S T A T E O F N E W Y O R K

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I N A S S E M B L Y

April 28, 2009

Introduced by M. of A. ENGLEBRIGHT, McDONOUGH, FIELDS, LATIMER -- Multi-Sponsored by -- M. of A. BOYLE, CONTE, GOTTFRIED, JOHN, KOON, PHEFFER, THIELE -- read once and referred to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the environmental conservation law, the education law and the social services law, in relation to the use and guidance of pesticide alternatives

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

Section 1. Section 33-0303 of the environmental conservation law is amended by adding a new subdivision 7 to read as follows:

7. THE COMMISSIONER, IN CONSULTATION WITH THE COMMISSIONER OF EDUCATION AND THE COMMISSIONER OF HEALTH, SHALL DEVELOP GUIDANCE ON PESTICIDE ALTERNATIVES TO FACILITATE COMPLIANCE WITH SECTION FOUR HUNDRED NINE-K OF THE EDUCATION LAW AND THREE HUNDRED NINETY-G OF THE SOCIAL SERVICES LAW.

S 2. The education law is amended by adding a new section 409-k to read as follows:

S 409-K. PESTICIDE ALTERNATIVES. 1. FOR PURPOSES OF THIS SECTION THE FOLLOWING TERMS SHALL HAVE THE MEANINGS SET FORTH BELOW:

(A) "SCHOOL" SHALL MEAN ANY PUBLIC SCHOOL DISTRICT OR PRIVATE OR PAROCHIAL SCHOOL OR BOARD OF COOPERATIVE EDUCATIONAL SERVICES.

(B) "PESTICIDE" SHALL HAVE THE SAME MEANING AS SET FORTH IN SUBDIVISION THIRTY-FIVE OF SECTION 33-0101 OF THE ENVIRONMENTAL CONSERVATION LAW, PROVIDED HOWEVER THAT IT SHALL NOT INCLUDE:

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

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(I) THE APPLICATION OF ANTI-MICROBIAL PESTICIDES AND ANTI-MICROBIAL PRODUCTS AS DEFINED BY FIFRA IN 7 U.S.C. SECTION 136 (MM) AND 136 Q (H) (2);

(II) THE USE OF AN AEROSOL PRODUCT WITH A DIRECTED SPRAY, IN CONTAINERS OF EIGHTEEN FLUID OUNCES OR LESS, WHEN USED TO PROTECT INDIVIDUALS FROM AN IMMINENT THREAT FROM STINGING AND BITING INSECTS, INCLUDING VENOMOUS SPIDERS, BEES, WASPS AND HORNETS;

(III) THE USE OF NON-VOLATILE INSECT OR RODENT BAIT IN A TAMPER RESISTANT CONTAINER;

(IV) THE APPLICATION OF A PESTICIDE CLASSIFIED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AS AN EXEMPT MATERIAL UNDER 40 CFR PART 152.25;

(V) THE USE OF BORIC ACID AND DISODIUM OCTABORATE TETRAHYDRATE; OR

(VI) THE USE OF HORTICULTURAL SOAP AND OILS THAT DO NOT CONTAIN SYNTHETIC PESTICIDES OR SYNERGISTS.

2. NO SCHOOL SHALL APPLY PESTICIDE TO ANY PLAYGROUNDS, TURF, ATHLETIC OR PLAYING FIELDS, EXCEPT THAT AN EMERGENCY APPLICATION OF A PESTICIDE MAY BE MADE AS DETERMINED BY THE COUNTY HEALTH DEPARTMENT OR FOR A COUNTY NOT HAVING A HEALTH DEPARTMENT SUCH AUTHORITY AS THE COUNTY LEGISLATURE SHALL DESIGNATE, THE COMMISSIONER OF HEALTH OR HIS OR HER DESIGNEE, THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION OR HIS OR HER DESIGNEE, OR, IN THE CASE OF A PUBLIC SCHOOL, THE SCHOOL BOARD.

S 3. The social services law is amended by adding a new section 390-g to read as follows:

S 390-G. PESTICIDE ALTERNATIVES. 1. FOR PURPOSES OF THIS SECTION THE FOLLOWING TERMS SHALL HAVE THE MEANINGS SET FORTH BELOW:

(A) "DAY CARE" SHALL APPLY TO ALL CHILD DAY CARE CENTERS OR HEAD START DAY CARE CENTERS, AS DEFINED IN SECTION THREE HUNDRED NINETY OF THIS TITLE.

(B) "PESTICIDE" SHALL HAVE THE SAME MEANING AS SET FORTH IN SUBDIVISION THIRTY-FIVE OF SECTION 33-0101 OF THE ENVIRONMENTAL CONSERVATION LAW, PROVIDED HOWEVER THAT IT SHALL NOT INCLUDE:

(I) THE APPLICATION OF ANTI-MICROBIAL PESTICIDES AND ANTI-MICROBIAL PRODUCTS AS DEFINED BY FIFRA IN 7 U.S.C. SECTION 136(MM) AND 136Q(H)(2);

(II) THE USE OF AN AEROSOL PRODUCT WITH A DIRECTED SPRAY, IN CONTAINERS OF EIGHTEEN FLUID OUNCES OR LESS, WHEN USED TO PROTECT INDIVIDUALS FROM AN IMMINENT THREAT FROM STINGING AND BITING INSECTS, INCLUDING VENOMOUS SPIDERS, BEES, WASPS AND HORNETS;

(III) THE USE OF NON-VOLATILE INSECT OR RODENT BAIT IN A TAMPER RESISTANT CONTAINER;

(IV) THE APPLICATION OF A PESTICIDE CLASSIFIED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AS AN EXEMPT MATERIAL UNDER 40 CFR PART 152.25;

(V) THE USE OF BORIC ACID AND DISODIUM OCTABORATE TETRAHYDRATE; OR

(VI) THE USE OF HORTICULTURAL SOAP AND OILS THAT DO NOT CONTAIN SYNTHETIC PESTICIDES OR SYNERGISTS.

2. NO DAY CARE SHALL APPLY PESTICIDE TO ANY PLAYGROUNDS, TURF, ATHLETIC OR PLAYING FIELDS, EXCEPT THAT AN EMERGENCY APPLICATION OF A PESTICIDE MAY BE MADE AS DETERMINED BY THE COUNTY HEALTH DEPARTMENT OR FOR A COUNTY NOT HAVING A HEALTH DEPARTMENT SUCH AUTHORITY AS THE COUNTY LEGISLATURE SHALL DESIGNATE, THE COMMISSIONER OF HEALTH OR HIS OR HER DESIGNEE, THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION OR HIS OR HER DESIGNEE, OR, IN THE CASE OF A PUBLIC SCHOOL, THE SCHOOL BOARD.

S 4. Subdivision 1 of section 389 of the social services law, as amended by chapter 555 of the laws of 1978, is amended to read as follows:

1. Except as hereinafter provided, any person, corporation, agency, society, institution or other organization, wilfully violating this title, OTHER THAN SECTION THREE HUNDRED NINETY-G OF THIS TITLE, or failing to comply with any order which the department is authorized under this title to make, shall be guilty of a misdemeanor.

S 5. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, that section two of this act shall take effect one year after it shall have become a law. Effective immediately the department of education and the department of environmental conservation may promulgate any rule or regulation necessary for the timely implementation of this act on its effective date.