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

4983

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sen. FOLEY -- read twice and ordered printed, and when printed to be committed 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:

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

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

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

A. ANY PESTICIDE THAT IS CLASSIFIED AS A KNOWN, PROBABLE, LIKELY, OR 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

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

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

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

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

E. ANY PESTICIDE THAT HAS USE RESTRICTIONS IMPOSED BY EITHER THE COMMISSIONER OR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY DUE TO THE FOLLOWING ENVIRONMENTAL HAZARDS: GROUNDWATER CONTAMINATION, WILDLIFE KILLS, OR THREATS TO ENDANGERED SPECIES.

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

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

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

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

20.20 of the penal law, violates any provision of article 33 of this chapter or any rule, regulation thereunder or commits any offense described in section 33-1301 of this chapter, except an offense relating to the application of a general use pesticide shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed five thousand dollars for each day during which such violation continues or by imprisonment for a term of not more than one year, or by both such fine and imprisonment. If the conviction is for a subsequent offense committed after a first conviction of such person under this subdivision, punishment shall be by a fine not to exceed ten thousand dollars for each day during which such violation continues or by imprisonment for a term of not more than one year, or by both such fine and imprisonment. When a violation consists of the manufacture or production of any prohibited article, each day during which or any part of which such manufacture or production is carried on or continued, shall be deemed a separate violation. Any person who violates any provision of article 33 of this chapter or any rule or regulation thereunder or commits any offense described in section 33-1301 of this chapter relating to the use of a general use pesticide shall be guilty of a violation and, upon conviction thereof, shall be punished by a fine not to exceed twenty-five hundred dollars. If the conviction is for a subsequent offense committed after the first such conviction of such person under this subdivision, punishment shall be by a fine not to exceed five thousand dollars. Prosecution hereunder may be conducted by either the attorney general or the district attorney consistent with section 71-0403 of this article. With respect to violations of section 33-1004 OR SUBDIVISION TWELVE OF SECTION 33-1301 of this chapter, penalties imposed pursuant to this subdivision may be assessed only against a person providing a commercial lawn application.

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