

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

HOUSE BILL NO. 1158
(Agriculture Committee)
(At the request of the Agriculture Commissioner)

AN ACT to amend and reenact section 4-28-03, subsections 18, 19, and 28 of section 19-18-02, and sections 19-18-04, 19-18-04.1, and 19-18-07 of the North Dakota Century Code, relating to pesticide registrations; to repeal section 19-18-02.2 of the North Dakota Century Code, relating to wheat commission membership and a pesticide residue advisory board; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-28-03 of the North Dakota Century Code is amended and reenacted as follows:

4-28-03. Wheat commission - Members. There is hereby created the North Dakota state wheat commission which consists of seven members. One member must be appointed or elected from each of the districts of the state established by the provisions of this chapter and one member must be appointed or elected from the state at large. Each member, except the member from the state at large, must be a bona fide resident of and a qualified elector in the district the member represents, must have farming operations in such district, and must have been actually engaged in the production of wheat and have derived a substantial portion of the member's income therefrom for at least five years next preceding the member's appointment or election. The member from the state at large must have similar qualifications except as limited by district lines.

Not more than sixty days prior to expiration of the term of the member from the state at large, a nominating committee consisting of the agriculture commissioner, the president of the North Dakota crop improvement association, the director of the North Dakota agricultural experiment station, the director of the North Dakota state university extension service, the president of the North Dakota farm bureau, the president of the North Dakota farmers union, ~~and~~ the president of the North Dakota grain dealers association, the president of the North Dakota grain growers association, and an individual who is a resident of this state and a member of the United States durum growers association, or their duly authorized representatives, shall submit to the governor a list of three names and within sixty days after expiration of the term the governor shall appoint, from the nominees so named, the member at large to the commission.

Each member of the commission shall hold office for a term of four years and until the member's successor has been selected and has qualified except that the commissioners elected and serving from the first and fourth districts shall hold office for terms ending on June 30, 1984; the commissioners elected and serving from the second and fifth districts shall hold office for terms ending on June 30, 1985; and the commissioners elected and serving from the third and sixth districts shall hold office for terms ending on June 30, 1982; and the commissioner appointed and serving as the state at large member shall hold office for a term ending on June 30, 1983. No producer is entitled to serve more than three terms.

At least sixty days prior to the expiration of the term of office of a commissioner representing any district, a meeting of producers must be held in each county in the district for the purpose of electing a county representative. The county agent shall call such meeting by publishing notice in the official newspaper of the county for two successive weeks, the last publication to be not less than five nor more than ten days prior to the meeting. The meeting must be held at a central location within the county and must be called to order by the county agent. The county agent, in cooperation with the cooperative extension service, shall conduct all elections under this section in each county in the

manner the county agent deems fair and reasonable. Votes must be canvassed by the county agent and certified by the county agent with the name and post-office address of the elected county representative to the director of the North Dakota state university extension service who shall thereupon, as expeditiously as possible, call a meeting of the county representatives of the district. Notice of such meeting must be sent to each county representative by registered or certified mail not less than five days prior to the meeting which must be held at a central location within the district. At such district meeting, the county representatives shall elect one of their number as the district member of the commission. The ballots at such meeting must be canvassed by the North Dakota state university extension service and the result of election certified to the governor by the director. Additional meetings of county representatives may be called by the state wheat commission for the purpose of promoting its programs. All expenses of all such meetings and elections must be paid from commission funds. County representatives must be reimbursed for expenses necessarily incurred in attending meetings and performing other official duties on the same basis as other state officers. Any vacancy occurring on the commission other than by expiration of term of office must be filled by the county representatives who shall elect one of their number as the district member of the commission for the remainder of the unexpired term. If the vacancy is from the state at large, appointment must be made from three nominations submitted by the nominating committee as in the case of the original appointment.

SECTION 2. AMENDMENT. Subsections 18, 19, and 28 of section 19-18-02 of the North Dakota Century Code are amended and reenacted as follows:

18. "Labeling" means all labels and other written, printed, or graphic matter:
 - a. Upon the pesticide or device or any of its containers or wrappers;
 - b. Accompanying the pesticide or device at any time; or
 - c. To which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, ~~nonmisleading~~ non-misleading reference is made to current official publications of ~~the environmental protection agency, the United States department of agriculture or interior, state agricultural experiment stations or centers, state agricultural colleges, or other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the fields of pesticides~~ a state or federal agency, state agricultural experiment station, or state agricultural college.

19. "Misbranded" applies:
 - a. To any pesticide or device if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular; and
 - b. To any pesticide:
 - (1) If it is an imitation of or is offered for sale under the name of another pesticide;
 - (2) If its labeling bears any reference to registration under this chapter;
 - (3) If the labeling accompanying it does not contain directions for use which are necessary and, if complied with, adequate to protect health and the environment;
 - (4) If the label does not contain a warning or caution statement which may be necessary and, if complied with, adequate to protect health and the environment;
 - (5) If the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through

which the ingredient statement on the immediate container cannot be clearly read, of the retail package that is presented or displayed under customary conditions of purchase; except that a pesticide is not misbranded under this subsection if:

- (a) The size or form of the immediate container, or the outside container or wrapper of the retail package, makes it impracticable to place the ingredient statement on the part that is presented or displayed under customary conditions of purchase; and
 - (b) The ingredient statement appears prominently on another part of the immediate container, or outside container or wrapper, permitted by the commissioner;
- (6) The labeling does not contain a statement of the use classification under which the product is registered if the product is a restricted use pesticide;
- (7) There is not affixed to its container, and to the outside container or wrapper of the retail package, if there is one, through which the required information on the immediate container cannot be clearly read, a label bearing:
- (a) The name and address of the producer, registrant, or person for whom produced;
 - (b) The name, brand, or trademark under which the pesticide is sold; and
 - (c) The net weight or measure of the content; and
 - ~~(d) When required by regulation of the commissioner to effectuate the purposes of this chapter, the registration number assigned to the pesticide under this chapter, and the use classification;~~
- (8) The pesticide contains any substance or substances in quantities highly toxic to man, unless the label bears, in addition to any other matter required by this chapter:
- (a) The skull and crossbones;
 - (b) The word "poison" prominently in red on a background of distinctly contrasting color; and
 - (c) A statement of a practical treatment (first aid or otherwise) in case of poisoning by the pesticide;
- (9) If any word, statement, or other information required by or under the authority of this chapter to appear on the labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or graphic matter in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
- (10) If in the case of an insecticide, nematocide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it is injurious to living man or other vertebrate animals or vegetation, except weeds, to which it is applied, or to the person applying the pesticide; or
- (11) If a plant regulator, defoliant, or desiccant when used as directed is injurious to man or other vertebrate animals, or the vegetation to which it is applied; provided, that the physical or physiological effect on plants or parts thereof may

not be deemed injurious when this is the purpose for which the plant regulator, defoliant, or desiccant is applied in accordance with label claims and recommendations.

28. "Restricted use pesticides" means any pesticide ~~that the commissioner has found and determined under the provisions of this chapter to be injurious to persons, beneficial insects, animals, crops, or to the environment other than the pests the pesticide is intended to repel, destroy, control, or mitigate~~ formulation that is classified for restricted use by the United States environmental protection agency. The term also includes a pesticide formulation classified for restricted use by the commissioner pursuant to section 19-18-05.

SECTION 3. AMENDMENT. Section 19-18-04 of the North Dakota Century Code is amended and reenacted as follows:

19-18-04. (Effective through June 30, 2003) Registration - Fees.

1. Any person before selling or offering for sale any pesticide for use within this state shall file biennially with the commissioner an application for registration of the pesticide. The application must:
 - a. Give the name and address of each manufacturer or distributor.
 - b. Give the name and brand of each product registered.
 - c. Be accompanied by a current label of each product so registered.
 - d. Be accompanied by a registration fee of three hundred fifty dollars for each product registered. At the close of each calendar month, the commissioner shall transmit to the state treasurer all moneys received for the registrations. The state treasurer shall credit fifty dollars for each registered product to the general fund in the state treasury and the remainder of the registration fee for each registered product to the environment and rangeland protection fund.
 - e. Be accompanied by a material safety data sheet.
2. The commissioner may require an applicant or registrant to provide efficacy, toxicity, residue, and any other data necessary to determine if the pesticide will perform its intended function without unreasonable adverse effects on the environment. If the commissioner finds that the application conforms to law, the commissioner shall issue to the applicant a certificate of registration of the product. If after public hearing before the commissioner the application is denied, the product may not be offered for sale.
3. Each registration covers a two-year period beginning January first and expiring December thirty-first of the following year. A certificate of registration may not be issued for a term longer than two years, and is not transferable from one person to another, or from the ownership to whom issued to another ownership, or from one place to another place or location. A penalty of fifty percent of the license or registration fee must be imposed if the license or certificate of registration is not applied for on or before January thirty-first following the expiration date, or within the same month the pesticides are first manufactured or sold within this state. Each product must go through a two-year discontinuance period in order to clear all outstanding products in the channel of trade.
4. This section does not apply to a pesticide sold by a retail dealer if the registration fee has been paid by the manufacturer, jobber, or any other person, as required by this section.

(Effective July 1, 2003) Registration - Fees. Any person before selling or offering for sale any pesticide for use within this state shall file biennially with the commissioner an application for registration of the pesticide. The application must:

1. Give the name and address of each manufacturer or distributor.
2. Give the name and brand of each product to be registered.
3. Be accompanied by a current label of each product ~~se~~ to be registered.
4. Be accompanied by a registration fee of three hundred dollars for each product to be registered. At the close of each calendar month, the commissioner shall transmit to the state treasurer all moneys received for the registrations. The state treasurer shall credit fifty dollars for each registered product to the general fund in the state treasury and the remainder of the registration fee for each registered product to the environment and rangeland protection fund.
5. Be accompanied by a material safety data sheet for each product to be registered.

The commissioner may require an applicant or registrant to provide efficacy, toxicity, residue, and any other data necessary to determine if the pesticide will perform its intended function without unreasonable adverse effects on the environment. If the commissioner finds that the application conforms to law, the commissioner shall issue to the applicant a certificate of registration of the product. ~~If after public hearing before the commissioner the application is denied, the product may not be offered for sale.~~

Each registration covers a designated two-year period beginning January first of each even-numbered year and expiring December thirty-first of the following year. A certificate of registration may not be issued for a term longer than two years, and is not transferable from one person to another, or from the ownership to whom issued to another ownership, ~~or from one place to another place or location~~. A penalty of fifty percent of the license or registration fee must be imposed if the license or certificate of registration is not applied for on or before January thirty-first following the expiration date, ~~or within the same month the pesticides are first manufactured or sold within this state~~. Each product must go through a two-year discontinuance period in order to clear all outstanding products in the channel of trade.

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

SECTION 4. AMENDMENT. Section 19-18-04.1 of the North Dakota Century Code is amended and reenacted as follows:

19-18-04.1. Reporting requirements. Upon request of the commissioner, a registrant shall report the amount and type of each registered pesticide sold, offered for sale, or otherwise distributed in the state. The report must be filed ~~by March first~~ within thirty days after receiving the commissioner's request. The information required must include the brand name, amount, and formulation of each pesticide sold, offered for sale, or otherwise distributed in the state. However, specific brand names may not be identified in any report or otherwise made public.

SECTION 5. AMENDMENT. Section 19-18-07 of the North Dakota Century Code is amended and reenacted as follows:

19-18-07. Exemptions. The penalties provided for violations of section 19-18-03 do not apply to:

1. Any carrier while lawfully engaged in transporting a pesticide within this state, if the carrier, upon request, permits the commissioner to copy all records showing the transactions in and movement of the articles.
2. Public officials of this state and the federal government engaged in the performance of their official duties.
3. The manufacturer or shipper of a pesticide for experimental use only:

- a. By or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of pesticides; or
 - b. By others if the pesticide is not sold and if the container thereof is plainly and conspicuously marked "For experimental use only - not to be sold", together with the manufacturer's name and address. ~~If a written permit has been obtained from the commissioner, pesticides may be sold for experimental purposes subject to such restrictions and conditions as may be set forth in the permit.~~
4. A person using, distributing, selling, or offering for sale an unregistered pesticide for which the United States environmental protection agency has granted an emergency exemption for at least one use in North Dakota under section 18 of the federal Act.

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

SECTION 6. REPEAL. Section 19-18-02.2 of the North Dakota Century Code is repealed.

SECTION 7. EMERGENCY. Sections 1 and 4 of this Act are declared to be an emergency measure.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1158 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 92 Nays 2 Absent 0

Speaker of the House

Chief Clerk of the House

This certifies that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 45 Nays 1 Absent 1

President of the Senate

Secretary of the Senate

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

Approved at _____ M. on _____, 2003.

Governor

Filed in this office this _____ day of _____, 2003,
at _____ o'clock _____ M.

Secretary of State