

CS FOR HOUSE BILL NO. 66(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 4/26/02

Referred: Resources, Finance

Sponsor(s): REPRESENTATIVE CISSNA

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to pesticide use; relating to program receipts collected by the
2 Department of Environmental Conservation for registrations and licenses relating to
3 pesticides; and providing for an effective date."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** AS 37.05.146(b)(4) is amended by adding a new subparagraph to read:

6 (AAA) receipts of the Department of Environmental
7 Conservation under AS 44.46.025(e) and AS 46.03.320(b);

8 * **Sec. 2.** AS 40.25.120(a) is amended to read:

9 (a) Every person has a right to inspect a public record in the state, including
10 public records in recorders' offices, except

11 (1) records of vital statistics and adoption proceedings, which shall be
12 treated in the manner required by AS 18.50;

13 (2) records pertaining to juveniles unless disclosure is authorized by
14 law;

- 1 (3) medical and related public health records;
- 2 (4) records required to be kept confidential by a federal law or
3 regulation or by state law;
- 4 (5) to the extent the records are required to be kept confidential under
5 20 U.S.C. 1232g and the regulations adopted under 20 U.S.C. 1232g in order to secure
6 or retain federal assistance;
- 7 (6) records or information compiled for law enforcement purposes, but
8 only to the extent that the production of the law enforcement records or information
- 9 (A) could reasonably be expected to interfere with enforcement
10 proceedings;
- 11 (B) would deprive a person of a right to a fair trial or an
12 impartial adjudication;
- 13 (C) could reasonably be expected to constitute an unwarranted
14 invasion of the personal privacy of a suspect, defendant, victim, or witness;
- 15 (D) could reasonably be expected to disclose the identity of a
16 confidential source;
- 17 (E) would disclose confidential techniques and procedures for
18 law enforcement investigations or prosecutions;
- 19 (F) would disclose guidelines for law enforcement
20 investigations or prosecutions if the disclosure could reasonably be expected to
21 risk circumvention of the law; or
- 22 (G) could reasonably be expected to endanger the life or
23 physical safety of an individual;
- 24 (7) names, addresses, and other information identifying a person as a
25 participant in the Alaska Higher Education Savings Trust under AS 14.40.802 or the
26 advance college tuition savings program under AS 14.40.803 - 14.40.817;
- 27 (8) public records containing information that would disclose or might
28 lead to the disclosure of a component in the process used to execute or adopt an
29 electronic signature if the disclosure would or might cause the electronic signature to
30 cease being under the sole control of the person using it;
- 31 (9) reports submitted under AS 05.25.030 concerning certain

1 collisions, accidents, or other casualties involving boats;

2 **(10) the information required to be submitted under**
 3 **AS 46.03.335(c)(6).**

4 * **Sec. 3.** AS 44.46.025 is amended by adding a new subsection to read:

5 (e) The department may charge a registration fee of \$150 for a pesticide label
 6 for a pesticide product registered for use in the state.

7 * **Sec. 4.** AS 46.03.320(b) is amended to read:

8 (b) The department may provide by regulation for the licensing of private
 9 applicators of restricted-use pesticides and for persons engaged in the custom,
 10 commercial, or contract spraying or application of pesticides and broadcast chemicals.

11 **The license must specify each category of use that is authorized for the person**
 12 **holding the license.** A person engaged in the custom, commercial, or contract
 13 spraying or application of pesticides and broadcast chemicals may, by regulation, be
 14 required to secure a surety bond or liability insurance. **The department shall**
 15 **establish and collect a fee for a license issued under this subsection. The fee shall**
 16 **be \$25 times the number of years for which the license is valid when issued,**
 17 **regardless of how many categories of use are authorized under the license. The**
 18 **department shall review the licensing fee every two years and recommend**
 19 **changes in the fee to the legislature when considered appropriate.**

20 * **Sec. 5.** AS 46.03 is amended by adding a new section to read:

21 **Sec. 46.03.325. Notice of commercial pesticide spraying.** (a) Except as
 22 provided in (e) of this section, a person who engages in the business of applying
 23 pesticides shall give written notice as provided in this section every time that the
 24 person is going to spray a pesticide out of doors unless the spraying is covered by the
 25 notice provisions of AS 46.03.330.

26 (b) The notice required under this section shall be posted

27 (1) on the property to be sprayed and on each residence and each
 28 commercial building with a different owner or manager within one-quarter mile of the
 29 site where the spraying will occur if the residence or commercial building is located
 30 on property that is contiguous to the property to be sprayed;

31 (2) at least 48 hours before the spraying and not more than 72 hours

1 before the spraying; and

2 (3) in a manner that is reasonably calculated to provide actual notice to
3 the persons living or doing business on property contiguous to the property to be
4 sprayed.

5 (c) The notice required under this section must include

6 (1) the trade name of each pesticide;

7 (2) the chemical name, to the extent available, of the principal active
8 ingredients in each pesticide;

9 (3) the exact date and approximate time that the pesticide will be
10 sprayed;

11 (4) the name, address, and telephone number of the person doing the
12 spraying;

13 (5) a warning that the pesticide is or may be harmful; and

14 (6) a statement of recommended precautions.

15 (d) The department shall provide samples of the notice required under this
16 section. Substantial compliance with the sample notices constitutes compliance with
17 this section.

18 (e) Notwithstanding other provisions of this section, notice is not required
19 under this section if the pesticide will be applied only to the exterior surface of a
20 building and if the pesticide will not be applied to plants or animals.

21 * **Sec. 6.** AS 46.03 is amended by adding new sections to article 5 to read:

22 **Sec. 46.03.335. Pesticide tracking system.** (a) The department shall
23 establish and implement a pesticide use tracking system. In developing the system,
24 the department shall ensure that, to the extent practicable, the data submission process
25 uses existing record-keeping requirements, automates the reporting system, and
26 encourages electronic submission of data. The department shall strive for a system
27 that is efficient and cost-effective and that reveals the location and extent of pesticide
28 use to the extent practicable.

29 (b) The department may establish regulations for the submission and
30 dissemination of accurate data for the tracking system, including regulations

31 (1) for data submission timing, which may differ for different

1 categories of pesticide applicators;

2 (2) regarding which pesticides are subject to the reporting
3 requirements of this section, based in part on the frequency of pesticide application; in
4 adopting regulations under this paragraph, the department shall seek and consider
5 advice from the Pesticide Advisory Board; the department may not include sanitizers
6 or disinfectants within the reporting requirements of this section; and

7 (3) regarding how location information is to be submitted and reported,
8 which may differ for different categories of pesticide applicators; the department shall
9 require enough specificity about the location of pesticide applications so that
10 aggregation of the data into hydrological units, as defined by the United States
11 Geological Survey, is enabled without permitting identification of specific pesticide
12 applicators in the aggregated data.

13 (c) The system established under this section must require all licensed custom,
14 commercial, or contract pesticide applicators in the state to report to the department
15 the following information pertaining to the professional use of the pesticides that the
16 department has determined are subject to the reporting requirements of this section:

17 (1) pesticide product name and United States Environmental Protection
18 Agency registration number;

19 (2) total amount of product applied;

20 (3) identification number assigned to the reporting entity by the
21 department;

22 (4) size in acres or square feet of the area treated;

23 (5) application rate in volume or weight of product for each area
24 treated;

25 (6) location of application;

26 (7) date of application;

27 (8) application method, including equipment, device, or apparatus
28 used; and

29 (9) target organism.

30 (d) The department may conduct a statistically valid household pesticide use
31 survey to acquire data that would complement information received under (c) of this

1 section.

2 (e) A licensed custom, commercial, or contract pesticide applicator shall retain
3 the records upon which the information submitted under (c) of this section is based for
4 three years after submitting the report to the department.

5 (f) In addition to other civil or criminal penalties that may be applicable, the
6 department may impose a civil penalty on a licensed custom, commercial, or contract
7 pesticide applicator who fails to comply with a reporting requirement established
8 under this section. The penalty may be up to \$1,000 for the first failure to comply and
9 up to \$2,000 for a second or subsequent failure to comply.

10 **Sec. 46.03.340. Availability of information to the public.** (a) Except as
11 provided in (c) of this section, the data in the tracking system developed under
12 AS 46.03.335 shall be made accessible by the department to the general public
13 through the Internet and shall be available from the department on disk and in printed
14 format upon request. The department shall aggregate the data released under this
15 section so that the anonymity of specific pesticide applicators and their clients is
16 protected. The database shall be made accessible in a way that reasonably provides
17 the public with understandable and useful information about the use of pesticides at
18 local, regional, and state levels. The department shall ensure that pesticide use
19 information in the database is accessible to researchers, pesticide users, workers,
20 government agencies, and the public in a timely and user-friendly manner.

21 (b) On or before June 30 of each year, the department shall publish an annual
22 report, available to the public, that includes

23 (1) a detailed summary of the information reported to the department
24 under AS 46.03.335, subject to the limitation in (c) of this section;

25 (2) an analysis of the data, including known reasons for any increases
26 or decreases in pesticide use over time and within categories such as pesticide type,
27 applicator type, and hydrological unit; and

28 (3) a description of the improvements made in the database or data
29 collection process during the fiscal year that have made the information in the
30 database more accessible to the public or have integrated the database with other
31 information or data bases maintained by the department.

1 (c) The information reported to the department under AS 46.03.335(c)(6)
 2 concerning the location of the application of a pesticide is confidential and may not be
 3 disclosed by the department under this section and is not subject to inspection or
 4 copying under AS 40.25.110 - 40.25.125.

5 **Sec. 46.03.345. Pesticide Advisory Board.** (a) There is established a
 6 Pesticide Advisory Board consisting of seven members appointed by the governor to
 7 staggered three-year terms as follows:

8 (1) one member who is a pesticide applicator or pesticide dealer who is
 9 required to be licensed by the department;

10 (2) one member who is not employed by or the agent of a licensed
 11 pesticide applicator or pesticide dealer and who has demonstrable expertise in fisheries
 12 biology or fish toxicology;

13 (3) one member who is not employed by or the agent of a licensed
 14 pesticide applicator or pesticide dealer and who has demonstrable expertise in wildlife
 15 biology or wildlife toxicology;

16 (4) one member who is employed by or is an agent of a public water
 17 supplier;

18 (5) one member who is an agent or specialist with the cooperative
 19 extension service, University of Alaska;

20 (6) one member who is not employed by or the agent of a licensed
 21 pesticide applicator or pesticide dealer and who has some expertise in public health
 22 issues, particularly children's health issues; and

23 (7) one public member.

24 (b) The Pesticide Advisory Board shall

25 (1) advise the department on the development and implementation of
 26 the pesticide use tracking system required under AS 46.03.335, including advice on
 27 ways to make it as easy as practicable for persons to comply with the reporting
 28 requirements of AS 46.03.335;

29 (2) advise the department on the development and implementation of
 30 research and information-gathering mechanisms related to household use of pesticides,
 31 especially the location of intended use, purpose, and amounts;

1 (3) recommend to the department methods for increasing public
2 awareness of less toxic alternatives to pesticides;

3 (4) solicit public input on, and recommend to the department, ways to
4 improve the reporting and enforcement process and on ways to improve the
5 accessibility and utility of the data generated by the tracking system;

6 (5) recommend to the department ways to address the problem of
7 persistent organic pollutants in the state; and

8 (6) recommend to all state agencies and the University of Alaska ways
9 in which they could modify their practices with regard to pest control so that
10 prevention of pest populations is emphasized through structural and procedural
11 modifications that reduce the potential habitat of pests, pesticides will be used as a last
12 resort, the least hazardous pesticide will be used when pesticide use is needed, and
13 pesticide use will be targeted to areas that are not accessible to people, especially
14 children.

15 (c) A member appointed under this section is eligible for reappointment, but a
16 member may not serve for more than two consecutive terms. If there is a vacancy, the
17 governor shall make an appointment to become immediately effective for the
18 unexpired term. A member serves at the pleasure of the governor.

19 (d) The Pesticide Advisory Board shall select one of its members as chair and
20 another as vice-chair for the terms and with the duties and powers considered
21 necessary by the board for the performance of the functions of the Pesticide Advisory
22 Board.

23 (e) A majority of the members of the Pesticide Advisory Board constitutes a
24 quorum for the transaction of business. The Pesticide Advisory Board shall meet at a
25 place and time determined by the board. The board may also meet at other times and
26 places specified by the call of the chair or of a majority of the members of the board.

27 (f) Notwithstanding AS 39.20.180, a member of the Pesticide Advisory Board
28 is not entitled to reimbursement of transportation expenses and payment of per diem
29 allowances.

30 **Sec. 46.03.350. Technical assistance.** (a) In order to develop and implement
31 the pesticide use tracking system required under AS 46.03.335, the department and the

1 Pesticide Advisory Board may request technical assistance from any public or private
2 agency with expertise in the subject matter.

3 (b) The department may develop a program to provide technical assistance to
4 pesticide applicators who are required to report under AS 46.03.335. The department
5 may develop and provide computer software to licensed pesticide applicators to
6 facilitate reporting for the tracking system.

7 **Sec. 46.03.355. Department's use of the tracking system.** The department
8 shall use the pesticide use database developed under AS 46.03.335 in carrying out the
9 department's responsibilities for the protection of water quality, other environmental
10 protection, worker health and safety programs, public health protection programs,
11 pesticide-related illness surveillance programs, risk assessments, and pest management
12 research and control programs. The department shall cooperate with and advise other
13 state agencies concerning their programs that may be affected by the use of pesticides.

14 * **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to
15 read:

16 REGULATIONS. The Department of Environmental Conservation may proceed to
17 develop and adopt regulations to implement this Act. The regulations take effect under
18 AS 44.62 (Administrative Procedure Act), but not before January 1, 2003.

19 * **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to
20 read:

21 REPORT. The Pesticide Advisory Board shall submit a report to the governor by
22 January 1, 2005, concerning the board's recommendations for action related to its areas of
23 jurisdiction under AS 46.03.345(b). The board shall notify the legislature that the report is
24 available.

25 * **Sec. 9.** Except as provided in sec. 10 of this Act, this Act takes effect January 1, 2003.

26 * **Sec. 10.** Section 7 of this Act takes effect immediately under AS 01.10.070(c).