

17.0038.01000

FIRST DRAFT:
Prepared by the Legislative Council staff for the
Agriculture and Natural Resources Committee

Sixty-fifth
Legislative Assembly
of North Dakota

Introduced by

1 A BILL for an Act

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

3 **SECTION 1. AMENDMENT.** Section 4-35-01 of the North Dakota Century Code is amended
4 and reenacted as follows:

5 ~~**4-35-01. Title.**~~

6 ~~This chapter must be known as the North Dakota Pesticide Act of 1975.~~

NOTE: North Dakota drafting style discourages the use of "short titles" for chapters.

7 **SECTION 2. AMENDMENT.** Section 4-35-03 of the North Dakota Century Code is amended
8 and reenacted as follows:

9 ~~**4-35-03. Enforcing agency.**~~

10 ~~This chapter must be administered by the pesticide control board, hereinafter referred to as~~
11 ~~the "board".~~

NOTE: Administration by the board is stated already in North Dakota Century Code
Section 4-35-06, revised in section 6 of this Act.

12 **SECTION 3. AMENDMENT.** Section 4-35-04 of the North Dakota Century Code is amended
13 and reenacted as follows:

14 ~~**4-35-04. Declaration of purpose.**~~

15 ~~The legislative assembly hereby finds that pesticides are valuable to our state's agricultural~~
16 ~~production and to the protection of man and the environment from insects, rodents, weeds, and~~
17 ~~other forms of life which may be pests; but it is essential to the public health and welfare that~~
18 ~~they be regulated to prevent adverse effects on human life and the environment. The purpose of~~
19 ~~this chapter is to regulate, in the public interest, the distribution, storage, transportation,~~
20 ~~disposal, and use and application of pesticides to control pests as hereinafter defined. New~~
21 ~~pesticides are continually being discovered or synthesized which are valuable for the control of~~

1 ~~pests, and for use as defoliants, desiccants, plant regulators, and for related purposes. The~~
2 ~~dissemination of accurate scientific information as to the proper use or nonuse of any pesticide~~
3 ~~is vital to the public health and welfare and the environment, both immediate and future.~~
4 ~~Therefore, it is deemed necessary to provide for regulation of their use and application.~~

NOTE: North Dakota drafting style discourages the use of intent statements.

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

7 **4-35-054.1-34-01. Definitions.**

8 As used in this chapter:

- 9 1. "Animal" means all vertebrate and invertebrate species, including humans and other
10 mammals, birds, fish, and shellfish.
- 11 2. "Applicator" means any person who applies a pesticide to land.
- 12 3. "Certified applicator" means any individual who is certified under this chapter to
13 purchase or use a restricted use pesticide.
- 14 4. "Commercial applicator" means a person who by contract or for hire engages in the
15 business of applying pesticides for compensation.
- 16 5. "Defoliant" means any substance or mixture of substances intended to cause the
17 leaves or foliage to drop from a plant, with or without causing abscission.
- 18 6. "Desiccant" means any substance or mixture of substances intended to artificially
19 accelerate the drying of plant tissue.
- 20 7. "Device" means any instrument or contrivance, other than a firearm, which is intended
21 for trapping, destroying, repelling, or mitigating any pest or any other form of plant or
22 animal life, other than human and other than bacteria, virus, or other micro-organism
23 on or in living humans or other living animals, but not including equipment used for the
24 application of pesticides when sold separately ~~therefrom~~from pesticide.
- 25 8. "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver, or supply
26 pesticides in this state.
- 27 9. "Environment" includes water, air, land, and all plants and humans and other animals
28 living therein, and the interrelationships ~~which~~that exist among ~~these~~them.
- 29 10. "Equipment" means any type of ground, water, or aerial equipment or contrivance
30 using motorized, mechanical, or pressurized power and used to apply any pesticide on
31 land and anything that may be growing, ~~habitating~~inhabiting, or stored on or in

- 1 ~~such~~that land. The term does not include any pressurized ~~hand-sized~~hand-held
2 household apparatus used to apply any pesticide, or any equipment or contrivance of
3 which the ~~person~~individual who is applying the pesticide is the source of power or
4 energy ~~in making such~~to make the pesticide application.
- 5 11. "Fungus" means any non-chlorophyll-bearing thallophytes, i.e., any
6 non-chlorophyll-bearing plant of a lower order than mosses and liverworts as, for
7 example, rust, smut, mildew, mold, yeast, and bacteria, except those on or in living
8 humans or other living animals, and except those on or in processed food, beverages,
9 or pharmaceuticals.
- 10 12. "Insect" means any of the numerous small invertebrate animals generally having the
11 body more or less obviously segmented, for the most part belonging to the class of
12 insecta, comprising six-legged, usually winged forms, and to other allied classes of
13 arthropods whose members are wingless and usually have more than six legs.
- 14 13. "Label" means the written, printed, or graphic matter on, or attached to, the pesticide
15 or device or any of its containers or wrappers.
- 16 14. "Labeling" means the label and all other written, printed, or graphic matter:
17 a. Accompanying the pesticide or device; and
18 b. To which reference is made on the label or in literature accompanying or referring
19 to the pesticide, except when accurate nonmisleading references are made to
20 current official publications of the board; ~~the~~ the United States environmental
21 protection agency; ~~the~~ the United States departments of agriculture and interior; ~~the~~ the
22 United States department of health and human services; ~~state~~ state agricultural
23 colleges; ~~and~~ and other similar federal or state institutions or agencies authorized by
24 law to conduct research in the field of pesticides.
- 25 15. "Land" means all land and water areas, including airspace, and all plants, animals,
26 structures, buildings, contrivances, and machinery, appurtenant ~~thereto~~to or situated
27 ~~thereon~~on land, fixed or mobile, including any used for transportation.
- 28 16. "Nematode" means invertebrate animals of the phylum nemathelminthes, and class
29 nematoda, i.e., unsegmented round worms with elongated, fusiform, or saclike bodies
30 covered with cuticle, and inhabiting soil, water, plants, or plant parts, may also be
31 called nemas or eelworms.

- 1 17. "Pest" means any insect, rodent, nematode, fungus, or weed; or any other form of
2 terrestrial or aquatic plant or animal life, viruses, bacteria, or other micro-organism,
3 except viruses, bacteria, or other micro-organisms on or in living humans or other
4 living animals.
- 5 18. "Pesticide" means:
6 a. Any substance or mixture of substances intended for preventing, destroying,
7 repelling, or mitigating any pest; and
8 b. Any substance or mixture of substances intended for use as a plant regulator,
9 defoliant, or desiccant.
- 10 19. "Pesticide dealer" means any person, other than a pesticide wholesaler, distributing
11 pesticides.
- 12 20. "Plant regulator" means any substance or mixture of substances intended, through
13 physiological action, to accelerate or retard the rate of growth or rate of maturation, or
14 to otherwise alter the behavior of plants or the produce thereof, but does not include
15 substances to the extent that they are intended as plant nutrients, trace elements,
16 nutritional chemicals, plant inoculants, ~~and~~or soil amendments.
- 17 21. "Private applicator" means an individual who is required to be a certified applicator to
18 buy or use a restricted use pesticide on property owned or rented by the applicator or
19 the applicator's employer or, if applied without compensation other than trading of
20 personal services between producers of agricultural commodities, on the property of
21 another person.
- 22 22. "Public applicator" means an applicator who applies pesticides, other than
23 ready-to-use pesticides, as an employee of:
24 a. A governmental agency, municipal corporation, or public utility; or
25 b. A hospital, privately owned golf course, nursery, or greenhouse.
- 26 23. "Ready-to-use pesticide" means a pesticide other than a restricted use pesticide which
27 is applied directly from its original container consistent with label directions, and
28 includes aerosol spray cans, ready-to-use spray containers, bait packs, and other
29 types of containers that do not require mixing or loading before application.

- 1 24. "Restricted use pesticide" means any pesticide formulation that is classified as
2 restricted use by the United States environmental protection agency or the agriculture
3 commissioner under section ~~19-18-054~~ 1-35-06.
- 4 25. "Rinsate" means a diluted mixture of pesticide obtained from triple rinsing or pressure
5 rinsing pesticide containers or from rinsing the inside and outside of spray equipment.
- 6 26. "Tank mix" means any pesticidal formulation used alone or in combination with another
7 pesticide and mixed with a liquid carrier prior to application.
- 8 27. "Unreasonable adverse effects on the environment" means any unreasonable risk to
9 humans or the environment, taking into account the economic, social, and
10 environmental costs and benefits of the use of any pesticide.
- 11 28. "Weed" means any plant ~~which~~that grows where not wanted.
- 12 29. "Wildlife" means all living things that are neither human, domesticated, nor, as defined
13 in this chapter, pests, including mammals, birds, and aquatic life.

14 **SECTION 5. AMENDMENT.** Section 4-35-02 of the North Dakota Century Code is amended
15 and reenacted as follows:

16 ~~4-35-024.1-34-02. Creation of pesticide~~**Pesticide control board - Enforcement by**
17 **agriculture commissioner.**

18 ~~There is hereby created the~~The pesticide control board, ~~hereinafter also called the "board",~~
19 ~~consisting~~ consists of the agriculture commissioner, the director of the cooperative extension
20 division of the North Dakota state university of agriculture and applied science, and the director
21 of the agricultural experiment station at North Dakota state university of agriculture and applied
22 science. The agriculture commissioner ~~must be~~ is chairman of the board ~~and is responsible for~~
23 ~~the enforcement of this chapter.~~ The board shall meet at the call of the chair.

24 The agriculture commissioner is responsible for the enforcement of this chapter. Any
25 authority of the commissioner under this chapter may be executed by such employees or
26 agents designated by the commissioner.

27 The members of the board must be compensated for their expenses in performing their
28 duties under this chapter at the same rate as other state officials and the board's expenses
29 must be paid from funds provided to the agriculture commissioner for the administration of this
30 chapter ~~to the agriculture commissioner.~~ The board may act through the office of the agriculture
31 commissioner, ~~and one person on the commissioner's staff may be specifically responsible to,~~

1 ~~or act as the state-level agent of,~~shall provide staff services for the board as directed by the
2 commissioner.

NOTE: Authority of employees or agents to act on the Commissioner's behalf is moved here to eliminate the need for Section 4-35-26.

3 **SECTION 6. AMENDMENT.** Section 4-35-06 of the North Dakota Century Code is amended
4 and reenacted as follows:

5 ~~4-35-064.1-34-03.~~ **Pesticide control board to administer chapter and adopt**
6 **regulationsrules.**

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

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

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

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

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

19 b. In adopting rules, the board shall give consideration to pertinent research findings
20 and recommendations of other agencies of this state, the federal government, or
21 other reliable sources.

22 2. ~~The board, in~~In adopting rules under this chapter, the board shall prescribe standards
23 and requirements for the certification of applicators of pesticides. These standards and
24 requirements must relate to the use and handling of pesticides. In determining these
25 standards and requirements, the board shall take into consideration standards and
26 requirements prescribed by the environmental protection agency.

27 3. Rules adopted under this chapter may not permit any pesticide use ~~which~~that is
28 prohibited by the ~~federal~~Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C.
29 136 et seq.] or regulations or orders issued thereunder.

1 4. ~~In order to~~To comply with section ~~4~~ of the federal ~~Federal~~ Insecticide, Fungicide, and
2 Rodenticide Act [7 U.S.C. 136 et seq.], the board may make such reports to the United
3 States environmental protection agency in such form and containing such information
4 as that agency may from time to time require.

5 5. Rules to implement this chapter may provide for:

6 a. The collection, examination, and reporting of samples of pesticides.

7 b. The safe handling, transportation, storage, display, distribution, and disposal of
8 pesticides and their containers.

9 c. The identification of pests under this chapter when the board finds particular
10 organisms to be annoying or otherwise injurious or harmful to agriculture, health,
11 and the environment.

12 **SECTION 7. AMENDMENT.** Section 4-35-06.1 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 ~~4-35-06.1-1-34-04.~~ **4-35-06.1-34-04. Limitation on authority of political subdivisions regarding**
15 **pesticides.**

16 ~~No~~A political subdivision, including a home rule city or county, may not adopt or continue in
17 effect any ordinance, resolution, or home rule charter provision regarding the registration,
18 labeling, distribution, sale, handling, use, application, transportation, or disposal of pesticides.

19 This section does not apply to city zoning ordinances.

NOTE: It appears this section was not intended to invalidate an entire home rule charter or
 ordinance, but only such parts as relate to pesticides.

20 **SECTION 8. AMENDMENT.** Section 4-35-13 of the North Dakota Century Code is amended
21 and reenacted as follows:

22 ~~4-35-13.1-34-05.~~ **4-35-13.1-34-05. Application of act to governmental entities and public utilities.**

23 All governmental agencies and public utilities are subject to this chapter and rules adopted
24 to implement this chapter.

25 **SECTION 9. AMENDMENT.** Section 4-35-08 of the North Dakota Century Code is amended
26 and reenacted as follows:

27 ~~4-35-08.1-34-06.~~ **4-35-08.1-34-06. Classification of commercial certificates.**

28 The board may classify commercial certificates to be issued under this chapter. The
29 classifications may include pest control operators, wood treaters, ornamental or agricultural
30 pesticide applicators, or right-of-way pesticide applicators. Separate classifications may be

1 specified as to ground, aerial, or manual methods used by any applicator to apply pesticides or
2 to the use of pesticides to control insects and plant diseases, rodents, or weeds. Each
3 classification of certification may be subject to separate testing procedures and training
4 requirements; ~~provided that a.~~ A person may be required to pay an additional fee if the person
5 desires to be certified in one or more of the classifications provided for by the board under this
6 section.

7 **SECTION 10. AMENDMENT.** Section 4-35-09 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **~~4-35-094.1-34-07.~~ Commercial and public applicator's certification.**

- 10 1. A commercial or public applicator may not purchase, use, or supervise the use of a
11 pesticide without first complying with the certification standards and requirements of
12 this chapter, or other restrictions as may be determined by the board.
- 13 2. An individual may be certified as a commercial or public applicator within a
14 classification if the individual successfully completes an examination for the
15 classification as prescribed by the board and administered by the North Dakota state
16 university extension service or the service's designee. An application for certification
17 must be on a form prescribed by the board and accompanied by a reasonable
18 examination fee set by the board.
- 19 3. If the North Dakota state university extension service, or its designee, finds, after
20 examination as the board requires, the applicant qualified to apply pesticides in the
21 classifications for which the applicant has applied, ~~after examination as the board~~
22 ~~requires~~, and the applicant meets all other requirements of this chapter, the North
23 Dakota state university extension service shall issue a commercial or a public
24 applicator's certificate limited to the classifications in which the applicant is qualified.
- 25 4. If certification is not to be issued as applied for, the North Dakota state university
26 extension service, or its designee, shall inform the applicant in writing of the reasons
27 for not issuing the certification.

28 **SECTION 11. AMENDMENT.** Section 4-35-10 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **~~4-35-104.1-34-08~~. Expiration of certification - Renewal.**

2 A certificate issued under section ~~4-35-094.1-34-07~~ expires as of the first day of April
3 following two years from the date of issuance. A certificate is renewable every three years on
4 April first. A certificate may be renewed upon completion of a seminar approved by the board or
5 upon successfully completing an examination required by the board, or both, if required by the
6 board. The board shall require a person holding a current valid certificate to take an
7 examination within the three-year period if the board determines additional knowledge related to
8 classifications for which the applicant has applied makes a new examination necessary or that a
9 new evaluation is necessary to assure a continuing level of competence and ability to safely
10 and properly use pesticides ~~safely and properly~~.

11 **SECTION 12. AMENDMENT.** Section 4-35-11 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **~~4-35-114.1-34-09~~. Nonresident application - Designation of agent for service of**
14 **process.**

15 ~~Any~~A nonresident applying for certification as an applicator or dealer under this chapter to
16 ~~operate in this state~~ shall file a written power of attorney in such form as to render effective the
17 jurisdiction of the courts of this state over the nonresident applicant designating the either:

18 1. North Dakota state university extension service or its designee as the nonresident's
19 agent ~~of such nonresident~~ upon whom service of process may be had in the event of
20 any suit against ~~said that~~ nonresident person, ~~and the power of attorney must be so~~
21 ~~prepared and in such form as to render effective the jurisdiction of the courts of this~~
22 ~~state over the nonresident applicant; provided, however, that any nonresident who has~~
23 a; or

24 2. The duly appointed nonresident person's resident agent upon whom process may be
25 served as provided by law ~~is not required to designate the extension service as such~~
26 ~~agent.~~

27 The extension service is allowed such fees ~~therefor~~ for service as a registered agent as provided
28 by law for designating resident agents. The nonresident must be furnished with a copy of the
29 designation of the extension service or of a resident agent. The copy ~~will~~must be duly certified
30 by the extension service.

1 **SECTION 13. AMENDMENT.** Section 4-35-09.1 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 ~~4-35-09.14.1-34-10.~~ **Proof of financial responsibility - Exceptions.**

4 1. A commercial applicator certificate may not be issued unless the applicant furnishes
5 proof of financial responsibility. Financial responsibility must be maintained in the
6 amount of one hundred thousand dollars, ~~and~~. Financial responsibility may be
7 demonstrated by a notarized letter from an officer of a financial institution or from a
8 certified public accountant attesting to the existence of net assets equal to at least one
9 hundred thousand dollars, a performance bond, or a general liability insurance policy.
10 The performance bond or insurance policy must contain a provision requiring the
11 issuing company to notify the agriculture commissioner at least ten days before the
12 effective date of cancellation, termination, or other modification of the bond or
13 insurance policy. When requested by the agriculture commissioner, a commercial
14 applicator immediately shall furnish proof of compliance with this section. If the
15 applicator is unable to furnish the required proof, the commissioner may stop a
16 pesticide application and not allow resumption until the applicator furnishes proof of
17 compliance. The agriculture commissioner shall immediately suspend the certification
18 of a commercial applicator who fails to maintain the financial responsibility standards
19 of this section. If there is any recovery against the commercial applicator, the
20 applicator shall demonstrate continued compliance with the requirements of this
21 section. An application for reinstatement of a certificate suspended under this section
22 must be accompanied by proof that any judgment previously rendered against the
23 applicant has been satisfied.

24 2. This section does not apply to:

25 a. A rancher who must obtain a commercial applicator certificate for controlling
26 noxious weeds on the leased federal acreage as a condition of a federal
27 grasslands lease.

28 b. A grazing association and its members if either the association or any member
29 must obtain a commercial applicator certificate for controlling noxious weeds on
30 the leased federal acreage as a condition of a federal grasslands lease.

31 c. A person who must be certified in the right-of-way category.

- 1 d. A commercial applicator who controls noxious weeds on grassland, land
2 producing tame hay, or other lands not devoted to the production of an annual
3 crop.
- 4 e. An employee of a commercial applicator if the commercial applicator complies
5 with this section.

6 **SECTION 14. AMENDMENT.** Section 4-35-12 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **4-35-124.1-34-11. Pesticide dealer certification - Employees - Requirements for**
9 **purchase.**

- 10 1. ~~It is unlawful for a~~ pesticide dealer ~~to may not~~ distribute restricted use pesticides or
11 act as a restricted use pesticide dealer, without first having obtained certification from
12 the North Dakota state university extension service, or the service's designee. ~~A~~During
13 business hours, a certified person is required to ~~must~~ be at any location or outlet from
14 which restricted use pesticides are distributed. Any manufacturer or distributor that has
15 no pesticide dealer outlet within this state and which distributes such pesticides
16 directly into this state shall obtain a pesticide dealer certificate for its principal
17 out-of-state location or outlet.
- 18 2. Application for a certificate must be on a form prescribed by the board accompanied
19 by an examination fee set by the board ~~and must be on a form prescribed by the~~
20 ~~board.~~ The application must ~~also state~~ include the address of each outlet, the principal
21 business address of the applicant, the name of a person domiciled in this state
22 authorized to receive and accept service of summons of legal notices of all kinds for
23 the applicant, and any other necessary information prescribed by the board.
- 24 3. The board shall require each pesticide dealer to demonstrate to the North Dakota
25 state university extension service or the service's designee knowledge of pesticide
26 laws and regulations; pesticide hazards to humans, animals, and the environment; and
27 the safe distribution, disposal, and use and application of pesticides by satisfactorily
28 passing an examination or meeting other requirements as prescribed by the board
29 within each classification for which certification is sought ~~as prescribed by the board.~~
- 30 4. Each pesticide dealer is responsible for the acts of each ~~person~~ individual employed by
31 the dealer in the solicitation and sale of restricted use pesticides and all claims and

1 recommendations for use of such pesticides. The dealer's certification is subject to
2 suspension or revocation, after a hearing, for any violation of this chapter, ~~whether~~
3 committed by the dealer, or by the dealer's officer, agent, or employee.

- 4 5. A certificate issued under this section expires as of the first day of April following two
5 years from the date of issuance. A certificate is renewable every three years on April
6 first. ~~A~~The board may condition renewal of a certificate may be renewed upon
7 completion of a seminar approved by the board or ~~upon successfully~~
8 ~~completing~~successful completion of an examination required by the board, or both, ~~if~~
9 ~~required by the board~~. The board may require any person holding a current valid
10 certificate to take an examination within the three-year period if the board determines
11 additional knowledge related to pesticides makes an additional examination necessary
12 or that a new evaluation is necessary to assure a continuing level of competence and
13 ability to safely and properly distribute pesticides ~~safely and properly~~.

- 14 6. Restricted use pesticides may be sold only to:
15 a. Persons certified as applicators by this state; and
16 b. Persons certified to use restricted use pesticides by another state, provided the
17 pesticide control board determines that the certifying state's requirements are
18 substantially similar to those of this state and ~~further provided~~ that the person
19 does not use the restricted use pesticide in this state.

20 **SECTION 15. AMENDMENT.** Section 4-35-14 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 ~~4-35-144.1-34-12.~~ **Private applicators - Certification.**

- 23 1. a. An individual who would be a private applicator, if certified, may not buy any
24 restricted use pesticide unless the individual first complies with the certification
25 requirements established by the board.
26 b. An individual who would be a private applicator, if certified, may not use any
27 restricted use pesticide unless the individual:
28 (1) Complies with the certification requirements established by the board; or
29 (2) Is under the direct supervision of a certified applicator.
30 2. Certification standards to determine the individual's competency with respect to the
31 use and handling of the pesticide or class of pesticides the private applicator is to be

1 certified to use must be determined by the board. In determining these standards, the
2 board shall ~~take into consideration~~consider similar standards of the environmental
3 protection agency. The North Dakota state university extension service, or its
4 designee, shall issue a certificate to any private applicator who has qualified as
5 prescribed by the board. The North Dakota state university extension service, or its
6 designee, may require any applicant required to be certified under this section to pay a
7 reasonable fee, not greater than the cost to the North Dakota state university
8 extension service, for materials provided to the applicant for training and education.

9 **SECTION 16. AMENDMENT.** Section 4-35-15 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 ~~4-35-154.1-34-13.~~ **4-35-154.1-34-13. Unlawful acts - Grounds for denial, suspension, or revocation of a**
12 **certification.**

13 It is a violation of this chapter for any person to:

- 14 1. Make false or fraudulent claims through any media, misrepresenting the effect of
15 materials or methods to be utilized, or ~~advertised~~advertise a pesticide without
16 reference to its classification.
- 17 2. Make a pesticide recommendation, application, or use inconsistent with the labeling or
18 other restrictions prescribed by the board.
- 19 3. Apply materials known by that person to be ineffective or improper.
- 20 4. Operate faulty or unsafe equipment.
- 21 5. Operate in a faulty, careless, or negligent manner.
- 22 6. Neglect, or, after notice, refuse to comply with this chapter, the rules adopted to
23 implement this chapter, or any lawful order of the commissioner.
- 24 7. Refuse or neglect to keep and maintain the records required by this chapter or to
25 make reports when and as required.
- 26 8. Make false or fraudulent records, invoices, or reports.
- 27 9. Apply pesticide to the property of another, without the permission of the owner or
28 lessee, unless the application is made under the direction of a governmental entity.
- 29 10. Use fraud or misrepresentation in making an application for, or for renewal of,
30 certification.

- 1 11. Refuse or neglect to comply with any limitations or restrictions on or in a duly issued
- 2 certification.
- 3 12. Aid or abet a person to evade this chapter, conspire with a person to evade this
- 4 chapter, or allow the person's certification to be used by another person.
- 5 13. Knowingly make false statements during or after an inspection or an investigation.
- 6 14. Impersonate a federal, state, county, or city inspector or official.
- 7 15. Distribute any restricted use pesticide to any person who is not properly certified to
- 8 use or purchase the pesticide.
- 9 16. Buy, use, or supervise the use of any pesticide without first complying with the
- 10 certification requirements of this chapter, unless otherwise exempted.
- 11 17. Apply any pesticide that is not registered pursuant to ~~chapter 49-184.1-35.~~

12 **SECTION 17. AMENDMENT.** Section 4-35-16 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **~~4-35-164.1-34-14.~~ Records - Retention - Submission to commissioner.**

15 The board shall require pesticide dealers, commercial applicators, and public applicators to
16 maintain records of sales and purchases of restricted use and special exemption pesticides.
17 The board shall require commercial applicators and public applicators to maintain records of all
18 applications of pesticides. The board may require restricted use pesticide application records of
19 private applicators. The records must be kept for a period of three years from the date of the
20 application, sale, or purchase of the pesticide. Upon request, all or any requested part of these
21 records ~~or pertinent parts thereof~~, must be submitted to the commissioner.

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

24 **~~4-35-184.1-34-15.~~ Reciprocal agreement.**

25 The North Dakota state university extension service, or its designee, may issue a
26 certification on a reciprocal basis, without examination, to a nonresident who is certified to buy,
27 distribute, or use restricted use pesticides under a plan substantially similar to this chapter and
28 after the applicant has paid a fee, set by the board, not greater than the fee or charge
29 authorized under section ~~4-35-094.1-34-07, 4-35-124.1-34-11, or 4-35-144.1-34-12~~ if the
30 applicant would have taken the appropriate examination. Such a certification may be
31 suspended or revoked in the same manner and on the same grounds as certifications pursuant

1 to this chapter, and must be suspended or revoked if the nonresident's home state certification
2 is suspended or revoked.

3 **SECTION 19. AMENDMENT.** Section 4-35-19 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **~~4-35-194.1-34-16.~~ Certification requirements -- ~~Exemptionsexemptions.~~**

- 6 1. The certification requirements of this chapter do not apply to an individual applying
7 non-restricted use pesticides under the direct supervision of a commercial applicator,
8 unless the pesticide label requires that a certified applicator personally apply the
9 pesticide. A pesticide is applied under the direct supervision of a commercial applicator
10 if the pesticide is applied by an individual acting under the instruction and control of a
11 certified applicator who is physically available if needed. The certified applicator need
12 not be present when the pesticide is applied. Direct supervision with respect to
13 applications using aircraft requires that the pilot of the aircraft be appropriately
14 certified. The certification requirements of this chapter do not apply to a competent
15 person applying restricted use pesticides under the direct supervision of a private
16 applicator, unless the pesticide label requires that a certified applicator personally
17 apply the particular pesticide. A pesticide is deemed to be applied under the direct
18 supervision of a private applicator if it is applied by a competent person acting under
19 the instruction and control of a private applicator who is available if and when needed,
20 even though the private applicator is not physically present at the time and place that
21 the pesticide is applied.
- 22 2. The certification requirements of this chapter do not apply to any person conducting
23 laboratory-type research using restricted use pesticides or to a doctor of medicine or a
24 doctor of veterinary medicine applying a pesticide as a drug or as medication during
25 the course of normal practice.

26 **SECTION 20. AMENDMENT.** Section 4-35-20 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **~~4-35-204.1-34-17.~~ Discarding and storing of pesticides, pesticide containers, and
29 rinsate.**

30 ~~No~~A person may not discard, store, display, or permit the disposal of surplus pesticides,
31 empty pesticide containers and devices, or rinsate in such a manner as to endanger the

1 environment or to endanger food, feed, or any other products that may be stored, displayed, or
2 distributed with such pesticides. The board shall ~~promulgate regulations~~adopt rules governing
3 the discarding, storage, display, or disposal of any pesticide, rinsate, pesticide containers, or
4 devices.

5 **SECTION 21. AMENDMENT.** Section 4-35-21.3 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 ~~4-35-21.34.1-34-18.~~ **4-35-21.34.1-34-18. Pesticide application - Alleged property damage - Notification of**
8 **applicator.**

- 9 1. a. Before a person may file a civil action seeking reimbursement for property
10 damage allegedly stemming from the application of a pesticide, the person shall
11 notify by certified mail the pesticide applicator of the alleged damage within the
12 earlier of:
- 13 (1) Twenty-eight days from the date the person first knew or should have known
14 of the alleged damage; or
- 15 (2) Before twenty percent of the crop or field allegedly damaged is harvested or
16 destroyed.
- 17 b. Subdivision a does not apply if the person seeking reimbursement for property
18 damage was the applicator of the pesticide.
- 19 2. Upon notifying the applicator as required under subsection 1, the person seeking
20 reimbursement for the alleged property damage shall permit the applicator and up to
21 four representatives of the applicator to enter the person's property for the purpose of
22 observing and examining the alleged damage. If the person fails to allow entry, the
23 person is barred from asserting a claim against the applicator.

24 **SECTION 22. AMENDMENT.** Section 4-35-22 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 ~~4-35-224.1-34-19.~~ **4-35-224.1-34-19. Subpoenas.**

27 ~~The~~In any hearing to enforce this chapter, the commissioner may issue subpoenas to
28 compel the attendance of witnesses or production of books, documents, and records pertaining
29 to pesticide applications, sales, and purchases in the state ~~in any hearing to enforce this~~
30 ~~chapter.~~

1 **SECTION 23. AMENDMENT.** Section 4-35-23 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 ~~4-35-234.1-34-20.~~ **Penalties.**

- 4 1. Any person other than a private applicator who knowingly violates this chapter is guilty
5 of a class A misdemeanor.
- 6 2. Any private applicator who knowingly violates this chapter is guilty of a class B
7 misdemeanor.
- 8 3. When construing and enforcing the provisions of this chapter, the act, omission, or
9 failure of any officer, agent, or other person acting for or employed by any person must
10 in every case be also deemed to be the act, omission, or failure of such person as well
11 as that of the person employed.
- 12 4. A person who violates this chapter or the rules adopted under this chapter is subject to
13 a civil penalty not to exceed five thousand dollars for each violation. The civil penalty
14 may be imposed by a court in a civil proceeding or by the agriculture commissioner
15 through an adjudicative proceeding pursuant to chapter 28-32. The assessment of a
16 civil penalty does not preclude the imposition of other sanctions authorized by law, this
17 chapter, or rules adopted under this chapter.
- 18 5. After providing an opportunity for a hearing, the commissioner may deny, suspend,
19 revoke, or modify the provision of any certification issued under this chapter, if the
20 commissioner determines that the applicant for certification or the holder of a
21 certificate has violated this chapter or any rules adopted under this chapter.

22 **SECTION 24. AMENDMENT.** Section 4-35-24 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 ~~4-35-244.1-34-21.~~ **Enforcement.**

- 25 1. The commissioner shall enforce the requirements of this chapter and any rules
26 adopted under this chapter.
- 27 2. The commissioner may bring an action to enjoin the violation or threatened violation of
28 this chapter, or any rule adopted under this chapter, in the district court of the county in
29 which such violation occurs or is about to occur.

- 1 3. If any person violates this chapter, the commissioner may issue an order requiring the
2 person to cease and desist from the unlawful activity. If the violator fails to obey, the
3 commissioner ~~will~~shall cause the appropriate criminal complaint to be filed.
- 4 4. The commissioner may enter upon any public or private premises at reasonable times,
5 ~~in order to:~~
- 6 a. Inspect any equipment subject to this chapter and the premises on which the
7 equipment is stored or used.
- 8 b. Inspect or sample lands actually or reported to be exposed to pesticides.
- 9 c. Inspect storage or disposal areas.
- 10 d. Inspect or investigate complaints of injury to humans or ~~land~~property.
- 11 e. Draw samples of a reasonable amount of tank mix pesticides and tank mixes
12 without compensation to the owner for values less than three dollars.
- 13 f. Observe the use and application of a pesticide.
- 14 g. Inspect any place where pesticides or devices are stored or held for distribution,
15 sale, or use, and obtain samples of any pesticides packaged, labeled, and
16 released for shipment and samples of any containers or labeling for the
17 pesticides.
- 18 5. a. ~~The~~At any reasonable time, the commissioner, ~~at any reasonable time,~~ has
19 access to records pertaining to the pesticide application, sales, purchases, and
20 repackaging by any person. The commissioner may copy or make copies of the
21 records for the purpose of this chapter. These records are confidential. However,
22 the commissioner may use these records in any way to enforce this chapter. Any
23 record that the commissioner uses as an exhibit in an enforcement action is no
24 longer a confidential record.
- 25 b. If an individual alleges exposure to pesticides and if the individual's medical
26 provider requests that the commissioner reveal the name of the pesticide, the
27 commissioner may reveal the name of the pesticide to the individual making the
28 request, together with the registration number assigned by the United States
29 environmental protection agency. The commissioner may require that a request
30 under this section be made in writing.

1 6. If access is refused or if the commissioner determines that critical enforcement
2 documentation may be lost, the commissioner may apply to any court for a search
3 warrant authorizing access to land or records. ~~The~~Upon compliance with chapter
4 29-29.1, the court may, upon compliance with chapter 29-29.1, issue the search
5 warrant for the purposes requested.

6 7. The commissioner may suspend or revoke a certification issued ~~pursuant to~~under this
7 chapter for failure to pay a civil penalty within thirty days after a final determination is
8 made that the civil penalty is owed.

9 **SECTION 25. AMENDMENT.** Section 4-35-12.1 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 ~~4-35-12.14.1-34-22.~~ **Stop-sale orders.**

12 ~~Whenever~~If the commissioner has reason to believe on the basis of inspection or tests that
13 any pesticide or device is found ~~by the commissioner and there is reason to believe on the~~
14 ~~basis of inspection or tests that the pesticide or device is in violation of any of the~~
15 ~~provisions~~provision of this chapter, or ~~when~~if the registration of the pesticide has been canceled
16 or suspended by the state or United States environmental protection agency ~~or has been~~
17 suspended, the commissioner may issue a written or printed "stop-sale, use, or removal" order
18 to any person who owns, controls, or has custody of the pesticide or device, ~~and after.~~ After
19 receipt of the order, ~~no~~ a person may not sell, use, or remove the pesticide or device described
20 in the order except in accordance with the provisions of the order.

NOTE: Question whether this section is necessary given the Commissioner's authority for
 a cease and desist order under subsection 3 of the previous section.

21 **SECTION 26. AMENDMENT.** Section 4-35-25 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 ~~4-35-254.1-34-23.~~ **Information and instruction.**

24 ~~The board may, in~~In cooperation with private, local, state, or federal agencies, the board
25 may publish information and conduct short courses of instruction in the areas of knowledge
26 required by this chapter.

27 **SECTION 27. AMENDMENT.** Section 4-35-27 of the North Dakota Century Code is
28 amended and reenacted as follows:

1 **4-35-274.1-34-24. Cooperation by the board with other entities.**

2 The board may cooperate, receive grants-in-aid, and enter into cooperative agreements
3 with any agency of the federal government, of this state or its subdivisions, or with any agency
4 of another state, in order to:

- 5 1. Secure uniformity of regulations.
- 6 2. Enter into cooperative agreements with and submit plans to the environmental
7 protection agency for approval to issue experimental use permits under the authority
8 of this chapter and the ~~federal~~Federal Insecticide, Fungicide, and Rodenticide Act
9 [7 U.S.C. 136 et seq.].
- 10 3. Cooperate in the enforcement of the federal pesticide control laws and state laws
11 through the use of state or federal personnel and facilities and to implement
12 cooperative enforcement programs.
- 13 4. Enter into contracts with other agencies, including federal agencies, for the purpose of
14 training pesticide applicators, managers, dealers, and pesticide consultants.
- 15 5. Gain assistance in implementation of this chapter.
- 16 6. Regulate certified applicators.
- 17 7. Comply with other purposes prescribed by ~~regulation~~rules of the commissioner.

18 **SECTION 28. AMENDMENT.** Section 4-35-28 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **4-35-284.1-34-25. Disposition of funds - Certification and training fund.**

21 All moneys received by the pesticide control board under the provisions of this chapter must
22 be deposited to the credit of the certification and training fund under the control of the board.

NOTE: Because the following sections of this chapter established the Crop Protection
Product Harmonization and Registration Board, it is necessary to specify that this section
refers to the Pesticide Control Board.

23 **SECTION 29. AMENDMENT.** Section 4-35-30 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **4-35-304.1-34-26. Crop protection product harmonization and registration board -**
26 **Duties - Grants.**

- 27 1. The crop protection product harmonization and registration board consists of:
 - 28 a. The governor or the governor's designee;
 - 29 b. The agriculture commissioner or the commissioner's designee;

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- 1 c. The chairman of the house agriculture committee or the chairman's designee;
- 2 d. The chairman of the senate agriculture committee or the chairman's designee;
- 3 e. A member of the house or senate agriculture committee who is not a member of
- 4 the faction in which the committee chairman is a member, appointed by the
- 5 legislative management chairman;
- 6 f. A crop protection product dealer in the state appointed by the governor from a list
- 7 of three nominees submitted by the North Dakota agricultural association;
- 8 g. A consumer of crop protection products appointed by the governor from a list of
- 9 three nominees submitted by the North Dakota grain growers association;
- 10 h. A consumer of crop protection products appointed by the governor from a list of
- 11 three nominees submitted by the North Dakota oilseed council;
- 12 i. A representative of the crop protection product manufacturing industry appointed
- 13 by the chairman of the legislative management; and
- 14 j. The director of the North Dakota state university agricultural experiment station.
- 15 2. The representative of the crop protection product manufacturing industry and the
- 16 director of the agricultural experiment station shall serve as nonvoting members. The
- 17 governor or the governor's designee shall serve as chairman of the board.
- 18 3. The board shall:
 - 19 a. Identify and prioritize crop protection product labeling needs;
 - 20 b. Explore the extent of authority given to this state under the ~~federal~~Federal
 - 21 Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136a et seq.];
 - 22 c. Identify the data necessary to enable registration of a use to occur in a timely
 - 23 manner;
 - 24 d. Determine what research, ~~if any,~~ is necessary to fulfill data requirements for
 - 25 activities listed in this section;
 - 26 e. Request the agriculture commissioner to pursue specific research funding
 - 27 options from public and private sources;
 - 28 f. Request the North Dakota state university agricultural experiment station to
 - 29 pursue specific research to coordinate registration efforts; and

1 g. Pursue any opportunities to make more crop protection product options available
2 to agricultural producers in this state through any means the board determines
3 advisable.

4 4. The board may contract with a consultant to conduct studies or provide research or
5 information regarding crop protection product registration and labeling needs.

6 5. The board may administer a grant program through which agriculture commodity
7 groups may apply for funds to be used by the groups to address issues related to the
8 registration of crop protection products. To be eligible for receipt of a grant, an
9 applicant must submit an application to the board which requests a specific amount of
10 funds, specifies the exact purposes for which the grant would be used, and provides a
11 detailed timetable for the use of the grant funds. The board may impose any additional
12 conditions it determines appropriate for grant recipients, including requiring periodic
13 reports and furnishing of matching funds. The board may terminate funding of a
14 previously approved grant at any time if the board is dissatisfied with the performance
15 of the grant recipient.

16 6. The board may use not more than fifteen percent of the funds under its supervision for
17 administrative purposes, including the cost of contracting for administrative services
18 and reimbursement of board member expenses. The members of the board who are
19 members of the legislative assembly are entitled to compensation from the legislative
20 council for attendance at board meetings at the rate provided for members of the
21 legislative assembly for attendance at interim committee meetings and are entitled to
22 reimbursement for expenses incurred in attending the meetings in the amounts
23 provided by law for other state officers.

24 7. The board may adopt rules to implement this section.

25 **SECTION 30. AMENDMENT.** Section 4-35-06.2 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 ~~4-35-06.24.1-34-27.~~ **Crop protection product harmonization and registration board -**
28 **Recovery of funds.**

29 The crop protection product harmonization and registration board may accept funds
30 received for expenses paid relating to the registration of pesticides or donations offered to or for
31 the benefit of the board. All moneys received under this section must be deposited in the minor

1 use pesticide fund to pay expenses relating to the registration of pesticides or for the specific
2 purpose for which they are given. The board shall attempt, whenever possible, to recover funds
3 expended relating to the registration of pesticides and shall adopt rules to administer this
4 section.

5 **SECTION 31. AMENDMENT.** Section 4-35-06.3 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **~~4-35-06.34.1-34-28.~~ Minor use pesticide fund - Continuing appropriation.**

8 The minor use pesticide fund is created as a special fund in the state treasury. All moneys
9 in the fund are appropriated on a continuing basis to the crop protection product harmonization
10 and registration board for the purpose of conducting or commissioning studies, investigations,
11 and evaluations regarding the registration and use of pesticides for minor crops, minor uses,
12 and other uses as determined by the board.

13 **SECTION 32. AMENDMENT.** Section 19-18-02.1 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **~~19-18-02.14.1-34-29.~~ Environment and rangeland protection fund.**

16 The environment and rangeland protection fund is a special fund in the state treasury. The
17 moneys in this fund may be used for rangeland improvement projects and to address issues
18 relating to harmonization of crop protection product standards. The rangeland improvement
19 projects may include noxious weed control; ground water testing, analysis, protection, and
20 improvement; analysis of food products for residues of pesticides and other materials; and
21 analysis and disposal of unusable pesticides and pesticide containers.

NOTE: This section was originally codified in Chapter 19-18 but it appears it is more
appropriately placed with the provisions on the Crop Protection Product Harmonization and
Registration Board.

22 **SECTION 33. AMENDMENT.** Section 19-18-02 of the North Dakota Century Code is
23 amended and reenacted as follows:

NOTE: The following sections will become a new Chapter 4.1-35, relating to pesticide
registration.

24 **~~19-18-024.1-35-01.~~ Definitions.**

25 For the purposes of this chapter, unless the context or subject matter otherwise requires:

- 26 1. "Active ingredient" means:
- 27 a. In the case of a pesticide other than a plant regulator, defoliant, or desiccant, any
28 ingredient that will prevent, destroy, repel, or mitigate pests.

- 1 b. In the case of a plant regulator, any ingredient that, through physiological action,
2 will accelerate or retard the rate of growth or rate of maturation or otherwise alter
3 the behavior of ornamental or crop plants or the product thereof.
- 4 c. In the case of a defoliant, any ingredient that will cause the leaves or foliage to
5 drop from a plant.
- 6 d. In the case of a desiccant, any ingredient that will artificially accelerate the drying
7 of plant tissue.
- 8 2. "Adulterated" applies to any pesticide if its strength or purity falls below the professed
9 standard or quality as expressed on labeling or under which it is sold, or if any
10 substance has been substituted wholly or in part for the pesticide, or if any valuable
11 constituent of the pesticide has been wholly or in part abstracted.
- 12 3. "Antidote" means the most practical immediate treatment in case of poisoning and
13 includes first-aid treatment.
- 14 4. "Commissioner" means the agriculture commissioner and includes any employee or
15 agent designated by the commissioner.
- 16 5. "Defoliant" means any substance or mixture of substances intended to cause the
17 leaves or foliage to drop from a plant with or without causing abscission.
- 18 6. "Desiccant" means any substance or mixture of substances intended to artificially
19 accelerate the drying of plant tissues.
- 20 7. "Device" means any instrument or contrivance intended for trapping, destroying,
21 repelling, or mitigating pests but does not include equipment used for the application
22 of pesticides when sold separately therefrom, or rodent traps.
- 23 8. "Environment" means air, water, land, and all plants and man and other animals living
24 therein and the interrelationships that exist among these.
- 25 9. "Federal Act" means the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C.
26 136 et seq.].
- 27 10. "Fungi" means all non-chlorophyll-bearing thallophytes, that is, all
28 non-chlorophyll-bearing plants of a lower order than mosses and liverworts, as, for
29 example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in
30 living man or other animals, and those on or in processed food, beverages, or
31 pharmaceuticals.

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- 1 11. "Fungicide" means any substance or mixture of substances intended for preventing,
2 destroying, repelling, or mitigating any fungi.
- 3 12. "Herbicide" means any substance or mixture of substances intended for preventing,
4 destroying, repelling, or mitigating any weed.
- 5 13. "Inert ingredient" means an ingredient that is not an active ingredient.
- 6 14. "Ingredient statement" means:
- 7 a. A statement of the name and percentage of each active ingredient, together with
8 the total percentage of the inert ingredients, in the pesticide; or
- 9 b. A statement of the name of all active ingredients in the order of their
10 predominance in the product, together with the name of each and total
11 percentage of ~~the~~any inert ingredients, ~~if any,~~ in the pesticide, except
12 subdivision a applies if the preparation is highly toxic to ~~man~~humans, determined
13 as provided in section ~~49-18-054.1-35-06~~, and in addition to subsections 1 and 2
14 of section ~~49-18-054.1-35-06~~. ~~In case~~if the pesticide contains arsenic in any
15 form, a statement must contain the percentages of total and water-soluble
16 arsenic, each calculated as elemental arsenic.
- 17 15. "Insect" means any of the numerous small invertebrate animals generally having the
18 body more or less obviously segmented, for the most part belonging to the class
19 Insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs,
20 bees, flies, and to other allied classes of arthropods whose members are wingless and
21 usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and
22 wood lice.
- 23 16. "Insecticide" means any substance or mixture of substances intended for preventing,
24 destroying, repelling, or mitigating any insects that may be present in any environment
25 whatsoever.
- 26 17. "Label" means the written, printed, or graphic matter on, or attached to, the pesticide
27 or device, or any of its containers or wrappers.
- 28 18. "Labeling" means all labels and other written, printed, or graphic matter:
- 29 a. Upon the pesticide or device or any of its containers or wrappers;
- 30 b. Accompanying the pesticide or device at any time; or

- 1 c. To which reference is made on the label or in literature accompanying the
2 pesticide or device, except when accurate, nonmisleading reference is made to
3 current official publications of a state or federal agency, state agricultural
4 experiment station, or state agricultural college.
- 5 19. "Misbranded" applies:
- 6 a. To any pesticide or device if its labeling bears any statement, design, or graphic
7 representation relative thereto or to its ingredients which is false or misleading in
8 any particular; and
- 9 b. To any pesticide:
- 10 (1) If it is an imitation of or is offered for sale under the name of another
11 pesticide;
- 12 (2) If its labeling bears any reference to registration under this chapter;
- 13 (3) If the labeling accompanying it does not contain directions for use which are
14 necessary and, if complied with, adequate to protect health and the
15 environment;
- 16 (4) If the label does not contain a warning or caution statement ~~which~~that may
17 be necessary and, if complied with, adequate to protect health and the
18 environment;
- 19 (5) If the label does not bear an ingredient statement on that part of the
20 immediate container and ~~on the~~, if there is an outside container or wrapper,
21 ~~if there be one, the outside container or wrapper does not have affixed a~~
22 correct copy of the required labeling information from the immediate
23 container or does not contain an opening through which the ingredient
24 statement on the immediate container ~~cannot~~can be clearly read, of the
25 retail package that is presented or displayed under customary conditions of
26 purchase; except that a pesticide is not misbranded under this subsection if:
- 27 (a) The size or form of the immediate container, or the outside container
28 or wrapper of the retail package, makes it impracticable to place the
29 ingredient statement on the part that is presented or displayed under
30 customary conditions of purchase; and

- 1 (b) The ingredient statement appears prominently on another part of the
2 immediate container, or outside container or wrapper, permitted by the
3 commissioner;
- 4 (6) The labeling does not contain a statement of the use classification under
5 which the product is registered if the product is a restricted use pesticide;
- 6 (7) There is ~~no~~no label information affixed to its container, and ~~to the~~, if there is
7 an outside container or wrapper of the retail package, ~~if there is one, there is~~
8 no label information affixed to the outside container or wrapper and the
9 outside container or wrapper does not contain an opening through which the
10 required label information on the immediate container ~~cannot~~can be clearly
11 read, ~~a label bearing~~. The label information must include:
- 12 (a) The name and address of the producer, registrant, or person for
13 whom produced;
- 14 (b) The name, brand, or trademark under which the pesticide is sold; and
- 15 (c) The net weight or measure of the content;
- 16 (8) The pesticide contains any substance or substances in quantities highly
17 toxic to ~~man~~humans, unless the label bears, in addition to any other matter
18 required by this chapter:
- 19 (a) The skull and crossbones;
- 20 (b) The word "poison" prominently in red on a background of distinctly
21 contrasting color; and
- 22 (c) A statement of a first aid or other practical treatment (~~first aid or~~
23 ~~otherwise~~) in case of poisoning by the pesticide;
- 24 (9) If any word, statement, or other information required ~~by or~~ under the
25 ~~authority of~~ this chapter to appear on the labeling is not prominently placed
26 thereon with such conspicuousness, as compared with other words,
27 statements, designs, or graphic matter in the labeling, and in such terms as
28 to render it likely to be read and understood by the ordinary individual under
29 customary conditions of purchase and use;
- 30 (10) If in the case of an insecticide, nematocide, fungicide, or herbicide, when
31 used as directed or in accordance with commonly recognized practice, it is

- 1 injurious to ~~living man~~humans or other vertebrate animals or vegetation,
2 except weeds; to which it is applied, or to the ~~person~~individual applying the
3 pesticide; or
- 4 (11) If a plant regulator, defoliant, or desiccant when used as directed is injurious
5 to ~~man~~humans or other vertebrate animals, or the vegetation to which it is
6 applied; ~~provided, that the~~ The physical or physiological effect on plants or
7 ~~parts thereof~~ may not be deemed injurious when this is the purpose for
8 which the plant regulator, defoliant, or desiccant is applied in accordance
9 with label claims and recommendations.
- 10 20. "Nematocide" means any substance intended to prevent, destroy, repel, or mitigate
11 nematodes.
- 12 21. "Nematode" means any of the nonsegmented roundworms harmful to agricultural
13 plants.
- 14 22. "Person" means any individual, partnership, association, corporation, limited liability
15 company, or organized group of persons whether incorporated or not.
- 16 23. "Pest" means any insect, rodent, nematode, fungus, weed, or any other form of
17 terrestrial or aquatic plant or animal life, viruses, bacteria, or other micro-organisms
18 except viruses, bacteria, or other micro-organisms on or in living ~~man~~humans or ~~other~~
19 living animals.
- 20 24. "Pesticide" means any substance or mixture of substances intended for preventing,
21 destroying, repelling, or mitigating any pests and any substance or mixture of
22 substances intended for use as a plant regulator, defoliant, or desiccant.
- 23 25. "Plant regulator" means any substance or mixture of substances intended, through
24 physiological action, to accelerate or retard the rate of growth or maturation, or to
25 otherwise alter the behavior of ornamental or crop plants or the produce thereof, but
26 does not include substances insofar as they are intended to be used as plant
27 nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments.
28 The term "plant regulator" does not include any of such of those nutrient mixtures or
29 soil amendments as are commonly known as vitamin-hormone horticultural products,
30 intended for improvement, maintenance, survival, health, and propagation of plants,

- 1 and as are not for pest destruction and are nontoxic and nonpoisonous in the
2 undiluted packaged concentration.
- 3 26. "Protect health and environment" means protection against any unreasonable adverse
4 effects on the environment.
- 5 27. "Registrant" means the person registering any pesticide pursuant to this chapter.
- 6 28. "Restricted use pesticides" means any pesticide formulation that is classified for
7 restricted use by the United States environmental protection agency. The term also
8 includes a pesticide formulation classified for restricted use by the commissioner
9 pursuant to section ~~19-18-054~~.1-35-06.
- 10 29. "Rodenticide" means any substance or mixture of substances intended for preventing,
11 destroying, repelling, or mitigating rodents or any other vertebrate animal that the
12 commissioner declares to be a pest.
- 13 30. "Snails or slugs" ~~include~~includes all harmful agricultural mollusks.
- 14 31. "Unreasonable adverse effects on the environment" means any unreasonable risk to
15 ~~man~~humans or the environment, taking into account the economic, social, and
16 environmental costs and benefits of the use of any pesticide.
- 17 32. "Weed" means any plant that grows where not wanted.

18 **SECTION 34. AMENDMENT.** Section 19-18-02.1 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 ~~19-18-02.1. Environment and rangeland protection fund.~~

21 ~~The environment and rangeland protection fund is a special fund in the state treasury. The~~
22 ~~moneys in this fund may be used for rangeland improvement projects and to address issues~~
23 ~~relating to harmonization of crop protection product standards. The rangeland improvement~~
24 ~~projects may include noxious weed control; ground water testing, analysis, protection, and~~
25 ~~improvement; analysis of food products for residues of pesticides and other materials; and~~
26 ~~analysis and disposal of unusable pesticides and pesticide containers.~~

NOTE: This section was originally codified in Chapter 19-18 but it appears it is more
appropriately placed with the provisions on the Crop Protection Product Harmonization and
Registration Board. The section has been moved in this bill draft to Section 4.1-34-29.

27 **SECTION 35. AMENDMENT.** Section 19-18-03 of the North Dakota Century Code is
28 amended and reenacted as follows:

1 ~~19-18-034.1-35-02.~~ **Prohibited acts.**

2 ~~No~~A person may not distribute, sell, or offer for sale within this state or deliver for
3 transportation or transport in intrastate commerce or between points within this state through
4 any point outside this state any of the following:

5 1. Any pesticide that has not been registered ~~pursuant to the provisions of~~under section
6 ~~19-18-044.1-35-03,~~ or any pesticide if any of the claims made for it or any of the
7 directions for its use differ in substance from the representations made in connection
8 with its registration, or if the composition of a pesticide differs from its composition as
9 represented in connection with its registration; ~~provided, that in the discretion of the,~~
10 The commissioner, may allow a change in the labeling or formula of a pesticide ~~may to~~
11 be made within a registration period without requiring reregistration of the product.

12 2. Any pesticide unless it is in the:

13 a. The registrant's or the manufacturer's unbroken immediate container; ~~or in a~~

14 b. A container repackaged by a facility or person with a federal environmental
15 protection agency issued establishment number, and there is affixed to such
16 container, and to ~~the~~any outside container or wrapper of the retail package, if

17 ~~there be one,~~a correct copy of the required labeling information from the

18 immediate container or there is in the outside container or wrapper an opening

19 through which the required labeling information on the immediate container

20 ~~cannot~~can be clearly read.

NOTE: This subsection is rewritten in part because it appears it was incorrectly worded to allow access to the required labeling information if there is an outside container or wrapper.

21 3. The pesticide commonly known as standard lead arsenate, basic lead arsenate,
22 calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride,
23 sodium fluosilicate, and barium fluosilicate unless they have been distinctly colored or
24 discolored as provided by ~~regulations~~rules issued in accordance with this chapter, or
25 any other white powder pesticide that the commissioner, after investigation of and after
26 public hearing on the necessity for the action for the protection of the public health and
27 the feasibility of the coloration or discoloration, by ~~regulation~~rule, requires to be
28 distinctly colored or discolored; unless it has been so colored or discolored. The
29 commissioner may exempt any pesticide to the extent that it is intended for a particular
30 use or uses from the coloring or discoloring required or authorized by this section if the

1 commissioner determines that the coloring or discoloring for the use or uses is not
2 necessary for the protection of the public health.

3 4. Any pesticide ~~which~~that is adulterated or misbranded, or any device ~~which~~that is
4 misbranded.

5 5. ~~No~~A person may not detach, alter, deface, or destroy, in whole or in part, any label or
6 labeling provided for in this chapter or ~~regulations promulgated hereunder~~rules
7 adopted under this chapter, or to add any substance to, or take any substance from, a
8 pesticide in a manner that may defeat the purpose of this chapter.

9 6. ~~No~~A person may not use for the person's own advantage or reveal other than in
10 response to a proper subpoena, except to a physician or other qualified person for use
11 in the preparation of an antidote, any information relative to the formula of any product
12 acquired by authority of this chapter.

13 **SECTION 36. AMENDMENT.** Section 19-18-04 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **~~19-18-044.1-35-03. Registration - Fees - Deposit of collections.~~**

16 1. Any person before selling or offering for sale any pesticide for use within this state
17 shall file biennially with the commissioner an application for registration of the
18 pesticide. The application must:

19 a. Give the name and address of each manufacturer or distributor.

20 b. Give the name and brand of each product to be registered.

21 c. Be accompanied by a current label of each product to be registered.

22 d. Be accompanied by a registration fee of three hundred fifty dollars for each
23 product to be registered. ~~At the close of each calendar month, the commissioner~~
24 ~~shall transmit to the state treasurer all moneys received for the registrations. The~~
25 ~~state treasurer shall credit the registration fee for each registered product to the~~
26 ~~environment and rangeland protection fund.~~

27 e. Be accompanied by a material safety data sheet for each product to be
28 registered.

NOTE: This subsection relates to contents of applications. Provisions for deposit of fees
are moved to a new subsection 5 and noted in the caption.

29 2. The commissioner may require an applicant or registrant to provide efficacy, toxicity,
30 residue, and any other data necessary to determine if the pesticide will perform its

1 intended function without unreasonable adverse effects on the environment. If the
2 commissioner finds that the application conforms to law, the commissioner shall issue
3 to the applicant a certificate of registration of the product.

4 3. Each registration covers a designated two-year period beginning January first of each
5 even-numbered year and expiring December thirty-first of the following year. A
6 certificate of registration may not be issued for a term longer than two years, and is not
7 transferable from one person to another, or from the ownership to ~~whom~~which it is
8 issued to another ownership. A penalty of fifty percent of the license or registration fee
9 must be imposed if the license or certificate of registration is not applied for on or
10 before January thirty-first following the expiration date. Each product must go through
11 a two-year discontinuance period in order to clear all outstanding products in the
12 channel of trade.

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

16 5. At the close of each calendar month, the commissioner shall transmit to the state
17 treasurer all moneys received for the registrations under this section. The state
18 treasurer shall credit the registration fees to the environment and rangeland protection
19 fund.

20 **SECTION 37. AMENDMENT.** Section 19-18-04.1 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **~~19-18-04.14.1-35-04.~~ Reporting requirements.**

23 ~~Upon~~Within thirty days after request ~~of~~by the commissioner, a registrant shall report the
24 amount and type of each registered pesticide sold, offered for sale, or otherwise distributed in
25 the state. ~~The report must be filed within thirty days after receiving the commissioner's request.~~
26 The information required must include the brand name, amount, and formulation of each
27 pesticide sold, offered for sale, or otherwise distributed in the state. However, specific brand
28 names may not be identified in any report or otherwise made public.

NOTE: This section does not provide the time period to be covered by the report.

29 **SECTION 38. AMENDMENT.** Section 19-18-04.2 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 ~~19-18-04.24.1-35-05.~~ **Protection of trade secrets.**

- 2 1. ~~Requirements.~~ In submitting data required by this chapter, the applicant may:
- 3 a. ~~Clearly mark any portions that in the applicant's opinion are~~the applicant requests
- 4 the commissioner to determine to be trade secrets or commercial or financial
- 5 information; and
- 6 b. Submit the marked material separately from other material.

NOTE: Subsection 2 says this is a request. Suggest language added to make the submission under subsection 1 be a "request."

- 7 2. ~~Information revealed.~~ After consideration of the applicant's request submitted under
- 8 subsection 1, the commissioner may not make any information public which in the
- 9 commissioner's judgment contains or relates to trade secrets or to commercial or
- 10 financial information obtained from an applicant. When necessary, information relating
- 11 to formulas of products may be revealed to any state or federal agency consulted with
- 12 similar protection of trade secret authority and may be revealed at a public hearing or
- 13 in findings of facts issued by the commissioner.
- 14 3. ~~Notification.~~ If the commissioner proposes to release information that the applicant or
- 15 registrant believes to be protected from disclosure under this section, the
- 16 commissioner shall notify the applicant or registrant by certified mail. The
- 17 commissioner may not make the information available for inspection until thirty days
- 18 after receipt of the notice by the applicant or registrant. During this period, the
- 19 applicant or registrant may institute an action in an appropriate court for a declaratory
- 20 judgment as to whether the information is subject to protection under this section.

21 **SECTION 39. AMENDMENT.** Section 19-18-05 of the North Dakota Century Code is

22 amended and reenacted as follows:

23 ~~19-18-054.1-35-06.~~ **Determinations - Rules - Uniformity.**

24 ~~The~~After providing an opportunity for a hearing, the commissioner, after opportunity for a

25 hearing, may:

- 26 1. Declare as a pest any form of plant or animal life or virus which is injurious to plants,
- 27 ~~man~~humans, domestic animals, articles, or substances.
- 28 2. Determine whether pesticides are highly toxic to ~~man~~humans and whether ~~the~~their use
- 29 ~~thereof~~ should be restricted.

1 3. Determine standards of coloring or discoloring for pesticides and to subject pesticides
2 to the requirements of subsection 3 of section ~~49-18-034.1-35-02~~.

3 The commissioner may adopt appropriate rules for carrying out this chapter, including rules
4 providing for the collection and examination of samples of pesticides or devices, ~~and. The~~
5 commissioner also may adopt such rules, applicable to and in conformity with the primary
6 standards established by this chapter, ~~as have been or may be~~ prescribed by the United States
7 environmental protection agency with respect to pesticides ~~in order that there may be to provide~~
8 uniformity ~~between~~among the requirements of the several states and the federal government.

NOTE: The kind of hearing is not stated. Presumably, the hearing is subject to Section
28-32-21(3).

9 **SECTION 40. AMENDMENT.** Section 19-18-06 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 ~~19-18-064.1-35-07. Enforcement.~~

12 The ~~examination of pesticides or devices must be made under the direction of the~~
13 ~~commissioner for the purpose of determining whether the~~shall examine pesticides or devices
14 ~~comply with the requirements or~~for compliance with this chapter. If it ~~appears from the~~after
15 examination that a pesticide or device fails to comply with the provisions of this chapter and the
16 commissioner ~~contemplates instituting~~intends to initiate criminal proceedings against any
17 person, the commissioner shall cause appropriate notice to be given to the person. Any person
18 so notified must be given an opportunity to present the person's views, either orally or in writing,
19 with regard to the contemplated proceedings and if thereafter in the opinion of the
20 commissioner it appears that the chapter has been violated by the person, then the
21 commissioner shall refer the facts to the state's attorney for the county in which the violation has
22 occurred with a copy of the results of the analysis or the examination of the article. ~~This chapter~~
23 ~~does not require the~~The commissioner is not required to report for prosecution or for the
24 institution of libel proceedings minor violations of ~~the~~this chapter ~~whenever~~if the commissioner
25 believes that the public interests will be best served by a suitable written notice of warning ~~in~~
26 ~~writing. Each~~A state's attorney to whom any violation is reported under this section shall ~~without~~
27 delay cause appropriate proceedings to be instituted and prosecuted in the proper court of
28 jurisdiction ~~without delay~~. The commissioner, by publication in the manner the commissioner
29 prescribes, shall give notice of all judgments entered in actions instituted under the authority of
30 this chapter.

1 **SECTION 41. AMENDMENT.** Section 19-18-06.1 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 ~~19-18-06.14.1-35-08.~~ **Stop-sale orders.**

4 The commissioner may issue and enforce a stop-sale order to the owner or custodian of
5 any pesticide when the commissioner finds that the product is being offered for sale in violation
6 of the provisions of this chapter, and the. The order must direct that the product be held at a
7 designated place until released in writing by the commissioner. The owner or custodian of the
8 product has the right to petition a court of competent jurisdiction in the county where the product
9 is found for an order releasing the product for sale in accordance with the findings of the court.

10 **SECTION 42. AMENDMENT.** Section 19-18-07 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 ~~19-18-074.1-35-09.~~ **Exemptions.**

13 The penalties provided for violations of section ~~19-18-034.1-35-02~~ do not apply to:

- 14 1. ~~Any~~A carrier while lawfully engaged in transporting a pesticide within this state, if the
15 carrier, upon request, permits the commissioner to copy all records showing the
16 transactions in and movement of the articles.
- 17 2. ~~Public officials~~A public official of this state and/or the federal government engaged in
18 the performance of their official duties.
- 19 3. The manufacturer or shipper of a pesticide for experimental use only:
 - 20 a. By or under the supervision of an agency of this state or of the federal
21 government authorized by law to conduct research in the field of pesticides; or
 - 22 b. By others if the pesticide is not sold and if the pesticide container thereof is
23 plainly and conspicuously marked "For experimental use only - not to be sold",
24 together with the manufacturer's name and address.
- 25 4. A person using, distributing, selling, or offering for sale an unregistered pesticide for
26 which the United States environmental protection agency has granted an emergency
27 exemption for at least one use in North Dakota under section 18 of the federal Act.

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

1 **SECTION 43. AMENDMENT.** Section 19-18-13 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 ~~19-18-134.1-35-10. Minimum-risk pesticide –Certificate of exemption.~~

- 4 1. Section ~~19-18-034.1-35-02~~ does not apply to any person who distributes, sells, or
5 offers for sale within this state or delivers for transportation or transports in intrastate
6 commerce or between points within this state through any point outside this state a
7 minimum-risk pesticide exempt from registration under the Federal Insecticide,
8 Fungicide, and Rodenticide Act [Pub. L. 100-532; 102 Stat. 2654; 7 U.S.C. 136
9 et seq.], provided the person has obtained a certificate of exemption from the
10 commissioner.
- 11 2. To obtain a certificate of exemption for a minimum-risk pesticide, a person shall file an
12 application with the commissioner. The application must include:
- 13 a. The name and address of the product's manufacturer or distributor;
14 b. The name and brand name of the product;
15 c. A current label for the product; and
16 d. A fee equal in amount to the fee set under section ~~19-18-044.1-35-03~~ for the
17 registration of a pesticide.
- 18 3. The commissioner shall remit any fees collected under this section to the state
19 treasurer for deposit in the environment and rangeland protection fund.
- 20 4. Each exemption from registration covers a designated two-year period beginning
21 January first of each even-numbered year and expiring December thirty-first of the
22 following year.

23 **SECTION 44. AMENDMENT.** Section 19-18-08 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 ~~19-18-084.1-35-11. Penalties.~~

26 Any person violating this chapter is guilty of an infraction. ~~In any case in which~~ If a registrant
27 was issued a warning by the commissioner pursuant to ~~under~~ this chapter, ~~the registrant is,~~ upon
28 violating this chapter, other than subsection 1 of section ~~19-18-034.1-35-02~~, that registrant is
29 guilty of a class A misdemeanor; and the registration of the article with ~~reference to~~ which the
30 violation occurred ~~terminates~~ automatically terminates. A pesticide, for which the registration of
31 ~~which~~ has been terminated; may not again be registered unless the pesticide, its labeling, and

1 other material required to be submitted appear to the commissioner to comply with all the
2 requirements of this chapter. In addition to ~~the any~~ criminal sanctions that may be
3 ~~imposed~~ penalty, a person found guilty of violating this chapter or the rules adopted under this
4 chapter is subject to a civil penalty not to exceed one thousand dollars for each violation. The
5 civil penalty may be imposed by a court in a civil proceeding or by the commissioner through an
6 administrative hearing ~~pursuant to~~ under chapter 28-32.

7 **SECTION 45. AMENDMENT.** Section 19-18-09 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **~~19-18-094.1-35-12.~~ 19-18-094.1-35-12. Seizures.**

10 Any pesticide or device that is distributed, sold, or offered for sale within this state or
11 delivered for transportation or transported in intrastate commerce or between points within this
12 state through any point outside this state is liable to be proceeded against in any proper court of
13 jurisdiction in any county of the state where it may be found and seized for confiscation by
14 process of libel for condemnation:

- 15 1. In the case of a pesticide:
 - 16 a. If it is adulterated or misbranded;
 - 17 b. If it has not been registered under ~~the provisions of section 19-18-044.1-35-03;~~
 - 18 c. If it fails to bear on its label the information required by this chapter; or
 - 19 d. If it is a white powder pesticide and is not colored as required under this chapter.
- 20 2. In the case of a device, if it is misbranded.

21 If the pesticide is condemned, ~~it must~~, after entry of decree, it must be disposed of by
22 destruction or sale as the court may direct and ~~the any~~ proceeds, ~~if such pesticide is sold~~, less
23 legal costs, must be paid to the state treasurer. The pesticide may not be sold contrary to the
24 provisions of this chapter. Upon payment of cost and execution and delivery of a good and
25 sufficient bond conditioned that the pesticide shall not be disposed of unlawfully, the court may
26 direct that said pesticide be delivered to ~~the its~~ owner thereof for relabeling or reprocessing as
27 ~~the case may be~~. When a decree of condemnation is entered against the pesticide, court costs
28 and fees and storage and other proper expenses must be awarded against ~~the any~~ person, ~~if~~
29 ~~any~~, intervening as claimant of the pesticide.

30 **SECTION 46. AMENDMENT.** Section 19-18-10 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 ~~19-18-10. Delegation of duties.~~

2 All authority vested in the commissioner by virtue of this chapter may with like force and
3 effect be executed by the employees of the commissioner as the commissioner may from time
4 to time designate for this purpose.

NOTE: Defining commissioner in section 4.1-35-01 to include an employee or agent designated by the commissioner eliminates the need for this section.

5 **SECTION 47. AMENDMENT.** Section 19-18-11 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 ~~19-18-114.1-35-13. Cooperation.~~

8 The commissioner may cooperate with, and enter into agreements with, any other agency
9 of this state or of the federal government or any other state or agency thereof for the purpose of
10 carrying out this chapter and securing uniformity of regulations.

11 **SECTION 48. AMENDMENT.** Section 19-18-12 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 ~~19-18-124.1-35-14. Experimental use permits.~~

14 ~~Provided~~If the state is authorized by the administrator of the environmental protection
15 agency to issue experimental use permits, the commissioner may:

- 16 1. Issue an experimental use permit to ~~a person applying for a permit~~ an applicant if the
17 commissioner determines that the applicant requires the permit to accumulate
18 information necessary to register a pesticide use. An application for an experimental
19 use permit may be filed ~~at the time of or before or after~~ when an application for
20 registration is filed ~~or before or after filing the application.~~
- 21 2. Prescribe terms, conditions, and the period of time for use under the experimental use
22 permit.
- 23 3. Revoke an experimental use permit, ~~at any time,~~ if the commissioner finds that its
24 terms or conditions are being violated or that its terms and conditions are inadequate
25 to avoid unreasonable adverse effects to human health or the environment.

26 **SECTION 49. AMENDMENT.** Section 19-18-13 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 ~~19-18-134.1-35-15. Minimum-risk pesticide - Certificate of exemption.~~

- 29 1. Section ~~19-18-034.1-35-02~~ does not apply to any person who distributes, sells, or
30 offers for sale within this state or delivers for transportation or transports in intrastate

1 commerce or between points within this state through any point outside this state a
2 minimum-risk pesticide exempt from registration under the Federal Insecticide,
3 Fungicide, and Rodenticide Act [Pub. L. 100-532; 102 Stat. 2654; 7 U.S.C. 136
4 et seq.], provided the person has obtained a certificate of exemption from the
5 commissioner.

6 2. To obtain a certificate of exemption for a minimum-risk pesticide, a person shall file an
7 application with the commissioner. The application must include:

8 a. The name and address of the product's manufacturer or distributor;

9 b. The name and brand name of the product;

10 c. A current label for the product; and

11 d. A fee equal in amount to the fee set under section 19-18-04 for the registration of
12 a pesticide.

13 3. The commissioner shall remit any fees collected under this section to the state
14 treasurer for deposit in the environment and rangeland protection fund.

15 4. Each exemption from registration covers a designated two-year period beginning
16 January first of each even-numbered year and expiring December thirty-first of the
17 following year.

NOTE: The following sections will become a new Chapter 4.1-36, relating to chemigation.

18 **SECTION 50. AMENDMENT.** Section 4-35.1-01 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 ~~4-35.1-01~~**4.1-36-01. Definitions.**

21 As used in this chapter:

22 1. "Chemigation" means any process by which chemicals, including pesticides and
23 fertilizers, are applied to land or crops through an irrigation system.

24 2. "Commissioner" means the agriculture commissioner and includes any employee or
25 agent designated by the commissioner.

26 3. "Fertilizer" means any fertilizer as defined by section ~~19-20.1-024~~4.1-40-01.

27 4. "Pesticide" means that term defined in section ~~4-35-054~~4.1-34-01.

28 5. "State engineer" means the state engineer appointed by the state water commission
29 under section 61-03-01.

30 **SECTION 51. AMENDMENT.** Section 4-35.1-02 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 ~~4-35.1-024.1-36-02.~~ **Statement of compliance**Compliance with rules.

2 For the purposes of this chapter, ~~farm~~Farm irrigation systems used for chemigation which
3 are designed, constructed, and operated as specified in the administrativein compliance with
4 rules adopted under this chapter ~~so as to minimize the possibility of ground or surface water~~
5 ~~contamination~~, are considered to be in compliance with this chapter.

6 **SECTION 52. AMENDMENT.** Section 4-35.1-03 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 ~~4-35.1-034.1-36-03.~~ **Rules - Standards for application through irrigation**
9 **system**chemigation, installation, maintenance, and modifications.

10 The agriculture commissioner shall adopt rules regulating chemigation through irrigation
11 systems in this state to minimize the possibility of chemical, pesticide, fertilizer, or other
12 contamination of irrigationground or surface water supply and other rules as necessary to
13 implement this chapter. The commissioner may establish by rule standards for application of
14 pesticides and fertilizers through irrigation systems; for installation and maintenance of all
15 equipment and devices used for chemigation purposes; ~~for~~ modifications or changes in design,
16 technology, or irrigation practices; or ~~for~~ other purposes relating to the use or placement of
17 equipment or devices. The commissioner may adopt rules requiring periodic calibration and
18 inspection of equipment and system operation during periods of chemigation.

19 **SECTION 53. AMENDMENT.** Section 4-35.1-04 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 ~~4-35.1-044.1-36-04.~~ **Inspections - Assistance of state engineer.**

22 The state engineer shall cooperate with the commissioner in the inspection of any irrigation
23 system using chemigation. The state engineer shall inform the commissioner of any violation of
24 this chapter that is discovered in the course of the state engineer's regular inspections of
25 irrigation systems using chemigation.

26 **SECTION 54. AMENDMENT.** Section 4-35.1-05 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 ~~4-35.1-054.1-36-05.~~ **Enforcement.**

29 1. The commissioner shall enforce this chapter and any rules adopted under this chapter.

- 1 2. The commissioner may seek an injunction in the district court in the county in which
2 the~~a~~ violation occurs or may issue a cease and desist order to any person for any
3 alleged violation of this chapter or any rules adopted under this chapter.
- 4 3. For the purpose of carrying out the provisions of this chapter, the commissioner and
5 the state engineer may enter upon any public or private premises at reasonable times
6 in order to:
- 7 a. Have access for the purpose of inspecting any equipment subject to this chapter
8 and the premises on which the equipment is stored or used.
- 9 b. Inspect or sample lands actually, or reported to be, exposed to pesticides or
10 fertilizers through chemigation.
- 11 c. Inspect storage or disposal areas.
- 12 d. Inspect or investigate complaints of injury to humans or animals.
- 13 e. Sample pesticides and fertilizers and pesticide or fertilizer mixes being applied or
14 to be applied.
- 15 f. Observe the use and application of a pesticide or fertilizer through chemigation.
- 16 g. Have access for the purpose of inspecting a premise or other place where
17 equipment or devices used for chemigation are held for distribution, sale, or for
18 use.

19 **SECTION 55. AMENDMENT.** Section 4-35.1-06 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 ~~4-35.1-06~~**4-36-06. Penalties.**

- 22 1. Any person who violates ~~the provisions~~a provision of this chapter or any ~~rules~~rule
23 adopted under this chapter is guilty of a class A misdemeanor.
- 24 2. When construing and enforcing the provisions of this chapter or any rules adopted
25 under this chapter, the act, omission, or failure of any officer, agent, or other person
26 acting for or employed by any person must in every case be also deemed to be the
27 act, omission, or failure of such person as well as that of the person employed.
- 28 3. Any person found to have violated ~~the provisions~~a provision of this chapter or ~~rules~~rule
29 adopted under this chapter is subject to a civil penalty not to exceed five thousand
30 dollars for each violation. The civil penalty may be imposed by a court in a civil

1 proceeding or by the commissioner through an administrative hearing under chapter
2 28-32.

NOTE: The following sections will become a new Chapter 4.1-37, relating to the pesticide and pesticide container disposal program.

3 **SECTION 56. AMENDMENT.** Section 4-35.2-01 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 ~~4-35.2-01~~**4.1-37-01. Pesticide and pesticide container disposal program - Pesticide**
6 **container management - Compensation.**

- 7 1. The definitions contained in section ~~4-35-054.1-34-01~~ apply to this ~~section~~chapter.
- 8 2. In consultation with an advisory board consisting of the state health officer, and
9 director of the North Dakota state university extension service, two individuals selected
10 by the agriculture commissioner representing agribusiness organizations, and two
11 individuals selected by the agriculture commissioner representing farm organizations,
12 ~~all of whom must be selected by the agriculture commissioner~~, the commissioner shall
13 continue to implement ~~the project authorized by section 1 of chapter 77 of the 2001~~
14 ~~Session Laws, which is known as project safe send~~. The purpose of the project is to:
- 15 a. Collect and either recycle or dispose of unusable pesticides and unusable
16 pesticide containers. The commissioner shall provide for the establishment and
17 operation of temporary collection sites for the pesticides and pesticide containers.
18 The commissioner may limit the type and quantity of pesticides and pesticide
19 containers acceptable for collection.
- 20 b. Promote proper pesticide container management. In consultation with the director
21 of the North Dakota state university extension service, the commissioner shall
22 evaluate and promote proper methods of pesticide container management,
23 including information on the variety of pesticide containers available.
- 24 3. Any entity collecting pesticide containers or unusable pesticides shall manage and
25 dispose of the containers and pesticides in compliance with applicable federal and
26 state requirements. When called upon, any state agency shall assist the commissioner
27 in implementing the project.
- 28 4. For services rendered in connection with the design and implementation of this
29 project, the advisory board members selected by the commissioner are entitled to
30 reimbursement for mileage and travel expenses in the same manner and for the same

1 amounts provided for state employees and officials. Compensation and expense
2 reimbursement must be paid from the environment and rangeland protection fund.

3 **SECTION 57. AMENDMENT.** Section 4-35.2-02 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **4-35.2-024.1-37-02. Project scope and evaluation.**

6 The project described in section ~~4-35.2-014.1-37-01~~ must occur in areas to be determined
7 by the agriculture commissioner in consultation with the advisory board ~~under subsection 2-~~
8 ~~of described in~~ section ~~4-35.2-014.1-37-01~~.

9 **SECTION 58. AMENDMENT.** Section 4-35.2-03 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **4-35.2-034.1-37-03. Project safe send pesticide and pesticide container collection -**
12 **User fees.**

13 The agriculture commissioner, in consultation with the advisory board for the project safe
14 send pesticide and pesticide container disposal program, may charge a fee for collection of
15 rinsate. The fees must be established at a level that will generate enough revenue to cover the
16 cost of disposal associated with the rinsate that is collected. Collections from this fee must be
17 deposited in the environment and rangeland protection fund.

18 **SECTION 59. AMENDMENT.** Section 4-35.2-04 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **4-35.2-044.1-37-04. Report on pesticide container disposal program.**

21 The agriculture commissioner shall submit a biennial report to a joint meeting of the house
22 of representatives and senate agriculture committees on the status of the pesticide container
23 disposal program.