

1 AN ACT relating to fertilizer and pesticide use and application and making an
2 appropriation therefor.

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

4 ➔SECTION 1. KRS 217B.040 IS REPEALED AND REENACTED TO READ
5 AS FOLLOWS:

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

- 7 *(1) "Applicant" means a person applying for a license or registration under this*
8 *chapter;*
- 9 *(2) "Branch office" means any location of a dealer other than its designated*
10 *principal place of business location, but does not include on-premises and off-*
11 *premises bulk storage or receiving warehouses used solely for the purpose of*
12 *customer order filling;*
- 13 *(3) "Dealer" means any person that engages in the storage of bulk fertilizer or a*
14 *restricted use pesticide for the purpose of redistribution or direct resale, or*
15 *engages in the business of applying any pesticide to the lands of another. A*
16 *"dealer" shall not include a manufacturer of a fertilizer or a restricted use*
17 *pesticide who distributes his or her product solely to a dealer;*
- 18 *(4) "Defoliant" means any substance or mixture of substances intended to cause the*
19 *leaves or foliage to drop from a plant with or without causing abscission;*
- 20 *(5) "Department" means the Kentucky Department of Agriculture;*
- 21 *(6) "Desiccant" means any substance or mixture of substances intended to*
22 *artificially accelerate the drying of plant tissues;*
- 23 *(7) "Direct supervision" means the act or process whereby the application of a*
24 *pesticide is made by a competent person acting under the instructions and control*
25 *of a certified operator or certified applicator who is responsible for the actions of*
26 *that person and who is available if and when needed, even though such certified*
27 *operator or certified applicator is not physically present at the time and place the*

1 pesticide is applied;

2 (8) "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver for
3 shipment, or receive, and, having received, deliver or offer to deliver any
4 pesticides in this state excepting internal distribution within a company or
5 organization;

6 (9) "EPA" means the United States Environmental Protection Agency;

7 (10) "Equipment" means any type of ground, water, or aerial equipment, device, or
8 contrivance using motorized, mechanical, or pressurized power and used to apply
9 any pesticide on land and anything that may be growing, habitating, or stored on
10 or in the land, but shall not include any pressurized hand-sized household device
11 used to apply any pesticide;

12 (11) "Fertilizer" means any substance containing one (1) or more recognized plant
13 nutrients, which is used for its plant nutrient content and which is designed for
14 use or claimed to have value in promoting plant growth, except unmanipulated
15 animal and vegetable manures, marl, lime, limestone, wood ashes, and other
16 products exempted by administrative regulation;

17 (12) "Fungi" means all nonchlorophyll-bearing thallophytes, that is, all
18 nonchlorophyll-bearing plants of a lower order than mosses and liverworts, as for
19 example, rusts, smuts, mildews, molds, yeasts, bacteria, and viruses, except those
20 on or in living humans or other living animals, and except those in or on
21 processed food, beverages, or pharmaceuticals;

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

1 nematodes and other worms, and any other invertebrates which are destructive,
2 constitute a liability, and may be classed as pests;

3 (14) "Label" means the written, printed, or graphic matter on, or attached to, the
4 pesticide or device or to any of its containers or wrappers;

5 (15) "Land" means all land and water areas, including airspace, and all plants,
6 animals, structures, buildings, devices, and contrivances and machinery
7 appurtenant to or situated on them, fixed or mobile, including any used for
8 transportation;

9 (16) "Livestock" means cattle, sheep, swine, goats, horses, alpacas, llamas, buffaloes,
10 or any other animals of the bovine, ovine, porcine, caprine, equine, or camelid
11 species;

12 (17) "Nematode" means invertebrate animals of the phylum nemathelminthes and
13 class nematoda, that is, unsegmented round worms with elongated, fusiform, or
14 sac-like bodies covered with cuticle, and inhabiting soil, water, plants, or plant
15 parts, and may also be called nemas or eelworms;

16 (18) "Noncommercial applicator" means any licensed individual making applications
17 of pesticides to lands owned, occupied, or managed by his or her employer;

18 (19) "Noncommercial license" means a license that is issued by the department for
19 noncommercial use, and shall be valid only when an individual is making
20 applications of pesticides to lands owned, occupied, or managed by his or her
21 employer;

22 (20) "Person" means any individual, partnership, association, or any organized group
23 of persons, whether incorporated or not;

24 (21) "Pest" means:

25 (a) Any insect, snail, slug, rodent, nematode, fungus, or weed; or

26 (b) Any other form of plant or animal life, or virus, bacteria, or other
27 microorganism, except viruses, bacteria, or other microorganisms on or in

1 living humans or other living animals, which is normally considered to be a
2 pest, or which the department declares to be a pest;

3 (22) "Pesticide" means:

4 (a) Any substance or mixture of substances intended to prevent, destroy,
5 control, repel, attract, or mitigate any pest;

6 (b) Any substance or mixture of substances intended to be used as a plant
7 regulator, defoliant, or desiccant; or

8 (c) Any substance or mixture of substances intended to be used as a spray
9 adjuvant, once they have been mixed with an EPA-registered product;

10 (23) "Pesticide applicator" means any individual employed or supervised by a
11 pesticide operator to apply pesticides. The term does not include trainees;

12 (24) "Pesticide operator" means any individual who owns or manages a pesticide
13 application business that is engaged in the business of applying pesticides upon
14 the lands of another;

15 (25) "Pesticide sales agent" means an individual who is employed by a dealer and
16 supervises the sale or distribution of restricted use pesticides to the final user;

17 (26) "Plant regulator" means any substance or mixture of substances intended
18 through physiological action to accelerate or retard the rate of growth or
19 maturation, or to otherwise alter the behavior of plants, but shall not include
20 substances insofar as they are intended to be used as plant nutrients, trace
21 elements, nutritional chemicals, plant inoculants, or soil amendments;

22 (27) "Restricted use pesticide" means any pesticide classified for restricted use by the
23 administrator of the EPA, or by administrative regulation of the department;

24 (28) "Snails or slugs" include all harmful mollusks;

25 (29) "Spray adjuvant" means any wetting agent, spreading agent, sticker, deposit
26 builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or
27 similar agent intended to be used with any other pesticide as an aid to the

1 application or to the effect of it, and which is in a package or container separate
 2 from that of the other pesticide with which it is to be used;

3 (30) "Trainee" means an individual who has been employed by a dealer and is
 4 working under the direct supervision of a licensed operator or applicator;

5 (31) "Weed" means any plant which grows where not wanted; and

6 (32) "Wildlife" means all living things that are neither human, domesticated, nor, as
 7 defined in this chapter, pests, including but not limited to mammals, birds, and
 8 aquatic life.

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

10 (1) The department shall administer and enforce the provisions of this chapter and
 11 promulgate administrative regulations to carry out the provisions of this chapter and
 12 in the administrative regulations may prescribe methods to be used in the storage of
 13 fertilizers, and the storage and application of pesticides. Where the department finds
 14 that the administrative regulations are necessary to carry out the purpose and intent
 15 of this chapter, the administrative regulations may relate to the time, place, manner,
 16 and method of storage and application of ~~the~~ pesticides and ~~storage of~~ fertilizers,
 17 may restrict or prohibit use of pesticides in designated areas during specified
 18 periods of time, and shall encompass all reasonable factors which the department
 19 deems necessary to prevent damage or injury by drift or misapplication to:

20 (a) Plants, including forage plants, on adjacent or nearby lands;

21 (b) Wildlife in the adjoining or nearby areas;

22 (c) Fish and other aquatic life in waters in reasonable proximity to the area to be
 23 treated; and

24 (d) Pollinating insects, animals, or persons.

25 (2) In promulgating the administrative regulations, the department shall give
 26 consideration to pertinent research findings and recommendations of other agencies
 27 of this state and of the federal government.

- 1 (3) The department may by administrative regulation adopt a list of "restricted use
2 pesticides" for the state or for designated areas within the state if it finds that the
3 characteristics of the pesticides require restricting their use to prevent injury on
4 lands other than the land to which they are applied, or to persons, animals, crops, or
5 pests or vegetation other than the pests or vegetation which they are intended to
6 destroy. For the purpose of uniformity of requirements between the states and the
7 federal government, the department may adopt the list of "restricted use pesticides"
8 as established by the Environmental Protection Agency or other federal or state
9 agencies.
- 10 (4) The department may establish additional classifications of applicator or operator
11 licenses as required for conformance with the Federal Environmental Pesticide
12 Control Act of 1972. The classifications may include private farmer applicators,
13 commercial establishment applicators, and government employee applicators not
14 specifically mentioned in this chapter. The administrative regulations may specify
15 licensing conditions, procedures, and fees~~[not to exceed those fees specified for
16 other licensees under this chapter]~~.
- 17 (5) In addition to the fees authorized in subsection (4) of this section, the department
18 may, by administrative regulation, establish fees for carrying out the provisions
19 required or authorized by this chapter~~[, but shall not establish fees exceeding those
20 specified under this chapter]~~.
- 21 **(6) In addition to other authority conferred by statute, the department shall develop a**
22 **regulatory program for regulating application and notice of application of**
23 **pesticides for lawn care and mosquito control.**
- 24 ➔Section 3. KRS 217B.060 is amended to read as follows:
- 25 (1) The department may classify licenses to be issued under this chapter. The
26 classifications may include but not be limited to ornamental or agricultural pesticide
27 applicators, or right-of-way pesticide applicators. Separate classifications may be

1 specified as to ground, aerial, or manual methods used by any licensee to apply
2 pesticides. Each classification shall be subject to separate testing procedures and
3 requirements.

4 (2) Application for a license shall be made in writing to the department on a designated
5 form obtained from the department. Each application for a license shall contain
6 information regarding the applicant's qualifications and proposed operations, and
7 license classification or classifications the applicant is applying for, and shall
8 include the following:

- 9 (a) The full name of the person applying for the license;
- 10 (b) If the applicant is a receiver, trustee, firm, partnership, association,
11 corporation, or other organized group of persons whether or not incorporated,
12 the full name of the receiver or trustee, the full name of each member of the
13 firm or partnership, or the names of the officers of the association,
14 corporation, or group;
- 15 (c) The principal business address of the applicant in the state and elsewhere;
- 16 (d) The name and address of a person, who may be the Secretary of State, whose
17 domicile is in the state, and who is authorized to receive and accept services
18 of summons and legal notice of all kinds for the applicant; and
- 19 ~~(e) [The model, make, horsepower, and size of any equipment used by the~~
20 ~~applicant to apply pesticides; and~~
- 21 ~~(f)]~~Any other necessary information prescribed by the department.

22 (3) The department shall require an applicant for a license to show upon examination
23 that the applicant possesses adequate knowledge concerning the proper use and
24 application of pesticides in the classifications he or she has applied for. The
25 applicant shall also demonstrate a knowledge of the proper use of and calibration of
26 the various equipment that he or she may have applied for a license to operate,
27 including any pressurized, hand-sized devices. The examination shall require a

- 1 working knowledge of:
- 2 (a) The proper use of the equipment;
- 3 (b) The hazards that may be involved in applying pesticides, including:
- 4 1. The effect of drift of the pesticides on adjacent and nearby lands and
- 5 other nontarget organisms;
- 6 2. The proper meteorological conditions for the application of pesticides
- 7 and the precautions to be taken;
- 8 3. The effect of the pesticides on plants or animals in the area, including
- 9 the possibility of damage to plants or animals or the possibility of illegal
- 10 pesticide residues resulting on them;
- 11 4. The effect of the application of pesticides to wildlife in the area,
- 12 including aquatic life;
- 13 5. The identity and classification of pesticides used and the effects of their
- 14 application in particular circumstances; and
- 15 6. The likelihood of contamination of water or injury to persons, plants,
- 16 livestock, pollinating insects, and vegetation;
- 17 (c) Calculating the concentration of pesticides to be used in particular
- 18 circumstances;
- 19 (d) Identification of pests to be controlled by common name only and the
- 20 damages caused by the pests;
- 21 (e) Protective clothing and respiratory equipment required during the handling
- 22 and application of pesticides;
- 23 (f) General precautions to be followed in the disposal of containers as well as the
- 24 cleaning and decontamination of the equipment that the applicant proposes to
- 25 use; and
- 26 (g) Applicable state and federal pesticide laws and regulations.
- 27 (4) If the department finds the applicant qualified to apply pesticides in the

1 classifications he or she has applied for, if the applicant files the bond or insurance
 2 required under KRS 217B.130, and if the applicant applying for a license to engage
 3 in aerial application of pesticides has met all of the requirements of the Federal
 4 Aviation Agency and the Transportation Cabinet to operate the equipment described
 5 in the application, the department shall issue a pesticide applicator license limited to
 6 the classifications for which he or she is qualified, which shall expire at the end of
 7 the calendar year of issue unless it has been revoked or suspended prior to that by
 8 the department for cause, or the financial security required under KRS 217B.130 is
 9 not dated to expire at an earlier date, in which case the license shall be dated to
 10 expire upon the expiration date of the financial security.

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

12 (1) No person shall engage in the business of applying pesticides to the lands of another
 13 within this state at any time without a pesticide operator's license issued by the
 14 department. The department shall require an annual fee of one hundred dollars
 15 (\$100)~~twenty five dollars (\$25)~~ for each pesticide operator's license issued.

16 (2) No license shall be issued unless the applicant holds a valid certification within this
 17 category.

18 (3) No license shall be issued unless the applicant is registered as a dealer or is
 19 employed by a person who is registered as a dealer.

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

21 (1) Except as provided in KRS 217B.090, it shall be unlawful for any person to act as
 22 an employee of a pesticide operator or dealer and apply pesticides ~~manually, or as~~
 23 ~~the applicator directly in charge of any equipment which is licensed or should be~~
 24 ~~licensed under the provisions of this chapter for the application of any pesticide,~~
 25 ~~without having obtained an applicator's license from the department. An~~
 26 applicator's license shall be in addition to any other license or permit required by
 27 law ~~for the operation or use of any equipment]. Any person applying for an~~

1 applicator's license shall file an application on a form prescribed by the department
2 on or before January 1 of each year. Application for a license to apply pesticides
3 shall be accompanied by a license fee of twenty-five dollars (\$25)~~ten dollars~~
4 ~~(\$10)~~. The provisions of this section shall not apply to any individual who has
5 passed the examination provided for in KRS 217B.060(3), and is a licensed
6 pesticide operator. If the department finds the applicant qualified to apply pesticides
7 in the classifications he has applied for after examinations as provided for in KRS
8 217B.060(3), and if the applicant applying for a license to engage in aerial
9 applications of pesticides has met all of the requirements of the Federal Aviation
10 Agency and the Transportation Cabinet to operate the equipment described in the
11 application, the department shall issue a pesticide applicator license limited to the
12 classifications for which he is qualified which shall expire at the end of the calendar
13 year of issue unless it has been revoked or suspended prior to that by the department
14 for cause as provided for in KRS 217B.120.

15 (2) No license shall be issued unless the applicant holds a valid certification within this
16 category.

17 (3) No license shall be issued unless the applicant is employed or supervised by a
18 person who holds a valid operator's license.

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

20 (1) It shall be unlawful for any person to act as a noncommercial applicator without
21 having obtained a noncommercial applicator license from the department. Any
22 person applying for a noncommercial applicator's license shall file an application on
23 a form prescribed by the department on or before January 1 of each year. The
24 provisions of this section shall not apply to any individual who is a licensed
25 pesticide operator or applicator. If the department finds the applicant qualified to
26 apply pesticides, the department shall issue a noncommercial~~limited~~ license
27 ~~for~~~~without~~ a fee of ten dollars (\$10) to a noncommercial applicator, which shall

1 be valid only when the individual is applying pesticides on land owned, occupied,
 2 or managed by his or her employer. The noncommercial applicator license shall
 3 expire at the end of the calendar year of issue unless it has been revoked or
 4 suspended prior to that by the department for cause as provided for in KRS
 5 217B.120.

6 (2) Employers of noncommercial applicators shall be subject to legal recourse by any
 7 person damaged by the application of any pesticide, and the action may be brought
 8 in the county where the damage or some part of the damage occurred.

9 (3) No license shall be issued unless the applicant holds a valid certification within this
 10 category.

11 (4) A noncommercial~~limited~~ license cannot be upgraded without retesting.

12 **(5) The department shall issue noncommercial applicator licenses to qualifying**
 13 **prison inmates and other incarcerated persons who are or will be engaged in the**
 14 **application of pesticides under the direction of the Department of Corrections.**
 15 **Fees for these persons shall be waived by the department.**

16 ➔Section 7. KRS 217B.105 is amended to read as follows:

17 (1) No person shall act in the capacity of a dealer, or shall engage or offer to engage in
 18 the business of, advertise as, or assume to act as a dealer without having registered
 19 as a dealer with the department.

20 (2) Application for a dealer registration shall be in the form and shall contain the
 21 information prescribed by the department. Each application shall be accompanied
 22 by a fee of seventy-five dollars (\$75)~~fifty dollars (\$50)~~. All registrations issued
 23 under this section shall expire on December 31 of the year for which they are
 24 issued. The registration for a dealer may be renewed annually upon application to
 25 the department, accompanied by a fee of seventy-five dollars (\$75)~~fifty dollars~~
 26 ~~(\$50)~~ for each registration, on or before the first day of January of the calendar year
 27 for which the registration is issued.

- 1 (3) No person shall be registered as a dealer without proof of financial responsibility as
2 required by KRS 217B.130.
- 3 (4) A dealer shall register each branch office location.
- 4 (5) Application for a branch office registration shall be in the form and shall contain the
5 information prescribed by the department. Each application shall be accompanied
6 by a fee of *fifty dollars (\$50)*~~[twenty five dollars (\$25)]~~. All registrations issued
7 under this section shall expire on December 31. The registration for a branch office
8 may be renewed annually upon application to the department, accompanied by a fee
9 of *fifty dollars (\$50)*~~[twenty five dollars (\$25)]~~ for each registration, on or before
10 the first of January of the calendar year for which the registration is issued. No
11 branch office registration may be issued unless the applicant is registered as a
12 dealer.
- 13 (6) The department shall issue to each applicant who satisfies the requirements of this
14 section a registration which entitles the applicant to conduct the business described
15 in the application for the calendar year for which the registration is issued, unless
16 the registration is sooner revoked or suspended.
- 17 (7) The department shall promulgate administrative regulations requiring dealers to
18 maintain records with respect to their operations as it determines are necessary for
19 the effective enforcement of this chapter. The records shall include, but not be
20 limited to, brands and amounts of restricted use pesticides sold, and the buyer's
21 name, address, use of the pesticide, and certification number. Records required
22 under this section shall extend to financial data, sales data, shipment data, and
23 personnel data. The records are to be retained for a period of two (2) years from the
24 time of sale. For the purposes of enforcing the provisions of this chapter, any dealer
25 shall, upon request of the department, furnish or permit the department at all
26 reasonable times to have access to, and to copy, records as required by this section.
- 27 ➔Section 8. KRS 217B.120 is amended to read as follows:

1 The department may assess civil penalties as provided by KRS 217B.193, or may
 2 suspend, revoke, delay issuing, or modify the provision of any license or registration
 3 issued under this chapter, if it finds that the applicant or holder has committed any of the
 4 following acts, each of which is declared to be a violation of this chapter:

5 (1) ~~[(1)]~~ ~~Made false or fraudulent claims through any media, misrepresenting the effect of~~
 6 ~~materials or methods to be utilized;~~

7 ~~(2)~~ ~~—~~ Made a pesticide~~[recommendation or]~~ application not in accordance with the label
 8 registered by the department under KRS 217.541 to 217.640;

9 ~~(2)~~~~[(3)]~~ Applied known ineffective or improper materials;

10 ~~(3)~~~~[(4)]~~ **Operated equipment not functioning as intended or designed by the**
 11 **manufacturer**~~[(Operated faulty or unsafe equipment)];~~

12 ~~(4)~~~~[(5)]~~ **Operated equipment in a manner not intended or designed by the**
 13 **manufacturer**~~[(Operated application equipment in a careless or negligent manner)];~~

14 ~~(5)~~~~[(6)]~~ Refused or, after notice, neglected to comply with the provisions of this
 15 chapter, the administrative regulations promulgated under this chapter, or of any
 16 lawful order of the department;

17 ~~(6)~~~~[(7)]~~ Refused or neglected to keep and maintain the records required by this
 18 chapter, or to make reports when and as required;

19 ~~(7)~~~~[(8)]~~ Made false ~~[(or fraudulent)]~~ records, invoices, or reports;

20 ~~(8)~~~~[(9)]~~ **Made false representations in**~~[(Engaged in the business of the application of a~~
 21 ~~pesticide without having a licensed applicator or operator in direct "on-the-job"~~
 22 ~~supervision;~~

23 ~~(10)~~ ~~Operated unregistered equipment;~~

24 ~~(11)~~ ~~Used fraud or misrepresentation in making]~~ an application for a license or
 25 registration or renewal of a license or registration;

26 ~~(9)~~~~[(12)]~~ Refused or neglected to comply with any limitations or restrictions on or in a
 27 duly issued license or registration;

- 1 ~~[(13) Aided or abetted a licensed or an unlicensed person to evade the provisions of this~~
 2 ~~chapter, combined or conspired with a licensed or an unlicensed person to evade the~~
 3 ~~provisions of this chapter, or allowed one's license to be used by an unlicensed~~
 4 ~~person;~~
- 5 ~~(14) Made false or misleading statements during or after an inspection concerning any~~
 6 ~~infestation or infection of pests found on land;]~~
- 7 (10)~~[(15)]~~ Impersonated any state, county, or city inspector or official;
- 8 (11)~~[(16)]~~ Made a sale to, or distributed a restricted use pesticide to, an
 9 unlicensed~~[uncertified]~~ applicator;
- 10 (12)~~[(17)]~~ Failed to obtain any license or registration required by this chapter;
- 11 (13)~~[(18)]~~ Failed to obtain or maintain financial responsibility required by this chapter;
- 12 (14)~~[(19)]~~ Failed to comply with the provisions of KRS 217B.190; or
- 13 (15)~~[(20)]~~ Failed to provide direct~~[on the job]~~ supervision of a trainee by a licensed
 14 operator or applicator in the application of a pesticide~~;~~;
- 15 ~~(21) Failed to follow notification and information requirements in accordance with~~
 16 ~~KRS 217B.300, including:~~
- 17 ~~(a) Failure to provide customer written information prior to application;~~
 18 ~~(b) Failure to place lawn marker;~~
 19 ~~(c) Failure to meet minimum requirements for lawn marker;~~
 20 ~~(d) Failure to furnish customer proper information at application; or~~
 21 ~~(e) Failure to furnish prior notification of application when requested; or~~
- 22 ~~(22) Failed to follow notification and information requirements in accordance with~~
 23 ~~KRS 217B.320, including:~~
- 24 ~~(a) Failure to place golf course marker immediately after application;~~
 25 ~~(b) Failure to meet minimum requirements for golf course marker; or~~
 26 ~~(c) Failure to furnish prior notification of application when requested].~~
- 27 ➔SECTION 9. KRS 217B.140 IS REPEALED AND REENACTED TO READ

1 AS FOLLOWS:

- 2 (1) Investigations into claims of pesticide misuse conducted by the department shall
3 occur only when the applicator of the pesticide is required by this chapter and
4 related administrative regulations to obtain a license to use pesticides.
- 5 (2) Any person claiming pesticide misuse by a pesticide applicator shall file with the
6 department a written statement of alleged misuse. The statement shall be
7 submitted to the department:
- 8 (a) Within sixty (60) days after the date the alleged pesticide misuse occurred;
9 or
- 10 (b) Prior to the time that twenty-five percent (25%) of a crop affected by
11 pesticide misuse is harvested.
- 12 (3) A statement of alleged pesticide misuse shall contain:
- 13 (a) The name of the person allegedly responsible for the pesticide application;
14 (b) The name of the person who alleges misuse of pesticide;
15 (c) The name of the owner or lessee of the land where the effects of the alleged
16 pesticide application misuse are evident; and
- 17 (d) The date on which the alleged pesticide misuse occurred.
- 18 (4) The filing of a report or the failure to file a report need not be alleged in any
19 complaint for damages resulting from pesticide misuse which might be filed in a
20 court of law, and the failure to file the report shall not be considered any bar to
21 the maintenance of any criminal or civil action. Failure to file a report shall not
22 be a violation of this chapter. If the person failing to file the report is the only
23 person injured from the misuse of a pesticide, the department may, when in the
24 public interest, refuse to hold a hearing for the denial, suspension, or revocation
25 of a license or registration issued under this chapter until the report is filed.
- 26 (5) When pesticide misuse is alleged, the claimant shall permit the person allegedly
27 responsible for the application of the pesticide, registration holder, and his or her

1 representatives, such as a bondsman or insurer, to observe within reasonable
 2 hours, the lands upon which alleged effects of pesticide misuse is evident in order
 3 that the effects may be examined. Failure of the claimant to permit the
 4 observation and examination of the location of the alleged effects shall
 5 automatically bar the claim against the person allegedly responsible for the
 6 pesticide application misuse.

7 ➔Section 10. KRS 217B.180 is amended to read as follows:

8 (1) The provisions of KRS 217B.020 to 217B.180 relating to licenses or registration
 9 and requirements for their issuance shall not apply to any farmer owner of ground
 10 equipment applying nonrestricted use pesticides for himself or his farmer neighbors
 11 if he applies the pesticides for his farmer neighbors without compensation other
 12 than trading of personal services.

13 (2) The licensing or registration provisions of KRS 217B.020 to 217B.180 and KRS
 14 217B.500 to 217B.585 shall not apply to any person: ~~{~~

15 (a) Using handpowered equipment, devices, or contrivances to apply
 16 nonrestricted use pesticides to lawns, or to ornamental shrubs and trees not in
 17 excess of twelve (12) feet high, as an incidental part of his activity of taking
 18 care of his household lawn and yard or those of his neighbors, on the
 19 condition that the person shall not publicly hold himself out as being in the
 20 business of applying pesticides, and shall not accept compensation other than
 21 the trading of personal services for the activity; or

22 (b) Using nonrestricted use pesticides to prevent, control, repel, or eliminate
 23 wood destroying organisms or general pests in, around, or outside his or
 24 her household for the purpose of mitigating threats to the structural
 25 integrity, the human occupancy, or the contents of such household, on the
 26 condition that the person shall not publicly represent himself or herself as
 27 being in the business of applying pesticides, and shall not accept

1 **compensation other than the trading of personal services for the activity.**

2 (3) KRS 217B.020 to 217B.180 shall not apply to operators presently licensed and
3 regulated under the provisions of KRS 249.250 to 249.340 on June 17, 1978, except
4 that if required by EPA regulations the persons may be issued, without additional
5 fees or examination, an applicator's license to enable them to purchase and use
6 restricted use pesticides in accordance with the requirements of the Federal
7 Environmental Pesticide Control Act of 1972.

8 (4) The registration provisions of KRS 217B.105 shall not apply to any noncommercial
9 applicator.

10 (5) The licensing provisions of KRS 217B.080 shall not apply to any trainee.

11 ➔Section 11. KRS 217B.185 is amended to read as follows:

12 (1) The department shall establish a licensure program for pesticide sales agents~~[-The~~
13 ~~department shall require an applicant for licensure to show upon examination that~~
14 ~~the applicant possesses adequate knowledge concerning the proper use and~~
15 ~~application of pesticides].~~

16 (2) Application for a pesticide sales agent license shall be in the form and shall contain
17 information prescribed by the department. Each application shall be accompanied
18 by a fee of **twenty-five dollars (\$25)**~~{five dollars (\$5)}~~. All licenses issued under this
19 section shall expire on December 31 of the year issued. The license for a pesticide
20 sales agent may be renewed annually upon application to the department,
21 accompanied by a fee of **twenty-five dollars (\$25)**~~{five dollars (\$5)}~~ for each
22 license, on or before the first day of January of the calendar year for which the
23 license is issued.

24 (3) The department shall issue to each applicant who meets the requirements of this
25 section a license that entitles the applicant to hold himself or herself out as a
26 pesticide sales agent.

27 (4) No person shall hold himself or herself out as a pesticide sales agent unless that

1 person is licensed as provided for in this section.

2 (5) ~~[No person shall make recommendations for the use or application of pesticides~~
3 ~~unless that person is licensed as provided for in this section.]~~

4 ~~(6) [No person shall~~ ***supervise the sale or distribution of*** ~~[sell or distribute]~~ restricted
5 use pesticides to the final user unless that person is licensed as provided for in this
6 section.

7 ~~[(7) No license shall be issued unless the applicant holds a valid certification within this~~
8 ~~category.]~~

9 ➔Section 12. KRS 217B.187 is amended to read as follows:

10 (1) The department shall establish and administer a program to register trainees.

11 (2) A dealer shall not employ a trainee to apply pesticides manually or as the applicator
12 directly in charge of any equipment that is licensed or should be licensed under the
13 provisions of this chapter for the application of any pesticide without registering the
14 trainee with the department. It shall be unlawful for any person to act as a trainee
15 without being registered.

16 (3) Application for a trainee registration shall be in the form and shall contain the
17 information prescribed by the department. Each application shall be accompanied
18 by a fee of ***twenty-five dollars (\$25)*** ~~[five dollars (\$5)]~~.

19 (4) Trainee registration shall be valid for ninety (90) days and shall not be reissued or
20 renewed.

21 ➔Section 13. KRS 217B.193 is amended to read as follows:

22 (1) If any of the requirements of this chapter or administrative regulations promulgated
23 under this chapter have not been complied with, the ***department*** ~~[Commissioner]~~
24 shall cause a notice of violation to be issued. The ***department*** ~~[Commissioner]~~ may
25 issue an order for immediate compliance and assess the civil penalty provided for in
26 this section and in KRS 217B.990, or the ***department*** ~~[Commissioner]~~ may set forth
27 in his notice a reasonable time period, but not more than ninety (90) days, for the

1 abatement of the violation. If any licensee or registration holder has not abated the
2 violation within the period of time prescribed in the notice of violation, the
3 department~~[Commissioner]~~ shall issue an order for immediate compliance and
4 assess the civil penalty provided for in this section and in KRS 217B.990. The
5 notice of noncompliance shall be mailed to the licensee or registration holder by
6 certified mail, return receipt requested, addressed to the permanent address as
7 shown on department records. The notice of noncompliance shall specify in what
8 respect the licensee or registration holder has failed to comply with this chapter or
9 administrative regulations promulgated under this chapter. If the licensee or
10 registration holder has not complied with the requirements set forth in the notice of
11 noncompliance within the time limit allowed, the license or registration may be
12 revoked as provided in this chapter.

13 (2) The department~~[Commissioner]~~ shall develop a method for calculating the civil
14 penalty for a violation, or failure to abate a violation, within the prescribed time
15 period as authorized by this section, and he shall promulgate a schedule of the civil
16 penalties in an administrative regulation.

17 ➔Section 14. KRS 217B.203 is amended to read as follows:

18 (1) All hearings required by KRS 217B.010 to 217B.990 shall be conducted in
19 accordance with KRS Chapter 13B.

20 (2) Appeals may be taken from all final orders of the department~~[Commissioner]~~ to the
21 Franklin Circuit Court in accordance with KRS Chapter 13B.

22 ➔Section 15. KRS 217B.270 is amended to read as follows:

23 (1) The Commonwealth of Kentucky hereby determines that the citizens of the state
24 benefit from a system of safe, effective, and scientifically sound fertilizer and
25 pesticide regulation~~[on agricultural and silvicultural land]~~. The Commonwealth
26 further finds that a system of fertilizer and pesticide regulation which is consistent,
27 coordinated, and comports with both federal and state technical expertise is

1 essential to the public health, safety, and welfare, and that local regulation of
2 fertilizer and pesticides does not materially assist in achieving these benefits.

3 (2) No city, town, county, or other political subdivision of the Commonwealth shall
4 adopt or continue in effect any ordinance, resolution, rule, or regulation regarding
5 ~~agriculture and silviculture~~ fertilizer regulated pursuant to KRS 250.371 and
6 pesticide sale or use, including without limitation: registration, notification of use,
7 advertising and marketing distribution, ~~applicator~~ training, licensing, and
8 certification, storage, transportation, disposal, disclosure of confidential
9 information, or product composition.

10 **(3) Authority for the regulation of pesticides sold and used in the Commonwealth of**
11 **Kentucky is hereby established in the department.**

12 **(4)**~~(3)~~ Nothing in this section shall be construed to:

- 13 (a) Abrogate any authority afforded by the state statutes to any program cabinet
14 established under KRS Chapter 12 or any state or federal mandated hazardous
15 materials regulations or fire safety codes and comprehensive hazardous
16 materials management program;
- 17 (b) Abrogate the planning and zoning authority granted local government
18 pursuant to KRS Chapter 100; or
- 19 (c) Waive any reporting requirement established by state or federal law or
20 regulation.

21 ➔SECTION 16. KRS 217B.500 IS REPEALED AND REENACTED TO READ
22 AS FOLLOWS:

23 **As used in KRS 217B.500 to 217B.585 unless the context requires otherwise:**

24 **(1) "Applicant" means any person applying for a license;**

25 **(2) "Applicator" means a licensed person who makes pesticide applications;**

26 **(3) "Board" means the Structural Pest Management Advisory Board;**

27 **(4) "Carpenter ants" means those ants that damage wooden structures and are**

- 1 classified within the genus *Camponotus*;
- 2 (5) "Carpenter bees" means those bees that damage wooden structures and are
3 classified in the genus *Xylocopa*;
- 4 (6) "Commercial pesticide application" means a pesticide application made by a
5 licensed person or trainee employed by a structural pest management company
6 on the property of another for a fee;
- 7 (7) "Department" means the Kentucky Department of Agriculture;
- 8 (8) "Direct supervision" means the act or process whereby the application of a
9 pesticide is made by a competent person acting under the instructions and control
10 of a certified operator or certified applicator who is responsible for the actions of
11 that person and who is available if and when needed, even though such certified
12 operator or certified applicator is not physically present at the time and place the
13 pesticide is applied;
- 14 (9) "General pests" means any arthropods, mollusks, annelid worms, rodents, or
15 other pestiferous vertebrate animals, vermin, or fungi, excluding those defined in
16 subsections (4), (5), (13), (16), and (20) of this section;
- 17 (10) "KPMA" means the Kentucky Pest Management Association, Inc.;
- 18 (11) "License" means an instrument issued by the department that certifies a person
19 is competent to make pesticide applications in a structural pest management
20 category;
- 21 (12) "Noncommercial pesticide application" means pesticide applications made by an
22 applicator, in the course of employment, on property owned, occupied, or
23 managed by the applicator or his or her employer;
- 24 (13) "Office" means any location where the application records or pesticide inventory
25 of a structural pest management company are stored;
- 26 (14) "Old house borer" means the cerambycid beetle *Hylotrupes bajalus* (L.);
- 27 (15) "Operator" means a licensed person who manages a structural pest management

1 company and makes pesticide applications or supervises applicators or trainees
 2 making pesticide applications;

3 (16) "Powder post beetle" means the beetles that damage wooden structures and are
 4 classified within the families Lyctidae, Bostrichidae, or Anobiidae;

5 (17) "Structural fumigation" means the use of poisonous gases for the control of
 6 general pests and wood destroying organisms in enclosed structures;

7 (18) "Structural pest management" means the use of pesticides to prevent, control,
 8 repel, or eliminate wood destroying organisms or general pests in, around, or
 9 outside structures for the purpose of mitigating threats to structural integrity, the
 10 human occupancy, or the contents of such structures;

11 (19) "Structural pest management company" means any company that provides
 12 commercial structural pest management or commercial structural fumigation
 13 services for a fee;

14 (20) "Termite" means the eastern subterranean termite, Reticulotermes flavipes
 15 (Kollar), the southeastern subterranean termite, R. virginicus Banks, or the light
 16 southeastern subterranean termite, R. hageni Banks;

17 (21) "Trainee" means an unlicensed person employed by a structural pest
 18 management company to make pesticide applications; and

19 (22) "Wood destroying organisms" means those organisms that cause damage to the
 20 wood used in the construction of structures including the insects defined under
 21 subsections (4), (5), (13), (16), and (20) of this section.

22 ➔Section 17. KRS 217B.505 is amended to read as follows:

23 (1) There shall be established a six (6)~~seven (7)~~ member Structural Pest
 24 Management~~Control~~ Advisory Board which shall consist of the following
 25 members:

26 (a)~~(1)~~ President of the KPMA~~[KPCA]~~ or the president's~~[his]~~ designated
 27 representative from the association's membership~~;~~~~[KPCA board of directors.]~~

1 ~~(b)~~⁽²⁾ One (1) member of ~~the KPMA~~^[KPCA] appointed by the Governor from
 2 a list of persons **active** in the **structural** pest **management**~~[control]~~ industry
 3 submitted by the ~~KPMA~~^[KPCA], ~~who shall be residents of the~~
 4 ~~Commonwealth~~. This member shall serve a two (2) year term; ~~[-]~~

5 ~~(c)~~⁽³⁾ The **chairperson**~~[chairman]~~ of the University of Kentucky Department
 6 of Entomology or **the chairperson's**^[his] designated representative; ~~[-]~~

7 ~~(d)~~⁽⁴⁾ One (1) other member of the University of Kentucky Department of
 8 Entomology appointed by the **chairperson**~~[chairman]~~ of the Department of
 9 Entomology; ~~and~~^[-]

10 ~~(e)~~⁽⁵⁾ Two (2) members of the department **staff** appointed by the
 11 Commissioner of Agriculture.

12 ~~(2)~~⁽⁶⁾ ~~[One (1) consumer member appointed by the Commissioner of Agriculture.~~
 13 ~~This member shall serve a two (2) year term.~~

14 ~~(7) If~~ **When** a vacancy occurs on the board, it shall be filled in the manner designated
 15 in **subsections (1) to (5) of** this section.

16 ~~(3)~~⁽⁸⁾ At the first meeting of the **Structural** Pest **Management**~~[Control]~~ Advisory
 17 Board, a **chairperson**~~[chairman]~~, a vice **chairperson**~~[chairman]~~, and a secretary
 18 shall be elected for one (1) year. They shall serve at the pleasure of the board. The
 19 **chairperson**~~[chairman]~~ or the vice **chairperson**~~[chairman]~~ shall preside at all
 20 meetings and vote as any other member. The secretary of the board shall maintain
 21 accurate minutes of each meeting of the board.

22 ~~(4)~~⁽⁹⁾ **Four (4)**~~[Five (5)]~~ members of the board shall constitute a quorum and any
 23 action or order of the board shall require the presence of a quorum and the approval
 24 of a simple majority of the members present.

25 ~~(5)~~⁽¹⁰⁾ The board shall meet **no less than two (2) times per year upon the call of the**
 26 **chairperson**~~[on the first Thursday of alternate months beginning with January at~~
 27 ~~Frankfort or such other place in Kentucky as the chairman shall direct. If the first~~

1 ~~Thursday falls on a holiday, the meeting shall take place the following Thursday].~~
 2 The secretary of the board shall notify members of upcoming meetings ten (10) days
 3 prior to the meeting. However, **three (3)**~~four (4)~~ members of the board may call a
 4 special meeting of the board on ten (10) days' notice to the other members.

5 ~~(6)~~~~(11)~~ Members of the board shall serve without compensation; however, members
 6 who are not employees of the Commonwealth shall be entitled to reimbursement by
 7 the department for actual expenses incurred in carrying out the duties of the board.

8 ➔Section 18. KRS 217B.510 is amended to read as follows:

9 The **Structural** Pest **Management**~~Control~~ Advisory Board shall have the following
 10 powers and duties:

11 (1) ~~[-]To~~ Review commercial structural pest **management**~~control~~ and commercial
 12 structural fumigation enforcement proceedings and to make written
 13 recommendations ~~[-]for further action~~ to the department; ~~[-]~~

14 (2) ~~[-]To~~ Hold hearings on the denial of an application for a license pursuant to KRS
 15 217B.540; ~~[-]~~

16 (3) ~~[-]To review commercial structural pest control and commercial structural fumigation~~
 17 ~~applicator license applications to ensure that the applicants meet state pest control~~
 18 ~~licensing requirements and to make recommendations to the department.~~

19 ~~(4) To~~ Review the **structural**~~state~~ pest **management**~~control~~ licensing
 20 examinations; ~~[-]~~

21 ~~(5) To assist the department in administering the licensing examinations for~~
 22 ~~commercial structural pest control applicators and commercial structural fumigation~~
 23 ~~applicators and to make recommendations to the department.]~~

24 ~~(4)~~~~(6)~~ ~~[-]To~~ Serve as a resource group to keep the department informed of current
 25 technical advancements in the **structural** pest **management**~~control~~ industry; **and**

26 **(5) Review and make recommendations to the department concerning statutes and**
 27 **administrative regulations, including any proposed revisions, affecting the**

1 *structural pest management industry.*

2 ~~[(7) To recommend reasonable rules and regulations concerning the following matters:~~

3 ~~(a) Standards of application and workmanship.~~

4 ~~(b) Proper health and safety precautions.~~

5 ~~(c) Requirements for standardized structural pest control contracts.~~

6 ~~(d) Furnishing of reports and information necessary for the Pest Control Advisory~~

7 ~~Board to carry out the provisions of KRS 217B.515 to 217B.585.~~

8 ~~(8) To assist the department in administering the licensing examinations for the~~
 9 ~~commercial structural pest control applicators and commercial structural fumigation~~
 10 ~~applicators and to make recommendations to the department.]~~

11 ➔SECTION 19. KRS 217B.515 IS REPEALED AND REENACTED TO READ
 12 AS FOLLOWS:

13 *(1) No person shall engage in structural pest management or structural fumigation*
 14 *without first obtaining a license from the department certifying competence to*
 15 *make commercial or noncommercial pesticide applications.*

16 *(2) A separate examination and license is required to operate in each of the*
 17 *following categories:*

18 *(a) Commercial structural pest management;*

19 *(b) Commercial structural fumigation;*

20 *(c) Noncommercial structural pest management; and*

21 *(d) Any additional category the department shall designate on recommendation*
 22 *of the board.*

23 *(3) Any person holding only a termite or a general pest control license or a*
 24 *fumigation license on or after June 17, 1978, may continue to operate in that*
 25 *category. That person may take the commercial structural pest management*
 26 *operator's license examination without jeopardizing his or her current license.*
 27 *Should the license of the license holder lapse or be revoked for any reason, the*

1 person, in order to be licensed again, shall be required to fulfill the requirements
 2 of KRS 217B.515 to 217B.545.

3 (4) Licenses issued under this section shall expire annually.

4 (5) The department may promulgate administrative regulations establishing other
 5 types of licenses certifying persons to engage in structural pest management and
 6 structural fumigation and providing for examinations to obtain those licenses.
 7 The department shall assess reasonable fees for licenses and the administration
 8 of examinations.

9 ➔Section 20. KRS 217B.520 is amended to read as follows:

10 ~~[(1)]~~ Applicants for an operator's~~[applicator's]~~ license shall be required to:

11 ~~(1)(a)~~ Be a legal resident of the United States;~~[-]~~

12 ~~(2)(b)~~ Be at least eighteen (18) years of age; and~~[-]~~

13 ~~(3)(c)~~ Have at least two (2) years of verified experience in structural pest
 14 management~~[employed with a licensed structural pest control applicator.~~

15 ~~Experience shall be verified by the license holder of the company from which the~~
 16 ~~applicant has obtained his experience].~~ A person with a bachelor's degree, a master's
 17 degree or a doctoral degree in entomology from an accredited college or university
 18 shall qualify with no experience. Educational background shall be verified with
 19 official transcripts from the institution or institutions granting the degree.

20 ~~[(2)]~~ Applicants for a manager's license shall be required to have one (1) year's
 21 experience as a service technician or as a salesperson for a licensed pest control
 22 company.

23 ~~(3)~~ No person convicted of fraud or misrepresentation may apply for an applicator's or
 24 manager's license.]

25 ➔Section 21. KRS 217B.525 is amended to read as follows:

26 (1) Application for an operator's license shall be submitted on a form furnished by the
 27 department, and shall be filed no later than thirty (30) days in advance of the next

1 examination date.

2 (2) The department shall notify the applicant within ten (10) days of the examination
3 date whether or not **the applicant**~~[he]~~ has passed the examination.

4 →Section 22. KRS 217B.530 is amended to read as follows:

5 (1) **Operator**~~[Applicator]~~ licensing examinations for commercial structural pest
6 **management**~~[control]~~ and commercial structural fumigation shall be given **at least**
7 **two (2) times per year**~~[the second Tuesday in May and the second Tuesday in~~
8 ~~November unless such date shall be a holiday. In such case the examination shall be~~
9 ~~given on the third Tuesday of that month. Manager licensing examinations shall be~~
10 ~~administered by the department as needed].~~

11 (2) ~~[An applicant shall be allowed to take two (2) consecutive licensing examinations~~
12 ~~but if the applicant has not passed the licensing examination after two (2) attempts~~
13 ~~he must then wait one (1) year and must complete and pass a training course~~
14 ~~approved by the department before reapplying to take the examination one (1) more~~
15 ~~time. If the applicant does not pass the examination the third or subsequent time, he~~
16 ~~shall have to wait two (2) years and complete and pass an additional training course~~
17 ~~approved by the department before reapplying to take the examination.~~

18 (3) ~~]~~**All** license testing fees shall be **established in administrative regulations**
19 **promulgated by the department**~~[fifty dollars (\$50) for each examination each time~~
20 ~~the examination is taken].~~

21 (3)~~(4)~~ ~~[Written]~~ Examinations shall be given to all qualified applicants. No oral
22 examinations shall be given.

23 (4)~~(5)~~ The commercial structural pest **management operator's**~~[control]~~ examination
24 shall consist of no less than two hundred sixty (260) written questions and
25 **identification of** no less than forty (40) **wood destroying organisms and general**
26 **pests**~~[identification specimens]. The commercial structural fumigation **operator's**~~
27 examination shall consist of no less than eighty (80) written questions and

1 **identification of** no less than twenty (20) **wood destroying organisms and general**
 2 **pests**~~identification specimens. The manager's licensing examination shall consist of~~
 3 ~~no less than ninety (90) written questions and no less than ten (10) identification~~
 4 ~~specimens].~~

5 ~~(5)~~~~(6)~~ The licensing examination shall be a timed examination. Five (5) hours shall
 6 be allowed for the commercial structural pest control examination and two (2) hours
 7 for the commercial structural fumigation examination.~~Timing for the manager's~~
 8 ~~licensing examinations shall be set by regulation.]~~

9 ~~(6)~~~~(7)~~ The applicant must achieve a grade of at least 70% correct on the written
 10 questions and at least 70% correct on the identification to pass the licensing
 11 examination. The ~~license~~ applicant must take and pass the entire examination to
 12 become licensed.

13 ~~(7)~~~~(8)~~ The commercial structural pest **management operator's examination and all**
 14 **other structural pest management license examinations**~~control and the~~
 15 ~~commercial structural fumigation examination]~~ shall ~~also~~ serve as the
 16 **examinations**~~examination]~~ necessary to fulfill federal commercial pesticide
 17 applicator certification requirements, including industrial, institutional, structural
 18 and health related pest control, **and the commercial structural fumigation**
 19 **operator's examination and all other fumigation license examinations shall serve**
 20 **as the examinations necessary to fulfill federal commercial pesticide applicator**
 21 **certification requirements for nonsoil fumigation.**

22 ➔Section 23. KRS 217B.535 is amended to read as follows:

23 (1) There shall be **at least**~~only~~ one (1) **operator**~~applicator~~ license holder per
 24 **structural pest management** company~~with one (1) or more reserve applicator~~
 25 ~~license holders allowed for each company].~~ **The department shall require an**
 26 **annual fee of one hundred dollars (\$100) for each operator's license issued.**

27 (2) A license issued by the department shall not be transferable or assignable.

1 *Structural pest management companies shall annually register and pay a fee of*
2 *fifty dollars (\$50) for each office* ~~[In the event of the death or incapacitation of a~~
3 ~~licensed operator, his heirs, representatives, other persons or legal entities, which~~
4 ~~may have an interest in the structural pest control business in which the deceased~~
5 ~~was the license holder, shall be allowed a maximum of twelve (12) months from~~
6 ~~such death to obtain a qualified licensed applicator to operate or manage said~~
7 ~~business under the provisions of KRS 217B.515 to 217B.585. A full time certified~~
8 ~~applicator shall be employed by such business for the application and supervision of~~
9 ~~restricted use pesticides.~~

10 ~~(3) If a pest control firm is sold, the purchaser must comply with all state laws and~~
11 ~~regulations. If the purchaser fails to comply he has ninety (90) days to dissolve the~~
12 ~~business. The seller must notify the buyer that the department regulates the pest~~
13 ~~control industry in Kentucky. The seller must notify the department that the~~
14 ~~business has been sold within ten (10) days after the sale. If the license holder for a~~
15 ~~pest control firm leaves or is terminated for reasons other than death or sale of the~~
16 ~~firm, the firm must notify the department of this change within ten (10) days and~~
17 ~~must acquire a license holder at the next testing period or must be granted an~~
18 ~~emergency license by the department for a period not to exceed the following~~
19 ~~scheduled examination. If the pest control firm fails to meet these requirements,~~
20 ~~they must dissolve the business within ninety (90) days. A full time certified~~
21 ~~applicator shall be employed by such business for the application and supervision of~~
22 ~~restricted use pesticides.~~

23 ~~(4) It shall be illegal to solicit business or advertise without a valid commercial~~
24 ~~structural pest control applicator's license or commercial structural fumigation~~
25 ~~applicator's license].~~

26 ~~(3)[(5)] [Each applicator shall register annually and shall pay an annual fee of one~~
27 ~~hundred dollars (\$100) for each place of business maintained in Kentucky.]Every~~

1 nonresident *operator, applicator, and structural pest management*
 2 *company*~~[owner]~~ shall designate a resident agent upon whom service ~~[of notice]~~ of
 3 process may be made to enforce the provisions of KRS 217B.515 to 217B.585.

4 ➔Section 24. KRS 217B.540 is amended to read as follows:

5 The department shall, after denying an application for a license, if petitioned by the
 6 applicant within ten (10) days of notification, schedule a hearing before the *Structural*
 7 Pest *Management*~~[Control]~~ Advisory Board. The hearing shall be conducted in
 8 accordance with KRS Chapter 13B.

9 ➔Section 25. KRS 217B.545 is amended to read as follows:

10 (1) The department may *issue a notice of its intent to* suspend, revoke, or modify the
 11 provision of any ~~[applicator's or manager's]~~ license issued under KRS 217B.515 to
 12 217B.520 if it finds that the licensee has committed any of the acts set forth in KRS
 13 217B.550.

14 (2) The license holder shall have ten (10) days upon the receipt of *a notice of intent to*
 15 *suspend, revoke, or modify a*~~[the notification of a proposed suspension, revocation,~~
 16 ~~or modification of]~~ license to request a hearing. The hearing shall be conducted in
 17 accordance with KRS Chapter 13B.

18 (3) If a hearing is not requested as provided for in subsection (2) of this section, the
 19 department may suspend, revoke, or modify the license once the ten (10) day
 20 hearing request filing period has passed.

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

27 ➔Section 26. KRS 217B.550 is amended to read as follows:

1 The following acts are declared to be a violation of KRS 217B.515 to 217B.585:

- 2 (1) *Using any material or pesticide that is not labeled for the purpose of structural*
 3 *pest management;*~~[Making any material representation for the purpose of~~
 4 ~~defrauding the public, or using any method or material that is not reasonably suited~~
 5 ~~for the purpose for which it was employed, by any licensed applicator, manager or~~
 6 ~~his solicitor or agent.]~~
- 7 (2) Failure of a licensed operator or *applicator*~~[manager]~~ to comply with any of the
 8 provisions of this chapter or any reasonable rule or regulation promulgated by the
 9 department;~~[-]~~
- 10 (3) Failure *of any person* to pay *a fine or comply with an order issued by the*
 11 *department;*~~[any final judgment rendered against any licensed operator or manager,~~
 12 ~~his employee, solicitor or representative by reason of liabilities resulting from~~
 13 ~~activities under KRS 217B.515 to 217B.585.]~~
- 14 (4) Failure to *renew any required*~~[make the]~~ registration *or*~~[and]~~ pay *any*~~[the annual]~~
 15 ~~licensing fees;~~~~[as required by KRS 217B.535.]~~
- 16 (5) Failure to *obtain required continuing education units through*~~[attend]~~ training
 17 courses approved by the department;~~[- on recommendation of the Pest Control~~
 18 ~~Advisory Board as specified by the Kentucky state plan.]~~
- 19 (6) ~~[The making of false or fraudulent claims through any media, misrepresenting the~~
 20 ~~effect of materials or methods to be utilized.~~
- 21 (7) ~~The]~~Making ~~[of]~~a pesticide ~~[recommendation or]~~application not in accordance
 22 with the label registered by the department under KRS 217.542 to 217.640;~~[-]~~
- 23 ~~(7)~~~~(8)~~ *Storing or discarding a pesticide or pesticide container in a manner*
 24 *prohibited under KRS 217B.555;*~~[The application of known improper materials.]~~
- 25 ~~(8)~~~~(9)~~ *Operating equipment not functioning as intended or designed by the*
 26 *manufacturer;*~~[Knowingly operating faulty or unsafe equipment.]~~
- 27 ~~(9)~~~~(10)~~ *Operating equipment in a manner not intended or designed by the*

1 ~~**manufacturer;** [Knowingly operating in a faulty, careless or negligent manner.]~~

2 ~~**(10)** [(11)] Failure to keep and maintain the records required by the department [KRS~~
3 ~~217B.510], or to make reports when and as required; [-]~~

4 ~~**(11)** [(12)] [The] Making [of] false [or fraudulent] records, invoices, or reports; [-]~~

5 ~~**(12)** [(13)] **Making an** [Engaging in the business of the] application of a pesticide by a~~
6 ~~trainee without having a licensed person [applicator or operator] providing [in]~~
7 ~~direct supervision; [-]~~

8 ~~**(13)** [(14)] **Making false representations in** [Using fraud or misrepresentation in making]~~
9 ~~an application for a license or renewal of a license; [-]~~

10 ~~**(14)** [(15)] Failure to comply with any limitations or restrictions placed on a license~~
11 ~~issued by the department; [on or in a duly issued license, permit or certification.]~~

12 ~~**(15)** [(16)] Aiding or abetting a licensed or an unlicensed person to evade the provisions~~
13 ~~of KRS 217B.515 to 217B.585, combining or conspiring with such a licensed or an~~
14 ~~unlicensed person to evade the provisions of KRS 217B.515 to 217B.585, or~~
15 ~~allowing one's license to be used by an unlicensed person.~~

16 ~~(17) The making of false or misleading statements during or after an inspection~~
17 ~~concerning any infestation or infection of pests found on land.~~

18 ~~(18)] Impersonating any state, county, or city inspector or official; [-]~~

19 ~~**(16) Failure to obtain any license or make any registration required by this chapter;**~~
20 ~~and~~

21 ~~**(17) Failure to obtain or maintain liability insurance as required by this chapter.**~~

22 ➔ Section 27. KRS 217B.555 is amended to read as follows:

23 (1) No person shall ~~knowingly~~ discard or store any pesticide or pesticide containers in
24 ~~such~~ a manner as to cause injury to humans, vegetation, crops, livestock, wildlife,
25 pollinating insects or to pollute any waterway in a way harmful to any wildlife
26 therein.

27 (2) No person shall purchase, use, or supervise the use of, a restricted use pesticide

1 unless ~~that~~^[such] person be ~~licensed~~^[certified] in a ~~category~~^[classification] which
2 permits ~~that~~^[such] purchase, use, or supervision of use.

3 →Section 28. KRS 217B.560 is amended to read as follows:

4 **Structural pest management companies shall register trainees with the department for**
5 **a fee of twenty-five dollars (\$25). The department may promulgate administrative**
6 **regulations to establish additional requirements for trainees**~~[A pest control company~~
7 ~~shall be required and responsible to use only trained personnel such that a new employee~~
8 ~~shall work under the full-time supervision of a certified applicator for at least thirty (30)~~
9 ~~days and sales and service personnel shall receive a training course approved by the~~
10 ~~department on recommendation of the Pest Control Advisory Board].~~

11 →Section 29. KRS 217B.565 is amended to read as follows:

12 **Identification of structural pest management company vehicles shall be subject to**
13 **administrative regulations promulgated by the department**~~[Each business establishment~~
14 ~~or business entity shall at all times have its vehicles, which are actively and regularly~~
15 ~~engaged in service work marked for easy identification with at least the letters "L.P.C.O."~~
16 ~~two (2) inches high, and the company name thereon, followed by the license number of~~
17 ~~the business establishment or business entity. Identification of vehicles may be~~
18 ~~permanent or removable; however, signs shall accompany the vehicle at all times for~~
19 ~~purpose of identification. Each licensed business establishment or business entity shall~~
20 ~~furnish each employee performing work or soliciting business an identification card to be~~
21 ~~secured from the department and said identification card shall be carried on his or her~~
22 ~~person at all times for the purpose of identification of the employee to the department or~~
23 ~~to the person or persons for whom such work is being performed. It is the responsibility~~
24 ~~of every business establishment or business entity issuing identification cards to collect~~
25 ~~any and all cards, or produce proof that a reasonable effort was made to collect same,~~
26 ~~from employees whose employment has terminated with that company. Identification~~
27 ~~cards collected in this manner shall be mailed to the department].~~

1 ➔Section 30. KRS 217B.570 is amended to read as follows:

- 2 (1) Each structural pest management company and employer of a noncommercial
 3 applicator shall be responsible for the actions of every person who acts as its
 4 employee or agent in performing structural pest management services~~[The burden~~
 5 ~~of responsibility shall rest upon the applicator for selection and use of proper~~
 6 ~~chemicals, and also for the correct formulation and dosages used unless otherwise~~
 7 ~~specified in the rules and regulations].~~
- 8 (2) ~~[However,]~~The department ~~[or its agents]~~shall have authority at reasonable times
 9 during regular business hours to examine and test any and all chemicals ~~[used or~~
 10 ~~being used or bought, held or]~~stored for the purpose of being used for prevention
 11 or control of wood destroying organisms or general pests~~[pest prevention or control~~
 12 ~~by any person having a license issued, whether then in use or not]~~.
- 13 (3) The department ~~[or its agent]~~shall have the authority to inspect equipment and all
 14 storage and disposal areas.
- 15 (4) The department ~~[or its agent]~~shall have the authority at reasonable times during
 16 regular business hours to inspect and observe the manner in which a particular
 17 pesticide is applied to ensure~~[insure]~~ that it~~[such]~~ is being done according to the
 18 registered label~~[properly]~~.

19 ➔Section 31. KRS 217B.580 is amended to read as follows:

20 All fees collected by the department ~~[from structural pest control operators]~~for licensing
 21 and examinations shall be deposited in the State Treasury to the credit of a revolving fund
 22 for the use of the department in enforcing the provisions of KRS 217B.515 to 217B.585
 23 and for the expense of carrying out the duties and functions of the Pest
 24 Management~~[Control]~~ Advisory Board.

25 ➔Section 32. KRS 217B.585 is amended to read as follows:

26 It shall be the duty of the department, or upon the request of the Commissioner of
 27 Agriculture, of the Attorney General to bring an action for the recovery of the penalties

1 provided for in KRS 217B.990~~[(5)]~~, and to bring an action for an injunction against any
2 person violating or threatening to violate any provision of this chapter~~[KRS 217B.515 to~~
3 ~~217B.575]~~ or violating or threatening to violate any administrative regulation, order, or
4 determination of the department promulgated pursuant thereto. In any such action any
5 finding of the department shall be prima facie evidence of the fact or facts found therein.

6 ➔Section 33. KRS 217B.990 is amended to read as follows:

7 (1) Any person who violates any of the provisions of this chapter or who fails to
8 perform any duties imposed by those sections, or who violates any determination or
9 order of the department promulgated pursuant thereto shall be liable to a civil
10 penalty of not to exceed the sum of one thousand dollars (\$1,000) for that~~[said]~~
11 violation, and an additional civil penalty of not to exceed one thousand dollars
12 (\$1,000) for each day during which the~~[such]~~ violation continues, and in addition,
13 may be enjoined from continuing the~~[such]~~ violations as~~[hereinafter]~~ provided in
14 this section. The~~[Such]~~ penalties shall be recoverable in an action brought in the
15 name of the Commonwealth of Kentucky by the department, or upon the
16 department's request by the Attorney General.

17 (2) Any person who fails to abate a violation within the time period prescribed by
18 administrative regulation for the abatement shall be assessed a civil penalty of not
19 less than one hundred dollars (\$100). Each day of continuing violation may be
20 deemed a separate violation for the purpose of penalty assessment. The
21 Commissioner shall develop a method for calculating monetary penalties and shall
22 promulgate a schedule of the penalties in an administrative regulation. The penalty
23 shall be recoverable in an action brought in the name of the Commonwealth. All
24 sums of recovery shall be placed in the State Treasury. A license holder shall have
25 thirty (30) days from notification of the penalty assessment to request a hearing.

26 (3) ~~It shall be the duty of the department, or upon the request of the Commissioner of~~
27 ~~Agriculture, of the Attorney General to bring an action for the recovery of the~~

1 penalties hereinabove provided for, and to bring an action for an injunction against
2 any person violating or threatening to violate any provision of this chapter or
3 violating or threatening to violate any order or determination of the department
4 promulgated pursuant thereto. In any such action any finding of the department shall
5 be prima facie evidence of the fact or facts found therein.

6 ~~(4)~~ Any person who shall willfully violate any of the provisions of this chapter or any
7 determination or order of the department promulgated pursuant to those sections
8 which have become final shall be guilty of a misdemeanor and upon conviction
9 thereof shall be punished by a fine of not less than one hundred dollars (\$100) nor
10 more than one thousand dollars (\$1,000) or by imprisonment for a term of not more
11 than one (1) year, or by both fine and imprisonment for each separate violation.
12 Each day upon which such violation occurs shall constitute a separate violation.

13 ~~[(5) Any person who violates any of the provisions of KRS 217B.515 to 217B.585 or~~
14 ~~who fails to perform any duties imposed by those sections, or who violates any~~
15 ~~determination or order of the department promulgated pursuant thereto shall be~~
16 ~~liable to a civil penalty of not to exceed the sum of one thousand dollars (\$1,000)~~
17 ~~for said violation, and an additional civil penalty of not to exceed one thousand~~
18 ~~dollars (\$1,000) for each day during which such violation continues, and in~~
19 ~~addition, may be enjoined from continuing such violations as hereinafter provided~~
20 ~~for in KRS 217B.585. Such penalties shall be recoverable in an action brought in~~
21 ~~the name of the Commonwealth of Kentucky by the department, or upon the~~
22 ~~department's request by the Attorney General.~~

23 ~~(6) Any person who shall willfully violate any of the provisions of KRS 217B.515 to~~
24 ~~217B.585 or any determination or order of the department promulgated pursuant to~~
25 ~~those sections which have become final shall be guilty of a misdemeanor and upon~~
26 ~~conviction thereof shall be punished by a fine of not less than one hundred dollars~~
27 ~~(\$100) nor more than one thousand dollars (\$1,000) or by imprisonment for a term~~

1 ~~of not more than one (1) year or by both fine and imprisonment for each separate~~
2 ~~violation. Each day upon which the violation occurs shall constitute a separate~~
3 ~~violation.]~~

4 ➔SECTION 34. A NEW SECTION OF KRS 217B.500 TO 217B.585 IS
5 CREATED TO READ AS FOLLOWS:

- 6 *(1) The department shall not issue or renew a structural pest management company*
7 *registration until the applicant has furnished to the department satisfactory*
8 *evidence of financial responsibility consisting of a liability insurance policy or*
9 *certification of that policy.*
- 10 *(2) The amount of the liability insurance as required in this section shall be not less*
11 *than one million dollars (\$1,000,000). The liability insurance shall be maintained*
12 *at not less than that amount at all times during the registration period. The*
13 *department shall be notified no less than ten (10) days prior to any reduction at*
14 *the request of the applicant or cancellation of the liability insurance by the*
15 *insurer. The total and aggregate of the insurer for all claims shall be limited to*
16 *the face of the liability insurance policy. The department may accept a liability*
17 *insurance policy which has a deductible clause against the total amount of*
18 *liability insurance required if the clause does not specify an amount exceeding*
19 *five thousand dollars (\$5,000). If the applicant has not satisfied the requirements*
20 *of the deductible amount in any prior legal claim, the deductible clause shall not*
21 *be accepted by the department unless the applicant furnishes the department with*
22 *a security bond or other liability insurance which shall satisfy the amount of the*
23 *deductible as to all claims that may arise from his or her application of pesticides.*
- 24 *(3) Should the surety furnished become unsatisfactory, the applicant shall, upon*
25 *notice, execute a new insurance policy and if the applicant fails to do so, the*
26 *department shall cancel the company's registration and it shall be unlawful for*
27 *any person to act as an employee or agent of the company to engage in structural*

1 pest management until the insurance is brought into compliance with the
 2 requirements of subsection (2) of this section and the registration is reinstated by
 3 the department.

4 (4) Nothing in this chapter shall be construed to relieve any person from liability for
 5 any damage to a person or their property caused by the use of pesticides even
 6 though the use conforms with this chapter and the administrative regulations
 7 promulgated thereunder.

8 ➔SECTION 35. A NEW SECTION OF KRS 217B.500 TO 217B.585 IS
 9 CREATED TO READ AS FOLLOWS:

10 (1) The Commonwealth of Kentucky hereby determines that the citizens of the state
 11 benefit from a system of safe, effective, and scientifically sound pesticide
 12 regulation. The Commonwealth further finds that a system of pesticide regulation
 13 which is consistent, coordinated, and comports with both federal and state
 14 technical expertise is essential to public health, safety, and welfare, and that local
 15 regulation of pesticides does not materially assist in achieving these benefits.

16 (2) The authority for regulation of pesticides sold and used in the Commonwealth of
 17 Kentucky is hereby established in the Department of Agriculture.

18 (3) Nothing in this section shall be construed to:

19 (a) Abrogate any authority afforded by the state statutes to any program cabinet
 20 established and defined in KRS Chapter 12 or any state or federal mandated
 21 hazardous materials regulations or fire safety codes and comprehensive
 22 hazardous materials management program;

23 (b) Abrogate the planning and zoning authority granted local government
 24 pursuant to KRS Chapter 100; or

25 (c) Waive any reporting requirement established by state or federal law or
 26 regulation.

27 ➔SECTION 36. A NEW SECTION OF KRS CHAPTER 217B.500 TO 217B.585

1 IS CREATED TO READ AS FOLLOWS:

- 2 (1) No person shall act in the capacity of a structural pest management company, or
3 shall engage or offer to engage in the business of, advertise as, or assume to act
4 as a structural pest management company, without having registered as such
5 with the department.
- 6 (2) Application for a structural pest management company registration shall be in
7 the form and shall contain the information prescribed by the department. Each
8 application shall be accompanied by a fee of seventy-five dollars (\$75). All
9 registrations issued under this section shall expire on December 31 of the year for
10 which they are issued. The registration for a structural pest management
11 company may be renewed annually upon application to the department,
12 accompanied by a fee of seventy-five dollars (\$75) for each registration, on or
13 before the first day of January of the calendar year for which the registration is
14 issued.
- 15 (3) No person shall be registered as a structural pest management company without
16 proof of financial responsibility as required by Section 34 of this Act.

17 ➔SECTION 37. A NEW SECTION OF KRS 217B.500 TO 217B.585 IS
18 CREATED TO READ AS FOLLOWS:

- 19 (1) Except as provided in this chapter, it shall be unlawful for any person to act as an
20 employee of a structural pest management operator and apply pesticides without
21 having obtained an applicator's license from the department. An applicator's
22 license shall be in addition to any other license or permit required by law. Any
23 person applying for an applicator's license shall file an application on a form
24 prescribed by the department on or before January 1 of each year. Application for
25 a license to apply pesticides shall be accompanied by a license fee of twenty-five
26 dollars (\$25). The provisions of this section shall not apply to any individual who
27 has passed the examination provided for in KRS 217B.530, and is a licensed

1 operator.

2 **(2) No license shall be issued unless the applicant holds a valid certification within**
3 **this category.**

4 **(3) No license shall be issued unless the applicant is employed by a structural pest**
5 **management company or is supervised by a person who holds a valid operator's**
6 **license.**

7 ➔Section 38. The following KRS sections are repealed:

8 217B.100 Consultant's license -- Fee -- Qualifications -- Waiver.

9 217B.103 Suspension, revocation, or modification of consultant's license -- Grounds --
10 Application for new license.

11 217B.170 Annual fee for registering equipment -- Exemptions -- Inspections -- License
12 plate displayed on equipment.

13 217B.260 Pesticide Advisory Board.

14 217B.300 Definitions -- Notification and information requirements -- Records.

15 217B.320 Exemption from provisions of KRS 217B.300 -- Definitions -- Notification
16 and information requirements.

17 217B.575 Notification of change of address.