

# HOUSE BILL No. 6301

November 4, 2004, Introduced by Rep. Whitmer and referred to the Committee on Agriculture and Resource Management.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 8302, 8303, 8304, 8305, 8306, 8316, and 8333 (MCL 324.8302, 324.8303, 324.8304, 324.8305, 324.8306, 324.8316, and 324.8333), sections 8302, 8303, 8304, 8305, 8306, and 8333 as amended by 2002 PA 418, and by adding sections 8315a, 8315b, 8316a, 8316b, and 8321a.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 8302. (1) "Abutting property" means any property that  
2 has a boundary or boundary point in common with the property on  
3 which a pesticide is to be applied.

4           (2) ~~(1)~~ "Active ingredient" means an ingredient that will  
5 prevent, destroy, repel, or mitigate pests, or that will act as a  
6 plant regulator, defoliant, or desiccant or otherwise alter the  
7 behavior of plants or products.

1           (3) ~~-(2)-~~ "Activity plan" means a plan for the mitigation of  
2 groundwater contamination at a specific location, including a  
3 time frame for implementation.

4           (4) ~~-(3)-~~ "Adulterated", ~~applies to a pesticide if its~~ **in**  
5 **reference to a pesticide, means that the pesticide's** strength or  
6 purity is less than, or significantly greater than, the professed  
7 standard or quality as expressed on its labeling or under which  
8 it is sold; ~~if~~ **that** a substance was substituted wholly or in  
9 part for a pesticide; or ~~if~~ **that** a valuable constituent of the  
10 pesticide was wholly or in part abstracted.

11           (5) **"Agency" means any state agency; local unit of**  
12 **government; public authority; institution of higher education;**  
13 **railroad; or telegraph, telephone, pipeline, gas, or electric**  
14 **corporation that applies pesticides.**

15           (6) ~~-(4)-~~ "Agricultural commodity" means a plant or part of a  
16 plant, or an animal or animal product, produced primarily for  
17 sale, consumption, propagation, or other use by human beings or  
18 animals.

19           (7) ~~-(5)-~~ "Animal" means all vertebrate and invertebrate  
20 species, including, but not limited to, human beings and other  
21 mammals, birds, fish, and shellfish.

22           (8) ~~-(6)-~~ "Antimicrobial pesticide" means a pesticide that is  
23 intended to disinfect, sanitize, reduce, or mitigate growth or  
24 development of microbial organisms, as defined under ~~the federal~~  
25 ~~insecticide, fungicide, and rodenticide act, chapter 125, 86~~  
26 ~~Stat. 973, 7 U.S.C. 136 to 136i, 136j to 136r, and 136s to 136y~~  
27 **FIFRA.**

1           (9) ~~-(7)-~~ "Application season" means a time period of  
2 pesticide application, consistent with the category of  
3 application, within a calendar year.

4           (10) ~~-(8)-~~ "Aquifer" means a geologic formation, a group of  
5 formations, or a part of a formation capable of yielding a  
6 significant amount of groundwater to wells or springs.

7           (11) ~~-(9)-~~ "Aquifer sensitivity" means a hydrogeologic  
8 function representing the inherent abilities of materials  
9 surrounding the aquifer to attenuate the movement of pesticides  
10 into that aquifer.

11           (12) ~~-(10)-~~ "Avicide" means a pesticide intended for  
12 preventing, destroying, repelling, or mitigating pest birds.

13           (13) ~~-(11)-~~ "Building manager" means the person who is  
14 designated as being responsible for the building's pest  
15 management program and to whom **shall be made** any reporting and  
16 notification ~~shall be made~~ pursuant to this part or rules  
17 promulgated under this part.

18           (14) ~~-(12)-~~ "Certified applicator" means an individual who is  
19 authorized under this part to use and supervise the use of a  
20 restricted use pesticide.

21           (15) **"Child care center" means that term as defined in**  
22 **section 1 of 1973 PA 116, MCL 722.111.**

23           (16) ~~-(13)-~~ "Commercial applicator" means a person who is  
24 required to be a registered or certified applicator under this  
25 part, or who holds himself or herself out to the public as being  
26 in the business of applying pesticides. A commercial applicator  
27 does not include a person using a pesticide for a private

1 agricultural purpose.

2       (17) ~~-(14)-~~ "Commercial building" means any portion of a  
3 building that is not a private residence where a business is  
4 located and that is frequented by the public.

5       (18) **"Commercial lawn application" means lawn application on**  
6 **property that is not owned by or leased to the individual making**  
7 **the lawn application.**

8       (19) ~~-(15)-~~ "Confirmed contaminant" means a contaminant that  
9 has been detected in at least 2 groundwater samples collected  
10 from the same groundwater sampling point at an interval of  
11 greater than 14 days.

12       (20) ~~-(16)-~~ "Contaminant" means any pesticide originated  
13 chemical, radionuclide, ion, synthetic organic compound,  
14 microorganism, or waste that does not occur naturally in  
15 groundwater or that naturally occurs at a lower concentration  
16 than detected.

17       (21) ~~-(17)-~~ "Contamination" means the direct or indirect  
18 introduction into groundwater of any contaminant caused in whole  
19 or in part by human activity.

20       Sec. 8303. (1) **"Day care facility" means a child care**  
21 **center, family day care home, or group day care home as those**  
22 **terms are defined in section 1 of 1973 PA 116, MCL 722.111.**

23       (2) ~~-(1)-~~ "Defoliant" means a substance or mixture of  
24 substances intended for causing the leaves or foliage to drop  
25 from a plant, with or without causing abscission.

26       (3) ~~-(2)-~~ "Department" means the department of agriculture.

27       (4) ~~-(3)-~~ "Desiccant" means a substance or mixture of

1 substances intended for artificially accelerating the drying of  
2 plant tissue.

3       (5) ~~-(4)-~~ "Device" means an instrument or contrivance, other  
4 than a firearm, which is intended for trapping, destroying,  
5 repelling, or mitigating a pest; but does not include equipment  
6 used for the application of pesticides when sold separately.

7       (6) ~~-(5)-~~ "Direct supervision" means directing the  
8 application of a pesticide while being physically present during  
9 the application. However, direct supervision by a private  
10 agricultural applicator means either of the following:

11       (a) The private agricultural applicator is in the same field  
12 or location directing the application of a restricted use  
13 pesticide by an uncertified applicator.

14       (b) The private agricultural applicator supervises the  
15 uncertified applicator and is physically present during the  
16 initial restricted use pesticide application on an agricultural  
17 commodity or agricultural structure, including calibration,  
18 mixing, application, operator safety, and disposal.

19       (7) ~~-(6)-~~ "Director" means the director of the department of  
20 agriculture or his or her authorized representative.

21       (8) ~~-(7)-~~ "Distribute" means to offer for sale, hold for  
22 sale, sell, barter, ship, or deliver pesticides in this state.

23       (9) ~~-(8)-~~ "Envelope monitoring" means monitoring of  
24 groundwater in areas adjacent to properties where groundwater is  
25 contaminated to determine the concentration and spatial  
26 distribution of the contaminant in the aquifer.

27       (10) ~~-(9)-~~ "Environment" includes water, air, land, and all

1 plants and human beings and other animals living therein, and the  
2 interrelationships that exist among them.

3 (11) ~~(10)~~ "EPA" means the United States environmental  
4 protection agency.

5 (12) ~~(11)~~ "FIFRA" means the federal insecticide, fungicide,  
6 and rodenticide act, chapter 125, 86 Stat. 973, 7 ~~U.S.C.~~ USC  
7 136 to 136i, ~~and~~ 136j to 136r, and 136s to 136y.

8 (13) ~~(12)~~ "Fungi" means all nonchlorophyll bearing  
9 thallophytes; that is, all nonchlorophyll bearing plants of a  
10 lower order than mosses and liverworts, as for example rusts,  
11 smuts, mildews, molds, yeasts, and bacteria, except those in or  
12 on other animals, and except those in or on processed foods,  
13 beverages, or pharmaceuticals.

14 (14) ~~(13)~~ "General use pesticide" means a pesticide that is  
15 not a restricted use pesticide.

16 (15) ~~(14)~~ "Groundwater" means underground water within the  
17 zone of saturation.

18 (16) ~~(15)~~ "Groundwater protection rule" means a rule  
19 promulgated under this part that defines a minimum operational  
20 standard for structures, activities, and procedures that may  
21 ~~have~~ **contaminate** or may contribute to the contamination of  
22 groundwater and that defines the scope of a groundwater  
23 protection rule, the region of implementation of a groundwater  
24 protection rule, and implementation period for those rules. As  
25 used in this subsection:

26 (a) "Structures, activities, and procedures" includes, but is  
27 not limited to, mixing, loading, and rinse pads, application

1 equipment, application timing, application rates, crop rotation,  
2 and pest control thresholds.

3 (b) "The scope of a groundwater protection rule" may define a  
4 particular pesticide, structure, activity, or procedure or may  
5 define pesticides containing specific ingredients.

6 (c) "The region of implementation of a groundwater protection  
7 rule" may include specific soil types or aquifer sensitivity  
8 regions or any other geographic boundary.

9 (17) ~~(16)~~ "Groundwater resource protection level" means a  
10 maximum contaminant level, health advisory level, or, if the EPA  
11 has not established a maximum contaminant level or a health  
12 advisory level, a level established by the director of public  
13 health using risk assessment protocol established by rule under  
14 this part.

15 (18) ~~(17)~~ "Groundwater resource response level" means 20%  
16 of the groundwater resource protection level. In cases where 20%  
17 of the groundwater resource protection level is less than the  
18 method detection limit, the method detection limit shall serve as  
19 the groundwater resource response level.

20 Sec. 8304. (1) **"Health care facility" means a facility**  
21 **which is not a private home and at which people may stay 1 or**  
22 **more nights and receive medical care, such as a hospital or**  
23 **nursing home.**

24 (2) ~~(1)~~ "Inert ingredient" means an ingredient that is not  
25 active.

26 (3) ~~(2)~~ "Ingredient statement" means ~~—(a)—~~ **a statement**  
27 **of the name and percentage of each active ingredient** ~~together~~

1 ~~with~~ **in a pesticide**, the total percentage of the inert  
2 ingredients in the pesticide, ~~—(b) When~~ **and, if** the pesticide  
3 contains arsenic in any form, the ~~ingredient statement shall~~  
4 ~~include~~ percentages of total and water soluble arsenic, each  
5 calculated as elemental arsenic.

6       **(4) —(3)—** "Insect" means any of the numerous small  
7 invertebrate animals generally having the body more or less  
8 obviously segmented, for the most part belonging to the class  
9 insecta, comprising 6-legged, usually winged forms, as for  
10 example beetles, bugs, bees, and flies, and to other allied  
11 classes or arthropods whose members are wingless and usually have  
12 more than 6 legs, as for example spiders, mites, ticks,  
13 centipedes, and wood lice.

14       **(5) —(4)—** "Insecticide" means a pesticide intended for  
15 preventing, destroying, repelling, or mitigating an insect.

16       **(6) "Institution of higher education" means a public or**  
17 **private institution in this state which offers a degree or course**  
18 **of study beyond the twelfth grade.**

19       **(7) —(5)—** "Integrated pest management" means a pest  
20 management system that uses all suitable techniques in a total  
21 management system to prevent pests from reaching unacceptable  
22 levels or to reduce existing pest populations to acceptable  
23 levels.

24       **(8) —(6)—** "Label" means the written, printed, or graphic  
25 matter on or attached to the pesticide or device or any of its  
26 containers or wrappers.

27       **(9) —(7)—** "Labeling" means the label and all other written,



1 printed, or graphic matter accompanying the pesticide or device,  
2 or to which reference is made on the label or in literature  
3 accompanying the pesticide or device, and all applicable  
4 modifications or supplements to official publications of the EPA,  
5 the United States departments of agriculture and interior, the  
6 United States departments of education and health and human  
7 services, state experiment stations, state agricultural colleges,  
8 and other similar federal or state institutions or agencies  
9 authorized by law to conduct research in the field of  
10 pesticides.

11 (10) "Lawn application" means the application of general use  
12 pesticides to ground, trees, or shrubs but does not include any  
13 of the following:

14 (a) The application of pesticides for the purpose of  
15 producing an agricultural commodity.

16 (b) The application of pesticides around or near the  
17 foundation of a building for the purpose of indoor pest control.

18 (c) The application of pesticides by or on behalf of agencies  
19 except that agencies shall be subject to visual notification  
20 requirements applicable to commercial lawn applications under  
21 section 8315a(7) if the application is within 100 feet of a  
22 dwelling, public building, or public park.

23 (d) The application of pesticides on golf courses or turf  
24 farms.

25 (11) ~~-(8)-~~ "Maximum contaminant level" means that term as it  
26 is defined in title XIV of the public health service act, chapter  
27 373, 88 Stat. 1660, 42 ~~U.S.C.~~ USC 300f to 300j-3, 300j-4 to

1 300j-9, and 300j-11 to 300j-25, and regulations promulgated under  
2 that act.

3 (12) ~~-(9)-~~ "Method detection limit" means the minimum  
4 concentration of a substance that can be measured and reported  
5 with 99% confidence that the analyte concentration is greater  
6 than 0 and is determined from analysis of a sample in a given  
7 matrix that contains the analyte.

8 (13) ~~-(10)-~~ "Minor use" means the use of a pesticide on a  
9 crop, animal, or site where any of the following exist:

10 (a) The total United States acreage for the crop or site is  
11 less than 300,000 acres.

12 (b) The acreage expected to be treated nationally as a result  
13 of that use is less than 300,000 acres annually.

14 (c) The use does not provide sufficient economic incentive to  
15 support the initial registration or continuing registration of  
16 the use.

17 (14) ~~-(11)-~~ "Misbranded", ~~applies to any~~ **in reference to a**  
18 **pesticide or device, means that the** pesticide or device ~~if it~~  
19 is an imitation of or is offered for sale under the name of  
20 another pesticide, or ~~if its~~ **has** labeling **that** does not comply  
21 with labeling requirements of this part, the rules promulgated  
22 under this part, FIFRA, or regulations promulgated under FIFRA.

23 (15) ~~-(12)-~~ "Molluscicide" means a pesticide intended for  
24 preventing, destroying, repelling, or mitigating a mollusk.

25 (16) "Multiple family dwelling" means a dwelling which is or  
26 is to be occupied as the residence or home for the members of 3  
27 or more households living independently of each other.

1           Sec. 8305. (1) "Nematode" means invertebrate animals of the  
2 phylum nemathelminthes and class nematoda, which are unsegmented  
3 roundworms with elongated, fusiform, or sac-like bodies covered  
4 with cuticle that inhabit soil, water, plants, or plant parts. A  
5 nematode may also be called a nema or eelworm.

6           (2) "Noncommercial lawn application" means lawn application  
7 on property owned by or leased to the individual making the lawn  
8 application.

9           (3) "1- or 2-family dwelling" is any structure or portion  
10 thereof which is or is to be occupied in whole or in part as the  
11 residence or home for 1 household or for 2 households living  
12 independently of each other.

13           (4) ~~(2)~~ "Person" means an individual, partnership,  
14 corporation, association, governmental entity, or other legal  
15 entity.

16           (5) ~~(3)~~ "Pest" means an insect, rodent, nematode, fungus,  
17 weed, and other forms of terrestrial or aquatic plant or animal  
18 life or virus, ~~bacteria,~~ or other microorganism, or any other  
19 organism that the director declares to be a pest under section  
20 8322, except viruses, fungi, ~~bacteria,~~ nematodes, or other  
21 microorganisms in or on living animals.

22           (6) ~~(4)~~ "Pesticide" means a substance or mixture of  
23 substances intended for preventing, destroying, repelling, or  
24 mitigating pests or intended for use as a plant regulator,  
25 defoliant, or desiccant. Pesticide does not include liquid  
26 chemical sterilant products, including any sterilant or  
27 subordinate disinfectant claims on such products, for use on a

1 critical or semi-critical device, as defined in section 201 of  
2 the federal food, drug, and cosmetic act, chapter 675, 52  
3 Stat. 1040, 21 ~~U.S.C.~~ USC 321. As used in this subsection:

4 (a) "Critical device" includes any device that is introduced  
5 directly into the human body, either into or in contact with the  
6 bloodstream or normally sterile areas of the body.

7 (b) "Semi-critical device" includes any device that contacts  
8 intact mucous membranes but that does not ordinarily penetrate  
9 the blood barrier or otherwise enter normally sterile areas of  
10 the body.

11 (7) ~~-(5)-~~ "Pesticide registration renewal" means the  
12 registration of any pesticide that was previously registered by  
13 the department.

14 (8) ~~-(6)-~~ "Place of business" means a location that is  
15 staffed by at least 1 person who independently, without  
16 supervision, sells or uses pesticides within this state or where  
17 a person exercises the right to control others in the sale or use  
18 of pesticides within this state.

19 (9) ~~-(7)-~~ "Plant regulator" means a substance or mixture of  
20 substances intended through physiological action for accelerating  
21 or retarding the rate of growth or rate of maturation or for  
22 otherwise altering the behavior of plants or the produce of  
23 plants. Plant regulator does not include substances to the  
24 extent that they are intended as plant nutrients, trace elements,  
25 nutritional chemicals, plant inoculants, and soil amendments.

26 (10) ~~-(8)-~~ "Private agricultural applicator" means a  
27 certified applicator who uses or supervises the use of a

1 restricted use pesticide for a private agricultural purpose.

2       (11) ~~-(9)-~~ "Private agricultural purpose" means the  
3 application of a pesticide for the production of an agricultural  
4 commodity on either of the following:

5       (a) Property owned or rented by the person applying the  
6 pesticide or by his or her employer.

7       (b) Property of another person if applied without  
8 compensation, other than trading of personal services between  
9 producers of agricultural commodities.

10       (12) ~~-(10)-~~ "Protect health and environment" means  
11 ~~protection~~ **to protect** against any unreasonable adverse effects  
12 on the environment.

13       (13) ~~-(11)-~~ "Public building" means a building that is owned  
14 or operated by a federal, state, or local government, including  
15 public universities.

16       Sec. 8306. (1) "Registered applicator" means an individual  
17 who is authorized to apply general use pesticides for a private  
18 or commercial purpose as provided in this part and in the rules  
19 promulgated under this part.

20       (2) "Ready-to-use pesticide" means a pesticide that is  
21 applied directly from its original container consistent with  
22 label directions, such as an aerosol insecticide or rodenticide  
23 bait pack that does not require mixing or loading prior to  
24 application.

25       (3) "Registrant" means a person who is required to register a  
26 pesticide pursuant to this part.

27       (4) "Restricted use pesticide" means a pesticide classified

1 for restricted use by the EPA or the director.

2 (5) "Restricted use pesticide dealer" means a person engaged  
3 in distributing, selling, or offering for sale restricted use  
4 pesticides to the ultimate user.

5 (6) "Rodenticide" means a pesticide intended for preventing,  
6 destroying, repelling, or mitigating rodents.

7 (7) "School" means public and private schools, grades  
8 kindergarten through the twelfth grade **but does not include a**  
9 **home school.**

10 (8) "School facility" means any school building used for  
11 instructional purposes, grounds surrounding such a building,  
12 school grounds used for playgrounds, athletics, and other  
13 instructional purposes, and any administrative offices.

14 (9) "School year" means the period commencing on the first  
15 day of regular instruction and ending on the last day of session.

16 (10) ~~-(8)-~~ "Supervise" means directing the application of a  
17 pesticide with or without being physically present during the  
18 application.

19 (11) ~~-(9)-~~ "Unreasonable adverse effect on the environment"  
20 means any unreasonable risk to human beings or the environment,  
21 taking into account the economic, social, and environmental costs  
22 and benefits of the use of a pesticide.

23 (12) ~~-(10)-~~ "Use of a pesticide" means the loading, mixing,  
24 applying, storing, transporting, and disposing of a pesticide.

25 (13) ~~-(11)-~~ "Vendor" means a person who sells or distributes  
26 pesticides.

27 (14) ~~-(12)-~~ "Violates this part" or "violation of this part"

1 means a violation of this part, a rule promulgated under this  
2 part, or an order issued under this part.

3 (15) ~~(13)~~ "Weed" means a plant which grows where it is not  
4 wanted.

5 Sec. 8315a. (1) A retail establishment that sells general  
6 use pesticides for lawn application shall display a sign meeting  
7 standards established by the director under section 8315b(1).

8 The sign shall be displayed in a conspicuous place as close as  
9 possible to the place where the pesticides are displayed.

10 (2) At least 48 hours before any commercial lawn application  
11 of a pesticide, the person making the application shall supply  
12 written notice to occupants of all 1- or 2-family dwellings, and  
13 to owners, owners' agents, or other persons in a position of  
14 authority for all other types of premises, that are on abutting  
15 property with a boundary that is within 150 feet of the site of  
16 the commercial lawn application. The director shall specify the  
17 manner in which a person making a commercial lawn application  
18 shall supply the written notice including, but not limited to,  
19 mailing the notice, or leaving the notice with a responsible  
20 adult or in a conspicuous location on the abutting property. The  
21 director shall specify a manner in which a person making a  
22 commercial lawn application may provide an option to occupants of  
23 1- or 2-family dwellings to decline further notices.

24 (3) The owner of a multiple family dwelling or the owner's  
25 agent shall supply the written notice under subsection (2) to the  
26 occupants of the multiple family dwelling in a manner specified  
27 by the director. For all other types of premises, the owner,

1 owner's agent, or other person in a position of authority shall  
2 post the written notice under subsection (2) in a manner  
3 specified by the director.

4 (4) The director shall specify the content and form of the  
5 written notice under subsection (2). The notice shall include at  
6 least all of the following:

7 (a) The address where the pesticide application is to be  
8 made.

9 (b) The name and telephone number of the person making the  
10 pesticide application.

11 (c) The specific date of each pesticide application and 2  
12 alternative dates to the proposed date of application if weather  
13 conditions prevent the pesticide application on the proposed  
14 date.

15 (d) The product name or names and the EPA registration number  
16 or numbers of the pesticide or pesticides to be applied.

17 (e) A prominent statement that reads substantially as  
18 follows: "This notice is to inform you of a pending pesticide  
19 application to neighboring property. You may wish to take  
20 precautions to minimize pesticide exposure to yourself, family  
21 members, pets, or family possessions. Further information about  
22 the product or products being applied, including any warnings  
23 that appear on the labels of such pesticide or pesticides that  
24 are pertinent to the protection of humans, animals, or the  
25 environment, can be obtained by calling the National Pesticide  
26 Information Center at 1-800-858-7378."

27 (5) Subsections (2) and (3) do not apply to any of the



1 following:

2 (a) The application of antimicrobial pesticides and  
3 antimicrobial products as defined in sections 2(mm) and 19(h)(2)  
4 of the federal insecticide, fungicide, and rodenticide act,  
5 chapter 125, 86 Stat. 973, 7 USC 136 and 136q.

6 (b) The use of an aerosol product with a directed spray, in  
7 containers of 18 fluid ounces or less, to protect individuals  
8 from an imminent threat from stinging and biting insects,  
9 including venomous spiders, bees, wasps, and hornets. This  
10 subdivision does not exempt from notification the use of any  
11 fogger product or aerosol product that discharges to a wide  
12 area.

13 (c) The use of nonvolatile insecticides or rodenticides in a  
14 tamper-resistant bait station or in areas inaccessible to  
15 children.

16 (d) The application of a pesticide classified by the EPA as  
17 an exempt material under 40 CFR 152.25.

18 (e) The application of boric acid and disodium octaborate  
19 tetrahydrate.

20 (f) The application of horticultural soap and oils that do  
21 not contain synthetic pesticides or synergists.

22 (g) The application of a pesticide by direct injection into a  
23 plant or the ground.

24 (h) The application of a pesticide to the ground or turf of a  
25 cemetery.

26 (i) An emergency pesticide application when necessary to  
27 protect against an imminent threat to human health. However,

1 before making an emergency pesticide application, a person shall  
2 make a good faith effort to supply the written notice under  
3 subsection (2). Upon making an emergency pesticide application,  
4 a person shall notify the director, using a form developed by the  
5 director for such purposes. The notice to the director shall  
6 include at least all of the following:

7 (i) The address where the application was made.

8 (ii) The name and telephone number of the person making the  
9 pesticide application.

10 (iii) The date of the pesticide application.

11 (iv) The product name and EPA registration number of the  
12 pesticide or pesticides applied.

13 (v) The reason for the pesticide application.

14 (6) The director shall review any emergency notice submitted  
15 under subsection (5)(i) to ensure that the circumstance did  
16 warrant the emergency pesticide application. The notices shall  
17 be kept on file at the department for 3 years from the date of  
18 the pesticide application and shall be made available to any  
19 person upon request.

20 (7) A person performing a noncommercial lawn application  
21 treating an area more than 100 square feet or performing a  
22 commercial lawn application shall place markers within or along  
23 the perimeter of the area where pesticides will be applied.  
24 Markers shall be placed so as to be clearly visible to persons  
25 immediately outside the perimeter. The markers shall be posted  
26 at least 12 inches above the ground and shall be at least 4  
27 inches by 5 inches in size. The markers shall be placed before

1 the lawn application on the day of the lawn application and shall  
2 instruct persons not to enter the area where pesticides were  
3 applied and not to remove the markers, for a period of at least  
4 24 hours. The instruction shall be printed boldly in letters at  
5 least 3/8 of an inch in height.

6       Sec. 8315b. (1) The director shall establish uniform  
7 standards for a consumer pesticide use information sign provided  
8 for under section 8315a(1) which shall be placed in retail  
9 establishments that sell general use pesticides for lawn  
10 application. This sign shall contain all of the following  
11 information:

12       (a) A warning notice directing consumers to follow directions  
13 on labels.

14       (b) A provision to inform consumers of the posting  
15 requirements set forth in section 8315a(7).

16       (c) A recommendation that the consumer notify neighbors  
17 before the application of pesticides so that such neighbors may  
18 take precautions to avoid pesticide exposure.

19       (2) The director shall prepare and publish, in consultation  
20 with the director of the department of community health,  
21 educational materials explaining the requirements of  
22 sections 8315a and 8316a and the human and environmental health  
23 effects of lawn care pesticides.

24       (3) The director may specify procedures, not inconsistent  
25 with any other provisions of law, for the department's  
26 investigation and processing of alleged violations of  
27 section 8315a(7) that pertain to persons performing noncommercial

1 lawn applications. The uniform procedures may require complaints  
2 to be in the form of a sworn statement containing the facts upon  
3 which an alleged violation is based and may provide that the  
4 department is not required to perform any testing or sampling in  
5 relation to the investigation of any such alleged violations.

6 Sec. 8316. ~~(1) At the beginning of each school year,~~  
7 ~~school administrators shall notify parents and guardians of~~  
8 ~~children attending that school of the right to be informed prior~~  
9 ~~to any application of a pesticide at that school.~~

10 ~~—— (2) The notice described in subsection (1) shall contain~~  
11 ~~information, obtained from the person applying the pesticide,~~  
12 ~~which includes a statement that a pesticide will be applied, the~~  
13 ~~approximate location of the application, and the date of the~~  
14 ~~application.~~

15 (1) Each school shall establish a pesticide notification  
16 procedure to provide information on pesticide applications at  
17 school facilities. A school shall provide written notification  
18 of pesticide applications at any school facility to staff,  
19 parents, and legal guardians as required in this section. Any  
20 notification required by this section shall be in writing  
21 provided directly to the student or staff, delivered to a  
22 receptacle designated for that student or staff, mailed to the  
23 student's or staff's last known address, or delivered by any  
24 other reasonable methods authorized by the director.

25 (2) A school shall provide notification under subsection (1)  
26 to all staff, parents, and legal guardians at the beginning of  
27 each school year. However, if a child enrolls after the

1 beginning of the school year, notification shall be provided  
2 within 1 week of enrollment. The notification provided at the  
3 beginning of the school year shall include at least all of the  
4 following information:

5 (a) A statement that pesticide products may be used  
6 periodically throughout the school year.

7 (b) A statement that schools are required to maintain a list  
8 of staff, parents, and legal guardians who wish to receive  
9 48-hour prior written notification of pesticide applications at  
10 relevant school facilities and instructions on how to register  
11 with the school to be on the notification list.

12 (c) The name of a school representative and contact number to  
13 obtain further information.

14 (3) Within 10 days of the end of the school year and within  
15 2 school days of the end of winter vacation and spring vacation,  
16 the school shall provide to all staff, parents, and legal  
17 guardians written notification that includes at least all of the  
18 following information:

19 (a) For each pesticide application that required prior  
20 notification and each emergency pesticide application made at  
21 school facilities, during the period of time since the previous  
22 notice, the date, location, and product used.

23 (b) A statement that schools are required to maintain a list  
24 of staff, parents, and legal guardians who wish to receive  
25 48-hour prior written notification of pesticide applications and  
26 instructions on how to register with the school to be on the list  
27 for prior notification.

1 (c) How to obtain further information about the products  
2 being applied, including any warnings that appear on the label of  
3 the pesticides that are pertinent to the protection of humans,  
4 animals, or the environment.

5 (d) The name and telephone number of a school representative  
6 to contact for additional information.

7 (4) Each school shall establish and maintain a list of staff,  
8 parents, and legal guardians requesting notification 48 hours in  
9 advance of pesticide applications. A school shall add any staff,  
10 parent, or legal guardian to the notification list upon request.

11 (5) Subject to subsection (6), not less than 48 hours before  
12 the application of a pesticide at a school facility, a school  
13 shall provide to individuals on the school's notification list  
14 under subsection (4) notification that includes at least all of  
15 the following information:

16 (a) The specific date and location of the pesticide  
17 application. In case of outdoor pesticide applications, the  
18 notice must provide a specific date, and may include  
19 2 alternative dates in case the application cannot be made  
20 because of weather conditions.

21 (b) The product name and pesticide registration number  
22 assigned by the EPA.

23 (c) A prominent statement that reads substantially as  
24 follows: "This notice is to inform you of a pending pesticide  
25 application at a school facility. You may wish to discuss with  
26 the designated school representative what precautions are being  
27 taken to protect children and staff from exposure to these

1 pesticides. Further information about the product(s) being  
2 applied, including any warnings that appear on the label of the  
3 pesticide(s) that are pertinent to the protection of humans,  
4 animals, or the environment, can be obtained by calling the  
5 National Pesticide Information Center at 1-800-858-7378."

6 (d) The name and telephone number of a school representative  
7 to contact for additional information.

8 (6) The notification under subsection (5) need only be  
9 provided to both of the following:

10 (a) Staff who regularly work at the school facility that is  
11 the site of the pesticide application.

12 (b) Parents or legal guardians of children who regularly  
13 receive instruction or have scheduled recess at that school  
14 facility.

15 (7) A pesticide shall not be applied at a school facility  
16 during school hours.

17 (8) The following pesticide applications are not subject to  
18 subsections (1) to (7):

19 (a) The application of antimicrobial pesticides and  
20 antimicrobial products as defined in sections 2(mm) and 19(h)(2)  
21 of the federal insecticide, fungicide, and rodenticide act,  
22 chapter 125, 86 Stat. 973, 7 USC 136 and 136q.

23 (b) The use of an aerosol product with a directed spray, in  
24 containers of 18 fluid ounces or less, when used to protect  
25 individuals from an imminent threat from stinging and biting  
26 insects including venomous spiders, bees, wasps, and hornets.  
27 This subdivision does not exempt from notification the use of any

1 fogger product or aerosol product that discharges to a wide  
2 area.

3 (c) The use of nonvolatile insecticides or rodenticides in  
4 tamper-resistant bait stations or in areas inaccessible to  
5 children.

6 (d) Silica gels and other nonvolatile ready-to-use paste,  
7 foam, or gel formulations of insecticides in areas inaccessible  
8 to children.

9 (e) Application of a pesticide classified by the EPA as an  
10 exempt material under 40 CFR 152.25.

11 (f) The application of boric acid and disodium octaborate  
12 tetrahydrate.

13 (g) The application of a pesticide which the EPA has  
14 determined satisfies its reduced risk criteria, including a  
15 biopesticide.

16 (h) Any pesticide application where the school facility  
17 remains unoccupied during and for a continuous 72-hour period  
18 following the application of the pesticide.

19 (i) Any emergency pesticide application when necessary to  
20 protect against an imminent threat to human health. However,  
21 before making an emergency pesticide application, a person shall  
22 make a good faith effort to supply the written notice required  
23 under this section. Upon making an emergency pesticide  
24 application, a person shall notify the director, using a form  
25 developed by the director for such purposes. The notice to the  
26 director shall include at least all of the following:

27 (i) The address where the application was made.



1           (ii) The name and telephone number of the person making the  
2 pesticide application.

3           (iii) The date of the pesticide application.

4           (iv) The product name and EPA registration number of the  
5 pesticide or pesticides applied.

6           (v) The reason for the pesticide application.

7           (9) The director shall review an emergency notice submitted  
8 under subsection (8)(i) to ensure that the circumstance did  
9 warrant the emergency pesticide application. The notices shall  
10 be kept on file at the department for 3 years from the date of  
11 the pesticide application and shall be made available to any  
12 person upon request.

13          (10) The director shall ensure the compliance of schools with  
14 the requirements of this section, and shall establish a procedure  
15 for parents to notify the state of any school's failure to comply  
16 with the requirements of this section.

17          Sec. 8316a. (1) Not less than 48 hours before the  
18 application of a pesticide at a day care facility, the day care  
19 facility shall post a notice of the pesticide application in a  
20 common area of the day care facility that is conspicuously  
21 visible to persons dropping off or picking up children from the  
22 day care facility. The notice shall include at least all of the  
23 following:

24          (a) The location and specific date of the pesticide  
25 application at the day care facility. For an outdoor  
26 application, the notice must provide a specific date and may  
27 include 2 alternative dates if weather conditions preclude the

1 pesticide application on the proposed date.

2 (b) The product name or names and the EPA registration number  
3 or numbers of the pesticide or pesticides to be applied.

4 (c) A prominent statement that reads substantially as  
5 follows: "This notice is to inform you of a pending pesticide  
6 application at this day care facility. You may wish to discuss  
7 with a representative of the day care facility what precautions  
8 are being taken to protect your child from exposure to these  
9 pesticides. Further information about the product or products  
10 being applied, including any warnings that appear on the label of  
11 the pesticide or pesticides that are pertinent to the protection  
12 of humans, animals, or the environment, can be obtained by  
13 calling the National Pesticide Information Center at  
14 1-800-858-7378."

15 (d) The name and telephone number of a representative of the  
16 day care facility to contact for additional information.

17 (2) A pesticide shall not be applied at a day care facility  
18 during operating hours.

19 (3) The pesticide applications described in section 8316(8)  
20 are not subject to the requirements of subsection (1) or (2).

21 (4) A person who contracts to apply a pesticide at a day care  
22 facility shall provide to the day care facility operator  
23 information required to be contained in the posting under  
24 subsection (1) at least 48 hours before the application.

25 Sec. 8316b. A person shall not apply a pesticide, other  
26 than a sanitizer, germicide, disinfectant, or anti-microbial  
27 agent, in a school building, public building, health care

1 facility, or child care center unless a verifiable integrated  
2 pest management program is in place for the building. The  
3 integrated pest management program shall include all of the  
4 following elements:

5 (a) The following integrated pest management practices and  
6 principles:

7 (i) Site evaluation, including site description, inspection,  
8 and monitoring.

9 (ii) Consideration of the relationship between pest biology  
10 and pest management methods.

11 (iii) Consideration of all available pest management methods,  
12 including population reduction techniques, such as mechanical,  
13 biological, and chemical techniques and pest prevention  
14 techniques, such as habitat modification.

15 (iv) Pest control method selection, including consideration  
16 of the impact on human health and the environment.

17 (v) Continual evaluation of the integrated pest management  
18 program to determine the program's effectiveness and the need for  
19 program modification.

20 (b) The maintenance by the applicator, of a record that  
21 includes all of the following information:

22 (i) The site address.

23 (ii) The date of service.

24 (iii) The target pest or pests.

25 (iv) The inspection report, including the number of pests  
26 found or reported, and the conditions conducive to pest  
27 infestation.

1 (v) The pest management recommendations made by the  
2 applicator, such as structural or habitat modification.

3 (vi) The structural or habitat modification or other measures  
4 that were initiated as a part of the pest management program.

5 (vii) The name of the pesticide or pesticides used.

6 (viii) The quantity of pesticide or pesticides used.

7 (ix) The location of the area or room or rooms where  
8 pesticides were applied.

9 (x) The name of the applicator.

10 (xi) The name of the pest control firm, if a firm is  
11 employed, and the emergency telephone number.

12 (c) With respect to a commercial applicator, provision of the  
13 following information to the building manager:

14 (i) The integrated pest management program and initial  
15 service inspection record, which shall be provided at the time of  
16 initial service.

17 (ii) A record that includes the information specified in  
18 subdivision (b), which shall be provided at the completion of  
19 each service call.

20 (iii) The acceptance of responsibility by the building  
21 manager to post any signs as required under rules promulgated  
22 under section 8325.

23 Sec. 8321a. The department shall maintain a database of  
24 human pesticide poisonings that occur in this state after the  
25 effective date of the amendatory act that added this section.  
26 The data shall include, but need not be limited to, all of the  
27 following:

1 (a) How the poisoning occurred.

2 (b) The pesticide that caused the poisoning.

3 (c) The number and age of the people affected.

4 (d) The adverse health effects suffered by the people  
5 affected.

6 (e) Any enforcement action taken.

7 Sec. 8333. (1) Notwithstanding any other provision of this  
8 section, a person who violates section 8315a(1) shall be issued a  
9 warning for the first violation and shall be provided 7 days to  
10 correct the violation. A person who violates section 8315a(1) a  
11 second or subsequent time is responsible for a state civil  
12 infraction and may be fined not more than \$250.00 for each such  
13 violation.

14 (2) Notwithstanding any other provision of this section, a  
15 person who violates section 8315a(3) or a person who violates  
16 section 8315a(7) shall, for a first such violation, in lieu of a  
17 fine, be issued a written warning and shall also be issued  
18 educational materials pursuant to section 8315b(2). A person who  
19 commits a second violation of section 8315a(3) or a second  
20 violation of section 8315a(7) is responsible for a state civil  
21 infraction and may be fined not more than \$100.00. A person who  
22 commits a third or subsequent violation of section 8315a(3) or a  
23 third or subsequent violation of section 8315a(7) is responsible  
24 for a state civil infraction and may be fined not more than  
25 \$250.00.

26 (3) Notwithstanding any other provision of this section, a  
27 person who violates section 8316a(4) shall, for a first such

1 violation, in lieu of a fine, be issued a written warning and  
2 shall also be issued educational materials pursuant to  
3 section 8315b(2). The director, upon finding after notice and an  
4 opportunity for a hearing, that such a person has committed a  
5 second or subsequent such violation, may impose an administrative  
6 fine of not more than \$100.00 for a second violation or not more  
7 than \$250.00 for a subsequent violation.

8 (4) ~~-(1)-~~ A person who violates this part is subject to the  
9 penalties and remedies provided in this part regardless of  
10 whether he or she acted alone or through an employee or agent.

11 (5) ~~-(2)-~~ The director, upon finding after notice and an  
12 opportunity for a hearing that a person has violated or attempted  
13 to violate any provision of this part **except section 8311(4),**  
14 **8312, 8315a(1), 8315a(3), 8315a(7), 8316, or 8316a(4),** may impose  
15 an administrative fine of not more than \$1,000.00 for each  
16 violation of this part.

17 (6) ~~-(3)-~~ If the director finds that a violation or attempted  
18 violation occurred despite the exercise of due care or did not  
19 result in significant harm to human health or the environment,  
20 the director may issue a warning instead of imposing an  
21 administrative fine.

22 (7) ~~-(4)-~~ The director shall advise the attorney general of  
23 the failure of a person to pay an administrative fine imposed  
24 under this section. The attorney general may bring an action in  
25 a court of competent jurisdiction for the failure to pay an  
26 administrative fine imposed under this section.

27 (8) ~~-(5)-~~ A person who violates this part or attempts to

1 violate this part is guilty of a misdemeanor punishable by  
2 imprisonment for not more than 90 days or a fine of not more than  
3 \$5,000.00, or both, for each offense.

4       (9) ~~-(6)-~~ The director may bring an action to enjoin a  
5 violation of this part or an attempted violation of this part in  
6 a court of competent jurisdiction of the county in which the  
7 violation occurs or is about to occur.

8       (10) ~~-(7)-~~ The attorney general may file a civil action in  
9 which the court may impose on any person who violates this part  
10 or attempts to violate this part a civil fine of not more than  
11 \$5,000.00 for each violation or attempted violation. In  
12 addition, the attorney general may bring an action in circuit  
13 court to recover the reasonable costs of the investigation from  
14 any person who violated this part or attempted to violate this  
15 part. Money recovered under this subsection shall be forwarded  
16 to the state treasurer for deposit into the pesticide control  
17 fund created in section 8318.

18       (11) ~~-(8)- In defense of an action filed under this section,~~  
19 ~~in-~~ **In** addition to any other lawful defense, ~~a person may~~  
20 ~~present evidence as-~~ **it is** an affirmative defense **to an action**  
21 **filed under this section** that, at the time of ~~the-~~ **a person's**  
22 alleged violation of this part or attempted violation of this  
23 part, he or she was in compliance with label directions and with  
24 this part and rules promulgated under this part at the time of  
25 the alleged violation.

26       (12) ~~-(9)-~~ A civil cause of action does not arise for  
27 injuries to any person or property if a private agricultural

1 applicator, or a registered applicator who stores, handles, or  
2 applies pesticides only for a private agricultural purpose, was  
3 not grossly negligent and stored, handled, or applied pesticides  
4 in compliance with this part, rules promulgated under this part,  
5 and the pesticide labeling.

6       **(13)** ~~(10)~~ Applicable provisions of the revised judicature  
7 act of 1961, 1961 PA 236, MCL 600.101 to ~~600.9948~~ **600.9947**,  
8 apply to civil actions filed pursuant to this part.