

Department of Legislative Services
 Maryland General Assembly
 2016 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 198

(Senator Nathan-Pulliam, *et al.*)

Education, Health, and Environmental Affairs

Environment and Transportation

Neonicotinoid Pesticides - Restrictions on Sales and Use (Pollinator Protection Act of 2016)

This bill establishes specified restrictions, effective January 1, 2018, on the sale and use of neonicotinoid pesticides. The Maryland Department of Agriculture (MDA) is also required to take specified actions on completion of the U.S. Environmental Protection Agency’s (EPA) pollinator risk assessment of four neonicotinoid pesticides and must incorporate specified practices into the State’s managed pollinator protection plan.

Fiscal Summary

State Effect: General fund expenditures increase by \$4,000 in FY 2017 for outreach-related costs and by \$78,600 in FY 2018 for MDA to hire an additional inspector to help enforce the bill. Future year estimates reflect annualization and inflation. Revenues are not materially affected.

| (in dollars) | FY 2017 | FY 2018 | FY 2019 | FY 2020 | FY 2021 |
|----------------|-----------|------------|------------|------------|------------|
| Revenues | \$0 | \$0 | \$0 | \$0 | \$0 |
| GF Expenditure | 4,000 | 78,600 | 57,800 | 60,200 | 62,700 |
| Net Effect | (\$4,000) | (\$78,600) | (\$57,800) | (\$60,200) | (\$62,700) |

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: Beginning January 1, 2018, a person may not sell at retail in the State a neonicotinoid pesticide unless the person also sells a restricted use pesticide.

Beginning January 1, 2018, a person also may not use a neonicotinoid pesticide unless the person is (1) a certified applicator or a person working under the supervision of a certified applicator; (2) a farmer, or a person working under the supervision of a farmer, who uses the pesticide for agricultural purposes, including crop production, livestock, poultry, equine, and noncrop agricultural fields; or (3) a veterinarian.

The restrictions do not apply to (1) pet care products used to mitigate fleas, mites, ticks, heartworms, or other animals that are harmful to the health of a domesticated animal; (2) personal care products used to mitigate lice and bedbugs; and (3) indoor pest control products used to mitigate insects indoors, including ant bait.

On completion of EPA's pollinator risk assessment of the neonicotinoid pesticides imidacloprid, clothianidin, thiamethoxam, and dinotefuran, MDA must review the State's pesticide laws and regulations and make recommendations for any changes necessary to ensure State laws and regulations are protective of pollinators, taking into account EPA recommendations. MDA must report its findings and recommendations to the Governor and General Assembly within six months of EPA's completed pollinator risk assessment of neonicotinoid pesticides.

In addition, MDA must incorporate pollinator habitat expansion and enhancement practices into the State's managed pollinator protection plan developed in coordination with EPA.

A person who violates the bill's provisions is subject to a civil penalty of \$250.

Current Law/Background:

Regulation of Pesticides

The Secretary of Agriculture is required to take various actions to regulate pesticide use, including (1) adopting rules and regulations governing the storage, sale, distribution, exchange, use, and disposal of any pesticide and its container and (2) prescribing, when necessary, the time and conditions under which a pesticide may be sold, distributed, exchanged, or used in different areas of the State.

Under the Federal Insecticide, Fungicide, and Rodenticide Act and a cooperative agreement with EPA, Maryland has primary enforcement responsibility for violations of

federal pesticide laws. To be sold, distributed, or used in Maryland, a pesticide must be registered by both MDA and EPA. Each pesticide registration must be renewed annually. MDA may refuse to register, or suspend or cancel the registration of, any pesticide for noncompliance with registration or labeling requirements.

Specified pesticides that have greater potential for causing harm are designated as restricted-use pesticides. Under MDA regulations, a “restricted-use pesticide” is a pesticide classified as such by Title 5 of the Agriculture Article, the federal government, or the Maryland Secretary of Agriculture. Under Title 5 of the Agriculture Article, cyclodiene termiticides are classified as restricted-use pesticides, although MDA advises that those pesticides are no longer used. MDA indicates that the EPA list of restricted-use pesticides is effectively the list of restricted-use pesticides for purposes of Maryland’s regulation of restricted-use pesticides. A “certified applicator” is certified by MDA as having demonstrated knowledge of pest control. Each commercial application of a pesticide must be under the supervision of a certified applicator who is responsible and liable for the application.

A person who sells or distributes restricted-use pesticides (1) must hold a dealer permit issued by MDA; (2) must maintain specified records on the sale or distribution of each restricted-use pesticide; and (3) may not sell or distribute a restricted-use pesticide to any person other than a permitted dealer or a certified applicator or that person’s authorized representative. A person may not use a restricted-use pesticide unless that person is a certified applicator or is a person working under the supervision of a certified applicator.

Neonicotinoid Pesticides

Neonicotinoid pesticides, a class of insecticides which affects the central nervous system of insects, are commonly used globally and in the State. Concern has been raised, however, about their impact on nontarget organisms, including bees and other pollinators, and the environment. Neonicotinoid pesticides are being reviewed by EPA as part of a pesticide registration review program intended to ensure that registered pesticides continue to not have unreasonable adverse effects. The risk assessments of four neonicotinoid pesticides – imidacloprid, clothianidin, thiamethoxam, and dinotefuran – are expected to be completed over the course of 2016 and 2017. A preliminary risk assessment for imidacloprid was released in January 2016. Based on concern about the potential effects of neonicotinoid pesticides on nontarget arthropods, including pollinators, EPA also recently implemented a requirement that products that contain any of those four types of neonicotinoid pesticides, and that are for outdoor application to foliage, be labeled with specific terms that highlight measures necessary to better protect pollinators. Neonicotinoid pesticide active ingredients are classified by EPA as general-use pesticides, which may be purchased at a retail outlet and used by the general public.

Pollinator Health

A Presidential Memorandum on creating a federal strategy to promote the health of honey bees and other pollinators was issued in June 2014 to the heads of federal agencies. The memorandum cited the importance of pollinators to the U.S. economy and significant loss of those pollinators, including honey bees, native bees, birds, bats, and butterflies, over the past few decades. MDA indicates that honey bees pollinate crops valued at more than \$40 million in Maryland alone.

The memorandum included various directives, including the establishment of a Pollinator Health Task Force, consisting of representatives of various federal agencies, to develop a National Pollinator Health Strategy, which was issued in May 2015. Among other directives to increase and improve pollinator habitat, the memorandum (1) required task force member agencies to develop and implement, as appropriate, plans to enhance pollinator habitat on their managed lands and facilities and (2) required the U.S. Environmental Protection Agency to engage State and tribal environmental, agricultural, and wildlife agencies in the development of State and tribal pollinator protection plans. The National Pollinator Health Strategy describes these plans as articulating means through which growers, applicators, and beekeepers can quickly and effectively communicate pesticide applications in close proximity to managed colonies. Maryland is currently in the process of developing its managed pollinator protection plan.

State Expenditures: General fund expenditures increase by \$4,000 in fiscal 2017 and by \$78,572 in fiscal 2018, which accounts for the bill’s October 1, 2016 effective date and the January 1, 2018 start date for the bill’s restrictions. This estimate reflects (1) printing and travel costs for initial outreach to retail operations in fiscal 2017 regarding the bill’s restriction on the sale of neonicotinoid pesticides and (2) the cost of hiring an inspector in fiscal 2018 to supplement existing inspection staff to enforce the restriction. The estimate includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. The estimate assumes that:

- enforcement of the neonicotinoid pesticide sales restriction is limited to inspection of products offered for sale at retail operations and communication with owners of the operations; and
- enforcement of the use restriction is limited to pursuit of any complaints received.

| | |
|---|-----------------|
| Position | 1 |
| Salary and Fringe Benefits | \$52,801 |
| Vehicle | 18,620 |
| Other Operating Expenses | <u>7,151</u> |
| Total FY 2018 State Expenditures | \$78,572 |

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

MDA can conduct the required review of the State's pesticide laws and regulations on completion of EPA's pollinator risk assessment of specified neonicotinoid pesticides, and meet the reporting requirement, with existing resources. The incorporation of pollinator habitat expansion and enhancement practices into the State's managed pollinator protection plan can also be handled with existing resources.

Small Business Effect: Retail operations that sell neonicotinoid pesticides may be meaningfully impacted by the bill's restrictions on the sale and use of neonicotinoid pesticides. Pest control businesses may meaningfully benefit to the extent the bill's restrictions on the use of neonicotinoid pesticides increases demand for the services of professional pesticide applicators.

Additional Information

Prior Introductions: SB 163 of 2015, a similar bill, received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. Its cross file, HB 605, received a hearing in the House Environment and Transportation Committee, but no further action was taken.

Cross File: HB 211 (Delegate Healey, *et al.*) - Environment and Transportation.

Information Source(s): Maryland Department of Agriculture, Department of Natural Resources, U.S. Environmental Protection Agency, Department of Legislative Services

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