STATE OF NEW YORK

8031

IN SENATE

January 5, 2024

Introduced by Sen. HOYLMAN-SIGAL -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the environmental conservation law, in relation to regulation of certain coated or treated seeds; to amend a chapter of the laws of 2023 amending the environmental conservation law relating to enacting the birds and bees protection act, as proposed in legislative bills numbers S. 1856-A and A. 7640, in relation to a study to identify practicable and feasible alternatives to certain pesticides

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Article 37 of the environmental conservation law is amended by adding a new title 11 to read as follows:

TITLE 11

REGULATION OF COATED OR TREATED SEEDS

Section 37-1101. Unlawful acts.

§ 37-1101. Unlawful acts.

1. Beginning January first, two thousand twenty-nine, it shall be unlawful for any person to sell, offer for sale or use, or distribute within the state any corn, soybean or wheat seeds coated or treated with pesticides, as defined in subdivision thirty-five of section 33-0101 of this chapter, with the active ingredients clothianidin, imidacloprid, thiamethoxam, or any other neonicotinoid as determined by the department in regulation unless a valid waiver is issued by the department to the user pursuant to subdivision two of this section.

2. The commissioner in consultation with the commissioner of agriculture and markets may issue a waiver to allow the use of such seeds for the production of agricultural commodities.

(a) No such waiver shall be valid for more than two years.

(b) Such waiver shall be granted only if at a minimum the following conditions are met:

(i) the farm owner must complete an integrated pest management training;

(ii) a pest risk assessment and a pest risk assessment report must be completed;

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

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(iii) any such seeds may only be planted on the farm property or properties identified in the pest risk assessment report; and

(iv) the farm owner must maintain current records of such pest risk assessment report and records of when treated seeds are planted, both of which shall be subject to review upon request by the department.

(c) The commissioner in consultation with the commissioner of agriculture and markets shall promulgate any appropriate regulations prior to undertaking this waiver process.

(d) The department shall annually report to the legislature on the number of waivers granted.

§ 2. Subdivision 13 of section 33-1301 of the environmental conservation law, as added by a chapter of the laws of 2023 amending the environmental conservation law relating to enacting the birds and bees protection act, as proposed in legislative bills numbers S. 1856-A and A. 7640, is amended to read as follows:

13. a. [~~Beginning January first, two thousand twenty-seven, for any person to sell, offer for sale or use, or distribute within the state any corn, soybean or wheat seeds coated or treated with pesticides with the active ingredients clothianidin, imidacloprid, thiamethoxam, dinotefuran, or acetamiprid; provided, however, that the commissioner may, by written order, temporarily suspend the provisions of this paragraph at any time based on the commissioner's determination, after consulting with the commissioner of agriculture and markets, that there is an insufficient amount of commercially available seed to adequately supply the agriculture market that has not been treated with pesticides with the active ingredients clothianidin, imidacloprid, thiamethoxam, dinotefuran or acetamiprid or the purchase of seed that complies with the requirements of this paragraph would result in undue financial hardship to agricultural producers. The commissioner, in consultation with the commissioner of agriculture and markets, shall publish such written order on or before October first next succeeding the date upon which it shall become law and reevaluate any such determination on an annual basis. By October first of each year, the commissioner shall publish a written directive a s to whether there shall be such temporary suspension for the forthcoming year. Any such temporary suspension shall specify the type of seed included and shall apply for one calendar year.~~

~~b. (1) No person shall~~] It shall be unlawful for any person to apply or treat outdoor ornamental plants and turf, except for the production of agricultural commodities or structural commercial applications within one foot of a building foundation perimeter to manage structural pests provided that the application is not conducted on any blooming plant, with a pesticide containing:

[~~(i)~~] (1) the active ingredients imidacloprid, thiamethoxam or acetamiprid on or after [~~July first~~] December thirty-first, two thousand [~~twenty-five~~] twenty-six;

[~~(ii)~~] (2) the active ingredients clothianidin or dinotefuran effective [~~immediately~~] December thirty-first, two thousand twenty-four.

[~~(2) a.~~] b. (1) The provisions of [~~this~~] paragraph a of this subdivision shall not apply where the [~~commissioner~~] department, by written order, determines that:

(i) a valid environmental emergency exists;

(ii) the pesticide would be effective in addressing the environmental emergency; and

(iii) no other, less harmful pesticide or pest management practice would be effective in addressing the environmental emergency.

[~~b.~~] (2) Any such order shall include the basis for the [~~commissioner's~~] department's determination and specify the approved time period, geographic scope, and purpose of the permitted use of such pesticide. An order issued pursuant to this section shall be valid for a period not to exceed one year.

[~~(3)~~] c. The provisions of this [~~paragraph~~] subdivision shall not apply to pesticide applications by, or under the supervision of, a certified applicator for treatment against invasive species [~~in~~] affecting woody plants.

[~~c.~~] d. For the purposes of this subdivision "environmental emergency" means: an occurrence of any pest which presents a significant risk of harm or injury to the environment, or significant harm, injury, or loss to agricultural crops, including, but not limited to, any exotic or foreign pest [~~which may need preventative quarantine measures to avert or prevent that risk, as determined by the department in consultation with the department of agriculture and markets~~].

e. Applicators using a pesticide containing the active ingredients imidacloprid, thiamethoxam, acetamiprid, clothianidin, or dinotefuran pursuant to paragraph b or c of this subdivision must take a department approved neonicotinoid course annually and maintain a record of this course for three years.

§ 3. Section 71-3703 of the environmental conservation law is amended by adding a new subdivision 7 to read as follows:

7. Any person who violates any of the provisions of, or who fails to perform any duty imposed by section 37-1101 of this chapter or any rule or regulation promulgated pursuant hereto, shall be liable for a civil penalty not to exceed one thousand dollars for each day during which such violation continues, and in addition thereto, such person may be enjoined from continuing such violation. Such person shall for a second violation be liable to the people of the state for a civil penalty not to exceed two thousand five hundred dollars for each day during which such violation continues.

§ 4. Section 3 of a chapter of the laws of 2023 amending the environmental conservation law relating to enacting the birds and bees protection act, as proposed in legislative bills numbers S. 1856-A and A. 7640, is amended to read as follows:

§ 3. The department of environmental conservation[~~, in consultation with~~] and the department of agriculture and markets[~~,~~] in consultation with New York state's land grant university[~~, and state university of New York college of environmental science and forestry~~] shall conduct a study to identify practicable and feasible alternatives to the use of pesticides containing the active ingredients clothianidin, imidacloprid, thiamethoxam, dinotefuran or acetamiprid. The results of the study shall be submitted to the governor, the temporary president of the senate and the speaker of the assembly on or before January 1, 2026 and shall be posted on the department's public website.

§ 5. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2023 amending the environmental conservation law relating to enacting the birds and bees protection act, as proposed in legislative bills numbers S. 1856-A and A. 7640, takes effect.