

**Fifty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2003**

SENATE BILL NO. 2082
(Agriculture Committee)
(At the request of the Agriculture Commissioner)

AN ACT to amend and reenact subsections 5, 6, 11, 28, and 29 of section 4-35-05, sections 4-35-09, 4-35-16, 4-35-17, and 4-35-18, and subsection 4 of section 4-35-23 of the North Dakota Century Code, relating to the North Dakota pesticide act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 5, 6, 11, 28, and 29 of section 4-35-05 of the North Dakota Century Code are amended and reenacted as follows:

5. "Certified applicator" means any individual who is certified under this chapter ~~The term includes a commercial applicator and a private applicator as authorized to use or supervise the use of any pesticide that is classified for restricted use.~~
6. "Commercial applicator" means ~~a certified applicator who uses any pesticide, for any purpose or on any property, other than as provided for by a private applicator an applicator, whether or not the applicator is a private applicator with respect to some uses, who uses or supervises the use of a pesticide, whether classified as restricted or general use, for any purpose or on any property, other than as provided by subsection 26.~~
11. "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver, or supply pesticides in this state.
28. "Public ~~operator~~ applicator" means a certified applicator who applies ~~restricted-use~~ pesticides as an employee of a state or federal agency, municipal corporation, public utility, or other governmental agency.
29. "Restricted use pesticide" means any pesticide formulation which is classified for restricted use by the ~~board~~ United States environmental protection agency. The term also includes a pesticide formulation classified for restricted use by the agriculture commissioner under section 19-18-05.

SECTION 2. AMENDMENT. Section 4-35-09 of the North Dakota Century Code is amended and reenacted as follows:

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

1. A commercial or public applicator may not purchase ~~or~~ use, or supervise the use of a 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 or public 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 for which the applicant has applied, 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.

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 or public applicators for the use of pesticides.

SECTION 3. AMENDMENT. Section 4-35-16 of the North Dakota Century Code is amended and reenacted as follows:

4-35-16. Commercial and public applicators to keep records - Duration - Submission to commissioner. The board shall require the holders of certificates to maintain records of sales of restricted use and special exemption pesticides and all ~~commercial~~ applications of pesticides by commercial or public applicators. The board may also require restricted use pesticide application records of private applicators. Such relevant information as the board may deem necessary may be specified by rule. The records must be kept for a period of three years from the date of the application or sale of the ~~restricted-use~~ pesticide to which the records refer. Upon request, these records or pertinent parts thereof, must be submitted to the commissioner.

SECTION 4. AMENDMENT. Section 4-35-17 of the North Dakota Century Code is amended and reenacted as follows:

4-35-17. License plates for equipment. The board may require all motor vehicles, as defined in chapter 39-01, which are used for the application of restricted use pesticides to be identified by a license plate or decal furnished by the board. Such license plate or decal must be issued at no cost to the certified applicator or public applicator, and must be affixed to the vehicle as prescribed by the board. This section must not be interpreted to apply to aircraft engaged in aerial spraying which are licensed under section 2-05-18.

SECTION 5. AMENDMENT. Section 4-35-18 of the North Dakota Century Code is amended and reenacted as follows:

4-35-18. Reciprocal agreement. The North Dakota state university extension service, or its designee, may issue a certification on a reciprocal basis, without examination, to a nonresident who is certified to use restricted use pesticides under a plan substantially similar to this chapter and after the applicant has paid a fee, set by the board, not greater than the fee or charge authorized under sections 4-35-09, 4-35-12, or 4-35-14 if the applicant would have taken the appropriate examination. Such a certification may be suspended or revoked in the same manner and on the same grounds as certifications pursuant to this chapter, and must be suspended or revoked if the nonresident's home state certification is suspended or revoked.

SECTION 6. AMENDMENT. Subsection 4 of section 4-35-23 of the North Dakota Century Code is amended and reenacted as follows:

4. ~~In addition to the criminal sanctions which may be imposed pursuant to subsections 1 and 2, a person found guilty of violating~~ A person who violates a provision of this chapter or the rules adopted under this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation. The civil penalty may be imposed by a court in a civil proceeding or by the commissioner of agriculture through an ~~administrative hearing~~ adjudicative proceeding pursuant to chapter 28-32. The assessment of a civil penalty does not preclude the imposition of other sanctions authorized by law, this chapter, or rules adopted under this chapter.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2082.

Senate Vote: Yeas 46 Nays 0 Absent 1

House Vote: Yeas 86 Nays 5 Absent 3

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2003.

Approved at _____ M. on _____, 2003.

Governor

Filed in this office this _____ day of _____, 2003,

at _____ o'clock _____ M.

Secretary of State