below. (Sec. 921.01(J).)

Existing law prohibits the application or direct supervision of the application of restricted use pesticides except by specified individuals. The bill generally retains that framework and modifies it to conform with the bill's licensure changes. Thus, included in the authorized applicators and supervisors are commercial applicators and trained servicepersons who are acting under the direct supervision of commercial applicators. Additionally, under existing law, a certified private applicator and an employee or immediate family member of a certified private applicator who is acting under the direct supervision of that private applicator are authorized to use restricted use pesticides. First, the bill instead provides that an immediate family member or a subordinate employee of a private applicator who is acting under the direct supervision of that private applicator is authorized to use restricted use pesticides. Also, rather than requiring private applicators to be certified, the bill requires them to be licensed. (Sec. 921.11(A).)

Under current law, the Director must adopt rules to establish standards for the certification of private applicators. An individual must apply for certification to the Director and pay a $30 fee for each certification, which expires every three years. The bill instead requires the Director to adopt rules establishing standards and procedures for the licensure of private applicators. It requires an individual who is applying for licensure to include in the application the pesticide-use category or categories of the license for which the individual is applying and any other information that the Director determines is essential to the administration of the Pesticides Law. The fee for a private applicator license must be established by rule. (Sec. 921.11(B).)

Under current law, "certification" means the recognition by a certifying agency that a person is competent and authorized to use or directly supervise the use of restricted use pesticides (former sec. 921.01(H)). The bill eliminates the definition of certification and replaces the term "certification" with the term "licensure" throughout the bill. However, it defines "licensure" to include certification as used in the Federal Insecticide, Fungicide and Rodenticide Act (federal act). (Sec. 921.01(FF).)

Under the bill, an individual who is licensed as a private applicator must use or directly supervise the use of a restricted use pesticide only for the purpose of producing agricultural commodities on property that is owned or rented by the individual or the individual's employer (sec. 921.11(C)).

Licensure examinations and standards for commercial applicators and private applicators

Under existing law, the Director must examine each applicant for a license to apply pesticides on the applicant's knowledge and competency in the proper use, handling, and application of pesticides in the categories for which the applicant has applied. The bill instead requires the Director to examine each applicant for a commercial applicator license or for a private applicator license on the applicant's knowledge and competency in the Pesticides Law and rules adopted under it and in the proper use, handling, and application of pesticides and, if the applicant is applying for a commercial applicator license, the conducting of diagnostic inspections in the pesticide-use categories for which the applicant has applied. (Sec. 921.12(A).)

Current law requires that if a license is not renewed within a year of its expiration, the licensee must take another examination. The bill applies this requirement to commercial applicator licenses and specifies that the examination must be on the Pesticides Law and rules adopted under it and on the proper use, handling, and application of pesticides and the proper conducting of diagnostic inspections in the pesticide-use categories for which the licensee has been licensed. (Sec. 921.12(B).) If a person who is applying for a commercial applicator license or a private applicator license or who is renewing a commercial applicator license after its expiration fails to pass an examination, he is not entitled to an adjudication under the Administrative Procedure Act for that failure (sec. 921.12(C)).

Under current law, the holder of a license to apply pesticides may renew the license within one year of the date of expiration without re-examination unless the Director determines that a new examination is necessary to insure that the licensee continues to meet the requirements of changing technology and to assure a continuing level of competence and ability to use pesticides safely and properly. The bill retains this provision with respect to the holder of a commercial applicator license. (Sec. 921.12(D).) As under existing law, the Director must determine when re-examination is required for private applicators (sec. 921.12(E)). Additionally, the bill authorizes the Director, instead of requiring a commercial applicator or private applicator to complete re-examination successfully, to require, in accordance with criteria established by rule, the commercial applicator or private applicator to participate in training programs that are designed to foster knowledge of new technology and to ensure a continuing level of competence and ability to use pesticides safely and properly. The Director or his representative may provide the training or may authorize a third party to do so. In order for such authorization to occur, the bill specifies that the third party and its training

program must comply with standards and requirements established by rule. (Sec. 921.12(F).)

Accordingly, the bill requires the Director to adopt rules that establish the following: (1) standards, requirements, and procedures for the examination and re-examination of commercial applicators and private applicators, and (2) with respect to training programs that the Director may require commercial applicators and private applicators to complete, standards and requirements that a training program must satisfy in order to be offered by the Director or his representative or in order to be approved by the Director if a third party wishes to offer it, eligibility standards and requirements that must be satisfied by third parties who wish to provide the training programs, procedures that third parties must follow in order to submit a proposed training program to the Director for approval, and criteria that the Director must consider when determining whether to authorize a commercial applicator or private applicator to participate in a training program instead of being required to pass a re-examination (sec. 921.16(K)).

Under existing law, the Director must prescribe standards for the certification of applicators of pesticides consistent with those prescribed by the federal act and the regulations adopted under it. The bill changes "certification" to "licensure" and adds that the Director may prescribe standards that are more restrictive than the federal standards. Current law provides that the standards may relate to the use and handling of pesticides or to the use and handling of the pesticide or class of pesticide uses covered by the individual's certification and must relate to the hazards involved and the use experience. The bill instead provides that the standards may relate to the use of a pesticide or to an individual's pesticide-use category. The bill retains the requirement that the Director take into consideration standards of the United States Environmental Protection Agency. (Sec. 921.16(D).)

Trained servicepersons

As indicated above, the bill authorizes trained servicepersons to apply pesticides and to conduct diagnostic inspections if they are under the direct supervision of commercial applicators. In addition to revising the definition of "direct supervision" (see above), the bill authorizes the Director to adopt rules specifying what constitutes "acting under the instructions and control of a commercial applicator" as used in that definition. In adopting the rules, the Director must consider the risks associated with the use of pesticides in the various pesticide-use categories. Based on consideration of the risks, the Director may define "acting under the instructions and control of a commercial applicator" to include communications between a commercial applicator and a trained serviceperson that are conducted via landline telephone or a means of wireless communication. The rules must be drafted in consultation with representatives of

the pesticide industry. (Sec. 921.16(F).) The bill also requires the Director to adopt rules establishing training requirements for trained servicepersons (sec. 921.16(K)). (See also "***Enforcement***," below.)

Records of pesticide applications and diagnostic inspections

Under current law, specified types of pesticide applicators must keep a record of all pesticide applications made by the applicators for three years from the date of a pesticide application to which a record refers or for any longer period that the Director determines necessary. Private applicators also must keep a record of all restricted use pesticide applications made by them or under their direct supervision. The same time periods apply. The bill requires a record to be kept of all pesticide applications made by a commercial applicator and by any trained serviceperson acting under the applicator's direct supervision and of all restricted use pesticide applications made by a private applicator and by any immediate family member or subordinate employee of that private applicator who is acting under the applicator's direct supervision. In addition, a commercial applicator must keep a record of all diagnostic inspections conducted by the applicator and by any trained serviceperson acting under the applicator's direct supervision to determine infestations of pests. A commercial applicator must submit copies of the records of applications and inspections to the pesticide business, other business, state agency, or political subdivision that employs the commercial applicator. (Secs. 921.14(A) and 921.16(C)(6) and (8).)

Instead of requiring commercial applicators to maintain the records for three years or another period of time, the bill requires each pesticide business, other business, state agency, or political subdivision that receives copies of the records to retain them for a period of time established by rule (sec. 921.14(B)). It retains the records retention requirement for private applicators. The bill also makes conforming changes by removing a provision relating to record-keeping by custom applicators and custom operators (sec. 921.14(C)).

Licensure of nonresidents

Under current law, nonresident applicators of pesticides who are licensed in another state having a state plan approved by the United States Environmental Protection Agency to operate in certain categories may be issued a license by the Director covering the same categories in this state without a categorical examination. However, such nonresidents may be required to demonstrate their knowledge of the Pesticides Law and rules adopted under it by taking an examination covering the Law and rules. A nonresident custom operator may be licensed in Ohio only if his supervisor or employer is also licensed in this state. Private applicators who are certified in another state may operate in Ohio as do resident private applicators without also being certified in Ohio, but they may be

required to demonstrate their knowledge of Ohio laws and rules. Licenses or certificates issued to nonresidents may be suspended or revoked in the same manner as other licenses or certificates issued under the Pesticides Law or upon suspension or revocation of the license or certificate of another state or the federal government supporting the issuance of an Ohio license or certification. The bill retains the nonresident applicator requirements and applies them to both commercial applicators and private applicators, thus establishing the possibility that nonresident private applicators may be required to take an examination to demonstrate their knowledge of Ohio law. It also makes conforming changes. (Sec. 921.08.)

Effective dates

Delayed effective date

The bill specifies that, with one exception, its provisions take effect July 1, 2004. Before that date, the Director of Agriculture must continue to issue custom applicator licenses, custom operator licenses, public operator licenses, and limited commercial applicator licenses under current law. Those licenses will continue to be valid until the date on which they expire regardless of whether the expiration date is on or after July 1, 2004. On and after July 1, 2004, the Director must cease to issue those licenses and instead must issue commercial applicator licenses under the bill. (Section 5.)

Exception: Normal effective date for provision involving the liability of an owner or operator of a pesticide application business

The only provision that is excepted from the delayed effective date of the bill involves the responsibility of an owner or operator of a pesticide application business for the acts of each employee in the handling, application, and use of pesticides. This provision will become effective at the normal time, that is, the 91st day after the bill is filed with the Secretary of State, which occurs after either the Governor approves the bill or the General Assembly overrides the Governor's disapproval of it.

Under current law, the owner or operator of a pesticide application business is responsible for the acts of each employee in the handling, application, and use of pesticides. The pesticide application business license is subject to denial, suspension, or revocation after a hearing for any violation of the Pesticides Law if it is determined that the owner or operator ratified or knowingly or negligently permitted any officer, employee, or agent to commit the violation. The Director may levy against the owner or operator any civil penalties authorized under existing law for any violation of the Pesticides Law that is committed by the owner or operator or by the owner's or operator's officer, employee, or agent. An

owner or operator is deemed to have ratified violations committed by any officer, employee, or agent if collectively the officers, employees, or agents commit three violations of a high or moderate level of severity in accordance with established enforcement guidelines of the Department of Agriculture that relate directly to the storage, preparation, handling, distribution, or application of pesticides, or any violation involving fraud, within a 24-month period. (Sec. 921.021(E).)

The bill retains the statement that the owner or operator of a pesticide application business is responsible for the acts of each employee in the handling, application, and use of pesticides and adds that the business is responsible for the acts of each employee in the conducting of diagnostic inspections. Under the bill, a pesticide application business license is not only subject to denial, suspension, or revocation after a hearing, but also to modification for any violation of the Pesticides Law and rules adopted under it. However, the bill eliminates the condition that a license is only subject to denial, suspension, or revocation if it is determined that the owner or operator ratified or knowingly or negligently permitted any officer, employee, or agent to commit the violations. (Sec. 921.021(E).) As under existing law, the Director may levy a civil penalty against an owner or operator for a violation of the Pesticides Law committed by the owner or operator or that person's officer, employee, or agent. The bill also authorizes the Director to levy such a civil penalty for a violation of a rule adopted or an order issued under that Law. (Sec. 921.021(E).)

Licensure of pesticide businesses

Current law

Under current law, no person can own or operate a pesticide application business without obtaining a license from the Director for each location owned or operated in Ohio (sec. 921.021(A)). "Pesticide application business" means any location that is used for the purpose of engaging in the business of applying pesticides to the property of another for hire, but does not mean any location that is used exclusively to perform administrative or other functions not directly connected with the storage, preparation, handling, or distribution of the pesticides to be applied (sec. 921.01(MM)). A license is issued for a period of time established by rule and is renewed in accordance with deadlines established by rule. (Sec. 921.021(A).) Any person who owns or operates a pesticide application business outside of Ohio, but engages in the business of applying pesticides to properties of another for hire in Ohio, must obtain a license from the Director for the person's principal out-of-state location (sec. 921.021(B)).

A person applying for a pesticide application business license must file a statement with the Director, on a form provided by him, that includes any information that the Director determines necessary and that he requires by rule.

Each applicant must pay a license fee of $20 per year for each pesticide application business license. (Sec. 921.021(C).) The owner or operator of a pesticide application business must employ at least one licensed custom applicator for each pesticide application business location that the owner or operator owns or operates (sec. 921.021(D)).

The Director may deny a pesticide application business license to any current owner, operator, officer, or agent whose pesticide application business license has been revoked within the previous 36 months (sec. 921.021(F)). The Director must adopt any rules necessary to administer and enforce the licensure requirements (sec. 921.021(G)).

Licensure requirements under the bill

The bill replaces the term "pesticide application business" with "pesticide business" and makes conforming changes throughout the bill. "Pesticide business" is defined to mean a person who performs pesticide business activities. (Sec. 921.01(LL).) "Pesticide business activities" means the application of pesticides to the property of another for hire, the solicitation to apply pesticides, or the conducting of authorized diagnostic inspections (sec. 921.01(MM)).

The bill revises the requirements for the licensure of pesticide businesses and makes necessary conforming changes. As under current law, a person applying for a pesticide business license must file a statement with the Director on a form provided by the Director that includes any information that he determines necessary and that he requires by rule. The bill specifically requires the statement to include the address of the pesticide business's principal place of business and the address of each location that the person intends to register under the bill as discussed below. (Sec. 921.09(C)(1).) An applicant must obtain a license to own or operate the pesticide business. The applicant then must register each location that is owned by the applicant and used for the purpose of engaging in the pesticide business. (Sec. 921.09(A).) An applicant who owns or operates a pesticide business outside of Ohio, but engages in the business of applying pesticides to properties of another for hire in Ohio must obtain a license for the person's principal out-of-state location and also must register each Ohio location that is owned by the person and used for the purpose of engaging in the pesticide business (sec. 921.09(B)).

Each applicant for a license must pay a license fee for the pesticide business plus an additional fee for each pesticide business registered location specified in the application. The license may be renewed upon payment of a renewal fee plus an additional fee for each pesticide business registered location. (Sec. 921.09(C)(2).) "Pesticide business registered location" means a location at which pesticide business activities are conducted and that is registered through the

issuance of a license to a pesticide business under the bill (sec. 921.01(NN)). The Director must adopt rules that establish fees for the licensure, including the fee for each registered location, and for license renewal of pesticide businesses (sec. 921.16(A)).

The issuance of a pesticide business license constitutes registration of any pesticide business location identified in the application (sec. 921.09(C)(3)). The owner or operator of a pesticide business must notify the Director not later than 15 days after any change occurs in the information required by the bill to be included in the application statement (sec. 921.09(C)(4)). A copy of the license must be maintained and conspicuously displayed at each pesticide business registered location (sec. 921.09(C)(2)). Each pesticide business registered location that is owned by a pesticide business is subject to inspection by the Director (sec. 921.09(H)).

Instead of requiring the owner or operator of a pesticide application business to employ at least one licensed custom applicator for each pesticide application business location that the owner or operator owns or operates, the bill requires the owner or operator of a pesticide business to employ at least one commercial applicator for each pesticide business registered location that the owner or operator owns or operates (sec. 921.09(D)).

The Director may modify a pesticide business license by revoking a licensee's authority to operate out of a particular pesticide business registered location listed under the bill or by preventing a licensee from operating within a specific pesticide-use category (sec. 921.09(F)). Instead of authorizing the denial of a license to any current owner, operator, officer, or agent whose pesticide application business license has been revoked within the previous 36 months, the bill authorizes the denial of a license to any person whose pesticide business license has been revoked within the previous 36 months (sec. 921.09(G)).

Financial responsibility of pesticide businesses

Under current law, the Director of Agriculture is prohibited from issuing a pesticide application business license until the applicant has submitted an effective liability insurance policy or any other evidence of financial responsibility that the Director determines necessary. The amount and condition of liability insurance or other evidence of financial responsibility must be established by the Director by rule. Current law specifies that the rules' requirements concerning liability insurance or other evidence of financial responsibility must be based on the category and operation of the applicant. The bill instead specifies that the requirements must be based on the pesticide-use categories in which commercial applicators are licensed to apply pesticides for the pesticide business. (Sec. 921.10(A).)

Under current law, if the evidence of financial responsibility expires without renewal prior to the expiration of the license, the pesticide application business license is automatically suspended. Current law further specifies that should evidence of financial responsibility furnished become unsatisfactory, the pesticide application business must upon notice immediately execute evidence of financial responsibility meeting the requirements established under current law or applicable rules. If the evidence of financial responsibility becomes unsatisfactory, the Director must suspend the pesticide application business's license and give the business notice of the suspension unless the business executes other evidence of financial responsibility. The bill generally retains these requirements for financial responsibility, but eliminates the requirement that if a pesticide business's evidence of financial responsibility expires without renewal prior to the expiration of the license, the license is automatically suspended. Under the bill, a pesticide business's license still may be suspended if the evidence of financial responsibility becomes unsatisfactory. (Sec. 921.10.)

Registration of pesticides

Current law requires each pesticide that is distributed within Ohio to be registered with the Director. An applicant for registration must follow specified procedures and abide by certain requirements. The Director must adopt rules that are necessary for the enforcement and administration of the registration of pesticides. (Sec. 921.02.)

The bill generally retains the pesticide registration requirements with several changes. Instead of requiring each pesticide that is distributed within Ohio to be registered with the Director, the bill prohibits anyone from distributing a pesticide within Ohio unless it is registered with the Director. (Sec. 921.02(A).)

The bill authorizes the Director to refuse to register a pesticide if the application for registration fails to comply with the requirements for registration. The Director may suspend or revoke a pesticide registration after a hearing in accordance with the Administrative Procedure Act for a pesticide that fails to meet the claims made for it on its label. The Director may immediately suspend a pesticide registration, prior to a hearing, when he believes that the pesticide poses an immediate hazard to human or animal health or a hazard to the environment. Not later than 15 days after suspending the registration, the Director must determine whether the pesticide poses such a hazard. If he determines that no hazard exists, he must lift the suspension. If he determines that a hazard exists, he must revoke the registration in accordance with the Administrative Procedure Act. (Sec. 921.02(H).)

Current law establishes a $50 registration and inspection fee per year for each product name and brand registered for the company whose name appears on

the label, a $25 penalty fee for late registration renewal, and a $25 fee for failure to register a pesticide. The bill instead requires those fees to be established by rule. (Secs. 921.02(F) and 921.16(A).)

Licensure of pesticide dealers

Under existing law, any person who is acting as a pesticide dealer or who advertises or assumes to act as a pesticide dealer at any time must obtain a pesticide dealer license from the Director.[3] Current law establishes standards and procedures for the licensure of pesticide dealers. (Sec. 921.13).)

Existing law specifies that the licensure requirements do not apply to a custom applicator who exclusively sells pesticides only as an integral part of the custom applicator's pesticide application business when the pesticides are dispensed only through equipment used for the pesticide application or to any federal, state, county, or municipal agency that provides pesticides for its own programs. The bill removes the discussion of custom applicators. (Sec. 921.13(B).)

Current law requires an applicant for a pesticide dealer license to pay a $25 license fee. The bill instead requires the fee to be established by rule. (Secs. 921.13(A) and 921.16(A).)

Under current law, it is unlawful for a person to distribute restricted use pesticides to the ultimate user or to an employee who is a commercial applicator at any time without a pesticide dealer's license or to an ultimate user who is not a certified applicator licensed under the Pesticides Law and rules adopted under it. The bill prohibits anyone from distributing restricted use pesticides to the ultimate user without a pesticide dealer's license or distributing restricted use pesticides to an ultimate user who is not licensed under the Pesticides Law or rules adopted under it as a commercial applicator, private applicator, or nonresident applicator. (Sec. 921.24(R) and (S).) However, the prohibition against the distribution of restricted use pesticides to an ultimate user who is not licensed under the bill does not apply to a pesticide dealer who distributes restricted use pesticides to a nonresident who is licensed in another state having a state plan approved by the United States Environmental Protection Agency (sec. 921.26(F)).

The bill also prohibits anyone from distributing a pesticide that is not registered with the Director (see above) or distributing a misbranded or adulterated

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[3] *Law unchanged by the bill defines "pesticide dealer" as any person who distributes restricted use pesticides or pesticides whose uses or distribution are further restricted by the Director to the ultimate user or to a commercial applicator who is employed by that pesticide dealer (sec. 921.01(KK)).*

pesticide (sec. 921.24(L) and (Y)). Whenever the Director has cause to believe that any person has violated, or is violating, any of the prohibitions, he may proceed as authorized under the bill (see "***Enforcement***," below) (sec. 921.25).

Political subdivisions subject to specified requirements

Existing law provides for the licensure of public operators who are employed by a state agency, municipal corporation, or other governmental agency or political subdivision. An individual must meet specified requirements established by the Director prior to being licensed as a public operator. In keeping with the consolidation of the licensure of public operators and other types of pesticide applicators into licensure of commercial applicators, the bill eliminates the licensure requirements for public operators. However, it retains current law that provides that every state agency, municipal corporation, and other governmental agency and political subdivision is subject to the Pesticides Law and the rules adopted under it with respect to the application of pesticides and adds that each such political entity also is subject to that Law and the rules with respect to the handling and use of pesticides. The bill adds that each state agency, municipal corporation, and other governmental agency and political subdivision is responsible for the acts of each of its employees in the application, handling, and use of pesticides. (Sec. 921.19.)

Establishment of fees by rule

Currently, the Pesticides Law establishes the amounts of all license fees and related fees that must be paid under that Law. The bill instead requires the amounts of such fees to be established by rule. The affected fees include the following: (1) registration and inspection fees paid by applicants for registration of a pesticide and penalty fees for late registration renewal or failure to register a pesticide, (2) commercial applicator license fees, (3) pesticide business license fees plus an additional fee for each pesticide business registered location specified in the application for licensure, (4) private applicator license fees, and (5) pesticide dealer license fees. The bill specifies that the aggregate amount of the fees that initially are established by rule after the bill's applicable effective date (see above) must be designed to cover, but not exceed, the costs incurred by the Department of Agriculture in administering the Pesticides Law. Thereafter, the fees cannot be increased without the approval of the General Assembly. (Sec. 921.16(A).)

Enforcement

Additional prohibitions

In addition to the revised or added prohibitions discussed above, the bill changes several other existing prohibitions and establishes additional new prohibitions as discussed below.

Existing law prohibits a person from using any restricted use pesticide unless certified to do so, acting as a trained serviceman under the direct supervision of a commercial applicator or limited commercial applicator, or acting as an employee or immediate family member of a private applicator under the direct supervision of that private applicator. The bill instead prohibits a person from using any restricted use pesticide unless the person is licensed to do so, is a trained serviceperson acting under the direct supervision of a commercial applicator, or is an immediate family member or a subordinate employee of a private applicator under the direct supervision of that private applicator. (Sec. 921.24(C).) Existing law prohibits a person from directly supervising the use of any restricted use pesticide on the property of another without having a certified applicator in direct supervision. The bill instead prohibits a person from failing to provide direct supervision as specified in rules adopted under the bill (see above). (Sec. 921.24(K).)

Under current law, a person cannot directly supervise the use of any general use pesticide on the property of another without having a licensed applicator in direct supervision. The bill instead prohibits a person from failing to properly supervise a trained serviceperson. (Sec. 921.24(Z).) The bill also prohibits a person from failing to provide training to trained servicepersons in the application of pesticides (sec. 921.24(J)).

Existing law prohibits a person from using fraud or misrepresentation in making application for a license or certificate or renewal of a license or certificate. The bill replaces "certificate" with "registration." (Sec. 921.24(M).) Current law also prohibits a person from refusing, failing, or neglecting to comply with any limitation or restriction of a license issued under the Pesticides Law or rules adopted under it. The bill adds any limitation or restriction of a registration to this prohibition. (Sec. 921.24(N).)

Finally, under existing law, a person is prohibited from engaging in fraudulent business practices in the application of pesticides when licensed as a custom applicator. The bill instead prohibits a person from engaging in fraudulent business practices. (Sec. 921.24(U).)

Penalties and civil actions for relief

The bill retains current law that requires the Director to assess a civil penalty against any person who violates the Pesticides Law or any rule or order adopted or issued under it in accordance with the schedule of civil penalties established in rules. The Director may conduct a hearing prior to assessing a civil penalty. In addition, current law authorizes the Director to assess a civil penalty against an employer of a person who violates the Pesticides Law or any rule or order adopted or issued under it for the same violation for which he fines the employee if specified conditions apply. The bill eliminates this provision and instead provides that a civil penalty may be assessed against the employer of a person who violates the Pesticides Law or any rule or order adopted or issued under it rather than against the person. (Sec. 921.25(A)(1) and (3).)

Under current law, if the employer or employee does not pay a civil penalty within a reasonable time after its assessment, the Attorney General, upon the request of the Director, must bring a civil action to recover the amount of the penalty. The bill changes "employer or employee" to "the person or employer." (Sec. 921.25(A)(4).)

The bill retains current law that authorizes the Director, in lieu of conducting a hearing, to refer a violation to the Attorney General who may bring a civil action against the violator. However, it eliminates current law that provides that if the Director refers a violation to the Attorney General, the Attorney General, in addition to bringing a civil action against a violator, may bring a civil action against the person's employer. The bill also eliminates the requirement that the court must order the employer to pay a civil penalty for the same violation for which the court orders the employee to pay a civil penalty if certain conditions apply. Instead, the bill provides that the Attorney General may bring a civil action against the employer of a person who violates the Pesticides Law or any rule or order adopted or issued under it rather than against the person. (Sec. 921.25(B).)

The bill retains existing law authorizing the Director to apply to the court of common pleas for a temporary or permanent injunction or other appropriate relief against continued violation of the Pesticides Law (sec. 921.25(C)). The bill also retains existing law that provides that the remedies available to the Director and the Attorney General under the Pesticides Law are independent of each other except for civil penalties (sec. 921.25(D)).

Under the bill, if a person violates the Pesticides Law or rules adopted under it, the person is liable for the violation, and the employer of the person is liable for and may be convicted of the violation if the person was acting on behalf of the employer and within the scope of the person's employment. (Sec. 921.25(E).)

Under existing law, anyone who violates most of the prohibitions contained in the Pesticides Law or rules adopted under it is guilty of a misdemeanor of the second degree on a first offense and a misdemeanor of the first degree on a subsequent offense. However, a person who violates the prohibition against operating in a negligent manner, which includes the operation of faulty or unsafe equipment, or the prohibition against the making of a false or misleading statement in an inspection concerning any infestation is guilty of a misdemeanor of the first degree. The bill instead makes a subsequent violation of either prohibition a felony of the fourth degree. (Sec. 921.99.)

Actions regarding licenses, permits, and registrations

Under the bill, in addition to assessing a civil penalty for violations (see above), the Director may deny, modify, suspend, revoke, or refuse to renew a license, permit, or registration issued under the Pesticides Law (sec. 921.25(A)(2)). Such an action does not affect, and cannot be construed as affecting, any other civil or criminal liability of the employee or the employer that may arise in consequence of the employer's or the employee's violation (sec. 921.25(A)).

Current law authorizes the Director to suspend, pending inquiry, for not longer than ten days, and, after the opportunity for hearing, to deny, suspend, revoke, refuse to renew, or modify any provision of any license, permit, or certification issued under the Pesticides Law if he finds that the applicant or the holder of a license, permit, or certificate is no longer qualified, has violated any provision of the Pesticides Law or rules adopted under it, has been found guilty of violating the federal act, or has been convicted of a misdemeanor involving moral turpitude or of a felony. The bill instead authorizes the Director to suspend, prior to a hearing, for not longer than ten days, any license, permit, or registration issued under the Pesticides Law if he makes any of the above findings. (Sec. 921.23).)

Written notices of warning

Under the bill, nothing in the Pesticides Law or any rule adopted under it can be construed to require the Director of Agriculture to report any findings to the appropriate prosecuting authority for proceedings in prosecution of, or issue any order or institute any enforcement procedure for, a violation of that Law or any rule adopted under it whenever the Director believes that the public interest will be best served by a suitable written notice of warning. A person who receives a written notice of warning may respond in writing to the notice. (Sec. 921.30.)

Exemptions

The bill retains with some changes the exemptions to the penalties provided under existing law for violations of the Pesticides Law. Under current law, the penalties do not apply to public officials of Ohio and the federal government, other than public operators, while engaged in the performance of their official duties in administering state or federal pesticide laws or rules or while engaged in pesticide research. In keeping with the bill's consolidation of the licensure of public operators and other pesticide applicators into the licensure of commercial applicators, the bill changes "public operators" to "commercial applicators employed by the federal government, the state, or a political subdivision." (Sec. 921.26(A)(2).)

The bill adds that the penalties for violations of the Pesticides Law do not apply to persons who incidentally use pesticides. The incidental use must involve only the application of general use pesticides. If a person incidentally uses a pesticide, the pesticide must be applied in strict accordance with the manufacturer's label for general use purposes. If further applications are necessary following the incidental use application, a pesticide applicator must apply the pesticide. (Sec. 921.26(A)(6).) "Incidental use" or "incidentally use" is defined to mean the application of a general use pesticide on an occasional, isolated, site-specific basis in order to avoid immediate personal harm. "Incidental use" or "incidentally use" does not mean regular, routine, or maintenance application of a general use pesticide. (Sec. 921.01(Y).)

Under existing law, the statute relating to custom applicators does not apply to an individual who uses only ground equipment for himself or for his neighbors, provided that he meets certain requirements under which he generally cannot operate as a business. The bill instead specifies that the bill's provisions relating to pesticide businesses do not apply to an individual who uses only ground equipment for himself or for his neighbors, provided that he meets the same requirements established under existing law and any other requirement established by the Director by rule. (Sec. 921.26(D).)

Additional enforcement

Current law authorizes the Director to enter any public or private premises or transport vehicles during regular business hours in order to have access to books, accounts, records, and memoranda, pesticides, or devices, subject to existing law and the rules adopted under it "for the purpose of determining pesticide applications, the financial responsibility of the applicator, the storage or disposal of pesticides"; to inspect and sample pesticides in storage or in use, "the disposal of pesticides," to inspect equipment or devices used to apply pesticides, and to make copies of records. The bill generally retains the Director's authority

with some changes. It states that the Director has such entry authority in order to determine compliance with the Pesticides Law and rules adopted under it. The bill reorganizes and clarifies what the Director may inspect and adds that he may inspect and copy books, pesticide application records, contracts related to pesticide business activities, and financial documents and may inspect pesticide storage facilities and sites and production areas of persons that manufacture pesticides for commercial purposes. (Sec. 921.18(A)(1).)

Under existing law, the Director may enter any public or private premises at any time when or where pesticides are being applied to determine if the applicator is or should be certified or licensed or if proper notice has been given before pesticide application, to collect samples of pesticides being applied or available for use, and to inspect equipment or devices used to apply pesticides. The bill generally retains this authority, except that it eliminates the Director's authority to enter on premises at any time to inspect equipment or devices used to apply pesticides. (Sec. 921.18(A)(2).)

Under existing law, when the Director or his authorized agent observes or has reasonable cause to believe that a piece of equipment used by a custom applicator or operator requires calibration, adjustment, or repair to enable it to perform satisfactorily, he may require such adjustment to be made immediately or issue a "stop operation" order pending repair to the equipment. In keeping with the bill's licensure consolidation, the bill replaces "custom applicator or operator" with "commercial applicator." It also adds a private applicator or any other individual to the list of people whose equipment may be checked for calibration, adjustment, or repair. (Sec. 921.18(B).)

Current law authorizes the Director to issue an order to the owner or custodian of any lot of pesticide or a device requiring it to be held at a designated place when the Director has reasonable cause to believe that the pesticide or device has been distributed, stored, transported, or used in violation of the Pesticides Law or any rule adopted under it or, if the owner or custodian is not available for service of the order upon him, attach the order to the pesticide or device and notify the owner or custodian and the registrant. The bill retains the Director's authority to so act and adds that the Director's authorized agent has the same authority. (Sec. 921.18(C).)

Pesticide Program Fund

Current law creates the Pesticide Program Fund in the state treasury. All money in the fund must be used to carry out the purposes of the Pesticides Law. The Fund consists of fees collected under the Pesticides Law and all fines, penalties, costs, and damages, except court costs, that are collected by either the Director of Agriculture or the Attorney General in consequence of any violation of

the Pesticides Law. Not later than June 30 each year, the Director of Budget and Management must determine whether the amount credited to the Pesticide Program Fund is in excess of the amount necessary to meet the Director of Agriculture's expenses in administering the Pesticides Law and must transfer any excess from the Pesticide Program Fund to the General Revenue Fund. The bill eliminates the requirement that the Director of Budget and Management make such a determination and transfer any excess funds to the General Revenue Fund. (Sec. 921.22).)

Other provisions

The bill retains the Director's authority to adopt rules with some changes. Under existing law, the Director must adopt rules that establish the conditions under which he requires a person to have a permit to apply restricted use pesticides. The bill removes this requirement. (Sec. 921.16(C)(2).)

Also under existing law, the Director cannot adopt any rule under the Pesticides Law that does either of the following:

(1) Permits any pesticide use that is prohibited by the federal act and regulations or orders issued under it; or

(2) As to certified applicators of restricted use pesticides as designated under the federal act, and rules adopted as to experimental use permits as authorized by the federal act, is inconsistent with the requirements of the federal act and regulations adopted under it. The bill instead, except as provided under the bill regarding licensure standards, prohibits the Director from adopting any rule under the Pesticides Law that is inconsistent with the requirements of the federal act and regulations adopted under it. (Sec. 921.16(G).)

Current law authorizes the Director to develop and enter into cooperative agreements with other state agencies for the purpose of developing and implementing voluntary or mandatory pesticide management plans that are designed to prevent unreasonable adverse effects on human health and the environment (sec. 921.16(K)). The bill instead requires the Director to establish standards governing the development and implementation of integrated pest management practices that are designed to prevent unreasonable adverse effects on human health and the environment. It then authorizes the Director to enter into cooperative agreements with other state agencies for the implementation of voluntary or mandatory integrated pest management practices. (Sec. 921.18(D).)

"Integrated pest management" means a sustainable approach to managing pests by combining biological, cultural, physical, and chemical tools in a way that minimizes economic, health, and environmental risks (sec. 921.01(CC)).

HISTORY

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