

- SUBJECT:** Financial responsibility for pesticide applicators using M-44 devices
- COMMITTEE:** Agriculture and Livestock — favorable, without amendment
- VOTE:** 7 ayes — Swinford, McReynolds, B. Brown, Crownover, Green, Hupp, C. Jones  
0 nays  
2 absent — Christian, Hardcastle
- WITNESSES:** For — Gary Joiner, Texas Farm Bureau  
Against — None
- BACKGROUND:** Under the Agriculture Code, sec. 76.111(e) all pesticide applicator businesses must show proof of financial responsibility, usually insurance liability coverage, of at least \$100,000 for each occurrence for property damage and for each occurrence for bodily injury. The head of a regulatory agency may set a higher amount.
- DIGEST:** HB 431 would require that the agriculture commissioner establish annually the amount of proof of financial responsibility required of a pesticide applicator business that primarily uses the M-44 device. Only the commissioner could set the amount. The commissioner could require proof of financial responsibility in an amount lower than that required for other types of businesses if the amount otherwise required would make the application of the M-44 device economically unfeasible.
- The bill would define an M-44 device as “a nonexplosive, spring-operated mechanical device designed to deliver a capsule of sodium cyanide into the mouth of the target animal as a method of livestock predation control.”
- This bill would require the agriculture commissioner to establish by January 1, 2000, the amount of financial responsibility required of pesticide applicator businesses that primarily use the M-44 device.
- HB 431 would take effect September 1, 1999.

SUPPORTERS  
SAY:

HB 431 would allow a lower required amount for proof of financial responsibility only for the few pesticide applicator businesses that primarily use M-44 devices, mostly to kill coyotes. Because these businesses are not in the same category as those that apply pesticides to crops or homes, they should not have to prove the same high amounts of financial responsibility required to cover crop dusting, roach and termite extermination, and other forms of pesticide application where people come into more direct contact with the pesticide.

Agriculture is a small-margin business that has suffered severe effects from drought. Some livestock and wildlife producers would like to provide M-44 placement service as a side business, and they should be able to do so because most producers already maintain a pesticide applicator license and meet the education requirements. These producers do not need liability insurance when setting M-44 traps on their own property, but if they were to set M-44 devices on other people's property, they would need liability insurance. However, the amount of proof of financial responsibility required under current law is so high that producers who wish to provide M-44 applicator service to others cannot afford the insurance.

The M-44 pesticide is applied only to a canine animal that pulls the bait-scented device with its teeth. The target animal, usually a coyote, dies within minutes or even seconds. Property damage and bodily injury, for which current law requires liability coverage, rarely result from use of the M-44 device. The only feasible property damage that could occur would be the unintentional killing of an animal other than the target animal, such as a domestic dog.

The agriculture commissioner each year likely would determine the liability amount for M-44 applicator businesses by looking at the previous year's liability costs. The commissioner would have the flexibility to review the liability amount and make annual adjustments as needed.

OPPONENTS  
SAY:

All pesticide applicator businesses currently must maintain the same minimum amount of proof of financial responsibility. HB 431 would create an exception for a certain kind of applicator business, opening the door for other kinds of specialized applicator businesses to ask for exceptions too.

HB 431 does not spell out how the agriculture commissioner would determine the required amount of proof of financial responsibility for M-44 applicator businesses each year. The bill should clearly define this procedure rather than leave it to assumption.

OTHER  
OPPONENTS  
SAY:

Businesses that primarily use the M-44 device should bear a higher burden of proof of financial responsibility because these devices kill many nontarget animals and could kill humans as well. Besides coyotes, the primary target, M-44 devices have killed dogs, bobcats, foxes, skunks, opossums, raccoons, and other nontarget animals.

Sodium cyanide is highly lethal, and people who set M-44 traps carry amyl nitrate as an antidote. Another person could accidentally set off one of these traps and not have the antidote. In view of the potential for this kind of accident, pesticide applicator businesses that primarily set M-44 devices should be financially responsible at a higher, not lower, level.