



February 21, 2020

ENGROSSED SENATE BILL No. 438

DIGEST OF SB 438 (Updated February 18, 2020 12:19 pm - DI 77)

Citations Affected: IC 15-16; noncode.

Synopsis: Regulation of pesticide use and application. Makes various changes to the statutes governing pesticide registration and pesticide use and application (pesticide laws). Increases the amounts that the state chemist may impose for certain violations of the pesticide laws. Establishes criteria for the state chemist to follow in computing penalties for violations. Provides that the changes made to the amount that the state chemist may impose as a civil penalty for purposes of the pesticide laws do not apply to the imposition of a civil penalty pursuant to a proceeding of the state chemist initiated before the effective date of the amendments made to the civil penalty provisions of the pesticide laws.

Effective: Upon passage; July 1, 2020.

Leising, Glick

(HOUSE SPONSORS — LEHE, PRESCOTT)

January 15, 2020, read first time and referred to Committee on Agriculture.

January 27, 2020, amended, reported favorably — Do Pass.

January 30, 2020, read second time, amended, ordered engrossed.

January 31, 2020, engrossed.

February 3, 2020, read third time, passed. Yeas 38, nays 9.

HOUSE ACTION

February 11, 2020, read first time and referred to Committee on Agriculture and Rural Development.

February 20, 2020, amended, reported — Do Pass.

ES 438—LS 7156/DI 129



February 21, 2020

Second Regular Session of the 121st General Assembly (2020)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2019 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 438

A BILL FOR AN ACT to amend the Indiana Code concerning agriculture and animals.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 15-16-4-3, AS ADDED BY P.L.2-2008, SECTION
2 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON
3 PASSAGE]: Sec. 3. As used in this chapter, "adulterated" refers to a
4 pesticide or pesticide product if:

- 5 (1) the strength or purity of the pesticide ~~falls below~~ **does not**
6 **meet** the professed standard or quality as expressed on its labeling
7 under which it is sold;
8 (2) any substance has been substituted wholly or in part for the
9 pesticide product; or
10 (3) any valuable constituent of the pesticide product has been
11 wholly or in part removed.

12 SECTION 2. IC 15-16-4-3.5 IS ADDED TO THE INDIANA CODE
13 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
14 1, 2020]: **Sec. 3.5. As used in this chapter, "adverse effect" has the**
15 **meaning set forth in IC 15-16-5-0.5.**

16 SECTION 3. IC 15-16-4-10, AS ADDED BY P.L.2-2008,
17 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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1 UPON PASSAGE]: Sec. 10. As used in this chapter, "device" means
 2 any instrument or contrivance intended for trapping, destroying,
 3 repelling, or mitigating ~~insects or rodents or destroying, repelling, or~~
 4 ~~mitigating~~ any pest. The term does not include:

- 5 (1) equipment used for the application of pesticides when sold
- 6 separately from the pesticides;
- 7 (2) firearms; or
- 8 (3) simple mechanical devices, including barriers, traps, or
- 9 adhesives, or other simple contrivances that are not subject to this
- 10 chapter as determined by the pesticide review board.

11 SECTION 4. IC 15-16-4-14, AS ADDED BY P.L.2-2008,
 12 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 13 UPON PASSAGE]: Sec. 14. As used in this chapter, "~~fungi~~" means all
 14 ~~nonchlorophyll-bearing thallophytes (all nonchlorophyll-bearing plants~~
 15 ~~of a lower order than mosses and liverworts); including:~~

- 16 (1) ~~rusts;~~
- 17 (2) ~~smuts;~~
- 18 (3) ~~mildews;~~
- 19 (4) ~~molds;~~
- 20 (5) ~~yeasts;~~
- 21 (6) ~~bacteria; and~~
- 22 (7) ~~viruses;~~

23 ~~except those on or in a living human or other animal: "fungus" has the~~
 24 ~~meaning set forth in IC 15-16-5-14.~~

25 SECTION 5. IC 15-16-4-18, AS ADDED BY P.L.2-2008,
 26 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 27 UPON PASSAGE]: Sec. 18. As used in this chapter, "immediate
 28 container" means the part of a container that is in direct contact with a
 29 pesticide. ~~product. In the case of a pesticide product that is a device,~~
 30 ~~the term includes the device itself.~~

31 SECTION 6. IC 15-16-4-28, AS ADDED BY P.L.2-2008,
 32 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 33 UPON PASSAGE]: Sec. 28. As used in this chapter, "person" means:
 34 any:

- 35 (1) **an** individual;
- 36 (2) **a** partnership;
- 37 (3) **an** association;
- 38 (4) **a** fiduciary;
- 39 (5) **a** corporation; or
- 40 (6) **an** organized group of persons;
- 41 whether incorporated or not.

42 SECTION 7. IC 15-16-4-34, AS ADDED BY P.L.2-2008,



1 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 UPON PASSAGE]: Sec. 34. As used in this chapter, "plant regulator"
3 means any substance or mixture of substances, intended through
4 physiological action, for:

- 5 (1) accelerating or retarding the rate of growth or rate of
6 maturation; or
- 7 (2) altering the behavior of ornamental or crop plants or the
8 produce of ornamental or crop plants.

9 The term does not include substances ~~to the extent they~~ **that** are
10 intended **solely** as plant nutrients, trace elements, nutritional chemicals,
11 plant inoculants, and soil amendments.

12 SECTION 8. IC 15-16-4-56, AS ADDED BY P.L.2-2008,
13 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
14 UPON PASSAGE]: Sec. 56. For more than one (1) pesticide product
15 to be considered the same pesticide product, each pesticide product
16 must exhibit the same:

- 17 (1) product name;
- 18 (2) registrant name;
- 19 (3) United States Environmental Protection Agency registration
20 number, **if applicable; and**
- 21 (4) labeling, **claims, and branding; and**
- 22 (5) **ingredient statement.**

23 SECTION 9. IC 15-16-4-61, AS ADDED BY P.L.2-2008,
24 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
25 UPON PASSAGE]: Sec. 61. (a) Each pesticide product that is:

- 26 (1) produced, distributed, sold, displayed, or offered for sale
27 within Indiana; or
- 28 (2) delivered for transportation or transported:
29 (A) in intrastate commerce; or
30 (B) between points within Indiana through any point outside
31 Indiana;

32 must be registered in the office of the state chemist.

33 (b) The application for registration must be made on a form
34 provided by the state chemist that includes the following information:

- 35 (1) The name and address of the:
36 (A) applicant; and
37 (B) person whose name will appear on the label, if a person
38 other than the applicant.
- 39 (2) The complete brand name of the pesticide **product.**
- 40 (3) A complete copy of the labeling accompanying the pesticide
41 **product.**
- 42 (4) ~~A statement of all claims to be made for it, including~~



1 directions for use:

2 (5) If requested by the state chemist, a full description of the tests
3 made and the results of the tests upon which the claims are based.
4 In the case of renewal of registration, a statement shall be
5 required only with respect to information that is different from
6 that furnished when the pesticide was registered or last
7 reregistered.

8 SECTION 10. IC 15-16-4-62, AS AMENDED BY P.L.99-2012,
9 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
10 UPON PASSAGE]: Sec. 62. (a) Each registrant shall pay an annual,
11 nonrefundable **application** fee of one hundred seventy dollars (\$170)
12 for each application for each pesticide product submitted for
13 registration **or reregistration.**

14 (b) Each registration expires January 1 of each year.

15 (c) All fees collected by the state chemist under this chapter shall be
16 paid to the treasurer of Purdue University, who shall deposit the fees in
17 a special restricted account designated by the treasurer of the board of
18 trustees of Purdue University.

19 (d) From the account described in subsection (c), the treasurer shall
20 pay all expenses incurred in administering this chapter, including
21 expenses for the following:

22 (1) The employment of:

- 23 (A) inspectors;
- 24 (B) investigators;
- 25 (C) researchers;
- 26 (D) analysts;
- 27 (E) administrators; and
- 28 (F) clerical and service staff.

29 (2) Expenses in procuring samples and printing results of
30 inspections.

31 (3) Purchasing:

- 32 (A) supplies;
- 33 (B) equipment; and
- 34 (C) services.

35 (4) Necessary remodeling.

36 (5) Other expenses of the office of the state chemist.

37 (6) The transfer of ten dollars (\$10) from each fee paid under
38 subsection (a) on an annual basis to the office of Purdue pesticide
39 programs to provide education about the safe and effective use of
40 pesticides.

41 The treasurer is not required to use any other funds, except those
42 collected as registration fees, to pay any expenses incurred in the



1 administration of this chapter. The dean of agriculture shall make an
 2 annual financial report to the governor showing total receipts and
 3 expenditures of all fees received under this chapter.

4 (e) A registrant who registers or pays an annual fee after December
 5 31 of any year shall pay a late fee of one hundred seventy dollars
 6 (\$170) as well as the annual fee.

7 (f) Excess funds from the collection of fees under this chapter are
 8 subject to IC 15-16-2-36.

9 SECTION 11. IC 15-16-4-64, AS ADDED BY P.L.120-2008,
 10 SECTION 69, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 11 JULY 1, 2020]: Sec. 64. (a) The state chemist ~~shall~~ **may** require the
 12 submission of the complete formula of any pesticide product,
 13 including: ~~the~~

- 14 (1) **the confidential statement of formula;**
- 15 (2) **the analytical methods for the analysis of the pesticide**
 16 **formulation and the analysis of residues of the pesticide product**
 17 **in environmental media; and**
- 18 (3) **the analytical standards of the pesticide product;**
- 19 (4) **the safety data sheet;**
- 20 (5) **the physical sample of the pesticide product; and**
- 21 (6) **a statement of all claims to be made for the pesticide**
 22 **product, including a full description of the tests made and the**
 23 **results of the tests upon which the claims are based.**

24 In the case of a federally registered product, this requirement may be
 25 waived.

26 (b) The state chemist shall register a pesticide product if:

- 27 (1) the state chemist determines that the composition of the
 28 pesticide product warrants the proposed claims for the pesticide
 29 product;
- 30 (2) the pesticide product, its labeling, and other material required
 31 to be submitted comply with the requirements of section 61 of this
 32 chapter; and
- 33 (3) the state chemist determines that the person submitting the
 34 application for registration has complied with the requirements of
 35 this chapter, **including satisfying all outstanding judgments**
 36 **resulting from a violation of this chapter, after any action has**
 37 **been finalized under section 64.5 of this chapter.**

38 (c) The state chemist shall notify the applicant that the pesticide
 39 product, labeling, or other material required to be submitted fails to
 40 comply with the law if the state chemist determines:

- 41 (1) that the proposed claims for the pesticide product; or
- 42 (2) the pesticide product, its labeling, and other material required



1 to be submitted;
 2 does not comply with this chapter, **including satisfying all**
 3 **outstanding judgments resulting from a violation of this chapter,**
 4 **after any action has been finalized under section 64.5 of this**
 5 **chapter.**

6 (d) If the state chemist notifies an applicant under subsection (c), the
 7 state chemist shall give the applicant an opportunity to make the
 8 necessary corrections. If upon receipt of notice, the applicant does not
 9 make the corrections, the state chemist may refuse to register the
 10 pesticide product.

11 (e) The state chemist, in accordance with the procedures specified
 12 in this section, may deny, suspend, or cancel the registration of a
 13 pesticide whenever the state chemist determines that:

- 14 (1) the pesticide product;
- 15 (2) the pesticide product's labeling; or
- 16 (3) the person submitting the application for registration of the
 17 pesticide product;

18 does not comply with this chapter, **including satisfying all**
 19 **outstanding judgments resulting from a violation of this chapter,**
 20 **after any action has been finalized under section 64.5 of this**
 21 **chapter.**

- 22 (f) If:
- 23 (1) an application for registration is refused; or
 - 24 (2) the state chemist proposes to deny, suspend, or cancel a
 25 registration;

26 notice of the action and information concerning the person's right to
 27 obtain a review under section 64.5 of this chapter must be given to the
 28 applicant or registrant.

29 SECTION 12. IC 15-16-4-69, AS ADDED BY P.L.2-2008,
 30 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 JULY 1, 2020]: Sec. 69. (a) Subject to this section, if a person violates
 32 this chapter or a rule adopted under this chapter, the state chemist
 33 under IC 4-21.5-3-6 may warn, cite, or impose a civil penalty on the
 34 person or:

- 35 (1) deny;
- 36 (2) suspend;
- 37 (3) revoke; or
- 38 (4) amend;

39 the person's registration under this chapter.

40 (b) The state chemist may impose civil penalties **under this section**
 41 only in accordance with the schedule of civil penalties adopted by the
 42 board. The board shall establish a schedule of the civil penalties that



1 may be imposed under subsection (a) by rule adopted under IC 4-22-2.
 2 The rule adopted under this subsection may not provide for a civil
 3 penalty that exceeds the following:

4 (1) ~~Two hundred fifty~~ **Five hundred** dollars (~~\$250~~) (**\$500**) for a
 5 person's first violation.

6 (2) ~~Five hundred~~ **One thousand** dollars (~~\$500~~) (**\$1,000**) for a
 7 person's second violation.

8 (3) ~~One~~ **Two thousand five hundred** dollars (~~\$1,000~~) (**\$2,500**) for
 9 a person's third violation and each subsequent violation.

10 ~~(e) If a violation is of a continuing nature, the state chemist may~~
 11 ~~impose a civil penalty for each day that the violation occurred.~~

12 ~~(d)~~ **(c)** A proceeding under IC 4-21.5-3 that involves the imposition
 13 of a civil penalty may be consolidated with any other proceeding
 14 commenced under IC 4-21.5 to enforce this chapter or the rules
 15 adopted under this chapter.

16 ~~(e)~~ **(d)** Money collected for civil penalties imposed under this
 17 section shall be credited to the office of Purdue pesticide programs.
 18 The money may be used only to provide education about pesticides.

19 SECTION 13. IC 15-16-4-73, AS ADDED BY P.L.120-2008,
 20 SECTION 72, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 21 UPON PASSAGE]: Sec. 73. (a) Except as provided in subsection (f),
 22 if the state chemist:

23 (1) finds any pesticide product:

24 (A) upon any premises; or

25 (B) in any means of conveyance;

26 where it is held for purposes of, or during or after, distribution or
 27 sale; and

28 (2) determines that the pesticide product:

29 (A) is in violation of this chapter; or

30 (B) has been or is intended to be:

31 (i) distributed;

32 (ii) sold; or

33 (iii) used;

34 in violation of this chapter;

35 the state chemist may issue an order under subsection (b).

36 (b) The state chemist may issue a written or printed:

37 (1) stop sale;

38 (2) use; or

39 (3) removal;

40 order to the owner or custodian of a pesticide product.

41 (c) Except as provided in subsection (d), after receiving an order
 42 under subsection (b), the owner or custodian of a pesticide product may



- 1 not:
- 2 (1) sell;
- 3 (2) use; or
- 4 (3) remove;
- 5 the pesticide product described in the order.
- 6 (d) The owner or custodian of a pesticide product who receives an
- 7 order under subsection (b) may:
- 8 (1) sell;
- 9 (2) use; or
- 10 (3) remove;
- 11 the pesticide product only in accordance with the order or until the
- 12 pesticide product is released in writing by the state chemist or by order
- 13 of a court.
- 14 (e) When a stop sale order is issued under subsection (b), the state
- 15 chemist shall ~~immediately~~ issue a notification to the dealer or registrant
- 16 of the pesticide product **within thirty (30) days** that states the
- 17 following:
- 18 (1) A stop sale order has been issued on the pesticide product.
- 19 (2) A reference to the specific language of the law or rule that is
- 20 believed to have been violated.
- 21 (f) Labels of pesticide devices may be submitted to the state chemist
- 22 for ~~approval~~ **evaluation of the need for registration under this**
- 23 **chapter** before the sale of the pesticide device.
- 24 SECTION 14. IC 15-16-5-0.5 IS ADDED TO THE INDIANA
- 25 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 26 [EFFECTIVE JULY 1, 2020]: **Sec. 0.5. As used in this chapter,**
- 27 **"adverse effect" means a pesticide exposure to a nontarget site that**
- 28 **results in:**
- 29 (1) **pesticide residues in excess of established food or feed**
- 30 **tolerances established by the United States Environmental**
- 31 **Protection Agency;**
- 32 (2) **environmental media standards or benchmarks for**
- 33 **pesticides established by a federal or state agency; or**
- 34 (3) **visible, measureable, or documented:**
- 35 (A) **death;**
- 36 (B) **illness;**
- 37 (C) **stunting;**
- 38 (D) **deformation;**
- 39 (E) **discoloration; or**
- 40 (F) **other effects;**
- 41 **that are detrimental to the nontarget site.**
- 42 SECTION 15. IC 15-16-5-7, AS ADDED BY P.L.2-2008,



1 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 UPON PASSAGE]: Sec. 7. As used in this chapter, "commercial
3 applicator" means a certified applicator, whether or not a private
4 applicator with respect to some uses, who uses or supervises the use of
5 **pesticides pesticide products** for any purpose or on any property other
6 than as provided by section 30 of this chapter.

7 SECTION 16. IC 15-16-5-10, AS ADDED BY P.L.2-2008,
8 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
9 UPON PASSAGE]: Sec. 10. As used in this chapter, "device" means
10 any instrument or contrivance, other than a firearm, that is intended for
11 trapping, destroying, repelling, or mitigating any pest or any other form
12 of plant or animal life other than bacteria, viruses, or other
13 microorganisms on or in living humans or other living animals. The
14 term does not include equipment used for the application of pesticides
15 when sold separately from the pesticides. **has the meaning set forth
16 in IC 15-16-4-10.**

17 SECTION 17. IC 15-16-5-14.7 IS ADDED TO THE INDIANA
18 CODE AS A **NEW SECTION** TO READ AS FOLLOWS
19 [EFFECTIVE JULY 1, 2020]: **Sec. 14.7. As used in this chapter,**
20 **"immediate container" has the meaning set forth in IC 15-16-4-18.**

21 SECTION 18. IC 15-16-5-15.5 IS ADDED TO THE INDIANA
22 CODE AS A **NEW SECTION** TO READ AS FOLLOWS
23 [EFFECTIVE JULY 1, 2020]: **Sec. 15.5. As used in this chapter,**
24 **"label" has the meaning set forth in IC 15-16-4-23.**

25 SECTION 19. IC 15-16-5-16, AS ADDED BY P.L.2-2008,
26 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
27 UPON PASSAGE]: Sec. 16. As used in this chapter, "licensed
28 applicator for hire" means any licensed certified commercial applicator
29 who is employed by a licensed pesticide business to use or to supervise
30 the use of any pesticide **product** on the property of another and who
31 has assumed direct responsibility for the use or supervision of the use
32 of **pesticides pesticide products** by the business.

33 SECTION 20. IC 15-16-5-19, AS ADDED BY P.L.2-2008,
34 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
35 UPON PASSAGE]: Sec. 19. As used in this chapter, "licensed
36 pesticide business" means any licensed person that owns, operates, or
37 manages a business that is engaged in or professes to be engaged in:

- 38 (1) using any pesticide **product**, including restricted use
39 pesticides; or
- 40 (2) making diagnostic inspections or reports to determine
41 infestations of wood destroying pests.

42 SECTION 21. IC 15-16-5-29, AS ADDED BY P.L.2-2008,



1 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 UPON PASSAGE]: Sec. 29. As used in this chapter, "plant regulator"
3 means any substance or mixture of substances intended, through
4 physiological action, for:

5 (1) accelerating or retarding the rate of growth or rate of
6 maturation; or

7 (2) altering the behavior of plants or the produce of plants.

8 The term does not include substances to the extent they are intended as
9 plant nutrients, trace elements, nutritional chemicals, plant inoculants,
10 or soil amendments. **has the meaning set forth in IC 15-16-4-34.**

11 SECTION 22. IC 15-16-5-34, AS ADDED BY P.L.2-2008,
12 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
13 UPON PASSAGE]: Sec. 34. As used in this chapter, "restricted use
14 pesticide" means:

15 (1) any pesticide classified as restricted by the administrator of
16 the United States Environmental Protection Agency; or

17 (2) a pesticide that the board has determined to be unduly
18 hazardous to persons, animals, plants, wildlife, waters, or lands
19 other than the pests the pesticide is intended to prevent, destroy,
20 control, or mitigate.

21 **has the meaning set forth in IC 15-16-4-37.**

22 SECTION 23. IC 15-16-5-45, AS ADDED BY P.L.2-2008,
23 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
24 UPON PASSAGE]: Sec. 45. (a) The state chemist shall adopt rules to
25 establish categories and qualifications to certify and license persons to
26 use pesticides and to make diagnostic inspections and reports for wood
27 destroying pests under this chapter. Each category is subject to separate
28 testing procedures and requirements. A person is not required to pay an
29 additional license fee if the person desires to be licensed in more than
30 one (1) of the license categories provided for by the state chemist under
31 this section.

32 (b) The state chemist, in adopting rules under this section, shall
33 establish **examination content and** standards for the certification of
34 persons who use pesticides or who make diagnostic inspections and
35 reports for wood destroying pests. The **examination content and**
36 standards must relate to **the following:**

37 (1) **The hazards involved in** the use and handling of pesticides,
38 or ~~to~~ the use and handling of the pesticide or class of pesticides
39 covered by the individual's certification.

40 (2) **The job responsibilities of the individual using pesticides**
41 **that are covered by the individual's certification.**

42 (3) **Any relevant information addressed in 40 CFR Part 171.**



1 and must be relative to the hazards involved. In determining standards,
 2 the state chemist shall consider the characteristics of the pesticide
 3 formulation, including the acute dermal and inhalation toxicity, the
 4 persistence, mobility, and susceptibility to biological concentration, the
 5 use experience that may reflect an inherent misuse or an unexpected
 6 good safety record that does not always follow laboratory toxicological
 7 information, the relative hazards of patterns of use, including granular
 8 soil applications, ultra-low volume or dust aerial applications, or air
 9 blast sprayer applications, and the extent of the intended use. The state
 10 chemist shall observe the relevant regulations of Section 4 of the
 11 Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 et
 12 seq.):

13 (c) The state chemist may require a person certified under this
 14 chapter as a commercial applicator or a private applicator to renew the
 15 person's certification, under requirements and standards established by
 16 the state chemist, to assure that the person maintains a level of
 17 competence and ability to use pesticides safely and properly.

18 **(d) An individual who is certified and licensed under this**
 19 **chapter must be at least eighteen (18) years of age, as proven by a**
 20 **valid government issued identification or an equivalent form of**
 21 **identification.**

22 SECTION 24. IC 15-16-5-47, AS ADDED BY P.L.2-2008,
 23 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 24 UPON PASSAGE]: Sec. 47. (a) A license issued under this chapter is
 25 not transferable except in the event of disability or death of the
 26 licensee. The state chemist may transfer a license **to an individual who**
 27 **is a certified applicator** by issuing a temporary permit to provide for
 28 the operation of the business until the expiration of the permanent
 29 license.

30 (b) A ~~certificate~~ **certification** issued under this chapter is not
 31 transferable.

32 SECTION 25. IC 15-16-5-48, AS ADDED BY P.L.120-2008,
 33 SECTION 75, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 34 UPON PASSAGE]: Sec. 48. (a) Subject to section 55 of this chapter,
 35 a person may not engage in or profess to engage in the business of:

36 (1) using a pesticide; or

37 (2) making diagnostic inspections or reports to determine
 38 infestations of wood destroying pests;

39 on the property of another for hire at any time without a pesticide
 40 business license issued by the state chemist. The state chemist shall
 41 require an annual license fee of forty-five dollars (\$45) for each
 42 pesticide business license that is issued.



1 (b) A pesticide business license must be obtained for each **unique**
 2 business location **or business name** from which pesticide use or
 3 application is conducted.

4 (c) The application for a license must be on a form provided by the
 5 state chemist. Each application must contain information necessary for
 6 the administration of this chapter.

7 (d) The state chemist may not issue a pesticide business license until
 8 the applicant or a pesticide applicator in the applicant's hire who uses
 9 or supervises the use of a pesticide on the property of another is
 10 certified by passing an examination to demonstrate to the state chemist
 11 the applicant's or applicator's knowledge of the:

12 (1) use of pesticides under the category for which the applicant or
 13 applicator has applied; and

14 (2) nature and effect of pesticides the applicant or applicator may
 15 apply under the categories.

16 At least one (1) licensed applicator for hire must be associated with
 17 each location from which pesticides are used for hire.

18 (e) The state chemist may renew any pesticide business license.

19 (f) Subject to subsections (a), (b), (c), and (d) and section 65 of this
 20 chapter, if:

21 (1) the state chemist finds the applicant qualified to engage in the
 22 business of using pesticides or making diagnostic inspections or
 23 reports to determine infestations of wood destroying pests on the
 24 property of another;

25 (2) the applicant files evidence of financial responsibility required
 26 under section 58 of this chapter; and

27 (3) the applicant applying for a license involving aerial
 28 application of pesticides has met all of the requirements of:

29 (A) the Federal Aviation Administration;

30 (B) the Indiana department of transportation; and

31 (C) any other applicable federal or state statutes or regulations
 32 to operate the equipment described in the application;

33 the state chemist may issue a pesticide business license limited to the
 34 categories for which the applicant or a pesticide applicator in the
 35 applicant's hire is qualified. The license expires January 1 of the year
 36 following issue unless it has been invalidated, revoked, or suspended
 37 earlier by the state chemist. A surety bond or certificate of liability
 38 insurance in force or certificate of financial responsibility required
 39 under section 58 of this chapter must be maintained and in effect on a
 40 continuing basis.

41 (g) The state chemist may limit a license or the operation of a
 42 business to the use of certain pesticides, or to certain areas, or to certain



1 types of equipment if the applicant is only so qualified.

2 (h) If a license is not issued as applied for, the state chemist shall
3 inform the applicant in writing of the reasons the license was not
4 issued.

5 SECTION 26. IC 15-16-5-55, AS ADDED BY P.L.2-2008,
6 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
7 UPON PASSAGE]: Sec. 55. Section 48 of this chapter relating to
8 **pesticide business** licenses and requirements for their issuance does
9 not apply to the following:

10 (1) A farmer who applies pesticides for the farmer's own use or
11 with ground equipment or manually for the farmer's neighbors if:

12 (A) the farmer operates farm property and operates and
13 maintains pesticide application equipment primarily for the
14 farmer's own use;

15 (B) the farmer is not engaged in the business of applying
16 pesticides for hire and the farmer does not publicly profess to
17 be a pesticide business;

18 (C) the farmer operates the farmer's pesticide application
19 equipment only in the vicinity of the farmer's own property
20 and for the accommodation of the farmer's neighbors **without**
21 **any compensation;** and

22 (D) the farmer is certified as a private applicator if the farmer
23 uses restricted use pesticides.

24 (2) A veterinarian who uses pesticides as an incidental part of the
25 veterinarian's practice, if the veterinarian is not regularly engaged
26 in or does not profess to be engaged in the business of using
27 pesticides for hire.

28 (3) Research personnel applying **general use** pesticides only to
29 bona fide experimental plots.

30 (4) **A person who uses nonrestricted general use pesticides for**
31 **purposes of disinfecting or sanitizing, unless a license is**
32 **required by a rule established by the board.**

33 SECTION 27. IC 15-16-5-59, AS ADDED BY P.L.120-2008,
34 SECTION 78, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
35 JULY 1, 2020]: Sec. 59. (a) Commercial applicators, **private**
36 **applicators**, and licensed pest inspectors shall maintain records
37 concerning:

38 (1) the application of restricted use pesticides;

39 (2) **the application of pesticides for hire;**

40 (3) **the application of pesticides on golf courses;**

41 (4) **the application of pesticides on school property;**

42 (2) (5) diagnostic inspections to determine infestations of wood



- 1 destroying pests; and
 2 ~~(3)~~ **(6)** any relevant information that the state chemist determines
 3 by rule is necessary for purposes of this chapter.
 4 ~~(b)~~ **The state chemist may require certified applicators to maintain**
 5 **records related to applications of state restricted pesticide uses:**
 6 ~~(c)~~ **(b)** Records required under this section must be kept for:
 7 (1) two (2) years after the date of the inspection or the application
 8 of the pesticide; or
 9 (2) the time specified by rule.
 10 ~~(d)~~ **(c)** The state chemist shall be provided access to the records ~~by~~
 11 ~~the commercial applicator or licensed pest inspector.~~ **required to be**
 12 **maintained under this section.**
 13 SECTION 28. IC 15-16-5-65, AS AMENDED BY P.L.99-2012,
 14 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 UPON PASSAGE]: Sec. 65. Subject to section 66 of this chapter, the
 16 state chemist under IC 4-21.5-3-6 may warn, cite, or impose a civil
 17 penalty on a person for a violation under this chapter. The state chemist
 18 may also deny, suspend, revoke, or modify any provision of any
 19 license, permit, registration, or certification issued under this chapter
 20 if the state chemist finds that the applicant or the holder of a license,
 21 permit, registration, or certification has committed any of the following
 22 acts, each of which is a violation of this chapter:
 23 (1) Made false or fraudulent claims either verbally or through any
 24 media misrepresenting the effect of pesticide products or methods
 25 to be used.
 26 (2) Recommended, used, or supervised the use of any registered
 27 pesticide product in a manner inconsistent with its labeling
 28 approved by the United States Environmental Protection Agency
 29 or Indiana state registration for that pesticide, or in violation of
 30 the United States Environmental Protection Agency or Indiana
 31 state restrictions on the use of that pesticide product.
 32 (3) Used known ineffective or improper pesticide products or
 33 known ineffective amounts of pesticides.
 34 (4) Operated faulty or unsafe equipment.
 35 (5) Operated in a careless or negligent manner.
 36 (6) Neglected or, after notice, refused to comply with this chapter,
 37 the rules adopted under this chapter, or of any lawful order of the
 38 state chemist or the board.
 39 (7) Refused or neglected to:
 40 (A) keep and maintain the records required by this chapter; or
 41 (B) make reports and supply information when required or
 42 requested by the state chemist in the course of an investigation



- 1 or inspection.
- 2 (8) Made false or fraudulent records, invoices, or reports.
- 3 (9) Engaged in or professed to be engaged in the business of:
- 4 (A) using a pesticide or any other product regulated under this
- 5 chapter or by rules adopted under this chapter; or
- 6 (B) making a diagnostic inspection to determine infestations
- 7 of a wood destroying pest;
- 8 for hire on the property of another without having a business
- 9 license issued by the state chemist.
- 10 (10) Used a ~~restricted use or supervised the use of~~ a pesticide
- 11 **product that is required to be used under this chapter by a**
- 12 **person who is certified, licensed, or permitted** without having
- 13 ~~an applicator; a person~~ who is **certified**, licensed, or permitted
- 14 under this chapter ~~in direct supervision; conducting the use.~~
- 15 (11) Used fraud or misrepresentation in ~~making an application the~~
- 16 **qualification or application** for, or renewal of, a license, permit,
- 17 registration, or certification.
- 18 (12) Refused or neglected to comply with any limitations or
- 19 restrictions on or in a duly issued license, permit, registration, or
- 20 certification.
- 21 (13) Aided or abetted a person to evade this chapter, conspired
- 22 with a person to evade this chapter, or allowed a license, permit,
- 23 registration, or certification to be used by another person.
- 24 (14) Made false or misleading statements during or after an
- 25 inspection concerning any infestation or infection of pests.
- 26 (15) Impersonated any federal, state, county, or city inspector,
- 27 investigator, or official.
- 28 (16) Knowingly purchased or used a pesticide product that was
- 29 not registered under IC 15-16-4.
- 30 (17) Failed to continuously maintain financial responsibility
- 31 required under section 58 of this chapter or to provide proof of
- 32 financial responsibility to the state chemist when requested.
- 33 (18) Intentionally altered a duly issued license, permit,
- 34 registration, or certification.
- 35 (19) Recklessly, knowingly, or intentionally impeded or prevented
- 36 the state chemist or the state chemist's agent from performing a
- 37 duty of the state chemist.
- 38 SECTION 29. IC 15-16-5-66, AS ADDED BY P.L.2-2008,
- 39 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 40 JULY 1, 2020]: Sec. 66. (a) The state chemist may impose civil
- 41 penalties only in accordance with **this chapter and** the schedule of
- 42 civil penalties adopted by the board.



1 **(b) Except for use violations subject to the criteria established**
 2 **in subsection (d),** the board shall establish a schedule of civil penalties
 3 that may be imposed under section 65 of this chapter by rule adopted
 4 under IC 4-22-2. The rule adopted under this subsection may not
 5 provide for a civil penalty that exceeds the following:

6 (1) For a violation committed by a person who is required to be
 7 certified as a private applicator, ~~one hundred dollars (\$100).~~

8 (2) For a violation by a person who is not described in subdivision
 9 (1), the following:

10 (A) ~~Two~~ **(1) Five** hundred fifty dollars ~~(\$250)~~ **(\$500)** for a
 11 person's first violation.

12 (B) ~~Five hundred~~ **(2) One thousand** dollars ~~(\$500)~~ **(\$1,000)** for
 13 a person's second violation.

14 (C) ~~One~~ **(3) Two** thousand dollars ~~(\$1,000)~~ **(\$2,000)** for a person's
 15 third violation and each subsequent violation.

16 (c) If a violation is of a continuing nature, the state chemist may
 17 impose a civil penalty for each day that the violation occurred.

18 **(d) Subject to the criteria established in subsection (e), for a use**
 19 **violation of this chapter, the state chemist may impose the**
 20 **following penalty in accordance with this subsection:**

21 **(1) For a violation that receives not more than eight (8) points,**
 22 **the state chemist shall impose no civil penalty.**

23 **(2) For a violation that receives at least nine (9) points but no**
 24 **more than eleven (11) points, the state chemist shall impose a**
 25 **penalty of two hundred fifty dollars (\$250) on the person.**

26 **(3) For a violation that receives at least twelve (12) points but**
 27 **not more than fourteen (14) points, the state chemist shall**
 28 **impose a penalty of five hundred dollars (\$500) on the person.**

29 **(4) For a violation that receives at least fifteen (15) points but**
 30 **not more than seventeen (17) points, the state chemist shall**
 31 **impose a penalty of seven hundred fifty dollars (\$750) on the**
 32 **person.**

33 **(5) For a violation that receives at least eighteen (18) points**
 34 **but not more than twenty (20) points, the state chemist shall**
 35 **impose a penalty of one thousand dollars (\$1,000) on the**
 36 **person.**

37 **(6) For a violation that receives at least twenty-one (21) points**
 38 **but not more than twenty-three (23) points, the state chemist**
 39 **shall impose a penalty of two thousand five hundred dollars**
 40 **(\$2,500) on the person.**

41 **(7) For a violation that receives at least twenty-four (24)**
 42 **points but not more than twenty-six (26) points, the state**



- 1 chemist shall impose a penalty of not more than five thousand
2 dollars (\$5,000) on the person.
- 3 (8) For a violation that receives at least twenty-seven (27)
4 points but not more than twenty-nine (29) points, the state
5 chemist shall impose a penalty of not more than seven
6 thousand five dollars (\$7,500) on the person.
- 7 (9) For a violation that receives thirty (30) points or more, the
8 state chemist shall impose a penalty of ten thousand dollars
9 (\$10,000) on the person.
- 10 (e) The state chemist shall use the following criteria to establish
11 the point value for use in computing the total number of violation
12 points for a penalty imposed under subsection (d):
- 13 (1) The following point value shall be assessed based on the
14 adverse effect incurred:
- 15 (A) If the violation resulted in exposure to nontarget site or
16 animals with no adverse effect, the state chemist shall
17 assign a point value of one (1).
- 18 (B) If the violation resulted in exposure to humans with no
19 adverse effect, the state chemist shall assign a point value
20 of four (4).
- 21 (C) If the violation resulted in exposure to nontarget site
22 with adverse effect, the state chemist shall assign a point
23 value of two (2).
- 24 (D) If the violation resulted in exposure to animals with
25 adverse effect, the state chemist shall assign a point value
26 of four (4).
- 27 (E) If the violation resulted in exposure to humans with
28 adverse effect, the state chemist shall assign a point value
29 of six (6).
- 30 (2) The following point value shall be assessed based on the
31 category of product used:
- 32 (A) If the product is general use, the state chemist shall
33 assign a point value of one (1).
- 34 (B) If the product is restricted use, the state chemist shall
35 assign a point value of four (4).
- 36 (3) The following point value shall be assessed based upon the
37 following degrees of responsibility involved in the violation:
- 38 (A) If the degree of responsibility is accidental, such as an
39 equipment malfunction, the state chemist shall assign a
40 point value of two (2).
- 41 (B) If the degree of responsibility is negligence, the state
42 chemist shall assign a point value of four (4).



- 1 (C) If the degree of responsibility is knowing or intentional,
2 the state chemist shall assign a point value of ten (10).
- 3 (4) The following point value shall be assessed based upon the
4 person's previous three (3) year history of violations:
5 (A) If the person has received a warning letter, the state
6 chemist shall assign a point value of two (2).
7 (B) If the person has been convicted of a criminal penalty
8 under this chapter or has committed a violation of this
9 chapter for which the state chemist has imposed a penalty,
10 the state chemist shall assign a point value of five (5).
11 (C) If the person has had the person's license, permit,
12 certification, or registration issued under this chapter
13 suspended or revoked, the state chemist shall assign a point
14 value of seven (7).
- 15 (5) The following point value shall be assessed based on the
16 following types of violations:
17 (A) If the person's violation is the result of inaccurate
18 record keeping, the state chemist shall assign a point value
19 of one (1).
20 (B) If the person's violation is a result of:
21 (i) the lack of supervision;
22 (ii) the use of faulty equipment; or
23 (iii) the use of a pesticide that is contrary to the
24 directions printed on the label and that exposes the
25 person to the pesticide;
26 the state chemist shall assign a point value of two (2).
27 (C) If the person's violation is a result of the use of a
28 pesticide that is contrary to the directions printed on the
29 label the state chemist shall assign a point value of three
30 (3).
31 (D) If the person's violation results in direct application to
32 a nontarget site, the state chemist shall assign a point value
33 of four (4).
- 34 (6) The state chemist may reduce the point value assessed
35 under this subsection for the following:
36 (A) Full and timely cooperation by the violator with the
37 state chemist during the investigation process.
38 (B) Remedial or corrective action taken by the violator to
39 address the noncompliant situation or adverse effects
40 resulting from the violation.
- 41 (†) (f) A proceeding under IC 4-21.5-3 that involves a civil penalty
42 may be consolidated with any other proceeding commenced under



- 1 IC 4-21.5 to enforce this chapter or the rules adopted under this
 2 chapter.
- 3 ~~(e)~~ **(g)** Money collected for civil penalties imposed under section 65
 4 of this chapter shall be credited to the office of Purdue pesticide
 5 programs. The money may be used only to provide education about
 6 pesticides.
- 7 SECTION 30. [EFFECTIVE UPON PASSAGE] **(a) IC 15-16-4-69,**
 8 **as amended by this act, does not apply to the imposition of a**
 9 **penalty under IC 15-16-4 pursuant to a proceeding of the state**
 10 **chemist initiated under IC 15-16-4 before the effective date of the**
 11 **amendments to IC 15-16-4-69 made by this act.**
- 12 **(b) IC 15-16-4-69, before its amendment by this act, applies to**
 13 **the imposition of a penalty under IC 15-16-4 pursuant to a**
 14 **proceeding of the state chemist initiated under IC 15-16-4 before**
 15 **the effective date of the amendments to IC 15-16-4-69 made by this**
 16 **act.**
- 17 **(c) IC 15-16-5-66, as amended by this act, does not apply to the**
 18 **imposition of a penalty under IC 15-16-5 pursuant to a proceeding**
 19 **of the state chemist initiated under IC 15-16-5 before the effective**
 20 **date of the amendments to IC 15-16-5-66 made by this act.**
- 21 **(d) IC 15-16-5-66, before its amendment by this act, applies to**
 22 **the imposition of a penalty under IC 15-16-5 pursuant to a**
 23 **proceeding of the state chemist initiated under IC 15-16-5 before**
 24 **the effective date of the amendments to IC 15-16-5-66 made by this**
 25 **act.**
- 26 **(e) This SECTION expires July 1, 2023.**
- 27 SECTION 31. [EFFECTIVE UPON PASSAGE] **(a) As used in this**
 28 **SECTION, "policy" refers to the FY 2019 pesticide enforcement**
 29 **response policy developed by the state chemist.**
- 30 **(b) Before July 1, 2020, the state chemist shall amend the policy**
 31 **to conform to the amendments made to IC 15-16-4 and IC 15-16-5**
 32 **by this act.**
- 33 **(c) This SECTION expires July 1, 2021.**
- 34 SECTION 32. **An emergency is declared for this act.**



COMMITTEE REPORT

Madam President: The Senate Committee on Agriculture, to which was referred Senate Bill No. 438, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Replace the effective dates in SECTIONS 1 through 27 with "[EFFECTIVE UPON PASSAGE]".

Page 2, between lines 26 and 27, begin a new paragraph and insert: "SECTION 5. IC 15-16-4-28, AS ADDED BY P.L.2-2008, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 28. As used in this chapter, "person" means: ~~any:~~

- (1) **an** individual;
- (2) **a** partnership;
- (3) **an** association;
- (4) **a** fiduciary;
- (5) **a** corporation; or
- (6) **an** organized group of persons;

whether incorporated or not."

Page 2, delete lines 39 through 42.

Page 3, delete lines 1 through 7, begin a new paragraph and insert: "SECTION 7. IC 15-16-4-56, AS ADDED BY P.L.2-2008, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 56. For more than one (1) pesticide product to be considered the same pesticide product, each pesticide product must exhibit the same:

- (1) product name;
- (2) registrant name;
- (3) United States Environmental Protection Agency registration number, **and if applicable;**
- (4) labeling, **claims, and branding; and**
- (5) **ingredient statement."**

Page 4, delete lines 36 through 42.

Delete page 5.

Page 6, delete lines 1 through 32, begin a new paragraph and insert: "SECTION 10. IC 15-16-4-64, AS ADDED BY P.L.120-2008, SECTION 69, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 64. (a) The state chemist ~~shall~~ **may** require the submission of the complete formula of any pesticide product, including: ~~the:~~

- (1) **the** confidential statement of formula;

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- (2) **the analytical methods for the analysis of the pesticide formulation and the analysis of residues of the pesticide product in environmental media; and**
- (3) **the analytical standards of the pesticide product;**
- (4) **the safety data sheet;**
- (5) **the physical sample of the pesticide product; and**
- (6) **a statement of all claims to be made for the pesticide product, including a full description of the tests made and the results of the tests upon which the claims are based.**

In the case of a federally registered product, this requirement may be waived.

(b) The state chemist shall register a pesticide product if:

- (1) the state chemist determines that the composition of the pesticide product warrants the proposed claims for the pesticide product;
- (2) the pesticide product, its labeling, and other material required to be submitted comply with the requirements of section 61 of this chapter; and
- (3) the state chemist determines that the person submitting the application for registration has complied with the requirements of this chapter.

(c) The state chemist shall notify the applicant that the pesticide product, labeling, or other material required to be submitted fails to comply with the law if the state chemist determines:

- (1) that the proposed claims for the pesticide product; or
- (2) the pesticide product, its labeling, and other material required to be submitted;

does not comply with this chapter.

(d) If the state chemist notifies an applicant under subsection (c), the state chemist shall give the applicant an opportunity to make the necessary corrections. If upon receipt of notice, the applicant does not make the corrections, the state chemist may refuse to register the pesticide product.

(e) The state chemist, in accordance with the procedures specified in this section, may deny, suspend, or cancel the registration of a pesticide whenever the state chemist determines that:

- (1) the pesticide product;
- (2) the pesticide product's labeling; or
- (3) the person submitting the application for registration of the pesticide product;

does not comply with this chapter.

(f) If:



- (1) an application for registration is refused; or
- (2) the state chemist proposes to deny, suspend, or cancel a registration;

notice of the action and information concerning the person's right to obtain a review under section 64.5 of this chapter must be given to the applicant or registrant.

SECTION 11. IC 15-16-4-69, AS ADDED BY P.L.2-2008, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 69. (a) Subject to this section, if a person violates this chapter or a rule adopted under this chapter, the state chemist under IC 4-21.5-3-6 may warn, cite, or impose a civil penalty on the person or:

- (1) deny;
- (2) suspend;
- (3) revoke; or
- (4) amend;

the person's registration under this chapter.

(b) The state chemist may impose civil penalties **under this section** only in accordance with the schedule of civil penalties adopted by the board. The board shall establish a schedule of the civil penalties that may be imposed under subsection (a) by rule adopted under IC 4-22-2. The rule adopted under this subsection may not provide for a civil penalty that exceeds the following:

- (1) ~~Two Three~~ **Three** hundred ~~forty~~ **hundred** dollars (~~\$250~~) (**\$300**) for a person's first violation.
- (2) ~~Five Six~~ **Six** hundred dollars (~~\$500~~) (**\$600**) for a person's second violation.
- (3) One thousand **two hundred** dollars (~~\$1,000~~) (**\$1,200**) for a person's third violation and each subsequent violation.

~~(c) If a violation is of a continuing nature, the state chemist may impose a civil penalty for each day that the violation occurred.~~

~~(d)~~ (c) A proceeding under IC 4-21.5-3 that involves the imposition of a civil penalty may be consolidated with any other proceeding commenced under IC 4-21.5 to enforce this chapter or the rules adopted under this chapter.

~~(e)~~ (d) Money collected for civil penalties imposed under this section shall be credited to the office of Purdue pesticide programs. The money may be used only to provide education about pesticides."

Page 8, delete lines 13 through 20.

Page 8, between lines 37 and 38, begin a new paragraph and insert:
"SECTION 17. IC 15-16-5-21.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS



[EFFECTIVE UPON PASSAGE]: **Sec. 21.5. (a) As used in this chapter, "panel" refers to the civil penalty advisory panel established by section 39.5 of this chapter.**

(b) This section expires July 1, 2021."

Page 9, between lines 17 and 18, begin a new paragraph and insert:
 "SECTION 20. IC 15-16-5-39.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS
 [EFFECTIVE UPON PASSAGE]: **Sec. 39.5. (a) The civil penalty advisory panel is established.**

(b) The panel shall study and recommend a point system for use in determining the civil penalties that may be imposed for a violation of this chapter.

(c) The panel is composed of the following individuals:

- (1) The director of the department of agriculture or the director's designee.**
- (2) The state chemist or the state chemist's designee.**
- (3) The governor shall appoint the following individuals:**
 - (A) One (1) individual with knowledge of pesticides who represents the Indiana Farm Bureau, Inc.**
 - (B) One (1) individual with knowledge of pesticides who represents the Agribusiness Council of Indiana.**
 - (C) One (1) individual with knowledge of pesticides who represents the interests of corn growers.**
 - (D) One (1) individual with knowledge of pesticides who represents the interests of soybean growers.**
 - (E) One (1) individual with knowledge of pesticides who represents the interests of wine grape growers.**
 - (F) One (1) individual with knowledge of pesticides who represents the interests of the lawn care industry.**
 - (G) One (1) individual with knowledge of pesticides who represents the interests of speciality crop growers.**
- (4) Two (2) members of the senate, appointed as follows:**
 - (A) One (1) member appointed by the president pro tempore of the senate.**
 - (B) One (1) member appointed by the minority leader of the senate.**
- (5) Two (2) members of the house of representatives appointed as follows:**
 - (A) One (1) member appointed by the speaker of the house of representatives.**
 - (B) One (1) member appointed by the minority leader of the house of representatives.**



(d) The state chemist or state chemist's designee shall serve as the chairperson of the panel. The panel shall meet on the call of the chairperson.

(e) A majority of the members serving on the panel constitutes a quorum. The affirmative votes of a majority of the members serving on the panel are required for the commission to take action on any measure, including the submission of recommendations under subsection (h).

(f) The board shall provide staff support to the panel.

(g) The following individuals appointed to the panel shall serve without compensation but may receive per diem or other expenses as follows:

(1) A member of the panel who is a state employee but who is not a member of the general assembly is entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(2) A member of the panel who is a member of the general assembly is entitled to receive the same per diem, mileage, and travel allowances paid to members of the general assembly serving on interim study committees established by the legislative council. Per diem, mileage, and travel allowances shall be made from appropriations to the legislative council.

(3) A member of the panel who is not described in subdivision (1) or (2) is entitled to reimbursement for traveling and other expenses as provided in the Purdue University travel policies and procedures, established by the Purdue University department of transportation and approved by the Purdue University vice president of business services. Traveling and other expenses shall be made from amounts appropriated and available to the state chemist.

(h) Before December 1, 2020, the panel shall make recommendations to:

(1) the board; and

(2) the general assembly in an electronic format under IC 5-14-6;

concerning the study of the point system described in subsection (b).

(i) This section expires July 1, 2021."



Page 14, delete lines 34 through 42.

Delete pages 15 through 17.

Page 18, delete lines 1 through 32, begin a new paragraph and insert:

"SECTION 27. IC 15-16-5-66, AS ADDED BY P.L.2-2008, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 66. (a) The state chemist may impose civil penalties **under this section** only in accordance with the schedule of civil penalties adopted by the board.

(b) The board shall establish a schedule of civil penalties that may be imposed under section 65 of this chapter by rule adopted under IC 4-22-2. The rule adopted under this subsection may not provide for a civil penalty that exceeds the following:

(1) For a violation committed by a person who is required to be certified as a private applicator, one hundred **twenty** dollars (~~\$100~~): **(\$120)**.

(2) For a violation by a person who is not described in subdivision (1), the following:

(A) ~~Two~~ **Three** hundred ~~fifty~~ dollars (~~\$250~~) **(\$300)** for a person's first violation.

(B) ~~Five~~ **Six** hundred dollars (~~\$500~~) **(\$600)** for a person's second violation.

(C) One thousand ~~two hundred~~ dollars (~~\$1,000~~) **(\$1,200)** for a person's third violation and each subsequent violation.

~~(e) If a violation is of a continuing nature, the state chemist may impose a civil penalty for each day that the violation occurred.~~

~~(d)~~ (c) A proceeding under IC 4-21.5-3 that involves a civil penalty may be consolidated with any other proceeding commenced under IC 4-21.5 to enforce this chapter or the rules adopted under this chapter.

~~(e)~~ (d) Money collected for civil penalties imposed under section 65 of this chapter shall be credited to the office of Purdue pesticide programs. The money may be used only to provide education about pesticides."

Page 18, line 36, delete "July 1, 2020." and insert "**the effective date of the amendments to IC 15-16-4-69 made by this act.**".

Page 18, line 40, delete "July 1, 2020." and insert "**the effective date of the amendments to IC 15-16-4-69 made by this act.**".

Page 19, line 1, delete "July 1, 2020." and insert "**the effective date of the amendments to IC 15-16-5-66 made by this act.**".

Page 19, line 5, delete "July 1, 2020." and insert "**the effective date of the amendments to IC 15-16-5-66 made by this act.**".



Page 19, after line 6, begin a new paragraph and insert:

"SECTION 29. [EFFECTIVE UPON PASSAGE] **(a) As used in this SECTION, "policy" refers to the FY 2019 pesticide enforcement response policy developed by the state chemist.**

(b) Before July 1, 2020, the state chemist shall amend the policy to conform to the amendments made to IC 15-16-4 and IC 15-16-5 by this act.

(c) This SECTION expires July 1, 2021.

SECTION 30. **An emergency is declared for this act."**

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 438 as introduced.)

LEISING, Chairperson

Committee Vote: Yeas 9, Nays 0.

SENATE MOTION

Madam President: I move that Senate Bill 438 be amended to read as follows:

Page 10, between lines 15 and 16, begin a new line double block indented and insert:

"(H) One (1) individual with knowledge of pesticides who represents the interests of the pest control and extermination industry.

(I) One (1) individual with knowledge of pesticides who represents the interests of tomato growers."

(Reference is to SB 438 as printed January 28, 2020.)

LEISING

COMMITTEE REPORT

Mr. Speaker: Your Committee on Agriculture and Rural Development, to which was referred Senate Bill 438, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

ES 438—LS 7156/DI 129



Page 1, between lines 11 and 12, begin a new paragraph and insert:
 "SECTION 1. IC 15-16-4-3.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: **Sec. 3.5. As used in this chapter, "adverse effect" has the meaning set forth in IC 15-16-5-0.5.**"

Page 3, line 16, after "number," insert "**if applicable;**".

Page 3, line 16, after "and" delete "if applicable;"

Page 5, delete lines 5 through 42, begin a new paragraph and insert:
 "SECTION 11. IC 15-16-4-64, AS ADDED BY P.L.120-2008, SECTION 69, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 64. (a) The state chemist ~~shall~~ **may** require the submission of the complete formula of any pesticide product, including: ~~the:~~

- (1) **the** confidential statement of formula;
- (2) **the** analytical methods for the analysis of the pesticide formulation and the analysis of residues of the pesticide product in environmental media; ~~and~~
- (3) **the** analytical standards of the pesticide product;
- (4) **the safety data sheet;**
- (5) **the physical sample of the pesticide product; and**
- (6) **a statement of all claims to be made for the pesticide product, including a full description of the tests made and the results of the tests upon which the claims are based.**

In the case of a federally registered product, this requirement may be waived.

- (b) The state chemist shall register a pesticide product if:
- (1) the state chemist determines that the composition of the pesticide product warrants the proposed claims for the pesticide product;
 - (2) the pesticide product, its labeling, and other material required to be submitted comply with the requirements of section 61 of this chapter; and
 - (3) the state chemist determines that the person submitting the application for registration has complied with the requirements of this chapter, **including satisfying all outstanding judgments resulting from a violation of this chapter, after any action has been finalized under section 64.5 of this chapter.**

(c) The state chemist shall notify the applicant that the pesticide product, labeling, or other material required to be submitted fails to comply with the law if the state chemist determines:

- (1) that the proposed claims for the pesticide product; or
- (2) the pesticide product, its labeling, and other material required



to be submitted;
 does not comply with this chapter, **including satisfying all outstanding judgments resulting from a violation of this chapter, after any action has been finalized under section 64.5 of this chapter.**

(d) If the state chemist notifies an applicant under subsection (c), the state chemist shall give the applicant an opportunity to make the necessary corrections. If upon receipt of notice, the applicant does not make the corrections, the state chemist may refuse to register the pesticide product.

(e) The state chemist, in accordance with the procedures specified in this section, may deny, suspend, or cancel the registration of a pesticide whenever the state chemist determines that:

- (1) the pesticide product;
- (2) the pesticide product's labeling; or
- (3) the person submitting the application for registration of the pesticide product;

does not comply with this chapter, **including satisfying all outstanding judgments resulting from a violation of this chapter, after any action has been finalized under section 64.5 of this chapter.**

(f) If:

- (1) an application for registration is refused; or
- (2) the state chemist proposes to deny, suspend, or cancel a registration;

notice of the action and information concerning the person's right to obtain a review under section 64.5 of this chapter must be given to the applicant or registrant.

SECTION 12. IC 15-16-4-69, AS ADDED BY P.L.2-2008, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 69. (a) Subject to this section, if a person violates this chapter or a rule adopted under this chapter, the state chemist under IC 4-21.5-3-6 may warn, cite, or impose a civil penalty on the person or:

- (1) deny;
- (2) suspend;
- (3) revoke; or
- (4) amend;

the person's registration under this chapter.

(b) The state chemist may impose civil penalties **under this section** only in accordance with the schedule of civil penalties adopted by the board. The board shall establish a schedule of the civil penalties that



may be imposed under subsection (a) by rule adopted under IC 4-22-2. The rule adopted under this subsection may not provide for a civil penalty that exceeds the following:

- (1) ~~Two hundred fifty~~ **Five hundred** dollars (~~\$250~~) (**\$500**) for a person's first violation.
- (2) ~~Five hundred~~ **One thousand** dollars (~~\$500~~) (**\$1,000**) for a person's second violation.
- (3) ~~One~~ **Two thousand five hundred** dollars (~~\$1,000~~) (**\$2,500**) for a person's third violation and each subsequent violation.

~~(e) If a violation is of a continuing nature, the state chemist may impose a civil penalty for each day that the violation occurred.~~

~~(d)~~ (c) A proceeding under IC 4-21.5-3 that involves the imposition of a civil penalty may be consolidated with any other proceeding commenced under IC 4-21.5 to enforce this chapter or the rules adopted under this chapter.

~~(e)~~ (d) Money collected for civil penalties imposed under this section shall be credited to the office of Purdue pesticide programs. The money may be used only to provide education about pesticides."

Delete page 6.

Page 7, delete lines 1 through 6.

Page 8, between lines 11 and 12, begin a new paragraph and insert:
 "SECTION 14. IC 15-16-5-0.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: **Sec. 0.5. As used in this chapter, "adverse effect" means a pesticide exposure to a nontarget site that results in:**

- (1) **pesticide residues in excess of established food or feed tolerances established by the United States Environmental Protection Agency;**
- (2) **environmental media standards or benchmarks for pesticides established by a federal or state agency; or**
- (3) **visible, measureable, or documented:**
 - (A) **death;**
 - (B) **illness;**
 - (C) **stunting;**
 - (D) **deformation;**
 - (E) **discoloration; or**
 - (F) **other effects;**

that are detrimental to the nontarget site."

Page 8, between lines 28 and 29, begin a new paragraph and insert:
 "SECTION 16. IC 15-16-5-14.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS



[EFFECTIVE JULY 1, 2020]: **Sec. 14.7. As used in this chapter, "immediate container" has the meaning set forth in IC 15-16-4-18.**

SECTION 17. IC 15-16-5-15.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: **Sec. 15.5. As used in this chapter, "label" has the meaning set forth in IC 15-16-4-23."**

Page 9, delete lines 4 through 9.

Page 9, delete lines 32 through 42.

Delete page 10.

Page 11, delete lines 1 through 31.

Page 15, delete lines 1 through 23, begin a new paragraph and insert:

"SECTION 26. IC 15-16-5-59, AS ADDED BY P.L.120-2008, SECTION 78, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 59. (a) Commercial applicators, **private applicators**, and licensed pest inspectors shall maintain records concerning:

(1) the application of restricted use pesticides;

(2) the application of pesticides for hire;

(3) the application of pesticides on golf courses;

(4) the application of pesticides on school property;

~~(5)~~ **(5)** diagnostic inspections to determine infestations of wood destroying pests; and

~~(6)~~ **(6)** any relevant information that the state chemist determines by rule is necessary for purposes of this chapter.

~~(b) The state chemist may require certified applicators to maintain records related to applications of state restricted pesticide uses.~~

~~(c)~~ **(b)** Records required under this section must be kept for:

(1) two ~~(2)~~ years after the date of the inspection or the application of the pesticide; or

(2) the time specified by rule.

~~(d)~~ **(c)** The state chemist shall be provided access to the records by the commercial applicator or licensed pest inspector. **required to be maintained under this section."**

Page 17, delete lines 7 through 36, begin a new paragraph and insert:

"SECTION 28. IC 15-16-5-66, AS ADDED BY P.L.2-2008, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 66. (a) The state chemist may impose civil penalties only in accordance with **this chapter and** the schedule of civil penalties adopted by the board.

(b) Except for use violations subject to the criteria established



in subsection (d), the board shall establish a schedule of civil penalties that may be imposed under section 65 of this chapter by rule adopted under IC 4-22-2. The rule adopted under this subsection may not provide for a civil penalty that exceeds the following:

~~(1) For a violation committed by a person who is required to be certified as a private applicator, one hundred dollars (\$100):~~

~~(2) For a violation by a person who is not described in subdivision (1), the following:~~

~~(A) Two~~ **(1) Five** hundred ~~fifty~~ dollars ~~(\$250)~~ **(\$500)** for a person's first violation.

~~(B) Five hundred~~ **(2) One thousand** dollars ~~(\$500)~~ **(\$1,000)** for a person's second violation.

~~(C) One~~ **(3) Two** thousand dollars ~~(\$1,000)~~ **(\$2,000)** for a person's third violation and each subsequent violation.

(c) If a violation is of a continuing nature, the state chemist may impose a civil penalty for each day that the violation occurred.

(d) Subject to the criteria established in subsection (e), for a use violation of this chapter, the state chemist may impose the following penalty in accordance with this subsection:

(1) For a violation that receives not more than eight (8) points, the state chemist shall impose no civil penalty.

(2) For a violation that receives at least nine (9) points but not more than eleven (11) points, the state chemist shall impose a penalty of two hundred fifty dollars (\$250) on the person.

(3) For a violation that receives at least twelve (12) points but not more than fourteen (14) points, the state chemist shall impose a penalty of five hundred dollars (\$500) on the person.

(4) For a violation that receives at least fifteen (15) points but not more than seventeen (17) points, the state chemist shall impose a penalty of seven hundred fifty dollars (\$750) on the person.

(5) For a violation that receives at least eighteen (18) points but not more than twenty (20) points, the state chemist shall impose a penalty of one thousand dollars (\$1,000) on the person.

(6) For a violation that receives at least twenty-one (21) points but not more than twenty-three (23) points, the state chemist shall impose a penalty of two thousand five hundred dollars (\$2,500) on the person.

(7) For a violation that receives at least twenty-four (24) points but not more than twenty-six (26) points, the state chemist shall impose a penalty of not more than five thousand



dollars (\$5,000) on the person.

(8) For a violation that receives at least twenty-seven (27) points but not more than twenty-nine (29) points, the state chemist shall impose a penalty of not more than seven thousand five dollars (\$7,500) on the person.

(9) For a violation that receives thirty (30) points or more, the state chemist shall impose a penalty of ten thousand dollars (\$10,000) on the person.

(e) The state chemist shall use the following criteria to establish the point value for use in computing the total number of violation points for a penalty imposed under subsection (d):

(1) The following point value shall be assessed based on the adverse effect incurred:

(A) If the violation resulted in exposure to nontarget site or animals with no adverse effect, the state chemist shall assign a point value of one (1).

(B) If the violation resulted in exposure to humans with no adverse effect, the state chemist shall assign a point value of four (4).

(C) If the violation resulted in exposure to nontarget site with adverse effect, the state chemist shall assign a point value of two (2).

(D) If the violation resulted in exposure to animals with adverse effect, the state chemist shall assign a point value of four (4).

(E) If the violation resulted in exposure to humans with adverse effect, the state chemist shall assign a point value of six (6).

(2) The following point value shall be assessed based on the category of product used:

(A) If the product is general use, the state chemist shall assign a point value of one (1).

(B) If the product is restricted use, the state chemist shall assign a point value of four (4).

(3) The following point value shall be assessed based upon the following degrees of responsibility involved in the violation:

(A) If the degree of responsibility is accidental, such as an equipment malfunction, the state chemist shall assign a point value of two (2).

(B) If the degree of responsibility is negligence, the state chemist shall assign a point value of four (4).

(C) If the degree of responsibility is knowing or intentional,



- the state chemist shall assign a point value of ten (10).
- (4) The following point value shall be assessed based upon the person's previous three (3) year history of violations:
- (A) If the person has received a warning letter, the state chemist shall assign a point value of two (2).
 - (B) If the person has been convicted of a criminal penalty under this chapter or has committed a violation of this chapter for which the state chemist has imposed a penalty, the state chemist shall assign a point value of five (5).
 - (C) If the person has had the person's license, permit, certification, or registration issued under this chapter suspended or revoked, the state chemist shall assign a point value of seven (7).
- (5) The following point value shall be assessed based on the following types of violations:
- (A) If the person's violation is the result of inaccurate record keeping, the state chemist shall assign a point value of one (1).
 - (B) If the person's violation is a result of:
 - (i) the lack of supervision;
 - (ii) the use of faulty equipment; or
 - (iii) the use of a pesticide that is contrary to the directions printed on the label and that exposes the person to the pesticide;
 the state chemist shall assign a point value of two (2).
 - (C) If the person's violation is a result of the use of a pesticide that is contrary to the directions printed on the label the state chemist shall assign a point value of three (3).
 - (D) If the person's violation results in direct application to a nontarget site, the state chemist shall assign a point value of four (4).
- (6) The state chemist may reduce the point value assessed under this subsection for the following:
- (A) Full and timely cooperation by the violator with the state chemist during the investigation process.
 - (B) Remedial or corrective action taken by the violator to address the noncompliant situation or adverse effects resulting from the violation.
- (f) A proceeding under IC 4-21.5-3 that involves a civil penalty may be consolidated with any other proceeding commenced under IC 4-21.5 to enforce this chapter or the rules adopted under this



chapter.

(e) (g) Money collected for civil penalties imposed under section 65 of this chapter shall be credited to the office of Purdue pesticide programs. The money may be used only to provide education about pesticides."

Renumber all SECTIONS consecutively.
and when so amended that said bill do pass.

(Reference is to SB 438 as reprinted January 31, 2020.)

LEHE

Committee Vote: yeas 11, nays 0.

