

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 3126**

4 (By Delegates Boggs, Smith, Hatfield, Storch, Fleischauer,
5 Manchin, Longstreth, Sumner and Poore)

6
7 (Originating in the Committee on Roads and Transportation)

8 [February 22, 2011]

9
10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new section, designated §31-2-16, relating to
12 railroad companies providing pesticide safety; requiring a
13 railroad company to provide pesticide safety information at a
14 central location accessible to employees of the railroad
15 company and to the public and local communities along the
16 right-of-way treated by pesticide use; and requiring a
17 railroad company to provide pesticide safety training annually
18 to its employees who work along railroad rights-of-way and in
19 rail yards.

20 *Be it enacted by the Legislature of West Virginia:*

21 That the Code of West Virginia, 1931, as amended, be amended
22 by adding thereto a new section, designated §31-2-16, to read as
23 follows:

24 **ARTICLE 2. RAILROAD COMPANIES.**

25 **§31-2-16. Railroad company pesticide use.**

1 (a) No later than seven days before applying a pesticide to a
2 right-of-way that a railroad company owns or maintains, the
3 railroad company shall provide pesticide safety information, which
4 may be obtained by the railroad company's contracted pesticide
5 applicator, by posting at affected on-duty railroad locations and
6 through train bulletins, dispatcher messages, or other required
7 documentation for each train and engine crew that will be working
8 in the affected pesticide spray area. Additionally, the railroad
9 company shall provide appropriate documentation to ensure prompt
10 notification for maintenance of way, mechanical, signal employees,
11 or other rail workers that will be working in the affected
12 pesticide spray area. A railroad company shall include all of the
13 following in the safety information provided under this
14 subdivision:

15 (1) The location and description of the area to be treated.

16 (2) The name of the pesticide, its active ingredients, and its
17 registration number under 7 U.S.C. §§ 136 et seq. The material
18 safety data sheet (MSDS) for the pesticide shall satisfy this
19 purpose.

20 (3) The approximate date and time that the pesticide is to be
21 applied.

22 (4) Any restricted entry interval specified on the pesticide
23 labeling. The MSDS for the pesticide shall satisfy this purpose.

24 Provided, That the railroad company shall not require an employee
25 to reenter the pesticide spray area prior to the requirements
26 specified by the MSDS on the pesticide being utilized, Provided

1 however, That train and/or on-track movement is not prohibited.

2 (5) A description of where the information required to be on
3 the pesticide label under 7 U.S.C. §§ 136 et seq or under the
4 provisions of article sixteen-a, chapter nineteen of this code is
5 available for review. The MSDS for the pesticide shall satisfy this
6 purpose.

7 (6) Emergency medical contact information.

8 (b) A railroad company shall keep the information required by
9 subsection (a) posted at the location accessible to employees of
10 the railroad for at least thirty days after the day of application.

11 (c) No later than seven days before applying a pesticide to a
12 right-of-way that a railroad company owns or maintains, the
13 railroad company shall provide all of the following to each
14 individual who directly supervises employees who work in the area
15 to be treated:

16 (1) The information described in subdivision (2) to (6) of
17 subsection (a); and

18 (2) A description of the central location where the railroad
19 company provides the pesticide safety information to employees
20 under the provisions of subsection (a).

21 (d) No later than seven days before applying a pesticide to a
22 right-of-way that a railroad company owns or maintains, the
23 railroad company must provide the location and description of the
24 area to be treated, the approximate date and time of the
25 application, and how to obtain answers to questions about the
26 pesticide application, including a telephone number for the

1 railroad company and any toll-free telephone number maintained by
2 the railroad company to the Commissioner of Agriculture of the
3 State of West Virginia. It is the duty of the Commissioner of
4 Agriculture to provide public notification per their normal
5 legislative rules and regulations, which should include, but not be
6 limited to, notifying each county and municipal law-enforcement
7 agency with jurisdiction over the area in which the pesticide will
8 be applied, the location and description of the area to be treated,
9 the approximate date and time of the application, and how to obtain
10 answers to questions about the pesticide application, including a
11 telephone number for the railroad company and any toll-free
12 telephone number maintained by the railroad company.

13 (e) A railroad company shall make available to the public on
14 its Internet site a description of how to obtain answers to
15 questions about pesticide use by the railroad company, including a
16 telephone number for the railroad and any toll-free number
17 maintained by the railroad company or the Commissioner of
18 Agriculture of the State of West Virginia to provide information
19 about pesticide use.

20 (f) A railroad company shall provide annual pesticide safety
21 training. This training may coincide with the annual railroad
22 operating rules class or at any other operating or safety training
23 class that is scheduled annually. This training shall be provided
24 to railroad employees who work along railroad rights-of-way and in
25 rail yards and to other employees who, due to the nature of their
26 employment, may work in areas to which pesticides have been

1 applied. It is the duty of the railroad company to keep records for
2 each training session, which should include, but not be limited to,
3 the date of the training session, the employees attending, and the
4 name of the trainer and the trainer's employer. In the training
5 under this subsection, a railroad company shall include, but not be
6 limited to, information about restricted entry intervals,
7 requirements for personal protective equipment, how to read
8 pesticide labels, and incident and complaint reporting.

9 (g) For purposes of this section, the term "pesticide" is
10 defined by section three, article sixteen-a, chapter nineteen of
11 this code.