

108TH CONGRESS
1ST SESSION

S. 332

To amend the Federal Insecticide, Fungicide, and Rodenticide Act to permit a State to register a Canadian pesticide for distribution and use within that State.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 6, 2003

Mr. DORGAN (for himself, Mr. DASCHLE, Mr. LEVIN, Mr. BAUCUS, and Mr. CONRAD) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To amend the Federal Insecticide, Fungicide, and Rodenticide Act to permit a State to register a Canadian pesticide for distribution and use within that State.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. REGISTRATION OF CANADIAN PESTICIDES BY**
4 **STATES.**

5 (a) IN GENERAL.—Section 24 of the Federal Insecti-
6 cide, Fungicide, and Rodenticide Act (7 U.S.C. 136v) is
7 amended by adding at the end the following:

8 “(d) REGISTRATION OF CANADIAN PESTICIDES BY
9 STATES.—

1 “(1) DEFINITIONS.—In this subsection:

2 “(A) CANADIAN PESTICIDE.—The term
3 ‘Canadian pesticide’ means a pesticide that—

4 “(i) is registered for use as a pesticide
5 in Canada;

6 “(ii) is identical or substantially simi-
7 lar in its composition to a comparable do-
8 mestic pesticide registered under section 3;
9 and

10 “(iii) is registered in Canada by the
11 registrant of the comparable domestic pes-
12 ticide or by an affiliated entity of the reg-
13 istrant.

14 “(B) COMPARABLE DOMESTIC PES-
15 TICIDE.—The term ‘comparable domestic pes-
16 ticide’ means a pesticide—

17 “(i) that is registered under section 3;

18 “(ii) the registration of which is not
19 under suspension;

20 “(iii) that is not subject to—

21 “(I) a notice of intent to cancel
22 or suspend under any provision of this
23 Act;

24 “(II) a notice for voluntary can-
25 cellation under section 6(f); or

1 “(III) an enforcement action
2 under any provision of this Act;

3 “(iv) that is used as the basis for
4 comparison for the determinations required
5 under paragraph (4);

6 “(v) that is registered for use on each
7 site of application for which registration is
8 sought under this subsection;

9 “(vi) for which no use is the subject
10 of a pending interim administrative review
11 under section 3(c)(8);

12 “(vii) that is not subject to any limita-
13 tion on production or sale agreed to by the
14 Administrator and the registrant or im-
15 posed by the Administrator for risk mitiga-
16 tion purposes; and

17 “(viii) that is not classified as a re-
18 stricted use pesticide under section 3(d).

19 “(2) AUTHORITY TO REGISTER CANADIAN PES-
20 TICIDES.—

21 “(A) IN GENERAL.—A State may register
22 a Canadian pesticide for distribution and use in
23 the State if the registration—

24 “(i) complies with this subsection;

25 “(ii) is consistent with this Act; and

1 “(iii) has not previously been dis-
2 approved by the Administrator.

3 “(B) PRODUCTION OF ANOTHER PES-
4 TICIDE.—A pesticide registered under this sub-
5 section shall not be used to produce a pesticide
6 registered under section 3 or subsection (c).

7 “(C) EFFECT OF REGISTRATION.—A reg-
8 istration of a Canadian pesticide by a State
9 under this subsection—

10 “(i) shall be deemed to be a registra-
11 tion under section 3 for all purposes of this
12 Act; and

13 “(ii) shall authorize distribution and
14 use only within that State.

15 “(D) REGISTRANT.—

16 “(i) IN GENERAL.—A State may reg-
17 ister a Canadian pesticide under this sub-
18 section on its own motion or on application
19 of any person.

20 “(ii) STATE OR APPLICANT AS REG-
21 ISTRANT.—

22 “(I) STATE.—If a State registers
23 a Canadian pesticide under this sub-
24 section on its own motion, the State
25 shall be considered to be the reg-

1 istrant of the Canadian pesticide for
2 all purposes of this Act.

3 “(II) APPLICANT.—If a State
4 registers a Canadian pesticide under
5 this subsection on application of any
6 person, the person shall be considered
7 to be the registrant of the Canadian
8 pesticide for all purposes of this Act.

9 “(3) REQUIREMENTS FOR REGISTRATION
10 SOUGHT BY PERSON.—A person seeking registration
11 by a State of a Canadian pesticide in a State under
12 this subsection shall—

13 “(A) demonstrate to the State that the Ca-
14 nadian pesticide is identical or substantially
15 similar in its composition to a comparable do-
16 mestic pesticide; and

17 “(B) submit to the State a copy of—

18 “(i) the label approved by the Pes-
19 ticide Management Regulatory Agency for
20 the Canadian pesticide; and

21 “(ii) the label approved by the Admin-
22 istrator for the comparable domestic pes-
23 ticide.

1 “(4) STATE REQUIREMENTS FOR REGISTRA-
2 TION.—A State may register a Canadian pesticide
3 under this subsection if the State—

4 “(A) obtains the confidential statement of
5 formula for the Canadian pesticide;

6 “(B) determines that the Canadian pes-
7 ticide is identical or substantially similar in
8 composition to a comparable domestic pesticide;

9 “(C) for each food or feed use authorized
10 by the registration—

11 “(i) determines that there exists an
12 adequate tolerance or exemption under the
13 Federal Food, Drug, and Cosmetic Act (21
14 U.S.C. 301 et seq.) that permits the resi-
15 dues of the pesticide on the food or feed;
16 and

17 “(ii) identifies the tolerances or ex-
18 emptions in the notification submitted
19 under subparagraph (E);

20 “(D) obtains a label approved by the Ad-
21 ministrators that—

22 “(i)(I) includes all statements, other
23 than the establishment number, from the
24 approved labeling of the comparable do-

1 mestic pesticide that are relevant to the
2 uses registered by the State; and

3 “(II) excludes all labeling statements
4 relating to uses that are not registered by
5 the State;

6 “(ii) identifies the State in which the
7 product may be used;

8 “(iii) prohibits sale and use outside
9 the State identified under clause (ii);

10 “(iv) includes a statement indicating
11 that it is unlawful to use the Canadian
12 pesticide in the State in a manner that is
13 inconsistent with the labeling approved by
14 the Administrator under this subsection;
15 and

16 “(v) identifies the establishment num-
17 ber of the establishment in which the label-
18 ing approved by the Administrator will be
19 affixed to each container of the Canadian
20 pesticide; and

21 “(E) not later than 10 business days after
22 the issuance by the State of the registration,
23 submit to the Administrator a written notifica-
24 tion of the action of the State that includes—

1 “(i) a description of the determination
2 made under this paragraph;

3 “(ii) a statement of the effective date
4 of the registration;

5 “(iii) a confidential statement of the
6 formula of the registered pesticide; and

7 “(iv) a final printed copy of the label-
8 ing approved by the Administrator.

9 “(5) DISAPPROVAL OF REGISTRATION BY AD-
10 MINISTRATOR.—

11 “(A) IN GENERAL.—The Administrator
12 may disapprove the registration of a Canadian
13 pesticide by a State under this subsection if the
14 Administrator determines that the registration
15 of the Canadian pesticide by the State—

16 “(i) does not comply with this sub-
17 section or the Federal Food, Drug, and
18 Cosmetic Act (21 U.S.C. 301 et seq.); or

19 “(ii) is inconsistent with this Act.

20 “(B) EFFECTIVE PERIOD.—If the Admin-
21 istrator disapproves a registration by a State
22 under this subsection by the date that is 90
23 days after the date on which the State issues
24 the registration, the registration shall be inef-
25 fective after the 90th day.

1 “(6) LABELING OF CANADIAN PESTICIDES.—

2 “(A) IN GENERAL.—Each container con-
3 taining a Canadian pesticide registered by a
4 State shall bear the label that is approved by
5 the Administrator under this subsection.

6 “(B) DISPLAY OF LABEL.—The label shall
7 be securely attached to the container and shall
8 be the only label visible on the container.

9 “(C) ORIGINAL CANADIAN LABEL.—The
10 original Canadian label on the container shall
11 be preserved underneath the label approved by
12 the Administrator.

13 “(D) PREPARATION AND USE OF LA-
14 BELS.—After a Canadian pesticide is registered
15 under this subsection, the registrant shall—

16 “(i) prepare labels approved by the
17 Administrator for the Canadian pesticide;
18 and

19 “(ii) conduct or supervise all labeling
20 of the Canadian pesticide with the ap-
21 proved labeling.

22 “(E) REGISTERED ESTABLISHMENTS.—
23 Labeling of a Canadian pesticide under this
24 subsection shall be conducted at an establish-

1 ment registered by the registrant under section
2 7.

3 “(7) REVOCATION.—

4 “(A) IN GENERAL.—After the registration
5 of a Canadian pesticide, if the Administrator
6 finds that the Canadian pesticide is not iden-
7 tical or substantially similar in composition to
8 a comparable domestic pesticide, the Adminis-
9 trator may issue an emergency order revoking
10 the registration of the Canadian pesticide.

11 “(B) TERMS OF ORDER.—The order—

12 “(i) shall be effective immediately;

13 “(ii) may prohibit the sale, distribu-
14 tion, and use of the Canadian pesticide;
15 and

16 “(iii) may require the registrant of the
17 Canadian pesticide to purchase and dispose
18 of any unopened product subject to the
19 order.

20 “(C) REQUEST FOR HEARING.—Not later
21 than 10 days after issuance of the order, the
22 registrant of the Canadian pesticide subject to
23 the order may request a hearing on the order.

24 “(D) FINAL ORDER.—If a hearing is not
25 requested in accordance with subparagraph (C),

1 the order shall become final and shall not be
2 subject to judicial review.

3 “(E) JUDICIAL REVIEW.—If a hearing is
4 requested on the order, judicial review may be
5 sought only at the conclusion of the hearing on
6 the order and following the issuance by the Ad-
7 ministrator of a final revocation order.

8 “(F) PROCEDURE.—A final revocation
9 order issued following a hearing shall be review-
10 able in accordance with section 16.

11 “(8) SUSPENSION OF STATE AUTHORITY TO
12 REGISTER CANADIAN PESTICIDES.—

13 “(A) IN GENERAL.—If the Administrator
14 finds that a State that has registered 1 or more
15 Canadian pesticides under this subsection is not
16 capable of exercising adequate controls to en-
17 sure that registration under this subsection is
18 consistent with this subsection, other provisions
19 of this Act, or the Federal Food, Drug, and
20 Cosmetic Act (21 U.S.C. 301 et seq.), or has
21 failed to exercise adequate controls of 1 or more
22 Canadian pesticides registered under this sub-
23 section, the Administrator may suspend the au-
24 thority of the State to register Canadian pes-
25 ticides under this subsection until such time as

1 the Administrator determines that the State
2 can and will exercise adequate control of the
3 Canadian pesticides.

4 “(B) NOTICE AND OPPORTUNITY TO RE-
5 SPOND.—Before suspending the authority of a
6 State to register a Canadian pesticide, the Ad-
7 ministrator shall—

8 “(i) notify the State that the Adminis-
9 trator proposes to suspend the authority
10 and the reasons for the proposed suspen-
11 sion; and

12 “(ii) before taking final action to sus-
13 pend authority under this subsection, pro-
14 vide the State an opportunity to respond to
15 the proposal to suspend within 30 calendar
16 days after the State receives notice under
17 clause (i).

18 “(9) LIMITS ON LIABILITY.—No action for
19 monetary damages may be heard in any Federal
20 court against—

21 “(A) a State acting as a registering agency
22 under the authority of and consistent with this
23 subsection for injury or damage resulting from
24 the use of a product registered by the State
25 under this subsection; or

1 “(B) a registrant for damages resulting
2 from adulteration or compositional alteration of
3 a Canadian pesticide registered under this sub-
4 section if the registrant did not have and could
5 not reasonably have obtained knowledge of the
6 adulteration or compositional alteration.

7 “(10) DISCLOSURE OF INFORMATION BY AD-
8 MINISTRATOR TO THE STATE.—The Administrator
9 may disclose to a State that is seeking to register a
10 Canadian pesticide in the State information that is
11 necessary for the State to make the determinations
12 required by paragraph (4) if the State certifies to
13 the Administrator that the State can and will main-
14 tain the confidentiality of any trade secrets and com-
15 mercial or financial information provided by the Ad-
16 ministrator to the State under this subsection to the
17 same extent as is required under section 10.

18 “(11) PROVISION OF INFORMATION BY REG-
19 ISTRANTS OF COMPARABLE DOMESTIC PES-
20 TICIDES.—

21 “(A) IN GENERAL.—On request by a
22 State, the registrant of a comparable domestic
23 pesticide shall provide to the State that is seek-
24 ing to register a Canadian pesticide in the State
25 under this subsection information that is nec-

1 essary for the State to make the determinations
2 required by paragraph (4) if the State certifies
3 to the registrant that the State can and will
4 maintain the confidentiality of any trade secrets
5 and commercial and financial information pro-
6 vided by the registrant to the State under this
7 subsection to the same extent as is required
8 under section 10.

9 “(B) PENALTY FOR NONCOMPLIANCE.—

10 “(i) IN GENERAL.—If the registrant
11 of a comparable domestic pesticide fails to
12 provide to the State, not later than 15
13 days after receipt of a written request by
14 the State, information possessed by or rea-
15 sonably accessible to the registrant that is
16 necessary to make the determinations re-
17 quired by paragraph (4), the Administrator
18 may assess a penalty against the registrant
19 of the comparable pesticide.

20 “(ii) AMOUNT.—The amount of the
21 penalty shall be equal to the product ob-
22 tained by multiplying—

23 “(I) the difference between the
24 per-acre cost of the application of the
25 comparable domestic pesticide and the

1 application of the Canadian pesticide,
2 as determined by the Administrator;
3 and

4 “(II) the number of acres in the
5 State devoted to the commodity for
6 which the State registration is sought.

7 “(C) NOTICE AND OPPORTUNITY FOR
8 HEARING.—No penalty under this paragraph
9 shall be assessed unless the registrant is given
10 notice and opportunity for a hearing in accord-
11 ance with section 14(a)(3).

12 “(D) ISSUES AT HEARING.—The only
13 issues for resolution at the hearing shall be—

14 “(i) whether the registrant of the
15 comparable domestic pesticide failed to
16 timely provide to the State the information
17 possessed by or reasonably accessible to
18 the registrant that was necessary to make
19 the determinations required by paragraph
20 (4); and

21 “(ii) the amount of the penalty.

22 “(12) PENALTY FOR DISCLOSURE BY STATE.—

23 “(A) IN GENERAL.—The State shall not
24 make public information obtained under para-
25 graph (10) or (11) that is privileged and con-

1 fidential and contains or relates to trade secrets
2 or commercial or financial information.

3 “(B) DISCLOSURE.—Any State employee
4 who willfully discloses information described in
5 subparagraph (A) shall be subject to penalties
6 described in section 10(f).

7 “(13) DATA COMPENSATION.—A State or per-
8 son registering a Canadian pesticide under this sub-
9 section shall not be liable for compensation for data
10 supporting the registration if the registration of the
11 Canadian pesticide in Canada and the registration of
12 the comparable domestic pesticide are held by the
13 same registrant or by affiliated entities.

14 “(14) FORMULATION CHANGES.—

15 “(A) IN GENERAL.—The registrant of a
16 comparable domestic pesticide shall notify the
17 Administrator of any change in the formulation
18 of a comparable domestic pesticide or a Cana-
19 dian pesticide registered by the registrant or an
20 affiliated entity not later than 30 days before
21 any sale or distribution of the pesticide con-
22 taining the new formulation.

23 “(B) STATEMENT OF FORMULA.—The reg-
24 istrant of the comparable domestic pesticide
25 shall submit, with the notice required under

1 subparagraph (A), a confidential statement of
2 the formula for the new formulation if the reg-
3 istrant has possession of or reasonable access to
4 the information.

5 “(C) SUSPENSION OF REGISTRATION FOR
6 NONCOMPLIANCE.—

7 “(i) IN GENERAL.—If the registrant
8 fails to provide notice or submit a con-
9 fidential statement of formula as required
10 by this paragraph, the Administrator may
11 issue a notice of intent to suspend the reg-
12 istration of the comparable domestic pes-
13 ticide for a period of not less than 1 year.

14 “(ii) EFFECTIVE DATE.—The suspen-
15 sion shall become final not later than the
16 end of the 30-day period beginning on the
17 date of the issuance by the Administrator
18 of the notice of intent to suspend the reg-
19 istration, unless during the period the reg-
20 istrant requests a hearing.

21 “(iii) HEARING PROCEDURE.—If a
22 hearing is requested, the hearing shall be
23 conducted in accordance with section 6(d).

24 “(iv) ISSUES.—The only issues for
25 resolution at the hearing shall be whether

1 the registrant has failed to provide notice
2 or submit a confidential statement of for-
3 mula as required by this paragraph.”.

4 (b) CONFORMING AMENDMENTS.—

5 (1) Section 24(c) of the Federal Insecticide,
6 Fungicide, and Rodenticide Act (7 U.S.C. 136v(c))
7 is amended—

8 (A) in paragraph (1), by inserting “IN
9 GENERAL.—” after “(1)”;

10 (B) in paragraph (2), by inserting “DIS-
11 APPROVAL.—” after “(2)”;

12 (C) in paragraph (3), by inserting “CON-
13 SISTENCY WITH FEDERAL FOOD, DRUG, AND
14 COSMETIC ACT.—” after “(3)”; and

15 (D) by striking “(4) If the Administrator”
16 and inserting the following:

17 “(4) SUSPENSION OF AUTHORITY TO REGISTER
18 PESTICIDES.—Except as provided in subsection
19 (d)(8), if the Administrator”.

20 (2) The table of contents in section 1(b) of the
21 Federal Insecticide, Fungicide, and Rodenticide Act
22 (7 U.S.C. prec. 121) is amended by striking the item
23 relating to section 24(c) and inserting the following:

- “(c) Additional uses.
 - “(1) In general.
 - “(2) Disapproval.
 - “(3) Consistency with Federal Food, Drug, and Cosmetic Act.
 - “(4) Suspension of authority to register pesticides.
- “(d) Registration of Canadian pesticides by States.
 - “(1) Definitions.
 - “(2) Authority to register Canadian pesticides.
 - “(3) Requirements for registration sought by person.
 - “(4) State requirements for registration.
 - “(5) Disapproval of registration by Administrator.
 - “(6) Labeling of Canadian pesticides.
 - “(7) Revocation.
 - “(8) Suspension of State authority to register Canadian pesticides.
 - “(9) Limits on liability.
 - “(10) Disclosure of information by Administrator to the State.
 - “(11) Provision of information by registrants of comparable domestic pesticides.
 - “(12) Penalty for disclosure by State.
 - “(13) Data compensation.
 - “(14) Formulation changes.”.

1 (c) EFFECTIVE DATE.—This section and the amend-
 2 ments made by this section take effect 180 days after the
 3 date of enactment of this Act.

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