

S. 2227

A. 5463

2009-2010 Regular Sessions

S E N A T E - A S S E M B L Y

February 13, 2009

IN SENATE -- Introduced by Sens. LAVALLE, DIAZ, HANNON, MORAHAN, PARKER
-- read twice and ordered printed, and when printed to be committed to
the Committee on Environmental Conservation

IN ASSEMBLY -- Introduced by M. of A. ALESSI -- read once and referred
to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to
requiring notification of pesticide use on golf courses

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Article 33 of the environmental conservation law is amended
2 by adding a new title 17 to read as follows:
3 TITLE 17
4 SPECIAL REQUIREMENTS FOR GOLF COURSES
5 SECTION 33-1701. REQUIREMENTS AND RESTRICTIONS.
6 33-1703. VISUAL NOTIFICATION.
7 S 33-1701. REQUIREMENTS AND RESTRICTIONS.
8 NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, THE OPERATOR OF
9 ANY GOLF COURSE SHALL, UPON REQUEST, PROVIDE TO ANY INDIVIDUAL, THE
10 FOLLOWING INFORMATION: TRADE NAMES, AMOUNTS AND DATES OF ALL APPLICA-
11 TIONS OF ALL PESTICIDES APPLIED TO SUCH GOLF COURSE WITHIN THE PRECEDING
12 SEVEN DAYS.
13 S 33-1703. VISUAL NOTIFICATION.
14 THE OPERATOR OF ANY GOLF COURSE UPON WHICH ANY PESTICIDE HAS BEEN
15 APPLIED SHALL POST IN A CONSPICUOUS PLACE, SIGNS IN THE AREA OF THE
16 FIRST AND TENTH TEES OF SUCH GOLF COURSE, AND IF DAILY GREENS FEES ARE
17 PAID, SIGNS AT THE POINT WHERE SUCH FEES ARE PAID. SUCH SIGNS SHALL BE
18 POSTED ON THE DAY ANY PESTICIDE IS APPLIED AND SHALL REMAIN IN PLACE
19 UNTIL THE END OF THE SECOND DAY AFTER THE DATE OF SUCH APPLICATION. SUCH
20 SIGNS SHALL STATE, IN LETTERS AT LEAST ONE-HALF INCH HIGH, THE DATE OF
21 APPLICATION AND THE TRADE NAME OF ANY AND ALL PESTICIDES APPLIED.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 S 2. Subdivisions 1 and 3 of section 71-2907 of the environmental
2 conservation law, as amended by chapter 285 of the laws of 2000, are
3 amended to read as follows:

4 1. Administrative sanctions. Except as otherwise provided in this
5 subdivision, any person who violates any provision of article [33] THIR-
6 TY-THREE of this chapter or any rule, regulation or order issued there-
7 under or commits any offense described in section 33-1301 of this chap-
8 ter shall be liable to the people of the state for a civil penalty not
9 to exceed five thousand dollars for a first violation, and not to exceed
10 ten thousand dollars for a subsequent offense, to be assessed by the
11 commissioner after a hearing or opportunity to be heard. Notwithstanding
12 any provision of law to the contrary, an owner or owner's agent of a
13 multiple dwelling or owner, owner's agent or a person in a position of
14 authority for all other types of premises, as such terms are defined in
15 paragraph d of subdivision five of section 33-0905 of this chapter, who
16 violates any provision of a local law adopted pursuant to subdivision
17 one of section 33-1004 of this chapter relating to paragraph b of such
18 subdivision, and a person, who violates any provision of a local law
19 adopted pursuant to subdivision one of section 33-1004 of this chapter
20 relating to paragraph c of such subdivision, and a person who violates
21 the provisions of subdivision three of section three hundred ninety-c of
22 the social services law, AS ADDED BY CHAPTER TWO HUNDRED EIGHTY-FIVE OF
23 THE LAWS OF TWO THOUSAND, shall, for a first such violation, in lieu of
24 a penalty, be issued a written warning and shall also be issued educa-
25 tional materials pursuant to subdivision two of section 33-1005, AS
26 ADDED BY CHAPTER TWO HUNDRED EIGHTY-FIVE OF THE LAWS OF TWO THOUSAND, of
27 this chapter. Such person shall, however, for a second violation, be
28 liable to the people of the state for a civil penalty not to exceed one
29 hundred dollars, and not to exceed two hundred fifty dollars for any
30 subsequent violation, such penalties to be assessed by the commissioner
31 after a hearing or opportunity to be heard.

32 Notwithstanding any provision of law to the contrary, any person who
33 violates the provisions of a local law adopted pursuant to subdivision
34 one of section 33-1004 of this chapter relating to paragraph a of such
35 subdivision, shall be issued a warning for the first violation and shall
36 be provided seven days to correct such violation; and shall be liable to
37 the people of the state for a civil penalty not to exceed one hundred
38 dollars for a second violation, and not to exceed two hundred fifty
39 dollars for a subsequent violation, to be assessed by the commissioner
40 after a hearing or opportunity to be heard. NOTWITHSTANDING ANY OTHER
41 PROVISION OF LAW TO THE CONTRARY, A GOLF COURSE OPERATOR, WHO VIOLATES
42 ANY PROVISION OF TITLE SEVENTEEN OF ARTICLE THIRTY-THREE OF THIS CHAPTER
43 SHALL, FOR A FIRST SUCH VIOLATION, IN LIEU OF A PENALTY, BE ISSUED AT
44 THE TIME OF THE OFFENSE A WRITTEN WARNING. SUCH PERSON SHALL, HOWEVER,
45 FOR A SECOND VIOLATION, BE LIABLE TO THE PEOPLE OF THE STATE FOR A CIVIL
46 PENALTY NOT TO EXCEED ONE HUNDRED DOLLARS, AND NOT EXCEED TWO HUNDRED
47 FIFTY DOLLARS FOR ANY SUBSEQUENT VIOLATION. SUCH PENALTIES SHALL BE
48 ASSESSED BY THE COMMISSIONER AFTER A HEARING OR OPPORTUNITY TO BE HEARD.
49 The commissioner, acting by the attorney general, may bring suit for
50 collection of such assessed civil penalty in any court of competent
51 jurisdiction. Such civil penalty may be released or compromised by the
52 commissioner before the matter has been referred to the attorney gener-
53 al; and where such matter has been referred to the attorney general, any
54 such penalty may be released or compromised and any action commenced to
55 recover the same may be settled and discontinued by the attorney general
56 with the consent of the commissioner. Any civil penalty assessed by the

1 commissioner under this subdivision shall be reviewable in a proceeding
2 under article [78] SEVENTY-EIGHT of the civil practice law and rules.
3 3. Criminal sanctions. Any person who, having the culpable mental
4 states defined in subdivision one or two of section 15.05 or in section
5 20.20 of the penal law, violates any provision of article [33]
6 THIRTY-THREE of this chapter or any rule, regulation thereunder or
7 commits any offense described in section 33-1301 of this chapter, except
8 an offense relating to the application of a general use pesticide shall
9 be guilty of a misdemeanor and, upon conviction thereof, shall be
10 punished by a fine not to exceed five thousand dollars for each day
11 during which such violation continues or by imprisonment for a term of
12 not more than one year, or by both such fine and imprisonment. If the
13 conviction is for a subsequent offense committed after a first
14 conviction of such person under this subdivision, punishment shall be by
15 a fine not to exceed ten thousand dollars for each day during which such
16 violation continues or by imprisonment for a term of not more than one
17 year, or by both such fine and imprisonment. When a violation consists
18 of the manufacture or production of any prohibited article, each day
19 during which or any part of which such manufacture or production is
20 carried on or continued, shall be deemed a separate violation. Any
21 person who violates any provision of article [33] THIRTY-THREE of this
22 chapter or any rule or regulation thereunder or commits any offense
23 described in section 33-1301 of this chapter relating to the use of a
24 general use pesticide shall be guilty of a violation and, upon
25 conviction thereof, shall be punished by a fine not to exceed twenty-
26 five hundred dollars. If the conviction is for a subsequent offense
27 committed after the first such conviction of such person under this
28 subdivision, punishment shall be by a fine not to exceed five thousand
29 dollars. Prosecution hereunder may be conducted by either the attorney
30 general or the district attorney consistent with section 71-0403 of this
31 article. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, PENALTIES PURSUANT
32 TO THIS SUBDIVISION MAY NOT BE ASSESSED WITH RESPECT TO VIOLATIONS OF
33 TITLE SEVENTEEN OF ARTICLE THIRTY-THREE OF THIS CHAPTER. With respect to
34 violations of section 33-1004 of this chapter, penalties imposed pursu-
35 ant to this subdivision may be assessed only against a person providing
36 a commercial lawn application.
37 S 3. This act shall take effect immediately.