

# Research Department

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# Minnesota House of Representatives

June 4, 2014

TO: Representative Hansen

FROM: Colbey Sullivan

RE: 2014 pollinator laws

You asked for a compilation of the pollinator laws enacted this session. Most of the pollinator provisions were included in the omnibus supplemental budget act. The plant labeling law was enacted in a separate piece of legislation.

## **Laws 2014, ch. 312 (supplemental budget act)**

### *Compensation for acute pesticide poisoning of bees (formerly HF 2908)*

Authorizes the Minnesota Department of Agriculture (MDA) to award compensation to bee owners for dead bees and colony losses that MDA can positively attribute to acute pesticide poisoning. MDA can assemble a team of pollinator experts to assist in investigations and may compensate the experts up to \$100,000 per fiscal year from the Pesticide Regulatory Account. The Pesticide Regulatory Account contains the fees and penalties paid to MDA by pesticide manufacturers, distributors, and applicators.

If MDA cannot determine the pesticide applicator or the pesticide applicator is identified and found to have followed application instructions and restrictions on the product's label, MDA could compensate the bee owner from the Pesticide Regulatory Account. The appropriation for this purpose is limited to \$150,000 per fiscal year (Article 13, §§ 3-11).

Sec. 3. Minnesota Statutes 2012, section 18B.01, is amended by adding a subdivision to read:

Subd. 1c. **Apiary.** "Apiary" means a place where a collection of one or more hives or colonies of bees or the nuclei of bees are kept.

Sec. 4. Minnesota Statutes 2012, section 18B.01, is amended by adding a subdivision to read:

Subd. 2a. **Bee.** "Bee" means any stage of the common honeybee, *Apis mellifera* (L).

Sec. 5. Minnesota Statutes 2012, section 18B.01, is amended by adding a subdivision to read:

Subd. 2b. **Bee owner.** "Bee owner" means a person who owns an apiary.

Sec. 6. Minnesota Statutes 2012, section 18B.01, is amended by adding a subdivision to read:

Subd. 4c. **Colony.** "Colony" means the aggregate of worker bees, drones, the queen, and developing young bees living together as a family unit in a hive or other dwelling.

Sec. 7. Minnesota Statutes 2012, section 18B.01, is amended by adding a subdivision

to read:

Subd. 11a. **Hive.** "Hive" means a frame hive, box hive, box, barrel, log gum, skep, or any other receptacle or container, natural or artificial, or any part of one, which is used as domicile for bees.

Sec. 8. Minnesota Statutes 2012, section 18B.01, is amended by adding a subdivision to read:

Subd. 20a. **Pollinator.** "Pollinator" means an insect that pollinates flowers.

Sec. 9. Minnesota Statutes 2012, section 18B.03, is amended by adding a subdivision to read:

Subd. 4. **Pollinator enforcement.** The commissioner may take enforcement action under chapter 18D for a violation of this chapter, or any rule adopted under this chapter, that results in harm to pollinators, including but not limited to applying a pesticide in a manner inconsistent with the pesticide product's label or labeling and resulting in pollinator death or willfully applying pesticide in a manner inconsistent with the pesticide product's label or labeling. The commissioner must deposit any penalty collected under this subdivision in the pesticide regulatory account in section 18B.05.

Sec. 10. Minnesota Statutes 2012, section 18B.04, is amended to read:

**18B.04 PESTICIDE IMPACT ON ENVIRONMENT.**

(a) The commissioner shall:

- (1) determine the impact of pesticides on the environment, including the impacts on surface water and groundwater in this state;
- (2) develop best management practices involving pesticide distribution, storage, handling, use, and disposal; and
- (3) cooperate with and assist other state agencies and local governments to protect public health, pollinators, and the environment from harmful exposure to pesticides.

(b) The commissioner may assemble a group of experts under section 16C.10, subdivision 2, to consult in the investigation of pollinator deaths or illnesses. The group of experts may include representatives from local, state, and federal agencies; academia, including the University of Minnesota; the state pollinator bank; or other professionals as deemed necessary by the commissioner. The amount necessary for the purposes of this paragraph, not to exceed \$100,000 per fiscal year, is appropriated from the pesticide regulatory account in section 18B.05.

**Sec. 11. 18B.055 COMPENSATION FOR BEES KILLED BY PESTICIDE; APPROPRIATION.**

Subdivision 1. **Compensation required.** (a) The commissioner of agriculture must compensate a person for an acute pesticide poisoning resulting in the death of bees or loss of bee colonies owned by the person, provided:

- (1) the person who applied the pesticide cannot be determined;
- (2) the person who applied the pesticide did so in a manner consistent with the pesticide product's label or labeling; or
- (3) the person who applied the pesticide did so in a manner inconsistent with the pesticide product's label or labeling.

(b) Except as provided in this section, the bee owner is entitled to the fair market value of the dead bees and bee colonies losses as determined by the commissioner upon recommendation by academic experts and bee keepers. In any fiscal year, a bee owner must not be compensated for a claim that is less than \$100 or compensated more than \$20,000 for all eligible claims.

Subd. 2. **Applicator responsible.** In the event a person applies a pesticide in a manner inconsistent with the pesticide product's label or labeling requirements as approved by the commissioner and is determined to have caused the acute pesticide poisoning of bees, resulting in death or loss of a bee colony kept for commercial purposes, then the person so identified must bear the responsibility of restitution for the value of the bees to the owner. In these cases the commissioner must not provide compensation as provided in this section.

Subd. 3. **Claim form.** The bee owner must file a claim on forms provided by the commissioner and available on the Department of Agriculture's Web site.

Subd. 4. **Determination.** The commissioner must determine whether the death of the bees or loss of bee colonies was caused by an acute pesticide poisoning, whether the pesticide applicator can be determined, and whether the pesticide applicator applied the pesticide product in a manner consistent with the pesticide product's label or labeling.

Subd. 5. **Payments; denial of compensation.** (a) If the commissioner determines the bee death or loss of bee colony was caused by an acute pesticide poisoning and either the pesticide applicator cannot be determined or the pesticide applicator applied the pesticide product in a manner consistent with the pesticide product's label or labeling,

the commissioner may award compensation from the pesticide regulatory account. If the pesticide applicator can be determined and the applicator applied the pesticide product in a manner inconsistent with the product's label or labeling, the commissioner may collect a penalty from the pesticide applicator sufficient to compensate the bee owner for the fair market value of the dead bees and bee colonies losses, and must award the money to the bee owner.

(b) If the commissioner denies compensation claimed by a bee owner under this section, the commissioner must issue a written decision based upon the available evidence. The decision must include specification of the facts upon which the decision is based and the conclusions on the material issues of the claim. The commissioner must mail a copy of the decision to the bee owner.

(c) A decision to deny compensation claimed under this section is not subject to the contested case review procedures of chapter 14, but may be reviewed upon a trial de novo in a court in the county where the loss occurred. The decision of the court may be appealed as in other civil cases. Review in court may be obtained by filing a petition for review with the administrator of the court within 60 days following receipt of a decision under this section. Upon the filing of a petition, the administrator must mail a copy to the commissioner and set a time for hearing within 90 days of the filing.

Subd. 6. **Deduction from payment.** The commissioner must reduce payments made under this section by any compensation received by the bee owner for dead bees and bee colonies losses as proceeds from an insurance policy or from another source.

Subd. 7. **Appropriation.** The amount necessary to pay claims under this section, not to exceed \$150,000 per fiscal year, is appropriated from the pesticide regulatory account in section 18B.05.

**EFFECTIVE DATE.** This section is effective July 1, 2014, and applies to bee kills and bee colony losses attributable to acute pesticide poisoning that occur on or after that date.

### *Apiary program report*

Requires MDA to report by January 15, 2015 regarding reestablishment of the apiary program repealed by the legislature in 2006. The report must include, at a minimum, recommendations on (1) prevention of diseases and exotic pests; (2) sanitary inspection of apiaries, including notification of diseases, nuisances, and quarantines; (3) an apiary location registry, to facilitate agency response to pollinator deaths or illnesses and for pesticide applicators to be aware of apiaries to avoid impacts, including data practices and privacy protections; and (4) the public benefit of an apiary program and the fiscal costs associated with a program (Article 13, § 43).

#### Sec. 43. **APIARY PROGRAM.**

No later than January 15, 2015, the commissioner of agriculture shall report to the house of representatives and senate committees with jurisdiction over agriculture regarding re-establishing an apiary program. The report shall include, at a minimum, recommendations on (1) prevention of diseases and exotic pests; (2) sanitary inspection of apiaries, including notification of diseases, nuisances, and quarantines; (3) an apiary location registry, to facilitate agency response to pollinator deaths or illnesses and for pesticide applicators to be aware of apiaries to avoid impacts, including data practices and privacy protections; and (4) the public benefit of an apiary program and the fiscal costs associated with a program.

### *Minnesota zoo*

Establishes the Minnesota Zoo as an official state pollinator bank, as defined (Article 13, § 17).

Sec. 17. Minnesota Statutes 2012, section 85A.02, subdivision 2, is amended to read:

Subd. 2. **Zoological Garden.** The board shall acquire, construct, equip, operate and maintain the Minnesota Zoological Garden at a site in Dakota County legally described in Laws 1975, chapter 382, section 12. The Zoological Garden shall consist of adequate facilities and structures for the collection, habitation, preservation, care, exhibition, examination or study of wild and domestic animals, including, but not limited to mammals, birds, fish, amphibians, reptiles, crustaceans and mollusks. The board may provide such lands, buildings and equipment as it deems necessary for parking, transportation, entertainment, education or instruction of the public in connection with such Zoological Garden. The Zoological Garden is an official pollinator bank for the state

of Minnesota. For purposes of this subdivision, "pollinator bank" means a program to avert the extinction of pollinator species by cultivating insurance breeding populations.

### **Laws 2014, ch. 299 (plant labeling restrictions, H.F. 2798)**

Effective July 1, 2014, this act prohibits those who sell nursery plants from labeling or advertising a plant as beneficial to pollinators if the plant was treated with, and has a detectable level of, a systemic insecticide that has United States Environmental Protection Agency-required pollinator warning information on the insecticide product's label or labeling. The act also defines the term "pollinator lethal insecticide."

MDA's Plant Protection Division administers the state's nursery laws under the authority of Minnesota Statutes, chapters 18H and 18J, and will enforce this new law in a like manner.

Section 1. Minnesota Statutes 2012, section 18H.02, is amended by adding a subdivision to read:

Subd. 28a. **Pollinator lethal insecticide.** "Pollinator lethal insecticide" means an insecticide absorbed by a plant that makes the plant lethal to pollinators. Pollinator lethal insecticide includes, but is not limited to, the neonicotinoid class of insecticides that affect the central nervous system of pollinators and may cause pollinator paralysis or death.

Sec. 2. Minnesota Statutes 2012, section 18H.14, is amended to read:

#### **18H.14 LABELING AND ADVERTISING OF NURSERY STOCK.**

(a) Plants, plant materials, or nursery stock must not be labeled or advertised with false or misleading information including, but not limited to, scientific name, variety, place of origin, hardiness zone as defined by the United States Department of Agriculture, and growth habit.

(b) All nonhardy nursery stock as designated by the commissioner must be labeled "nonhardy" in Minnesota.

(c) A person may not offer for distribution plants, plant materials, or nursery stock, represented by some specific or special form of notation, including, but not limited to, "free from" or "grown free of," unless the plants are produced under a specific program approved by the commissioner to address the specific plant properties addressed in the special notation claim.

(d) Nursery stock collected from the wild state must be inspected and certified prior to sale and at the time of sale must be labeled "Collected from the Wild." The label must remain on each plant or clump of plants while it is offered for sale and during the distribution process. The collected stock may be grown in nursery rows at least two years, after which the plants may be sold without the labeling required by this paragraph.

(e) A person may not label or advertise an annual plant, bedding plant, or other plant, plant material, or nursery stock as beneficial to pollinators if the annual plant, bedding plant, plant material, or nursery stock has been treated with and has a detectable level of systemic insecticide that: (1) has a pollinator protection box on the label; or (2) has a pollinator, bee, or honey bee precautionary statement in the environmental hazards section of the insecticide product label. The commissioner shall enforce this paragraph as provided in chapter 18J.

**EFFECTIVE DATE.**This section is effective July 1, 2014.

CS/nh