

4-7-93 *Public Law Senate*
4-23-93 *Senate Do Pass Agriculture*

MAR 24 1993

HOUSE FILE 641
BY COMMITTEE ON AGRICULTURE

Place On Calendar

(SUCCESSOR TO HSB 278)

Passed House, Date ^(p. 1099) 4-7-93 Passed Senate, Date ^(p. 1449) 4/29/93
Vote: Ayes 99 Nays 0 Vote: Ayes 50 Nays 0
Approved May 12, 1993

A BILL FOR

1 An Act relating to the department of agriculture and land
2 stewardship, by providing for the assessment and collection of
3 civil penalties against commercial applicators of pesticides.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 641

1 Section 1. Section 206.19, subsection 5, Code 1993, is
2 amended to read as follows:

3 5. Establish, assess, and collect civil penalties for
4 violations by commercial applicators. In determining the
5 amount of the civil penalty, the department shall consider all
6 of the following factors:

7 a. The willfulness of the violation.

8 b. The actual or potential danger of injury to the public
9 health or safety, or damage to the environment caused by the
10 violation.

11 c. The actual or potential cost of the injury or damage
12 caused by the violation to the public health or safety, or to
13 the environment.

14 d. The actual or potential cost incurred by the department
15 in enforcing this chapter and rules adopted pursuant to this
16 chapter against the violator.

17 e. The remedial action required of the violator.

18 f. The violator's previous history of complying with
19 orders or decisions of the department.

20 The amount of the civil penalty shall not exceed five
21 hundred dollars for each offense.

22 Sec. 2. NEW SECTION. 206.23A COMMERCIAL PESTICIDE
23 APPLICATOR PEER REVIEW PANEL.

24 1. The department shall establish a commercial pesticide
25 applicator peer review panel to assist the department in
26 assessing or collecting a civil penalty pursuant to section
27 206.19. The secretary shall appoint the following members:

28 a. A person actively engaged in the business of applying
29 pesticides by use of an aircraft and who is licensed as an
30 aerial commercial applicator in this state pursuant to section
31 206.6.

32 b. A person actively engaged in the business of applying
33 pesticides in urban areas on lawns and gardens, and who is
34 licensed as a commercial applicator pursuant to section 206.6.

35 c. A person actively engaged in the business of applying

1 pesticides within structures used for residential or
2 commercial purposes, and who is licensed as a commercial
3 applicator pursuant to section 206.6.

4 d. A person actively engaged in the business of applying
5 pesticides on agricultural land used for farming and who is
6 licensed as a commercial applicator pursuant to section 206.6.

7 e. A person certified as a public applicator pursuant to
8 section 206.5.

9 2. a. The members appointed pursuant to this section
10 shall serve four-year terms beginning and ending as provided
11 in section 69.19. However, the secretary shall appoint
12 initial members to serve for less than four years to ensure
13 that members serve staggered terms. A member is eligible for
14 reappointment. A vacancy on the panel shall be filled for the
15 unexpired portion of the regular term in the same manner as
16 regular appointments are made.

17 b. The panel shall elect a chairperson who shall serve for
18 a term of one year. The panel shall meet on a regular basis
19 and at the call of the chairperson or upon the written request
20 to the chairperson of two or more members. Three voting
21 members constitute a quorum and the affirmative vote of a
22 majority of the members present is necessary for any
23 substantive action to be taken by the panel. The majority
24 shall not include any member who has a conflict of interest
25 and a statement by a member that the member has a conflict of
26 interest is conclusive for this purpose. A vacancy in the
27 membership does not impair the duties of the panel.

28 c. Notwithstanding section 7E.6, the members shall only
29 receive reimbursement for actual expenses for performance of
30 their official duties, as provided by the department.

31 d. The panel shall be staffed by the department.

32 3. The panel shall make recommendations to the department
33 regarding the establishment of civil penalties and procedures
34 to assess and collect penalties, as provided in section
35 206.19. The panel may propose a schedule of penalties for

1 minor and serious violations. The department may adopt rules
2 based on the recommendations of the panel as approved by the
3 secretary.

4 4. The panel shall review cases of persons required to be
5 licensed as commercial applicators who are subject to civil
6 penalties as provided in section 206.19 according to rules
7 adopted by the department. A review shall be performed upon
8 request by the secretary or the person subject to the civil
9 penalty. The panel may establish procedures for the review
10 and establish a system of prioritizing cases for review,
11 consistent with rules adopted by the department. The rules
12 may exclude review of minor violations. The review may also
13 include the manner of assessing and collecting the civil
14 penalty. The findings and recommendations of the panel shall
15 be included in a response delivered to the department and the
16 person subject to the penalty. The response may include a
17 recommendation that a proposed civil penalty be modified or
18 suspended, that an alternative method of collection be
19 instituted, or that conditions be placed upon the license of a
20 commercial applicator.

21 5. The department shall adopt rules establishing a period
22 for the review and response by the panel which must be
23 completed prior to a contested case hearing under chapter 17A.
24 A hearing shall not be delayed after the required period for
25 review and response, except as provided in chapter 17A.

26 6. This section does not apply to a license revocation
27 proceeding. This section does not require the department to
28 delay the prosecution of a case if immediate action is
29 necessary to reduce the risk of harm to the environment or
30 public health or safety. This section also does not require a
31 review or response if the department refers a violation of
32 this chapter for criminal prosecution, or for an action
33 involving a stop order issued pursuant to section 206.16. The
34 department shall consider any available response by the panel;
35 but is not required to change findings of an investigation, a

1 penalty sought to be assessed, or a manner of collection.
2 7. An available response by the panel may be used as
3 evidence in an administrative hearing, or a civil or criminal
4 case, except to the extent that information is considered
5 confidential pursuant to section 22.7.

6 EXPLANATION

7 This bill amends chapter 206 regulating pesticides, and
8 specifically section 206.19 which provides that the department
9 of agriculture and land stewardship shall establish civil
10 penalties for violations of the chapter by commercial
11 applicators. The bill provides that the department may assess
12 and collect the civil penalties. The bill requires the
13 department to determine the amount of the civil penalty based
14 upon a number of factors relating to the intent of the
15 violator, the extent of the violations, and the history of the
16 violator. The amount of the penalty cannot exceed \$500 for
17 each offense.

18 The bill also creates a commercial pesticide applicator
19 peer review panel composed of pesticide applicators appointed
20 by the secretary of agriculture. The bill provides the terms
21 and procedures of the panel. The panel must make
22 recommendations to the department regarding the establishment
23 of civil penalties against commercial pesticide applicators
24 which may be adopted by the department. The panel is also
25 charged to review cases of persons required to be licensed as
26 commercial applicators who are subject to civil penalties as
27 provided in the bill. The department must establish a period
28 for the review and response by the panel which must be
29 completed prior to a contested case hearing under chapter 17A.
30 The department must establish a period for review and response
31 by the panel. The review requirement does not apply to a
32 number of circumstances, including license revocation
33 proceedings, or an action involving immediate risk of harm to
34 the environment of public health. It does not require a
35 review if the department refers a violation for criminal

1 prosecution, or for an action involving a stop order issued by
2 the department. The department is not required to change the
3 findings of an investigation, a penalty sought to be assessed,
4 or a manner of collection. A response by the panel may be
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6 criminal case, except to the extent that the information is
7 considered confidential.

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**HOUSE FILE 641
FISCAL NOTE**

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A fiscal note for **House File 641** is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

House File 641 requires the Department of Agriculture and Land Stewardship (DALS) establish civil penalties for persons who violate provisions of the Code of Iowa relating to commercial application of pesticides. The maximum civil penalty is \$500.

The bill also establishes a Commercial Pesticide Applicator Peer Review Panel. The Panel would consist of 5 persons appointed by the Secretary of Agriculture, and would receive actual expenses but no per diem. The Panel would meet when necessary to assist the DALS in establishing the civil penalty rules, and to review cases of commercial applicators assessed civil penalties.

Fiscal impact:

The civil penalties are projected to total less than \$15,000 annually, and the revenue would be deposited in the General Fund. The actual expenditures of the Panel members are projected to total \$2,000 annually. The Panel will also require DALS staff time.

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(LSB 2656hv, JWR)

FILED APRIL 1, 1993

BY DENNIS PROUTY, FISCAL DIRECTOR

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LSB 2656HV 75

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Klemme, Jr
Hahn
Henderson

HSB 278
Agriculture

HOUSE FILE 641
BY (PROPOSED COMMITTEE ON
AGRICULTURE BILL BY
CHAIRPERSON EDDIE)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

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13 the environment.

14 d. The actual or potential cost incurred by the department
15 in enforcing this chapter and rules adopted pursuant to this
16 chapter against the violator.

17 e. The remedial action required of the violator.

18 f. The violator's previous history of complying with
19 orders or decisions of the department.

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29 department to determine the amount of the civil penalty based
30 upon a number of factors relating to the intent of the
31 violator, the extent of the violations, and the history of the
32 violator. The amount of the penalty cannot exceed \$500 for
33 each offense.

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HOUSE FILE 641

AN ACT

RELATING TO THE DEPARTMENT OF AGRICULTURE AND LAND STEWARD-
SHIP, BY PROVIDING FOR THE ASSESSMENT AND COLLECTION OF
CIVIL PENALTIES AGAINST COMMERCIAL APPLICATORS OF
PESTICIDES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 206.19, subsection 5, Code 1993, is amended to read as follows:

5. Establish, assess, and collect civil penalties for violations by commercial applicators. In determining the amount of the civil penalty, the department shall consider all of the following factors:

- a. The willfulness of the violation.
- b. The actual or potential danger of injury to the public health or safety, or damage to the environment caused by the violation.
- c. The actual or potential cost of the injury or damage caused by the violation to the public health or safety, or to the environment.
- d. The actual or potential cost incurred by the department in enforcing this chapter and rules adopted pursuant to this chapter against the violator.
- e. The remedial action required of the violator.
- f. The violator's previous history of complying with orders or decisions of the department.

The amount of the civil penalty shall not exceed five hundred dollars for each offense.

Sec. 2. NEW SECTION. 206.23A COMMERCIAL PESTICIDE APPLICATOR PEER REVIEW PANEL.

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b. A person actively engaged in the business of applying pesticides in urban areas on lawns and gardens, and who is licensed as a commercial applicator pursuant to section 206.6.

c. A person actively engaged in the business of applying pesticides within structures used for residential or commercial purposes, and who is licensed as a commercial applicator pursuant to section 206.6.

d. A person actively engaged in the business of applying pesticides on agricultural land used for farming and who is licensed as a commercial applicator pursuant to section 206.6.

e. A person certified as a public applicator pursuant to section 206.5.

2. a. The members appointed pursuant to this section shall serve four-year terms beginning and ending as provided in section 69.19. However, the secretary shall appoint initial members to serve for less than four years to ensure that members serve staggered terms. A member is eligible for reappointment. A vacancy on the panel shall be filled for the unexpired portion of the regular term in the same manner as regular appointments are made.

b. The panel shall elect a chairperson who shall serve for a term of one year. The panel shall meet on a regular basis and at the call of the chairperson or upon the written request to the chairperson of two or more members. Three voting members constitute a quorum and the affirmative vote of a majority of the members present is necessary for any substantive action to be taken by the panel. The majority shall not include any member who has a conflict of interest and a statement by a member that the member has a conflict of interest is conclusive for this purpose. A vacancy in the membership does not impair the duties of the panel.

c. Notwithstanding section 7E.6, the members shall only receive reimbursement for actual expenses for performance of their official duties, as provided by the department.

d. The panel shall be staffed by the department.

3. The panel shall make recommendations to the department regarding the establishment of civil penalties and procedures to assess and collect penalties, as provided in section 206.19. The panel may propose a schedule of penalties for minor and serious violations. The department may adopt rules based on the recommendations of the panel as approved by the secretary.

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5. The department shall adopt rules establishing a period for the review and response by the panel which must be completed prior to a contested case hearing under chapter 17A. A hearing shall not be delayed after the required period for review and response, except as provided in chapter 17A.

6. This section does not apply to a license revocation proceeding. This section does not require the department to delay the prosecution of a case if immediate action is necessary to reduce the risk of harm to the environment or public health or safety. This section also does not require a review or response if the department refers a violation of this chapter for criminal prosecution, or for an action

involving a stop order issued pursuant to section 206.16. The department shall consider any available response by the panel, but is not required to change findings of an investigation, a penalty sought to be assessed, or a manner of collection.

7. An available response by the panel may be used as evidence in an administrative hearing, or a civil or criminal case, except to the extent that information is considered confidential pursuant to section 22.7.

HAROLD VAN MAANEN
Speaker of the House

LEONARD L. BOSWELL
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 641, Seventy-fifth General Assembly.

ELIZABETH ISAACSON
Chief Clerk of the House

Approved May 12, 1993

TERRY E. BRANSTAD
Governor