

106TH CONGRESS
1ST SESSION

S. 394

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 9, 1999

Mr. DORGAN (for himself, 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 any pesticide reg-
8 istered under section 3; and

9 “(iii) is registered by the registrant of
10 a comparable domestic pesticide or an af-
11 filiated entity of the registrant.

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

15 “(i) is registered under section 3;

16 “(ii) is not subject to a notice of in-
17 tent to cancel or suspend or an enforce-
18 ment action under section 12, based on the
19 labeling or composition of the pesticide;

20 “(iii) is used as the basis for compari-
21 son for the determinations required under
22 paragraph (3); and

23 “(iv) is labeled for use on the site or
24 crop for which registration is sought under
25 this subsection on the basis of a use that

1 is not the subject of a pending interim ad-
2 ministrative review under section 3(c)(8).

3 “(2) AUTHORITY TO REGISTER CANADIAN PES-
4 TICIDES.—

5 “(A) IN GENERAL.—A State may register
6 a Canadian pesticide for distribution and use in
7 the State if the registration is consistent with
8 this subsection and other provisions of this Act
9 and is approved by the Administrator.

10 “(B) EFFECT OF REGISTRATION.—

11 “(i) IN GENERAL.—Except as pro-
12 vided in clause (ii), on approval by the Ad-
13 ministrator, the registration of a Canadian
14 pesticide by a State shall be considered a
15 registration of the pesticide under section
16 3.

17 “(ii) DISTRIBUTION TO OTHER
18 STATES.—A Canadian pesticide that is
19 registered by a State under this subsection
20 and distributed to a person in that State
21 shall not be transported to, or used by, a
22 person in another State unless the dis-
23 tribution and use is consistent with the
24 registration by the original State.

1 “(C) REGISTRANT.—A State that registers
 2 a Canadian pesticide under this subsection shall
 3 be considered the registrant of the Canadian
 4 pesticide under this Act.

5 “(3) STATE REQUIREMENTS FOR REGISTRA-
 6 TION.—To register a Canadian pesticide under this
 7 subsection, a State shall—

8 “(A)(i) determine whether the Canadian
 9 pesticide is identical or substantially similar in
 10 its composition to a comparable domestic pes-
 11 ticide; and

12 “(ii) submit the proposed registration to
 13 the Administrator only if the State determines
 14 that the Canadian pesticide is identical or sub-
 15 stantially similar in its composition to a com-
 16 parable domestic pesticide;

17 “(B) for each food or feed use authorized
 18 by the registration—

19 “(i) determine whether there exists a
 20 tolerance or exemption under the Federal
 21 Food, Drug, and Cosmetic Act (21 U.S.C.
 22 301 et seq.) that permits the residues of
 23 the pesticide on the food or feed; and

1 “(ii) identify the tolerances or exemp-
2 tions in the submission made under sub-
3 paragraph (D);

4 “(C) require that the pesticide bear a label
5 that—

6 “(i) specifies the information that is
7 required to comply with section 3(c)(5);

8 “(ii) identifies itself as the only valid
9 label;

10 “(iii) identifies the State in which the
11 product may be used;

12 “(iv) identifies the approved use and
13 includes directions for use, use restrictions,
14 and precautions that are identical or sub-
15 stantial similar to the directions for use,
16 use restrictions, and precautions that are
17 on the approved label of the comparable
18 domestic pesticide; and

19 “(v) includes a statement indicating
20 that it is unlawful to distribute or use the
21 Canadian pesticide in the State in a man-
22 ner that is inconsistent with the registra-
23 tion of the pesticide by the State; and

24 “(D) submit to the Administrator a de-
25 scription of the proposed registration of the Ca-

1 nadian pesticide that includes a statement of
2 the determinations made under this paragraph,
3 the proposed labeling for the Canadian pes-
4 ticide, and related supporting documentation.

5 “(4) APPROVAL OF REGISTRATION BY ADMINIS-
6 TRATOR.—

7 “(A) IN GENERAL.—The Administrator
8 shall approve the proposed registration of a Ca-
9 nadian pesticide by a State submitted under
10 paragraph (3)(D) if the Administrator deter-
11 mines that the proposed registration of the Ca-
12 nadian pesticide by the State is consistent with
13 this subsection and other provisions of this Act.

14 “(B) NOTICE OF APPROVAL.—No registra-
15 tion of a Canadian pesticide by a State under
16 this subsection shall be considered approved, or
17 be effective, until the Administrator provides
18 notice of approval of the registration in writing
19 to the State.

20 “(5) LABELING OF CANADIAN PESTICIDES.—

21 “(A) DISTRIBUTION.—After a notice of the
22 approval of a Canadian pesticide by a State is
23 received by the State, the State shall make la-
24 bels approved by the State and the Adminis-

1 trator available to persons seeking to distribute
2 the Canadian pesticide in the State.

3 “(B) USE.—A Canadian pesticide that is
4 registered by a State under this subsection may
5 be used within the State only if the Canadian
6 pesticide bears the approved label for use in the
7 State.

8 “(C) CONTAINERS.—Each container con-
9 taining a Canadian pesticide registered by a
10 State shall, before the transportation of the Ca-
11 nadian pesticide into the State and at all times
12 the Canadian pesticide is distributed or used in
13 the State, bear a label that is approved by the
14 State and the Administrator.

15 “(D) REPORT.—A person seeking to dis-
16 tribute a Canadian pesticide registered by a
17 State shall provide to the State a report that—

18 “(i) identifies the person that will re-
19 ceive and use the Canadian pesticide in the
20 State; and

21 “(ii) states the quantity of the Cana-
22 dian pesticide that will be transported into
23 the State.

24 “(E) AFFIXING LABELS.—The act of
25 affixing a label to a Canadian pesticide under

1 this subsection shall not be considered produc-
2 tion for the purposes of this Act.

3 “(6) ANNUAL REPORTS.—

4 “(A) PREPARATION.—A State registering
5 1 or more Canadian pesticides under this sub-
6 section shall prepare an annual report that—

7 “(i) identifies the Canadian pesticides
8 that are registered by the State;

9 “(ii) identifies the users of Canadian
10 pesticides used in the State; and

11 “(iii) states the quantity of Canadian
12 pesticides used in the State.

13 “(B) AVAILABILITY.—On the request of
14 the Administrator, the State shall provide a
15 copy of the annual report to the Administrator.

16 “(7) RECALLS.—If the Administrator deter-
17 mines that it is necessary under this Act to termi-
18 nate the distribution or use of a Canadian pesticide
19 in a State, on the request of the Administrator, the
20 State shall recall the Canadian pesticide.

21 “(8) SUSPENSION OF STATE AUTHORITY TO
22 REGISTER CANADIAN PESTICIDES.—

23 “(A) IN GENERAL.—If the Administrator
24 finds that a State that has registered 1 or more
25 Canadian pesticides under this subsection is not

1 capable of exercising adequate controls to en-
2 sure that registration under this subsection is
3 consistent with this subsection and other provi-
4 sions of this Act or has failed to exercise ade-
5 quate control of 1 or more Canadian pesticides,
6 the Administrator may suspend the authority of
7 the State to register Canadian pesticides under
8 this subsection until such time as the Adminis-
9 trator determines that the State can and will
10 exercise adequate control of the Canadian pes-
11 ticides.

12 “(B) NOTICE AND OPPORTUNITY TO RE-
13 SPOND.—Before suspending the authority of a
14 State to register a Canadian pesticide, the Ad-
15 ministrator shall—

16 “(i) advise the State that the Admin-
17 istrator proposes to suspend the authority
18 and the reasons for the proposed suspen-
19 sion; and

20 “(ii) provide the State with an oppor-
21 tunity time to respond to the proposal to
22 suspend.

23 “(9) DISCLOSURE OF INFORMATION BY ADMIN-
24 ISTRATOR TO THE STATE.—The Administrator may
25 disclose to a State that is seeking to register a Ca-

1 nadian pesticide in the State information that is nec-
2 essary for the State to make the determinations re-
3 quired by paragraph (3) if the State certifies to the
4 Administrator that the State can and will maintain
5 the confidentiality of any trade secrets or commer-
6 cial or financial information that was marked under
7 section 10(a) provided by the Administrator to the
8 State under this subsection to the same extent as is
9 required under section 10.

10 “(10) PROVISION OF INFORMATION BY REG-
11 ISTRANTS OF COMPARABLE DOMESTIC PES-
12 TICIDES.—If a State registers a Canadian pesticide,
13 and a registrant of a comparable domestic pesticide
14 that is (directly or through an affiliate) a foreign
15 registrant fails to provide to the State the informa-
16 tion possessed by the registrant that is necessary to
17 make the determinations required by paragraph (3),
18 the Administrator may suspend without a hearing all
19 pesticide registrations issued to the registrant under
20 this Act.

21 “(11) PATENTS.—Title 35, United States Code,
22 shall not apply to a Canadian pesticide registered by
23 a State under this subsection that is transported
24 into the United States or to any person that takes

1 an action with respect to the Canadian pesticide in
 2 accordance with this subsection.

3 “(12) SUBMISSIONS.—A submission by a State
 4 under this section shall not be considered an applica-
 5 tion under section 3(c)(1)(F).”.

6 (b) CONFORMING AMENDMENT.—The table of con-
 7 tents in section 1(b) of the Federal Insecticide, Fungicide,
 8 and Rodenticide Act (7 U.S.C. prec. 121) is amended by
 9 adding at the end of the items relating to section 24 the
 10 following:

“(d) Registration of Canadian pesticides by States.

“(1) Definitions.

“(2) Authority to register Canadian pesticides.

“(3) State requirements for registration.

“(4) Approval of registration by Administrator.

“(5) Labeling of Canadian pesticides.

“(6) Annual reports.

“(7) Recalls.

“(8) Suspension of State authority to register Canadian
 pesticides.

“(9) Disclosure of information by Administrator to the
 State.

“(10) Provision of information by registrants of com-
 parable domestic pesticides.

“(11) Patents.

“(12) Submissions.”.

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

