WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4722

By Delegate Walker

[Introduced February 15, 2022; Referred to the Committee on Agriculture and Natural Resources then Government Organization]

A BILL to amend the Code of West Virginia, 1931, amended, by adding thereto a new section, designated §19-16A-28, relating to restricting the use of neonicotinoid pesticides.

Be it enacted by the Legislature of West Virginia:

Article 16A. West Virginia Pesticide Control act.

§19-16A-28. Limitations on neonicotinoid pesticides; definitions; rulemaking authority.

(a) As used in this section:

“Agricultural plant” means any plant, or part thereof, grown, maintained, or otherwise produced for commercial purposes, including any plant grown, maintained, or otherwise produced for sale or trade, for research or experimental purposes, or for use in part or their entirety in another location. “Agricultural plant” includes, but is not limited to, grains, fruits, and vegetables; wood fiber or timber products; flowering and foliage plants and trees; seedlings and transplants; and turf grass produced for sod. “Agricultural plant” does not include pasture or rangeland used for grazing.

“Environmental emergency” means an occurrence of any pest which presents a significant risk of harm or injury to the environment, or significant harm, injury, or loss to agricultural crops, including, but not limited to, any exotic or foreign pest which may need preventative quarantine measures to avert or prevent that risk, as determined by the Department of Environmental Protection in consultation with the state Department of Agriculture.

“Neonicotinoid pesticide” means any pesticide containing a chemical belonging to the neonicotinoid class of chemicals, including, but not limited to, acetamiprid, clothianidin, dinotefuran, flonicamid, imidacloprid, nitenpyram, nithiazine, thiacloprid, thiamethoxam, or any other chemical designated by the department as belonging to the neonicotinoid class of chemicals.

“Restricted use pesiticide” means a pesticide that can be purchased and used only by a certified and licensed pesticide applicator, as determined by the department pursuant to the “Pesticide Control Act of 1971,” or persons working under the direct supervision of a certified and licensed pesticide applicator.

(b) No later than 12 months after the effective date of this section and every three years thereafter, the Department of Agriculture shall review the latest scientific information concerning neonicotinoid pesticides, and classify as a restricted use pesticide any neonicotinoid pesticide that the department determines will cause harm to populations of pollinating bees, birds, other pollinating wildlife, or aquatic invertebrates. Any person may petition the department at any time pursuant to an administrative process developed by the department by July 1, 2023, to classify a pesticide pursuant to this section.

(c) Notwithstanding the provisions of this section to the contrary, the application by a licensed pesticide applicator of a neonicotinoid pesticide adjacent to a building foundation perimeter to manage structural pests may be extended by an additional four feet, if such additional area is necessary to treat the source of the infestation and the application is limited to a spot targeted treatment of the source of the infestation only.

(d) Notwithstanding the provisions of this section to the contrary, the commissioner, in consultation with the department, may, by written order, authorize one or more licensed pesticide applicators to use a pesticide that is prohibited under this section if the commissioner finds that:

(1) A valid environmental emergency exists;

(2) The pesticide would be effective in addressing the environmental emergency; and

(3) No other, less harmful pesticide or pest management practice would be effective in addressing the environmental emergency.

Any order issued by the commissioner pursuant to this subsection shall include the basis for the commissioner’s determination and specify the approved time period, geographic scope, and purpose of the permitted sale or use of a pesticide. An order issued pursuant to this subsection shall be valid for a period not to exceed one year.

(e) The commissioner shall promulgate any state rule necessary to implement this section.

(f) This section shall take effect January 1, 2023.

NOTE: The purpose of this bill is to restrict the use of neonicotinoid pesticides; providing definitions and rulemaking authority; and setting an effective date.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.