

1 *Senate* BILL NO. *124*
 2 INTRODUCED BY *Salas*
 3 BY REQUEST OF THE DEPARTMENT OF AGRICULTURE
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE PESTICIDE
 6 LAW RELATING TO DEFINITIONS; REGISTRATION AND EMBARGO OF
 7 PRODUCTS; LICENSING OF APPLICATORS, DEALERS, AND RETAILERS;
 8 CERTIFICATION OF FARM APPLICATORS; REVOCATION OF LICENSES
 9 AND PERMITS; RULE MAKING AND ADMINISTRATIVE PROCEDURES;
 10 ADVISORY COUNCIL; AGENCY COOPERATION; ENFORCEMENT AND
 11 VIOLATIONS; AMENDING SECTIONS 27-216, 27-217, 27-220,
 12 27-221, 27-222, 27-225, 27-227, 27-228, 27-230, 27-231,
 13 27-232, 27-234, 27-235, 27-240, 27-242, 27-243, AND 27-245,
 14 R.C.M. 1947; REPEALING SECTIONS 27-236, 27-237, AND 27-238,
 15 R.C.M. 1947; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
 16

17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18 Section 1. Section 27-216, R.C.M. 1947, is amended to
 19 read as follows:

20 "27-216. Definitions. Unless the context requires
 21 otherwise, in this act:

- 22 (1) "Active ingredient" means:
 23 (a) ~~In~~ in the case of a pesticide other than a plant
 24 regulator, defoliant, or desiccant, an ingredient which will
 25 prevent, destroy, repel, alter life processes, or mitigate

1 insects, nematodes, fungi, rodents, weeds, or other pests;

2 (b) ~~In~~ in the case of a plant regulator, an ingredient
 3 which acts upon the physiology to accelerate or retard the
 4 rate of growth or rate of maturation or otherwise alter the
 5 normal processes of ornamental or crop plants or their
 6 produce;

7 (c) ~~In~~ in the case of a defoliant, an ingredient which
 8 will cause the leaves or foliage to drop from a plant;

9 (d) ~~In~~ in the case of a desiccant, an ingredient which
 10 will artificially accelerate the drying of plant tissue.

11 (2) "Adulterated" applies to a pesticide if its
 12 strength of purity falls below the professed standard or
 13 quality as expressed on labeling or under which it is sold,
 14 or if any substance has been substituted wholly or in part
 15 for the pesticide, or if any valuable constituent of the
 16 pesticide has been wholly or in part abstracted.

17 (3) "Antidote" means the most practical immediate
 18 treatment in case of poisoning and includes ~~first-aid~~
 19 first-aid treatment.

20 (4) "Applicator" means a person who applies pesticides
 21 by any method.

22 (5) "Commercial applicator" means a person who by
 23 contract or for hire applies by aerial, ground, or hand
 24 equipment pesticides to land, plants, seed, animals, waters,
 25 structures, or vehicles.

1 (6) "Commercial operator" means a person who applies
2 pesticides under the supervision of a commercial applicator.

3 (7) "Farm applicator" means a person applying
4 pesticides to his own crops or land.

5 (8) "Public utility applicator" means a person
6 applying pesticides to land and structures owned or leased
7 by a public utility.

8 (9) "Beneficial insects" means those insects which, in
9 the course of their life cycle, carry, transmit, or spread
10 pollen to and from vegetation, act as parasites and
11 predators on other insects, or are otherwise beneficial.

12 (10) "Crop" means a food intended for human or animal
13 consumption or a fiber product.

14 (11) "Dealer" means a person who sells, wholesales,
15 offers, or exposes for sale, exchanges, barter, or gives
16 away within this state any pesticide except those pesticides
17 which are to be used for home, yard, garden, home orchard,
18 shade trees, ornamental trees, hedges, and lawn.

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

22 (13) "Desiccant" means a substance or mixture of
23 substances for artificially accelerating the drying of plant
24 tissue.

25 (14) "Device" means any instrument or contrivance

1 intended for destroying, controlling, repelling, or
2 mitigating pests but not equipment used for the application
3 of pesticides.

4 (15) "Environment" means the soil, air, water, plants,
5 and animals.

6 (16) "Equipment" means equipment used in the actual
7 application of pesticides, including aircraft, ground
8 sprayers and dusters, hand-held applicators, and water
9 surface equipment.

10 (17) "Fungi" means all nonchlorophyll-bearing
11 thallophytes (all nonchlorophyll-bearing plants of a lower
12 order than mosses and liverworts) as, for example, rusts,
13 smuts, mildews, molds, yeasts, and bacteria, except those
14 resident on or in living man or other animals.

15 (18) "Fungicide" means a substance or mixture of
16 substances for preventing, destroying, repelling, or
17 mitigating any fungus.

18 (19) "Herbicide" means a substance or mixture of
19 substances for preventing, destroying, repelling, or
20 mitigating any weed.

21 (20) "Inert ingredient" means an ingredient which is
22 not an active ingredient.

23 (21) "Ingredient statement" means either:

24 (a) A statement of the chemical name and common name
25 and percentage of each active ingredient, together with the

1 total percentage of the inert ingredients, in the pesticide;
2 or

3 (b) ~~A~~ a statement of the chemical name and common name
4 of each active ingredient, together with the name of each
5 and total percentage of the inert ingredients, if any, in
6 the pesticide. However, subsection (21)(a) of this section
7 applies if the preparation is highly toxic to man,
8 determined as provided in ~~sections~~ 27-234, and if the
9 pesticide contains arsenic in any form, the ingredient
10 statement shall also include a statement of the percentage
11 of total and water-soluble arsenic, each calculated as
12 elemental arsenic.

13 (22) "Insect" means any of the numerous small
14 invertebrate animals generally having the body more or less
15 obviously segmented, for the most part belonging to the
16 class insecta, comprising six-legged, winged and wingless
17 forms, such as beetles, bugs, wasps, flies, and keds, and to
18 other classes of ~~arthropods~~ arthropods whose members are
19 wingless and usually have more than six legs, such as
20 spiders, mites, ticks, centipedes, and wood lice.

21 (23) "Insecticide" means any substance or mixture of
22 substances for preventing, destroying, repelling, or
23 mitigating any insects present in any environment.

24 (24) "Label" means the written, printed, or graphic
25 matter on or attached to the pesticide or device, or to its

1 immediate container, and any outside container or wrapper of
2 any retail package of the pesticide or device.

3 (25) "Labeling" means all labels and other written,
4 printed, or graphic matter:

5 (a) ~~Upon~~ upon the pesticide or device or any of its
6 containers or wrappers;

7 (b) ~~Accompanying~~ accompanying the pesticide or device
8 at any time;

9 (c) ~~To~~ to which reference is made on the label or in
10 literature accompanying the pesticide or device, except when
11 accurate, nonmisleading reference is made to current
12 official publications of the United States environmental
13 protection agency, ~~and~~ and departments of agriculture, interior, or
14 health, education, and welfare, ~~and~~ and state experiment stations, ~~and~~
15 state agricultural colleges, ~~and~~ and other similar federal
16 institutions or official agencies of this state or other
17 states authorized by law to conduct research in the field of
18 pesticides.

19 (26) "Misbranded" applies:

20 (a) ~~To~~ to a pesticide or device if its labeling bears
21 any statement, design, or graphic representation relative to
22 its ingredients which is false or misleading.

23 (b) ~~To~~ to a pesticide if:

24 (i) ~~It~~ it is an imitation of or is offered for sale
25 under the name of another pesticide;

1 (ii) ~~Its~~ its labeling bears any reference to
2 registration under this act;

3 (iii) ~~The~~ the labeling accompanying it does not contain
4 instructions for use necessary and, if complied with,
5 adequate for the protection of the public;

6 (iv) ~~The~~ the label does not contain a warning or
7 caution statement necessary and, if complied with, adequate
8 to prevent injury to living man or undue hazard to the
9 environment;

10 (v) ~~The~~ the label of the retail package which is
11 presented or displayed under customary conditions of
12 purchase does not bear an ingredient statement on that part
13 of the immediate container and on the outside or on a
14 wrapper through which the ingredient statement on the
15 immediate container cannot be clearly read;

16 (vi) ~~Any~~ any word, statement, or other information
17 required to appear on the labeling is not prominently placed
18 on the labeling with a conspicuousness (as compared with
19 other words, statements, designs, or graphic matter in the
20 labeling) and in terms rendering it likely to be read and
21 understood by the ordinary individual under customary
22 conditions of purchase and use;

23 (vii) ~~It~~ in the case of an insecticide, nematocide,
24 fungicide, or herbicide, when used as directed or in
25 accordance with commonly recognized practice, it is

1 injurious to living man or other vertebrate animals or
2 vegetation, except weeds, to which it is applied, or to the
3 person applying the pesticide;

4 (viii) ~~It~~ in the case of a plant regulator, defoliant,
5 or desiccant, when used as directed, it is injurious to man
6 or other vertebrate animals or vegetation to which it is
7 applied, or to the person applying the pesticide. Physical
8 or physiological effects on plants or parts of plants are
9 not injurious when this is the purpose for which the plant
10 regulator, defoliant, or desiccant is applied in accordance
11 with the label claims and recommendations.

12 (27) "Nematocide" means any substance or mixture of
13 substances intended for preventing, destroying, repelling,
14 or mitigating nematodes.

15 (28) "Nematodes," "nemas," or "eelworms" means
16 invertebrate animals of the phylum nemathelminthes and class
17 nematoda, that is, unsegmented round worms with elongated,
18 fusiform, or sac-like bodies covered with cuticle, and
19 inhabiting soil, water, animals, plants, or plant parts.

20 (29) "Person" means any natural person, individual,
21 firm, partnership, association, corporation, company,
22 joint-stock association, body politic, or organized group of
23 persons whether incorporated or not, and any trustee,
24 receiver, assignee, or similar representative.

25 (30) "Pest" includes any insect, rodent, nematode,

1 snail, slug, weed, and any form of plant or animal life or
 2 virus, except virus on or in living man or other animal,
 3 which is normally considered a pest or which the department
 4 declares a pest.

5 (31) "Pesticide" means any:

6 (a) ~~Substance~~ substance or mixture of substances,
 7 including any living organism or any product derived from a
 8 living organism, intended for preventing, destroying,
 9 controlling, repelling, altering life processes, or
 10 mitigating any insects, rodents, nematodes, fungi, weeds,
 11 and other forms of plant or animal life or viruses, except
 12 viruses on or in living man or other animals, that may
 13 infect, or be detrimental to persons, vegetation, crops,
 14 animals, structures, or households or be present in any
 15 environment or which the department declares a pest;

16 (b) ~~Substance~~ substance or mixture of substances
 17 intended for use as a plant regulator, defoliant, or
 18 desiccant; and,

19 (c) ~~Other~~ other substances intended for that use named
 20 by the department by a rule adopted by it.

21 (32) "Plant regulator" means any substance or mixture
 22 of substances affecting the rate of growth or rate of
 23 maturation or for otherwise altering physiological condition
 24 of plants, but does not include substances to the extent
 25 that they are intended as plant nutrients, trace elements,

1 nutritional chemicals, plant inoculants, and soil
 2 amendments.

3 (33) "Registrant" means the person registering any
 4 pesticide or device under the provisions of this act.

5 (34) "Restricted use pesticide" means any pesticide,
 6 including highly toxic pesticides, which the department of
 7 agriculture has found and determined, subsequent to a
 8 hearing, to be injurious when used in accordance with
 9 registration, label, directions, and cautions to persons,
 10 beneficial insects, animals, crops, or the environment other
 11 than the pests it is intended to prevent, destroy, control,
 12 or mitigate.

13 (35) "Retailer" means any person who sells, offers, or
 14 exposes for sale, exchanges, barter, or gives away within
 15 this state any pesticide for home, yard, lawn, and garden
 16 use, in quantities or concentrations as determined by the
 17 department of agriculture.

18 (36) "Weed" means any plant or part of the plant which
 19 grows where not wanted."

20 Section 2. Section 27-217, R.C.M. 1947, is amended to
 21 read as follows:

22 "27-217. Registration. (1) Every pesticide
 23 distributed, sold, or offered for sale within this state or
 24 delivered for transportation or transported in intrastate
 25 commerce or between points within this state, shall be

1 registered with the department of agriculture. The
 2 registration shall be renewed annually by the manufacturer,
 3 ~~or~~ formulator, or distributor of the pesticide. The
 4 department of agriculture shall register all approved
 5 pesticides and those registered are subject to registration
 6 fees and all other provisions of this act. All registrations
 7 of pesticides expire on December 31 following the date of
 8 issuance, unless otherwise terminated.

9 (2) The applicant for registration shall file with the
 10 department of agriculture a statement including:

11 (a) ~~The~~ the name and address of the applicant and the
 12 name and address of the person whose name will appear on the
 13 label, if other than the registrant;

14 (b) ~~A~~ a complete copy of the label of the pesticide,
 15 the United States environmental protection agency
 16 registration number, if the pesticide is so registered, and
 17 a statement of all claims to be made for it, including
 18 directions for use;

19 (c) ~~The~~ the trade and chemical name of the pesticide;

20 (d) ~~If~~ if requested by the department of agriculture,
 21 a full description of tests made and the results upon which
 22 the claims are based. In the case of renewal of
 23 registration, a statement shall be required only with
 24 respect to information which is different from that
 25 furnished when the pesticide was registered or last

1 reregistered.

2 (3) Any pesticide imported into this state, which is
 3 subject to the provisions of any federal act providing for
 4 the registration of pesticides and ~~which~~ has been registered
 5 under the provisions of a federal act, shall be registered
 6 in the state. However, the state may restrict the use and
 7 application of the pesticide by type of applicator, time,
 8 and place and may establish special registrations of
 9 pesticides as outlined in subsection ~~(9)~~ (8) of this section
 10 and ~~section~~ 27-234(3). The annual registration fee must also
 11 be paid, and registration information required by the
 12 department of agriculture must be provided.

13 (4) The applicant shall pay an annual fee of ~~ten~~
 14 ~~dollars~~ -\$10 for each pesticide registered. A registration
 15 fee is not required to register an experimental use permit.
 16 Fees collected shall be deposited in the state treasury to
 17 the credit of the general fund.

18 (5) The department of agriculture may require the
 19 submission of the complete formula and certified analytical
 20 standards of any pesticide. If it appears to the department
 21 of agriculture that the composition of the article warrants
 22 the proposed claims for it and if the article and its
 23 labeling and other material required to be submitted comply
 24 with the requirements of ~~section~~ 27-218, it shall register
 25 the article.

1 (6) If it does not appear to the department of
 2 agriculture that the article warrants the proposed claims
 3 for it or if the article and its labeling and other material
 4 required to be submitted do not comply with this chapter, it
 5 shall notify the applicant of the manner in which the
 6 articles, labeling, or other material required to be
 7 submitted fails to comply with the act so as to afford the
 8 applicant an opportunity to make the necessary corrections.
 9 If ~~upon receipt of the notice, the applicant does not make~~
 10 ~~the corrections the applicant does not make the corrections~~
 11 upon receipt of the notice, the department of agriculture
 12 may refuse to register the article. The department of
 13 agriculture ~~in accordance with the procedures specified by~~
 14 ~~the department of agriculture~~, may suspend or cancel the
 15 registration of a pesticide whenever it does not appear that
 16 the article or its labeling comply with this act. When an
 17 application for registration is refused or the department of
 18 agriculture proposes to suspend or cancel a registration,
 19 the registrant may appeal to the ~~department of agriculture~~
 20 department's as provided for in section 27-226 decision.

21 ~~(7) The department of agriculture shall review all~~
 22 ~~registered pesticides at least every two (2) years.~~

23 ~~(8)~~ (7) Registration is not required in the case of a
 24 pesticide shipped from one plant in this state to another
 25 plant in this state by the same person.

1 ~~(9)~~ (8) (a) The departments of health and environmental
 2 sciences, agriculture, and fish and game shall review all
 3 applications for registration of a ~~pesticide or device~~
 4 ~~submitted to the department of agriculture an experimental~~
 5 use permit, a registration for special local needs, or
 6 registration of a device. The departments shall utilize the
 7 same requirements and standards for reviewing registrations
 8 as established by the Federal Insecticide, Fungicide, and
 9 Rodenticide Act, as amended, and regulations adopted
 10 thereunder. The department of agriculture shall provide the
 11 departments of health and environmental sciences and fish
 12 and game with a complete copy of the application, related
 13 correspondence, and a statement of the department of
 14 agriculture's proposed action on the application. The
 15 departments of health and environmental sciences and fish
 16 and game shall approve or disapprove the application within
 17 ~~three (3)~~ 10 days after the receipt of the application. If
 18 the departments of health and environmental sciences,
 19 agriculture, and fish and game are in agreement with the
 20 proposed registration, the department of agriculture shall
 21 ~~proceed with its~~ issue the registration.

22 (b) The department of agriculture shall establish a
 23 time and place for an interagency conference for the
 24 purposes of resolving the registration of any pesticide or
 25 device. If two ~~(2)~~ of the departments approve the proposed

1 registration, the department of agriculture shall proceed
2 with issue the registration.

3 (c) The registrant applying for registration shall be
4 notified as to proposed changes in registration. If the
5 departments cannot resolve the proposed registration
6 following the interagency conference, the registrant may
7 request a joint administrative hearing before the
8 departments of agriculture, health and environmental
9 sciences, and fish and game.

10 (d) Following the interagency conference, and if
11 requested, the administrative hearing, if the proposed
12 registration of a pesticide or device has not been resolved,
13 the department of agriculture shall appoint an advisory
14 council as outlined in ~~section~~ 27-240 to resolve by majority
15 vote the registration of any pesticide. The advisory
16 council's recommendations on the registration shall be
17 accepted by the departments and implemented by the
18 department of agriculture."

19 Section 3. Section 27-220, R.C.M. 1947, is amended to
20 read as follows:

21 "27-220. Embargo. (1) Whenever a duly authorized agent
22 of the department of agriculture finds or has probable cause
23 to believe that any pesticide or device+

24 ~~(a) Is is~~ adulterated or misbranded+,

25 ~~(b) Has has~~ not been registered under the provisions

1 of ~~section 5 [27-217]~~ (5) of this act+.

2 ~~(c) Fails fails~~ to bear on its label the information
3 required by this act+.

4 ~~(d) Is is~~ a white powder pesticide and is not colored
5 as required under this act+ he shall affix to such article
6 a tag or other appropriate marking, giving notice ~~that such~~
7 ~~pesticide or device is, or is suspected of being adulterated~~
8 ~~or misbranded, not registered, fails to bear the required~~
9 ~~information on the label, is a white powder pesticide and~~
10 ~~not colored as required, and thereof and that such article~~
11 has been detained or embargoed and warning all persons not
12 to remove or dispose of such article by sale or otherwise
13 until permission for removal or disposal is given by such
14 agent or the court. It ~~shall be is~~ unlawful for any person
15 to remove or dispose of such detained or embargoed article
16 by sale or otherwise, without such permission, or to remove
17 or alter the tag or marking.

18 (2) When an article detained or embargoed under
19 ~~section 8 (1) [subdivision (1) of this section]~~ subsection
20 (1) has been found by such agent to be in violation, if
21 after ~~thirty (30)~~ days the violation has not been resolved,
22 he may petition the district court in whose jurisdiction the
23 article is detained or embargoed for a condemnation of such
24 article. When such agent has found that an article so
25 detained or embargoed is not adulterated or misbranded, he

1 shall remove the tag or other marking.

2 (3) If the court finds that a detained or embargoed
 3 article is in violation of ~~section 8 (1) [subdivision (1) of~~
 4 ~~this section]~~ the act or rules adopted thereunder, such
 5 article shall after entry of the decree be destroyed at the
 6 expense of the claimant thereof, under the supervision of
 7 such agent, and all court costs and fees and storage and
 8 other proper expenses shall be assessed against the claimant
 9 of such pesticide or device or his agent; provided that when
 10 the adulteration or misbranding can be corrected by proper
 11 labeling or processing of the article, the court, after
 12 entry of the decree and after such costs, fees, and expenses
 13 have been paid and a good and sufficient bond has been
 14 executed, conditioned ~~that~~ upon the proper labeling or
 15 processing of such pesticide or device ~~shall be so labeled~~
 16 ~~or processed, has been executed~~, may by order direct that
 17 such article be delivered to the claimant thereof for such
 18 labeling or processing under the supervision of an agent of
 19 the department of agriculture. The expense of such
 20 supervision shall be paid by claimant. The article shall be
 21 returned to the claimant of the pesticide or device on the
 22 representation to the court by the department of agriculture
 23 that the article is no longer in violation of this act, and
 24 that the expenses of such supervision have been paid."

25 Section 4. Section 27-221, R.C.M. 1947, is amended to

1 read as follows:

2 "27-221. Commercial applicator. (1) It shall be
 3 unlawful for any person to engage in the business of
 4 applying pesticides for another without a pesticide
 5 applicator's license obtained from the department of
 6 agriculture. The application shall be accompanied by a fee
 7 of ~~ten dollars (\$10)~~. Applicators applying for a dealer ~~or~~
 8 ~~retailer~~ license under this act shall be required to pay
 9 only a ~~five dollar (\$5)~~ licensing fee for the dealer ~~or~~
 10 ~~retailer~~ license. The provisions of this section shall not
 11 apply to any person employed only to operate any equipment
 12 used for the application of any pesticide, and in which the
 13 person has no financial interest or other control over such
 14 apparatus other than its day-to-day mechanical operation for
 15 the purpose of applying any pesticide.

16 (2) Public utility applicators shall be licensed in
 17 the same manner as commercial applicators, provided that
 18 public utility operators working under public utility
 19 applicators are not required to be licensed, except as
 20 provided for under ~~section~~ 27-223.

21 (3) Veterinarians licensed as provided in ~~section~~
 22 66-2204 shall not be required to be licensed to apply
 23 nonrestricted pesticides, provided that these veterinarians
 24 shall register with the department of agriculture each year;
 25 provided further that the veterinarians shall be required to

1 meet all other requirements and ~~regulations~~ rules of the
 2 Montana Pesticides Act. The department ~~when adopting~~
 3 ~~regulations shall consider the professional licensing~~
 4 ~~requirements for veterinarians shall consider the~~
 5 professional licensing requirements for veterinarians when
 6 adopting rules."

7 Section 5. Section 27-222, R.C.M. 1947, is amended to
 8 read as follows:

9 "27-222. Application for applicator's license. (1)
 10 Application for a pesticide applicator's license provided
 11 for in ~~section~~ 27-221 shall be made annually, to the
 12 department of agriculture before applying pesticides in any
 13 calendar year, ~~from the department of agriculture. Provided~~
 14 that pesticide applicators applying for renewal of license
 15 shall do so on or before April 1 of that calendar year. Any
 16 applicator applying for renewal of license after April 1
 17 shall be assessed a \$10 late licensing fee.

18 (2) If the application is made for a license to engage
 19 in aerial application of pesticides, the applicant shall
 20 first meet all of the requirements of the federal aviation
 21 agency and the department of community affairs to operate
 22 the equipment described in the application."

23 Section 6. Section 27-225, R.C.M. 1947, is amended to
 24 read as follows:

25 "27-225. Dealers. (1) It is unlawful for a dealer to

1 sell, deliver, or have delivered within this state any
 2 pesticide without first procuring a license from the
 3 department of agriculture for each calendar year or portion
 4 thereof. A separate dealer's license and fee shall be
 5 required for each location or outlet from which pesticides
 6 are distributed, sold, held for sale, or offered for sale.
 7 Pesticide fieldmen or salesmen, employed directly out of the
 8 same location or outlet and under a licensed dealer, shall
 9 not be required to obtain a license.

10 (2) The dealer shall furnish the department of
 11 agriculture the names and addresses of its fieldmen and
 12 salesmen selling pesticides within the state. The
 13 application for a license shall be accompanied by a fee of
 14 ~~ten dollars (\$10).~~ Dealers applying for renewal of license
 15 shall do so on or before April 1 of that calendar year. Any
 16 dealer applying for renewal of license after April 1 shall
 17 be assessed a \$10 late licensing fee.

18 (3) The dealer shall require the purchaser of any
 19 restricted pesticide to exhibit ~~their~~ his license or permit
 20 issued under authority of this act before completing a sale.

21 ~~(4) Licensed dealers shall not be required to obtain a~~
 22 ~~retail noncommercial license or pay the fee; however, all~~
 23 ~~other provisions of section 15 [27-227] shall apply. Dealers~~
 24 may make one application for two annual licenses if the
 25 application is accompanied by a \$10 licensing fee for each

1 year of the state biennium.

2 (5) Pharmacists and veterinarians, licensed as
3 provided for in ~~section~~ 66-1506, 66-1507, and ~~section~~
4 66-2204, and certified pharmacies licensed under ~~section~~
5 66-1508(b), shall not be required to be licensed to sell
6 pesticides, provided that the certified pharmacies and
7 veterinarians shall register with the department of
8 agriculture each year. However, the certified pharmacies and
9 veterinarians shall be required to meet all other
10 requirements concerning the commercial sale of pesticides.
11 The department ~~when adopting regulations~~ shall take into
12 account the professional licensing requirements of
13 pharmacists, certified pharmacies, and veterinarians when
14 adopting rules."

15 Section 7. Section 27-227, R.C.M. 1947, is amended to
16 read as follows:

17 "27-227. Retail noncommercial sale of pesticides. ~~44)~~
18 The department of agriculture is authorized to designate the
19 pesticides that may be sold in this state at retail for
20 home, yard, garden, and lawn use. Only pesticides so
21 designated may be sold at retail. The department of
22 agriculture may also limit the retail sale of such
23 designated pesticides to quantities up to a specific number
24 of ~~pound(s)~~ pounds or ~~gallon(s)~~ gallons and of such
25 concentrations as would be sublethal to humans and animals

1 if small amounts thereof were accidentally swallowed,
2 inhaled, sprayed, or dusted on the skin.

3 ~~(2) Each pesticide retail outlet shall be required to~~
4 ~~obtain an annual license from the department of agriculture~~
5 ~~for purchasing and selling retail pesticides. The~~
6 ~~application for a license shall be accompanied by a minimum~~
7 ~~fee of ten dollars (\$10), provided, that retailers selling~~
8 ~~only human insect repellents shall only be required to pay a~~
9 ~~licensing fee of five dollars (\$5)."~~

10 Section 8. Section 27-228, R.C.M. 1947, is amended to
11 read as follows:

12 "27-228. Farm applicators. (1) ~~The department of~~
13 ~~agriculture shall establish which are restricted use~~
14 ~~pesticides for agricultural use. Pesticides so restricted~~
15 ~~cannot be utilized by the farm applicator on commercial~~
16 ~~crops, land, or livestock, except as provided in (2) below.~~
17 Farm applicators shall be required to obtain a certificate
18 or special use permit prior to purchasing and using any
19 pesticide designated by the department as a restricted use
20 pesticide. The certificate, to be issued for 5 calendar
21 years, must be renewed annually by the department or its
22 authorized representative. The 5-year certification period
23 shall commence on January 1, 1978. Provided that the time
24 period from October 21, 1977, through December 31, 1977,
25 shall be considered as part of the January 1, 1978, 5-year

1 certification period.

2 ~~(2) Farm applicators desiring to apply restricted use~~
 3 ~~pesticides on commercial crops, land, or livestock may~~
 4 ~~obtain an annual special use permit from the department of~~
 5 ~~agriculture. The department of agriculture shall require the~~
 6 ~~applicant to show upon written examination that he possesses~~
 7 ~~adequate knowledge to use and apply restricted agricultural~~
 8 ~~pesticides and the justification for their use on commercial~~
 9 ~~crops, land or livestock. Restricted pesticides may not be~~
 10 ~~utilized by farm applicators or their employees except for~~
 11 ~~the purpose of producing or protecting any agricultural~~
 12 ~~commodity on property owned, leased, or rented, or as~~
 13 ~~provided in (6) of this section.~~

14 (3) Farm applicators shall qualify for the certificate
 15 or permit by either passing a written examination or
 16 attending a training course approved by the department with
 17 or without an ungraded quiz. The examination or course shall
 18 include practical knowledge as the ability to:

19 (a) recognize common pests to be controlled and damage
 20 caused by them;

21 (b) read and understand the label and labeling
 22 information including the common name of the pesticide(s)
 23 applied; pest(s) to be controlled; timing and methods of
 24 application; safety precautions; any preharvest or reentry
 25 restrictions; and any specific disposal procedures.

1 (c) apply pesticides in accordance with label
 2 instructions and warnings, including the ability to prepare
 3 the proper concentration of pesticides to be used under
 4 particular circumstances taking into account such factors as
 5 area to be covered, speed at which application equipment
 6 will be driven, and the quantity dispersed in a given period
 7 of operation;

8 (d) recognize local environmental situations that must
 9 be considered during application to avoid contamination; and

10 (e) recognize poisoning symptoms and procedures to
 11 follow in case of a pesticide accident.

12 (4) The department may require farm applicators to
 13 attend a mandatory training session and pass a written
 14 examination for those restricted pesticides which are
 15 extremely toxic or for which an effective antidote is not
 16 available. The department may require farm applicators
 17 handling these pesticides to maintain use records.

18 (5) Farm applicators having verified reading
 19 disabilities may become certified to use up to two
 20 restricted use pesticides by passing a specific oral
 21 examination on the particular pesticide(s) if the applicator
 22 documents that a certified applicator in the immediate
 23 vicinity can advise him.

24 (6) Provisions of this act relating to licensing of
 25 farm applicators shall not apply to any farm applicator

1 applying nonrestricted pesticides on his own land, or on
2 lands of his neighbor's; ~~PROVIDED~~, provided that he:

3 (a) He operates farm property and operates and
4 maintains pesticide application equipment primarily for his
5 own use;

6 (b) He is not regularly engaged in the business of
7 applying pesticides for hire and ~~that he~~ does not publicly
8 hold himself out as a pesticide applicator;

9 (c) He operates his pesticide application equipment
10 only in the vicinity of his own property and for the
11 accommodation of his immediate neighbors."

12 Section 9. Section 27-230, R.C.M. 1947, is amended to
13 read as follows:

14 "27-230. Revocation of licenses and permits. (1) The
15 department of agriculture shall establish the policy and
16 procedures on the revocation of licenses or permits. The
17 department of agriculture may refuse to grant, renew, or may
18 revoke a license or permit, as the case may require, when
19 the department of agriculture is satisfied that the licensee
20 or holder of a permit is not qualified to sell, use, or
21 apply pesticides under the conditions in the locality in
22 which he operates or has operated, or that he has committed
23 any of the following acts, each of which is declared to be a
24 violation of this act:

25 ~~(1)(a)~~ Made made false or fraudulent claims or

1 recommendations through any media, misrepresenting the
2 effect of materials or methods to be utilized;

3 ~~(2)(b)~~ Applied applied unapproved or illegal
4 materials;

5 ~~(2)(c)~~ Operate operated in a faulty, careless, or
6 negligent manner;

7 ~~(4)(d)~~ Operated operated faulty or unsafe equipment;

8 ~~(5)(e)~~ Refused refused or neglected to comply with the
9 provisions of this act, the rules ~~and regulations~~ adopted
10 hereunder, or ~~of~~ any lawful order of the department of
11 agriculture;

12 ~~(6)(f)~~ Refused refused or neglected to keep and
13 maintain the records required by this act, or to make
14 reports when and as required;

15 ~~(7)(g)~~ Made made false or fraudulent records or
16 reports;

17 ~~(8)(h)~~ Operated operated equipment for the commercial
18 application of a pesticide without having a license or
19 permit;

20 ~~(9)(i)~~ Used used fraud or misrepresentation in making
21 an application for a license or permit or renewal of a
22 license or permit;

23 (j) used or applied a registered pesticide
24 inconsistent with its labeling or the label or the
25 department restrictions on the use of that pesticide.

1 (2) Decisions of the department of agriculture
2 relating to the issuing of licenses or permits may be
3 appealed."

4 Section 10. Section 27-231, R.C.M. 1947, is amended to
5 read as follows:

6 "27-231. Government agencies. (1) All state agencies,
7 municipal corporations, or any other governmental agency
8 shall be subject to the provisions of this act and rules
9 adopted thereunder concerning the application or sale of
10 pesticides. Applicators and operators ~~operating equipment~~
11 ~~for the application of applying~~ pesticides ~~used by any state~~
12 ~~and dealers selling pesticides for~~ agencies, municipal
13 corporations, or any governmental agencies shall be subject
14 to the provisions of ~~sections 9, 10, 11 and 12~~ [27-221,
15 27-222, 27-223, ~~and 27-224, 27-225, and 27-226~~] ~~of this act~~
16 and the department of agriculture shall issue a limited
17 commercial applicator's, ~~or~~ operator's, or dealer's license
18 without a fee which shall be valid only when such
19 applicators, ~~and~~ operators, and dealers are applying or
20 selling pesticides for such agencies. Provided, that the
21 jurisdictional health officer, state veterinarian, their
22 duly authorized representatives, or governmental research
23 personnel are exempt from this licensing requirement when
24 applying pesticides to experimental areas."

25 Section 11. Section 27-232, R.C.M. 1947, is amended to

1 read as follows:

2 "27-232. Liability. The department of agriculture
3 shall ~~within two (2) years after the effective date of this~~
4 ~~act,~~ annually require from each commercial pesticide
5 applicator proof of financial responsibility in amounts to
6 be determined under ~~such rules and regulations as may~~
7 promulgated by the department of agriculture."

8 Section 12. Section 27-234, R.C.M. 1947, is amended to
9 read as follows:

10 "27-234. Rules and regulations. (1) The department of
11 agriculture ~~may~~ adopt by reference without a public hearing
12 regulations adopted under the federal Insecticide,
13 Fungicide, and Rodenticide Act, as amended. The department
14 may, after a public hearing, adopt all rules and regulations
15 necessary to carry out this act.

16 (2) The rules ~~may~~ prescribe methods of:

17 (a) ~~Registration~~ registration, application, use or
18 restricting use, prohibiting use, offering or exposing for
19 sale, any pesticide;

20 (b) ~~Determining~~ determining whether pesticides are
21 highly toxic to man;

22 (c) ~~Determining~~ determining standards of coloring or
23 discoloring for pesticides, and subjecting pesticides to the
24 requirements of ~~section~~ 27-218;

25 (d) ~~Licensing~~ licensing commercial applicators and

1 operators, dealers, ~~retailers~~, establishing methods of
 2 record keeping for applicators, operators, and dealers, ~~and~~
 3 ~~retailers~~, and providing for the review of the records by
 4 the department of agriculture's authorized agent and the
 5 submission of the records to the department of agriculture
 6 upon written request;

7 (e) ~~Issuing~~ issuing farm applicator special use
 8 permits and the maintenance and submission of records by
 9 farm applicators issued special use permits;

10 (f) ~~Collecting~~ collection, examination, and standard
 11 deviation from guarantee analysis and umpire analysis of
 12 pesticides and devices;

13 (g) ~~Operating~~ operating and maintaining equipment used
 14 by applicators;

15 (h) ~~Developing~~ developing examinations which shall be
 16 held periodically throughout the state;

17 (i) ~~Establishing~~ establishing the form and content of
 18 all applications for licenses and permits;

19 (j) ~~Designating~~ designating pesticides that may be
 20 sold at retail for home, yard, garden, and lawn use. The
 21 department of agriculture may also limit retail sale of
 22 pesticides, up to a specific number of pounds or gallons and
 23 concentration which would be sublethal to humans and animals
 24 if small amounts of it were accidentally swallowed, inhaled,
 25 sprayed, or dusted on the skin.

1 (k) ~~Revoking~~ revoking licenses and permits;

2 (l) ~~Registering~~ registering or controlling any spray
 3 adjuvant, such as a wetting agent, spreading agent, deposit
 4 builder, adhesive, emulsifying agent, deflocculating agent,
 5 water modifier, or similar agent with or without toxic
 6 properties of its own intended to be used with any other
 7 pesticide as an aid to the application or effect of that
 8 other pesticide, whether or not distributed in a package or
 9 container separate from that of a pesticide with which it is
 10 to be used;

11 (m) ~~Registering~~ registering pesticide fertilizer and
 12 other chemical blends or, instead of registration,
 13 establishing licensing, inspection, and fees for blending
 14 plants;

15 (n) ~~Establishing~~ establishing registration procedures
 16 for devices with a fee not to exceed ~~five dollars~~ (\$5) per
 17 type of device, specifying classes of devices to be
 18 registered and providing for additional requirements.

19 (3) ~~(a) Where~~ Whenever the department of agriculture
 20 finds that those rules ~~and regulations~~ are necessary to
 21 carry out the purposes and intent of this act, the rules ~~and~~
 22 ~~regulations~~ may relate to the time, place, manner, and
 23 method of registration, application, or selling of the
 24 pesticides, may restrict or prohibit use of pesticides in
 25 the state or in designated areas during specified periods of

1 time and shall encompass all reasonable factors which the
2 department of agriculture considers necessary to prevent
3 damage or injury to:

4 ~~(a) (i) Persons persons~~, animals, or pollinating
5 insects from the effect of drift or careless application;

6 ~~(b) (ii) The the~~ environment;

7 ~~(c) (iii) Plants plants~~, including forage plants;

8 ~~(d) (iv) Wildlife wildlife~~;

9 ~~(e) (v) Fish fish~~ and other aquatic life.

10 (b) In issuing the ~~regulations~~ rules, the department
11 of agriculture shall give consideration to pertinent
12 research findings and recommendations of other agencies of
13 this state or of the federal government.

14 (4) If the department of agriculture finds that an
15 emergency exists which requires immediate action with regard
16 to the registration, use, or application of pesticides, the
17 department of agriculture may, without notice or hearing,
18 issue necessary orders, ~~or~~ rules, ~~or~~ regulations to protect
19 the public health, welfare, and safety. An order, ~~or~~ rule,
20 ~~or~~ regulation issued under this subsection is effective for
21 a period no longer than ~~sixty (60)~~ 120 days after it is
22 issued. If the department of agriculture determines that the
23 emergency order, ~~or~~ rule, ~~or~~ regulation should remain in
24 effect, a public hearing under section 27-235 shall be held
25 within the ~~sixty (60) day~~ 120-day period to determine

1 whether the order, ~~or~~ rule, ~~or~~ regulation should be adopted
2 by the department of agriculture.

3 (5) All rules, ~~regulations~~, and orders issued by the
4 department of agriculture shall be in writing, shall be
5 entered in full in books to be kept by the department of
6 agriculture for that purpose, shall be indexed, and shall be
7 public records open for inspection at all times during
8 reasonable office hours. Except for orders establishing or
9 changing rules of practice and procedure, all orders made
10 and published by the department of agriculture shall include
11 and be based upon written findings of fact. A copy of any
12 rule, ~~regulation~~, or order certified by the department of
13 agriculture ~~or its secretary~~ shall be received in evidence
14 in all courts of this state with the same effect as the
15 original."

16 Section 13. Section 27-235, R.C.M. 1947, is amended to
17 read as follows:

18 "27-235. Hearings Administrative procedures. ~~(4)~~
19 ~~Public hearings. Except as provided in section 27-234, no~~
20 ~~rule or regulation shall be adopted by the department of~~
21 ~~agriculture without a public hearing upon at least~~
22 ~~twenty-one (21) days' notice. The public hearing shall be~~
23 ~~held at such time and place as may be prescribed by the~~
24 ~~department of agriculture, and any interested person is~~
25 ~~entitled to be heard.~~

1 ~~(a) Notice of public hearing on the adoption of rules~~
 2 ~~or regulations shall be made by the department of~~
 3 ~~agriculture as follows:~~

4 ~~(i) Informal notice of the hearing will be sent to all~~
 5 ~~registrants of pesticides, to all licensed pesticide~~
 6 ~~applicators, including farm applicators with restricted use~~
 7 ~~permits, and to all licensed pesticide dealers or retailers,~~
 8 ~~provided that the notice shall be sent only to the~~
 9 ~~respective group or groups directly affected by the rules~~
 10 ~~and regulations. Farm applicators of nonrestricted~~
 11 ~~pesticides will be given informal notice through farm~~
 12 ~~groups, organizations or associations and by means of farm~~
 13 ~~publications.~~

14 ~~(ii) In all cases of public hearings for adoption of~~
 15 ~~rules and regulations, notice thereof shall be published in~~
 16 ~~five (5) newspapers of general circulation in the state once~~
 17 ~~a week for two (2) successive weeks and the department of~~
 18 ~~agriculture shall issue appropriate press releases.~~

19 ~~(iii) Notices and publications shall be issued in the~~
 20 ~~name of the state of Montana, shall be signed by the~~
 21 ~~director of agriculture, shall specify the style and number~~
 22 ~~of the proceedings, and the time and place of the hearing,~~
 23 ~~and shall briefly state the purpose of the proceeding and~~
 24 ~~method of procedure.~~

25 ~~(iv) Proof of service by publication shall be made by~~

1 ~~the affidavit of the printer or publisher of the newspaper.~~
 2 ~~Proof of service by mailing shall be made by the affidavit~~
 3 ~~of the director of agriculture.~~

4 ~~(2) Complaints. In all cases where a complaint has~~
 5 ~~been made by the department of agriculture or its authorized~~
 6 ~~agents or by any person that any provision of this act or~~
 7 ~~any rule, regulation, or order of the department of~~
 8 ~~agriculture is being or has been violated, notice of the~~
 9 ~~hearing to be held on such complaint shall be given to the~~
 10 ~~interested persons.~~

11 ~~(3) Except as otherwise in this act provided, the~~
 12 ~~department of agriculture may act upon the petition of any~~
 13 ~~interested person. On the filing of a petition concerning~~
 14 ~~any matter within the jurisdiction of the department of~~
 15 ~~agriculture, the department of agriculture shall promptly~~
 16 ~~fix a date for a hearing thereon and shall cause notice of~~
 17 ~~the hearing to be given. The hearing shall be held without~~
 18 ~~undue delay after the filing of the petition. The department~~
 19 ~~of agriculture shall enter its order and findings on~~
 20 ~~complaints and petitions within thirty (30) days after the~~
 21 ~~hearing. The administration of this act and all rule making~~
 22 ~~and hearing functions under the act shall be conducted in~~
 23 ~~accordance with the Administrative Procedure Act."~~

24 Section 14. Section 27-240, R.C.M. 1947, is amended to
 25 read as follows:

1 "27-240. Advisory council. (1) The director of
2 agriculture may appoint an advisory council to study and
3 make recommendations on special pesticide problems in the
4 state. The council shall consist of individuals
5 representing, equally, controlled industry, agriculture,
6 health, and wildlife. Governmental personnel, university
7 personnel not included, may not be represented on the
8 council. Governmental personnel shall meet with the council
9 in an advisory capacity when requested by the council. The
10 council may not exceed ~~twelve~~ (12) members. The director of
11 agriculture shall establish the time period in which the
12 council shall exist. The time period may not exceed ~~two~~ (2)
13 years. The department of agriculture shall provide the
14 necessary administrative, secretarial, and any other
15 essential items to the council.

16 (2) Each member of the council shall receive as
17 compensation for his services the sum of ~~twenty-five dollars~~
18 ~~(\$25)~~ per day for each day actually spent in the performance
19 of his duties and shall be reimbursed for travel expenses
20 as provided for in ~~sections~~ 59-538, 59-539, and 59-801.

21 (3) The council may request that the department of
22 agriculture hold a public hearing ~~as outlined in section~~
23 ~~27-235,~~ to assist it in gathering factual data and
24 information on the special problems assigned it."

25 Section 15. Section 27-242, R.C.M. 1947, is amended to

1 read as follows:

2 "27-242. Cooperation with other agencies. The
3 department of agriculture may cooperate with agencies of
4 this state or its subdivisions or with any agency of any
5 other state or the federal government for the purpose of
6 carrying out the provisions of this act ~~and~~ for securing
7 uniformity of ~~regulations~~ rules and entering into reciprocal
8 licensing and certification agreements with other states."

9 Section 16. Section 27-243, R.C.M. 1947, is amended to
10 read as follows:

11 "27-243. Enforcement. In enforcing this act, the
12 department of agriculture or its duly authorized agents,
13 upon reasonable cause, ~~shall have the authority to may~~ enter
14 upon private and public premises and property with a warrant
15 or consent of the inhabitant or owner to inspect or
16 investigate at reasonable time:

- 17 (1) ~~Equipment~~ equipment subject to this act;
- 18 (2) ~~Actual~~ actual or reported adverse effects caused
19 by pesticides in humans, crops, animals, land, or other
20 property; ~~or~~
- 21 (3) ~~Records~~ records on the selling or use of
22 pesticides and the person's stock of pesticides;
- 23 (4) storage and disposal areas;
- 24 (5) sample pesticides being applied or to be applied;
- 25 or

1 (6) the use and application of a pesticide."

2 Section 17. Section 27-245, R.C.M. 1947, is amended to
3 read as follows:

4 "27-245. Violation. (1) Any person convicted of
5 violating any of the provisions of this act or the rules and
6 ~~regulations~~ issued thereunder or who may misrepresent,
7 impede, obstruct, hinder, or otherwise prevent or attempt to
8 prevent the department of agriculture or its duly authorized
9 agent in performance of its duty in connection with the
10 provisions of this act, shall be adjudged guilty of a
11 misdemeanor.

12 (2) The department of agriculture or its authorized
13 representative is hereby authorized to apply to the district
14 court of the county or any county wherein a violation is
15 about to occur or has occurred to grant a temporary or
16 permanent injunction restraining any person from violating
17 or continuing to violate any of the provisions of this act
18 or any rule ~~or regulation~~ promulgated under the act
19 notwithstanding the existence of other remedies of law. The
20 injunction is to be issued without bond.

21 (3) Nothing in this act is to be construed as
22 requiring the department of agriculture or its authorized
23 agent to report for prosecution or for the institution of
24 seizure proceedings, minor violations of the act when it
25 believes the public interest will be best served by other

1 remedial action or by a suitable notice of warning in
2 writing; nor is any part of this act to be construed to
3 apply to common carriers transporting shipments tendered to
4 them by the general public.

5 (4) Notwithstanding any other provisions of this
6 section, if any person, with intent to defraud, uses or
7 reveals information relative to formulas of products
8 acquired under the authority of ~~section 5 [27-217] of this~~
9 ~~act~~, he shall, upon conviction, be fined not more than ~~five~~
10 ~~hundred dollars (\$500)~~ or imprisoned for not more than ~~one~~
11 ~~(1)~~ year or both.

12 (5) In all prosecutions under the registration section
13 involving the composition of a lot of pesticide, a certified
14 copy of the official analysis signed by the department of
15 agriculture's authorized chemist shall be accepted as prima
16 facie evidence of the composition."

17 Section 18. Severability. If a part of this act is
18 invalid, all valid parts that are severable from the invalid
19 part remain in effect. If a part of this act is invalid in
20 one or more of its applications, the part remains in effect
21 in all valid applications that are severable from the
22 invalid applications.

23 Section 19. Repealer. Sections 27-236, 27-237, and
24 27-238, R.C.M. 1947, are repealed.

25 Section 20. Effective date. This act is effective on

LC 0457/01

1 its passage and approval.

-End-

STATE OF MONTANA

REQUEST NO. 457-77

FISCAL NOTE

Form BD-15

In compliance with a written request received February 10, 19 77, there is hereby submitted a Fiscal Note for Senate Bill 124 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

Senate Bill 124 amends the pesticide law relating to definitions; registration and embargo of products; licensing of applicators, dealers, and retailers; and eliminating the need of licensing retail pesticide dealers.

ASSUMPTIONS:

1. Number of pesticide retailers will remain constant through FY 79.
2. Investigation of complaints, selling of unregistered products, display methods, and storage methods related to public health will be maintained by the Department.
3. The Department will maintain basic surveillance program of retailers on an integrated system with other retail client inspections.

FISCAL IMPACT:

	<u>FY 78</u>	<u>FY 79</u>
Decrease in revenue due to proposed law	\$7,000	\$7,000
Decrease in expenditures due to proposed law	<u>1,400</u>	<u>1,400</u>
Net General Fund loss due to proposed law	<u>\$5,600</u>	<u>\$5,600</u>

Richard L. Drayton

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-16-77

Approved by Committee
on Agriculture Livestock
& Irrigation

1 SENATE BILL NO. 124
2 INTRODUCED BY GRABAM
3 BY REQUEST OF THE DEPARTMENT OF AGRICULTURE
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE PESTICIDE
6 LAW RELATING TO DEFINITIONS; REGISTRATION AND EMBARGO OF
7 PRODUCTS; LICENSING OF APPLICATORS, DEALERS, AND RETAILERS;
8 CERTIFICATION OF FARM APPLICATORS; REVOCATION OF LICENSES
9 AND PERMITS; RULE MAKING AND ADMINISTRATIVE PROCEDURES;
10 ADVISORY COUNCIL; AGENCY COOPERATION; ENFORCEMENT AND
11 VIOLATIONS; AMENDING SECTIONS 27-216, 27-217, 27-220,
12 27-221, 27-222, 27-225, 27-227, 27-228, 27-230, 27-231,
13 27-232, 27-234, 27-235, 27-240, 27-242, 27-243, AND 27-245,
14 R.C.M. 1947; REPEALING SECTIONS 27-236, 27-237, AND 27-238,
15 R.C.M. 1947; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
16

17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18 Section 1. Section 27-216, R.C.M. 1947, is amended to
19 read as follows:

20 "27-216. Definitions. Unless the context requires
21 otherwise, in this act:

22 (1) "Active ingredient" means:

23 (a) ~~in~~ in the case of a pesticide other than a plant
24 regulator, defoliant, or desiccant, an ingredient which will
25 prevent, destroy, repel, alter life processes, or mitigate

1 insects, nematodes, fungi, rodents, weeds, or other pests;

2 (b) ~~in~~ in the case of a plant regulator, an ingredient
3 which acts upon the physiology to accelerate or retard the
4 rate of growth or rate of maturation or otherwise alter the
5 normal processes of ornamental or crop plants or their
6 produce;

7 (c) ~~in~~ in the case of a defoliant, an ingredient which
8 will cause the leaves or foliage to drop from a plant;

9 (d) ~~in~~ in the case of a desiccant, an ingredient which
10 will artificially accelerate the drying of plant tissue.

11 (2) "Adulterated" applies to a pesticide if its
12 strength of purity falls below the professed standard or
13 quality as expressed on labeling or under which it is sold,
14 or if any substance has been substituted wholly or in part
15 for the pesticide, or if any valuable constituent of the
16 pesticide has been wholly or in part abstracted.

17 (3) "Antidote" means the most practical immediate
18 treatment in case of poisoning and includes ~~first-aid~~
19 first-aid treatment.

20 (4) "Applicator" means a person who applies pesticides
21 by any method.

22 (5) "Commercial applicator" means a person who by
23 contract or for hire applies by aerial, ground, or hand
24 equipment pesticides to land, plants, seed, animals, waters,
25 structures, or vehicles.

*The changes in SB 124 are on page 36
Please refer to yellow copy* SECOND READING

SECOND PRINTING

1 Section 15. Section 27-242, R.C.M. 1947, is amended to
2 read as follows:

3 "27-242. Cooperation with other agencies. (1) The
4 department of agriculture may cooperate with agencies of
5 this state or its subdivisions or with any agency of any
6 other state or the federal government for the purpose of
7 carrying out the provisions of this act and for securing
8 uniformity of ~~regulations~~ rules and entering into reciprocal
9 licensing and certification agreements with other states.

10 (2) THE DEPARTMENT AND THE DEPARTMENT OF HEALTH AND
11 ENVIRONMENTAL SCIENCES SHALL ENTER INTO A MEMORANDUM OF
12 AGREEMENT CONCERNING THE INSPECTION, REGULATION, AND
13 RESPONSIBILITIES OF PERSONS OR ACTIVITIES THAT MAY BE
14 INVOLVED IN THE MANAGEMENT, DISPOSAL, STORAGE,
15 TRANSPORTATION, TREATMENT, RECYCLING OR RECOVERY OF
16 HAZARDOUS WASTES AS DEFINED IN TITLE 69, CHAPTER 40, AND THE
17 DISPOSAL OF SOLID WASTES AS DEFINED IN TITLE 69, CHAPTER
18 40."

19 Section 16. Section 27-243, R.C.M. 1947, is amended to
20 read as follows:

21 "27-243. Enforcement. In enforcing this act, the
22 department of agriculture or its duly authorized agents,
23 upon reasonable cause, ~~shall have the authority to~~ may enter
24 upon private and public premises and property with a warrant
25 or consent of the inhabitant or owner to inspect or

1 investigate at reasonable time:

- 2 (1) ~~Equipment~~ equipment subject to this act;
- 3 (2) ~~Actual~~ actual or reported adverse effects caused
4 by pesticides in humans, crops, animals, land, or other
5 property; ~~or~~
- 6 (3) ~~Records~~ records on the selling or use of
7 pesticides and the person's stock of pesticides;
- 8 (4) storage and disposal areas OF PESTICIDES BY
9 PERSONS LICENSED OR REGULATED UNDER THIS ACT;
- 10 (5) sample pesticides being applied or to be applied;
11 or
- 12 (6) the use and application of a pesticide."

13 Section 17. Section 27-245, R.C.M. 1947, is amended to
14 read as follows:

15 "27-245. Violation. (1) Any person convicted of
16 violating any of the provisions of this act or the rules and
17 ~~regulations~~ issued thereunder or who may misrepresent,
18 impede, obstruct, hinder, or otherwise prevent or attempt to
19 prevent the department of agriculture or its duly authorized
20 agent in performance of its duty in connection with the
21 provisions of this act, shall be adjudged guilty of a
22 misdemeanor.

23 (2) The department of agriculture or its authorized
24 representative is hereby authorized to apply to the district
25 court of the county or any county wherein a violation is

Approved by Committee
on Agriculture Livestock
& Irrigation

SENATE BILL NO. 124

INTRODUCED BY GRAHAM

BY REQUEST OF THE DEPARTMENT OF AGRICULTURE

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE PESTICIDE
LAW RELATING TO DEFINITIONS; REGISTRATION AND EMBARGO OF
PRODUCTS; LICENSING OF APPLICATORS, DEALERS, AND RETAILERS;
CERTIFICATION OF FARM APPLICATORS; REVOCATION OF LICENSES
AND PERMITS; RULE MAKING AND ADMINISTRATIVE PROCEDURES;
ADVISORY COUNCIL; AGENCY COOPERATION; ENFORCEMENT AND
VIOLATIONS; AMENDING SECTIONS 27-216, 27-217, 27-220,
27-221, 27-222, 27-225, 27-227, 27-228, 27-230, 27-231,
27-232, 27-234, 27-235, 27-240, 27-242, 27-243, AND 27-245,
R.C.M. 1947; REPEALING SECTIONS 27-236, 27-237, AND 27-238,
R.C.M. 1947; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-216, R.C.M. 1947, is amended to
read as follows:

"27-216. Definitions. Unless the context requires
otherwise, in this act:

(1) "Active ingredient" means:

(a) ~~It is~~ in the case of a pesticide other than a plant
regulator, defoliant, or desiccant, an ingredient which will
prevent, destroy, repel, alter life processes, or mitigate

insects, nematodes, fungi, rodents, weeds, or other pests;

(b) ~~It is~~ in the case of a plant regulator, an ingredient
which acts upon the physiology to accelerate or retard the
rate of growth or rate of maturation or otherwise alter the
normal processes of ornamental or crop plants or their
produce;

(c) ~~It is~~ in the case of a defoliant, an ingredient which
will cause the leaves or foliage to drop from a plant;

(d) ~~It is~~ in the case of a desiccant, an ingredient which
will artificially accelerate the drying of plant tissue.

(2) "Adulterated" applies to a pesticide if its
strength of purity falls below the professed standard or
quality as expressed on labeling or under which it is sold,
or if any substance has been substituted wholly or in part
for the pesticide, or if any valuable constituent of the
pesticide has been wholly or in part abstracted.

(3) "Antidote" means the most practical immediate
treatment in case of poisoning and includes ~~first-aid~~
first-aid treatment.

(4) "Applicator" means a person who applies pesticides
by any method.

(5) "Commercial applicator" means a person who by
contract or for hire applies by aerial, ground, or hand
equipment pesticides to land, plants, seed, animals, waters,
structures, or vehicles.

1 (6) "Commercial operator" means a person who applies
2 pesticides under the supervision of a commercial applicator.

3 (7) "Farm applicator" means a person applying
4 pesticides to his own crops or land.

5 (8) "Public utility applicator" means a person
6 applying pesticides to land and structures owned or leased
7 by a public utility.

8 (9) "Beneficial insects" means those insects which, in
9 the course of their life cycle, carry, transmit, or spread
10 pollen to and from vegetation, act as parasites and
11 predators on other insects, or are otherwise beneficial.

12 (10) "Crop" means a food intended for human or animal
13 consumption or a fiber product.

14 (11) "Dealer" means a person who sells, wholesales,
15 offers, or exposes for sale, exchanges, barter, or gives
16 away within this state any pesticide except those pesticides
17 which are to be used for home, yard, garden, home orchard,
18 shade trees, ornamental trees, bushes, and lawn.

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

22 (13) "Desiccant" means a substance or mixture of
23 substances for artificially accelerating the drying of plant
24 tissue.

25 (14) "Device" means any instrument or contrivance

1 intended for destroying, controlling, repelling, or
2 mitigating pests but not equipment used for the application
3 of pesticides.

4 (15) "Environment" means the soil, air, water, plants,
5 and animals.

6 (16) "Equipment" means equipment used in the actual
7 application of pesticides, including aircraft, ground
8 sprayers and dusters, hand-held applicators, and water
9 surface equipment.

10 (17) "Fungi" means all nonchlorophyll-bearing
11 thallophytes (all nonchlorophyll-bearing plants of a lower
12 order than mosses and liverworts) as, for example, rusts,
13 smuts, mildews, molds, yeasts, and bacteria, except those
14 resident on or in living man or other animals.

15 (18) "Fungicide" means a substance or mixture of
16 substances for preventing, destroying, repelling, or
17 mitigating any fungus.

18 (19) "Herbicide" means a substance or mixture of
19 substances for preventing, destroying, repelling, or
20 mitigating any weed.

21 (20) "Inert ingredient" means an ingredient which is
22 not an active ingredient.

23 (21) "Ingredient statement" means either:

24 (a) ~~a~~ a statement of the chemical name and common name
25 and percentage of each active ingredient, together with the

1 total percentage of the inert ingredients, in the pesticide;
2 or

3 (b) ~~A~~ a statement of the chemical name and common name
4 of each active ingredient, together with the name of each
5 and total percentage of the inert ingredients, if any, in
6 the pesticide. However, subsection (21)(a) of this section
7 applies if the preparation is highly toxic to man,
8 determined as provided in ~~section~~ 27-234, and if the
9 pesticide contains arsenic in any form, the ingredient
10 statement shall also include a statement of the percentage
11 of total and water-soluble arsenic, each calculated as
12 elemental arsenic.

13 (22) "Insect" means any of the numerous small
14 invertebrate animals generally having the body more or less
15 obviously segmented, for the most part belonging to the
16 class insecta, comprising six-legged, winged and wingless
17 forms, such as beetles, bugs, wasps, flies, and keds, and to
18 other classes of ~~arthropods~~ arthropods whose members are
19 wingless and usually have more than six legs, such as
20 spiders, mites, ticks, centipedes, and wood lice.

21 (23) "Insecticide" means any substance or mixture of
22 substances for preventing, destroying, repelling, or
23 mitigating any insects present in any environment.

24 (24) "Label" means the written, printed, or graphic
25 matter on or attached to the pesticide or device, or to its

1 immediate container, and any outside container or wrapper of
2 any retail package of the pesticide or device.

3 (25) "Labeling" means all labels and other written,
4 printed, or graphic matter:

5 (a) ~~Upon~~ upon the pesticide or device or any of its
6 containers or wrappers;

7 (b) ~~Accompanying~~ accompanying the pesticide or device
8 at any time;

9 (c) ~~To~~ to which reference is made on the label or in
10 literature accompanying the pesticide or device, except when
11 accurate, nonmisleading reference is made to current
12 official publications of the United States environmental
13 protection agency₇; departments of agriculture, interior, or
14 health, education, and welfare₇; state experiment stations₇;
15 state agricultural colleges₇; or other similar federal
16 institutions or official agencies of this state or other
17 states authorized by law to conduct research in the field of
18 pesticides.

19 (26) "Misbranded" applies:

20 (a) ~~To~~ to a pesticide or device if its labeling bears
21 any statement, design, or graphic representation relative to
22 its ingredients which is false or misleading.

23 (b) ~~To~~ to a pesticide if:

24 (i) ~~It~~ it is an imitation of or is offered for sale
25 under the name of another pesticide;

1 (ii) ~~Its~~ its labeling bears any reference to
2 registration under this act;

3 (iii) ~~The~~ the labeling accompanying it does not contain
4 instructions for use necessary and, if complied with,
5 adequate for the protection of the public;

6 (iv) ~~The~~ the label does not contain a warning or
7 caution statement necessary and, if complied with, adequate
8 to prevent injury to living man or undue hazard to the
9 environment;

10 (v) ~~The~~ the label of the retail package which is
11 presented or displayed under customary conditions of
12 purchase does not bear an ingredient statement on that part
13 of the immediate container and on the outside or on a
14 wrapper through which the ingredient statement on the
15 immediate container cannot be clearly read;

16 (vi) ~~Any~~ any word, statement, or other information
17 required to appear on the labeling is not prominently placed
18 on the labeling with a conspicuousness (as compared with
19 other words, statements, designs, or graphic matter in the
20 labeling) and in terms rendering it likely to be read and
21 understood by the ordinary individual under customary
22 conditions of purchase and use;

23 (vii) ~~It~~ in the case of an insecticide, nematocide,
24 fungicide, or herbicide, when used as directed or in
25 accordance with commonly recognized practice, it is

1 injurious to living men or other vertebrate animals or
2 vegetation, except weeds, to which it is applied, or to the
3 person applying the pesticide;

4 (viii) ~~It~~ in the case of a plant regulator, defoliant,
5 or desiccant, when used as directed, it is injurious to man
6 or other vertebrate animals or vegetation to which it is
7 applied, or to the person applying the pesticide. Physical
8 or physiological effects on plants or parts of plants are
9 not injurious when this is the purpose for which the plant
10 regulator, defoliant, or desiccant is applied in accordance
11 with the label claims and recommendations.

12 (27) "Nematocide" means any substance or mixture of
13 substances intended for preventing, destroying, repelling,
14 or mitigating nematodes.

15 (28) "Nematodes," "nemas," or "eelworms" means
16 invertebrate animals of the phylum nemathelminthes and class
17 nematoda, that is, unsegmented round worms with elongated,
18 fusiform, or sac-like bodies covered with cuticle, and
19 inhabiting soil, water, animals, plants, or plant parts.

20 (29) "Person" means any natural person, individual,
21 firm, partnership, association, corporation, company,
22 joint-stock association, body politic, or organized group of
23 persons whether incorporated or not, and any trustee,
24 receiver, assignee, or similar representative.

25 (30) "Pest" includes any insect, rodent, nematode,

1 snail, slug, weed, and any form of plant or animal life or
 2 virus, except virus on or in living man or other animal,
 3 which is normally considered a pest or which the department
 4 declares a pest.

5 (31) "Pesticide" means any:

6 (a) ~~Substance~~ substance or mixture of substances,
 7 including any living organism or any product derived from a
 8 living organism, intended for preventing, destroying,
 9 controlling, repelling, altering life processes, or
 10 mitigating any insects, rodents, nematodes, fungi, weeds,
 11 and other forms of plant or animal life or viruses, except
 12 viruses on or in living man or other animals, that may
 13 infect, or be detrimental to persons, vegetation, crops,
 14 animals, structures, or households or be present in any
 15 environment or which the department declares a pest;

16 (b) ~~Substance~~ substance or mixture of substances
 17 intended for use as a plant regulator, defoliant, or
 18 desiccant; and

19 (c) ~~Other~~ other substances intended for that use named
 20 by the department by a rule adopted by it.

21 (32) "Plant regulator" means any substance or mixture
 22 of substances affecting the rate of growth or rate of
 23 maturation or for otherwise altering physiological condition
 24 of plants, but does not include substances to the extent
 25 that they are intended as plant nutrients, trace elements,

1 nutritional chemicals, plant inoculants, and soil
 2 amendments.

3 (33) "Registrant" means the person registering any
 4 pesticide or device under the provisions of this act.

5 (34) "Restricted use pesticide" means any pesticide,
 6 including highly toxic pesticides, which the department of
 7 agriculture has found and determined, subsequent to a
 8 hearing, to be injurious when used in accordance with
 9 registration, label, directions, and cautions to persons,
 10 beneficial insects, animals, crops, or the environment other
 11 than the pests it is intended to prevent, destroy, control,
 12 or mitigate.

13 (35) "Retailer" means any person who sells, offers, or
 14 exposes for sale, exchanges, barter, or gives away within
 15 this state any pesticide for home, yard, lawn, and garden
 16 use, in quantities or concentrations as determined by the
 17 department of agriculture.

18 (36) "Weed" means any plant or part of the plant which
 19 grows where not wanted."

20 Section 2. Section 27-217, R.C.M. 1947, is amended to
 21 read as follows:

22 "27-217. Registration. (1) Every pesticide
 23 distributed, sold, or offered for sale within this state or
 24 delivered for transportation or transported in intrastate
 25 commerce or between points within this state, shall be

1 registered with the department of agriculture. The
 2 registration shall be renewed annually by the manufacturer,
 3 ~~or~~ formulator, or distributor of the pesticide. The
 4 department of agriculture shall register all approved
 5 pesticides and those registered are subject to registration
 6 fees and all other provisions of this act. All registrations
 7 of pesticides expire on December 31 following the date of
 8 issuance, unless otherwise terminated.

9 (2) The applicant for registration shall file with the
 10 department of agriculture a statement including:

11 (a) ~~The~~ the name and address of the applicant and the
 12 name and address of the person whose name will appear on the
 13 label, if other than the registrant;

14 (b) ~~A~~ a complete copy of the label of the pesticide,
 15 the United States environmental protection agency
 16 registration number, if the pesticide is so registered, and
 17 a statement of all claims to be made for it, including
 18 directions for use;

19 (c) ~~The~~ the trade and chemical name of the pesticide;

20 (d) ~~If~~ if requested by the department of agriculture,
 21 a full description of tests made and the results upon which
 22 the claims are based. In the case of renewal of
 23 registration, a statement shall be required only with
 24 respect to information which is different from that
 25 furnished when the pesticide was registered or last

1 reregistered.

2 (3) Any pesticide imported into this state, which is
 3 subject to the provisions of any federal act providing for
 4 the registration of pesticides and ~~which~~ has been registered
 5 under the provisions of a federal act, shall be registered
 6 in the state. However, the state may restrict the use and
 7 application of the pesticide by type of applicator, time,
 8 and place and may establish special registrations of
 9 pesticides as outlined in subsection ~~(4)~~ (8) of this section
 10 and ~~section~~ 27-234(3). The annual registration fee must also
 11 be paid, and registration information required by the
 12 department of agriculture must be provided.

13 (4) The applicant shall pay an annual fee of ~~ten~~
 14 ~~dollars—(\$10)~~ for each pesticide registered. A registration
 15 fee is not required to register an experimental use permit.
 16 Fees collected shall be deposited in the state treasury to
 17 the credit of the general fund.

18 (5) The department of agriculture may require the
 19 submission of the complete formula and certified analytical
 20 standards of any pesticide. If it appears to the department
 21 of agriculture that the composition of the article warrants
 22 the proposed claims for it and if the article and its
 23 labeling and other material required to be submitted comply
 24 with the requirements of ~~section~~ 27-218, it shall register
 25 the article.

1 (6) If it does not appear to the department of
 2 agriculture that the article warrants the proposed claims
 3 for it or if the article and its labeling and other material
 4 required to be submitted do not comply with this chapter, it
 5 shall notify the applicant of the manner in which the
 6 articles, labeling, or other material required to be
 7 submitted fails to comply with the act so as to afford the
 8 applicant an opportunity to make the necessary corrections.
 9 ~~If upon receipt of the notice, the applicant does not make~~
 10 ~~the corrections the applicant does not make the corrections~~
 11 upon receipt of the notice, the department of agriculture
 12 may refuse to register the article. The department of
 13 agriculture ~~in accordance with the procedures specified by~~
 14 ~~the department of agriculture~~, may suspend or cancel the
 15 registration of a pesticide whenever it does not appear that
 16 the article or its labeling comply with this act. When an
 17 application for registration is refused or the department of
 18 agriculture proposes to suspend or cancel a registration,
 19 the registrant may appeal to the ~~department of agriculture~~
 20 department's as provided for in section 27-236 decision.

21 ~~(7) The department of agriculture shall review all~~
 22 ~~registered pesticides at least every two (2) years.~~

23 ~~(8)~~ (7) Registration is not required in the case of a
 24 pesticide shipped from one plant in this state to another
 25 plant in this state by the same person.

1 ~~(9)~~ (8) (a) The departments of health and environmental
 2 sciences, agriculture, and fish and game shall review all
 3 applications for registration of ~~a pesticide or device~~
 4 ~~submitted to the department of agriculture~~ an experimental
 5 use permit, OR a registration for special local needs, or
 6 registration of a device. The departments shall utilize the
 7 same requirements and standards for reviewing registrations
 8 as established by the Federal Insecticide, Fungicide, and
 9 Rodenticide Act, as amended, and regulations adopted
 10 thereunder. The department of agriculture shall provide the
 11 departments of health and environmental sciences and fish
 12 and game with a complete copy of the application, related
 13 correspondence, and a statement of the department of
 14 agriculture's proposed action on the application. The
 15 departments of health and environmental sciences and fish
 16 and game shall approve or disapprove the application within
 17 ~~three (3)~~ 10 days after the receipt of the application. If
 18 the departments of health and environmental sciences,
 19 agriculture, and fish and game are in agreement with the
 20 proposed registration, the department of agriculture shall
 21 ~~proceed with its~~ issue the registration.

22 (b) The department of agriculture shall establish a
 23 time and place for an interagency conference for the
 24 purposes of resolving the registration of any pesticide or
 25 device. If two ~~(2)~~ of the departments approve the proposed

1 registration, the department of agriculture shall proceed
2 with issue the registration.

3 (c) The registrant applying for registration shall be
4 notified as to proposed changes in registration. If the
5 departments cannot resolve the proposed registration
6 following the interagency conference, the registrant may
7 request a joint administrative hearing before the
8 departments of agriculture, health and environmental
9 sciences, and fish and game.

10 (d) Following the interagency conference, and if
11 requested, the administrative hearing, if the proposed
12 registration of a pesticide or device has not been resolved,
13 the department of agriculture shall appoint an advisory
14 council as outlined in ~~section~~ 27-240 to resolve by majority
15 vote the registration of any pesticide. The advisory
16 council's recommendations on the registration shall be
17 accepted by the departments and implemented by the
18 department of agriculture."

19 Section 3. Section 27-220, R.C.M. 1947, is amended to
20 read as follows:

21 "27-220. Embargo. (1) Whenever a duly authorized agent
22 of the department of agriculture finds or has probable cause
23 to believe that any pesticide or device:

24 ~~(a) Is is~~ adulterated or misbranded,

25 ~~(b) Has has~~ not been registered under the provisions

1 of ~~section 5 [27-217](5)~~ of this act.

2 ~~(c) Fails fails~~ to bear on its label the information
3 required by this act.

4 ~~(d) Is is~~ a white powder pesticide and is not colored
5 as required under this act, he shall affix to such article
6 a tag or other appropriate marking, giving notice ~~that such~~
7 ~~pesticide or device is, or is suspected of being adulterated~~
8 ~~or misbranded, not registered, fails to bear the required~~
9 ~~information on the label, is a white powder pesticide and~~
10 ~~not colored as required, and thereof and that such article~~
11 has been detained or embargoed and warning all persons not
12 to remove or dispose of such article by sale or otherwise
13 until permission for removal or disposal is given by such
14 agent or the court. It ~~shall be is~~ unlawful for any person
15 to remove or dispose of such detained or embargoed article
16 by sale or otherwise, without such permission, or to remove
17 or alter the tag or marking.

18 (2) When an article detained or embargoed under
19 ~~section 8 (1) [subdivision (1) of this section]~~ subsection
20 (1) has been found by such agent to be in violation, if
21 after ~~thirty (30)~~ days the violation has not been resolved,
22 he may petition the district court in whose jurisdiction the
23 article is detained or embargoed for a condemnation of such
24 article. When such agent has found that an article so
25 detained or embargoed is not adulterated or misbranded, he

1 shall remove the tag or other marking.

2 (3) If the court finds that a detained or embargoed
 3 article is in violation of ~~section 8 (1) [subdivision (1) of~~
 4 ~~this section]~~ the act or rules adopted thereunder, such
 5 article shall after entry of the decree be destroyed at the
 6 expense of the claimant thereof, under the supervision of
 7 such agent, and all court costs and fees and storage and
 8 other proper expenses shall be assessed against the claimant
 9 of such pesticide or device or his agent; provided that when
 10 the adulteration or misbranding can be corrected by proper
 11 labeling or processing of the article, the court, after
 12 entry of the decree and after such costs, fees, and expenses
 13 have been paid and a good and sufficient bond has been
 14 executed, conditioned ~~that~~ upon the proper labeling or
 15 processing of such pesticide or device ~~shall be so labeled~~
 16 ~~or processed, has been executed~~, may by order direct that
 17 such article be delivered to the claimant thereof for such
 18 labeling or processing under the supervision of an agent of
 19 the department of agriculture. The expense of such
 20 supervision shall be paid by claimant. The article shall be
 21 returned to the claimant of the pesticide or device on the
 22 representation to the court by the department of agriculture
 23 that the article is no longer in violation of this act, and
 24 that the expenses of such supervision have been paid."

25 Section 4. Section 27-221, R.C.M. 1947, is amended to

1 read as follows:

2 "27-221. Commercial applicator. (1) It shall be
 3 unlawful for any person to engage in the business of
 4 applying pesticides for another without a pesticide
 5 applicator's license obtained from the department of
 6 agriculture. The application shall be accompanied by a fee
 7 of ~~ten dollars~~ ~~(\$10)~~. Applicators applying for a dealer ~~or~~
 8 ~~retailer~~ license under this act shall be required to pay
 9 only a ~~five dollar~~ ~~(\$5)~~ licensing fee for the dealer ~~or~~
 10 ~~retailer~~ license. The provisions of this section shall not
 11 apply to any person employed only to operate any equipment
 12 used for the application of any pesticide, and in which the
 13 person has no financial interest or other control over such
 14 apparatus other than its day-to-day mechanical operation for
 15 the purpose of applying any pesticide.

16 (2) Public utility applicators shall be licensed in
 17 the same manner as commercial applicators, provided that
 18 public utility operators working under public utility
 19 applicators are not required to be licensed, except as
 20 provided for under ~~section~~ 27-223.

21 (3) Veterinarians licensed as provided in ~~section~~
 22 66-220⁴ shall not be required to be licensed to apply
 23 nonrestricted pesticides, provided that these veterinarians
 24 shall register with the department of agriculture each year;
 25 provided further that the veterinarians shall be required to

1 meet all other requirements and ~~regulations~~ rules of the
 2 Montana Pesticides Act. The department ~~when adopting~~
 3 ~~regulations shall consider the professional licensing~~
 4 ~~requirements for veterinarians shall consider the~~
 5 professional licensing requirements for veterinarians when
 6 adopting rules."

7 Section 5. Section 27-222, R.C.M. 1947, is amended to
 8 read as follows:

9 "27-222. Application for applicator's license. (1)
 10 Application for a pesticide applicator's license provided
 11 for in ~~section~~ 27-221 shall be made annually, to the
 12 department of agriculture before applying pesticides in any
 13 calendar year, ~~from the department of agriculture~~. Provided
 14 that pesticide applicators applying for renewal of license
 15 shall do so on or before ~~April~~ MAY 1 of that calendar year.
 16 Any applicator applying for renewal of license after ~~April~~
 17 MAY 1 shall be assessed a \$10 late licensing fee.

18 (2) If the application is made for a license to engage
 19 in aerial application of pesticides, the applicant shall
 20 first meet all of the requirements of the federal aviation
 21 agency and the department of community affairs to operate
 22 the equipment described in the application."

23 Section 6. Section 27-225, R.C.M. 1947, is amended to
 24 read as follows:

25 "27-225. Dealers. (1) It is unlawful for a dealer to

1 sell, deliver, or have delivered within this state any
 2 pesticide without first procuring a license from the
 3 department of agriculture for each calendar year or portion
 4 thereof. A separate dealer's license and fee shall be
 5 required for each location or outlet from which pesticides
 6 are distributed, sold, held for sale, or offered for sale.
 7 Pesticide fieldmen or salesmen, employed directly out of the
 8 same location or outlet and under a licensed dealer, shall
 9 not be required to obtain a license.

10 (2) The dealer shall furnish the department of
 11 agriculture the names and addresses of its fieldmen and
 12 salesmen selling pesticides within the state. The
 13 application for a license shall be accompanied by a fee of
 14 ~~ten dollars (\$10)~~. Dealers applying for renewal of license
 15 shall do so on or before ~~April~~ MAY 1 of that calendar year.
 16 Any dealer applying for renewal of license after ~~April~~ MAY 1
 17 shall be assessed a \$10 late licensing fee.

18 (3) The dealer shall require the purchaser of any
 19 restricted pesticide to exhibit ~~their~~ his license or permit
 20 issued under authority of this act before completing a sale.

21 (4) ~~Licensed dealers shall not be required to obtain a~~
 22 ~~retail noncommercial license or pay the fee; however, all~~
 23 ~~other provisions of section 15 [27-227] shall apply. Dealers~~
 24 may make one application for two annual licenses if the
 25 application is accompanied by a \$10 licensing fee for each

1 year of the state biennium.

2 (5) Pharmacists and veterinarians, licensed as
3 provided for in ~~sections~~ 66-1506, 66-1507, and ~~sections~~
4 66-2204, and certified pharmacies licensed under ~~sections~~
5 66-1508(b), shall not be required to be licensed to sell
6 pesticides, provided that the certified pharmacies and
7 veterinarians shall register with the department of
8 agriculture each year. However, the certified pharmacies and
9 veterinarians shall be required to meet all other
10 requirements concerning the commercial sale of pesticides.
11 The department ~~when adopting regulations~~ shall take into
12 account the professional licensing requirements of
13 pharmacists, certified pharmacies, and veterinarians when
14 adopting rules."

15 Section 7. Section 27-227, R.C.S. 1947, is amended to
16 read as follows:

17 "27-227. Retail noncommercial sale of pesticides. ~~(4)~~
18 The department of agriculture is authorized to designate the
19 pesticides that may be sold in this state at retail for
20 home, yard, garden, and lawn use. Only pesticides so
21 designated may be sold at retail. The department of
22 agriculture may also limit the retail sale of such
23 designated pesticides to quantities up to a specific number
24 of ~~pound(s)~~ pounds or ~~gallon(s)~~ gallons and of such
25 concentrations as would be sublethal to humans and animals

1 if small amounts thereof were accidentally swallowed,
2 inhaled, sprayed, or dusted on the skin.

3 ~~(2) Each pesticide retail outlet shall be required to~~
4 ~~obtain an annual license from the department of agriculture~~
5 ~~for purchasing and selling retail pesticides. The~~
6 ~~application for a license shall be accompanied by a minimum~~
7 ~~fee of ten dollars (\$10), provided, that retailers selling~~
8 ~~only human insect repellents shall only be required to pay a~~
9 ~~licensing fee of five dollars (\$5)."~~

10 Section 8. Section 27-228, R.C.M. 1947, is amended to
11 read as follows:

12 "27-228. Farm applicators. ~~(1) The department of~~
13 ~~agriculture shall establish which are restricted use~~
14 ~~pesticides for agricultural use. Pesticides so restricted~~
15 ~~cannot be utilized by the farm applicator on commercial~~
16 ~~crops, land, or livestock, except as provided in (2) below.~~
17 Farm applicators shall be required to obtain a certificate
18 or special use permit prior to purchasing and using any
19 pesticide designated by the department as a restricted use
20 pesticide. The certificate, to be issued for 5 calendar
21 years, must be renewed annually by the department or its
22 authorized representative. The 5-year certification period
23 shall commence on January 1, 1978. Provided that the time
24 period from October 21, 1977, through December 31, 1977,
25 shall be considered as part of the January 1, 1978, 5-year

1 certification period.

2 (2) ~~Farm applicators desiring to apply restricted use~~
 3 ~~pesticides on commercial crops, land, or livestock may~~
 4 ~~obtain an annual special use permit from the department of~~
 5 ~~agriculture. The department of agriculture shall require the~~
 6 ~~applicant to show upon written examination that he possesses~~
 7 ~~adequate knowledge to use and apply restricted agricultural~~
 8 ~~pesticides and the justification for their use on commercial~~
 9 ~~crops, land or livestock. Restricted pesticides may not be~~
 10 ~~utilized by farm applicators or their employees except for~~
 11 ~~the purpose of producing or protecting any agricultural~~
 12 ~~commodity on property owned, leased, or rented, or as~~
 13 ~~provided in (6) of this section.~~

14 (3) Farm applicators shall qualify for the certificate
 15 or permit by either passing a written examination or
 16 attending a training course approved by the department with
 17 or without an ungraded quiz. The examination or course shall
 18 include practical knowledge as the ability to:

19 (a) recognize common pests to be controlled and damage
 20 caused by them;

21 (b) read and understand the label and labeling
 22 information including the common name of the pesticide(s)
 23 applied; pest(s) to be controlled; timing and methods of
 24 application; safety precautions; any preharvest or reentry
 25 restrictions; and any specific disposal procedures.

1 (c) apply pesticides in accordance with label
 2 instructions and warnings, including the ability to prepare
 3 the proper concentration of pesticides to be used under
 4 particular circumstances taking into account such factors as
 5 area to be covered, speed at which application equipment
 6 will be driven, and the quantity dispersed in a given period
 7 of operation;

8 (d) recognize local environmental situations that must
 9 be considered during application to avoid contamination; and

10 (e) recognize poisoning symptoms and procedures to
 11 follow in case of a pesticide accident.

12 (4) The department may require farm applicators to
 13 attend a mandatory training session and pass a written
 14 examination for those restricted pesticides which are
 15 extremely toxic or for which an effective antidote is not
 16 available. The department may require farm applicators
 17 handling these pesticides to maintain use records.

18 (5) Farm applicators having verified reading
 19 disabilities may become certified to use up to two
 20 restricted use pesticides by passing a specific oral
 21 examination on the particular pesticide(s) if the applicator
 22 documents that a certified applicator in the immediate
 23 vicinity can advise him.

24 (6) Provisions of this act relating to licensing of
 25 farm applicators shall not apply to any farm applicator

1 applying nonrestricted pesticides on his own land, or on
2 lands of his neighbor's; ~~PROVIDED,~~ provided that he:

3 (a) ~~He~~ operates farm property and operates and
4 maintains pesticide application equipment primarily for his
5 own use;

6 (b) ~~He~~ is not regularly engaged in the business of
7 applying pesticides for hire and ~~that he~~ does not publicly
8 hold himself out as a pesticide applicator;

9 (c) ~~He~~ operates his pesticide application equipment
10 only in the vicinity of his own property and for the
11 accommodation of his immediate neighbors."

12 Section 9. Section 27-230, R.C.M. 1947, is amended to
13 read as follows:

14 "27-230. Revocation of licenses and permits. (1) The
15 department of agriculture shall establish the policy and
16 procedures on the revocation of licenses or permits. The
17 department of agriculture may refuse to grant, renew, or may
18 revoke a license or permit, as the case may require, when
19 the department of agriculture is satisfied that the licensee
20 or holder of a permit is not qualified to sell, use, or
21 apply pesticides under the conditions in the locality in
22 which he operates or has operated, or that he has committed
23 any of the following acts, each of which is declared to be a
24 violation of this act:

25 ~~(1)(a)~~ Made made false or fraudulent claims or

1 recommendations through any media, misrepresenting the
2 effect of materials or methods to be utilized;

3 ~~(2)(b)~~ Applied applied unapproved or illegal
4 materials;

5 ~~(3)(c)~~ Operate operated in a faulty, careless, or
6 negligent manner;

7 ~~(4)(d)~~ Operated operated faulty or unsafe equipment;

8 ~~(5)(e)~~ Refused refused or neglected to comply with the
9 provisions of this act, the rules ~~and regulations~~ adopted
10 hereunder, or ~~of~~ any lawful order of the department of
11 agriculture;

12 ~~(6)(f)~~ Refused refused or neglected to keep and
13 maintain the records required by this act, or to make
14 reports when and as required;

15 ~~(7)(g)~~ Made made false or fraudulent records or
16 reports;

17 ~~(8)(h)~~ Operated operated equipment for the commercial
18 application of a pesticide without having a license or
19 permit;

20 ~~(9)(i)~~ Used used fraud or misrepresentation in making
21 an application for a license or permit or renewal of a
22 license or permit;

23 (j) used or applied a registered pesticide
24 inconsistent with its labeling or the label or the
25 department restrictions on the use of that pesticide.

1 (2) Decisions of the department of agriculture
2 relating to the issuing of licenses or permits may be
3 appealed."

4 Section 10. Section 27-231, R.C.H. 1947, is amended to
5 read as follows:

6 "27-231. Government agencies. (1) All state agencies,
7 municipal corporations, or any other governmental agency
8 shall be subject to the provisions of this act and rules
9 adopted thereunder concerning the application or sale of
10 pesticides. Applicators and operators ~~operating equipment~~
11 ~~for the application of~~ applying pesticides ~~used by any state~~
12 ~~and dealers selling pesticides for~~ agencies, municipal
13 corporations, or any governmental agencies shall be subject
14 to the provisions of ~~sections 9, 10, 11 and 12~~ [27-221,
15 27-222, 27-223, ~~and 27-224, 27-225, and 27-226~~] ~~of this act~~
16 and the department of agriculture shall issue a limited
17 commercial applicator's, ~~or operator's, or dealer's~~ license
18 without a fee which shall be valid only when such
19 applicators, ~~and operators, and dealers~~ are applying or
20 selling pesticides for such agencies. Provided, that the
21 jurisdictional health officer, state veterinarian, their
22 duly authorized representatives, or governmental research
23 personnel are exempt from this licensing requirement when
24 applying pesticides to experimental areas."

25 Section 11. Section 27-232, R.C.H. 1947, is amended to

1 read as follows:

2 "27-232. Liability. The department of agriculture
3 shall ~~within two (2) years after the effective date of this~~
4 ~~act,~~ annually require from each commercial pesticide
5 applicator proof of financial responsibility in amounts to
6 be determined under ~~such rules and regulations as may be~~
7 promulgated by the department of agriculture."

8 Section 12. Section 27-234, R.C.H. 1947, is amended to
9 read as follows:

10 "27-234. Rules and regulations. (1) The department of
11 agriculture may adopt by reference without a public hearing
12 regulations adopted under the federal Insecticide,
13 Fungicide, and Rodenticide Act, as amended. The department
14 may, after a public hearing, adopt all rules and regulations
15 necessary to carry out this act.

16 (2) The rules may prescribe methods of:

17 (a) ~~Registration~~ registration, application, use or
18 restricting use, prohibiting use, offering or exposing for
19 sale, any pesticide;

20 (b) ~~Determining~~ determining whether pesticides are
21 highly toxic to man;

22 (c) ~~Determining~~ determining standards of coloring or
23 discoloring for pesticides, and subjecting pesticides to the
24 requirements of ~~section~~ 27-218;

25 (d) ~~Licensing~~ licensing commercial applicators and

1 operators, dealers, ~~retailers~~, establishing methods of
 2 record keeping for applicators, operators, and dealers, ~~and~~
 3 ~~retailers~~, and providing for the review of the records by
 4 the department of agriculture's authorized agent and the
 5 submission of the records to the department of agriculture
 6 upon written request;

7 (e) ~~Issuing~~ issuing farm applicator special use
 8 permits and the maintenance and submission of records by
 9 farm applicators issued special use permits;

10 (f) ~~Collection~~ collection, examination, and standard
 11 deviation from guarantee analysis and umpire analysis of
 12 pesticides and devices;

13 (g) ~~Operating~~ operating and maintaining equipment used
 14 by applicators;

15 (h) ~~Developing~~ developing examinations which shall be
 16 held periodically throughout the state;

17 (i) ~~Establishing~~ establishing the form and content of
 18 all applications for licenses and permits;

19 (j) ~~Designating~~ designating pesticides that may be
 20 sold at retail for home, yard, garden, and lawn use. The
 21 department of agriculture may also limit retail sale of
 22 pesticides, up to a specific number of pounds or gallons and
 23 concentration which would be sublethal to humans and animals
 24 if small amounts of it were accidentally swallowed, inhaled,
 25 sprayed, or dusted on the skin.

1 (k) ~~Revoking~~ revoking licenses and permits;

2 (l) ~~Registering~~ registering or controlling any spray
 3 adjuvant, such as a wetting agent, spreading agent, deposit
 4 builder, adhesive, emulsifying agent, deflocculating agent,
 5 water modifier, or similar agent with or without toxic
 6 properties of its own intended to be used with any other
 7 pesticide as an aid to the application or effect of that
 8 other pesticide, whether or not distributed in a package or
 9 container separate from that of a pesticide with which it is
 10 to be used;

11 (m) ~~Registering~~ registering pesticide fertilizer and
 12 other chemical blends or, instead of registration,
 13 establishing licensing, inspection, and fees for blending
 14 plants;

15 (n) ~~Establishing~~ establishing registration procedures
 16 for devices with a fee not to exceed ~~five dollars~~ ~~(\$5)~~ per
 17 type of device, specifying classes of devices to be
 18 registered and providing for additional requirements.

19 (3) (a) ~~Where~~ Whenever the department of agriculture
 20 finds that those rules ~~and regulations~~ are necessary to
 21 carry out the purposes and intent of this act, the rules ~~and~~
 22 ~~regulations~~ may relate to the time, place, manner, and
 23 method of registration, application, or selling of the
 24 pesticides, may restrict or prohibit use of pesticides in
 25 the state or in designated areas during specified periods of

1 time and shall encompass all reasonable factors which the
 2 department of agriculture considers necessary to prevent
 3 damage or injury to:

- 4 ~~(a)(i)~~ Persons persons, animals, or pollinating
- 5 insects from the effect of drift or careless application;
- 6 ~~(b)(ii)~~ The the environment;
- 7 ~~(c)(iii)~~ Plants plants, including forage plants;
- 8 ~~(d)(iv)~~ Wildlife wildlife;
- 9 ~~(e)(v)~~ Fish fish and other aquatic life.

10 (b) In issuing the ~~regulations~~ rules, the department
 11 of agriculture shall give consideration to pertinent
 12 research findings and recommendations of other agencies of
 13 this state or of the federal government.

14 (4) If the department of agriculture finds that an
 15 emergency exists which requires immediate action with regard
 16 to the registration, use, or application of pesticides, the
 17 department of agriculture may, without notice or hearing,
 18 issue necessary orders, or ~~rules, or regulations~~ to protect
 19 the public health, welfare, and safety. An order, or ~~rule,~~
 20 ~~or regulation~~ issued under this subsection is effective for
 21 a ~~THE~~ period ~~no longer than sixty (60) 120 days after it is~~
 22 ~~issued~~ PRESCRIBED BY THE ADMINISTRATIVE PROCEDURE ACT. If
 23 the department of agriculture determines that the emergency
 24 order, or ~~rule, or regulation~~ should remain in effect, a
 25 public hearing under ~~section~~ 27-235 shall be held within the

1 ~~sixty (60)-day 120-day ABOVE~~ period to determine whether the
 2 order, or ~~rule, or regulation~~ should be adopted by the
 3 department of agriculture.

4 (5) All rules, ~~regulations,~~ and orders issued by the
 5 department of agriculture shall be in writing, shall be
 6 entered in full in books to be kept by the department of
 7 agriculture for that purpose, shall be indexed, and shall be
 8 public records open for inspection at all times during
 9 reasonable office hours. Except for orders establishing or
 10 changing rules of practice and procedure, all orders made
 11 and published by the department of agriculture shall include
 12 and be based upon written findings of fact. A copy of any
 13 rule, ~~regulation,~~ or order certified by the department of
 14 agriculture ~~or its secretary~~ shall be received in evidence
 15 in all courts of this state with the same effect as the
 16 original."

17 Section 13. Section 27-235, B.C.M. 1947, is amended to
 18 read as follows:

19 "27-235. ~~Hearings~~ Administrative procedures. ~~(4)~~
 20 ~~Public hearings. Except as provided in section 27-224, no~~
 21 ~~rule or regulation shall be adopted by the department of~~
 22 ~~agriculture without a public hearing upon at least~~
 23 ~~twenty-one (21) days' notice. The public hearing shall be~~
 24 ~~held at such time and place as may be prescribed by the~~
 25 ~~department of agriculture, and any interested person is~~

1 ~~entitled to be heard.~~

2 ~~(a) Notice of public hearing on the adoption of rules~~
3 ~~or regulations shall be made by the department of~~
4 ~~agriculture as follows:~~

5 ~~(i) Informal notice of the hearing will be sent to all~~
6 ~~registrants of pesticides, to all licensed pesticide~~
7 ~~applicators, including farm applicators with restricted use~~
8 ~~permits, and to all licensed pesticide dealers or retailers,~~
9 ~~provided that the notice shall be sent only to the~~
10 ~~respective group or groups directly affected by the rules~~
11 ~~and regulations. Farm applicators of nonrestricted~~
12 ~~pesticides will be given informal notice through farm~~
13 ~~groups, organizations or associations and by means of farm~~
14 ~~publications.~~

15 ~~(ii) In all cases of public hearings for adoption of~~
16 ~~rules and regulations, notice thereof shall be published in~~
17 ~~five (5) newspapers of general circulation in the state once~~
18 ~~a week for two (2) successive weeks and the department of~~
19 ~~agriculture shall issue appropriate press releases.~~

20 ~~(iii) Notices and publications shall be issued in the~~
21 ~~name of the state of Montana, shall be signed by the~~
22 ~~director of agriculture, shall specify the style and number~~
23 ~~of the proceedings, and the time and place of the hearing,~~
24 ~~and shall briefly state the purpose of the proceeding and~~
25 ~~method of procedure.~~

1 ~~(iv) Proof of service by publication shall be made by~~
2 ~~the affidavit of the printer or publisher of the newspaper.~~
3 ~~Proof of service by mailing shall be made by the affidavit~~
4 ~~of the director of agriculture.~~

5 ~~(2) Complaints. In all cases where a complaint has~~
6 ~~been made by the department of agriculture or its authorized~~
7 ~~agents or by any person that any provision of this act or~~
8 ~~any rule, regulation, or order of the department of~~
9 ~~agriculture is being or has been violated, notice of the~~
10 ~~hearing to be held on such complaint shall be given to the~~
11 ~~interested persons.~~

12 ~~(3) Except as otherwise in this act provided, the~~
13 ~~department of agriculture may act upon the petition of any~~
14 ~~interested person. On the filing of a petition concerning~~
15 ~~any matter within the jurisdiction of the department of~~
16 ~~agriculture, the department of agriculture shall promptly~~
17 ~~fix a date for a hearing thereon and shall cause notice of~~
18 ~~the hearing to be given. The hearing shall be held without~~
19 ~~undue delay after the filing of the petition. The department~~
20 ~~of agriculture shall enter its order and findings on~~
21 ~~complaints and petitions within thirty (30) days after the~~
22 ~~hearing. The administration of this act and all rule making~~
23 ~~and hearing functions under the act shall be conducted in~~
24 ~~accordance with the Administrative Procedure Act."~~

25 Section 14. Section 27-240, R.C.M. 1947, is amended to

1 read as follows:

2 "27-240. Advisory council. (1) The director of
3 agriculture may appoint an advisory council to study and
4 make recommendations on special pesticide problems in the
5 state. The council shall consist of individuals
6 representing, equally, controlled industry, agriculture,
7 health, and wildlife. Governmental personnel, university
8 personnel not included, may not be represented on the
9 council. Governmental personnel shall meet with the council
10 in an advisory capacity when requested by the council. The
11 council may not exceed ~~twelve~~ (12) members. The director of
12 agriculture shall establish the time period in which the
13 council shall exist. The time period may not exceed ~~two~~ (2)
14 years. The department of agriculture shall provide the
15 necessary administrative, secretarial, and any other
16 essential items to the council.

17 (2) Each member of the council shall receive as
18 compensation for his services the sum of ~~twenty-five dollars~~
19 (\$25) per day for each day actually spent in the performance
20 of his duties and shall be reimbursed for travel expenses
21 as provided for in ~~sections~~ 59-538, 59-539, and 59-801.

22 (3) The council may request that the department of
23 agriculture hold a public hearing ~~as outlined in section~~
24 ~~27-235,~~ to assist it in gathering factual data and
25 information on the special problems assigned it."

1 Section 15. Section 27-242, R.C.M. 1947, is amended to
2 read as follows:

3 "27-242. Cooperation with other agencies. The
4 department of agriculture may cooperate with agencies of
5 this state or its subdivisions or with any agency of any
6 other state or the federal government for the purpose of
7 carrying out the provisions of this act ~~and~~ for securing
8 uniformity of ~~regulations~~ rules and entering into reciprocal
9 licensing and certification agreements with other states."

10 Section 16. Section 27-243, R.C.M. 1947, is amended to
11 read as follows:

12 "27-243. Enforcement. In enforcing this act, the
13 department of agriculture or its duly authorized agents,
14 upon reasonable cause, ~~shall have the authority to~~ may enter
15 upon private and public premises and property with a warrant
16 or consent of the inhabitant or owner to inspect or
17 investigate at reasonable time:

- 18 (1) ~~Equipment~~ equipment subject to this act;
- 19 (2) ~~Actual~~ actual or reported adverse effects caused
20 by pesticides in humans, crops, animals, land, or other
21 property; ~~or~~
- 22 (3) ~~Records~~ records on the selling or use of
23 pesticides and the person's stock of pesticides;
- 24 (4) storage and disposal areas;
- 25 (5) sample pesticides being applied or to be applied;

1 or

2 (6) the use and application of a pesticide."

3 Section 17. Section 27-245, R.C.M. 1947, is amended to
4 read as follows:

5 "27-245. Violation. (1) Any person convicted of
6 violating any of the provisions of this act or the rules ~~and~~
7 ~~regulations~~ issued thereunder or who may misrepresent,
8 impede, obstruct, hinder, or otherwise prevent or attempt to
9 prevent the department of agriculture or its duly authorized
10 agent in performance of its duty in connection with the
11 provisions of this act, shall be adjudged guilty of a
12 misdemeanor.

13 (2) The department of agriculture or its authorized
14 representative is hereby authorized to apply to the district
15 court of the county or any county wherein a violation is
16 about to occur or has occurred to grant a temporary or
17 permanent injunction restraining any person from violating
18 or continuing to violate any of the provisions of this act
19 or any rule ~~or regulation~~ promulgated under the act
20 notwithstanding the existence of other remedies of law. The
21 injunction is to be issued without bond.

22 (3) Nothing in this act is to be construed as
23 requiring the department of agriculture or its authorized
24 agent to report for prosecution or for the institution of
25 seizure proceedings, minor violations of the act when it

1 believes the public interest will be best served by other
2 remedial action or by a suitable notice of warning in
3 writing; nor is any part of this act to be construed to
4 apply to common carriers transporting shipments tendered to
5 them by the general public.

6 (4) Notwithstanding any other provisions of this
7 section, if any person, with intent to defraud, uses or
8 reveals information relative to formulas of products
9 acquired under the authority of ~~section 5 [27-217] of this~~
10 ~~act~~, he shall, upon conviction, be fined not more than ~~five~~
11 ~~hundred dollars (\$500)~~ or imprisoned for not more than ~~one~~
12 ~~(1)~~ year or both.

13 (5) In all prosecutions under the registration section
14 involving the composition of a lot of pesticide, a certified
15 copy of the official analysis signed by the department of
16 agriculture's authorized chemist shall be accepted as prima
17 facie evidence of the composition."

18 Section 18. Severability. If a part of this act is
19 invalid, all valid parts that are severable from the invalid
20 part remain in effect. If a part of this act is invalid in
21 one or more of its applications, the part remains in effect
22 in all valid applications that are severable from the
23 invalid applications.

24 Section 19. Repealer. Sections 27-236, 27-237, and
25 27-238, R.C.M. 1947, are repealed.

SB 0124/02

1 Section 20. Effective date. This act is effective on
2 its passage and approval.

-End-

1 SENATE BILL NO. 124

2 INTRODUCED BY GRAHAM

3 BY REQUEST OF THE DEPARTMENT OF AGRICULTURE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE PESTICIDE
6 LAW RELATING TO DEFINITIONS; REGISTRATION AND EMBARGO OF
7 PRODUCTS; LICENSING OF APPLICATORS, DEALERS, AND RETAILERS;
8 CERTIFICATION OF FARM APPLICATORS; REVOCATION OF LICENSES
9 AND PERMITS; RULE MAKING AND ADMINISTRATIVE PROCEDURES;
10 ADVISORY COUNCIL; AGENCY COOPERATION; ENFORCEMENT AND
11 VIOLATIONS; AMENDING SECTIONS 27-216, 27-217, 27-220,
12 27-221, 27-222, 27-225, 27-227, 27-228, 27-230, 27-231,
13 27-232, 27-234, 27-235, 27-240, 27-242, 27-243, AND 27-245,
14 R.C.M. 1947; REPEALING SECTIONS 27-236, 27-237, AND 27-238,
15 R.C.M. 1947; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18 Section 1. Section 27-216, R.C.M. 1947, is amended to
19 read as follows:

20 "27-216. Definitions. Unless the context requires
21 otherwise, in this act:

22 (1) "Active ingredient" means:

23 (a) ~~is in~~ the case of a pesticide other than a plant
24 regulator, defoliant, or desiccant, an ingredient which will
25 prevent, destroy, repel, alter life processes, or mitigate

1 insects, nematodes, fungi, rodents, weeds, or other pests;

2 (b) ~~is in~~ the case of a plant regulator, an ingredient
3 which acts upon the physiology to accelerate or retard the
4 rate of growth or rate of maturation or otherwise alter the
5 normal processes of ornamental or crop plants or their
6 produce;

7 (c) ~~is in~~ the case of a defoliant, an ingredient which
8 will cause the leaves or foliage to drop from a plant;

9 (d) ~~is in~~ the case of a desiccant, an ingredient which
10 will artificially accelerate the drying of plant tissue.

11 (2) "Adulterated" applies to a pesticide if its
12 strength of purity falls below the professed standard or
13 quality as expressed on labeling or under which it is sold,
14 or if any substance has been substituted wholly or in part
15 for the pesticide, or if any valuable constituent of the
16 pesticide has been wholly or in part abstracted.

17 (3) "Antidote" means the most practical immediate
18 treatment in case of poisoning and includes ~~first-aid~~
19 first-aid treatment.

20 (4) "Applicator" means a person who applies pesticides
21 by any method.

22 (5) "Commercial applicator" means a person who by
23 contract or for hire applies by aerial, ground, or hand
24 equipment pesticides to land, plants, seed, animals, waters,
25 structures, or vehicles.

1 (6) "Commercial operator" means a person who applies
2 pesticides under the supervision of a commercial applicator.

3 (7) "Farm applicator" means a person applying
4 pesticides to his own crops or land.

5 (8) "Public utility applicator" means a person
6 applying pesticides to land and structures owned or leased
7 by a public utility.

8 (9) "Beneficial insects" means those insects which, in
9 the course of their life cycle, carry, transmit, or spread
10 pollen to and from vegetation, act as parasites and
11 predators on other insects, or are otherwise beneficial.

12 (10) "Crop" means a food intended for human or animal
13 consumption or a fiber product.

14 (11) "Dealer" means a person who sells, wholesales,
15 offers, or exposes for sale, exchanges, barter, or gives
16 away within this state any pesticide except those pesticides
17 which are to be used for home, yard, garden, home orchard,
18 shade trees, ornamental trees, bushes, and lawn.

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

22 (13) "Desiccant" means a substance or mixture of
23 substances for artificially accelerating the drying of plant
24 tissue.

25 (14) "Device" means any instrument or contrivance

1 intended for destroying, controlling, repelling, or
2 mitigating pests but not equipment used for the application
3 of pesticides.

4 (15) "Environment" means the soil, air, water, plants,
5 and animals.

6 (16) "Equipment" means equipment used in the actual
7 application of pesticides, including aircraft, ground
8 sprayers and dusters, hand-held applicators, and water
9 surface equipment.

10 (17) "Fungi" means all nonchlorophyll-bearing
11 thallophytes (all nonchlorophyll-bearing plants of a lower
12 order than mosses and liverworts) as, for example, rusts,
13 smuts, mildews, molds, yeasts, and bacteria, except those
14 resident on or in living man or other animals.

15 (18) "Fungicide" means a substance or mixture of
16 substances for preventing, destroying, repelling, or
17 mitigating any fungus.

18 (19) "Herbicide" means a substance or mixture of
19 substances for preventing, destroying, repelling, or
20 mitigating any weed.

21 (20) "Inert ingredient" means an ingredient which is
22 not an active ingredient.

23 (21) "Ingredient statement" means either:

24 (a) A statement of the chemical name and common name
25 and percentage of each active ingredient, together with the

1 total percentage of the inert ingredients, in the pesticide;
2 or

3 (b) ~~is a~~ statement of the chemical name and common name
4 of each active ingredient, together with the name of each
5 and total percentage of the inert ingredients, if any, in
6 the pesticide. However, subsection (21) (a) of this section
7 applies if the preparation is highly toxic to man,
8 determined as provided in ~~sections~~ 27-234, and if the
9 pesticide contains arsenic in any form, the ingredient
10 statement shall also include a statement of the percentage
11 of total and water-soluble arsenic, each calculated as
12 elemental arsenic.

13 (22) "Insect" means any of the numerous small
14 invertebrate animals generally having the body more or less
15 obviously segmented, for the most part belonging to the
16 class insecta, comprising six-legged, winged and wingless
17 forms, such as beetles, bugs, wasps, flies, and keds, and to
18 other classes of ~~arthropods~~ arthropods whose members are
19 wingless and usually have more than six legs, such as
20 spiders, mites, ticks, centipedes, and wood lice.

21 (23) "Insecticide" means any substance or mixture of
22 substances for preventing, destroying, repelling, or
23 mitigating any insects present in any environment.

24 (24) "Label" means the written, printed, or graphic
25 matter on or attached to the pesticide or device, or to its

1 immediate container, and any outside container or wrapper of
2 any retail package of the pesticide or device.

3 (25) "Labeling" means all labels and other written,
4 printed, or graphic matter:

5 (a) ~~Upon upon~~ the pesticide or device or any of its
6 containers or wrappers;

7 (b) ~~Accompanying~~ accompanying the pesticide or device
8 at any time;

9 (c) ~~To to~~ which reference is made on the label or in
10 literature accompanying the pesticide or device, except when
11 accurate, nonmisleading reference is made to current
12 official publications of the United States environmental
13 protection agency, departments of agriculture, interior, or
14 health, education, and welfare, state experiment stations,
15 state agricultural colleges, or other similar federal
16 institutions or official agencies of this state or other
17 states authorized by law to conduct research in the field of
18 pesticides.

19 (26) "Misbranded" applies:

20 (a) ~~To to~~ a pesticide or device if its labeling bears
21 any statement, design, or graphic representation relative to
22 its ingredients which is false or misleading.

23 (b) ~~To to~~ a pesticide if:

24 (i) ~~It it~~ is an imitation of or is offered for sale
25 under the name of another pesticide;

1 (ii) ~~The~~ its labeling bears any reference to
2 registration under this act;

3 (iii) ~~The~~ the labeling accompanying it does not contain
4 instructions for use necessary and, if complied with,
5 adequate for the protection of the public;

6 (iv) ~~The~~ the label does not contain a warning or
7 caution statement necessary and, if complied with, adequate
8 to prevent injury to living man or undue hazard to the
9 environment;

10 (v) ~~The~~ the label of the retail package which is
11 presented or displayed under customary conditions of
12 purchase does not bear an ingredient statement on that part
13 of the immediate container and on the outside or on a
14 wrapper through which the ingredient statement on the
15 immediate container cannot be clearly read;

16 (vi) ~~Any~~ any word, statement, or other information
17 required to appear on the labeling is not prominently placed
18 on the labeling with a conspicuousness (as compared with
19 other words, statements, designs, or graphic matter in the
20 labeling) and in terms rendering it likely to be read and
21 understood by the ordinary individual under customary
22 conditions of purchase and use;

23 (vii) ~~It~~ in the case of an insecticide, nematocide,
24 fungicide, or herbicide, when used as directed or in
25 accordance with commonly recognized practice, it is

1 injurious to living men or other vertebrate animals or
2 vegetation, except weeds, to which it is applied, or to the
3 person applying the pesticide;

4 (viii) ~~It~~ in the case of a plant regulator, defoliant,
5 or desiccant, when used as directed, it is injurious to man
6 or other vertebrate animals or vegetation to which it is
7 applied, or to the person applying the pesticide. Physical
8 or physiological effects on plants or parts of plants are
9 not injurious when this is the purpose for which the plant
10 regulator, defoliant, or desiccant is applied in accordance
11 with the label claims and recommendations.

12 (27) "Nematocide" means any substance or mixture of
13 substances intended for preventing, destroying, repelling,
14 or mitigating nematodes.

15 (28) "Nematodes," "nemas," or "eelworms" means
16 invertebrate animals of the phylum nemathelminthes and class
17 nematoda, that is, unsegmented round worms with elongated,
18 fusiform, or sac-like bodies covered with cuticle, and
19 inhabiting soil, water, animals, plants, or plant parts.

20 (29) "Person" means any natural person, individual,
21 firm, partnership, association, corporation, company,
22 joint-stock association, body politic, or organized group of
23 persons whether incorporated or not, and any trustee,
24 receiver, assignee, or similar representative.

25 (30) "Pest" includes any insect, rodent, nematode,

1 snail, slug, weed, and any form of plant or animal life or
 2 virus, except virus on or in living man or other animal,
 3 which is normally considered a pest or which the department
 4 declares a pest.

5 (31) "Pesticide" means any:

6 (a) ~~Substance~~ substance or mixture of substances,
 7 including any living organism or any product derived from a
 8 living organism, intended for preventing, destroying,
 9 controlling, repelling, altering life processes, or
 10 mitigating any insects, rodents, nematodes, fungi, weeds,
 11 and other forms of plant or animal life or viruses, except
 12 viruses on or in living man or other animals, that may
 13 infect, or be detrimental to persons, vegetation, crops,
 14 animals, structures, or households or be present in any
 15 environment or which the department declares a pest;

16 (b) ~~Substance~~ substance or mixture of substances
 17 intended for use as a plant regulator, defoliant, or
 18 desiccant; and

19 (c) ~~Other~~ other substances intended for that use named
 20 by the department by a rule adopted by it.

21 (32) "Plant regulator" means any substance or mixture
 22 of substances affecting the rate of growth or rate of
 23 maturation or for otherwise altering physiological condition
 24 of plants, but does not include substances to the extent
 25 that they are intended as plant nutrients, trace elements,

1 nutritional chemicals, plant inoculants, and soil
 2 amendments.

3 (33) "Registrant" means the person registering any
 4 pesticide or device under the provisions of this act.

5 (34) "Restricted use pesticide" means any pesticide,
 6 including highly toxic pesticides, which the department of
 7 agriculture has found and determined, subsequent to a
 8 hearing, to be injurious when used in accordance with
 9 registration, label, directions, and cautions to persons,
 10 beneficial insects, animals, crops, or the environment other
 11 than the pests it is intended to prevent, destroy, control,
 12 or mitigate.

13 (35) "Retailer" means any person who sells, offers, or
 14 exposes for sale, exchanges, barter, or gives away within
 15 this state any pesticide for home, yard, lawn, and garden
 16 use, in quantities or concentrations as determined by the
 17 department of agriculture.

18 (36) "Weed" means any plant or part of the plant which
 19 grows where not wanted."

20 Section 2. Section 27-217, R.C.M. 1947, is amended to
 21 read as follows:

22 "27-217. Registration. (1) Every pesticide
 23 distributed, sold, or offered for sale within this state or
 24 delivered for transportation or transported in intrastate
 25 commerce or between points within this state, shall be

1 registered with the department of agriculture. The
 2 registration shall be renewed annually by the manufacturer,
 3 ~~or~~ formulator, or distributor of the pesticide. The
 4 department of agriculture shall register all approved
 5 pesticides and those registered are subject to registration
 6 fees and all other provisions of this act. All registrations
 7 of pesticides expire on December 31 following the date of
 8 issuance, unless otherwise terminated.

9 (2) The applicant for registration shall file with the
 10 department of agriculture a statement including:

11 (a) ~~The~~ the name and address of the applicant and the
 12 name and address of the person whose name will appear on the
 13 label, if other than the registrant;

14 (b) ~~A~~ a complete copy of the label of the pesticide,
 15 the United States environmental protection agency
 16 registration number, if the pesticide is so registered, and
 17 a statement of all claims to be made for it, including
 18 directions for use;

19 (c) ~~The~~ the trade and chemical name of the pesticide;

20 (d) ~~If~~ if requested by the department of agriculture,
 21 a full description of tests made and the results upon which
 22 the claims are based. In the case of renewal of
 23 registration, a statement shall be required only with
 24 respect to information which is different from that
 25 furnished when the pesticide was registered or last

1 reregistered.

2 (3) Any pesticide imported into this state, which is
 3 subject to the provisions of any federal act providing for
 4 the registration of pesticides and ~~which~~ has been registered
 5 under the provisions of a federal act, shall be registered
 6 in the state. However, the state may restrict the use and
 7 application of the pesticide by type of applicator, time,
 8 and place and may establish special registrations of
 9 pesticides as outlined in subsection ~~(9)~~ (8) of this section
 10 and ~~section~~ 27-234(3). The annual registration fee must also
 11 be paid, and registration information required by the
 12 department of agriculture must be provided.

13 (4) The applicant shall pay an annual fee of ~~ten~~
 14 ~~dollars~~ (\$10) for each pesticide registered. A registration
 15 fee is not required to register an experimental use permit.
 16 Fees collected shall be deposited in the state treasury to
 17 the credit of the general fund.

18 (5) The department of agriculture may require the
 19 submission of the complete formula and certified analytical
 20 standards of any pesticide. If it appears to the department
 21 of agriculture that the composition of the article warrants
 22 the proposed claims for it and if the article and its
 23 labeling and other material required to be submitted comply
 24 with the requirements of ~~section~~ 27-218, it shall register
 25 the article.

1 (6) If it does not appear to the department of
 2 agriculture that the article warrants the proposed claims
 3 for it or if the article and its labeling and other material
 4 required to be submitted do not comply with this chapter, it
 5 shall notify the applicant of the manner in which the
 6 articles, labeling, or other material required to be
 7 submitted fails to comply with the act so as to afford the
 8 applicant an opportunity to make the necessary corrections.
 9 ~~If upon receipt of the notice, the applicant does not make~~
 10 ~~the corrections the applicant does not make the corrections~~
 11 upon receipt of the notice, the department of agriculture
 12 may refuse to register the article. The department of
 13 agriculture ~~in accordance with the procedures specified by~~
 14 ~~the department of agriculture~~, may suspend or cancel the
 15 registration of a pesticide whenever it does not appear that
 16 the article or its labeling comply with this act. When an
 17 application for registration is refused or the department of
 18 agriculture proposes to suspend or cancel a registration,
 19 the registrant may appeal to the ~~department of agriculture~~
 20 department's as provided for in section 37-236 decision.

21 ~~(7) The department of agriculture shall review all~~
 22 ~~registered pesticides at least every two (2) years.~~

23 ~~(8) (7)~~ Registration is not required in the case of a
 24 pesticide shipped from one plant in this state to another
 25 plant in this state by the same person.

1 ~~(9) (8)~~ (a) The departments of health and environmental
 2 sciences, agriculture, and fish and game shall review all
 3 applications for registration of a ~~pesticide or device~~
 4 ~~submitted to the department of agriculture an experimental~~
 5 use permit, OR a registration for special local needs, or
 6 registration of a device. The departments shall utilize the
 7 same requirements and standards for reviewing registrations
 8 as established by the Federal Insecticide, Fungicide, and
 9 Rodenticide Act, as amended, and regulations adopted
 10 thereunder. The department of agriculture shall provide the
 11 departments of health and environmental sciences and fish
 12 and game with a complete copy of the application, related
 13 correspondence, and a statement of the department of
 14 agriculture's proposed action on the application. The
 15 departments of health and environmental sciences and fish
 16 and game shall approve or disapprove the application within
 17 ~~three (3)~~ 10 days after the receipt of the application. If
 18 the departments of health and environmental sciences,
 19 agriculture, and fish and game are in agreement with the
 20 proposed registration, the department of agriculture shall
 21 ~~proceed with its issue the~~ registration.

22 (b) The department of agriculture shall establish a
 23 time and place for an interagency conference for the
 24 purposes of resolving the registration of any pesticide or
 25 device. If two ~~(2)~~ of the departments approve the proposed

1 registration, the department of agriculture shall proceed
2 with issue the registration.

3 (c) The registrant applying for registration shall be
4 notified as to proposed changes in registration. If the
5 departments cannot resolve the proposed registration
6 following the interagency conference, the registrant may
7 request a joint administrative hearing before the
8 departments of agriculture, health and environmental
9 sciences, and fish and game.

10 (d) Following the interagency conference, and if
11 requested, the administrative hearing, if the proposed
12 registration of a pesticide or device has not been resolved,
13 the department of agriculture shall appoint an advisory
14 council as outlined in ~~section 27-240~~ to resolve by majority
15 vote the registration of any pesticide. The advisory
16 council's recommendations on the registration shall be
17 accepted by the departments and implemented by the
18 department of agriculture."

19 Section 3. Section 27-220, R.C.M. 1947, is amended to
20 read as follows:

21 "27-220. Embargo. (1) Whenever a duly authorized agent
22 of the department of agriculture finds or has probable cause
23 to believe that any pesticide or device

24 ~~(a) is is~~ adulterated or misbranded,

25 ~~(b) has has~~ not been registered under the provisions

1 of ~~section 5-[27-217-]~~(5) of this act.

2 ~~(c) Fails fails~~ to bear on its label the information
3 required by this act.

4 ~~(d) Is is~~ a white powder pesticide and is not colored
5 as required under this act, he shall affix to such article
6 a tag or other appropriate marking, giving notice ~~that such~~
7 ~~pesticide or device is, or is suspected of being adulterated~~
8 ~~or misbranded, not registered, fails to bear the required~~
9 ~~information on the label, is a white powder pesticide and~~
10 ~~not colored as required, and thereof and that such article~~
11 has been detained or embargoed and warning all persons not
12 to remove or dispose of such article by sale or otherwise
13 until permission for removal or disposal is given by such
14 agent or the court. It ~~shall be is~~ unlawful for any person
15 to remove or dispose of such detained or embargoed article
16 by sale or otherwise, without such permission, or to remove
17 or alter the tag or marking.

18 (2) When an article detained or embargoed under
19 ~~section 8 (1) [subdivision (1) of this section]~~ subsection
20 (1) has been found by such agent to be in violation, if
21 after ~~thirty (30)~~ days the violation has not been resolved,
22 he may petition the district court in whose jurisdiction the
23 article is detained or embargoed for a condemnation of such
24 article. When such agent has found that an article so
25 detained or embargoed is not adulterated or misbranded, he

1 shall remove the tag or other marking.

2 (3) If the court finds that a detained or embargoed
 3 article is in violation of ~~section 8 (1) [subdivisions (1) of~~
 4 ~~this section]~~ the act or rules adopted thereunder, such
 5 article shall after entry of the decree be destroyed at the
 6 expense of the claimant thereof, under the supervision of
 7 such agent, and all court costs and fees and storage and
 8 other proper expenses shall be assessed against the claimant
 9 of such pesticide or device or his agent; provided that when
 10 the adulteration or misbranding can be corrected by proper
 11 labeling or processing of the article, the court, after
 12 entry of the decree and after such costs, fees, and expenses
 13 have been paid and a good and sufficient bond has been
 14 executed, conditioned ~~that upon the proper labeling or~~
 15 processing of such pesticide or device ~~shall be so labeled~~
 16 ~~or processed, has been executed~~, may by order direct that
 17 such article be delivered to the claimant thereof for such
 18 labeling or processing under the supervision of an agent of
 19 the department of agriculture. The expense of such
 20 supervision shall be paid by claimant. The article shall be
 21 returned to the claimant of the pesticide or device on the
 22 representation to the court by the department of agriculture
 23 that the article is no longer in violation of this act, and
 24 that the expenses of such supervision have been paid."

25 Section 4. Section 27-221, R.C.M. 1947, is amended to

1 read as follows:

2 "27-221. Commercial applicator. (1) It shall be
 3 unlawful for any person to engage in the business of
 4 applying pesticides for another without a pesticide
 5 applicator's license obtained from the department of
 6 agriculture. The application shall be accompanied by a fee
 7 of ~~ten dollars (\$10)~~. Applicators applying for a dealer ~~or~~
 8 ~~retailer~~ license under this act shall be required to pay
 9 only a ~~five dollar (\$5)~~ licensing fee for the dealer ~~or~~
 10 ~~retailer~~ license. The provisions of this section shall not
 11 apply to any person employed only to operate any equipment
 12 used for the application of any pesticide, and in which the
 13 person has no financial interest or other control over such
 14 apparatus other than its day-to-day mechanical operation for
 15 the purpose of applying any pesticide.

16 (2) Public utility applicators shall be licensed in
 17 the same manner as commercial applicators, provided that
 18 public utility operators working under public utility
 19 applicators are not required to be licensed, except as
 20 provided for under ~~section~~ 27-223.

21 (3) Veterinarians licensed as provided in ~~section~~
 22 66-2204 shall not be required to be licensed to apply
 23 nonrestricted pesticides, provided that these veterinarians
 24 shall register with the department of agriculture each year;
 25 provided further that the veterinarians shall be required to

1 meet all other requirements and ~~regulations~~ rules of the
 2 Montana Pesticides Act. The department ~~when adopting~~
 3 ~~regulations shall consider the professional licensing~~
 4 ~~requirements for veterinarians shall consider the~~
 5 professional licensing requirements for veterinarians when
 6 adopting rules."

7 Section 5. Section 27-222, R.C.M. 1947, is amended to
 8 read as follows:

9 "27-222. Application for applicator's license. (1)
 10 Application for a pesticide applicator's license provided
 11 for in ~~section~~ 27-221 shall be made annually, to the
 12 department of agriculture before applying pesticides in any
 13 calendar year, ~~from the department of agriculture. Provided~~
 14 that pesticide applicators applying for renewal of license
 15 shall do so on or before April MAY 1 of that calendar year.
 16 Any applicator applying for renewal of license after April
 17 MAY 1 shall be assessed a \$10 late licensing fee.

18 (2) If the application is made for a license to engage
 19 in aerial application of pesticides, the applicant shall
 20 first meet all of the requirements of the federal aviation
 21 agency and the department of community affairs to operate
 22 the equipment described in the application."

23 Section 6. Section 27-225, R.C.M. 1947, is amended to
 24 read as follows:

25 "27-225. Dealers. (1) It is unlawful for a dealer to

1 sell, deliver, or have delivered within this state any
 2 pesticide without first procuring a license from the
 3 department of agriculture for each calendar year or portion
 4 thereof. A separate dealer's license and fee shall be
 5 required for each location or outlet from which pesticides
 6 are distributed, sold, held for sale, or offered for sale.
 7 Pesticide fieldmen or salesmen, employed directly out of the
 8 same location or outlet and under a licensed dealer, shall
 9 not be required to obtain a license.

10 (2) The dealer shall furnish the department of
 11 agriculture the names and addresses of its fieldmen and
 12 salesmen selling pesticides within the state. The
 13 application for a license shall be accompanied by a fee of
 14 ~~ten dollars (\$10).~~ Dealers applying for renewal of license
 15 shall do so on or before April MAY 1 of that calendar year.
 16 Any dealer applying for renewal of license after April MAY 1
 17 shall be assessed a \$10 late licensing fee.

18 (3) The dealer shall require the purchaser of any
 19 restricted pesticide to exhibit ~~their~~ his license or permit
 20 issued under authority of this act before completing a sale.

21 (4) ~~Licensed dealers shall not be required to obtain a~~
 22 ~~retail noncommercial license or pay the fee; however, all~~
 23 ~~other provisions of section 15-[27-227] shall apply. Dealers~~
 24 may make one application for two annual licenses if the
 25 application is accompanied by a \$10 licensing fee for each

1 year of the state biennium.

2 (5) Pharmacists and veterinarians, licensed as
3 provided for in ~~sections~~ 66-1506, 66-1507, and ~~sections~~
4 66-2204, and certified pharmacies licensed under ~~section~~
5 66-1508(b), shall not be required to be licensed to sell
6 pesticides, provided that the certified pharmacies and
7 veterinarians shall register with the department of
8 agriculture each year. However, the certified pharmacies and
9 veterinarians shall be required to meet all other
10 requirements concerning the commercial sale of pesticides.
11 The department ~~when adopting regulations~~ shall take into
12 account the professional licensing requirements of
13 pharmacists, certified pharmacies, and veterinarians when
14 adopting rules."

15 Section 7. Section 27-227, R.C.M. 1947, is amended to
16 read as follows:

17 "27-227. Retail noncommercial sale of pesticides. ~~(4)~~
18 The department of agriculture is authorized to designate the
19 pesticides that may be sold in this state at retail for
20 home, yard, garden, and lawn use. Only pesticides so
21 designated may be sold at retail. The department of
22 agriculture may also limit the retail sale of such
23 designated pesticides to quantities up to a specific number
24 of ~~pound(s)~~ pounds or ~~gallon(s)~~ gallons and of such
25 concentrations as would be sublethal to humans and animals

1 if small amounts thereof were accidentally swallowed,
2 inhaled, sprayed, or dusted on the skin.

3 ~~(2) Each pesticide retail outlet shall be required to~~
4 ~~obtain an annual license from the department of agriculture~~
5 ~~for purchasing and selling retail pesticides. The~~
6 ~~application for a license shall be accompanied by a ninus~~
7 ~~fee of ten dollars (\$10), provided, that retailers selling~~
8 ~~only human insect repellents shall only be required to pay a~~
9 ~~licensing fee of five dollars (\$5)."~~

10 Section 8. Section 27-228, R.C.M. 1947, is amended to
11 read as follows:

12 "27-228. Farm applicators. (1) ~~The department of~~
13 ~~agriculture shall establish which are restricted use~~
14 ~~pesticides for agricultural use. Pesticides so restricted~~
15 ~~cannot be utilized by the farm applicator on commercial~~
16 ~~crops, land, or livestock, except as provided in (2) below.~~
17 Farm applicators shall be required to obtain a certificate
18 or special use permit prior to purchasing and using any
19 pesticide designated by the department as a restricted use
20 pesticide. The certificate, to be issued for 5 calendar
21 years, must be renewed annually by the department or its
22 authorized representative. The 5-year certification period
23 shall commence on January 1, 1978. Provided that the time
24 period from October 21, 1977, through December 31, 1977,
25 shall be considered as part of the January 1, 1978, 5-year

1 certification period.

2 ~~(2) Farm applicators desiring to apply restricted-use~~
 3 ~~pesticides on commercial crops, land, or livestock may~~
 4 ~~obtain an annual special use permit from the department of~~
 5 ~~agriculture. The department of agriculture shall require the~~
 6 ~~applicant to show upon written examination that he possesses~~
 7 ~~adequate knowledge to use and apply restricted agricultural~~
 8 ~~pesticides and the justification for their use on commercial~~
 9 ~~crops, land or livestock. Restricted pesticides may not be~~
 10 ~~utilized by farm applicators or their employees except for~~
 11 ~~the purpose of producing or protecting any agricultural~~
 12 ~~commodity on property owned, leased, or rented, or as~~
 13 ~~provided in (6) of this section.~~

14 (3) Farm applicators shall qualify for the certificate
 15 or permit by either passing a written examination or
 16 attending a training course approved by the department with
 17 or without an ungraded quiz. The examination or course shall
 18 include practical knowledge as the ability to:

19 (a) recognize common pests to be controlled and damage
 20 caused by them;

21 (b) read and understand the label and labeling
 22 information including the common name of the pesticide(s)
 23 applied; pest(s) to be controlled; timing and methods of
 24 application; safety precautions; any preharvest or reentry
 25 restrictions; and any specific disposal procedures.

1 (c) apply pesticides in accordance with label
 2 instructions and warnings, including the ability to prepare
 3 the proper concentration of pesticides to be used under
 4 particular circumstances taking into account such factors as
 5 area to be covered, speed at which application equipment
 6 will be driven, and the quantity dispersed in a given period
 7 of operation;

8 (d) recognize local environmental situations that must
 9 be considered during application to avoid contamination; and

10 (e) recognize poisoning symptoms and procedures to
 11 follow in case of a pesticide accident.

12 (4) The department may require farm applicators to
 13 attend a mandatory training session and pass a written
 14 examination for those restricted pesticides which are
 15 extremely toxic or for which an effective antidote is not
 16 available. The department may require farm applicators
 17 handling these pesticides to maintain use records.

18 (5) Farm applicators having verified reading
 19 disabilities may become certified to use up to two
 20 restricted use pesticides by passing a specific oral
 21 examination on the particular pesticide(s) if the applicator
 22 documents that a certified applicator in the immediate
 23 vicinity can advise him.

24 (6) Provisions of this act relating to licensing of
 25 farm applicators shall not apply to any farm applicator

1 applying nonrestricted pesticides on his own land, or on
2 lands of his neighbor's; ~~PROVIDED~~, provided that he:

3 (a) He operates farm property and operates and
4 maintains pesticide application equipment primarily for his
5 own use;

6 (b) He is not regularly engaged in the business of
7 applying pesticides for hire and ~~that he~~ does not publicly
8 hold himself out as a pesticide applicator;

9 (c) He operates his pesticide application equipment
10 only in the vicinity of his own property and for the
11 accommodation of his immediate neighbors."

12 Section 9. Section 27-230, R.C.M. 1947, is amended to
13 read as follows:

14 "27-230. Revocation of licenses and permits. (1) The
15 department of agriculture shall establish the policy and
16 procedures on the revocation of licenses or permits. The
17 department of agriculture may refuse to grant, renew, or may
18 revoke a license or permit, as the case may require, when
19 the department of agriculture is satisfied that the licensee
20 or holder of a permit is not qualified to sell, use, or
21 apply pesticides under the conditions in the locality in
22 which he operates or has operated, or that he has committed
23 any of the following acts, each of which is declared to be a
24 violation of this act:

25 (4) (a) ~~Made~~ made false or fraudulent claims or

1 recommendations through any media, misrepresenting the
2 effect of materials or methods to be utilized;

3 (2) (b) ~~Applied~~ applied unapproved or illegal
4 materials;

5 (3) (c) ~~Operate~~ operated in a faulty, careless, or
6 negligent manner;

7 (4) (d) ~~Operated~~ operated faulty or unsafe equipment;

8 (5) (e) ~~Refused~~ refused or neglected to comply with the
9 provisions of this act, the rules ~~and regulations~~ adopted
10 hereunder, or of any lawful order of the department of
11 agriculture;

12 (6) (f) ~~Refused~~ refused or neglected to keep and
13 maintain the records required by this act, or to make
14 reports when and as required;

15 (7) (g) ~~Made~~ made false or fraudulent records or
16 reports;

17 (8) (h) ~~Operated~~ operated equipment for the commercial
18 application of a pesticide without having a license or
19 permit;

20 (9) (i) ~~Used~~ used fraud or misrepresentation in making
21 an application for a license or permit or renewal of a
22 license or permit;

23 (j) used or applied a registered pesticide
24 inconsistent with its labeling or the label or the
25 department restrictions on the use of that pesticide.

1 (2) Decisions of the department of agriculture
2 relating to the issuing of licenses or permits may be
3 appealed."

4 Section 10. Section 27-231, R.C.M. 1947, is amended to
5 read as follows:

6 "27-231. Government agencies. (1) All state agencies,
7 municipal corporations, or any other governmental agency
8 shall be subject to the provisions of this act and rules
9 adopted thereunder concerning the application or sale of
10 pesticides. Applicators and operators ~~operating equipment~~
11 ~~for the application of~~ applying pesticides ~~used by any state~~
12 and dealers selling pesticides for agencies, municipal
13 corporations, or any governmental agencies shall be subject
14 to the provisions of ~~sections 9, 10, 11 and 12~~ [27-221,
15 27-222, 27-223, ~~and 27-224, 27-225, and 27-226~~] ~~of this act~~
16 and the department of agriculture shall issue a limited
17 commercial applicator's, ~~or operator's, or dealer's~~ license
18 without a fee which shall be valid only when such
19 applicators, ~~and operators, and dealers~~ are applying or
20 selling pesticides for such agencies. Provided, that the
21 jurisdictional health officer, state veterinarian, their
22 duly authorized representatives, or governmental research
23 personnel are exempt from this licensing requirement when
24 applying pesticides to experimental areas."

25 Section 11. Section 27-232, R.C.M. 1947, is amended to

1 read as follows:

2 "27-232. Liability. The department of agriculture
3 shall ~~within two (2) years after the effective date of this~~
4 ~~act,~~ annually require from each commercial pesticide
5 applicator proof of financial responsibility in amounts to
6 be determined under ~~such rules and regulations as were~~
7 promulgated by the department of agriculture."

8 Section 12. Section 27-234, R.C.M. 1947, is amended to
9 read as follows:

10 "27-234. Rules and regulations. (1) The department of
11 agriculture may adopt by reference without a public hearing
12 regulations adopted under the federal Insecticide,
13 Fungicide, and Rodenticide Act, as amended. The department
14 may, after a public hearing, adopt all rules and regulations
15 necessary to carry out this act.

16 (2) The rules may prescribe methods of:

17 (a) ~~Registration~~ registration, application, use or
18 restricting use, prohibiting use, offering or exposing for
19 sale, any pesticide;

20 (b) ~~Determining~~ determining whether pesticides are
21 highly toxic to man;

22 (c) ~~Determining~~ determining standards of coloring or
23 discoloring for pesticides, and subjecting pesticides to the
24 requirements of ~~section~~ 27-218;

25 (d) ~~Licensing~~ licensing commercial applicators and

1 operators, dealers, ~~retailers~~, establishing methods of
 2 record keeping for applicators, operators, ~~and~~ dealers, ~~and~~
 3 ~~retailers~~, and providing for the review of the records by
 4 the department of agriculture's authorized agent and the
 5 submission of the records to the department of agriculture
 6 upon written request;

7 (e) ~~Issuing~~ issuing farm applicator special use
 8 permits and the maintenance and submission of records by
 9 farm applicators issued special use permits;

10 (f) ~~Collection~~ collection, examination, and standard
 11 deviation from guarantee analysis and umpire analysis of
 12 pesticides and devices;

13 (g) ~~Operating~~ operating and maintaining equipment used
 14 by applicators;

15 (h) ~~Developing~~ developing examinations which shall be
 16 held periodically throughout the state;

17 (i) ~~Establishing~~ establishing the form and content of
 18 all applications for licenses and permits;

19 (j) ~~Designating~~ designating pesticides that may be
 20 sold at retail for home, yard, garden, and lawn use. The
 21 department of agriculture may also limit retail sale of
 22 pesticides, up to a specific number of pounds or gallons and
 23 concentration which would be sublethal to humans and animals
 24 if small amounts of it were accidentally swallowed, inhaled,
 25 sprayed, or dusted on the skin.

1 (k) ~~Revoking~~ revoking licenses and permits;

2 (l) ~~Registering~~ registering or controlling any spray
 3 adjuvant, such as a wetting agent, spreading agent, deposit
 4 builder, adhesive, emulsifying agent, deflocculating agent,
 5 water modifier, or similar agent with or without toxic
 6 properties of its own intended to be used with any other
 7 pesticide as an aid to the application or effect of that
 8 other pesticide, whether or not distributed in a package or
 9 container separate from that of a pesticide with which it is
 10 to be used;

11 (n) ~~Registering~~ registering pesticide fertilizer and
 12 other chemical blends or, instead of registration,
 13 establishing licensing, inspection, and fees for blending
 14 plants;

15 (n) ~~Establishing~~ establishing registration procedures
 16 for devices with a fee not to exceed ~~five dollars~~ (\$5) per
 17 type of device, specifying classes of devices to be
 18 registered and providing for additional requirements.

19 (3) ~~(a) Where~~ Whenever the department of agriculture
 20 finds that those rules ~~and regulations~~ are necessary to
 21 carry out the purposes and intent of this act, the rules ~~and~~
 22 ~~regulations~~ may relate to the time, place, manner, and
 23 method of registration, application, or selling of the
 24 pesticides, may restrict or prohibit use of pesticides in
 25 the state or in designated areas during specified periods of

1 time and shall encompass all reasonable factors which the
2 department of agriculture considers necessary to prevent
3 damage or injury to:

- 4 ~~(a)(i)~~ Persons persons, animals, or pollinating
5 insects from the effect of drift or careless application;
6 ~~(b)(iii)~~ The the environment;
7 ~~(c)(iii)~~ Plants plants, including forage plants;
8 ~~(d)(iv)~~ Wildlife wildlife;
9 ~~(e)(v)~~ Fish fish and other aquatic life.

10 (b) In issuing the ~~regulations~~ rules, the department
11 of agriculture shall give consideration to pertinent
12 research findings and recommendations of other agencies of
13 this state or of the federal government.

14 (4) If the department of agriculture finds that an
15 emergency exists which requires immediate action with regard
16 to the registration, use, or application of pesticides, the
17 department of agriculture may, without notice or hearing,
18 issue necessary orders, or rules, ~~or regulations~~ to protect
19 the public health, welfare, and safety. An order, or rule,
20 ~~or regulation~~ issued under this subsection is effective for
21 a THE period ~~no longer than sixty (60) 120~~ days after it is
22 issued PRESCRIBED BY THE ADMINISTRATIVE PROCEDURE ACT. If
23 the department of agriculture determines that the emergency
24 order, or rule, ~~or regulation~~ should remain in effect, a
25 public hearing under section 27-235 shall be held within the

1 ~~sixty (60) day 120 day ABOVE~~ period to determine whether the
2 order, or rule, ~~or regulation~~ should be adopted by the
3 department of agriculture.

4 (5) All rules, ~~regulations~~, and orders issued by the
5 department of agriculture shall be in writing, shall be
6 entered in full in books to be kept by the department of
7 agriculture for that purpose, shall be indexed, and shall be
8 public records open for inspection at all times during
9 reasonable office hours. Except for orders establishing or
10 changing rules of practice and procedure, all orders made
11 and published by the department of agriculture shall include
12 and be based upon written findings of fact. A copy of any
13 rule, ~~regulation~~, or order certified by the department of
14 agriculture ~~or its secretary~~ shall be received in evidence
15 in all courts of this state with the same effect as the
16 original."

17 Section 13. Section 27-235, R.C.M. 1947, is amended to
18 read as follows:

19 "27-235. Hearings Administrative procedures. ~~(4)~~
20 ~~Public hearings. Except as provided in section 27-234, no~~
21 ~~rule or regulation shall be adopted by the department of~~
22 ~~agriculture without a public hearing upon at least~~
23 ~~twenty one (21) days' notice. The public hearing shall be~~
24 ~~held at such time and place as may be prescribed by the~~
25 ~~department of agriculture, and any interested person is~~

1 ~~entitled to be heard.~~

2 ~~(a) Notice of public hearing on the adoption of rules~~
3 ~~or regulations shall be made by the department of~~
4 ~~agriculture as follows:~~

5 ~~(i) Informal notice of the hearing will be sent to all~~
6 ~~registrants of pesticides, to all licensed pesticide~~
7 ~~applicators, including farm applicators with restricted use~~
8 ~~permits, and to all licensed pesticide dealers or retailers,~~
9 ~~provided that the notice shall be sent only to the~~
10 ~~respective group or groups directly affected by the rules~~
11 ~~and regulations. Farm applicators of nonrestricted~~
12 ~~pesticides will be given informal notice through farm~~
13 ~~groups, organizations or associations and by means of farm~~
14 ~~publications.~~

15 ~~(ii) In all cases of public hearings for adoption of~~
16 ~~rules and regulations, notice thereof shall be published in~~
17 ~~five (5) newspapers of general circulation in the state once~~
18 ~~a week for two (2) successive weeks and the department of~~
19 ~~agriculture shall issue appropriate press releases.~~

20 ~~(iii) Notices and publications shall be issued in the~~
21 ~~name of the state of Montana, shall be signed by the~~
22 ~~director of agriculture, shall specify the style and number~~
23 ~~of the proceedings, and the time and place of the hearing,~~
24 ~~and shall briefly state the purpose of the proceeding and~~
25 ~~method of procedure.~~

1 ~~(iv) Proof of service by publication shall be made by~~
2 ~~the affidavit of the printer or publisher of the newspaper.~~
3 ~~Proof of service by mailing shall be made by the affidavit~~
4 ~~of the director of agriculture.~~

5 ~~(2) Complaints. In all cases where a complaint has~~
6 ~~been made by the department of agriculture or its authorized~~
7 ~~agents or by any person that any provision of this act or~~
8 ~~any rule, regulation, or order of the department of~~
9 ~~agriculture is being or has been violated, notice of the~~
10 ~~hearing to be held on such complaint shall be given to the~~
11 ~~interested persons.~~

12 ~~(3) Except as otherwise in this act provided, the~~
13 ~~department of agriculture may act upon the petition of any~~
14 ~~interested person. On the filing of a petition concerning~~
15 ~~any matter within the jurisdiction of the department of~~
16 ~~agriculture, the department of agriculture shall promptly~~
17 ~~fix a date for a hearing thereon and shall cause notice of~~
18 ~~the hearing to be given. The hearing shall be held without~~
19 ~~undue delay after the filing of the petition. The department~~
20 ~~of agriculture shall enter its order and findings on~~
21 ~~complaints and petitions within thirty (30) days after the~~
22 ~~hearing. The administration of this act and all rule making~~
23 ~~and hearing functions under the act shall be conducted in~~
24 ~~accordance with the Administrative Procedure Act."~~

25 Section 14. Section 27-240, R.C.M. 1947, is amended to

1 read as follows:

2 "27-240. Advisory council. (1) The director of
3 agriculture may appoint an advisory council to study and
4 make recommendations on special pesticide problems in the
5 state. The council shall consist of individuals
6 representing, equally, controlled industry, agriculture,
7 health, and wildlife. Governmental personnel, university
8 personnel not included, may not be represented on the
9 council. Governmental personnel shall meet with the council
10 in an advisory capacity when requested by the council. The
11 council may not exceed ~~twelve~~ (12) members. The director of
12 agriculture shall establish the time period in which the
13 council shall exist. The time period may not exceed ~~two~~ (2)
14 years. The department of agriculture shall provide the
15 necessary administrative, secretarial, and any other
16 essential items to the council.

17 (2) Each member of the council shall receive as
18 compensation for his services the sum of ~~twenty-five dollars~~
19 ~~(\$25)~~ per day for each day actually spent in the performance
20 of his duties and shall be reimbursed for travel expenses
21 as provided for in ~~sections~~ 59-538, 59-539, and 59-801.

22 (3) The council may request that the department of
23 agriculture hold a public hearing ~~as outlined in section~~
24 ~~27-235~~, to assist it in gathering factual data and
25 information on the special problems assigned it."

1 Section 15. Section 27-242, R.C.M. 1947, is amended to
2 read as follows:

3 "27-242. Cooperation with other agencies. (1) The
4 department of agriculture may cooperate with agencies of
5 this state or its subdivisions or with any agency of any
6 other state or the federal government for the purpose of
7 carrying out the provisions of this act and for securing
8 uniformity of ~~regulations rules and entering into reciprocal~~
9 licensing and certification agreements with other states.

10 (2) THE DEPARTMENT AND THE DEPARTMENT OF HEALTH AND
11 ENVIRONMENTAL SCIENCES SHALL ENTER INTO A MEMORANDUM OF
12 AGREEMENT CONCERNING THE INSPECTION, REGULATION, AND
13 RESPONSIBILITIES OF PERSONS OR ACTIVITIES THAT MAY BE
14 INVOLVED IN THE MANAGEMENT, DISPOSAL, STORAGE,
15 TRANSPORTATION, TREATMENT, RECYCLING OR RECOVERY OF
16 HAZARDOUS WASTES AS DEFINED IN TITLE 69, CHAPTER 40, AND THE
17 DISPOSAL OF SOLID WASTES AS DEFINED IN TITLE 69, CHAPTER
18 40."

19 Section 16. Section 27-243, R.C.M. 1947, is amended to
20 read as follows:

21 "27-243. Enforcement. In enforcing this act, the
22 department of agriculture or its duly authorized agents,
23 upon reasonable cause, ~~shall have the authority to~~ may enter
24 upon private and public premises and property with a warrant
25 or consent of the inhabitant or owner to inspect or

1 investigate at reasonable time:

- 2 (1) ~~Equipment~~ equipment subject to this act;
- 3 (2) ~~Actual~~ actual or reported adverse effects caused
- 4 by pesticides in humans, crops, animals, land, or other
- 5 property; ~~or~~
- 6 (3) ~~Records~~ records on the selling or use of
- 7 pesticides and the person's stock of pesticides;
- 8 (4) storage and disposal areas OF PESTICIDES BY
- 9 PERSONS LICENSED OR REGULATED UNDER THIS ACT;
- 10 (5) sample pesticides being applied or to be applied;
- 11 or
- 12 (6) the use and application of a pesticide."

13 Section 17. Section 27-245, R.C.M. 1987, is amended to

14 read as follows:

15 "27-245. Violation. (1) Any person convicted of

16 violating any of the provisions of this act or the rules ~~and~~

17 ~~regulations~~ issued thereunder or who ~~may~~ misrepresent,

18 impede, obstruct, hinder, or otherwise prevent or attempt to

19 prevent the department of agriculture or its duly authorized

20 agent in performance of its duty in connection with the

21 provisions of this act, shall be adjudged guilty of a

22 misdemeanor.

23 (2) The department of agriculture or its authorized

24 representative is hereby authorized to apply to the district

25 court of the county or any county wherein a violation is

1 about to occur or has occurred to grant a temporary or

2 permanent injunction restraining any person from violating

3 or continuing to violate any of the provisions of this act

4 or any rule ~~or regulation~~ promulgated under the act

5 notwithstanding the existence of other remedies of law. The

6 injunction is to be issued without bond.

7 (3) Nothing in this act is to be construed as

8 requiring the department of agriculture or its authorized

9 agent to report for prosecution or for the institution of

10 seizure proceedings, minor violations of the act when it

11 believes the public interest will be best served by other

12 remedial action or by a suitable notice of warning in

13 writing; nor is any part of this act to be construed to

14 apply to common carriers transporting shipments tendered to

15 them by the general public.

16 (4) Notwithstanding any other provisions of this

17 section, if any person, with intent to defraud, uses or

18 reveals information relative to formulas of products

19 acquired under the authority of ~~section 5 [27-217] of this~~

20 ~~act~~, he shall, upon conviction, be fined not more than ~~five~~

21 ~~hundred dollars~~ (\$500) or imprisoned for not more than ~~one~~

22 ~~(1)~~ year or both.

23 (5) In all prosecutions under the registration section

24 involving the composition of a lot of pesticide, a certified

25 copy of the official analysis signed by the department of

1 agriculture's authorized chemist shall be accepted as prima
2 facie evidence of the composition."

3 Section 18. Severability. If a part of this act is
4 invalid, all valid parts that are severable from the invalid
5 part remain in effect. If a part of this act is invalid in
6 one or more of its applications, the part remains in effect
7 in all valid applications that are severable from the
8 invalid applications.

9 Section 19. Repealer. Sections 27-236, 27-237, and
10 27-238, H.C.M. 1947, are repealed.

11 Section 20. Effective date. This act is effective on
12 its passage and approval.

-End-

March 29, 1977

HOUSE AGRICULTURE, LIVESTOCK AND IRRIGATION COMMITTEE AMENDMENTS
TO SENATE BILL NO. 124.

Third reading (blue) copy be amended as follows:

1. Amend page 36, section 15, line 16.

Following: "WASTES"

Strike: "AS DEFINED IN TITLE 69, CHAPTER 40,"

2. Amend page 36, section 15, line 17.

Following: "WASTES"

Strike: "AS DEFINED IN TITLE 69, CHAPTER 40"

3. Amend page 36.

Following: line 18

Insert: "(3) For the purpose of this section solid waste means all putrescible and nonputrescible wastes including but not limited to garbage; rubbish; refuse; hazardous wastes; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood by-products and inert materials. Solid waste does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of state lands, slash and forest debris regulated under laws administered by the department of natural resources and conservation, or marketable wood by-products.

(4) For the purpose of this section hazardous waste means any waste or combination of wastes of a solid, liquid, contained gaseous, or semi-solid form which may cause or contribute to an increase in mortality or an increase in serious illness, taking into account the toxicity of the waste, its persistence and degradability in nature, its potential for assimilation or concentration in tissue, and other factors that may otherwise cause or contribute to adverse acute or chronic effects on the health of persons or other living organisms. Hazardous wastes include but are not limited to those which are toxic, radioactive, corrosive, flammable, irritants, strong sensitizers, or which generate pressure through decomposition, heat, or other means, excluding wood chips and wood used for manufacturing or fuel purposes."

1 SENATE BILL NO. 124

2 INTRODUCED BY GRAHAM

3 BY REQUEST OF THE DEPARTMENT OF AGRICULTURE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE PESTICIDE
6 LAW RELATING TO DEFINITIONS; REGISTRATION AND EMBARGO OF
7 PRODUCTS; LICENSING OF APPLICATORS, DEALERS, AND RETAILERS;
8 CERTIFICATION OF FARM APPLICATORS; REVOCATION OF LICENSES
9 AND PERMITS; RULE MAKING AND ADMINISTRATIVE PROCEDURES;
10 ADVISORY COUNCIL; AGENCY COOPERATION; ENFORCEMENT AND
11 VIOLATIONS; AMENDING SECTIONS 27-216, 27-217, 27-220,
12 27-221, 27-222, 27-225, 27-227, 27-228, 27-230, 27-231,
13 27-232, 27-234, 27-235, 27-240, 27-242, 27-243, AND 27-245,
14 R.C.M. 1947; REPEALING SECTIONS 27-236, 27-237, AND 27-238,
15 R.C.M. 1947; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18 Section 1. Section 27-216, R.C.M. 1947, is amended to
19 read as follows:

20 "27-216. Definitions. Unless the context requires
21 otherwise, in this act:

22 (1) "Active ingredient" means:

23 (a) ~~in in~~ the case of a pesticide other than a plant
24 regulator, defoliant, or desiccant, an ingredient which will
25 prevent, destroy, repel, alter life processes, or mitigate

1 insects, nematodes, fungi, rodents, weeds, or other pests;

2 (b) ~~in in~~ the case of a plant regulator, an ingredient
3 which acts upon the physiology to accelerate or retard the
4 rate of growth or rate of maturation or otherwise alter the
5 normal processes of ornamental or crop plants or their
6 produce;

7 (c) ~~in in~~ the case of a defoliant, an ingredient which
8 will cause the leaves or foliage to drop from a plant;

9 (d) ~~in in~~ the case of a desiccant, an ingredient which
10 will artificially accelerate the drying of plant tissue.

11 (2) "Adulterated" applies to a pesticide if its
12 strength of purity falls below the professed standard or
13 quality as expressed on labeling or under which it is sold,
14 or if any substance has been substituted wholly or in part
15 for the pesticide, or if any valuable constituent of the
16 pesticide has been wholly or in part abstracted.

17 (3) "Antidote" means the most practical immediate
18 treatment in case of poisoning and includes ~~first-aid~~
19 first-aid treatment.

20 (4) "Applicator" means a person who applies pesticides
21 by any method.

22 (5) "Commercial applicator" means a person who by
23 contract or for hire applies by aerial, ground, or hand
24 equipment pesticides to land, plants, seed, animals, waters,
25 structures, or vehicles.

1 (6) "Commercial operator" means a person who applies
2 pesticides under the supervision of a commercial applicator.

3 (7) "Farm applicator" means a person applying
4 pesticides to his own crops or land.

5 (8) "Public utility applicator" means a person
6 applying pesticides to land and structures owned or leased
7 by a public utility.

8 (9) "Beneficial insects" means those insects which, in
9 the course of their life cycle, carry, transmit, or spread
10 pollen to and from vegetation, act as parasites and
11 predators on other insects, or are otherwise beneficial.

12 (10) "Crop" means a food intended for human or animal
13 consumption or a fiber product.

14 (11) "Dealer" means a person who sells, wholesales,
15 offers, or exposes for sale, exchanges, barter, or gives
16 away within this state any pesticide except those pesticides
17 which are to be used for home, yard, garden, home orchard,
18 shade trees, ornamental trees, bushes, and lawn.

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

22 (13) "Desiccant" means a substance or mixture of
23 substances for artificially accelerating the drying of plant
24 tissue.

25 (14) "Device" means any instrument or contrivance

1 intended for destroying, controlling, repelling, or
2 mitigating pests but not equipment used for the application
3 of pesticides.

4 (15) "Environment" means the soil, air, water, plants,
5 and animals.

6 (16) "Equipment" means equipment used in the actual
7 application of pesticides, including aircraft, ground
8 sprayers and dusters, hand-held applicators, and water
9 surface equipment.

10 (17) "Fungi" means all nonchlorophyll-bearing
11 thallophytes (all nonchlorophyll-bearing plants of a lower
12 order than mosses and liverworts) as, for example, rusts,
13 smuts, mildews, molds, yeasts, and bacteria, except those
14 resident on or in living man or other animals.

15 (18) "Fungicide" means a substance or mixture of
16 substances for preventing, destroying, repelling, or
17 mitigating any fungus.

18 (19) "Herbicide" means a substance or mixture of
19 substances for preventing, destroying, repelling, or
20 mitigating any weed.

21 (20) "Inert ingredient" means an ingredient which is
22 not an active ingredient.

23 (21) "Ingredient statement" means either:

24 (a) A statement of the chemical name and common name
25 and percentage of each active ingredient, together with the

1 total percentage of the inert ingredients, in the pesticide;
2 or

3 (b) A statement of the chemical name and common name
4 of each active ingredient, together with the name of each
5 and total percentage of the inert ingredients, if any, in
6 the pesticide. However, subsection (21)(a) of this section
7 applies if the preparation is highly toxic to man,
8 determined as provided in section 27-234, and if the
9 pesticide contains arsenic in any form, the ingredient
10 statement shall also include a statement of the percentage
11 of total and water-soluble arsenic, each calculated as
12 elemental arsenic.

13 (22) "Insect" means any of the numerous small
14 invertebrate animals generally having the body more or less
15 obviously segmented, for the most part belonging to the
16 class insecta, comprising six-legged, winged and wingless
17 forms, such as beetles, bugs, wasps, flies, and keds, and to
18 other classes of ~~entropods~~ arthropods whose members are
19 wingless and usually have more than six legs, such as
20 spiders, mites, ticks, centipedes, and wood lice.

21 (23) "Insecticide" means any substance or mixture of
22 substances for preventing, destroying, repelling, or
23 mitigating any insects present in any environment.

24 (24) "Label" means the written, printed, or graphic
25 matter on or attached to the pesticide or device, or to its

1 immediate container, and any outside container or wrapper of
2 any retail package of the pesticide or device.

3 (25) "Labeling" means all labels and other written,
4 printed, or graphic matter:

5 (a) Upon upon the pesticide or device or any of its
6 containers or wrappers;

7 (b) ~~Accompanying~~ accompanying the pesticide or device
8 at any time;

9 (c) ~~To to~~ which reference is made on the label or in
10 literature accompanying the pesticide or device, except when
11 accurate, nonmisleading reference is made to current
12 official publications of the United States environmental
13 protection agency; departments of agriculture, interior, or
14 health, education, and welfare; state experiment stations; state
15 agricultural colleges; or other similar federal
16 institutions or official agencies of this state or other
17 states authorized by law to conduct research in the field of
18 pesticides.

19 (26) "Misbranded" applies:

20 (a) ~~To to~~ a pesticide or device if its labeling bears
21 any statement, design, or graphic representation relative to
22 its ingredients which is false or misleading.

23 (b) ~~To to~~ a pesticide if:

24 (i) ~~It it~~ is an imitation of or is offered for sale
25 under the name of another pesticide;

1 (ii) ~~its~~ its labeling bears any reference to
2 registration under this act;

3 (iii) ~~The~~ the labeling accompanying it does not contain
4 instructions for use necessary and, if complied with,
5 adequate for the protection of the public;

6 (iv) ~~the~~ the label does not contain a warning or
7 caution statement necessary and, if complied with, adequate
8 to prevent injury to living man or undue hazard to the
9 environment;

10 (v) ~~The~~ the label of the retail package which is
11 presented or displayed under customary conditions of
12 purchase does not bear an ingredient statement on that part
13 of the immediate container and on the outside or on a
14 wrapper through which the ingredient statement on the
15 immediate container cannot be clearly read;

16 (vi) ~~Any~~ any word, statement, or other information
17 required to appear on the labeling is not prominently placed
18 on the labeling with a conspicuousness (as compared with
19 other words, statements, designs, or graphic matter in the
20 labeling) and in terms rendering it likely to be read and
21 understood by the ordinary individual under customary
22 conditions of purchase and use;

23 (vii) ~~In~~ in the case of an insecticide, nematocide,
24 fungicide, or herbicide, when used as directed or in
25 accordance with commonly recognized practice, it is

1 injurious to living men or other vertebrate animals or
2 vegetation, except weeds, to which it is applied, or to the
3 person applying the pesticide;

4 (viii) ~~In~~ in the case of a plant regulator, defoliant,
5 or desiccant, when used as directed, it is injurious to man
6 or other vertebrate animals or vegetation to which it is
7 applied, or to the person applying the pesticide. Physical
8 or physiological effects on plants or parts of plants are
9 not injurious when this is the purpose for which the plant
10 regulator, defoliant, or desiccant is applied in accordance
11 with the label claims and recommendations.

12 (27) "Nematocide" means any substance or mixture of
13 substances intended for preventing, destroying, repelling,
14 or mitigating nematodes.

15 (28) "Nematodes" ~~is~~ is "nemas" ~~is~~ is or "eelworms" means
16 invertebrate animals of the phylum nemathelminthes and class
17 nematoda, that is, unsegmented round worms with elongated,
18 fusiform, or sac-like bodies covered with cuticle, and
19 inhabiting soil, water, animals, plants, or plant parts.

20 (29) "Person" means any natural person, individual,
21 firm, partnership, association, corporation, company,
22 joint-stock association, body politic, or organized group of
23 persons whether incorporated or not, and any trustee,
24 receiver, assignee, or similar representative.

25 (30) "Pest" includes any insect, rodent, nematode,

1 snail, slug, weed, and any form of plant or animal life or
 2 virus, except virus on or in living man or other animal,
 3 which is normally considered a pest or which the department
 4 declares a pest.

5 (31) "Pesticide" means any:

6 (a) ~~Substance~~ substance or mixture of substances,
 7 including any living organism or any product derived from a
 8 living organism, intended for preventing, destroying,
 9 controlling, repelling, altering life processes, or
 10 mitigating any insects, rodents, nematodes, fungi, weeds,
 11 and other forms of plant or animal life or viruses, except
 12 viruses on or in living man or other animals, that may
 13 infect, or be detrimental to persons, vegetation, crops,
 14 animals, structures, or households or be present in any
 15 environment or which the department declares a pest;

16 (b) ~~Substance~~ substance or mixture of substances
 17 intended for use as a plant regulator, defoliant, or
 18 desiccant; and

19 (c) ~~Other~~ other substances intended for that use named
 20 by the department by a rule adopted by it.

21 (32) "Plant regulator" means any substance or mixture
 22 of substances affecting the rate of growth or rate of
 23 maturation or for otherwise altering physiological condition
 24 of plants, but does not include substances to the extent
 25 that they are intended as plant nutrients, trace elements,

1 nutritional chemicals, plant inoculants, and soil
 2 amendments.

3 (33) "Registrant" means the person registering any
 4 pesticide or device under the provisions of this act.

5 (34) "Restricted use pesticide" means any pesticide,
 6 including highly toxic pesticides, which the department of
 7 agriculture has found and determined, subsequent to a
 8 hearing, to be injurious when used in accordance with
 9 registration, label, directions, and cautions to persons,
 10 beneficial insects, animals, crops, or the environment other
 11 than the pests it is intended to prevent, destroy, control,
 12 or mitigate.

13 (35) "Retailer" means any person who sells, offers, or
 14 exposes for sale, exchanges, barter, or gives away within
 15 this state any pesticide for home, yard, lawn, and garden
 16 use, in quantities or concentrations as determined by the
 17 department of agriculture.

18 (36) "Weed" means any plant or part of the plant which
 19 grows where not wanted."

20 Section 2. Section 27-217, R.C.M. 1947, is amended to
 21 read as follows:

22 "27-217. Registration. (1) Every pesticide
 23 distributed, sold, or offered for sale within this state or
 24 delivered for transportation or transported in intrastate
 25 commerce or between points within this state, shall be

1 registered with the department of agriculture. The
 2 registration shall be renewed annually by the manufacturer,
 3 or formulators, or distributor of the pesticide. The
 4 department of agriculture shall register all approved
 5 pesticides and those registered are subject to registration
 6 fees and all other provisions of this act. All registrations
 7 of pesticides expire on December 31 following the date of
 8 issuance, unless otherwise terminated.

9 (2) The applicant for registration shall file with the
 10 department of agriculture a statement including:

11 (a) The ~~the~~ name and address of the applicant and the
 12 name and address of the person whose name will appear on the
 13 label, if other than the registrant;

14 (b) ~~A~~ a complete copy of the label of the pesticide,
 15 the United States environmental protection agency
 16 registration number, if the pesticide is so registered, and
 17 a statement of all claims to be made for it, including
 18 directions for use;

19 (c) The ~~the~~ trade and chemical name of the pesticide;

20 (d) ~~If~~ if requested by the department of agriculture,
 21 a full description of tests made and the results upon which
 22 the claims are based. In the case of renewal of
 23 registration, a statement shall be required only with
 24 respect to information which is different from that
 25 furnished when the pesticide was registered or last

1 reregistered.

2 (3) Any pesticide imported into this state, which is
 3 subject to the provisions of any federal act providing for
 4 the registration of pesticides and which has been registered
 5 under the provisions of a federal act, shall be registered
 6 in the state. However, the state may restrict the use and
 7 application of the pesticide by type of applicator, time,
 8 and place and may establish special registrations of
 9 pesticides as outlined in subsection ~~(9)~~ (8) of this section
 10 and section 27-234(3). The annual registration fee must also
 11 be paid, and registration information required by the
 12 department of agriculture must be provided.

13 (4) The applicant shall pay an annual fee of ~~ten~~
 14 ~~dollars--(\$10)~~ for each pesticide registered. A registration
 15 fee is not required to register an experimental use permit.
 16 Fees collected shall be deposited in the state treasury to
 17 the credit of the general fund.

18 (5) The department of agriculture may require the
 19 submission of the complete formula and certified analytical
 20 standards of any pesticide. If it appears to the department
 21 of agriculture that the composition of the article warrants
 22 the proposed claims for it and if the article and its
 23 labeling and other material required to be submitted comply
 24 with the requirements of section 27-218, it shall register
 25 the article.

1 (6) If it does not appear to the department of
 2 agriculture that the article warrants the proposed claims
 3 for it or if the article and its labeling and other material
 4 required to be submitted do not comply with this chapter, it
 5 shall notify the applicant of the manner in which the
 6 articles, labeling, or other material required to be
 7 submitted fails to comply with the act so as to afford the
 8 applicant an opportunity to make the necessary corrections.
 9 ~~If upon receipt of the notice, the applicant does not make~~
 10 ~~the corrections the applicant does not make the corrections~~
 11 ~~upon receipt of the notice, the department of agriculture~~
 12 ~~may refuse to register the article. The department of~~
 13 ~~agriculture in accordance with the procedures specified by~~
 14 ~~the department of agriculture, may suspend or cancel the~~
 15 ~~registration of a pesticide whenever it does not appear that~~
 16 ~~the article or its labeling comply with this act. When an~~
 17 ~~application for registration is refused or the department of~~
 18 ~~agriculture proposes to suspend or cancel a registration,~~
 19 ~~the registrant may appeal to the department of agriculture~~
 20 ~~department's as provided for in section 27-236 decision.~~

21 ~~{7} The department of agriculture shall review all~~
 22 ~~registered pesticides at least every two {2} years.~~

23 ~~{0}[1]~~ Registration is not required in the case of a
 24 pesticide shipped from one plant in this state to another
 25 plant in this state by the same person.

1 ~~{9}[B]~~ (a) The departments of health and environmental
 2 sciences, agriculture, and fish and game shall review all
 3 applications for registration of a ~~pesticide or device~~
 4 ~~submitted to the department of agriculture an experimental~~
 5 ~~use permit OR a registration for special local needs, or~~
 6 ~~registration of a device. The departments shall utilize the~~
 7 ~~same requirements and standards for reviewing registrations~~
 8 ~~as established by the Federal Insecticide, Fungicide, and~~
 9 ~~Rodenticide Act, as amended, and regulations adopted~~
 10 ~~thereunder.~~ The department of agriculture shall provide the
 11 departments of health and environmental sciences and fish
 12 and game with a complete copy of the application, related
 13 correspondence, and a statement of the department of
 14 agriculture's proposed action on the application. The
 15 departments of health and environmental sciences and fish
 16 and game shall approve or disapprove the application within
 17 ~~three {3} 10~~ days after the receipt of the application. If
 18 the departments of health and environmental sciences,
 19 agriculture, and fish and game are in agreement with the
 20 proposed registration, the department of agriculture shall
 21 ~~proceed with its issue the~~ registration.

22 (b) The department of agriculture shall establish a
 23 time and place for an interagency conference for the
 24 purposes of resolving the registration of any pesticide or
 25 device. If two {2} of the departments approve the proposed

1 registration, the department of agriculture shall proceed
2 with issue the registration.

3 (c) The registrant applying for registration shall be
4 notified as to proposed changes in registration. If the
5 departments cannot resolve the proposed registration
6 following the interagency conference, the registrant may
7 request a joint administrative hearing before the
8 departments of agriculture, health and environmental
9 sciences, and fish and game.

10 (d) Following the interagency conference, and if
11 requested, the administrative hearing, if the proposed
12 registration of a pesticide or device has not been resolved,
13 the department of agriculture shall appoint an advisory
14 council as outlined in section 27-240 to resolve by majority
15 vote the registration of any pesticide. The advisory
16 council's recommendations on the registration shall be
17 accepted by the departments and implemented by the
18 department of agriculture."

19 Section 3. Section 27-220, R.C.M. 1947, is amended to
20 read as follows:

21 "27-220. Embargo. (1) Whenever a duly authorized agent
22 of the department of agriculture finds or has probable cause
23 to believe that any pesticide or device

24 ~~(a)~~ ~~is~~ is adulterated or misbranded;

25 ~~(b)~~ ~~has~~ has not been registered under the provisions

1 of section ~~5-[27-217]~~(5) of this act;

2 ~~(c)~~ ~~fails~~ fails to bear on its label the information
3 required by this act;

4 ~~(d)~~ ~~is~~ is a white powder pesticide and is not colored
5 as required under this act; he shall affix to such article
6 a tag or other appropriate marking, giving notice ~~that such~~
7 ~~pesticide or device is, or is suspected of being adulterated~~
8 ~~or misbranded, not registered, fails to bear the required~~
9 ~~information on the label, is a white powder pesticide and~~
10 ~~not colored as required, and thereof and that such article~~
11 has been detained or embargoed and warning all persons not
12 to remove or dispose of such article by sale or otherwise
13 until permission for removal or disposal is given by such
14 agent or the court. It ~~shall be~~ is unlawful for any person
15 to remove or dispose of such detained or embargoed article
16 by sale or otherwise, without such permission, or to remove
17 or alter the tag or marking.

18 (2) When an article detained or embargoed under
19 ~~section 8-(1)-[subdivision (1) of this section]~~ subsection
20 (1) has been found by such agent to be in violation, if
21 after ~~thirty~~ ~~(30)~~ days the violation has not been resolved,
22 he may petition the district court in whose jurisdiction the
23 article is detained or embargoed for a condemnation of such
24 article. When such agent has found that an article so
25 detained or embargoed is not adulterated or misbranded, he

1 shall remove the tag or other marking.

2 (3) If the court finds that a detained or embargoed
3 article is in violation of ~~section 8-(1)-(subdivision (1)) of~~
4 ~~this section~~ the act or rules adopted thereunder, such
5 article shall after entry of the decree be destroyed at the
6 expense of the claimant thereof, under the supervision of
7 such agent, and all court costs and fees and storage and
8 other proper expenses shall be assessed against the claimant
9 of such pesticide or device or his agent; provided that when
10 the adulteration or misbranding can be corrected by proper
11 labeling or processing of the article, the court, after
12 entry of the decree and after such costs, fees, and expenses
13 have been paid and a good and sufficient bond has been
14 executed, conditioned that upon the proper labeling or
15 processing of such pesticide or device ~~shall be so labeled~~
16 ~~or processed, has been executed~~, may by order direct that
17 such article be delivered to the claimant thereof for such
18 labeling or processing under the supervision of an agent of
19 the department of agriculture. The expense of such
20 supervision shall be paid by claimant. The article shall be
21 returned to the claimant of the pesticide or device on the
22 representation to the court by the department of agriculture
23 that the article is no longer in violation of this act, and
24 that the expenses of such supervision have been paid.*

25 Section 4. Section 27-221, R.C.M. 1947, is amended to

1 read as follows:

2 *27-221. Commercial applicator. (1) It shall be
3 unlawful for any person to engage in the business of
4 applying pesticides for another without a pesticide
5 applicator's license obtained from the department of
6 agriculture. The application shall be accompanied by a fee
7 of ~~ten dollars (\$10)~~. Applicators applying for a dealer or
8 retailer license under this act shall be required to pay
9 only a ~~five dollar (\$5)~~ licensing fee for the dealer or
10 retailer license. The provisions of this section shall not
11 apply to any person employed only to operate any equipment
12 used for the application of any pesticide, and in which the
13 person has no financial interest or other control over such
14 apparatus other than its day-to-day mechanical operation for
15 the purpose of applying any pesticide.

16 (2) Public utility applicators shall be licensed in
17 the same manner as commercial applicators, provided that
18 public utility operators working under public utility
19 applicators are not required to be licensed, except as
20 provided for under section 27-223.

21 (3) Veterinarians licensed as provided in section
22 66-2204 shall not be required to be licensed to apply
23 nonrestricted pesticides, provided that these veterinarians
24 shall register with the department of agriculture each year;
25 provided further that the veterinarians shall be required to

1 meet all other requirements and ~~regulations rules~~ of the
 2 Montana Pesticides Act. The department when ~~adopting~~
 3 ~~regulations shall consider the professional licensing~~
 4 ~~requirements for veterinarians shall consider the~~
 5 professional licensing requirements for veterinarians when
 6 adopting rules."

7 Section 5. Section 27-222, R.C.M. 1947, is amended to
 8 read as follows:

9 "27-222. Application for applicator's license. (1)
 10 Application for a pesticide applicator's license provided
 11 for in section 27-221 shall be made annually to the
 12 department of agriculture before applying pesticides in any
 13 calendar year ~~from the department of agriculture. Provided~~
 14 that pesticide applicators applying for renewal of license
 15 shall do so on or before April MAY 1 of that calendar year.
 16 Any applicator applying for renewal of license after April
 17 MAY 1 shall be assessed a \$10 late licensing fee.

18 (2) If the application is made for a license to engage
 19 in aerial application of pesticides, the applicant shall
 20 first meet all of the requirements of the federal aviation
 21 agency and the department of community affairs to operate
 22 the equipment described in the application."

23 Section 6. Section 27-225, R.C.M. 1947, is amended to
 24 read as follows:

25 "27-225. Dealers. (1) It is unlawful for a dealer to

1 sell, deliver, or have delivered within this state any
 2 pesticide without first procuring a license from the
 3 department of agriculture for each calendar year or portion
 4 thereof. A separate dealer's license and fee shall be
 5 required for each location or outlet from which pesticides
 6 are distributed, sold, held for sale, or offered for sale.
 7 Pesticide fieldmen or salesmen employed directly out of the
 8 same location or outlet and under a licensed dealer, shall
 9 not be required to obtain a license.

10 (2) The dealer shall furnish the department of
 11 agriculture the names and addresses of its fieldmen and
 12 salesmen selling pesticides within the state. The
 13 application for a license shall be accompanied by a fee of
 14 ~~ten dollars (\$10).~~ Dealers applying for renewal of license
 15 shall do so on or before April MAY 1 of that calendar year.
 16 Any dealer applying for renewal of license after April MAY 1
 17 shall be assessed a \$10 late licensing fee.

18 (3) The dealer shall require the purchaser of any
 19 restricted pesticide to exhibit ~~their~~ his license or permit
 20 issued under authority of this act before completing a sale.

21 (4) ~~Licensed dealers shall not be required to obtain a~~
 22 ~~retail noncommercial license or pay the fee; however, all~~
 23 ~~other provisions of section 15-27-227 shall apply. Dealers~~
 24 may make one application for two annual licenses if the
 25 application is accompanied by a \$10 licensing fee for each

1 year of the state biennium.

2 (5) Pharmacists and veterinarians, licensed as
3 provided for in section 66-1506, 66-1507₂ and section
4 66-2204, and certified pharmacies licensed under section
5 66-1508(b), shall not be required to be licensed to sell
6 pesticides, provided that the certified pharmacies and
7 veterinarians shall register with the department of
8 agriculture each year. However, the certified pharmacies and
9 veterinarians shall be required to meet all other
10 requirements concerning the commercial sale of pesticides.
11 The department ~~when adopting regulations~~ shall take into
12 account the professional licensing requirements of
13 pharmacists, certified pharmacies₁ and veterinarians when
14 adopting rules."

15 Section 7. Section 27-227, R.C.M. 1947, is amended to
16 read as follows:

17 "27-227. Retail noncommercial sale of pesticides. ~~(1)~~
18 The department of agriculture is authorized to designate the
19 pesticides that may be sold in this state at retail for
20 home, yard, garden, and lawn use. Only pesticides so
21 designated may be sold at retail. The department of
22 agriculture may also limit the retail sale of such
23 designated pesticides to quantities up to a specific number
24 of ~~pound(s)~~ pounds or ~~gallon(s)~~ gallons and of such
25 concentrations as would be sublethal to humans and animals

1 if small amounts thereof were accidentally swallowed,
2 inhaled, sprayed, or dusted on the skin.

3 ~~(2) Each pesticide retail outlet shall be required to~~
4 ~~obtain an annual license from the department of agriculture~~
5 ~~for purchasing and selling retail pesticides. The~~
6 ~~application for a license shall be accompanied by a minimum~~
7 ~~fee of ten dollars (\$10), provided, that retailers selling~~
8 ~~only human insect repellents shall only be required to pay a~~
9 ~~licensing fee of five dollars (\$5)."~~

10 Section 8. Section 27-228, R.C.M. 1947, is amended to
11 read as follows:

12 "27-228. Farm applicators. (1) ~~The department of~~
13 ~~agriculture shall establish which are restricted use~~
14 ~~pesticides for agricultural use. Pesticides so restricted~~
15 ~~cannot be utilized by the farm applicator on commercial~~
16 ~~crops, land, or livestock, except as provided in (2) below.~~
17 Farm applicators shall be required to obtain a certificate
18 or special use permit prior to purchasing and using any
19 pesticide designated by the department as a restricted use
20 pesticide. The certificate, to be issued for 5 calendar
21 years, must be renewed annually by the department or its
22 authorized representative. The 5-year certification period
23 shall commence on January 1, 1978. Provided that the time
24 period from October 21, 1977, through December 31, 1977,
25 shall be considered as part of the January 1, 1978, 5-year

1 certification period.

2 (2) ~~Form applicators desiring to apply restricted use~~
3 ~~pesticides on commercial crops, land, or livestock may~~
4 ~~obtain an annual special use permit from the department of~~
5 ~~agriculture. The department of agriculture shall require the~~
6 ~~applicant to show upon written examination that he possesses~~
7 ~~adequate knowledge to use and apply restricted agricultural~~
8 ~~pesticides and the justification for their use on commercial~~
9 ~~crops, land, or livestock. Restricted pesticides may not be~~
10 ~~utilized by farm applicators or their employees except for~~
11 ~~the purpose of producing or protecting any agricultural~~
12 ~~commodity on property owned, leased, or rented, or as~~
13 ~~provided in (6) of this section.~~

14 (3) Farm applicators shall qualify for the certificate
15 or permit by either passing a written examination or
16 attending a training course approved by the department with
17 or without an ungraded quiz. The examination or course shall
18 include practical knowledge as the ability to:

19 (a) recognize common pests to be controlled and damage
20 caused by them;

21 (b) read and understand the label and labeling
22 information including the common name of the pesticide(s)
23 applied; pest(s) to be controlled; timing and methods of
24 application; safety precautions; any preharvest or reentry
25 restrictions; and any specific disposal procedures.

1 (c) apply pesticides in accordance with label
2 instructions and warnings, including the ability to prepare
3 the proper concentration of pesticides to be used under
4 particular circumstances taking into account such factors as
5 area to be covered, speed at which application equipment
6 will be driven, and the quantity dispersed in a given period
7 of operation;

8 (d) recognize local environmental situations that must
9 be considered during application to avoid contamination; and

10 (e) recognize poisoning symptoms and procedures to
11 follow in case of a pesticide accident.

12 (4) The department may require farm applicators to
13 attend a mandatory training session and pass a written
14 examination for those restricted pesticides which are
15 extremely toxic or for which an effective antidote is not
16 available. The department may require farm applicators
17 handling these pesticides to maintain use records.

18 (5) Farm applicators having verified reading
19 disabilities may become certified to use up to two
20 restricted use pesticides by passing a specific oral
21 examination on the particular pesticide(s) if the applicator
22 documents that a certified applicator in the immediate
23 vicinity can advise him.

24 (6) Provisions of this act relating to licensing of
25 farm applicators shall not apply to any farm applicator

1 applying nonrestricted pesticides on his own land or on
2 lands of his neighbor's; ~~PROVIDED~~ provided that he:

3 (a) He operates farm property and operates and
4 maintains pesticide application equipment primarily for his
5 own use;

6 (b) He is not regularly engaged in the business of
7 applying pesticides for hire and ~~that he~~ does not publicly
8 hold himself out as a pesticide applicator;

9 (c) He operates his pesticide application equipment
10 only in the vicinity of his own property and for the
11 accommodation of his immediate neighbors."

12 Section 9. Section 27-230, R.C.M. 1947, is amended to
13 read as follows:

14 "27-230. Revocation of licenses and permits. (1) The
15 department of agriculture shall establish the policy and
16 procedures on the revocation of licenses or permits. The
17 department of agriculture may refuse to grant, renew, or may
18 revoke a license or permit, as the case may require, when
19 the department of agriculture is satisfied that the licensee
20 or holder of a permit is not qualified to sell, use, or
21 apply pesticides under the conditions in the locality in
22 which he operates or has operated, or that he has committed
23 any of the following acts, each of which is declared to be a
24 violation of this act:

25 (1)(a) Made ~~made~~ false or fraudulent claims or

1 ~~recommendations~~ through any media, misrepresenting the
2 effect of materials or methods to be utilized;

3 (2)(b) Applied ~~applied~~ unapproved or illegal
4 materials;

5 (3)(c) Operate ~~operated~~ in a faulty, careless, or
6 negligent manner;

7 (4)(d) Operated ~~operated~~ faulty or unsafe equipment;

8 (5)(e) Refused ~~refused~~ or neglected to comply with the
9 provisions of this act, the rules ~~and regulations~~ adopted
10 hereunder, or of any lawful order of the department of
11 agriculture;

12 (6)(f) Refused ~~refused~~ or neglected to keep and
13 maintain the records required by this act, or to make
14 reports when and as required;

15 (7)(g) Made ~~made~~ false or fraudulent records or
16 reports;

17 (8)(h) Operated ~~operated~~ equipment for the commercial
18 application of a pesticide without having a license or
19 permit;

20 (9)(i) Used ~~used~~ fraud or misrepresentation in making
21 an application for a license or permit or renewal of a
22 license or permit;

23 (j) ~~used or applied a registered pesticide~~
24 ~~inconsistent with its labeling or the label or the~~
25 ~~department restrictions on the use of that pesticide.~~

1 (2) Decisions of the department of agriculture
2 relating to the issuing of licenses or permits may be
3 appealed.*

4 Section 10. Section 27-231, R.C.M. 1947, is amended to
5 read as follows:

6 "27-231. Government agencies. (1) All state agencies,
7 municipal corporations, or any other governmental agency
8 shall be subject to the provisions of this act and rules
9 adopted thereunder concerning the application or sale of
10 pesticides. Applicators and operators ~~operating equipment~~
11 ~~for the application of~~ applying pesticides used by any state
12 ~~and dealers selling pesticides for~~ agencies, municipal
13 corporations, or any governmental agencies shall be subject
14 to the provisions of ~~sections 9, 10, 11 and 12~~ [27-221,
15 27-222, 27-223, and 27-224, 27-225, and 27-226] of this act
16 and the department of agriculture shall issue a limited
17 commercial applicator's, or operator's, or dealer's license
18 without a fee which shall be valid only when such
19 applicators, and operators, and dealers are applying or
20 selling pesticides for such agencies. Provided, that the
21 jurisdictional health officer, state veterinarian, their
22 duly authorized representatives, or governmental research
23 personnel are exempt from this licensing requirement when
24 applying pesticides to experimental areas.*

25 Section 11. Section 27-232, R.C.M. 1947, is amended to

1 read as follows:

2 "27-232. Liability. The department of agriculture
3 shall ~~within two (2) years after the effective date of this~~
4 ~~act,~~ annually require from each commercial pesticide
5 applicator proof of financial responsibility in amounts to
6 be determined under such rules ~~and regulations as made~~
7 promulgated by the department of agriculture.*

8 Section 12. Section 27-234, R.C.M. 1947, is amended to
9 read as follows:

10 "27-234. Rules and regulations. (1) The department of
11 agriculture may adopt by reference without a public hearing
12 regulations adopted under the federal Insecticide,
13 Fungicide, and Rodenticide Act, as amended. The department
14 may, after a public hearing, adopt all rules and regulations
15 necessary to carry out this act.

16 (2) The rules may prescribe methods of:

17 (a) ~~Registration~~ registration, application, use or
18 restricting use, prohibiting use, offering or exposing for
19 sale, any pesticide;

20 (b) ~~Determining~~ determining whether pesticides are
21 highly toxic to man;

22 (c) ~~Determining~~ determining standards of coloring or
23 discoloring for pesticides, and subjecting pesticides to the
24 requirements of section 27-218;

25 (d) ~~licensing~~ licensing commercial applicators and

1 operators, dealers, ~~retailers~~, establishing methods of
 2 record keeping for applicators, operators, ~~and~~ dealers, ~~and~~
 3 ~~retailers~~, and providing for the review of the records by
 4 the department of agriculture's authorized agent and the
 5 submission of the records to the department of agriculture
 6 upon written request;

7 (e) ~~issuing~~ issuing farm applicator special use
 8 permits and the maintenance and submission of records by
 9 farm applicators issued special use permits;

10 (f) ~~collection~~ collection, examination, and standard
 11 deviation from guarantee analysis and umpire analysis of
 12 pesticides and devices;

13 (g) ~~operating~~ operating and maintaining equipment used
 14 by applicators;

15 (h) ~~Developing~~ developing examinations which shall be
 16 held periodically throughout the state;

17 (i) ~~Establishing~~ establishing the form and content of
 18 all applications for licenses and permits;

19 (j) ~~Designating~~ designating pesticides that may be
 20 sold at retail for home, yard, garden, and lawn use. The
 21 department of agriculture may also limit retail sale of
 22 pesticides, up to a specific number of pounds or gallons and
 23 concentration which would be sublethal to humans and animals
 24 if small amounts of it were accidentally swallowed, inhaled,
 25 sprayed, or dusted on the skin.

1 (k) ~~Revoking~~ revoking licenses and permits;

2 (l) ~~Registering~~ registering or controlling any spray
 3 adjuvant, such as a wetting agent, spreading agent, deposit
 4 builder, adhesive, emulsifying agent, deflocculating agent,
 5 water modifier, or similar agent with or without toxic
 6 properties of its own intended to be used with any other
 7 pesticide as an aid to the application or effect of that
 8 other pesticide, whether or not distributed in a package or
 9 container separate from that of a pesticide with which it is
 10 to be used;

11 (m) ~~Registering~~ registering pesticide fertilizer and
 12 other chemical blends or, instead of registration,
 13 establishing licensing, inspection, and fees for blending
 14 plants;

15 (n) ~~Establishing~~ establishing registration procedures
 16 for devices with a fee not to exceed ~~five dollars~~ (\$5) per
 17 type of device, specifying classes of devices to be
 18 registered and providing for additional requirements.

19 (3) ~~1a) Where~~ Whenever the department of agriculture
 20 finds that those rules ~~and--regulations~~ are necessary to
 21 carry out the purposes and intent of this act, the rules ~~and~~
 22 regulations may relate to the time, place, manner, and
 23 method of registration, application, or selling of the
 24 pesticides, may restrict or prohibit use of pesticides in
 25 the state or in designated areas during specified periods of

1 time and shall encompass all reasonable factors which the
2 department of agriculture considers necessary prevent
3 damage or injury to:

4 ~~(a)(i)~~ Persons ~~persons~~, animals, or pollinating
5 insects from the effect of drift or careless application;

6 ~~(b)(ii)~~ The ~~the~~ environment;

7 ~~(c)(iii)~~ Plants ~~plants~~, including forage plants;

8 ~~(d)(iv)~~ Wildlife ~~wildlife~~;

9 ~~(e)(v)~~ Fish ~~fish~~ and other aquatic life.

10 (b) In issuing the ~~regulations~~ rules, the department
11 of agriculture shall give consideration to pertinent
12 research findings and recommendations of other agencies of
13 this state or of the federal government.

14 (4) If the department of agriculture finds that an
15 emergency exists which requires immediate action with regard
16 to the registration, use, or application of pesticides, the
17 department of agriculture may, without notice or hearing,
18 issue necessary orders, or ~~rules~~ ~~or~~ ~~regulations~~ to protect
19 the public health, welfare, and safety. An order, or ~~rule~~
20 ~~or~~ ~~regulation~~ issued under this subsection is effective for
21 a THE period no longer than ~~sixty (60)~~ 120 days after it is
22 issued PRESCRIBED BY THE ADMINISTRATIVE PROCEDURE ACT. If
23 the department of agriculture determines that the emergency
24 order, or ~~rule~~ ~~or~~ ~~regulation~~ should remain in effect, a
25 public hearing under section 27-235 shall be held within the

1 ~~sixty (60)-day~~ 120-day ~~ABOVE~~ period to determine whether the
2 order, or ~~rule~~ ~~or~~ ~~regulation~~ should be adopted by the
3 department of agriculture.

4 (5) All ~~rules~~ ~~or~~ ~~regulations~~, and orders issued by the
5 department of agriculture shall be in writing, shall be
6 entered in full in books to be kept by the department of
7 agriculture for that purpose, shall be indexed, and shall be
8 public records open for inspection at all times during
9 reasonable office hours. Except for orders establishing or
10 changing rules of practice and procedure, all orders made
11 and published by the department of agriculture shall include
12 and be based upon written findings of fact. A copy of any
13 ~~rule~~ ~~or~~ ~~regulation~~ or order certified by the department of
14 agriculture ~~or~~ ~~its~~ ~~secretary~~ shall be received in evidence
15 in all courts of this state with the same effect as the
16 original."

17 Section 13. Section 27-235, R.C.M. 1947, is amended to
18 read as follows:

19 "27-235. Hearings Administrative procedures. ~~(1)~~
20 ~~Public hearings~~ ~~Except as provided in section 27-234~~ ~~no~~
21 ~~rule or regulation shall be adopted by the department of~~
22 ~~agriculture without a public hearing upon at least~~
23 ~~twenty-one (21) days' notice. The public hearing shall be~~
24 ~~held at such time and place as may be prescribed by the~~
25 ~~department of agriculture and any interested person is~~

1 entitled-to-be-heardv

2 (a)~~--Notice of public hearing on the adoption of rules~~
3 ~~or regulations shall be made by the department of~~
4 ~~agriculture as follows:~~

5 (i)~~--Informal notice of the hearing will be sent to all~~
6 ~~registrants of pesticides, to all licensed pesticide~~
7 ~~applicators, including farm applicators with restricted use~~
8 ~~permits, and to all licensed pesticide dealers or retailers,~~
9 ~~provided that the notice shall be sent only to the~~
10 ~~respective group or groups directly affected by the rules~~
11 ~~and regulations. Farm applicators of nonrestricted~~
12 ~~pesticides will be given informal notice through farm~~
13 ~~groups, organizations or associations and by means of farm~~
14 ~~publications.~~

15 (ii)~~--In all cases of public hearings for adoption of~~
16 ~~rules and regulations, notice thereof shall be published in~~
17 ~~five (5) newspapers of general circulation in the state once~~
18 ~~a week for two (2) successive weeks and the department of~~
19 ~~agriculture shall issue appropriate press releases.~~

20 (iii)~~--Notices and publications shall be issued in the~~
21 ~~name of the state of Montana, shall be signed by the~~
22 ~~director of agriculture, shall specify the style and number~~
23 ~~of the proceedings, and the time and place of the hearing,~~
24 ~~and shall briefly state the purpose of the proceeding and~~
25 ~~method of procedure.~~

1 (iv)~~--Proof of service by publication shall be made by~~
2 ~~the affidavit of the printer or publisher of the newspaper.~~
3 ~~Proof of service by mailing shall be made by the affidavit~~
4 ~~of the director of agriculture.~~

5 (2)~~--Complaints. In all cases where a complaint has~~
6 ~~been made by the department of agriculture or its authorized~~
7 ~~agents or by any person that any provision of this act or~~
8 ~~any rule, regulation, or order of the department of~~
9 ~~agriculture is being or has been violated, notice of the~~
10 ~~hearing to be held on such complaint shall be given to the~~
11 ~~interested persons.~~

12 (3)~~--Except as otherwise in this act provided, the~~
13 ~~department of agriculture may act upon the petition of any~~
14 ~~interested persons. On the filing of a petition concerning~~
15 ~~any matter within the jurisdiction of the department of~~
16 ~~agriculture, the department of agriculture shall promptly~~
17 ~~fix a date for a hearing thereon and shall cause notice of~~
18 ~~the hearing to be given. The hearing shall be held without~~
19 ~~undue delay after the filing of the petition. The department~~
20 ~~of agriculture shall enter its order and findings on~~
21 ~~complaints and petitions within thirty (30) days after the~~
22 ~~hearing. The administration of this act and all rule making~~
23 ~~and hearing functions under the act shall be conducted in~~
24 ~~accordance with the Administrative Procedure Act.~~"

25 Section 14. Section 27-240, R.C.M. 1947, is amended to

1 read as follows:

2 "27-240. Advisory council. (1) The director of
3 agriculture may appoint an advisory council to study and
4 make recommendations on special pesticide problems in the
5 state. The council shall consist of individuals
6 representing, equally, controlled industry, agriculture,
7 health, and wildlife. Governmental personnel, university
8 personnel not included, may not be represented on the
9 council. Governmental personnel shall meet with the council
10 in an advisory capacity when requested by the council. The
11 council may not exceed ~~twelve~~ {12} members. The director of
12 agriculture shall establish the time period in which the
13 council shall exist. The time period may not exceed ~~two~~ {2}
14 years. The department of agriculture shall provide the
15 necessary administrative, secretarial, and any other
16 essential items to the council.

17 (2) Each member of the council shall receive as
18 compensation for his services the sum of ~~twenty-five dollars~~
19 {25} per day for each day actually spent in the performance
20 of his duties and shall be reimbursed for travel expenses
21 as provided for in sections 59-538, 59-539, and 59-801.

22 (3) The council may request that the department of
23 agriculture hold a public hearing ~~as outlined in section~~
24 ~~27-235v~~ to assist it in gathering factual data and
25 information on the special problems assigned it."

1 Section 15. Section 27-242, R.C.M. 1947, is amended to
2 read as follows:

3 "27-242. Cooperation with other agencies. (1) The
4 department of agriculture may cooperate with agencies of
5 this state or its subdivisions or with any agency of any
6 other state or the federal government for the purpose of
7 carrying out the provisions of this act and for securing
8 uniformity of ~~regulations~~ rules and entering into reciprocal
9 licensing and certification agreements with other states.

10 (2) THE DEPARTMENT AND THE DEPARTMENT OF HEALTH AND
11 ENVIRONMENTAL SCIENCES SHALL ENTER INTO A MEMORANDUM OF
12 AGREEMENT CONCERNING THE INSPECTION, REGULATION, AND
13 RESPONSIBILITIES OF PERSONS OR ACTIVITIES THAT MAY BE
14 INVOLVED IN THE MANAGEMENT, DISPOSAL, STORAGE,
15 TRANSPORTATION, TREATMENT, RECYCLING OR RECOVERY OF
16 HAZARDOUS WASTES AS DEFINED IN TITLE 69, CHAPTER 40, AND THE
17 DISPOSAL OF SOLID WASTES AS DEFINED IN TITLE 69, CHAPTER
18 40."

19 (3) FOR THE PURPOSE OF THIS SECTION, SOLID WASTE MEANS
20 ALL PUTRESCIBLE AND NONPUTRESCIBLE WASTES INCLUDING BUT NOT
21 LIMITED TO GARBAGE; RUBBISH; REFUSE; HAZARDOUS WASTES;
22 ASHES; SLUDGE FROM SEWAGE TREATMENT PLANTS, WATER SUPPLY
23 TREATMENT PLANTS, OR AIR POLLUTION CONTROL FACILITIES;
24 CONSTRUCTION AND DEMOLITION WASTES; DEAD ANIMALS, INCLUDING
25 DEER; DISCARDED HOME AND INDUSTRIAL APPLIANCES; AND WOOD

1 PRODUCTS OR WOOD BY-PRODUCTS AND INERT MATERIALS. SOLID
 2 WASTE DOES NOT MEAN MUNICIPAL SEWAGE, INDUSTRIAL WASTEWATER
 3 AFFLUENTS, MINING WASTES REGULATED UNDER THE MINING AND
 4 RECLAMATION LAWS ADMINISTERED BY THE DEPARTMENT OF STATE
 5 LANDS, SLASH AND FOREST DEBRIS REGULATED UNDER LAWS
 6 ADMINISTERED BY THE DEPARTMENT OF NATURAL RESOURCES AND
 7 CONSERVATION, OR MARKETABLE WOOD BY-PRODUCTS.

8 (4) FOR THE PURPOSE OF THIS SECTION HAZARDOUS WASTE
 9 MEANS ANY WASTE OR COMBINATION OF WASTES OF A SOLID, LIQUID,
 10 CONTAINED GASEOUS, OR SEMI-SOLID FORM WHICH MAY CAUSE OR
 11 CONTRIBUTE TO AN INCREASE IN MORTALITY OR AN INCREASE IN
 12 SERIOUS ILLNESS, TAKING INTO ACCOUNT THE TOXICITY OF THE
 13 WASTE, ITS PERSISTENCE AND DEGRADABILITY IN NATURE, ITS
 14 POTENTIAL FOR ASSIMILATION OR CONCENTRATION IN TISSUE, AND
 15 OTHER FACTORS THAT MAY OTHERWISE CAUSE OR CONTRIBUTE TO
 16 ADVERSE ACUTE OR CHRONIC EFFECTS ON THE HEALTH OF PERSONS OR
 17 OTHER LIVING ORGANISMS. HAZARDOUS WASTES INCLUDE BUT ARE
 18 NOT LIMITED TO THOSE WHICH ARE TOXIC, RADIOACTIVE,
 19 CORROSIVE, FLAMMABLE, IRRITANTS, STRONG SENSITIZERS, OR
 20 WHICH GENERATE PRESSURE THROUGH DECOMPOSITION, HEAT, OR
 21 OTHER MEANS, EXCLUDING WOOD CHIPS AND WOOD USED FOR
 22 MANUFACTURING OR FUEL PURPOSES.

23 Section 16. Section 27-243, R.C.M. 1947, is amended to
 24 read as follows:

25 "27-243. Enforcement. In enforcing this act, the

1 department of agriculture or its duly authorized agents,
 2 upon reasonable cause, ~~shall have the authority to~~ may enter
 3 upon private and public premises and property with a warrant
 4 or consent of the inhabitant or owner to inspect or
 5 investigate at reasonable time:

6 (1) ~~Equipment~~ equipment subject to this act;
 7 (2) ~~Actual~~ actual or reported adverse effects caused
 8 by pesticides in humans, crops, animals, land, or other
 9 property; or

10 (3) ~~Records~~ records on the selling or use of
 11 pesticides and the person's stock of pesticides;

12 (4) storage and disposal areas OF PESTICIDES BY
 13 PERSONS LICENSED OR REGULATED UNDER THIS ACT;

14 (5) sample pesticides being applied or to be applied;
 15 or

16 (6) the use and application of a pesticide."

17 Section 17. Section 27-245, R.C.M. 1947, is amended to
 18 read as follows:

19 "27-245. Violation. (1) Any person convicted of
 20 violating any of the provisions of this act or the rules and
 21 regulations issued thereunder or who may misrepresent,
 22 impede, obstruct, hinder, or otherwise prevent or attempt to
 23 prevent the department of agriculture or its duly authorized
 24 agent in performance of its duty in connection with the
 25 provisions of this act, shall be adjudged guilty of a

1 misdemeanor.

2 (2) The department of agriculture or its authorized
3 representative is hereby authorized to apply to the district
4 court of the county or any county wherein a violation is
5 about to occur or has occurred to grant a temporary or
6 permanent injunction restraining any person from violating
7 or continuing to violate any of the provisions of this act
8 or any rule ~~or regulation~~ promulgated under the act
9 notwithstanding the existence of other remedies of law. The
10 injunction is to be issued without bond.

11 (3) Nothing in this act is to be construed as
12 requiring the department of agriculture or its authorized
13 agent to report for prosecution or for the institution of
14 seizure proceedings, minor violations of the act when it
15 believes the public interest will be best served by other
16 remedial action or by a suitable notice of warning in
17 writing; nor is any part of this act to be construed to
18 apply to common carriers transporting shipments tendered to
19 them by the general public.

20 (4) Notwithstanding any other provisions of this
21 section, if any person with intent to defraud uses or
22 reveals information relative to formulas of products
23 acquired under the authority of ~~section 5-27-217 of this~~
24 ~~act~~, he shall, upon conviction, be fined not more than five
25 ~~hundred dollars~~ ~~(\$500)~~ or imprisoned for not more than one

1 ~~{1}~~ year or both.

2 (5) In all prosecutions under the registration section
3 involving the composition of a lot of pesticide, a certified
4 copy of the official analysis signed by the department of
5 agriculture's authorized chemist shall be accepted as prima
6 facie evidence of the composition."

7 Section 18. Severability. If a part of this act is
8 invalid, all valid parts that are severable from the invalid
9 part remain in effect. If a part of this act is invalid in
10 one or more of its applications, the part remains in effect
11 in all valid applications that are severable from the
12 invalid applications.

13 Section 19. Repealer. Sections 27-236, 27-237, and
14 27-238, R.C.M. 1947, are repealed.

15 Section 20. Effective date. This act is effective on
16 its passage and approval.

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