

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5154

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 8303, 8304, 8306, and 8316 (MCL 324.8303,
324.8304, 324.8306, and 324.8316), sections 8303, 8304, and 8306
as amended by 2002 PA 418.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 8303. (1) "Day care center" means a facility, other
2 than a private residence, which receives 1 or more preschool or
3 school-age children for care for periods of less than 24 hours a
4 day, at which the parents or guardians are not immediately
5 available to the child, and which is licensed as a child care
6 organization by the Michigan family independence agency under
7 1973 PA 116, MCL 722.111 to 722.128.

8 (2) ~~—(1)—~~ "Defoliant" means a substance or mixture of
9 substances intended for causing the leaves or foliage to drop

1 from a plant, with or without causing abscission.

2 (3) ~~—(2)—~~ "Department" means the department of agriculture.

3 (4) ~~—(3)—~~ "Desiccant" means a substance or mixture of
4 substances intended for artificially accelerating the drying of
5 plant tissue.

6 (5) ~~—(4)—~~ "Device" means an instrument or contrivance, other
7 than a firearm, which is intended for trapping, destroying,
8 repelling, or mitigating a pest; but does not include equipment
9 used for the application of pesticides when sold separately.

10 (6) ~~—(5)—~~ "Direct supervision" means directing the
11 application of a pesticide while being physically present during
12 the application. However, direct supervision by a private
13 agricultural applicator means either of the following:

14 (a) The private agricultural applicator is in the same field
15 or location directing the application of a restricted use
16 pesticide by an uncertified applicator.

17 (b) The private agricultural applicator supervises the
18 uncertified applicator and is physically present during the
19 initial restricted use pesticide application on an agricultural
20 commodity or agricultural structure, including calibration,
21 mixing, application, operator safety, and disposal.

22 (7) ~~—(6)—~~ "Director" means the director of the department ~~of~~
23 ~~agriculture~~ or his or her authorized representative.

24 (8) ~~—(7)—~~ "Distribute" means to offer for sale, hold for
25 sale, sell, barter, ship, or deliver pesticides in this state.

26 (9) ~~—(8)—~~ "Envelope monitoring" means monitoring of
27 groundwater in areas adjacent to properties where groundwater is

1 contaminated to determine the concentration and spatial
2 distribution of the contaminant in the aquifer.

3 (10) ~~—(9)—~~ "Environment" includes water, air, land, and all
4 plants and human beings and other animals living therein, and the
5 interrelationships that exist among them.

6 (11) ~~—(10)—~~ "EPA" means the United States environmental
7 protection agency.

8 (12) ~~—(11)—~~ "FIFRA" means the federal insecticide, fungicide,
9 and rodenticide act, chapter 125, 86 Stat. 973, 7 U.S.C. 136 to
10 136i, ~~and~~ 136j to 136r and 136s to 136y.

11 (13) ~~—(12)—~~ "Fungi" means all nonchlorophyll bearing
12 thallophytes; that is, all nonchlorophyll bearing plants of a
13 lower order than mosses and liverworts, as for example rusts,
14 smuts, mildews, molds, yeasts, and bacteria, except those in or
15 on other animals, and except those in or on processed foods,
16 beverages, or pharmaceuticals.

17 (14) ~~—(13)—~~ "General use pesticide" means a pesticide that is
18 not a restricted use pesticide.

19 (15) ~~—(14)—~~ "Groundwater" means underground water within the
20 zone of saturation.

21 (16) ~~—(15)—~~ "Groundwater protection rule" means a rule
22 promulgated under this part that ~~defines~~ **specifies** a minimum
23 operational standard for structures, activities, and procedures
24 that may have or may contribute to the contamination of
25 groundwater and that ~~defines the scope of a groundwater~~
26 ~~protection rule, the~~ **specifies the standard's scope**, region of
27 implementation, ~~of a groundwater protection rule,~~ and

1 implementation period. ~~for these rules.~~ As used in this
2 subsection:

3 (a) "Structures, activities, and procedures" includes, but is
4 not limited to, mixing, loading, and rinse pads, application
5 equipment, application timing, application rates, crop rotation,
6 and pest control thresholds.

7 (b) ~~"The scope of a groundwater protection rule" may define~~
8 **"Scope" means applicability to** a particular pesticide, structure,
9 activity, or procedure or ~~may define~~ pesticides containing
10 specific ingredients.

11 (c) ~~"The region of implementation of a groundwater~~
12 ~~protection rule~~ **"Region of implementation"** may include specific
13 soil types or aquifer sensitivity regions or any other geographic
14 boundary.

15 (17) ~~(16)~~ "Groundwater resource protection level" means a
16 maximum contaminant level, health advisory level, or, if the EPA
17 has not established a maximum contaminant level or a health
18 advisory level, a level established by the director of public
19 health using risk assessment protocol established by rule under
20 this part.

21 (18) ~~(17)~~ "Groundwater resource response level" means 20%
22 of the groundwater resource protection level. ~~In cases where~~
23 **If** 20% of the groundwater resource protection level is less than
24 the method detection limit, the method detection limit ~~shall~~
25 ~~serve as~~ **is** the groundwater resource response level.

26 Sec. 8304. (1) "Inert ingredient" means an ingredient that
27 is not active.

(2) "Ingredient statement" means:

(a) A statement of the name and percentage of each active ingredient together with the total percentage of the inert ingredients in the pesticide.

(b) When the pesticide contains arsenic in any form, the ingredient statement shall include percentages of total and water soluble arsenic, each calculated as elemental arsenic.

(3) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising 6-legged, usually winged forms, as for example beetles, bugs, bees, and flies, and to other allied classes or arthropods whose members are wingless and usually have more than 6 legs, as for example spiders, mites, ticks, centipedes, and wood lice.

(4) "Insecticide" means a pesticide intended for preventing, destroying, repelling, or mitigating an insect.

(5) "Integrated pest management" means a pest management system that uses all suitable techniques in a total management system to prevent pests from reaching unacceptable levels or to reduce existing pest populations to acceptable levels.

(6) "Integrated pest management program" means a program for integrated pest management that includes at least all of the following elements:

(a) The following integrated pest management practices and principles:

(i) Site evaluation, including site description, inspection,

1 and monitoring and the concept of threshold levels.

2 (ii) Consideration of the relationship between pest biology
3 and pest management methods.

4 (iii) Consideration of all available pest management methods,
5 including population reduction techniques, such as mechanical,
6 biological, and chemical techniques and pest prevention
7 techniques, such as habitat modification.

8 (iv) Pest control method selection, including consideration
9 of the impact on human health and the environment.

10 (v) Continual evaluation of the integrated pest management
11 program to determine the program's effectiveness and the need for
12 program modification.

13 (b) Recordkeeping which shall be maintained by the applicator
14 and which shall include all of the following:

15 (i) The site address.

16 (ii) The date of service.

17 (iii) The target pest or pests.

18 (iv) The inspection report, including the number of pests
19 found or reported, and the conditions conducive to pest
20 infestation.

21 (v) The pest management recommendations made by the
22 applicator, such as structural or habitat modification.

23 (vi) The structural or habitat modification or other measures
24 that were initiated as a part of the pest management program.

25 (vii) The name of each pesticide used.

26 (viii) Quantity of each pesticide used.

27 (ix) The location of the area or room or rooms where

1 pesticides were applied.

2 (x) The name of the applicator.

3 (xi) The name of the pest control firm, if a firm is
4 employed, and the emergency telephone number.

5 (c) Provision of the following information to the building
6 manager:

7 (i) The integrated pest management program and initial
8 service inspection record, which shall be provided at the time
9 of, or made available electronically within 48 hours after, the
10 initial service.

11 (ii) A record that includes the information specified in
12 subdivision (b), which shall be provided upon or made available
13 electronically within 48 hours after the completion of each
14 inspection, application, or service call.

15 (d) The acceptance of responsibility by the building manager
16 to post signs provided by the pesticide applicator in compliance
17 with rules promulgated under section 8325.

18 (7) ~~—(6)—~~ "Label" means the written, printed, or graphic
19 matter on or attached to the pesticide or device or any of its
20 containers or wrappers.

21 (8) ~~—(7)—~~ "Labeling" means the label and all other written,
22 printed, or graphic matter accompanying the pesticide or device,
23 or to which reference is made on the label or in literature
24 accompanying the pesticide or device, and all applicable
25 modifications or supplements to official publications of the EPA,
26 the United States departments of agriculture and interior, the
27 United States departments of education and health and human

1 services, state experiment stations, state agricultural colleges,
2 and other similar federal or state institutions or agencies
3 authorized by law to conduct research in the field of
4 pesticides.

5 (9) ~~—(8)—~~ "Maximum contaminant level" means that term as it
6 is defined in title XIV of the public health service act,
7 ~~chapter 373, 88 Stat. 1660, 42 U.S.C.~~ **USC** 300f to ~~300j-3,~~
8 ~~300j-4 to 300j-9 and 300j-11 to~~ 300j-25, and regulations
9 promulgated under that act.

10 (10) ~~—(9)—~~ "Method detection limit" means the minimum
11 concentration of a substance that can be measured and reported
12 with 99% confidence that the analyte concentration is greater
13 than 0 and is determined from analysis of a sample in a given
14 matrix that contains the analyte.

15 (11) ~~—(10)—~~ "Minor use" means the use of a pesticide on a
16 crop, animal, or site where any of the following exist:

17 (a) The total United States acreage for the crop or site is
18 less than 300,000 acres.

19 (b) The acreage expected to be treated nationally as a result
20 of that use is less than 300,000 acres annually.

21 (c) The use does not provide sufficient economic incentive to
22 support the initial registration or continuing registration of
23 the use.

24 (12) ~~—(11)—~~ "Misbranded" applies to any pesticide or device
25 if it is an imitation of or is offered for sale under the name of
26 another pesticide, or if its labeling does not comply with
27 labeling requirements of this part, the rules promulgated under

1 this part, FIFRA, or regulations promulgated under FIFRA.

2 (13) ~~—(12)—~~ "Molluscicide" means a pesticide intended for
3 preventing, destroying, repelling, or mitigating a mollusk.

4 Sec. 8306. (1) "Registered applicator" means an individual
5 who is authorized to apply general use pesticides for a private
6 or commercial purpose as provided in this part and in the rules
7 promulgated under this part.

8 (2) "Ready-to-use pesticide" means a pesticide that is
9 applied directly from its original container consistent with
10 label directions, such as an aerosol insecticide or rodenticide
11 bait pack that does not require mixing or loading prior to
12 application.

13 (3) "Registrant" means a person who is required to register a
14 pesticide pursuant to this part.

15 (4) "Restricted use pesticide" means a pesticide classified
16 for restricted use by the EPA or the director.

17 (5) "Restricted use pesticide dealer" means a person engaged
18 in distributing, selling, or offering for sale restricted use
19 pesticides to the ultimate user.

20 (6) "Rodenticide" means a pesticide intended for preventing,
21 destroying, repelling, or mitigating rodents.

22 (7) "School" means public and private schools, grades
23 kindergarten through the twelfth grade, **but does not include a**
24 **home school.**

25 (8) "Supervise" means directing the application of a
26 pesticide with or without being physically present during the
27 application.

1 (9) "Unreasonable adverse effect on the environment" means
2 any unreasonable risk to human beings or the environment, taking
3 into account the economic, social, and environmental costs and
4 benefits of the use of a pesticide.

5 (10) "Use of a pesticide" means the loading, mixing,
6 applying, storing, transporting, and disposing of a pesticide.

7 (11) "Vendor" means a person who sells or distributes
8 pesticides.

9 (12) "Violates this part" or "violation of this part" means a
10 violation of this part, a rule promulgated under this part, or an
11 order issued under this part.

12 (13) "Weed" means a plant which grows where it is not
13 wanted.

14 Sec. 8316. ~~—(1) At the beginning of each school year,~~
15 ~~school administrators shall notify parents and guardians of~~
16 ~~children attending that school of the right to be informed prior~~
17 ~~to any application of a pesticide at that school.~~

18 ~~—— (2) The notice described in subsection (1) shall contain~~
19 ~~information, obtained from the person applying the pesticide,~~
20 ~~which includes a statement that a pesticide will be applied, the~~
21 ~~approximate location of the application, and the date of the~~
22 ~~application.~~

23 (1) Beginning 1 year after the effective date of the
24 amendatory act that added this subsection, a person shall not
25 apply a pesticide in a school or day care center unless the
26 school or day care center has an integrated pest management
27 program in place for the building.

1 (2) The primary administrator of a school or day care center
2 or his or her designee shall annually notify the parents or
3 guardians of children attending that school or cared for at that
4 day care center that the parents or guardians will receive
5 advance notice of the application of a pesticide, other than a
6 bait or gel formulation, at the school or day care center. The
7 primary administrator of a school or his or her designee shall
8 give the annual notification not more than 30 days after the
9 beginning of the school year, and the primary administrator of a
10 day care center or his or her designee shall give the annual
11 notification in September.

12 (3) An annual notification under subsection (2) shall satisfy
13 all of the following requirements:

14 (a) Be in writing.

15 (b) Specify 2 methods by which advance notice of the
16 application of a pesticide will be given at least 48 hours before
17 the application. The first method shall be by posting at the
18 entrances to the school or day care center. Subject to
19 subdivision (c), the second method shall be 1 of the following:

20 (i) Posting in a public, common area of the school or day
21 care center, other than an entrance.

22 (ii) E-mail.

23 (iii) A telephone call by which direct contact is made with a
24 parent or guardian of a student of the school or a child under
25 the care of the day care center or a message is recorded on an
26 answering machine.

27 (iv) Providing students of the school or children under the

1 care of the day care center with a written notice to be delivered
2 to their parents or guardians.

3 (v) Posting on the school's or day care center's website.

4 (c) State that, in addition to notice under subdivision (b),
5 parents or guardians are entitled to receive the notice by
6 first-class United States mail postmarked at least 3 days before
7 the application, if they so request, and the manner in which such
8 a request shall be made.

9 (d) For a school, inform parents and guardians that they may
10 review the school's integrated pest management program, if any,
11 and records on any pesticide applications.

12 (e) For a school, provide the name, telephone number, and, if
13 applicable, e-mail address of the person at the school building
14 responsible for pesticide application procedures.

15 (4) An advance notice of application of a pesticide, other
16 than a bait or gel formulation, shall contain all of the
17 following information:

18 (a) A statement that a pesticide is expected to be applied.

19 (b) The target pest or pests.

20 (c) The approximate location of the application.

21 (d) The date of the application.

22 (e) The name, telephone number, and, if available, e-mail
23 address of a contact person at the school or day care center
24 responsible for maintaining records with specific information on
25 pest infestation and actual pesticide application as required by
26 rules.

27 (f) A toll-free telephone number for a national pesticide

1 information center recognized by the department and a telephone
2 number for pesticide information from the department.

3 (5) Before applying a pesticide, other than a bait or gel
4 formulation, a school or day care center shall provide advance
5 notice to parents and guardians consistent with subsections
6 (3)(b) to (e) and (4). However, in an emergency, a school or day
7 care center may apply a pesticide without providing advance
8 notice to parents or guardians. Promptly after the emergency
9 pesticide application, the school or day care center shall give
10 parents or guardians notice of the emergency pesticide
11 application that otherwise meets the requirements of subsection
12 (3)(b) and (c). The notice shall contain a statement that a
13 pesticide was applied and shall meet the requirements of
14 subsection (4)(b) to (f).

15 (6) Liquid spray or aerosol insecticide applications shall
16 not be made in a room of a school building or day care center
17 building unless the room will be unoccupied by students or
18 children for not less than 4 hours after the application or
19 unless the product label requires a longer reentry period. The
20 building manager shall be notified of the reentry restrictions by
21 the applicator.

22 (7) The department shall do both of the following:

23 (a) Within 1 year after the effective date of the amendatory
24 act that added this subsection, develop a model integrated pest
25 management policy for schools, in consultation with the
26 department of education and the pesticide advisory committee
27 created in section 8326, and make the policy available to all

1 school districts, intermediate school districts, public school
2 academies, and private schools.

3 (b) Encourage local and intermediate school boards and boards
4 of directors of public school academies to do both of the
5 following:

6 (i) Adopt and follow the model integrated pest management
7 policy developed under subdivision (a).

8 (ii) Require appropriate staff to obtain periodic updates and
9 training on integrated pest management from experts on the
10 subject.

11 (8) Subsections (1) to (7) do not apply to sanitizers,
12 germicides, disinfectants, or antimicrobial agents.