

**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.



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.].