

BILL ANALYSIS

Senate Research Center

H.B. 1144
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Natural Resources
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Engrossed

DIGEST

The Texas Department of Agriculture (TDA) has the primary responsibility in Texas for the registration and regulation of pesticides. TDA registers all pesticides used in Texas, regulates the agricultural application of pesticides, and enforces worker protection laws. In addition, TDA is responsible for implementing federal worker protection standards which have been adopted by the United States Environmental Protection Agency. This bill sets forth provisions regarding the consolidation of herbicide and pesticide laws under the jurisdiction of the Department of Agriculture.

PURPOSE

As proposed, H.B. 1144 sets forth provisions regarding the consolidation of herbicide and pesticide laws under the jurisdiction of the Department of Agriculture.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas Department of Agriculture in SECTION 1 (Sections 76.072, 76.075(b), 76.104(a), 76.115(c), 76.131(a), 76.141(a), and 76.144(c), Agriculture Code) of this code.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 76, Agriculture Code, as follows:

CHAPTER 76. PESTICIDE AND HERBICIDE REGULATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 76.001. DEFINITIONS. Defines "application of a herbicide," "department," "FIFRA," "registrant," and "worker protection standard." Makes a conforming change.

Sec. 76.002. PESTS. Requires the Department of Agriculture (TDA) to determine what organisms constitute pests for purposes of this chapter and may include in the list any virus, bacteria, or other microorganism, other than a virus, bacteria, or other microorganism on or in living man or other living animals.

Sec. 76.003. STATE-LIMITED-USE PESTICIDES. Requires TDA to consider any formal request to add any pesticide to the state-limited-use list under Subsection (b).

Sec. 76.004. DEPARTMENT RULES. Provides that any rule adopted by TDA for the purposes of protection or enhancement of water quality shall not be inconsistent with nor less stringent than rules adopted for the protection or enhancement of water quality by the Texas Natural Resource Conservation Commission pursuant to certain recommendations.

Sec. 76.005. NOTICE OF HEARING. Makes no change.

Sec. 76.006. PESTICIDE EXAMINATION AND TESTING. Authorizes, rather than requires, TDA to make or provide for sample tests of a pesticide on request.

Sec. 76.007. INTERAGENCY COOPERATION. Requires TDA to cooperate with the Texas Groundwater Protection Committee in the committee's development and implementation of federally mandated state management plans for pesticides in groundwater in accordance with Section 26.407, Water Code, under certain conditions.

Sec. 76.008. EXEMPTION. Makes no change.

Sec. 76.009. AGRICULTURE RESOURCES PROTECTION AUTHORITY. Requires the Agricultural Resources Protection Authority (authority) to meet annually, rather than quarterly, and at the call of the presiding officer or a majority of the members. Makes conforming and nonsubstantive changes.

SUBCHAPTER B. LABELING

Sec. 76.021. LABELING INFORMATION. Requires each pesticide distributed in this state to bear a label containing information required by the Federal Insecticide, Fungicide, and Rodenticide Act 7 U.S.C. Section 136 et seq.) (FIFRA) and certain other information. Deletes a provision regarding the labeling of each pesticide distributed in this state with the use classification for which the product is registered. Makes a conforming change.

Sec. 76.022. CONSPICUOUS LETTERING. Requires a device registered by TDA to be prominently and conspicuously placed for certain purposes.

Sec. 76.023. MISBRANDED PESTICIDE OR DEVICE. Provides that a pesticide or device is misbranded under certain conditions concerning the FIFRA registration. Makes conforming changes.

SUBCHAPTER C. REGISTRATION

Sec. 76.041. REGISTRATION REQUIRED. Provides that registration is not required for a pesticide that is not for use in this state and is being manufactured, transported, or distributed for use only outside of this state. Sets forth provisions regarding registration of pesticides that are not used in this state but are manufactured, transported, or distributed for use outside this state.

Sec. 76.042. CONTENT OF REGISTRATION APPLICATION. Requires the application for registration of a pesticide to include a copy of the Environmental Protection Agency (EPA) stamped accepted labeling and any applicable comment pages under certain conditions.

Sec. 76.043. EXPIRATION AND RENEWAL. Makes no change.

Sec. 76.044. FEES. Makes no change.

Sec. 76.045. REGISTRATION FOR SPECIAL LOCAL NEED. Deletes existing Section 76.045 regarding department approval. Authorizes TDA to register a pesticide for additional uses and methods of application not covered by federal registration, rather than regulation, but not inconsistent with federal law, for certain purposes.

Sec. 76.046. DENIAL OR CANCELLATION OF REGISTRATION. Redesignates from Section 76.046.

Sec. 76.047. EXPERIMENTAL USE PERMIT. Redesignates for existing Section 76.048. Authorizes TDA to change a fee for issuing a permit under this section in a certain amount.

SUBCHAPTER D. LICENSING OF DEALERS

Sec. 76.071. LICENSE REQUIRED. Prohibits a person from distributing in this state a regulated herbicide without a valid current pesticide dealer license issued by TDA. Prohibits

a pesticide dealer from distributing a restricted-use or state-limited-use pesticide (pesticide) or a regulated herbicide (herbicide) except in certain circumstances.

Sec. 76.072. EXPIRATION. Provides that a pesticide dealer license expires on the second anniversary of the date of its granting or renewal under certain conditions.

Sec. 76.073. FEES. Deletes a provision regarding an additional fee for certain persons.

Sec. 76.074. DISPLAY OF DEALER LICENSE. Makes no change.

Sec. 76.075. RECORDS. Sets forth provisions regarding the recording of the distribution of a pesticide or herbicide. Deletes the provisions of existing Section 76.075.

Sec. 76.076. DENIAL, REVOCATION, MODIFICATION, OR SUSPENSION OF LICENSE. Sets forth provisions regarding the denial, revocation, modification, or suspension of a license by TDA.

Sec. 76.077. EXCEPTIONS. Makes a conforming change.

SUBCHAPTER E. USE AND APPLICATION

Sec. 76.101. COORDINATION. Requires TDA to use the Texas Agricultural Experiment Station at its discretion. Deletes a provision prohibiting the contents of the subsection from being construed to affect Chapter 75.

Sec. 76.102. AGENCIES RESPONSIBLE FOR LICENSING PESTICIDE APPLICATORS. Requires TDA to license pesticide applicators involved in other license use categories as necessary to comply with federal requirements. Prohibits TDA from adopting license use categories that are designated by statute for regulation by another agency.

Sec. 76.103. PROGRAM CONTINGENT ON FEDERAL FUNDS. Makes no change.

Sec. 76.104. AGENCY RULES FOR APPLICATION OF A PESTICIDE. Requires TDA to adopt worker protection standards for pesticides in certain circumstances. Authorizes TDA to adopt other rules for the protection of the health, safety, and welfare of farm workers and pesticide handlers.

Sec. 76.105. LICENSE REQUIRED. Prohibits a person from purchasing or using certain pesticides or regulated herbicides unless the person is an individual acting under the direct supervision of a licensed applicator, except as provided by certain sections, rather than a licensed noncommercial or a licensed private applicator. Prohibits a licensed applicator from supervising an applicator whose license or certificate is under suspension or revocation. Provides that a licensed applicator satisfies the requirements of this subsection if the person working the licensee's direct supervision has been trained as a handler under the federal worker protection standard, rather than attends a certain program. Prohibits a person from purchasing a restricted-use or state-limited-use pesticide or regulated herbicide under certain conditions. Makes conforming and nonsubstantive changes.

Sec. 76.106. CLASSIFICATION OF LICENSES. Makes no change.

Sec. 76.107. LICENSING BY MORE THAN ONE AGENCY. Makes no change.

Sec. 76.108. COMMERCIAL APPLICATOR LICENSE. Deletes provisions regarding the issuance of a commercial applicator license. Makes conforming and nonsubstantive changes.

Sec. 76.109. NONCOMMERCIAL APPLICATOR LICENSE. Prohibits a regulatory agency from charging a certain fee under this section. Makes conforming and nonsubstantive changes.

Sec. 76.110. COMMERCIAL AND NONCOMMERCIAL APPLICATOR EXAMINATION; RECIPROCAL AGREEMENTS. Makes a conforming change.

Sec. 76.111. New heading; APPLICATOR BUSINESSES; PROOF OF FINANCIAL RESPONSIBILITY. Defines "applicator business." Requires each applicator business, rather than applicant for a commercial applicator license, to file with the regulatory agency issuing the license, a liability insurance policy, certification of policy, or other proof of financial responsibility acceptable by TDA protecting certain persons. Deletes provisions regarding insurance coverage. Prohibits the amount of the proof of financial responsibility from being less than \$100,000 for each occurrence for property damage. Requires an applicator business to cease certain operations during a certain period. Deletes provisions regarding exemption from the financial responsibility requirements, a surety furnished under this section, and a regulatory agency. Makes conforming and nonsubstantive changes.

Sec. 76.112. PRIVATE APPLICATOR. Provides that a person is a private applicator if the person uses or supervises the use of certain pesticides or herbicides for the purpose of producing an agricultural commodity or services related to agricultural production including the use of equipment. Requires TDA to approve certain appropriate training courses. Prohibits a certified private applicator from supervising the use of pesticides or herbicides. Makes conforming and nonsubstantive changes.

Sec. 76.113. EXPIRATION AND RENEWAL OF LICENSES. Makes no change.

Sec. 76.114. RECORDS. Authorizes TDA to require each commercial or noncommercial applicator licensee to maintain records of all pesticide applications. Sets forth provisions regarding these records. Authorizes TDA to require all persons who apply a regulated herbicide to submit periodically to TDA a copy of the records required by this section. Makes conforming and nonsubstantive changes.

Sec. 76.115. New heading: INSPECTIONS OF EQUIPMENT. Authorizes each regulatory agency to inspect equipment used in the application of pesticides. Authorizes TDA, by rule, to provide certain requirements under this section.

Sec. 76.116. SUSPENSION, MODIFICATION, OR REVOCATION OF LICENSE. Authorizes the head of a regulatory agency that licensed or certified an applicator take certain actions against a person if the the licensee or certificate holder has failed to maintain financial responsibility, rather than a bond or policy of insurance, as required by this chapter. Sets forth provisions for a regulatory agency proposing not to renew a person's license or certificate for certain reasons. Makes conforming and nonsubstantive changes.

Sec. 76.117. PROPERTY OWNER USE. Makes a nonsubstantive change.

Sec. 76.118. EXEMPTION FOR LICENSED VETERINARIANS. Sets forth provisions regarding an exemption for a licensed veterinarian.

SUBCHAPTER F. STORAGE AND DISPOSAL

Sec. 76.131. RULES. Authorizes TDA to adopt rules governing the storage and disposal of pesticides and pesticide containers for the purpose of preventing water pollution. Sets forth provisions regarding the storage of pesticides. Sets forth provisions regarding the notification of the fire chief having jurisdiction over the storage place concerning the pesticides.

SUBCHAPTER G. HERBICIDES

Sec. 76.141. REGULATED HERBICIDES. Sets forth provisions regarding regulated herbicides.

Sec. 76.142. APPLICATION OF REGULATED HERBICIDE. Sets forth provisions

regarding the application of regulated herbicides.

Sec. 76.143. PUBLIC HEARING. Authorizes TDA to hold a public hearing the hear a request for a revision of certain decisions of TDA.

Sec. 76.144. COUNTY HERBICIDE REGULATIONS. Sets forth provisions regarding county regulations for herbicides.

SUBCHAPTER H. ENFORCEMENT

Sec. 76.151. ENTRY POWER. Makes a conforming change.

Sec. 76.152. SAMPLING. Makes no change.

Sec. 76.153. New heading: STOP USE, STOP DISTRIBUTION, OR REMOVAL ORDER. Authorizes TDA to issue and enforce a written ro printed order to stop the use or distribution of the pesticide or requiring the pesticide to be removed and secured from further distributions. Prohibits a person who receives the order from distributing or using the pesticide until TDA makes certain determinations including that the pesticide does not present a hazard to the public health, safety, or welfare.

Sec. 76.154. INJUNCTION. Makes no changes.

Sec. 76.155. PROSECUTIONS. Makes a conforming change.

Sec. 76.1555. ADMINISTRATIVE PENALTY. Authorizes TDA to assess an administrative penalty if a person violates this chapter, rather than Chapter 75 or 76 of this code administered by TDA, or a rule or order adopted by TDA. Makes conforming changes.

Sec. 76.156. CIVIL PENALTY. Makes no change.

SUBCHAPTER I. REMEDIES

Sec. 76.181. APPEAL OF DENIAL OR CANCELLATION OF PESTICIDE REGISTRATION. Deletes existing Subsection (b) providing that an appeal under this section is governed by the substantial evidence rule.

Sec. 76.182. APPEAL OF PERMIT OR LICENSE DENIAL, SUSPENSION, MODIFICATION, OR REVOCATION. Makes a conforming change.

Sec. 76.183. New heading: APPEAL OF STOP USE, STOP DISTRIBUTION, OR REMOVAL ORDER. Authorizes an owner or custodian of a pesticide to which a stop use, stop distribution, or removal order is imposed under Section 76.153 to appeal to a certain court.

Sec. 76.184. New heading: REPORTS OF PESTICIDE ADVERSE EFFECTS. Sets forth provision regarding adverse effects from the application of a pesticide experienced by a person. Deletes provisions regarding damages sustained through the application of pesticides.

Sec. 76.185. DAMAGES RESULTING FROM APPLICATION OF PESTICIDE UNDER GOVERNMENT PROGRAM. Makes no change.

SUBCHAPTER J. PENALTIES

Sec. 76.201. OFFENSES. Exempts pesticides that are not for use in this state and are only being manufactured, transported, or distributed for use outside of this state from being labeled an offense under this section. Provides that the person commits an offense if the person in some manner damages the label or labeling provided for by this chapter or a rule adopted under this chapter before the container has been emptied and rinsed properly, commits an act

for which a certified applicator's license may not be renewed under Section 76.116, violates any other provision of this chapter to which this section does not expressly apply, violates Section 76.071(a), has a permit to apply a powder or dry-type herbicide that does not meet certain requirements, violates a rule adopted under this chapter, or fails to keep or submit records in violation of this chapter.

Sec. 76.202. PENALTY. Makes no change.

Sec. 76.203. DEFENSES. Makes no change.

SECTION 2. Repealer: Chapter 75, Agricultural Code (Herbicide Regulation).

SECTION 3. Sets forth provisions regarding the validity of a license under this section.

SECTION 4. Emergency clause.

Effective date: upon passage.