SENATE BILL 268

By: Senator Kagan
Introduced and read first time: January 17, 2022
Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

AN ACT concerning

Pesticide Regulation – Transfer to Department of the Environment

FOR the purpose of transferring the regulation of pesticides, plant diseases, and mosquitoes in the State from the Department of Agriculture to the Department of the Environment; and generally relating to the regulation of pesticides, plant diseases, and mosquitoes in the State.

BY transferring

Article – Agriculture
Annotated Code of Maryland
(2016 Replacement Volume and 2021 Supplement)

Article – Environment
Section 18–101 through 18–114, respectively, and the subtitle “Subtitle 1. Maryland Pesticide Registration and Labeling Law”; 18–201 through 18–219, respectively, and the subtitle “Subtitle 2. Pesticide Applicator’s Law”; 18–301 through 18–305, respectively, and the subtitle “Subtitle 3. Neonicotinoid Pesticides”; 18–401 through 18–413, respectively, and the subtitle “Subtitle 4. Plant Disease Control”; and 18–501 through 18–509, respectively, and the subtitle “Subtitle 5. Mosquito Control” to be under the new title “Title 18.
Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
BY repealing and reenacting, without amendments,
Article – Environment
Section 18–101(a) and 18–301(a)
Annotated Code of Maryland
(2014 Replacement Volume and 2021 Supplement)
(As enacted by Section 1 of this Act)

BY repealing and reenacting, with amendments,
Article – Environment
Section 18–101(l), 18–103, 18–107(c), 18–109(d), 18–110, 18–111(b), 18–204,
18–206(a), 18–217(d), 18–301(b) and (d), 18–405(b), 18–408(e), 18–508(a), and
18–509
Annotated Code of Maryland
(2014 Replacement Volume and 2021 Supplement)
(As enacted by Section 1 of this Act)

BY repealing
Article – Environment
Section 18–412
Annotated Code of Maryland
(2014 Replacement Volume and 2021 Supplement)
(As enacted by Section 1 of this Act)

BY adding to
Article – Environment
Section 18–412
Annotated Code of Maryland
(2014 Replacement Volume and 2021 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That Section(s) 5–101, 5–102, 5–104 through 5–107, 5–107.1, and 5–108 through 5–114,
respectively, and the subtitle “Subtitle 1. Maryland Pesticide Registration and Labeling
through 5–210.5, and 5–211, respectively, and the subtitle “Subtitle 2. Pesticide
Applicator’s Law”; 5–2A–01 through 5–2A–05, respectively, and the subtitle “Subtitle 2A.
Neonicotinoid Pesticides”; 5–301, 5–302, and 5–304 through 5–314, respectively, and the
subtitle “Subtitle 3. Plant Disease Control”; and 5–401 through 5–405, 5–405.1, and 5–406
through 5–408, respectively, and the subtitle “Subtitle 4. Mosquito Control” of Article –
Agriculture of the Annotated Code of Maryland be transferred to be Section(s) 18–101
through 18–114, respectively, and the subtitle “Subtitle 1. Maryland Pesticide Registration
and Labeling Law”; 18–201 through 18–219, respectively, and the subtitle “Subtitle 2.
Pesticide Applicator’s Law”; 18–301 through 18–305, respectively, and the subtitle
“Subtitle 3. Neonicotinoid Pesticides”; 18–401 through 18–413, respectively, and the
subtitle “Subtitle 4. Plant Disease Control”; and 18–501 through 18–509, respectively, and
the subtitle “Subtitle 5. Mosquito Control” to be under the new title “Title 18. Pesticides” of Article – Environment of the Annotated Code of Maryland.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Environment

18–101.

(a) In this subtitle the following words have the meanings indicated.

(l) “Ingredient statement” means:

(1) [A] For a preparation declared highly toxic to humans under § 18–103(b) of this subtitle, a statement of the name and percentage of each active ingredient, together with the total percentage of inert ingredients in the pesticide;

(2) A statement of the name of each active ingredient, together with the name of each and total percentage of any inert ingredient in the pesticide; or

(3) In the case of a pesticide containing arsenic in any form, a statement of the percentages of total and water soluble arsenic, each calculated as elemental arsenic, in addition to the requirements of [paragraphs] ITEMS (1) and (2) of this subsection.

[Paragraph (1) of this subsection applies to any preparation declared highly toxic to humans, pursuant to § 5–104(b) of this subtitle.]

18–103.

(a) The Secretary, after public hearing, may adopt appropriate rules and regulations to carry out the provisions of this subtitle, including rules and regulations providing for the collection and examination of samples of pesticides.

(b) The Secretary may:

(1) Declare any form of plant or animal life or virus which is injurious to plants, humans, domestic animals, articles, or substances to be a pest;

(2) Determine whether any pesticide is highly toxic to humans; and

(3) Subject pesticides to the requirements of [§ 5–105] § 18–104 of this subtitle.

[(c) Uniform pesticide requirements between the several states and the federal government are desirable to avoid confusion that endangers the public health and that results from diverse requirements, particularly relating to the labeling and coloring of]
pesticides, and to avoid increased costs to the people of the State due to the necessity of complying with diverse requirements for manufacturing and selling pesticides. Consequently, the Secretary, after public hearing, may adopt the rules and regulations of the appropriate agency of the United States government relating to pesticides, if the rules and regulations are applicable to and conform with the primary standards established by this subtitle.]

18–107.

(c) All penalties collected under this section shall be paid into the State Chemist Fund under § 6–501 of [this article] THE AGRICULTURE ARTICLE.

18–109.

(d) A person may not use for his own advantage or reveal any information concerning formulas or products acquired by authority of § 5–105 or § 5–106 OR § 18–105 of this subtitle, other than to the Secretary, any proper official or employee of the State, to a court of the State in response to a subpoena, to a physician, or, in an emergency, to a pharmacist, or any other qualified person, for use in the preparation of antidotes.

18–110.

(a) (1) The following persons are not subject to any penalty for a violation of § 5–106 or § 5–109 OR § 18–105 OR § 18–109 of this subtitle:

[(1) (I) Any carrier while lawfully engaged in transporting a pesticide within the State, if the carrier, upon request, permits the Secretary to copy any record showing the transactions in and movement of any pesticide;]

[(2) (II) Any public official of the State or the federal government engaged in the performance of his official duty; or]

[(3) (III) [A] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A manufacturer or shipper of a pesticide for experimental use only:

[i] 1. [by] BY or under the supervision of an agency of the State or of the federal government authorized by law to conduct pesticide research[]; or

[ii] 2. [by] BY any other person if the pesticide is not sold and if its container shows the manufacturer’s name and address and it is plainly and conspicuously marked “for experimental use only – not to be sold”.

(2) [However, if] IF a written permit is obtained from the Secretary, [the] A pesticide may be sold for experimental purposes subject to any restriction set forth in the permit.
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(b) (1) A pesticide is not in violation of this subtitle, if it is intended solely for export to a foreign country, and if it is prepared or packed according to the specifications or directions of the purchaser.

(2) If [the] A pesticide is not exported, all the provisions of this subtitle apply.

18–111.

(b) (1) After entry of the decree of condemnation, [the] A pesticide shall be destroyed or sold, as the court directs.

(2) If [the] A pesticide is sold, the proceeds, less legal costs, shall be paid to and deposited in the fund established in § 6–501 of [this article] THE AGRICULTURE ARTICLE.

(3) [The] A pesticide may not be sold contrary to the provision of this subtitle.

(4) [Upon] ON payment of costs and execution and delivery of a good and sufficient bond conditioned that [the] A pesticide may not be disposed of unlawfully, the court may order the pesticide delivered to its owner for relabeling or reprocessing.

18–204.

The Secretary, by suitable administrative procedures including public hearings, if appropriate, shall:

(1) [Adopt rules and] IN COLLABORATION WITH THE SECRETARY OF HEALTH AND THE SECRETARY OF AGRICULTURE, ADOPT regulations governing the storage, sale, distribution, exchange, use, and disposal of any pesticide and its container, INCLUDING REGULATIONS ESTABLISHING RESTRICTED USES OR PROHIBITIONS OF PESTICIDES;

(2) Prescribe, when necessary, the time and conditions under which a pesticide may be sold, distributed, exchanged, or used in different areas of the State;

(3) Provide, if necessary, that extremely hazardous pesticides may be sold, distributed, exchanged, or applied only when special permission first is obtained from the Secretary;

(4) Define the formulations and establish the conditions and appropriate areas for application of any pesticide;
(5) Establish guidelines and requirements for the application of pesticides and providing for submission of records to the Secretary;

(6) Design and conduct an appropriate educational program on the use of pesticides and the necessity for care when applying them;

(7) Encourage, conduct, and support research which will contribute to optimal uses of pesticides for maximum public benefit and minimum public damage;

(8) Require that records be kept by all licensees and permittees;

(9) Employ inspectors and other employees necessary for the proper enforcement of the provisions of this subtitle and the rules and regulations adopted pursuant to it;

(10) Coordinate and support pesticide monitoring programs;

(11) Establish appropriate categories and, if necessary, subcategories of applicators of pesticides;

(12) Establish guidelines and requirements for all licensees, certificate holders, and permittees for the identification of pests and their methods of inspection of property to determine the presence of pests;

(13) For purposes of uniformity and in order to enter into cooperative agreements, adopt use classifications and other pertinent pesticide regulation provisions that are established by the U. S. Environmental Protection Agency; and

(14) Cooperate with State or federal agencies as is reasonable and proper to carry out the provisions of this subtitle.

18–206.

(a) The Secretary shall establish, by rule or regulation, qualifications for licensing and certification in each category established by [§ 5–207] § 18–207 of this subtitle to assure competence and responsibility in the application of pesticides.

18–217.

(d) An action for an injunction under this section is in addition to, and not instead of, criminal prosecution taken under [§ 5–211] § 18–219 of this subtitle or imposition of civil penalties under [§ 5–210.2] § 18–215 of this subtitle.

18–301.

(a) In this subtitle the following words have the meanings indicated.
(b) "Certified applicator" has the meaning stated in [§ 5–201] § 18–201 of this title.

(d) "Restricted use pesticide" has the meaning stated in [§ 5–201] § 18–201 of this title.

18–405.

(b) (1) If the Secretary determines that any dangerously injurious plant pest can be controlled without destroying the plant, [then he] THE SECRETARY shall order it treated.

(2) If the person notified UNDER PARAGRAPH (1) OF THIS SUBSECTION fails to comply with the order, the Secretary shall apply the appropriate control measures and the owner shall pay the [cost] COSTS.

(3) If the owner refuses to pay the [cost] COSTS REQUIRED UNDER PARAGRAPH (2) OF THIS SUBSECTION, [it] THE COSTS shall be collected as provided [in § 5–307] UNDER § 18–406 OF THIS SUBTITLE.

(4) The Secretary may treat any suspicious plant found in dangerous proximity to those infested or infected in order to prevent dissemination.

18–408.

(e) (1) If dangerously injurious plant pests are found in any nursery, orchard, or any premises where nursery stock is grown or held for sale, the Secretary shall order it treated or destroyed by the [nurseryman] NURSERY or dealer.

(2) [He] THE SECRETARY shall release all other nursery stock grown on the premises, and issue a certificate of inspection to the owner.

(3) If the [nurseryman] NURSERY or dealer fails to comply with the order, the Secretary shall seize, destroy, [and/or] OR treat the infested or infected nursery stock and the owner shall pay the costs.

(4) If [the] AN owner refuses to pay the [cost] COSTS REQUIRED UNDER PARAGRAPH (3) OF THIS SUBSECTION, [it] THE COSTS shall be collected [as prescribed in § 5–307] IN ACCORDANCE WITH § 18–406 OF this subtitle.

[18–412.

Any person who violates any provision of this subtitle is subject to the penalties and fines set forth in Title 12 of this article.]
Subject to § 18–413 of this subtitle, a person who violates this subtitle or any regulation adopted under this subtitle is guilty of a misdemeanor and on conviction is subject to:

(1) For a first offense, a fine not exceeding $500, imprisonment not exceeding 3 months, or both; and

(2) For a second or subsequent offense occurring within 2 years of a prior violation and arising from a separate set of circumstances from the prior violation, a fine not exceeding $1,000, imprisonment not exceeding 1 year, or both.

A person who fails to comply with the requirements of an order served under [§ 5–406] § 18–507 of this subtitle is guilty of a misdemeanor and on conviction is subject to:

(1) For a first offense, a fine not exceeding $1,000; and

(2) For a second or subsequent offense, a fine not exceeding $5,000.

SECTION 3. AND BE IT FURTHER ENACTED, That, on the effective date of this Act, the following shall be transferred to the Department of the Environment:

(1) the responsibilities of the Secretary of Agriculture and the Department of Agriculture as it relates to the regulation of pesticides, plant diseases, and mosquitos;

(2) all appropriations, including State and federal funds, held by the Department of Agriculture for the purpose of regulating pesticides, plant diseases, and mosquitos; and

(3) all of the functions, powers, duties, books and records (including electronic records), real and personal property, equipment, fixtures, assets, liabilities, obligations, credits, rights, and privileges of the Department of Agriculture and assigned for the regulation of pesticides, plant diseases, and mosquitos.

SECTION 4. AND BE IT FURTHER ENACTED, That, on the effective date of this Act, all employees of the Department of Agriculture primarily assigned to regulate pesticides, plant diseases, or mosquitos shall be transferred to the Department of the
Environment without diminution of their rights, benefits, employment, or retirement status.

SECTION 5. AND BE IT FURTHER ENACTED, That the publisher of the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, shall correct, with no further action required by the General Assembly, cross-references and terminology rendered incorrect by this Act. The publisher shall adequately describe any correction that is made in an editor’s note following the section affected.

SECTION 6. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2022.