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HOUSE BILL NO. 2030

Offered January 13, 2021

Prefiled January 12, 2021

A BILL to amend and reenact § 3.2-3900 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 3.2-3929.1 and by adding in Article 1 of Chapter 9 of Title 15.2 a section numbered 15.2-926.5, relating to neonicotinoid pesticides; local regulation and notice; penalty.

Patrons—Krizek, Helmer, Carr, Keam, Kory, Lopez and Sickles; Senator: Surovell

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 a section numbered 3.2-3929.1 and by adding in Article 1 of Chapter 9 of Title 15.2 a section numbered 15.2-926.5 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.

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59 "Label" means the written, printed or graphic matter on, or attached to, the pesticide or device, or the
60 immediate container thereof, and the outside container or wrapper of the retail package, if any, of the
61 pesticide or device.

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

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

71 "*Neonicotinoid*" means any neuroactive insecticide chemically similar to nicotine identified by the
72 U.S. Environmental Protection Agency as harmful or potentially harmful to pollinating insects.
73 "*Neonicotinoid*" includes acetamiprid, clothianidin, dinotefuran, imidacloprid, and thiamethoxam.

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

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

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

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

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

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

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

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

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

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

"State special use" or "pesticide classified for restricted use in the Commonwealth" means any pesticide that is judged by the Board after special review to be so hazardous or injurious to persons, pollinating insects, animals, crops, wildlife, lands, or the environment (other than the pests it is intended to prevent, destroy, control, or mitigate) that additional restrictions on its sale, purpose, use, or possession are required.

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

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

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

§ 3.2-3929.1. Application of neonicotinoid pesticides.

A. No person shall use any neonicotinoid in an area that is zoned for residential, business, commercial, or industrial use, unless at least 72 hours prior to use he has given written notice at every address within one-half mile of the area of application.

B. The Board may adopt regulations pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) to carry out the provisions of this section.

§ 15.2-926.5. Regulation of certain pesticides; civil penalty.

A. For the purposes of this section, "neonicotinoid" means the same as that term is defined in § 3.2-3900.

B. Any locality, by ordinance, may regulate or prohibit the distribution, possession, or sale of a neonicotinoid or other pesticide that the locality deems harmful to pollinators or regulate or prohibit outdoor use in an area that is zoned for residential, business, commercial, or industrial use.

C. A violation of a neonicotinoid ordinance authorized by this section shall be subject to a civil penalty, not to exceed \$50 for the first violation or violations arising from the same set of operative facts. The civil penalty for subsequent violations not arising from the same set of operative facts within 12 months of the first violation shall not exceed \$200. Each business day during which the same violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same set of operative facts result in civil penalties that exceed a total of \$3,000 in a 12-month period.