

First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 23-0327.01 Jennifer Berman x3286

SENATE BILL 23-192

SENATE SPONSORSHIP

Priola and Roberts, Marchman, Pelton B., Pelton R., Simpson, Cutter, Jaquez Lewis

HOUSE SPONSORSHIP

Kipp and McLachlan, Amabile, Bird, Boesenecker, Brown, Joseph, Lindsay, Lukens, Martinez, McCluskie, Ricks, Snyder, Valdez

Senate Committees

Agriculture & Natural Resources
Appropriations

House Committees

Agriculture, Water & Natural Resources
Appropriations

HOUSE
3rd Reading Unamended
April 29, 2023

A BILL FOR AN ACT

101 **CONCERNING THE CONTINUATION OF THE "PESTICIDE APPLICATORS'**
102 **ACT", AND, IN CONNECTION THEREWITH, IMPLEMENTING**
103 **RECOMMENDATIONS CONTAINED IN THE 2022 SUNSET REPORT**
104 **BY THE DEPARTMENT OF REGULATORY AGENCIES REGARDING**
105 **THE ACT, AND MAKING AN APPROPRIATION.**

HOUSE
2nd Reading Unamended
April 26, 2023

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/>.)

SENATE
3rd Reading Unamended
April 17, 2023

Sunset Process - Senate Agriculture and Natural Resources Committee. The bill implements some of the recommendations of the

SENATE
Amended 2nd Reading
April 14, 2023

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.

department of regulatory agencies, as contained in the department's sunset review of the "Pesticide Applicators' Act" (act), as follows:

- **Sections 1 and 2** of the bill continue the act for 11 years, until September 1, 2034;
- **Section 3** updates the statutory definition of "use" to align with the federal definition adopted by the federal environmental protection agency;
- **Section 4** increases the maximum civil penalty for a violation of the act from \$1,000 to \$2,500 for the first violation, which results in the possibility of a maximum civil penalty of \$5,000 for a second violation;
- **Section 5** requires that money collected for civil penalties imposed under the act be transferred to the general fund;
- **Section 6** requires the commissioner of agriculture (commissioner) to publish and periodically update information on the department of agriculture's website about pesticide applicators' licensing and registration;
- **Section 7** requires the commissioner to establish an online complaint process;
- **Section 8** limits the number of terms that members of the advisory committee may serve to 2 terms, but allows a member representing the Colorado state university agricultural experiment station or extension service (CSU) or the Colorado department of public health and environment (CDPHE) to serve on the advisory committee for unlimited terms during the duration of the member's employment with CSU or CDPHE; and
- **Sections 9 to 11** place language in statutes governing local governments that mirrors the language in the act requiring a local government that adopts an ordinance or resolution about pesticides to submit information to the commissioner about the ordinance or resolution.

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

2 **SECTION 1.** In Colorado Revised Statutes, 24-34-104, **repeal**
3 (24)(a)(I); and **add** (35)(a)(V) as follows:

4 **24-34-104. General assembly review of regulatory agencies**
5 **and functions for repeal, continuation, or reestablishment - legislative**
6 **declaration - repeal.** (24) (a) The following agencies, functions, or both,
7 are scheduled for repeal on September 1, 2023:

1 (I) ~~The regulation by the commissioner of agriculture of the~~
2 ~~application of pesticides in accordance with article 10 of title 35, C.R.S.;~~

3 (35) (a) The following agencies, functions, or both, are scheduled
4 for repeal on September 1, 2034:

5 (V) THE REGULATION OF THE APPLICATION OF PESTICIDES BY THE
6 COMMISSIONER OF AGRICULTURE IN ACCORDANCE WITH ARTICLE 10 OF
7 TITLE 35.

8 **SECTION 2.** In Colorado Revised Statutes, **amend** 35-10-128 as
9 follows:

10 **35-10-128. Repeal of article - review of functions.** Effective
11 ~~September 1, 2023~~, This article 10 is repealed, ~~Prior to~~ EFFECTIVE
12 SEPTEMBER 1, 2034. BEFORE the repeal, THIS ARTICLE 10 IS SCHEDULED
13 FOR REVIEW IN ACCORDANCE WITH SECTION 24-34-104. AS PART OF ITS
14 REVIEW, the department of regulatory agencies shall ~~review the regulation~~
15 ~~by the commissioner of the application of pesticides pursuant to this~~
16 ~~article 10 as provided for in section 24-34-104, C.R.S., and shall report~~
17 on the extent of local regulation of pesticides pursuant to section
18 31-15-707 (1)(b) ~~C.R.S.~~, or under the police power of any political
19 subdivision of the state.

20 **SECTION 3.** In Colorado Revised Statutes, 35-10-103, **amend**
21 the introductory portion and (18) as follows:

22 **35-10-103. Definitions.** As used in this ~~article~~ ARTICLE 10, unless
23 the context otherwise requires:

24 (18) "Use" means: ~~all aspects of the handling of pesticides,~~
25 ~~including but not limited to the mixing, loading, application or~~
26 ~~administration, spill control, and disposal of a pesticide or its container.~~

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- (a) PRE-APPLICATION ACTIVITIES INVOLVING MIXING AND LOADING A PESTICIDE;
- (b) APPLYING THE PESTICIDE, INCLUDING SUPERVISING THE USE OF A PESTICIDE BY A NONCERTIFIED APPLICATOR; AND
- (c) OTHER PESTICIDE-RELATED ACTIVITIES, INCLUDING:
 - (I) TRANSPORTING OR STORING PESTICIDE CONTAINERS THAT HAVE BEEN OPENED;
 - (II) CLEANING EQUIPMENT; AND
 - (III) DISPOSING OF EXCESS PESTICIDES, SPRAY MIX, EQUIPMENT WASH WATER, PESTICIDE CONTAINERS, AND OTHER PESTICIDE-CONTAINING MATERIALS.

SECTION 4. In Colorado Revised Statutes, 35-10-112, **amend** (1)(a) and (1)(c)(I)(A); and add (1)(c)(III) and (1)(f) as follows:

35-10-112. Notification requirements - registry of pesticide-sensitive persons - preemption - rules. (1) (a) (I) The commissioner shall promulgate rules for the establishment of a registry of pesticide-sensitive persons to be maintained by the department. Pesticide-sensitive persons may apply to be placed on the registry if they can provide proof of medical justification by a physician licensed in Colorado in the form and manner prescribed by the commissioner. TO REMAIN ON THE REGISTRY, A PESTICIDE-SENSITIVE PERSON MUST UPDATE the PERSON'S proof of medical justification ~~shall be updated~~ every two years. The DEPARTMENT SHALL UPDATE THE registry ~~shall be updated~~ at least annually, and MAKE the published registry ~~shall be made~~ readily accessible, in a form and manner prescribed by the commissioner, to all commercial, registered limited commercial, and registered public

1 applicators on record with the commissioner.

2 (II) IN APPLYING TO BE PLACED ON THE REGISTRY, A
3 PESTICIDE-SENSITIVE PERSON MAY LIST A PRINCIPAL:

4 (A) RESIDENTIAL ADDRESS;

5 (B) EMPLOYMENT ADDRESS; AND

6 (C) SCHOOL ADDRESS.

7 (c) (I) A commercial, registered limited commercial, or registered
8 public applicator, prior to applying a pesticide in any turf or ornamental
9 category, shall take reasonable actions to give notice of the date and
10 approximate time of any such pesticide application, prior to the
11 application, to any pesticide-sensitive person whose name is on the
12 published registry and:

13 (A) Who ~~resides on~~ HAS LISTED the property to be treated AS THE
14 PERSON'S PRINCIPAL RESIDENTIAL, EMPLOYMENT, OR SCHOOL ADDRESS
15 PURSUANT TO SUBSECTION (1)(a)(II) OF THIS SECTION;

16 (III) IN NOTIFYING A PESTICIDE-SENSITIVE PERSON PURSUANT TO
17 THIS SECTION, A COMMERCIAL, REGISTERED LIMITED COMMERCIAL, OR
18 REGISTERED PUBLIC APPLICATOR MAY PROVIDE THE NOTICE
19 ELECTRONICALLY.

20 (f) (I) ON OR BEFORE JULY 1, 2024, THE DEPARTMENT SHALL
21 DEVELOP A SEARCHABLE DATABASE OF ALL PROPERTIES THAT ABUT, OR
22 ARE ENTIRELY LOCATED WITHIN TWO HUNDRED FIFTY FEET OF, ANY
23 RESIDENTIAL PROPERTY LISTED IN THE REGISTRY OF PESTICIDE-SENSITIVE
24 PERSONS. IF A PROPERTY IS ONLY PARTIALLY LOCATED WITHIN TWO
25 HUNDRED FIFTY FEET OF A RESIDENTIAL PROPERTY LISTED IN THE
26 REGISTRY, AND DOES NOT ABUT THE RESIDENTIAL PROPERTY, THE
27 DEPARTMENT SHALL NOT INCLUDE THE PROPERTY IN THE SEARCHABLE

1 DATABASE.

2 (II) WHEN DEVELOPING THE SEARCHABLE DATABASE PURSUANT
3 TO THIS SUBSECTION (1)(f), THE DEPARTMENT MUST:

4 (A) THROUGH THE COMMISSIONER, ADOPT RULES REQUIRING A
5 COMMERCIAL, REGISTERED LIMITED COMMERCIAL, OR REGISTERED PUBLIC
6 APPLICATOR TO PROVIDE NOTICE TO A PESTICIDE-SENSITIVE PERSON IF THE
7 COMMERCIAL, REGISTERED LIMITED COMMERCIAL, OR REGISTERED PUBLIC
8 APPLICATOR TREATS A PROPERTY THAT IS LISTED IN THE SEARCHABLE
9 DATABASE AS ABUTTING, OR BEING ENTIRELY LOCATED WITHIN TWO
10 HUNDRED FIFTY FEET OF, THE PESTICIDE SENSITIVE PERSON'S LISTED
11 RESIDENTIAL PROPERTY. A COMMERCIAL, REGISTERED LIMITED
12 COMMERCIAL, OR REGISTERED PUBLIC APPLICATOR IS NOT REQUIRED TO
13 PROVIDE NOTICE PURSUANT TO THIS SUBSECTION (1)(f)(II)(A) UNLESS AND
14 UNTIL THE COMMISSIONER ADOPTS RULES PURSUANT TO THIS SUBSECTION
15 (1)(f)(II)(A).

16 (B) PERIODICALLY UPDATE THE SEARCHABLE DATABASE AS
17 NEEDED; AND

18 (C) PROVIDE ACCESS TO THE SEARCHABLE DATABASE TO ALL
19 COMMERCIAL, REGISTERED LIMITED COMMERCIAL, AND REGISTERED
20 PUBLIC APPLICATORS.

21 (III) IT IS AN AFFIRMATIVE DEFENSE TO AN ALLEGATION THAT A
22 COMMERCIAL, REGISTERED LIMITED COMMERCIAL, OR REGISTERED PUBLIC
23 APPLICATOR VIOLATED RULES ADOPTED PURSUANT TO SUBSECTION
24 (1)(f)(II)(A) OF THIS SECTION IF A FAILURE TO NOTIFY A
25 PESTICIDE-SENSITIVE PERSON OF THE TREATMENT OF A PROPERTY THAT
26 ABUTS, OR IS LOCATED ENTIRELY WITHIN TWO HUNDRED FIFTY FEET OF,
27 THE PESTICIDE-SENSITIVE PERSON'S LISTED RESIDENTIAL PROPERTY

1 RESULTED FROM THE FACT THAT THE TREATED PROPERTY WAS NOT LISTED
2 IN THE SEARCHABLE DATABASE AT THE TIME OF THE TREATMENT.

3 **SECTION 5.** In Colorado Revised Statutes, 35-10-122, **amend**
4 (1) as follows:

5 **35-10-122. Civil penalties.** (1) Any person who violates ~~any~~
6 ~~provision of this article or any rule or regulation~~ THIS ARTICLE 10 OR ANY
7 RULE adopted pursuant to this ~~article~~ ARTICLE 10 is subject to a civil
8 penalty, as determined by the commissioner or a court of competent
9 jurisdiction. The maximum penalty ~~shall not exceed one~~ IS TWO thousand
10 FIVE HUNDRED dollars per violation; except that ~~such~~ THE penalty may be
11 doubled if it is determined, after notice and an opportunity for hearing,
12 that the person has violated the provision OR rule ~~or regulation~~ for the
13 second time.

14 **SECTION 6.** In Colorado Revised Statutes, **amend** 35-10-126 as
15 follows:

16 **35-10-126. Transfer of money to plant health, pest control,**
17 **and environmental protection cash fund - fees.** (1) All fees ~~and civil~~
18 ~~fees~~ collected pursuant to this ~~article~~ ARTICLE 10 shall be transmitted to
19 the state treasurer, who shall credit the ~~same~~ MONEY to the plant health,
20 pest control, and environmental protection cash fund created in section
21 35-1-106.3.

22 (2) ALL CIVIL PENALTIES COLLECTED PURSUANT TO SECTION
23 35-10-122 SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL
24 CREDIT THE MONEY TO THE GENERAL FUND.

25 **SECTION 7.** In Colorado Revised Statutes, 35-10-124, **add** (3)
26 as follows:

27 **35-10-124. Information - use and handling of pesticides -**

1 **enforcement action - credentialing information - definition.**

2 (3) (a) THE COMMISSIONER SHALL:

3 (I) PUBLISH AND PERIODICALLY UPDATE INFORMATION ON THE
4 DEPARTMENT'S WEBSITE INFORMING CONSUMERS ABOUT WHICH PESTICIDE
5 APPLICATORS ARE CREDENTIALLED IN COMPLIANCE WITH THIS ARTICLE 10;
6 AND

7 (II) PROVIDE THE CREDENTIALING INFORMATION SPECIFIED IN
8 SUBSECTION (3)(a)(I) OF THIS SECTION IN A MANNER THAT MEMBERS OF
9 THE PUBLIC MAY EASILY ACCESS AND SEARCH ON THE WEBSITE.

10 (b) AS USED IN THIS SUBSECTION (3), "CREDENTIALLED" MEANS
11 HAVING A VALID LICENSE OR REGISTRATION ISSUED PURSUANT TO THIS
12 ARTICLE 10.

13 **SECTION 8.** In Colorado Revised Statutes, 35-10-118, **add** (9.7)
14 as follows:

15 **35-10-118. Powers and duties of the commissioner.**

16 (9.7) (a) THE COMMISSIONER SHALL:

17 (I) DEVELOP AN ONLINE COMPLAINT PROCESS ON THE
18 DEPARTMENT'S WEBSITE THAT ALLOWS MEMBERS OF THE PUBLIC TO FILL
19 OUT AND SUBMIT A COMPLAINT FORM ONLINE; AND

20 (II) PROVIDE THE COMPLAINT FORM IN A MANNER THAT IS:

21 (A) EASILY ACCESSIBLE ON THE DEPARTMENT'S WEBSITE;

22 (B) USER-FRIENDLY;

23 (C) PRINTABLE; AND

24 (D) ACCOMPANIED BY EASY-TO-FOLLOW INSTRUCTIONS.

25 (b) THE COMPLAINT FORM OR THE INSTRUCTIONS ACCOMPANYING
26 THE COMPLAINT FORM MUST INCLUDE THE DEPARTMENT'S MAILING
27 ADDRESS SO THAT A MEMBER OF THE PUBLIC MAY CHOOSE TO PRINT AND

1 SUBMIT THE COMPLAINT FORM BY MAIL INSTEAD OF ELECTRONICALLY.

2 **SECTION 9.** In Colorado Revised Statutes, 35-10-125, **amend**
3 (4) as follows:

4 **35-10-125. Advisory committee.** (4) ~~The appointment of the~~
5 ~~formulator, the commercial applicator engaged in the control of~~
6 ~~agricultural crop pests, and one of the representatives from a registered~~
7 ~~public applicator shall expire on January 1, 1991; and the appointment of~~
8 ~~the commercial applicator engaged in the control of turf or ornamental~~
9 ~~pests, the representative from the general public who is actively engaged~~
10 ~~in agricultural production, the qualified supervisor employed by a~~
11 ~~registered limited commercial applicator, and the representative from the~~
12 ~~department of health shall expire on January 1, 1992. The initial~~
13 ~~appointment of all other members shall be for a term of three years.~~
14 ~~Thereafter, the appointment of~~ Each member ~~to~~ OF the committee ~~shall be~~
15 ~~for~~ SERVES a term of three years AND MAY SERVE A MAXIMUM OF TWO
16 CONSECUTIVE TERMS ON THE COMMITTEE; EXCEPT THAT A COMMITTEE
17 MEMBER APPOINTED PURSUANT TO SUBSECTION (2)(g) OR (2)(h) OF THIS
18 SECTION MAY SERVE UNLIMITED TERMS FOR THE DURATION OF THE
19 COMMITTEE MEMBER'S EMPLOYMENT BY THE AGENCY THAT THE
20 COMMITTEE MEMBER REPRESENTS.

21 **SECTION 10.** In Colorado Revised Statutes, **add** 29-20-110 as
22 follows:

23 **29-20-110. Local government regulation of pesticide use -**
24 **definitions.** (1) A LOCAL GOVERNMENT THAT ADOPTS AN ORDINANCE
25 THAT CONCERNS PESTICIDES, INCLUDING AN ORDINANCE ADOPTED
26 PURSUANT TO SECTION 31-15-707 (1)(b), SHALL FILE THE FOLLOWING
27 WITH THE COMMISSIONER OF AGRICULTURE IN ACCORDANCE WITH SECTION

1 35-10-112.5 (4):

2 (a) A CERTIFIED COPY OF THE ORDINANCE ___ ; AND

3 (b) A MAP OR LEGAL DESCRIPTION OF THE GEOGRAPHIC AREA THAT
4 THE LOCAL GOVERNMENT INTENDS TO REGULATE UNDER THE ORDINANCE
5 ___ .

6 (2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
7 REQUIRES:

8 (a) "COMMISSIONER OF AGRICULTURE" MEANS THE COMMISSIONER
9 OF THE DEPARTMENT OF AGRICULTURE APPOINTED PURSUANT TO SECTION
10 35-1-107 (1) OR THE COMMISSIONER'S DESIGNEE.

11 (b) "PESTICIDE" HAS THE MEANING SET FORTH IN SECTION
12 35-10-103 (10).

13 **SECTION 11.** In Colorado Revised Statutes, **add** 30-11-131 as
14 follows:

15 **30-11-131. Regulation of pesticide use - definitions.** (1) A
16 BOARD OF COUNTY COMMISSIONERS THAT ADOPTS AN ORDINANCE THAT
17 CONCERNS PESTICIDES SHALL FILE THE FOLLOWING WITH THE
18 COMMISSIONER OF AGRICULTURE IN ACCORDANCE WITH SECTION
19 35-10-112.5 (4):

20 (a) A CERTIFIED COPY OF THE ORDINANCE ___ ; AND

21 (b) A MAP OR LEGAL DESCRIPTION OF THE GEOGRAPHIC AREA THAT
22 THE BOARD OF COUNTY COMMISSIONERS INTENDS TO REGULATE UNDER
23 THE ORDINANCE ___ .

24 (2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
25 REQUIRES:

26 (a) "COMMISSIONER OF AGRICULTURE" MEANS THE COMMISSIONER
27 OF THE DEPARTMENT OF AGRICULTURE APPOINTED PURSUANT TO SECTION

1 35-1-107 (1) OR THE COMMISSIONER'S DESIGNEE.

2 (b) "PESTICIDE" HAS THE MEANING SET FORTH IN SECTION
3 35-10-103 (10).

4 **SECTION 12.** In Colorado Revised Statutes, **add** 31-15-905 as
5 follows:

6 **31-15-905. Regulation of pesticide use - definitions.** (1) THE
7 GOVERNING BODY OF A MUNICIPALITY THAT ADOPTS AN ORDINANCE THAT
8 CONCERNS PESTICIDES, INCLUDING AN ORDINANCE ADOPTED PURSUANT TO
9 SECTION 31-15-707 (1)(b), SHALL FILE THE FOLLOWING WITH THE
10 COMMISSIONER OF AGRICULTURE IN ACCORDANCE WITH SECTION
11 35-10-112.5 (4):

12 (a) A CERTIFIED COPY OF THE ORDINANCE ___ ; AND

13 (b) A MAP OR LEGAL DESCRIPTION OF THE GEOGRAPHIC AREA THAT
14 THE GOVERNING BODY INTENDS TO REGULATE UNDER THE ORDINANCE ___
15 .

16 (2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
17 REQUIRES:

18 (a) "COMMISSIONER OF AGRICULTURE" MEANS THE COMMISSIONER
19 OF THE DEPARTMENT OF AGRICULTURE APPOINTED PURSUANT TO SECTION
20 35-1-107 (1) OR THE COMMISSIONER'S DESIGNEE.

21 (b) "PESTICIDE" HAS THE MEANING SET FORTH IN SECTION
22 35-10-103 (10).

23 **SECTION 13. Appropriation.** (1) For the 2023-24 state fiscal
24 year, \$72,150 is appropriated to the department of agriculture. This
25 appropriation is from the plant health, pest control, and environmental
26 protection cash fund created in section 35-1-106.3 (1), C.R.S. To
27 implement this act, the department may use this appropriation for the

1 purchase of information technology services.

2 (2) For the 2023-24 state fiscal year, \$72,150 is appropriated to
3 the office of the governor for use by the office of information technology.
4 This appropriation is from reappropriated funds received from the
5 department of agriculture under subsection (1) of this section. To
6 implement this act, the office may use this appropriation to provide
7 information technology services for the department of agriculture.

8 **SECTION 14. Act subject to petition - effective date.** This act
9 takes effect at 12:01 a.m. on the day following the expiration of the
10 ninety-day period after final adjournment of the general assembly; except
11 that, if a referendum petition is filed pursuant to section 1 (3) of article V
12 of the state constitution against this act or an item, section, or part of this
13 act within such period, then the act, item, section, or part will not take
14 effect unless approved by the people at the general election to be held in
15 November 2024 and, in such case, will take effect on the date of the
16 official declaration of the vote thereon by the governor.