

GENERAL LAWS OF MASSACHUSETTS

CHAPTER 132B. MASSACHUSETTS PESTICIDE CONTROL ACT.

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MGL c. 132B was amended by Chapter 85 of the Acts of 2000, An Act to Protect the Health of Children and Families from Harmful Pesticides. Sections 2, 5A, 10, and 14 were amended and Sections 5A, 6B, 6C, 6D, 6E, 6F, 6G, 6H, 6I, 6J, 6K, 7A, 14A, and 16 were added.

Section 1. This chapter shall be known and may be cited as the Massachusetts Pesticide Control Act.

The purpose of this chapter is to conform the laws of the commonwealth to the Federal Insecticide, Fungicide, and Rodenticide Act, Public Law 92-516, as amended, and the regulations promulgated thereunder and to establish a regulatory process in the commonwealth. The exclusive authority in regulating the labeling, distribution, sale, storage, transportation, use and application, and disposal of pesticides in the commonwealth shall be determined by this chapter.

Section 2. Unless the context clearly requires otherwise, when used in this chapter, the following words and phrases shall have the following meanings:

“Active ingredient”, in the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient which prevents, destroys, repels, or mitigates any pest; in the case of a plant regulator, an ingredient which through physiological action accelerates or retards the rate of growth or rate of maturation or otherwise alters the behavior of ornamental or crop plants or the products thereof; in the case of a defoliant, an ingredient which causes the leaves or foliage to drop from a plant; and, in the case of a desiccant, an ingredient which artificially accelerates the drying of plant tissue.

“Administrator”, the Administrator of the United States Environmental Protection Agency.

“Adulterated”, when used with reference to a pesticide, any pesticide the strength or purity of which falls below the professed standard of purity as expressed on its labeling under which it is sold; a pesticide for which any substance has been substituted wholly or in part; or a pesticide from which any valuable constituent has been wholly or in part abstracted.

“Advisory council”, a council established by regulations adopted by the department for the purposes set forth in section five.

“Agency”, any executive office, department, division, agency, board, branch, bureau or commission of the commonwealth.

“Agricultural commodity”, a plant, or part thereof, or animal or animal product produced by a person primarily for sale, consumption, propagation, or other use by man or animals.

“Animal” all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish and shellfish.

“Anti-microbial pesticide”, a pesticide that is used for the control of microbial pests, including, but not limited to, viruses, bacteria, algae and protozoa, and is intended to disinfect, sanitize, reduce or mitigate growth or development of microbiological organisms. Anti-microbial pesticide shall not include any fungicide or pesticide used on plants, turf or other vegetation or for ornamental uses.

“Certified applicator”, an individual who is certified under the provisions of section ten as authorized to use or supervise the use of any pesticide which is classified by the department as being for restricted use.

“Private applicator”, a certified applicator who uses or supervises the use of any pesticide which is classified by the department as being for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or if applied without compensation other than trading of personal services between producers of agricultural commodities on the land of another person.

“Commercial applicator”, a certified applicator, whether or not he is a private applicator with respect to some users, who uses or supervises the use of any pesticide which is classified by the department as being for restricted use for any purpose or on any land other than as provided in the preceding paragraph.

“Licensed applicator”, an individual who is licensed under the provisions of section ten as authorized to be present while pesticides classified by the department as being for restricted use are being applied under the direct supervision of a certified applicator, or to use or to be present to supervise the use or land of another for hire any pesticide classified by the department as being for general use.

“Beneficial insects”, insects which, during their life cycle, are effective pollinators of plants, are parasites or predators of pests, or are otherwise beneficial.

“Board”, the pesticide board, established by section three.

“Commissioner”, the commissioner of food and agriculture.

“Day care center”, any public or private facility operated on a regular basis whether known as a day nursery, nursery school, kindergarten, child play school, progressive school, child development center or preschool, or known under any other name, which receives children not of common parentage who are not more than six years of age, or who are not more than 21 years of age if such children have special needs, for nonresidential custody and care during part or all of the day separate from their parents. Day care center shall not include: any part of a public school system; any part of a private, organized educational system, unless the services of such system are primarily limited to kindergarten, nursery or related preschool services; periodic religious instruction classes conducted by a religious institution; a facility operated by a religious organization where children are cared for during short periods of time while persons responsible for such children are attending religious services; a family day care home; an informal cooperative arrangement among neighbors or relatives; or the occasional care of children with or without compensation.

“Defoliant”, a substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission.

“Department”, the department of food and agriculture.

“Desiccant”, a substance or mixture of substances intended to artificially accelerate the drying of plant tissue.

“Device”, an instrument or contrivance, other than a firearm, intended to hold or dispense a pesticide and used in conjunction with a pesticide, the purpose of which is to trap, destroy, repel, or mitigate any pest or any other form of plant or animal life, other than man and other than bacteria, virus, or other micro-organism on or in living man or other living animals, but not including equipment used for the application of pesticides when sold separately therefrom.

“Director”, the pesticides program director established by section four.

“Distribution” or “Distribute”, to offer for sale, hold for sale, sell, barter, ship, deliver for shipment, or receive.

“Environment”, includes water, air, land, and all plants and man and other living animals therein, and the interrelationships which exist among these.

“Federally registered pesticide”, a pesticide which is registered pursuant to FIFRA.

“FIFRA”, the Federal Insecticide, Fungicide, and Rodenticide Act, Public Law 92-516, as amended.

“Fungi” or “Fungus”, non-chlorophyll-bearing thallophytes of a lower order than mosses and liver-worts, as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other living animals, and except those in or on processed food, beverages, or pharmaceuticals.

“Imminent hazard”, a situation in which the continued use of a pesticide would result in unreasonable adverse effects on the environment.

“Inert ingredient”, an ingredient which is not active.

“Insect”, a small invertebrate animal 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, moths, beetles, bugs, bees, flies, and their immature stages, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as for example, spiders, mites, ticks, millipedes, and wood lice.

“Integrated pest management”, a comprehensive strategy of pest control whose major objective is to achieve desired levels of pest control in an environmentally responsible manner by combining multiple pest control measures to reduce the need for reliance on chemical pesticides; more specifically, a combination of pest controls which addresses conditions that support pests and may include, but is not limited to, the use of monitoring techniques to determine immediate and ongoing need for pest control, increased sanitation, physical barrier methods, the use of natural pest enemies and a judicious use of lowest risk pesticides when necessary.

“Label”, the written, printed, or graphic matter, on or attached to, the pesticide or device or any of its containers or wrappers.

“Labeling”, all labels and all other written, printed or graphic matter accompanying the pesticide or device at any time, or to which reference is made on the label or in literature accompanying the pesticide or device, but shall not include publications of the United States Environmental Protection Agency, the United States Department of Agriculture, or Interior, or Health, Education and Welfare, state experiment stations, state agricultural colleges, and other similar federal or state institutions or agencies authorized by law to conduct research or disseminate information in the field of pesticides, except as otherwise provided by regulation of the department.

“Land”, land and water areas, including airspace, and structures, buildings, contrivances, and machinery appurtenant thereto or situated thereon, fixed or mobile.

“Licensed pesticide dealer”, a person who distributes pesticides classified by the department as being for restricted use or pesticides whose uses or distribution are further restricted by regulations adopted by the department, with the approval of the board.

“Misbranded”, (a) in the case of a pesticide or device, if the labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular; (b) in the case of a pesticide or device, if it is an imitation of, or is offered for sale under the name of, another pesticide or device; (c) in the case of a pesticide or device, if any word, statement, or other information required by or under authority of FIFRA or this chapter to appear on the label or 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; (d) in the case of a pesticide, if it is contained in a package or other container or wrapping which does not conform to standards established pursuant to FIFRA or this chapter; (e) in the case of a pesticide, if it does not contain a label bearing the registration number assigned under FIFRA to each establishment in which it was produced; (f) in the case of a pesticide, if the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under FIFRA or this chapter, is adequate to protect health and the environment; (g) in the case of a pesticide, if its label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under FIFRA or this chapter, is adequate to protect health and the environment; (h) in the case of a pesticide, if its label does not bear an ingredient statement on that part of the immediate container, and on the outside container or wrapper of the retail package, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, which is presented or displayed under customary conditions or purchase, except that a pesticide is not misbranded if the administrator has permitted the ingredient statement to be placed on another part of the container pursuant to FIFRA; (i) in the case of a pesticide, if its labeling does not contain a statement of the use classification under which it is registered; (j) in the case of a pesticide, if there is not affixed to its 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 the name and address of the producer, registrant, or person for whom the pesticide is produced; the name, brand, or trademark under which the pesticide is distributed; the net weight or measure of the content, as required by the administrator; and the registration number assigned to the pesticide by said administrator pursuant to FIFRA; (k) in the case of a pesticide containing any substance or substances in quantities highly toxic to man, unless the label shall bear, in addition to any other matter required by FIFRA or this chapter the skull and crossbones; the word "POISON" prominently in red on a background of distinctly contrasting color; and a statement of practical treatment, first aid or otherwise, in case or poisoning by the pesticide; and (l) in the case of a pesticide, if its container does not bear a label, as required by the department pursuant to this chapter.

“Nematode”, invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or sac-like bodies covered with

cuticle, and inhabiting soil, water, plants or plant parts. Nematodes may also be referred to as nemas or eel-worms.

“Person”, an individual, association, partnership, corporation, company, business organization, trust, estate, the commonwealth or its political subdivisions, administrative agencies, public or quasi-public corporation or body, or any other legal entity or its legal representative, agent or assign, or a group of persons.

“Pest”, an insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacterium, or other micro-organism, except viruses, bacteria or other micro-organisms on or in living man or other living animal, which is declared to be a pest by the administrator or by the department with the approval of the board.

“Pesticide”, a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; provided that the term “Pesticide” shall not include any article that is a “new animal drug” within the meaning of section 201 (w) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. s 321 (w)), or that has been determined by the Secretary of the United States Department of Health, Education and Welfare not to be a new animal drug by a regulation establishing conditions of use for the article, or that is an animal feed within the meaning of section 201 (x) of such act (21 U.S.C. s 321 (x)).

“Plant regulator”, a substance or mixture of substances intended, through physiological action, to accelerate or retard the rate of growth or rate of maturation, or to otherwise alter the behavior of plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments. Also, the term “plant regulator” shall not include any nutrient mixtures or soil amendments commonly known as vitamin-hormone horticultural products, intended for improvement, maintenance, survival, health, and propagation of plants, and as are not for pest destruction and are nontoxic, nonpoisonous in the undiluted package concentration.

“Produce”, to manufacture, prepare, compound, propagate, process or repackage any pesticide or device.

“Producer”, a person who manufactures, prepares, compounds, propagates, processes or repackages any pesticide or device.

“Protect health and the environment” or “protection of health and environment”, protection against any unreasonable adverse effects on the environment.

“Registrant”, a person who has registered any pesticide pursuant to the provisions of this chapter.

“School”, any public or private school for preschool, elementary, middle or high school students.

“School administration”, a school committee, private school board of directors, or other body of school supervisory officers.

“School age child care program”, any public or private program or facility operated on a regular basis which provides supervised group care for children not of common parentage who are enrolled in kindergarten and are of sufficient age to enter first grade the following year, or an older child who is not more than 14 years of age, or

not more than 21 years of age if such child has special needs. Such a program may operate before and after school and may also operate during school vacation and holidays. A school age child care program shall not include: any part of a public school system; any part of a private, organized educational system, unless the services of such system are primarily limited to a school age day care program; periodic religious instruction classes conducted by a religious institution; a facility operated by a religious organization where children are cared for during short periods of time while persons responsible for such children are attending religious services; a family day care home; an informal cooperative arrangement among neighbors or relatives; or the occasional care of children with or without compensation.

“Standard written notification”, includes the following information: the approximate dates on which the spraying, release, deposit or application of a pesticide shall commence and conclude; the specific location of the anticipated application; the product name and type of each pesticide to be used; a department-approved fact sheet and United States Environmental Protection Agency registration number for each pesticide; a description of the purpose of the pesticide application; and a department-approved statement describing ways to minimize exposure, and precautions to be taken, especially for sensitive individuals such as children, the elderly, pregnant women and those with health problems.

“Under the direct supervision of a certified applicator”, unless otherwise prescribed by its labeling, a pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a competent person acting under the instructions and control of a certified applicator who is available if and when needed, and who is responsible for the pesticide applications made by that person, even though such certified applicator is not physically present at the time and place the pesticide is applied.

“Unreasonable adverse effects on the environment”, an unreasonable risk to man or the environment, taking into account the economic, social and environmental cost and benefits of the use of any pesticide.

“Weed”, a plant which grows where not wanted.

“Wildlife”, vertebrate animals, excluding man, that are wild by nature, including fish, birds, mammals, reptiles and amphibians.

Section 3. There shall be within the department of food and agriculture a pesticide board which shall consist of the commissioner of environmental protection or his designee, the commissioner of food and agriculture or his designee, the director of the division of food and drugs or his designee, the commissioner of fisheries, wildlife and recreational vehicles or his designee, the commissioner of environmental management or his designee, the commissioner of public health or his designee, and seven persons appointed by the governor one of whom shall have been engaged in the commercial production of a plant-related agricultural commodity for at least the preceding five years on land owned or rented by him, one of whom shall have been an active commercial applicator of pesticides for at least the preceding five years, one of whom shall have expertise in the health effects of pesticide use,

one of whom shall be a physician, one of whom shall be experienced in the conservation and protection of the environment, and two of whom shall represent the public at large. The commissioner of food and agriculture or his designee shall be chairman of the board. (Amended by 1990, 177, Sec. 242 eff. 8-7-90.)

The appointive members of the board shall receive fifty dollars for each day or portion thereof spent in the discharge of their official duties and shall be reimbursed for their necessary expenses incurred in the discharge of their official duties. Each appointive member shall be appointed for a term of four years, except for persons appointed to fill vacancies who shall serve for the unexpired term. Any member shall be eligible for reappointment.

The board shall hold an annual meeting in March, and regularly at three other times annually, and from time to time at the call of the chairman or upon the request of any two members.

Seven members of the board shall constitute a quorum. The board may, by vote of a majority of its members then in office, adopt rules and regulations for the conduct of its business. Rules and regulations adopted may be amended or repealed by a two-thirds vote of its members.

The board in addition to other powers conferred in this chapter shall advise the commissioner of food and agriculture with respect to the implementation and administration of this chapter.

The pesticides program director established by section four shall attend meetings of the board, shall serve as secretary thereto, but shall have no vote in its deliberation.

Section 3A. A subcommittee of the pesticide board shall be established and shall be charged with the responsibility of registering all pesticides for use in the commonwealth pursuant to section seven. Said subcommittee shall also be responsible for issuing all experimental use permits pursuant to section eight. Said subcommittee shall consist of five members, the director of the division of food and drugs, who shall act as chairman, the commissioner of the department of food and agriculture or his designee, the commissioner of the department of environmental management or his designee, the commissioner of public health or his designee, and one person appointed by the governor who shall have been actively engaged in commercial application of pesticides for at least the preceding five years who shall be a member of the pesticide board. Any person aggrieved by the decision of said subcommittee may appeal any such decision according to the provisions of section thirteen.

Section 4. The pesticide regulatory functions conferred upon the department under the provisions of this chapter shall be under the administrative supervision of a pesticide programs director who shall be qualified by training and experience to perform such duties. Said director shall be appointed by the commissioner with the approval of the board for a term of five years. Said person shall be eligible for reappointment, but may be removed by the commissioner for cause. The position of director shall not be subject to the provisions of chapter thirty-one or the provisions of section nine A of chapter thirty. If an employee serving in a position which is classified under chapter thirty-one or in which he has tenure by reason of section nine A of chapter thirty shall be appointed director, he shall upon termination of his service as director be restored to

the position which he held immediately prior to such appointment or to a position equivalent thereto in salary grade in the same state department; provided, however, that his service in such unclassified position shall be determined by the civil service commission in administering chapter thirty-one. Such restoration shall be made without impairment of his civil service status or tenure under section nine A of chapter thirty and without loss of seniority, retirement, or other rights to which uninterrupted service in such prior position would have entitled him. During the period of such appointment, the person so appointed from a position in the classified service shall be eligible to take any competitive promotional examination for which he would otherwise have been eligible.

Section 5. The department with the approval of the board may cooperate and enter into cooperative agreements and contracts with appropriate federal agencies, the agencies of other states, interstate agencies, other agencies of the commonwealth or its political subdivisions, or private or nonprofit organizations in matters related to the purposes of this chapter or FIFRA, and may receive from and dispense to such agencies such funds as may be available for the purposes of this chapter and FIFRA.

The department with the approval of the board shall take all action necessary or appropriate to secure for the commonwealth the benefits of FIFRA and other pertinent federal legislation.

The department with the approval of the board and subject to the provisions of chapter thirty A may from time to time adopt, amend or repeal such forms, regulations and standards as it deems necessary for the implementation and administration of this chapter.

The department with the approval of the board shall by regulation establish and formulate procedures whereby the advice or relevant advisory councils shall be sought incident to the development of policy or the adoption, amendment or repeal of regulations related to the administration of this chapter.

The department may with the approval of the board declare such pests and devices as it deems necessary to be subject to the provisions of this chapter.

Section 5A. The department shall promote the use of biologic controls, integrated pest management, sustainable agriculture and other alternate pest control methods through education, technical assistance and research in order to reduce or eliminate, whenever possible, human or environmental exposures to chemical pesticides. Said department shall submit an annual report to the clerks of the senate and the house of representatives and the joint committee on natural resources and agriculture describing the efforts taken and the progress made toward reducing pesticide use, furthering the use of integrated pest management and other alternate pest control methods in the commonwealth.

Section 6. No person shall distribute a pesticide not registered pursuant to the provisions of section seven. This prohibition shall not apply to the transfer of a pesticide from one plant or warehouse to another plant or warehouse and used solely at such plant or warehouse as a

constituent part to make a pesticide which is or will be registered pursuant to the provisions of this act; or the distribution of a pesticide pursuant to the provisions of an experimental use permit issued under section eight.

No person shall distribute a pesticide classified by the department as being for restricted use to a person not appropriately certified to use that pesticide. This prohibition shall not apply to the distribution of a pesticide to a competent individual acting under the direct supervision of an individual appropriately certified to use that pesticide.

No person shall distribute a pesticide that is adulterated or misbranded or a device that is misbranded.

No person shall distribute any pesticide unless it is in the registrant's or the producer's unbroken, unopened, and sealed container. This prohibition shall not apply to the repackaging of pesticides because of damage in transit.

No person shall distribute any pesticide that does not conform to any requirement of its registration or permit.

No person shall distribute any pesticide in containers that are unsafe due to damage or design.

No person shall detach, alter, deface, or destroy, wholly or in part, any label or labeling provided for in this chapter or in regulations adopted thereunder, or to add any substance to, or take any substance from, a pesticide in a manner that may defeat the purposes of this chapter or regulations adopted thereunder.

No person shall distribute, handle, dispose of, discard, or store any pesticide or pesticide container in such a manner as to cause injury to humans, vegetation, crops, livestock, wildlife, beneficial insects, to cause damage to the environment, or to pollute or contaminate any water supply, waterway, groundwater or waterbody.

No person shall act in the capacity of, or advertise as, or assume to act as a licensed pesticide dealer unless that person is in possession of a currently valid license issued by the department pursuant to the provisions of section nine. No person possessing a pesticide dealer license shall violate or allow to be violated any term, condition, restriction or provision of said license.

No person shall purchase or use a pesticide that is not registered by the department under the provisions of section seven; provided, however, that this prohibition shall not apply to the use of a pesticide consistent with the terms of an experimental use permit issued by the department under the provisions of section eight.

Section 6A. No person shall use a registered pesticide in a manner that is inconsistent with its labeling or other restrictions imposed by the department. No person shall use a pesticide which is the subject of an experimental use permit inconsistently with the terms and conditions of said permit.

No individual certified or licensed as a pesticide applicator shall violate any provision, condition, term or restriction of his certification or license.

No person shall use a pesticide that has been classified by the department as being for restricted use unless he is an appropriately certified private applicator, an appropriately certified

commercial applicator, or a competent individual acting under the direct supervision of an appropriately certified applicator.

Section 6B. (a) No gas, electric, telephone or other utility company licensed to do business in the commonwealth, nor any agency of the commonwealth or any of its political subdivisions, nor any authority, as defined in section 39 of chapter 3, nor any private entity or their agent, shall spray, release, deposit or apply any pesticide to any land which it owns, or as to which it holds an easement or similar right and over which it maintains power, high tension or other lines, or to any roadway, railway, or other transportation layout, without first notifying the department and, by registered mail, the mayor, city manager or chair of the board of selectmen and the conservation commission in the city or town where such application is to occur 21 days before such spraying, release, deposit or application, and without first publishing conspicuous notice in at least one newspaper of general circulation in each city or town where such land lies at least 48 hours prior to such spraying, release, deposit or application. Such notice shall appear in the local section of the newspaper and measure at least four by five inches in size. The published notice shall include: the method and locations of pesticide spraying, release, deposit or application; the approximate dates on which spraying, release, deposit or application shall commence and conclude, but such spraying, release, deposit or application shall not commence more than ten days before nor conclude more than ten days after such approximate dates; a list of potential pesticides to be used; a description of the purpose of the spraying, release, deposit or application; and the name, title, business address and phone number of a designated contact person from whom any citizen may request further information.

(b) The notice to the city or town where the affected land lies shall contain the following information: the method and locations of pesticide spraying, release, deposit or application; the approximate dates on which such spraying, release, deposit or application shall commence and conclude, but such spraying, release, deposit or application shall not commence more than ten days before nor conclude more than ten days after such approximate dates; the type of pesticide to be used and a copy of all information supplied by the manufacturers thereof relative to the pesticide; a department-approved fact sheet and United States Environmental Protection Agency registration number for each pesticide; the name, title, business address and phone number of the certified commercial applicator, certified private applicator or licensed applicator, or the contractor, employers or employees responsible for carrying out the pesticide spraying, release, deposit or application.

(c) Notwithstanding any other provision of law, all agencies of the commonwealth and all authorities, as defined in section 39 of chapter 3, shall develop policies to eliminate or, if necessary, reduce the use of pesticides for any vegetation management purpose along any roadway.

(d) Any employee of any state agency, or authority, as defined in section 39 of chapter 3, when spraying, releasing, depositing or applying pesticides, supervising the use

of pesticides, or when present during the spraying, release, deposit or application of pesticides, shall be provided with personal protection equipment and clothing in conformance with all federal and state laws and regulations pertaining to pesticide applications. This shall include, but not necessarily be limited to, protections according to Material Safety Data Sheets (MSDS), the product label, and any other supportive technical data provided by the manufacturer.

Section 6C. (a) Pesticides shall not be sprayed, released, deposited or applied indoors while children are on the property of a school, day care center or school age child care program, except for those pesticides listed in section 6F.

(b) Pesticides shall not be sprayed, released, deposited or applied on the outdoor property of a school, day care center or school age child care program while children are located in, on, or adjacent to the area of the pesticide application.

(c) (1) Whenever pesticides are to be sprayed, released, deposited or applied outdoors at a school, day care center or school age child care program, the school administration, day care center operator or school age child care program operator shall ensure that employees, pupils or supervised children and their parents or guardians receive standard written notification, as defined in section 2, at least two working days before pesticides are sprayed, released, deposited or applied, provided that such spraying, release, deposit or application of pesticides shall not commence prior to the approximate dates set forth on the standard written notification, and shall not conclude more than 72 hours after such approximate dates.

(c) (2) Such notification policy shall apply at all times except during periods when classes are not scheduled for at least five consecutive days after the spraying, release, deposit or application or when day care or school age child care facilities are not scheduled to be open for at least five consecutive days after the spraying, release, deposit or application.

(c) (3) Information to be included in the standard written notification shall be provided to the school administration, day care center operator, or school age child care program operator by the certified commercial applicator, certified private applicator, or licensed applicator, or the contractor, employers or employees responsible for carrying out the pesticide spraying, release, deposit or application. Larval mosquito control applications using pesticides classified as category four pesticides by the United States Environmental Protection Agency, as applied by mosquito control projects under chapter 252, are exempt from the notification requirements of this section. This section shall not apply to any use of an anti-microbial pesticide as defined in section 2.

Section 6D. Each school administration, day care center operator, or school age child care program operator shall ensure that standard written notification is posted in a common area of its facility at least two working days before the outdoor spraying, release, deposit or application of a pesticide and for at least 72 hours following the spraying, release, deposit or application. Treated areas will be posted with clear and conspicuous

warning signs along the perimeter in accordance with regulations to be promulgated by the department governing indoor and outdoor spraying, release, deposit or application of pesticides at schools, day care centers and school age child care programs. Larval mosquito control applications using pesticides classified as category four pesticides by the United States Environmental Protection Agency, as applied by mosquito control projects under chapter 252, are exempt from the notification requirements of this section. This section shall not apply to any use of an anti-microbial pesticide as defined in section 2.

Section 6E. (a) On or before November 1, 2001, each school, day care center and school age child care program in the commonwealth shall adopt and implement, in accordance with any regulations promulgated by the department pursuant to this chapter, an integrated pest management plan. The plan shall cover both indoor and outdoor areas. The department shall produce a generic integrated pest management plan that may be adopted by any school, day care center or school age child care program. One copy of the plan adopted by the school, day care center or school age child care program shall be filed with the department, and at least one additional copy shall be kept on site and made available to the public upon request pursuant to section 10 of chapter 66. Every agency of the commonwealth shall develop and implement integrated pest management plans and procedures for all buildings and grounds owned or managed by the commonwealth.

(b) No person shall spray, release, deposit or apply or supervise the spraying, release, deposit or application of any pesticide in, on, or around structures or grounds of a school, day care center or school age child care program unless that person is a certified commercial applicator, certified private applicator, licensed applicator, or is under the supervision of a certified commercial applicator, certified private applicator or licensed applicator.

Section 6F. Beginning November 1, 2001, pesticide products eligible for use indoors on the facility grounds of any school, day care center or school age child care program shall be limited to the following:

- (a) Anti-microbial pesticides;
- (b) Rodenticides placed in tamper resistant bait stations or placed in areas inaccessible to children and the general public;
- (c) Ready-to-use dust, powder or gel formulations of insecticide applied in areas inaccessible to children and the general public;
- (d) Insecticidal baits placed in tamper resistant bait stations or in areas inaccessible to children and the general public;
- (e) Termiticides used only in the presence of an active termite infestation and when non-chemical pesticide alternatives have been determined to be ineffective; and
- (f) Pesticides classified by the United States Environmental Protection Agency as exempt materials under 40 CFR 152.25.

Section 6G. Beginning November 1, 2001, pesticide products eligible for use on the outdoor grounds of any school, day care center or school age child care program shall be limited to the following:

(a) pesticides used in accordance with the facility's integrated pest management plan filed with the department and maintained on site;

(b) pesticides other than those classified as known, likely or probable human carcinogens by the United States Environmental Protection Agency, or equivalently categorized by the department, except as provided for in section 6H;

(c) pesticide products that do not contain inert ingredients categorized as "List 1: Inerts of Toxicological Concern" or any equivalent categorization by the United States Environmental Protection Agency; and

(d) pesticides that are applied for reasons other than purely aesthetic purposes, except that any municipality, city or town may allow the use of pesticide products for purely aesthetic purposes on the outdoor grounds of any school, day care center or school age child care program.

Section 6H. (a) If a school official or an operator of a day care center or school age child care program determines that a human health emergency warrants the use of a pesticide not otherwise allowed under this chapter, or warrants its use sooner than two days after providing the required standard written notification, such official or operator may apply for a single-use waiver from the appropriate municipal board of health or agent or director of public health or the department.

(b) The department or appropriate municipal board of health or agent or director of public health shall determine if such a waiver is warranted based on the following criteria:

(1) whether the pest situation poses an immediate threat to human health; and

(2) whether no viable alternatives to the use of chemical pesticides exist. As a condition of approval, the appropriate municipal board of health or agent or director of public health or the department shall require a commitment from the school official or operator of a day care center or school age child care program that the underlying causes of the pest outbreak will be identified and addressed in order to prevent future outbreaks.

(c) In such an emergency situation, the school official or operator of a day care center or school age child care program shall ensure that conspicuous warning signs are posted near the site of the spraying, release, deposit or application prior to, and for at least 72 hours after the spraying, release, deposit or application. Treated areas will be posted with clear and conspicuous warning signs along the perimeter in accordance with regulations to be promulgated by the department governing indoor and outdoor spraying, release, deposit or application of pesticides at schools, day care centers and school age child care programs. In such an emergency situation, the school official or operator of a day care center or school age child care program shall also ensure that standard written notification is provided to employees, pupils or supervised children and

their parents or guardians immediately prior to or, if necessary, immediately following the emergency spraying, release, deposit or application. A record of the emergency event, including the identification of the cause and the actions taken to address it, shall be maintained as a part of the records required under section 6I.

Section 6I. A written or electronic record of any and all chemical pesticide spraying, release, deposit or application made at a school, day care center or school age child care program in the commonwealth shall be maintained on site for a period of not less than five years, and shall be made available to the public upon request pursuant to section 10 of chapter 66.

Section 6J. Notwithstanding any other provisions of this chapter, sections 6C to 6I, inclusive, shall not apply to the spraying, release, deposit or application of any pesticide made as a part of a supervised training program at any of the state-aided and approved vocational-technical or agricultural schools in the commonwealth.

Section 6K. The department shall conduct a review of anti-microbial pesticides, as defined in section 2, to determine whether and to what extent they should be subject to the provisions of this chapter.

Section 7. Pesticides, including pesticides that are federally registered may be registered by the subcommittee of the pesticide board for use in the commonwealth.

Each applicant for the registration of a pesticide shall annually file with the subcommittee an application providing thereon such information as said subcommittee shall require. Said subcommittee may require of applicants for pesticide registrations any information that it deems necessary to determine whether, or how, the pesticide should be registered.

An applicant desiring to register or reregister a pesticide shall pay such registration fee, not to exceed twenty-five dollars, as said subcommittee may by regulation require. All pesticide registrations shall be for a period not to exceed one year.

In the event that any person files with said subcommittee an application to reregister a pesticide which is registered on the date of application for reregistration and pays the appropriate fee therewith, such registration shall be deemed to be in effect until the earlier of the following two events shall occur, ninety days have elapsed after the registration was scheduled to expire, or the subcommittee notifies the applicant for reregistration that the registration has been renewed, modified or denied.

If said subcommittee determines that a pesticide, when used in accordance with its directions for use, warnings and cautions and for the uses for which it is registered, or for one or more such uses, or in accordance with a widespread and commonly recognized practice, will not generally cause unreasonable adverse effects on the environment, it may classify the pesticide, or the particular use or uses of the pesticide to which the determination applies, as being for general use.

If said subcommittee determines that a pesticide, when used in accordance with its directions for use, warnings and cautions and for the use for which it is registered, or for one or more of such uses, or in accordance with a widespread and commonly recognized practice, may cause, without additional restrictions, unreasonable adverse effects on the environment, including injury to the applicator, it may classify the pesticide or the particular use or uses to which the determination applies, for restricted use.

Said subcommittee shall register a pesticide if it determines that its composition is such as to warrant the proposed claims for it; its labeling and other material required to be submitted comply with the requirements of this chapter; it will perform its intended function without unreasonable adverse effects on the environment; and when used in accordance with widespread and commonly recognized practice it will not generally cause unreasonable adverse effects on the environment.

As part of the registration of a pesticide, said subcommittee may require that the pesticide be colored or discolored if such requirement is necessary for the protection of health or the environment, may classify for restricted use any pesticide or pesticide use classified for general use under FIFRA, and may include in the registration such conditions of use as it deems necessary.

If at any time it appears that a pesticide registration does not comply with the provisions of FIFRA, this chapter, or rules and regulations promulgated thereunder, or when used as registered, or a pesticide may cause unreasonable adverse effects on the environment, or a registered pesticide is an imminent hazard, the subcommittee as established in section three A, may, forthwith by an order suspend the registration of such pesticide. Notification of such order shall be sent to the applicant and shall be a public record.

Section 7A. (a) Subject to appropriation, the department shall establish and implement a pesticide use reporting system for use by government agencies, researchers, policy makers and the public to ensure the public health and safety and to protect the environment of the commonwealth. In establishing and implementing the system, said department shall design, develop and implement the system in order to collect, evaluate, summarize, retain and report information on the use of pesticides in each major category of use in the commonwealth, including agriculture, forestry, industrial, commercial and homeowner uses. Said department shall, at least one time each year, collect the best data practicable from each major category of pesticide use in a manner that will allow such data to be used for public health purposes, including, but not limited to, epidemiological studies, and for environmental protection purposes. Such data shall be collected in a manner which minimizes reporting costs. Said department shall begin operation of the required statewide data reporting program on or before January 31, 2002.

(b) The secretary of environmental affairs shall appoint a pesticide stakeholder work group to advise the department in developing the pesticide use reporting system required by this section. Said secretary shall appoint the following members of the work group: one pesticide applicator, one pesticide dealer, one public health expert or

researcher familiar with pesticides and their impact on public health, one representative from the department of public health, one representative from the department of environmental protection, one representative from the department's pesticide board established by section 3, and one representative from each of the following organizations: one environmental organization, one labor organization, one public health organization, one public water supplier and one agricultural organization. In carrying out its responsibilities under this section, the department shall consult with the work group appointed under this section and convene meetings of the work group as necessary. All meetings of the work group shall be open to the public and shall include an opportunity to receive recommendations and comments from members of the public. The work group shall make specific recommendations on stable and sufficient funding mechanisms to support the pesticide reporting program.

(c) Said department shall conduct an analytical review of any issues that must be resolved in order to establish a valid, cost-effective pesticide use reporting system in the commonwealth. The review shall be conducted in consultation with the work group appointed under this section, and its conclusions shall be published not later than January 31, 2001. As part of the analytical review required by this section, the department shall consider whether and to what extent use of anti microbial pesticides, as defined in section 2, shall be part of the pesticide use reporting system. In implementing the pesticide use reporting system, the department shall, beginning January 31, 2003, and annually thereafter, make available data on pesticide use in the commonwealth.

(d) Said department shall develop protocols for the exchange of information with the department of public health or other state agencies for the purpose of conducting research related to the public health and the environment. Said department shall also establish policy and adopt rules relating to the public release of pesticide use information. The policy and rules may not reveal the identity of the owner or lessee of a specific property or the address of the property itself where a pesticide has been applied, and shall maintain the confidentiality of that information. Nothing in the policy or rules adopted by said department shall limit access to data for the following purposes: (1) information obtained as part of any investigation under any other provision of law; (2) the release of information obtained exclusively under this chapter to any other local, state or federal agency, if the local, state or federal agency has agreed to maintain the confidentiality of any information that is required to be treated as confidential under this subsection, unless the public interest by clear and convincing evidence requires disclosure in the particular instance; and (3) the release of information obtained exclusively under this chapter to a health or environmental researcher acting in an official capacity from an accredited university or accepted research institute who agrees to maintain the confidentiality of any information that is required to be treated as confidential under this section.

(e) Nothing in this section shall be construed to create a new private right of action against any pesticide user or retail pesticide dealer.

Section 8. Any person may apply to the subcommittee for an experimental use permit for a pesticide. Each applicant for an experimental use permit shall file with the department an application providing thereon such information as the department may require. Each applicant for an experimental use permit shall pay such registration fee, not to exceed twenty-five dollars, as the department may by regulation require.

The subcommittee may grant an experimental use permit to an applicant therefor if it determines that the applicant needs such a permit to accumulate information necessary to register a pesticide.

The subcommittee shall refuse to grant an experimental use permit if it believes that the pesticide applications to be made under the proposed terms and conditions may cause unreasonable adverse effects on the environment, or if it believes that the applicant or person to conduct the experimentation is not competent to conduct such experimentation without causing unreasonable adverse effects on the environment.

The subcommittee shall revoke any experimental use permit, at any time, if it believes that its terms or conditions are being violated, or that its terms and conditions are inadequate to avoid unreasonable effects on the environment.

Section 9. A person may apply to the department to be a licensed pesticide dealer. Said applicants shall submit to the department a statement supplying such information thereon as the department may require. An applicant for such a license shall pay such registration fee, not to exceed twenty-five dollars, as the department may by regulation require, for each principal distribution center, branch outlet, or direct sales representative of an out-of-state distributor.

In the event that any person files with the department an application to renew a pesticide dealer's license which is in effect on the date of application for renewal and pays the appropriate fee therewith, such license shall be deemed to be in effect until the earlier of the following two events shall occur: ninety days have elapsed after the license was scheduled to expire; or the department notifies the applicant for renewal that the license has been renewed, modified or denied.

The department shall grant a pesticide dealer's license for a term not to exceed one year. The department shall grant such licenses subject to such terms, conditions and restrictions as it deems necessary or appropriate.

The department shall refuse to grant a pesticide dealer's license if it finds that the proposed distributor or his agent has acted in a manner inconsistent with the purposes for requirements of this chapter or FIFRA.

The department shall revoke any pesticide dealer's license, at any time, if it finds that its terms, conditions or restrictions are being violated or are inadequate to avoid unreasonable adverse effects on the environment.

As part of its determination to refuse to grant, or to revoke, a pesticide dealer's license the department may specify a period, not to exceed two years, within which the applicant may not reapply for a pesticide dealer's license. In the event that the department has specified a period for nonapplication, the department may later, at its discretion, shorten or waive such period.

Section 10. Certifications and licenses to use pesticides may be issued to individuals by the department in accordance with the provisions, standards and procedures contained in and established pursuant to this chapter. Each certification and license issued pursuant to this section shall be valid only for the individual to whom it is issued, may not be transferred, and shall not continue in force and effect after the death of the individual to whom it is issued. All certifications and licenses shall be for a period not to exceed one year, unless sooner revoked or suspended.

The department may authorize individuals to use pesticides in classifications as a certified commercial applicator, a certified private applicator, and a licensed applicator provided, however, that the department shall require that all persons who are applicators of pesticides in public and private places used for human occupation and habitation, except residential properties with three or less dwelling units, shall be so licensed or certified with such special designation.

The department may establish such categories and subcategories as it deems necessary to restrict or condition the scope of pesticide use permitted within each classification. The department may establish such standards and criteria, take such action and impose such requirements as it deems necessary to determine or redetermine levels of competence and experience to qualify for each classification and each category and subcategory thereof.

Each applicant for a certification or license shall annually file with the department an application providing thereon such information as the department may require.

Each applicant desiring to be certified or licensed shall annually pay such application fee, not to exceed twenty dollars, as the department may by regulation require.

In the event that any individual files with the department an application to renew a certification or license which is in effect on the date of the application for renewal and pays the appropriate fee therewith, such certification or license shall be deemed to be in effect until the earlier of the following two events shall occur: ninety days have elapsed after the certification or license was scheduled to expire; or the department notifies the applicant that the certification or license has been renewed, modified or denied.

The department may issue a certification or license to an applicant therefor if it determines that the applicant satisfies the criteria established for that certification or license and the category or subcategory for which the certification or license is sought. The department may thus issue a certification or license subject to such terms, conditions, restrictions and requirements as it deems necessary. The department may require that an applicant for a certification or license has obtained and maintains in effect a contract of liability insurance conforming to regulations established by the department.

The department shall prior to issuing a certificate or license evaluate each applicant to determine his competence with respect to the use and handling of pesticides, or to the use and handling of the pesticides or class of pesticides covered or to be covered by said individual's certification or license. Said evaluation shall include such examinations as the department may require. Examinations may be taken only upon payment of a fee, not to exceed ten dollars for each examination given, as the department may require by regulation approved by the board. **Each examination shall include an evaluation of the applicant's competence with respect to the use of integrated pest management.**

The department may revoke, suspend, cancel or deny any certification or license, or any class thereof, at any time, if it believes: that the terms or conditions thereof are being violated or are inadequate to avoid unreasonable adverse effects on the environment, or that the holder of or applicant for the certification or license has violated any provision of this chapter or FIFRA or any regulation, standard, order, license, certification or permit issued thereunder or that the holder or applicant for said certification or license is not competent with respect to the use and handling of pesticides, or to the use and handling of the pesticides or class of pesticides covered by said individual's certification or license. Any person whose certification or license is suspended or revoked hereunder shall also be subject to such other punishment, penalties, sanctions or liabilities as may be provided by law. As part of its determination to refuse to grant, to revoke, or to suspend a certification or license the department may specify a period, not to exceed two years, within which the applicant may not reapply for a certification or license. In the event that the department has refused to issue or has revoked or suspended such a certification or license, and has specified a period for non-application, the department may later, at its discretion, shorten or waive such period.

The department may, at its discretion, appropriately license or certify any person possessing a valid certification or license, or equivalent rating, issued by the pesticide control agency of any other state or the federal government whose standards for the issuance of such rating are not less stringent than those of the department, provided that the pesticide control agency of that state extends similar privileges to persons so licensed or certified by the commonwealth. Any person so licensed or certified shall be subject to the annual fee requirements of this section.

Section 11. The department shall by regulation establish such restrictions and prohibitions upon the disposal and storage of pesticides, packages and containers of pesticides, and materials used in the testing or application of pesticides as it deems necessary to protect health and the environment.

Section 12. Whenever it appears to the department that there is an imminent hazard, or a potential threat of unreasonable adverse effect on the environment, or a violation or a potential violation of any provision of this chapter or of any license, certification, permit, order, registration or regulation issued or adopted thereunder, the department may issue to such persons as it deems necessary an order requiring the production of samples and records, or an order imposing restraints on or requiring such action, as it deems necessary. Issuance of an order under this section shall not preclude and shall not be deemed an election to forego any action to recover for damages to interests of the commonwealth or, under section fourteen of this act, for civil penalties or for criminal fines and penalties.

Section 13. Any person aggrieved by a determination by the department to register or not to register a pesticide, to suspend a pesticide registration, to issue, not issue or revoke an experimental use permit, to issue, deny, revoke or suspend any certification or license, or to issue an order, made under the provisions of this chapter, may request an adjudicatory hearing before

the board under the provisions of chapter thirty A. Said determination shall contain a notice of a right to request a hearing and may specify a time limit, not to exceed twenty-one days, within which said persons may request a hearing before the board under the provisions of said chapter thirty A. If no such request is timely made, the determination shall be deemed assented to. If a timely request is received, the board shall within a reasonable time hold a hearing and comply with the provisions of said chapter thirty A. In hearings so held the board shall designate a hearing officer to preside over the hearing, to assemble an official record thereof, and to render a tentative decision as provided in paragraph (7) of section eleven of said chapter thirty A. The board shall make the final decision on the basis of the official record and tentative decision so rendered.

If, in making a determination which under the provisions of the preceding paragraph may be the subject of an adjudicatory hearing, the department finds that an imminent hazard or an unreasonable adverse effect on the environment could result pending the conclusion of the adjudicatory hearing requested thereon, the department may order that the determination shall become provisionally effective and enforceable immediately upon issuance, and shall remain so notwithstanding and until the conclusion of any adjudicatory hearing procedures timely requested. In the event that the department has thus made a determination provisionally effective, it may later, at its discretion, shorten the duration of or waive such order.

As part of a final decision in an adjudicatory proceeding held under the provisions of this section, the board may specify a reasonable time period within which the matter may be barred from further proceedings before the department or the board. In the event that the board has so specified a time period, the board may later, at its discretion, shorten or waive such period.

A person aggrieved by a final adjudicatory determination of the board may obtain judicial review thereof pursuant to the provisions of chapter thirty A.

Section 14. Any person who knowingly violates any provision of section six shall be punished by a fine of not more than twenty-five thousand dollars, or by imprisonment for not more than one year, or both such fine and imprisonment, for each such violation, or shall be subject to a civil penalty not to exceed twenty-five thousand dollars for each such violation, which may be assessed in an action brought on behalf of the commonwealth in any court of competent jurisdiction. Each day of violation shall constitute a separate offense.

Any person who violates any provision of **section 6A to 61, inclusive, or section 7A** or who violates any regulation adopted under the provisions of this chapter, (a) shall be punished by a fine of not more than one thousand dollars, or imprisonment for not more than six months, or both such fine and imprisonment, for the second and each subsequent offense knowingly committed, or (b), shall be subject to a civil penalty not to exceed ten thousand dollars for any offense, which may be assessed in an action brought on behalf of the commonwealth in any court of competent jurisdiction. Each day of violation shall constitute a separate offense.

Any person who violates any order issued under the provisions of this chapter, (a) shall be punished by a fine of not more than twenty-five thousand dollars or imprisonment for not more than two years, or both such fine and imprisonment, for each violation knowingly committed, or

(b) shall be subject to a civil penalty not to exceed twenty-five thousand dollars for each violation, which may be assessed in an action brought on behalf of the commonwealth in any court of competent jurisdiction. Each day of violation shall constitute a separate offense. (Amended by 1987, 174, Sec. 22.)

The superior court shall have jurisdiction to enjoin violations of, or grant such relief as it deems necessary or appropriate to secure compliance with, any provision of this chapter or the terms of an order, license, certification, registration, permit or regulation issued or adopted thereunder.

Section 14A. (a) **The department may adopt and promulgate such regulations as may be necessary for the enforcement of sections 6C to 6I, inclusive, and the licensing requirements of section 10. Said department may assess a civil administrative penalty of up to \$1,000 against any person or school administration who violates the requirements of sections 6C to 6I, inclusive, or any regulation promulgated under such sections.**

(b) Said department may assess a civil administrative penalty of up to \$1,000 against any person who violates the licensing requirement of section 10.

(c) Prior to assessment of the penalty, said department shall provide written notice and an opportunity to correct the violation within 90 days of the issuance of the notice of violation. This penalty shall be assessed in addition to any other civil penalty otherwise provided for by law. Notice of assessment of a penalty pursuant to this section shall be made by service in hand, or by certified mail, return receipt requested, and shall state the amount of the administrative penalty, the date the penalty shall be due, a statement of the violator's right to an adjudicator's hearing pursuant to chapter 30A regarding the assessment, a statement of the actions the person may take in order to avoid the assessment of the penalty or to avoid waiving the right to a hearing relative to the penalty, and the manner of acceptable payment of an election to waive a hearing is made.

A person shall be deemed to have waived all right to an adjudicatory hearing unless, within 21 days of the date of the department's notice, the person files a written notice, by hand or by certified mail, return receipt requested, requesting such adjudicatory hearing. In the event that such request is not received in accordance with this section, the proposed administrative penalty shall become final and payment shall be due in accordance with the notice.

Section 15. For the purpose of administering the provisions of this chapter, personnel or agents of the department and its inspectors shall have access and entry at reasonable times to any premises pursuant to a search warrant duly issued by a court of competent jurisdiction, provided that no sample of a pesticide obtained in the course of such inspection and no result of any analysis or test of any such sample shall be received in evidence in any criminal proceeding under this chapter unless the sample shall have been taken and the analysis or test conducted by a chemist in the agricultural extension service of the University of Massachusetts authorized by the department. Personnel or agents of the department may take such samples as are reasonably

necessary to accomplish the purpose of their investigation and inspection. Any information relating to secret processes, methods of manufacture, production or use obtained in the course of such inspection shall be kept confidential upon request, when not required to be disclosed incident to the enforcement of this chapter. This section shall not be construed to abrogate any of the powers and duties, as defined by general or special law or common law, of any agency or political subdivision of the commonwealth.

Section 16. There shall be established and set up on the books of the commonwealth a separate fund to be known as the Children and Families Protection Fund. There shall be credited to the fund any penalties collected for violations of sections 6C to 6I, inclusive, and any income derived from the investment of amounts credited to the fund. Amounts credited to the fund shall be used, subject to appropriation, for the implementation and enforcement of said sections 6C to 6I.