

7937

2009-2010 Regular Sessions

I N A S S E M B L Y

April 28, 2009

Introduced by M. of A. ENGLEBRIGHT, McDONOUGH, EDDINGTON -- Multi-Sponsored by -- M. of A. GOTTFRIED, JOHN, KOON, WALKER -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to prohibiting the use of certain toxic chemicals for lawn and grounds maintenance

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

1 Section 1. Legislative findings and intent. The legislature finds and  
2 declares that it is the policy of the state to prevent unnecessary  
3 endangerment of human health and environmental quality. In order to  
4 further this mission, the risks posed by the use of toxic chemicals must  
5 be evaluated in light of the benefits derived. The use of toxic chemi-  
6 cals for the purely aesthetic purpose of lawn and grounds maintenance  
7 confers no public health or environmental benefit, yet exposes people,  
8 often without their knowledge or consent, to many chemicals with seri-  
9 ous, deleterious effects on human health and the environment. It is the  
10 intent of the legislature to prevent such unwarranted exposure from  
11 purely aesthetic use.

12 S 2. Section 33-1301 of the environmental conservation law is amended  
13 by adding a new subdivision 12 to read as follows:

14 12. FOR THE FOLLOWING PESTICIDES TO BE USED IN COMMERCIAL LAWN APPLI-  
15 CATION, FLOWER BED APPLICATION, GOLF COURSE APPLICATION, DAY CARE CENTER  
16 AND SCHOOL OUTDOOR APPLICATIONS, AND RESIDENTIAL LAWN APPLICATION FOR  
17 THE PURPOSE OF PEST CONTROL ON ORNAMENTALS AND TURF OR TO BE USED BY ANY  
18 STATE AGENCY AS DEFINED IN SUBDIVISION FOUR OF SECTION ONE HUNDRED ONE  
19 OF THE STATE TECHNOLOGY LAW OR MUNICIPAL CORPORATION AS DEFINED IN  
20 SECTION SIXTY-SIX OF THE GENERAL CONSTRUCTION LAW FOR THE PURPOSE OF  
21 PEST CONTROL ON ORNAMENTALS AND TURF:

22 A. ANY PESTICIDE THAT IS CLASSIFIED AS A KNOWN, PROBABLE, LIKELY, OR  
23 POSSIBLE HUMAN CARCINOGEN BY THE UNITED STATES ENVIRONMENTAL PROTECTION

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

LBD07103-03-9

1 AGENCY OR THAT THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY HAS  
2 CLASSIFIED AS HAVING SUGGESTIVE EVIDENCE OF CARCINOGENICITY;

3 B. ANY PESTICIDE THAT IS CLASSIFIED AS CATEGORY I OR II ACCORDING TO  
4 THE PRODUCT ACUTE TOXICITY CLASSIFICATION OF THE UNITED STATES ENVIRON-  
5 MENTAL PROTECTION AGENCY FOR EITHER ORAL, DERMAL OR INHALATION TOXICITY;

6 C. ANY PESTICIDE FOR WHICH THERE IS A SPECIFIC, OUTSTANDING REQUEST  
7 FROM THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY FOR HEALTH AND  
8 ENVIRONMENTAL STUDIES FOR THE PURPOSE OF REGISTRATION OR REREGISTRATION;

9 D. ANY PESTICIDE WHICH THE COMMISSIONER DETERMINES, IN CONSULTATION  
10 WITH THE COMMISSIONER OF HEALTH, IS A LIKELY ENDOCRINE DISRUPTER  
11 (INCLUDING, BUT NOT LIMITED TO ESTROGEN MIMICRY OR ANDROGEN INHIBITION),  
12 IMMUNOTOXIN OR CHRONIC NEUROTOXIN, AS SUCH INFORMATION BECOMES AVAIL-  
13 ABLE; AND

14 E. ANY PESTICIDE THAT HAS USE RESTRICTIONS IMPOSED BY EITHER THE  
15 COMMISSIONER OR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY DUE TO  
16 THE FOLLOWING ENVIRONMENTAL HAZARDS: GROUNDWATER CONTAMINATION, WILD-  
17 LIFE KILLS, OR THREATS TO ENDANGERED SPECIES.

18 S 3. The commissioner of environmental conservation shall restrict the  
19 use of pesticides for the purposes prohibited under subdivision 12 of  
20 section 33-1301 of the environmental conservation law, as added by  
21 section two of this act, through the pesticide registration program  
22 under title 7 of article 33 of the environmental conservation law, and  
23 shall promulgate rules and regulations to provide for notice to commer-  
24 cial applicators and the public of the restrictions on such pesticides.

25 S 4. The second undesignated paragraph of subdivision 1 and subdivi-  
26 sion 3 of section 71-2907 of the environmental conservation law, as  
27 amended by chapter 285 of the laws of 2000, are amended to read as  
28 follows:

29 Notwithstanding any provision of law to the contrary, any person who  
30 violates the provisions of a local law adopted pursuant to subdivision  
31 one of section 33-1004 of this chapter relating to paragraph a of such  
32 subdivision, shall be issued a warning for the first violation and shall  
33 be provided seven days to correct such violation; and shall be liable to  
34 the people of the state for a civil penalty not to exceed one hundred  
35 dollars for a second violation, and not to exceed two hundred fifty  
36 dollars for a subsequent violation, to be assessed by the commissioner  
37 after a hearing or opportunity to be heard. NOTWITHSTANDING ANY  
38 PROVISION OF LAW TO THE CONTRARY, ANY PERSON WHO VIOLATES SUBDIVISION  
39 TWELVE OF SECTION 33-1301 OF THIS CHAPTER, SHALL, FOR A FIRST SUCH  
40 VIOLATION, IN LIEU OF A PENALTY BE ISSUED A WRITTEN WARNING, AND SHALL,  
41 FOR A SECOND SUCH VIOLATION BE LIABLE TO THE PEOPLE OF THE STATE FOR A  
42 CIVIL PENALTY NOT TO EXCEED ONE HUNDRED DOLLARS AND NOT TO EXCEED TWO  
43 HUNDRED FIFTY DOLLARS FOR ANY SUBSEQUENT VIOLATION, SUCH PENALTIES TO BE  
44 ASSESSED BY THE COMMISSIONER AFTER A HEARING OR OPPORTUNITY TO BE HEARD.  
45 The commissioner, acting by the attorney general, may bring suit for  
46 collection of such assessed civil penalty in any court of competent  
47 jurisdiction. Such civil penalty may be released or compromised by the  
48 commissioner before the matter has been referred to the attorney gener-  
49 al; and where such matter has been referred to the attorney general, any  
50 such penalty may be released or compromised and any action commenced to  
51 recover the same may be settled and discontinued by the attorney general  
52 with the consent of the commissioner. Any civil penalty assessed by the  
53 commissioner under this subdivision shall be reviewable in a proceeding  
54 under article [78] SEVENTY-EIGHT of the civil practice law and rules.

55 3. Criminal sanctions. Any person who, having the culpable mental  
56 states defined in subdivision one or two of section 15.05 or in section

1 20.20 of the penal law, violates any provision of article 33 of this  
2 chapter or any rule, regulation thereunder or commits any offense  
3 described in section 33-1301 of this chapter, except an offense relating  
4 to the application of a general use pesticide shall be guilty of a  
5 misdemeanor and, upon conviction thereof, shall be punished by a fine  
6 not to exceed five thousand dollars for each day during which such  
7 violation continues or by imprisonment for a term of not more than one  
8 year, or by both such fine and imprisonment. If the conviction is for a  
9 subsequent offense committed after a first conviction of such person  
10 under this subdivision, punishment shall be by a fine not to exceed ten  
11 thousand dollars for each day during which such violation continues or  
12 by imprisonment for a term of not more than one year, or by both such  
13 fine and imprisonment. When a violation consists of the manufacture or  
14 production of any prohibited article, each day during which or any part  
15 of which such manufacture or production is carried on or continued,  
16 shall be deemed a separate violation. Any person who violates any  
17 provision of article 33 of this chapter or any rule or regulation there-  
18 under or commits any offense described in section 33-1301 of this chap-  
19 ter relating to the use of a general use pesticide shall be guilty of a  
20 violation and, upon conviction thereof, shall be punished by a fine not  
21 to exceed twenty-five hundred dollars. If the conviction is for a subse-  
22 quent offense committed after the first such conviction of such person  
23 under this subdivision, punishment shall be by a fine not to exceed five  
24 thousand dollars. Prosecution hereunder may be conducted by either the  
25 attorney general or the district attorney consistent with section  
26 71-0403 of this article. With respect to violations of section 33-1004  
27 OR SUBDIVISION TWELVE OF SECTION 33-1301 of this chapter, penalties  
28 imposed pursuant to this subdivision may be assessed only against a  
29 person providing a commercial lawn application.

30 S 5. This act shall take effect on the one hundred twentieth day after  
31 it shall have become a law, except that section three of this act shall  
32 take effect immediately, and except that the penalty provisions of  
33 sections 71-2907 and 71-2909 of the environmental conservation law shall  
34 not apply to violations of subdivision 12 of section 33-1301 of the  
35 environmental conservation law, as added by section two of this act  
36 occurring during the one hundred twenty day period following the effec-  
37 tive date of this act.