

No. 145. An act relating to the sale, use, or application of neonicotinoid pesticides.

(H.626)

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:

(1) “Secretary” shall have the meaning stated in subdivision 911(4) of this title.

(2) “Cumulative” when used in reference to a substance means that the substance so designated has been demonstrated to increase twofold or more in concentration if ingested or absorbed by successive life forms.

(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 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 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.”

(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.

(8) “Neonicotinoid pesticide” means any economic poison containing a chemical belonging to the neonicotinoid class of chemicals.

(9) “Neonicotinoid treated article seeds” are treated article seeds that are treated or coated with a neonicotinoid pesticide.

Sec. 2. 6 V.S.A. § 1105a is amended to read:

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

(a) The Secretary of Agriculture, Food and Markets, upon the recommendation of the Agricultural Innovation Board, may adopt by rule:

(1) best management practices (BMPs), standards, procedures, and requirements relating to the sale, use, storage, or disposal of treated articles the use of which the Agricultural Innovation Board 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 for the examination or inspection of treated articles the use of which the Agricultural Innovation Board 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, and what treatments were received, the use of which the Agricultural Innovation Board 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 Agricultural Innovation Board 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 pre-filing a rule authorized under subsection (a) or subsection (c) 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 Forestry for review.

(c)(1) Under subsection (a) of this section, the Secretary of Agriculture, Food and Markets, after consultation with the Agricultural Innovation Board, shall adopt by rule BMPs for the use in the State of neonicotinoid treated article seeds. In developing the rules with the Agricultural Innovation Board, the Secretary shall address:

(A) establishment of threshold levels of pest pressure required prior to use of neonicotinoid treated article seeds;

(B) availability of nontreated article seeds that are not neonicotinoid treated article seeds;

(C) economic impact from crop loss as compared to crop yield when neonicotinoid treated article seeds are used;

(D) relative toxicities of different neonicotinoid treated article seeds and the effects of neonicotinoid treated article seeds on human health and the environment;

(E) surveillance and monitoring techniques for in-field pest pressure;

(F) ways to reduce pest harborage from conservation tillage practices; and

(G) criteria for a system of approval of neonicotinoid treated article seeds.

(2) In implementing the rules required under this subsection, the Secretary of Agriculture, Food and Markets shall work with farmers, seed companies, and other relevant parties to ensure that farmers have access to appropriate varieties and amounts of untreated seed or treated seed that are not neonicotinoid treated article seeds.

Sec. 3. 6 V.S.A. § 3036 is added to read:

§ 3036. MONITORING OF POLLINATOR HEALTH

The Secretary of Agriculture, Food and Markets shall monitor managed pollinator health to establish pollinator health benchmarks for Vermont,

including:

- (1) presence of pesticides in hives;
- (2) mite pressure;
- (3) disease pressure;
- (4) mite control methods;
- (5) genetic influence on survival;
- (6) winter survival rate; and
- (7) forage availability.

Sec. 4. IMPLEMENTATION; REPORT; RULEMAKING

(a) On or before March 1, 2024, the Secretary of Agriculture, Food, and Markets shall submit to the Senate Committee on Agriculture and the House Committee on Agriculture and Forestry a copy of the proposed rules required to be adopted under 6 V.S.A. § 1105a.

(b) The Secretary of Agriculture shall not file the final proposal of the rules required by 6 V.S.A. § 1105a under 3 V.S.A. § 841 until at least 90 days from submission of the proposed rules to the General Assembly under subsection (a) of this section or July 1, 2024, which ever shall occur first.

Sec. 5. REVIEW AND REPORT ON BMPS FOR TREATED ARTICLE
SEEDS

On or before February 15, 2023, the Agricultural Innovation Board shall submit to the Senate Committee on Agriculture and the House Committee on Agriculture and Forestry a written report regarding whether best management practices (BMPs) should be adopted for the use of treated article seeds that are not neonicotinoid treated article seeds. The report shall include:

(1) a summary of the Agricultural Innovation Board's review of treated article seeds that are not neonicotinoid treated article seeds, including identification of treated article seeds that may have adverse effects on human health or the environment;

(2) a recommendation of whether BMPs for treated article seeds that are not neonicotinoid treated article seeds should be adopted and whether they should be adopted by rule; and

(3) proposed BMPs for treated article seeds that are not neonicotinoid treated article seeds.

Sec. 5a. AGENCY OF AGRICULTURE, FOOD AND MARKETS;

RESIDUALS MANAGEMENT POSITIONS

Two new permanent classified positions at the Agency of Agriculture, Food and Markets are authorized in fiscal year 2023 for the purpose of staffing the Agency's Residuals Management Program, supporting the Agricultural Innovation Board, and enforcing and reviewing the use of treated article

pesticides in the State. In fiscal year 2023, \$181,190.00 is appropriated to the Agency of Agriculture, Food and Markets for the purpose of hiring the two new positions in the Agency's Residuals Management Program. The two positions shall be funded from the revenue raised from the registration of soil amendments under 6 V.S.A. chapter 28 and the registration of dosage form animal health products and feed supplements under 6 V.S.A. chapter 26.

Sec. 6. EFFECTIVE DATE

This act shall take effect on July 1, 2022.

Date Governor signed bill: May 27, 2022