

SENATE BILL 268

M4, M3

2lr1514
CF 2lr1516

By: **Senator Kagan**

Introduced and read first time: January 17, 2022

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Pesticide Regulation – Transfer to Department of the Environment**

3 FOR the purpose of transferring the regulation of pesticides, plant diseases, and mosquitos
4 in the State from the Department of Agriculture to the Department of the
5 Environment; and generally relating to the regulation of pesticides, plant diseases,
6 and mosquitos in the State.

7 BY transferring

8 Article – Agriculture

9 Section 5–101, 5–102, 5–104 through 5–107, 5–107.1, and 5–108 through 5–114,
10 respectively, and the subtitle “Subtitle 1. Maryland Pesticide Registration and
11 Labeling Law”; 5–201 through 5–207, 5–207.1, 5–208, 5–208.1, 5–209,
12 5–209.1, 5–210, 5–210.1 through 5–210.5, and 5–211, respectively, and the
13 subtitle “Subtitle 2. Pesticide Applicator’s Law”; 5–2A–01 through 5–2A–05,
14 respectively, and the subtitle “Subtitle 2A. Neonicotinoid Pesticides”; 5–301,
15 5–302, and 5–304 through 5–314, respectively, and the subtitle “Subtitle 3.
16 Plant Disease Control”; and 5–401 through 5–405, 5–405.1, and 5–406
17 through 5–408, respectively, and the subtitle “Subtitle 4. Mosquito Control”

18 Annotated Code of Maryland

19 (2016 Replacement Volume and 2021 Supplement)

20 to be

21 Article – Environment

22 Section 18–101 through 18–114, respectively, and the subtitle “Subtitle 1. Maryland
23 Pesticide Registration and Labeling Law”; 18–201 through 18–219,
24 respectively, and the subtitle “Subtitle 2. Pesticide Applicator’s Law”; 18–301
25 through 18–305, respectively, and the subtitle “Subtitle 3. Neonicotinoid
26 Pesticides”; 18–401 through 18–413, respectively, and the subtitle “Subtitle 4.
27 Plant Disease Control”; and 18–501 through 18–509, respectively, and the
28 subtitle “Subtitle 5. Mosquito Control” to be under the new title “Title 18.
29 Pesticides”

30 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2014 Replacement Volume and 2021 Supplement)

2 BY repealing and reenacting, without amendments,
3 Article – Environment
4 Section 18–101(a) and 18–301(a)
5 Annotated Code of Maryland
6 (2014 Replacement Volume and 2021 Supplement)
7 (As enacted by Section 1 of this Act)

8 BY repealing and reenacting, with amendments,
9 Article – Environment
10 Section 18–101(l), 18–103, 18–107(c), 18–109(d), 18–110, 18–111(b), 18–204,
11 18–206(a), 18–217(d), 18–301(b) and (d), 18–405(b), 18–408(e), 18–508(a), and
12 18–509
13 Annotated Code of Maryland
14 (2014 Replacement Volume and 2021 Supplement)
15 (As enacted by Section 1 of this Act)

16 BY repealing
17 Article – Environment
18 Section 18–412
19 Annotated Code of Maryland
20 (2014 Replacement Volume and 2021 Supplement)
21 (As enacted by Section 1 of this Act)

22 BY adding to
23 Article – Environment
24 Section 18–412
25 Annotated Code of Maryland
26 (2014 Replacement Volume and 2021 Supplement)

27 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
28 That Section(s) 5–101, 5–102, 5–104 through 5–107, 5–107.1, and 5–108 through 5–114,
29 respectively, and the subtitle “Subtitle 1. Maryland Pesticide Registration and Labeling
30 Law”; 5–201 through 5–207, 5–207.1, 5–208, 5–208.1, 5–209, 5–209.1, 5–210, 5–210.1
31 through 5–210.5, and 5–211, respectively, and the subtitle “Subtitle 2. Pesticide
32 Applicator’s Law”; 5–2A–01 through 5–2A–05, respectively, and the subtitle “Subtitle 2A.
33 Neonicotinoid Pesticides”; 5–301, 5–302, and 5–304 through 5–314, respectively, and the
34 subtitle “Subtitle 3. Plant Disease Control”; and 5–401 through 5–405, 5–405.1, and 5–406
35 through 5–408, respectively, and the subtitle “Subtitle 4. Mosquito Control” of Article –
36 Agriculture of the Annotated Code of Maryland be transferred to be Section(s) 18–101
37 through 18–114, respectively, and the subtitle “Subtitle 1. Maryland Pesticide Registration
38 and Labeling Law”; 18–201 through 18–219, respectively, and the subtitle “Subtitle 2.
39 Pesticide Applicator’s Law”; 18–301 through 18–305, respectively, and the subtitle
40 “Subtitle 3. Neonicotinoid Pesticides”; 18–401 through 18–413, respectively, and the
41 subtitle “Subtitle 4. Plant Disease Control”; and 18–501 through 18–509, respectively, and

1 the subtitle “Subtitle 5. Mosquito Control” to be under the new title “Title 18. Pesticides” of
2 Article – Environment of the Annotated Code of Maryland.

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

5 **Article – Environment**

6 18–101.

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

8 (l) “Ingredient statement” means:

9 (1) **[A] FOR A PREPARATION DECLARED HIGHLY TOXIC TO HUMANS**
10 **UNDER § 18–103(B) OF THIS SUBTITLE,** A statement of the name and percentage of each
11 active ingredient, together with the total percentage of inert ingredients in the pesticide;

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

14 (3) In the case of a pesticide containing arsenic in any form, a statement of
15 the percentages of total and water soluble arsenic, each calculated as elemental arsenic, in
16 addition to the requirements of [paragraphs] **ITEMS** (1) and (2) of this subsection.
17 [Paragraph (1) of this subsection applies to any preparation declared highly toxic to
18 humans, pursuant to § 5–104(b) of this subtitle.]

19 18–103.

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

23 (b) The Secretary may:

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

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

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

29 [(c) Uniform pesticide requirements between the several states and the federal
30 government are desirable to avoid confusion that endangers the public health and that
31 results from diverse requirements, particularly relating to the labeling and coloring of

1 pesticides, and to avoid increased costs to the people of the State due to the necessity of
2 complying with diverse requirements for manufacturing and selling pesticides.
3 Consequently, the Secretary, after public hearing, may adopt the rules and regulations of
4 the appropriate agency of the United States government relating to pesticides, if the rules
5 and regulations are applicable to and conform with the primary standards established by
6 this subtitle.]

7 18-107.

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

10 18-109.

11 (d) A person may not use for his own advantage or reveal any information
12 concerning formulas or products acquired by authority of [~~§ 5-105 or § 5-106~~] **§ 18-104**
13 **OR § 18-105** of this subtitle, other than to the Secretary, any proper official or employee
14 of the State, to a court of the State in response to a subpoena, to a physician, or, in an
15 emergency, to a pharmacist, or any other qualified person, for use in the preparation of
16 antidotes.

17 18-110.

18 (a) **(1)** The following persons are not subject to any penalty for a violation of [~~§~~
19 ~~5-106 or § 5-109~~] **§ 18-105 OR § 18-109** of this subtitle:

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

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

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

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

29 **[(ii)] 2.** [by] **BY** any other person if the pesticide is not sold and if
30 its container shows the manufacturer's name and address and it is plainly and
31 conspicuously marked "for experimental use only – not to be sold".

32 **(2)** [However, if] **IF** a written permit is obtained from the Secretary, [the]
33 A pesticide may be sold for experimental purposes subject to any restriction set forth in the
34 permit.

1 (b) (1) A pesticide is not in violation of this subtitle, if it is intended solely for
2 export to a foreign country, and if it is prepared or packed according to the specifications or
3 directions of the purchaser.

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

6 18–111.

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

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

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

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

17 18–204.

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

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

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

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

30 (4) Define the formulations and establish the conditions and appropriate
31 areas for application of any pesticide;

1 (5) Establish guidelines and requirements for the application of pesticides
2 and providing for submission of records to the Secretary;

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

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

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

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

11 (10) Coordinate and support pesticide monitoring programs;

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

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

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

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

22 18-206.

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

26 18-217.

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

30 18-301.

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

1 (b) "Certified applicator" has the meaning stated in [§ 5-201] § 18-201 of this
2 title.

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

5 18-405.

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

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

12 (3) If the owner refuses to pay the [cost] **COSTS REQUIRED UNDER**
13 **PARAGRAPH (2) OF THIS SUBSECTION**, [it] **THE COSTS** shall be collected as provided [in
14 § 5-307] **UNDER § 18-406 OF THIS SUBTITLE**.

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

17 18-408.

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

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

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

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

29 [18-412.

30 Any person who violates any provision of this subtitle is subject to the penalties and
31 fines set forth in Title 12 of this article.]

1 18-412.

2 SUBJECT TO § 18-413 OF THIS SUBTITLE, A PERSON WHO VIOLATES THIS
3 SUBTITLE OR ANY REGULATION ADOPTED UNDER THIS SUBTITLE IS GUILTY OF A
4 MISDEMEANOR AND ON CONVICTION IS SUBJECT TO:

5 (1) FOR A FIRST OFFENSE, A FINE NOT EXCEEDING \$500,
6 IMPRISONMENT NOT EXCEEDING 3 MONTHS, OR BOTH; AND

7 (2) FOR A SECOND OR SUBSEQUENT OFFENSE OCCURRING WITHIN 2
8 YEARS OF A PRIOR VIOLATION AND ARISING FROM A SEPARATE SET OF
9 CIRCUMSTANCES FROM THE PRIOR VIOLATION, A FINE NOT EXCEEDING \$1,000,
10 IMPRISONMENT NOT EXCEEDING 1 YEAR, OR BOTH.

11 18-508.

12 (a) The Secretary may bring an action for an injunction against any person
13 violating any order issued by the Secretary under [§ 5-406] § 18-507 of this subtitle.

14 18-509.

15 A person who fails to comply with the requirements of an order served under [§
16 5-406] § 18-507 of this subtitle is guilty of a misdemeanor and on conviction is subject to:

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

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

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

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

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

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

30 SECTION 4. AND BE IT FURTHER ENACTED, That, on the effective date of this
31 Act, all employees of the Department of Agriculture primarily assigned to regulate
32 pesticides, plant diseases, or mosquitos shall be transferred to the Department of the

1 Environment without diminution of their rights, benefits, employment, or retirement
2 status.

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

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