

Senate Study Bill 1214 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
AGRICULTURE BILL BY
CHAIRPERSON ZUMBACH)

A BILL FOR

1 An Act regulating the application of pesticides, including by
2 providing for the certification of applicators, and certain
3 actions taken by the department of agriculture and land
4 stewardship against private applicators, and providing
5 penalties.

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

1 Section 1. Section 206.5, subsection 6, Code 2021, is
2 amended to read as follows:

3 6. An employee of a food processing and distribution
4 establishment is exempt from the certification requirements
5 of **this section** provided that at least one person holding
6 a supervisory position is certified and provided that the
7 employer provides a program, approved by the department, for
8 training, testing, and certification of personnel who apply, as
9 an incidental part of their duties, any pesticide on property
10 owned or rented by the employer. However, an employee exempt
11 from the certification requirements of this section shall
12 not apply restricted use pesticides. The secretary shall
13 adopt rules to administer the provisions of this ~~paragraph~~
14 subsection.

15 Sec. 2. Section 206.19, subsection 5, Code 2021, is amended
16 to read as follows:

17 5. *a.* Establish, assess, and collect civil penalties for
18 ~~violations~~ a violation of a provision in this chapter or a rule
19 adopted pursuant to this chapter by ~~a commercial applicators~~
20 applicator or private applicator. In determining the amount
21 of ~~the~~ a civil penalty to be assessed for a violation, the
22 department shall consider all of the following factors:

23 (1) The willfulness of the violation.

24 (2) The actual or potential danger of injury to the public
25 health or safety, or damage to the environment caused by the
26 violation.

27 (3) The actual or potential cost of the injury or damage
28 caused by the violation to the public health or safety, or to
29 the environment.

30 (4) The actual or potential cost incurred by the department
31 in enforcing **this chapter** and rules adopted pursuant to this
32 chapter against the violator.

33 (5) The remedial action required of the violator.

34 (6) The violator's previous history of complying with
35 orders or decisions of the department.

1 *b.* The amount of the civil penalty that may be assessed
2 for each violation committed by a commercial applicator or
3 private applicator shall not exceed five hundred dollars ~~for~~
4 ~~each offense.~~

5 Sec. 3. NEW SECTION. **206.23B Private pesticide applicator**
6 **peer review panel.**

7 1. The department shall establish a private pesticide
8 applicator peer review panel to assist the department in
9 assessing or collecting a civil penalty pursuant to section
10 206.19. The secretary shall appoint five members, including
11 three certified private applicators and two members of the
12 public who have not been licensed or certified under this
13 chapter. The appointments shall be made on a geographically
14 balanced basis.

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

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

34 *c.* Notwithstanding [section 7E.6](#), the members shall only
35 receive reimbursement for actual expenses for performance of

1 their official duties, as provided by the department.

2 *d.* The panel shall be staffed by the department.

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

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

26 5. The department shall adopt rules establishing a period
27 for the review and response by the panel which must be
28 completed prior to a contested case hearing under [chapter 17A](#).
29 A hearing shall not be delayed after the required period for
30 review and response, except as provided in [chapter 17A](#).

31 6. [This section](#) does not apply to a certification revocation
32 proceeding under [section 206.11](#). [This section](#) does not
33 require the department to delay the prosecution of a case if
34 immediate action is necessary to reduce the risk of harm to
35 the environment or public health or safety. [This section](#) also

1 does not require a review or response if the department refers
2 a violation of [this chapter](#) for criminal prosecution, or for an
3 action involving a "stop sale, use, or removal" order issued
4 pursuant to [section 206.16](#). The department shall consider any
5 available response by the panel, but is not required to change
6 findings of an investigation, a penalty sought to be assessed,
7 or a manner of collection.

8 7. An available response by the panel may be used as
9 evidence in an administrative hearing, or a civil or criminal
10 case, except to the extent that information is considered
11 confidential including as provided in [section 22.7](#).

12 EXPLANATION

13 The inclusion of this explanation does not constitute agreement with
14 the explanation's substance by the members of the general assembly.

15 GENERAL. This bill amends provisions in the "Pesticide Act
16 of Iowa" (Code chapter 206), regulating the use of pesticides
17 by certain persons referred to as applicators. A pesticide
18 includes a substance that prevents, destroys, repels, or
19 mitigates any insect, animal, nematode, fungi, weed, or virus
20 (Code section 206.2(21)). A commercial or public applicator
21 cannot apply any pesticide, and a private applicator cannot
22 apply a restricted use pesticide without being certified by the
23 department of agriculture and land stewardship (DALs) (Code
24 section 206.5(1)). A restricted use pesticide is subject to
25 more stringent regulations, and certification standards must
26 account for the application of such pesticides (Code section
27 206.7). The designation of a pesticide as belonging to the
28 class of restricted use pesticides is determined by DALs (Code
29 section 206.20) and is generally based on determinations of
30 the United States environmental protection agency (40 C.F.R.
31 §152.175). A person is required to be certified as a private
32 applicator if the person applies or supervises the application
33 of a restricted use pesticide on property owned or leased by
34 the person (Code section 206.2(6)). A commercial, private, or
35 public applicator must complete an educational program (Code

1 section 206.5). In addition, certain persons must be licensed,
2 including commercial applicators (Code section 206.6) and
3 dealers (Code section 206.8).

4 EMPLOYEE OF A FOOD PROCESSING AND DISTRIBUTION
5 ESTABLISHMENT. An employee of a food processing and
6 distribution establishment may act as an applicator without
7 being certified so long as another person holding a supervisory
8 position over the employee is certified. The bill provides
9 that the exception does not apply to an employee who applies a
10 restricted use pesticide (amended Code section 206.5(6)).

11 CIVIL PENALTIES. DALs may impose a civil penalty for a
12 violation of the Code chapter by a commercial applicator and
13 the bill provides that a private applicator is subject to
14 the same civil penalty (amended Code section 206.19(5)). An
15 assessment of the civil penalty is based upon a number of
16 factors relating to the intent of the violator, the extent
17 that the violation poses a danger to the public, the cost of
18 the injury or damage caused by the violation, remedial action
19 required of the violator, and the violator's previous history.
20 The amount of the penalty cannot exceed \$500 for each offense.
21 Generally, a person who violates a provision in Code chapter
22 206 commits a serious misdemeanor (Code section 206.22). A
23 serious misdemeanor is punishable by confinement for no more
24 than one year and a fine of at least \$430 but not more than
25 \$2,560.

26 PRIVATE PESTICIDE APPLICATOR PEER REVIEW PANEL. The
27 bill creates a private pesticide applicator peer review
28 panel composed of five persons appointed by the secretary of
29 agriculture (new Code section 206.23B). Three of the persons
30 must be certified public applicators and two of the persons
31 must be members of the public who have not been certified
32 or licensed under the Code chapter. Otherwise, the panel
33 closely resembles the existing commercial pesticide applicator
34 peer review panel (Code section 206.23A). The new panel must
35 make recommendations to DALs regarding the establishment of

1 civil penalties against private applicators. The new panel
2 must also review cases of persons required to be certified
3 as private applicators who are subject to civil penalties
4 as provided in the bill. A review requirement does not
5 apply in a number of circumstances, including certification
6 revocation proceedings or an action involving an immediate risk
7 of harm to the environment or public health. The bill does
8 not require a review if DALs refers a violation for criminal
9 prosecution, or for an action involving a stop order issued
10 by DALs. DALs is not required to change the findings of an
11 investigation, a penalty sought to be assessed, or a manner of
12 collection. A response by the panel may be used as evidence in
13 an administrative hearing, or a civil or criminal case, except
14 when the information is considered confidential.