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HOUSE BILL NO. 1706

Offered January 17, 2020

A BILL to amend and reenact § 3.2-3939 of the Code of Virginia, relating to prohibited pesticides; chlorpyrifos.

Patron—Kory

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That § 3.2-3939 of the Code of Virginia is amended and reenacted as follows:

§ 3.2-3939. Violations generally.

A. It is unlawful for any person to manufacture, distribute, sell, offer for sale, use, or offer for use:

1. Any pesticide not registered pursuant to the provisions of this chapter; any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration; or any pesticide if the composition of a pesticide differs from its composition as represented in connection with its registration.

2. Any pesticide sold, offered for sale, or offered for use that is not in the registrant's or the manufacturer's unbroken container, and does not have an affixed and visible label bearing the following information:

a. The name and address of the manufacturer, registrant, or person for whom manufactured;

b. The name, brand, or trademark under which said pesticide is sold; and

c. The net weight or measure of the content, subject to reasonable variations as permitted by the Commissioner.

3. Any pesticide containing any substance in quantities highly toxic to man, unless the label bears:

a. A skull and crossbones;

b. The word "poison" shown prominently in red on a background of distinctly contrasting color; and

c. A statement of an antidote for the pesticide.

4. The pesticides commonly known as lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate, unless they have been distinctly colored as provided by regulations issued hereunder. ~~Any,~~ and any other white powder pesticide that the Commissioner requires to be distinctly colored after an investigation of and after a public hearing on the necessity for such action. The Commissioner may exempt any pesticide to the extent that it is intended for a particular use if he determines that distinctive coloring is unnecessary for the protection of the public health.

5. Any pesticide that is adulterated or misbranded, or any device that is misbranded.

6. Any pesticide that is the subject of a stop sale, use, or removal order as provided for in § 3.2-3944 until such time as the provisions of that section have been met.

7. Any pesticide containing chlorpyrifos as an active ingredient. In lieu of any penalty imposed for a violation of this subdivision pursuant to § 3.2-3947, authorized personnel of the Department shall seize any pesticide containing chlorpyrifos. Any such seized pesticide shall be considered forfeited. For purposes of this subdivision, "chlorpyrifos" means a toxic crystalline organophosphate pesticide with chemical nomenclature O,O-diethyl O-3,5,6-trichloropyridin-2-yl phosphorothioate, commonly known as chlorpyrifos pesticide or chlorpyrifos-ethyl.

B. It is unlawful for any person to use or cause to be used any pesticide in a manner inconsistent with its labeling or regulations of the Board, provided that such deviation may include provisions set forth in Section 2 (ee) of the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 et seq.).

C. It is unlawful to dispose of containers or unused portions of pesticide in a manner inconsistent with label directions or the regulations of the Board in the absence of label directions, or if those regulations further restrict such disposal.

D. It is unlawful for any person to knowingly use any pesticide against any organism that is otherwise protected under fish, game, or migratory bird laws, without first obtaining authorization as necessary from the federal or state agency responsible for the protection of the organism.

E. It is unlawful for any person to detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this chapter or the regulations adopted hereunder.

F. It is unlawful for any manufacturer, distributor, dealer, carrier, or other person to refuse, upon a request in writing specifying the nature or kind of pesticide or device to which such request relates, to furnish to or permit any person designated by the Commissioner to have access to and to copy such

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59 records of business transactions as may be essential in carrying out the purposes of this chapter.

60 G. It is unlawful for any person to give a guaranty or undertaking provided for in § 3.2-3941 that is
61 false in any particular, except that a person who receives and relies upon a guaranty authorized under
62 such section may give a guaranty to the same effect, which guaranty shall contain in addition to his own
63 name and address the name and address of the person residing in the U.S. from whom he received the
64 guaranty or undertaking.

65 H. It is unlawful for any person to oppose or interfere in any way with the Commissioner in carrying
66 out the duties imposed by this chapter.