

COMMITTEE SUBSTITUTE

FOR

**H. B. 3126**

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(BY DELEGATES BOGGS, SMITH, HATFIELD,  
STORCH, FLEISCHAUER, MANCHIN, LONGSTRETH,  
SUMNER AND POORE)

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(Originating in the Committee on Roads and Transportation)  
[February 22, 2011]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §31-2-16, relating to railroad companies providing pesticide safety; requiring a railroad company to provide pesticide safety information at a central location accessible to employees of the railroad company and to the public and local communities along the

right-of-way treated by pesticide use; and requiring a railroad company to provide pesticide safety training annually to its employees who work along railroad rights-of-way and in rail yards.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §31-2-16, to read as follows:

**ARTICLE 2. RAILROAD COMPANIES.**

**§31-2-16. Railroad company pesticide use.**

1        (a) No later than seven days before applying a pesticide  
2        to a right-of-way that a railroad company owns or  
3        maintains, the railroad company shall provide pesticide  
4        safety information, which may be obtained by the railroad  
5        company's contracted pesticide applicator, by posting at  
6        affected on-duty railroad locations and through train  
7        bulletins, dispatcher messages, or other required  
8        documentation for each train and engine crew that will be  
9        working in the affected pesticide spray area. Additionally, the

10 railroad company shall provide appropriate documentation to  
11 ensure prompt notification for maintenance of way,  
12 mechanical, signal employees, or other rail workers that will  
13 be working in the affected pesticide spray area. A railroad  
14 company shall include all of the following in the safety  
15 information provided under this subdivision:

16 (1) The location and description of the area to be treated.

17 (2) The name of the pesticide, its active ingredients, and  
18 its registration number under 7 U.S.C. §§ 136 et seq. The  
19 material safety data sheet(MSDS) for the pesticide shall  
20 satisfy this purpose.

21 (3) The approximate date and time that the pesticide is to  
22 be applied.

23 (4) Any restricted entry interval specified on the pesticide  
24 labeling. The MSDS for the pesticide shall satisfy this  
25 purpose. *Provided*, That the railroad company shall not  
26 require an employee to reenter the pesticide spray area prior  
27 to the requirements specified by the MSDS on the pesticide  
28 being utilized, *Provided however*, That train and/or on-track  
29 movement is not prohibited.

30       (5) A description of where the information required to be  
31 on the pesticide label under 7 U.S.C. §§ 136 et seq or under  
32 the provisions of article sixteen-a, chapter nineteen of this  
33 code is available for review. The MSDS for the pesticide  
34 shall satisfy this purpose.

35       (6) Emergency medical contact information.

36       (b) A railroad company shall keep the information  
37 required by subsection (a) posted at the location accessible to  
38 employees of the railroad for at least thirty days after the day  
39 of application.

40       (c) No later than seven days before applying a pesticide  
41 to a right-of-way that a railroad company owns or maintains,  
42 the railroad company shall provide all of the following to  
43 each individual who directly supervises employees who work  
44 in the area to be treated:

45       (1) The information described in subdivision (2) to (6) of  
46 subsection (a); and

47       (2) A description of the central location where the  
48 railroad company provides the pesticide safety information  
49 to employees under the provisions of subsection (a).

50 (d) No later than seven days before applying a pesticide  
51 to a right-of-way that a railroad company owns or  
52 maintains, the railroad company must provide the location  
53 and description of the area to be treated, the approximate date  
54 and time of the application, and how to obtain answers to  
55 questions about the pesticide application, including a  
56 telephone number for the railroad company and any toll-free  
57 telephone number maintained by the railroad company to the  
58 Commissioner of Agriculture of the State of West Virginia.  
59 It is the duty of the Commissioner of Agriculture to provide  
60 public notification per their normal legislative rules and  
61 regulations, which should include, but not be limited to,  
62 notifying each county and municipal law-enforcement  
63 agency with jurisdiction over the area in which the pesticide  
64 will be applied, the location and description of the area to be  
65 treated, the approximate date and time of the application, and  
66 how to obtain answers to questions about the pesticide  
67 application, including a telephone number for the railroad  
68 company and any toll-free telephone number maintained by  
69 the railroad company.

70       (e) A railroad company shall make available to the public  
71 on its Internet site a description of how to obtain answers to  
72 questions about pesticide use by the railroad company,  
73 including a telephone number for the railroad and any  
74 toll-free number maintained by the railroad company or the  
75 Commissioner of Agriculture of the State of West Virginia to  
76 provide information about pesticide use.

77       (f) A railroad company shall provide annual pesticide  
78 safety training. This training may coincide with the annual  
79 railroad operating rules class or at any other operating or  
80 safety training class that is scheduled annually. This training  
81 shall be provided to railroad employees who work along  
82 railroad rights-of-way and in rail yards and to other  
83 employees who, due to the nature of their employment, may  
84 work in areas to which pesticides have been applied. It is the  
85 duty of the railroad company to keep records for each  
86 training session, which should include, but not be limited to,  
87 the date of the training session, the employees attending, and  
88 the name of the trainer and the trainer's employer. In the

89 training under this subsection, a railroad company shall  
90 include, but not be limited to, information about restricted  
91 entry intervals, requirements for personal protective  
92 equipment, how to read pesticide labels, and incident and  
93 complaint reporting.

94 (g) For purposes of this section, the term “pesticide” is  
95 defined by section three, article sixteen-a, chapter nineteen of  
96 this code.