

Department of Legislative Services  
 Maryland General Assembly  
 2003 Session

FISCAL AND POLICY NOTE

Senate Bill 540 (Senator Grosfeld, *et al.*)  
 Education, Health, and Environmental Affairs

**Agriculture - Restricted Use Pesticide - Use and Access**

This bill requires the Maryland Department of Agriculture (MDA) to conduct criminal records checks on all applicants for certification as a pesticide applicator and for a permit to sell or distribute restricted use pesticides. MDA must adopt regulations requiring employers to conduct such checks and obtain job history reports on employees with access to restricted use pesticides. Employers who in good faith rely on these checks in making personnel decisions are immune from liability. The bill establishes restrictions on persons who are not certified applicators and provides a minimum civil penalty for specified violations of the Pesticide Applicator’s Law. MDA must establish a tracking system for reports of suspicious pesticide purchases.

**Fiscal Summary**

**State Effect:** General fund administrative expenditures for MDA would increase by at least \$134,500 in FY 2004. Out-years reflect annualization and inflation. This does not include costs for criminal records checks under the assumption that MDA would be able to pass such costs on to each applicant.

(in dollars)	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	134,500	122,600	130,300	138,800	148,000
Net Effect	(\$134,500)	(\$122,600)	(\$130,300)	(\$138,800)	(\$148,000)

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect*

**Local Effect:** Increases in local expenditures for background checks on public agency employees with access to restricted use pesticides. **This bill may impose a mandate on a unit of local government.**

**Small Business Effect:** Meaningful.

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## **Analysis**

**Bill Summary:** This bill adds several provisions relating to the Pesticide Applicator's Law.

### *Criminal History Records Checks and Disqualification*

This bill requires MDA to conduct background and national and State criminal history records checks on all applicants for certification as a pesticide applicator and for a permit to sell or distribute restricted use pesticides. MDA must adopt regulations requiring employers to conduct such checks and to obtain job history reports on all employees with access to restricted use pesticides. MDA must also provide for what crimes will disqualify a person from certification or employment. The bill provides immunity from liability for employers who in good faith rely on criminal background checks in making personnel decisions.

### *Restrictions on Persons Who Are Not Certified Applicators*

The bill generally prohibits a noncertified person from applying, purchasing, mixing, or loading a restricted use pesticide unless the person is: (1) competent; (2) acting under the instruction and control of a certified applicator responsible for the person's actions; and (3) within the certified applicator's continuous visual and voice contact. A person employed by a certified private applicator may use or apply a restricted use pesticide if the person is supervised by the certified private applicator. The bill authorizes a person to file a complaint, within six months of the violation, alleging a violation relating to purchasing, mixing, or loading a restricted use pesticide.

### *Minimum Penalty for Noncompliance with Training or Reinstatement Requirements*

The bill establishes a minimum civil penalty of \$1,000 for any violation of existing law mandating: (1) additional training for pest control consultants and applicators when significant technological developments so require; and (2) a special examination as a prerequisite to reinstatement or renewal of a suspended or revoked pest control or applicator's certification. The maximum penalty under current law (\$2,500) would remain.

### *Tracking and Investigating Suspicious Pesticide Purchases*

MDA must establish a tracking system to facilitate the reporting, recording, and investigating of suspicious pesticide purchases, to include: (1) a toll-free telephone line to take anonymous citizen reports; and (2) a database to record such reports. MDA must further review each report to determine whether it contains credible evidence of dangerous or illegal activity, and forward all such credible reports to the appropriate law enforcement agency. MDA must adopt all necessary regulations to carry out these provisions by October 1, 2004.

**Current Law:** The Secretary of Agriculture must establish mandatory qualifications for the various licenses, permits, and certifications relating to the application of pesticides to assure competence and responsibility. MDA currently does not require criminal history records checks for applicants.

All pest control consultants, pest control applicators, and public agency applicators are required to pass a written examination and obtain an annual certificate indicating competence in one or more established categories. All applicants for private applicator certificates must pass a written examination and obtain a certificate that is valid for three years and renewable by participation in training. Each application for a certificate must be accompanied by a fee payment set by statute. A person who sells or distributes a restricted use pesticide must hold a dealer permit. Each dealer permit must be renewed annually by payment of a \$25 fee. A public agency that applies a pesticide must hold an annual public agency permit. All fees collected must be placed in a special fund and used to defray partially the expenses of administering the Pesticide Applicator's Law.

“Restricted use pesticide” means specified chemical compounds so classified by the Secretary of Agriculture or the federal government. Each commercial application of a pesticide must be under the supervision of a certified pest control applicator or certified public agency applicator who is responsible and liable for the application. Each application of a restricted use pesticide by a certified private applicator must be done under a private applicator's supervision, and the private applicator is responsible and liable for the application. By MDA regulation, a person may not use a restricted use pesticide unless that person is a certified applicator or is a person working under the supervision of a certified applicator.

MDA does not require employers to conduct criminal history records checks and job history reports for any employees who have access to restricted use pesticides, nor does it mandate disqualification of an applicant for certification or potential employee for employment based on commission of certain crimes. State law does require that all licensees and permittees register with MDA any employee who performs pest control,

and that employees other than certified applicators complete training approved by MDA. An employee who does not complete this training may only apply pesticides if a certified applicator or registered employee is physically present at the time and place the pesticide is applied by the employee.

Any violation of the Pesticide Applicator's Law subjects a person to: (1) a civil penalty not exceeding \$2,500 for a first violation and \$5,000 for each subsequent violation; and (2) a misdemeanor criminal penalty of a fine not exceeding \$1,000 or imprisonment not exceeding 60 days, or both. The Secretary of Agriculture also has authority to deny, suspend, or revoke a license, permit, or certificate and to bring an action for an injunction against a violator. There are no minimum penalties for any violations.

**Background:** This bill is intended to: (1) prevent terrorists from using restricted use pesticides as chemical weapons; and (2) provide enhanced precautions for the possession, mixing, loading, transport, use, storage, and disposal of restricted use pesticides.

**State Fiscal Effect:** General fund expenditures would increase by at least an estimated \$134,457 in fiscal 2004 for the bill's provisions, excluding any costs relating to criminal history records checks fees (discussed below). This estimate reflects the bill's October 1, 2003 effective date. It reflects the cost of hiring two agricultural inspectors to conduct site visits and ensure compliance with the bill's requirements and one administrative support staff to track criminal history records check information and fee payments as well as reports of suspicious pesticide purchases. It includes salaries, fringe benefits, one-time start-up costs, one automobile for each inspector, and ongoing operating expenses.

Salaries and Fringe Benefits	\$80,504
Two Autos, Mileage, Fuel	31,436
Other Operating Expenses	<u>22,517</u>
<b>FY 2004 Expenditures (excluding criminal history records fees)</b>	<b>\$134,457</b>

Future year expenditures reflect: (1) full salaries with 4.5% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

MDA's general fund expenditures could be significantly higher depending upon how the bill's provisions requiring criminal history records checks apply. It is unclear: (1) whether MDA must pay the fees for the requisite criminal history records checks or may pass on this cost to the applicants; and (2) whether the bill applies only to new applicants as of the bill's effective date, or to all current permit and certificate holders upon renewal.

The total maximum cost of each criminal history records check is \$52, which includes State and national background checks plus fingerprinting. Maryland's Criminal Justice Information System (CJIS) Central Repository is authorized by law to collect an \$18 fee established for Maryland criminal history records checks. This fee represents cost recovery for processing and administration and is revenue/cost neutral. The Federal Bureau of Investigation (FBI) charges a fee of \$24 for a national criminal history records check. There is also normally a \$10 fee for two fingerprint cards (\$5 for the State card; \$5 for the separate FBI card). The CJIS Central Repository must collect the records fees from the applicant, or other payer, and reimburse the FBI through that agency's monthly billing.

Inasmuch as most fees for criminal history records checks are passed along to the applicant, it is assumed that MDA will also be able to pass along this cost, resulting in a neutral net fiscal impact for these checks. However, if MDA is required to pay the records check fee for the applicants, MDA's expenditures could increase by about \$52,260 for new applicants alone in fiscal 2004. This additional cost is based on the fact that MDA receives new applications on an annual basis for approximately 300 private applicator certificates, 700 commercial applicator certificates, and 5 restricted use pesticide dealer permits, and each of the applicants would be subject to a criminal history records check at \$52 per person.

Moreover, assuming that the records check requirement is also meant to apply to all current permit and certificate holders as they come up for renewal, MDA's general fund expenditures could increase by an additional \$425,828 over the next few years. This is based on a payment of \$52 for 8,189 current certificate and permit holders, including 4,137 private applicators (three-year renewal cycle), 3,897 commercial applicators (annual renewal), and 155 restricted use pesticide dealers (annual renewal).

**Local Expenditures:** There are currently 237 public agency permits issued to local government entities. These entities will be required to conduct criminal history records checks and obtain job history reports for each employee with access to restricted use pesticides. Local expenditures will increase accordingly for these purposes.

**Small Business Effect:** Expenditures by small businesses will also increase to pay for criminal history records checks of employees with access to restricted use pesticides. The majority (85%) of the 1,516 licensed pesticide businesses and 155 restricted use pesticide dealers are small businesses. These businesses will be required to conduct criminal history records checks and obtain job history reports for each employee with access to restricted use pesticides. There are approximately 38,000 registered employees who work under the supervision of certified commercial applicators that could have access to restricted use pesticides. In addition, certified private applicators (farmers)

would be required to conduct criminal history records checks on an estimated 7,000 - 10,000 employees with access to restricted use pesticides.

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### **Additional Information**

**Prior Introductions:** An identical bill was introduced as HB 809 of 2002. The bill received an unfavorable report from the House Environmental Matters Committee.

**Cross File:** None.

**Information Source(s):** Maryland Department of Agriculture, Department of Public Safety and Correctional Services, Department of Legislative Services

**Fiscal Note History:** First Reader - March 5, 2003  
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