

## State Neonicotinoid Insecticide Use Restrictions – Proposed Bill

### SECTION 1. SHORT TITLE.

This Act may be cited as the “Saving [State]’s Pollinators Act ”.

### SECTION 2. FINDINGS.

- (a) Pollination services, including by honey bees and numerous other pollinators, are a vital part of agricultural production in [State].
- (b) One-third of food produced in North America depends on pollination by honey bees, including nearly 95 varieties of fruits and other foods of high nutritional value to all of [State]’s citizens. **[If possible, insert any State-specific findings regarding agricultural crops that require pollination services by honey bees or other pollinators,].**
- (c) Over the past several years, documented incidents of colony collapse disorder and excessive honey bee mortality have been at a record high, with some beekeepers losing large portions of their operations and suffering reduced production of their valuable honey. **[If possible, insert any State-specific findings regarding colony loss, losses to beekeepers, etc.]**
- (d) Scientists have linked the use of systemic neonicotinoid insecticides to the rapid decline of honey bees and other pollinators and to the deterioration of pollinator health. This class of insecticides damages the central nervous system of insects, causing tremors, paralysis, and death at very low doses. They are systemic insecticides, meaning they are absorbed into treated plants and distributed throughout their vascular systems. As a result, treating a plant or coating a seed with neonicotinoids can render parts of the plant—including the roots, leaves, stems, flowers, nectar, pollen, and guttation fluid—toxic to insects. They are persistent in soil and easily transported via air, dust, and water.
- (e) Neonicotinoid insecticides cause sublethal effects including impaired foraging and feeding behavior, disorientation, weakened immunity, delayed larval development, and increased susceptibility to viruses, diseases, and parasites and numerous studies have also demonstrated acute, lethal effects from the application of these toxins. They have also been found to kill or weaken beneficial invertebrates, birds, and other wildlife, through direct and indirect effects.
- (f) Bumblebees, beneficial insects of all kinds, and whole food chains of aquatic invertebrates, insects, birds, bats and other pollinators in [State] are at risk from environmental contamination by highly-persistent neonicotinoids. **[If possible, list species that are negatively impacted by neonicotinoid uses in your State here. If there are State and Federally-listed threatened or endangered species that may be harmed by neonicotinoid uses in your State, identify them.]**
- (g) Scientists have also found that the use of neonicotinoids in seed treatment is harmful to birds. Recent science has demonstrated that consumption of a single corn kernel coated

with a neonicotinoid is toxic enough to kill a medium-sized songbird. **[If possible, list some birds that occur in your State at risk from uses of neonicotinoids.]**

- (h) In 2013, the European Union voted to suspend use of three major neonicotinoids - imidacloprid, clothianidin, and thiamethoxam on certain agricultural crops pending a review of their safety. Other U.S. States, such as New York, have restricted some neonicotinoid uses to address their risks.

### SECTION 3. DEFINITIONS.

For purposes of this Act—

“Neonicotinoid insecticides” means a class of systemic pesticides with a common mode of action that affects the central nervous system of insects that includes the following active ingredients: acetamiprid, clothianidin, dinotefuran, imidacloprid, thiacloprid and thiamethoxam, and such other new neonicotinoid insecticides as may be identified after the effective date of this Act by regulation adopted by the **[Agriculture Department Director or equivalent]**.

### SECTION 4. STATEMENT OF PURPOSE.

The purposes of this Act are: (1) to protect **[State]**'s honey bees, native bees, other pollinators, insects, birds, and animals from exposure to neonicotinoid insecticides; and (2) to defend and protect **[State]**'s agricultural economy and natural ecosystems. This Act shall be liberally construed to fulfill these purposes.

### SECTION 5. RESTRICTIONS ON USE OF NEONICOTINOID INSECTICIDES

- (a) **Outdoor Uses on State Property.** Beginning nine months after the date of enactment of this Act, it shall be unlawful to apply any neonicotinoid insecticides on any public lands owned or maintained by **[State]**.
- (b) **Outdoor Uses in Agricultural Production.** Beginning nine months after the date of enactment of this Act, it shall be unlawful to apply any neonicotinoid insecticides in outdoor agricultural production, including, but not limited to, planting any seeds treated with neonicotinoid insecticides, in **[State]**.
- (c) **Other Outdoor Uses.** Beginning nine months after the date of enactment of this Act, it shall be unlawful to apply neonicotinoid insecticides in any other outdoor settings, including landscaping, ornamental or other outdoor applications, in **[State]**.

### SECTION 6. EXEMPTIONS.

The provisions of Section 5 of this Act shall not apply to:

- 1) the use of neonicotinoids following the date of enactment of this Act that were purchased before that date pursuant to a reasonable phase-out period to be

- adopted by the [Ag. Dep't Director or equivalent] by regulation, not to exceed one year; or
- 2) to any facility or other entity that is State or Federally licensed to conduct research on neonicotinoid insecticides.

#### SECTION 7. RULEMAKING.

The [Ag. Dep't Director or equivalent] shall, within six months after the date of enactment of this Act, adopt regulations further defining and implementing the provisions of Sections 5 and 6 of this Act.

#### SECTION 8. STUDY AND REEVALUATION.

The [Ag. Dep't Director or equivalent] shall, within one year after the date of enactment of this Act, issue a draft report evaluating whether clear, peer-reviewed, published scientific evidence exists that outdoor applications of these insecticides are safe for honey bees, other pollinators, other beneficial insects, the broader environment and human health. The public, including all interested entities, then shall be allowed to comment on the draft report. After considering the comments and any other relevant information, the Director shall deliver his or her final evaluation report on that topic to the Governor and to the Chairs of the [House and Senate Agriculture Committees – insert correct committee names].

#### SECTION 9. ENFORCEMENT.

- a) Enforcement [**refer to existing State agricultural provisions on enforcement, civil and criminal penalties**].
- b) The Attorney General may bring an action to enjoin a violation of this Act in any court of competent jurisdiction.
- c) Any injured citizen of [State] may, after giving notice of the alleged violation to the Attorney General and the alleged violator and waiting sixty (60) days, bring an action to enjoin a violation of this Act by any person in any court of competent jurisdiction. The court may, in such an action, award to a citizen who is a prevailing plaintiff reasonable attorneys' fees and costs incurred in investigating and prosecuting the action, however, the court may not award monetary damages in such an action.

#### SECTION 10. AUTHORITY OF LOCAL GOVERNMENT.

Nothing in this Act shall be construed to prohibit or preempt the authority of a unit of local government in [State] to regulate applications of neonicotinoid pesticides in a manner that is equivalent to, or more stringent than, the provisions contained in this Act.

#### SECTION 11. SEVERABILITY.

If any provision of this chapter or the application thereof to any person, entity, or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

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## LEGAL NOTES

### Section 2. Findings.

The U.S. Supreme Court has long recognized the authority of States to restrict and regulate uses of pesticides, such as the proposed restrictions in this bill, under the Federal Insecticide, Fungicide, and Rodenticide Act. *See Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597, 607 (1991); *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 441-42 (2005). On the other hand, a State law that imposed excessive and unsupported indirect effects on interstate commerce might be challenged under the Commerce Clause of the U.S. Constitution if it imposes burdens on interstate commerce that are “clearly excessive” compared to the benefits the State provides. *See Pike v. Bruce Church*, 397 U.S. 137 (1970). The findings in the proposed bill have been crafted to explain its particular benefits to any State.

### Section 9. Enforcement.

It is recommended that each State should use its existing enforcement provisions regarding pesticide use violations. It also is recommended to include alternative enforcement through a citizen suit provision, as in Sec. 9(c). Citizen suit provisions, also known as private attorney general provisions, are more common in some States than others. If the State has previously used any citizen suit provisions, it should use those examples to inform what is used in this proposed bill. The citizen suit provision above permits reimbursement of reasonable attorneys’ fees and costs only, not damage awards, to mitigate the concern that it might promote private litigation.

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