

1 SENATE BILL 161

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

4 Mimi Stewart

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10 AN ACT

11 RELATING TO THE ENVIRONMENT; RESTRICTING THE USE OF
12 NEONICOTINOID CLASS PESTICIDES; PROVIDING EXCEPTIONS; REQUIRING
13 AN EDUCATION AND TRAINING PROGRAM; AMENDING AND ENACTING
14 SECTIONS OF THE PESTICIDE CONTROL ACT.

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. Section 76-4-1 NMSA 1978 (being Laws 1973,
18 Chapter 366, Section 1) is amended to read:

19 "76-4-1. SHORT TITLE.--~~[This act]~~ Chapter 76, Article 4
20 NMSA 1978 may be cited as the "Pesticide Control Act"."

21 SECTION 2. Section 76-4-3 NMSA 1978 (being Laws 1973,
22 Chapter 366, Section 3, as amended by Laws 2009, Chapter 101,
23 Section 1 and by Laws 2009, Chapter 109, Section 1) is amended
24 to read:

25 "76-4-3. DEFINITIONS.--As used in the Pesticide Control
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1 Act:

2 ~~[A. "equipment" means any type of ground, water or~~
3 ~~aerial equipment, device or contrivance using motorized,~~
4 ~~mechanical or pressurized power to apply any pesticide on land~~
5 ~~and anything that may be growing, habitating or stored on or in~~
6 ~~such land, but does not include any pressurized hand-sized~~
7 ~~household device used by a homeowner to apply a pesticide or~~
8 ~~any equipment, device or contrivance of which the person who is~~
9 ~~applying the pesticide on the person's own land is the source~~
10 ~~of power or energy in making the pesticide application;~~

11 B.] A. "board" means the board of regents of New
12 Mexico state university;

13 B. "commercial applicator" means a licensed
14 applicator, whether or not the licensed applicator is also a
15 private applicator with respect to some uses, who for
16 compensation uses or supervises the use of any pesticide for
17 any purpose on any property other than as provided by Sections
18 76-4-19 and 76-4-20.1 NMSA 1978;

19 C. "department" means the New Mexico department of
20 agriculture;

21 D. "device" means ~~[any]~~ an instrument or
22 contrivance other than a firearm that is intended for trapping,
23 destroying, repelling or mitigating any pest or any other form
24 of plant or animal life, other than humans and other than
25 bacteria, viruses or other microorganisms on or in any living

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1 thing other than plants, but does not include equipment used
2 for the application of pesticides when sold separately
3 [~~therefrom~~] from a pesticide, or traps used to control
4 predators or rodents or sterilization using dry heat or steam;

5 E. "distribute" means to offer for sale, hold for
6 sale, sell, barter or supply in this state;

7 F. "environment" includes water, air and land and
8 all plants and every living thing in water, in air and on land
9 and the existing interrelationships;

10 G. "equipment" means any type of ground, water or
11 aerial equipment, device or contrivance using motorized,
12 mechanical or pressurized power to apply a pesticide on land
13 and anything that may be growing, habitating or stored on or in
14 such land, but does not include a pressurized hand-sized
15 household device used by a homeowner to apply a pesticide or
16 any equipment, device or contrivance of which the person who is
17 applying the pesticide on the person's own land is the source
18 of power or energy in making the pesticide application;

19 [~~G.~~] H. "insect" means any of the numerous small
20 invertebrate animals belonging principally to the class
21 insecta, including beetles, bugs, bees and flies, and to other
22 allied classes of arthropods, including spiders, mites, ticks,
23 millipedes, centipedes and sowbugs;

24 [~~H.~~] I. "ingredient statement" means a statement
25 that contains the name and percentage of each ingredient of

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1 [any] a pesticide that is intended for one of the purposes
2 [~~under Paragraphs (1) through (4) of~~] specified in Subsection
3 [N] R of this section and the total percentage of all
4 ingredients in the pesticide not for one of those purposes. If
5 the pesticide contains arsenic in any form, the ingredient
6 statement shall contain a statement of the percentages of total
7 and water-soluble arsenic, calculated as elemental arsenic;

8 [~~F.~~] J. "label" means the written, printed or
9 graphic matter on or attached to the pesticide or device or any
10 of its containers or wrappers;

11 [~~J.~~] K. "labeling" means all labels and all other
12 written, printed or graphic matter accompanying the pesticide
13 or device at any time; or to which reference is made on the
14 label or in literature accompanying the pesticide or device,
15 except to current official publications of the department; the
16 United States environmental protection agency; United States
17 departments of agriculture, the interior and health and human
18 services; state agricultural universities and other similar
19 federal or state institutions or agencies authorized by law to
20 conduct research in the field of pesticides;

21 [~~K.~~] L. "land" means all land and water areas,
22 including air space, and all living things and all structures,
23 buildings, contrivances and machinery appurtenant [~~thereto~~] to
24 the land or situated [~~thereon~~] on the land, fixed or mobile,
25 including any used for transportation;

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1 M. "neonicotinoid class pesticide" means a
2 pesticide belonging to the neonicotinoid class of chemicals,
3 including clothianidin, dinotefuran, imidacloprid, nithiazine,
4 nitenpyram, thiacloprid and thiamethoxam and any other
5 pesticide identified as a neonicotinoid by the United States
6 environmental protection agency, but does not include
7 acetamiprid;

8 N. "noncommercial applicator" means a person
9 licensed to use or demonstrate restricted use pesticides who
10 does not qualify as a private applicator and who is not
11 required to have a commercial applicator's license;

12 O. "not pollinated by insects" means agricultural
13 crops not dependent on insect pollination, including alfalfa
14 grown for animal feed, wheat, corn, sorghum, cotton, pecans,
15 dry beans, chile, peanuts, pistachios, grapes, lettuce
16 harvested prior to seeding, berries, plums, onions harvested
17 prior to flowering and potatoes and crops that either do not
18 bloom or are not allowed to bloom before harvest;

19 ~~[E.]~~ P. "person" has the extended meaning ascribed
20 to it in Subsection E of Section 12-2A-3 NMSA 1978;

21 ~~[M.]~~ Q. "pest" means any living organism injurious
22 to other living organisms, except humans, viruses, bacteria or
23 other microorganisms in or on other living organisms other than
24 plants, that the board by rule declares to be a pest;

25 ~~[N.]~~ R. "pesticide" means ~~[any]~~ a substance or

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1 mixture of substances intended for:

2 (1) preventing, destroying, repelling or
3 mitigating ~~[any]~~ a pest;

4 (2) causing the leaves or foliage to drop from
5 a plant, with or without causing abscission;

6 (3) artificially accelerating the drying of
7 plant tissue; or

8 (4) accelerating or retarding the rate of
9 growth or rate of maturation, or for otherwise altering the
10 behavior, of ornamental or crop plants or the produce ~~[thereof]~~
11 of ornamental or crop plants, through physiological action, but
12 not including substances that are intended as plant nutrients,
13 trace elements, nutritional chemicals, plant inoculants or soil
14 amendments;

15 ~~[O.]~~ S. "pesticide dealer" means ~~[any]~~ a person
16 ~~[who distributes]~~ licensed to distribute highly toxic
17 pesticides, restricted use pesticides or both, which pesticides
18 are restricted by rule to distribution only by ~~[licensed]~~
19 pesticide dealers;

20 ~~[P.]~~ T. "pest management consultant" means ~~[any]~~
21 ~~individual who offers or supplies]~~ a person licensed to offer
22 or supply technical advice or ~~[makes]~~ make recommendations to
23 the user of highly toxic pesticides, restricted use pesticides
24 or both, which pesticides are restricted by rule to
25 distribution only by ~~[licensed]~~ pesticide dealers;

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1 U. "private applicator" means a certified
2 applicator who uses or supervises the use of a pesticide that
3 is classified for restricted use for purposes of producing an
4 agricultural commodity on property owned or rented by the
5 certified applicator or the certified applicator's employer or
6 on the property of another person if applied without
7 compensation other than trading of personal services between
8 producers of agricultural commodities;

9 V. "public applicator" means a licensed applicator
10 who as an employee of a federal, state, county or municipal
11 agency or municipal corporation uses a pesticide classified for
12 restricted use or general use to apply to sites or under
13 conditions identified by rule promulgated by the board;

14 [Q-] W. "registrant" means a person who has
15 registered [any] a pesticide pursuant to the provisions of the
16 Pesticide Control Act;

17 [R-] X. "restricted use pesticide" means any
18 pesticide or device designated by the board as requiring
19 specific restrictions to prevent unreasonable adverse effects
20 on the environment, including humans, beneficial insect
21 predators and parasites, pollinating insects, animals, crops,
22 wildlife and lands, but excluding the pests the pesticide or
23 device is intended to prevent, destroy, control or mitigate;
24 and

25 [S-] ~~"unreasonable adverse effects on the~~

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1 ~~environment" means an unreasonable risk to humans or the~~
2 ~~environment, taking into account the economic, social and~~
3 ~~environmental costs and benefits of the use of any pesticide;~~

4 ~~T. "noncommercial applicator" means a person who~~
5 ~~uses or demonstrates restricted use pesticides and does not~~
6 ~~qualify as a private applicator and is not required to have a~~
7 ~~commercial applicator's license;~~

8 ~~U. "private applicator" means a certified~~
9 ~~applicator who uses or supervises the use of any pesticide that~~
10 ~~is classified for restricted use for purposes of producing any~~
11 ~~agricultural commodity on property owned or rented by the~~
12 ~~certified applicator or the certified applicator's employer or~~
13 ~~on the property of another person if applied without~~
14 ~~compensation other than trading of personal services between~~
15 ~~producers of agricultural commodities;~~

16 ~~V. "public applicator" means a certified applicator~~
17 ~~who as an employee of a federal, state, county or municipal~~
18 ~~agency or municipal corporation uses any pesticide that is~~
19 ~~classified for restricted use or any general use pesticide,~~
20 ~~when applied to sites or under conditions identified by rule~~
21 ~~promulgated by the board; and~~

22 ~~W. "commercial applicator" means a certified~~
23 ~~applicator, whether or not the certified applicator is a~~
24 ~~private applicator with respect to some uses, who for~~
25 ~~compensation uses or supervises the use of any pesticide for~~

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1 ~~any purpose on any property other than as provided by Sections~~
2 ~~76-4-19 and 76-4-20.1 NMSA 1978.]~~

3 Y. "unreasonable adverse effects on the
4 environment" means an unreasonable risk to humans; animals,
5 including wildlife and domestic animals; beneficial
6 pollinators, insect predators and parasites; crops; land;
7 habitats; aquatic life; or other damages, but excluding the
8 pests the pesticide or device is intended to prevent, destroy,
9 control or mitigate and taking into account the economic,
10 social and environmental costs and benefits of the use of any
11 pesticide."

12 SECTION 3. Section 76-4-5 NMSA 1978 (being Laws 1973,
13 Chapter 366, Section 5) is amended to read:

14 "76-4-5. PROHIBITED ACTS.--

15 A. It is unlawful for ~~[any]~~ a person to distribute
16 within the state, to deliver for transportation or to transport
17 in intrastate commerce or between points within this state
18 through any point outside this state or to use any of the
19 following:

20 (1) ~~[any]~~ a pesticide ~~[which]~~ that has not
21 been registered in accordance with the Pesticide Control Act or
22 ~~[regulations adopted]~~ rules promulgated pursuant to that act;

23 (2) ~~[any]~~ a pesticide if any of the claims
24 made for it or any of the directions for its use or other
25 labeling differs from the representations made in connection

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1 with its registration or if the composition as represented in
2 connection with its registration differs. However, at the
3 discretion of the department, a change in the labeling of a
4 pesticide, except changes in the ingredient statement, may be
5 made within a registration period without requiring
6 reregistration of the product if the change will not have
7 unreasonable adverse effects on the environment;

8 (3) [any] a pesticide ~~[unless it]~~ that is not
9 in the unbroken immediate container of the registrant or
10 manufacturer and to which there is not affixed to the
11 container, and to the outside container or wrapper of the
12 retail package if there is one through which the required
13 information on the immediate container cannot be clearly read,
14 a label bearing the information required ~~[in]~~ by the Pesticide
15 Control Act and the ~~[regulations adopted]~~ rules promulgated
16 pursuant to that act;

17 (4) [any] a pesticide ~~[which]~~ that has not
18 been colored or discolored as required by the Pesticide Control
19 Act;

20 (5) [any] a pesticide ~~[which]~~ that does not
21 meet the professed standard of quantity or quality, as
22 expressed on the labeling under which it is sold, or in which
23 [any] a substance has been substituted wholly or in part for
24 the pesticide, or if [any] a valuable constituent has been
25 wholly or in part abstracted or if [any] a contaminant is

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1 misbranded or is present in an amount determined by the
2 department to be a hazard;

3 (6) ~~[any]~~ a device ~~[which]~~ that is misbranded;
4 ~~[or]~~

5 (7) ~~[any]~~ a pesticide in containers violating
6 ~~[regulations adopted]~~ rules promulgated pursuant to the
7 Pesticide Control Act or pesticides found in damaged containers
8 ~~[which]~~ that constitute a hazard to the environment; or

9 (8) a neonicotinoid class pesticide, or any
10 substance or product containing a neonicotinoid class
11 pesticide, unless:

12 (a) the product is being used by a
13 licensed applicator in commercial agriculture on crops not
14 pollinated by insects;

15 (b) the product's use is intended for
16 the eradication, control or mitigation of parasites harmful to
17 domestic animals;

18 (c) the product's use is intended for
19 the eradication, control or mitigation of lice or bedbugs;

20 (d) the product's use is intended for
21 indoor use in an enclosed space to eradicate, control or
22 mitigate pests; or

23 (e) the neonicotinoid class pesticide is
24 contained in a wood product that has been treated with a
25 neonicotinoid class pesticide.

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B. It is unlawful:

(1) to distribute a restricted use pesticide to ~~[any]~~ a person who is required by law or ~~[regulations]~~ rules promulgated pursuant to the Pesticide Control Act to be licensed or certified to use the restricted use pesticide and the person, including the license holder's or certificate holder's agent, does not have a permit to use or purchase the kind and quantity of the restricted use ~~[pesticides, unless the person or his agent to whom sale or delivery is made has a valid permit to use or purchase the kind and quantity of the restricted use]~~ pesticide; provided, however, subject to conditions established by the department, ~~[such]~~ a permit may be obtained from ~~[any]~~ a person who has been designated by the department to issue permits immediately prior to distribution;

(2) for ~~[any]~~ a person to detach, alter, deface or destroy, wholly or in part, any label or labeling provided for in the Pesticide Control Act or ~~[regulations adopted]~~ rules promulgated pursuant to that act or to add any substance to or take any substance from a pesticide in a manner that may defeat the purpose of the Pesticide Control Act or the ~~[regulations adopted thereunder]~~ rules promulgated pursuant to that act;

(3) for ~~[any]~~ a person to use or cause to be used ~~[any]~~ a restricted use pesticide contrary to directions on the label or to ~~[regulations]~~ rules of the board if those

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1 [regulations] rules differ from or further restrict the
2 labeling;

3 (4) for [any] a person to use for [his own]
4 personal advantage or to reveal [~~other than to the department,~~
5 ~~or to the courts of the state in response to a subpoena, or to~~
6 ~~physicians, or in emergencies to pharmacists and other~~
7 ~~qualified person for use in the preparation of a practical~~
8 ~~treatment including first aid, in case of poisoning]~~ any
9 information relative to formulas of products acquired by
10 authority of the Pesticide Control Act; provided, however, that
11 a person may reveal formula information to:

12 (a) the department;

13 (b) the courts of the state in response
14 to a subpoena;

15 (c) physicians; or

16 (d) pharmacists or other qualified
17 persons in emergencies to prepare a practical treatment,
18 including first aid, in case of poisoning;

19 (5) for [any] a person to handle, transport,
20 store, display, distribute or use pesticides in such a manner
21 as to endanger [~~man and his~~] human health or the environment or
22 to endanger food, feed or any other products that may be
23 transported, stored, displayed or distributed with [~~such~~] the
24 pesticides; [~~or~~]

25 (6) for [any] a person to dispose of, discard

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1 or store [~~any~~] pesticides or pesticide containers in a manner
2 that may cause injury to humans, vegetation, crops, livestock,
3 wildlife or domestic animals or pollinating insects or to
4 pollute any water supply or waterway; or

5 (7) to provide for sale blooming or flowering
6 plants, plant material or seed that has been treated with a
7 neonicotinoid class pesticide, unless the blooming or flowering
8 plant, plant material or seed is clearly and conspicuously
9 labeled as having been treated with a neonicotinoid class
10 pesticide and includes a description of the risks to
11 pollinators and other nontarget organisms associated with the
12 use of neonicotinoid class pesticides."

13 SECTION 4. A new section of the Pesticide Control Act is
14 enacted to read:

15 "[NEW MATERIAL] POLLINATOR HEALTH OUTREACH AND EDUCATION
16 PLAN--EDUCATIONAL AND TRAINING MATERIALS DEVELOPMENT.--

17 A. The department, in consultation with the college
18 of agriculture, consumer and environmental sciences at New
19 Mexico state university, shall develop:

20 (1) a pollinator health outreach and education
21 plan to educate the public regarding the best practices for
22 avoiding adverse effects from pesticides on populations of bees
23 and other pollinating insects; and

24 (2) educational and training materials for
25 pesticide dealers; pest management consultants and licensed or

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1 certified applicators, including commercial, public, private
2 and noncommercial applicators, and operators; farmers and
3 ranchers; and owners and employees of nurseries and other
4 wholesale or retail sellers of plants and plant materials
5 regarding the best practices for avoiding adverse effects from
6 pesticides on populations of bees and other pollinating
7 insects.

8 B. The educational and training materials shall
9 include measures that pesticide dealers; pest management
10 consultants and licensed or certified applicators, including
11 commercial, public, private and noncommercial applicators, and
12 operators; and farmers and ranchers are required to take to
13 protect native bees, honeybees and other pollinators. The
14 educational and training materials for owners and employees of
15 nurseries and other wholesale or retail sellers of plants and
16 plant materials shall include recommended measures to protect
17 native bees, honeybees and other pollinators.

18 C. The department shall:

19 (1) design the educational and training
20 materials to ensure that all classes of pesticide applicators
21 applying or supervising the application of a pesticide are
22 knowledgeable regarding alternatives to, the appropriateness of
23 and precautions for pesticide use that may be injurious to the
24 health of bees and other pollinating insects; and

25 (2) make the educational and training

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1 materials part of the education required for taking any
2 licensing or certification examination or continuing education
3 requirement under the Pesticide Control Act."

4 SECTION 5. EFFECTIVE DATE.--The effective date of the
5 provisions of this act is July 1, 2023.

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