

Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 20-0452.01 Jery Payne x2157

SENATE BILL 20-189

SENATE SPONSORSHIP

Fenberg,

HOUSE SPONSORSHIP

Cutter and Duran,

Senate Committees

Agriculture & Natural Resources

House Committees

A BILL FOR AN ACT

101 CONCERNING PROVISIONS THAT PREEMPT A LOCAL GOVERNMENT'S
102 AUTHORITY TO REGULATE THE USE OF PESTICIDES WITHIN THE
103 LOCAL GOVERNMENT'S JURISDICTION.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Current state law prohibits local governments from substantively regulating the use and application of pesticides. The bill authorizes local governments to regulate pesticide use and application. In connection with this authorization, the bill:

! Declares pesticide regulation a matter of both statewide and

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

- ! local concern;
- ! Repeals provisions that prohibit local regulation of pesticide use and application and explicitly authorizes a county to enact this type of regulation;
- ! Permits local governments to regulate pesticide use and application except in connection with the cultivation of marijuana and the production of agricultural products;
- ! Clarifies that a local government must meet the requirements of state and federal law; and
- ! Gives state courts exclusive jurisdiction to review local pesticide laws.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 30-11-107, **add**
3 (1)(II) as follows:

4 **30-11-107. Powers of the board.** (1) The board of county
5 commissioners of each county has power at any meeting:

6 (II) TO REGULATE THE USE AND APPLICATION OF PESTICIDES IN
7 ACCORDANCE WITH ARTICLE 10 OF TITLE 35.

8 **SECTION 2.** In Colorado Revised Statutes, 35-10-112, **repeal** (3)
9 as follows:

10 **35-10-112. Notification requirements - registry of**
11 **pesticide-sensitive persons - rules.** (3) ~~No county, city and county,~~
12 ~~municipality, home rule county, home rule city and county, or home rule~~
13 ~~municipality shall enact or impose any notification requirements upon~~
14 ~~commercial applicators which are more stringent than those imposed by~~
15 ~~this article; except that each county, city and county, municipality, home~~
16 ~~rule county, home rule city and county, and home rule municipality shall~~
17 ~~retain the authority to impose any notification requirements upon private~~
18 ~~individuals, property owners, and the general public. Any such~~
19 ~~notification requirement imposed by any county, city and county,~~

1 ~~municipality, home rule county, home rule city and county, or home rule~~
2 ~~municipality on private individuals, property owners, or the general~~
3 ~~public shall not be held to be applicable to any commercial applicator, nor~~
4 ~~shall any commercial applicator be exposed to any liability for a failure~~
5 ~~to comply with any such notification requirement.~~

6 **SECTION 3.** In Colorado Revised Statutes, 35-10-112.5, **amend**
7 (1)(b), (1)(c), (1)(d), (1)(e), (2) introductory portion, (2)(b), (2)(d), (3)(a)
8 introductory portion, (3)(a)(I), (3)(a)(IV), and (4); **repeal** (2)(c), (3)(b),
9 and (3)(c); and **add** (1)(f), (2)(e), (2.5), (3)(a)(V), and (3)(d) as follows:

10 **35-10-112.5. Pesticide control and regulation - exceptions -**
11 **legislative declaration.** (1) The general assembly hereby determines
12 that:

13 (b) A system of pesticide regulation that is ~~consistent~~
14 TRANSPARENT and coordinated, that creates statewide uniform BASELINE
15 standards, ~~and~~ that conforms with both state and federal BASELINE
16 technical standards and requirements, AND THAT ENABLES LOCAL
17 GOVERNMENTS TO ADDRESS THE NEEDS OF THEIR CITIZENS AND THE NEEDS
18 OF THE LOCAL ENVIRONMENT is essential to the public health, safety, and
19 welfare; ~~and finds that local regulation of pesticides that is inconsistent~~
20 ~~with and adopts different standards from federal and state requirements~~
21 ~~does not assist in achieving these benefits;~~

22 (c) (I) Through statute and ~~regulation~~ RULE-MAKING, the state has
23 created a system of pesticide regulation based upon scientific standards
24 that protects the citizens of this state;

25 (II) THE STATE HAS PRIMARY ENFORCEMENT RESPONSIBILITY FOR
26 PESTICIDE VIOLATIONS UNDER 7 U.S.C. SEC. 136w-1, AND 7 U.S.C. SEC.
27 136w-5 AUTHORIZES STATES TO DEVELOP LICENSING, CERTIFICATION, AND

1 TRAINING PROGRAMS FOR PESTICIDE USE AND APPLICATION;

2 (III) ALTHOUGH THE STATE HAS PRIMARY ENFORCEMENT
3 RESPONSIBILITY, LOCAL GOVERNMENTS MAY REGULATE THE USE AND
4 APPLICATION OF A PESTICIDE IN THE INTEREST OF PUBLIC HEALTH, PUBLIC
5 SAFETY, AND ENVIRONMENTAL PROTECTION IF THE REGULATION MEETS
6 THE REQUIREMENTS OF BOTH STATE AND FEDERAL LAW AND THE USE IS
7 NOT FOR THE PRODUCTION OF AGRICULTURAL PRODUCTS;

8 (d) Although the cultivation of marijuana is illegal under federal
9 law and so the use of pesticides in cultivating marijuana is not specifically
10 allowed by any pesticide's label, the cultivation of marijuana is
11 specifically allowed and regulated by Colorado law, and the use of
12 pesticides should be regulated pursuant to this ~~article~~ ARTICLE 10 and
13 rules promulgated pursuant to this ~~article~~ ARTICLE 10 rather than pursuant
14 to local laws; ~~and~~

15 (e) Pesticide regulation is a matter of BOTH statewide AND LOCAL
16 concern; AND

17 (f) THIS SECTION IS NOT INTENDED TO AFFECT A DUTY IMPOSED BY
18 ARTICLE 4, 5.5, 7, OR 9 OF THIS TITLE 35.

19 (2) A local government shall not adopt or continue in effect any
20 ordinance, rule, resolution, OR charter provision ~~or statute~~ regarding the
21 use of any pesticide by persons regulated by this ~~article~~ ARTICLE 10 or
22 federal law and pertaining to:

23 (b) ~~(f)~~ The use and application of pesticides IN CONNECTION WITH
24 THE CULTIVATION OF MARIJUANA by persons regulated by this ~~article~~
25 ARTICLE 10 or federal law; ~~including but not limited to, directions for use,~~
26 ~~classification of pesticides as general or restricted use, mixing and~~
27 ~~loading, site of application, target pest, dosage rate, method of~~

1 application, application equipment, frequency and timing of applications,
2 application rate, reentry intervals, worker specifications, container storage
3 and disposal, required intervals between application and harvest of food
4 or feed crops, rotational crop restrictions, and warnings against use on
5 certain crops, animals, or objects or against use in or adjacent to certain
6 areas.

7 (H) ~~Subparagraph (I) of this paragraph (b) applies to the use and~~
8 ~~application of pesticides by persons regulated by this article or federal law~~
9 ~~in connection with the cultivation of marijuana.~~

10 (c) ~~Except as specifically provided in this article, any warnings~~
11 ~~and precautionary statements, notifications, or statements of practical~~
12 ~~treatment; or~~

13 (d) Licensure, training, or certification requirements for persons
14 regulated under this ~~article~~ ARTICLE 10, including any insurance and
15 record-keeping requirements; OR

16 (e) THE USE OF PESTICIDES IN THE PRODUCTION OF AGRICULTURAL
17 PRODUCTS, INCLUDING GROWING FEED FOR LIVESTOCK; LIVESTOCK; OR
18 THE MAINTENANCE OF AGRICULTURAL WATER SUPPLY FACILITIES,
19 INCLUDING IRRIGATION DITCHES AND OTHER WATER INFRASTRUCTURE.

20 (2.5) TO PROMULGATE AN ORDINANCE, RULE, RESOLUTION, OR
21 CHARTER PROVISION REGULATING THE APPLICATION OF OR USE OF A
22 PESTICIDE, A LOCAL GOVERNMENT MUST CONSIDER THE AVAILABLE
23 SCIENCE.

24 (3) (a) Nothing in this ~~article~~ ARTICLE 10 may be construed to
25 limit the authority of a local government as defined by state law to:

26 (I) Zone for the sale or storage of any pesticide, provide or
27 designate sites for disposal of any pesticide or pesticide container, adopt

1 or enforce building and fire code requirements, regulate the transportation
2 of pesticides consistently with and in no more strict of a manner than state
3 and federal law, adopt regulations pursuant to a storm water management
4 program that is consistent with OR MORE RESTRICTIVE THAN federal or
5 state law, or adopt regulations to protect surface or groundwater drinking
6 water supplies consistent with OR MORE RESTRICTIVE THAN state or
7 federal law concerning the protection of drinking water supplies;

8 (IV) Issue local general occupational licenses to persons regulated
9 by this ~~article~~ ARTICLE 10; AND

10 (V) ADOPT ANY ORDINANCE, RULE, RESOLUTION, OR CHARTER
11 PROVISION CONCERNING THE USE AND APPLICATION OF A PESTICIDE THAT
12 IS ADOPTED IN THE INTEREST OF PUBLIC HEALTH, PUBLIC SAFETY, AND
13 ENVIRONMENTAL PROTECTION.

14 (b) ~~This subsection (3) does not authorize a local government to
15 utilize the police power or the authority to zone, to provide or designate
16 disposal sites, to adopt and enforce building and fire codes, or to regulate
17 the transportation of pesticides as described in paragraph (a) of this
18 subsection (3) to directly or indirectly regulate or prohibit the application
19 of pesticides by persons regulated by this article or by federal law,
20 including in connection with the cultivation of marijuana.~~

21 (c) ~~Nothing in this article shall be construed to be an implicit grant
22 of authority to a local government that is not otherwise granted by state
23 law.~~

24 (d) THIS SECTION DOES NOT AFFECT THE OBLIGATION OF A LOCAL
25 GOVERNMENT TO MEET THE REQUIREMENTS OF STATE AND FEDERAL LAW.

26 (4) Any local government that promulgates an ordinance, RULE,
27 RESOLUTION, OR CHARTER PROVISION that concerns pesticides OR that is

1 promulgated pursuant to UNDER THIS ARTICLE 10 OR section 31-15-707
2 (1)(b) C.R.S., or that is promulgated pursuant to any authority described
3 in paragraph (a) of subsection (3) of this section concerning pesticides
4 shall file the following with the department of agriculture:

5 (a) A certified copy of the ordinance, RULE, RESOLUTION, OR
6 CHARTER PROVISION; and

7 (b) A map or legal description of the geographic area that the local
8 government intends to regulate under the ordinance, RULE, RESOLUTION,
9 OR CHARTER PROVISION.

10 **SECTION 4.** In Colorado Revised Statutes, **add** 35-10-112.6 as
11 follows:

12 **35-10-112.6. Judicial review of local government ordinances,**
13 **rules, resolutions, or charter provisions.** STATE COURTS HAVE
14 EXCLUSIVE JURISDICTION TO REVIEW LOCAL PESTICIDE ORDINANCES,
15 RULES, RESOLUTIONS, OR CHARTER PROVISIONS.

16 **SECTION 5. Act subject to petition - effective date.** This act
17 takes effect at 12:01 a.m. on the day following the expiration of the
18 ninety-day period after final adjournment of the general assembly (August
19 5, 2020, if adjournment sine die is on May 6, 2020); except that, if a
20 referendum petition is filed pursuant to section 1 (3) of article V of the
21 state constitution against this act or an item, section, or part of this act
22 within such period, then the act, item, section, or part will not take effect
23 unless approved by the people at the general election to be held in
24 November 2020 and, in such case, will take effect on the date of the
25 official declaration of the vote thereon by the governor.