
Referred to Committee on

Date:

Subject: Agriculture; pesticides; pollinator protection; neonicotinoid pesticides
Statement of purpose of bill as introduced:  This bill proposes to regulate the
sale and application of neonicotinoid pesticides in order to protect pollinator
populations. The bill requires the Secretary of Agriculture, Food and Markets
to register as a restricted use pesticide any neonicotinoid pesticide that is
distributed, sold, or offered for sale in the State. The bill prohibits a person
from selling a neonicotinoid pesticide at retail unless the person has a pesticide
dealer license and the pesticide is sold to a person with a Class A applicator
license. The bill allows neonicotinoid pesticides to be used only for farming.
The bill requires the Secretary to recommend treated article seeds that are
appropriate for the control of the specific pests that threaten Vermont crops.
The bill requires a person using a treated article seed to report the amount of
seed used and the location of use. The bill increases pesticide registration fees.
The fees would be deposited in a fund to compensate persons whose
pollinators or crops are damaged by application of a neonicotinoid pesticide or
treated article seed. The bill requires the Secretary to establish an Integrated
Pest and Pollinator Management Program by contracting with a university with
agricultural expertise.

An act relating to pollinator protection
It is hereby enacted by the General Assembly of the State of Vermont:

* * * Retail Sale of Neonicotinoid Pesticides * * *

Sec. 1. 6 V.S.A. § 911 is amended to read:

§ 911. DEFINITIONS

For the purpose of As used in this chapter:

* * *

(4) Secretary” “Secretary” means the Secretary of Agriculture, Food and Markets.

(5) “Economic poison” means:

(A) any substance produced, distributed, or used for preventing, destroying, or repelling any insects, rodents, nematodes, fungi, weeds, or other forms of plant or animal life or viruses, except viruses on or in living human or other animals, which the Secretary shall declare to be a pest;

(B) any substance produced, distributed, or used as a plant regulator, defoliant, or desiccant.

* * *

(7) “Fungicide” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi.

(8) “Herbicide” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.

* * *
(12) “Insecticide” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects which may be present in any environment whatsoever.

* * *

(16) “Person” means any individual, partnership, association, corporation, or organized group of persons whether incorporated or not.

(17) “Registrant” means the person registering any economic poison pursuant to the provisions of this chapter.

(18) “Rodenticide” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animal which the Secretary shall declare to be a pest.

(19) “Weed” means any plant which grows where not wanted.

(20) “Nematocide” means any substance produced, distributed, or used for preventing, destroying, or repelling nematodes.

(21) “Plant regulator” means any substance produced, distributed, or used for the purposes of accelerating or retarding the rate of growth or rate of maturation, or otherwise altering the behavior of plants but shall not include substances produced, distributed, or used for plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

(22) “Defoliant” means any substance produced, distributed, or used for causing the foliage to drop from a plant, with or without causing abscission.
(23) “Desiccant” means any substance produced, distributed, or used for artificially accelerating the drying of plant tissues.

* * *

(25) “Neonicotinoid pesticide” means any economic poison containing a chemical belonging to the neonicotinoid class of chemicals, including:

(A) imidacloprid;

(B) nithiazine;

(C) acetamiprid;

(D) clothianidin;

(E) dinotefuran;

(F) thiecloprid;

(G) thiamethoxam; and

(H) any other chemical designated by the Secretary by rule.

Sec. 2. 6 V.S.A. § 918 is amended to read:

§ 918. REGISTRATION

(a) Every economic poison which that is distributed, sold, or offered for sale within this State or delivered for transportation or transported in intrastate commerce or between points within this State through any point outside this State shall be registered in the Office of the Secretary, and such registration shall be renewed annually; provided that products which that have the same formula are manufactured by the same person, the labeling of which contains
the same claims, and the labels of which bear a designation identifying the
product as the same economic poison may be registered as a single economic
poison; and additional names and labels shall be added by supplemental
statements during the current period of registration. It is further
provided that any economic poison imported into this State, which is subject to
the provisions of any federal act providing for the registration of economic
poisons and which has been duly registered under the provisions of this
chapter, may, in the discretion of the Secretary, be exempted from registration
under this chapter, when sold or distributed in the unbroken immediate
container in which it was originally shipped. The registrant shall file with the
Secretary a statement including:

(1) The name and address of the registrant and the name and address of
the person whose name will appear on the label, if other than the registrant.

(2) The name of the economic poison.

(3) A complete copy of the labeling accompanying the economic poison
and a statement of all claims to be made for it, including directions for use.

(4) If requested by the Secretary, a full description of the tests made and
the results thereof upon which the claims are based. In the case of renewal of
registration, a statement shall be required only with respect to information
which is different from that furnished when the economic poison was
registered or last reregistered.
(b) The registrant shall pay an annual fee of $200.00 for each product registered, and $160.00 of that amount shall be deposited in the special fund created in section 929 of this title, of which $5.00 from each product registration shall be used for an educational program related to the proper purchase, application, and disposal of household pesticides, and $5.00 from each product registration shall be used to collect and dispose of obsolete and unwanted pesticides. Of the registration fees collected under this subsection, $15.00 of the amount collected shall be deposited in the Agricultural Water Quality Special Fund under section 4803 of this title. Of the registration fees collected under this subsection, $25.00 of the amount collected shall be deposited in the Pollinator Damage Compensation Fund under section 930 of this title. The annual registration year shall be from December 1 to November 30 of the following year.

* * *

(f) The Secretary shall register as a restricted use pesticide any neonicotinoid pesticide that is distributed, sold, or offered for sale within this State or delivered for transportation or transported in intrastate commerce or between points within this State through any point outside this State, provided that the Secretary shall not register the following products as restricted use pesticides:
(1) pet care products used for preventing, destroying, repelling, or mitigating fleas, mites, ticks, heartworms, or other insects or organisms;

(2) personal care products used for preventing, destroying, repelling, or mitigating lice or bedbugs; and

(3) indoor pest control products used for preventing, destroying, repelling, or mitigating insects indoors.

Sec. 3. 6 V.S.A. § 930 is added to read:

§ 930. POLLINATOR DAMAGE COMPENSATION FUND

(a)(1) The Pollinator Damage Compensation Fund is established pursuant to 32 V.S.A. chapter 7, subchapter 5 to be administered by the Secretary of Agriculture, Food and Markets. The Fund shall consist of:

(A) revenues, including fees collected under this chapter, dedicated for deposit into the Fund by the General Assembly; and

(B) other gifts, donations, and other funds received from any source, public or private, dedicated for deposit into the Fund and approved under 32 V.S.A. § 5.

(2) Notwithstanding any contrary provisions of 32 V.S.A. chapter 7, subchapter 5, unexpended balances shall remain in the Fund from year to year.

(b) The Secretary may use monies deposited in the Fund to compensate a person if application of a neonicotinoid pesticide or treated article containing a neonicotinoid pesticide results in one or more of the following:
(1) destruction of bees, an apiary, a pollinator colony, or a hive registered under chapter 172 of this title;

(2) damage to a crop or crop-bearing plant other than grass; and

(3) other damage specified by the Secretary by rule.

(c) Notwithstanding the requirements of 32 V.S.A. § 588(3), interest earned by the Fund shall be retained in the Fund from year to year.

(d) The Secretary may adopt by rule requirements to implement this section, including:

(1) the process for applying for compensation under subsection (b) of this section;

(2) eligibility criteria for compensation under subsection (b) of this section; and

(3) other types of damage that qualify for compensation under subsection (b) of this section.

Sec. 4. 6 V.S.A. § 1101 is amended to read:

§ 1101. DEFINITIONS

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

(1) “Secretary” shall have the same meaning stated as in subdivision 911(4) of this title.
(3) “Dealer or pesticide dealer” means any person who regularly sells pesticides in the course of business, but not including a casual sale.

(4) “Economic poison” shall have the same meaning stated as 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 microorganisms, which the Secretary declares as being injurious to health or environment. Pest shall not mean any viruses, bacteria, or other microorganisms on or in living humans or other living animals.

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

* * *

(8) “Farming” shall have the same meaning as in 10 V.S.A. § 6001.

(9) “Neonicotinoid pesticide” means any economic poison containing a chemical belonging to the neonicotinoid class of chemicals, including:

(A) imidacloprid;

(B) nithiazine;

(C) acetamiprid;

(D) clothianidin;

(E) dinotefuran;

(F) thiecloprid;
(G) thiamethoxam; and

(H) any other chemical designated by the Secretary by rule.

(10) “Ornamental plants” means any shrub, bush, tree, or other plant used or intended for a use other than farming as that term is defined in 10 V.S.A. § 6001.

(11) “Pollinator foraging area” means an area with flowering plants or fruit trees that is one or more of the following:

(A) a natural, undisturbed area;

(B) land that is planted or cultivated, or both; or

(C) an area planted to attract intentionally pollinators.

Sec. 5. 6 V.S.A. § 1105b is added to read:

§ 1105b. RETAIL SALE OF NEONICOTINOID PESTICIDES

(a) Except as provided under subsection (b) of this section, a person shall not sell a neonicotinoid pesticide at retail in the State unless:

(1) the person has a pesticide dealer license from the Secretary authorizing the sale of restricted use pesticides; and

(2) the neonicotinoid pesticide is sold to a person with a Class A applicator license.

(b) The prohibition on the retail sale of neonicotinoid pesticides shall not apply to the following products:
(1) pet care products used for preventing, destroying, repelling, or mitigating fleas, mites, ticks, heartworms, or other insects or organisms;

(2) personal care products used for preventing, destroying, repelling, or mitigating lice or bedbugs; and

(3) indoor pest control products used for preventing, destroying, repelling, or mitigating insects indoors.

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

§ 1105c. APPLICATION OF NEONICOTINOID PESTICIDES

(a) A person shall not apply neonicotinoid pesticides to ornamental plants in the State.

(b) A person shall only apply neonicotinoid pesticides in the State for the purposes of farming. When a person applies neonicotinoid pesticides for farming, the person shall not apply neonicotinoid pesticides within 50 feet of a pollinator foraging area.

Sec. 7. RECOMMENDED TREATED ARTICLE SEED FOR VERMONT

(a) On or before January 15, 2019, the Secretary of Agriculture, Food and Markets shall submit to the House Committees on Agriculture and Forestry and on Natural Resources, Fish, and Wildlife and the Senate Committees on Agriculture and on Natural Resources and Energy a recommended list of the treated article seeds that are most appropriate to control the specific insects, weeds, and other pests that threaten agricultural crops in Vermont.
(b) The Secretary shall develop the recommended list of treated article seeds after consideration of all of the following:

(1) the type of pesticide or pesticides contained in or sprayed on the seed;

(2) whether a pesticide or pesticides contained in or on a seed are intended to control an insect, weed, or other pest present in or threatening to enter Vermont and, if so, whether:

(A) the pesticide has a potential adverse effect on human health, pollinator health, or the environment and the severity of the adverse effect;

(B) an alternative pesticide is available on the market that would have less of an adverse effect on human health, pollinator health, or the environment;

(C) if a safer alternative pesticide is available on the market, there would be an increased cost of buying treated article seed with only that pesticide or combination of safer alternative pesticides; and

(D) a treated article seed with a safer alternative pesticide or pesticides could be made available to Vermont farmers in sufficient quantity to meet potential demand.

(3) if a pesticide or pesticides contained in or on a seed are not intended to control an insect, weed, or other pest present in or threatening to enter Vermont, whether:
(A) the pesticide or pesticides have a potential adverse effect on human health, pollinator health, or the environment;

(B) if the pesticide or pesticides have an adverse effect on human health, pollinator health, or the environment, why the pesticide should be allowed for use in Vermont considering its lack of efficacy to control insects, weeds, or other pests in Vermont; and

(C) a safer alternative pesticide or pesticides are available to control insects, weeds, or other pests present in or threatening Vermont and, if so, why they should not be required as an alternative to those pesticides lacking efficacy in Vermont.

(c) The Secretary shall document his or her findings under subsection (b) of this section for each treated article seed sold in Vermont.

* * * Licensed and Certified Applicators; Reporting; Education * * *

Sec. 8. 6 V.S.A. § 1112 is amended to read:

§ 1112. LICENSING PESTICIDE APPLICATORS; PESTICIDE COMPANIES; DEALERS

(a) The Secretary may adopt rules requiring persons selling Class A and B pesticides to be licensed under this chapter. In addition, the Secretary may adopt rules requiring companies that hire applicators or conduct pesticide applications to be licensed and applicators who use pesticides to be certified under this chapter. The Secretary may establish reasonable requirements for
obtaining licenses and certificates. The fees for dealers, licensed companies, and applicator certificates under this chapter shall be as follows:

(1) Class A Dealer License—$50.00;

(2) Class B Dealer License—$50.00;

(3) Pesticide Company License—$75.00;

(4) Commercial and Noncommercial Applicator Certification fee—$30.00 per category or subcategory with a maximum of $120.00;

(5) Second and third time examination fee for dealer licenses and applicator certification—$25.00;

(6) Private Applicator—$25.00;


(b) All license and certification fees shall be for one year or any part thereof for each dealer, licensed pesticide applicator company, or certified commercial and noncommercial applicator. The license and certification period shall be January 1 to December 31.

(c) Notwithstanding the fees provided in subsection (a) of this section, the Secretary shall exempt the federal government and its agencies and instrumentalities from license and certification fees.

(d) An applicator licensed or certified under this section on or before January of each year shall report to the Secretary the type and volume of
pesticide applied in the prior calendar year. The report shall be made on forms and in a manner to be prescribed by the Secretary.

(e) When an applicator is licensed or certified under this section or rules adopted under this chapter, the Secretary shall provide the applicator with educational materials regarding the effect of pesticides on pollinator health and requirements or methods for reducing the effect of pesticides on pollinators.

*** Treated Article Seed; Untreated Seed ***

Sec. 9. 6 V.S.A. § 641 is amended to read:

§ 641. DEFINITIONS

As used in this chapter:

(1) “Agricultural seed” includes grass, forage, cereal, oil, fiber, and other kinds of crop seeds commonly recognized as agricultural seeds, lawn seeds, and combinations of such seeds, and may include noxious weed seeds used as agricultural seed.

(2) “Secretary” means the Secretary of Agriculture, Food and Markets or his or her designee.

(3) “Agency” means the Agency of Agriculture, Food and Markets.

(4) “Flower seed” includes seed of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental parts, and commonly known and sold under the name of flower seed.

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(7) “Vegetable seeds” include the seeds of those crops which are grown in gardens and on truck farms and are generally known and sold under the name of vegetable or herb seeds in this State.

* * *

(11) “Treated article” or “treated article pesticide” shall have the same meaning as “treated article” in section 1101 of this title.

(12) “Treated article seed” means an agricultural seed, flower seed, or vegetable seed that is a treated article pesticide.

(13) “Untreated seed” means an agricultural seed, flower seed, or vegetable seed that is not a treated article pesticide.

Sec. 10. 6 V.S.A. chapter 35, subchapter 3 is added to read:

Subchapter 3. Seed Supply; Untreated Seed; Use of Treated Seed

§ 650. SEED SUPPLY; UNTREATED SEED

(a) A person who sells treated article seeds in the State shall offer for sale untreated seed versions of the same type of agricultural seed, flower seed, or vegetable seed that is sold as a treated article seed.

(b) A person shall satisfy the requirements of subsection (a) of this section if the person offers untreated seed for sale in the amount of at least 10 percent of the weight of each treated seed offered for sale.
§ 651. USE OF TREATED ARTICLE SEED: REPORTING

A person who plants treated article seed in the State annually shall report to the Agency of Agriculture, Food and Markets the total amount of treated article seed planted by weight and the location of the planting. The report shall be made on forms and in a manner to be prescribed by the Secretary.

* * * Integrated Pest and Pollinator Management Program * * *

Sec. 11. INTEGRATED PEST AND POLLINATOR MANAGEMENT PROGRAM

(a) The Secretary of Agriculture, Food and Markets shall establish the Integrated Pest and Pollinator Management Program to provide farmers and others in Vermont with expertise and advice on methods for limiting, wherever feasible, the adverse effect of pesticides on pollinator health. The Secretary shall implement the program through a contract or financing of a program at a university or college with agricultural expertise or coursework.

(b) The Integrated Pest and Pollinator Management Program shall include assistance regarding:

(1) the efficient application of a pesticide so that not more is applied than is necessary to control insects, weeds, or other pests;

(2) the need to apply a pesticide, including whether application is not needed when no verified insect, weed, or other pest is present or is threatened to be present;
(3) the need to prioritize the use of pesticides that have lower toxicity or lower persistence, or both; and

(4) the appropriate and effective use of nonpesticidal controls.

*** Effective Dates ***

Sec. 12. EFFECTIVE DATES

(a) This section and Sec. 11 (Integrated Pest and Pollinator Management Program) shall take effect on passage.

(b) Secs. 1-6 (sale, registration, and use of neonicotinoid pesticides) and Secs. 9-10 (treated article seeds) shall take effect on January 1, 2019.

(c) All other sections shall take effect on July 1, 2018.