

Act No. 24
Public Acts of 2004
Approved by the Governor
March 10, 2004
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**STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2004**

Introduced by Reps. Gaffney, Minore, Smith, Ward, Plakas, Gillard, Ruth Johnson, Gleason, Farrah, Sak, O'Neil, Vagnozzi, Clack, Condino, Bieda, LaJoy, Nofs, Law, Walker, Brandenburg, Tobocman, Kolb, Acciavatti, Howell, Elkins, Hardman, Waters, Daniels, McConico, Anderson, Stewart, Pappageorge, Phillips, Jamnick, DeRossett, Richardville, Lipsey, Voorhees, Middaugh, Meyer, Dennis, Shackleton, Hunter, Hood, Paletko, Pastor, Hopgood, Wojno, Taub, Accavitti, Shaffer, Stahl and Moolenaar

ENROLLED HOUSE BILL No. 5154

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," 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:

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

(2) "Defoliant" means a substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(3) "Department" means the department of agriculture.

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

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

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

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

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

(7) “Director” means the director of the department or his or her authorized representative.

(8) “Distribute” means to offer for sale, hold for sale, sell, barter, ship, or deliver pesticides in this state.

(9) “Envelope monitoring” means monitoring of groundwater in areas adjacent to properties where groundwater is contaminated to determine the concentration and spatial distribution of the contaminant in the aquifer.

(10) “Environment” includes water, air, land, and all plants and human beings and other animals living therein, and the interrelationships that exist among them.

(11) “EPA” means the United States environmental protection agency.

(12) “FIFRA” means the federal insecticide, fungicide, and rodenticide act, chapter 125, 86 Stat. 973, 7 USC 136 to 136i, 136j to 136r and 136s to 136y.

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

(14) “General use pesticide” means a pesticide that is not a restricted use pesticide.

(15) “Groundwater” means underground water within the zone of saturation.

(16) “Groundwater protection rule” means a rule promulgated under this part that specifies a minimum operational standard for structures, activities, and procedures that may have or may contribute to the contamination of groundwater and that specifies the standard’s scope, region of implementation, and implementation period. As used in this subsection:

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

(b) “Scope” means applicability to a particular pesticide, structure, activity, or procedure or pesticides containing specific ingredients.

(c) “Region of implementation” may include specific soil types or aquifer sensitivity regions or any other geographic boundary.

(17) “Groundwater resource protection level” means a maximum contaminant level, health advisory level, or, if the EPA has not established a maximum contaminant level or a health advisory level, a level established by the director of public health using risk assessment protocol established by rule under this part.

(18) “Groundwater resource response level” means 20% of the groundwater resource protection level. If 20% of the groundwater resource protection level is less than the method detection limit, the method detection limit is the groundwater resource response level.

Sec. 8304. (1) “Inert ingredient” means an ingredient that 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, and monitoring and the concept of threshold levels.

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

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

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

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

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

(i) The site address.

(ii) The date of service.

(iii) The target pest or pests.

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

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

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

(vii) The name of each pesticide used.

(viii) Quantity of each pesticide used.

(ix) The location of the area or room or rooms where pesticides were applied.

(x) The name of the applicator.

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

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

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

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

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

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

(8) "Labeling" means the label and all other written, printed, or graphic matter accompanying the pesticide or device, or to which reference is made on the label or in literature accompanying the pesticide or device, and all applicable modifications or supplements to official publications of the EPA, the United States departments of agriculture and interior, the United States departments of education and health and human services, state experiment stations, state agricultural colleges, and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

(9) "Maximum contaminant level" means that term as it is defined in title XIV of the public health service act, 42 USC 300f to 300j-25, and regulations promulgated under that act.

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

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

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

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

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

(12) "Misbranded" applies to any pesticide or device if it is an imitation of or is offered for sale under the name of another pesticide, or if its labeling does not comply with labeling requirements of this part, the rules promulgated under this part, FIFRA, or regulations promulgated under FIFRA.

(13) "Molluscicide" means a pesticide intended for preventing, destroying, repelling, or mitigating a mollusk.

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

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

(3) “Registrant” means a person who is required to register a pesticide pursuant to this part.

(4) “Restricted use pesticide” means a pesticide classified for restricted use by the EPA or the director.

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

(6) “Rodenticide” means a pesticide intended for preventing, destroying, repelling, or mitigating rodents.

(7) “School” means public and private schools, grades kindergarten through the twelfth grade, but does not include a home school.

(8) “Supervise” means directing the application of a pesticide with or without being physically present during the application.

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

(10) “Use of a pesticide” means the loading, mixing, applying, storing, transporting, and disposing of a pesticide.

(11) “Vendor” means a person who sells or distributes pesticides.

(12) “Violates this part” or “violation of this part” means a violation of this part, a rule promulgated under this part, or an order issued under this part.

(13) “Weed” means a plant which grows where it is not wanted.

Sec. 8316. (1) Beginning 1 year after the effective date of the amendatory act that added this subsection, a person shall not apply a pesticide in a school or day care center unless the school or day care center has an integrated pest management program in place for the building.

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

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

(a) Be in writing.

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

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

(ii) E-mail.

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

(iv) Providing students of the school or children under the care of the day care center with a written notice to be delivered to their parents or guardians.

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

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

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

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

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

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

(b) The target pest or pests.

(c) The approximate location of the application.

(d) The date of the application.

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

(f) A toll-free telephone number for a national pesticide information center recognized by the department and a telephone number for pesticide information from the department.

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

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

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

(a) Within 1 year after the effective date of the amendatory act that added this subsection, develop a model integrated pest management policy for schools, in consultation with the department of education and the pesticide advisory committee created in section 8326, and make the policy available to all school districts, intermediate school districts, public school academies, and private schools.

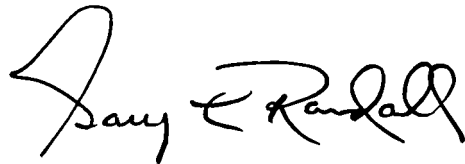
(b) Encourage local and intermediate school boards and boards of directors of public school academies to do both of the following:

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

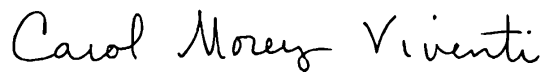
(ii) Require appropriate staff to obtain periodic updates and training on integrated pest management from experts on the subject.

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor