

ONE HUNDRED SIXTH LEGISLATURE - FIRST SESSION - 2019
COMMITTEE STATEMENT
LB320

Hearing Date: Tuesday February 05, 2019
Committee On: Agriculture
Introducer: Albrecht
One Liner: Change various provisions of the Pesticide Act and update federal references

Roll Call Vote - Final Committee Action:
Advanced to General File

Vote Results:

Aye: 8 Senators Blood, Brandt, Chambers, Halloran, Hansen, B., Lathrop, Moser, Slama
Nay:
Absent:
Present Not Voting:

Oral Testimony:

Proponents:

Senator Joni Albrecht
Steve Wellman

Representing:

Introducer
Nebraska Department of Agriculture

Opponents:

Representing:

Neutral:

Representing:

Summary of purpose and/or changes:

LB 320 is introduced to bring provisions of the Pesticide Act (Neb. Rev. Stat. sections 2-2622 to 2-2659) into alignment with recent revisions to the Certification of Pesticide Applicators Rule at 40 CFR 171, which establishes standards for state programs to certify persons applying restricted use pesticides (RUPs), training/competency to be demonstrated by applicators to obtain certification and licensure, and related recordkeeping. The revisions increase Federal applicator certification program standards, enhance pesticide safety training and standards for supervision of noncertified applicators, and establish a minimum age requirement for noncertified applicators using RUPs under the direct supervision of a certified applicator. States have until March, 2020 to submit to EPA revised certification plans that comply with the updated rule requirements. The bill also contains other statutory housekeeping and clarifications.

Section-by-Section Description:

Section 1: Amends Sec. 2-2624 making revisions to defined terms utilized throughout the Act.

Section 2: Amends Sec. 2-2626 which assigns duties and authorities to the Nebraska Department of Agriculture to carry out the Pesticide Act. The revisions include 1) a clarification of the Department's authority to regulate use and possession of state limited use pesticides, 2) changes from prescriptive to permissive the Department's authority to adopt certain rules and regulations, 3) updates reference to federal rules regarding certification categories, 4) expands authority to issue stop-use orders to unlawful uses of a pesticide, and 5) removes express authority to declare pests.

Section 3: Amends Sec. 2-2628 which requires pesticides distributed (sold or used) in the state and upon certain movements in commerce to be registered by the manufacturer or other distributor. The bill clarifies a listed exception to the registration requirement for products merely transported through the state and adds an additional authority of the Department to not require registration of products exempted from EPA registration.

Section 4: Amends Sec. 2-2629 which sets forth information to be supplied on an application for registration of a pesticide. The revisions include that the applicant supply the trade name of the pesticide and identify locations of online sources of pesticide information. The bill includes that a non-resident application either name a designated resident agent for service of process or consent to jurisdiction of the state.

Section 5: Amends Sec. 2-2630 prescribing information to be included on a pesticide label. The revision would require inclusion of federal registration identification and remove a requirement for arsenic content.

Section 6: Amends Sec. 2-2632 to clarify grounds under which the Department may deny a pesticide product registration.

Section 7: Amends Sec. 2-3635 which requires persons distributing pesticides to be licensed as a dealer and sets forth information to be supplied by applicants for a dealer license. The bill includes that a non-resident application either name a designated resident agent for service of process or consent to jurisdiction of the state. Removes an application fee for a duplicate dealer's license.

Section 8: Amends Sec. 2-2636 which prescribes requirements to apply restricted use pesticides. The bill requires that applicators be at least 18 years old (the referenced exception is for persons at least 16 years old applying RUPs under the supervision of a family member licensed as a private applicator for ag applications) and are a licensed applicator or working under the direct supervision of a certified applicator. Harmonizes requirements for application of general use pesticides for hire for lawn care, structural pest control, outdoor vector control, and harmonizes an internal reference.

Section 9: Amends Sec. 2-2637 authorizing the Department to establish categories for certification of applicator licensees. Revisions appear to enable consistency with revisions in federal regulations regarding certification categories and competency, and presentation of identification to attend training and certification sessions.

Section 10: Amends Sec. 2-2638 which requires persons using RUPs for hire to be licensed as a commercial applicator, be certified in the necessary categories of pesticide application, and specifies requirements for applying for a commercial license. Revisions appear to enable consistency with revisions in federal regulations regarding certification categories, and harmonize an internal reference to an existing exception allowing application of general use lawn care and structural pest control products by non-certified persons under the supervision of licensed applicators. The revision also includes that a non-resident applicant for a commercial license either name a designated resident agent for service of process or consent to jurisdiction of the state.

Section 11: Amends Sec. 2-2639 which sets requirements for licensure as a non-commercial applicator. The revisions add grounds for denial of a license and that a non-resident applicant for a commercial license either name a designated resident agent for service of process or consent to jurisdiction of the state.

Section 12: Amends Sec. 2-2640 to remove reference to subcategories of uses of restricted use pesticides to enable consistency with revisions in federal regulations regarding certification categories.

Section 13: Amends Sec. 2-4641 which authorizes licensure as a private applicator in lieu of commercial or noncommercial licensure for agricultural producers applying pesticides on their own farming operation or for noncommercial purpose in exchange of services with other producers. The revisions strike provisions inconsistent with the revisions to the definition of "private applicator" in section 2 and inserts new federal requirement for identification to be presented for participants in certification training or exams.

Section 14: Amends Sec. 2-4642 which governs application by non-certified persons applying pesticides for a period

prior to obtaining certification while under the supervision of a certified applicator. The revisions appear to enable consistency with updated federal requirements pertaining to training and limitations on pesticide applications by non-certified applications.

Section 15: Amends Sec. 2-2643 to enable consistency with updated federal regulations pertaining to recordkeeping of RUP applications.

Section 16: Amends Sec. 2-2643.02 which assigns a duty of license holders to comply with the Act, rules and regulations, and orders of the Director. The revision extends the duty to complying with requirements of license holder supervising application by non-certified person as referenced.

Section 17: Amends Sec. 2-2645 which assigns responsibilities to the Department to investigate complaints. The revisions clarify grounds by which the Department may decline to investigate.

Section 18: Amends Sec. 2-2646 which lists unlawful acts. The revision adds advertising or recommending a pesticide in contradiction with the act or regulations as a prohibited act.

Section 19: Amends Sec. 2-2653 to update nomenclature of the state pesticide plan.

Section 20: Amends Sec. 2-2656 which provides for the requirement to obtain licensure as an aerial pesticide business, and specifies information to be supplied by an applicant for licensure. The revision provides that a non-resident applicant for a commercial license either name a designated resident agent for service of process or consent to jurisdiction of the state.

Steve Halloran, Chairperson