

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1664

SPONSOR: Committee on Agriculture and Senator Hill

SUBJECT: Florida Agricultural Worker Safety Act

DATE: April 8, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Akhavein</u>	<u>Poole</u>	<u>AG</u>	<u>Fav/CS</u>
2.	<u>Munroe</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable</u>
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	<u>AGG</u>	_____
5.	_____	_____	<u>AP</u>	_____
6.	_____	_____	_____	_____

I. Summary:

This bill creates the “Florida Agricultural Worker Safety Act” to be administered by the Department of Agriculture and Consumer Services (DACS or department). The intent of the act is to ensure that agricultural workers are protected from and receive information about agricultural pesticides. It specifies that DACS shall continue to operate under the regulations established by the United States Environmental Protection Agency Labeling Requirement for Pesticides and Devices and the Worker Protection Standards, which DACS adopted by rule during the 1995-96 fiscal year.

The bill requires an agricultural employer to provide agricultural workers and others with specific written information concerning agricultural pesticides within two working days after being requested. It would be unlawful if the employer failed to provide the required pesticide information or to take any retaliatory action against any agricultural worker. DACS must monitor all complaints of retaliation and report any findings to the Legislature by October 1, 2008.

The bill amends sections 487.011, 487.012, 487.021, 487.025, 487.031, 487.041, 487.0435, 487.045, 487.046, 487.047, 487.049, 487.051, 487.0615, 487.071, 487.081, 487.091, 487.101, 487.111, 487.13, 487.156, 487.159, 487.161, 487.163, 487.171, 487.175, 403.088, 482.242, 500.03, and 570.44, Florida Statutes.

This bill creates part II of chapter 487, F.S., consisting of ss. 487.2011, 487.2021, 487.2031, 487.2041, 487.2051, 487.2061, and 487.2071, F.S., and one undesignated section of law.

II. Present Situation:

Federal Laws Related to the Use of Pesticides and Farm Workers

In August 1992, the U.S. Environmental Protection Agency (EPA) adopted the Worker Protection Standards for Agricultural Pesticides (WPS). The purpose of these standards is to reduce the risk of illness or injury resulting from workers' and handlers' occupational exposure to pesticides used in the production of agricultural plants on farms or in nurseries, greenhouses and forests; and from accidental exposure of workers and other persons to pesticides. The standards require workplace practices to be designed to reduce or eliminate exposures to pesticides and to exposure-related emergencies.

The federal WPS requires employers to adhere to strict regulations that are designed to ensure the safety of agricultural workers. The standards require employers to:

- Provide written or oral information to agricultural workers which state the type of pesticides used on the crops being harvested;
- Provide personal protective equipment that is designed to protect farm workers from contact with pesticides to each farm worker;
- Restrict reentry of the workers into any field after pesticides have been sprayed and advise each worker about the spraying; and
- Provide facilities for the farm workers which are located near work areas so the workers, in the event of an emergency, may wash their hands to get rid of any pesticide residue on themselves and to rinse their eyes or mouth.

The WPS also prohibit employers from exposing farm workers to pesticides through direct spraying or drift-away pesticide spray from airplanes or tractors.

There are two main offices within EPA that are responsible for pesticide-related issues. The Office of Pesticide Programs was established to protect the public health and the environment from the risks posed by pesticides, to promote safer means of pest control, and to ensure that pesticides are fairly and efficiently regulated. The Office of Enforcement and Compliance Assurance is responsible for ensuring compliance with federal environmental statutes through regional offices across the country.

The federal Occupational Health and Safety Act of 1970 provide farm workers who work on farms with 11 or more workers with basic field sanitation facilities.

Florida Laws Related to the Use of Pesticides and Farm Workers

Chapter 487, F.S., the Florida Pesticide Law, protects people and the environment from the adverse effects of pesticides. DACS is the primary agency for administering state pesticide laws and regulations. Chapter 487, F.S., regulates the distribution, sale, and use of pesticides except as provided in chapter 388, F.S., relating to mosquito control and chapter 482, F.S., relating to pest control.

Section 487.021(49), F.S., defines “pesticide” as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, nematodes, fungi, weeds, or other forms of plant or animal life or viruses, except viruses, bacteria, or fungi on or in living humans or other animals, which the department by rule declares to be a pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, excluding new animal drugs or animal feed.

DACS, under chapter 487, F.S., must certify and license any person who applies restricted-use pesticides. “Restricted-use pesticide” includes any pesticide, when applied in accordance with its directions for use, warnings, and cautions and for uses for which it is registered or for one or more such uses, or in accordance with a widespread and commonly recognized practice, may generally cause, without additional regulatory restrictions, unreasonable adverse effects on the environment, or injury to the applicator or other persons, and which has been classified as a restricted-use pesticide by the department or the administrator of EPA. The department may issue certified applicator licenses for public applicators, private applicators, and commercial applicators. In order for a person to be licensed as a certified-pesticide applicator, she or he must demonstrate competence by completion of a written or oral examination that demonstrates adequate knowledge concerning the proper use and application of restricted-use pesticides. The applicant for a certified-pesticide applicator’s license must demonstrate minimum competence as to:

- The proper use of pesticide application equipment;
- The environmental hazards that may be involved in applying restricted-use pesticides;
- Calculating the concentration of restricted-use pesticides to be used in particular circumstances;
- Identifying common pests to be controlled and the damage caused by such pests;
- Using of protective clothing and respiratory equipment required during the handling and application of restricted-use pesticides;
- Precautions to be followed in the disposal of containers, as well as cleaning and decontamination of the equipment used in the application of the pesticides;
- Applicable state and federal pesticide laws, rules, and regulations; and
- General safety precautions.

The department may adopt, by rule, the primary standards established by U.S. EPA with respect to pesticides.¹ If federal law preempts any provision in chapter 487, F.S., those provisions in the chapter that are not preempted shall apply. Chapter 487, F.S., is intended to be the comprehensive and exclusive regulation of pesticides in Florida.²

Section 487.0615, F.S., creates the Pesticide Review Council within the department. Its purpose is to advise the Commissioner of Agriculture regarding the sale, use, and registration of pesticides and to advise government agencies with respect to activities related to their

¹ See Chapter 5E-2, Florida Administrative Code. See Rule 5E-2.039, F.A.C., which provides the worker protection standard for agricultural pesticides as specified in 40 CFR 170, revised as of July 1, 1993, and amended in 59 FR 30264, published June 10, 1994, is hereby adopted by reference.

² See s. 487.051(2), F.S.

responsibilities regarding pesticides. The council is comprised of 11 scientific members from state agencies and state universities and is empowered to do the following:

- Recommend appropriate scientific studies on any registered pesticide when data indicate that the pesticide could pose an unreasonably adverse effect on the environment or human health;
- Recommend actions to be taken by the department with respect to the sale or use of a pesticide which the council has reviewed;
- Provide advice or information to government agencies with respect to activities related to their responsibilities regarding pesticides;
- Review biological and alternative controls to replace or reduce the use of pesticides;
- Consider the development of appropriate advice or recommendations on a pesticide when data indicate that the pesticide could pose an unreasonably adverse effect on the environment or human health; and
- Assist the department in the review of registered pesticides which are selected for special review based upon potential environmental or human health effects.

Section 487.1585, F.S., provides for duties of a pesticide licensee supervising unlicensed pesticide applicators and field workers. A licensed pesticide applicator must provide adequate instruction and training on the safety procedures required for applying pesticides. Such training and instruction must include:

- Safety procedures to be followed as specified on the label of the pesticide;
- Safety clothing and equipment to be worn;
- Common symptoms of pesticide poisoning;
- The dangers of eating, drinking, or smoking while handling pesticides; and
- Where to obtain medical treatment if needed.

1994 Florida Agricultural Worker Safety Act

In 1994, the Legislature adopted the Florida Agricultural Worker Safety Act³ which authorized DACS to adopt by rule the requirements of the federal Environmental Protection's Labeling Requirement for Pesticides and Devices and the Worker Protection Standards for Agricultural Pesticides. The Act required agricultural employers to provide agricultural workers and others with specific written information concerning agricultural pesticides. The Act provided penalties for agricultural employers who violated any provisions of the Act. The Act required the department to monitor agricultural workers' complaints of retaliation from employers for raising issues related to the Act and to submit a report to the Legislature on such complaints.

The Act made it unlawful for any agricultural employer to fail to provide agricultural pesticide information as required in the Act or to take any retaliatory action against any worker for exercising any right under the federal Worker Protection Standard.

The Act required the department to produce a pesticide safety information sheet for agricultural workers. The Act required, as part of the information provided to farm workers, when pesticides

³ See sections 27 and 28, ch. 94-233, Laws of Florida.

were applied within the previous 30 days and detailed information on health and safety issues. The Act also provided for agricultural workers who had been retaliated against by employers for raising issues related to the Act to seek relief under Florida law. The Act was repealed effective January 1, 1998, by section 28 of chapter 94-233, L.O.F.

Pesticides and the Florida Department of Health

In 1997, the Florida Department of Health began a five-year multi-state project under the National Institute for Occupational Safety and Health of the federal Centers for Disease Control and Prevention called the Sentinel Event Notification System for Occupational Risk Program (SENSOR).

The purpose of the SENSOR project was to build and maintain occupational illness and injury surveillance capacity with state health departments. One of the illnesses reported under SENSOR is acute occupational pesticide-related illnesses and injuries. Besides maintaining a record of the incidents of occupational pesticide-related cases, SENSOR also provided for the performance of in-depth investigations and preventive interventions aimed at particular industries. The surveillance for occupational pesticide-related illness and injury is designed to protect farm workers by determining the underlying causes for overexposure to pesticides in the workplace and to serve as an early warning system of any harmful effects not detected by the manufacturer testing of pesticides.

According to information from the Department of Health, orchards, nurseries, and farms occupy more than 25 percent of Florida's land area. There are more than 40,000 commercial farmers and 60,000 to 400,000 migrant farm workers in Florida.

Florida's pesticide exposure surveillance program was a collaborative effort between state agencies, county health departments, the medical establishment, state universities, and farm owners and groups, and farm worker organizations and groups. Expected short-term outcomes of the project included efforts to: increase the reporting of occupational pesticide-related cases, describe the magnitude and trend of such cases, identify populations at risk, identify emerging pesticide problems, and increase the awareness among farm workers and the public of pesticide-related illnesses. Long-term outcomes of the project included the reduction of: any exposures to pesticides, and the toxicity of any pesticide exposures. According to a 1999 SENSOR program report, the Florida Department of Health reported that the number of cases of acute pesticide-related illnesses detected by the Department of Health rose from an average of, about 4 cases in each of the previous years, to 171 cases in 1999.

III. Effect of Proposed Changes:

Section 1. Amends s. 487.011, F.S., to provide that this part may be cited as the "Florida Pesticide Law" which shall be administered by DACS.

Sections 2-25. Amends ss. 487.012-487.175, F.S., making technical corrections changing the term "chapter" to "part" and to make these sections conform to the bill which creates part II of chapter 487, F.S.

Sections 26-29. Amends ss. 403.088, 482.242, 500.03, and 570.44, F.S., to make technical corrections that refer to part II of chapter 487, F.S., which is created by the bill.

Section 30. Creates s. 487.2011, F.S., to provide that this part may be cited as the “Florida Agricultural Worker Safety Act” which must be administered by DACS. Part II of chapter 487, F.S., consists of ss. 487.2011, 487.2021, 487.2031, 487.2041, 487.2051, 487.2061, and 487.2071, F.S.

Creates s. 487.2021, F.S., to provide legislative intent ensuring that agricultural workers are protected from and receive information about pesticides.

Creates s. 487.2031, F.S., to provide definitions for the terms “agricultural employer,” “agricultural establishment,” “agricultural plant,” “department,” “designated representative,” “fact sheet,” “material safety data sheet,” “retaliatory action,” “trainer,” and “worker.”

Creates s. 487.2041, F.S., to require DACS to continue, to the extent that resources are available, to operate under the regulations established by the U.S. EPA’s Labeling Requirement for Pesticides and the Devices, and the Worker Protection Standard which was adopted by DACS by rule during the 1995-1996 fiscal year and published in the Florida Administrative Code.

Creates s. 487.2051, F.S., to require agricultural employers to make available to a worker certain information on agricultural pesticides. The bill requires the information to be in the form of a fact sheet or a material safety data sheet and such information must be provided to a worker within 2 working days after the request by a worker, a designated representative of the worker, or any medical personnel treating the worker. Upon the initial purchase of a product and with the first purchase after the material safety data sheet is updated, the distributor, manufacturer, or importer of any agricultural pesticide must obtain or develop and provide each direct purchaser of an agricultural pesticide with a material safety data sheet. DACS must design and make available to a trainer a one-page general agricultural pesticide safety sheet. The safety sheet must be in a language that is understandable to the worker and must include, but need not be limited to, illustrated instructions on the prevention of agricultural pesticide exposure and toll-free numbers to the Florida Poison Control Centers.

Creates s. 487.2061, F.S., to prohibit any person covered by this part from failing to provide required agricultural pesticide information or to take any retaliatory action. A person who violates this part is subject to federal penalties as provided in the U.S. EPA Worker Protection Standard (federal law).⁴ Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of EPA not more than \$5,000 for each offense.⁵ Any private applicator or other person who violates any provision of the federal law subsequent to receiving a written warning from the Administrator of EPA or following a citation for a prior violation, may be assessed a civil penalty by the Administrator of EPA of not more than \$1,000 for each offense,

⁴ The United States Environmental Worker Protection Standard is codified at 40 C.F.R. § 170.9(b). A person who has a duty under this part, as referenced on the pesticide product label, and who fails to perform that duty, violates Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.) (FIFRA) section 12(a)(2)(G) and is subject to a civil penalty under section 14. A person who knowingly violates section 12(a)(2)(G) is subject to section 14 criminal sanctions.

⁵ See 7 U.S.C.A. § 1361.

except that any applicator not included by the federal law who holds or applies registered pesticides, or uses dilutions of registered pesticides, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served, and who violates any provision of the federal law may be assessed a civil penalty by the Administrator of EPA of not more than \$500 for the first offense nor more than \$1,000 for each subsequent offense.⁶

The U.S. EPA Worker Protection Standard also provides criminal penalties. Any registrant, applicant for a registration, or producer who knowingly violates any provision of the federal law shall be fined not more than \$50,000 or imprisoned for not more than 1 year, or both.⁷ Any commercial applicator of a restricted use pesticide, or any other person not described in federal law who distributes or sells pesticides or devices, who knowingly violates any provision of the federal law shall be fined not more than \$25,000 or imprisoned for not more than 1 year, or both.⁸

Creates s. 487.2071, F.S., to provide for penalties against any person who violates the provisions of this part. The bill provides for civil and criminal penalties as provided in the U.S. EPA Worker Protection Standard.⁹ The bill allows a worker who has been subject to retaliatory action and seeks relief to file a complaint with DACS. DACS must monitor complaints of retaliation and report its findings to the Legislature on or before October 1, 2008. The report must include the number of complaints received, the circumstances surrounding the complaints, and the actions taken concerning the complaints.

Section 31. Creates an undesignated section of law, to request the Division of Statutory Revision to designate s. 487.011 through s. 487.175, F.S., as Part I of chapter 487, entitled the "Florida Pesticide Law," and s. 487.2011 through s. 487.2071, F.S., as created by this act, as part II of that chapter, entitled the "Florida Agricultural Worker Safety Act."

Section 32. Provides that this act shall take effect July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, s. 24(a) and (b) of the Florida Constitution.

⁶ See 7 U.S.C.A. § 1361.

⁷ See 7 U.S.C.A. § 1361.

⁸ See 7 U.S.C.A. § 1361.

⁹ *Supra.*

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Agricultural employers will be required to furnish general pesticide safety information and a written document that provides technical information about specific agricultural pesticides to workers. Estimated costs for this are unknown.

C. Government Sector Impact:

	Fund	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES:		0	0	0
EXPENDITURES:				
<u>Recurring:</u>				
2 Environmental Specialist III	GR	102,284	102,284	102,284
4 Environmental Specialist II	GR	184,906	184,906	184,906
6 Standard Expense Packages	GR	59,490	41,124	41,124
4 Motor Vehicles	GR	80,000	0	0
Technology Maintenance Costs	GR	2,700	2,700	2,700
<u>Non-Recurring:</u>				
6 Standard Professional Pkg.	GR	9,000	0	0
Application Development for Pesticide Complaints	GR	31,510	0	0
TOTAL EXPENDITURES:	GR	\$469,890	\$331,014	\$331,014

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
