

SENATE BILL 359

M4
SB 917/09 – EHE

0lr1315
CF 0lr1897

By: **Senators Lenett, Exum, Harrington, King, McFadden, Pinsky, Pugh, Raskin, Robey, and Rosapepe**

Introduced and read first time: January 28, 2010

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Agriculture – Fertilizers and Pesticides – Release Reporting**

3 FOR the purpose of requiring the Department of Agriculture to adopt certain
4 regulations regarding the reporting on the release of fertilizers and pesticides;
5 declaring certain findings of the General Assembly; requiring a certain person
6 that releases fertilizers and pesticides to submit a certain report to the
7 Department; requiring the report to contain certain information; requiring the
8 report to be submitted annually beginning on a certain date; requiring the
9 Department to establish the format of the report; requiring the Department to
10 adopt standard naming conventions for certain chemicals and products;
11 requiring that a person that withholds certain information from the report to
12 notify the Department and provide a certain explanation; establishing that this
13 Act does not relieve a person from certain reporting requirements under federal,
14 State, or local laws; authorizing the Department to inspect certain records;
15 requiring certain records to be made available to the Department for inspection
16 at a certain time; requiring the Department to provide notice of a certain
17 inspection of records to a certain person; requiring the Department to serve as
18 the repository for certain records; authorizing the Department to delegate
19 certain data management functions; authorizing the Department to share data
20 management resources with other State departments; requiring the
21 Department to establish an online electronic reporting system; requiring the
22 system to allow certain information to be reported; authorizing the Department
23 to adopt certain regulations regarding electronic reporting; authorizing the
24 Department to adopt regulations regarding the public availability of certain
25 information; requiring the Department to adopt regulations to ensure that
26 certain data will not result in the association of a certain person; requiring the
27 Department to adopt regulations to protect the identity of certain persons;
28 limiting access to certain reports to certain persons; prohibiting access to
29 certain reports unless certain requirements are met; requiring the availability
30 of certain administrative and judicial review under certain circumstances;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 creating a Fertilizer and Pesticide Release Fund; providing for the
 2 administration of the Fund; requiring the Fund to be used for certain purposes;
 3 requiring the Fund to have an annual revenue target; requiring the Department
 4 to set the revenue target and adjust the target based on certain conditions;
 5 requiring certain penalties and fees to be deposited into the Fund; requiring the
 6 Department to place a certain surcharge on certain fees; requiring the
 7 surcharge fees to be deposited into the Fund; requiring the surcharge fees to be
 8 used for a certain purpose; prohibiting the violation of this Act; establishing the
 9 penalties for certain violations; providing for the enforcement of this Act;
 10 defining certain terms; and generally relating to fertilizer and pesticide release
 11 reporting.

12 BY adding to
 13 Article – Agriculture
 14 Section 14–101 through 14–403 to be under the new title “Title 14. Fertilizers
 15 and Pesticides”
 16 Annotated Code of Maryland
 17 (2007 Replacement Volume and 2009 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 19 MARYLAND, That the Laws of Maryland read as follows:

20 **Article – Agriculture**

21 **TITLE 14. FERTILIZERS AND PESTICIDES.**

22 **SUBTITLE 1. DEFINITIONS; GENERAL PROVISIONS.**

23 **14–101.**

24 **THE GENERAL ASSEMBLY FINDS THAT:**

25 **(1) THE RELEASE OF FERTILIZERS AND PESTICIDES INTO THE**
 26 **ENVIRONMENT CAN HAVE A NEGATIVE EFFECT ON PUBLIC HEALTH AND THE**
 27 **ENVIRONMENT;**

28 **(2) NEGATIVE EFFECTS CAN OCCUR EVEN IF CHEMICALS ARE**
 29 **USED IN FULL ACCORDANCE WITH APPROVED APPLICATIONS WHEN WEATHER**
 30 **AND OTHER SITUATIONS RESULT IN CHEMICALS ENTERING THE ATMOSPHERE,**
 31 **SOILS, GROUNDWATER, STREAMS, RIVERS, LAKES, OR ESTUARIES;**

32 **(3) SIGNIFICANT EFFORTS ARE UNDERTAKEN AT GREAT EXPENSE**
 33 **TO IDENTIFY AND TRACK FERTILIZERS AND PESTICIDES IN THE ENVIRONMENT;**

1 (4) WITHOUT INFORMATION ON THE PATTERNS OF FERTILIZER
2 AND PESTICIDE USE, IT IS COSTLY AND CHALLENGING TO DESIGN APPROPRIATE
3 MONITORING, EVALUATION, AND PROTECTION PROGRAMS;

4 (5) IT IS JUSTIFIED AND APPROPRIATE TO REQUIRE THAT
5 CERTAIN INFORMATION ON THE RELEASE OF FERTILIZERS AND PESTICIDES
6 THAT ARE POTENTIALLY HARMFUL ENVIRONMENTAL CONTAMINANTS BE
7 ASSEMBLED FOR THE PURPOSES OF ASSURING THE PROTECTION OF HUMAN
8 AND ENVIRONMENTAL HEALTH;

9 (6) FERTILIZER AND PESTICIDE USE CAN CONTRIBUTE TO THE
10 IMPAIRMENT OF THE STATE'S WATER, SOIL, AND AIR ENVIRONMENTS, AND THE
11 COLLECTION OF DATA CAN BE USED FOR IMPROVED PLANNING, CONTROL, AND
12 TRACKING;

13 (7) ACCESS TO REPORTED DATA AND THE IDENTITY OF A PERSON
14 SUBMITTING A REPORT REQUIRED UNDER THIS TITLE IS INTENDED FOR
15 GOVERNMENT AGENCIES AND RESEARCH ORGANIZATIONS THAT HAVE A
16 REGULATORY OR ACADEMIC INTEREST IN REDUCING RELEASES OF
17 CONTAMINANTS THAT COULD SIGNIFICANTLY IMPAIR OR DAMAGE HUMAN
18 HEALTH OR THE ENVIRONMENT; AND

19 (8) EFFICIENCIES IN REPORTING OF DATA CAN BE ACHIEVED
20 THROUGH THE USE OF CONSOLIDATED ELECTRONIC SYSTEMS, AND TO THE
21 EXTENT POSSIBLE, REPORTING OBLIGATIONS UNDER THIS TITLE AND THOSE
22 RELATING TO REQUIREMENTS FOR PESTICIDE APPLICATIONS AND NUTRIENT
23 MANAGEMENT PLANS UNDER SEPARATE TITLES WITHIN THE AGRICULTURE
24 ARTICLE SHOULD BE LINKED TO BENEFIT BOTH THE DEPARTMENT AND THE
25 REGULATED ENTITIES.

26 14-102.

27 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS
28 INDICATED.

29 (B) (1) "FERTILIZER" MEANS A CHEMICAL SUBSTANCE THAT IS
30 UTILIZED FOR THE ENHANCED GROWTH OF CROPS.

31 (2) "FERTILIZER" INCLUDES:

32 (I) NITROGEN AND PHOSPHORUS IN ELEMENTAL,
33 MOLECULAR, AND COMPOUND FORMULATIONS; AND

34 (II) MANURE AND BIOSOLIDS.

1 **(C) “FUND” MEANS THE FERTILIZER AND PESTICIDE USE FUND**
2 **ESTABLISHED UNDER § 14–301 OF THIS TITLE.**

3 **(D) “PESTICIDE” HAS THE MEANING AS DEFINED IN § 5–101 OF THIS**
4 **ARTICLE.**

5 **(E) “RELEASE” MEANS ANY APPLICATION, USE, OR SPILL.**

6 **SUBTITLE 2. FERTILIZER AND PESTICIDE RELEASE REPORTING.**

7 **14–201.**

8 **THE DEPARTMENT SHALL ADOPT REGULATIONS FOR REPORTING THE**
9 **RELEASE OF FERTILIZERS AND PESTICIDES, INCLUDING:**

10 **(1) OUTDOOR AGRICULTURAL RELEASE;**

11 **(2) WOOD–DESTROYING INSECT CONTROL, INCLUDING OUTDOOR**
12 **AND SUBSURFACE BUILDING TREATMENTS;**

13 **(3) LAWN CARE AND LANDSCAPING SERVICES;**

14 **(4) GOLF COURSE MAINTENANCE;**

15 **(5) CEMETERY MAINTENANCE;**

16 **(6) HIGHWAY, UTILITY, AND RAILROAD RIGHTS–OF–WAY**
17 **MAINTENANCE;**

18 **(7) FOREST PEST CONTROL; AND**

19 **(8) MOSQUITO CONTROL.**

20 **14–202.**

21 **(A) ANY PERSON REQUIRED TO SUBMIT A REPORT UNDER THIS TITLE**
22 **SHALL SUBMIT AN ANNUAL REPORT TO THE DEPARTMENT INDICATING:**

23 **(1) THE QUANTITIES OF THE FERTILIZER OR PESTICIDE**
24 **RELEASED IN MONTHLY AND ANNUAL TOTALS;**

25 **(2) THE TYPES OF FERTILIZER OR PESTICIDE RELEASED;**

1 (3) THE LOCATIONS WHERE FERTILIZER OR PESTICIDE IS
2 RELEASED;

3 (4) FERTILIZER AND PESTICIDE MONTHLY OR SEASONAL USE
4 PATTERNS;

5 (5) THE INTENDED PURPOSES OF THE FERTILIZER OR PESTICIDE
6 APPLICATION OR RELEASE, INCLUDING:

7 (I) CROPS TO WHICH FERTILIZER OR PESTICIDE IS
8 APPLIED; AND

9 (II) TARGETED ORGANISMS FOR PESTICIDE USE;

10 (6) THE 16-DIGIT UNITED STATES GEOLOGICAL SURVEY UNIT
11 CODE FOR THE WATERSHED IN WHICH FERTILIZER OR PESTICIDE WAS
12 RELEASED; AND

13 (7) ANY INFORMATION RELATING TO FERTILIZER AND PESTICIDE
14 USE THAT THE SECRETARY REQUIRES.

15 (B) (1) REPORTS REQUIRED UNDER THIS TITLE OR REGULATIONS
16 ADOPTED IN ACCORDANCE WITH THIS TITLE SHALL COVER THE PRECEDING
17 CALENDAR YEAR AND BE SUBMITTED ANNUALLY TO THE DEPARTMENT
18 BEGINNING ON MARCH 1, 2012.

19 (2) THE DEPARTMENT SHALL SPECIFY THE FORMAT OF REPORTS
20 REQUIRED UNDER THIS TITLE.

21 (3) THE DEPARTMENT SHALL ADOPT STANDARD NAMING
22 CONVENTIONS AND CATEGORIES FOR THE VARIOUS CHEMICAL NAMES,
23 PRODUCT NAMES, AND PRODUCT FORMULATIONS.

24 (C) A PERSON THAT WITHHOLDS INFORMATION FROM A REPORT
25 REQUIRED UNDER THIS SECTION BASED ON A CLAIM THAT THE INFORMATION IS
26 CONFIDENTIAL BUSINESS INFORMATION SHALL:

27 (1) NOTIFY THE DEPARTMENT THAT INFORMATION IS BEING
28 WITHHELD; AND

29 (2) PROVIDE AN EXPLANATION FOR THE CLAIM THAT THE
30 WITHHELD INFORMATION IS CONFIDENTIAL.

1 **(D) THIS SECTION DOES NOT RELIEVE A PERSON FROM ANY OTHER**
2 **REPORTING REQUIREMENTS UNDER FEDERAL, STATE, OR LOCAL LAWS.**

3 **14-203.**

4 **(A) THE DEPARTMENT MAY INSPECT ANY RECORDS OR REPORTS OF**
5 **FERTILIZER OR PESTICIDE RELEASE BY A PERSON.**

6 **(B) ON REQUEST BY THE DEPARTMENT, A PERSON SHALL MAKE**
7 **RECORDS AVAILABLE FOR INSPECTION BY THE DEPARTMENT DURING NORMAL**
8 **BUSINESS HOURS.**

9 **(C) IF THE DEPARTMENT INTENDS TO INSPECT RECORDS AT THE**
10 **LOCATION WHERE THE RECORDS ARE MAINTAINED, THE DEPARTMENT SHALL**
11 **PROVIDE ADVANCE NOTICE OF NOT LESS THAN 1 WEEK TO THE PERSON IN**
12 **POSSESSION OF THE RECORDS.**

13 **14-204.**

14 **(A) THE DEPARTMENT SHALL SERVE AS THE REPOSITORY FOR DATA**
15 **REGARDING FERTILIZER AND PESTICIDE RELEASE IN THE STATE.**

16 **(B) THE DEPARTMENT MAY DELEGATE THE MANAGEMENT OF ITS DATA**
17 **REPOSITORY FUNCTIONS TO ANOTHER STATE AGENCY OR PRIVATE**
18 **CONTRACTOR.**

19 **(C) THE DEPARTMENT MAY SHARE SYSTEMS AND RESOURCES WITH**
20 **OTHER STATE DEPARTMENTS TO OPTIMIZE THE MANAGEMENT AND SHARING OF**
21 **ITS DATA REPOSITORIES.**

22 **14-205.**

23 **(A) (1) THE DEPARTMENT SHALL ESTABLISH AN ONLINE**
24 **ELECTRONIC REPORTING SYSTEM FOR THE SUBMITTAL OF REPORTS REQUIRED**
25 **UNDER THIS TITLE.**

26 **(2) THE ONLINE ELECTRONIC REPORTING SYSTEM SHALL**
27 **INCLUDE MEANS FOR A PERSON TO IDENTIFY THE WATERSHED OF THE RELEASE**
28 **SITE AS REQUIRED UNDER § 14-202(A)(7) OF THIS SUBTITLE.**

29 **(B) (1) THE DEPARTMENT MAY ADOPT REGULATIONS FOR THE**
30 **PURPOSE OF ACHIEVING RECEIPT OF 90% OF REPORTS REQUIRED UNDER THIS**
31 **TITLE BY ONLINE ELECTRONIC SUBMISSION BY 2013.**

1 **(2) THE DEPARTMENT MAY ADOPT REGULATIONS REQUIRING**
2 **ALL REPORTS TO BE SUBMITTED ELECTRONICALLY AFTER JANUARY 1, 2016.**

3 **14-206.**

4 **(A) THE DEPARTMENT MAY ADOPT RULES AND REGULATIONS**
5 **REGARDING ACCESS BY THE PUBLIC TO INFORMATION SUBMITTED TO OR**
6 **MAINTAINED BY THE DEPARTMENT REGARDING FERTILIZERS AND PESTICIDES**
7 **RELEASED IN THE STATE.**

8 **(B) (1) THE DEPARTMENT SHALL ADOPT REGULATIONS TO:**

9 **(I) ENSURE THAT PUBLICLY DISTRIBUTED DATA WILL NOT**
10 **RESULT IN THE ASSOCIATION OF ANY DATA WITH A PERSON; AND**

11 **(II) PROTECT THE IDENTITY OF A PERSON REQUIRED TO**
12 **SUBMIT A REPORT UNDER THIS SUBTITLE.**

13 **(2) ACCESS TO INDIVIDUAL REPORTS SHALL BE LIMITED TO:**

14 **(I) GOVERNMENT AGENCIES; AND**

15 **(II) RESEARCH ORGANIZATIONS THAT HAVE A REGULATORY**
16 **OR ACADEMIC INTEREST IN THE RELEASE OF FERTILIZERS AND PESTICIDES.**

17 **(3) ACCESS TO INDIVIDUAL REPORTS MAY NOT BE PROVIDED TO**
18 **AN ENTITY LISTED UNDER PARAGRAPH (2) OF THIS SUBSECTION UNLESS THE**
19 **ENTITY:**

20 **(I) DEMONSTRATES IT HAS ADEQUATE SECURITY**
21 **MEASURES TO PREVENT THE RELEASE OF INFORMATION THAT IS**
22 **ATTRIBUTABLE TO A PERSON SUBMITTING A REPORT; AND**

23 **(II) SIGNS AN AGREEMENT TO KEEP CONFIDENTIAL THE**
24 **IDENTITY OF A PERSON THAT HAS SUBMITTED A REPORT.**

25 **(C) FOR MATTERS RELATING TO THE DEPARTMENT'S PROTECTION OF**
26 **THE IDENTITY OF A PERSON REQUIRED TO SUBMIT A REPORT, A PERSON SHALL**
27 **BE ENTITLED TO:**

28 **(1) A REVIEW BY AN ADMINISTRATIVE LAW JUDGE; AND**

29 **(2) AN APPEAL TO A COURT OF COMPETENT JURISDICTION, AS**
30 **AUTHORIZED BY STATE LAW.**

1 **SUBTITLE 3. FERTILIZER AND PESTICIDE RELEASE FUND.**

2 **14-301.**

3 **(A) THERE IS A FERTILIZER AND PESTICIDE RELEASE FUND IN THE**
4 **DEPARTMENT.**

5 **(B) THE SECRETARY SHALL ADMINISTER THE FUND.**

6 **(C) (1) (I) THE FUND IS A SPECIAL, NONLAPSING FUND THAT IS**
7 **NOT SUBJECT TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT**
8 **ARTICLE.**

9 **(II) SUBJECT TO § 14-303(H) OF THIS SUBTITLE, EXCESS**
10 **MONEY DEPOSITED INTO THE FUND MAY BE DIRECTED INTO THE GENERAL**
11 **FUND IF THE FUND IS CAPABLE OF SUPPORTING ALL REQUIRED FUNCTIONS**
12 **FOR THE UPCOMING FISCAL YEAR.**

13 **(2) THE STATE TREASURER SHALL HOLD THE FUND**
14 **SEPARATELY, AND THE COMPTROLLER SHALL ACCOUNT FOR THE FUND.**

15 **(D) THE FUND CONSISTS OF:**

16 **(1) REVENUE DISTRIBUTED TO THE FUND UNDER THIS TITLE;**

17 **(2) MONEY APPROPRIATED IN THE STATE BUDGET TO THE FUND;**

18 **AND**

19 **(3) ANY OTHER MONEY FROM ANY OTHER SOURCE ACCEPTED**
20 **FOR THE BENEFIT OF THE FUND.**

21 **(E) THE FUND SHALL BE USED FOR:**

22 **(1) THE COLLECTION, MANAGEMENT, AND ANALYSIS OF DATA**
23 **RECEIVED BY THE DEPARTMENT FROM PERSONS REQUIRED TO REPORT IN**
24 **ACCORDANCE WITH THIS TITLE OR REGULATIONS ADOPTED IN ACCORDANCE**
25 **WITH THIS TITLE; AND**

26 **(2) ENFORCEMENT OF THE PROVISIONS OF THIS SUBTITLE.**

27 **(F) (1) THE STATE TREASURER SHALL INVEST THE MONEY OF THE**
28 **FUND IN THE SAME MANNER AS OTHER STATE MONEY MAY BE INVESTED.**

1 **(2) ANY INTEREST OR OTHER INVESTMENT EARNINGS OF THE**
2 **FUND SHALL BE CREDITED AND PAID INTO THE FUND.**

3 **(G) (1) THE FUND SHALL HAVE AN ANNUAL REVENUE TARGET.**

4 **(2) THE ANNUAL REVENUE TARGET SHALL BE SET AND ADJUSTED**
5 **ANNUALLY BY THE DEPARTMENT IN RESPONSE TO DOCUMENTED PROGRAM**
6 **NEEDS OR CHANGES IN THE COST-OF-LIVING INDEX USED BY THE STATE; AND**

7 **(3) THE REVENUE TARGET SHALL BE SET AT A LEVEL SUFFICIENT**
8 **TO COVER ALL COSTS OF THE PROGRAM ESTABLISHED UNDER THIS TITLE.**

9 **14-302.**

10 **ANY FEE OR PENALTY COLLECTED IN ACCORDANCE WITH THIS TITLE**
11 **SHALL BE DEPOSITED INTO THE FUND.**

12 **14-303.**

13 **(A) THE DEPARTMENT SHALL PLACE A SURCHARGE ON REGISTRATION**
14 **FEEES RELATED TO FERTILIZERS AND PESTICIDES IN AN AMOUNT SUFFICIENT TO**
15 **GENERATE FUNDS TO MEET THE ANNUAL REVENUE TARGET ESTABLISHED**
16 **UNDER § 14-301(G) OF THIS SUBTITLE.**

17 **(B) THE SURCHARGE PORTION OF REGISTRATION FEES UNDER**
18 **SUBSECTION (A) OF THIS SECTION SHALL BE FOR THE PURPOSE OF**
19 **SUPPORTING THE DEVELOPMENT AND OPERATION OF, AND COMPLIANCE WITH,**
20 **THE REPORTING PROGRAM REQUIRED UNDER THIS TITLE.**

21 **(C) THE SURCHARGE ON THE FERTILIZER AND PESTICIDE**
22 **REGISTRATION FEES SHALL BE DEPOSITED INTO THE FUND.**

23 **SUBTITLE 4. ENFORCEMENT OF TITLE; PENALTIES.**

24 **14-401.**

25 **A PERSON MAY NOT KNOWINGLY OR RECKLESSLY SUBMIT FALSE**
26 **INFORMATION IN RESPONSE TO A REPORTING REQUIREMENT UNDER THIS**
27 **TITLE.**

28 **14-402.**

29 **(A) A PERSON SHALL BE SUBJECT TO A PENALTY IN AN AMOUNT NOT TO**
30 **EXCEED \$100 FOR AN INITIAL NOTICE OF NONCOMPLIANCE WITH THIS TITLE.**

1 **(B) FAILURE TO SUBMIT A REPORT OR PAY THE FEES AS REQUIRED**
2 **UNDER THIS TITLE ON SECOND AND SUBSEQUENT NOTICES DELIVERED AT**
3 **LEAST 30 DAYS FROM THE INITIAL OR PREVIOUS NOTICE SHALL BE SUBJECT TO**
4 **A PENALTY IN AN AMOUNT NOT TO EXCEED \$10,000 FOR EACH NOTICE.**

5 **(C) KNOWINGLY SUBMITTING FALSE INFORMATION TO THE**
6 **DEPARTMENT IN A REPORT REQUIRED UNDER THIS TITLE SHALL BE SUBJECT**
7 **TO A PENALTY IN AN AMOUNT NOT TO EXCEED \$20,000.**

8 **(D) A PERSON THAT VIOLATES AN AGREEMENT OF CONFIDENTIALITY**
9 **UNDER § 14-207 OF THIS TITLE SHALL BE SUBJECT TO A PENALTY IN AN**
10 **AMOUNT NOT TO EXCEED \$10,000.**

11 **14-403.**

12 **(A) EXCEPT AS OTHERWISE PROVIDED BY LAW, THE PROVISIONS AND**
13 **PROCEDURES OF TITLE 12 OF THIS ARTICLE SHALL BE USED AND APPLIED TO**
14 **ENFORCE A PERSON'S KNOWING OR RECKLESS VIOLATION OF:**

15 **(1) THIS TITLE; AND**

16 **(2) ANY REGULATIONS ADOPTED UNDER THIS TITLE.**

17 **(B) A PENALTY IMPOSED FOR A VIOLATION OF THIS TITLE IS PAYABLE**
18 **TO THE FUND AND MAY BE COLLECTED IN ANY MANNER PROVIDED BY LAW FOR**
19 **THE COLLECTION OF DEBTS.**

20 **(C) THE ATTORNEY GENERAL SHALL ENFORCE THIS TITLE.**

21 **(D) UNLESS A PERSON SERVED WITH NOTICE OF A PENALTY UNDER**
22 **THIS SUBTITLE MAKES A WRITTEN REQUEST FOR A HEARING WITHIN 30 DAYS OF**
23 **RECEIPT OF THE NOTICE, THE PENALTY IS CONSIDERED FINAL.**

24 **(E) IF A PERSON REQUIRED TO PAY A FINAL PENALTY IMPOSED UNDER**
25 **THIS SUBTITLE FAILS TO PAY WITHIN 30 DAYS AFTER THE PENALTY BECOMES**
26 **FINAL, A LIEN SHALL BE RECORDED AGAINST ANY REAL PROPERTY OWNED BY**
27 **THE PERSON IN THE AMOUNT OF THE PENALTY, TOGETHER WITH INTEREST AND**
28 **ANY COSTS THAT MAY ACCRUE.**

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 July 1, 2010.