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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 2908

03/10/2014 Authored by Hansen, Wagenius, Falk, Bly and Davnie
The bill was read for the first time and referred to the Committee on Agriculture Policy

1.1 A bill for an act
1.2 relating to claims; providing compensation for bee deaths caused by pesticide
1.3 poisoning under certain circumstances; establishing a pollinator emergency
1.4 response team; providing civil liability for bee deaths; appropriating money;
1.5 amending Minnesota Statutes 2012, section 18B.05; proposing coding for new
1.6 law in Minnesota Statutes, chapters 3; 17; 604.

1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.8 Section 1. **[3.7372] COMPENSATION FOR BEE DEATHS.**

1.9 Subdivision 1. **Compensation required.** (a) Notwithstanding section 3.736,
1.10 subdivision 3, paragraph (k), or any other law, a person who owns bees shall be
1.11 compensated by the commissioner of agriculture for an acute pesticide poisoning resulting
1.12 in the death of bees owned by the person, provided the applicator of the pesticide can
1.13 not be determined.

1.14 (b) Except as provided in this section, the owner is entitled to the fair market value
1.15 of the bees as determined by the commissioner, upon recommendation of the fair market
1.16 value by a university researcher knowledgeable in pollinators. In any fiscal year, a bee
1.17 owner may not be compensated for a claim under this section that is less than \$100
1.18 in value or more than \$20,000.

1.19 Subd. 2. **Claim form.** The owner shall file a claim on forms provided by the
1.20 commissioner and available on the Department of Agriculture's Web site.

1.21 Subd. 3. **Investigation.** A university researcher knowledgeable in pollinators or
1.22 pesticides, an official from the United States Department of Agriculture, or a member of
1.23 the pollinator emergency response team established under section 17.4455 must make
1.24 a personal inspection of the site and submit a report to the commissioner, including
1.25 photographs, detailing the results of the investigation. The commissioner, upon

2.1 recommendation of the investigator, shall determine whether the death of the bees was
2.2 likely caused by an acute pesticide poisoning and whether the pesticide applicator can
2.3 be determined.

2.4 Subd. 4. **Payments; denial of compensation.** (a) If the commissioner determines
2.5 that the loss of the bees was likely caused by an acute pesticide poisoning and the
2.6 source and applicator of the pesticide cannot be determined, the commissioner shall pay
2.7 compensation as provided in this section and in the rules of the department.

2.8 (b) If the commissioner denies compensation claimed by an owner under this
2.9 section, the commissioner shall issue a written decision based upon the available evidence.
2.10 The decision shall include specification of the facts upon which the decision is based
2.11 and the conclusions on the material issues of the claim. A copy of the decision shall
2.12 be mailed to the owner.

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

2.20 (d) If the commissioner denies compensation claimed by an owner under this
2.21 section because the commissioner has determined that the applicator of the pesticide can
2.22 be determined, the commissioner shall notify the owner of the provisions under section
2.23 604.135.

2.24 Subd. 5. **Deduction from payment.** Payments made under this section shall be
2.25 reduced by amounts received by the owner as proceeds from an insurance policy covering
2.26 bee losses, or from any other source for the same purpose.

2.27 Subd. 6. **Rules; valuation.** The commissioner shall adopt rules to carry out this
2.28 section including methods of valuing bees destroyed, criteria for determining the cause of
2.29 bee deaths, and other matters determined necessary by the commissioner to carry out this
2.30 section. In adopting rules, the commissioner shall determine a restitution value for bees.

2.31 Subd. 7. **Appropriation.** The amount necessary to pay claims under this section,
2.32 not to exceed \$....., is appropriated from the pesticide regulatory account.

2.33 **Sec. 2. [17.4455] POLLINATOR EMERGENCY RESPONSE TEAM.**

2.34 Subdivision 1. **Team established.** The commissioner of agriculture shall assemble
2.35 a pollinator emergency response team to investigate large-scale pollinator deaths or

3.1 illnesses. The pollinator emergency response team may be chosen from representatives
 3.2 of the following entities: the Department of Agriculture, the Department of Natural
 3.3 Resources, the Pollution Control Agency, the Board of Water and Soil Resources, the
 3.4 University of Minnesota, the Minnesota State Colleges and Universities, and federal
 3.5 agencies. A majority of the members must be from a state agency and all members must
 3.6 have expertise in pollinators or factors affecting pollinator habitat.

3.7 Subd. 2. **Database.** The pollinator emergency response team shall develop a
 3.8 database of known large scale pollinator deaths and illnesses.

3.9 Sec. 3. **[17.4456] ADMINISTRATIVE PENALTIES.**

3.10 Subdivision 1. **Authority to issue penalty orders.** The commissioner may issue
 3.11 an order requiring violations to be corrected and administratively assessing monetary
 3.12 penalties for violations of this chapter, chapter 18 or 18B, or any rules adopted under
 3.13 those chapters that have resulted in harm to pollinators. The order must be issued as
 3.14 provided in this section.

3.15 Subd. 2. **Amount of penalty; considerations.** (a) The commissioner may issue
 3.16 orders assessing penalties of up to \$..... for violations identified during an inspection or
 3.17 other compliance review.

3.18 (b) In determining the amount of a penalty, the commissioner may consider:

3.19 (1) the willfulness of the violation;

3.20 (2) the gravity of the violation;

3.21 (3) the history of past violations;

3.22 (4) the number of violations;

3.23 (5) the economic benefit gained by the person by allowing or committing the
 3.24 violation; and

3.25 (6) other factors as justice may require, if the commissioner specifically identifies
 3.26 the additional factors in the commissioner's order.

3.27 (c) For a violation after an initial violation, including a continuation of the initial
 3.28 violation, the commissioner must, in determining the amount of a penalty, consider the
 3.29 factors in paragraph (b) and:

3.30 (1) the similarity of the most recent previous violation and the violation to be
 3.31 penalized;

3.32 (2) the time elapsed since the last violation;

3.33 (3) the number of previous violations; and

3.34 (4) the response of the person to the most recent previous violation identified.

4.1 Subd. 3. **Contents of order.** An order assessing an administrative penalty under
4.2 this section must include:

4.3 (1) a concise statement of the facts alleged to constitute a violation;

4.4 (2) a reference to the section of the statute, rule, order, or term or condition of
4.5 a permit that has been violated;

4.6 (3) a statement of the amount of the administrative penalty to be imposed and the
4.7 factors upon which the penalty is based; and

4.8 (4) a statement of the person's right to review of the order.

4.9 Subd. 4. **Penalty.** (a) Unless the person requests review of the order under
4.10 subdivision 5 or 6 before the penalty is due, the penalty in the order is due and payable on
4.11 the 31st day after the order was received.

4.12 (b) Interest at the rate established in section 549.09 begins to accrue on penalties
4.13 under this subdivision on the 31st day after the order with the penalty was received.

4.14 Subd. 5. **Expedited administrative hearing.** (a) Within 30 days after receiving
4.15 an order, the person subject to an order under this section may request an expedited
4.16 hearing, using the procedures under Minnesota Rules, parts 1400.8510 to 1400.8612, to
4.17 review the commissioner's determination. The hearing request must specifically state the
4.18 reasons for seeking review of the order. The person to whom the order is directed and the
4.19 commissioner are the parties to the expedited hearing. The commissioner must notify the
4.20 person to whom the order is directed of the time and place of the hearing at least 20 days
4.21 before the hearing. The expedited hearing must be held within 30 days after a request for
4.22 hearing has been filed with the commissioner, unless the parties agree to a later date.

4.23 (b) All written arguments must be submitted within ten days following the close of
4.24 the hearing. The hearing must be conducted under Minnesota Rules, parts 1400.8510 to
4.25 1400.8612, as modified by this subdivision.

4.26 (c) The administrative law judge must issue a report making recommendations about
4.27 the commissioner's action to the commissioner within 30 days following the close of the
4.28 record. The administrative law judge may not recommend a change in the amount of the
4.29 proposed penalty unless the administrative law judge determines that, based on the factors
4.30 in subdivision 2, the amount of the penalty is unreasonable.

4.31 (d) If the administrative law judge makes a finding that the hearing was requested
4.32 solely for purposes of delay or that the hearing request was frivolous, the commissioner
4.33 may add to the amount of the penalty the costs charged to the department for the hearing
4.34 by the Office of Administrative Hearings.

4.35 (e) If a hearing has been held, the commissioner may not issue a final order until at
4.36 least five days after receipt of the report of the administrative law judge. The person to

5.1 whom an order is issued may, within those five days, comment to the commissioner on the
 5.2 recommendations, and the commissioner must consider the comments. The final order
 5.3 may be appealed in the manner provided in sections 14.63 to 14.69.

5.4 (f) If a hearing has been held and a final order issued by the commissioner, the
 5.5 penalty must be paid by 30 days after the date the final order is received, unless review of
 5.6 the final order is requested under sections 14.63 to 14.69. If review is not requested or the
 5.7 order is reviewed and upheld, the amount due is the penalty, together with interest accruing
 5.8 from 31 days after the original order was received at the rate established in section 549.09.

5.9 Subd. 6. **Mediation.** In addition to review under subdivision 5, the commissioner
 5.10 may enter into mediation concerning an order issued under this section if the commissioner
 5.11 and the person to whom the order is issued both agree to mediation.

5.12 Subd. 7. **Penalties due and payable.** The commissioner may enforce penalties that
 5.13 are due and payable under this section in any manner provided by law for the collection
 5.14 of debts.

5.15 Subd. 8. **Revocation.** If a person fails to pay a penalty owed under this section, the
 5.16 commissioner has grounds to revoke a license.

5.17 Subd. 9. **Cumulative remedy.** The authority of the commissioner to issue an order
 5.18 assessing penalties is in addition to other remedies available under statutory or common
 5.19 law, except that the state may not seek civil penalties under any other provision of law
 5.20 for the violations covered by the administrative penalty order. The payment of a penalty
 5.21 does not preclude the use of other enforcement provisions, under which penalties are not
 5.22 assessed, in connection with the violation for which the penalty was assessed.

5.23 Subd. 10. **Deposit of fees.** Fees collected under this section must be credited to
 5.24 the pesticide regulatory account.

5.25 Subd. 11. **Plan for use of administrative penalties.** The commissioner must
 5.26 prepare a plan for using the administrative penalty authority in this section. The
 5.27 commissioner must provide a 30-day period for public comment on the plan. The plan
 5.28 must be finalized within six months after the effective date of this section.

5.29 Sec. 4. Minnesota Statutes 2012, section 18B.05, is amended to read:

5.30 **18B.05 PESTICIDE REGULATORY ACCOUNT.**

5.31 Subdivision 1. **Establishment.** A pesticide regulatory account is established in the
 5.32 agricultural fund. Fees, assessments, and penalties collected under this chapter must
 5.33 be deposited in the agricultural fund and credited to the pesticide regulatory account.
 5.34 Money in the account, including interest, is appropriated to the commissioner for the
 5.35 administration and enforcement of this chapter and to pay claims under section 3.7372.

6.1 Sec. 5. **[604.135] DESTRUCTION OF BEES.**

6.2 A pesticide applicator that has knowingly violated the law resulting in the death
6.3 of bees kept for commercial purposes is liable for any actual damages resulting from
6.4 the violation, including any economic damages associated with loss or damage to bees
6.5 kept. In awarding damages under this section, there is a rebuttable presumption that the
6.6 economic value of a damaged or destroyed bee population is consistent with the value
6.7 assigned to bees by the commissioner of agriculture, pursuant to section 17.4455.

6.8 Sec. 6. **APPROPRIATION.**

6.9 \$200,000 in fiscal year 2015 is appropriated from the general fund to the
6.10 commissioner of agriculture for the pollinator emergency response team established in
6.11 section 17.4455.