

HOUSE BILL NO. 190

INTRODUCED BY HANSON

BY REQUEST OF THE DEPARTMENT OF AGRICULTURE

IN THE HOUSE

JANUARY 16, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON AGRICULTURE, LIVESTOCK & IRRIGATION.  FIRST READING.
JANUARY 21, 1989	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
JANUARY 23, 1989	PRINTING REPORT.
JANUARY 24, 1989	SECOND READING, DO PASS.
JANUARY 25, 1989	ON MOTION TAKEN FROM ENGROSSING AND REREFERRED TO COMMITTEE ON AGRICULTURE, LIVESTOCK, AND IRRIGATION.
FEBRUARY 11, 1989	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 13, 1989	PRINTING REPORT.
FEBRUARY 14, 1989	SECOND READING, DO PASS.
FEBRUARY 15, 1989	ENGROSSING REPORT.
FEBRUARY 16, 1989	THIRD READING, PASSED. AYES, 91; NOES, 5.  TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 17, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON AGRICULTURE, LIVESTOCK AND IRRIGATION.  FIRST READING.
MARCH 4, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.

MARCH 6, 1989

SECOND READING, CONCURRED IN.

MARCH 8, 1989

THIRD READING, CONCURRED IN.  
AYES, 50; NOES, 0.

RETURNED TO HOUSE.

IN THE HOUSE

MARCH 9, 1989

RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 190  
2 INTRODUCED BY M. Hansen  
3 BY REQUEST OF THE DEPARTMENT OF AGRICULTURE  
4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE  
6 CERTAIN PROVISIONS OF THE MONTANA PESTICIDES ACT; PROVIDING  
7 WHEN CERTAIN EXPENSES MAY BE INCLUDED IN EDUCATIONAL PROGRAM  
8 FEES; INCREASING CERTAIN REGISTRATION AND LICENSING FEES;  
9 CLARIFYING APPLICATOR RESPONSIBILITY FOR OPERATORS;  
10 CLARIFYING GENERAL VIOLATIONS; AMENDING SECTIONS 80-8-109,  
11 80-8-201, 80-8-203, 80-8-207, AND 80-8-305, MCA; AND  
12 PROVIDING AN EFFECTIVE DATE."

13  
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 **Section 1.** Section 80-8-109, MCA, is amended to read:

16 **"80-8-109. Educational programs.** (1) The department  
17 shall develop and conduct appropriate educational programs.  
18 The educational programs shall inform those individuals  
19 dealing in and applying pesticides as to correct methods of  
20 formulating, applying, storing, disposing of, handling, and  
21 transporting pesticides.

22 (2) In developing and administering such programs, the  
23 department may consult other state and federal agencies and  
24 private industry, as well as such other persons it considers  
25 necessary, and may charge a fee for the programs

1 commensurate with their administration costs. The fee may  
2 not include the salary or travel expenses of any employee of  
3 the a state agency or a--unit of the Montana university  
4 system cooperative extension service.

5 (3) All fees collected pursuant to this section must  
6 be deposited in the state treasury to the credit of the  
7 state special revenue fund and must be spent for the  
8 purposes set forth in this section."

9 **Section 2.** Section 80-8-201, MCA, is amended to read:

10 **"80-8-201. Registration.** (1) Every pesticide  
11 distributed, sold, or offered for sale within this state or  
12 delivered for transportation or transported in intrastate  
13 commerce or between points within this state shall be  
14 registered with the department. The registration shall be  
15 renewed annually by the manufacturer, formulator, or  
16 distributor of the pesticide. The department shall register  
17 all federally approved pesticides, and those registered are  
18 subject to registration fees and all other provisions of  
19 this chapter. All registrations of pesticides expire on  
20 December 31 following the date of issuance unless otherwise  
21 terminated.

22 (2) The applicant for registration shall file with the  
23 department a statement including:

24 (a) the name and address of the applicant and the name  
25 and address of the person whose name will appear on the

1 label, if other than the registrant;

2 (b) a complete copy of the label of the pesticide, the  
3 United States environmental protection agency registration  
4 number if the pesticide is so registered, and a statement of  
5 all claims to be made for it, including directions for use;

6 (c) the trade and chemical name of the pesticide;

7 (d) if requested by the department, a full description  
8 of tests made and the results upon which the claims are  
9 based. In the case of renewal of registration, a statement  
10 shall be required only with respect to information which is  
11 different from that furnished when the pesticide was  
12 registered or last reregistered.

13 (3) Any pesticide imported into this state which is  
14 subject to the provisions of any federal act providing for  
15 the registration of pesticides and has been registered under  
16 the provisions of a federal act shall be registered in the  
17 state. However, the state may restrict the sale or use and  
18 application of the pesticide by type of dealer, applicator,  
19 time, and place and may establish special registrations of  
20 pesticides as outlined in subsection (8) of this section and  
21 80-8-105(3). The annual registration fee must also be paid,  
22 and registration information required by the department must  
23 be provided.

24 (4) The applicant shall pay an annual fee of ~~\$50~~ \$75  
25 for each pesticide registered. A registration fee is not

1 required to register a federally approved experimental use  
2 permit. Fees collected shall be deposited in the state  
3 treasury to the credit of the general fund.

4 (5) The department may require the submission of the  
5 complete formula and certified analytical standards of any  
6 pesticide. If it appears to the department that the  
7 composition of the article warrants the proposed claims for  
8 it and if the article and its labeling and other material  
9 required to be submitted comply with the requirements of  
10 80-8-202, it shall register the article.

11 (6) If it does not appear to the department that the  
12 article warrants the proposed claims for it or if the  
13 article and its labeling and other material required to be  
14 submitted do not comply with this chapter, it shall notify  
15 the applicant of the manner in which the article, labeling,  
16 or other material required to be submitted fails to comply  
17 with the chapter so as to afford the applicant an  
18 opportunity to make the necessary corrections. If the  
19 applicant does not make the corrections upon receipt of the  
20 notice, the department may refuse to register the article.  
21 The department may suspend or cancel the registration of a  
22 pesticide whenever it does not appear that the article or  
23 its labeling comply with this chapter or whenever scientific  
24 evidence proves that the article endangers man or the  
25 general environment afforded protection under

1 80-8-105(3)(a). When an application for registration is  
2 refused or the department proposes to suspend or cancel a  
3 registration, the registrant may pursue administrative  
4 remedies under the Montana Administrative Procedure Act and  
5 rules of the department.

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

9 (8) (a) The departments of health and environmental  
10 sciences, agriculture, and fish, wildlife, and parks shall  
11 review all applications for registration of an  
12 experimental-use permit or a registration for special local  
13 needs. The applicant shall pay a one-time fee of \$50 \$75 for  
14 a special local need or experimental-use permit  
15 registration. The departments shall utilize the same  
16 requirements and standards for reviewing registrations  
17 established by the Federal Insecticide, Fungicide, and  
18 Rodenticide Act, as amended, and regulations adopted  
19 thereunder. The department of agriculture shall provide the  
20 departments of health and environmental sciences and fish,  
21 wildlife, and parks with a complete copy of the application,  
22 related correspondence, and a statement of the department of  
23 agriculture's proposed action on the application. The  
24 departments of health and environmental sciences and fish,  
25 wildlife, and parks shall approve or disapprove the

1 application within 10 days after the receipt of the  
2 application. If the departments of health and environmental  
3 sciences, agriculture, and fish, wildlife, and parks are in  
4 agreement with the proposed registration, the department of  
5 agriculture shall issue the registration.

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

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

19 (d) Following the interagency conference and, if  
20 requested, the administrative hearing, if the proposed  
21 registration of a pesticide or device has not been resolved,  
22 the department of agriculture shall appoint an advisory  
23 council as outlined in 80-8-108 to resolve by majority vote  
24 the registration of any pesticide. The advisory council's  
25 recommendations on the registration shall be accepted by the

departments and implemented by the department of agriculture.

(9) Pesticides registered under any federal law when canceled for sale and use in total or in part by a federal agency responsible for registration are considered canceled in total or in part for sale and use in Montana. The cancellation is effective on the final date of sale or use allowed under the federal law and rules or orders of the federal agency. If the federal cancellation allows existing stock to be used past the final date of cancellation, such sale or use in this state may not exceed 2 years. The department shall provide technical assistance to any person in possession of such products to insure their proper disposal, relabeling, or removal."

**Section 3.** Section 80-8-203, MCA, is amended to read:

"80-8-203. Commercial applicator. (1) It shall be unlawful for any person to engage in the business of applying pesticides for another without a pesticide applicator's license obtained from the department of agriculture. The application shall be accompanied by a fee of \$35 ~~\$45~~. Applicators applying for a dealer's license under this chapter shall be required to pay only a \$20 licensing fee for the dealer's license. The provisions of this subsection shall not apply to any person employed only to operate any equipment used for the application of any

pesticide and in which the person has no financial interest or other control over such apparatus other than its day-to-day mechanical operation for the purpose of applying any pesticide.

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

(3) Veterinarians licensed as provided in Title 37, chapter 18, part 3, shall not be required to be licensed to apply nonrestricted pesticides, provided that these 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.

(4) An applicator is responsible for the use of any pesticide by an operator or employee under the applicator's supervision or employment."

**Section 4.** Section 80-8-207, MCA, is amended to read:

"80-8-207. Dealers. (1) It is unlawful for any person to sell, offer for sale, deliver, or have delivered within this state any pesticide without first procuring a license

1 from the department of agriculture for each calendar year or  
 2 portion thereof. A separate dealer's license and fee shall  
 3 be required for each location or outlet from which  
 4 pesticides are distributed, sold, held for sale, or offered  
 5 for sale. Pesticide fieldmen or salesmen employed directly  
 6 out of the same location or outlet and under a licensed  
 7 dealer shall not be required to obtain a license. The dealer  
 8 shall furnish the department the names and addresses of its  
 9 fieldmen and salesmen selling pesticides within the state.

10 (2) The application for a license shall be accompanied  
 11 by a fee of \$35 \$45. Dealers applying for renewal of license  
 12 shall do so on or before March 1 of that calendar year. Any  
 13 dealer applying for renewal of license after March 1 shall  
 14 be assessed a \$25 late licensing fee.

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

18 (4) Dealers may make one application for two annual  
 19 licenses if the application is accompanied by a \$35 \$45  
 20 licensing fee for each year of the state biennium.

21 (5) Pharmacists licensed as provided for in 37-7-302  
 22 and 37-7-303, veterinarians licensed as provided for in  
 23 37-18-302 and 37-18-303, and certified pharmacies licensed  
 24 under 37-7-321 shall not be required to be licensed to sell  
 25 pesticides, provided that the certified pharmacies and

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

8 **Section 5.** Section 80-8-305, MCA, is amended to read:

9 **"80-8-305. General violations.** (1) It is unlawful for  
 10 any person:

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

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

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

23 (d) to apply or attempt to apply any registered  
 24 pesticide in a manner inconsistent with the label, as  
 25 defined in 80-8-102; or

1        (e) to use any unregistered chemical or biological  
2 agent that is required to be registered as a pesticide by  
3 the Montana Pesticides Act.

4        (2) It is unlawful for any person to manufacture,  
5 formulate, or store any registered pesticide or component or  
6 byproduct thereof in such a manner that the pesticide or any  
7 component or byproduct cannot be contained or confined  
8 within the boundaries of the lands owned by or under the  
9 appropriate control of the person involved. Odor is  
10 specifically exempted from the provisions of this  
11 subsection."

12        NEW SECTION. Section 6. Extension of authority. Any  
13 existing authority to make rules on the subject of the  
14 provisions of [this act] is extended to the provisions of  
15 [this act].

16        NEW SECTION. Section 7. Severability. If a part of  
17 [this act] is invalid, all valid parts that are severable  
18 from the invalid part remain in effect. If a part of [this  
19 act] is invalid in one or more of its applications, the part  
20 remains in effect in all valid applications that are  
21 severable from the invalid applications.

22        NEW SECTION. Section 8. Effective date. [This act] is  
23 effective July 1, 1989.

-End-



STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB190, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

HB190 would increase certain registration and licensing fees of the Montana Pesticides Act and clarify which expenses may be included in educational program fees, applicator responsibility for operators, and general violations.

ASSUMPTIONS:

1. Registration fees for each pesticide distributed, sold or offered for sale in the state will increase from \$50 to \$75 and, based upon 4,989 products registered in FY88, this will generate an additional \$124,725 of general fund revenue each year of the 1991 biennium.
2. The annual application fee for a pesticide dealers license will increase from \$35 to \$45 per year and, based upon 501 licensed dealers in FY88, this will generate an additional \$3,883 of general fund revenue each year. (Because a dealer who is also an applicator receives a \$15 reduction which is applied both to the dealer license and the commercial applicator license, and because a late licensing fee of \$25 is assessed after March 1, calculation involves more than multiplication).
3. The commercial applicator license fee will increase from \$35 to \$45 per year and, based upon 784 applicators in FY88 and the reduction applied from No. 2 above, this will generate an additional \$8,647 of general fund revenue each year.
4. The federal Environmental Protection Agency (EPA) is implementing new or expanded programs concerning pesticides in groundwater, endangered species, pesticide disposal and farm worker safety.
5. The cost of implementing these programs is a shared state and federal responsibility. The reason for these registration and licensing fee increases is to pay for the state share. The EPA will be providing increased support both for existing programs and these new programs.
6. The three modifications recommended in the executive budget (EB) to implement these new programs will be approved at a total general fund cost of \$97,995 in FY90 and \$98,604 in FY91.
7. The balance of the increased general fund revenue will be used for state purposes during the 1991 biennium; however, once the impact of the EPA changes is known, programmatic adjustments for the Dept. of Agriculture may be required in future biennia.
8. This legislation will have no fiscal impact on the Montana Cooperative Extension Service because it will not change the nature or the substance of their staff workload.

*Ray Shackelford* 1/23/89  
RAY SHACKLEFORD, BUDGET DIRECTOR DATE  
OFFICE OF BUDGET AND PROGRAM PLANNING

*Marian W. Hanson* 1/24/89  
MARIAN W. HANSON, PRIMARY SPONSOR DATE

Fiscal Note for HB190, as introduced

**HB 190**

Fiscal Note Request, HB190 as introduced

Form BD-15

Page 2

FISCAL IMPACT:

Increased Dept. of Agriculture expenditures and funding already included in the executive budget for HB100.

	<u>Current Law</u>	<u>FY90 Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>FY91 Proposed Law</u>	<u>Difference</u>
<u>Revenue:</u>						
Net increase assuming EB pesticide modifications are approved as recommended						
General Fund	-0-	\$39,260	\$39,260	-0-	\$38,651	\$38,651

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The total increase in general fund of \$137,255 each fiscal year will enable the Dept. of Agriculture to implement and maintain the expanded and new EPA-state pesticide programs this biennium and in future years. The EPA is expected to also provide additional funds to support these programs.

TECHNICAL NOTES:

Commercial applicators applying for a dealer's license are to receive a discount of \$15. This means the discount fee contained in 80-8-203 (1) should be \$30; however, it has not been changed and remains at \$20 (p. 7, line 22 of introduced bill). Failure to adjust this figure would result in higher costs to applicator-dealers and higher general fund revenue.

HB 190

APPROVED BY COMMITTEE  
ON AGRICULTURE LIVESTOCK  
& IRRIGATIONHouse BILL NO. 190INTRODUCED BY M. Hansen

BY REQUEST OF THE DEPARTMENT OF AGRICULTURE

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE CERTAIN PROVISIONS OF THE MONTANA PESTICIDES ACT; PROVIDING WHEN CERTAIN EXPENSES MAY BE INCLUDED IN EDUCATIONAL PROGRAM FEES; INCREASING CERTAIN REGISTRATION AND LICENSING FEES; CLARIFYING APPLICATOR RESPONSIBILITY FOR OPERATORS; CLARIFYING GENERAL VIOLATIONS; AMENDING SECTIONS 80-8-109, 80-8-201, 80-8-203, 80-8-207, AND 80-8-305, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

**Section 1.** Section 80-8-109, MCA, is amended to read:

"80-8-109. Educational programs. (1) The department 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 transporting pesticides.

(2) In developing and administering such programs, the department may consult other state and federal agencies and private industry, as well as such other persons it considers necessary, and may charge a fee for the programs

commensurate with their administration costs. The fee may not include the salary or travel expenses of any employee of the a state agency or a--unit of the Montana university system cooperative extension service.

(3) All fees collected pursuant to this section must be deposited in the state treasury to the credit of the state special revenue fund and must be spent for the purposes set forth in this section."

**Section 2.** Section 80-8-201, MCA, is amended to read:

"80-8-201. Registration. (1) Every pesticide distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state shall be registered with the department. The registration shall be renewed annually by the manufacturer, formulator, or distributor of the pesticide. The department shall register all federally approved pesticides, and those registered are subject to registration fees and all other provisions of this chapter. All registrations of pesticides expire on December 31 following the date of issuance unless otherwise terminated.

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

(a) the name and address of the applicant and the name and address of the person whose name will appear on the

1 label, if other than the registrant;

2 (b) a complete copy of the label of the pesticide, the  
3 United States environmental protection agency registration  
4 number if the pesticide is so registered, and a statement of  
5 all claims to be made for it, including directions for use;

6 (c) the trade and chemical name of the pesticide;

7 (d) if requested by the department, a full description  
8 of tests made and the results upon which the claims are  
9 based. In the case of renewal of registration, a statement  
10 shall be required only with respect to information which is  
11 different from that furnished when the pesticide was  
12 registered or last reregistered.

13 (3) Any pesticide imported into this state which is  
14 subject to the provisions of any federal act providing for  
15 the registration of pesticides and has been registered under  
16 the provisions of a federal act shall be registered in the  
17 state. However, the state may restrict the sale or use and  
18 application of the pesticide by type of dealer, applicator,  
19 time, and place and may establish special registrations of  
20 pesticides as outlined in subsection (8) of this section and  
21 80-8-105(3). The annual registration fee must also be paid,  
22 and registration information required by the department must  
23 be provided.

24 (4) The applicant shall pay an annual fee of ~~\$50~~ \$75  
25 for each pesticide registered. A registration fee is not

1 required to register a federally approved experimental use  
2 permit. Fees collected shall be deposited in the state  
3 treasury to the credit of the general fund.

4 (5) The department may require the submission of the  
5 complete formula and certified analytical standards of any  
6 pesticide. If it appears to the department that the  
7 composition of the article warrants the proposed claims for  
8 it and if the article and its labeling and other material  
9 required to be submitted comply with the requirements of  
10 80-8-202, it shall register the article.

11 (6) If it does not appear to the department that the  
12 article warrants the proposed claims for it or if the  
13 article and its labeling and other material required to be  
14 submitted do not comply with this chapter, it shall notify  
15 the applicant of the manner in which the article, labeling,  
16 or other material required to be submitted fails to comply  
17 with the chapter so as to afford the applicant an  
18 opportunity to make the necessary corrections. If the  
19 applicant does not make the corrections upon receipt of the  
20 notice, the department may refuse to register the article.  
21 The department may suspend or cancel the registration of a  
22 pesticide whenever it does not appear that the article or  
23 its labeling comply with this chapter or whenever scientific  
24 evidence proves that the article endangers man or the  
25 general environment afforded protection under

1 80-8-105(3)(a). When an application for registration is  
2 refused or the department proposes to suspend or cancel a  
3 registration, the registrant may pursue administrative  
4 remedies under the Montana Administrative Procedure Act and  
5 rules of the department.

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

9 (8) (a) The departments of health and environmental  
10 sciences, agriculture, and fish, wildlife, and parks shall  
11 review all applications for registration of an  
12 experimental-use permit or a registration for special local  
13 needs. The applicant shall pay a one-time fee of \$50 \$75 for  
14 a special local need or experimental-use permit  
15 registration. The departments shall utilize the same  
16 requirements and standards for reviewing registrations  
17 established by the Federal Insecticide, Fungicide, and  
18 Rodenticide Act, as amended, and regulations adopted  
19 thereunder. The department of agriculture shall provide the  
20 departments of health and environmental sciences and fish,  
21 wildlife, and parks with a complete copy of the application,  
22 related correspondence, and a statement of the department of  
23 agriculture's proposed action on the application. The  
24 departments of health and environmental sciences and fish,  
25 wildlife, and parks shall approve or disapprove the

1 application within 10 days after the receipt of the  
2 application. If the departments of health and environmental  
3 sciences, agriculture, and fish, wildlife, and parks are in  
4 agreement with the proposed registration, the department of  
5 agriculture shall issue the registration.

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

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

19 (d) Following the interagency conference and, if  
20 requested, the administrative hearing, if the proposed  
21 registration of a pesticide or device has not been resolved,  
22 the department of agriculture shall appoint an advisory  
23 council as outlined in 80-8-108 to resolve by majority vote  
24 the registration of any pesticide. The advisory council's  
25 recommendations on the registration shall be accepted by the

1 departments and implemented by the department of  
2 agriculture.

3 (9) Pesticides registered under any federal law when  
4 canceled for sale and use in total or in part by a federal  
5 agency responsible for registration are considered canceled  
6 in total or in part for sale and use in Montana. The  
7 cancellation is effective on the final date of sale or use  
8 allowed under the federal law and rules or orders of the  
9 federal agency. If the federal cancellation allows existing  
10 stock to be used past the final date of cancellation, such  
11 sale or use in this state may not exceed 2 years. The  
12 department shall provide technical assistance to any person  
13 in possession of such products to insure their proper  
14 disposal, relabeling, or removal."

15 **Section 3.** Section 80-8-203, MCA, is amended to read:

16 "80-8-203. Commercial applicator. (1) It shall be  
17 unlawful for any person to engage in the business of  
18 applying pesticides for another without a pesticide  
19 applicator's license obtained from the department of  
20 agriculture. The application shall be accompanied by a fee  
21 of \$35 \$45. Applicators applying for a dealer's license  
22 under this chapter shall be required to pay only a \$20  
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24 this subsection shall not apply to any person employed only  
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1 pesticide and in which the person has no financial interest  
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3 day-to-day mechanical operation for the purpose of applying  
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5 (2) Public utility applicators shall be licensed in  
6 the same manner as commercial applicators, provided that  
7 public utility operators working under public utility  
8 applicators are not required to be licensed except as  
9 provided for under 80-8-205.

10 (3) 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  
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10 (2) The application for a license shall be accompanied  
 11 by a fee of \$35 \$45. Dealers applying for renewal of license  
 12 shall do so on or before March 1 of that calendar year. Any  
 13 dealer applying for renewal of license after March 1 shall  
 14 be assessed a \$25 late licensing fee.

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

18 (4) Dealers may make one application for two annual  
 19 licenses if the application is accompanied by a \$35 \$45  
 20 licensing fee for each year of the state biennium.

21 (5) Pharmacists licensed as provided for in 37-7-302  
 22 and 37-7-303, veterinarians licensed as provided for in  
 23 37-18-302 and 37-18-303, and certified pharmacies licensed  
 24 under 37-7-321 shall not be required to be licensed to sell  
 25 pesticides, provided that the certified pharmacies and

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

8 **Section 5.** Section 80-8-305, MCA, is amended to read:  
 9 **"80-8-305. General violations.** (1) It is unlawful for  
 10 any person:

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

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

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

23 (d) to apply or attempt to apply any registered  
 24 pesticide in a manner inconsistent with the label, as  
 25 defined in 80-8-102; or

1       (e) to use any unregistered chemical or biological  
2       agent that is required to be registered as a pesticide by  
3       the Montana Pesticides Act.

4       (2) It is unlawful for any person to manufacture,  
5       formulate, or store any registered pesticide or component or  
6       byproduct thereof in such a manner that the pesticide or any  
7       component or byproduct cannot be contained or confined  
8       within the boundaries of the lands owned by or under the  
9       appropriate control of the person involved. Odor is  
10      specifically exempted from the provisions of this  
11      subsection."

12      NEW SECTION. Section 6. Extension of authority. Any  
13      existing authority to make rules on the subject of the  
14      provisions of [this act] is extended to the provisions of  
15      [this act].

16      NEW SECTION. Section 7. Severability. If a part of  
17      [this act] is invalid, all valid parts that are severable  
18      from the invalid part remain in effect. If a part of [this  
19      act] is invalid in one or more of its applications, the part  
20      remains in effect in all valid applications that are  
21      severable from the invalid applications.

22      NEW SECTION. Section 8. Effective date. [This act] is  
23      effective July 1, 1989.

-End-



1 House BILL NO. 190  
2 INTRODUCED BY M. Hanson  
3 BY REQUEST OF THE DEPARTMENT OF AGRICULTURE  
4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE  
6 CERTAIN PROVISIONS OF THE MONTANA PESTICIDES ACT; PROVIDING  
7 WHEN CERTAIN EXPENSES MAY BE INCLUDED IN EDUCATIONAL PROGRAM  
8 FEES; INCREASING CERTAIN REGISTRATION AND LICENSING FEES;  
9 CLARIFYING APPLICATOR RESPONSIBILITY FOR OPERATORS;  
10 CLARIFYING GENERAL VIOLATIONS; AMENDING SECTIONS 80-8-109,  
11 80-8-201, 80-8-203, 80-8-207, AND 80-8-305, MCA; AND  
12 PROVIDING AN EFFECTIVE DATE."  
13

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

15 **Section 1.** Section 80-8-109, MCA, is amended to read:

16 **"80-8-109. Educational programs.** (1) The department  
17 shall develop and conduct appropriate educational programs.  
18 The educational programs shall inform those individuals  
19 dealing in and applying pesticides as to correct methods of  
20 formulating, applying, storing, disposing of, handling, and  
21 transporting pesticides.

22 (2) In developing and administering such programs, the  
23 department may consult other state and federal agencies and  
24 private industry, as well as such other persons it considers  
25 necessary, and may charge a fee for the programs

1 commensurate with their administration costs. The fee may  
2 not include the salary or travel expenses of any employee of  
3 the a state agency or a--unit of the Montana university  
4 system cooperative extension service.

5 (3) All fees collected pursuant to this section must  
6 be deposited in the state treasury to the credit of the  
7 state special revenue fund and must be spent for the  
8 purposes set forth in this section."

9 **Section 2.** Section 80-8-201, MCA, is amended to read:

10 **"80-8-201. Registration.** (1) Every pesticide  
11 distributed, sold, or offered for sale within this state or  
12 delivered for transportation or transported in intrastate  
13 commerce or between points within this state shall be  
14 registered with the department. The registration shall be  
15 renewed annually by the manufacturer, formulator, or  
16 distributor of the pesticide. The department shall register  
17 all federally approved pesticides, and those registered are  
18 subject to registration fees and all other provisions of  
19 this chapter. All registrations of pesticides expire on  
20 December 31 following the date of issuance unless otherwise  
21 terminated.

22 (2) The applicant for registration shall file with the  
23 department a statement including:

24 (a) the name and address of the applicant and the name  
25 and address of the person whose name will appear on the

1 label, if other than the registrant;

2 (b) a complete copy of the label of the pesticide, the  
3 United States environmental protection agency registration  
4 number if the pesticide is so registered, and a statement of  
5 all claims to be made for it, including directions for use;

6 (c) the trade and chemical name of the pesticide;

7 (d) if requested by the department, a full description  
8 of tests made and the results upon which the claims are  
9 based. In the case of renewal of registration, a statement  
10 shall be required only with respect to information which is  
11 different from that furnished when the pesticide was  
12 registered or last reregistered.

13 (3) Any pesticide imported into this state which is  
14 subject to the provisions of any federal act providing for  
15 the registration of pesticides and has been registered under  
16 the provisions of a federal act shall be registered in the  
17 state. However, the state may restrict the sale or use and  
18 application of the pesticide by type of dealer, applicator,  
19 time, and place and may establish special registrations of  
20 pesticides as outlined in subsection (8) of this section and  
21 80-8-105(3). The annual registration fee must also be paid,  
22 and registration information required by the department must  
23 be provided.

24 (4) The applicant shall pay an annual fee of \$50 \$75  
25 for each pesticide registered. A registration fee is not

1 required to register a federally approved experimental use  
2 permit. Fees collected shall be deposited in the state  
3 treasury to the credit of the general fund.

4 (5) The department may require the submission of the  
5 complete formula and certified analytical standards of any  
6 pesticide. If it appears to the department that the  
7 composition of the article warrants the proposed claims for  
8 it and if the article and its labeling and other material  
9 required to be submitted comply with the requirements of  
10 80-8-202, it shall register the article.

11 (6) If it does not appear to the department that the  
12 article warrants the proposed claims for it or if the  
13 article and its labeling and other material required to be  
14 submitted do not comply with this chapter, it shall notify  
15 the applicant of the manner in which the article, labeling,  
16 or other material required to be submitted fails to comply  
17 with the chapter so as to afford the applicant an  
18 opportunity to make the necessary corrections. If the  
19 applicant does not make the corrections upon receipt of the  
20 notice, the department may refuse to register the article.  
21 The department may suspend or cancel the registration of a  
22 pesticide whenever it does not appear that the article or  
23 its labeling comply with this chapter or whenever scientific  
24 evidence proves that the article endangers man or the  
25 general environment afforded protection under

1 80-8-105(3)(a). When an application for registration is  
2 refused or the department proposes to suspend or cancel a  
3 registration, the registrant may pursue administrative  
4 remedies under the Montana Administrative Procedure Act and  
5 rules of the department.

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

9 (8) (a) The departments of health and environmental  
10 sciences, agriculture, and fish, wildlife, and parks shall  
11 review all applications for registration of an  
12 experimental-use permit or a registration for special local  
13 needs. The applicant shall pay a one-time fee of ~~\$50~~ \$75 for  
14 a special local need or experimental-use permit  
15 registration. The departments shall utilize the same  
16 requirements and standards for reviewing registrations  
17 established by the Federal Insecticide, Fungicide, and  
18 Rodenticide Act, as amended, and regulations adopted  
19 thereunder. The department of agriculture shall provide the  
20 departments of health and environmental sciences and fish,  
21 wildlife, and parks with a complete copy of the application,  
22 related correspondence, and a statement of the department of  
23 agriculture's proposed action on the application. The  
24 departments of health and environmental sciences and fish,  
25 wildlife, and parks shall approve or disapprove the

1 application within 10 days after the receipt of the  
2 application. If the departments of health and environmental  
3 sciences, agriculture, and fish, wildlife, and parks are in  
4 agreement with the proposed registration, the department of  
5 agriculture shall issue the registration.

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

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

19 (d) Following the interagency conference and, if  
20 requested, the administrative hearing, if the proposed  
21 registration of a pesticide or device has not been resolved,  
22 the department of agriculture shall appoint an advisory  
23 council as outlined in 80-8-108 to resolve by majority vote  
24 the registration of any pesticide. The advisory council's  
25 recommendations on the registration shall be accepted by the

1 departments and implemented by the department of  
2 agriculture.

3 (9) Pesticides registered under any federal law when  
4 canceled for sale and use in total or in part by a federal  
5 agency responsible for registration are considered canceled  
6 in total or in part for sale and use in Montana. The  
7 cancellation is effective on the final date of sale or use  
8 allowed under the federal law and rules or orders of the  
9 federal agency. If the federal cancellation allows existing  
10 stock to be used past the final date of cancellation, such  
11 sale or use in this state may not exceed 2 years. The  
12 department shall provide technical assistance to any person  
13 in possession of such products to insure their proper  
14 disposal, relabeling, or removal."

15 **Section 3.** Section 80-8-203, MCA, is amended to read:

16 **"80-8-203. Commercial applicator.** (1) It shall be  
17 unlawful for any person to engage in the business of  
18 applying pesticides for another without a pesticide  
19 applicator's license obtained from the department of  
20 agriculture. The application shall be accompanied by a fee  
21 of \$35 \$45. Applicators applying for a dealer's license  
22 under this chapter shall be required to pay only a \$20  
23 licensing fee for the dealer's license. The provisions of  
24 this subsection shall not apply to any person employed only  
25 to operate any equipment used for the application of any

1 pesticide and in which the person has no financial interest  
2 or other control over such apparatus other than its  
3 day-to-day mechanical operation for the purpose of applying  
4 any pesticide.

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

10 (3) 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 adopting rules.

19 (4) An applicator is responsible for the use of any  
20 pesticide by an operator or employee under the applicator's  
21 supervision or employment."

22 **Section 4.** Section 80-8-207, MCA, is amended to read:

23 **"80-8-207. Dealers.** (1) It is unlawful for any person  
24 to sell, offer for sale, deliver, or have delivered within  
25 this state any pesticide without first procuring a license

1 from the department of agriculture for each calendar year or  
 2 portion thereof. A separate dealer's license and fee shall  
 3 be required for each location or outlet from which  
 4 pesticides are distributed, sold, held for sale, or offered  
 5 for sale. Pesticide fieldmen or salesmen employed directly  
 6 out of the same location or outlet and under a licensed  
 7 dealer shall not be required to obtain a license. The dealer  
 8 shall furnish the department the names and addresses of its  
 9 fieldmen and salesmen selling pesticides within the state.

10 (2) The application for a license shall be accompanied  
 11 by a fee of \$35 \$45. Dealers applying for renewal of license  
 12 shall do so on or before March 1 of that calendar year. Any  
 13 dealer applying for renewal of license after March 1 shall  
 14 be assessed a \$25 late licensing fee.

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

18 (4) Dealers may make one application for two annual  
 19 licenses if the application is accompanied by a \$35 \$45  
 20 licensing fee for each year of the state biennium.

21 (5) Pharmacists licensed as provided for in 37-7-302  
 22 and 37-7-303, veterinarians licensed as provided for in  
 23 37-18-302 and 37-18-303, and certified pharmacies licensed  
 24 under 37-7-321 shall not be required to be licensed to sell  
 25 pesticides, provided that the certified pharmacies and

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

8 **Section 5.** Section 80-8-305, MCA, is amended to read:  
 9 **"80-8-305. General violations.** (1) It is unlawful for  
 10 any person:

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

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

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

23 (d) to apply or attempt to apply any registered  
 24 pesticide in a manner inconsistent with the label, as  
 25 defined in 80-8-102; or

1       (e) to use any unregistered chemical or biological  
2       agent that is required to be registered as a pesticide by  
3       the Montana Pesticides Act.

4       (2) It is unlawful for any person to manufacture,  
5       formulate, or store any registered pesticide or component or  
6       byproduct thereof in such a manner that the pesticide or any  
7       component or byproduct cannot be contained or confined  
8       within the boundaries of the lands owned by or under the  
9       appropriate control of the person involved. Odor is  
10      specifically exempted from the provisions of this  
11      subsection."

12      NEW SECTION. Section 6. Extension of authority. Any  
13      existing authority to make rules on the subject of the  
14      provisions of [this act] is extended to the provisions of  
15      [this act].

16      NEW SECTION. Section 7. Severability. If a part of  
17      [this act] is invalid, all valid parts that are severable  
18      from the invalid part remain in effect. If a part of [this  
19      act] is invalid in one or more of its applications, the part  
20      remains in effect in all valid applications that are  
21      severable from the invalid applications.

22      NEW SECTION. Section 8. Effective date. [This act] is  
23      effective July 1, 1989.

-End-

House BILL NO. 190

INTRODUCED BY M. Hansen

BY REQUEST OF THE DEPARTMENT OF AGRICULTURE

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE CERTAIN PROVISIONS OF THE MONTANA PESTICIDES ACT; PROVIDING WHEN CERTAIN EXPENSES MAY BE INCLUDED IN EDUCATIONAL PROGRAM FEES; INCREASING CERTAIN REGISTRATION AND LICENSING FEES; CLARIFYING APPLICATOR RESPONSIBILITY FOR OPERATORS; CLARIFYING GENERAL VIOLATIONS; AMENDING SECTIONS 80-8-109, 80-8-201, 80-8-203, 80-8-207, AND 80-8-305, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

**Section 1.** Section 80-8-109, MCA, is amended to read:

**"80-8-109. Educational programs.** (1) The department 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 transporting pesticides.

(2) In developing and administering such programs, the department may consult other state and federal agencies and private industry, as well as such other persons it considers necessary, and may charge a fee for the programs

commensurate with their administration costs. The fee may not include the salary or travel expenses of any employee of the a state agency or a--unit of the Montana university system cooperative extension service.

(3) All fees collected pursuant to this section must be deposited in the state treasury to the credit of the state special revenue fund and must be spent for the purposes set forth in this section."

**Section 2.** Section 80-8-201, MCA, is amended to read:

**"80-8-201. Registration.** (1) Every pesticide distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state shall be registered with the department. The registration shall be renewed annually by the manufacturer, formulator, or distributor of the pesticide. The department shall register all federally approved pesticides, and those registered are subject to registration fees and all other provisions of this chapter. All registrations of pesticides expire on December 31 following the date of issuance unless otherwise terminated.

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

(a) the name and address of the applicant and the name and address of the person whose name will appear on the

1 label, if other than the registrant;

2 (b) a complete copy of the label of the pesticide, the  
3 United States environmental protection agency registration  
4 number if the pesticide is so registered, and a statement of  
5 all claims to be made for it, including directions for use;

6 (c) the trade and chemical name of the pesticide;

7 (d) if requested by the department, a full description  
8 of tests made and the results upon which the claims are  
9 based. In the case of renewal of registration, a statement  
10 shall be required only with respect to information which is  
11 different from that furnished when the pesticide was  
12 registered or last reregistered.

13 (3) Any pesticide imported into this state which is  
14 subject to the provisions of any federal act providing for  
15 the registration of pesticides and has been registered under  
16 the provisions of a federal act shall be registered in the  
17 state. However, the state may restrict the sale or use and  
18 application of the pesticide by type of dealer, applicator,  
19 time, and place and may establish special registrations of  
20 pesticides as outlined in subsection (8) of this section and  
21 80-8-105(3). The annual registration fee must also be paid,  
22 and registration information required by the department must  
23 be provided.

24 (4) The applicant shall pay an annual fee of \$50 \$75  
25 for each pesticide registered. A registration fee is not

1 required to register a federally approved experimental use  
2 permit. Fees collected shall be deposited in the state  
3 treasury to the credit of the general fund.

4 (5) The department may require the submission of the  
5 complete formula and certified analytical standards of any  
6 pesticide. If it appears to the department that the  
7 composition of the article warrants the proposed claims for  
8 it and if the article and its labeling and other material  
9 required to be submitted comply with the requirements of  
10 80-8-202, it shall register the article.

11 (6) If it does not appear to the department that the  
12 article warrants the proposed claims for it or if the  
13 article and its labeling and other material required to be  
14 submitted do not comply with this chapter, it shall notify  
15 the applicant of the manner in which the article, labeling,  
16 or other material required to be submitted fails to comply  
17 with the chapter so as to afford the applicant an  
18 opportunity to make the necessary corrections. If the  
19 applicant does not make the corrections upon receipt of the  
20 notice, the department may refuse to register the article.  
21 The department may suspend or cancel the registration of a  
22 pesticide whenever it does not appear that the article or  
23 its labeling comply with this chapter or whenever scientific  
24 evidence proves that the article endangers man or the  
25 general environment afforded protection under



1 80-8-105(3)(a). When an application for registration is  
2 refused or the department proposes to suspend or cancel a  
3 registration, the registrant may pursue administrative  
4 remedies under the Montana Administrative Procedure Act and  
5 rules of the department.

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

9 (8) (a) The departments of health and environmental  
10 sciences, agriculture, and fish, wildlife, and parks shall  
11 review all applications for registration of an  
12 experimental-use permit or a registration for special local  
13 needs. The applicant shall pay a one-time fee of ~~\$50~~ \$75 for  
14 a special local need or experimental-use permit  
15 registration. The departments shall utilize the same  
16 requirements and standards for reviewing registrations  
17 established by the Federal Insecticide, Fungicide, and  
18 Rodenticide Act, as amended, and regulations adopted  
19 thereunder. The department of agriculture shall provide the  
20 departments of health and environmental sciences and fish,  
21 wildlife, and parks with a complete copy of the application,  
22 related correspondence, and a statement of the department of  
23 agriculture's proposed action on the application. The  
24 departments of health and environmental sciences and fish,  
25 wildlife, and parks shall approve or disapprove the

1 application within 10 days after the receipt of the  
2 application. If the departments of health and environmental  
3 sciences, agriculture, and fish, wildlife, and parks are in  
4 agreement with the proposed registration, the department of  
5 agriculture shall issue the registration.

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

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

19 (d) Following the interagency conference and, if  
20 requested, the administrative hearing, if the proposed  
21 registration of a pesticide or device has not been resolved,  
22 the department of agriculture shall appoint an advisory  
23 council as outlined in 80-8-108 to resolve by majority vote  
24 the registration of any pesticide. The advisory council's  
25 recommendations on the registration shall be accepted by the

1 departments and implemented by the department of  
2 agriculture.

3 (9) Pesticides registered under any federal law when  
4 canceled for sale and use in total or in part by a federal  
5 agency responsible for registration are considered canceled  
6 in total or in part for sale and use in Montana. The  
7 cancellation is effective on the final date of sale or use  
8 allowed under the federal law and rules or orders of the  
9 federal agency. If the federal cancellation allows existing  
10 stock to be used past the final date of cancellation, such  
11 sale or use in this state may not exceed 2 years. The  
12 department shall provide technical assistance to any person  
13 in possession of such products to insure their proper  
14 disposal, relabeling, or removal."

15 **Section 3.** Section 80-8-203, MCA, is amended to read:

16 "80-8-203. Commercial applicator. (1) It shall be  
17 unlawful for any person to engage in the business of  
18 applying pesticides for another without a pesticide  
19 applicator's license obtained from the department of  
20 agriculture. The application shall be accompanied by a fee  
21 of \$35 \$45. Applicators applying for a dealer's license  
22 under this chapter shall be required to pay only a \$20  
23 licensing fee for the dealer's license. The provisions of  
24 this subsection shall not apply to any person employed only  
25 to operate any equipment used for the application of any

1 pesticide and in which the person has no financial interest  
2 or other control over such apparatus other than its  
3 day-to-day mechanical operation for the purpose of applying  
4 any pesticide.

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

10 (3) 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 adopting rules.

19 (4) An applicator is responsible for the use of any  
20 pesticide by an operator or employee under the applicator's  
21 supervision or employment."

22 **Section 4.** Section 80-8-207, MCA, is amended to read:

23 "80-8-207. Dealers. (1) It is unlawful for any person  
24 to sell, offer for sale, deliver, or have delivered within  
25 this state any pesticide without first procuring a license

1 from the department of agriculture for each calendar year or  
 2 portion thereof. A separate dealer's license and fee shall  
 3 be required for each location or outlet from which  
 4 pesticides are distributed, sold, held for sale, or offered  
 5 for sale. Pesticide fieldmen or salesmen employed directly  
 6 out of the same location or outlet and under a licensed  
 7 dealer shall not be required to obtain a license. The dealer  
 8 shall furnish the department the names and addresses of its  
 9 fieldmen and salesmen selling pesticides within the state.

10 (2) The application for a license shall be accompanied  
 11 by a fee of \$35 \$45. Dealers applying for renewal of license  
 12 shall do so on or before March 1 of that calendar year. Any  
 13 dealer applying for renewal of license after March 1 shall  
 14 be assessed a \$25 late licensing fee.

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

18 (4) Dealers may make one application for two annual  
 19 licenses if the application is accompanied by a \$35 \$45  
 20 licensing fee for each year of the state biennium.

21 (5) Pharmacists licensed as provided for in 37-7-302  
 22 and 37-7-303, veterinarians licensed as provided for in  
 23 37-18-302 and 37-18-303, and certified pharmacies licensed  
 24 under 37-7-321 shall not be required to be licensed to sell  
 25 pesticides, provided that the certified pharmacies and

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

8 **Section 5.** Section 80-8-305, MCA, is amended to read:

9 **"80-8-305. General violations.** (1) It is unlawful for  
 10 any person:

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

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

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

23 (d) to apply or attempt to apply any registered  
 24 pesticide in a manner inconsistent with the label, as  
 25 defined in 80-8-102; or

1        (e) to use any unregistered chemical or biological  
2        agent that is required to be registered as a pesticide by  
3        the Montana Pesticides Act.

4        (2) It is unlawful for any person to manufacture,  
5        formulate, or store any registered pesticide or component or  
6        byproduct thereof in such a manner that the pesticide or any  
7        component or byproduct cannot be contained or confined  
8        within the boundaries of the lands owned by or under the  
9        appropriate control of the person involved. Odor is  
10       specifically exempted from the provisions of this  
11       subsection."

12       NEW SECTION. Section 6. Extension of authority. Any  
13       existing authority to make rules on the subject of the  
14       provisions of [this act] is extended to the provisions of  
15       [this act].

16       NEW SECTION. Section 7. Severability. If a part of  
17       [this act] is invalid, all valid parts that are severable  
18       from the invalid part remain in effect. If a part of [this  
19       act] is invalid in one or more of its applications, the part  
20       remains in effect in all valid applications that are  
21       severable from the invalid applications.

22       NEW SECTION. Section 8. Effective date. [This act] is  
23       effective July 1, 1989.

-End-

## 1 HOUSE BILL NO. 190

2 INTRODUCED BY HANSON

3 BY REQUEST OF THE DEPARTMENT OF AGRICULTURE  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE  
6 CERTAIN PROVISIONS OF THE MONTANA PESTICIDES ACT; PROVIDING  
7 WHEN CERTAIN EXPENSES MAY BE INCLUDED IN EDUCATIONAL PROGRAM  
8 FEES; INCREASING CERTAIN REGISTRATION AND LICENSING FEES;  
9 CLARIFYING APPLICATOR RESPONSIBILITY FOR OPERATORS;  
10 CLARIFYING GENERAL VIOLATIONS; AMENDING SECTIONS 80-8-109,  
11 80-8-201, 80-8-203, 80-8-207, AND 80-8-305, MCA; AND  
12 PROVIDING AN EFFECTIVE DATE."

13  
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 Section 1. Section 80-8-109, MCA, is amended to read:

16 "80-8-109. Educational programs. (1) The department  
17 shall develop and conduct appropriate educational programs.  
18 The educational programs shall inform those individuals  
19 dealing in and applying pesticides as to correct methods of  
20 formulating, applying, storing, disposing of, handling, and  
21 transporting pesticides.

22 (2) In developing and administering such programs, the  
23 department may consult other state and federal agencies and  
24 private industry, as well as such other persons it considers  
25 necessary, and may charge a fee for the programs

1 commensurate with their administration costs. The fee may  
2 not include the salary or travel expenses of any employee of  
3 the a state agency or a--unit of the Montana university  
4 system cooperative extension service.

5 (3) All fees collected pursuant to this section must  
6 be deposited in the state treasury to the credit of the  
7 state special revenue fund and must be spent for the  
8 purposes set forth in this section."

9 Section 2. Section 80-8-201, MCA, is amended to read:

10 "80-8-201. Registration. (1) Every pesticide  
11 distributed, sold, or offered for sale within this state or  
12 delivered for transportation or transported in intrastate  
13 commerce or between points within this state shall be  
14 registered with the department. The registration shall be  
15 renewed annually by the manufacturer, formulator, or  
16 distributor of the pesticide. The department shall register  
17 all federally approved pesticides, and those registered are  
18 subject to registration fees and all other provisions of  
19 this chapter. All registrations of pesticides expire on  
20 December 31 following the date of issuance unless otherwise  
21 terminated.

22 (2) The applicant for registration shall file with the  
23 department a statement including:

24 (a) the name and address of the applicant and the name  
25 and address of the person whose name will appear on the

1 label, if other than the registrant;  
 2 (b) a complete copy of the label of the pesticide, the  
 3 United States environmental protection agency registration  
 4 number if the pesticide is so registered, and a statement of  
 5 all claims to be made for it, including directions for use;  
 6 (c) the trade and chemical name of the pesticide;  
 7 (d) if requested by the department, a full description  
 8 of tests made and the results upon which the claims are  
 9 based. In the case of renewal of registration, a statement  
 10 shall be required only with respect to information which is  
 11 different from that furnished when the pesticide was  
 12 registered or last reregistered.

13 (3) Any pesticide imported into this state which is  
 14 subject to the provisions of any federal act providing for  
 15 the registration of pesticides and has been registered under  
 16 the provisions of a federal act shall be registered in the  
 17 state. However, the state may restrict the sale or use and  
 18 application of the pesticide by type of dealer, applicator,  
 19 time, and place and may establish special registrations of  
 20 pesticides as outlined in subsection (8) of this section and  
 21 80-8-105(3). The annual registration fee must also be paid,  
 22 and registration information required by the department must  
 23 be provided.

24 (4) The applicant shall pay an annual fee of \$50 \$75  
 25 for each pesticide registered. A registration fee is not

1 required to register a federally approved experimental use  
 2 permit. Fees collected shall be deposited in the state  
 3 treasury to the credit of the general fund.

4 (5) The department may require the submission of the  
 5 complete formula and certified analytical standards of any  
 6 pesticide. If it appears to the department that the  
 7 composition of the article warrants the proposed claims for  
 8 it and if the article and its labeling and other material  
 9 required to be submitted comply with the requirements of  
 10 80-8-202, it shall register the article.

11 (6) If it does not appear to the department that the  
 12 article warrants the proposed claims for it or if the  
 13 article and its labeling and other material required to be  
 14 submitted do not comply with this chapter, it shall notify  
 15 the applicant of the manner in which the article, labeling,  
 16 or other material required to be submitted fails to comply  
 17 with the chapter so as to afford the applicant an  
 18 opportunity to make the necessary corrections. If the  
 19 applicant does not make the corrections upon receipt of the  
 20 notice, the department may refuse to register the article.  
 21 The department may suspend or cancel the registration of a  
 22 pesticide whenever it does not appear that the article or  
 23 its labeling comply with this chapter or whenever scientific  
 24 evidence proves that the article endangers man or the  
 25 general environment afforded protection under

1 80-8-105(3)(a). When an application for registration is  
2 refused or the department proposes to suspend or cancel a  
3 registration, the registrant may pursue administrative  
4 remedies under the Montana Administrative Procedure Act and  
5 rules of the department.

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

9 (8) (a) The departments of health and environmental  
10 sciences, agriculture, and fish, wildlife, and parks shall  
11 review all applications for registration of an  
12 experimental-use permit or a registration for special local  
13 needs. The applicant shall pay a one-time fee of \$50 \$75 for  
14 a special local need or experimental-use permit  
15 registration. The departments shall utilize the same  
16 requirements and standards for reviewing registrations  
17 established by the Federal Insecticide, Fungicide, and  
18 Rodenticide Act, as amended, and regulations adopted  
19 thereunder. The department of agriculture shall provide the  
20 departments of health and environmental sciences and fish,  
21 wildlife, and parks with a complete copy of the application,  
22 related correspondence, and a statement of the department of  
23 agriculture's proposed action on the application. The  
24 departments of health and environmental sciences and fish,  
25 wildlife, and parks shall approve or disapprove the

1 application within 10 days after the receipt of the  
2 application. If the departments of health and environmental  
3 sciences, agriculture, and fish, wildlife, and parks are in  
4 agreement with the proposed registration, the department of  
5 agriculture shall issue the registration.

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

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

19 (d) Following the interagency conference and, if  
20 requested, the administrative hearing, if the proposed  
21 registration of a pesticide or device has not been resolved,  
22 the department of agriculture shall appoint an advisory  
23 council as outlined in 80-8-108 to resolve by majority vote  
24 the registration of any pesticide. The advisory council's  
25 recommendations on the registration shall be accepted by the

1 departments and implemented by the department of  
2 agriculture.

3 (9) Pesticides registered under any federal law when  
4 canceled for sale and use in total or in part by a federal  
5 agency responsible for registration are considered canceled  
6 in total or in part for sale and use in Montana. The  
7 cancellation is effective on the final date of sale or use  
8 allowed under the federal law and rules or orders of the  
9 federal agency. If the federal cancellation allows existing  
10 stock to be used past the final date of cancellation, such  
11 sale or use in this state may not exceed 2 years. The  
12 department shall provide technical assistance to any person  
13 in possession of such products to insure their proper  
14 disposal, relabeling, or removal."

15 **Section 3.** Section 80-8-203, MCA, is amended to read:

16 **"80-8-203. Commercial applicator.** (1) It shall be  
17 unlawful for any person to engage in the business of  
18 applying pesticides for another without a pesticide  
19 applicator's license obtained from the department of  
20 agriculture. The application shall be accompanied by a fee  
21 of \$35 \$45. Applicators applying for a dealer's license  
22 under this chapter shall be required to pay only a \$20  
23 licensing fee for the dealer's license. The provisions of  
24 this subsection shall not apply to any person employed only  
25 to operate any equipment used for the application of any

1 pesticide and in which the person has no financial interest  
2 or other control over such apparatus other than its  
3 day-to-day mechanical operation for the purpose of applying  
4 any pesticide.

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

10 (3) 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 adopting rules.

19 (4) An applicator is responsible for the use of any  
20 pesticide by an operator or employee under the applicator's  
21 supervision or employment."

22 **Section 4.** Section 80-8-207, MCA, is amended to read:

23 **"80-8-207. Dealers.** (1) It is unlawful for any person  
24 to sell, offer for sale, deliver, or have delivered within  
25 this state any pesticide without first procuring a license



from the department of agriculture for each calendar year or portion thereof. A separate dealer's license and fee shall be required for each location or outlet from which pesticides are distributed, sold, held for sale, or offered for sale. Pesticide fieldmen or salesmen employed directly out of the same location or outlet and under a licensed dealer shall not be required to obtain a license. The dealer shall furnish the department the names and addresses of its fieldmen and salesmen selling pesticides within the state.

(2) The application for a license shall be accompanied by a fee of \$35 ~~\$45~~. Dealers applying for renewal of license shall do so on or before March 1 of that calendar year. Any dealer applying for renewal of license after March 1 shall be assessed a \$25 late licensing fee.

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

(4) Dealers may make one application for two annual licenses if the application is accompanied by a \$35 ~~\$45~~ 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 pharmacies and

veterinarians shall register with the department each year. However, the certified pharmacies and veterinarians shall be required to meet all other requirements concerning the commercial sale of pesticides. The department shall take into account the professional licensing requirements of pharmacists, certified pharmacies, and veterinarians when adopting rules."

**Section 5.** Section 80-8-305, MCA, is amended to read:

"80-8-305. General violations. (1) It is unlawful for any person:

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

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

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

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

1       (e) to use any unregistered chemical or biological  
2       agent that is required to be registered as a pesticide by  
3       the Montana Pesticides Act.

4       (2) It is unlawful for any person to manufacture,  
5       formulate, or store any registered pesticide or component or  
6       byproduct thereof in such a manner that the pesticide or any  
7       component or byproduct cannot be contained or confined  
8       within the boundaries of the lands owned by or under the  
9       appropriate control of the person involved. Odor is  
10       specifically exempted from the provisions of this  
11       subsection."

12       NEW SECTION. Section 6. Extension of authority. Any  
13       existing authority to make rules on the subject of the  
14       provisions of [this act] is extended to the provisions of  
15       [this act].

16       NEW SECTION. Section 7. Severability. If a part of  
17       [this act] is invalid, all valid parts that are severable  
18       from the invalid part remain in effect. If a part of [this  
19       act] is invalid in one or more of its applications, the part  
20       remains in effect in all valid applications that are  
21       severable from the invalid applications.

22       NEW SECTION. Section 8. Effective date. [This act] is  
23       effective July 1, 1989.

-End-