

1 **Senate Bill No. 413**

2 (By Senator D. Hall)

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4 [Introduced February 4, 2015; referred to the Committee on Agriculture and Rural Development;  
5 and then to the Committee on Government Organization.]

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10 A BILL to amend and reenact §19-16A-7 and §19-16A-12 of the Code of West Virginia, 1931, as  
11 amended, relating to pesticide control; licensing requirements, including criminal  
12 background checks and evidence of employment or college or university degrees in  
13 entomology; and drug testing.

14 *Be it enacted by the Legislature of West Virginia:*

15 That §19-16A-7 and §19-16A-12 of the Code of West Virginia, 1931, as amended, be  
16 amended and reenacted to read as follows:

17 **ARTICLE 16A. WEST VIRGINIA PESTICIDE CONTROL ACT.**

18 **§19-16A-7. Annual pesticide business license.**

19 (a) No person may engage in the application of pesticides for hire at any time without a  
20 pesticide application business license issued by the commissioner. The commissioner shall require  
21 an annual fee for each pesticide application business license issued as prescribed by rules  
22 promulgated under this article.

1 (b) Application for a pesticide application business license shall be made in writing to the  
2 commissioner on forms approved or supplied by the commissioner. Each application for a license  
3 shall contain information regarding the applicant's qualifications and proposed operations, license  
4 classification or classifications the applicant is applying for and shall include the following:

5 (1) The full name of the person applying for the license;

6 (2) If different from subdivision (1) of this subsection, the full name of the individual  
7 qualifying under subsection (c) of this section;

8 (3) If the applicant is a person other than an individual, the full name of each member of the  
9 firm or partnership or the names of the officers of the association, corporation or group;

10 (4) The principal business address of the applicant in the state and elsewhere;

11 (5) The address of each branch office or suboffice from which the business of applying  
12 pesticides is carried on. Each suboffice shall be licensed;

13 (6) The name and address of each certified commercial applicator applying pesticides or  
14 supervising the application of pesticides for the pesticide application business;

15 (7) State tax number; and

16 (8) Any other necessary information prescribed by the commissioner.

17 (c) The commissioner may not issue a pesticide application business license until the owner,  
18 manager, partner or corporate officer is qualified by passing an examination to demonstrate to the  
19 commissioner his or her knowledge of the state and federal pesticide laws, safe use and storage of  
20 pesticides. The pesticide application business shall be limited to the classification or classifications  
21 for which the business maintains certified commercial applicators in their employ.

22 (d) If the commissioner finds the applicant qualified to apply pesticides in the classifications

1 the applicant has applied for, and if the applicant files the financial security required by this article,  
2 and if the applicant applying for a license to engage in aerial application of pesticides has met all the  
3 requirements of the federal aviation agency, the aeronautics commission of this state, and any other  
4 applicable federal or state laws or regulations to operate the equipment described in the application,  
5 the commissioner shall issue a pesticide application business license. The license expires at the end  
6 of the calendar year of issue, unless it has been revoked or suspended prior to expiration by the  
7 commissioner for cause. When the financial security required under this article is dated to expire  
8 at an earlier date, the license shall be dated to expire upon expiration date of the financial security.  
9 The commissioner may limit the license of the applicant to certain classifications of pest control  
10 work, or to certain areas or to certain types of equipment or to certain specific pesticides if the  
11 applicant is only so qualified. If a license is not issued as applied for, the commissioner shall inform  
12 the applicant in writing of the reasons for the denial.

13 (e) All persons applying pesticides as a pesticide business, whether or not they are applying  
14 restricted-use pesticides, shall be a certified applicator in the appropriate category or subcategory or  
15 shall be a registered technician under the direct supervision of a certified commercial applicator. A  
16 licensed commercial applicator must be located at each office of a company or branch or office  
17 located within a residence where pesticides, products, and records are maintained.

18 (f) Commissioner of Agriculture inspectors shall check new licensed pest control applicators  
19 where products, pesticides and records are stored within ninety days and again within nine months.

20 (f)(g) All funds collected pursuant to this section shall be deposited in the Pesticide Control  
21 Fund of the state pursuant to section twenty-three of this article.

22 **§19-16A-12. Private and commercial applicator's license and certificate; registered technician**

1                   **certificate.**

2           (a) Application for a private or commercial applicator's license shall be made in writing to  
3 the commissioner on forms approved or supplied by the commissioner. Each application shall  
4 contain:

5           (1) The full name of the person applying for the license, who shall be at least eighteen years  
6 of age and a legal resident of the United States;

7           (2) The principal business address of the applicant;

8           (3) A listing of agricultural commodities produced or to be produced by the applicant  
9 applying for a private applicator's license;

10          (4) Any other necessary information prescribed by the commissioner, which shall include a  
11 nationwide background check consisting of inquiries of the National Instant Criminal Background  
12 Check System, the West Virginia criminal history record responses and the National Interstate  
13 Identification Index and to be paid by applicant. If convicted of a crime, felony, misrepresentation  
14 or fraud, the applicant is not eligible for licensing. The commissioner shall require two years of  
15 documented employment with a licensed pest control company in West Virginia or another state,  
16 documented on the licensed pest control company letterhead and notarized. The commissioner shall  
17 also require the applicant to take an examination within one year of leaving employment with  
18 another company, whether instate or out of state. If the applicant does not take the examination, then  
19 the applicant, to qualify shall be employed continuously with a pest control company for two  
20 additional years. An applicant shall maintain continuous employment with a licensed pest control  
21 company or establish an independent company within sixty days of passing the examination. The  
22 commissioner shall waive the requirement of examination for an applicant who has a degree from

1 an accredited college or university in entomology and presents an official transcript from that  
2 institution which verifies when the degree was awarded and that it is in entomology. The  
3 commissioner shall require that all applicants pass a substance abuse test after submitting an  
4 application, but before taking the examination or if examination is waived, before a license may be  
5 granted. The commissioner shall designate the laboratory to be used in testing, the date test will be  
6 made and notify the applicant with this information as well as the address for results to be sent. The  
7 drug test results shall be submitted directly to the commissioner and paid for by applicant. An  
8 applicant who fails the drug test may not apply again until six months. An applicant who fails the  
9 drug test a second time may not apply again until after one year; and

10 (5) Payment of ~~required fees~~ a \$45 fee, to be submitted with the required documents and drug  
11 test results.

12 (b) The commissioner may renew any applicant's license under each classification for which  
13 such applicant is licensed. However, the applicant may, at no greater than three-year intervals, be  
14 required to present evidence or documentation indicating he or she has attended a workshop or  
15 training session approved by the commissioner.

16 (c) No private applicator may use any restricted use pesticide which is restricted to use by  
17 certified applicators without having first complied with the certification requirements determined  
18 by the commissioner as necessary to prevent unreasonable adverse effects on the environment,  
19 including injury to the applicator or other persons, for that specific pesticide use.

20 (d) As a minimum requirement for certification, a private or commercial applicator must  
21 show that he or she possesses a practical knowledge of the pest problems and pest control practices  
22 associated with his or her agricultural operations, proper storage, use, handling and disposal of the

1 pesticides and containers and his or her related legal responsibility. This practical knowledge  
2 includes ability to:

3 (1) Recognize common pests to be controlled and damage caused by them;

4 (2) Read and understand the label and labeling information including the common name of  
5 pesticides he or she uses; the crop, animal or site to which they will be applied; pests to be  
6 controlled; timing and methods of application; safety precautions; any preharvest or reentry  
7 restrictions; and any specified disposal procedures;

8 (3) Apply pesticides in accordance with label instructions and warnings, including the ability  
9 to prepare the proper concentration of pesticide to be used under particular circumstances, taking into  
10 account such factors as area to be covered, speed at which application equipment will be driven, and  
11 the quantity dispersed in a given period of operation;

12 (4) Recognize local environmental situations that must be considered during application to  
13 avoid contamination; and

14 (5) Recognize poisoning symptoms and procedures to follow in case of a pesticide accident.

15 (e) If the commissioner does not certify the private or commercial application under this  
16 section, he or she shall inform the applicant in writing of the reasons therefor.

17 (f) Any written examinations required of private or commercial applicators may not be more  
18 stringent than the requirements for such examinations by the United States environmental protection  
19 agency.

NOTE: The purpose of this bill is to provide for licensing requirements, including criminal background checks and evidence of employment or college or university degrees in entomology and drug testing for applicants for a private or commercial applicator's license.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.