

HOUSE BILL NO. 452

INTRODUCED BY MEYER, ERNST, THOFT, HEMSTAD, BARDANOUE
BY REQUEST OF THE DEPARTMENT OF AGRICULTURE

IN THE HOUSE

January 24, 1981	Introduced and referred to Committee on Agriculture.
February 11, 1981	Committee recommend bill do pass as amended. Report adopted.
February 12, 1981	Bill printed and placed on members' desks.
February 14, 1981	Second reading, do passa.
February 16, 1981	Correctly engrossed.
February 17, 1981	Third reading, passed. Ayes, 99; Noes, 0. Transmitted to Senate.

IN THE SENATE

February 18, 1981	Introduced and referred to Committee on Agriculture, Livestock and Irrigation.
March 7, 1981	Committee recommend bill be concurred in as amended. Report adopted.
March 10, 1981	Second reading, concurred in.
March 12, 1981	Third reading, concurred in as amended. Ayes, 50; Noes, 0.

IN THE HOUSE

March 13, 1981	Returned from Senate with amendments.
----------------	--

March 18, 1981

Second reading, amendments
concurrent in.

March 20, 1981

Third reading, amendments
concurrent in. Ayes, 93; Noes, 0.
Sent to enrolling.

Reported correctly enrolled.

1 HOUSE BILL NO. 452
 2 INTRODUCED BY Meyer Ernst Hoff Senator
 3 Bandman BY REQUEST OF THE DEPARTMENT OF AGRICULTURE

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT FOR A GENERAL REVISION
 6 OF PESTICIDE REGISTRATION, LICENSING, ENFORCEMENT, AND
 7 PENALTIES PROVISIONS; AMENDING SECTIONS 80-8-204, 80-8-207,
 8 80-8-209, 80-8-211, AND 80-8-301 THROUGH 80-8-306, MCA."

9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 80-8-204, MCA, is amended to read:

12 "80-8-204. Application for applicator's license. (1)
 13 Application for a pesticide applicator's license provided
 14 for in 80-8-203 shall be made annually to the department
 15 before applying pesticides in any calendar year, provided
 16 that pesticide applicators applying for renewal of license
 17 shall do so on or before May 1 of that calendar year. Any
 18 applicator applying for renewal of license after May 1 shall
 19 be assessed a \$15 late licensing fee.

20 ~~(2) If the application is made An individual applying~~
 21 ~~for a license to engage in aerial application of pesticides,~~
 22 ~~the applicant shall first meet certify on the application~~
 23 ~~that he has met all of the requirements--of--the federal~~
 24 ~~aviation agency administration and the department of~~
 25 ~~community affairs to operate the equipment described in--the~~

1 ~~application requirements for aerial pesticide applicators."~~

2 Section 2. Section 80-8-207, MCA, is amended to read:

3 "80-8-207. Dealers. (1) It is unlawful for a dealer
 4 ~~any person~~ to sell, offer for sale, deliver, or have
 5 delivered within this state any pesticide without first
 6 procuring a license from the department of agriculture for
 7 each calendar year or portion thereof. A separate dealer's
 8 license and fee shall be required for each location or
 9 outlet from which pesticides are distributed, sold, held for
 10 sale, or offered for sale. Pesticide fieldmen or salesmen
 11 employed directly out of the same location or outlet and
 12 under a licensed dealer shall not be required to obtain a
 13 license. The dealer shall furnish the department the names
 14 and addresses of its fieldmen and salesmen selling
 15 pesticides within the state.

16 (2) The application for a license shall be accompanied
 17 by a fee of \$15. Dealers applying for renewal of license
 18 shall do so on or before May 1 of that calendar year. Any
 19 dealer applying for renewal of license after May 1 shall be
 20 assessed a \$15 late licensing fee.

21 (3) The dealer shall require the purchaser of any
 22 restricted pesticide to exhibit his license or permit issued
 23 under authority of this chapter before completing a sale.

24 (4) Dealers may make one application for two annual
 25 licenses if the application is accompanied by a \$15

1 licensing fee for each year of the state biennium.

2 (5) Pharmacists licensed as provided for in 37-7-302
3 and 37-7-303, veterinarians licensed as provided for in
4 37-18-302 and 37-18-303, and certified pharmacies licensed
5 under 37-7-321 shall not be required to be licensed to sell
6 pesticides, provided that the certified pharmacies and
7 veterinarians shall register with the department each year.
8 However, the certified pharmacies and veterinarians shall be
9 required to meet all other requirements concerning the
10 commercial sale of pesticides. The department shall take
11 into account the professional licensing requirements of
12 pharmacists, certified pharmacies, and veterinarians when
13 adopting rules."

14 Section 3. Section 80-8-209, MCA, is amended to read:

15 "80-8-209. Farm applicators. (1) Farm applicators
16 shall obtain a ~~certificate or~~ special-use permit prior to
17 purchasing and using any pesticide designated by the
18 department as a restricted-use pesticide. ~~The certificate~~
19 ~~to be issued for 5 calendar years, must be renewed annually~~
20 ~~by the department or its authorized representative. The~~
21 ~~5-year certification period shall commence on January 1,~~
22 1978. The special-use permit shall be effective for 5
23 calendar years. The department may establish a staggered
24 years system of issuing permits by agricultural districts so
25 that all permits issued in one of the five agricultural

1 districts will be renewed in the same year but permits from
2 only one district will be renewed in any 1 year. Permits
3 issued in the course of a given district's 5-year effective
4 period will be effective only for the duration of the 5-year
5 period and then will be renewable for 5 years at the same
6 time as all other permits issued in the same district.

7 (2) Restricted pesticides may not be utilized by farm
8 applicators or their employees except for the purpose of
9 producing or protecting any agricultural commodity on
10 property owned, leased, or rented by such applicator or as
11 provided in (6) of this section.

12 (3) Farm applicators shall qualify for the ~~certificate~~
13 ~~or~~ permit by either passing a graded written examination or
14 attending a training course approved by the department ~~with~~
15 ~~or without~~ and taking an ungraded written examination. The
16 ~~examination or examinations and~~ course shall include require
17 and demonstrate practical knowledge ~~as to~~ of the
18 applicator's 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
 5 as 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 that 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~~ manifesting
 19 reading disabilities may become certified to use ~~up to as~~
 20 many as two restricted-use pesticides by passing a specific
 21 oral examination on the particular pesticide(s) if the
 22 applicator documents that a certified applicator in the
 23 immediate vicinity can advise him.

24 (6) Provisions of this chapter relating to
 25 certification of farm applicators do not apply to any farm

1 applicator applying nonrestricted pesticides on his own land
 2 or on lands of his neighbors if he:

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

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

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

11 Section 4. Section 80-8-211, MCA, is amended to read:

12 "80-8-211. Revocation of licenses and permits. (1) The
 13 department shall establish the policy and procedures on the
 14 revocation of licenses or permits. The department may refuse
 15 to grant, renew, or may revoke or modify a license or
 16 permit, as the case may require, when the department is
 17 satisfied that the licensee or holder of a permit is not
 18 qualified to sell, use, or apply pesticides under the
 19 conditions in the locality in which he operates or has
 20 operated or that he has committed any of the following acts,
 21 each of which is declared to be a violation of this chapter:

22 (a) made false or fraudulent claims or recommendations
 23 through any media misrepresenting the effect of materials or
 24 methods to be utilized;

25 (b) applied or sold unapproved or illegal materials or

1 ~~applied or sold a pesticide without possessing a current and~~
2 ~~appropriate license or permit;~~

3 (c) operated in a faulty, careless, or negligent
4 manner;

5 (d) operated faulty or unsafe equipment;

6 (e) refused or neglected to comply with the provisions
7 of this chapter, the rules adopted hereunder, or any lawful
8 order of the department;

9 (f) refused or neglected to keep and maintain the
10 records required by this chapter or to make reports when and
11 as required;

12 (g) made false or fraudulent records or reports;

13 (h) operated equipment for the commercial application
14 of a pesticide without having a license or permit;

15 (i) used fraud or misrepresentation in making an
16 application for a license or permit or renewal of a license
17 or permit;

18 (j) used or applied a registered pesticide
19 inconsistent with its labeling or the label or the
20 department restrictions on the use of that pesticide;

21 ~~(k) made false or misleading statements in connection~~
22 ~~with a pest inspection of land, crops, yards, or any~~
23 ~~premises in an attempt to induce any person to engage his~~
24 ~~services to eliminate, control, or mitigate the alleged pest~~
25 ~~or made statements intended to overcome any concern~~

1 ~~expressed by a customer about the effectiveness of any~~
2 ~~application of pesticides.~~

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

5 Section 5. Section 80-9-301, MCA, is amended to read:

6 "80-9-301. Report of loss or damage -- effect of
7 failure to report. (1) A person suffering loss or damage
8 resulting from the use or application of any pesticide by
9 any person shall, within 30 days from the time the
10 occurrence of the loss became known to him, file with the
11 department of agriculture a verified report of loss setting
12 forth, so far as known to the claimant, the following:

13 (a) name and address of claimant;

14 (b) type, kind, and location of property alleged to be
15 injured or damaged;

16 (c) date the alleged injury or damage occurred;

17 (d) name of person applying the pesticide and
18 allegedly responsible for the loss or damage;

19 (e) name of the owner or occupant of the property for
20 whom such pesticide application was made.

21 (2) The filing of such a report or the failure to file
22 such a report shall not be alleged in any complaint which
23 might be filed in a court of law, and the failure to file
24 shall not of itself be considered any bar to the maintenance
25 of any criminal or civil action.

1 (3) The failure to file such a report shall not be a
 2 violation of this chapter. However, if the person failing to
 3 file such report is the only one injured from such use or
 4 application of a pesticide by any person, the department may
 5 refuse to hold a hearing for the denial, suspension, or
 6 revocation of a license issued under this chapter until such
 7 report is filed. The filing of such report shall not
 8 constitute institution of a civil or criminal suit in any
 9 court, state or federal."

10 Section 6. Section 80-8-302, MCA, is amended to read:
 11 "80-8-302. Sampling and analysis. (1) The department
 12 shall have the authority to sample, inspect, make analysis
 13 of pesticides or devices distributed within this state at
 14 such time and place and to such extent as it may deem
 15 necessary to determine whether such pesticides or devices
 16 are in compliance with the provisions of this chapter. The
 17 department is authorized with a warrant or the consent of
 18 the inhabitant or owner to enter upon any public or private
 19 premises including any vehicle of transport in order to have
 20 access to pesticides or devices and to records relating to
 21 their distribution.

22 (2) The methods of sampling and analysis shall be
 23 those adopted by the department from sources such as the
 24 Journal of the Association of Official Analytical Chemists.

25 ~~(3) In all administrative or legal actions involving~~

1 ~~the composition, identification, or quantification of a~~
 2 ~~pesticide, a certified copy of the official analysis signed~~
 3 ~~by the department's authorized chemist shall be accepted as~~
 4 ~~prima facie evidence of the determinations set forth~~
 5 ~~therein."~~

6 Section 7. Section 80-8-303, MCA, is amended to read:
 7 "80-8-303. Embargo. (1) Whenever a duly authorized
 8 agent of the department of agriculture finds or has probable
 9 cause to believe that any pesticide or device is adulterated
 10 or misbranded, has not been registered under the provisions
 11 of 80-8-201(5), fails to bear on its label the information
 12 required by this chapter, or is a white powder pesticide and
 13 is not colored as required under this chapter, he shall
 14 affix to such article a tag or other appropriate marking
 15 giving notice thereof and ~~stating~~ that the article has been
 16 detained or embargoed and warning all persons not to remove
 17 or dispose of such article by sale or otherwise until
 18 permission for removal or disposal is given by such agent or
 19 the court. ~~it is unlawful for any~~ Any person ~~to remove who~~
 20 ~~removes~~ or ~~dispose~~ ~~disposes~~ of such detained or embargoed
 21 article by sale or otherwise, without such prior permission,
 22 or ~~to remove~~ ~~removes~~ or ~~alter~~ ~~alters~~ the tag or marking, ~~is~~
 23 ~~guilty of a misdemeanor and may be charged accordingly or~~
 24 ~~may be subjected to appropriate administrative proceedings,~~
 25 ~~or both.~~

1 (2) When an article detained or embargoed under
 2 subsection (1) has been found by such agent to be in
 3 violation, if after 30 days the violation has not been
 4 resolved, he may petition the district court in whose
 5 jurisdiction the article is detained or embargoed for a
 6 condemnation of such article. When such agent has found that
 7 an article so detained or embargoed is not adulterated or
 8 misbranded, he shall remove the tag or other marking.

9 (3) If the court finds that a detained or embargoed
 10 article is in violation of this chapter or rules adopted
 11 thereunder, such article shall after entry of the decree be
 12 destroyed at the expense of the claimant thereof, under the
 13 supervision of such agent, and all court costs and fees and
 14 storage and other proper expenses shall be assessed against
 15 the claimant of such pesticide or device or his agent,
 16 provided that when the adulteration or misbranding can be
 17 corrected by proper labeling or processing of the article,
 18 the court, after entry of the decree and after such costs,
 19 fees, and expenses have been paid and a good and sufficient
 20 bond has been executed, conditioned upon the proper labeling
 21 or processing of such pesticide or device, may by order
 22 direct that such article be delivered to the claimant
 23 thereof for such labeling or processing under the
 24 supervision of an agent of the department. The expense of
 25 such supervision shall be paid by claimant. The article

1 shall be returned to the claimant of the pesticide or device
 2 on the representation to the court by the department that
 3 the article is no longer in violation of this chapter, and
 4 that the expenses of such supervision have been paid."

5 Section 8. Section 80-8-304, MCA, is amended to read:
 6 "80-8-304. Enforcement Investigation and enforcement
 7 authority. (1) In enforcing this chapter, the department or
 8 its duly authorized agents, upon reasonable cause, may enter
 9 upon private and public premises and property with a warrant
 10 or consent of the inhabitant or owner to inspect or
 11 investigate at reasonable times:

12 (1)(a) equipment subject to this chapter used for
 13 applying pesticides;

14 (2)(b) actual or reported adverse effects caused by
 15 pesticides in humans, crops, animals, land, or other
 16 property;

17 (3)(c) records on the selling or use of pesticides and
 18 the person's stock of pesticides;

19 (4)(d) storage and disposal of pesticides by persons
 20 licensed or regulated under this chapter any person;

21 (5)(e) sample pesticides being applied or to be
 22 applied and to sample the pesticides; or

23 (6)(f) the use and application of a pesticide; or
 24 (g) the environment alleged to have been exposed to
 25 pesticides and to collect and analyze environmental samples.

1 (2) The department is authorized to investigate all
 2 incidents involving the application, introduction, or
 3 utilization of registered pesticides or compounds capable of
 4 acting in the manner of pesticides when the incidents have a
 5 reasonable potential to adversely affect the public
 6 environment or persons other than the applicator.

7 (3) The investigation authority provided for in this
 8 section may be exercised only upon receipt of a complaint or
 9 report of an incident."

10 Section 9. Section 80-8-305, MCA, is amended to read:

11 "80-8-305. Discarding--pesticides General violations.

12 (1) It shall be unlawful for any person:

13 (a) to discard any pesticide or pesticide container in
 14 such a manner as to cause injury to humans, domestic
 15 animals, or wildlife, or to pollute any waterway in a way
 16 harmful to any wildlife therein or to the environment;

17 (b) to handle, transport, store, display, or
 18 distribute pesticides or pesticide containers in such a
 19 manner as to endanger man or the environment or to endanger
 20 food or any other products that may be transported, stored,
 21 displayed, or distributed with such pesticides;

22 (c) to handle, apply, or attempt to apply any
 23 registered pesticide for which he does not have an
 24 appropriate, complete, or legible label at hand; or

25 (d) to apply or attempt to apply any registered

1 pesticide in a manner inconsistent with the label, as
 2 defined in 80-8-102.

3 (2) It is unlawful for any person to manufacture,
 4 formulate, use, store, apply, or attempt to apply any
 5 registered pesticide or component or byproduct thereof in
 6 such a manner that the pesticide or any component or
 7 byproduct cannot be contained or confined within the
 8 boundaries of the lands owned by or under the appropriate
 9 control of the person involved."

10 Section 10. Section 80-8-306, MCA, is amended to read:

11 "80-8-306. Violation Penalties. (1) Any person
 12 convicted of violating any of the provisions of this chapter
 13 or the rules issued thereunder or who may misrepresent,
 14 impede, obstruct, hinder, or otherwise prevent or attempt to
 15 prevent the department or its duly authorized agent in
 16 performance of its duty in connection with the provisions of
 17 this chapter shall be adjudged guilty of a misdemeanor and
 18 shall be fined not less than \$100 but not more than \$500 or
 19 imprisoned in the county jail for a term not to exceed 6
 20 months, or both.

21 (2) The department or its authorized representative is
 22 hereby authorized to apply to the district court of the
 23 county or any county wherein a violation is about to occur
 24 or has occurred to grant a temporary or permanent injunction
 25 restraining any person from violating or continuing to

1 violate any of the provisions of this chapter or any rule
 2 promulgated under the chapter notwithstanding the existence
 3 of other remedies of law. When a person makes pesticide
 4 applications without a license or permit or in violation of
 5 a lawful written order of the department, the district court
 6 of Lewis and Clark County has concurrent jurisdiction with
 7 the district court of any other county wherein a violation
 8 has occurred or is about to occur, and the department may
 9 select and proceed in the court most appropriate under the
 10 circumstances. The injunction is to be issued without bond.

11 (3) Nothing in this chapter is to be construed as
 12 requiring the department or its authorized agent to report
 13 minor violations of the chapter for prosecution or for the
 14 institution of seizure proceedings when it believes the
 15 public interest will be best served by other remedial
 16 actions, or by a suitable notice of warning in writing or a
 17 lawful written order; nor is any part of this chapter to be
 18 construed to apply to common carriers transporting shipments
 19 tendered to them by the general public.

20 (4) ~~Notwithstanding any other provisions of this~~
 21 ~~section, if any~~ Any person ~~who~~ with intent to defraud uses
 22 or reveals information relative to formulas of products
 23 acquired under the authority of 80-8-201, he shall, upon
 24 conviction, be fined not more than \$500 or imprisoned for
 25 not more than 1 year, or both.

1 ~~(5) in all prosecutions under the registration section~~
 2 ~~involving the composition of a lot of pesticide, a certified~~
 3 ~~copy of the official analysis signed by the department's~~
 4 ~~authorized chemist shall be accepted as prima facie evidence~~
 5 ~~of the composition."~~

-End-

Approved by Committee
on Agriculture Livestock
& Irrigation

HOUSE BILL NO. 452

INTRODUCED BY MEYER, ERNST, THOFT, HEMSTAD, BARDANOUVE

BY REQUEST OF THE DEPARTMENT OF AGRICULTURE

A BILL FOR AN ACT ENTITLED: "AN ACT FOR A GENERAL REVISION
OF PESTICIDE REGISTRATION, LICENSING, ENFORCEMENT, AND
PENALTIES PROVISIONS; AMENDING SECTIONS 80-8-204, 80-8-207,
80-8-209, 80-8-211, AND 80-8-301 THROUGH 80-8-306, MCA."

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

Section 1. Section 80-8-204, MCA, is amended to read:

"80-8-204. Application for applicator's license. (1)
Application for a pesticide applicator's license provided
for in 80-8-203 shall be made annually to the department
before applying pesticides in any calendar year, provided
that pesticide applicators applying for renewal of license
shall do so on or before May 1 of that calendar year. Any
applicator applying for renewal of license after May 1 shall
be assessed a \$15 late licensing fee.

(2) ~~if the application is made~~ An individual applying
for a license to engage in aerial application of pesticides,
~~the applicant shall first meet~~ certify on the application
that he has met all of the requirements ~~of the~~ federal
aviation agency administration and the department of
community affairs ~~to operate the equipment described in the~~

application requirements for aerial pesticide applicators."

Section 2. Section 80-8-207, MCA, is amended to read:

"80-8-207. Dealers. (1) It is unlawful for ~~a dealer~~
any person to sell, offer for sale, deliver, or have
delivered within this state any pesticide without first
procuring a license from the department of agriculture for
each calendar year or portion thereof. A separate dealer's
license and fee shall be required for each location or
outlet from which pesticides are distributed, sold, held for
sale, or offered for sale. Pesticide fieldmen or salesmen
employed directly out of the same location or outlet and
under a licensed dealer shall not be required to obtain a
license. The dealer shall furnish the department the names
and addresses of its fieldmen and salesmen selling
pesticides within the state.

(2) The application for a license shall be accompanied
by a fee of \$15. Dealers applying for renewal of license
shall do so on or before May 1 of that calendar year. Any
dealer applying for renewal of license after May 1 shall be
assessed a \$15 late licensing fee.

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

(4) Dealers may make one application for two annual
licenses if the application is accompanied by a \$15

1 licensing fee for each year of the state biennium.

2 (5) Pharmacists licensed as provided for in 37-7-302

3 and 37-7-303, veterinarians licensed as provided for in

4 37-18-302 and 37-18-303, and certified pharmacies licensed

5 under 37-7-321 shall not be required to be licensed to sell

6 pesticides, provided that the certified pharmacies and

7 veterinarians shall register with the department each year.

8 However, the certified pharmacies and veterinarians shall be

9 required to meet all other requirements concerning the

10 commercial sale of pesticides. The department shall take

11 into account the professional licensing requirements of

12 pharmacists, certified pharmacies, and veterinarians when

13 adopting rules."

14 Section 3. Section 80-8-209, MCA, is amended to read:

15 "80-8-209. Farm applicators. (1) Farm applicators

16 shall obtain a ~~certificate or~~ special-use permit prior to

17 purchasing and using any pesticide designated by the

18 department as a restricted-use pesticide. ~~The certificate~~

19 ~~to be issued for 5 calendar years, must be renewed annually~~

20 ~~by the department or its authorized representative. The~~

21 ~~5-year certification period shall commence on January 1,~~

22 ~~1978. The special-use permit shall be effective for 5~~

23 ~~calendar years. The department may establish a staggered~~

24 ~~years system of issuing permits by agricultural districts so~~

25 ~~that all permits issued in one of the five agricultural~~

1 ~~districts will be renewed in the same year but permits from~~

2 ~~only one district will be renewed in any 1 year. Permits~~

3 ~~issued in the course of a given district's 5-year effective~~

4 ~~period will be effective only for the duration of the 5-year~~

5 ~~period and then will be renewable for 5 years at the same~~

6 ~~time as all other permits issued in the same district.~~

7 (2) Restricted pesticides may not be utilized by farm

8 applicators or their employees except for the purpose of

9 producing or protecting any agricultural commodity on

10 property owned, leased, or rented by such applicator or as

11 provided in (6) of this section.

12 (3) Farm applicators shall qualify for the ~~certificate~~

13 or permit by either passing a graded written examination or

14 attending a training course approved by the department ~~with~~

15 ~~or without~~ and taking an ungraded written examination. The

16 ~~examination or examinations and~~ course shall ~~include~~ require

17 ~~and demonstrate~~ practical knowledge ~~as to~~ of the

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

24 (6) Provisions of this chapter relating to
 25 certification of farm applicators do not apply to any farm

1 applicator applying nonrestricted pesticides on his own land
 2 or on lands of his neighbors if he:

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

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

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

11 Section 4. Section 80-8-211, MCA, is amended to read:

12 "80-8-211. Revocation of licenses and permits. (1) The
 13 department shall establish the policy and procedures on the
 14 revocation of licenses or permits. The department may refuse
 15 to grant, renew, or may revoke or modify a license or
 16 permit, as the case may require, when the department is
 17 satisfied that the licensee or holder of a permit is not
 18 qualified to sell, use, or apply pesticides under the
 19 conditions in the locality in which he operates or has
 20 operated or that he has committed any of the following acts,
 21 each of which is declared to be a violation of this chapter:

22 (a) made false or fraudulent claims or recommendations
 23 through any media misrepresenting the effect of materials or
 24 methods to be utilized;

25 (b) applied or sold unapproved or illegal materials or

1 applied or sold a pesticide without possessing a current and
2 appropriate license or permit;

3 (c) operated in a faulty, careless, or negligent
4 manner;

5 (d) operated faulty or unsafe equipment;

6 (e) refused or neglected to comply with the provisions
7 of this chapter, the rules adopted hereunder, or any lawful
8 order of the department;

9 (f) refused or neglected to keep and maintain the
10 records required by this chapter or to make reports when and
11 as required;

12 (g) made false or fraudulent records or reports;

13 (h) operated equipment for the commercial application
14 of a pesticide without having a license or permit;

15 (i) used fraud or misrepresentation in making an
16 application for a license or permit or renewal of a license
17 or permit;

18 (j) used or applied a registered pesticide
19 inconsistent with its labeling or the label or the
20 department restrictions on the use of that pesticide;

21 (k) made false or misleading statements in connection
22 with a pest inspection of land, crops, yards, or any
23 premises in an attempt to induce any person to engage his
24 services to eliminate, control, or mitigate the alleged pest
25 or made FALSE OR MISLEADING statements intended-to-overcome

1 ~~any concern expressed by a customer about~~ CONCERNING the
2 ~~effectiveness of any application of pesticides~~ PESTICIDE UR
3 ~~ITS APPLICATION.~~

4 (2) Decisions of the department relating to the
5 issuing of licenses or permits may be appealed."

6 Section 5. Section 80-8-301, MCA, is amended to read:

7 "80-8-301. Report of loss or damage -- effect of
8 failure to report. (1) A person suffering loss or damage
9 resulting from the use or application of any pesticide by
10 any person shall, within 30 days from the time the
11 occurrence of the loss became known to him, file with the
12 department of agriculture a verified report of loss setting
13 forth, so far as known to the claimant, the following:

14 (a) name and address of claimant;

15 (b) type, kind, and location of property alleged to be
16 injured or damaged;

17 (c) date the alleged injury or damage occurred;

18 (d) name of person applying the pesticide and
19 allegedly responsible for the loss or damage;

20 (e) name of the owner or occupant of the property for
21 whom such pesticide application was made.

22 (2) The filing of such a report or the failure to file
23 such a report shall not be alleged in any complaint which
24 might be filed in a court of law, and the failure to file
25 shall not of itself be considered any bar to the maintenance

1 of any criminal or civil action.

2 (3) The failure to file such a report shall not be a
3 violation of this chapter. However, if the person failing to
4 file such report is the only one injured from such use or
5 application of a pesticide by any person, the department may
6 refuse to hold a hearing for the denial, suspension, or
7 revocation of a license issued under this chapter until such
8 report is filed. The filing of such report shall not
9 constitute institution of a civil or criminal suit in any
10 court, state or federal."

11 Section 6. Section 80-8-302, MCA, is amended to read:
12 "80-8-302. Sampling and analysis. (1) The department
13 shall have the authority to sample, inspect, make analysis
14 of pesticides or devices distributed within this state at
15 such time and place and to such extent as it may deem
16 necessary to determine whether such pesticides or devices
17 are in compliance with the provisions of this chapter. The
18 department is authorized with a warrant or the consent of
19 the inhabitant or owner to enter upon any public or private
20 premises including any vehicle of transport in order to have
21 access to pesticides or devices and to records relating to
22 their distribution.

23 (2) The methods of sampling and analysis shall be
24 those adopted by the department from sources such as the
25 Journal of the Association of Official Analytical Chemists.

1 (3) In all administrative or legal actions involving
2 the composition, identification, or quantification of a
3 pesticide, a certified copy of the official analysis signed
4 by the department's authorized chemist shall be accepted as
5 prima facie evidence of the determinations set forth
6 therein."

7 Section 7. Section 80-8-303, MCA, is amended to read:
8 "80-8-303. Embargo. (1) Whenever a duly authorized
9 agent of the department of agriculture finds or has probable
10 cause to believe that any pesticide or device is adulterated
11 or misbranded, has not been registered under the provisions
12 of 80-8-201(5), fails to bear on its label the information
13 required by this chapter, or is a white powder pesticide and
14 is not colored as required under this chapter, he shall
15 affix to such article a tag or other appropriate marking
16 giving notice thereof and stating that the article has been
17 detained or embargoed and warning all persons not to remove
18 or dispose of such article by sale or otherwise until
19 permission for removal or disposal is given by such agent or
20 the court. ~~It is unlawful for any~~ Any person to--remove who
21 removes or dispose disposes of such detained or embargoed
22 article by sale or otherwise, without such prior permission,
23 or ~~to remove~~ removes or ~~alter~~ alters the tag or marking, is
24 guilty of a misdemeanor and may be charged accordingly or
25 may be subjected to appropriate administrative proceedings.

1 or both.

2 (2) When an article detained or embargoed under
3 subsection (1) has been found by such agent to be in
4 violation, if after 30 days the violation has not been
5 resolved, he may petition the district court in whose
6 jurisdiction the article is detained or embargoed for a
7 condemnation of such article. When such agent has found that
8 an article so detained or embargoed is not adulterated or
9 misbranded, he shall remove the tag or other marking.

10 (3) If the court finds that a detained or embargoed
11 article is in violation of this chapter or rules adopted
12 thereunder, such article shall after entry of the decree be
13 destroyed at the expense of the claimant thereof, under the
14 supervision of such agent, and all court costs and fees and
15 storage and other proper expenses shall be assessed against
16 the claimant of such pesticide or device or his agent,
17 provided that when the adulteration or misbranding can be
18 corrected by proper labeling or processing of the article,
19 the court, after entry of the decree and after such costs,
20 fees, and expenses have been paid and a good and sufficient
21 bond has been executed, conditioned upon the proper labeling
22 or processing of such pesticide or device, may by order
23 direct that such article be delivered to the claimant
24 thereof for such labeling or processing under the
25 supervision of an agent of the department. The expense of

1 such supervision shall be paid by claimant. The article
2 shall be returned to the claimant of the pesticide or device
3 on the representation to the court by the department that
4 the article is no longer in violation of this chapter, and
5 that the expenses of such supervision have been paid."

6 Section 8. Section 80-8-304, MCA, is amended to read:
7 "80-8-304. Enforcement Investigation and enforcement
8 authority. (1) In enforcing this chapter, the department or
9 its duly authorized agents, upon reasonable cause, may enter
10 upon private and public premises and property with a warrant
11 or consent of the inhabitant or owner to inspect or
12 investigate at reasonable times:

13 ~~(1)(a)~~ equipment subject to this chapter used for
14 applying pesticides;

15 ~~(2)(b)~~ actual or reported adverse effects caused by
16 pesticides in humans, crops, animals, land, or other
17 property;

18 ~~(3)(c)~~ records on the selling or use of pesticides and
19 the person's stock of pesticides;

20 ~~(4)(d)~~ storage and disposal of pesticides by persons
21 ~~licensed or regulated under this chapter~~ any person;

22 ~~(5)(e)~~ sample pesticides being applied or to be
23 applied and to sample the pesticides; or

24 ~~(6)(f)~~ the use and application of a pesticide; or
25 ~~(g)~~ the environment alleged to have been exposed to

1 pesticides and to collect and analyze environmental samples.

2 (2) The department is authorized to investigate all
 3 incidents involving the application, introduction, or
 4 utilization of registered pesticides or compounds capable of
 5 acting in the manner of pesticides when the incidents have a
 6 reasonable potential to adversely affect the public
 7 environment or persons other than the applicator.

8 (3) The investigation authority provided for in this
 9 section may be exercised OVER PERSONS NOT POSSESSING A
 10 REQUIRED LICENSE OR PERMIT only upon receipt of a complaint
 11 or report of an incident."

12 Section 9. Section 80-8-305, MCA, is amended to read:

13 "80-8-305. Discarding-pesticides General violations.

14 (1) It shall be is unlawful for any person:

15 (a) to discard any pesticide or pesticide container in
 16 such a manner as to cause injury to humans, domestic
 17 animals, or wildlife, or to pollute any waterway in a way
 18 harmful to any wildlife therein or to the environment;

19 (b) to handle, transport, store, display, or
 20 distribute pesticides or pesticide containers in such a
 21 manner as to endanger man or the environment or to endanger
 22 food or any other products that may be transported, stored,
 23 displayed, or distributed with such pesticides;

24 (c) to handle, apply, or attempt to apply any
 25 registered pesticide for which he does not have an

1 appropriate, complete, or legible label at hand; or

2 (d) to apply or attempt to apply any registered
 3 pesticide in a manner inconsistent with the label, as
 4 defined in 80-8-102.

5 (2) It is unlawful for any person to manufacture,
 6 formulate, use, store, apply, or attempt to apply any
 7 registered pesticide or component or byproduct thereof in
 8 such a manner that the pesticide or any component or
 9 byproduct cannot be contained or confined within the
 10 boundaries of the lands owned by or under the appropriate
 11 control of the person involved. ~~OR~~ IS SPECIFICALLY
 12 EXEMPTED FROM THE PROVISIONS OF THIS SUBSECTION."

13 Section 10. Section 80-8-306, MCA, is amended to read:

14 "80-8-306. Violation Penalties. (1) Any person
 15 convicted of violating any of the provisions of this chapter
 16 or the rules issued thereunder or who may misrepresent,
 17 impede, obstruct, hinder, or otherwise prevent or attempt to
 18 prevent the department or its duly authorized agent in
 19 performance of its duty in connection with the provisions of
 20 this chapter shall be adjudged guilty of a misdemeanor and
 21 shall be fined not less than \$100 but not more than \$500 or
 22 imprisoned in the county jail for a term not to exceed 6
 23 months, or both.

24 (2) The department or its authorized representative is
 25 hereby authorized to apply to the district court of the

1 county or any county wherein a violation is about to occur
 2 or has occurred to grant a temporary or permanent injunction
 3 restraining any person from violating or continuing to
 4 violate any of the provisions of this chapter or any rule
 5 promulgated under the chapter notwithstanding the existence
 6 of other remedies of law. When a person makes pesticide
 7 applications IN MORE THAN ONE COUNTY ON A COMMERCIAL BASIS
 8 without a license or permit or OPERATES in violation of a
 9 lawful written order of the department IN MORE THAN ONE
 10 COUNTY, the district court of Lewis and Clark County has
 11 concurrent jurisdiction with the district court of any other
 12 county wherein a violation has occurred or is about to
 13 occur, and the department may select and proceed in the
 14 court most appropriate under the circumstances. The
 15 injunction is to be issued without bond.

16 (3) Nothing in this chapter is to be construed as
 17 requiring the department or its authorized agent to report
 18 minor violations of the chapter for prosecution or for the
 19 institution of seizure proceedings when it believes the
 20 public interest will be best served by other remedial
 21 action, or by a suitable notice of warning in writing or a
 22 lawful written order; nor is any part of this chapter to be
 23 construed to apply to common carriers transporting shipments
 24 tendered to them by the general public.

25 (4) ~~Notwithstanding any other provisions of this~~

1 ~~section, if any~~ Any person who with intent to defraud uses
 2 or reveals information relative to formulas of products
 3 acquired under the authority of 80-8-201, he shall, upon
 4 conviction, be fined not more than \$500 or imprisoned for
 5 not more than 1 year, or both.

6 ~~(5) In all prosecutions under the registration section~~
 7 ~~involving the composition of a lot of pesticide, a certified~~
 8 ~~copy of the official analysis signed by the department's~~
 9 ~~authorized chemist shall be accepted as prima facie evidence~~
 10 ~~of the composition."~~

-End-

HOUSE BILL NO. 452

INTRODUCED BY MEYER, ERNST, THOFT, HEMSTAD, BARDANOUVE

BY REQUEST OF THE DEPARTMENT OF AGRICULTURE

A BILL FOR AN ACT ENTITLED: "AN ACT FOR A GENERAL REVISION OF PESTICIDE REGISTRATION, LICENSING, ENFORCEMENT, AND PENALTIES PROVISIONS; AMENDING SECTIONS 80-8-204, 80-8-207, 80-8-209, 80-8-211, AND 80-8-301 THROUGH 80-8-306, MCA."

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

Section 1. Section 80-8-204, MCA, is amended to read:

"80-8-204. Application for applicator's license. (1) Application for a pesticide applicator's license provided for in 80-8-203 shall be made annually to the department before applying pesticides in any calendar year, provided that pesticide applicators applying for renewal of license shall do so on or before May 1 of that calendar year. Any applicator applying for renewal of license after May 1 shall be assessed a \$15 late licensing fee.

(2) ~~If the application is made~~ An individual applying for a license to engage in aerial application of pesticides, ~~the applicant shall first meet~~ certify on the application ~~that he has met~~ all of the requirements ~~of the~~ federal aviation agency administration and the department of community affairs ~~to operate the equipment described in the~~

application requirements for aerial pesticide applicators."

Section 2. Section 80-8-207, MCA, is amended to read:

"80-8-207. Dealers. (1) It is unlawful for ~~a dealer~~ any person to sell, offer for sale, deliver, or have delivered within this state any pesticide without first procuring a license from the department of agriculture for each calendar year or portion thereof. A separate dealer's license and fee shall be required for each location or outlet from which pesticides are distributed, sold, held for sale, or offered for sale. Pesticide fieldmen or salesmen employed directly out of the same location or outlet and under a licensed dealer shall not be required to obtain a license. The dealer shall furnish the department the names and addresses of its fieldmen and salesmen selling pesticides within the state.

(2) The application for a license shall be accompanied by a fee of \$15. Dealers applying for renewal of license shall do so on or before May 1 of that calendar year. Any dealer applying for renewal of license after May 1 shall be assessed a \$15 late licensing fee.

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

(4) Dealers may make one application for two annual licenses if the application is accompanied by a \$15

1 licensing fee for each year of the state biennium.

2 (5) Pharmacists licensed as provided for in 37-7-302
3 and 37-7-303, veterinarians licensed as provided for in
4 37-18-302 and 37-18-303, and certified pharmacies licensed
5 under 37-7-321 shall not be required to be licensed to sell
6 pesticides, provided that the certified pharmacies and
7 veterinarians shall register with the department each year.
8 However, the certified pharmacies and veterinarians shall be
9 required to meet all other requirements concerning the
10 commercial sale of pesticides. The department shall take
11 into account the professional licensing requirements of
12 pharmacists, certified pharmacies, and veterinarians when
13 adopting rules."

14 Section 3. Section 80-8-209, MCA, is amended to read:

15 "80-8-209. Farm applicators. (1) Farm applicators
16 shall obtain a ~~certificate or~~ special-use permit prior to
17 purchasing and using any pesticide designated by the
18 department as a restricted-use pesticide. ~~The certificate~~
19 ~~to be issued for 5 calendar years, must be renewed annually~~
20 ~~by the department or its authorized representative. The~~
21 ~~5-year certification period shall commence on January 1,~~
22 1978. The special-use permit shall be effective for 5
23 calendar years. The department may establish a staggered
24 years system of issuing permits by agricultural districts so
25 that all permits issued in one of the five agricultural

1 ~~districts will be renewed in the same year but permits from~~
2 ~~only one district will be renewed in any 1 year. Permits~~
3 ~~issued in the course of a given district's 5-year effective~~
4 ~~period will be effective only for the duration of the 5-year~~
5 ~~period and then will be renewable for 5 years at the same~~
6 ~~time as all other permits issued in the same district.~~

7 (2) Restricted pesticides may not be utilized by farm
8 applicators or their employees except for the purpose of
9 producing or protecting any agricultural commodity on
10 property owned, leased, or rented by such applicator or as
11 provided in (6) of this section.

12 (3) Farm applicators shall qualify for the certificate
13 or permit by either passing a graded written examination or
14 attending a training course approved by the department with
15 or without and taking an ungraded written examination. The
16 examination or examinations and course shall include require
17 and demonstrate practical knowledge as to of the
18 applicator's 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
5 as 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 that 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~~ manifesting
19 reading disabilities may become certified to use ~~up-to as~~
20 many as two restricted-use pesticides by passing a specific
21 oral examination on the particular pesticide(s) if the
22 applicator documents that a certified applicator in the
23 immediate vicinity can advise him.

24 (6) Provisions of this chapter relating to
25 certification of farm applicators do not apply to any farm

1 applicator applying nonrestricted pesticides on his own land
2 or on lands of his neighbors if he:

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

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

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

11 Section 4. Section 80-8-211, MCA, is amended to read:

12 "80-8-211. Revocation of licenses and permits. (1) The
13 department shall establish the policy and procedures on the
14 revocation of licenses or permits. The department may refuse
15 to grant, renew, or may revoke or modify a license or
16 permit, as the case may require, when the department is
17 satisfied that the licensee or holder of a permit is not
18 qualified to sell, use, or apply pesticides under the
19 conditions in the locality in which he operates or has
20 operated or that he has committed any of the following acts,
21 each of which is declared to be a violation of this chapter:

22 (a) made false or fraudulent claims or recommendations
23 through any media misrepresenting the effect of materials or
24 methods to be utilized;

25 (b) applied or sold unapproved or illegal materials or

1 applied or sold a pesticide without possessing a current and
 2 appropriate license or permit;

3 (c) operated in a faulty, careless, or negligent
 4 manner;

5 (d) operated faulty or unsafe equipment;

6 (e) refused or neglected to comply with the provisions
 7 of this chapter, the rules adopted hereunder, or any lawful
 8 order of the department;

9 (f) refused or neglected to keep and maintain the
 10 records required by this chapter or to make reports when and
 11 as required;

12 (g) made false or fraudulent records or reports;

13 (h) operated equipment for the commercial application
 14 of a pesticide without having a license or permit;

15 (i) used fraud or misrepresentation in making an
 16 application for a license or permit or renewal of a license
 17 or permit;

18 (j) used or applied a registered pesticide
 19 inconsistent with its labeling or the label or the
 20 department restrictions on the use of that pesticide;

21 (k) made false or misleading statements in connection
 22 with a pest inspection of land, crops, yards, or any
 23 premises in an attempt to induce any person to engage his
 24 services to eliminate, control, or mitigate the alleged pest
 25 or made FALSE OR MISLEADING statements intended-to-overcome

1 ~~any concern expressed by a customer about~~ CONCERNING the
 2 ~~effectiveness of any application of pesticides~~ PESTICIDE OR
 3 ITS APPLICATION.

4 (2) Decisions of the department relating to the
 5 issuing of licenses or permits may be appealed."

6 Section 5. Section 80-8-301, MCA, is amended to read:

7 "80-8-301. Report of loss or damage -- effect of
 8 failure to report. (1) A person suffering loss or damage
 9 resulting from the use or application of any pesticide by
 10 any person shall, within 30 days from the time the
 11 occurrence of the loss became known to him, file with the
 12 department of agriculture a verified report of loss setting
 13 forth, so far as known to the claimant, the following:

14 (a) name and address of claimant;

15 (b) type, kind, and location of property alleged to be
 16 injured or damaged;

17 (c) date the alleged injury or damage occurred;

18 (d) name of person applying the pesticide and
 19 allegedly responsible for the loss or damage;

20 (e) name of the owner or occupant of the property for
 21 whom such pesticide application was made.

22 (2) The filing of such a report or the failure to file
 23 such a report shall not be alleged in any complaint which
 24 might be filed in a court of law, and the failure to file
 25 shall not of itself be considered any bar to the maintenance

1 of any criminal or civil action.

2 (3) The failure to file such a report shall not be a
 3 violation of this chapter. However, if the person failing to
 4 file such report is the only one injured from such use or
 5 application of a pesticide by any person, the department may
 6 refuse to hold a hearing for the denial, suspension, or
 7 revocation of a license issued under this chapter until such
 8 report is filed. The filing of such report shall not
 9 constitute institution of a civil or criminal suit in any
 10 court, state or federal."

11 Section 6. Section 80-8-302, MCA, is amended to read:

12 "80-8-302. Sampling and analysis. (1) The department
 13 shall have the authority to sample, inspect, make analysis
 14 of pesticides or devices distributed within this state at
 15 such time and place and to such extent as it may deem
 16 necessary to determine whether such pesticides or devices
 17 are in compliance with the provisions of this chapter. The
 18 department is authorized with a warrant or the consent of
 19 the inhabitant or owner to enter upon any public or private
 20 premises including any vehicle of transport in order to have
 21 access to pesticides or devices and to records relating to
 22 their distribution.

23 (2) The methods of sampling and analysis shall be
 24 those adopted by the department from sources such as the
 25 Journal of the Association of Official Analytical Chemists.

1 (3) In all administrative or legal actions involving
 2 the composition, identification, or quantification of a
 3 pesticide, a certified copy of the official analysis signed
 4 by the department's authorized chemist shall be accepted as
 5 prima facie evidence of the determinations set forth
 6 therein."

7 Section 7. Section 80-8-303, MCA, is amended to read:

8 "80-8-303. Embargo. (1) Whenever a duly authorized
 9 agent of the department of agriculture finds or has probable
 10 cause to believe that any pesticide or device is adulterated
 11 or misbranded, has not been registered under the provisions
 12 of 80-8-201(5), fails to bear on its label the information
 13 required by this chapter, or is a white powder pesticide and
 14 is not colored as required under this chapter, he shall
 15 affix to such article a tag or other appropriate marking
 16 giving notice thereof and stating that the article has been
 17 detained or embargoed and warning all persons not to remove
 18 or dispose of such article by sale or otherwise until
 19 permission for removal or disposal is given by such agent or
 20 the court. ~~It is unlawful for any~~ Any person to--remove who
 21 removes or dispose disposes of such detained or embargoed
 22 article by sale or otherwise, without such prior permission,
 23 or to remove removes or after alters the tag or marking, is
 24 guilty of a misdemeanor and may be charged accordingly or
 25 may be subjected to appropriate administrative proceedings.

1 or both.

2 (2) When an article detained or embargoed under
3 subsection (1) has been found by such agent to be in
4 violation, if after 30 days the violation has not been
5 resolved, he may petition the district court in whose
6 jurisdiction the article is detained or embargoed for a
7 condemnation of such article. When such agent has found that
8 an article so detained or embargoed is not adulterated or
9 misbranded, he shall remove the tag or other marking.

10 (3) If the court finds that a detained or embargoed
11 article is in violation of this chapter or rules adopted
12 thereunder, such article shall after entry of the decree be
13 destroyed at the expense of the claimant thereof, under the
14 supervision of such agent, and all court costs and fees and
15 storage and other proper expenses shall be assessed against
16 the claimant of such pesticide or device or his agent,
17 provided that when the adulteration or misbranding can be
18 corrected by proper labeling or processing of the article,
19 the court, after entry of the decree and after such costs,
20 fees, and expenses have been paid and a good and sufficient
21 bond has been executed, conditioned upon the proper labeling
22 or processing of such pesticide or device, may by order
23 direct that such article be delivered to the claimant
24 thereof for such labeling or processing under the
25 supervision of an agent of the department. The expense of

1 such supervision shall be paid by claimant. The article
2 shall be returned to the claimant of the pesticide or device
3 on the representation to the court by the department that
4 the article is no longer in violation of this chapter, and
5 that the expenses of such supervision have been paid."

6 Section 8. Section 80-8-304, MCA, is amended to read:

7 "80-8-304. Enforcement investigation and enforcement
8 authority. (1) In enforcing this chapter, the department or
9 its duly authorized agents, upon reasonable cause, may enter
10 upon private and public premises and property with a warrant
11 or consent of the inhabitant or owner to inspect or
12 investigate at reasonable times:

13 ~~(1)(a)~~ equipment subject--to--this--chapter used for
14 applying pesticides;

15 ~~(2)(b)~~ actual or reported adverse effects caused by
16 pesticides in humans, crops, animals, land, or other
17 property;

18 ~~(3)(c)~~ records on the selling or use of pesticides and
19 the person's stock of pesticides;

20 ~~(4)(d)~~ storage and disposal of pesticides by persons
21 ~~licensed or regulated under this chapter~~ any person;

22 ~~(5)(e)~~ sample pesticides being applied or to be
23 applied and to sample the pesticides; or

24 ~~(6)(f)~~ the use and application of a pesticide; or

25 ~~(7)(g)~~ the environment alleged to have been exposed to

1 pesticides and to collect and analyze environmental samples.

2 (2) The department is authorized to investigate all
 3 incidents involving the application, introduction, or
 4 utilization of registered pesticides or compounds capable of
 5 acting in the manner of pesticides when the incidents have a
 6 reasonable potential to adversely affect the public
 7 environment or persons other than the applicator.

8 (3) The investigation authority provided for in this
 9 section may be exercised OVER PERSONS NOT POSSESSING A
 10 REQUIRED LICENSE OR PERMIT only upon receipt of a complaint
 11 or report of an incident."

12 Section 9. Section 80-8-305, MCA, is amended to read:

13 "80-8-305. Discarding pesticides General violations.

14 (1) It shall be is unlawful for any person:

15 (a) to discard any pesticide or pesticide container in
 16 such a manner as to cause injury to humans, domestic
 17 animals, or wildlife, or to pollute any waterway in a way
 18 harmful to any wildlife therein or to the environment;

19 (b) to handle, transport, store, display, or
 20 distribute pesticides or pesticide containers in such a
 21 manner as to endanger man or the environment or to endanger
 22 food or any other products that may be transported, stored,
 23 displayed, or distributed with such pesticides;

24 (c) to handle, apply, or attempt to apply any
 25 registered pesticide for which he does not have an

1 appropriate, complete, or legible label at hand; or

2 (d) to apply or attempt to apply any registered
 3 pesticide in a manner inconsistent with the label, as
 4 defined in 80-8-102.

5 (2) It is unlawful for any person to manufacture,
 6 formulate, use, store, apply, or attempt to apply any
 7 registered pesticide or component or byproduct thereof in
 8 such a manner that the pesticide or any component or
 9 byproduct cannot be contained or confined within the
 10 boundaries of the lands owned by or under the appropriate
 11 control of the person involved. DOOR IS SPECIFICALLY
 12 EXEMPTED FROM THE PROVISIONS OF THIS SUBSECTION."

13 Section 10. Section 80-8-306, MCA, is amended to read:

14 "80-8-306. Violation Penalties. (1) Any person
 15 convicted of violating any of the provisions of this chapter
 16 or the rules issued thereunder or who may misrepresent,
 17 impede, obstruct, hinder, or otherwise prevent or attempt to
 18 prevent the department or its duly authorized agent in
 19 performance of its duty in connection with the provisions of
 20 this chapter shall be adjudged guilty of a misdemeanor and
 21 shall be fined not less than \$100 but not more than \$500 or
 22 imprisoned in the county jail for a term not to exceed 6
 23 months, or both.

24 (2) The department or its authorized representative is
 25 hereby authorized to apply to the district court of the

1 county or any county wherein a violation is about to occur
 2 or has occurred to grant a temporary or permanent injunction
 3 restraining any person from violating or continuing to
 4 violate any of the provisions of this chapter or any rule
 5 promulgated under the chapter notwithstanding the existence
 6 of other remedies of law. When a person makes pesticide
 7 applications IN MORE THAN ONE COUNTY ON A COMMERCIAL BASIS
 8 without a license or permit or OPERATES in violation of a
 9 lawful written order of the department IN MORE THAN ONE
 10 COUNTY, the district court of Lewis and Clark County has
 11 concurrent jurisdiction with the district court of any other
 12 county wherein a violation has occurred or is about to
 13 occur, and the department may select and proceed in the
 14 court most appropriate under the circumstances. The
 15 injunction is to be issued without bond.

16 (3) Nothing in this chapter is to be construed as
 17 requiring the department or its authorized agent to report
 18 minor violations of the chapter for prosecution or for the
 19 institution of seizure proceedings when it believes the
 20 public interest will be best served by other remedial
 21 action, or by a suitable notice of warning in writing or a
 22 lawful written order; nor is any part of this chapter to be
 23 construed to apply to common carriers transporting shipments
 24 tendered to them by the general public.

25 (4) ~~Notwithstanding any other provisions of this~~

1 ~~section--if--any~~ Any person who with intent to defraud uses
 2 or reveals information relative to formulas of products
 3 acquired under the authority of 80-8-201, ~~he shall, upon~~
 4 conviction, be fined not more than \$500 or imprisoned for
 5 not more than 1 year, or both.

6 ~~(5)--in-all-prosecutions-under-the-registration-section~~
 7 ~~involving-the-composition-of-a-lot-of-pesticides-a-certified~~
 8 ~~copy--of--the--official--analysis--signed--by--the--department's~~
 9 ~~authorized-chemist--shall--be--accepted--as--prima-facie--evidence~~
 10 ~~of-the-composition."~~

-End-

1 HOUSE BILL NO. 452

2 INTRODUCED BY MEYER, ERNST, THOFT, HEMSTAD, BARDANOUVE

3 BY REQUEST OF THE DEPARTMENT OF AGRICULTURE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT FOR A GENERAL REVISION
6 OF PESTICIDE REGISTRATION, LICENSING, ENFORCEMENT, AND
7 PENALTIES PROVISIONS; AMENDING SECTIONS 80-8-204, 80-8-207,
8 80-8-209, 80-8-211, AND 80-8-301 THROUGH 80-8-306, MCA."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 80-8-204, MCA, is amended to read:

12 "80-8-204. Application for applicator's license. (1)
13 Application for a pesticide applicator's license provided
14 for in 80-8-203 shall be made annually to the department
15 before applying pesticides in any calendar year, provided
16 that pesticide applicators applying for renewal of license
17 shall do so on or before May 1 of that calendar year. Any
18 applicator applying for renewal of license after May 1 shall
19 be assessed a \$15 late licensing fee.

20 (2) ~~if the application is made~~ An individual applying
21 for a license to engage in aerial application of pesticides,
22 the applicant shall first meet certify on the application
23 that he has met all of the requirements--of--the federal
24 aviation agency administration and the department of
25 community affairs ~~to operate the equipment described in the~~

1 application requirements for aerial pesticide applicators."

2 Section 2. Section 80-8-207, MCA, is amended to read:

3 "80-8-207. Dealers. (1) It is unlawful for ~~a dealer~~
4 any person to sell, offer for sale, deliver, or have
5 delivered within this state any pesticide without first
6 procuring a license from the department of agriculture for
7 each calendar year or portion thereof. A separate dealer's
8 license and fee shall be required for each location or
9 outlet from which pesticides are distributed, sold, held for
10 sale, or offered for sale. Pesticide fieldmen or salesmen
11 employed directly out of the same location or outlet and
12 under a licensed dealer shall not be required to obtain a
13 license. The dealer shall furnish the department the names
14 and addresses of its fieldmen and salesmen selling
15 pesticides within the state.

16 (2) The application for a license shall be accompanied
17 by a fee of \$15. Dealers applying for renewal of license
18 shall do so on or before May 1 of that calendar year. Any
19 dealer applying for renewal of license after May 1 shall be
20 assessed a \$15 late licensing fee.

21 (3) The dealer shall require the purchaser of any
22 restricted pesticide to exhibit his license or permit issued
23 under authority of this chapter before completing a sale.

24 (4) Dealers may make one application for two annual
25 licenses if the application is accompanied by a \$15

1 licensing fee for each year of the state biennium.
 2 (5) Pharmacists licensed as provided for in 37-7-302
 3 and 37-7-303, veterinarians licensed as provided for in
 4 37-18-302 and 37-18-303, and certified pharmacies licensed
 5 under 37-7-321 shall not be required to be licensed to sell
 6 pesticides, provided that the certified pharmacies and
 7 veterinarians shall register with the department each year.
 8 However, the certified pharmacies and veterinarians shall be
 9 required to meet all other requirements concerning the
 10 commercial sale of pesticides. The department shall take
 11 into account the professional licensing requirements of
 12 pharmacists, certified pharmacies, and veterinarians when
 13 adopting rules."

14 Section 3. Section 80-8-209, MCA, is amended to read:
 15 "80-8-209. Farm applicators. (1) Farm applicators
 16 shall obtain a certificate or special-use permit prior to
 17 purchasing and using any pesticide designated by the
 18 department as a restricted-use pesticide. ~~The certificate~~
 19 ~~to be issued for 5 calendar years, must be renewed annually~~
 20 ~~by the department or its authorized representative. The~~
 21 ~~5-year certification period shall commence on January 1,~~
 22 ~~1978. The special-use permit shall be effective for 5~~
 23 ~~calendar years. The department may establish a staggered~~
 24 ~~years system of issuing permits by agricultural districts so~~
 25 ~~that all permits issued in one of the five agricultural~~

1 ~~districts will be renewed in the same year but permits from~~
 2 ~~only one district will be renewed in any 1 year. Permits~~
 3 ~~issued in the course of a given district's 5-year effective~~
 4 ~~period will be effective only for the duration of the 5-year~~
 5 ~~period and then will be renewable for 5 years at the same~~
 6 ~~time as all other permits issued in the same district.~~

7 (2) Restricted pesticides may not be utilized by farm
 8 applicators or their employees except for the purpose of
 9 producing or protecting any agricultural commodity on
 10 property owned, leased, or rented by such applicator or as
 11 provided in (6) of this section.

12 (3) Farm applicators shall qualify for the certificate
 13 or permit by either passing a graded written examination or
 14 attending a training course approved by the department with
 15 or without and taking an ungraded written examination. The
 16 examination or examinations and course shall include require
 17 and demonstrate practical knowledge ~~as to~~ of the
 18 applicator's 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
5 as 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 that 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~~ manifesting
19 reading disabilities may become certified to use ~~up to~~ as
20 many as two restricted-use pesticides by passing a specific
21 oral examination on the particular pesticide(s) if the
22 applicator documents that a certified applicator in the
23 immediate vicinity can advise him.

24 (6) Provisions of this chapter relating to
25 certification of farm applicators do not apply to any farm

1 applicator applying nonrestricted pesticides on his own land
2 or on lands of his neighbors if he:

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

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

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

11 Section 4. Section 80-8-211, MCA, is amended to read:

12 *80-8-211. Revocation of licenses and permits. (1) The
13 department shall establish the policy and procedures on the
14 revocation of licenses or permits. The department may refuse
15 to grant, renew, or may revoke or modify a license or
16 permit, as the case may require, when the department is
17 satisfied that the licensee or holder of a permit is not
18 qualified to sell, use, or apply pesticides under the
19 conditions in the locality in which he operates or has
20 operated or that he has committed any of the following acts,
21 each of which is declared to be a violation of this chapter:

22 (a) made false or fraudulent claims or recommendations
23 through any media misrepresenting the effect of materials or
24 methods to be utilized;

25 (b) applied or sold unapproved or illegal materials or

1 applied or sold a pesticide without possessing a current and
 2 appropriate license or permit;

3 (c) operated in a faulty, careless, or negligent
 4 manner;

5 (d) operated faulty or unsafe equipment;

6 (e) refused or neglected to comply with the provisions
 7 of this chapter, the rules adopted hereunder, or any lawful
 8 order of the department;

9 (f) refused or neglected to keep and maintain the
 10 records required by this chapter or to make reports when and
 11 as required;

12 (g) made false or fraudulent records or reports;

13 (h) operated equipment for the commercial application
 14 of a pesticide without having a license or permit;

15 (i) used fraud or misrepresentation in making an
 16 application for a license or permit or renewal of a license
 17 or permit;

18 (j) used or applied a registered pesticide
 19 inconsistent with its labeling or the label or the
 20 department restrictions on the use of that pesticide;

21 (k) made false or misleading statements in connection
 22 with a pest inspection of land, crops, yards, or any
 23 premises in an attempt to induce any person to engage his
 24 services to eliminate, control, or mitigate the alleged pest
 25 or made FALSE OR MISLEADING statements intended to overcome

1 ~~any concern expressed by a customer about~~ CONCERNING the
 2 ~~effectiveness of any application of pesticides~~ PESTICIDE OR
 3 ITS APPLICATION.

4 (2) Decisions of the department relating to the
 5 issuing of licenses or permits may be appealed."

6 Section 5. Section 80-8-301, MCA, is amended to read:

7 "80-8-301. Report of loss or damage -- effect of
 8 failure to report. (1) A person suffering loss or damage
 9 resulting from the use or application of any pesticide by
 10 any person shall, within 30 days from the time the
 11 occurrence of the loss became known to him, file with the
 12 department of agriculture a verified report of loss setting
 13 forth, so far as known to the claimant, the following:

14 (a) name and address of claimant;

15 (b) type, kind, and location of property alleged to be
 16 injured or damaged;

17 (c) date the alleged injury or damage occurred;

18 (d) name of person applying the pesticide and
 19 allegedly responsible for the loss or damage;

20 (e) name of the owner or occupant of the property for
 21 whom such pesticide application was made.

22 (2) The filing of such a report or the failure to file
 23 such a report shall not be alleged in any complaint which
 24 might be filed in a court of law, and the failure to file
 25 shall not of itself be considered any bar to the maintenance

1 of any criminal or civil action.

2 (3) The failure to file such a report shall not be a
3 violation of this chapter. However, if the person failing to
4 file such report is the only one injured from such use or
5 application of a pesticide by any person, the department may
6 refuse to hold a hearing for the denial, suspension, or
7 revocation of a license issued under this chapter until such
8 report is filed. The filing of such report shall not
9 constitute institution of a civil or criminal suit in any
10 court, state or federal."

11 Section 6. Section 80-8-302, MCA, is amended to read:

12 "80-8-302. Sampling and analysis. (1) The department
13 shall have the authority to sample, inspect, make analysis
14 of pesticides or devices distributed within this state at
15 such time and place and to such extent as it may deem
16 necessary to determine whether such pesticides or devices
17 are in compliance with the provisions of this chapter. The
18 department is authorized with a warrant or the consent of
19 the inhabitant or owner to enter upon any public or private
20 premises including any vehicle of transport in order to have
21 access to pesticides or devices and to records relating to
22 their distribution.

23 (2) The methods of sampling and analysis shall be
24 those adopted by the department from sources such as the
25 Journal of the Association of Official Analytical Chemists.

1 (3) In all administrative or legal actions involving
2 the composition, identification, or quantification of a
3 pesticide, a certified copy of the official analysis signed
4 by the department's authorized chemist shall be accepted as
5 prima facie evidence of the determinations set forth
6 therein."

7 Section 7. Section 80-8-303, MCA, is amended to read:

8 "80-8-303. Embargo. (1) Whenever a duly authorized
9 agent of the department of agriculture finds or has probable
10 cause to believe that any pesticide or device is adulterated
11 or misbranded, has not been registered under the provisions
12 of 80-8-201(5), fails to bear on its label the information
13 required by this chapter, or is a white powder pesticide and
14 is not colored as required under this chapter, he shall
15 affix to such article a tag or other appropriate marking
16 giving notice thereof and stating that the article has been
17 detained or embargoed and warning all persons not to remove
18 or dispose of such article by sale or otherwise until
19 permission for removal or disposal is given by such agent or
20 the court. ~~It is unlawful for any~~ Any person to--remove who
21 removes or dispose disposes of such detained or embargoed
22 article by sale or otherwise, without such prior permission,
23 or ~~to remove~~ removes or ~~after~~ alters the tag or marking, is
24 guilty of a misdemeanor and may be charged accordingly or
25 may be subjected to appropriate administrative proceedings,

1 or both.

2 (2) When an article detained or embargoed under
3 subsection (1) has been found by such agent to be in
4 violation, if after 30 days the violation has not been
5 resolved, he may petition the district court in whose
6 jurisdiction the article is detained or embargoed for a
7 condemnation of such article. When such agent has found that
8 an article so detained or embargoed is not adulterated or
9 misbranded, he shall remove the tag or other marking.

10 (3) If the court finds that a detained or embargoed
11 article is in violation of this chapter or rules adopted
12 thereunder, such article shall after entry of the decree be
13 destroyed at the expense of the claimant thereof, under the
14 supervision of such agent, and all court costs and fees and
15 storage and other proper expenses shall be assessed against
16 the claimant of such pesticide or device or his agent,
17 provided that when the adulteration or misbranding can be
18 corrected by proper labeling or processing of the article,
19 the court, after entry of the decree and after such costs,
20 fees, and expenses have been paid and a good and sufficient
21 bond has been executed, conditioned upon the proper labeling
22 or processing of such pesticide or device, may by order
23 direct that such article be delivered to the claimant
24 thereof for such labeling or processing under the
25 supervision of an agent of the department. The expense of

1 such supervision shall be paid by claimant. The article
2 shall be returned to the claimant of the pesticide or device
3 on the representation to the court by the department that
4 the article is no longer in violation of this chapter, and
5 that the expenses of such supervision have been paid."

6 Section 8. Section 80-8-304, MCA, is amended to read:
7 "80-8-304. Enforcement Investigation and enforcement
8 authority. (1) In enforcing this chapter, the department or
9 its duly authorized agents, upon reasonable cause, may enter
10 upon private and public premises and property with a warrant
11 or consent of the inhabitant or owner to inspect or
12 investigate at reasonable times:

13 (1)(a) equipment subject to this chapter used for
14 applying pesticides;

15 (2)(b) actual or reported adverse effects caused by
16 pesticides in humans, crops, animals, land, or other
17 property;

18 (3)(c) records on the selling or use of pesticides and
19 the person's stock of pesticides;

20 (4)(d) storage and disposal of pesticides by persons
21 ~~licensed or regulated under this chapter~~ any person;

22 (5)(e) sample pesticides being applied or to be
23 applied and to sample the pesticides; or

24 (6)(f) the use and application of a pesticide; or
25 (g) the environment alleged to have been exposed to

1 pesticides and to collect and analyze environmental samples.

2 (2) The department is authorized to investigate all
 3 incidents involving the application, introduction, or
 4 utilization of registered pesticides or compounds capable of
 5 acting in the manner of pesticides when the incidents have a
 6 reasonable potential to adversely affect the public
 7 environment or persons other than the applicator.

8 (3) The investigation authority provided for in this
 9 section may be exercised OVER PERSONS NOT POSSESSING A
 10 REQUIRED LICENSE OR PERMIT only upon receipt of a complaint
 11 or report of an incident."

12 Section 9. Section 80-8-305, MCA, is amended to read:

13 "80-8-305. Discarding pesticides General violations.
 14 (1) It shall be is unlawful for any person:

15 (a) to discard any pesticide or pesticide container in
 16 such a manner as to cause injury to humans, domestic
 17 animals, or wildlife, or to pollute any waterway in a way
 18 harmful to any wildlife therein or to the environment;

19 (b) to handle, transport, store, display, or
 20 distribute pesticides or pesticide containers in such a
 21 manner as to endanger man or the environment or to endanger
 22 food or any other products that may be transported, stored,
 23 displayed, or distributed with such pesticides;

24 (c) to handle, apply, or attempt to apply any
 25 registered pesticide for which he does not have an

1 appropriate, complete, or legible label at hand; or

2 (d) to apply or attempt to apply any registered
 3 pesticide in a manner inconsistent with the label, as
 4 defined in 80-8-102.

5 (2) It is unlawful for any person to manufacture,
 6 formulate, use OR store, apply, or attempt to apply any
 7 registered pesticide or component or byproduct thereof in
 8 such a manner that the pesticide or any component or
 9 byproduct cannot be contained or confined within the
 10 boundaries of the lands owned by or under the appropriate
 11 control of the person involved. ODOR IS SPECIFICALLY
 12 EXEMPTED FROM THE PROVISIONS OF THIS SUBSECTION."

13 Section 10. Section 80-8-306, MCA, is amended to read:

14 "80-8-306. Violation Penalties. (1) Any person
 15 convicted of violating any of the provisions of this chapter
 16 or the rules issued thereunder or who may misrepresent,
 17 impede, obstruct, hinder, or otherwise prevent or attempt to
 18 prevent the department or its duly authorized agent in
 19 performance of its duty in connection with the provisions of
 20 this chapter shall be adjudged guilty of a misdemeanor and
 21 shall be fined not less than \$100 but not more than \$500 or
 22 imprisoned in the county jail for a term not to exceed 6
 23 months, or both.

24 (2) The department or its authorized representative is
 25 hereby authorized to apply to the district court of the

1 county or any county wherein a violation is about to occur
 2 or has occurred to grant a temporary or permanent injunction
 3 restraining any person from violating or continuing to
 4 violate any of the provisions of this chapter or any rule
 5 promulgated under the chapter notwithstanding the existence
 6 of other remedies of law. When a person makes pesticide
 7 applications IN MORE THAN ONE COUNTY ON A COMMERCIAL BASIS
 8 without a license or permit or OPERATES in violation of a
 9 lawful written order of the department IN MORE THAN ONE
 10 COUNTY, the district court of Lewis and Clark County has
 11 concurrent jurisdiction with the district court of any other
 12 county wherein a violation has occurred or is about to
 13 occur, and the department may select and proceed in the
 14 court most appropriate under the circumstances. The
 15 injunction is to be issued without bond.

16 (3) Nothing in this chapter is to be construed as
 17 requiring the department or its authorized agent to report
 18 minor violations of the chapter for prosecution or for the
 19 institution of seizure proceedings when it believes the
 20 public interest will be best served by other remedial
 21 actions or by a suitable notice of warning in writing, or BY
 22 a lawful written order; nor is any part of this chapter to
 23 be construed to apply to common carriers transporting
 24 shipments tendered to them by the general public.

25 (4) ~~Notwithstanding any other provisions of this~~

1 ~~section--if--any~~ Any person who with intent to defraud uses
 2 or reveals information relative to formulas of products
 3 acquired under the authority of 80-8-201~~he~~ shall, upon
 4 conviction, be fined not more than \$500 or imprisoned for
 5 not more than 1 year, or both.

6 ~~{5}--in--all--prosecutions--under--the--registration--section~~
 7 ~~involving--the--composition--of--a--lot--of--pesticides--a--certified~~
 8 ~~copy--of--the--official--analysis--signed--by--the--department's~~
 9 ~~authorized--chemist--shall--be--accepted--as--prima--facie--evidence~~
 10 ~~of--the--composition"~~

-End-

March 7, 1981

SENATE STANDING COMMITTEE REPORT
(Agriculture, Livestock & Irrigation)

That House Bill No. 452 be amended as follows:

1. Page 14, line 6.

Following: "formulate,"

Strike: "use,"

Insert: "or"

Following: "store"

Strike: ", apply, or attempt to apply"

2. Page 15, line 21.

Following: "writing"

Insert: ","

Following: "or"

Insert: "by"