

Department of Legislative Services
 Maryland General Assembly
 2016 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 198 (Senator Nathan-Pulliam, *et al.*)
 Education, Health, and Environmental Affairs

**Neonicotinoid Pesticides - Labeling, Signage, and Restrictions on Sales and Use
 (Pollinator Protection Act of 2016)**

This bill requires any seed, plant material, nursery stock, annual plant, bedding plant, or other plant that is sold at retail in the State and that has been treated with a neonicotinoid pesticide to bear a label with, or be in close proximity to a sign that prominently displays, a specified warning statement. The bill also establishes restrictions, effective January 1, 2017, on the sale and use of neonicotinoid pesticides.

Fiscal Summary

State Effect: General fund expenditures increase by \$198,500 in FY 2017 for the Maryland Department of Agriculture (MDA) to hire three inspectors to enforce the bill. Future year estimates reflect annualization and inflation. Revenues are not materially affected.

(in dollars)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	198,500	172,800	173,500	180,600	188,000
Net Effect	(\$198,500)	(\$172,800)	(\$173,500)	(\$180,600)	(\$188,000)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Bill Summary: Any seed, plant material, nursery stock, annual plant, bedding plant, or other plant that is sold at retail in the State and that has been treated with a neonicotinoid pesticide must bear a label with, or be in close proximity to a sign that prominently displays, the following statement:

“WARNING: This product has been treated with neonicotinoid pesticides, found to harm or impair nontarget organisms, including bees and other pollinators, birds, earthworms, and aquatic invertebrates.”

Beginning January 1, 2017, a person may not sell at retail in the State a neonicotinoid pesticide unless the person also sells a restricted use pesticide.

Beginning January 1, 2017, a person also may not use a neonicotinoid pesticide unless the person is (1) a certified applicator; (2) a farmer who uses the pesticide for agricultural purposes, including crop production, livestock, poultry, and noncrop agricultural fields; or (3) a veterinarian.

The restrictions that begin on January 1, 2017, do not apply to a flea or tick collar that contains a neonicotinoid pesticide.

Current Law/Background:

Regulation of Pesticides

The Secretary of Agriculture is required to take various actions to regulate pesticide use, including (1) adopting rules and regulations governing the storage, sale, distribution, exchange, use, and disposal of any pesticide and its container and (2) prescribing, when necessary, the time and conditions under which a pesticide may be sold, distributed, exchanged, or used in different areas of the State.

Under the Federal Insecticide, Fungicide, and Rodenticide Act and a cooperative agreement with the U.S. Environmental Protection Agency (EPA), Maryland has primary enforcement responsibility for violations of federal pesticide laws. To be sold, distributed, or used in Maryland, a pesticide must be registered by both MDA and EPA. Each pesticide registration must be renewed annually. MDA may refuse to register, or suspend or cancel the registration of, any pesticide for noncompliance with registration or labeling requirements.

Specified pesticides that have greater potential for causing harm are designated as restricted-use pesticides. Under MDA regulations, a “restricted-use pesticide” is a

pesticide classified as such by Title 5 of the Agriculture Article, the federal government, or the Maryland Secretary of Agriculture. Under Title 5 of the Agriculture Article, cyclodiene termiticides are classified as restricted-use pesticides, although MDA advises that those pesticides are no longer used. MDA indicates that the EPA list of restricted-use pesticides is effectively the list of restricted-use pesticides for purposes of Maryland's regulation of restricted-use pesticides. A "certified applicator" is certified by MDA as having demonstrated knowledge of pest control.

A person who sells or distributes restricted-use pesticides (1) must hold a dealer permit issued by MDA; (2) must maintain specified records on the sale or distribution of each restricted-use pesticide; and (3) may not sell or distribute a restricted-use pesticide to any person other than a permitted dealer or a certified applicator or that person's authorized representative. A person may not use a restricted-use pesticide unless that person is a certified applicator or is a person working under the supervision of a certified applicator.

Neonicotinoid Pesticides

Neonicotinoid pesticides, a class of insecticides which affects the central nervous system of insects, are commonly used globally and in the State. Concern has been raised, however, about their impact on nontarget organisms, including bees and other pollinators, and the environment. Neonicotinoid pesticides are being reviewed by EPA as part of a pesticide registration review program intended to ensure that registered pesticides continue to not have unreasonable adverse effects. Based on concern about the potential effects of neonicotinoid pesticides on nontarget arthropods, including pollinators, EPA also recently implemented a requirement that products that contain any of four types of neonicotinoid pesticides, and that are for outdoor application to foliage, be labeled with specific terms that highlight measures necessary to better protect pollinators. Neonicotinoid pesticide active ingredients are classified by EPA as general-use pesticides, which may be purchased at a retail outlet and used by the general public.

State Expenditures: General fund expenditures increase by \$198,462 in fiscal 2017, which accounts for the bill's October 1, 2016 effective date. This estimate reflects the cost of hiring three inspectors to inspect nurseries and plant retail operations to ensure proper labeling or display of signs as well as retail operations that sell pesticides to ensure that neonicotinoid pesticides are only sold by persons that also sell restricted-use pesticides. Many facilities that need to be visited to properly enforce the bill are not currently visited by MDA inspectors in enforcing the existing State pesticide regulation and plant disease control laws. The estimate includes salaries, fringe benefits, one-time start-up costs (including outreach mailings), and ongoing operating expenses. The estimate assumes that:

- enforcement of the labeling requirement is limited to inspections that involve observation of labeling of products or display of signs at nurseries and plant retail

operations and communication with owners regarding their pesticide applications and how they determine past use of neonicotinoid pesticides on plant products purchased from others;

- enforcement of the neonicotinoid pesticide sales restriction is limited to inspection of products offered for sale at retail operations and communication with owners of the operations; and
- enforcement of the use restrictions is limited to pursuit of any complaints received.

Positions	3
Salaries and Fringe Benefits	\$117,303
Vehicles	59,899
Other Operating Expenses	<u>21,260</u>
Total FY 2017 State Expenditures	\$198,462

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

If sampling and analysis of plant products not containing the required label or sign display is conducted as part of the enforcement of the bill, the increase in general fund expenditures is much more significant, including personnel costs for an additional chemist and laboratory technician in the State Chemist section of MDA to perform analyses of samples gathered by inspectors and a cost of at least \$400,000 for an additional mass spectrometry instrument to perform the analyses. Alternatively, samples could be sent to a third party for analysis for an up-front cost of \$15,000 to \$30,000 to develop an analysis method and approximately \$450 per sample.

Small Business Effect: Various small businesses are negatively impacted by the bill's requirements, including nurseries and plant retail operations, pest control businesses, and pesticide retail operations. Nurseries and plant retail operations must manage compliance with the bill's labeling/sign display requirement which may have cost and operational impacts. Any increase in business that pest control businesses experience due to the neonicotinoid pesticides being limited to application only by certified applicators is expected to be outweighed by the negative impact of noncertified employees of the business not being able to apply the pesticides. Retail operations that sell products containing neonicotinoid pesticides may experience a decrease in sales due to the bill's restrictions on the sale and use of neonicotinoid pesticides.

Additional Information

Prior Introductions: SB 163 of 2015 received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. Its cross file, SB 198/ Page 4

HB 605, received a hearing in the House Environment and Transportation Committee, but no further action was taken.

Cross File: HB 211 (Delegate Healey, *et al.*) - Environment and Transportation.

Information Source(s): Maryland Department of Agriculture, Department of Natural Resources, U.S. Environmental Protection Agency, Maryland Delaware Agribusiness Association, Maryland State Pest Control Association, Department of Legislative Services

Fiscal Note History: First Reader - February 9, 2016

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