

Sixty-ninth
Legislative Assembly
of North Dakota

**SENATE BILL NO. 2086
with House Amendments**

SENATE BILL NO. 2086

Introduced by

Agriculture and Veterans Affairs Committee

(At the request of the Agriculture Commissioner)

1 A BILL for an Act to create and enact a new section to chapter 4.1-33 of the North Dakota
2 Century Code, relating to pesticide certification standards; and to amend and reenact sections
3 4.1-33-01 and 4.1-33-03, subdivision b of subsection 1 of section 4.1-33-12, section 4.1-33-13,
4 subsection 1 of section 4.1-33-16, and subsection 5 of section 4.1-33-20 of North Dakota
5 Century Code, relating to pesticide control.

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

7 **SECTION 1. AMENDMENT.** Section 4.1-33-01 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **4.1-33-01. Definitions.**

10 As used in this chapter:

- 11 1. "Animal" means all vertebrate and invertebrate species, including humans and other
12 mammals, birds, fish, and shellfish.
- 13 2. "Antimicrobial pesticide" means a substance or mixture of substances intended for
14 preventing, destroying, repelling, suppressing, or mitigating the growth of
15 micro-organisms, including bacteria, viruses, and fungi on inanimate objects and
16 surfaces.
- 17 3. "Applicator" means ~~any~~ any person who applies a pesticide to land.
- 18 4. "Certified applicator" means ~~any~~ any individual who is certified under this chapter to
19 purchase or use a restricted use pesticide.
- 20 5. "Commercial applicator" means a person who, by contract or for hire, engages in the
21 business of applying pesticides for compensation.

- 1 6. "Defoliant" means anya substance or mixture of substances intended to cause the
2 leaves or foliage to drop from a plant, with or without causing abscission.
- 3 7. "Desiccant" means anya substance or mixture of substances intended to artificially
4 accelerate the drying of plant tissue.
- 5 8. "Device" means anyan instrument or contrivance, other than a firearm, which is
6 intended for trapping, destroying, repelling, or mitigating any pest or any other form of
7 plant or animal life, other than human and other than bacteria, virus, or other
8 micro-organism on or in living humans or other living animals, but not including
9 equipment used for the application of pesticides when sold separately from pesticide.
- 10 9. "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver, or supply
11 pesticides in ~~this~~the state.
- 12 10. "Environment" includes water, air, land, and all plants ~~and~~, humans, and other animals
13 living ~~therein~~there, and the interrelationships ~~that exist~~existing among them.
- 14 11. "Equipment" means anya type of ground, water, or aerial equipment or contrivance
15 using motorized, mechanical, or pressurized power and used to apply anya pesticide
16 on land and anything that may be growing, inhabiting, or stored on or in that land. The
17 term does not include anya pressurized hand-held household apparatus used to apply
18 anya pesticide, or any equipment or contrivance of which the individual who is
19 applying the pesticide is the source of power or energy to make the pesticide
20 application.
- 21 12. "Fungus" means anya non-chlorophyll-bearing thallophytes, that is, anya
22 non-chlorophyll-bearing plant of a lower order than mosses and liverworts as, for
23 example, rust, smut, mildew, mold, yeast, and bacteria, ~~except these~~fungus on or in
24 living humans or other living animals, and ~~except these~~fungus on or in processed food,
25 beverages, or pharmaceuticals.
- 26 13. "Insect" means anyone of the numerous small invertebrate animals generally having
27 the body more or less obviously segmented, for the most part belonging to the class of
28 insecta, comprising six-legged, usually winged forms, and to other allied classes of
29 arthropods ~~whose~~for which members are wingless and usually have more than six
30 legs.

- 1 14. "Label" means the written, printed, or graphic matter on, or attached to, the pesticide
2 or device or any of ~~its~~the pesticide or device's containers or wrappers.
- 3 15. "Labeling" means the label and ~~all~~ other written, printed, or graphic matter:
4 a. Accompanying the pesticide or device; or
5 b. To which reference is made on the label or in literature accompanying or referring
6 to the pesticide, except when accurate nonmisleading references are made to
7 current official publications of the board, the United States environmental
8 protection agency, the United States departments of agriculture and interior, the
9 United States department of health and human services, state agricultural
10 colleges, and other similar federal or state institutions or agencies authorized by
11 law to conduct research in the field of pesticides.
- 12 16. "Land" means ~~all~~ land and water areas, including airspace, and ~~all~~ plants, animals,
13 structures, buildings, contrivances, and machinery, appurtenant to or situated on land,
14 fixed or mobile, including any used for transportation.
- 15 17. "Nematode" means an invertebrate ~~animal~~animal of the phylum nemathelminthes,
16 and class nematoda, i.e., unsegmented round worms with elongated, fusiform, or
17 saclike bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts,
18 may also be called nemas or eelworms.
- 19 18. "Pest" means ~~any~~an insect, rodent, nematode, fungus, or weed; or ~~any~~ other form of
20 terrestrial or aquatic plant or animal life, viruses, bacteria, or other micro-organism,
21 except viruses, bacteria, or other micro-organisms on or in living humans or other
22 living animals.
- 23 19. "Pesticide" means:
24 a. ~~Any~~A substance or mixture of substances intended for preventing, destroying,
25 repelling, or mitigating any pest; and
26 b. ~~Any~~A substance or mixture of substances intended for use as a plant regulator,
27 defoliant, or desiccant.
- 28 20. "Pesticide certification standards" means the requirements under title 40, Code of
29 Federal Regulations, sections 171.101 through 171.107, as those sections existed on
30 January 4, 2017.

- 1 21. "Pesticide dealer" means anya person, other than a pesticide wholesaler, distributing
2 pesticides.
- 3 ~~21.~~22. "Plant regulator" means anya substance or mixture of substances intended, through
4 physiological action, to accelerate or retard the rate of growth or rate of maturation, or
5 to otherwise alter the behavior of plants or the produce thereof, but does not include
6 substances to the extent that they are intended as plant nutrients, trace elements,
7 nutritional chemicals, plant inoculants, or soil amendments.
- 8 ~~22.~~23. "Private applicator" means an individual who is required to be a certified applicator to
9 buy or use a restricted use pesticide on property owned or rented by the applicator or
10 the applicator's employer or, if applied without compensation other than trading of
11 personal services between producers of agricultural commodities, on the property of
12 another person.
- 13 ~~23.~~24. "Public applicator" means an applicator who applies pesticides, other than
14 ready-to-use pesticides, as an employee of:
- 15 a. A governmental agency, municipal corporation, or public utility; or
16 b. A hospital, privately owned golf course, nursery, or greenhouse.
- 17 24.~~25.~~ "Ready-to-use pesticide" means a pesticide other than a restricted use pesticide which
18 is applied directly from its original container consistent with label directions, and
19 includes aerosol spray cans, ready-to-use spray containers, bait packs, and other
20 types of containers that do not require mixing or loading before application.
- 21 ~~25.~~26. "Restricted use pesticide" means anya pesticide formulation ~~that is~~ classified as
22 restricted use by the United States environmental protection agency or the agriculture
23 commissioner under section 4.1-34-06.
- 24 ~~26.~~27. "Rinsate" means a diluted mixture of pesticide obtained from triple rinsing or pressure
25 rinsing pesticide containers or from rinsing the inside and outside of spray equipment.
- 26 ~~27.~~28. "Tank mix" means anya pesticidal formulation used alone or in combination with
27 another pesticide and mixed with a liquid carrier prior to application.
- 28 ~~28.~~29. "Unreasonable adverse effects on the environment" means anyan unreasonable risk
29 to humans or the environment, taking into account the economic, social, and
30 environmental costs and benefits of the use of any pesticide.
- 31 ~~29.~~30. "Weed" means anya plant that grows where not wanted.

1 ~~30-31.~~ "Wildlife" means all living things that are ~~neither~~not human, domesticated, ~~nor~~or, as
2 defined in this chapter, pests, including mammals, birds, and aquatic life.

3 **SECTION 2.** A new section to chapter 4.1-33 of the North Dakota Century Code is created
4 and enacted as follows:

5 **Standards for pesticide certification.**

6 The pesticide certification standards as defined under section 4.1-33-01, are incorporated
7 by reference and made part of this chapter.

8 **SECTION 3. AMENDMENT.** Section 4.1-33-03 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **4.1-33-03. Pesticide control board to administer chapter and adopt rules.**

11 1. a. The pesticide control board shall administer this chapter and may adopt rules
12 under chapter 28-32 to implement this chapter. The rules may prescribe methods
13 to be used in the application of pesticides. The rules may relate to the time,
14 place, manner, methods, materials, and amounts and concentrations, in
15 connection with the application of the pesticide, and may restrict or prohibit use of
16 pesticides in designated areas during specified periods of time and ~~shall~~must
17 encompass all reasonable factors ~~which~~that the board deems necessary to
18 prevent damage or injury by drift or misapplication to:

19 (1) Plants, including forage plants, on adjacent or nearby lands.

20 (2) Wildlife in the adjoining or nearby areas.

21 (3) Fish and other aquatic life in waters in proximity to the area to be treated.

22 (4) Persons, animals, or beneficial insects.

23 b. In adopting rules, the board shall give consideration to pertinent research findings
24 and recommendations of other agencies of ~~this~~the state, ~~the~~ federal government,
25 or other reliable sources.

26 2. In adopting rules under this chapter, the board shall prescribe standards and
27 requirements for the certification of applicators of pesticides. ~~These~~The standards and
28 requirements must relate to the use and handling of pesticides. In determining
29 ~~these~~the standards and requirements, the board shall ~~take into consideration~~adopt
30 standards and requirements prescribed by the United States environmental protection
31 agency in the pesticide certification standards.

- 1 3. Rules adopted under this chapter may not permit any pesticide use that is prohibited
2 by the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.] or
3 regulations or orders issued thereunder.
- 4 4. To comply with the pesticide certification standards and the Federal Insecticide,
5 Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.], the board ~~may~~shall make
6 reports to the United States environmental protection agency in the form and
7 containing the information as ~~that~~the agency requires.
- 8 5. Rules to implement this chapter may provide for:
- 9 a. The collection, examination, and reporting of samples of pesticides.
- 10 b. The safe handling, transportation, storage, display, distribution, and disposal of
11 pesticides and pesticides containers.
- 12 c. The identification of pests under this chapter ~~when~~if the board finds particular
13 organisms to be annoying or otherwise injurious or harmful to agriculture, health,
14 and the environment.

15 **SECTION 4. AMENDMENT.** Subdivision b of subsection 1 of section 4.1-33-12 of the North
16 Dakota Century Code is amended and reenacted as follows:

- 17 b. An individual who would be a private applicator, if certified, may not use any
18 restricted use pesticide unless the individual:
- 19 (1) Complies with the certification requirements established by the board; or
- 20 (2) Is under the direct supervision of a certified applicator while applying a
21 restricted use herbicide.

22 **SECTION 5. AMENDMENT.** Section 4.1-33-13 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **4.1-33-13. Unlawful acts –~~Grounds~~and grounds for denial, suspension, or revocation**
25 **of a certification.**

- 26 1. It is a violation of this chapter for ~~any~~a person to:
- 27 4. a. Make false or fraudulent claims through any media, misrepresenting the effect of
28 materials or methods to be utilized, or advertise a pesticide without reference to
29 its classification.
- 30 2. b. Make a pesticide recommendation, application, or use inconsistent with the
31 labeling or other restrictions prescribed by the board.

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- 1 3. c. Apply materials known by that person to be ineffective or improper.
- 2 4. d. Operate faulty or unsafe equipment.
- 3 5. e. Operate in a faulty, careless, or negligent manner.
- 4 6. f. Neglect or, after notice, refuse to comply with this chapter, the rules adopted to
5 implement this chapter, or any lawful order of the commissioner.
- 6 7. g. Refuse or neglect to keep and maintain the records required by this chapter or to
7 make reports when and as required.
- 8 8. h. Make false or fraudulent records, invoices, or reports.
- 9 9. i. Apply pesticide to the property of another, without the permission of the owner or
10 lessee, unless the application is made under the direction of a governmental
11 entity.
- 12 10. j. Use fraud or misrepresentation in making an application for, or for renewal of,
13 certification.
- 14 11. k. Refuse or neglect to comply with any limitations or restrictions on or in a duly
15 issued certification.
- 16 12. l. Aid or abet a person to evade this chapter, conspire with a person to evade this
17 chapter, or allow the person's certification to be used by another person.
- 18 13. m. Knowingly make false statements during or after an inspection or an
19 investigation.
- 20 14. n. Impersonate a federal, state, county, or city inspector or official.
- 21 15. o. Distribute any restricted use pesticide to any person who is not properly certified
22 to use or purchase the pesticide.
- 23 16. p. Buy, use, or supervise the use of any pesticide without first complying with the
24 certification requirements of this chapter, unless otherwise exempted.
- 25 17. q. Apply any pesticide that is not registered under chapter 4.1-34.
- 26 2. A certification issued under this chapter may be denied, removed, or suspended if a
27 person:
- 28 a. Receives a criminal conviction under section 136l of the Federal Insecticide,
29 Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.];
- 30 b. Is subject to a final order imposing a civil penalty under section 136l of the
31 Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.]; or

1 c. Is subject to a concluded enforcement action for a violation of state law or
2 regulation relating to pesticide use.

3 **SECTION 6. AMENDMENT.** Subsection 1 of section 4.1-33-16 of the North Dakota Century
4 Code is amended and reenacted as follows:

5 1. The certification requirements of this chapter do not apply to an individual applying
6 nonrestricted use pesticides under the direct supervision of a private or commercial
7 applicator, unless the pesticide label requires that a certified applicator personally
8 apply the pesticide. A pesticide is applied under the direct supervision of a private or
9 commercial applicator if the pesticide is applied by an individual acting under the
10 instruction and control of a certified applicator who is physically available if needed.
11 The certified applicator need not be present when the pesticide is applied. Direct
12 supervision with respect to applications using aircraft requires that the pilot of the
13 aircraft be appropriately certified. The certification requirements of this chapter do not
14 apply to a competent person applying a restricted use ~~pesticide~~herbicide under the
15 direct supervision of a private applicator, unless the ~~pesticide~~herbicide label requires
16 that a certified applicator personally apply the particular ~~pesticide~~herbicide. A
17 ~~pesticide~~An herbicide is deemed to be applied under the direct supervision of a private
18 applicator if it is applied by a competent person acting under the instruction and
19 control of a private applicator who is available if ~~and when~~ needed, even though the
20 private applicator is not physically present at the time and place ~~that the~~
21 ~~pesticide~~herbicide is applied.

22 **SECTION 7. AMENDMENT.** Subsection 5 of section 4.1-33-20 of the North Dakota Century
23 Code is amended and reenacted as follows:

24 5. After providing an opportunity for a hearing, the commissioner may deny, suspend,
25 revoke, or modify the provision of any certification issued under this chapter, if the
26 commissioner determines that the applicant for certification or the holder of a
27 certificate has violated this chapter or any rules adopted under this chapter, or has a
28 criminal conviction subject to a final order imposing a civil penalty under section 136I
29 of the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.].