HOUSE BILL NO. 802

INTRODUCED BY D. BROWN, MOHAR, REGAN, BERGENE, REAM, HARPER, RAMIREZ

IN THE HOUSE February 15, 1983 Introduced and referred to Committee on Natural Resources. February 21, 1983 Committee recommend bill do pass as amended. Report adopted. **February 22, 1983** Bill printed and placed on members' desks. February 23, 1983 Second reading, do pass as amended. Correctly engrossed. Third reading, passed. Transmitted to Senate. IN THE SENATE March 1, 1983 Introduced and referred to Committee on Agriculture, Livestock and Irrigation. March 16, 1983 Committee recommend bill be concurred in as amended. Report adopted. Second reading, pass March 18, 1983 consideration. March 19, 1983 Second reading, pass consideration until 3/22. Second reading, concurred in March 22, 1983 as amended.

March 24, 1983	Third reading, concurred in. Ayes, 41; Noes, 8.
	IN THE HOUSE
March 24, 1983	Returned to House with amendments.
March 31, 1983	Second reading, pass consideration.
April 1, 1983	Second reading, amendments not concurred in.
	On motion Conference Committee requested and appointed.
April 8, 1983	Conference Committee dissolved.
	On motion Free Conference Committee requested and appointed.
April 9, 1983	Free Conference Committee reported.
April 12, 1983	Second reading, Free Conference Committee report adopted.
April 13, 1983	Third reading, Free Conference Committee report adopted.
April 16, 1983	Free Conference Committee report adopted by Senate.
	Sent to enrolling.
	Reported correctly enrolled.

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BILL NO. 802 1 Mola Ban Belaine 2 INTRODUCED BY Ream Theres Rammer 3 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE 4 LAWS RELATING TO THE REGULATION OF THE SALE AND USE OF 5 PESTICIDES: AMENDING SECTIONS 80-8-105, 80-8-109, 80-8-201, 6 7 80-8-203. 80-8-204. 80-8-207. 80-8-209. 80-8-213. 8 80-8-306. MCA." 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 10 11 Section 1. Section 80-8-105. MCA. is amended to read: 12 #60-8-105. Rules. (1) The department may adopt by reference without a public hearing regulations adopted under 13 -14 the Federal Insecticide. Fungicide, and Rodenticide Act, as 15 amended. The department may, after a public hearing, adopt 16 all rules necessary to carry out this chapter. . 17 (2) The rules may prescribe methods of: 18 (a) registration, suspension or cancellation of 19 registration, application, use, or restricting use, prohibiting use, offering or exposing for sale of any 20 21 pesticide: 22 (b) determining whether pesticides are highly toxic to 23 #lan; 24 (c) determining standards of coloring or discoloring

for pesticides and subjecting pesticides to the requirements

1 of 80-8-202;

2 (d) licensing commercial applicators, operators, and 3 dealers. establishing methods of recordkeeping for applicators, operators, and dealers, and providing for the review of the records by the department's authorized agent 5 and the submission of the records to the department upon 6 written request; 7 (e) issuing farm applicator special-use permits and 8 9 the maintenance and submission of records by farm applicators issued special-use permits: 10 (f) collection. examination. and standard deviation 11 from quarantee analysis and unpire analysis of pesticides 12 and devices; 13 (q) operating and maintaining equipment used 14 by 15 applicators: 16 (h) developing examinations which shall held 17 periodically throughout the state;

19 (1) establishing the form and content of all19 applications for licenses and permits;

(j) designating pesticides that may be sold at retail for home, yard, garden, and lawn use. The department may also limit retail sale of pesticides, up to a specific number of pounds or gallons and concentration which would be subletnal to humans and animals if small amounts of it were accidentally swallowed, inhaled, sprayed, or dusted on the

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(k) revoking licenses and permits;

3 (1) registering or controlling any spray adjuvant. such as a wetting agent, spreading agent, deposit builder, 4 adhesive, emulsifying agent, deflocculating agent, water 5 6 modifier, or similar agent with or without toxic properties 7 of its own intended to be used with any other pesticide as 8 an aid to the application or effect of that other pesticide. whether or not distributed in a package or container 9 separate from that of a pesticide with which it is to be 10 11 used:

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

(n) establishing registration procedures for devices,
with a fee not to exceed \$5 per type of device, specifying
classes of devices to be registered and providing for
additional requirements.

19 <u>fol_imposing conditions for renewal of dealers</u> 20 <u>applicators and operator licenses and permitss including</u> 21 <u>requalification training</u>

 24
 Igl_establishing_fees_for_training_courses_and

 25
 materials.

1 (3) (a) Whenever the department finds that those rules 2 are necessary to carry out the purposes and intent of this chapter, the rules may relate to the time, place, manner, З and method of registration, suspension or cancellation of 4 5 registration: application. or selling of the pesticides. way 6 restrict or prohibit use of pesticides in the state or in 7 designated areas during specified periods of time, and shall 8 encompass all reasonable factors which the department 9 considers necessary to prevent damage or injury to: 10 (i) persons, animals, crops, or pollinating insects from the effect of drift or careless application; 11 12 (ii) the environment; 13 (iii) plants, including forage plants; 14 (iv) wildlife; 15 (v) fish and other aquatic life. (b) In issuing the rules, the department shall give 16 17 consideration to pertinent research findings and 18 recommendations of other agencies of this state or of the 19 federal government. 20 (4) If the department finds that an emergency exists the

21 which requires Immediate action with regard to the 22 registration, use, or application of pesticides, the 23 department may, without notice or hearing, issue necessary 24 orders or rules to protect the public health, welfare, and 25 safety. An order or rule issued under this subsection is

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effective for the period prescribed by the <u>Hontana</u>
 Administrative Procedure Act. If the department determines
 that the emergency order or rule should remain in effect, a
 public hearing under 80-8-106 shall be held within the above
 period to determine whether the order or rule should be
 adopted by the department.

(5) All rules and orders issued by the department 7 shall be in writing, shall be entered in full in books to be 8 9 kept by the department for that purpose, shall be indexed, and shall be public records open for inspection at all times 10 11 during reasonable office hours. Except for orders 12 establishing or changing rules of practice and procedure, all orders made, and published by the department shall 13 include and be based upon written findings of fact. A copy 14 15 of any rule or order certified by the department shall be received in evidence in all courts of this state with the 16 17 same effect as the original."

Section 2. Section 80-8-109, MCA, is amended to read: 18 19 *80-8-109. Educational programs. (11 The department in cooperation-with-other--state--and--federal--agencies shall 20 21 develop and conduct appropriate educational programs. The 22 educational programs shall inform those individuals dealing 23 in and applying pesticides as to correct methods of formulating, applying, storing, disposing of, handling, and 24 25 transporting pesticides.

1	121In_developing_and_administering_such_programs.tbe
2	departmentmay_consult_other_state_and_federal_acenciesas
3	well as such other persons it considers pecessary. and way
- 4	charge_a_fee_for_the_programs_commensurate_with their
5	<u>administration_costsThe_fee_may_not_include_the_salaryor</u>
6	<u>travel_expenses_of_apy_suployee_of_the_state_or_a_uoit_of</u>
7	the Pootana university system.
8	131_All fees collected in any fiscal year and not
\$	expended_within_that_fiscal_year_must_bs_placed_in_an
10	<u>educational and wanuals account of the earmarked revenue</u>
11	fund_for_future_use_for_that_purpose."
12	Section 3. Section 80-8-201, MCA, is amended to read:
13	#80-8-201. Registration. (1) Every posticide
14	distributed, sold, or offered for sale within this state or
15	delivered for transportation or transported in intrastate
16	commerce or between points within this state shall be
17	registered with the department. Theregistrationshall-be
18	renewedannuallybythemanufacturoryformulatoryor
19	distributor-of-the-pesticides-The-department-shailregister
20	allapprovedpesticidesand-those-registered Applications
21	for_registration_shall_be_filed_annually_with_the_department
22	by the manufacturers formulators of distributor of the
23	pesticidesIbe_department_sball_review_tbe_application_ands
24	<u>subject to the provisions of subsection (8). may register</u>
25	the pesticide for use in the state. Pesticidas so approved

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1 are subject to registration fees and all other provisions of 2 this chapter. All registrations of pesticides expire on 3 December 31 following the date of issuance unless otherwise terminated. Kithin_the_first_2_months_of_each_calendar 4 5 year, the department shall prepare a list of all pesticides 6 registered ... within the states ... The list must be distributed 7 to the department of bealth and environmental sciences and 8 the department of fish, wildlife, and marks and must be made 9 available to the public.

10 (2) The applicant for registration shall file with the11 department a statement including:

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

15 (b) a complete copy of the label of the pesticide, the 16 United States environmental protection agency registration 17 number if the pesticide is so registered, and a statement of 18 all claims to be made for it, including directions for use; 19 (c) the trade and chemical name of the pesticide;

(d) if requested by the department, a full description
of tests made and the results upon which the claims are
based<u>s_including_all_available_information_about_the_effects</u>
of the pesticide on nontarget_species. In the case of
renewal of registration, a statement shall be required only
with respect to information_which is different from that

furnished when the pesticide was registered or last
 reregistered.

(3) Any pesticide imported into this state which is 3 4 subject to the provisions of any federal act providing for 5 the registration of pesticides and has been registered under ð the provisions of a federal act sholl may be registered in 7 the state. However, the state may restrict the sale or use 8 and application of the pesticide by type of dealer. 9 applicator, time, and place and may establish special registrations of pesticides as outlined in subsection (8) of 10 this section and 80-8-105(3). The annual registration fee 11 must also be paid, and registration information required by 12 the department must be provided. 13

14 (4) The applicant shall pay an annual fee of \$15 <u>450</u> 15 for each pasticide registered. A registration fee is not 16 required to register en <u>a federally approved</u> experimental 17 use permit. Fees collected shall be deposited in the state 18 treasury to the credit of the general fund.

19 (5) The department may require the submission of the 20 complete formula and certified analytical standards of any 21 pesticide. If it appears to the department that the 22 composition of the article warrants the proposed claims for 23 it and if the article and its labeling and other material 24 required to be submitted comply with the requirements of 25 80-8-202, it shall register the article.

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1 (6) If it does not appear to the department that the 2 article warrants the proposed claims for it or if the 31 article and its labeling and other material required to be submitted do not comply with this chapter, it shall notify . 4 5 the applicant of the manner in which the articles labeling, or other material required to be submitted fails to comply -6 7 with the chapter so as to afford the applicant an я opportunity to make the necessary corrections. If the 9 applicant does not make the corrections upon receipt of the notice, the department may refuse to register the article. 10 11 The department may suspend or cancel the registration of a 12 pesticide whenever it does not appear that the article or its labeling comply with this chapter. When an application 13 -14 for registration is refused or the department proposes to 15 suspend or cancel a registration, the registrant may appeal 16 the-department-s--decision <u>pursue_administrative_remains</u> 17 under_the_Montana_Administrative_Procedure_Ast_and_rules_of 19 the department.

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

(8) (a) The departments of health and environmental
sciences, agriculture, and fish, wildlife, and parks shall
review all applications for registration of an
experimental-use permit or a registration for special local

1 needs. <u>The applicant shall pay a one-time fee of \$50 for a</u> 2 special_local_need_or_experimental_use_permit_registration. 3 Within 30 days of receipt of the list of registered 4 pesticides___provided___for___under___subsection__flig__each 5 department may also request that any pesticide registered by 6 the department or being considered for registration by the 7 department__be__reviewed_in_accordance_with_this_subsection_ R The departments shall utilize but are not limited to the 9 some requirements and standards for reviewing registrations 10 established by the Federal Insecticide. Funcicide. and 11 Rodenticide Act, as amended, and regulations adopted 12 thereunder. The department of agriculture shall provide the 13 departments of health and environmental sciences and fish-14 wildlife, and parks with a complete copy of the application, 15 related correspondence, and a statement of the department of agriculture's proposed action on the application. 16 The 17 departments of health and environmental sciences and fish, 18 wildlife, and parks shall approve or disapprove the 19 application within 10 days after the receipt of the 20 application. If the departments of health and environmental 21 sciences, agriculture, and fish, wildlife, and parks are in 22 agreement with the proposed registration, the department of 23 acriculture shall issue the registration. (b) The department of agriculture shall establish a 24

25 time and place for an interagency conference for the

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purposes of resolving the registration of any pesticide or
 device. If two of the departments approve the proposed
 registration, the department of agriculture shall issue the
 registration.

5 (c) The registrant applying for registration shall be 6 notified as to proposed changes in registration. If the 7 departments cannot resolve the proposed registration 8 following the interagency conference, the registrant may 9 request a joint administrative hearing before the 10 departments of agriculture, health and environmental 11 sciences, and fish, wildlife, and parks.

12 (d) Following the interagency conference and, if 13 requested, the administrative hearing, if the proposed 14 registration of a pesticide or device has not been resolved, 15 the department of agriculture shall appoint an advisory 16 council as outlined in 80-8-108 to resolve by majority vote 17 the registration of any pesticide. The advisory council's 18 recommendations on the registration shall be accepted by the 19 departments and implemented by the department of 20 agriculture.

21 <u>191 Pesticides registered under any federal law when</u> 22 canceled for sale and use in total or part by a federal 23 agency responsible for registration are considered canceled 24 in total or part for sale and use in Montana, For the 25 purposes of bringing such pesticides into Montana for sale

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2 the cancellation by the federal agency. Such pesticides in 3 Montana__at_the_time_of_the_announcement_way_be_sold_or_used 4 until the final date of sale or use allowed under the 5 federal_law_and_rules_or_orders_of_the_federal_agency._If 6 the federal cancellation allows existing stock to be used 7 past_the_final_date_of_cancellations_such_sale_or_use_in 8 this state may not exceed 2 years. The department shall 9 provide__technical_assistance_to_any_person_in_possession_of 10 such products to insure their proper_disposals_relabelings 11 or removal. Section 4. Section 80-8-203. NCA. is amended to read: 12 13 *80-8-203. Commercial applicator. (1) It shall be unlawful for any person to engage in the business of 14 15 applying pesticides for another without a pesticide 16 applicator's license obtained from the department of 17 agriculture. The application shall be accompanied by a fee 18 of \$15 \$50. Applicators applying for a dealer's license 19 under this chapter shall be required to pay only a 440 130 20 licensing fee for the dealer's license. The provisions of 21 this section subsection shall not apply to any person 22 employed only to operate any equipment used for the 23 application of any pesticide and in which the person has no financial interest or other control over such apparatus 24

or__uses__the_cancellation_is_effective_upon_announcement_of

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other than its day-to-day mechanical operation for the

1 purpose of applying any pesticide.

2 <u>(2) Each applicator shall have his license in his</u> 3 possession when using pesticides and shall display the 4 license upon request of an authorized agent of the 5 departments

6 (2)(3) Public utility applicators shall be licensed in 7 the same manner as commercial applicators, provided that 8 public utility operators working under public utility 9 applicators are not required to be licensed except as 10 provided for under 80-8-205.

(3)(4) Veterinarians licensed as provided in Title 37. 11 · chapter 18, part 3, shall not be required to be licensed to 12 apply nonrestricted pesticides, provided that these 13 veterinarians shall register with the department each year; 14 provided further that the veterinarians shall be required to ...15 meet all other requirements and rules of the Montana 16 Pesticides Act. The department shall consider the 17 professional licensing requirements for veterinarians when 18 19 adopting rules.*

20 Section 5. Section 80-8-204, MCA, is amended to read: 21 "80-8-204. Application for applicator's license. (1) 22 Application for a pesticide applicator's license provided 23 for in 80-8-203 shall be made annually to the department 24 before applying pesticides in any calendar year, provided 25 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 615 125 late licensing fee.

4 (2) An individual applying for a license to engage in 5 aerial application of pesticides shall certify on the 6 application that he has met all the federal aviation 7 administration and the department of commerce requirements 8 for aerial pesticide applicators."

ø Section 6. Section 80-8-207, HCA, is amonded to read: 10 "80-8-207. Dealers. (1) It is unlawful for any person 11 to sell, offer for sale, deliver, or have delivered within 12 this state any pesticide without first procuring a license 13 from the department of agriculture for each calendar year or 14 portion thereof. A separate dealer's license and fee shall 15 required for each location or outlet from which be 16 pesticides are distributed, sold, held for sale, or offered 17 for sale. Pesticide fieldmen or salesmen employed directly 18 out of the same location or outlet and under a licensed dealer shall not be required to obtain a license. The dealer 19 20 shall furnish the department the names and addresses of its 21 fieldmen and salesmen selling pesticides within the state. **2**2 A dealer shall have bis license in his possession when 23 selling_pesticides_and_shall_display_the_license_upon 24 request_of_an_authorized_agent_of_the_department_ 25 (2) The application for a license shall be accompanied

by a fee of \$15 \$50. 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 \$25 late licensing fee.

5 (3) The dealer shall require the purchaser of any 6 restricted pesticide to exhibit his license or permit issued 7 under authority of this chapter before completing a sale.

8 (4) Dealers may make one application for two annual
 9 licenses if the application is accompanied by a 615 150
 10 licensing fee for each year of the state biennium.

11 (5) Pharmacists licensed as provided for in 37-7-302 12 and 37-7-303, veterinarians licensed as provided for in 13 37-18-302 and 37-18-303, and certified pharmacies licensed 14 under 37-7-321 shall not be required to be licensed to sell 15 pesticides, provided that the certified pharmacies and veterinarians shall register with the department each year. 16 17 However, the certified pharmacies and veterinarians shall be 18 required to meet all other requirements concerning the 19 commercial sale of pesticides. The department shall take 20 into account the professional licensing requirements of pharmacists, certified pharmacies, and veterinarians when 21 22 adopting rules.*

23 Section 7. Section 80-8-209, MCA, is amended to read:
 24 #80-8-209. Farm applicators. (1) Farm applicators
 25 shall obtain a special-use permit prior to purchasing and

using any pesticide designated by the department as a
 restricted-use pesticide. <u>The fee for the permit is \$15.</u>
 The special-use permit shall be effective for 5 calendar
 years. The department may establish a staggered years system
 of issuing permits.

6 (2) Restricted pesticides may not be utilized by farm
7 applicators or their employees except for the purpose of
8 producing or protecting any agricultural compodity on
9 property owned, leased, or rented by such applicator or-as
10 provided-in-f67-of-this-section.

11 (3) Farm applicators shall qualify for the their first 12 permit by either bassing a graded written examination or 13 attending a training course approved by the department and 14 taking an ungraded written examination. The examinations and 15 course shall require and demonstrate practical knowledge of 16 the applicator's ability to:

17 (a) recognize common pests to be controlled and damage 18 caused by them;

(b) read and understand the label and labeling
information, including the common name of the pesticida(s)
applied, pest(s) to be controlled, timing and methods of
application, safety precautions, any preharvest or reentry
restrictions, and any specific disposal procedures;

24 (c) apply pesticides in accordance with label
25 instructions and warnings, including the ability to prepare

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the proper concentration of pesticides to be used under
 particular circumstances, taking into account such factors
 as: area to be covered, speed at which application equipment
 will be driven, and the quantity dispersed in a given period
 of operation;

(d) recognize local environmental situations that must
 be considered during application to avoid contamination; and
 (e) recognize poisoning symptoms and procedures to
 follow in case of a pesticide accident.

10 (4) The department may require farm applicators to 11 attend a mandatory training session and pass a written 12 examination for those restricted pesticides that are 13 extremely toxic or for which an effective antidote is not 14 available. The department may require farm applicators 15 handling these pesticides to maintain use records.

16 (5) Form-ppplicators-menifesting-reading--disabilities 17 may--become--certified--to-use-as-many-as-two-restricted-use 18 pesticides-by-possing-a-specific-oral--examination--on--the 19 particular--pesticida(sj--if-the-applicator-documents-that-a certified-applicator-in-the-immediate--vicinity--con--advise 20 21 him The department shall require fare applicators to 22 regualify for renewal of the 5-year permit by obtaining 100 Z3 training_credits. The department_shall_establish_by_rule_a 24 uniform_system_of_administering_the_requalification_training 25 credits. The department may credit only training related to the standards set forth in subsection (3).

2 (6) Provisions of this chapter relating to
3 Certification of farm applicators do not apply to any farm
4 applicator applying nonrestricted pesticides on his own land
5 or on lands of his neighbors if he:

6 (a) operates farm property and operates and maintains
7 pesticide application equipment primarily for his own use;
8 (b) is not regularly engaged in the business of
9 applying pesticides for hire and does not publicly hold
10 himself out as a pesticide applicator;

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

14 Section 8. Section 80-8-213, MCA, is amended to read: 15 "80-8-213. Government agencies. [1] A11 state 16 agencies, municipal corporations, or any other governmental 17 agency shall be subject to the provisions of this chapter and rules adopted thereunder concerning the application or 18 sale of pesticides. Applicators and operators applying 19 20 pesticides and dealers selling pesticides for agencies, 21 municipal corporations, or any governmental agencies shall be subject to the provisions of 80-8-203 through 80-8-208* 22 23 and-the_

 24
 121_Ibs department shall issue a limited commercial

 25
 applicator'sv-operator'sy or dealer's license without-a-fee

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1 for an annual fee of \$50, which shall be valid only when 2 such applicatorsy-operatorsy-and-dealers-are applicator_or 3 dealer is applying or selling pesticides for such agencies, provided that the jurisdictional health officer, state 4 5 veterinarian, their duly authorized representatives, or governmental research personnel are exempt from this 6 licensing requirement when applying pesticides 7 to я experimental areas.

9 [31 A governmental agency shall pay the annual 10 applicator's fee for its first four employee applicators. 11 The acency shall pay an annual fee of \$5 for each additional 12 employee_applicator.

13 141 Government employees becoming certified 14 applicators only to qualify for conducting pesticide 15 education courses may not be charged a license fee but are limited to providing such courses, Government operators, are 16 17 subject_to_rules_adopted_oursuant_to_80-8-205+ including the 18 license_fee.*

19 Section 9. Section 80-8-306, MCA, is amended to read: 20 #80-8-306. Penalties. (1) Any person convicted of violating any of the provisions of this chapter or the rules 21 22 issued thereunder or who may misrepresent, impede, obstruct, 23 hinder, or otherwise prevent or attempt to prevent the 24 department or its duly authorized agent in performance of 25 its duty in connection with the provisions of this chapter

shall be adjudged quilty of a misdemeanor and shall be fined not less than \$100 \$500 but not more than \$500 \$2.500 or imprisoned in the county jail for a term not to exceed 6 3 months, or both.

5 (2) The department or its authorized representative is hereby authorized to apply to the district court of the 5 county or any county wherein a violation is about to occur 7 or has occurred to grant a temporary or permanent injunction R 9 restraining any person from violating or continuing to 10 violate any of the provisions of this chapter or any rule promulgated under the chapter notwithstanding the existence 11 of other remedies of law. When a person makes pesticide 12 13 applications in more than one county on a commercial basis 14 without a license or permit or operates in violation of a 15 lawful written order of the department in more than one county, the district court of Lewis and Clark County has 16 17 concurrent jurisdiction with the district court of any other county wherein a violation has occurred or is about to 18 19 occur, and the department may select and proceed in the court most appropriate under the circumstances. The **20** injunction is to be issued without bond. 21

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

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1	public interest will be best served by other remedial		1	occurreds the degree of care exercised by the offenders and
· 2	action, by a suitable notice of warning in writing, or by a		Z	whethersignificantharmresulted to bealthe environmente
· · · · 3 .	lawful written order; nor is any part of this chapter to be		3.,	agricultural crops, or livestock. The department may issue a
· 40	construed to apply to common carriers transporting shipments		4	<u>warning or take any other appropriate action allowed by this</u>
5	tendered to them by the general public.		5	chapter
· · · 6 ·	(4) Any person who with intent to defraud uses or		. 6	<pre>idlif_the_department_is_unable_to_collect_suchcivil</pre>
7 -	reveals information relative to formulas of products		7	penalty_or_if_any_person_fails_to_pay_all_or_a_set_portion
8	acquired under the authority of 80-8-201 shall, upon		8	of the civil penalty as deterpined by the department, it may
9	conviction, be fined not more than \$500 or imprisoned for		9	recover_such_amount_by_action_intheappropriatedistrict
10	not more than 1 year, or both.		10	Courte"
11	[5] (a) Any registrants applicators dealers retailers		11	NEW SECTION: Section 10. Earmarked fund. That portion
. 12	or other person who violates any provision of this chapter	÷ .	12	of all licensing, permitting, registration, and equipment
13	may be assessed a civil penalty by the department of not		13	inspection fees collected which constitutes an increase
. 14	morethan\$1.000foreach_offenseHowevers_fare	· · · ·	14	after Dctober 1, 1983, must be deposited in the earmarked
15	applicators possessing a permit may not be assessed a civil		15	revenue fund for the purpose of supporting a portion of the
16	penalty_over_\$200_for_tbe_first_offense_Assessment_of_a		16	costs of administering this chapter. The administration of
2 17 1	civil_penalty_may_be_madeinconjunctionwithanyother	· .	17	this chapter is to be funded from both the earmarked revenue
18	<u>department_order_or_administrative_action_authorized_by_this</u>		18	fund and the general fund because of the mutual benefits to
19	stapter.		19	the industry and the public, as stated in 80-8-103. Reserve
20	<u>[b]No_civil_penalty_may_be_assessed_unless_the_person</u>		20	earmarked revenue fund money may be invested by the
21	<u>charged was given notice and opportunity for a hearing</u>		21	department through the board of investments. The income from
22	<u>pursuant to the Montana Administrative Procedure Act.</u>		22	such investments must be credited to the proper department
23	[c]_lo_determining_a0_appropriatepenaltythe		23	account in the earmarked revenue fund.
24	department_sball_consider_the_effect_on_the_person's_ability		24	<u>NEW_SECTION.</u> Section 11. Codification instruction.
25	to continue in business, the gravity of the violation which		25	Section 10 is intended to be codified as an integral part of

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1 Title 80, chapter 8.

2 <u>NEW SECTION</u> Section 12. Saving clause. This act does
3 not affect rights and duties that matured, penalties that
4 were incurred, or proceedings that were begun before the
5 effective date of this act.

6 <u>NEW SECTION</u> Section 13. Severability. If a part of 7 this act is invalid, all valid parts that are severable from 8 the invalid part remain in effect. If a part of this act is 9 invalid in one or more of its applications, the part remains 10 in effect in all valid applications that are severable from 11 the invalid applications.

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48th Legislature

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Approved by Committee on <u>Natural Resources</u>

1	HOUSE BILL NO. 802
2	INTRODUCED BY D. BROWN, MOHAR, REGAN,
3	BERGENE, REAM, HARPER, RAMIREZ
4	

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE 6 LANS RELATING TO THE REGULATION OF THE SALE AND USE OF 7 PESTICIDES; AMENDING SECTIONS 80-8-105, 80-8-109, 80-8-201, 8 80-8-203, 80-8-204, 80-8-207, 80-8-209, 80-8-213, AND 9 80-8-306, MCA."

10

11BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:12Section 1. Section 80-8-105, MCA, is amended to read:

13 **80-8-105. Rules. (1) The department may adopt by 14 reference without a public hearing regulations adopted under 15 the Federal Insectivide, Fungicide, and Rodenticide Act, as 16 amended. The department may, after a public hearing, adopt 17 all rules necessary to carry out this chapter.

18 (2) The rules may prescribe methods of:

19 (a) registration, <u>suspension_or_cancellation_of</u>
20 <u>registration</u> application, use, or restricting use,
21 prohibiting use, offering or exposing for sale <u>of</u> any
22 pesticide;

23 (b) determining whether pesticides are highly toxic to24 mani

25 (c) determining standards of coloring or discoloring

for pasticides and subjecting pesticides to the requirements
 of 80-3-202;

3 (d) licensing commercial applicators, operators, and
4 dealers, establishing methods of recordkeeping for
5 applicators, operators, and dealers, and providing for the
6 review of the records by the department's authorized agent
7 and the submission of the records to the department upon
8 written request;

9 (e) issuing farm applicator special-use permits and
10 the maintenance and submission of records by farm
11 applicators issued special-use permits;

12 (f) collection, examination, and standard deviation
13 from guarantee analysis and umpire analysis of pesticides
14 and devices;

15 (g) operating and maintaining equipment used by16 applicators;

17 (h) developing examinations which shall be held18 periodically throughout the state;

19 (i) establishing the form and content of all
20 applications for licenses and permits;

(j) designating pesticides that may be sold at retail for home, yard, garden, and lawn use. The department may also limit retail sale of pesticides, up to a specific number of pounds or gallons and concentration which would be sublethal to humans and animals if small amounts of it were

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1 accidentally swallowed, inhaled, sprayed, or dusted on the 2 skin.

3 (k) revoking licenses and permits;

4 (1) registering or controlling any spray adjuvant, 5 such as a wetting agent, spreading agent, deposit builder, 6 adhesive, emulsifying agent, deflocculating agent, water 7 modifier, or similar agent with or without toxic properties 8 of its own intended to be used with any other pesticide as 9 an aid to the application or effect of that other pesticide, 10 whether or not distributed in a package or container 11 separate from that of a pesticide with which it is to be 12 used;

(m) registering pesticide-fertilizer and other
 chemical blends or, instead of registration, establishing
 licensing, inspection, and fees for blending plants;

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

23 (p)__establishing_procedures_for__implementing__and
 24 administering_the_civil_penalties_under_80=8=306:_and

25 (a) establishing fees for training courses and

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1 Daterials.

2	(3) (a) Whenever the department finds that those rules
3	are necessary to carry out the purposes and intent of this
4	chapter, the rules may relate to the time, place, manner,
5	and method of registration, <u>suspension_or_cancellation_of</u>
6	registration, application, or selling of the pesticides, may
7	restrict or prohibit use of pesticides in the state or in
8	designated areas during specified periods of time, and shall
9	encompass all reasonable factors which the department
10	considers necessary to prevent damage or injury to:
11	(i) persons, animals, <u>crops</u> or pollinating insects
12	from the effect of drift or careless application;
13	(ii) the environment;
14	(iii) plants, including forage plants;
15	(iv) wildlife;
16	<pre>{v) fish and other aquatic life.</pre>
17	(b) In issuing the rules, the department shall give
18	consideration to pertinent research findings and
19	recommendations of other agencies of this state or of the
20	federal government.
21	(4) If the department finds that an emergency exists
22	which requires immediate action with regard to the
23	registration, use, or application of pesticides, the
24	department may, without notice or hearing, issue necessary
25	orders or rules to protect the public health, welfare, and

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1 safety. An order or rule issued under this subsection is 2 effective for the period prescribed by the <u>Montana</u> 3 Administrative Procedure Act. If the department determines 4 that the emergency order or rule should remain in effect, a 5 public hearing under 80-8-106 shall be held within the above 6 period to determine whether the order or rule should be 7 adopted by the department.

(5) All rules and orders issued by the department 8 9 shall be in writing, shall be entered in full in books to be 10 kept by the department for that purpose, shall be indexed, and shall be public records open for inspection at all times 11 during reasonable office hours. Except for orders 12 establishing or changing rules of practice and procedure. 13 all orders made and published by the department shall 14 include and be based upon written findings of fact. A copy 15 of any rule or order certified by the department shall be 16 received in evidence in all courts of this state with the 17 same effect as the original." 18

19 Section 2. Section 80-8-109, HCA, is amended to read: 20 "80-8-109. Educational programs. (1) The department in 21 cooperation-with-other--state--end--federal--agencies shall 22 develop and conduct appropriate educational programs. The 23 educational programs shall inform those individuals dealing 24 in and applying pesticides as to correct methods of 25 formulating, applying, storing, disposing of, handling, and 1 transporting pesticides.

2	121_In_developing_and_administering_such_programs. the
3	department_may_consult_other_state_and_federal_agenciesas
4	well_as_such_other_persons_it_considers_necessarysandmay
5	charge_a_fee_for_the_programs_commensurate_with_their
6	administration_costsIbe_fee_may_not_include_the_salaryor
7	travel_expenses_of_any_employee_of_the_state_or_s_unit_of
8	the_Dootana_university_system.
9	131_All_fees_collected_ioaoyfiscalyearandoot
10	expended_withinthatfiscalyearmustbeplaced_in_an
11	educational_and_manuals_accountoftheearmarkedrevenue
12	fund_for_future_use_for_that_purpose.**
13	Section 3. Section 80-8-201, MCA, is amended to read:
14	#80-8-201. Registration. (1) Every pesticide
15	distributed, sold, or offered for sale within this state or
16	delivered for transportation or transported in intrastate
17	commerce or between points within this state shall be
18	registered with the department. Theregistrationshallbe
19	renewedannuallybythemanufactureryformulatoryor
20	distriputor-of-the-pesticidex-The-deportment-shallregister
21	allapprovedpesticidesand-those-registered Applications
22	for registration shall be filed annually with the department
23	<u>by the manufacturers formulators or distributor of the</u>
24	pesticideIbg_department_shall_review_the_application_and.
25	<u>subject_to_the_provisions_of_subsection_(8), may_register</u>

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1	the pesticide for use in the state. Pesticides so approved
2	are subject to registration fees and all other provisions of
3	this chapter. All registrations of pesticides expire on
4	December 31 following the date of issuance unless otherwise
5	terminated. <u>Within_the_first_2_months_of_each_calendar</u>
6	<u>year. the department shall prepare a list of all pesticides</u>
7	registered_within_ithe_stateThe_list_must_be_distributed
8	to the department of health and environmental sciences and
9	the_department_of_fishwildlife, and parks_and_must_be_made
10	available_to_the_publics
11	(2) The applicant for registration shall file with the
12	department a statement including:
13	(a) the name and address of the applicant and the name
14	and address of the person whose name will appear on the
15	label, if other than the registrant;
16	(b) a complete copy of the label of the pesticide, the
17	United States environmental protection agency registration
18	number if the pesticide is so registered, and a statement of
19	all claims to be made for it, including directions for use;
20	(c) the trade and chemical name of the pesticide;
21	(d) if requested by the department, a full description
22	of tests made and the results upon which the claims are
23	based <u>e_including_all arcitable</u> information IN_IME_POSSESSION
24	OF_IHE_APPLICANI about_the_effects_of_the_pesticide_on
25	<u>REPRESENTATIVE contarget species</u> . In the case of renewal of
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registration, a statement shall be required only with
 respect to information which is different from that
 furnished when the pesticide was registered or last
 reregistered.

5 (3) Any pesticide imported into this state which is subject to the provisions of any federal act providing for 6 7 the registration of pesticides and has been registered under the provisions of a federal act sholl may SHALL be 8 9 registered in the state. However, the state may restrict the sale_gr use and application of the pesticide by type of 10 11 dealers applicator, time, and place and may establish special registrations of pesticides as outlined in 12 13 subsection (8) of this section and 80-8-105(3). The annual 14 registration fee must also be paid, and registration 15 information required by the department must be provided.

16 (4) The applicant shall pay an annual fee of \$15 \$50
17 for each pesticide registered. A registration fee is not
18 required to register an <u>a_federally_approved</u> experimental
19 use permit. Fees collected shall be deposited in the state
20 treasury to the credit of the general fund.

21 (5) The department may require the submission of the 22 complete formula and certified analytical standards of any 23 pesticide. If it appears to the department that the 24 composition of the article warrants the proposed claims for 25 it and if the article and its labeling and other material

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required to be submitted comply with the requirements of
 80-8-202, it shall register the article.

3 (6) If it does not appear to the department that the article warrants the proposed claims for it or if the 4 5 article and its labeling and other material required to be 6 submitted do not comply with this chapter, it shall notify the applicant of the manner in which the article, labeling, 7 or other material required to be submitted fails to comply R 9 with the chapter so as to afford the applicant an opportunity to make the necessary corrections. If the 10 applicant does not make the corrections upon receipt of the 11 notice, the department may refuse to register the article. 12 13 The department may suspend or cancel the registration of a pesticide whenever it does not appear that the article or 14 its labeling comply with this chapter. When an application 15 for registration is refused or the department proposes to 16 suspend or cancel a registration, the registrant may appeal 17 the--department*s---decision pursua_administrative_remedies 18 under the Montana Administrative Procedure Act and rules of 19 20 the_degartment.

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

24 (8) (a) The departments of health and environmental
25 sciences, agriculture, and fish, wildlife, and parks shall

review a11 applications for registration of 1 2 experimental-use permit or a registration for special local 3 needs. Ibe__applicant_shall pay a opertime fee of \$50 for a 4 <u>Special_local_need_or_experimental_use_permit__registration.</u> 5 Hithin_30_days_of_receipt_of_the_list_of_registered pesticides_provided_for__under%_subsection__(1).each 6 7 department___max_also_request_that any A pesticide registered 8 by the department or being considered for redistration by the department be reviewed in accordance with this 9 SUBSECTION. THE DEPARTMENTS. IN DETERMINING WHETHER TO 10 REQUEST. SUCH REVIEW FOR A PARTICULAR CHEMICAL PRODUCT. MAY 11 NOT REQUEST A REVIEW UNLESS THE CHEMICAL HATERIAL OR TITS 12 13 BYPRODUCTS HAVE BEEN SHOWN TO: 14 11)_HAVE_A_HARE-LIEE_IN_THE ENVIRONMENT_GREATER_THAN_7 15 DAYS: III1_ACCUMULATE__IN___VEGETATION=__SOILS+_OR__ANIMAL 15 TISSUES: AND 17 18 LIII.BE A SUSPECTED CARCINOGEN. MUTAGEN. OR TERATOGEN. 19 The departments shall utilize but are not limited to the 20 same requirements and standards for reviewing registrations 21 es established by the Federal Insecticide, Fundicide, and Rodenticide Act, as amended, and regulations adopted 22 thereunder. The department of agriculture shall provide the 23 24 departments of health and environmental sciences and fish+ 25 wildlife, and parks with a complete copy of the application,

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related correspondence, and a statement of the department of 1 2 agriculture's proposed action on the application. The 3 departments of health and environmental sciences and fish. 4 wildlife, and parks shall approve or disapprove the 5 application within 10 days after the receipt of the 6 application. If the departments of health and environmental 7 sciences, agriculture, and fish, wildlife, and parks are in 8 agreement with the proposed registration, the department of 9 agriculture shall issue the registration.

10 (b) The department of agriculture shall establish a 11 time and place for an interagency conference for the 12 purposes of resolving the registration of any pesticide or 13 device. If two of the departments approve the proposed 14 registration, the department of agriculture shall issue the 15 registration.

16 (c) The registrant applying for registration shall be 17 notified as to proposed changes in registration. If the 19 departments cannot resolve the proposed registration 19 following the interagency conference, the registrant may 20 request a joint administrative hearing before the 21 departments of agriculture, health and environmental 22 sciences, and fish, wildlife, and parks.

(d) Following the interagency conference and, if
 requested, the administrative hearing, if the proposed
 registration of a pesticide or device has not been resolved,

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the department of agriculture shall appoint an advisory council as outlined in 80-8-108 to resolve by majority vote the registration of any pesticide. The advisory council's recommendations on the registration shall be accepted by the departments and implemented by the department of agriculture.

7 (9) Pesticides registered under any federal law when canceled for sale and use in total or part by a federal 8 9 agency_responsible_for_registration_are_considered__canceled in_total_or_part_for_sale_and_use_in_Montana_ Egenthe 10 nuenoses-of-bringing-such-pesticides-into-Montona-for==sole 11 or---uses__the_cancellation_is_sffective_upon_announcement_of 12 the concellation by the federal agency, Such Desticides in 13 Montana_at_the_time_of_the_announcement_may_be_sold_or_used 14 15 until the final date of sale or use allowed under the federal law and rules or orders of the federal agency. If 16 17 the federal cancellation allows existing stock to be used 18 <u>past_the_final_date_of_cancellation.such_sale_of_use_in</u> this_state_may_not_exceed__2_vears.__Ibe__department__shall 19 20 provide__technical_assistance_to_any_person_io_possession_of 21 such products to insure their proper_disposals_relabelings 22 or_removal." Section 4. Section 80-8-203, MCA, is amended to read: 23 #80-8-203. Commercial applicator. (1) It shall be 24 unlawful for any person to engage in the business of 25

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applying pesticides for another without a pesticide 1 2 applicator's license obtained from the department of 3 agriculture. The application shall be accompanied by a fee 4 of #15 \$50. Applicators applying for a dealer's license 5 under this chapter shall be required to pay only a \$10 \$30 6 licensing fee for the dealer's license. The provisions of 7 this section subsection shall not apply to any person 8 employed only to operate any equipment used for the 9 application of any pesticide and in which the person has no financial interest or other control over such apparatus 10 11 other than its day-to-day mechanical operation for the 12 purpose of applying any pesticide.

13 (2)_Each_applicator_shall_have_bis_license_in_bis 14 gossession_when_using_pesticides_and_shall_display_the 15 license__upon__request_of_an_authorized_agent_of_the 16 departments

17 <u>f2f11</u> Public utility applicators shall be licensed in 18 the same manner as commercial applicators, provided that 19 public utility operators working under public utility 20 applicators are not required to be licensed except as 21 provided for under 80-8-205.

22 (37,41) Veterinarians licensed as provided in Title 37, 23 chapter 18, part 3, shall not be required to be licensed to 24 apply nonrestricted pesticides, provided that these 25 veterinarians shall register with the department each year; provided further that the veterinarians shall be required to
 meet all other requirements and rules of the Montana
 Pesticides Act. The department shall consider the
 professional licensing requirements for veterinarians when
 adopting rules."

6 Section 5. Section 80-8-204, MCA, is amended to read: 7 #80-8-204. Application for applicator's license. (1) 8 Application for a pesticide applicator's license provided 9 for in 80-8-203 shall be made annually to the department 10 before applying pesticides in any calendar year, provided 11 that pesticide applicators applying for renewal of license shall do so on or before May 1 of that calendar year. Any 12 applicator applying for renewal of license after May 1 shall 13 14 be assessed a \$15 \$25 late licensing fee.

15 (2) An individual applying for a license to engage in aerial application of pesticides shall certify on the application that he has met all the federal aviation administration and the department of commerce requirements for aerial pesticide applicators."

20 Section 6. Section 80-8-207, MCA, is amended to read: 21 "80-8-207. Dealers. (1) It is unlawful for any person 22 to sell. offer for sale, deliver, or have delivered within 23 this state any pesticide without first procuring a license 24 from the department of agriculture for each calendar year or 25 portion thereof. A separate dealer's license and fee shall

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required for each location or outlet from which 1 be 2 pesticides are distributed, sold, held for sale, or offered 3 for sale. Pesticide fieldmen or salesmen employed directly 4 out of the same location or outlet and under a licensed 5 dealer shall not be required to obtain a license. The dealer 6 shall furnish the department the names and addresses of its 7 fieldmen and salesmen selling pesticides within the state. 8 A__dealer_shall_have_bis_license_in_bis_possession_when 9 selling pesticides and shall display the license upon 10 request_of_an_authorized_agent_of_the_department.

(2) The application for a license shall be accompanied
by a fee of ******5 <u>**</u>0. 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 <u>**</u>5 <u>**</u>25 late licensing fee.

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

19 (4) Dealers may make one application for two annual
20 licenses if the application is accompanied by a \$15 \$50
21 licensing fee for each year of the state biennium.

(5) Pharmacists licensed as provided for in 37-7-302
and 37-7-303, veterinarians licensed as provided for in
37-18-302 and 37-18-303, and certified pharmacies licensed
under 37-7-321 shall not be required to be licensed to sell

pesticides, provided that the certified pharmacles and 1 2 veterinarians shall register with the department each year. 3 However, the certified pharmacies and veterinarians shall be 4 required to meet all other requirements concerning the 5 commercial sale of pesticides. The department shall take 6 into account the professional licensing regulrements of 7 pharmacists, certified pharmacies, and veterinarians when 8 adopting rules."

g Section 7. Section 80-8-209, MCA, is amended to read: 10 #80-8-209. Farm applicators. (1) Farm applicators 11 shall obtain a special-use permit prior to purchasing and using any pesticide designated by the department as a 12 restricted-use pesticide. The fee for the permit is \$15. 13 14 The special-use permit shall be effective for 5 calendar years. The department may establish a staggered years system 15 16 of issuing permits.

17 (2) Restricted pesticides may not be utilized by farm 18 applicators or their employees except for the purpose of 19 producing or protecting any agricultural commodity on 20 property owned, leased, or rented by such applicator or-as 21 provided-in-t6)-of-this-section OR_AS_PROVIDED_IN_SUBSECTION 22 (6)_UE_THIS_SECTION.

(3) Farm applicators shall qualify for the <u>their_first</u>
 permit by either passing a graded written examination or
 attending a training course approved by the department and

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taking an ungraded written examination. The examinations and 1 course shall require and demonstrate practical knowledge of 2 the applicator's ability to: 3

(a) recognize common pests to be controlled and damage 4 5 caused by them;

(b) read and understand the label and labeling 6 information. including the common name of the pesticide(s) 7 applied, pest(s) to be controlled, timing and methods of 8 application, safety precautions, any preharvest or reentry 9 restrictions, and any specific disposal procedures; 10

(c) apply pesticides in accordance with label 11 instructions and warnings, including the ability to prepare 12 the proper concentration of pesticides to be used under 13 particular circumstances, taking into account such factors 14 as area to be covered, speed at which application equipment 15 will be driven, and the quantity dispersed in a given period 16 17 of operation;

(d) recognize local environmental situations that must 18 be considered during application to avoid contamination; and 19 (e) recognize poisoning symptoms and procedures to 20 follow in case of a pesticide accident. 21

22 (4) The department may require farm applicators to attend a mandatory training session and pass a written 23 examination for those restricted pesticides that are 24 extremaly toxic or for which an effective antidote is not 25

1 available. The department may require farm applicators 2 handling these pesticides to maintain use records.

3 (5) Form-applicators-manifesting-reading--disabilities 4 may--become--certified--to-use-es-many-as-two-restricted-use pasticides-by-passing-6-specific--oral--examination--on--the 5 particular-pesticidefs}--if-the-pooliestor-documents-that-a ~ certified-applicator-in-the-immediate--vicinity--con--advisa 7 8 him. Inc._department._sball_require_fars_applicators_to 9 requalify for renewal of the 5-year permit by obtaining 100 10 training_credits. The department_shall_establish_by_rule_a 11 uniform_system_of_administering_the_regualification_training credits. The department may credit only training related to 12 13 the standards set forth in subsection [3]. 14 (6) Provisions of this chapter relating to 15 certification of farm applicators do not apply to any farm 16 applicator applying nonrestricted pesticides on his own land 17 or on lands of his neighbors if he: 18 (a) operates farm property and operates and maintains 19 pesticide application equipment primarily for his own use: 20 (b) is not regularly engaged in the business of applying pesticides for hire and does not publicly hold

22 himself out as a pesticide applicator; 23

(c) operates his pesticide application equipment only in the vicinity of his own property and 24 for the 25 accommodation of his immediate neighbors."

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1 Section 8. Section 80-8-213. MCA. is amended to read: 2 #80-8-213. Government agencies. (1) All state 3 agencies, municipal corporations, or any other governmental 4 agency shall be subject to the provisions of this chapter rules adopted thereunder concerning the application or 5 and sale of pesticides. Applicators and operators applying 6 7 pesticides and dealers selling pesticides for agencies. 8 municipal corporations, or any governmental agencies shall 9 be subject to the provisions of 80-8-203 through 80-8-208* 10 and-the.

11 121_The department shall issue a limited commercial applicator'sy--operatority or dealer's license without-a-fee 12 13 for an annual fee of \$50. which shall be valid only when such applicatorsy-soperatorsy-and-dealers-are applicator.or 14 15 dealer is applying or selling pesticides for such agencies, 16 provided that the jurisdictional health officer, state 17 veterinarian, their duly authorized representatives, or 18 governmental research personnel are exempt from this 19 licensing requirement when applying pesticides to 20 experimental areas.

25 141 Government ____employees ____becoming ___certified

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1 applicators_only_to_gualify_for__conducting __pesticide 2 education_courses_may_not_be_charged_a_license_fee_but_are 3 limited_to_providing_such_courses._Government_operators_are 4 subject_to_rules_adopted_oursuant_to_80~8=205._including_tbe 5 license_fee."

6 Section 9. Section 80-8-306, MCA, is amended to read: 7 #80-8-306. Penalties. (1) Any person convicted of 8 violating any of the provisions of this chapter or the rules 9 issued thereunder or who may misrepresent. impede. obstruct. 10 hinder, or otherwise prevent or attempt to prevent the 11 department or its duly authorized agent in performance of its duty in connection with the provisions of this chapter 12 shall be adjudged quilty of a misdemeanor and shall be fined 13 not less than \$100 \$500 but not more than \$500 \$2.500 or 14 15 imprisoned in the county jail for a term not to exceed 6 16 months, or both.

17 (2) The department or its authorized representative is 18 hereby authorized to apply to the district court of the 19 county or any county wherein a violation is about to occur 20 or has occurred to grant a temporary or permanent injunction 21 restraining any person from violating or continuing to 22 violate any of the provisions of this chapter or any rule promulgated under the chapter notwithstanding the existence 23 24 of other remedies of law. When a person makes pesticide 25 applications in more than one county on a commercial basis

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1 without a license or permit or operates in violation of a 2 lawful written order of the department in more than one 3 county, the district court of Lewis and Clark County has 4 concurrent jurisdiction with the district court of any other 5 county wherein a violation has occurred or is about to 6 occur, and the department may select and proceed in the 7 court most appropriate under the circumstances. The A injunction is to be issued without bond.

9 (3) Nothing In this chapter is to be construed as 10 requiring the department or its authorized agent to report 11 minor violations of the chapter for prosecution or for the 12 institution of seizure proceedings when it believes the 13 public interest will be best served by other remedial action, by a suitable notice of warning in writing, or by a 14 15 lawful written order; nor is any part of this chapter to be construed to apply to common carriers transporting shipments 16 tendered to them by the general public. 17

18 (4) Any person who with intent to defraud uses or 19 reveals information relative to formulas of products 20 acquired under the authority of 80-8-201 shall, upon 21 conviction, be fined not more than \$500 or imprisoned for 22 not more than 1 year, or both.

23 [5]_[a]_Any_registrant.applicator.dealer.retailer.
 24 pr_other_person_wbo_yiolates_any_provision_of_this_chapter
 25 may_be_assessed_a_civil_penalty_by_the_department_of_not

1 more___than___\$1.000___for__each_offenses__Howevers__farm 2 applicators possessing a permit may not be assessed a civil 3 penalty_over_\$200_for_the_first_offense_Assessment_of_a 4 civil penalty may be made in conjunction with any other 5 department_order_or_administrative_action_authorized_by_this 6 chapter. 7 Int_No_civil_penalty_may_be_assessed_unless_the_person 8 charged_was__given__Gotice__and_poportupity__for_a_hearing 9 cursuant to the Montana Administrative Procedure Act. 10 icl_In_determining_an_appropriate_penalty, the department_shall_consider_the_effect_on_the_person's_ability 11 12 to continue in business, the gravity of the violation which 13 occurred. the degree of care exercised by the offender...and 14 whether___significant__harm__resulted_to_health.environment. 15 agricultural_crops_or_livestock_ A_CIVIL_PENALTY_SHALL_DNLY 16 BE_ASSESSED_AGAINST_A_PERSON_WHEN_ONE_OR_MORE_MAJOR 17 VIOLATIONS__ARE__PROVEN_UNDER_IHE_PROCEDURES_OF_THIS_ACT_AND 18 THE MONTANA_ADMINISTRATIVE_PROCEDURE_ACT.__MAJOR___VIOLATIONS 19 INCLUDE MISUSE OF A PESTICIDE WHICH RESULTS IN PROVEN HARM 20 TO HUMAN HEALTH, THE ENVIRONMENT, OR AGRICULIURAL CROPS OB 21 LIVESTOCK: SELLING DE A RESTRICTED PESILCIDE TO A PERSON NOT 22 CERTIFIED OR AUTHORIZED TO PURCHASE_SUCH_PESTICIDES: USE OR 23 SALE DE UNREGISTERED PESTICIDES: FAILURE TO MAINTAIN ANY 24 INDIVIDUAL PESTICIDE APPLICATION AND SALES RECORDS: USING OR 25 SELLING_PESTICIDES_WITHOUT_THE_REQUIRED_LICENSE_OR_PERMIT:

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1 OR_REDCCURRENCE_OF_ANY_IDENTICAL_VIOLATIONS_WITHIN_THE__SAME 2 CALENDAR__YEAR. The___department_may_issue_a_warning_or_take з any other appropriate action allowed by this chapter. 4 (d) If the department is unable to collect such civil 5 penalty or if any person fails to pay all or a set portion 6 of the civil penalty as determined by the departments it may 7 recover such amount by action in the appropriate district а COULT. 9 NEW_SECTION. Section 10. Sermarked--fund DEPOSIT_OF 10 FEES_AND_PENALTIES_IN_GENERAL_FUND. That--portion--of--all 11 ticensingy----permittingy----registrationy---and---eggipment 12 inspection-feas--collected--which--constitutes--an--increase 13 after--8ctober--iv--1983y-must-be-deposited-in-the-earmarked revenue-fund-for-the-purpose-of-supporting-a-portion-of--the 14 costs--of--administering-this-chapter-The-administration-of 15 16 this-chepter-is-to-be-funded-from-both-the-earmarked-revenue 17 fund-and-the-general-fund-because-of-the-mutual-benefits--to 18 the---industry-and-the-publicy-as-stated-in-68-8-103+-Reserve 19 earmarked--revenue--fund--money--ba--favested--by---the 20 department-through-the-board-of-investments--The-income-from 21 such--investments--must-be-credited-to-the-proper-department 22 23 PERMITIING, REGISTRATION, AND EQUIPMENT INSPECTION EEES 24 COLLECTED_UNDER__PART_2__DE__THIS__CHAPTER__AND__ANY__CIVIL -25 PENALTIES__COLLECTED_UNDER_80*84306_MUST_BE_DEPOSITED_IN_THE HB 802 -23-

1 GENERAL_EUND.

<u>NEW_SECTION</u>. Section 11. Codification instruction.
 Section 10 is intended to be codified as an integral part of
 Title 80. chapter 8.

5 <u>SECTION</u>. Section 12. Saving clause. This act does 6 not affect rights and duties that matured, penalties that 7 were incurred, or proceedings that were begun before the 8 effective date of this act.

9 <u>NEW_SECTION</u>. Section 13. Severability. If a part of 10 this act is invalid, all valid parts that are severable from 11 the invalid part remain in effect. If a part of this act is 12 invalid in one or more of its applications, the part remains 13 in effect in all valid applications that are severable from 14 the invalid applications.

-End-

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for pesticides and subjecting pesticides to the requirements . HOUSE BILL NO. 802 1 INTRODUCED BY D. BROWN, MOMAR, REGAN, 2 of 80-8-202; 2 BERGENE, REAN, HARPER, RAMIREZ 3 (d) licensing commercial applicators, operators, and 2 dealers, establishing methods of recordkeeping for applicators, operators, and dealers, and providing for the A BILL FOR AN ACT ENTITLED; "AN ACT TO GENERALLY REVISE THE 5 5 LANS RELATING TO THE REGULATION OF THE SALE AND USE OF review of the records by the department's authorized agent . 6 and the submission of the records to the department upon PESTICIDES: AMENDING SECTIONS 80-8-105, 80-8-109, 80-8-201, 7 7 written request: 80-8-203, 80-8-204, 80-8-207, 80-8-209, 80-8-213, AND R 8 9 (e) issuing farm applicator special-use permits and 9 80-8-306. HCA.* 10 the maintenance and submission of records by farm 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 11 applicators issued special-use permits; 11 Section 1. Section 80-8-105, MCA, is amended to read: 12 12 (f) collection, examination, and standard deviation #80-8-105. Rules. (1) The department may adopt by 13 13 from guarantee analysis and umpire analysis of pesticides reference without a public hearing regulations adopted under 14 14 and devices; the Federal Insecticide, Fungicide, and Rodenticide Act, as 15 15 (g) operating and maintaining equipment used bv amended. The department may, after a public hearing, adopt applicators; 16 16 .17 all rules necessary to carry out this chapter. 17 (h) developing examinations which shall be held 18 (2) The rules may prescribe methods of: 18 periodically throughout the state; (a) registration, suspension or cancellation of 19 19 (i) establishing the form and content of a11 registration, application, usey or restricting use, 20 applications for licenses and permits; 20 prohibiting use, offering or exposing for sale of any 21 (i) designating pesticides that may be sold at retail 21 22 pesticide; 22 for home, yard, garden, and lawn use. The department may (b) determining whether pesticides are highly toxic to 23 23 also limit retail sale of pesticides, up to a specific 24 number of pounds or gallons and concentration which would be 24 manı (c) determining standards of coloring or discoloring 25 sublethal to humans and animals if small amounts of it were 25

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1 accidentally swallowed, inhaled, sprayed, or dusted on the 2 skin.

(k) revoking licenses and permits;

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4 (1) registering or controlling any spray adjuvant. 5 such as a wetting agent, spreading agent, deposit builder, 6 adhesive, emulsifying agent, deflocculating agent, water 7 modifier, or similar agent with or without toxic properties of its own intended to be used with any other pesticide as 8 9 an aid to the application or effect of that other pesticide. 10 whether or not distributed in a package or container 11 separate from that of a pesticide with which it is to be 12 used:

(m) registering pesticide-fertilizer and other
chemical blends or, instead of registration, establishing
licensing, inspection, and fees for blending plants;

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

20 <u>tol_imposing_conditions_for_reneral_of_dealers</u>
21 applicators_and_operator_licenses_and_permitss_including
22 renualification_training;

23 (p)_establisbing_proceduses_for_implementing_and
 24 administering_tbs_clvil_penalties_under_80=8=3061_and

25 Igl_establishing_fees_for_training_courses_and

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1 materials. 2 (3) (a) Whenever the department finds that those rules 3 are necessary to carry out the purposes and intent of this 4 chapter, the rules may relate to the time, place, manner, 5 and method of registration, suspension_or_cancellation_of registration, application, or selling of the pesticides, may 6 7 restrict or prohibit use of pesticides in the state or in 8 designated areas during specified periods of time, and shall 9 encompass all reasonable factors which the department considers necessary to prevent damage or injury to: 10 11 (i) persons, animals, crops, or pollinating insects 12 from the effect of drift or careless application; 13 (II) the environment; 14 (iii) plants, including forage plants; 15 (iv) wildlife; 16 (v) fish and other aquatic life. 17 (b) In issuing the rules, the department shall give 18 consideration to pertinent research findings and 19 recommendations of other agencies of this state or of the 20 federal governments 21 (4) If the department finds that an emergency exists which requires immediate action with regard to 22 the 23 registration, use, or application of pesticides, the 24 department may, without notice or hearing, issue necessary

orders or rules to protect the public health, welfare, and

1 safety. An order or rule issued under this subsection is 2 effective for the period prescribed by the <u>Montana</u> 3 Administrative Procedure Act. If the department determines 4 that the emergency order or rule should remain in effect, a 5 public hearing under 80-8-106 shall be held within the above 6 period to determine whether the order or rule should be 7 adopted by the department.

(5) All rules and orders issued by the department 8 shall be in writing, shall be entered in full in books to be 9 kept by the department for that purpose, shall be indexed, 10 and shall be public records open for inspection at all times 11 during reasonable office hours. Except for orders 12 establishing or changing rules of practice and procedure, 13 all orders made and published by the department shall 14 include and be based upon written findings of fact. A copy 15 of any rule or order certified by the department shall be 16 received in evidence in all courts of this state with the 17 18 same affect as the original."

Section 2. Section 80-8-109, MCA, is amended to read: m80-8-109. Educational programs. (1) The department in ecooperation-with-other--state--and--federal--agencies shall develop and conduct appropriate educational programs. The educational programs shall inform those individuals dealing in and applying pesticides as to correct methods of formulating, applying, storing, disposing of, handling, and

1	transporting pesticides.
2	[2]In_devaloping_and_administering_such_programs.tbe
3	department_may_consult_other_state_and_federal_agencies+_as
4	<u>well_as_such_other_persons_it_considers_necessarysandmay</u>
5	<u>chargeafeefortheprogramscommensuratewith_their</u>
6	administration_costs. The fee may not include the salary or
T	<u>trayel_expenses_of_any_employee_of_the_state_or_a_unit_of</u>
8	the Montana_university_system.
9	<pre>(3)_All_fees_collected_in_any_fiscal_year_and_not</pre>
10	<u>expended_withio_that_fiscal_year_must_be_placed_io_an</u>
11	<u>educational_and_manuals_account_of_the_earmarked_revenue</u>
12	<u>fund_for_future_use_for_that_purposes"</u>
13	Section 3. Section 80-8-201, MCA, is amended to read:
14	#80-8-201. Registration. (1) Every pesticide
15	distributed, sold, or offered for sale within this state or
16	delivered for transportation or transported in intrastate
17	commerce or between points within this state shall be
18	registered with the department. Theregistrationshallbe
19	renewedannuallybythemanufactureryformulatoryor
20	distributor-of-the-pesticides-The-department-shallregister
21	attapprovedpesticidesand-those-registered Applications
22	for_registration_sball_be_filed_annually_with_the_department
23	<u>by the</u>
24	<u>pesticides_The_department_shall_review_the_application_ands</u>
25	<u>subject_to_the_provisions_of_subsection_181.may_register</u>

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the pesticide_for_use_io_the_states__Pesticides_so__approved 1 are subject to registration fees and all other provisions of 2 this chapter. All registrations of pesticides expire on 3 December 31 following the date of issuance unless otherwise 4 5 terminated. <u>Within the first 2_months of each calendar</u> year, the department shall prevare a list of all pesticides 6 registered within the state. The list must be distributed 7 to the department of health and environmental_sciences_and 8 9 the department of fish, wildlife, and parks and must be made 10 available_to_the_public. 11 (2) The applicant for registration shall file with the department a statement including: 12 13 (a) the name and address of the applicant and the name 14 and address of the person whose name will appear on the 15 label, if other than the registrant: 16 (b) a complete copy of the label of the pesticide, the 17 United States environmental protection agency registration 18 number if the pesticide is so registered, and a statement of 19 all claims to be made for it, including directions for use; 20 (c) the trade and chemical name of the pesticide; 21 (d) if requested by the department, a full description 22 of tests made and the results upon which the claims are 23 based<u>__including_all</u> available information_IN_IME_POSSESSION OF__IME__APPLICANI about the effects of the pesticide on 24 25 <u>REPRESENTATIVE nontarget species.</u> In the case of renewal^w of -7-HB 802

registration, a statement shall be required only with
 respect to information which is different from that
 furnished when the pesticide was registered or last
 reregistered.

5 (3) Any pesticide imported into this state which is subject to the provisions of any federal act providing for 6 the registration of pesticides and has been registered under 7 8 the provisions of a federal act shall gay SHALL be 9 registered in the state. However, the state may restrict the 10 sale or use and application of the pesticide by type of 11 dealer, applicator, time, and place and may establish registrations of pesticides as outlined in 12 special 13 subsection (B) of this section and 80-8-105(3). The annual registration fee must also be paid, and registration 14 information required by the department must be provided. 15

16 (4) The applicant shall pay an annual fee of 615 550
17 for each pesticide registered. A registration fee is not
18 required to register on a federally approved experimental
19 use permit. Fees collected shall be deposited in the state
20 treasury to the credit of the general fund.

21 (5) The department may require the submission of the 22 complete formula and certified analytical standards of any 23 pesticide. If it appears to the department that the 24 composition of the article warrants the proposed claims for 25 it and if the article and its labeling and other material

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required to be submitted comply with the requirements of
 80-8-202, it shall register the article.

(6) If it does not appear to the department that the 3 article warrants the proposed claims for it or if the 4 article and its labeling and other material required to be 5 submitted do not comply with this chapter, it shall notify 6 the applicant of the manner in which the articles labelings 7 8 or other material required to be submitted fails to comply with the chapter so as to afford the applicant an 9 opportunity to make the necessary corrections. If the 10 applicant does not make the corrections upon receipt of the 11 notice, the department may refuse to register the article. 12 The department may suspend or cancel the registration of a 13 pesticide whenever it does not appear that the article or 14 its labeling comply with this chapter. When an application 15 for registration is refused or the department proposes to 16 17 suspend or cancel a registration, the registrant may appeal the---department*s---dec+ston <u>pursue_administrative_remedies</u> 18 under the Montana Administrative Procedure Act and rules of 19 20 the_department.

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

(B) (a) The departments of health and environmental
sciences, agriculture, and fish, wildlife, and parks shall

L	review all applications for registration of an
Z	experimental-use permit or a registration for special local
3	needs. Ibe applicant shall pay a one-time fee of \$50 for a
4	special_local_need_or_experimental_use_permitregistration.
5	Within_30_days_of_receipt_of_the_list_of_registered
6	pesticides_provided_forundersubsectionfll+each
7	department_may_also_request_that any A pesticide_registered
8	by the department or being considered for registration by
9	thedepartmentbereviewedipaccordancewiththis
10	SUBSECTION. THE DEPARTMENTS, IN DELERMINING
11	REQUESTSUCHREVIEW_EOR_A_PARTICULAR_CHEMICAL_PRODUCT.MAX
12	NOT_REQUEST A REVIEW UNLESS_THECHEMICALMATERIALOBITS
13	BYPRODUCTS_HAVE_BEEN_SHOWN_TO:
14	(I)HAVE_A_HALE=LIEE_IN_THE_ENVIRONMENT_GREATER_THAN_Z
15	DAYSI
16	(III)_ACCUMULATEINYEGETATION+SOILS+ORANIMAL
17	IISSUES:_AND
18	(111)_BE_A_SUSPECIED_CARCINGGEN+_HUIAGEN+_OR_IERATOGEN+
19	The departments shall utilize but are not limited to the
20	same requirements and standards for reviewing registrations
21	as established by the Federal Insecticide, Fungicide, and
22	Rodenticide Act, as amended, and regulations adopted
23	thereunder. The department of agriculture shall provide the
24	departments of health and environmental sciences and fish,
25	wildlife, and parks with a complete copy of the application,

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1 related correspondence, and a statement of the department of 2 agriculture's proposed action on the application. The departments of health and environmental sciences and fish, 3 4 wildlife, and parks shall approve or disapprove the 5 application within 10 days after the receipt of the application. If the departments of health and environmental 6 7 sciences, agriculture, and fish, wildlife, and parks are in agreement with the proposed registration, the department of 8 9 agriculture shall issue the registration.

10 (b) The department of agriculture shall establish a 11 time and place for an interagency conference for the 12 purposes of resolving the registration of any pesticide or 13 device. If two of the departments approve the proposed 14 registration, the department of agriculture shall issue the 15 registration.

16 (c) The registrant applying for registration shall be 17 notified as to proposed changes in registration. If the 18 departments cannot resolve the proposed registration 19 following the interagency conference, the registrant may 20 request a joint administrative hearing before the 21 departments of agriculture, health and environmental 22 sciences, and fish, wildlife, and parks.

(d) Following the interagency conference and, if
 requested, the administrative hearing, if the proposed
 registration of a pesticide or device has not been resolved,

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the department of agriculture shall appoint an advisory council as outlined in 80-8-108 to resolve by majority vote the registration of any pesticide. The advisory council's recommandations on the registration shall be accepted by the departments and implemented by the department of agriculture.

[9] Pesticides registered under any federal law when 7 canceled for sale and use in total or part by a federal 8 agency_responsible_for_registration_are_considered__canceled 9 in_total_or_part_for_sale_and_use_in_Montana, for=the 10 11 purposes-of-bringing-such-pesticides_inte-Mentana__for__isite 12 13 the concellation by the federal agency Such pesticides in Nontana__at_the_time_of_the_announcement_may_be_sold_or_used 14 15 until the final date of sale or use allowed under the 16 federal_law_and_rules_or_orders_of_tbe_federal_agency+_If 17 the federal cancellation allows existing stock to be used 18 past_the_final_date_of_cancellations_such_sale_or_use_in 19 this state may not exceed 2 years. The department shall provide__technical_assistance_to_apy_person_in_possession_of 20 such products to insure their proper___disposale___relabeling. 21 or removal." **Z**Z 23 Section 4. Section 80-8-203. MCA, is amended to read: *80-8-203. Commercial applicator. (1) It shall be 24 unlawful for any person to engage in the business of 25

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1 applying pesticides for another without a pesticide applicator's license obtained from the department of 2 agriculture. The application shall be accompanied by a fee 3 of 415 \$50. Applicators applying for a dealer's license 4 5 under this chapter shall be required to pay only a \$10 \$30 licensing fee for the dealer's license. The provisions of 6 this section subsection shall not apply to any person 7 employed only to operate any equipment used for the 8 9 application of any pesticide and in which the person has no 10 financial interest or other control over such apparatus other than its day-to-day mechanical operation for the 11 12 purpose of applying any pesticide.

 13
 (2)_Each_applicator_shall_bave_bis_license_in_his

 14
 possession_when_using_pesticides_and_shall_display_the

 15
 license_upon_request_of_an_authorized_agent_of_the

 16
 department_

17 (2)(2) Public utility applicators shall be licensed in 18 the same manner as commercial applicators, provided that 19 public utility operators working under public utility 20 applicators are not required to be licensed except as 21 provided for under 80-8-205.

22 (3)(4) Veterinarians licensed as provided in Title 37, 23 chapter 18, part 3, shall not be required to be licensed to 24 apply nonrestricted pesticides, provided that these 25 veterinarians shall register with the department each year; provided further that the veterinarians shall be required to
 meet all other requirements and rules of the Montana
 Pesticides Act. The department shall consider the
 professional licensing requirements for veterinarians when
 adopting rules."

6 Section 5. Section 80-8-204, MCA, is amended to read: 7 "80-8-204. Application for applicator's license. (1) 8 Application for a pesticide applicator's license provided 9 for in 80-8-203 shall be made annually to the department before applying pesticides in any calendar year, provided 10 11 that pesticide applicators applying for renewal of license 12 shall do so on or before May 1 of that calendar year. Any 13 applicator applying for renewal of license after May 1 shall be assessed a \$15 125 late licensing fee. 14

15 (2) An individual applying for a license to engage in 16 aerial application of pesticides shall certify on the 17 application that he has met all the federal aviation 18 administration and the department of commerce requirements 19 for aerial pesticide applicators."

20 Section 6. Section 80-8-207, MCA, is amended to read: 21 #80-8-207. Dealers. (1) It is unlawful for any person 22 to sell, offer for sale, deliver, or have delivered within 23 this state any pesticide without first procuring a license 24 from the department of agriculture for each calendar year or 25 portion thereof. A separate dealer's license and fee shall

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required for each location or outlet from which 1 be 2 pesticides are distributed, sold, held for sale, or offered for sale. Pesticide fieldmen or salesmen employed directly 3 4 out of the same location or outlet and under a licensed 5 dealer shall not be required to obtain a license. The dealer shall furnish the department the names and addresses of its 6 fieldmen and salesmen selling pesticides within the state. 7 A__dealer__shall__baye__his__license__in_bis_possession_when 8 9 selling pesticides and shall display the license upon 10 request of an authorized agent of the department.

11 (2) The application for a license shall be accompanied 12 by a fee of #15 \$50. Dealers applying for renewal of license 13 shall do so on or before May 1 of that calendar year. Any 14 dealer applying for renewal of license after May 1 shall be 15 assessed a #15 \$25 late licensing fee.

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

Dealers way make one application for two annual
 licenses if the application is accompanied by a \$15 \$50
 licensing fee for each year of the state biennium.

(5) Pharmacists licensed as provided for in 37-7-302
and 37+7-303, veterinarians licensed as provided for in
37-18-302 and 37-18-303, and certified pharmacies licensed
under 37-7-321 shall not be required to be licensed to sell

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1 pesticides, provided that the certified pharmacies and 2 veterinarians shall register with the department each year. 3 However, the certified pharmacies and veterinarians shall be 4 required to meet all other requirements concerning the 5 commercial sale of pesticides. The department shall take Into account the professional licensing requirements of 6 7 pharmacists, certified pharmacies, and veterinarians when я adopting rules.*

9 Section 7. Section 80-8-209. MCA. is amended to read: 10 #80-8-209. Farm applicators. (1) Farm applicators 11 shall obtain a special-use permit prior to purchasing and 12 using any pesticide designated by the department as a 13 restricted-use pesticide. The fee for the permit is \$15. 14 The special-use permit shall be effective for 5 calendar years. The department may establish a staggered years system 15 16 of issuing permits.

17 (2) Restricted pesticides may not be utilized by farm applicators or their employees except for the purpose of 18 19 producing or protecting any agricultural commodity on 20 property owned, leased, or rented by such applicator or-as provided-in-f6)-of-this-section OR_AS_PROVIDED_IN_SUBSECTION 21 22 (6)_DE_THIS_SECTION+ 23 (3) farm applicators shall qualify for the their_first 24 permit by either passing a graded written examination or

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attending a training course approved by the department and

taking an ungraded written examination. The examinations and
 course shall require and demonstrate practical knowledge of
 the applicator's ability to:

4 (a) recognize common pests to be controlled and damage
5 caused by them;

6 (b) read and understand the label and labeling 7 information, including the common name of the pesticide(s) 8 applied, pest(s) to be controlled, timing and methods of 9 application, safety precautions, any preharvest or reentry 10 restrictions, and any specific disposal procedures;

11 (c) apply pesticides in accordance with label 12 instructions and warnings, including the ability to prepare 13 the proper concentration of pesticides to be used under 14 particular circumstances, taking into account such factors 15 as area to be covered, speed at which application equipment 16 will be driven, and the quantity dispersed in a given period 17 of operation;

18 (d) recognize local environmental situations that must
19 be considered during application to avoid contamination; and
20 (e) recognize poisoning symptoms and procedures to
21 follow in case of a pesticide accident.

22 (4) The department may require farm applicators to
23 attend a mandatory training session and pass a written
24 examination for those restricted pesticides that are
25 extremely toxic or for which an effective antidote is not

available. The department may require farm applicators
 handling these pesticides to maintain use records.

3 (5) form-applicators-monifesting-reading--disabilities 4 may--become--certified--to-use-as-many-as-two-restricted-use 5 pesticides-by-passing-a-specific--oral--examination--on--the 6 particular--pesticidefs}--if-the-applicator-documents-that-a 7 certified-spolicstor-in-the-immediate--vicinity--can--advise 8 htmy Ibe__department__shall__require__farm__applicators__to 9 regualify_for_renewal_of_the_5-year_permit_by_obtaining__100 10 training_credits__The_department_shall_establish_by_rule_a 11 uniform_system_of_administering_the_requalification_training 12 credits. The department may credit only training related to 13 the_standards_set_forth_in_subsection_(3). 14 (6) Provisions of this chapter relating to 15 certification of farm applicators do not apply to any farm applicator applying nonrestricted pesticides on his own land 16 17 or on lands of his neighbors if he: 18 (a) operates farm property and operates and maintains 19 pesticide application equipment primarily for his own use; 20 (b) is not regularly engaged in the business of 21 applying pesticides for hire and does not publicly hold 22 himself out as a pesticide applicator; 23 (c) operates his pesticide application equipment only 24 in the vicinity of his own property and for the 25 accommodation of his immediate neichbors."

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Section 8. Section 80-8-213, MCA, is amended to read: 1 *80-8-213. Government agencies. (1) All state 2 agencies, municipal corporations, or any other governmental 3 agency shall be subject to the provisions of this chapter 4 and rules adopted thereunder concerning the application or 5 sale of pesticides. Applicators and operators applying 6 pesticides and dealers selling pesticides for agencies, 7 municipal corporations, or any governmental agencies shall 8 be subject to the provisions of 80-8-203 through 80-8-208* 9 10 and-the.

121 The department shall issue a limited commercial 11 applicator'sy--operatorisy or dealer's license without-a-fee 12 for an annual fee of \$50, which shall be valid only when 13 such applicatorsy-operatorsy-and-dealers-are applicator or 14 dealer_is applying or selling pesticides for such agencies. 15 provided that the jurisdictional health officer, state 16 veterinarian, their duly authorized representatives, or 17 governmental research personnel are exempt from this 18 licensing requirement when applying pesticides to 19 experimental areas. 20

25 (1)_Government____employees____becoming____certified

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1 applicators only to gualify for conducting pesticide 2 aducation_courses_may_not_be_charged_a_license_fee_but_are 3 limited to providing such courses. Government operators, are 4 subject_to_rules_adopted_pursuant_to_80-8-2051_including_the 5 license_fee." Section 9. Section 80-8-306. MCA. is amended to read: 6 7 #80-8-306. Penalties. (1) Any person convicted of 8 violating any of the provisions of this chapter or the rules 9 issued thereunder or who may misrepresent, impede, obstruct, 10 hinder, or otherwise prevent or attempt to prevent the department or its duly authorized agent in performance of 11 its duty in connection with the provisions of this chapter 12 13 shall be adjudged guilty of a misdemeanor and shall be fined 14 not less than \$200 but not more than \$500 \$2.500 or 15 imprisoned in the county jail for a term not to exceed 6 16 months, or both. 17 (2) The department or its authorized representative is

hereby authorized to apply to the district court of the 18 county or any county wherein a violation is about to occur 19 20 or has occurred to grant a temporary or permanent injunction 21 restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule 22 23 promulgated under the chapter notwithstanding the existence 24 of other remedies of law. When a person makes pesticide 25 applications in more than one county on a commercial basis

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1 without a license or permit or operates in violation of a 2 lawful written order of the department in more than one 3 county, the district court of Lewis and Clark County has 4 concurrent jurisdiction with the district court of any other 5 county wherein a violation has occurred or is about to 6 occur, and the department may select and proceed in the 7 court most appropriate under the circumstances. The

(3) Nothing in this chapter is to be construed as 9 requiring the department or its authorized agent to report 10 minor violations of the chapter for prosecution or for the 11 institution of seizure proceedings when it believes the 12 public interest will be best served by other remedial 13 action, by a suitable notice of warning in writing, or by a 14 lawful written order; nor is any part of this chapter to be 15 construed to apply to common carriers transporting shipments 16 tendered to them by the general public. 17

injunction is to be issued without bond.

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18 (4) Any person who with intent to defraud uses or
19 reveals information relative to formulas of products
20 acquirad under the authority of 80-8-201 shall, upon
21 conviction, be fined not more than \$500 or imprisoned for
22 not more than 1 year, or both.

(51_fal_Aby_registrant, applicator, dealer, retailer,
 or_other_person_who_violates_aby_provision_of_this_chapter
 may_be_assessed_a_civil_penalty_by_the_department_of_not

1	worethan\$1+000foreachoffenseHowever+farm
Z	applicators_possessing_a_permit_may_oot_be_assessed_acivil
3	penalty_over_\$200_for_the_first_offense.Assessment_of_a
4	civil_penalty_may_be_madeioconjunctionwithanyother
5	department_order_or_administrative_action_authorized_by_this
6	chapter.
7	<u>(b)_No_civil_penalty_may_be_assessed_unless_tbe_person</u>
8	charged_was_given_notice_and_opportunity_for_a_hearing
9	pursuant_to_the_Montana_Administrative_Procedure_Acta
10	iclIndeterminingengeropristepengleythe
11	deportment_aboll_consider_the_sifect_on_the_peracola-ability
12	to::continuc:in-businessy:the-grovity-of-the-violation-which
13	occurredx=tbe=degree=of=eare=exercised=by=the=offeodery=aand
14	whethersignificantharmresulted_to_bealtbx_sovireements
15	estiguiturel_graps:cortivestocks A_CIVIL_PENALTY_SHALL_ONLY
16	BEASSESSED_AGAINST_A_PERSON_WHEN_ONE_OB_MORE_HAJOR
17	VIOLATIONSABEPROVEN_UNDER_THE_PROCEDURES_DE_THIS_ACT_AND
18	THE_BONTANA_ADDINISTRATIVE_PROCEDURE_ACTMAJORVIOLATIONS
19	INCLUDEHISUSEOE_A_PESTICIDE_WHICH_RESULIS_IN_PROVEN_HARM
20	ID_HUMAN_HEALIHIHE_ENVIRONMENTDR_AGRICULTURALCROPSOR
21	LIVESTOCK: SELLING_DE_A_RESTRICTED_PESIICIDE_TO_A_PERSON_NOT
22	CERTIFIED_OR_AUTHORIZED_TO_PURCHASE_SUCH_PESTICIDES:_USE_OR
23	SALE_DE_UNBEGISTERED_PESTICIDES:EAILUREIQBAINTAINANY
24	INDIVIDUAL PESTICIDE APPLICATION, AND SALES RECORDS: USING OR
25	SELLING_PESTICIDES_HITHOUT_THE_REQUIRED_LICENSE_OR_PERMIT:

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1	OR_BEOCCUBBENCE_DE_ANY_IDENTICAL_XIDLATIONS_WITHIN_THESAME
2	CALENDAR_YEAR. Ibe_department_may_issue_a_warning_or_take
3	any_other_appropriate_action_allowed_by_this_chapter.
4	<u>(d) if the department is unable to collect such civil</u>
5	penalty_or_if_any_person_fails_to_pay_all_or_a_set_portion
6	<u>of_tbs_civil_pepalty_as_determined_by_tbe_departments_it_may</u>
7	recover_such_amount_by_action_iptheappropriatedistrict
8	Courta
9	<u>NEW_SECTION</u> Section 10. Earmarked-fund <u>DEPOSIT_OF</u>
10	EEES_AND_PENALIIES_IN_GENERALEUND. Thetpertionofall
11	licensingvpermittingvregistrationvandequipment
12	inspection-feescollectedwhichconstitutesanincrease
13	afterBctoberly1983y-must-be-deposited-in-the-earmarked
14	revenue-fund-for-the-purpose-of-supporting-a-portion-ofthe
15	costsofadministering-this-chapterw-The-administration-of
16	this-chapter-is-to-be-funded-from-both-the-earmarked-revenue
17	fund-and-the-general-fund-because-of-the-mutual-benefitsto
18	theindustry-and-the-publicy-as-stated-in-80-0-103-Reserve
19	earmarkedrevanuefundmoneymaybeinvestedbythe
20	department-through-the-board-of-investmentsThe-income-from
21	such investmentsmust-be-credited-to-the-proper-department
22	occountintheearmarkedrevenuefund <u>ALLLICENSING</u> ,
23	PERMITTINGREGISTRATIONANDEQUIRMENTINSPECTIONEEES
24	COLLECTED_UNDEBPART2OFTHISCHAPTEBANDANYCIVIL
25	PENALTIES_COLLECTED_UNDER_80-8-306_HUST_BE_DEPOSITED_IN_THE

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1 GENERAL_EUND.

<u>NEW_SECTION</u>* Section 11. Codification instruction.
 Section 10 is intended to be codified as an integral part of
 Title 80, chapter 8.
 <u>YEW_SECTION</u>* Section 12. Saving clause. This act does
 not affect rights and duties that matured, penalties that
 were incurred, or proceedings that were begun before the
 effective date of this act.

9 NEW_SECTION: Section 13. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.
15 SECTION 14. TERMINATION: SECTION 3 TERMINATES JULY 1.

16 1985.

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SENATE STANDING COMMITTEE REPORT (Agriculture, Livestock & Irrigation)

That House Bill No. 802 be amended as follows:

1. Page 6, line 3.
Following: "agencies" Insert: "and private industry" 2. Page 6, lines 21 and 22. Strike: "Applications" on line 21 through "department" on line 22 Insert: "The registration shall be renewed annually" 3. Page 6, line 24 through line 1 on page 7. Strike: "review" on page 6, line 24 through "approved" on page 7, line 1Insert: "register all federally approved pesticides and those registered" 4. Page 7, lines 5 through 10. Following: "." on line 5 Strike: the remainder of line 5 through line 10 in their entirety 5. Page 7, lines 23 through 25. Strike: "," on line 23 through "species" on line 25 6. Page 8, line 16. Strike: "\$50" "<u>\$20</u>" Insert: 7. Page 9, line 15. Following: "chapter" Insert: "or whenever scientific evidence proves that the article endangers man or the general environment afforded protection under 80-8-105(3)(a)" 8. Page 10, lines 5 through 18. Strike: These lines in their entirety 9. Page 10, line 19. Strike: "but are not limited to" Following: "the" Insert: "same" 10. Page 12, line 8. Following: "or" Insert: "in" 11. Page 12, line 10. Following: "or" Insert: "in"

Senate Standing Committee Report H.B. 802 Agriculture, Livestock & Irrigation March 16, 1983 Page 2 12. Page 12, lines 13 through 15. Strike: "Such" on line 13 through "until" on line 15 Insert: "The cancellation is effective on" 13. Page 13, line 4. Strike: "\$50" Insert: "\$20" 14. Page 13, line 5. Strike: "\$30" "<u>\$15</u>" Insert: 15. Page 13, lines 13 through 16. Strike: These lines in their entirety ۰. Renumber: subsequent subsections 16. Page 14, line 12. Strike: "May" Insert: "March" 17. Page 14, line 13. Strike: "May" Insert: "March" 18. Page 15, lines 8 through 10. Strike: These lines in their entirety 19. Page 15, line 12. Strike: "\$50" Insert: "\$20" 20. Page 15, line 13. Strike: "May" Insert: "March" 21. Page 15, line 14. Strike: "May" Insert: "March" 22. Page 15, line 15. Strike: "\$25" "\$15" Insert: 23. Page 15, line 20. Strike: "\$50" Insert: "<u>\$20</u>" 24. Page 16, lines 21 and 22. Strike: "OR" on line 21 through "SECTION" on line 22 25. Page 20, lines 14 through 16. "\$500" on line 14 Strike: "\$100" Insert: "\$2,500" on line 14 Strike: "\$1,500" Insert: 1 - ma 1/ + h manah "hath" on 1 - ma 1/ llevell or **.**

Sunate committee of the whole Amendment

That House Bill No. 802 be amended as follows:

1. Page 23, line 25. Following: "court." Insert: "(6) Any person against whom the department has assessed a civil penalty under this section may, within 30 days of the final agency action making the assessment, appeal the assessment to the district court of the county in which the violation is alleged by the department to have occurred. Appeal is by trial de novo and a jury trial must be granted if requested. Where the provisions of this subsection conflict with 2-4-702 through 2-4-704, the provisions of this subsection govern."

Senate Standing Committee Report H.B. 802 Agriculture, Livestock & Irrigation March 16, 1983 Page 3 Page 21, line 24. 26. Strike: "violates any provision" Insert: "commits a major violation" Following: "chapter" Insert: "as defined in subsection (5)(d)" 27. Page 22, line 5. Following: "department" Insert: "warning," Following: "order' Insert: "," 28. Page 22, lines 15 through 19. Strike: "A" on line 15 through "INCLUDE" on line 19 Insert: "In determining an appropriate penalty, the department shall consider the effect on the person's ability to continue in business, the gravity of the violation which occurred, the degree of care exercised by the offender, and whether significant harm resulted to health, environment, agricultural crops, or livestock. (d) A major violation of this chapter includes: (i)" 29. Page 22, line 21. Following: ";" Insert: "(ii)" 30. Page 22, line 22. Following: ";" Insert: "(iii)" 31. Page 22, line 23. Following: ";" Insert: "(iv)" 32. Page 22, line 24. Following: ";" Insert: "(v)" 33. Page 22, line 25. Following: "WITHOUT" Insert: "having obtained" 34. Page 23, line 1. Following: "OR" "(vi)" Insert: Strike: "VIOLATIONS" Insert: "violation of this chapter" 35. Page 23, lines 2 and 3. Strike: "The" on line 2 through "." on line 3 36. Page 23, line 4. Strike: "(d)" Insert: "(e)" 37. Page 24, lines 15 and 16. Strike: section 14 in its entirety

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1	HOUSE BILL NO. 802	. 1	for pesticides and subjecting pesticides to the requirements
2	INTRODUCED BY D. BROWN, MOHAR, REGAN,	2	of 80~8-202;
3	BERGENE, REAM, HARPER, RAMIREZ	3	(d) licensing commercial applicators, operators, and
4		4	dealers, establishing methods of recordkeeping for
5	A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE	5	applicators, operators, and dealers, and providing for the
6	LAWS RELATING TO THE REGULATION OF THE SALE AND USE OF	6	review of the records by the department's authorized agent
7	PESTICIDES; AMENDING SECTIONS 80-8-105, 80-8-109, 80-8-201,	7	and the submission of the records to the department upon
6	80-8-203, 80-8-204, 80-8-207, 80-8-209, 80-8-213, AND	8	written request:
9	80-8-306+ MCA+"	9	(e) issuing farm applicator special-use permits and
10		10	the maintenance and submission of records by farm
11	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	11	applicators issued special-use permits;
12	Section 1. Section 80-8-105, MCA, is amended to read:	12	(f) collection, examination, and standard deviation
13	#80-8-105。 Rules• (I) The department may adopt by	13	from guarantee analysis and umpire analysis of pesticides
14	reference without a public hearing regulations adopted under	14	and devices;
15	the Federal Insecticide, Fungicide, and Rodenticide Act, as	15	(g) operating and maintaining equipment used by
16	amended. The department may, after a public hearing, adopt	16	applicators;
17	all rules necessary to carry out this chapter.	17	(h) developing examinations which shall be held
18	(2) The rules may prescribe methods of:	18	periodically throughout the state;
19	(a) registration, <u>suspensionorcancellation_of</u>	19	(i) establishing the form and content of all
20	registration, application, use, or restricting use,	20	applications for licenses and permits;
21	prohibiting use, offering or exposing for sale of any	21	(j) designating posticides that may be sold at retail
22	pesticide;	. 22	for home, yard, garden, and lawn use. The department may
23	(b) determining whether pesticides are highly toxic to	23	also limit retail sale of pesticides, up to a specific
24	man;	24	number of pounds or gallons and concentration which would be
25	(c) determining standards of coloring or discoloring	25	sublethal to humans and animals if small amounts of it were
			-2- HB 802

REFERENCE BILL

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1 accidentally swallowed. Inhaled, sprayed, or dusted on the 2 skin.

3 (k) revoking licenses and permits;

4 (1) registering or controlling any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, 5 adhesive, emulsifying agent, deflocculating agent, water 6 7 sodifier, or similar agent with or without toxic properties 8 of its own intended to be used with any other pesticide as 9 an aid to the application or effect of that other pesticide, 10 whether or not distributed in a package or container 11 separate from that of a pesticide with which it is to be 12 used:

(m) registering pesticide-fertilizer and other
 chemical blends or, instead of registration, establishing
 licensing, inspection, and fees for blending plants;

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

20 (o)_imposing_conditions_for__renewal__of__dealers
21 applicators_and_operator_licenses_and_permitss_includiog
22 regualification_training:

(p)_establishing_procedures_for__implementing__and
 administering_the_clwil_penalties_under_80-8-306; and

25 Igl_establishing__fees__for__training_courses_and

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1 materials.

(3) (a) Whenever the department finds that those rules 2 are necessary to carry out the purposes and intent of this 3 chapters the rules may relate to the time, place, manner, 4 and method of registration, suspension or cancellation of 5 registration, application, or selling of the pesticides, may 6 restrict or prohibit use of pesticides in the state or in 7 designated areas during specified periods of times and shall 8 encompass all reasonable factors which the department 9 considers necessary to prevent damage or injury to: 10 11 (i) persons, animals, cross, or pollinating insects 12 from the effect of drift or careless application; 13 (ii) the environment; (iii) plants, including forage plants; 14 15 (iv) wildlife; (v) fish and other aquatic life. 16 17 (b) In issuing the rules, the department shall give 18 consideration to pertinent research findings and recommendations of other agencies of this state or of the 19 20 federal government. 21 (4) If the department finds that an emergency exists 2Z which requires immediate action with regard to the 23 registration, use, or application of pesticides, the department may, without notice or hearing, issue necessary 24 orders or rules to protect the public health, welfare, and 25

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safety. An order or rule issued under this subsection is
 effective for the period prescribed by the <u>Montana</u>
 Administrative Procedure Act. If the department determines
 that the emergency order or rule should remain in effect, a
 public hearing under 80-8-106 shall be held within the above
 period to determine whether the order or rule should be
 adopted by the department.

8 (5) All rules and orders issued by the department 9 shall be in writing, shall be entered in full in books to be 10 kept by the department for that purpose, shall be indexed, 11 and shall be public records open for inspection at all times 12 during reasonable office hours. Except for orders 13 establishing or changing rules of practice and procedure, all orders made and published by the department shall 14 include and be based upon written findings of fact. A copy 15 16 of any rule or order certified by the department shall be received in evidence in all courts of this state with the 17 18 same effect as the original."

19 Section 2. Section 80-8-109, NCA, is amended to read: 20 #80-8-109. Educational programs. <u>[11]</u> The department in 21 cooperation-with-other--state--and--federal--agencies shall 22 develop and conduct appropriate educational programs. The 23 educational programs shall inform those individuals dealing 24 in and applying pesticides as to correct methods of 25 formulating, applying, storing, disposing of, handling, and 1 transporting pesticides.

2	<u>[2]Io_developing_and_administering_such_programs=_the</u>			
3	department_may_consult_other_state_and_federal_agencies_AND			
4	PBIVAIC_INDUSIRY1_as_well_as_such_other_persons_it_considers			
5	necessaryandmaycbargeafeefortheprograms			
6	commensurate_with_their_administration_costs.The_fee_way			
7	pot_include_tbe_salary_or_trayel_expenses_of_any_employee_of			
8	the state or a unit of the Montana university system.			
9	<pre>(3)All_fees_collected_loapyfiscalyearandoot</pre>			
10	expendedwithinthatfiscalyearmustbeplaced_in_an			
11	educational_and_manuals_accountoftbeearmarkedrevenue			
12	fund_for_future_use_for_that_purpose_"			
13	Section 3. Section 80-8-201, MCA, is amended to read:			
14	#80-8-201. Registration. (1) Every pesticide			
15	distributed, sold, or offered for sale within this state or			
16	delivered for transportation or transported in intrastate			
17	commerce or between points within this state shall be			
18	registered with the department. Theregistrationshallbe			
19	renewedannuallybythemanufacturaryformulatoryor			
20	distributor-of-the-pesticideThe-department-shallregister			
21	allapprovedpesticidesand-those-registered <u>applications</u>			
22	for-registration-shell-be-filed-anoually-with-the-department			
23	THEREGISTRATIONSHALLBERENEWEDANNUALLY bytbe			
24	<pre>manufacturerformulatoror_distributor_of_the_pesticide.</pre>			
25	Ibe_department_sball review=the=oppticotico=oody=subject==to			

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I	the provisions of appacetion this systemistate the posticide
2	for
3	EEDEBALLY_APPROVEDPESTICIDESANDIHOSEBEGISTERED are
4	subject to registration fees and all other provisions of
5	this chapter. All registrations of pesticides expire on
6	December 31 following the date of issuance unless otherwise
7	terminated. <u>Withig-therfirst2montharrofracecharcelender</u>
8	<u>xtorx=the=deporteent=absliprepore=a=list=of=oll=pesticides</u>
9	Cegistered-withio_the_statex=_lbe_list_mustbedistributed
10	to::tbsc:deportment=of=bealtb=and=sovirenments}=sciences-and
11	the_department_of_fishe_wildlifer_mod_parks_and_must_be_made
12	aveilabla-te-the-publics
13	(2) The applicant for registration shall file with the
14	department a statement including:
15	(a) the name and address of the applicant and the name
16	and address of the person whose name will appear on the

17 label, if other than the registrant;

(b) a complete copy of the label of the pesticide, the
United States environmental protection agency registration
number if the pesticide is so registered, and a statement of
all claims to be made for it, including directions for use;
(c) the trade and chemical name of the pesticide;
(d) if requested by the department, a full description

24 of tests made and the results upon which the claims are 25 based<u>wrincluding=all-available=information IN=FHE=PBSSESSIBN</u>

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1 BE_INE: APPLIGANT about__the__effects___effects

7 (3) Any pesticide imported into this state which is 8 subject to the provisions of any federal act providing for 9 the registration of pesticides and has been registered under the provisions of a federal act shall may SHALL be 10 11 registered in the state. However, the state may restrict the 12 sale ar use and application of the pesticide by type of 13 dealers applicator, time, and place and may establish 14 special registrations of pesticides as outlined in 15 subsection (8) of this section and 80-8-105(3). The annual 16 registration fee must also be paid, and registration 17 information required by the department must be provided.

18 (4) The applicant shall pay an annual fee of 915 158
19 520 for each pesticide registered. A registration fee is not
20 required to register an <u>a_federally_approved</u> experimental
21 use permit. Fees collected shall be deposited in the state
22 treasury to the credit of the general fund.

(5) The department may require the submission of the
 complete formula and certified analytical standards of any
 pesticide. If it appears to the department that the

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composition of the article warrants the proposed claims for
 it and if the article and its labeling and other material
 required to be submitted comply with the requirements of
 80-8-202. it shall register the article.

(6) If it does not appear to the department that the 5 article warrants the proposed claims for it or if the 6 article and its labeling and other material required to be 7 submitted do not comply with this chapter, it shall notify A. 9 the applicant of the manner in which the article, labeling, or other material required to be submitted fails to comply 10 with the chapter so as to afford the applicant an 11 opportunity to make the necessary corrections. If the 12 applicant does not make the corrections upon receipt of the 13 notica, the department may refuse to register the article. 14 The department may suspend or cancel the registration of a 15 pesticide whenever it does not appear that the article or 16 its labeling comply with this chapter OR WHENEVER SCIENTIFIC 17 EVIDENCE_PROVES_INAL_INE_ARTICLE_ENDANGERS_NAN_OR_INE 18 GENERAL ENVIRONMENT AFEORDED PROTECTION UNDER 19 <u>A0-B-105(3)(A)</u>. When an application for registration is 20 refused or the department proposes to suspend or cancel a 21 registration, the registrant may appeal--the--department*s 22 23 decision <u>pursue</u> administrative remedies under the Montana 24 Administrative_Procedure_Act_and_rules_of_the_department. 25 (7) Registration is not required in the case of a 1 pesticide shipped from one plant in this state to another
2 plant in this state by the same person.

(8) (a) The departments of health and environmental 3 4 sciences, agriculture, and fish, wildlife, and parks shall 5 review all applications for registration of an experimental-use permit or a registration for special local 6 7 needs. The applicant shall pay a opertime fee of \$50 for a Α. special_local_need_or_experimental_use_permit_registration. 9 <u>Within__38--dova__of__receipt__of--the--list--of--redistored</u> 10 11 department:may_glag_reguest_that_any A pesticide__registered 12 <u>by--the--department--or-bing-considered-for-registration-by</u> 13 the and the start sector to the start sector sector starts and the starts sector secto subsections THE--DEPARTMENTS--IN-DETERMINING--WHETHER--TO 14 15 REQUESTISUEN-REVIEW-EBR-A-PARTIEULAR-EHEMIEAL-PRODUETs-THAT 16 NBT--REQUEST--A--REVIEW--WNLESS-IHE-CHEMICAL-MATERIAL-BR-IIS 17 BYPRODUCTS-HAVE-BEEM-SHOWN-TOt 18 +It--HAVE-A-HALE-LIFE-IN-THE-ENVIRBNMENT-GREATER-THAN-T BAYSt 19 20 **Z**1 FESSUESt-AND 22 filit-be-a-SUSPECTED-CAREINOGEN--MUTAGEN--GR-TERATOGEN The departments shall utilize <u>but-are-not-limited-to</u> the 23 some <u>SAME</u> requirements and standards for reviewing 24 registrations as established by the Federal Insecticide. 25

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1 Fungicide, and Rodenticide Act, as amended, and regulations Z adopted thereunder. The department of agriculture shall 3 provide the departments of health and environmental sciences and fish, wildlife, and parks with a complete copy of the 4 5 application, related correspondence, and a statement of the 6 department of agriculture's proposed action on the application. The departments of health and environmental 7 8 sciences and fish, wildlife, and parks shall approve or 9 disapprove the application within 10 days after the receipt 10 of the application. If the departments of health and environmental sciences, agriculture, and fish, wildlife, and 11 12 parks are in agreement with the proposed registration, the 13 department of agriculture shall issue the registration.

14 (b) The department of agriculture shall establish a 15 time and place for an interagency conference for the 16 purposes of resolving the registration of any pesticide or 17 device. If two of the departments approve the proposed 18 registration, the department of agriculture shall issue the 19 registration.

(c) The registrant applying for registration shall be notified as to proposed changes in registration. If the departments cannot resolve the proposed registration following the interagency conference, the registrant may request a joint administrative hearing before the departments of agriculture, health and environmental

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1 sciences, and fish, wildlife, and parks.

2 (d) Following the interagency conference and, if requested, the administrative hearing, if the proposed 3 4 registration of a pesticide or device has not been resolved, the department of agriculture shall appoint an advisory 5 council as outlined in 80-8-108 to resolve by majority vote 6 the registration of any pesticide. The advisory council's 7 recommendations on the registration shall be accepted by the я departments and implemented by the department of 9 agriculture. 10

11 (9)__Pesticides__registered_under_any_federal_law_when 12 canceled for sale and use in total or IN part by a federal 13 agency__responsible_for_registration_are_considered_canceled 14 in total or IN part for sale and use in Bontana. For the 15 owcooses-rof--bringing-such-pesticides-inte-Montena-fec-sale 16 or_usex_the-coocellation_is_effective_uson__onnounce#cot__of 17 thesessocslintings-hysthesfederal-ogeneys Such-pesticidesig 18 Mantan azatztezti ezofztbezenneuncement-max-hezzeid-oczzused 19 until IHE_CANCELLATION_IS_EFFECIIVE_ON the_final_date_of 20 sale_pr_use_allowed_under__the__federal__law__and__rules__or 21 orders_of_the_federal_acency_If_the_federal_cancellation 22 allows_existing_stock_to_be_used__past_the__final__date_of 23 cancellations__such_sale_or_use_io_this_state_may_not_exceed 2_years. The department_shall_provide__technical__assistance 24 25 to any person in possession of such products to insure their

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1 proper_disposale_relabelinge_or_removale" 2 Section 4. Section 80-8-203. MCA. is amended to read: 3 =80-8-203. Commercial applicator. (1) It shall be 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 315 150 120. Applicators applying for a dealer's license under this chapter shall be required to pay only a \$20 330 9 10 \$15 licensing fee for the dealer's license. The provisions 11 of this section subsection shall not apply to any person 12 employed only to operate any equipment used for the 13 application of any pasticide and in which the person has no financial interest or other control over such apparatus 14 other than its day-to-day mechanical operation for the 15 purpose of applying any pesticide. 16

 17
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 18
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 19
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 20
 deportzentz

(3)(4)(3) Veterinarians licensed as provided in Title 1 2 37. chapter 18. part 3. shall not be required to be licensed 3 to apply nonrestricted pesticides, provided that these 4 veterinarians shall register with the department each year; provided further that the veterinarians shall be required to 5 6 meet all other requirements and rules of the Montana Pesticides Act. The department 7 shall consider the 8 professional licensing requirements for veterinarians when 9 adopting rules."

10 Section 5. Section 80-8-204, MCA, is amended to read: 11 "80-8-204. Application for applicator's license. (1) 12 Application for a pesticide applicator's license provided 13 for in 80-8-203 shall be made annually to the department before applying pesticides in any calendar year, provided 14 15 that pesticide applicators applying for renewal of license 16 shall do so on or before May MARCH 1 of that calendar year. 17 Any applicator applying for renewal of license after Mey MARCH 1 shall be assessed a \$15 \$25 late licensing fee. 18

19 (2) An individual applying for a license to engage in 20 aerial application of pesticides shall certify on the 21 application that he has met all the federal aviation 22 administration and the department of commerce requirements 23 for aerial pesticide applicators."

24Section 6. Section 80-8-207, MCA, is amended to read:25#80-8-207. Dealers. (1) It is unlawful for any person

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to sell, offer for sale, deliver, or have delivered within 1 2 this state any pesticide without first procuring a license from the department of agriculture for each calendar year or 3 portion thereof. A separate dealer's license and fee shall 4 be required for each location or outlet from which 5 pesticides are distributed, sold, held for sale, or offered 6 7 for sale. Pesticide fieldmen or salesmen employed directly 8 out of the same location or outlet and under a licensed dealer shall not be required to obtain a license. The dealer 9 10 shall furnish the department the names and addresses of its 11 fieldmen and salesmen selling pesticides within the state. 12 A-dealectabelt-bergathis-ticensg--in-abig-possession--whom 13 14 requestsofsonsoutborizedsocontsofstbosdcoorteents

15 (2) The application for a license shall be accompanied 16 by a fee of \$15 \$50 \$20. Dealers applying for renewal of 17 license shall do so on or before Mey #ARCH 1 of that 18 calendar year. Any dealer applying for renewal of license 19 after Mey #ARCH 1 shall be assessed a \$15 \$25 \$15 late 20 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 \$59 \$20

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1 licensing fee for each year of the state biennium.

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

Section 7. Section 80-8-209, MCA, is amended to read: 14 15 #80-8-209. Farm applicators. (1) Farm applicators shall obtain a special-use permit prior to purchasing and 16 using any pesticide designated by the department as a 17 16 restricted-use pesticide. The fee for the permit is \$15a 19 The special-use permit shall be effective for 5 calendar years. The department may establish a staggered years system 20 21 of issuing permits.

(2) Restricted pesticides may not be utilized by farm
applicators or their employees except for the purpose of
producing or protecting any agricultural commodity on
property owned, leased, or rented by such applicator or-res

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1 provided-in-t6;-of-this-section <u>BR-AS-PRBViBER-IN-SUBSECTION</u>

2 161-05-3015-5661108.

3 (3) Farm applicators shall qualify for the <u>their first</u> 4 permit by either passing a graded written examination or 5 attending a training course approved by the department and 6 taking an ungraded written examination. The examinations and 7 course shall require and demonstrate practical knowledge of 8 the applicator's ability to:

9 (a) recognize common pests to be controlled and damage
 10 caused by them;

11 (b) read and understand the label and labeling 12 information, including the common name of the pesticide(s) 13 applied, pest(s) to be controlled, timing and methods of 14 application, safety precautions, any preharvest or reentry 15 restrictions, and any specific disposal procedures;

16 (c) apply pesticides in accordance with label 17 instructions and warnings, including the ability to prepare 18 the proper concentration of pesticides to be used under 19 particular circumstances, taking into account such factors 20 as area to be covered, speed at which application equipment 21 will be driven, and the quantity dispersed in a given period 22 of operation;

(d) recognize local environmental situations that must
 be considered during application to avoid contamination; and
 (e) recognize poisoning symptoms and procedures to

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1 follow in case of a pesticide accident.

2 (4) The department may require farm applicators to 3 attend a mandatory training session and pass a written 4 examination for those restricted pesticides that are 5 extremely toxic or for which an effective antidote is not 6 available. The department may require farm applicators 7 handling these pesticides to maintain use records.

(5) Farm--apoliectors-monifesting-reading-disabilities 8 mov-become-certified-to-use-es-many--as--two---restricted-use 9 10 pesticides--by--passing-~a--specific-orsi-examination-on-the 11 particular-pasticide(s)-if-the-applicator-documents--that--a 12 certified--applicator--in--the-immediate-vicinity-can-advise 13 him Ibe_department_shall_require_farm_applicators_to 14 requalify_for_renewal_of_the_5=year_permit_by_obtaining_100 15 training_credits. The department_shall_establish_by__rule__a 16 unifors_system_of_administering_the_regualification_training 17 credits___Ibe_department_may_credit_poly_training_related_to 18 the standards set forth in subsection [3]. 19 (6) Provisions of this chapter relating to 20 certification of farm applicators do not apply to any farm applicator applying nonrestricted pesticides on his own land 21 22 or on lands of his neighbors if he:

(a) operates farm property and operates and maintains
pesticide application equipment primarily for his own use;
(b) is not regularly engaged in the business of

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applying pesticides for hire and does not publicly hold
 himself out as a pesticide applicator;

4 in the vicinity of his own property and for the
 5 accommodation of his immediate neighbors."

Section 8. Section 80-8-213, MCA, is amended to read: 6 7 #80-8-213. Government agencies. (11 All state 8 agencies, municipal corporations, or any other governmental 9 agency shall be subject to the provisions of this chapter 10 and rules adopted thereunder concerning the application or 11 sale of pesticides. Applicators and operators applying 12 pesticides and dealers selling pesticides for agencies, 13 municipal corporations, or any governmental agencies shall 14 be subject to the provisions of 80-8-203 through 80-8-208* 15 and-the_

16 121 The department shall issue a limited commercial 17 applicator'sy-operator-sy or dealer's license without-e--fee 18 for an annual fee of \$50, which shall be valid only when 19 such applicatorsy-operatorsy-and-dealers-are applicator_or 20 dealer__is applying or selling pesticides for such agencies, 21 provided that the jurisdictional health officer, state 22 veterinarian, their duly authorized representatives, or 23 governmental research personnel are exempt from this 24 licensing requirement when applying pesticides to 25 experimental areas.

1 (3) A governmental agency shall pay the annual 2 applicator's fee for its first four employee applicators. The agency shall pay an annual fee of \$5 for each additional 3 4 emoloyee_applicator. 5 (4) Government employees becoming certified applicators only to qualify for conducting pesticide 6 7 education_courses_may_not_be_charged_a_license_fee__but__are 8 limited_to_providing_such_courses__Government_operators_are subject_to_rules_adouted_oursuant_to_80=8=205+_including_the 9 10 license_fee.* 11 Section 9. Section 80-8-306, MCA, is amended to read: 12 #80-8-306. Penalties. (1) Any person convicted of 13 violating any of the provisions of this chapter or the rules issued thereunder or who may misrepresent, impede, obstruct, 14 hinder, or otherwise prevent or attempt to prevent the 15 department or its duly authorized agent in performance of 16 17 its duty in connection with the provisions of this chapter 18 shall be adjudged guilty of a misdemeanor and shall be fined

19 not less than \$100 \$100 but not more than \$500 \$22580 20 \$11500 or-imprisoned-in-the-county-jail-for-a--term--not--to 21 exceed-6-monthsy-or-both.

(2) The department or its authorized representative is
hereby authorized to apply to the district court of the
county or any county wherein a violation is about to occur
or has occurred to grant a temporary or permanent injunction

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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 5 applications in more than one county on a commercial basis without a license or permit or operates in violation of a 6 lawful written order of the department in more than one 7 8 county, the district court of Lewis and Clark County has concurrent jurisdiction with the district court of any other 0 county wherein a violation has occurred or is about to 10 occur. and the department may select and proceed in the 11 12 court most appropriate under the circumstances. The 13 injunction is to be issued without bond.

[3] Nothing in this chapter is to be construed as 14 15 requiring the department or its authorized agent to report 16 minor violations of the chapter for prosecution or for the 17 institution of seizure proceedings when it believes the public interest will be best served by other remedial 18 action. by a suitable notice of warning in writing, or by a 19 lawful written order; nor is any part of this chapter to be 20 Z1 construed to apply to common carriers transporting shipments 22 tendered to them by the general public.

(4) Any person who with intent to defraud uses or
 reveals information relative to formulas of products
 acquired under the authority of 80-8-201 shall, upon

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1 conviction, be fined not more than \$500 or imprisoned for 2 not more than 1 year, or both. 3 (5) (a) Any registrant, applicator, dealer, retailer. 4 prother person who violates any provision COMMITS_A_MAJOR 5 VIOLATION of this chapter AS DEFINED IN SUBSECTION (5)(D) may be assessed a civil penalty by the department of not * 7 more___than___\$1*000___for __cach__offense___Hovever*__farm 8 applicators_possessing_a_permit_may_cot_be_assessed_a__civil penalty_over_\$200_for_the_first_offense_Assessment_of_a 9 10 civil penalty may be made in conjunction with any other 11 department WARNING, order, or __administrative__action 12 authorized by this chapter. 13 (b) No civil penalty may be assessed upless the person 14 charged_was_given_notice_and_opportunity_for_a_hearing 15 pursuant_tp_the_Hontana_Administrative_Procedure_Act. 16 (c)__in===determining===en===energariote==peneltyx==the department_shall_consider_the_affect_on_the_agraon_s-ability 17 18 to_continue_in_businessy_the_scavity_of_the_violation__which 19 pecurredy__the_dearee-of-care-exercised-by-the-offendery-and 20 whether_significant_harm=resulted==to==healthx=-environmenty 21 agricultural-cropy-or-livestocky A-GIVIL-PENALTY-SHALL-ONLY 22 23 YIOLATIONS_ARE_PROYEN_UNGER_THE_PROCEDURES_DE_IHIS__AGI-_AND IHE == HENIANA__ADHINISIRAIIYE_PROGEOURE_AEIx=HAJOR=YIGLAFIONS 24

25 INCLUDE IN DEIERMINING AN APPROPRIATE PENALTY. THE

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1	DEPARTMENT_SHALL_CONSIDER_THE_EFEECT_ON_THE_PERSON'S_ABILITY	1	LEL_ANYPERSONAGAINSIMHOMIHEDEPARIMENT_HAS
Z	TOCONTINUE_IN_BUSINESS:_IHE_GRAVITY_OF_IHE_VIOLATION_WHICH	2	ASSESSED A CIVIL PENALTY UNDER THIS SECTION MAY. MITHIN 30
3	OCCURRED. THE DEGREE DE CARE EXERCISED BY THE DEFENDER. AND	3	DAYS. DE. THE EINAL AGENCY ACTION MAKING THE ASSESSMENT.
4	WHETHER_SIGNIFICANI_HARM_BESULIED_ID_HEALTH*_ENVIRNOMENT*	4	APPEAL THE ASSESSMENT TO THE DISTRICT COURT OF THE COUNTY IN
5	AGRICULIUBAL_CROPS+_OR_LIVESIDCK+	5	WHICH THE VIOLATION IS ALLEGED BY THE DEPARTMENT TO HAVE
6	LD)A_MAJOR_VIOLATION_DE_THIS_CHARTER_INCLUDES:	6	OCCURSED APPEAL_IS_BY_IRIAL_DE_NOYD+_AND_A_JURY_IRIAL_BUSI
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11	CERTIFIED_OR_AUTHORIZED_TO_PUBLHASE_SUCH_RESTICIDES:	11	EEESANDPENALTIESINGENERALFUND. That-portion-of-all
12	<pre>(III)_USE_DR_SALE_DE_UNREGISTERED_PESTICIDES:</pre>	12	ticensing,permitting,registration,andaquipment
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15	LX1USINGORSELLINGPESTICIDESWITHOUTHAVING	15	revenuefund-for-the-purpose-of-supporting-a-portion-of-the
16	OBTAINED. THE BEOUIRED. LICENSE OR PERMIT: OR	16	costs-of-administering-this-chapterv-theadministrationof
17	(VI) REOCCURRENCE OF ANY IDEMIICAL VIOLATION VIOLATION	17	this-chapter-is-to-be-funded-from-both-the-earmarked-revenue
18	QEIHISCHAPTERWITHINTHESAMECALENDARYEAR. ID:	18	fund and-the-general-fund-because-of-the-mutual-benefits-to
19	deportvedt=wa <u>y-ipgueza_yarning_oc_take_any_otber_appropriets</u>	19	the-industry-and-the-publicy-as-stated-in-88-8-103wReserve
20	action:allowed_by_this_chapters	20	eermarkedrevenuefundmoneymeybeinvestedbythe
21	tdt(E)lftbsdepartmentisunablg_tg_collect_sucb	21	department-through-the-board-of-investments-The-income-from
22	civil pecalty or if any person fails to pay all or a set	22	such-investments-must-be-credited-to-theproperdepartment
23	portionoftbecivil_penalty_asdetermined_bythe	23	account-in-the-earmarked-revenue-fund <u>ALL_LIGENSINGs_PERMITs</u>
24	departmantit_max_recover_suchamount_byactioninthe	24	REGISTRATION. AND EQUIPMENT INSPECTION FEES COLLECTED UNDER
25	appropriate_district_courte	25	PABL2_DE_IHIS_CHAPTER_ANDANYCIVILPENALTIESCOLLECTED

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1 UNDER 80-8-306 MUST BE DEPOSITED IN THE GENERAL EUND.

NEM_SECTION. Section 11. Codification instruction.
 Section 10 is intended to be codified as an integral part of
 Title 80. chapter 8.

5 <u>YEW_SECTION</u> Section 12. Saving clause. This act does 6 not affect rights and duties that matured, penalties that 7 were incurred, or proceedings that were begun before the 8 effective date of this act.

9 <u>NEW_SECTION</u>. Section 13. Severablity. If a part of 10 this act is invalid, all valid parts that are severable from 11 the invalid part remain in effect. If a part of this act is 12 invalid in one or more of its applications, the part remains 13 in effect in all valid applications that are severable from 14 the invalid applications.

15 SECTION:14x::FERMINATIONx::SECTION:3-TERMINATES:duex:1x

16 <u>1985</u>1

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FREE CONFERENCE COMMITTEE HOUSE BILL 802 (Report No. 1, 10 a.m.)

TATE PUBLISHING CO. HELENA' MONTANA

MR. SPEAKER:

We, your Free Conference Committee on House Bill 802, met and considered:

- Senate Agriculture, Livestock, and Irrigation Committee amendments to Third Reading copy, dated March 16, 1983; and
- 2. Senate Committee of the Whole amendment to the Third Reading copy, dated March 22, 1983.

We respectfully recommend as follows:

That the House accede to the Senate Committee of the Whole amendment and to the Senate Agriculture, Livestock, and Irrigation Committee amendment nos. 1 through 5, 7 through 12, 15 through 18, 20, 21, and 24 through 37;

That the Senate recede from the Senate Agriculture, Livestock and Irrigation Committee amendment nos. 6, 13, 14, 19, 22, and 23;

That House Bill 802 be further amended as specified in the Clerical Instructions 1, 2, 3, 4, 5, 6 and 7; and

That this Free Conference Committee report be adopted.

CLERICAL INSTRUCTIONS FOR REFERENCE COPY (SALMON)

- 1) Strike Senate Agriculture, Livestock, and Irrigation Committee amendment nos. 6, 13, 14, 19, 22, and 23;
- 2) Page 8, line 19. Strike: "\$20" Insert: "\$50"
- 3) Page 13, line 8. Strike: "\$20" Insert: "\$35"
- 4) Page 13, line 10. Strike: "\$15" Insert: "\$20"
- 5) Page 15, line 16. Strike: "\$20" Insert: "\$35"

(2 of 2)

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- 6) Page 15, line 19. Strike: "\$15" Insert: "\$25"
- 7) Page 15, line 25. Strike: "\$20" Insert: "\$35"

FOR THE HOUSE: Dave Brown, Chairman nl Bergene Harper

FOR THE SENATE Galt, Chairman

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HB 0802/05

1	HOUSE BILL NO. 802
2	INTRODUCED BY D. BROWN, MOHAR, REGAN,
3	BERGENE, REAN, HARPER, RAMIREZ
4	
5	A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
6	LAWS RELATING TO THE REGULATION OF THE SALE AND USE OF
7	PESTICIDES; AMENDING SECTIONS 80-8-105, 80-8-109, 80-8-201,

7 PESTICIDES; AMENDING SECTIONS 80-8-105, 80-8-109, B0-8-201, 8 80-8-203, 80-8-204, 80-8-207, 80-8-209, 80-8-213, AND 9 80-8-306, MCA.*

10

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MUNTANA: 12 Section 1. Section 80-8-105, MCA, is amended to read: 13 "80-8-105. Rules. (1) The department may adopt by 14 reference without a public hearing regulations adopted under 15 the Federal Insecticide, Fungicide, and Rodenticide Act, as 16 amended. The department may, after a public hearing, adopt 17 all rules necessary to carry out this chapter.

18 (2) The rules may prescribe methods of:

19 (a) registration: <u>suspension_or_cancellation_of</u>
20 <u>registration:</u> application; use; or restricting use;
21 prohibiting use; offering or exposing for sale <u>of</u> any
22 pesticide;

23 (b) determining whether pesticides are highly toxic to24 man;

25 (c) determining standards of coloring or discoloring

for pesticides and subjecting pesticides to the requirements
 of 80-8-202;

3 (d) licensing commercial applicators, operators, and 4 dealers, establishing recordkeeping methods of for 5 applicators, operators, and dealers, and providing for the 6 review of the records by the department's authorized agent 7 and the submission of the records to the department upon 8 written request;

9 (e) issuing farm applicator special-use permits and 10 the maintenance and submission of records by farm 11 applicators issued special-use permits;

12 (f) collection, examination, and standard deviation
13 from guarantee analysis and umpire analysis of pesticides
14 and devices;

15 (9) operating and maintaining equipment used by 16 applicators;

17 (h) developing examinations which shall be held18 periodically throughout the state;

19 (i) establishing the form and content of all
 20 applications for licenses and permits;

(j) designating pesticides that may be sold at retail
for home, yard, garden, and lawn use. The department may
also limit retail sale of pesticides, up to a specific
number of pounds or gallons and concentration which would ue
sublethal to humans and animals if small amounts of it were

-2- HB 802 REFERENCE BILL: Includes Free Joint Conference Committee Report Dated 1-9-13

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1 accidentally swallowed, inhaled, sprayed, or dusted on the 2 skin.

3 (k) revoking licenses and permits;

(1) registering or controlling any spray adjuvant. 4 5 such as a wetting agent, spreading agent, deposit builder, 6 adhesive, emulsifying agent, deflocculating agent, water 7 modifier, or similar agent with or without toxic properties of its own intended to be used with any other pesticide as 8 9 an aid to the application or effect of that other pesticide, 10 whether or not distributed in a package or container 11 separate from that of a pesticide with which it is to be 12 used;

(m) registering pesticide-fertilizer and other
chemical blends or, instead of registration, establishing
licensing, inspection, and fees for blending plants;

(n) establishing registration procedures for devices,
with a fee not to exceed \$5 per type of device, specifying
classes of devices to be registered and providing for
additional requirements=:

20 IOL_imposing_conditions_for_renewal_of_dealer:
 21 applicator, and operator_licenses_and permits.including
 22 requalification_training:

23 (p)__establishing_procedures_for__implementing__and
 24 administering_the_civil_penalties_under_80=8=306:_and

25

(g) establishing fees for training courses and

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1 <u>materials</u>.

2	(3) (a) Whenever the department finds that those rules
3	are necessary to carry out the purposes and intent of this
4	chapter, the rules may relate to the time, place, manner,
5	and method of registration, <u>suspension_or_cancellation_of</u>
6	registration: application, or selling of the pesticides, may
7	restrict or prohibit use of pesticides in the state or in
8	designated areas during specified periods of time, and shall
9	encompass all reasonable factors which the department
10	considers necessary to prevent damage or injury to:
11	(i) persons, animals, <u>crops</u> , or pollinating insects
12	from the effect of drift or careless application;
13	(ii) the environment;
14	(iii) plants, including forage plants;
15	(iv) wildlife;
16	(v) fish and other aquatic life.
17	(b) In issuing the rules, the department shall give
19	consideration to pertinent research findings and
19	recommendations of other agencies of this state or of the
20	federal government.
21	(4) If the department finds that an emergency exists
22	which requires immediate action with regard to the
23	registration, use, or application of pesticides, the
24	department may, without notice or hearing, issue necessary
25	orders or rules to protect the public health, welfare, and

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1 safety. An order or rule issued under this subsection is 2 effective for the period prescribed by the <u>Montana</u> 3 Administrative Procedure Act. If the department determines 4 that the emergency order or rule should remain in effect, a 5 public hearing under 80-8-106 shall be held within the above 6 period to determine whether the order or rule should be 7 adopted by the department.

(5) All rules and orders issued by the department 8 shall be in writing, shall be entered in full in books to be 9 kept by the department for that purpose, shall be indexed, 10 and shall be public records open for inspection at all times 11 during reasonable office hours. Except for orders 12 establishing or changing rules of practice and procedure, 13 all orders made and published by the department shall 14 include and be based upon written findings of fact. A copy 15 of any rule or order certified by the department shall be 16 17 received in evidence in all courts of this state with the 18 same effect as the original."

19 Section 2. Section B0-8-109, MCA, is amended to read: 20 "80-8-109. Educational programs. [1] The department in 21 cooperation-with-other--state--and--federal--agencies shall 22 develop and conduct appropriate educational programs. The 23 educational programs shall inform those individuals dealing 24 in and applying pesticides as to correct methods of 25 formulating, applying, storing, disposing of, handling, and HB 0802/05

1 transporting pesticides. 2 12)___in_developing and administering such programs, the 3 department_may_consult_other_state_and_federal_agencies_AND PRIVATE_INDUSTRY.as_well_as_such_other_persons_it_considers 4 necessary, and may charge a fee for the programs 5 6 commensurate with their administration costs. The fee may 7 not include the salary or travel expenses of any employee of 8 the state or a unit of the Montana university system. Q (3) All fees collected in any fiscal year and not 10 expended within that fiscal year must be placed in an 11 educational and manuals account of the earmarked revenue 12 fund_for_future_use_for_that_purpose_" Section 3. Section 80-8-201, MCA, is amended to read: 13 "80-8-201. Registration. (1) 14 Everv pesticide distributed, sold, or offered for sale within this state or 15 16 delivered for transportation or transported in intrastate 17 commerce or between points within this state shall be 18 registered with the department. The--registration--shall--be 19 renewed---annually---by--the--manufacturery--formulatory--or 20 distributor-of-the-pesticides-The-department-shall--register all--approved--pesticides--and-those-registered <u>Applications</u> 21 22 for_registration_shall_be_filed_annually_with_the_department 23 INE_REGISTRATION_SHALL_BE__RENEWED__ANNUALLY by the 24 manufacturer, formulator, or distributor of the pesticide. 25 The department_shall review-the-application-andy-subject-to

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1	<u>the provisions of subsection for may register the pesticide</u>
2	for was in the states Posticides - so approved REGISTER ALL
3	EEDERALLY_APPROVED_PESTICIDES,_AND_IHOSE_REGISTERED are
4	subject to registration fees and all other provisions of
5	this chapter. All registrations of pesticides expire on
6	December 31 following the date of issuance unless otherwise
7	terminated. <u>Hithin_the_ficst2_monthsofcochcotendor</u>
8	<u> </u>
9	<u>registered-within-the-statexThe-list-mustbedistributed</u>
10	<u>to==the==dspartment_of=health=and=environmental=aciencea=qod</u>
11	<u>the-deportment-of-fishy-wildlifey-and-parks-and-must-be-made</u>
12	a railable_to_the_public
13	(2) The applicant for registration shall file with the
14	department a statement including:
15	(a) the name and address of the applicant and the name
16	and address of the person whose name will appear on the
17	label, if other than the registrant;
18	(b) a complete copy of the label of the pesticide+ the
19	United States environmental protection agency registration
20	number if the pesticide is so registered, and a statement of
21	all claims to be made for it, including directions for use;
22	(c) the trade and chemical name of the pesticide;
23	(d) if requested by the department, a full description
24	of tests made and the results upon which the claims are
25	based <u>wrincludingrallravailablerinformation</u> IN-THE-POSSESSION

BETHETAPPLICANT about the confects of the constitution
 REPRESENTATIVE nontarget apecies. In the case of renewal of
 registration, a statement shall be required only with
 respect to information which is different from that
 furnished when the pesticide was registered or last
 reregistered.

7 (3) Any pesticide imported into this state which is 8 subject to the provisions of any federal act providing for 9 the registration of pesticides and has been registered under 10 the provisions of a federal act shall may SHALL be 11 registered in the state. However, the state may restrict the 12 sale or use and application of the pesticide by type of 13 dealers applicator, time, and place and may establish special registrations of pesticides as outlined in 14 15 subsection (8) of this section and 80-8-105(3). The annual 16 registration fee must also be paidy and registration 17 information required by the department must be provided. 18 (4) The applicant shall pay an annual fee of \$15 558 19 120 150 for each pesticide registered. A registration fee is

19 <u>120</u> <u>150</u> for each pesticide registered. A registration fee is 20 not required to register <u>on a federally approved</u> 21 experimental use permit. Fees collected shall be deposited 22 in the state treasury to the credit of the general fund.

(5) The department may require the submission of the
 complete formula and certified analytical standards of any
 pesticide. If it appears to the department that the

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composition of the article warrants the proposed claims for
 it and if the article and its labeling and other material
 required to be submitted comply with the requirements of
 80-8-202, it shall register the article.

5 (6) If it does not appear to the department that the 6 article warrants the proposed claims for it or if the 7 article and its labeling and other material required to be submitted do not comply with this chapter, it shall notify 8 the applicant of the manner in which the article, labeling, 9 or other material required to be submitted fails to comply 10 with the chapter so as to afford the applicant an 11 12 opportunity to make the necessary corrections. If the applicant does not make the corrections upon receipt of the 13 notice. the department may refuse to register the article. 14 The department may suspend or cancel the registration of a 15 pesticide whenever it does not appear that the article or 16 17 its labeling comply with this chapter <u>DR_HHENEVER_SCIENTIFIC</u> EVIDENCE PROVES THAT THE ARTICLE ENDANGERS MAN OR THE 18 19 GENERAL _____ENVIRONMENT _____AFEORDED _____PROTECTION ____UNDER 80-3-105(3)(A). When an application for registration is 20 refused or the department proposes to suspend or cancel a 21 22 registration, the registrant may appeal--the--department*s 23 sectation <u>pursue_administrative remedies under the Montana</u> 24 Administrative_Procedure_Act_and_rules_of_the_department. (7) Registration is not required in the case of a 25

pesticide shipped from one plant in this state to another
 plant in this state by the same person.

3 (8) (a) The departments of health and environmental 4 sciences, agriculture, and fish, wildlife, and parks shall 5 review all applications for registration of an К experimental-use permit or a registration for special local 7 needs. Ine applicant shall pay a one-time fee of \$50 for a 8 special_local_need_or_experimental_use_permit_registration. 9 Hitbin__30-_days--of--receipt--of--the--list--of--redistered 10 PEaticidea___provided___for___under___subsection__fite__each 11 depertment_may_qlao_reducat_thot_any A pesticide--registered 12 bf==the==deportment==of=being=considered=for=registration-by 13 the--department--be--reviewed--in---accordance---with---this 14 15 <u>REQUEST-SUCH-REVIEH-FOR-A-PARTICULAR-CHEMTCAL--PRODUCT---MAY</u> 16 HOT__REQUEST__A__REVIEH__UNLESS_THE_GHEHICAL_MATERIAL_OR_IIS 17 BYPRODUCTS-HAVE-BEEN-SHOWN-TO+ 18 fit--HAVE-A-HALF-LEFE-IN-THE-ENV-RONNENT-GREATER-THAN-7 19 BAYSt 20 till_ACCUMULATE__IN__YEGETATION____SGILS___OR___ANIMAL 21 IISSUEST-AND 22 filll-BE-A-SUSPECTED-CARCINGGENI-MUTAGENI-OR-TERATOGENI 23 The departments shall utilize but-are-not-limited-to the 24 same <u>SAME</u> requirements and standards for reviewing 25 registrations as established by the Federal Insecticide.

1 Fungicide, and Rodenticide Act, as amended, and regulations 2 adopted thereunder. The department of agriculture shall provide the departments of health and environmental sciences 3 and fish, wildlife, and parks with a complete copy of the 4 5 application, related correspondence, and a statement of the department of agriculture's proposed action on the 6 7 application. The departments of health and environmental A sciences and fish, wildlife, and parks shall approve or 9 disapprove the application within 10 days after the receipt of the application. If the departments of health and 10 environmental sciences, agriculture, and fish, wildlife, and 11 parks are in agreement with the proposed registration, the 12 13 department of agriculture shall issue the registration.

14 (b) The department of agriculture shall establish a 15 time and place for an interagency conference for the 16 purposes of resolving the registration of any pesticide or 17 device. If two of the departments approve the proposed 18 registration, the department of agriculture shall issue the 19 registration.

20 (c) The registrant applying for registration shall be notified as to proposed changes in registration. If the 21 22 departments cannot resolve the proposed registration following the interagency conference, the registrant may 23 24 request a joint administrative hearing before the departments of agriculture, health and environmental 25

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1 sciences, and fish, wildlife, and parks.

(d) Following the interagency conference and, if 2 3 requested, the administrative hearing, if the proposed 4 registration of a pesticide or device has not been resolved, 5 the department of agriculture shall appoint an advisory 6 council as outlined in 80-8-108 to resolve by majority vote 7 the registration of any pesticide. The advisory council's recommendations on the registration shall be accepted by the 8 departments and implemented by the department of 9 adriculture. 10

11 [9] Pesticides registered under any federal law when 12 canceled for sale and use in total or IN part by a federal 13 agency_responsible for registration are considered canceled 14 in_total_or IN part for sale and use_in_Montana. For-the 15 purposes -- of -- bring-such-pesticides-into-Montons:for-sale or-use--the-cancellation-is-effective-upon---onnowncement--of 16 the -- cancellation -- brather federal-agenery Sych-pesticides in 17 18 Montana_at_the_time-of-the-announcement_may-be-apld_of__uacd 19 until THE CANCELLATION IS EFFECTIVE ON the final date of 20 sale or use allowed under the federal law and rules or prders of the federal agency. If the federal cancellation 21 22 allows existing stock to be used past the final date of 23 cancellation, such sale or use in this state may not exceed 24 <u>Z_vears. The department shall_provide_technical_assistance</u> 25 to any person in possession of such products to insure their

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proper_disposal. relabeling. or removal." 1

2 Section 4. Section 80-8-203, MCA, is amended to read: "80-8-203, Commercial applicator, (1) It shall be 3 unlawful for any person to engage in the business of 4 5 applying pesticides for another without a pesticide applicator's license obtained from the department of 6 agriculture. The application shall be accompanied by a fee 7 of \$15 \$50 \$20 \$35. Applicators applying for a dealer's 8 license under this chapter shall be required to pay only a 9 \$10 \$30 \$15 \$20 licensing fee for the dealer's license. The 10 11 provisions of this section subsection shall not apply to any 12 person employed only to operate any equipment used for the 13 application of any pesticide and in which the person has no financial interest or other control over such apparatus 14 other than its day-to-day mechanical operation for the 15 16 purpose of applying any pesticide.

t21--Each-applicator-shall--have--his--license--in--his 17 18 possession-when--using--pesticides--and--shall--display-the 19 license--upgn--request-of--outborized--agent---of---the 20 depactments

21 +2+13+(2) Public utility applicators shall be licensed 22 in the same manner as commercial applicators, provided that public utility operators working under public utility 23 applicators are not required to be licensed except as 24 25 provided for under 80-8-205.

3 (3)+(4)(3) Veterinarians licensed as provided in Title 37, chapter 18, part 3, shall not be required to be licensed 2 to apply nonrestricted pesticides, provided that these 3 veterinarians shall register with the department each year: 4 5 provided further that the veterinarians shall be required to meet all other requirements and rules of the Montana 6 7 Pesticides Act. The department shall consider the 8 professional licensing requirements for veterinarians when 9 adopting rules."

10 Section 5. Section 80~8-204, MCA, is amended to read: 11 "80-8-204. Application for applicator's license. (1) Apolication for a pesticide applicator's license provided 12 13 for in 80-8-203 shall be made annually to the department 14 before applying pesticides in any calendar year, provided 15 that pesticide applicators applying for renewal of license 16 shall do so on or before May MARCH 1 of that calendar year. 17 Any applicator applying for renewal of license after May 18 MARCH 1 shall be assessed a \$15 \$25 late licensing fee.

19 (2) An individual applying for a license to engage in 20 aerial application of pesticides shall certify on the 21 application that he has met all the federal aviation administration and the department of commerce requirements 22 for aerial pesticide applicators." 23

24 Section 6. Section 80-8-207, MCA, is amended to read: 25 "80-8-207. Dealers. (1) It is unlawful for any person

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1 to sell, offer for sale, deliver, or have delivered within 2 this state any pesticide without first procuring a license 3 from the department of agriculture for each calendar year or 4 portion thereof. A separate dealer's license and fee shall required for each location or outlet from which 5 he pesticides are distributed, sold, held for sale, or offered 6 7 for sale. Pesticide fieldmen or salesmen employed directly 8 out of the same location or outlet and under a licensed 9 dealer shall not be required to obtain a license. The dealer 10 shall furnish the department the names and addresses of its fieldmen and salesmen selling pesticides within the state. 11 12 Azzdeoleczzshałłzshovezsbizzsłicense-inshis-possession-when 13 actling__pesticides--and__shall__display_the--license--upon 14 request=of=on=puthprized=sgent=of=the=deportment+

15 (2) The application for a license shall be accompanied 16 by a fee of \$15 \$50 \$20 \$35. Dealers applying for renewal of 17 license shall do so on or before May MARCH 1 of that 18 calendar year. Any dealer applying for renewal of license 19 after May MARCH 1 shall be assessed a 515 525 515 525 late 20 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 \$15 550 520

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1 \$35 licensing fee for each year of the state biennium.

(5) Pharmacists licensed as provided for in 37-7-302 2 з 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 pesticides, provided that the certified pharmacies and 6 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 commercial sale of pesticides. The department shall take 10 11 into account the professional licensing requirements of 12 pharmacists, certified pharmacies, and veterinarians when 13 adopting rules."

14 Section 7. Section 80-8-209. MCA, is amended to read: 15 "80-8-209. Farm applicators. (1) Farm applicators 16 shall obtain a special-use permit prior to purchasing and 17 using any pesticide designated by the department as a 18 restricted-use pesticide. The fee for the permit is \$15. The special-use permit shall be effective for 5 calendar 19 20 years. The department may establish a staggered years system 21 of issuing permits.

2Z (2) Restricted pesticides may not be utilized by farm 23 applicators or their employees except for the purpose of 24 producing or protecting any agricultural commodity on 25 property owned, leased, or rented by such applicator of--as

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1 provided-in-(6)-of-this-section <u>BR:A5-PROVIBED-IN-SUBSEEFION</u>

2 <u>161-8E-TH15-5EETION</u>.

3 (3) Farm applicators shall qualify for the their_first 4 permit by either passing a graded written examination or 5 attending a training course approved by the department and 6 taking an ungraded written examination. The examinations and 7 course shall require and demonstrate practical knowledge of 8 the applicator's ability to:

9 (a) recognize common pests to be controlled and damage
 10 caused by them;

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

16 (c) apply pesticides in accordance with label 17 instructions and warnings, including the ability to prepare 18 the proper concentration of pesticides to be used under 19 particular circumstances, taking into account such factors 20 as area to be covered, speed at which application equipment 21 will be driven, and the quantity dispersed in a given period 22 of operation;

(d) recognize local environmental situations that must
 be considered during application to avoid contamination; and
 (e) recognize poisoning symptoms and procedures to

1 follow in case of a pesticide accident.

2 (4) The department may require farm applicators to 3 attend a mandatory training session and pass a written 4 examination for those restricted pesticides that are 5 extremely toxic or for which an effective antidote is not 6 available. The department may require farm applicators 7 handling these pesticides to maintain use records.

8 (5) Farm--applicators-manifesting-reading-disabilities 9 may-become-certified-to-use-as-many-as--two--restricted-use 10 pesticides--by--passing--a--specific-orol-examination-on-the particular-pesticidets;-if-the-applicator-documents--that--a 11 12 certified--applicator--in--the-immediate-vicinity-can-advise him* The department shall require farm applicators to 13 14 regualify for renewal of the 5-year permit by obtaining 100 15 training credits. The department shall establish by rule a uniform system of administering the requalification training 16 credits. The department may credit only training related to 17 18 the standards set forth in subsection (3). 19 (6) Provisions of this chapter relating to certification of farm applicators do not apply to any farm 20 21 applicator applying nonrestricted pesticides on his own land 22 or on lands of his neighbors if he: (a) operates farm property and operates and maintains 23 24

24 pesticide application equipment primarily for his own use;25 (b) is not regularly engaged in the business of

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applying pesticides for hire and does not publicly hold
 himself out as a pesticide applicator:

3 (c) operates his pesticide application equipment only
 4 in the vicinity of his own property and for the
 5 accommodation of his immediate neighbors.^m

Section 8. Section 80-8-213. MCA, is amended to read: 6 7 #80-8-213. Government agencies. <u>(1)</u> All state agencies, municipal corporations, or any other governmental 8 agency shall be subject to the provisions of this chapter 9 10 and rules adopted thereunder concerning the application or 11 sale of pesticides. Applicators and operators applying 12 pesticides and dealers selling pesticides for agencies, 13 municipal corporations, or any governmental agencies shall be subject to the provisions of 80-8-203 through 80-8-208+ 14 15 and-the.

16 (2) The department shall issue a limited commercial 17 applicator*sy-operator*sy or dealer's license without-a--fee 18 for an annual fee of \$50. which shall be valid only when 19 such applicatorsy-operatorsy-and-dealers-are applicator or 20 dealer___is applying or selling pesticides for such agencies, provided that the jurisdictional health officer, state 21 22 veterinarian, their duly authorized representatives, or 23 governmental research personnel are exempt from this 24 licensing requirement when applying pesticides to 25 experimental areas.

1 (3) A governmental agency shall pay the aunual Z applicator's fee for its first four employee applicators. 3 The agency shall pay an annual fee of \$5 for each additional employee applicator. 4 5 (4) Government employees becoming certified 6 applicators only to qualify for conducting pesticide 7 education courses may not be charged a license fee but are я limited to providing such courses, Government operators are 9 subject to rules adopted pursuant to 80-8-205, including the 10 license_fee." 11 Section 9. Section 80-8-306, MCA, is amended to read: 12 "80-8-306. Penalties. (1) Any person convicted of violating any of the provisions of this chapter or the rules 13 issued thereunder or who may misrepresent, impede, obstruct, 14 hinder, or otherwise prevent or attempt to prevent the 15 department or its duly authorized agent in performance of 16 17 its duty in connection with the provisions of this chapter 10 shall be adjudged guilty of a misdemeanor and shall be fined 19 not less than \$100 \$500 \$100 but not more than \$500 \$23500 \$1.500 or-imprisoned-in-the-county-jail-for-a--term--not--to 20 21 exceed-6-months-or-both.

(2) The department or its authorized representative is
hereby authorized to apply to the district court of the
county or any county wherein a violation is about to occur
or has occurred to grant a temporary or parmanent injunction

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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 in more than one county on a commercial basis 5 without a license or permit or operates in violation of a 6 lawful written order of the department in more than one 7 county, the district court of Lewis and Clark County has 8 concurrent jurisdiction with the district court of any other 9 county wherein a violation has occurred or is about to 10 occur, and the department may select and proceed in the 11 court most appropriate under the circumstances. The 12 injunction is to be issued without bond. 13

(3) Nothing in this chapter is to be construed as 14 requiring the department or its authorized agent to report 15 minor violations of the chapter for prosecution or for the 16 institution of seizure proceedings when it believes the 17 public interest will be best served by other remedial 18 action, by a suitable notice of warning in writing, or by a 19 lawful written order; nor is any part of this chapter to be 20 construed to apply to common carriers transporting shipments 21 22 tendered to them by the general public+

(4) Any person who with intent to defraud uses or
reveals information relative to formulas of products
acquired under the authority of 80-8-201 shall, upon

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1	conviction, be fined not more than \$500 or imprisoned for
2	not more than I year, or both.
3	[5](a)_Any_registrantapplicatordealerretailer.
4	or_other_person_who_violates_ony-provision_COMMIISAMAJOR
5	VIOLATION of this chapter AS_DEEINED_IN_SUBSECTION_(5)(D)
6	may be assessed a civil penalty by the department of not
7	morethan\$1:000foreach_offenseHoweverfarm
8	applicators possessing a permit may not be assessed a civil
9	penalty_over_\$200_for_the_first_offense_Assessment_of_a
10	civil_penalty_may_be_made_in_conjunction_with.any_other
11	<u>department WARNINGs orders or administrative action</u>
12	authorized by this chapter.
13	<u>(b)_No_civil_penalty_may_be_assessed_unless_the_person</u>
14	charged_was_given_notice_and_opportunity_for_a_hearing
15	<u>pursuant to the Montana Administrative Procedure Act</u>
16	<u>[c]_in===determining===nn===ppropriate==penalty==the</u>
17	department_shall_consider_the-effect_on_the_person*g_obility
18	<u>to_continuc_in-businessy_the_gravity_of_the_violationwhich</u>
19	<u>occurredythe-degree-of-core-exercised-by-the-offendery-and</u>
20	whether_signific_ont_berm_resultedtohealthx_renvironmentx
21	<u>ogriculturalcropsycotclinestocks ActivityCENALTy-SHALL-ONLY</u>
22	<u>BEASSESSEDAGAINSI:-A</u> PEBS <u>BNWHENBNEBBMORENAJOB</u>
23	<u>¥10LATIONS_ARE_PROYEN_WNDER_THE_PROCEDURES_DE_THISAETAND</u>
24	<u> IHEMONTANAADMINISIRATIVE-CROEEDURE_AEIx_MAdOR_VIULATIONS</u>
25	INCLUDE IN DETERMINING AN APPROPRIATE PENALTY. THE

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1	DEPARTMENT_SHALL_CONSIDER_THE_EEFECT_DN_THE_PERSON'S ABILITY	1	161_ANYPERSONAGAINST_WHONIHEDEPARTMENTHAS
Z	IOCONTINUE_IN_BUSINESS, THE_GRAVITY_OF_THE_VIOLATION_WHICH	Z	ASSESSED A CIVIL PENALTY_UNDER_THIS_SECTION_MAY*WITHIN30
3	DCCURRED. THE DEGREE DE CARE EXERCISED BY THE DEFENDER. AND	3	DAYS_DE_THE_FINAL_AGENCY_ACTION_MAKING_THE_ASSESSMENT*
4	WHETHERSIGNIFICANTHARMRESULTED_TO_HEALTH*_ENVIRNMENT*	4	APPEAL THE ASSESSMENT TO THE DISTRICT COURT OF THE COUNTY IN
5	AGRICULTURAL_CROPS. OR_LIVESTOCK.	5	WHICH THE VIOLATION IS ALLEGED BY THE DEPARTMENT ID HAVE
6	(D)A_MAJOR_VIOLATION_DE_THIS_CHAPTER_INCLUDES:	6	DCCURRED. APPEAL IS BY TRIAL DE NOVD. AND A JURY IRIAL MUSI
ז	[1] NISUSE OF A PESTICIDE WHICH RESULTS IN PROVEN HARM	7	BE_GRANIED_IE_REQUESIED. WHERE THE PROVISIONS OF THIS
8	ID_HUMAN_HEALTH:_THE_ENVIRONMENT:_DR_AGRICULTURAL_CROPS_OR	8	SUBSECTIONCONFLICT_WITH_2-4-702_THROUGH_2-4-704THE
9	LIVE STOCK:	9	PROVISIONS_DE_THIS_SUBSECTION_GOVERN."
10	(II) SELLING DE A RESTRICTED PESTICIDE ID A PERSON NOT	10	<u>NEW_SECTION.</u> Section 10. Eermarkedfund <u>DEPOSIT_DE</u>
11	CERTIFIED_OR_AUTHORIZED_TO_PURCHASE_SUCH_PESTICIDES:	11	EEES_AND_PENALIIES_IN_GENERAL_EUND. That-portion-of-all
12	(III)_USE_OR_SALE_OF_UNREGISTERED_PESTICIDES:	12	łiconsingypermittingyregistrationyandequipment
13	(IV) FAILURE TO MAINTAIN ANY INDIVIDUAL PESTICIDE	13	inspectiunfeescollectedwhichconstitutesan-inc rasse
14	APPLICATION_AND_SALES_RECORDS:	14	afte r-October-1y-1983y-mus t- be -depositedintheearanked
15	(V)USINGORSELLINGPESTICIDESWITHOUTHAVING	15	revenuefund-for-the-purpose-of-supporting-a-portion-of-the
16	OBTAINED THE REQUIRED LICENSE OR PERMITE OR	16	eoses-of-administering-this-chapterTheadministrationof
17	IVIL_REQCCURRENCE_OF_ANY_IDENTICAL VIOLATIONS VIOLATION	17	this-chopter-is-to-bc-funded-from-both-the-earmarked-revenue
18	OF_IHIS_CHAPTER_WITHIN_IHE_SAME_CALENDAR_YEAR. The	18	fundand-the-general-fund-because-of-tho-mutual-benefits-to
19	department_may_issue_a_werning-or_take_any_other_appropriate	19	the-industry-and-the-publicy-as-stated-in-89-8-103Reserve
20	<u>action_allowed_by_this_chapterw</u>	20	earmarkedrevenuefundmoneymaybeinvestedbythe
21	<pre>fdl(E) If the department is unable to collect such</pre>	21	department-through-the-board-of-investmentsr-The-income-from
22	civil penalty or if any person fails to pay all or a set	22	such-investments-must-be-credited-to-theproperdepartment
23	portionofthecivil_penalty_asdetermined_by_the	23	occount-in-the-cormorked-revenue-fund <u>ALL_LICENSINGs_PERMIT</u> ,
24	department. it may recover such amount by action in the	24	BEGISIRATION. AND EQUIPMENT INSPECTION EEES COLLECTED UNDER
25	appropriate_district_courte	25	PART 2 OF THIS CHAPTER AND ANY CIVIL PENALTIES COLLECTED

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1 UNDER_80-8-306_MUST_BE_DEPOSITED_IN_THE_GENERAL_FUND.

NEW_SECTION. Section 11. Codification instruction.
 Section 10 is intended to be codified as an integral part of
 Title 80, chapter 8.

5 <u>NEW SECTION</u> Section 12. Saving clause. This act does 6 not affect rights and duties that matured, penalties that 7 were incurred, or proceedings that were begun before the 8 effective date of this act.

9 <u>NEW_SECTION</u> Section 13. Severability. If a part of 10 this act is invalid, all valid parts that are severable from 11 the invalid part remain in effect. If a part of this act is 12 invalid in one or more of its applications, the part remains 13 in effect in all valid applications that are severable from 14 the invalid applications.

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