

Second Regular Session
Seventy-fifth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 26-0138.02 Jennifer Berman x3286

SENATE BILL 26-065

SENATE SPONSORSHIP

Wallace and Kipp,

HOUSE SPONSORSHIP

Velasco and Brown,

Senate Committees

Agriculture & Natural Resources

House Committees

A BILL FOR AN ACT

101 CONCERNING LIMITATIONS ON THE USE OF CERTAIN INSECTICIDES IN
102 THE STATE.

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>.)

On and after January 1, 2029, the bill prohibits a person from selling, offering for sale, or otherwise distributing in the state field crop seeds coated or treated with systemic insecticide (coated or treated seeds), which is an insecticide designed to be absorbed by plants, unless the buyer presents at the point of sale a certificate authorizing the purchase of such seeds from a seed dealer and the use of such seeds on agricultural

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

property.

A person may apply to the commissioner of agriculture (commissioner) for approval to serve as a third-party verifier (approved third-party verifier) to determine whether a specified use of coated or treated seeds is necessary and appropriate. On and after January 1, 2029, a person that seeks to apply such coated or treated seeds on agricultural property must work with an approved third-party verifier to determine if such use is necessary and appropriate.

The approved third-party verifier shall conduct a pest risk assessment and prepare a report on the assessment. If the approved third-party verifier determines that the use of coated or treated seeds is necessary and appropriate on the agricultural property, they may issue a certificate authorizing the use of coated or treated seeds on the agricultural property for a period up to one year.

The commissioner shall adopt rules to implement a program ensuring that coated or treated seeds are used on agricultural property only when needed and expected to be effective and may enforce against an approved third-party verifier's or seed dealer's noncompliance with the requirements of the bill, including by suspending or revoking approval of the third-party verifier or the seed dealer's license or by assessing a fine in an amount not to exceed \$50,000 per violation. Approved third-party verifiers and seed dealers must annually report to the commissioner, and the commissioner must include a summary of the reports and the implementation of the bill in the commissioner's annual "State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act" presentation to the general assembly.

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

2 **SECTION 1. Short title.** The short title of this act is the
3 "Strengthening Economic and Environmental Decisions (SEED) Act".

4 **SECTION 2.** In Colorado Revised Statutes, 35-9-103, **amend** (3)
5 and (9.5); and **add** (4.5), (7.5), (8.2), and (13) as follows:

6 **35-9-103. Definitions.**

7 As used in this article 9, unless the context otherwise requires:

8 (3) "Commissioner" means the commissioner of agriculture OR,
9 AS APPROPRIATE, THE COMMISSIONER'S DESIGNEE.

10 (4.5) "DEPARTMENT" MEANS THE DEPARTMENT OF AGRICULTURE.

1 (7.5) "FIELD CROP SEED" MEANS ONE OF THE FOLLOWING TYPES OF
2 SEEDS:

- 3 (a) ALFALFA;
- 4 (b) BARLEY;
- 5 (c) CANOLA;
- 6 (d) CORN;
- 7 (e) MILLET;
- 8 (f) OAT;
- 9 (g) RYE;
- 10 (h) SAFFLOWER;
- 11 (i) SORGHUM;
- 12 (j) SOYBEAN;
- 13 (k) SUNFLOWER; OR
- 14 (l) WHEAT.

15 (8.2) "INSECTICIDE" MEANS A PESTICIDE OR PESTICIDE-ACTIVE
16 INGREDIENT THAT IS DESIGNED OR INTENDED TO PREVENT, DESTROY,
17 REPEL, OR MITIGATE AN INSECT PEST.

18 (9.5) "Neonicotinoid pesticide" means any pesticide containing a
19 chemical belonging to the neonicotinoid class of chemicals, including:

- 20 (a) Acetamiprid;
- 21 (b) Clothianidin;
- 22 (c) Dinotefuran;
- 23 (d) FLUPYRADIFURONE;
- 24 ~~(d)~~ (e) Imidacloprid;
- 25 ~~(e)~~ (f) Nitenpyram;
- 26 ~~(f)~~ (g) Nithiazine;
- 27 (h) SULFOXAFLOR;

1 ~~(g)~~ (i) Thiacloprid; or

2 ~~(h)~~ (j) Thiamethoxam.

3 (13) (a) "SYSTEMIC INSECTICIDE" MEANS AN INSECTICIDE
4 CONTAINING A CHEMICAL DESIGNED TO BE ABSORBED BY PLANTS AND
5 TRANSLOCATED THROUGH PLANT TISSUE.

6 (b) "SYSTEMIC INSECTICIDE" INCLUDES:

7 (I) ACETAMIPRID;

8 (II) CHLORANTRANILIPROLE;

9 (III) CLOTHIANIDIN;

10 (IV) CYANTRANILIPROLE;

11 (V) DINOTEFURAN;

12 (VI) FIPRONIL;

13 (VII) FLUPYRADIFURONE;

14 (VIII) IMIDACLOPRID;

15 (IX) NITENPYRAM;

16 (X) SULFOXAFLOL;

17 (XI) TETRANILIPROLE;

18 (XII) THIACLOPRID; AND

19 (XIII) THIAMETHOXAM.

20 **SECTION 3.** In Colorado Revised Statutes, 35-9-120, **add** (4) as
21 follows:

22 **35-9-120. Prohibited acts - deceptive trade practice -**
23 **certification to use systemic insecticides on field crops - definitions -**
24 **rules - reports.**

25 (4) (a) (I) ON AND AFTER JANUARY 1, 2029, A PERSON SHALL NOT
26 SELL, OFFER FOR SALE, OR OTHERWISE DISTRIBUTE FIELD CROP SEEDS
27 COATED OR TREATED WITH A SYSTEMIC INSECTICIDE UNLESS THE BUYER

1 PRESENTS AT THE POINT OF SALE A CERTIFICATE DEMONSTRATING A NEED
2 TO USE FIELD CROP SEEDS COATED OR TREATED WITH A SYSTEMIC
3 INSECTICIDE, WHICH CERTIFICATE HAS BEEN PROVIDED BY A THIRD-PARTY
4 VERIFIER APPROVED BY THE COMMISSIONER PURSUANT TO SUBSECTION
5 (4)(b) OF THIS SECTION.

6 (II) THE PROHIBITION SET FORTH IN SUBSECTION (4)(a)(I) OF THIS
7 SECTION APPLIES TO IN-PERSON SALES, PHONE SALES, CATALOG SALES,
8 AND INTERNET SALES TO BUYERS IN THE STATE. WITH RESPECT TO
9 INTERNET SALES, THE POINT OF SALE OCCURS AFTER THE BUYER HAS
10 SELECTED ITEMS FOR SALE BUT BEFORE PAYING FOR THE ITEMS.

11 (b) (I) A PERSON MAY APPLY TO THE COMMISSIONER FOR, AND THE
12 COMMISSIONER MAY GRANT, APPROVAL AUTHORIZING THE PERSON AS A
13 THIRD-PARTY VERIFIER REGARDING THE USE OF FIELD CROP SEEDS COATED
14 OR TREATED WITH A SYSTEMIC INSECTICIDE AS NECESSARY AND
15 APPROPRIATE. THE COMMISSIONER SHALL ADOPT RULES TO ESTABLISH:

16 (A) QUALIFICATIONS TO ENSURE THAT EACH THIRD-PARTY
17 VERIFIER IS SUFFICIENTLY COMPETENT AND PROFESSIONALLY QUALIFIED
18 TO ENSURE COMPLIANCE WITH THIS SUBSECTION (4);

19 (B) THIRD-PARTY VERIFICATION APPLICATION REQUIREMENTS,
20 INCLUDING A REQUIREMENT THAT AN APPLICANT DECLARE IN THEIR
21 APPLICATION WHETHER THEY HAVE ANY DIRECT FINANCIAL CONFLICTS OF
22 INTEREST WITH SERVING AS A THIRD-PARTY VERIFIER; AND

23 (C) A THIRD-PARTY VERIFICATION FEE SET IN AN AMOUNT NOT TO
24 EXCEED THE COMMISSIONER'S DIRECT AND INDIRECT ADMINISTRATIVE
25 COSTS FOR IMPLEMENTING AND ENFORCING THIRD-PARTY VERIFICATIONS.

26 (II) (A) ON AND AFTER JANUARY 1, 2029, A PERSON SHALL NOT
27 USE FIELD CROP SEEDS COATED OR TREATED WITH A SYSTEMIC

1 INSECTICIDE ON AGRICULTURAL PROPERTY IN THE STATE UNLESS THE
2 PERSON HAS BEEN ISSUED A CERTIFICATE FOR SUCH USE OF FIELD CROP
3 SEEDS. A PERSON THAT SEEKS TO USE FIELD CROP SEEDS COATED OR
4 TREATED WITH A SYSTEMIC INSECTICIDE ON AGRICULTURAL PROPERTY IN
5 THE STATE SHALL FIRST WORK WITH A THIRD-PARTY VERIFIER WHO HAS
6 BEEN APPROVED BY THE COMMISSIONER PURSUANT TO SUBSECTION
7 (4)(b)(I) OF THIS SECTION TO DETERMINE WHETHER THERE IS A NEED FOR
8 SYSTEMIC INSECTICIDE USE AS A FIELD CROP SEED COATING OR
9 TREATMENT BASED ON THE SPECIFIC CONDITIONS OF THE AGRICULTURAL
10 PROPERTY.

11 (B) THE APPROVED THIRD-PARTY VERIFIER SHALL COMPLETE A
12 PEST RISK ASSESSMENT OF THE AGRICULTURAL PROPERTY AND PREPARE
13 A REPORT SUMMARIZING THE ASSESSMENT.

14 (c) (I) (A) IF AN APPROVED THIRD-PARTY VERIFIER DETERMINES
15 PURSUANT TO SUBSECTION (4)(b)(II) OF THIS SECTION THAT THE USE OF A
16 SYSTEMIC INSECTICIDE AS A FIELD CROP SEED COATING OR TREATMENT IS
17 NECESSARY AND APPROPRIATE ON AN AGRICULTURAL PROPERTY, THE
18 APPROVED THIRD-PARTY VERIFIER MAY ISSUE A CERTIFICATE VERIFYING
19 THAT THE USE OF FIELD CROP SEEDS COATED OR TREATED WITH A
20 SYSTEMIC INSECTICIDE ON THE AGRICULTURAL PROPERTY IS NECESSARY
21 AND APPROPRIATE.

22 (B) THE APPROVED THIRD-PARTY VERIFIER SHALL NOT ISSUE A
23 CERTIFICATE AUTHORIZING THE USE OF FIELD CROP SEEDS COATED OR
24 TREATED WITH A SYSTEMIC INSECTICIDE UNLESS THE VERIFIER
25 DETERMINES THAT SUCH USE IS NECESSARY AND APPROPRIATE TO
26 ADDRESS A DEMONSTRABLE PEST ISSUE.

27 (C) THE CERTIFICATE ISSUED BY THE APPROVED THIRD-PARTY

1 VERIFIER MUST USE A STANDARDIZED FORM THAT IS DEVELOPED BY THE
2 COMMISSIONER AND MADE AVAILABLE ON THE DEPARTMENT'S WEBSITE.

3 (II) A CERTIFICATE AUTHORIZING THE USE OF FIELD CROP SEEDS
4 COATED OR TREATED WITH A SYSTEMIC INSECTICIDE ON AGRICULTURAL
5 PROPERTY IS VALID FOR UP TO ONE YEAR. A PERSON MAY PRESENT THE
6 CERTIFICATE TO A SEED DEALER FOR THE PURCHASE OF THE COATED OR
7 TREATED FIELD CROP SEEDS WITHIN THAT ONE-YEAR PERIOD. THE
8 PURCHASER AND THE SEED DEALER SHALL EACH MAINTAIN A COPY OF THE
9 CERTIFICATE FOR FIVE YEARS FOLLOWING THE PURCHASE OF THE COATED
10 OR TREATED FIELD CROP SEEDS. AT ANY TIME WITHIN THE FIVE YEARS
11 FOLLOWING THE PURCHASE, THE PURCHASER OR SEED DEALER SHALL
12 FURNISH THE COMMISSIONER WITH A COPY OF THE CERTIFICATE UPON
13 REQUEST BY THE COMMISSIONER.

14 (d) A CERTIFICATE AUTHORIZING THE USE OF FIELD CROP SEEDS
15 COATED OR TREATED WITH A SYSTEMIC INSECTICIDE PURSUANT TO THIS
16 SUBSECTION (4) MUST INCLUDE INFORMATION:

17 (I) SPECIFYING THE AGRICULTURAL PROPERTY ON WHICH THE USE
18 IS AUTHORIZED;

19 (II) INDICATING THE REASONS WHY THE USE OF FIELD CROP SEEDS
20 COATED OR TREATED WITH A SYSTEMIC INSECTICIDE IS NEEDED ON THE
21 AGRICULTURAL PROPERTY AND WHY SUCH USE IS EXPECTED TO BE
22 EFFECTIVE;

23 (III) INDICATING THE PERIOD, NOT TO EXCEED ONE YEAR, FOR
24 WHICH THE USE IS AUTHORIZED; AND

25 (IV) DETAILING ANY CONDITIONS OR RESTRICTIONS REGARDING
26 THE APPROVED USE, INCLUDING ANY RESTRICTIONS ON THE USE,
27 HANDLING, AND DISPOSAL OF THE FIELD CROP SEEDS COATED OR TREATED

1 WITH A SYSTEMIC INSECTICIDE AS A MEANS TO MINIMIZE HARM TO
2 POLLINATOR POPULATIONS, BIRD POPULATIONS, OTHER ANIMALS,
3 ECOSYSTEMS, OR PUBLIC HEALTH.

4 (e) AFTER USE OF FIELD CROP SEEDS COATED OR TREATED WITH A
5 SYSTEMIC INSECTICIDE ON AN AGRICULTURAL PROPERTY PURSUANT TO
6 THIS SUBSECTION (4), FOR THE PURPOSE OF PROVIDING DATA FOR FUTURE
7 PEST RISK ASSESSMENTS ON THE AGRICULTURAL PROPERTY, IN-SEASON
8 INSECT SCOUTING OF THE PROPERTY SHALL BE PERFORMED AND PLANT
9 EMERGENCE RATES FOR ALL LOCATIONS WHERE FIELD CROP SEEDS COATED
10 OR TREATED WITH A SYSTEMIC INSECTICIDE WERE PLANTED SHALL BE
11 RECORDED.

12 (f) ON OR BEFORE JANUARY 1, 2030, AND ON OR BEFORE JANUARY
13 1 EACH YEAR THEREAFTER, EACH APPROVED THIRD-PARTY VERIFIER SHALL
14 SUBMIT TO THE COMMISSIONER COPIES OF THE CERTIFICATES THE
15 APPROVED THIRD-PARTY VERIFIER ISSUED IN THE PREVIOUS TWELVE
16 MONTHS, AND EACH SEED DEALER THAT SOLD FIELD CROP SEEDS COATED
17 OR TREATED WITH A SYSTEMIC INSECTICIDE IN THE STATE AT LEAST ONCE
18 IN THE PREVIOUS TWELVE MONTHS SHALL SUBMIT TO THE COMMISSIONER
19 COPIES OF THE CERTIFICATES RECEIVED IN THE PREVIOUS TWELVE
20 MONTHS.

21 (g) THE COMMISSIONER MAY ENFORCE THIS SUBSECTION (4) BY:

22 (I) ENTERING AND INSPECTING A SEED DEALER'S BUSINESS
23 PROPERTY:

24 (A) IF THE COMMISSIONER REQUESTS ACCESS TO THE BUSINESS
25 PROPERTY DURING REGULAR BUSINESS HOURS; AND

26 (B) IN ORDER FOR THE COMMISSIONER TO INSPECT ANY BUILDING,
27 EQUIPMENT, VEHICLE, OR RECORDS ON THE BUSINESS PROPERTY

1 PERTINENT TO THE INSPECTION;

2 (II) SUSPENDING OR REVOKING A SEED DEALER'S LICENSE OR THE
3 COMMISSIONER'S APPROVAL OF A THIRD-PARTY VERIFIER IF, AFTER A
4 HEARING HELD ON THE MATTER, THE COMMISSIONER DETERMINES THAT
5 THE SEED DEALER OR THIRD-PARTY VERIFIER:

6 (A) FAILED TO ADHERE TO THE REQUIREMENTS OF THIS
7 SUBSECTION (4) OR THE COMMISSIONER'S RULES IMPLEMENTING THIS
8 SUBSECTION (4); OR

9 (B) COMMITTED FRAUD; OR

10 (III) ASSESSING AGAINST A PERSON THAT KNOWINGLY OR
11 INTENTIONALLY VIOLATES THIS SUBSECTION (4) A FINE IN AN AMOUNT NOT
12 TO EXCEED FIFTY THOUSAND DOLLARS PER VIOLATION. THE STATE
13 TREASURER SHALL CREDIT FINES COLLECTED PURSUANT TO THIS
14 SUBSECTION (4)(g)(III) TO THE PLANT HEALTH, PEST CONTROL, AND
15 ENVIRONMENTAL PROTECTION CASH FUND CREATED IN SECTION
16 35-1-106.3 (1).

17 (h) COMMENCING IN 2030, THE DEPARTMENT SHALL INCLUDE IN
18 ITS ANNUAL "STATE MEASUREMENT FOR ACCOUNTABLE, RESPONSIVE,
19 AND TRANSPARENT (SMART) GOVERNMENT ACT" PRESENTATION MADE
20 PURSUANT TO SECTION 2-7-203 AN ANONYMIZED SUMMARY OF:

21 (I) THE CERTIFICATES SUBMITTED TO THE COMMISSIONER
22 PURSUANT TO SUBSECTION (4)(f) OF THIS SECTION; AND

23 (II) THE DEPARTMENT'S IMPLEMENTATION OF THIS SUBSECTION (4),
24 INCLUDING ANY INSPECTIONS PERFORMED OR SUSPENSIONS, REVOCATIONS,
25 OR FINES ISSUED PURSUANT TO SUBSECTION (4)(g) OF THIS SECTION.

26 (i) ON OR BEFORE JANUARY 1, 2028, THE COMMISSIONER SHALL
27 ADOPT RULES AS NECESSARY TO IMPLEMENT THIS SUBSECTION (4),

1 INCLUDING RULES:

2 (I) CREATING A PROGRAM TO ENSURE THAT FIELD CROP SEEDS
3 COATED OR TREATED WITH A SYSTEMIC INSECTICIDE ARE USED ON
4 AGRICULTURAL PROPERTY ONLY WHEN NEEDED AND EXPECTED TO BE
5 EFFECTIVE;

6 (II) REQUIRING RECORD-KEEPING AND REPORTING REQUIREMENTS
7 REGARDING THE USE, HANDLING, AND DISPOSAL OF FIELD CROP SEEDS
8 COATED OR TREATED WITH A SYSTEMIC INSECTICIDE; AND

9 (III) AUTHORIZING THE DEPARTMENT TO GRANT AN EMERGENCY
10 EXCEPTION FOR THE SALE OF FIELD CROP SEEDS COATED OR TREATED WITH
11 A SYSTEMIC INSECTICIDE IN THE STATE IF THERE IS AN INSUFFICIENT
12 AMOUNT OF COMMERCIALY AVAILABLE SEEDS THAT HAVE NOT BEEN
13 COATED OR TREATED WITH A SYSTEMIC INSECTICIDE.

14 **SECTION 4. Safety clause.** The general assembly finds,
15 determines, and declares that this act is necessary for the immediate
16 preservation of the public peace, health, or safety or for appropriations for
17 the support and maintenance of the departments of the state and state
18 institutions.