

CHAPTER 172 (SB 300)

AN ACT relating to fertilizer and pesticide use and application.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 217B.040 is amended to read as follows:

For the purposes of this chapter, unless the context requires otherwise:

- (1) "Pest" means:
 - (a) Any insect, snail, slug, rodent, nematode, fungus, weed; ~~or~~~~and~~
 - (b) Any other form of plant or animal life, or virus, bacteria, or other microorganism, except viruses, bacteria, or other microorganisms on or in living man or other living animals, which is normally considered to be a pest, or which the department declares to be a pest;
- (2) "Pesticide" means:
 - (a) Any substance or mixture of substances intended to prevent, destroy, control, repel, attract, or mitigate any pest;
 - (b) Any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; ~~or~~~~and~~
 - (c) Any substance or mixture of substances intended to be used as a spray adjuvant, ***once they have been mixed with an EPA registered product;***
- (3) "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant with or without causing abscission;
- (4) "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissues;
- (5) "Plant regulator" means any substance or mixture of substances intended through physiological action to accelerate or retard the rate of growth or maturation, or to otherwise alter the behavior of plants, but shall not include substances insofar as they are intended to be used as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments;
- (6) "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 six (6) legged, usually winged forms, as for example beetles, bugs, bees, wasps, and flies, and includes other allied classes of arthropods whose members are wingless and usually have more than six (6) legs, as for example spiders, mites, ticks, centipedes, and wood lice, and also nematodes and other worms, and any other invertebrates which are destructive, constitute a liability, and may be classed as pests;
- (7) "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, bacteria, and viruses, except those on or in living man or other living animals, and except those in or on processed food, beverages, or pharmaceuticals;
- (8) "Fertilizer" means any substance containing one (1) or more recognized plant nutrients, which is used for its plant nutrient content and which is designed for use or claimed to have value in

promoting plant growth, except unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes, and other products exempted by administrative regulation;

- (9) "Weed" means any plant which grows where not wanted;
- (10) "Nematode" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or sac-like bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts, and may also be called nemas or eelworms;
- (11) "Snails or slugs" include all harmful mollusks;
- (12) "Person" means any individual, partnership, association, or any organized group of persons whether incorporated or not;
- (13) "Equipment" means any type of ground, water, or aerial equipment, device, or contrivance using motorized, mechanical, or pressurized power and used to apply any pesticide on land and anything that may be growing, habitating, or stored on or in the land, but shall not include any pressurized hand-sized household device used to apply any pesticide;
- (14) "Restricted use pesticide" means any pesticide classified for restricted use by the administrator, EPA, or by administrative regulation of the department;
- (15) ~~"Engage in business" means any application of pesticide by any person upon lands of another;~~
- (16) ~~"Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, devices, and contrivances and machinery appurtenant to ~~thereto~~ or situated *on them* ~~thereon~~, fixed or mobile, including any used for transportation;~~
- (17) ~~(17)~~ "Pesticide applicator" means any *individual employed or supervised by a pesticide operator to apply pesticides. The term does not include trainees* ~~[person who owns or manages a pesticide application business which is engaged in the business of applying pesticides upon the lands of another];~~
- (18) ~~(18)~~ "Pesticide operator" means any *individual who owns or manages a pesticide application business that is engaged in the business of applying pesticides upon the lands of another* ~~[person employed by a pesticide applicator who operates equipment for the application of pesticides or applies pesticides manually. This term does not include employees who work only under direct "on the job" supervision of a licensed pesticide applicator or licensed pesticide operator];~~
- (19) ~~(19)~~ "Pest control consultant" means any person who, for a fee, offers or supplies technical advice, supervision, or aid, or recommends the use of specific pesticides for the purpose of controlling insect pests, plant diseases, weeds, and other pests;
- (20) ~~(20)~~ "Noncommercial applicator" ~~[Public operator"]~~ means any *individual employed* ~~[person in charge of any equipment used]~~ by *golf courses*, municipal corporations, public utilities, or other governmental agencies *making applications of pesticides to lands owned, occupied, or managed by his or her employer* ~~[applying pesticides];~~
- (21) ~~(21)~~ "Wildlife" means all living things that are neither human, domesticated, nor, as defined in this chapter, pests; including, but not limited to mammals, birds, and aquatic life;

- (21)~~(22)~~ "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver for shipment, or receive, and, having received, deliver or offer to deliver any pesticides in this state excepting internal distribution within a company or organization;
- (22)~~(23)~~ "EPA" means the United States Environmental Protection Agency;
- (23)~~(24)~~ "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device or to any of its containers or wrappers;
- ~~(25) "Restricted use pesticide dealer" means any person who distributes restricted use pesticides except manufacturers of restricted use pesticides who distribute their products solely to "restricted use pesticide dealers";~~
- (24)~~(26)~~ "Spray adjuvant" means any wetting agent, spreading agent, sticker, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent intended to be used with any other pesticide as an aid to the application or to the effect *of it*~~[thereof]~~, and which is in a package or container separate from that of the other pesticide with which it is to be used;~~[and]~~
- (25)~~(27)~~ "Commissioner" means the Commissioner of the Department of Agriculture;
- (26) *"Dealer" means any person that engages in the storage of bulk fertilizer or a restricted use pesticide for the purpose of redistribution or direct resale, or engages in the business of applying any pesticide to the lands of another. A "dealer" shall not include a manufacturer of a restricted use pesticide or a fertilizer who distributes his or her product solely to a dealer;*
- (27) *"Trainee" means an individual who has been employed by a dealer and is working under the direct on-the-job supervision of a licensed operator or applicator;*
- (28) *"Direct on-the-job supervision" means having a licensed operator or licensed applicator physically on site and directly supervising or training an individual in the application of a pesticide;*
- (29) *"Branch office" means any location of a dealer other than its designated principal place of business location, but does not include on-premises and off-premises bulk storage or receiving warehouses used solely for the purpose of customer order filling;*
- (30) *"Applicant" means a person applying for a license or registration under this chapter;*
- (31) *"Pesticide sales agent" means an individual who sells or distributes restricted use pesticides or an individual who sells and makes recommendations for the use or application of pesticides to the final user;*
- (32) *"Limited license" means a license that is issued by the department for noncommercial use, and shall be valid only when an individual is making applications of pesticides to lands owned, occupied, or managed by his or her employer; and*
- (33) *"Certified crop advisor" means an individual who has met the requirements of and has been certified by the Kentucky Certified Crop Advisor Board.*

Section 2. KRS 217B.050 is amended to read as follows:

- (1) The department shall administer and enforce the provisions of this chapter and *promulgate*~~[issue]~~ administrative regulations to carry out the provisions of this chapter and

in the administrative regulations may prescribe methods to be used in the storage of fertilizers and pesticides, and application of pesticides. Where the department finds that the administrative regulations are necessary to carry out the purpose and intent of this chapter, the administrative regulations may relate to the time, place, manner, and method of storage and application of the pesticides and storage of fertilizers and pesticides, may restrict or prohibit use of pesticides in designated areas during specified periods of time, and shall encompass all reasonable factors which the department deems necessary to prevent damage or injury by drift or misapplication to:

- (a) Plants, including forage plants, on adjacent or nearby lands;
 - (b) Wildlife in the adjoining or nearby areas;
 - (c) Fish and other aquatic life in waters in reasonable proximity to the area to be treated; and
 - (d) Pollinating insects, animals, or persons.
- (2) In ~~*promulgating*~~~~[issuing]~~ the administrative regulations, the department shall give consideration to pertinent research findings and recommendations of other agencies of this state and of the federal government.
- (3) The department may by administrative regulation adopt a list of "restricted use pesticides" for the state or for designated areas within the state if it finds that the characteristics of the pesticides require restricting their use to prevent injury on lands other than the land to which they are applied, or to persons, animals, crops, or pests or vegetation other than the pests or vegetation which they are intended to destroy. For the purpose of uniformity of requirements between the states and the federal government, the department may adopt the list of "restricted use pesticides" as established by the Environmental Protection Agency or other federal or state agencies.
- (4) The department may establish additional classifications of applicator *or operator* licenses as required for conformance with the Federal Environmental Pesticide Control Act of 1972. The classifications may include private farmer applicators, commercial establishment applicators, and government employee applicators not specifically mentioned in this chapter. The administrative regulations may specify licensing conditions, procedures, and fees not to exceed those fees specified for other licensees under this chapter.

Section 3. KRS 217B.060 is amended to read as follows:

- (1) The department may classify licenses to be issued under this chapter. ~~*The*~~~~[Such]~~ classifications may include but not be limited to ornamental or agricultural pesticide applicators, or right-of-way pesticide applicators. Separate classifications may be specified as to ground, aerial, or manual methods used by any licensee to apply pesticides. Each classification shall be subject to separate testing procedures and requirements.~~[No person shall be required to pay an additional license fee if such person desires to be licensed in one (1) or all of the license classifications provided for by the department under the authority of this section.]~~
- (2) *Application for a license shall be made in writing to the department on a designated form obtained from the department. Each application for a license shall contain information regarding the applicant's qualifications and proposed operations, and license classification or classifications the applicant is applying for, and shall include the following:*

- (a) *The full name of the person applying for the license;*
 - (b) *If the applicant is a receiver, trustee, firm, partnership, association, corporation, or other organized group of persons whether or not incorporated, the full name of the receiver or trustee, the full name of each member of the firm or partnership, or the names of the officers of the association, corporation, or group;*
 - (c) *The principal business address of the applicant in the state and elsewhere;*
 - (d) *The name and address of a person, who may be the Secretary of State, whose domicile is in the state, and who is authorized to receive and accept services of summons and legal notice of all kinds for the applicant;*
 - (e) *The model, make, horsepower, and size of any equipment used by the applicant to apply pesticides; and*
 - (f) *Any other necessary information prescribed by the department.*
- (3) *The department shall require an applicant for a license to show upon examination that the applicant possesses adequate knowledge concerning the proper use and application of pesticides in the classifications he or she has applied for. The applicant shall also demonstrate a knowledge of the proper use of and calibration of the various equipment that he or she may have applied for a license to operate, including any pressurized, handsized devices. The examination shall require a working knowledge of:*
- (a) *The proper use of the equipment;*
 - (b) *The hazards that may be involved in applying pesticides, including:*
 - 1. *The effect of drift of the pesticides on adjacent and nearby lands and other nontarget organisms;*
 - 2. *The proper meteorological conditions for the application of pesticides and the precautions to be taken;*
 - 3. *The effect of the pesticides on plants or animals in the area, including the possibility of damage to plants or animals or the possibility of illegal pesticide residues resulting on them;*
 - 4. *The effect of the application of pesticides to wildlife in the area, including aquatic life;*
 - 5. *The identity and classification of pesticides used and the effects of their application in particular circumstances; and*
 - 6. *The likelihood of contamination of water or injury to persons, plants, livestock, pollinating insects, and vegetation;*
 - (c) *Calculating the concentration of pesticides to be used in particular circumstances;*
 - (d) *Identification of pests to be controlled by common name only and the damages caused by the pests;*
 - (e) *Protective clothing and respiratory equipment required during the handling and application of pesticides;*

- (f) *General precautions to be followed in the disposal of containers as well as the cleaning and decontamination of the equipment that the applicant proposes to use; and*
- (g) *Applicable state and federal pesticide laws and regulations.*
- (4) *If the department finds the applicant qualified to apply pesticides in the classifications he or she has applied for, if the applicant files the bond or insurance required under Section 15 of this Act, and if the applicant applying for a license to engage in aerial application of pesticides has met all of the requirements of the Federal Aviation Agency and the Transportation Cabinet to operate the equipment described in the application, the department shall issue a pesticide applicator license limited to the classifications for which he or she is qualified, which shall expire at the end of the calendar year of issue unless it has been revoked or suspended prior to that by the department for cause, or the financial security required under Section 15 of this Act is not dated to expire at an earlier date, in which case the license shall be dated to expire upon the expiration date of the financial security.*

Section 4. KRS 217B.070 is amended to read as follows:

- (1) No person shall engage in the business of applying pesticides to the lands of another within this state at any time without a pesticide *operator's*~~[applicator's]~~ license issued by the department. The department shall require an annual fee of *twenty-five dollars (\$25)*~~[\$25]~~ for each pesticide *operator's*~~[applicator's]~~ license issued~~[and, in addition, an inspection fee of \$10 for each aircraft to be licensed and \$10 for each piece of ground equipment to be licensed. Should any equipment fail to pass inspection under KRS 217B.160, making it necessary for a second inspection to be made, the department shall require an added inspection fee of \$5. In addition to the required inspection, unannounced inspections may be made without charge to determine if equipment is properly calibrated and maintained in conformance with laws and regulations].~~
- (2) *No license shall be issued unless the applicant holds a valid certification within this category*~~[Application for a license shall be made in writing to the department on a designated form obtained from the department. Each application for a license shall contain information regarding the applicant's qualifications and proposed operations, license classification or classifications the applicant is applying for, and shall include the following:~~
- (a) ~~The full name of the person applying for the license;~~
- (b) ~~If the applicant is an individual, receiver, trustee, firm, partnership, association, corporation, or other organized group of persons whether or not incorporated, the full name of each member of the firm or partnership, or the names of the officers of the association, corporation, or group;~~
- (c) ~~The principal business address of the applicant in the state and elsewhere;~~
- (d) ~~The name and address of a person, who may be the Secretary of State, whose domicile is in the state, and who is authorized to receive and accept services of summons and legal notice of all kinds for the applicant;~~
- (e) ~~The model, make, horsepower, and size of any equipment used by the applicant to apply pesticides;~~
- (f) ~~Any other necessary information prescribed by the department].~~

- (3) *No license shall be issued unless the applicant is registered as a dealer or is employed by a person who is registered as a dealer*~~[The department shall require an applicant for a license to show upon examination that he possesses adequate knowledge concerning the proper use and application of pesticides in the classifications he has applied for, manually or with the various equipment that he may have applied for a license to operate. The examination shall require a working knowledge of:~~
- ~~(a) The proper use of the equipment.~~
 - ~~(b) The hazards that may be involved in applying pesticides, including:

 - ~~1. The effect of drift of the pesticides on adjacent and nearby lands and other nontarget organisms;~~
 - ~~2. The proper meteorological conditions for the application of pesticides and the precautions to be taken therewith;~~
 - ~~3. The effect of the pesticides on plants or animals in the area, including the possibility of damage to plants or animals or the possibility of illegal pesticide residues resulting on them;~~
 - ~~4. The effect of the application of pesticides to wildlife in the area, including aquatic life;~~
 - ~~5. The identity and classification of pesticides used and the effects of their application in particular circumstances;~~
 - ~~6. The likelihood of contamination of water or injury to persons, plants, livestock, pollinating insects, and vegetation.~~~~
 - ~~(c) Calculating the concentration of pesticides to be used in particular circumstances.~~
 - ~~(d) Identification of pests to be controlled by common name only and the damages caused by such pests.~~
 - ~~(e) Protective clothing and respiratory equipment required during the handling and application of pesticides.~~
 - ~~(f) General precautions to be followed in the disposal of containers as well as the cleaning and decontamination of the equipment which the applicant proposes to use.~~
 - ~~(g) Applicable state and federal pesticide laws and regulations.~~
- (4) ~~If the department finds the applicant qualified to apply pesticides in the classifications he has applied for and, if the applicant files the bond or insurance required under KRS 217B.130, and if the applicant applying for a license to engage in aerial application of pesticides has met all of the requirements of the Federal Aviation Agency and the Transportation Cabinet to operate the equipment described in the application, the department shall issue a pesticide applicator license limited to the classifications for which he is qualified, which shall expire at the end of the calendar year of issue unless it has been revoked or suspended prior thereto by the department for cause or the financial security required under KRS 217B.130 is not dated to expire at an earlier date, in which case said license shall be dated to expire upon expiration date of said financial security].~~

Section 5. KRS 217B.080 is amended to read as follows:

- (1) ***Except as provided in Section 6 of this Act***, it shall be unlawful for any person to act as an employee of a pesticide ***operator or dealer***~~applicator~~ and apply pesticides manually, or as the ***applicator***~~operator~~ directly in charge of any equipment which is licensed or should be licensed under the provisions of this chapter for the application of any pesticide, without having obtained an ***applicator's***~~operator's~~ license from the department.~~Such~~ An ***applicator's***~~operator's~~ license shall be in addition to any other license or permit required by law for the operation or use of any~~such~~ equipment. Any person applying for ~~such~~ an ***applicator's***~~operator's~~ license shall file an application on a form prescribed by the department on or before January 1 of each year. Application for a license to apply pesticides shall be accompanied by a license fee of ***ten dollars***~~(\$10)~~~~[\$10]~~. The provisions of this section shall not apply to any individual who has passed the examination provided for in subsection (3) of ***Section 3 of this Act***~~[KRS 217B.070]~~, and is a licensed pesticide ***operator***~~applicator~~. If the department finds the applicant qualified to apply pesticides in the classifications he has applied for after examinations as provided for in subsection (3) of ***Section 3 of this Act***~~[KRS 217B.070]~~, and if the applicant applying for a license to engage in aerial applications of pesticides has met all of the requirements of the Federal Aviation Agency and the Transportation Cabinet to operate the equipment described in the application, the department shall issue a pesticide ***applicator***~~operator~~ license limited to the classifications for which he is qualified which shall expire at the end of the calendar year of issue unless it has been revoked or suspended prior ***to that***~~thereto~~ by the department for cause as provided for in KRS 217B.120.
- (2) ***No license shall be issued unless the applicant holds a valid certification within this category.***
- (3) ***No license shall be issued unless the applicant is employed or supervised by a person who holds a valid operator's license.***

Section 6. KRS 217B.090 is amended to read as follows:

- (1) ***It shall be unlawful for any person to act as a noncommercial applicator without having obtained a noncommercial applicator license from the department. Any person applying for a noncommercial applicator's license shall file an application on a form prescribed by the department on or before January 1 of each year. The provisions of this section shall not apply to any individual who is a licensed pesticide operator or applicator. If the department finds the applicant qualified to apply pesticides, the department shall issue a limited license without a fee to a noncommercial applicator, which shall be valid only when the individual is applying pesticides on land owned, occupied, or managed by his or her employer. The noncommercial applicator license shall expire at the end of the calendar year of issue unless it has been revoked or suspended prior to that by the department for cause as provided for in Section 14 of this Act.*** ~~[Municipal corporations, and public utilities, or any other governmental agency except state agencies shall be subject to the provisions of this chapter and rules adopted thereunder; the public operator in charge of any equipment used by any municipal corporations, public utilities, or any governmental agencies, shall be subject to the provisions of KRS 217B.070(3) and 217B.080, and the department shall issue a limited license without a fee to such public operators which shall be valid only when such public operators are acting as operators on equipment used by such entities. Government research personnel shall be exempt from this licensing requirement when applying pesticides to experimental plots. Such agencies, municipal corporations, and public utilities.]~~

- (2) ***Employers of noncommercial applicators*** shall be subject to legal recourse by any person damaged by ~~the~~^{such} application of any pesticide, and ~~the~~^{such} action may be brought in the county where the damage or some part ***of the damage***~~thereof~~ occurred.
- (3) ***No license shall be issued unless the applicant holds a valid certification within this category.***
- (4) ***A limited license cannot be upgraded without retesting.***

Section 7. KRS 217B.100 is amended to read as follows:

- (1) No person shall perform services as a pest control consultant without first procuring from the department a license in the classifications he has applied for under KRS 217B.060. Application for a license shall be on a form prescribed by the department and shall include the applicable information stipulated in subsection (2) of ***Section 3 of this Act***~~[KRS 217B.070]~~. The application for a license shall be accompanied by an annual fee of ***fifty dollars*** ~~(\$50)~~^(\$50).
- (2) Each applicant for a pest control consultant's license shall be required to present to the department satisfactory evidence of training and experience providing a basic background to understand pest control principles. ~~The~~^{Such} applicant shall be required to pass satisfactorily a written examination to be prescribed by the department to demonstrate the applicant's specific knowledge under subsection (3) of ***Section 3 of this Act***~~[KRS 217B.070]~~.
- (3) ***If an applicant provides a copy of a valid Kentucky Certified Crop Advisor certification to the department, the test and fee for a consultant license may be waived.***

Section 8. KRS 217B.103 is amended to read as follows:

- (1) The department may suspend for not longer than ten (10) days, pending inquiry, and, after opportunity for a hearing, the department may deny, suspend, revoke, or modify the provision of any license issued under KRS 217B.100 if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this section:
 - (a) Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized or sold;
 - (b) Made a pesticide recommendation not in accordance with the label registered ***as provided by***~~[pursuant to]~~ KRS 217.541 to 217.640;
 - (c) Violated any provision of this chapter or any ***administrative***~~[rule or]~~ regulation ***promulgated***~~[adopted]~~ by the department or of any lawful order of the department;
 - (d) Failed to pay the original or renewal license fee when due~~[, and continue to sell restricted use pesticides without paying the license fee, or sold restricted use pesticides without a license]~~;
 - (e) Was guilty of gross negligence, incompetency, or misconduct in acting as a ***consultant, or***~~[pesticide dealer];~~
 - (f) ~~Refused or neglected to keep and maintain the records required by this chapter, or to make reports when and as required;~~
 - (g) ~~Made false or fraudulent records, invoices, or reports;~~

- (h) ~~]~~ used fraud or misrepresentation in making an application for a license or renewal of a license~~[, or in selling or offering to sell restricted use pesticides];~~
- (f)~~(i)~~ Refused or neglected to comply with any limitations or restrictions on or in a duly issued license;
- (g)~~(j)~~ Aided or abetted a licensed or an unlicensed person to evade the provisions of this chapter, combined or conspired with~~[such]~~ a licensed or unlicensed person to evade the provisions of this chapter, or allowed one's license to be used by an unlicensed person;
or
- (h)~~(k)~~ — Impersonated any state, county, or city inspector or official~~;~~
- (l) — ~~Stored or disposed of containers or pesticides by means other than those prescribed on the label or adopted regulations].~~

- (2) Any licensee whose license is revoked under the provisions of this section shall not be eligible to apply for a new license~~[hereunder]~~ until *the*~~[such]~~ time has elapsed from the date of the order revoking *the*~~[said]~~ license as established by the department, not to exceed two (2) years, or if an appeal is taken from *the*~~[said]~~ order or revocation, not to exceed two (2) years from the date of the order or final judgment sustaining *the*~~[said]~~ revocation.

Section 9. KRS 217B.105 is amended to read as follows:

- (1) No person shall act in the capacity of a~~[pesticide]~~ dealer, or shall engage or offer to engage in the business of, advertise as, or assume to act as a~~[restricted use pesticide]~~ dealer ***without having registered as a dealer with the department***~~[unless he is licensed annually as provided in this section. A separate license and fee shall be required for each location or outlet from which restricted use pesticides are distributed].~~
- (2) Application for a~~[pesticide]~~ dealer ***registration***~~[license]~~ shall be in the form and shall contain the information prescribed by the department. Each application shall be accompanied by a fee of ***fifty dollars (\$50)***~~[five dollars (\$5)]~~. All ***registrations***~~[licenses]~~ issued under this section shall expire on December 31 of the year for which they are issued. The ***registration***~~[license]~~ for a~~[pesticide]~~ dealer may be renewed annually upon application to the department, accompanied by a fee of ***fifty dollars (\$50)***~~[five dollars (\$5)]~~ for each ***registration***~~[license]~~, on or before the first day of January of the calendar year for which the ***registration***~~[license]~~ is issued.
- (3) ***No person shall be registered as a dealer without proof of financial responsibility as required by Section 15 of this Act.***
- (4) ***A dealer shall register each branch office location.***
- (5) ***Application for a branch office registration shall be in the form and shall contain the information prescribed by the department. Each application shall be accompanied by a fee of twenty-five dollars (\$25). All registrations issued under this section shall expire on December 31. The registration for a branch office may be renewed annually upon application to the department, accompanied by a fee of twenty-five dollars (\$25) for each registration, on or before the first of January of the calendar year for which the registration is issued. No branch office registration may be issued unless the applicant is registered as a dealer.***

- (6) The department shall issue to each applicant who satisfies the requirements of this section a **registration**~~[license]~~ which entitles the applicant to conduct the business described in the application for the calendar year for which the **registration**~~[license]~~ is issued, unless the **registration**~~[license]~~ is sooner revoked or suspended.
- (7)~~(4)~~—The department shall **promulgate administrative**~~[prescribe]~~ regulations requiring~~[restricted-use pesticide]~~ dealers to maintain~~[such]~~ records with respect to their operations as it determines are necessary for the effective enforcement of this chapter. ~~The~~~~[Such]~~ records shall include, but not be limited to~~[:]~~ brands and amounts of restricted use pesticides sold, **and the**~~[:]~~ buyer's name, address, **use of the pesticide**, and **certification**~~[applicator's license]~~ number.~~;~~~~provided that, no~~ Records required under this section shall extend to financial data, sales data,~~[other than amount and]~~ shipment data,~~[pricing data]~~ and personnel data. ~~The~~~~[Such]~~ records are to be retained for a period of two (2) years from the time of sale. For the purposes of enforcing the provisions of this chapter, any~~[pesticide]~~ dealer shall, upon request of the department, furnish or permit the department at all reasonable times to have access to, and to copy, records as required by this section. Section 10. KRS 217B.107 is amended to read as follows:

Each~~[pesticide]~~ dealer shall be responsible for the actions of every person who acts as his employee or agent in the solicitation or sale of restricted use pesticides, and in all claims and recommendations for use or application of restricted use pesticides.

SECTION 11. A NEW SECTION OF KRS CHAPTER 217B IS CREATED TO READ AS FOLLOWS:

- (1) *The department shall establish a licensure program for pesticide sales agents. The department shall require an applicant for licensure to show upon examination that the applicant possesses adequate knowledge concerning the proper use and application of pesticides.*
- (2) *Application for a pesticide sales agent license shall be in the form and shall contain information prescribed by the department. Each application shall be accompanied by a fee of five dollars (\$5). All licenses issued under this section shall expire on December 31 of the year issued. The license for a pesticide sales agent may be renewed annually upon application to the department, accompanied by a fee of five dollars (\$5) for each license, on or before the first day of January of the calendar year for which the license is issued.*
- (3) *The department shall issue to each applicant who meets the requirements of this section a license that entitles the applicant to hold himself or herself out as a pesticide sales agent.*
- (4) *No person shall hold himself or herself out as a pesticide sales agent unless that person is licensed as provided for in this section.*
- (5) *No person shall make recommendations for the use or application of pesticides unless that person is licensed as provided for in this section.*
- (6) *No person shall sell or distribute restricted use pesticides to the final user unless that person is licensed as provided for in this section.*
- (7) *No license shall be issued unless the applicant holds a valid certification within this category.*

SECTION 12. A NEW SECTION OF KRS CHAPTER 217B IS CREATED TO READ AS FOLLOWS:

- (1) *The department shall establish and administer a program to register trainees.*
- (2) *A dealer shall not employ a trainee to apply pesticides manually or as the applicator directly in charge of any equipment that is licensed or should be licensed under the provisions of this chapter for the application of any pesticide without registering the trainee with the department. It shall be unlawful for any person to act as a trainee without being registered.*
- (3) *Application for a trainee registration shall be in the form and shall contain the information prescribed by the department. Each application shall be accompanied by a fee of five dollars (\$5).*
- (4) *Trainee registration shall be valid for ninety (90) days and shall not be reissued or renewed.*

Section 13. KRS 217B.110 is amended to read as follows:

- (1) If the application for renewal of any license *or registration* provided for in this chapter is not filed prior to March 1 in any year, a penalty of twenty-five percent (25%) shall be assessed and added to the original fee and shall be paid by the applicant before the renewal ~~is~~ license shall be issued; ~~such penalty shall not apply if the applicant furnishes an affidavit certifying that he has not engaged in the business subsequent to the expiration of his license.~~
- (2) Any person holding a current valid license may renew ~~the~~ such license for the next year without taking another examination unless the department determines that new knowledge related to classifications for which the applicant has applied makes a new examination necessary. However, if the license is not renewed by June 1 of each year, then ~~the~~ such licensee shall ~~again~~ be required to take another examination.
- (3) *No license will be issued or renewed unless certification is valid for the calendar year or the applicant has met training requirements that will allow for a renewal of certification within the calendar year for the license.*

Section 14. KRS 217B.120 is amended to read as follows:

The department may *assess civil penalties as provided by Section 20 of this Act, or may* suspend, revoke, *delay issuing*, or modify the provision of any ~~applicator's, operator's, or consultant's~~ license *or registration* issued under this chapter, if it finds that the applicant or ~~holder~~ licensee has committed any of the following acts, each of which is declared to be a violation of this chapter:

- (1) Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized;
- (2) Made a pesticide recommendation or application not in accordance with the label registered by the department under KRS 217.541 to 217.640;
- (3) Applied known ineffective or improper materials;
- (4) Operated faulty or unsafe equipment;
- (5) Operated *application equipment* in a ~~faulty,~~ careless[,] or negligent manner;
- (6) Refused or, after notice, neglected to comply with the provisions of this chapter, the *administrative regulations promulgated under this chapter* ~~rules adopted hereunder~~, or of any lawful order of the department;
- (7) Refused or neglected to keep and maintain the records required by this chapter, or to make reports when and as required;

- (8) Made false or fraudulent records, invoices, or reports;
- (9) Engaged in the business of the application of a pesticide without having a licensed applicator or operator in direct "on-the-job" supervision;
- (10) Operated *unregistered*~~[unlicensed]~~ equipment;
- (11) Used fraud or misrepresentation in making an application for a license *or registration* or renewal of a license *or registration*;
- (12) Refused or neglected to comply with any limitations or restrictions on or in a duly issued license or *registration*~~[permit]~~;
- (13) Aided or abetted a licensed or an unlicensed person to evade the provisions of this chapter, combined or conspired with~~[such]~~ a licensed or an unlicensed person to evade the provisions of this chapter, or allowed one's license to be used by an unlicensed person;
- (14) Made false or misleading statements during or after an inspection concerning any infestation or infection of pests found on land;~~[or]~~
- (15) Impersonated any state, county, or city inspector or official;
- (16) *Made a sale to, or distributed a restricted use pesticide to, an uncertified applicator;*
- (17) *Failed to obtain any license or registration required by this chapter;*
- (18) *Failed to obtain or maintain financial responsibility required by this chapter;*
- (19) *Failed to comply with the provisions of Section 19 of this Act;*
- (20) *Failed to provide direct on-the-job supervision of a trainee by a licensed operator or applicator in the application of a pesticide;*
- (21) *Failed to follow notification and information requirements in accordance with Section 22 of this Act, including:*
 - (a) *Failure to provide customer written information prior to application;*
 - (b) *Failure to place lawn marker;*
 - (c) *Failure to meet minimum requirements for lawn marker;*
 - (d) *Failure to furnish customer proper information at application; or*
 - (e) *Failure to furnish prior notification of application when requested; or*
- (22) *Failed to follow notification and information requirements in accordance with Section 23 of this Act, including:*
 - (a) *Failure to place golf course marker immediately after application;*
 - (b) *Failure to meet minimum requirements for golf course marker; or (c) Failure to furnish prior notification of application when requested.*

Section 15. KRS 217B.130 is amended to read as follows:

- (1) The department shall not issue *or renew a dealer registration to a dealer applying pesticides to the lands of others*~~[pesticide applicator license in the category of right-of-way pest control or in any aerial pesticide application category]~~ until the applicant has furnished evidence of financial responsibility with the department consisting either of a surety bond or a liability insurance policy, or certification *of the bond or policy*~~[thereof]~~, protecting persons who may

suffer legal damages as a result of the applicant. ~~All other categories shall be exempt from the requirement to furnish financial responsibility.~~

- (2) The amount of the surety bond or liability insurance as provided for in this section shall be not less than **one million dollars (\$1,000,000)**. ~~The [one hundred thousand dollars (\$100,000)] for public liability and not less than twenty five thousand dollars (\$25,000) for property damage, including loss or damage arising out of the actual use of any pesticide. Such~~ surety bond or liability insurance shall be maintained at not less than **that amount** ~~those amounts~~ at all times during the licensed period. The department shall be notified ten (10) days prior to any reduction at the request of the applicant or cancellation of ~~the [such]~~ surety bond or liability insurance by the surety or insurer. The total and aggregate of the surety and insurer for all claims shall be limited to the face of the bond or liability insurance policy. The department may accept a liability insurance policy or surety bond in the proper sum which has a deductible clause in an amount not exceeding one thousand dollars (\$1,000) for all applicators for the total amount of liability insurance or surety bond required ~~herein~~. If the applicant has not satisfied the requirements of the deductible amount in any prior legal claim, ~~the [such]~~ deductible clause shall not be accepted by the department unless ~~the [such]~~ applicant furnishes the department with a security bond or liability insurance which shall satisfy the amount of the deductible as to all claims that may arise in his application of pesticides.
- (3) Should the surety furnished become unsatisfactory, ~~the [said]~~ applicant shall upon notice execute a new bond or insurance and shall he fail to do so, the department shall cancel ~~the registration [his license]~~ and it shall be unlawful ~~thereafter~~ for ~~the [such]~~ person to engage in ~~the [said]~~ business of applying pesticides until the bond or insurance is brought into compliance with the requirements of subsection (2) of this section and ~~the registration [his license]~~ is reinstated by the department.
- (4) Nothing in this chapter shall be construed to relieve any person from liability for any damage to the person or lands of another caused by the use of pesticides even though ~~the [such]~~ use conforms to the ~~administrative [rules and]~~ regulations of the department.

Section 16. KRS 217B.140 is amended to read as follows:

- (1) The person claiming damages from pesticide application shall **file** ~~have filed~~ with the department a written statement claiming that he has been damaged, on a form prescribed by the department, within sixty (60) days after the date that damages occurred, or prior to the time that twenty-five percent (25%) of a crop damaged **has** ~~shall have~~ been harvested. ~~The [Such]~~ statement shall contain, but shall not be limited ~~to [thereto]~~, the name of the person responsible for the application of ~~the [said]~~ pesticide, the name of the owner or lessee of the land on which the crop is grown and for which damages are claimed, and the date on which it is alleged that the damage occurred. The department shall prepare a form to be furnished to persons to be used in ~~those [such]~~ cases and ~~the [such]~~ form shall contain ~~such~~ other requirements as the department may deem proper. The department shall, upon receipt of ~~the [such]~~ statement, notify the licensee and the owner or lessee of the land or other person who may be charged with the responsibility, for the damages claimed, and furnish copies of ~~the [such]~~ statements as may be requested.
- (2) The filing of ~~a [such]~~ report or the failure to file ~~such~~ a report need not be alleged in any complaint which might be filed in a court of law, and the failure to file the report shall not be considered any bar to the maintenance of any criminal or civil action. The failure to file ~~such~~ a report shall not be a violation of this chapter. ~~However,~~ If the person failing to file

the[such] report is the only one injured from *the*[such] use or application of a pesticide by others, the department may, when in the public interest, refuse to hold a hearing for the denial, suspension, or revocation of a license or **registration**[permit] issued under this chapter until *the*[such] report is filed.

- (3) When damage is alleged to have been done, the claimant shall permit the licensee, **registration holder**, and his representatives, such as bondsman or insure, to observe within reasonable hours the lands or nontarget organism alleged to have been damaged in order that *the*[such] damage may be examined. Failure of the claimant to permit *the*[such] observation and examination of the damaged lands shall automatically bar the claim against the licensee **or registration holder**.

Section 17. KRS 217B.170 is amended to read as follows:

- (1) *The department shall require an annual fee of ten dollars (\$10) for each aircraft to be registered and a fee of ten dollars (\$10) for each piece of ground equipment to be registered, in the business of applying pesticides to the lands of another within this state. Should any equipment fail to pass inspection under KRS 217B.160, the department shall, pending inquiry and reinspection, suspend or revoke the registration. In addition to the required inspection, unannounced inspections may be made without charge to determine if equipment is properly calibrated and maintained in conformance with applicable laws and administrative regulations.*
- (2) All **registered**[licensed] equipment shall be identified by a license plate or decal furnished by the department, **and**[at no cost to the licensee, which plate] shall be affixed in a location and manner upon *the*[such] equipment as prescribed by the department.

Section 18. KRS 217B.180 is amended to read as follows:

- (1) The provisions of KRS 217B.020 to 217B.180 relating to licenses **or registration** and requirements for their issuance shall not apply to any farmer owner of ground equipment applying nonrestricted use pesticides for himself or his farmer neighbors ~~if~~; provided, that:
- (a) ~~—} he applies the pesticides for his farmer neighbors without compensation other than trading of personal services};~~
- (b) ~~All equipment not engaged in the application of pesticides for hire shall be identified by a license plate or decal furnished by the department at no cost to the owner with an inscription informing persons that such equipment is not to be used in the application of pesticides for hire under KRS 217B.070. It is the responsibility of the owner to inform the department in writing if any changes in status are to be made}.~~
- (2) The licensing **or registration** provisions of KRS 217B.020 to 217B.180 shall not apply to any person using handpowered equipment, devices, or contrivances to apply nonrestricted use pesticides to lawns, or to ornamental shrubs and trees not in excess of twelve (12) feet high, as an incidental part of his activity of taking care of his household lawn and yard or those of his neighbors, on the condition that *the*[such] person shall not publicly hold himself out as being in the business of applying pesticides, and shall not accept compensation other than the trading of personal services for *the*[such] activity.
- (3) KRS 217B.020 to 217B.180 shall not apply to operators presently licensed and regulated under the provisions of KRS 249.250 to 249.340 on June 17, 1978, except that if required by EPA regulations *the*[such] persons may be issued, without additional fees or examination, an

applicator's license to enable them to purchase and use restricted use pesticides *in accordance with* ~~pursuant to~~ the requirements of the Federal Environmental Pesticide Control Act of 1972.

- (4) *The registration provisions of Section 9 of this Act shall not apply to any noncommercial applicator.*
- (5) *The licensing provisions of Section 5 of this Act shall not apply to any trainee.*

Section 19. KRS 217B.190 is amended to read as follows:

- (1) No person shall discard or store any pesticide or pesticide containers in ~~such~~ a manner as to cause injury to humans, vegetation, crops, livestock, wildlife, *or* pollinating insects, or to pollute any waterway in a way harmful to any wildlife ~~therein~~.
- (2) No person shall use any registered pesticide in a manner not in accordance with its label.
- (3) No person shall purchase, use, or supervise the use of, a restricted use pesticide unless ~~the~~ *such* person *is certified* ~~be licensed~~ in a classification which permits ~~the~~ *such* purchase, use, or supervision of use.
- (4) No person shall distribute a restricted use pesticide to a person who *does not have the appropriate certification, registration, or license* ~~is not licensed as a restricted use pesticide dealer or applicator~~ as prescribed in this chapter.

Section 20. KRS 217B.193 is amended to read as follows:

- (1) ~~If~~ *When* any of the requirements of this chapter or administrative regulations promulgated *under this chapter* ~~pursuant thereto~~ have not been complied with, the Commissioner shall cause a notice of violation to be issued ~~upon the permit holder~~. The Commissioner *may issue an order for immediate compliance and assess the civil penalty provided for in this section and in KRS 217B.990, or the Commissioner may* ~~shall~~ set forth in his notice a reasonable time period, but not more than ninety (90) days, for the abatement of the violation. If any *licensee or registration* ~~license~~ holder has not abated the violation within the period of time prescribed in the notice of violation, the Commissioner shall issue an order for immediate compliance and assess the civil penalty provided for in this section and in KRS 217B.990. The notice of noncompliance shall be mailed to the *licensee or registration* ~~license~~ holder by certified mail, return receipt requested, addressed to the ~~license holder's~~ permanent address as shown on department records. The notice of noncompliance shall specify in what respect the *licensee or registration* ~~license~~ holder has failed to comply with this chapter or administrative regulations promulgated *under this chapter* ~~pursuant thereto, and the period of time established for abatement~~. If the *licensee or registration* ~~license~~ holder has not complied with the requirements set forth in the notice of noncompliance within the time limit allowed, the license *or registration* may be revoked as provided in this chapter.
- (2) The Commissioner shall develop a method for calculating the civil penalty for *a violation, or* failure to abate a violation, within the prescribed time period as authorized by this section, and he shall promulgate a schedule of the civil penalties in an administrative regulation.

Section 21. KRS 217B.220 is amended to read as follows:

The department may issue subpoenas to compel the attendance of witnesses ~~or~~~~and/or~~ production of books, documents, and records anywhere in the state in any hearing affecting the authority or privilege granted by a license or **registration**~~permit~~ issued under the provisions of this chapter.

Section 22. KRS 217B.300 is amended to read as follows:

- (1) The following definitions apply to this section:
 - (a) "Application" means the spreading of lawn chemicals in liquid or dry form on a lawn;
 - (b) "Applicator for hire" means any person who makes an application of lawn chemicals to a lawn for compensation, including applications made by an employee to lawns owned, occupied or managed by his employer;
 - (c) "Customer" means a person who makes a contract, either written or verbal, with an applicator for hire to apply a pesticide to a lawn;
 - (d)~~"Fertilizer" means any substance containing nitrogen, phosphorus, potassium or other recognized plant nutrient or compound which is used for its plant nutrient content;~~
 - ~~(e)~~"Lawn" means land area covered with turf kept closely mown, except land areas used for agricultural production~~, golf courses~~, commercial production of turf, or land situated within three (3) feet of the foundation of a structure when a pesticide is applied to this area as a preventive or control measure for structural pests;
 - ~~(e)~~~~(f)~~"Lawn chemicals" means fertilizers, pesticides, or defoliantes applied or intended for application to lawns;
 - ~~(f)~~~~(g)~~"Structural pest" means a pest which commonly invades or attacks dwellings or structures; and
 - ~~(g)~~~~(h)~~"Turf" means the upper stratum of soils bound by grass and plant roots into a thick mat.
- (2) The following notification requirements shall be met:
 - (a) An applicator for hire shall provide a customer at the time of entering into a contract,~~either written or verbal, or a reasonable time thereafter,~~ with written information concerning lawn chemicals, application procedures, and other general guidelines about the safe use of lawn chemicals;~~;~~
 - (b) Immediately following application of lawn chemicals to a lawn, the applicator shall place a lawn marker at a prominent location in the lawn;~~;~~
 - (c) The lawn marker shall consist of, at a minimum, a four (4) inch by five (5) inch white sign attached to the upper portion of a dowel or other supporting device of not less than twelve (12) inches in length;~~;~~
 - (d) Lettering on the lawn marker shall be in a contrasting color and shall read on one side "LAWN CARE APPLICATION - PLEASE STAY OFF GRASS UNTIL DRY" in letters easily readable and not less than three-eighths (3/8) **inches in height**~~inches~~. The lawn marker may also display a symbol depicting the required message and the name, logo, and service mark of the applicator;~~;~~

- (e) The lawn marker shall be removed and discarded by the property owner or resident, or other person authorized by the property owner or resident, the day following application;~~;~~
 - (f) For applications to residential properties of three (3) families or less, the applicator shall place one (1) lawn marker per property; *and*~~;~~
 - (g) For applications to properties other than residential property of three (3) families or less, the applicator shall place lawn markers at primary points of entry to the property to provide notice that lawn chemicals have been applied to the lawn.
- (3) At the time of application of lawn chemicals to a lawn, an applicator for hire shall provide the following information to the customer, either homeowner or landlord, for each lawn chemical used, *and shall record and maintain at the business address the following information relating to the application of each lawn chemical:* (a) The brand name or common name of the pesticide applied;
- (b) The pesticide type;
 - (c) The fertilize rate *and*~~or~~ analysis;
 - (d) The reason for use;
 - (e) The concentration of end use product applied to the lawn, ~~and~~ the rate of application, *and the total gallons of end use product applied to the lawn;*
 - (f) Any special instruction appearing on the label of the lawn chemical product applicable to the customer's use of the lawn following application and any other precautionary or hazard information appearing on the label as applicable to the end use concentration; ~~and~~
 - (g) The name and the state applicator license or certificate number of the individual actually making the application;
 - (h) *Customer name, address, and date of application; and (i) Total area of lawn treated.*
- (4) Any customer of an applicator for hire, or a neighbor whose residence is adjoining to a customer of an applicator for hire, may *request*~~receive~~ prior notification twenty-four (24) to forty-eight (48) hours in advance of an application by contacting the applicator for hire and providing his name, address, and telephone number. In this event, the applicator for hire shall provide notification in writing, in person, or by telephone, of the date and approximate time of application. If an applicator for hire is unable to provide prior notification to a customer or neighbor because of the absence or inaccessibility of the individual, the applicator shall leave a written notice at the residence.

~~[(5) Violations of this section shall be punishable by a civil fine of not more than one hundred dollars (\$100) for each violation.]~~

SECTION 23. A NEW SECTION OF KRS CHAPTER 217B IS CREATED TO READ AS FOLLOWS:

- (1) *The provisions of Section 22 of this Act relating to notification and information requirements shall not apply to any golf course or its employees.*
- (2) *As used in this section:*

- (a) *"Application" means the spreading of plant-regulating materials in liquid or dry form on a golf course;*
 - (b) *"Golf course" means land on which turf and ornamental care, including application of pesticides or fertilizer and storage of pesticides or fertilizer, is done for the purpose of preparing the land for use in the game of golf;*
 - (c) *"Plant-regulating materials" means fertilizers, pesticides, or defoliants applied or intended for application to a golf course; and*
 - (d) *"Turf" means the upper stratum of soils bound by grass and plant roots into a thick mat.*
- (3) *The following shall be required by a golf course relating to records, notification, and information requirements:*
- (a) *Immediately following application of plant-regulating materials on a golf course, the applicator shall place a golf course marker on the number-one (1) and numberten (10) tees;*
 - (b) *The golf course marker shall consist of, at a minimum, a four (4) inch by five (5) inch white sign attached to the upper portion of a dowel or other supporting device of not less than twelve (12) inches in length;*
 - (c) *Lettering on the golf course marker shall be in a contrasting color and shall read on one side "PLANT-REGULATING MATERIALS HAVE BEEN APPLIED. IF DESIRED, YOU MAY CONTACT THE GOLF COURSE SUPERINTENDENT FOR FURTHER INFORMATION" in letters easily readable and not less than three-eighths (3/8) inches in height. The golf course marker may also display a symbol depicting the required message and the name, logo, and service mark of the applicator;*
 - (d) *The golf course marker may be removed by the applicator or other personnel authorized by the golf course management the day following application;*
 - (e) *Any person whose residence directly adjoins a golf course may request prior notification of a plant-regulating material application by contacting the golf course superintendent's office and providing his or her name, address, and telephone number. If requested, the golf course shall provide notification in writing, in person, or by telephone. In the event the golf course cannot provide advance notice, the person shall be contacted at the time of application. If the golf course is unable to provide prior notification or direct notification to a resident because of the absence or unavailability of the resident, the golf course shall leave a written notice at the residence; and*
 - (f) *Material safety data sheets for each plant-regulating material shall be in an area of the superintendent's office where they can be easily read and accessible by patrons of the golf course.*
- (4) *At the time of application of plant-regulating materials to a golf course, an applicator shall record and maintain the following information for each plant-regulating material used:*
- (a) *The brand name or common name of the pesticide applied;*
 - (b) *The pesticide type;*

- (c) *The fertilize rate and analysis;*
 - (d) *The reason for use;*
 - (e) *The concentration of end use product applied to the golf course, the rate of application, and the total gallons of end use product applied to the golf course;*
 - (f) *The location of area treated;*
 - (g) *Any special instruction appearing on the label of the plant-regulating material applicable to the golf course use following application and any other precautionary or hazard information appearing on the label as applicable to the end use concentration; and*
 - (h) *The name and the state applicator license or certification number of the individual actually making the application.*
- (5) *This record shall be maintained in the golf course superintendent's office and shall be readily available to review on request. This record shall be retained for three (3) years and be an inspectable item for the department.*

Approved March 28, 2000