

1 AN ACT relating to pesticide labeling.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔ SECTION 1. A NEW SECTION OF KRS CHAPTER 217 IS CREATED TO
4 READ AS FOLLOWS:

5 (1) Any pesticide registered for use with the Department of Agriculture, pursuant to
6 KRS 217.570, or the United States Environmental Protection Agency (EPA)
7 pursuant to the FIFRA as defined in Section 2 of this Act, and any regulations
8 promulgated thereunder, including but not limited to 40 C.F.R. pt. 156, that
9 displays a label that has been approved by the EPA in registering the pesticide or
10 is consistent with the most recent human health risk assessment performed under
11 the FIFRA shall be deemed a sufficient warning label for the purposes of an
12 action commenced under any provision of state law concerning the duty to warn
13 or label, or any other common law duty to warn.

14 (2) The provisions of this section shall not:

15 (a) Apply when a determination has been made by the EPA that a
16 manufacturer knowingly withheld, concealed, misrepresented, or destroyed
17 material information regarding the human health risks of such pesticide in
18 order to obtain or maintain approval of its label by the EPA; or
19 (b) Be interpreted to prohibit a cause of action based on any other provision or
20 doctrine of state law.

21 ➔ Section 2. KRS 217.544 is amended to read as follows:

22 As used in this chapter, unless the context requires otherwise:

23 (1) "Active ingredient" means any ingredient which will prevent, destroy, repel,
24 control, or mitigate pests, or which will act as a plant regulator, defoliant, or
25 desiccant, or as a functioning agent in a spray adjuvant;
26 (2) "Adulterated" shall apply to any pesticide if its strength or purity falls below the
27 professed standard or quality as expressed on its labeling or under which it is sold,

1 or if any substance has been substituted wholly or in part for the pesticide, or if any
2 valuable constituent of the pesticide has been wholly or in part abstracted;

3 (3) "Animal" means all vertebrate and invertebrate species, including but not limited to
4 man and other mammals, birds, fish, and shellfish;

5 (4) "Antidote" means the most practical immediate treatment in case of poisoning and
6 includes first-aid treatment;

7 (5) "Board" means the Pesticide Advisory Board;

8 (6) "Defoliant" means any substance or mixture of substances intended to cause the
9 leaves or foliage to drop from a plant, with or without causing abscission;

10 (7) "Desiccant" means any substance or mixture of substances intended to artificially
11 accelerate the drying of plant tissue;

12 (8) "Device" means any instrument or contrivance other than a firearm which is
13 intended for trapping, destroying, repelling, or mitigating any pest or any other
14 form of plant or animal life other than man and other bacteria, virus, or other
15 microorganisms on or in living man or other living animals; but not including
16 equipment used for the application of pesticides when sold separately therefrom;

17 (9) "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver for
18 shipment, or receive and, having received, deliver, or offer to deliver pesticides in
19 this state;

20 (10) "Environment" includes water, air, land, and all plants and man and other animals
21 living therein and the interrelationships which exist among these;

22 (11) "EPA" means the United States Environmental Protection Agency;

23 (12) "FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act as
24 amended, and any regulations promulgated thereunder;

25 (13) "Fungi" means all nonchlorophyll-bearing thallophytes; that is, all nonchlorophyll-
26 bearing plants of a lower order than mosses and liverworts, as for example, rusts,
27 smuts, mildews, molds, yeasts, bacteria, and viruses, except those on or in living

1 man or other living animals, and except those in or on processed food, beverages, or
2 pharmaceuticals;

3 (14) "Highly toxic pesticide" means any pesticide determined to be highly toxic under
4 the authority of sec. 25(c)(2) of FIFRA or by the department under this chapter;

5 (15) "Imminent hazard" means a situation which exists when the continued use of a
6 pesticide would likely result in unreasonable adverse effects on the environment or
7 will involve unreasonable hazard to the survival of a species declared endangered
8 by the secretary of the United States Department of Interior under Pub. L. 91-135 of
9 the United States Congress;

10 (16) "Inert ingredient" means an ingredient which is not an active ingredient;

11 (17) "Ingredient statement" means a statement of the name and percentage of each active
12 ingredient together with the total percentage of the inert ingredients in the pesticide
13 and, when the pesticide contains arsenic in any form, a statement of the percentage
14 of total and water-soluble arsenic, each stated as elemental arsenic;

15 (18) "Insect" means any of the numerous small invertebrate animals generally having the
16 body more or less obviously segmented, for the most part belonging to the class
17 insecta, comprising six (6) legged, usually winged forms, as for example, beetles,
18 bugs, bees, flies, and to other allied classes of arthropods whose members are
19 wingless and usually have more than six (6) legs, as, for example, spiders, mites,
20 ticks, centipedes, and wood lice, also nematodes and other invertebrates which are
21 destructive, constitute a liability, and may be classed as pests;

22 (19) "Label" means the written, printed, or graphic matter on, or attached to, the
23 pesticide or device, or to any of its containers or wrappers;

24 (20) "Labeling" means the label and other written, printed, or graphic matter:
25 (a) On the pesticide or device, or any of its containers or wrappers;
26 (b) Accompanying the pesticide or device at any time or referring to it in any
27 other media used to disseminate information to the public; and

1 (c) To which reference is made on the label or in the literature accompanying the
2 pesticide or device, except when accurate nonmisleading reference is made to
3 current official publications of the United States Environmental Protection
4 Agency, the Departments of Agriculture and Interior, the Department of
5 Health, Education and Welfare, and other similar federal institutions, the
6 College of Agriculture, University of Kentucky, Kentucky Agricultural
7 Experiment Station, Cabinet for Health and Family Services, Energy and
8 Environment Cabinet, or other agencies of this state or other states when such
9 agencies are authorized by law to conduct research in the field of pesticides;

10 (21) "Land" means all land and water areas, including air space and all plants, animals,
11 structures, buildings, contrivances, and machinery appurtenant thereto, or situated
12 thereon, fixed or mobile, including any used for transportation;

13 (22) "Livestock" means cattle, sheep, swine, goats, horses, alpacas, llamas, buffaloes,
14 and any other animals of the bovine, ovine, porcine, caprine, equine, or camelid
15 species;

16 (23) "Misbranded" means a pesticide is misbranded if:
17 (a) Its labeling bears any statement, design, or graphic representation relative
18 thereto or to its ingredients which is false or misleading in any particular;
19 (b) It is an imitation of or is distributed under the name of another pesticide;
20 (c) The labeling accompanying it does not contain directions for use which are
21 necessary for effecting the purpose for which the product is intended and, if
22 complied with, together with any requirements imposed under section 3(d) of
23 FIFRA are adequate to protect health and the environment;
24 (d) The labeling does not contain a statement of the use classification under
25 which the product is registered by EPA;
26 (e) The label does not contain a warning or caution statement required [which
27 may be necessary and if complied with, together with any requirements]

~~imposed] under section 3(d) of FIFRA[, is adequate to protect health and the environment];~~

3 (f) The label does not bear an ingredient statement on that part of the immediate
4 container, and on the outside container or wrapper, if there be one, through
5 which the ingredient statement on the immediate container cannot be clearly
6 read, of the retail package which is presented or displayed under customary
7 conditions of the purchase; provided, that the ingredient statement may appear
8 prominently on another part of the container pursuant to section 2(q) 2(A) (i)
9 (ii) of FIFRA if the size and form of the container makes it impractical to
10 place it on that part of the retail package which is presented or displayed
11 under customary conditions of purchase;

12 (g) Any word, statement, or other information required by KRS 217.542 to
13 217.630 or FIFRA to appear on the label or labeling is not prominently placed
14 thereon with such conspicuousness, as compared to other words, statements,
15 designs, or graphic matter in the labeling, and in such terms as to render it
16 likely to be read and understood by the ordinary individual under customary
17 conditions of purchase and use;

18 (h) The label does not bear the name, brand, or trademark under which the
19 pesticide is distributed;

20 (i) The label does not bear the net weight or measure of the content;

21 (j) The label does not bear the name and address of the manufacturer, registrant,
22 or person for whom manufactured; and

23 (k) The label does not bear the EPA registration number assigned to each
24 establishment in which the product is produced and the EPA number assigned
25 to the pesticide, if required by regulation under FIFRA;

26 (24) "Nematode" means invertebrate animals of the phylum nemathelminthes and class
27 nematoda, that is, unsegmented round worms with elongated, fusiform, or sac-like

1 bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts; may
2 also be called nemas or eelworms;

3 (25) "Person" means any individual, partnership, association, or any organized group of
4 persons whether incorporated or not;

5 (26) "Pest" means any insect, snail, slug, rodent, nematode, fungus, weed, and any other
6 form of plant or animal life, or virus, bacteria, or other microorganism, except
7 viruses, bacteria, or other microorganisms on or in living man or other living
8 animals, which is normally considered to be a pest, or which the department may
9 declare to be a pest;

10 (27) "Pesticide" means any substance or mixture of substances intended to prevent,
11 destroy, control, repel, attract, or mitigate any pest; any substance or mixture of
12 substances intended to be used as a plant regulator, defoliant, or desiccant; and any
13 substance or mixture of substances intended to be used as a spray adjuvant;

14 (28) "Plant regulator" means any substance or mixture of substances, intended through
15 physiological actions, to accelerate or retard the rate of growth or maturation, or to
16 otherwise alter the behavior of plants, but shall not include substances insofar as
17 they are intended to be used as plant nutrients, trace elements, nutritional chemicals,
18 plant inoculants, or soil amendments;

19 (29) "Protect health and the environment" means protection against any unreasonable
20 adverse effects on the environment;

21 (30) "Registrant" means a person who has registered any pesticide pursuant to the
22 provisions of KRS 217.542 to 217.630;

23 (31) "Restricted-use pesticide" means any pesticide classified for restricted use by the
24 administrator, EPA, or by regulation of the department;

25 (32) "Spray adjuvant" means any wetting agent, spreading agent, sticker, deposit builder,
26 adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent
27 intended to be used with any other pesticide as an aid to the application or to the

1 effect thereof, and which is in a package or container separate from that of the other
2 pesticide with which it is to be used;

3 (33) "Unreasonable adverse effects on the environment" means any unreasonable risk to
4 man or the environment, taking into account the economic, social, and
5 environmental costs and benefits of the use of any pesticide;

6 (34) "Weed" means any plant which grows where not wanted; and

7 (35) "Wildlife" means all living things that are neither human, domesticated, nor as
8 defined in KRS 217.542 to 217.630, pests, including but not limited to mammals,
9 birds, and aquatic life.