

CHAPTER 376

AGRICULTURE

SENATE BILL 10-034

BY SENATOR(S) Whitehead, Hodge, Johnston, Romer, Shaffer B., Tapia, Tochtrop;
also REPRESENTATIVE(S) Looper, Fischer, Kerr J., Pace, Pommer, Priola, Vigil, Carroll T.

AN ACT

CONCERNING THE ADMINISTRATION OF LAWS REGULATING PESTICIDES, AND, IN CONNECTION THEREWITH, AMENDING THE "PESTICIDE ACT" TO AUTHORIZE THE COMMISSIONER OF THE DEPARTMENT OF AGRICULTURE TO INSPECT REFILLERS, IMPOSE RESIDUE REMOVAL AND RECORD-KEEPING REQUIREMENTS, AND SET EXPIRATION DATES FOR PESTICIDE AND DEVICE REGISTRATIONS BY RULE.

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

SECTION 1. 35-9-102, Colorado Revised Statutes, is amended to read:

35-9-102. Legislative declaration. The general assembly hereby finds and declares that the intent of this article is to regulate, in the public interest, the REFILLING, registration, labeling, transportation, distribution, storage, use, and disposal of any pesticide and of certain devices. The general assembly further finds and declares that it is the intent of this article to assure the dissemination of accurate information regarding the proper and prohibited uses of any pesticide or device. The provisions of this article are enacted to protect the public health, safety, and welfare of the people of this state.

SECTION 2. 35-9-103, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

35-9-103. Definitions. As used in this article, unless the context otherwise requires:

(11.4) "REFILL" MEANS TO TRANSFER A PESTICIDE FOR SALE OR DISTRIBUTION TO A REFILLABLE CONTAINER WITHOUT CHANGING THE COMPOSITION, FORMULATION, OR EPA REGISTRATION NUMBER OF THE PESTICIDE.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(11.5) "REFILLABLE CONTAINER" MEANS A CONTAINER THAT IS INTENDED TO BE FILLED MORE THAN ONCE WITH A PESTICIDE FOR SALE OR DISTRIBUTION.

(11.6) "REFILLER" MEANS A PERSON THAT ENGAGES IN REFILLING.

SECTION 3. 35-9-105, Colorado Revised Statutes, is amended to read:

35-9-105. Exclusive jurisdiction. Jurisdiction in all matters pertaining to the distribution and sale of pesticides and devices, INCLUDING REMOVAL OF PESTICIDE RESIDUE FROM CONTAINERS PRIOR TO REFILLING OR DISPOSAL, is vested exclusively in the department of agriculture.

SECTION 4. 35-9-106, Colorado Revised Statutes, is amended to read:

35-9-106. Pesticide registration required - exemptions. (1) EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS SECTION, every pesticide ~~which~~ THAT is distributed in this state shall be registered with the commissioner as provided by this article and any rules ~~and regulations~~ adopted ~~pursuant thereto~~ UNDER THIS ARTICLE.

(2) THE COMMISSIONER MAY EXEMPT CERTAIN PESTICIDES FROM THE REGISTRATION REQUIREMENT CONSISTENT WITH THE "FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT", 7 U.S.C. SEC. 136 ET SEQ., AS AMENDED, AND RULES PROMULGATED BY THE EPA UNDER THE "FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT".

SECTION 5. The introductory portion to 35-9-107 (1) and 35-9-107 (1) (d) and (4), Colorado Revised Statutes, are amended to read:

35-9-107. Pesticide registration - application - fees - expiration - repeal.

(1) Each applicant for registration of a pesticide shall file with the commissioner, in the form and manner ~~he~~ THE COMMISSIONER shall designate:

(d) A complete statement of each active ingredient and its percentage of the whole and, IF REQUESTED BY THE COMMISSIONER, each inert ingredient and its percentage of the whole, which INERT INGREDIENT information shall be kept confidential as provided in section 35-9-109;

(4) (a) (I) Registration of a pesticide shall expire on December 31 of each year.

(II) THIS PARAGRAPH (a) IS REPEALED, EFFECTIVE JANUARY 1, 2011.

(b) ON AND AFTER JANUARY 1, 2011, REGISTRATION OF A PESTICIDE SHALL EXPIRE EACH YEAR ON A DATE SPECIFIED BY THE COMMISSIONER BY RULE.

SECTION 6. Repeal. 35-9-107 (3), Colorado Revised Statutes, is repealed as follows:

35-9-107. Pesticide registration - application - fees - expiration. (3) ~~In the event that a cease-and-desist order has been issued for the distribution of an unregistered pesticide product under the provisions of section 35-9-121, the applicant shall pay, in addition to the annual application fee, a penalty fee in an~~

amount to be determined by the commissioner, in addition to any other penalty or sum assessed pursuant to this article.

SECTION 7. 35-9-109 (1), (2), and (3), Colorado Revised Statutes, are amended to read:

35-9-109. Confidentiality of inert ingredients. (1) Except as provided by this section, no INERT INGREDIENT information required by section 35-9-107 (1) (d) shall be released to any person by the commissioner.

(2) A registrant may authorize the commissioner to disclose any INERT INGREDIENT information required by section 35-9-107 by filing a signed authorization for release of information with the commissioner.

(3) When a treating physician or the poison control service provider selected pursuant to section 25-32-105, C.R.S., determines that a medical emergency exists and information submitted to the commissioner CONCERNING INERT INGREDIENTS pursuant to section 35-9-107 (1) (d) is necessary for emergency or first-aid treatment, the commissioner may immediately disclose the information necessary to that treating physician or to such poison control service provider. The commissioner shall require such treating physician or such poison control service provider to submit to the commissioner a statement of need for ~~such~~ THE information and a confidentiality agreement, in the form and manner the commissioner shall designate, as soon as circumstances permit.

SECTION 8. Repeal. 35-9-111 (3), Colorado Revised Statutes, is repealed as follows:

35-9-111. Device registration - application - fees - expiration. (3) ~~In the event that a cease-and-desist order has been issued for the distribution of an unregistered device pursuant to section 35-9-121, the applicant shall pay, in addition to the application fee, a penalty fee not to exceed one hundred twenty-five dollars, in addition to any other penalty or sum assessed pursuant to this article.~~

SECTION 9. 35-9-111 (4), Colorado Revised Statutes, is amended to read:

35-9-111. Device registration - application - fees - expiration - repeal. (4) (a) (I) Registration of a device shall expire on December 31 of each year.

(II) THIS PARAGRAPH (a) IS REPEALED, EFFECTIVE JANUARY 1, 2011.

(b) ON AND AFTER JANUARY 1, 2011, REGISTRATION OF A DEVICE SHALL EXPIRE EACH YEAR ON A DATE SPECIFIED BY THE COMMISSIONER BY RULE.

SECTION 10. 35-9-112 (1) and (2), Colorado Revised Statutes, are amended to read:

35-9-112. Renewal of pesticide and device registration. (1) A registrant of either a pesticide or a device shall submit a renewal application in the form and manner designated by the commissioner on or before the ~~first working day of January for the year of renewal~~ EXPIRATION DATE OF THE REGISTRATION and shall

pay a renewal fee in an amount determined by the commissioner.

(2) If ~~any~~ AN application for renewal of a pesticide or device registration is not ~~postmarked~~ RECEIVED on or before the ~~first day of March of the renewal year~~ EXPIRATION DATE OF THE REGISTRATION, the registration shall expire. An expired registration may be renewed within two years ~~of~~ AFTER the ~~registration~~ EXPIRATION date OF THE REGISTRATION upon payment of all late fees and any other penalties or sums assessed pursuant to this article, if the applicant satisfies the commissioner that the requirements of section 35-9-107 have been met.

SECTION 11. 35-9-116 (2) and (3), Colorado Revised Statutes, are amended to read:

35-9-116. Renewal of pesticide dealer license. (2) If the application for renewal of any pesticide dealer license is not ~~postmarked~~ RECEIVED on or before the first working day of January for the year of renewal, a penalty fee of ten percent of the license fee shall be assessed and added to the renewal fee. No license shall be renewed until the total fee is paid.

(3) If ~~any~~ A pesticide dealer license renewal application is not received by February 1 of the renewal year, the license shall ~~be automatically revoked~~ NOT BE RENEWED AND THE DEALER MUST APPLY FOR A NEW LICENSE.

SECTION 12. 35-9-117, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

35-9-117. Dealer and refiller records and reports. (4) REFILLERS SHALL KEEP AND MAINTAIN RECORDS IN THE FORM AND MANNER SPECIFIED BY THE COMMISSIONER BY RULE.

SECTION 13. Article 9 of title 35, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

35-9-117.5. Refillable container residue removal requirements. A REFILLER SHALL COMPLY WITH REFILLABLE CONTAINER RESIDUE REMOVAL REQUIREMENTS ESTABLISHED BY THE COMMISSIONER BY RULE.

SECTION 14. The introductory portion to 35-9-118 (2) and 35-9-118 (2) (b), Colorado Revised Statutes, are amended to read:

35-9-118. Powers and duties of the commissioner. (2) The commissioner is authorized to adopt all reasonable rules ~~and regulations~~ for the administration and enforcement of this article, including, but not limited to:

(b) Determining that certain pesticides are highly toxic to people; except that, in making this determination, the commissioner shall be guided by the ~~definition of highly toxic as~~ CRITERIA set forth in 40 CFR ~~156.10~~ 156.62, as amended;

SECTION 15. 35-9-120 (1) (j) and (3), Colorado Revised Statutes, are amended, and the said 35-9-120 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

35-9-120. Prohibited acts. (1) It is unlawful and a violation of this article for any person:

(j) To impersonate any state, county, or city inspector or official; ~~or~~

(j.5) TO MAKE A FALSE STATEMENT IN ANY INVOICE, RECORD, REPORT, OR APPLICATION REQUIRED UNDER THIS ARTICLE OR ANY RULE PROMULGATED UNDER THIS ARTICLE; OR

(3) Any violation of paragraph (a), (c), (f), or (g) of subsection (1) of this section ~~or paragraph (f) of subsection (2) of this section~~ is a deceptive trade practice and is subject to ~~the provisions of the "Colorado Consumer Protection Act", article 1 of title 6, C.R.S.~~

SECTION 16. 35-9-120, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

35-9-120. Prohibited acts. (2.5) IT IS UNLAWFUL AND A VIOLATION OF THIS ARTICLE FOR ANY REFILLER:

(a) TO FAIL TO MAINTAIN ANY RECORDS OR REPORTS REQUIRED UNDER THIS ARTICLE OR ANY RULE PROMULGATED UNDER THIS ARTICLE;

(b) TO MAKE A FALSE STATEMENT OF FACT IN ANY RECORD OR REPORT REQUIRED BY THIS ARTICLE OR ANY RULE PROMULGATED UNDER THIS ARTICLE; OR

(c) TO FAIL TO CLEAN A REFILLABLE CONTAINER IN ACCORDANCE WITH RESIDUE REMOVAL PROCEDURES SPECIFIED BY THE COMMISSIONER BY RULE.

SECTION 17. Specified effective date - applicability. This act shall take effect July 1, 2010, and shall apply to conduct occurring on or after said date.

SECTION 18. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 7, 2010