

By the Committee on Agriculture; and Senators Hill, Alexander and Bullard

303-2334-04

1 A bill to be entitled
2 An act relating to worker safety with respect
3 to agricultural pesticides; amending ss.
4 487.011, 487.012, 487.021, 487.025, 487.031,
5 487.041, 487.0435, 487.045, 487.046, 487.047,
6 487.049, 487.051, 487.0615, 487.071, 487.081,
7 487,091, 487.101, 487.111, 487.13, 487.156,
8 487.159, 487.161, 487.163, 487.171, 487.175,
9 403.088, 482.242, 500.03, and 570.44, F.S.;
10 changing the term "chapter" to "part" to
11 conform to changes made by the act; creating
12 part II of ch. 487, F.S.; providing a short
13 title; providing for administration by the
14 Department of Agriculture and Consumer
15 Services; declaring legislative intent;
16 defining terms; requiring the department to
17 continue to operate under specified federal
18 worker protection regulations; providing for
19 application unless exempted by federal law;
20 requiring an agricultural employer to make
21 pesticide information available to an
22 agricultural worker; authorizing requests by
23 the worker, a designated representative, or
24 medical personnel treating the worker;
25 requiring the manufacturer of an agricultural
26 pesticide to prepare a material safety data
27 sheet; requiring provision of the data sheet to
28 each direct purchaser; requiring the department
29 to produce and make available a general
30 agricultural pesticide safety sheet;
31 prohibiting an agricultural employer from

1 failing to provide required pesticide
2 information or taking retaliatory action;
3 providing penalties for an agricultural
4 employer who violates part II of ch. 487, F.S.;
5 requiring a worker who seeks relief for
6 retaliatory action to file a complaint with the
7 department; requiring that the department
8 monitor complaints of retaliation and report
9 findings to the President of the Senate and the
10 Speaker of the House of Representatives;
11 requesting the Division of Statutory Revision
12 to designate parts I and II of ch. 487, F.S.;
13 providing an effective date.
14

15 Be It Enacted by the Legislature of the State of Florida:
16

17 Section 1. Section 487.011, Florida Statutes, is
18 amended to read:

19 487.011 Short title; administration.--This part
20 ~~chapter~~ may be cited as the "Florida Pesticide Law" and shall
21 be administered by the Department of Agriculture and Consumer
22 Services.

23 Section 2. Section 487.012, Florida Statutes, is
24 amended to read:

25 487.012 Declaration of purpose.--The purpose of this
26 part ~~chapter~~ is to regulate the distribution, sale, and use of
27 pesticides, except as provided in chapters 388 and 482, and to
28 protect people and the environment from the adverse effects of
29 pesticides.

30 Section 3. Subsections (31), (45), and (57) of section
31 487.021, Florida Statutes, are amended to read:

1 487.021 Definitions.--For the purpose of this chapter:

2 (31) "Highly toxic" means any highly poisonous
3 pesticide as determined by the rules promulgated pursuant to
4 this part ~~chapter~~.

5 (45) "Official sample" means any sample of a pesticide
6 taken by the department in accordance with the provisions of
7 this part ~~chapter~~ or rules adopted under this part ~~chapter~~,
8 and designated as official by the department.

9 (57) "Registrant" means the person registering any
10 pesticide pursuant to the provisions of this part ~~chapter~~.

11 Section 4. Subsection (2) of section 487.025, Florida
12 Statutes, is amended to read:

13 487.025 Misbranding.--

14 (2) A pesticide is misbranded if:

15 (a) It is an imitation of, or is offered for sale
16 under the name of, another pesticide.

17 (b) Its labeling bears any reference to registration
18 under this part ~~chapter~~.

19 (c) The labeling accompanying it does not contain
20 instructions for use which are necessary and, if complied
21 with, adequate for the protection of the public.

22 (d) The label does not contain a warning or caution
23 statement which may be necessary and, if complied with,
24 adequate to prevent injury to living humans and other
25 vertebrate animals.

26 (e) The label does not bear an ingredient statement on
27 that part of the immediate container, and on the outside
28 container or wrapper, if there is one, through which the
29 ingredient statement on the immediate container cannot be
30 clearly read, of the retail package which is presented or
31 displayed under customary conditions of purchase.

1 (f) Any word, statement, or other information required
2 by or under authority of this part ~~chapter~~ to appear on the
3 labeling is not prominently placed thereon with such
4 conspicuousness, as compared with other words, statements,
5 designs, or graphic matter in the labeling, and in such terms
6 as to render it likely to be read and understood by the
7 ordinary individual under customary conditions of purchase and
8 use.

9 (g) It is injurious to living humans or other
10 vertebrate animals or vegetation, except weeds, to which it is
11 applied, or to the person applying such pesticide as directed
12 or in accordance with commonly recognized practice.

13 (h) In the case of a plant regulator, defoliant, or
14 desiccant, when used as directed, it is injurious to living
15 humans or other vertebrate animals, or vegetation, to which it
16 is applied, or to the person applying such pesticide.
17 However, physical or physiological effects on plants or parts
18 thereof shall not be deemed to be injury when this is the
19 purpose for which the plant regulator, defoliant, or desiccant
20 was applied in accordance with the label claims and
21 recommendations.

22 (i) Any ingredient which is present in amounts which
23 are not likely to be effective when used according to
24 directions is given undue prominence or conspicuousness, as
25 compared with ingredients which are present in effective
26 amounts, in its labeling. Such ingredient shall appear only
27 in the ingredient statement.

28 (j) It is found to be ineffective when tested in the
29 laboratory.

30 (k) It is found by the department to be of short
31 measure.

1 Section 5. Subsections (2), (4), (5), and (13) of
2 section 487.031, are amended to read:

3 487.031 Prohibited acts.--It is unlawful:

4 (2) To distribute, sell, or offer for sale within this
5 state any pesticide or product which has not been registered
6 pursuant to the provisions of this part ~~chapter~~, except
7 pesticides distributed, sold, offered for sale, or used in
8 accordance with the provisions of federal or state
9 restriction, supervision, or cancellation orders or other
10 existing stock agreements.

11 (4) To detach, alter, deface, or destroy, in whole or
12 in part, any label or labeling provided for in this part
13 ~~chapter~~ or rules promulgated under this part ~~chapter~~, or to
14 add any substance to, or take any substance from, any
15 pesticide in a manner that may defeat the purpose of this part
16 ~~chapter~~.

17 (5) For any person to use for his or her own advantage
18 or to reveal any information relative to formulas of products
19 acquired by authority of this part ~~chapter~~, other than to: the
20 department, proper officials, or employees of the state; the
21 courts of this state in response to a subpoena; physicians,
22 pharmacists, and other qualified persons, in an emergency, for
23 use in the preparation of antidotes. The information relative
24 to formulas of products is confidential and exempt from the
25 provisions of s. 119.07(1).

26 (13) For any person to:

27 (a) Make a false or fraudulent claim through any
28 medium, misrepresenting the effect of materials or methods
29 used;

30 (b) Make a pesticide recommendation or application not
31 in accordance with the label, except as provided in this

1 section, or not in accordance with recommendations of the
2 United States Environmental Protection Agency or not in
3 accordance with the specifications of a special local need
4 registration;

5 (c) Operate faulty or unsafe equipment;

6 (d) Operate in a faulty, careless, or negligent
7 manner;

8 (e) Apply any pesticide directly to, or in any manner
9 cause any pesticide to drift onto, any person or area not
10 intended to receive the pesticide;

11 (f) Fail to disclose to an agricultural crop grower,
12 prior to the time pesticides are applied to a crop, full
13 information regarding the possible harmful effects to human
14 beings or animals and the earliest safe time for workers or
15 animals to reenter the treated field;

16 (g) Refuse or, after notice, neglect to comply with
17 the provisions of this part ~~chapter~~, the rules adopted under
18 this part ~~chapter~~, or any lawful order of the department;

19 (h) Refuse or neglect to keep and maintain the records
20 required by this part ~~chapter~~ or to submit reports when and as
21 required;

22 (i) Make false or fraudulent records, invoices, or
23 reports;

24 (j) Use fraud or misrepresentation in making an
25 application for a license or license renewal;

26 (k) Refuse or neglect to comply with any limitations
27 or restrictions on or in a duly issued license;

28 (l) Aid or abet a licensed or unlicensed person to
29 evade the provisions of this part ~~chapter~~, or combine or
30 conspire with a licensed or unlicensed person to evade the
31

1 provisions of this part ~~chapter~~, or allow a license to be used
2 by an unlicensed person;

3 (m) Make false or misleading statements during or
4 after an inspection concerning any infestation or infection of
5 pests found on land;

6 (n) Make false or misleading statements, or fail to
7 report, pursuant to this part ~~chapter~~, any suspected or known
8 damage to property or illness or injury to persons caused by
9 the application of pesticides;

10 (o) Impersonate any state, county, or city inspector
11 or official;

12 (p) Fail to maintain a current liability insurance
13 policy or surety bond as provided for in this part ~~chapter~~;

14 (q) Fail to adequately train, as provided for in this
15 part ~~chapter~~, unlicensed applicators or mixer-loaders applying
16 restricted-use pesticides under the direct supervision of a
17 licensed applicator; or

18 (r) Fail to provide authorized representatives of the
19 department with records required by this part ~~chapter~~ or with
20 free access for inspection and sampling of any pesticide,
21 areas treated with or impacted by these materials, and
22 equipment used in their application.

23 Section 6. Subsections (2), (3), and (8) of section
24 487.041, Florida Statutes, are amended to read:

25 487.041 Registration.--

26 (2) For the purpose of defraying expenses of the
27 department in connection with carrying out the provisions of
28 this part ~~chapter~~, each person shall pay an annual
29 registration fee of \$250 for each registered pesticide. The
30 annual registration fee for each special local need label and
31 experimental use permit shall be \$100. All registrations

1 expire on December 31 of each year. Nothing in this section
2 shall be construed as applying to distributors or retail
3 dealers selling pesticides when such pesticides are registered
4 by another person.

5 (3) The department shall adopt rules governing the
6 procedures for pesticide registration and for the review of
7 data submitted by an applicant for registration of a
8 pesticide. The department shall determine whether a pesticide
9 should be registered, registered with conditions, or tested
10 under field conditions in this state. The department shall
11 determine that all requests for pesticide registrations meet
12 the requirements of current state and federal law. The
13 department, whenever it deems it necessary in the
14 administration of this part ~~chapter~~, may require the
15 manufacturer or registrant to submit the complete formula,
16 quantities shipped into or manufactured in the state for
17 distribution and sale, evidence of the efficacy and the safety
18 of any pesticide, and other relevant data. The department may
19 review and evaluate a registered pesticide if new information
20 is made available which indicates that use of the pesticide
21 has caused an unreasonable adverse effect on public health or
22 the environment. Such review shall be conducted upon the
23 request of the secretary of the Department of Health in the
24 event of an unreasonable adverse effect on public health or
25 the secretary of the Department of Environmental Protection in
26 the event of an unreasonable adverse effect on the
27 environment. Such review may result in modifications,
28 revocation, cancellation, or suspension of a pesticide
29 registration. The department, for reasons of adulteration,
30 misbranding, or other good cause, may refuse or revoke the
31 registration of any pesticide, after notice to the applicant

1 or registrant giving the reason for the decision. The
2 applicant may then request a hearing, pursuant to chapter 120,
3 on the intention of the department to refuse or revoke
4 registration, and, upon his or her failure to do so, the
5 refusal or revocation shall become final without further
6 procedure. In no event shall registration of a pesticide be
7 construed as a defense for the commission of any offense
8 prohibited under this part ~~chapter~~.

9 (8) Nothing in this section affects the authority of
10 the department to administer the pesticide registration
11 program under this part ~~chapter~~ or the authority of the
12 Commissioner of Agriculture to approve the registration of a
13 pesticide.

14 Section 7. Section 487.0435, Florida Statutes, is
15 amended to read:

16 487.0435 License classification.--The department shall
17 issue certified applicator licenses in the following
18 classifications: certified public applicator; certified
19 private applicator; and certified commercial applicator. In
20 addition, separate classifications and subclassifications may
21 be specified by the department in rule as deemed necessary to
22 carry out the provisions of this part ~~chapter~~. Each
23 classification shall be subject to requirements or testing
24 procedures to be set forth by rule of the department and shall
25 be restricted to the activities within the scope of the
26 respective classification as established in statute or by
27 rule. In specifying classifications, the department may
28 consider, but is not limited to, the following:

29 (1) Whether the license sought is for commercial,
30 public, or private applicator status.

31

1 (2) The method of applying the restricted-use
2 pesticide.

3 (3) The specific crops upon which restricted-use
4 pesticides are applied.

5 (4) The proximity of populated areas to the land upon
6 which restricted-use pesticides are applied.

7 (5) The acreage under the control of the licensee.

8 (6) The pounds of technical restricted toxicant
9 applied per acre per year by the licensee.

10 Section 8. Section 487.045, Florida Statutes, is
11 amended to read:

12 487.045 Fees.--

13 (1) The department shall establish applicable fees by
14 rule. The fees shall not exceed \$250 for commercial
15 applicators or \$100 for private applicators and public
16 applicators, for initial licensing and for each subsequent
17 license renewal. The fees shall be determined annually and
18 shall represent department costs associated with enforcement
19 of the provisions of this part ~~chapter~~.

20 (2) Fees collected under the provisions of this part
21 ~~chapter~~ shall be deposited into the General Inspection Trust
22 Fund and shall be used to defray expenses in the
23 administration of this chapter.

24 Section 9. Subsection (2) of section 487.046, Florida
25 Statutes, is amended to read:

26 487.046 Application; licensure.--

27 (2) If the department finds the applicant qualified in
28 the classification for which the applicant has applied, and if
29 the applicant applying for a license to engage in aerial
30 application of pesticides has met all of the requirements of
31 the Federal Aviation Agency and the Department of

1 Transportation of this state to operate the equipment
2 described in the application and has shown proof of liability
3 insurance or posted a surety bond in an amount to be set forth
4 by rule of the department, the department shall issue a
5 certified applicator's license, limited to the classifications
6 for which the applicant is qualified. The license shall expire
7 as required by rules promulgated under this part ~~chapter~~,
8 unless it has been revoked or suspended by the department
9 prior to expiration, for cause as provided in this part
10 ~~chapter~~. The license or authorization card issued by the
11 department verifying licensure shall be kept on the person of
12 the licensee while performing work as a licensed applicator.

13 Section 10. Section 487.047, Florida Statutes, is
14 amended to read:

15 487.047 Nonresident license; reciprocal agreement;
16 authorized purchase.--

17 (1) The department may waive all or part of the
18 examination requirements provided for in this part ~~chapter~~ on
19 a reciprocal basis with any other state or agency, or an
20 Indian tribe, that has substantially the same or better
21 standards.

22 (2) Any nonresident applying for a license under this
23 part ~~chapter~~ to operate in the state shall file a Designation
24 of Registered Agent naming the Secretary of State as the agent
25 of the nonresident, upon whom process may be served in the
26 event of any suit against the nonresident. The designation
27 shall be prepared on a form provided by the department and
28 shall render effective the jurisdiction of the courts of this
29 state over the nonresident applicant. However, any nonresident
30 who has a duly appointed registered agent upon whom process
31 may be served as provided by law shall not be required to

1 designate the Secretary of State as registered agent. The
2 Secretary of State shall be allowed the registered-agent fees
3 as provided by law for designating registered agents. The
4 department shall be furnished with a copy of the designation
5 of the Secretary of State or of a registered agent which is
6 certified by the Secretary of State. The Secretary of State
7 shall notify the department of any service of process it
8 receives as registered agent for persons licensed under this
9 part chapter.

10 (3) Restricted-use pesticides may be purchased by any
11 person who holds a valid applicator's license or who holds a
12 valid purchase authorization card issued by the department or
13 by a licensee under chapter 482 or chapter 388. A nonlicensed
14 person may apply restricted-use pesticides under the direct
15 supervision of a licensed applicator. An applicator's license
16 shall be issued by the department on a form supplied by it in
17 accordance with the requirements of this part chapter.

18 Section 11. Subsection (1) of section 487.049, Florida
19 Statutes, is amended to read:

20 487.049 Renewal; late fee; recertification.--

21 (1) The department shall require renewal of a
22 certified applicator's license at 4-year intervals from the
23 date of issuance. If the application for renewal of any
24 license provided for in this part chapter is not filed on
25 time, a late fee shall be assessed not to exceed \$50. However,
26 the penalty shall not apply if the renewal application is
27 filed within 60 days after the renewal date, provided the
28 applicant furnishes an affidavit certifying that he or she has
29 not engaged in business subsequent to the expiration of the
30 license for a period not exceeding 60 days. A license may be
31 renewed without taking another examination unless the

1 department determines that new knowledge related to the
2 classification for which the applicant has applied makes a new
3 examination necessary; however, the department may require the
4 applicant to provide evidence of continued competency, as
5 determined by rule. If the license is not renewed within 60
6 days of the expiration date, then the licensee may again be
7 required to take another examination, unless there is some
8 unavoidable circumstance which results in the delay of the
9 renewal of any license issued under this part ~~chapter~~ which
10 was not under the applicant's control.

11 Section 12. Section 487.051, Florida Statutes, is
12 amended to read:

13 487.051 Administration; rules; procedure.--

14 (1) The department may by rule:

15 (a) Declare as a pest any form of plant or animal life
16 or virus which is injurious to plants, humans, domestic
17 animals, articles, or substances.

18 (b) Establish procedures for the taking and handling
19 of samples and establish tolerances and deficiencies where not
20 specifically provided for in this part ~~chapter~~; assess
21 penalties; and prohibit the sale or use of pesticides or
22 devices shown to be detrimental to human beings, the
23 environment, or agriculture or to be otherwise of questionable
24 value.

25 (c) Determine whether pesticides, and quantities of
26 substances contained in pesticides, are injurious to the
27 environment. The department shall be guided by the United
28 States Environmental Protection Agency regulations in this
29 determination.

30 (d) Establish requirements governing aircraft used for
31 the aerial application of pesticides, including requirements

1 for recordkeeping, annual aircraft registration, secure
2 storage when not in use, area-of-application information, and
3 reporting any sale, lease, purchase, rental, or transfer of
4 such aircraft to another person.

5 (e) Establish requirements governing the secure
6 storage of pesticides used by aerial pesticide applicators.

7 (2) The department is authorized to adopt by rule the
8 primary standards established by the United States
9 Environmental Protection Agency with respect to pesticides. If
10 the provisions of this part ~~chapter~~ are preempted in part by
11 federal law, those provisions not preempted shall apply. This
12 chapter is intended as comprehensive and exclusive regulation
13 of pesticides in this state. Except as provided in chapters
14 373, 376, 388, 403, and 482, or as otherwise provided by law,
15 no agency, commission, department, county, municipality, or
16 other political subdivision of the state may adopt laws,
17 regulations, rules, or policies pertaining to pesticides,
18 including their registration, packaging, labeling,
19 distribution, sale, or use, except that local jurisdictions
20 may adopt or enforce an ordinance pertaining to pesticides if
21 that ordinance is in the area of occupational license taxes,
22 building and zoning regulations, disposal or spillage of
23 pesticides within a water well zone, or pesticide safety
24 regulations relating to containment at the storage site.

25 Section 13. Subsection (4) of section 487.0615,
26 Florida Statutes, is amended to read:

27 487.0615 Pesticide Review Council.--

28 (4) The council is defined as a "substantially
29 interested person" and has standing under chapter 120 in any
30 proceeding conducted by the department relating to the
31 registration of a pesticide under this part ~~chapter~~. The

1 standing of the council shall in no way prevent individual
2 members of the council from exercising standing in these
3 matters.

4 Section 14. Subsections (1), (2), (3), (4), (6), and
5 (7) of section 487.071, Florida Statutes, are amended to read:

6 487.071 Enforcement, inspection, sampling, and
7 analysis.--

8 (1) The department is authorized to enter upon any
9 public or private premises or carrier where pesticides are
10 known or thought to be distributed, sold, offered for sale,
11 held, stored, or applied, during regular business hours in the
12 performance of its duties relating to pesticides and records
13 pertaining to pesticides. No person shall deny or refuse
14 access to the department when it seeks to enter upon any
15 public or private premises or carrier during business hours in
16 performance of its duties under this part ~~chapter~~.

17 (2) The department is authorized and directed to
18 sample, test, inspect, and make analyses of pesticides sold,
19 offered for sale, distributed, or used within this state, at a
20 time and place and to such an extent as it may deem necessary,
21 to determine whether the pesticides or persons exercising
22 control over the pesticides are in compliance with the
23 provisions of this part ~~chapter~~, the rules adopted under this
24 part ~~chapter~~, and the provisions of the pesticide label or
25 labeling.

26 (3) The official analysis shall be made from the
27 official sample. A sealed and identified sample, herein called
28 "official check sample" shall be kept until the analysis on
29 the official sample is completed. However, the registrant may
30 obtain upon request a portion of the official sample. Upon
31 completion of the analysis of the official sample, a true copy

1 of the certificate of analysis shall be mailed to the
2 registrant of the pesticide from whom the official sample was
3 taken and also to the dealer or agent, if any, and consumer,
4 if known. If the official analysis conforms with the
5 provisions of this part ~~chapter~~, the official check sample may
6 be destroyed. If the official analysis does not conform with
7 the provisions of this part ~~chapter~~, the rules adopted under
8 this part ~~chapter~~, and the provisions of the pesticide label
9 or labeling, the official check sample shall be retained for a
10 period of 90 days from the date of the certificate of analysis
11 of the official sample. If within that time the registrant of
12 the pesticide from whom the official sample was taken makes
13 demand for analysis by a referee chemist, a portion of the
14 official check sample sufficient for analysis shall be sent to
15 a referee chemist who is mutually acceptable to the department
16 and the registrant for analysis at the expense of the
17 registrant. Upon completion of the analysis, the referee
18 chemist shall forward to the department and to the registrant
19 a certificate of analysis bearing a proper identification mark
20 or number; and such certificate of analysis shall be verified
21 by an affidavit of the person or laboratory making the
22 analysis. If the certificate of analysis checks within 3
23 percent of the department's analysis on each active ingredient
24 for which analysis was made, the mean average of the two
25 analyses shall be accepted as final and binding on all
26 concerned. However, if the referee's certificate of analysis
27 shows a variation of greater than 3 percent from the
28 department's analysis in any one or more of the active
29 ingredients for which an analysis was made, upon demand of
30 either the department or the registrant from whom the official
31 sample was taken, a portion of the official check sample

1 sufficient for analysis shall be submitted to a second referee
2 chemist who is mutually acceptable to the department and the
3 registrant, at the expense of the party or parties requesting
4 the referee analysis. Upon completion of the analysis, the
5 second referee chemist shall make a certificate and report as
6 provided in this subsection for the first referee chemist. The
7 mean average of the two analyses nearest in conformity shall
8 be accepted as final and binding on all concerned. If no
9 demand is made for an analysis by a second referee chemist,
10 the department's certificate of analysis shall be accepted as
11 final and binding on all concerned.

12 (4) If a pesticide or device fails to comply with the
13 provisions of this part ~~chapter~~ with reference to the
14 ingredient statement reflecting the composition of the
15 product, as required on the registration and labeling, and the
16 department contemplates possible criminal proceedings against
17 the person responsible because of this violation, the
18 department shall, after due notice, accord the person an
19 informal hearing or an opportunity to present evidence and
20 opinions, either orally or in writing, with regard to such
21 contemplated proceedings. If in the opinion of the department
22 the facts warrant, the department may refer the facts to the
23 state attorney for the county in which the violation occurred,
24 with a copy of the results of the analysis or the examination
25 of such article; provided that nothing in this part ~~chapter~~
26 shall be construed as requiring the department to report for
27 prosecution minor violations whenever it believes that the
28 public interest will be subserved by a suitable notice of
29 warning in writing.

30 (6) The department shall, by publication in such
31 manner as it may prescribe, give notice of all judgments

1 entered in actions instituted under the authority of this part
2 ~~chapter~~.

3 (7)(a) The department may analyze pesticide samples
4 upon request in a manner consistent with this part ~~chapter~~.

5 (b) The department shall establish by rule a fee
6 schedule for pesticide samples analyzed upon request. The
7 fees shall be sufficient to cover the costs to the department
8 for taking the samples and performing the analysis. However,
9 no fee shall exceed \$400 per test.

10 (c) The department shall keep separate records with
11 respect to requested pesticide analyses, including the
12 pesticide analyzed, tests performed, fees collected, the name
13 and address of the person who requested the analysis, and the
14 name and address of the registrant.

15 (d) All fees collected pursuant to this subsection
16 shall be deposited into the General Inspection Trust Fund and
17 shall be used by the department to implement this subsection.

18 (e) In addition to any other penalty provided by this
19 part ~~chapter~~, the registrant of any pesticide found to be
20 adulterated, misbranded, or otherwise deficient shall
21 reimburse the person requesting the pesticide analysis under
22 this subsection for all fees assessed by and paid to the
23 department.

24 Section 15. Subsections (2), (3), and (4) of section
25 487.081, Florida Statutes, are amended to read:

26 487.081 Exemptions.--

27 (2) No article shall be deemed in violation of this
28 part ~~chapter~~ when intended solely for export to a foreign
29 country and when prepared or packed according to the
30 specifications or directions of the purchaser.

31

1 (3) Notwithstanding any other provision of this part
2 ~~chapter~~, registration required under this part ~~chapter~~ is not
3 required in the case of a pesticide stored or shipped from one
4 manufacturing plant within this state to another manufacturing
5 plant within this state operated by the same person.

6 (4) Nothing in this part ~~chapter~~ shall be construed to
7 apply to persons duly licensed or certified under chapter 388
8 or chapter 482 performing any pest control or other operation
9 for which they are licensed or certified under those chapters.

10 Section 16. Subsection (2) of section 487.091, Florida
11 Statutes, is amended to read:

12 487.091 Tolerances, deficiencies, and penalties.--

13 (2) If a pesticide is found by analysis to be
14 deficient in an active ingredient beyond the tolerance as
15 provided in this part ~~chapter~~, the registrant is subject to a
16 penalty for the deficiency, not to exceed \$10,000 per
17 violation. However, no penalty shall be assessed when the
18 official sample was taken from a pesticide that was in the
19 possession of a consumer for more than 45 days from the date
20 of purchase by that consumer, or when the product label
21 specifies that the product should be used by an expiration
22 date that has passed. Procedures for assessing penalties shall
23 be established by rule, based on the degree of the deficiency.
24 Penalties assessed shall be paid to the consumer or, in the
25 absence of a known consumer, the department. If the penalty is
26 not paid within the prescribed period of time as established
27 by rule, the department may deny, suspend, or revoke the
28 registration of any pesticide.

29 Section 17. Section 487.101, Florida Statutes, is
30 amended to read:

31

1 487.101 Stop-sale, stop-use, removal, or hold
2 orders.--

3 (1) When a pesticide or device is being offered or
4 exposed for sale, used, or held in violation of any of the
5 provisions of this part ~~chapter~~, the department may issue and
6 enforce a stop-sale, stop-use, removal, or hold order, in
7 writing, to the owner or custodian of the pesticide or device,
8 ordering that the pesticide or device be held at a designated
9 place until the part ~~chapter~~ has been complied with and the
10 pesticide or device is released, in writing, by the department
11 or the violation has been disposed of by court order.

12 (2) The written notice is warning to all persons,
13 including, but not limited to, the owner or custodian of the
14 pesticide or the owner's or custodian's agents or employees,
15 to scrupulously refrain from moving, bothering, altering, or
16 interfering with the pesticide or device or from altering,
17 defacing, or in any way interfering with the written notice or
18 permitting the same to be done. The willful violation of these
19 provisions is a misdemeanor, subjecting the violator to the
20 penalty provisions of this part ~~chapter~~.

21 (3) The department shall release the pesticide or
22 device under a stop-sale, stop-use, removal, or hold order
23 when the owner or custodian complies with the provisions of
24 this part ~~chapter~~.

25 (4) The owner or custodian, with authorization and
26 supervision of the department, may relabel the pesticide or
27 device so that the label will conform to the product, or
28 transfer and return the product to the manufacturer or
29 supplier for the purpose of bringing the product in compliance
30 with the provisions of this part ~~chapter~~.

31

1 Section 18. Subsection (1) of section 487.111, Florida
2 Statutes, is amended to read:

3 487.111 Seizure, condemnation, and sale.--

4 (1) Any lot of pesticide or device not in compliance
5 with the provisions of this part ~~chapter~~ is subject to seizure
6 on complaint of the department to the circuit court in the
7 county in which the pesticide or device is located. In the
8 event the court finds the pesticide or device in violation of
9 this part ~~chapter~~ and orders it condemned, it shall be
10 disposed of as the court may direct; provided that in no
11 instance shall the disposition of the pesticide or device be
12 ordered by the court without first giving the owner or
13 custodian an opportunity to apply to the court for release of
14 the pesticide or device or for permission to process or
15 relabel it to bring it into compliance with this part ~~chapter~~.

16 Section 19. Section 487.13, Florida Statutes, is
17 amended to read:

18 487.13 Cooperation.--The department is authorized and
19 empowered to cooperate with and enter into agreements with any
20 other agency of this state, the United States Department of
21 Agriculture, the United States Environmental Protection
22 Agency, and any other state or federal agency for the purpose
23 of carrying out the provisions of this part ~~chapter~~ and
24 securing uniformity of regulations.

25 Section 20. Section 487.156, Florida Statutes, is
26 amended to read:

27 487.156 Governmental agencies.--All governmental
28 agencies shall be subject to the provisions of this part
29 ~~chapter~~ and rules adopted under this part ~~chapter~~. Public
30 applicators using or supervising the use of restricted-use
31

1 pesticides shall be subject to examination as provided in s.
2 487.044.

3 Section 21. Subsection (1) of section 487.159, Florida
4 Statutes, is amended to read:

5 487.159 Damage or injury to property, animal, or
6 person; mandatory report of damage or injury; time for filing;
7 failure to file.--

8 (1) The person claiming damage or injury to property,
9 animal, or human beings from application of a pesticide shall
10 file with the department a written statement claiming damages,
11 on a form prescribed by the department, within 48 hours after
12 the damage or injury becomes apparent. The statement shall
13 contain, but shall not be limited to, the name of the person
14 responsible for the application of the pesticide, the name of
15 the owner or lessee of the land on which the crop is grown and
16 for which the damages are claimed, and the date on which it is
17 alleged that the damages occurred. The department shall
18 investigate the alleged damages and notify all concerned
19 parties of its findings. If the findings reveal a violation of
20 the provisions of this part ~~chapter~~, the department shall
21 determine an appropriate penalty, as provided in this part
22 ~~chapter~~. The filing of a statement or the failure to file such
23 a statement need not be alleged in any complaint which might
24 be filed in a court of law, and the failure to file the
25 statement shall not be considered any bar to the maintenance
26 of any criminal or civil action.

27 Section 22. Section 487.161, Florida Statutes, is
28 amended to read:

29 487.161 Exemptions, nonagricultural pest control and
30 research.--

31

1 (1) Any person duly licensed or certified under
2 chapter 482, or under the supervision of chapter 388, is
3 exempted from the licensing provisions of this part ~~chapter~~.

4 (2) The use of the antibiotic oxytetracycline
5 hydrochloride for the purpose of controlling lethal yellowing
6 is exempted from the licensing provisions of this part
7 ~~chapter~~.

8 (3) The personnel of governmental, university, or
9 industrial research agencies are exempted from the provisions
10 of this part ~~chapter~~ when doing applied research within a
11 laboratory, but shall comply with all the provisions of this
12 part ~~chapter~~ when applying restricted-use pesticides to
13 experimental or demonstration plots.

14 Section 23. Section 487.163, Florida Statutes, is
15 amended to read:

16 487.163 Information; interagency cooperation.--

17 (1) The department may, in cooperation with the
18 University of Florida or other agencies of government, publish
19 information and conduct short courses of instruction in the
20 safe use and application of pesticides for the purpose of
21 carrying out the provisions of this part ~~chapter~~.

22 (2) The department may cooperate or enter into formal
23 agreements with any other agency or educational institution of
24 this state or its subdivisions or with any agency of any other
25 state or of the Federal Government for the purpose of carrying
26 out the provisions of this part ~~chapter~~ and of securing
27 uniformity of regulations.

28 Section 24. Subsections (1), (2), and (3) of section
29 487.171, Florida Statutes, are amended to read:

30
31

1 487.171 Classification of antifouling paint containing
2 organotin compounds as restricted-use pesticides; prohibition
3 of distribution and sale.--

4 (1) The department shall classify antifouling paints
5 containing organotin compounds having an acceptable release
6 rate as restricted-use pesticides subject to the requirements
7 of this part ~~chapter~~. Antifouling paints containing organotin
8 having acceptable release rates and sold in spray cans of 16
9 ounces avoirdupois weight or less for outboard motor or lower
10 unit use are exempt from the restricted-use pesticide
11 classification requirement.

12 (2) The department shall initiate action under chapter
13 120, to deny or cancel the registration of antifouling paints
14 containing organotin compounds which do not have an acceptable
15 release rate or do not meet other criteria established by the
16 department in accordance with this part ~~chapter~~.

17 (3) Distribution, sale, and use of antifouling paints
18 containing organotin compounds with acceptable release rates
19 shall be limited to dealers and applicators licensed by the
20 department in accordance with this part ~~chapter~~, to
21 distribute, sell, or use restricted-use pesticides. Such paint
22 may be applied only by licensed applicators and may be applied
23 only to vessels which exceed 25 meters in length or which have
24 aluminum hulls.

25 Section 25. Section 487.175, Florida Statutes, is
26 amended to read:

27 487.175 Penalties; administrative fine; injunction.--

28 (1) In addition to any other penalty provided in this
29 part ~~chapter~~, when the department finds any person, applicant,
30 or licensee has violated any provision of this part ~~chapter~~ or
31

1 rule adopted under this part ~~chapter~~, it may enter an order
2 imposing any one or more of the following penalties:
3 (a) Denial of an application for licensure.
4 (b) Revocation or suspension of a license.
5 (c) Issuance of a warning letter.
6 (d) Placement of the licensee on probation for a
7 specified period of time and subject to conditions the
8 department may specify by rule, including requiring the
9 licensee to attend continuing education courses, to
10 demonstrate competency through a written or practical
11 examination, or to work under the direct supervision of
12 another licensee.
13 (e) Imposition of an administrative fine not to exceed
14 \$10,000 for each violation. When imposing any fine under this
15 paragraph, the department shall consider the degree and extent
16 of harm caused by the violation, the cost of rectifying the
17 damage, the amount of money the violator benefited from by
18 noncompliance, whether the violation was committed willfully,
19 and the compliance record of the violator.
20 (2) Any person who violates any provision of this part
21 ~~chapter~~ or rules adopted pursuant thereto commits a
22 misdemeanor of the second degree and upon conviction is
23 punishable as provided in ss. 775.082 and 775.083. For a
24 subsequent violation, such person commits a misdemeanor of the
25 first degree and upon conviction is punishable as provided in
26 ss. 775.082 and 775.083.
27 (3) In addition to the remedies provided in this part
28 ~~chapter~~ and notwithstanding the existence of any adequate
29 remedy at law, the department may bring an action to enjoin
30 the violation or threatened violation of any provision of this
31 part ~~chapter~~, or rule adopted under this part ~~chapter~~, in the

1 circuit court of the county in which the violation occurred or
2 is about to occur. Upon the department's presentation of
3 competent and substantial evidence to the court of the
4 violation or threatened violation, the court shall immediately
5 issue the temporary or permanent injunction sought by the
6 department. The injunction shall be issued without bond. A
7 single act in violation of any provision of this part ~~chapter~~
8 shall be sufficient to authorize the issuance of an
9 injunction.

10 Section 26. Subsection (1) of section 403.088, Florida
11 Statutes, is amended to read:

12 403.088 Water pollution operation permits;
13 conditions.--

14 (1) No person, without written authorization of the
15 department, shall discharge into waters within the state any
16 waste which, by itself or in combination with the wastes of
17 other sources, reduces the quality of the receiving waters
18 below the classification established for them. However, this
19 section shall not be deemed to prohibit the application of
20 pesticides to waters in the state for the control of insects,
21 aquatic weeds, or algae, provided the application is performed
22 pursuant to a program approved by the Department of Health, in
23 the case of insect control, or the department, in the case of
24 aquatic weed or algae control. The department is directed to
25 enter into interagency agreements to establish the procedures
26 for program approval. Such agreements shall provide for public
27 health, welfare, and safety, as well as environmental factors.
28 Approved programs must provide that only chemicals approved
29 for the particular use by the United States Environmental
30 Protection Agency or by the Department of Agriculture and
31 Consumer Services may be employed and that they be applied in

1 accordance with registered label instructions, state standards
2 for such application, and the provisions of the Florida
3 Pesticide Law, part I of chapter 487.

4 Section 27. Subsection (1) of section 482.242, Florida
5 Statutes, is amended to read:

6 482.242 Preemption.--

7 (1) This chapter is intended as comprehensive and
8 exclusive regulation of pest control in this state. The
9 provisions of this chapter preempt to the state all regulation
10 of the activities and operations of pest control services,
11 including the pesticides used pursuant to labeling and
12 registration approved under part I of chapter 487. No local
13 government or political subdivision of the state may enact or
14 enforce an ordinance that regulates pest control, except that
15 the preemption in this section does not prohibit a local
16 government or political subdivision from enacting an ordinance
17 regarding any of the following:

18 (a) Local occupational licenses adopted pursuant to
19 chapter 205.

20 (b) Land development regulations adopted pursuant to
21 chapter 163 which include regulation of any aspect of
22 development, including a subdivision, building construction,
23 sign regulation or any other regulation concerning the
24 development of land, or landscaping or tree protection
25 ordinances which do not include pesticide application
26 restrictions.

27 (c) Regulations that:

28 1. Require, for multicomplex dwellings in excess of 10
29 units, annual termite inspections for termite activity or
30 damage, including Formosan termites, which must be performed
31 by a person licensed under this chapter.

1 2. Require pest control treatments of structures that
2 have termite activity or damage which must be performed by a
3 person licensed under this chapter.

4 3. Require property owners or other persons to obtain
5 inspections or pest control treatments performed by a person
6 licensed under this chapter.

7
8 An ordinance by a local government or political subdivision
9 which requires an annual inspection or pest control treatment
10 must conform to current law.

11 (d) Protection of wellhead protection areas and high
12 recharge areas.

13 (e) Hazardous materials reporting as set forth in part
14 II of chapter 252, storage, and containment including as
15 relating to stormwater management.

16 (f) Hazardous material unlawful discharge and
17 disposal.

18 (g) Hazardous materials remediation.

19 Section 28. Paragraph (x) of subsection (1) of section
20 500.03, Florida Statutes, is amended to read:

21 500.03 Definitions; construction; applicability.--

22 (1) For the purpose of this chapter, the term:

23 (x) "Pesticide chemical" means any substance which,
24 alone, in chemical combination, or in formulation with one or
25 more other substances is a "pesticide" within the meaning of
26 the Florida Pesticide Law, part I of chapter 487, and which is
27 used in the production, storage, or transportation of raw
28 agricultural commodities.

29 Section 29. Subsections (1) and (6) of section 570.44,
30 Florida Statutes, are amended to read:

31

1 570.44 Division of Agricultural Environmental
2 Services; powers and duties.--The duties of the Division of
3 Agricultural Environmental Services include, but are not
4 limited to:

5 (1) Inspecting and drawing samples of: commercial
6 feeds offered for sale in this state and enforcing those
7 provisions of chapter 580 authorized by the department; seeds
8 offered for sale in this state and enforcing those provisions
9 of chapter 578 authorized by the department; certified seed
10 grown in this state; fertilizers offered for sale in this
11 state and enforcing those provisions of chapter 576 authorized
12 by the department; and pesticides offered for sale in this
13 state, and soil and water in this state for the presence of
14 pesticides, and enforcing those provisions of part I of
15 chapter 487 authorized by the department.

16 (6) Analyzing samples of pesticide formulations
17 offered for sale in this state and tank mix, soil, water, and
18 other environmental samples related to pesticide use
19 investigations, as required under part I of chapter 487.

20 Section 30. Part II of chapter 487, Florida Statutes,
21 consisting of sections 487.2011, 487.2021, 487.2031, 487.2041,
22 487.2051, 487.2061, and 487.2071, is created to read:

23 487.2011 Part title; administration.--This part may be
24 cited as the "Florida Agricultural Worker Safety Act" and
25 shall be administered by the Department of Agriculture and
26 Consumer Services.

27 487.2021 Legislative intent.--It is the intent of the
28 Legislature to ensure that agricultural workers employed in
29 the state receive protection from agricultural pesticides. The
30 Legislature intends to ensure that agricultural workers be
31 given information concerning agricultural pesticides.

1 487.2031 Definitions.--As used in this part, the term:

2 (1) "Agricultural employer" means any person who hires
3 or contracts for the services of workers to perform activities
4 related to the production of agricultural plants, or any
5 person who is an owner of, or is responsible for, the
6 management or condition of an agricultural establishment that
7 uses such workers.

8 (2) "Agricultural establishment" means any farm,
9 forest, nursery, or greenhouse.

10 (3) "Agricultural plant" means any plant grown or
11 maintained for commercial or research purposes and includes,
12 but is not limited to, food, feed, fiber plants, trees,
13 turfgrass, flowers, shrubs, ornamentals, and seedlings.

14 (4) "Department" means the Department of Agriculture
15 and Consumer Services.

16 (5) "Designated representative" means any organization
17 or person to whom a worker gives written authorization to
18 exercise the right to request agricultural pesticide
19 information pursuant to this part.

20 (6) "Fact sheet" means an agricultural pesticide fact
21 sheet approved by the state or federal government which
22 provides information about the impacts of the use of an
23 agricultural pesticide.

24 (7) "Material safety data sheet" means written or
25 printed material concerning an agricultural pesticide which
26 states:

27 (a) The chemical name and the common name of the
28 agricultural pesticide.

29 (b) The hazards or other risks in the use of the
30 agricultural pesticide, including:

31

1 1. The potential for fire, explosion, corrosivity, or
2 reactivity.

3 2. The known acute health effects and chronic health
4 effects, of exposure to the agricultural pesticide, including
5 those medical conditions which are generally recognized as
6 being aggravated by exposure to the agricultural pesticide.

7 3. The primary routes of entry and the symptoms of
8 overexposure.

9 (c) The proper handling practices, necessary personal
10 protective equipment, and other proper or necessary safety
11 precautions in circumstances that involve the use of or
12 exposure to the agricultural pesticide, including appropriate
13 emergency treatment in case of overexposure.

14 (d) The emergency procedures for spills, fire,
15 disposal, and first aid.

16 (e) A description of the known specific potential
17 health risks posed by the agricultural pesticide, which is
18 written in lay terms and intended to alert any person who
19 reads the information.

20 (f) The year and month, if available, that the
21 information was compiled and the name, address, and emergency
22 telephone number of any manufacturer responsible for preparing
23 the sheet.

24 (8) "Retaliatory action" means an action, such as
25 dismissal, demotion, harassment, blacklisting with other
26 employers, reducing pay or work hours, or taking away company
27 housing, which is taken by an agricultural employer against a
28 worker who exercises any right under the provisions of the
29 United States Environmental Protection Agency Worker
30 Protection Standard, 40 C.F.R. s. 1707(b), or this part.

31

1 (9) "Trainer" means any person who qualifies to train
2 workers under the pesticide safety training requirements of
3 the United States Environmental Protection Agency Worker
4 Protection Standard, 40 C.F.R. s. 170.130.

5 (10) "Worker" means any person, including a farmworker
6 or a self-employed person, who receives any type of
7 compensation for employment that involves tasks relating to
8 the production of agricultural plants on an agricultural
9 establishment. The term does not include any person employed
10 by a commercial pesticide handling establishment to perform
11 tasks as a crop advisor.

12 487.2041 Enforcement of federal worker protection
13 regulations.--The department shall, to the extent that
14 resources are available, continue to operate under the United
15 States Environmental Protection Agency regulations regarding
16 the Labeling Requirement for Pesticides and Devices, 40 C.F.R.
17 part 156, and the Worker Protection Standard, 40 C.F.R. part
18 170, which the department adopted by rule during the 1995-1996
19 fiscal year and published in the Florida Administrative Code.
20 Any provision of this part not preempted by federal law shall
21 continue to apply.

22 487.2051 Availability of agricultural pesticide
23 information to workers and medical personnel.--

24 (1) An agricultural employer shall make available
25 agricultural pesticide information concerning any agricultural
26 pesticide to any worker:

27 (a) Who enters an agricultural-pesticide-treated area
28 on an agricultural establishment where:

29 1. An agricultural pesticide has been applied within
30 30 days of that entry; or

31 2. A restricted-entry interval has been in effect; or

1 (b) Who may be exposed to the agricultural pesticide
2 during normal conditions of use or in a foreseeable emergency.

3 (2) The agricultural pesticide information provided
4 pursuant to subsection (1) must be in the form of a fact sheet
5 or a material safety data sheet. The agricultural employer
6 shall provide a written copy of the information provided
7 pursuant to subsection (1) within 2 working days after a
8 request for the information by a worker or a designated
9 representative. In the case of a pesticide-related medical
10 emergency, the agricultural employer shall provide a written
11 copy of the information promptly on the request of the worker,
12 the designated representative, or medical personnel treating
13 the worker.

14 (3) Upon the initial purchase of a product and with
15 the first purchase after the material safety data sheet is
16 updated, the distributor, manufacturer, or importer of any
17 agricultural pesticide shall obtain or develop and provide
18 each direct purchaser of an agricultural pesticide with a
19 material safety data sheet. If the material safety data sheet
20 or fact sheet for the agricultural pesticide is not available
21 when the agricultural pesticide is purchased, the agricultural
22 employer shall take appropriate and timely steps to obtain the
23 material safety data sheet or fact sheet from the distributor,
24 the manufacturer, the department, a federal agency, or another
25 distribution source.

26 (4) The department shall produce and make available to
27 a trainer a one-page general agricultural pesticide safety
28 sheet. The safety sheet must be in a language understandable
29 to the worker and must include, but need not be limited to,
30 illustrated instructions on preventing agricultural pesticide
31 exposure and toll-free telephone numbers to the Florida Poison

1 Control Centers. The trainer shall provide the safety sheet
2 to the worker pursuant to the United States Environmental
3 Protection Agency Worker Protection Standard, 40 C.F.R. s.
4 170.130.

5 487.2061 Prohibited acts.--Any person covered by this
6 part may not:

7 (1) Fail to provide agricultural pesticide information
8 as required in this part; or

9 (2) Take retaliatory action.

10 487.2071 Penalties against violators; worker relief;
11 monitoring complaints of retaliation.--

12 (1) Penalties set forth in this part shall be applied
13 to any person who violates this part. A person who violates
14 this part is subject to federal penalties as provided in the
15 United States Environmental Protection Agency Worker
16 Protection Standard, 40 C.F.R. s. 170.9(b).

17 (2) A worker who has been subject to retaliatory
18 action and seeks relief under this section may file a
19 complaint with the department.

20 (3) In any action brought under this section which
21 involves retaliatory action, if retaliatory action is
22 predicated on the disclosure by a worker of an illegal action,
23 policy, or practice of any person covered by this part to an
24 appropriate governmental agency, the worker may not be
25 required to show that the disclosure was under oath or in
26 writing or that the worker notified the employer in writing of
27 the illegal action, policy, or practice.

28 (4) The department shall monitor all complaints of
29 retaliation which it receives and report its findings to the
30 President of the Senate and the Speaker of the House of
31 Representatives on or before October 1, 2008. The report

1 shall include the number of complaints received, the
2 circumstances surrounding the complaints, and the action taken
3 concerning the complaints.

4 Section 31. The Division of Statutory Revision is
5 requested to designate sections 487.011-487.175, Florida
6 Statutes, as part I of chapter 487, entitled the "Florida
7 Pesticide Law," and sections 487.2011-487.2071, Florida
8 Statutes, as created by this act, as part II of that chapter,
9 entitled the "Florida Agricultural Worker Safety Act."

10 Section 32. This act shall take effect July 1, 2004.

11
12 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
13 COMMITTEE SUBSTITUTE FOR
14 Senate Bill 1664

15 Committee Substitute for Senate Bill 1664 is different from
16 Senate Bill 1664 in that it:

- 17 1. Strikes everything after the enacting clause and inserts
18 sections 20-51 of Senate Bill 2954.
- 19 2. Requires that an agricultural pesticide fact sheet or
20 material safety data sheet be provided to a workers
21 within two working days rather than within two weeks
22 after a request by a worker, a designated representative
23 of the worker, or medical personnel treating the worker.
- 24 3. Provides that upon the initial purchase of a product and
25 with the first purchase after the material safety data
26 sheet is updated, the distributor, manufacturer, or
27 importer of any agricultural pesticide shall obtain or
28 develop and provide each direct purchaser of an
29 agricultural pesticide with a material safety data sheet.
- 30 4. Provides that a worker who has been subject to
31 retaliatory action and seeks relief may, rather than
shall, file a complaint with the Department of
Agriculture and Consumer Services.
5. Changes the definition of designated representative to
mean any "organization or person" to whom a worker gives
written authorization to exercise the right to request
agricultural pesticide information, rather than an
"immediate family member, health service provider,
coworker, or language interpreter."