

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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BILL: SB 1498

INTRODUCER: Senator Benacquisto

SUBJECT: Pest Control

DATE: February 23, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Akhvein</u>	<u>Becker</u>	<u>AG</u>	<b>Favorable</b>
2.	<u>Blizzard</u>	<u>DeLoach</u>	<u>AGG</u>	<b>Recommend: Favorable</b>
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	<b>Pre-meeting</b>

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**I. Summary:**

SB 1498 requires the Department of Agriculture and Consumer Services (department) to adopt a rule specifying the circumstances when less than 24-hour notification of structural fumigation is acceptable. The bill removes the current emergency exception.

The bill requires the department to adopt rules that include additional safety measures to be taken regarding the clearance of residential structures before reoccupation after a fumigation. These measures can include extended aeration times or specific clearance procedures.

Additionally, the bill authorizes the department to adopt rules that establish conditions for registration or reregistration of structural fumigants. The rules must require registrants (manufacturers) to:

- Train distributors and end users in safety measures and proper use, safe storage, and management of fumigant materials;
- Obtain continuing education program approval for stewardship training programs;
- Conduct quality assurance reviews;
- Report to the department any probation or stop-sale notices issued to end users. The department must then notify all other structural fumigant registrants of the reported probation or stop-sale notice; and
- Assist the department, upon request, with the removal of fumigant containers from distributors and end users compliance with permanent or extended stop-sale notices.

The bill has an insignificant negative fiscal impact on the department. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2016.

## II. Present Situation:

The Department of Agriculture and Consumer Services (department) regulates the structural pest control industry.<sup>1</sup> Fumigants are chemicals that, when at a required temperature and pressure, can exist in the gaseous state in sufficient concentration to be lethal to a given organism.<sup>2</sup> Sulfuryl fluoride is the most common pesticide used as a structural fumigant and is classified by the U.S. Environmental Protection Agency as a “Restricted Use Pesticide” due to its high toxicity to humans.<sup>3</sup>

There are 137 pest control businesses performing structural fumigations in Florida. The pesticide sulfuryl fluoride was used in 99.92 percent of the structural fumigations in Florida. Structural fumigations have increased by 57 percent for Fiscal Year 2014-2015. Since 2010, 166 calls were received by the Florida Poison Information Center Network related to sulfuryl fluoride exposure. Most exposures were unintentional and occurred at a residence. Florida law requires that suspected exposures to pesticides be reported to the Florida Department of Health and the department within 24 hours.<sup>4</sup>

The largest number of exposures were reported in Miami-Dade (30.7 percent), Broward (17.5 percent), Palm Beach (12 percent), Pinellas (9 percent), and Hillsborough (7.8 percent) counties. The most common clinical syndromes were gastrointestinal, neurological, respiratory, and ocular. The most common symptoms reported were nausea, eye irritation or pain, dyspnea, headache, vomiting, and dizziness. Since January 2010, one major illness and one death have been reported.<sup>5</sup>

### Section 482.051, F.S.

Section 482.051, F.S., provides the department with rulemaking authority to enforce ch. 482, F.S. The department is required to adopt rules for the protection of the health, safety, and welfare of pest control employees and the general public. Section 482.051, F.S., provides requirements that must be included the department’s rules.

The department must have a rule which requires licensees to provide written notification to the department of the location that fumigants will be applied. The notice must be received by the department at least 24 hours before the fumigation.<sup>6</sup>

Section 482.051(4), F.S., provides in an authentic and verifiable emergency, when 24 hours’ notice is not possible, notice may be given by telephone, facsimile, or other form of acceptable electronic communication. The notice must be immediately followed by written confirmation

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<sup>1</sup> See ch. 482, F.S.

<sup>2</sup> Section 482.021(9), F.S.

<sup>3</sup> Office of Inspector General, Review of the Division of Agricultural Environmental Services, *Structural Fumigation Regulations and Processes*, p. 1 (January 2016) available at <http://media.wptv.com/image/Report.pdf> (last visited February 19, 2016).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Section 482.051(4), F.S.

providing the required information.<sup>7</sup> However, what constitutes an emergency is not clearly defined. From 2010 to 2015, an average of 845 emergency notifications per year were reported.<sup>8</sup>

### **Structural Fumigation**

After a structural fumigation has occurred, the structure must be aerated. The aeration process includes a minimum one-hour active aeration and a minimum five-hour passive aeration. An active aeration requires the doors and windows of the structure to be opened and fans used to allow the fumigant to dissipate. The passive aeration occurs after the active aeration and requires the structure to be re-secured.<sup>9</sup>

Pest control businesses are not required to provide the department with the initiation time of the aeration process. After the aeration process is completed, licensees are required to use calibrated clearance devices to take readings throughout a structure to ensure any residual fumigant is within acceptable levels for re-occupancy. Licensees are required to maintain evidence of device calibration, but do not have to provide these records to the department unless requested.<sup>10</sup>

### **Fumigants**

Stewardship training educates applicators about pest control products, how to properly apply pest control products, and the risks associated with these products.<sup>11</sup> Currently, the requirement for participation in a stewardship program is enforced through language on the label of the fumigant. A manufacturer's label requires the completion of a stewardship course before purchase or use of the product, but does not specify a training frequency.<sup>12</sup>

The department does not require completion of a stewardship program and there are no rules language regarding these programs.<sup>13</sup>

## **III. Effect of Proposed Changes:**

**Section 1** amends s. 482.051, F.S., to require the department adopt a rule specifying the circumstances when less than 24-hour notification of structural fumigation is acceptable. The bill removes the current emergency exception.

The bill requires the department to adopt rules that prescribe safety measures to be taken regarding the clearance of residential structures before reoccupation after a fumigation. These measures can include extended aeration times or specific clearance procedures.

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<sup>7</sup> *Id.*

<sup>8</sup> Department of Agriculture and Consumer Services, Division of Agricultural Environmental Services, *Agency Bill Analysis for SB 1498*, (January 15, 2016) (on file with the Senate Committee on Fiscal Policy).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Supra* note 3 at p. 10. Section 487.025, F.S., requires a label to contain instructions for use necessary to protect the public.

<sup>13</sup> *Supra* note 8. The department regulates pesticides under ch. 487, F.S.

**Section 2** amends s. 487.051, F.S., to authorize the department to adopt rules that establish conditions for registration or reregistration of structural fumigants. The rules must require registrants (manufacturers) to:

- Train distributors and end users in safety measures and proper use, safe storage, and management of fumigant materials;
- Obtain continuing education program approval for stewardship training programs;
- Conduct quality assurance reviews;
- Report to the department any probation or stop-sale notices issued to end users. The department must then notify all other structural fumigant registrants of the reported probation or stop-sale notice; and
- Assist the department, upon request, with the removal of fumigant containers from distributors and end users compliance with permanent or extended stop-sale notices.

**Section 3** provides that the bill is effective July 1, 2016.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Pest control businesses, manufacturers, and others may incur indeterminate costs to comply with department rules adopted pursuant to this bill.

C. Government Sector Impact:

The bill has an insignificant negative fiscal impact to the department because it will need to initiate the rulemaking process to strengthen safety requirements for structural fumigation and to update requirements for fumigant registrants. These costs can be absorbed within existing resources.

**VI. Technical Deficiencies:**

Chapter 487, F.S., does not define the terms “fumigant” or “structural fumigant.” Section 482.021(9), F.S., defines the term “fumigant”, however, the provisions of ch. 487, F.S., generally exclude or do not apply to ch. 482, F.S.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 482.051 and 487.051 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.