

Fifty-eighth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1158

Introduced by

Agriculture Committee

(At the request of the Agriculture Commissioner)

1 A BILL for an Act to amend and reenact subsections 18, 19, and 28 of section 19-18-02 and
2 sections 19-18-04, 19-18-04.1, and 19-18-07 of the North Dakota Century Code, relating to
3 pesticide registrations; to repeal section 19-18-02.2 of the North Dakota Century Code, relating
4 to a pesticide residue advisory board; to provide a penalty; and to declare an emergency.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Subsections 18, 19, and 28 of section 19-18-02 of the
7 North Dakota Century Code are amended and reenacted as follows:

- 8 18. "Labeling" means all labels and other written, printed, or graphic matter:
- 9 a. Upon the pesticide or device or any of its containers or wrappers;
- 10 b. Accompanying the pesticide or device at any time; or
- 11 c. To which reference is made on the label or in literature accompanying the
- 12 pesticide or device, except when accurate, ~~nonmisleading~~ non-misleading
- 13 reference is made to current official publications of ~~the environmental~~
- 14 ~~protection agency, the United States department of agriculture or interior,~~
- 15 ~~state agricultural experiment stations or centers, state agricultural colleges, or~~
- 16 ~~other similar federal institutions or official agencies of this state or other states~~
- 17 ~~authorized by law to conduct research in the fields of pesticides~~ a state or
- 18 federal agency, state agricultural experiment station, or state agricultural
- 19 college.
- 20 19. "Misbranded" applies:
- 21 a. To any pesticide or device if its labeling bears any statement, design, or
- 22 graphic representation relative thereto or to its ingredients which is false or
- 23 misleading in any particular; and
- 24 b. To any pesticide:

- 1 (1) If it is an imitation of or is offered for sale under the name of another
2 pesticide;
- 3 (2) If its labeling bears any reference to registration under this chapter;
- 4 (3) If the labeling accompanying it does not contain directions for use which
5 are necessary and, if complied with, adequate to protect health and the
6 environment;
- 7 (4) If the label does not contain a warning or caution statement which may
8 be necessary and, if complied with, adequate to protect health and the
9 environment;
- 10 (5) If the label does not bear an ingredient statement on that part of the
11 immediate container and on the outside container or wrapper, if there
12 be one, through which the ingredient statement on the immediate
13 container cannot be clearly read, of the retail package that is presented
14 or displayed under customary conditions of purchase; except that a
15 pesticide is not misbranded under this subsection if:
16 (a) The size or form of the immediate container, or the outside
17 container or wrapper of the retail package, makes it impracticable
18 to place the ingredient statement on the part that is presented or
19 displayed under customary conditions of purchase; and
20 (b) The ingredient statement appears prominently on another part of
21 the immediate container, or outside container or wrapper,
22 permitted by the commissioner;
- 23 (6) The labeling does not contain a statement of the use classification
24 under which the product is registered if the product is a restricted use
25 pesticide;
- 26 (7) There is not affixed to its container, and to the outside container or
27 wrapper of the retail package, if there is one, through which the
28 required information on the immediate container cannot be clearly read,
29 a label bearing:
30 (a) The name and address of the producer, registrant, or person for
31 whom produced;

- 1 (b) The name, brand, or trademark under which the pesticide is sold;
2 and
- 3 (c) The net weight or measure of the content; ~~and~~
- 4 ~~(d) When required by regulation of the commissioner to effectuate~~
5 ~~the purposes of this chapter, the registration number assigned to~~
6 ~~the pesticide under this chapter, and the use classification;~~
- 7 (8) The pesticide contains any substance or substances in quantities highly
8 toxic to man, unless the label bears, in addition to any other matter
9 required by this chapter:
- 10 (a) The skull and crossbones;
- 11 (b) The word "poison" prominently in red on a background of
12 distinctly contrasting color; and
- 13 (c) A statement of a practical treatment (first aid or otherwise) in
14 case of poisoning by the pesticide;
- 15 (9) If any word, statement, or other information required by or under the
16 authority of this chapter to appear on the labeling is not prominently
17 placed thereon with such conspicuousness, as compared with other
18 words, statements, designs, or graphic matter in the labeling, and in
19 such terms as to render it likely to be read and understood by the
20 ordinary individual under customary conditions of purchase and use;
- 21 (10) If in the case of an insecticide, nematocide, fungicide, or herbicide,
22 when used as directed or in accordance with commonly recognized
23 practice, it is injurious to living man or other vertebrate animals or
24 vegetation, except weeds, to which it is applied, or to the person
25 applying the pesticide; or
- 26 (11) If a plant regulator, defoliant, or desiccant when used as directed is
27 injurious to man or other vertebrate animals, or the vegetation to which
28 it is applied; provided, that the physical or physiological effect on plants
29 or parts thereof may not be deemed injurious when this is the purpose
30 for which the plant regulator, defoliant, or desiccant is applied in
31 accordance with label claims and recommendations.

28. ~~"Restricted use pesticides" means any pesticide that the commissioner has found and determined under the provisions of this chapter to be injurious to persons, beneficial insects, animals, crops, or to the environment other than the pests the pesticide is intended to repel, destroy, control, or mitigate~~ formulation that is classified for restricted use by the United States environmental protection agency. The term also includes a pesticide formulation classified for restricted use by the commissioner pursuant to section 19-18-05.

SECTION 2. AMENDMENT. Section 19-18-04 of the North Dakota Century Code is amended and reenacted as follows:

19-18-04. (Effective through June 30, 2003) Registration - Fees.

1. Any person before selling or offering for sale any pesticide for use within this state shall file biennially with the commissioner an application for registration of the pesticide. The application must:
 - a. Give the name and address of each manufacturer or distributor.
 - b. Give the name and brand of each product registered.
 - c. Be accompanied by a current label of each product so registered.
 - d. Be accompanied by a registration fee of three hundred fifty dollars for each product registered. At the close of each calendar month, the commissioner shall transmit to the state treasurer all moneys received for the registrations. The state treasurer shall credit fifty dollars for each registered product to the general fund in the state treasury and the remainder of the registration fee for each registered product to the environment and rangeland protection fund.
 - e. Be accompanied by a material safety data sheet.
2. The commissioner may require an applicant or registrant to provide efficacy, toxicity, residue, and any other data necessary to determine if the pesticide will perform its intended function without unreasonable adverse effects on the environment. If the commissioner finds that the application conforms to law, the commissioner shall issue to the applicant a certificate of registration of the product. If after public hearing before the commissioner the application is denied, the product may not be offered for sale.

- 1 3. Each registration covers a two-year period beginning January first and expiring
2 December thirty-first of the following year. A certificate of registration may not be
3 issued for a term longer than two years, and is not transferable from one person to
4 another, or from the ownership to whom issued to another ownership, or from one
5 place to another place or location. A penalty of fifty percent of the license or
6 registration fee must be imposed if the license or certificate of registration is not
7 applied for on or before January thirty-first following the expiration date, or within
8 the same month the pesticides are first manufactured or sold within this state.
9 Each product must go through a two-year discontinuance period in order to clear
10 all outstanding products in the channel of trade.
- 11 4. This section does not apply to a pesticide sold by a retail dealer if the registration
12 fee has been paid by the manufacturer, jobber, or any other person, as required by
13 this section.

14 **(Effective July 1, 2003) Registration - Fees.** Any person before selling or offering for
15 sale any pesticide for use within this state shall file biennially with the commissioner an
16 application for registration of the pesticide. The application must:

- 17 1. Give the name and address of each manufacturer or distributor.
18 2. Give the name and brand of each product to be registered.
19 3. Be accompanied by a current label of each product ~~se~~ to be registered.
20 4. Be accompanied by a registration fee of three hundred dollars for each product to
21 be registered. At the close of each calendar month, the commissioner shall
22 transmit to the state treasurer all moneys received for the registrations. The state
23 treasurer shall credit fifty dollars for each registered product to the general fund in
24 the state treasury and the remainder of the registration fee for each registered
25 product to the environment and rangeland protection fund.
- 26 5. Be accompanied by a material safety data sheet for each product to be registered.

27 The commissioner may require an applicant or registrant to provide efficacy, toxicity,
28 residue, and any other data necessary to determine if the pesticide will perform its intended
29 function without unreasonable adverse effects on the environment. If the commissioner finds
30 that the application conforms to law, the commissioner shall issue to the applicant a certificate

of registration of the product. ~~If after public hearing before the commissioner the application is denied, the product may not be offered for sale.~~

Each registration covers a designated two-year period beginning January first of each even-numbered year and expiring December thirty-first of the following year. A certificate of registration may not be issued for a term longer than two years, and is not transferable from one person to another, or from the ownership to whom issued to another ownership, ~~or from one place to another place or location.~~ A penalty of fifty percent of the license or registration fee must be imposed if the license or certificate of registration is not applied for on or before January thirty-first following the expiration date, ~~or within the same month the pesticides are first manufactured or sold within this state.~~ Each product must go through a two-year discontinuance period in order to clear all outstanding products in the channel of trade.

This section does not apply to a pesticide sold by a retail dealer if the registration fee has been paid by the manufacturer, jobber, or any other person, as required by this section.

SECTION 3. AMENDMENT. Section 19-18-04.1 of the North Dakota Century Code is amended and reenacted as follows:

19-18-04.1. Reporting requirements - Penalty. Upon request of the commissioner, a registrant shall report the amount and type of each registered pesticide sold, offered for sale, or otherwise distributed in the state. The report must be filed ~~by March first~~ within thirty days after receiving the commissioner's request. The information required must include the brand name, amount, and formulation of each pesticide sold, offered for sale, or otherwise distributed in the state. However, specific brand names may not be identified in any report or otherwise made public. Notwithstanding the civil penalty provided in section 19-18-08, a person who violates this section is subject to a civil penalty not to exceed fifty dollars per day of violation. Each day of noncompliance constitutes a separate violation for purposes of penalty assessment.

SECTION 4. AMENDMENT. Section 19-18-07 of the North Dakota Century Code is amended and reenacted as follows:

19-18-07. Exemptions. The penalties provided for violations of section 19-18-03 do not apply to:

1. Any carrier while lawfully engaged in transporting a pesticide within this state, if the carrier, upon request, permits the commissioner to copy all records showing the transactions in and movement of the articles.

2. Public officials of this state and the federal government engaged in the performance of their official duties.
3. The manufacturer or shipper of a pesticide for experimental use only:
 - a. By or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of pesticides; or
 - b. By others if the pesticide is not sold and if the container thereof is plainly and conspicuously marked "For experimental use only - not to be sold", together with the manufacturer's name and address. ~~If a written permit has been obtained from the commissioner, pesticides may be sold for experimental purposes subject to such restrictions and conditions as may be set forth in the permit.~~
4. A person using, distributing, selling, or offering for sale an unregistered pesticide for which the United States environmental protection agency has granted an emergency exemption for at least one use in North Dakota under section 18 of the federal Act.

No article may be deemed in violation of this chapter when intended solely for export to a foreign country and when prepared or packed according to the specifications or directions of the purchaser. If not so exported, all the provisions of this chapter apply.

SECTION 5. REPEAL. Section 19-18-02.2 of the North Dakota Century Code is repealed.

SECTION 6. EMERGENCY. Section 3 of this Act is declared to be an emergency measure.