

## CHAPTER 350

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**AGRICULTURE**

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## SENATE BILL 23-192

BY SENATOR(S) Priola and Roberts, Marchman, Pelton B., Pelton R., Simpson, Cutter, Jaquez Lewis;  
also REPRESENTATIVE(S) Kipp and McLachlan, Amabile, Bird, Boesenecker, Brown, Joseph, Lindsay, Lukens, Martinez,  
Ricks, Snyder, Valdez, McCluskie.

**AN ACT**

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

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

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

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

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

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

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

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

**35-10-128. Repeal of article - review of functions.** ~~Effective September 1, 2023; This article 10 is repealed, Prior to~~ **EFFECTIVE SEPTEMBER 1, 2034. BEFORE**

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*Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.*

the repeal, THIS ARTICLE 10 IS SCHEDULED FOR REVIEW IN ACCORDANCE WITH SECTION 24-34-104. AS PART OF ITS REVIEW, the department of regulatory agencies shall review the regulation by the commissioner of the application of pesticides pursuant to this article 10 as provided for in section 24-34-104, C.R.S., and shall report on the extent of local regulation of pesticides pursuant to section 31-15-707 (1)(b) C.R.S., or under the police power of any political subdivision of the state.

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

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

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

(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 applicators on record with the commissioner.

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

(A) RESIDENTIAL ADDRESS;

(B) EMPLOYMENT ADDRESS; AND

(C) SCHOOL ADDRESS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**35-10-124. Information - use and handling of pesticides - enforcement action - credentialing information - definition.** (3) (a) THE COMMISSIONER SHALL:

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

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

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

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

**35-10-118. Powers and duties of the commissioner.** (9.7) (a) THE COMMISSIONER SHALL:

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

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

- (A) EASILY ACCESSIBLE ON THE DEPARTMENT'S WEBSITE;
- (B) USER-FRIENDLY;
- (C) PRINTABLE; AND
- (D) ACCOMPANIED BY EASY-TO-FOLLOW INSTRUCTIONS.

(b) THE COMPLAINT FORM OR THE INSTRUCTIONS ACCOMPANYING THE COMPLAINT FORM MUST INCLUDE THE DEPARTMENT'S MAILING ADDRESS SO THAT A MEMBER OF THE PUBLIC MAY CHOOSE TO PRINT AND SUBMIT THE COMPLAINT FORM BY MAIL INSTEAD OF ELECTRONICALLY.

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

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

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

**29-20-110. Local government regulation of pesticide use - definitions.** (1) A LOCAL GOVERNMENT THAT ADOPTS AN ORDINANCE THAT CONCERNS PESTICIDES, INCLUDING AN ORDINANCE ADOPTED PURSUANT TO SECTION 31-15-707 (1)(b), SHALL FILE THE FOLLOWING WITH THE COMMISSIONER OF AGRICULTURE IN ACCORDANCE WITH SECTION 35-10-112.5 (4):

- (a) A CERTIFIED COPY OF THE ORDINANCE; AND
- (b) A MAP OR LEGAL DESCRIPTION OF THE GEOGRAPHIC AREA THAT THE LOCAL GOVERNMENT INTENDS TO REGULATE UNDER THE ORDINANCE.

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

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

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

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

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

(a) A CERTIFIED COPY OF THE ORDINANCE; AND

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

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

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

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

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

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

(a) A CERTIFIED COPY OF THE ORDINANCE; AND

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

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

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

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

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

(2) For the 2023-24 state fiscal year, \$72,150 is appropriated to the office of the governor for use by the office of information technology. This appropriation is from

reappropriated funds received from the department of agriculture under subsection (1) of this section. To implement this act, the office may use this appropriation to provide information technology services for the department of agriculture.

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

Approved: June 5, 2023