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H.861

Introduced by Committee on Agriculture and Forest Products

Date:

Subject: Agriculture; control of pesticides; treated articles

Statement of purpose of bill as introduced: This bill proposes to authorize the Secretary of Agriculture, Food and Markets to regulate “treated article” pesticides under the Secretary’s existing authority to regulate pesticides in the State.

An act relating to regulation of treated article pesticides

It is hereby enacted by the General Assembly of the State of Vermont:

~~Sec. 1. 6 V.S.A. § 1101 is amended to read:~~

§ 1101. DEFINITIONS

As used in this chapter unless the context clearly requires otherwise:

* * *

(4) “Economic poison” shall have the meaning stated in subdivision 911(5) of this title, provided that as used in this chapter “economic poison” shall include treated articles.

(5) “Pest” means any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organisms, which the Secretary declares as being

1 ~~injurious to health or environment. Pest shall not mean any viruses, bacteria,~~

2 or other micro-organisms on or in living man or other living animals.

3 (6) "Pesticide" for the purposes of this chapter shall be used
4 interchangeably with "economic poison".

5 (7) "Treated article" means a pesticide or class of pesticides exempt
6 under 40 C.F.R. § 152.25(a) from regulation under the Federal Insecticide,
7 Fungicide, and Rodenticide Act, 7 U.S.C. § 136-136y.

8 Sec. 2. AGENCY OF AGRICULTURE, FOOD AND MARKETS;

9 RULEMAKING; TREATED ARTICLES

10 On or before July 1, 2018, the Secretary of Agriculture, Food and Markets
11 shall adopt under 6 V.S.A. §1104 rules regulating treated articles used or sold
12 in the State that may require additional restrictions under 6 V.S.A. § 1104(3)
13 when use of the treated article will have a hazardous or long-term deleterious
14 effect on the environment or use of the treated article has been determined by
15 the Secretary of Agriculture, Food and Markets to be of such a nature that its
16 use is deemed to be unwise or dangerous.

17 Sec. 3. EFFECTIVE DATE

18 ~~This act shall take effect on July 1, 2016.~~

Sec. 1. 6 V.S.A. § 1101 is amended to read:

§ 1101. DEFINITIONS

As used in this chapter unless the context clearly requires otherwise:

* * *

(4) *“Economic poison” shall have the meaning stated in subdivision 911(5) of this title.*

(5) *“Pest” means any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organisms, which the ~~secretary~~ Secretary declares as being injurious to health or environment. Pest shall not mean any viruses, bacteria, or other micro-organisms on or in living ~~man~~ humans or other living animals.*

(6) *“Pesticide” for the purposes of this chapter shall be used interchangeably with “economic ~~poison~~”.* poison.”

(7) *“Treated article” means a pesticide or class of pesticides exempt under 40 C.F.R. § 152.25(a) from regulation under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136-136y.*

Sec. 2. 6 V.S.A. § 1102 is amended to read:

§ 1102. PESTICIDE ADVISORY COUNCIL ESTABLISHED

(a) The Pesticide Advisory Council is established and attached to the Agency of Agriculture, Food and Markets. Members of the Council, except those public members appointed by the Governor, shall be qualified individuals who, by experience and training, are knowledgeable in one or more areas associated with pest control. The Secretary, or Commissioner as the case may be, shall represent each Department or Agency on the Council:

- (1) *The Department of Fish and Wildlife.*
- (2) *The Department of Environmental Conservation.*
- (3) *The Agency of Agriculture, Food and Markets.*
- (4) *The Department of Forests, Parks and Recreation.*
- (5) *The Department of Health.*
- (6) *The Agency of Transportation.*
- (7) *One physician from the College of Medicine of the University of Vermont nominated by its dean.*
- (8) *One representative in the area of entomology, plant pathology, or weed control from the University of Vermont Extension Service to be named by the director.*
- (9) *One representative in the area of pesticide research from the Vermont Agricultural Experiment Station named by the dean of the College of Agriculture and Life Sciences of the University of Vermont.*
- (10) *Two members appointed by the Governor. In choosing these members, the ~~governor~~ Governor shall consider people who have knowledge and qualities that could be useful in pursuing the goals and functions of the Council. One of these members shall have practical experience in commercial agricultural production and shall be appointed in consultation with the Secretary.*

* * *

(d) The functions of the Council are:

(1) To review insect, plant disease, weed, nematode, rodent, noxious wildlife, and other pest control programs within the State and to assess the effect of such programs on human health and comfort, natural resources, water, wildlife, and food and ~~fi~~ber production; and, where necessary, make recommendations for greater safety and efficiency.

(2) To serve as the advisory group to State agencies having responsibilities for the use of pesticides as well as to other State agencies and departments.

(3) To advise the Executive Branch of State government with respect to legislation concerning the use of various pest control measures.

(4) To suggest programs, policies, and legislation for wise and effective pesticide use that lead to an overall reduction in the use of pesticides in Vermont consistent with sound pest or vegetative management practices.

(5) To recommend studies necessary for the performance of its functions as established under this section.

(6) To recommend targets with respect to the State goal of achieving an overall reduction in the use of pesticides consistent with sound pest or vegetative management practices, and to issue an annual report to the General Assembly, detailing the State's progress in reaching those targets and attaining that goal. The targets should be designed to enable evaluation of

multiple measures of pesticide usage, use patterns, and associated risks.

Targets should take into consideration at a minimum the following:

(A) reducing the amount of acreage where pesticides are used;

(B) reducing the risks associated with the use of pesticides;

(C) increasing the acreage managed by means of integrated pest management techniques;

(D) decreasing, within each level of comparable risk, the quantity of pesticides applied per acre; and

(E) making recommendations regarding the implementation of other management practices that result in decreased pesticide use.

(7) To recommend to the Secretary policies, proposed rules, or legislation for the regulation of the use of a treated article when the Council determines that use of the treated article will have a hazardous or long-term deleterious effect on the environment in Vermont, presents a likely risk to human health, or is dangerous. In developing recommendations under this subdivision, the Council shall review:

(A) alternatives available to a user of a treated article; and

(B) the potential effects on the environment or risks to human health from use of the available alternatives to a treated article.

(e) The Council shall meet semiannually, once in the fall and once in the spring. Meetings at other times may be called by the Governor, by the Chair,

or by a member of the Council. Attendance at Council meetings shall not be required of the Commissioners of Departments within the Agency of Natural Resources, or their designees; however, at least one of these Commissioners, or the Commissioner's designee, shall attend each meeting of the Council. ~~Council~~ The Council's proceedings shall be open to the public and its deliberations shall be recorded and made available to the public, along with its work product.

Sec. 3. 6 V.S.A. § 1105a is added to read:

§ 1105a. TREATED ARTICLES; POWERS OF SECRETARY; BEST

MANAGEMENT PRACTICES

(a) The Secretary of Agriculture, Food and Markets, upon the recommendation of the Pesticide Advisory Council, may adopt by rule:

(1) best management practices, standards, procedures, and requirements relating to the sale, use, storage, or disposal of treated articles the use of which the Pesticide Advisory Council has determined will have a hazardous or long-term deleterious effect on the environment, presents a likely risk to human health, or is dangerous;

(2) requirements for the response to or corrective actions for exigent circumstances or contamination from a treated article that presents a threat to human health or the environment;

(3) requirements by the Secretary for the examination or inspection of treated articles the use of which the Pesticide Advisory Council has determined will have a hazardous or long-term deleterious effect on the environment, presents a likely risk to human health, or is dangerous;

(4) requirements for persons selling treated articles to keep or make available to the Secretary records of sale of treated articles the use of which the Pesticide Advisory Council has determined will have a hazardous or long-term deleterious effect on the environment, presents a likely risk to human health, or is dangerous; or

(5) requirements for reporting of incidents resulting from accidental contamination from or misuse of treated articles the use of which the Pesticide Advisory Council has determined will have a hazardous or long-term deleterious effect on the environment, presents a likely risk to human health, or is dangerous.

(b) At least 30 days prior to prefiling a rule authorized under subsection (a) of this section with the Interagency Committee on Administrative Rules under 3 V.S.A. § 837, the Secretary shall submit a copy of the draft rule to the Senate Committee on Agriculture and the House Committee on Agriculture and Forest Products for review.

Sec. 4. 6 V.S.A. § 1104(3) is amended to read:

(3) Adopt standards, procedures, and requirements relating to the display, sale, use, application, treatment, storage, or disposal of economic poisons or their waste products and limit the conditions under which the same may be sold, used, treated, stored, or disposed of. The use of pesticides which the ~~secretary~~ Secretary finds to have a hazardous or ~~long-term~~ long-term deleterious effect on the environment shall be restricted, and permits shall be required for their use in accordance with regulations adopted by the ~~secretary~~ Secretary. Specific uses of certain pesticides deemed to ~~be unwise or~~ present a likely risk to human health or be dangerous shall be restricted by regulation or by ordering the deletion of certain uses for registered pesticides from the label on pesticide products to be marketed in the ~~state~~ State. Approved methods for the safe display, storage, and shipping of poisonous pesticides shall be prescribed and enforced. Procedures for the disposal of pesticides which are illegal, obsolete, surplus, or in damaged containers shall be adopted and enforced with the cooperation of the ~~agency of natural resources~~ Agency of Natural Resources;

Sec. 5. CONSISTENCY OF TREATED ARTICLE REQUIREMENTS

The Secretary of Agriculture, Food and Markets shall not establish requirements, best management practices, standards, or procedures under 6 V.S.A. § 1105a for a treated article, class of treated articles, or release from a treated article when, and to the extent that, the sale, use, storage, disposal,

inspection, recordkeeping, reporting, or corrective action of a treated article, class of treated article, or release from a treated article is regulated by another agency, department, board, or instrumentality of the State under rule, order, practice, procedure, or exercise of statutory authority.

Sec. 6. EFFECTIVE DATE

The act shall take effect on July 1, 2016.