

**HOUSE BILL NO. 314**

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-THIRD LEGISLATURE - FIRST SESSION

**BY REPRESENTATIVE CISSNA**

**Introduced: 5/9/03**

**Referred: Labor and Commerce, Resources**

**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(c) is amended by adding a new paragraph to read:

6 (77) receipts of the Department of Environmental Conservation under  
7 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) records or information pertaining to a plan, program, or  
3 procedures for establishing, maintaining, or restoring security in the state, or to a  
4 detailed description or evaluation of systems, facilities, or infrastructure in the state,  
5 but only to the extent that the production of the records or information

6 (A) could reasonably be expected to interfere with the  
7 implementation or enforcement of the security plan, program, or procedures;

8 (B) would disclose confidential guidelines for investigations or  
9 enforcement and the disclosure could reasonably be expected to risk  
10 circumvention of the law; or

11 (C) could reasonably be expected to endanger the life or  
12 physical safety of an individual or to present a real and substantial risk to the  
13 public health and welfare;

14 **(11) the information required to be submitted under**  
15 **AS 46.03.335(c)(6).**

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

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

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

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

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

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

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

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

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

12 (2) at least 48 hours before the spraying and not more than 72 hours  
13 before the spraying; and

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

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

18 (1) the trade name of each pesticide;

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

21 (3) the exact date and approximate time that the pesticide will be  
22 sprayed;

23 (4) the name, address, and telephone number of the person doing the  
24 spraying;

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

26 (6) a statement of recommended precautions.

27 (d) The department shall provide samples of the notice required under this  
28 section. Substantial compliance with the sample notices constitutes compliance with  
29 this section.

30 (e) Notwithstanding other provisions of this section, notice is not required  
31 under this section if the pesticide will be applied only to the exterior surface of a

1 building and if the pesticide will not be applied to plants or animals.

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

3 **Sec. 46.03.335. Pesticide tracking system.** (a) The department shall  
4 establish and implement a pesticide use tracking system. In developing the system,  
5 the department shall ensure that, to the extent practicable, the data submission process  
6 uses existing record-keeping requirements, automates the reporting system, and  
7 encourages electronic submission of data. The department shall strive for a system  
8 that is efficient and cost-effective and that reveals the location and extent of pesticide  
9 use to the extent practicable.

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

12 (1) for data submission timing, which may differ for different  
13 categories of pesticide applicators;

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

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

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

29 (1) pesticide product name and United States Environmental Protection  
30 Agency registration number;

31 (2) total amount of product applied;

- 1                   (3) identification number assigned to the reporting entity by the  
2 department;
- 3                   (4) size in acres or square feet of the area treated;
- 4                   (5) application rate in volume or weight of product for each area  
5 treated;
- 6                   (6) location of application;
- 7                   (7) date of application;
- 8                   (8) application method, including equipment, device, or apparatus  
9 used; and
- 10                  (9) target organism.

11                  (d) The department may conduct a statistically valid household pesticide use  
12 survey to acquire data that would complement information received under (c) of this  
13 section.

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

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

22                  **Sec. 46.03.340. Availability of information to the public.** (a) Except as  
23 provided in (c) of this section, the data in the tracking system developed under  
24 AS 46.03.335 shall be made accessible by the department to the general public  
25 through the Internet and shall be available from the department on disk and in printed  
26 format upon request. The department shall aggregate the data released under this  
27 section so that the anonymity of specific pesticide applicators and their clients is  
28 protected. The database shall be made accessible in a way that reasonably provides  
29 the public with understandable and useful information about the use of pesticides at  
30 local, regional, and state levels. The department shall ensure that pesticide use  
31 information in the database is accessible to researchers, pesticide users, workers,

1 government agencies, and the public in a timely and user-friendly manner.

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

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

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

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

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

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

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

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

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

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

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

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

4 (7) one public member.

5 (b) The Pesticide Advisory Board shall

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

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

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

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

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

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

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

31 (d) The Pesticide Advisory Board shall select one of its members as chair and

1 another as vice-chair for the terms and with the duties and powers considered  
 2 necessary by the board for the performance of the functions of the Pesticide Advisory  
 3 Board.

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

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

11 **Sec. 46.03.350. Technical assistance.** (a) In order to develop and implement  
 12 the pesticide use tracking system required under AS 46.03.335, the department and the  
 13 Pesticide Advisory Board may request technical assistance from any public or private  
 14 agency with expertise in the subject matter.

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

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

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

28 REGULATIONS. The Department of Environmental Conservation may proceed to  
 29 develop and adopt regulations to implement this Act. The regulations take effect under  
 30 AS 44.62 (Administrative Procedure Act), but not before January 1, 2004.

31 \* **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 REPORT. The Pesticide Advisory Board shall submit a report to the governor by  
3 January 1, 2006, concerning the board's recommendations for action related to its areas of  
4 jurisdiction under AS 46.03.345(b). The board shall notify the legislature that the report is  
5 available.

6 \* **Sec. 9.** Except as provided in sec. 10 of this Act, this Act takes effect January 1, 2004.

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