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HOUSE BILL NO. 1906

Offered January 9, 2019

Prefiled January 4, 2019

A *BILL to amend and reenact § 3.2-3900 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1 of Chapter 39 of Title 3.2 a section numbered 3.2-3913.1, relating to residential automatic pesticide misting systems; prohibition; civil penalty.*

Patrons—Kory and Rasoul

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That § 3.2-3900 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 1 of Chapter 39 of Title 3.2 a section numbered 3.2-3913.1 as follows:

§ 3.2-3900. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Active ingredient" means (in the case of a pesticide other than a plant regulator, defoliant, desiccant, or anti-desiccant) an ingredient that will prevent, destroy, repel, or mitigate insects, fungi, rodents, weeds, or other pests.

"Agricultural commodity" means any plant or part thereof, animal, or animal product, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, nurserymen, wood treaters not for hire, or other comparable persons) primarily for sale, consumption, propagation, or other use by man or animals.

"Certificate" means the document issued to a certified applicator or registered technician who has completed all the requirements of Article 3.

"Certification" or "certified" means the recognition granted by the Board to an applicator who has completed all the requirements of Article 3.

"Certified applicator" means a person who: (i) has satisfactorily completed the Board requirements for certification as a commercial applicator, registered technician, or private applicator; and (ii) has been issued a valid certificate.

"Commercial applicator" means any person who has completed the requirements for certification to use or supervise the use of any pesticide for any purpose or on any property other than as provided in the definition of private applicator.

"Defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

"Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

"Device" means any instrument or contrivance intended for: (i) trapping, destroying, repelling, or mitigating insects or rodents; or (ii) destroying, repelling, or mitigating fungi, bacteria, weeds or other pests as may be designated by the Commissioner. Device shall not include treated wood products, simple mechanical devices such as rattraps, or equipment used for the application of pesticide when sold separately.

"Fumigant" means any substance or mixture of substances that emits or liberates gases, fumes, or vapors capable of destroying vermin, rodents, insects, and other pests.

"Fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi or plant disease.

"Herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.

"Ingredient statement" or "guaranteed analysis statement" means a statement containing: (i) the name and percentage of each active ingredient; (ii) the total percentage of the inert ingredients; and (iii) if the pesticide contains arsenic in any form, the percentages of total and water soluble arsenic.

"Insect" means any small invertebrate animal generally having a segmented form and belonging to the class Insecta including beetles, bugs, and bees. For purposes of this act, the term insect shall also mean classes of arthropods whose members are usually wingless and have more than six legs including spiders, mites, ticks, centipedes, and wood lice.

"Insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects that may be present in any environment whatsoever.

"Label" means the written, printed or graphic matter on, or attached to, the pesticide or device, or the

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59 immediate container thereof, and the outside container or wrapper of the retail package, if any, of the
60 pesticide or device.

61 "Labeling" means all labels and other written, printed, or graphic matter: (i) upon the pesticide or
62 device or any of its containers or wrappers; (ii) accompanying the pesticide or device at any time; or
63 (iii) referenced on the label or in literature accompanying the pesticide or device. Labeling shall not
64 include current official publications of the agricultural experiment station, the Virginia Polytechnic
65 Institute and State University, the Department, the State Board of Health, or similar federal or state
66 institutions when accurate, nonmisleading reference is made to such official publications and such
67 agencies are authorized by law to conduct research in the field of pesticides.

68 "Licensed" or "licensee" means a person issued a license by the Board to engage in the sale, storage,
69 distribution, recommendation, or application of pesticides for compensation.

70 "Pest" means any deleterious organism that is: (i) any vertebrate animal other than man; (ii) any
71 invertebrate animal excluding any internal parasite of living man or other living animals; (iii) any plant
72 growing where not wanted, and any plant part such as a root; or (iv) any bacterium, virus, or other
73 microorganisms (except for those on or in living man or other living animals and those on or in
74 processed food or processed animal feed, beverages, drugs as defined by the Federal Food, Drug, and
75 Cosmetic Act at 21 U.S.C. § 321 (g)(1), and cosmetics as defined by the Federal Food, Drug, and
76 Cosmetic Act at 21 U.S.C. § 321 (i)). Any organism classified as endangered, threatened, or otherwise
77 protected under federal or state laws shall not be deemed a pest for the purposes of this chapter.

78 "Pesticide" means: (i) any substance or mixture of substances intended for preventing, destroying,
79 repelling, or mitigating any insects, rodents, fungi, bacteria, weeds, other forms of plant or animal life,
80 bacterium, or viruses, except viruses on or in living man or other animals, which the Commissioner
81 shall declare to be a pest; (ii) any substance or mixture of substances intended for use as a plant
82 regulator, defoliant, or desiccant; and (iii) any substance intended to become an active ingredient in any
83 substance defined in clause (i) and (ii).

84 "Pesticide business" means any person engaged in the business of: distributing, applying or
85 recommending the use of a product; or storing, selling, or offering for sale pesticides directly to the
86 user. The term "pesticide business" does not include: (i) wood treaters not for hire; (ii) seed treaters not
87 for hire; (iii) operations that produce agricultural products, unless the owners or operators of such
88 operations described in clauses (i), (ii), and (iii) are engaged in the business of selling or offering for
89 sale pesticides, or distributing pesticides to persons outside of that agricultural producing operation in
90 connection with commercial transactions; or (iv) businesses exempted by regulations adopted by the
91 Board.

92 "Plant regulator" means any substance or mixture of substances, intended through physiological
93 action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the
94 behavior of ornamental or crop plants or the produce thereof, but shall not include substances to the
95 extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants,
96 and soil amendments.

97 "Private applicator" means an individual who uses or supervises the use of any pesticide that is
98 classified for restricted use for purposes of producing any agricultural commodity on property owned or
99 rented by him or his employer or, if applied without compensation other than trading of personal
100 services between producers of agricultural commodities, on the property of another person.

101 "Registered technician" means an individual who has satisfactorily completed the Board requirements
102 for certification to apply general use pesticides, and to apply restricted use pesticides while under the
103 direct supervision of a certified commercial applicator. Registered technicians render services similar to
104 those of a certified commercial applicator, but have not completed all the requirements to be eligible for
105 certification as a commercial applicator.

106 "Registrant" means the person registering any pesticide pursuant to the provisions of this chapter.

107 "*Residential automatic pesticide misting system*" means any device that is designed to be installed on
108 the grounds of a residential dwelling, or on, near, or around the exterior of such dwelling, and to
109 automatically spray a pesticide solution at timed intervals.

110 "Restricted use pesticide" or "pesticide classified for restricted use" means any pesticide classified as
111 restricted by the Administrator of the U.S. Environmental Protection Agency.

112 "Rodenticide" means any substance or mixture of substances intended for preventing, destroying,
113 repelling or mitigating rodents or any other vertebrate animal declared by the Commissioner to be a
114 pest.

115 "Serious violation" means a violation of this chapter or regulation adopted hereunder that results in a
116 substantial probability of death or serious physical harm to persons, serious harm to property, or serious
117 harm to the environment unless the person or licensee did not or could not with the exercise of
118 reasonable diligence know of the violation.

119 "State special use" or "pesticide classified for restricted use in the Commonwealth" means any
120 pesticide that is judged by the Board after special review to be so hazardous or injurious to persons,

121 pollinating insects, animals, crops, wildlife, lands, or the environment (other than the pests it is intended
122 to prevent, destroy, control, or mitigate) that additional restrictions on its sale, purpose, use, or
123 possession are required.

124 "Under the direct supervision of" means the act or process whereby the application of a pesticide is
125 made by a competent person acting under the instructions and control of a certified applicator who is
126 responsible for the actions of that person.

127 "Unreasonable adverse effects on the environment" means any unreasonable risk to man or the
128 environment, taking into account the economic, social, and environmental costs and benefits of the use
129 of any pesticide.

130 "Use" means the employment of a pesticide for the purposes of: (i) preventing, destroying, repelling,
131 or mitigating any pest; or (ii) regulating plant growth, causing defoliation or desiccation of plants. The
132 term "use" shall include applying, mixing, handling, or transferring a pesticide after the manufacturer's
133 original seal is broken, and any act consistent with the label.

134 **§ 3.2-3913.1. Residential automatic pesticide misting systems; civil penalty.**

135 *A. Beginning January 1, 2020, no person shall install or use any residential automatic pesticide*
136 *misting system.*

137 *B. The Board shall assess a civil penalty for each day of violation of this section pursuant to the*
138 *provisions of § 3.2-3943, with maximum penalties as follows: (i) \$500 for a less than serious violation,*
139 *(ii) \$2,500 for a serious violation, and (iii) \$10,000 for a repeat or knowing violation.*

140 *C. The Board may adopt regulations to carry out the provisions of this section.*