

H.706

An act relating to banning the use of neonicotinoid pesticides

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

Sec. 1. FINDINGS

The General Assembly finds that:

(1) Wild and managed pollinators are essential to the health and vitality of Vermont's agricultural economy, environment, and ecosystems. According to the Department of Fish and Wildlife (DFW), between 60 and 80 percent of the State's wild plants depend on pollinators to reproduce.

(2) Vermont is home to thousands of pollinators, including more than 300 native bee species. Many pollinator species are in decline or have disappeared from Vermont, including three bee species that the State lists as endangered. The Vermont Center for Ecostudies and DFW's State of Bees 2022 Report concludes that at least 55 of Vermont's native bee species need significant conservation action.

(3) Neonicotinoids are a class of neurotoxic, systemic insecticides that are extremely toxic to bees and other pollinators. Neonicotinoids are the most widely used class of insecticides in the world and include imidacloprid, clothianidin, thiamethoxam, acetamiprid, dinotefuran, thiacloprid, and nithiazine.

(4) Among other uses, neonicotinoids are commonly applied to crop seeds as a prophylactic treatment. More than 90 percent of neonicotinoids

1 applied to treated seeds move into soil, water, and nontarget plants. According
2 to the Agency of Agriculture, Food and Markets, at least 1197.66 tons of seeds
3 sold in Vermont in 2022 were treated with a neonicotinoid product.

4 (5) Integrated pest management is a pest management technique that
5 protects public health, the environment, and agricultural productivity by
6 prioritizing nonchemical pest management techniques. Under integrated pest
7 management, pesticides are a measure of last resort. According to the
8 European Academies Science Advisory Council, neonicotinoid seed treatments
9 are incompatible with integrated pest management.

10 (6) A 2020 Cornell University report that analyzed more than 1,100
11 peer-reviewed studies found that neonicotinoid corn and soybean seed
12 treatments pose substantial risks to bees and other pollinators but provide no
13 overall net income benefits to farms. DFW similarly recognizes that
14 neonicotinoid use contributes to declining pollinator populations.

15 (7) A 2014 peer-reviewed study conducted by the Harvard School of
16 Public Health and published in the journal *Bulletin of Insectology* concluded
17 that sublethal exposure to neonicotinoids is likely to be the main culprit for the
18 occurrence of colony collapse disorder in honey bees.

19 (8) A 2020 peer-reviewed study published in the journal *Nature*
20 *Sustainability* found that increased neonicotinoid use in the United States
21 between 2008 and 2014 led to statistically significant reductions in bird

1 biodiversity, particularly among insectivorous and grassland birds.

2 (9) A 2022 peer-reviewed study published in the journal *Environmental*
3 *Science and Technology* found neonicotinoids in 95 percent of the 171
4 pregnant women who participated in the study. Similarly, a 2019 peer-
5 reviewed study published in the journal *Environmental Research* found that
6 49.1 percent of the U.S. general population had recently been exposed to
7 neonicotinoids.

8 (10) The European Commission and the provinces of Quebec and
9 Ontario have implemented significant prohibitions on the use of
10 neonicotinoids.

11 (11) The New York General Assembly passed legislation that prohibits
12 the sale or use of corn, soybean, and wheat seed treated with imidacloprid,
13 clothianidin, thiamethoxam, dinotefuran, or acetamiprid. The same legislation
14 prohibits the nonagricultural application of imidacloprid, clothianidin,
15 thiamethoxam, dinotefuran, or acetamiprid to outdoor ornamental plants and
16 turf.

17 Sec. 2. 6 V.S.A. § 1101 is amended to read:

18 § 1101. DEFINITIONS

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

20 (1) “Secretary” ~~shall have~~ has the same meaning stated in subdivision
21 911(4) of this title.

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

4 (3) “Dealer or pesticide dealer” means any person who regularly sells
5 pesticides in the course of business, but not including a casual sale.

6 (4) “Economic poison” ~~shall have~~ has the same meaning stated in
7 subdivision 911(5) of this title.

8 (5) “Pest” means any insect, rodent, nematode, fungus, weed, or any
9 other form of terrestrial or aquatic plant or animal life or ~~virus~~ viruses,
10 bacteria, or other microorganisms that the Secretary declares as being injurious
11 to health or environment. “Pest ~~shall~~” does not mean any viruses, bacteria, or
12 other microorganisms on or in living humans or other living animals.

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

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

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

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

1 (10) “Agricultural commodity” means any food in its raw or natural
2 state, including all fruits or vegetables that are washed, colored, or otherwise
3 treated in their unpeeled natural form prior to marketing.

4 (11) “Agricultural emergency” means an occurrence of any pest that
5 presents an imminent risk of significant harm, injury, or loss to agricultural
6 crops.

7 (12) “Bloom” means the period from the onset of flowering or
8 inflorescence until petal fall is complete.

9 (13) “Crop group” means the groupings of agricultural commodities
10 specified in 40 C.F.R. § 180.41(c) (2023).

11 (14) “Environmental emergency” means an occurrence of any pest that
12 presents a significant risk of harm or injury to the environment, or significant
13 harm, injury, or loss to agricultural crops, including any exotic or foreign pest
14 that may need preventative quarantine measures to avert or prevent that risk, as
15 determined by the Secretary of Agriculture, Food and Markets.

16 (15) “Ornamental plants” mean perennials, annuals, and groundcover
17 purposefully planted for aesthetic reasons.

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

19 § 1105b. USE AND SALE OF NEONICOTINOID TREATED ARTICLE

20 SEEDS

21 (a) No person shall sell, offer for sale or use, distribute, or use any

1 neonicotinoid treated article seed for soybeans or for any crop in the cereal
2 grains crop group (crop groups 15, 15-22, 16, and 16-22).

3 (b) The Secretary of Agriculture, Food and Markets, after consultation with
4 the Secretary of Natural Resources, may issue a written exemption order to
5 suspend the provisions of subsection (a) of this section, only if the following
6 conditions are met:

7 (1) the person seeking the exemption order shall complete an integrated
8 pest management training, provided by the Secretary or an approved third
9 party;

10 (2) the person seeking the exemption order shall complete a pest risk
11 assessment and submit a pest risk assessment report to the Secretary;

12 (3) any seeds authorized for use under the exemption order shall be
13 planted only on the property or properties identified in the pest risk assessment
14 report; and

15 (4) the persons seeking the exemption order shall maintain current
16 records of the pest risk assessment report and records of when treated seeds are
17 planted, both of which shall be subject to review upon request by the Secretary.

18 (c) A written exemption order issued under subsection (b) of this section
19 shall:

20 (1) not be valid for more than one year; and

21 (2) specify the types of neonicotinoid treated article seeds to which the

1 exemption order applies, the date on which the exemption order takes effect,
2 and the exemption order's duration.

3 (d) A written exemption order issued under subsection (b) of this section
4 may:

5 (1) establish restrictions related to the use of neonicotinoid treated
6 article seeds to which the exemption order applies to minimize harm to
7 pollinator populations, bird populations, ecosystem health, and public health;
8 and

9 (2) establish other restrictions related to the use of neonicotinoid treated
10 article seeds to which the exemption order applies that the Secretary of
11 Agriculture, Food and Markets considers necessary.

12 (e) Upon issuing a written exemption order under subsection (b) of this
13 section, the Secretary of Agriculture, Food and Markets shall submit a copy of
14 the exemption order to the Senate Committees on Natural Resources and
15 Energy and on Agriculture; the House Committees on Environment and
16 Energy and on Agriculture, Food Resiliency, and Forestry; and the
17 Agricultural Innovation Board. The General Assembly shall post the written
18 exemption order to the website of the General Assembly.

19 (f) The Secretary of Agriculture, Food and Markets, after consultation with
20 the Secretary of Natural Resources, may rescind a written exemption order
21 issued under subsection (b) of this section at any time. Such rescission shall

1 come into effect not sooner than 30 days after its issuance and shall not apply
2 to neonicotinoid treated article seeds planted or sown before such recission
3 comes into effect.

4 Sec. 4. 6 V.S.A. § 1105c is added to read:

5 § 1105c. NEONICOTINOID PESTICIDES; PROHIBITED USES

6 (a) The following uses of neonicotinoid pesticides are prohibited:

7 (1) the outdoor application of neonicotinoid pesticides to any crop
8 during bloom;

9 (2) the outdoor application of neonicotinoid pesticides to soybeans or
10 any crop in the cereal grains crop group (crop groups 15, 15-22, 16, and 16-
11 22);

12 (3) the outdoor application of neonicotinoid pesticides to crops in the
13 leafy vegetables; brassica; bulb vegetables; herbs and spices; and stalk, stem,
14 and leaf petiole vegetables crop groups (crop groups 3, 3-07, 4, 4-16, 5, 5-16,
15 19, 22, 25, and 26) harvested after bloom; and

16 (4) the application of neonicotinoid pesticides to ornamental plants.

17 (b) The Secretary of Agriculture, Food and Markets, after consultation with
18 the Secretary of Natural Resources, may issue a written exemption order to
19 suspend the provisions of subsection (a) of this section if the Secretary
20 determines that:

21 (1) a valid environmental emergency or agricultural emergency exists;

1 (2) the pesticide would be effective in addressing the environmental
2 emergency or the agricultural emergency; and

3 (3) no other, less harmful pesticide or pest management practice would
4 be effective in addressing the environmental emergency or the agricultural
5 emergency.

6 (c) A written exemption order issued under subsection (b) of this section
7 shall:

8 (1) not be valid for more than one year;

9 (2) specify the neonicotinoid pesticides, uses, and crops, or plants to
10 which the exemption order applies; the date on which the exemption order
11 takes effect; the exemption order's duration; and the exemption order's
12 geographic scope, which may include specific farms, fields, or properties; and

13 (3) provide a detailed evaluation determining that an agricultural
14 emergency or an environmental emergency exists.

15 (d) A written exemption order issued under subsection (b) of this section
16 may:

17 (1) establish restrictions related to the use of neonicotinoid pesticides to
18 which the exemption order applies to minimize harm to pollinator populations,
19 bird populations, ecosystem health, and public health; or

20 (2) establish other restrictions related to the use of neonicotinoid
21 pesticides to which the exemption order applies that the Secretary of

1 Agriculture, Food and Markets considers necessary.

2 (e) Upon issuing a written exemption order under subsection (b) of this
3 section, the Secretary of Agriculture, Food and Markets shall submit a copy of
4 the exemption order to the Senate Committees on Natural Resources and
5 Energy and on Agriculture; the House Committees on Environment and
6 Energy and on Agriculture, Food Resiliency, and Forestry; and the
7 Agricultural Innovation Board. The General Assembly shall post the written
8 exemption order to the website of the General Assembly.

9 (f) The Secretary of Agriculture, Food and Markets, after consultation with
10 the Secretary of Natural Resources, may rescind any written exemption order
11 issued under subsection (b) of this section at any time. Such rescission shall
12 come into effect not sooner than 15 days after its issuance.

13 Sec. 5. 6 V.S.A. § 918 is amended to read:

14 § 918. REGISTRATION

15 (a) Every economic poison that is distributed, sold, or offered for sale
16 within this State or delivered for transportation or transported in intrastate
17 commerce or between points within this State through any point outside this
18 State shall be registered in the Office of the Secretary, and such registration
19 shall be renewed annually, provided that products that have the same formula
20 are manufactured by the same person, the labeling of which contains the same
21 claims, and the labels of which bear a designation identifying the product as

1 the same economic poison may be registered as a single economic poison, and
2 additional names and labels shall be added by supplemental statements during
3 the current period of registration. It is further provided that any economic
4 poison imported into this State, which is subject to the provisions of any
5 federal act providing for the registration of economic poisons and that has been
6 duly registered under the provisions of this chapter, may, in the discretion of
7 the Secretary, be exempted from registration under this chapter when sold or
8 distributed in the unbroken immediate container in which it was originally
9 shipped. The registrant shall file with the Secretary a statement including:

10 * * *

11 (f) ~~The~~ Unless the use or sale of a neonicotinoid pesticide is otherwise
12 prohibited, the Secretary shall register as a restricted use pesticide any
13 neonicotinoid pesticide labeled as approved for outdoor use that is distributed,
14 sold, sold into, or offered for sale within the State or delivered for
15 transportation or transported in intrastate commerce or between points within
16 this State through any point outside this State, provided that the Secretary shall
17 not register the following products as restricted use pesticides unless classified
18 under federal law as restricted use products:

19 (1) pet care products used for preventing, destroying, repelling, or
20 mitigating fleas, mites, ticks, heartworms, or other insects or organisms;

21 (2) personal care products used for preventing, destroying, repelling, or

1 mitigating lice or bedbugs; and

2 (3) indoor pest control products used for preventing, destroying,
3 repelling, or mitigating insects indoors; ~~and~~

4 ~~(4) treated article seed.~~

5 Sec. 6. 6 V.S.A. § 1105a(c) is amended to read:

6 (c)(1) Under subsection (a) of this section, the Secretary of Agriculture,
7 Food and Markets, after consultation with the Agricultural Innovation Board,
8 shall adopt by rule BMPs for the use in the State of:

9 (A) neonicotinoid treated article seeds when used prior to January 1,
10 2031;

11 (B) neonicotinoid treated article seeds when the Secretary issues a
12 written exemption order pursuant to section 1105b of this chapter authorizing
13 the use of neonicotinoid treated article seeds;

14 (C) neonicotinoid pesticides when the Secretary issues a written
15 exemption order pursuant to section 1105c of this chapter authorizing the use
16 of neonicotinoid pesticides; and

17 (D) the agricultural use after July 1, 2025 of neonicotinoid pesticides
18 the use of which is not otherwise prohibited under law.

19 (2) In developing the rules with the Agricultural Innovation Board, the
20 Secretary shall address:

21 (A) establishment of threshold levels of pest pressure required prior

1 to use of neonicotinoid treated article seeds or neonicotinoid pesticides;

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

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

6 (D) relative toxicities of different neonicotinoid treated article seeds
7 or neonicotinoid pesticides and the effects of neonicotinoid treated article
8 seeds or neonicotinoid pesticides on human health and the environment;

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

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

12 (G) criteria for a system of approval of neonicotinoid treated article
13 seeds or neonicotinoid pesticides.

14 ~~(2)~~(3) In implementing the rules required under this subsection, the
15 Secretary of Agriculture, Food and Markets shall work with farmers, seed
16 companies, and other relevant parties to ensure that farmers have access to
17 appropriate varieties and amounts of untreated seed or treated seed that are not
18 neonicotinoid treated article seeds.

19 Sec. 7. 2022 Acts and Resolves No. 145, Sec. 4 is amended to read:

20 Sec. 4. IMPLEMENTATION; REPORT; RULEMAKING

21 (a) On or before March 1, 2024, the Secretary of Agriculture, Food, and

1 Markets shall submit to the Senate Committee on Agriculture and the House
2 Committee on Agriculture, Food Resiliency, and Forestry a copy of the
3 proposed rules required to be adopted under 6 V.S.A. § 1105a(c)(1)(A).

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

9 Sec. 8. CONTINGENT REPEAL

10 (a) 6 V.S.A. §1105b (use and sale of neonicotinoid treated article seeds;
11 prohibition) shall be repealed if the prohibition on the use of neonicotinoid
12 treated article seed in New York under N.Y. Environmental Conservation Law
13 § 37-1101(1) is repealed.

14 (b) 6 V.S.A. § 1105c (neonicotinoid pesticides; prohibited uses) shall be
15 repealed if the prohibition on the use of neonicotinoid pesticides on ornamental
16 plants in New York under N.Y. Environmental Conservation Law § 37-
17 1101(2) is repealed.

18 Sec. 9. EFFECTIVE DATES

19 (a) This section and Secs. 1 (findings), 2 (definitions), 5 (registration),
20 6 (BMP rules), 7 (implementation), and 8 (contingent repeal) shall take effect
21 on passage.

1 (b) Sec. 4 (prohibited use; neonicotinoid pesticides) shall take effect on
2 July 1, 2025, provided that the prohibition on the use of neonicotinoid
3 pesticides on ornamental plants in New York under N.Y. Environmental
4 Conservation Law § 37-1101(2) is in effect on July 1, 2025. If N.Y.
5 Environmental Conservation Law § 37-1101(2) is not in effect on July 1, 2025,
6 Sec. 4 of this act shall not take effect until the effective date of N.Y.
7 Environmental Conservation Law § 37-1101(2).
8 (c) Sec. 3 (treated article seed) shall take effect on January 1, 2029,
9 provided that the prohibition on the use of neonicotinoid treated article seed in
10 New York under N.Y. Environmental Conservation Law § 37-1101(1) is in
11 effect on January 1, 2029. If N.Y. Environmental Conservation Law § 37-
12 1101(1) is not in effect on January 1, 2029, Sec. 3 of this act shall not take
13 effect until the effective date of N.Y. Environmental Conservation Law § 37-
14 1101(1).