

LAWS OF PENNSYLVANIA,

No. 124

AN ACT

Providing for the recording of wills probated outside of this Commonwealth in the office of the recorder of deeds, and the effect thereof.

Recorder
of deeds.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Wills probated
outside this
Commonwealth,
when exempli-
fied, shall be
indexed as
provided.

Section 1. The recorder of deeds shall record exemplified copies of wills probated outside of this Commonwealth, and shall index them in the grantor index under the name of the testator and in the grantee index under the name of each person named in the will as devisee of real property located in this Commonwealth. Each will so recorded and indexed shall be notice to all persons of the existence thereof.

Act effective
immediately.

Section 2. This act shall take effect immediately.

APPROVED—The 5th day of June, A. D. 1957.

GEORGE M. LEADER

No. 125

AN ACT

Relating to the distribution, sale or transportation of deficient or misbranded insecticides, fungicides, rodenticides and other pesticides; regulating traffic therein; providing for registration and examination of such materials; and imposing penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Pennsylvania
Pesticide Act
of 1957.

Section 1. Short Title.—This act shall be known and may be cited as the "Pennsylvania Pesticide Act of 1957."

Section 2. Definitions.—As used in this act—

(1) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any insects, rodents, fungi, weeds or other forms of plant or animal life or viruses, except viruses on or in living man or other animals which the secretary shall declare to be a pest.

(2) "Insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any insects which may be present in any environment whatsoever.

(3) "Fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any fungi.

(4) "Rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating rodents or any other vertebrate animal which the secretary shall declare to be a pest.

(5) "Herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any weed, and shall include defoliants, deflorants and those hormone-like substances which may be used to regulate the growth of plants.

(6) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented for the most part belonging to the class Insecta comprising six-legged usually winged forms as, for example, beetles, bugs, bees, flies and to other allied classes of arthropodes whose members are wingless and usually have more than six legs as, for example, spiders, mites, ticks, centipedes, wood lice and shall include nematodes.

(7) "Fungi" means all non-chlorophyll-bearing thallophtes (that is all non-chlorophyll-bearing plants of a lower order than mosses and liverworts) as, for example, rusts, smuts, mildews, molds, yeasts and bacteria, except those on or in living man or other animals.

(8) "Weed" means any plant which grows where not wanted.

(9) "Ingredient statement" means, either

(i) a statement of the name and percentage of each active ingredient together with the total percentage of the inert ingredients in a pesticide; or

(ii) a statement of the name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any, in the pesticide, except clause (i) shall apply if the preparation is for agricultural use or is highly toxic to man determined as provided in section 6 of this act, and in addition to clauses (i) and (ii), if the pesticide contains arsenic in any form, a statement of the percentages of total and water soluble arsenic each calculated as elemental arsenic.

(10) "Active ingredient" means an ingredient which will prevent, destroy, repel or mitigate insects, fungi, rodents, weeds or other pests.

(11) "Inert ingredient" means an ingredient which is not an active ingredient.

(12) "Antidote" means the most practical immediate treatment in case of poisoning and includes first aid treatment.

(13) "Person" means any individual, partnership, association, corporation or organized group of persons, whether incorporated or not.

(14) "Secretary" means the Secretary of Agriculture of the Commonwealth of Pennsylvania.

(15) "Registrant" means the person registering any pesticide pursuant to the provisions of this act.

(16) "Label" means the written, printed or graphic matter on or attached to the pesticide or the immediate container thereof and the outside container or wrapper of the retail package, if any, of the pesticide.

(17) "Labeling" means all labels and other written, printed or graphic matter:

(i) upon the pesticide or any of its containers or wrappers;

(ii) accompanying the pesticide at any time; and

(iii) to which reference is made on the label or in literature accompanying the pesticide, except when accurate non-misleading reference is made to current official publications of the United States Departments of Agriculture, Interior, Health, Education and Welfare, State Experiment Stations, State Agricultural Colleges or other similar Federal institutions or official agencies of this Commonwealth or other states authorized by law to conduct research in the field of pesticides.

(18) "Deficient" applies to any pesticide if its strength or purity falls below the profused standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the article has been wholly or in part abstracted.

Section 3. Misbranding.—"Misbranded" shall apply—

(1) to any pesticide if its labeling bears any statement, design or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

(2) to any pesticide,

(i) if it is an imitation of or is offered for sale under the name of another pesticide;

(ii) if its labeling bears any reference to registration under this act;

(iii) if the labeling accompanying it does not contain instructions for use which are necessary and if complied with adequate for the protection of the public;

(iv) if the label does not contain a warning or caution statement which may be necessary and if complied with adequate to prevent injury to living man and other vertebrate animals;

(v) if the label does not bear an ingredient statement on that part of the immediate container and on the out-

side container or wrapper if there be one through which the ingredient statement on the immediate container cannot be clearly read of the retail package which is presented or displayed under customary conditions of purchase;

(vi) if any word, statement or other information required by or under the authority of this act to appear on the labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or

(vii) if in the case of an insecticide, fungicide or herbicide when used as directed or in accordance with commonly recognized practice, it shall be injurious to living man or other vertebrate animals or vegetation, except weeds, to which it is applied or to the person applying the pesticide.

Section 4. Prohibited Acts.—(a) It shall be unlawful for any person to distribute, sell or offer for sale within this Commonwealth or deliver for transportation or transport in intrastate commerce or between points within this Commonwealth via any point outside this Commonwealth:

(1) Any pesticide which has not been registered pursuant to the provisions of section 5 of this act or any pesticide, if any, of the claims made for it, or any of the directions for its use differ in substance from the representation made in connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration. The secretary may permit a change in the labeling or formula of a pesticide within a registration period without requiring reregistration of the product.

(2) Any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container and to the outside container or wrapper of the retail package, if there be one through which the required information on the immediate container cannot be clearly read, a label bearing—

(i) the name and address of the manufacturer, registrant or person for whom manufactured;

(ii) the name, brand or trademark under which the article is sold; and

(iii) the net weight or measure of the content subject to such reasonable variations as the secretary may permit.

(3) Any pesticide which contains any substance or substances in quantities highly toxic to man determined

as provided in section 6 of this act, unless the label shall bear in addition to any other matter required by this act—

(i) the skull and crossbones;

(ii) the word "poison" prominently in red on a background of distinctly contrasting color; and

(iii) a statement of an antidote for the pesticide.

(4) Pesticides commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, sodium fluoride, sodium fluosilicate, and barium fluosilicate unless they have been distinctly colored or discolored as provided by regulations issued in accordance with this act, or any other white powder pesticide which the secretary, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, shall, by regulation, *require to be distinctly colored or discolored unless it has been so colored or discolored. The secretary may exempt any pesticide to the extent that it is intended for a particular use or uses from the coloring or discoloring required or authorized by this section, if he determines that coloring or discoloring for such use or uses is not necessary for the protection of the public health.

(5) Any pesticide which is deficient or misbranded.

(b) It shall be unlawful—

(1) for any person to detach, alter, deface or destroy, in whole or in part, any label or labeling provided for in this act or regulations promulgated hereunder, or to add any substance to or take any substance from a pesticide in a manner that may defeat the purpose of this act.

(2) for any person to use for his own advantage or to reveal other than to the secretary or proper officials or employes of the Commonwealth or to the courts of this Commonwealth in response to a subpoena or to physicians or in emergencies to pharmacists and other qualified persons for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of section 5 of this act.

Section 5. Registration.—(a) Every pesticide which is distributed, sold or offered for sale within this Commonwealth or delivered for transportation or transported in intrastate commerce or between points within this Commonwealth through any point outside this Commonwealth, shall be registered by the manufacturer or person for whom manufactured with the secretary, and such registration shall be renewed annually. The registrant shall file, with the secretary, a statement including

* "required" in original.

(1) The name and address of the registrant and the name and address of the person whose name will appear on the label if other than the registrant;

(2) The name of the pesticide;

(3) A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it including directions for use; and

(4) If requested by the secretary, a full description of the tests made and the results thereof upon which the claims are based. In the case of renewal of registration a statement shall be required only with respect to information which is different from that furnished when the pesticide was registered or last reregistered.

(b) Each pesticide shall be registered with the secretary before being offered for sale, sold or otherwise distributed in this Commonwealth. The application for registration shall be submitted to the secretary on forms which he shall supply, and shall be accompanied by a fee of seven dollars and fifty cents (\$7.50) per brand, for the first ten brands registered and two dollars (\$2) per brand for each brand registered in excess thereof. Upon approval by the secretary, a copy of the registration shall be furnished to the applicant. All registrations shall expire on the thirty-first day of December of each year. The registration fees and fines, when collected, shall be placed in the Feed and Fertilizer Fund to be administered by the secretary for the payment of the costs of inspection, sampling, analysis and other expenses necessary for the administration of this act.

(c) The secretary, whenever he deems it necessary in the administration of this act, may require the submission of the complete formula of any pesticide. If it appears to the secretary that the composition of the article is such as to warrant the proposed claims for it and if the article and its labeling and other material required to be submitted comply with the requirements of section 4 of this act, he shall register the article.

(d) If it does not appear to the secretary that the article is such as to warrant the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with the provisions of this act, he shall notify the registrant of the manner in which the article labeling or other material required to be submitted fail to comply with the act so as to afford the registrant an opportunity to make the necessary correction. If upon receipt of such notice, the registrant insists that the corrections are not necessary and requests, in writing, that the article be registered, the secretary shall register the article, under protest, and the registration shall be accompanied by a warning, in writing, to the registrant of the apparent failure of the

article to comply with the provisions of this act. In order to protect the public, the secretary may, at any time, cancel the registration of a pesticide, and in lieu thereof issue a registration under protest in accordance with the foregoing procedure. In no event shall registration of an article, whether or not protested, be construed as a defense for the commission of any offense prohibited under section 4 of this act.

(e) Notwithstanding any other provision of this act, registration is not required in the case of a pesticide shipped from one plant within this Commonwealth to another plant within this Commonwealth operated by the same person.

(f) This act shall not apply to the transportation of pesticides by the ultimate consumer.

Section 6. Determinations, Rules, Regulations, Uniformity.—(a) The secretary may, after opportunity for a hearing—

(1) Declare as a pest any form of plant or animal life or virus which is injurious to plants, men, domestic animals, articles or substances;

(2) Determine whether pesticides are highly toxic to man; and

(3) Determine standards of coloring or discoloring for pesticides and to subject pesticides to the requirements of section 4 (a) (4) of this act.

(b) The secretary may, after due public hearing, make rules and regulations for carrying out the provisions of this act, including rules and regulations providing for the collection and examination of samples of pesticides.

(c) In order to avoid confusion, endangering the public health, resulting from diverse requirements particularly as to the labeling and coloring of pesticides and to avoid increased costs to the people of this Commonwealth due to the necessity of complying with such diverse requirements in the manufacture and sale of such pesticides, it is desirable that there should be uniformity between the requirements of the several states and the Federal government relating to such pesticides. To this end the secretary may, after due public hearing, adopt rules and regulations applicable to and in conformity with the primary standards established by this act, which are prescribed in the United States Department of Agriculture with respect to pesticides. Such rules and regulations shall have the full force and effect of law as if they had been specifically enacted by the Legislature.

Section 7. Enforcement.—(a) The examination of pesticides shall be made under the direction of the secretary for the purpose of determining whether they comply

with the requirements of this act. If it appears from such examination that a pesticide fails to comply with the provisions of this act and the secretary contemplates instituting proceedings against any person, the secretary shall cause appropriate notice to be given to such person and to the registrant. Any person so notified shall be given an opportunity to present his views, either orally or in writing, with regard to such contemplated proceedings and, if thereafter in the opinion of the secretary, it appears that the provisions of the act have been violated by such person, the secretary shall institute such action as is hereinafter provided in the county in which the violation occurred. Nothing in this act shall be construed as requiring the secretary to report for prosecution or for the institution of libel proceedings minor violations of the act, whenever he believes that the public interests will be best served by a suitable notice of warning in writing.

(b) The secretary shall, by publication in such manner as he may prescribe, give public notice of all judgments entered in actions instituted under the authority of this act, and all registrations made under protest.

Section 8. Exemptions.—(a) The penalties provided for violations of section 4 (a) of this act shall not apply to—

(1) Any carrier while lawfully engaged in transporting a pesticide within this Commonwealth if such carrier shall, upon request, permit the secretary or his designated agent to copy all records showing the transactions in and movement of the articles.

(2) Public officials of this Commonwealth and the Federal government engaged in the performance of their official duties.

(3) The manufacturer or shipper of a pesticide for experimental use only:

(i) by or under the supervision of an agency of this Commonwealth or of the Federal government authorized by law to conduct research in the field of pesticide; or

(ii) by others if the pesticide is not sold and if the container thereof is plainly and conspicuously marked "For experimental use only. Not to be sold," together with the manufacturer's name and address. When a written permit has been obtained from the secretary, pesticides may be sold for experimental purposes subject to such restrictions and conditions as may be set forth in the permit.

(b) No article shall be deemed in violation of this act when intended solely for export to a foreign country and when prepared or packaged according to the specifica-

tions or directions of the purchaser. If not so exported, all the provisions of this act shall apply.

Section 9. Penalties.—(a) Any person violating any of the provisions of this act or any rule, regulation or order made pursuant to this act shall, for the first or second offense, upon conviction thereof in a summary proceeding, be sentenced to pay a fine of not less than fifty dollars (\$50) nor more than one hundred (\$100) and *costs of prosecution, and in default of payment thereof, shall be sentenced to undergo imprisonment for not more than thirty days, and for a third or subsequent offense shall be guilty of a misdemeanor, and shall, upon conviction thereof, be sentenced to pay a fine of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1000), or to undergo imprisonment not exceeding one year, or both. Any offense committed more than five years after a previous conviction shall be considered a first offense. In any case where a registrant was issued a warning by the secretary pursuant to the provision of this act, the registrant shall, upon conviction of a violation of any provision of this act, other than section 4 (a) (1), be fined not more than one thousand dollars (\$1000) or imprisoned for not more than one year, or both, and the registration of the article with reference to which the violation occurred shall terminate automatically. An article, the registration of which has been terminated, may not again be registered, unless the article, its labeling and other material required to be submitted, appear to the secretary to comply with all the requirements of this act.

(b) Notwithstanding any other provisions of this section, in case any person who, with intent to defraud, uses or reveals information relative to formulas of products acquired under authority of section 5 of this act, upon conviction thereof in a summary proceeding, shall be fined not less than two hundred dollars (\$200) nor more than five hundred dollars (\$500), or imprisoned for not more than one year, or both.

Section 10. Seizures.—(a) Any pesticide that is distributed, sold or offered for sale within this Commonwealth, or delivered for transportation or transported in intrastate commerce or between points within this Commonwealth through any point outside this Commonwealth, shall be liable to be proceeded against in any competent court in any county of the Commonwealth where it may be found and seized for confiscation by process of libel for condemnation:

(1) In the case of a pesticide—

(i) if it is deficient or misbranded;

* "cost" in original.

(ii) if it has not been registered under the provisions of section 5 of this act;

(iii) if it fails to bear on its label the information required by this act;

(iv) if it is a white powder pesticide and is not colored as required under this act.

(b) If the article is condemned, it shall, after entry of decree, be disposed of by destruction or sale as the court may direct, and the proceeds, if such article is sold less legal costs, shall be paid into the fund hereinbefore referred to in section 5 (b) of this act. The article shall not be sold contrary to the provisions of this act. Upon payment of costs and execution and delivery of a good and sufficient bond conditioned that the article shall not be disposed of unlawfully, the court may direct that the article be delivered to the owner thereof for relabeling or reprocessing as the case may be.

(c) When a decree of condemnation is entered against the article, court costs and fees and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of the article.

Section 11. Delegation of Duties.—All authority vested in the secretary by virtue of the provisions of this act may, with like force and effect, be executed by duly authorized agents of the Department of Agriculture as the secretary may, from time to time, designate for said purpose.

Section 12. Cooperation.—The Secretary is authorized and empowered to cooperate with, and enter into agreements with any other agency of this Commonwealth, the United States Department of Agriculture and any other State or agency thereof for the purpose of carrying out the provisions of this act and securing uniformity of regulations.

Section 13. Repealer.—The act of May 17, 1917 (P. L. 224), entitled “An act preventing the manufacture, sale, or transportation within the Commonwealth of adulterated or misbranded Paris greens, lead arsenates, lime-sulphur compounds, and other insecticides and fungicides, and regulating traffic therein; providing for inspection of such materials, and imposing penalties,” is repealed. Jurisdiction in all matters pertaining to the distribution, sale and transportation of pesticides is, by this act, vested conclusively in the secretary, and all acts and parts of acts inconsistent with this act are hereby expressly repealed. Repeal.

Section 14. Effective Date.—This act shall take effect January 1, 1958. Effective date.

APPROVED—The 5th day of June, A. D. 1957.

GEORGE M. LEADER