

**Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 10-0594.01 Kate Meyer

SENATE BILL 10-034

SENATE SPONSORSHIP

Whitehead,

HOUSE SPONSORSHIP

Looper,

Senate Committees

Agriculture and Natural Resources

House Committees

Agriculture, Livestock, & Natural Resources

A BILL FOR AN ACT

101 **CONCERNING THE ADMINISTRATION OF LAWS REGULATING**
102 **PESTICIDES, AND, IN CONNECTION THEREWITH, AMENDING THE**
103 **"PESTICIDE ACT" TO AUTHORIZE THE COMMISSIONER OF THE**
104 **DEPARTMENT OF AGRICULTURE TO INSPECT REFILLERS, IMPOSE**
105 **RESIDUE REMOVAL AND RECORD-KEEPING REQUIREMENTS, AND**
106 **SET EXPIRATION DATES FOR PESTICIDE AND DEVICE**
107 **REGISTRATIONS BY RULE.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

HOUSE
Am ended 2nd Reading
March 8, 2010

SENATE
3rd Reading Unamended
February 2, 2010

SENATE
Am ended 2nd Reading
February 1, 2010

According to new requirements for pesticide containers and containments under the "Federal Insecticide, Fungicide, and Rodenticide Act" (FIFRA), a state with primary enforcement responsibility for pesticide use must have authority over establishments that refill pesticide containers to ensure compliance with the FIFRA. In order to meet this requirement, the bill amends the state "Pesticide Act" (state act) as follows:

- ! **Section 1** of the bill includes refilling pesticides among the regulated activities mentioned in the legislative declaration;
- ! **Section 2** defines the terms "refillable container", "refiller", and "refill";
- ! **Section 3** grants the state department of agriculture (department) jurisdiction in all matters pertaining to removal of pesticide residue from containers;
- ! **Section 12** requires pesticide refillers to comply with record-keeping and reporting regulations specified by the commissioner of the department of agriculture (commissioner) by rule;
- ! **Section 13** requires pesticide refillers to comply with residue removal requirements promulgated by the commissioner; and
- ! **Section 16** declares certain acts by pesticide refillers to be unlawful.

In addition to the provisions regarding refillers, various provisions of the state act are amended as follows:

- ! **Section 2** of the bill defines the term "federal act" to mean the FIFRA;
- ! **Section 4** authorizes the commissioner to exempt, in accordance with the FIFRA, certain pesticides from the registration requirement;
- ! **Section 5** allows the commissioner to waive the requirement that a person applying to register a pesticide list all inert ingredients in the application;
- ! **Sections 5 and 9** require the commissioner to set by rule the date on which registrations of pesticides and devices, respectively, expire;
- ! **Sections 6 and 8** repeal redundant provisions stating that applicants must pay a penalty fee when cease-and-desist orders are issued for distribution of an unregistered pesticide or unregistered device, respectively;
- ! **Section 7** clarifies that the confidentiality provisions in the state act apply only to inert ingredients;
- ! **Section 10** allows an expired pesticide registration to be

renewed within the 2-year period following the date of the registration's expiration, rather than the date the registration was issued;

! **Sections 10 and 11** require applications for renewal of pesticide and device registrations or pesticide dealer licenses, respectively, to be received, rather than postmarked, by the date specified by the commissioner;

! **Section 11** clarifies that, if an application for renewal of a pesticide dealer license is not timely received, the license shall not be renewed and the dealer must apply for a new license;

! **Section 14** amends an incorrect citation to federal rules; and

! **Section 15** adds to the list of unlawful acts making a false statement by any person on an invoice, record, report, or application required under the state act or under any rule promulgated pursuant to the state act. Section 15 also identifies making such a false statement as a deceptive trade practice under the "Colorado Consumer Protection Act".

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** 35-9-102, Colorado Revised Statutes, is amended
3 to read:

4 **35-9-102. Legislative declaration.** The general assembly hereby
5 finds and declares that the intent of this article is to regulate, in the public
6 interest, the REFILLING, registration, labeling, transportation, distribution,
7 storage, use, and disposal of any pesticide and of certain devices. The
8 general assembly further finds and declares that it is the intent of this
9 article to assure the dissemination of accurate information regarding the
10 proper and prohibited uses of any pesticide or device. The provisions of
11 this article are enacted to protect the public health, safety, and welfare of
12 the people of this state.

13 **SECTION 2.** 35-9-103, Colorado Revised Statutes, is amended
14 BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to

1 read:

2 **35-9-103. Definitions.** As used in this article, unless the context
3 otherwise requires:

4 (11.4) "REFILL" MEANS TO TRANSFER A PESTICIDE FOR SALE OR
5 DISTRIBUTION TO A REFILLABLE CONTAINER WITHOUT CHANGING THE
6 COMPOSITION, FORMULATION, OR EPA REGISTRATION NUMBER OF THE
7 PESTICIDE.

8 (11.5) "REFILLABLE CONTAINER" MEANS A CONTAINER THAT IS
9 INTENDED TO BE FILLED MORE THAN ONCE WITH A PESTICIDE FOR SALE OR
10 DISTRIBUTION.

11 (11.6) "REFILLER" MEANS A PERSON THAT ENGAGES IN REFILLING.

12 **SECTION 3.** 35-9-105, Colorado Revised Statutes, is amended
13 to read:

14 **35-9-105. Exclusive jurisdiction.** Jurisdiction in all matters
15 pertaining to the distribution and sale of pesticides and devices,
16 INCLUDING REMOVAL OF PESTICIDE RESIDUE FROM CONTAINERS PRIOR TO
17 REFILLING OR DISPOSAL, is vested exclusively in the department of
18 agriculture.

19 **SECTION 4.** 35-9-106, Colorado Revised Statutes, is amended
20 to read:

21 **35-9-106. Pesticide registration required - exemptions.**

22 (1) EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS SECTION, every
23 pesticide ~~which~~ THAT is distributed in this state shall be registered with
24 the commissioner as provided by this article and any rules ~~and regulations~~
25 adopted ~~pursuant thereto~~ UNDER THIS ARTICLE.

26 (2) THE COMMISSIONER MAY EXEMPT CERTAIN PESTICIDES FROM
27 THE REGISTRATION REQUIREMENT CONSISTENT WITH THE "FEDERAL

1 INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT", 7 U.S.C. SEC. 136 ET
2 SEQ., AS AMENDED, AND RULES PROMULGATED BY THE EPA UNDER THE
3 "FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT". ==

4 **SECTION 5.** The introductory portion to 35-9-107 (1) and
5 35-9-107 (1) (d) and (4), Colorado Revised Statutes, are amended to read:

6 **35-9-107. Pesticide registration - application - fees - expiration**

7 **- repeal.** (1) Each applicant for registration of a pesticide shall file with
8 the commissioner, in the form and manner ~~he~~ THE COMMISSIONER shall
9 designate:

10 (d) A complete statement of each active ingredient and its
11 percentage of the whole and, IF REQUESTED BY THE COMMISSIONER, each
12 inert ingredient and its percentage of the whole, which INERT INGREDIENT
13 information shall be kept confidential as provided in section 35-9-109;

14 (4) (a) (I) Registration of a pesticide shall expire on December 31
15 of each year.

16 (II) THIS PARAGRAPH (a) IS REPEALED, EFFECTIVE JANUARY 1,
17 2011.

18 (b) ON AND AFTER JANUARY 1, 2011, REGISTRATION OF A
19 PESTICIDE SHALL EXPIRE EACH YEAR ON A DATE SPECIFIED BY THE
20 COMMISSIONER BY RULE.

21 **SECTION 6. Repeal.** 35-9-107 (3), Colorado Revised Statutes,
22 is repealed as follows:

23 **35-9-107. Pesticide registration - application - fees -**

24 **expiration.** (3) ~~In the event that a cease-and-desist order has been issued~~
25 ~~for the distribution of an unregistered pesticide product under the~~
26 ~~provisions of section 35-9-121, the applicant shall pay, in addition to the~~
27 ~~annual application fee, a penalty fee in an amount to be determined by the~~

1 ~~commissioner, in addition to any other penalty or sum assessed pursuant~~
2 ~~to this article.~~

3 **SECTION 7.** 35-9-109 (1), (2), and (3), Colorado Revised
4 Statutes, are amended to read:

5 **35-9-109. Confidentiality of inert ingredients.** (1) Except as
6 provided by this section, no INERT INGREDIENT information required by
7 section 35-9-107 (1) (d) shall be released to any person by the
8 commissioner.

9 (2) A registrant may authorize the commissioner to disclose any
10 INERT INGREDIENT information required by section 35-9-107 by filing a
11 signed authorization for release of information with the commissioner.

12 (3) When a treating physician or the poison control service
13 provider selected pursuant to section 25-32-105, C.R.S., determines that
14 a medical emergency exists and information submitted to the
15 commissioner CONCERNING INERT INGREDIENTS pursuant to section
16 35-9-107 (1) (d) is necessary for emergency or first-aid treatment, the
17 commissioner may immediately disclose the information necessary to that
18 treating physician or to such poison control service provider. The
19 commissioner shall require such treating physician or such poison control
20 service provider to submit to the commissioner a statement of need for
21 ~~such~~ THE information and a confidentiality agreement, in the form and
22 manner the commissioner shall designate, as soon as circumstances
23 permit.

24 **SECTION 8. Repeal.** 35-9-111 (3), Colorado Revised Statutes,
25 is repealed as follows:

26 **35-9-111. Device registration - application - fees - expiration.**
27 (3) ~~In the event that a cease-and-desist order has been issued for the~~

1 ~~distribution of an unregistered device pursuant to section 35-9-121, the~~
2 ~~applicant shall pay, in addition to the application fee, a penalty fee not to~~
3 ~~exceed one hundred twenty-five dollars, in addition to any other penalty~~
4 ~~or sum assessed pursuant to this article.~~

5 **SECTION 9.** 35-9-111 (4), Colorado Revised Statutes, is
6 amended to read:

7 **35-9-111. Device registration - application - fees - expiration**
8 **- repeal.** (4) (a) (I) Registration of a device shall expire on December 31
9 of each year.

10 (II) THIS PARAGRAPH (a) IS REPEALED, EFFECTIVE JANUARY 1,
11 2011.

12 (b) ON AND AFTER JANUARY 1, 2011, REGISTRATION OF A DEVICE
13 SHALL EXPIRE EACH YEAR ON A DATE SPECIFIED BY THE COMMISSIONER BY
14 RULE.

15 **SECTION 10.** 35-9-112 (1) and (2), Colorado Revised Statutes,
16 are amended to read:

17 **35-9-112. Renewal of pesticide and device registration.** (1) A
18 registrant of either a pesticide or a device shall submit a renewal
19 application in the form and manner designated by the commissioner on
20 or before the ~~first working day of January for the year of renewal~~
21 EXPIRATION DATE OF THE REGISTRATION and shall pay a renewal fee in an
22 amount determined by the commissioner.

23 (2) If ~~any~~ AN application for renewal of a pesticide or device
24 registration is not ~~postmarked~~ RECEIVED on or before the ~~first day of~~
25 ~~March of the renewal year~~ EXPIRATION DATE OF THE REGISTRATION, the
26 registration shall expire. An expired registration may be renewed within
27 two years ~~of~~ AFTER the ~~registration~~ EXPIRATION date OF THE

1 REGISTRATION upon payment of all late fees and any other penalties or
2 sums assessed pursuant to this article, if the applicant satisfies the
3 commissioner that the requirements of section 35-9-107 have been met.

4 **SECTION 11.** 35-9-116 (2) and (3), Colorado Revised Statutes,
5 are amended to read:

6 **35-9-116. Renewal of pesticide dealer license.** (2) If the
7 application for renewal of any pesticide dealer license is not ~~postmarked~~
8 RECEIVED on or before the first working day of January for the year of
9 renewal, a penalty fee of ten percent of the license fee shall be assessed
10 and added to the renewal fee. No license shall be renewed until the total
11 fee is paid.

12 (3) If ~~any~~ A pesticide dealer license renewal application is not
13 received by February 1 of the renewal year, the license shall ~~be~~
14 ~~automatically revoked~~ NOT BE RENEWED AND THE DEALER MUST APPLY
15 FOR A NEW LICENSE.

16 **SECTION 12.** 35-9-117, Colorado Revised Statutes, is amended
17 BY THE ADDITION OF A NEW SUBSECTION to read:

18 **35-9-117. Dealer and refiller records and reports.**

19 (4) REFILLERS SHALL KEEP AND MAINTAIN RECORDS IN THE FORM AND
20 MANNER SPECIFIED BY THE COMMISSIONER BY RULE.

21 **SECTION 13.** Article 9 of title 35, Colorado Revised Statutes, is
22 amended BY THE ADDITION OF A NEW SECTION to read:

23 **35-9-117.5. Refillable container residue removal requirements.**

24 A REFILLER SHALL COMPLY WITH REFILLABLE CONTAINER RESIDUE
25 REMOVAL REQUIREMENTS ESTABLISHED BY THE COMMISSIONER BY RULE.

26 **SECTION 14.** The introductory portion to 35-9-118 (2) and
27 35-9-118 (2) (b), Colorado Revised Statutes, are amended to read:

1 **35-9-118. Powers and duties of the commissioner.** (2) The
2 commissioner is authorized to adopt all reasonable rules ~~and regulations~~
3 for the administration and enforcement of this article, including, but not
4 limited to:

5 (b) Determining that certain pesticides are highly toxic to people;
6 except that, in making this determination, the commissioner shall be
7 guided by the ~~definition of highly toxic as~~ CRITERIA set forth in 40 CFR
8 ~~156.10~~ 156.62, as amended;

9 **SECTION 15.** 35-9-120 (1) (j) and (3), Colorado Revised
10 Statutes, are amended, and the said 35-9-120 (1) is further amended BY
11 THE ADDITION OF A NEW PARAGRAPH, to read:

12 **35-9-120. Prohibited acts.** (1) It is unlawful and a violation of

13 (j) To impersonate any state, county, or city inspector or official;
14 ~~or~~

15 (j.5) TO MAKE A FALSE STATEMENT IN ANY INVOICE, RECORD,
16 REPORT, OR APPLICATION REQUIRED UNDER THIS ARTICLE OR ANY RULE
17 PROMULGATED UNDER THIS ARTICLE; OR

18 (3) Any violation of paragraph (a), (c), (f), or (g) of subsection
19 (1) of this section or paragraph (f) of subsection (2) of this section is a
20 deceptive trade practice and is subject to ~~the provisions of~~ the "Colorado
21 Consumer Protection Act", article 1 of title 6, C.R.S.

22 **SECTION 16.** 35-9-120, Colorado Revised Statutes, is amended
23 BY THE ADDITION OF A NEW SUBSECTION to read:

24 **35-9-120. Prohibited acts.** (2.5) IT IS UNLAWFUL AND A
25 VIOLATION OF THIS ARTICLE FOR ANY REFILLER:

26 (a) TO FAIL TO MAINTAIN ANY RECORDS OR REPORTS REQUIRED
27 UNDER THIS ARTICLE OR ANY RULE PROMULGATED UNDER THIS ARTICLE;

1 (b) TO MAKE A FALSE STATEMENT OF FACT IN ANY RECORD OR
2 REPORT REQUIRED BY THIS ARTICLE OR ANY RULE PROMULGATED UNDER
3 THIS ARTICLE; OR

4 (c) TO FAIL TO CLEAN A REFILLABLE CONTAINER IN ACCORDANCE
5 WITH RESIDUE REMOVAL PROCEDURES SPECIFIED BY THE COMMISSIONER
6 BY RULE.

7 **SECTION 17. Specified effective date - applicability.** This act
8 shall take effect July 1, 2010, and shall apply to conduct occurring on or
9 after said date.

10 **SECTION 18. Safety clause.** The general assembly hereby finds,
11 determines, and declares that this act is necessary for the immediate
12 preservation of the public peace, health, and safety.