

FIRST ENGROSSMENT
with Conference Committee Amendments
ENGROSSED SENATE BILL NO. 2167

Introduced by

Agriculture Committee

(At the request of the Agriculture Commissioner)

1 A BILL for an Act to amend and reenact sections 4-35-05, 4-35-06, 4-35-08, 4-35-09, 4-35-13,
2 4-35-15, 4-35-19, and subsection 4 of section 4-35.1-01 of the North Dakota Century Code,
3 relating to pesticide applicators.

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

5 **SECTION 1. AMENDMENT.** Section 4-35-05 of the 1999 Supplement to the North
6 Dakota Century Code is amended and reenacted as follows:

7 **4-35-05. Definitions.** As used in this chapter:

8 1. "Animal" means all vertebrate and invertebrate species, including, ~~but not limited~~
9 ~~to, man~~ humans and other mammals, birds, fish, and shellfish.

10 2. "Antidote" means a practical treatment in case of poisoning and includes first aid
11 treatment.

12 ~~2-4.~~ 3. "Applicator" means any person who applies a pesticide to land.

13 ~~3.~~ 4. "Beneficial insects" means those insects ~~which~~ that, during their life cycle, are
14 effective pollinators of plants, are parasites, or predators of pests.

15 ~~4-a.~~ 5. "Certified applicator" means any individual who is certified under this chapter as
16 ~~authorized to use any restricted use pesticide covered by the applicator's~~
17 ~~certification.~~ The term includes a commercial applicator and a private applicator.

18 ~~b. "Private applicator" means a certified applicator who uses or supervises the~~
19 ~~use of any pesticide which is classified for restricted use for purposes of~~
20 ~~producing any agricultural commodity on property owned or rented by the~~
21 ~~applicator or the applicator's employer or, if applied without compensation~~
22 ~~other than trading of personal services between producers of agricultural~~
23 ~~commodities, on the property of another person.~~

24 ~~e.~~

- 1 6. "Commercial applicator" means a certified applicator, ~~whether or not the applicator~~
2 ~~is a private applicator with respect to some uses~~, who uses any pesticide ~~which is~~
3 ~~classified for restricted use~~, for any purpose or on any property, other than as
4 provided for by ~~subdivision b~~ a private applicator.
- 5 5- 7. "Dealer" means any person who sells a pesticide to an end user.
- 6 6- 8. "Defoliant" means any substance or mixture of substances intended to cause the
7 leaves or foliage to drop from a plant, with or without causing abscission.
- 8 7- 9. "Desiccant" means any substance or mixture of substances intended to artificially
9 accelerate the drying of plant tissue.
- 10 8- 10. "Device" means any instrument or contrivance, other than a firearm, which is
11 intended for trapping, destroying, repelling, or mitigating any pest or any other form
12 of plant or animal life, other than ~~man~~ human and other than bacteria, virus, or
13 other micro-organism on or in living ~~man~~ humans or other living animals, but not
14 including equipment used for the application of pesticides when sold separately
15 therefrom.
- 16 9- 11. "Distribute" means to offer for sale, hold for sale, sell, barter, or supply pesticides
17 in this state.
- 18 40- 12. "Environment" includes water, air, land, and all plants and ~~man~~ humans and other
19 animals living therein, and the interrelationships which exist among these.
- 20 44- 13. "Equipment" means any type of ground, water, or aerial equipment or contrivance
21 using motorized, mechanical, or pressurized power and used to apply any
22 pesticide on land and anything that may be growing, habitating, or stored on or in
23 such land, ~~but shall~~. The term does not include any pressurized hand-sized
24 household apparatus used to apply any pesticide, or any equipment or contrivance
25 of which the person who is applying the pesticide is the source of power or energy
26 in making such pesticide application.
- 27 42- 14. "Fungus" means any non-chlorophyll-bearing thallophytes, i.e., any
28 non-chlorophyll-bearing plant of a lower order than mosses and liverworts as, for
29 example, rust, smut, mildew, mold, yeast, and bacteria, except those on or in living
30 ~~man~~ humans or other living animals, and except those on or in processed food,
31 beverages, or pharmaceuticals.

- 1 ~~43.~~ 15. "Insect" means any of the numerous small invertebrate animals generally having
2 the body more or less obviously segmented, for the most part belonging to the
3 class of insecta, comprising six-legged, usually winged forms, and to other allied
4 classes of arthropods whose members are wingless and usually have more than
5 six legs.
- 6 ~~44.~~ 16. "Label" means the written, printed, or graphic matter on, or attached to, the
7 pesticide or device or any of its containers or wrappers.
- 8 ~~45.~~ 17. "Labeling" means the label and all other written, printed, or graphic matter:
9 a. Accompanying the pesticide or device; and
10 b. To which reference is made on the label or in literature accompanying or
11 referring to the pesticide, except when accurate nonmisleading references are
12 made to current official publications of the board; the United States
13 environmental protection agency; the United States departments of
14 agriculture and interior; the United States department of health and human
15 services; state agricultural colleges; and other similar federal or state
16 institutions or agencies authorized by law to conduct research in the field of
17 pesticides.
- 18 ~~46.~~ 18. "Land" means all land and water areas, including airspace, and all plants, animals,
19 structures, buildings, contrivances, and machinery, appurtenant thereto or situated
20 thereon, fixed or mobile, including any used for transportation.
- 21 ~~47.~~ 19. "Mixture" means a diluted pesticide combination.
- 22 ~~48.~~ 20. "Nematode" means invertebrate animals of the phylum nemathelminthes, and
23 class nematoda, i.e., unsegmented round worms with elongated, fusiform, or
24 saclike bodies covered with cuticle, and inhabiting soil, water, plants, or plant
25 parts, may also be called nemas or eelworms.
- 26 ~~49.~~ 21. "Person" means any individual, partnership, association, fiduciary, corporation,
27 limited liability company, or any organized group of persons, whether or not
28 incorporated.
- 29 ~~20.~~ 22. "Pest" means:
30 a. Any insect, snail, slug, rodent, nematode, fungus, weed; or

- b. Any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism, except viruses, bacteria, or other micro-organisms on or in living ~~man~~ humans or other living animals which are annoying or otherwise injurious or harmful to agriculture, health, and the environment.

~~24.~~ 23. "Pesticide" means:

- a. Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; and
- b. Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

~~22.~~ 24. "Pesticide dealer" means any person who distributes restricted use pesticides.

~~23.~~ 25. "Plant regulator" means any substance or mixture of substances intended, through physiological action, to accelerate or retard the rate of growth or rate of maturation, or to otherwise alter the behavior of plants or the produce thereof, but does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

26. "Private applicator" means a certified applicator who uses or supervises the use of any pesticide that is classified for restricted use, to produce any agricultural commodity on property owned or rented by the applicator or the applicator's employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.

~~24.~~ 27. "Protect health and the environment" means protection against any unreasonable adverse effects on public health and the environment.

~~25.~~ 28. "Public operator" means a certified applicator who applies restricted use pesticides as an employee of a state agency, municipal corporation, public utility, or other governmental agency.

~~26.~~ 29. "Restricted use pesticide" means any pesticide formulation which is classified for restricted use by the board.

~~27.~~ 30. "Rinsate" means a diluted mixture of pesticide obtained from triple rinsing pesticide containers or from rinsing the inside and outside of spray equipment.

~~28. 31. "Snails or slugs" include all~~ "Snail" or "slug" includes every harmful mollusk
mollusk.

~~29. 32.~~ "Tank mix" means any pesticidal formulation used alone or in combination with
another pesticide and mixed with a liquid carrier prior to application.

~~30. 33.~~ "Unreasonable adverse effects on the environment" means any unreasonable risk
to man humans or the environment, taking into account the economic, social, and
environmental costs and benefits of the use of any pesticide.

~~31. 34.~~ "Weed" means any plant which grows where not wanted.

~~32. 35.~~ "Wildlife" means all living things that are neither human, domesticated, nor, as
defined in this chapter, pests, including, ~~but not limited to,~~ mammals, birds, and
aquatic life.

SECTION 2. AMENDMENT. Section 4-35-06 of the 1999 Supplement to the North
Dakota Century Code is amended and reenacted as follows:

4-35-06. Pesticide control board to administer chapter and adopt regulations.

1. a. The pesticide control board shall administer ~~the provisions of this chapter and~~
~~has authority to issue regulations in conformance with provisions of~~ may
adopt rules in accordance with chapter 28-32 ~~to carry out the provisions of~~
implement this chapter. ~~Such regulations~~ The rules may prescribe methods
to be used in the application of pesticides. ~~Where the board finds that such~~
~~regulations are necessary to carry out the purpose and intent of this chapter,~~
~~such regulations~~ The rules may relate to the time, place, manner, methods,
materials, and amounts and concentrations, in connection with the application
of the pesticide, and may restrict or prohibit use of pesticides in designated
areas during specified periods of time and shall encompass all reasonable
factors which the board deems necessary to prevent damage or injury by drift
or misapplication to:

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

~~b.~~ (2) Wildlife in the adjoining or nearby areas.

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

~~d.~~ (4) Persons, animals, or beneficial insects.

- 1 ~~b.~~ In ~~issuing such regulations~~ adopting rules, the board shall give consideration
2 to pertinent research findings and recommendations of other agencies of this
3 state, the federal government, or other reliable sources.
- 4 2. For the purpose of uniformity, the board may adopt, ~~pursuant to chapter 28-32,~~
5 restricted use classifications as determined by the federal environmental protection
6 agency. The board may also by ~~regulation~~ rule determine state restricted use
7 pesticides for the state or designated areas within the state.
- 8 3. The board, in adopting rules under this chapter, shall prescribe standards and
9 requirements for the certification of applicators of ~~restricted-use~~ pesticides. These
10 standards and requirements must relate to the use and handling of pesticides. In
11 determining these standards and requirements, the board shall take into
12 consideration standards and requirements prescribed by the environmental
13 protection agency.
- 14 4. ~~Regulations~~ Rules adopted under this chapter may not permit any pesticide use
15 which is prohibited by the Federal Insecticide, Fungicide, and Rodenticide Act or
16 regulations or orders issued thereunder.
- 17 5. In order to comply with section 4 of the Federal Insecticide, Fungicide, and
18 Rodenticide Act, the board ~~is authorized to~~ may make such reports to the United
19 States environmental protection agency in such form and containing such
20 information as that agency may from time to time require.
- 21 6. ~~The board is authorized to make appropriate regulations, in accordance with~~
22 ~~chapter 28-32, for carrying out the provisions of this chapter, including, but not~~
23 ~~limited to, regulations providing~~ Rules to implement this chapter may provide for:
- 24 a. The collection, examination, and reporting of samples of pesticides.
- 25 b. The safe handling, transportation, storage, display, distribution, and disposal
26 of pesticides and their containers.
- 27 ~~7. c.~~ c. ~~The board may by regulation identify "pests" under the guidelines of the~~
28 ~~definition of the term "pest" contained within~~ The identification of pests under
29 this chapter when ~~it~~ the board finds particular organisms to be annoying or
30 otherwise injurious or harmful to agriculture, health, and the environment.

SECTION 3. AMENDMENT. Section 4-35-08 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-35-08. Classification of certificates. The board may classify commercial certificates to be issued under this chapter. ~~Such~~ The classifications may include pest control operators, wood treaters, ornamental or agricultural pesticide applicators, or right-of-way pesticide applicators. Separate classifications may be specified as to ground, aerial, or manual methods used by any applicator to apply ~~restricted-use~~ pesticides or to the use of ~~restricted-use~~ pesticides to control insects and plant diseases, rodents, or weeds. Each classification of certification may be subject to separate testing procedures and training requirements; provided that a person may be required to pay an additional fee if ~~such~~ the person desires to be certified in one or more of the classifications provided for by the board under ~~the authority of~~ this section.

SECTION 4. AMENDMENT. Section 4-35-09 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-35-09. Commercial applicator's certification.

1. ~~No person who would be a~~ A commercial applicator ~~if certified~~ may not purchase or use a ~~restricted-use~~ pesticide without first complying with the certification standards and requirements of this chapter, or other restrictions as may be determined by the board.
2. An individual may be certified as a commercial applicator within a classification if the individual successfully completes an examination for the classification as prescribed by the board and administered by the North Dakota state university extension service or the service's designee. An application for certification must be on a form prescribed by the board and accompanied by a reasonable examination fee set by the board.
3. If the North Dakota state university extension service, or its designee, finds the applicant qualified to apply pesticides in the classifications ~~he~~ for which the applicant has applied ~~for~~, after examination as the board requires, and the applicant meets all other requirements of this chapter, the North Dakota state university extension service shall issue a commercial applicator's certificate limited to the classifications in which the applicant is qualified ~~in~~.

4. If certification is not to be issued as applied for, the North Dakota state university extension service, or its designee, shall inform the applicant in writing of the reasons for not issuing the certification. Individuals certified pursuant to this section are deemed certified commercial applicators for the use of ~~restricted-use~~ pesticides.

SECTION 5. AMENDMENT. Section 4-35-13 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-35-13. Application of act to governmental entities. All ~~federal agencies, state agencies, municipal corporations, and any other~~ governmental agencies, or and public utilities, are subject to this chapter and rules adopted ~~thereunder concerning the application of~~ restricted-use pesticides to implement this chapter.

SECTION 6. AMENDMENT. Section 4-35-15 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-35-15. Unlawful acts - Grounds for denial, suspension, or revocation of a certification. The commissioner ~~may~~, after providing an opportunity for a hearing, may deny, suspend, revoke, or modify any provision of any certification issued under this chapter, if the commissioner finds that the applicant or the holder of a the certification has committed any ~~of the acts enumerated~~ act listed in this section. Each of the following acts is a violation of this chapter, whether committed by an applicant, by the holder of the certification, or by any other person applying or using pesticides, if the person:

1. Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized, or advertised a pesticide without reference to its classification.
2. Made a pesticide recommendation, application, or use inconsistent with the labeling or other restrictions prescribed by the board.
3. Applied materials known by that person to be ineffective or improper.
4. Operated faulty or unsafe equipment.
5. Operated in a faulty, careless, or negligent manner.
6. Neglected, or, after notice, refused to comply with ~~the provisions of~~ this chapter, the rules adopted ~~hereunder~~ to implement this chapter, or ~~of~~ any lawful order of the commissioner.

7. Refused or neglected to keep and maintain the records required by this chapter, or to make reports when and as required.
8. Made false or fraudulent records, invoices, or reports.
9. Operated unlicensed equipment in violation of section 4-35-17.
10. Used fraud or misrepresentation in making an application for, or for renewal of, certification.
11. Refused or neglected to comply with any limitations or restrictions on or in a duly issued certification.
12. Aided or abetted a certified or an uncertified person to evade the provisions of this chapter, conspired with such a certified or an uncertified person to evade the provisions of this chapter, or allowed the person's certification to be used by another person.
13. Knowingly made false statements during or after an inspection or an investigation.
14. Impersonated ~~any~~ a federal, state, county, or city inspector or official.
15. Distributed any restricted use pesticide to any person who is required by law or rule to be certified to use or purchase ~~such~~ the restricted use pesticide unless ~~such~~ the person or ~~his~~ agent to whom distribution is made is certified to use or purchase that kind of restricted use pesticide.
16. Bought, used, or supervised the use of any ~~restricted use~~ pesticide without first complying with the certification requirements of this chapter, unless otherwise exempted ~~therefrom~~.
17. Applied any economic poison ~~which~~ that is not registered pursuant to ~~the provisions of~~ chapter 19-18.

SECTION 7. AMENDMENT. Section 4-35-19 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-35-19. Exemptions.

1. The certification requirements of this chapter do not apply to ~~any~~ a competent person applying general use pesticides ~~that are not classified for restricted use~~ under the direct supervision of a commercial applicator, unless the pesticide label requires that a certified applicator personally apply the pesticide. A pesticide is deemed to be applied under the direct supervision of a commercial applicator if the

pesticide is applied by a competent person acting under the instruction and control of a certified applicator who is physically available if needed. The certified applicator need not be present when the pesticide is applied. Direct supervision with respect to applications using aircraft requires that the pilot of the aircraft be appropriately certified.

2- The ~~provisions~~ certification requirements of this chapter ~~relating to certification requirements~~ do not apply to a competent person applying restricted use pesticides under the direct supervision of a private applicator, unless the pesticide ~~labeling~~ label requires that a certified applicator personally ~~applies~~ apply the particular pesticide. A pesticide is ~~considered~~ deemed to be applied under the direct supervision of a private applicator if it is applied by a competent person acting under the ~~instructions~~ instruction and control of a private applicator who is available if and when needed, even though ~~such~~ the private applicator is not physically present at the time and place that the pesticide is applied.

3- 2. ~~Persons~~ The certification requirements of this chapter do not apply to any person conducting laboratory-type research using restricted use pesticides ~~and doctors or to a doctor~~ of medicine and doctors or a doctor of veterinary medicine applying ~~pesticides as drugs~~ a pesticide as a drug or as medication during the course of ~~their~~ normal practice.

SECTION 8. AMENDMENT. Subsection 4 of section 4-35.1-01 of the 1999

Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. "Pesticide" means that term ~~as defined by subsection 21 of~~ in section 4-35-05.