

**Sixtieth Legislative Assembly of North Dakota  
In Regular Session Commencing Wednesday, January 3, 2007**

SENATE BILL NO. 2095  
(Agriculture Committee)  
(At the request of the Agriculture Commissioner)

AN ACT to amend and reenact section 4-35-05 of the North Dakota Century Code, relating to pesticide definitions; and to declare an emergency.

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

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

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

1. "Animal" means all vertebrate and invertebrate species, including humans and other mammals, birds, fish, and shellfish.
2. "Antidote" means a practical treatment in case of poisoning and includes first-aid treatment.
3. "Applicator" means any person who applies a pesticide to land.
4. "Beneficial insects" means those insects that, during their life cycle, are effective pollinators of plants, are parasites, or predators of pests.
5. "Certified applicator" means any individual who is certified under this chapter as authorized to use or supervise the use of any pesticide that is classified for restricted use.
6. "Commercial applicator" ~~means an applicator, whether or not the applicator is a private applicator with respect to some uses, who uses or supervises the use of a pesticide, whether classified as restricted or general use, for any purpose or on any property, other than as provided by subsection 26~~ means a person who by contract or for hire engages in the business of applying pesticides for compensation to the land of another by aerial, ground, hand, or any other equipment. The term "commercial applicator" does not include a person using a pesticide for a private agricultural purpose unless that person is being compensated for the pesticide application.
7. "Dealer" means any person who sells a pesticide to an end user.
8. "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission.
9. "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissue.
10. "Device" means any instrument or contrivance, other than a firearm, which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life, other than human and other than bacteria, virus, or other micro-organism on or in living humans or other living animals, but not including equipment used for the application of pesticides when sold separately therefrom.
11. "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver, or supply pesticides in this state.

12. "Environment" includes water, air, land, and all plants and humans and other animals living therein, and the interrelationships which exist among these.
13. "Equipment" means any type of ground, water, or aerial equipment or contrivance using motorized, mechanical, or pressurized power and used to apply any pesticide on land and anything that may be growing, habitating, or stored on or in such land. The term does not include any pressurized hand-sized household apparatus used to apply any pesticide, or any equipment or contrivance of which the person who is applying the pesticide is the source of power or energy in making such pesticide application.
14. "Fungus" means any non-chlorophyll-bearing thallophytes, i.e., any non-chlorophyll-bearing plant of a lower order than mosses and liverworts as, for example, rust, smut, mildew, mold, yeast, and bacteria, except those on or in living humans or other living animals, and except those on or in processed food, beverages, or pharmaceuticals.
15. "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class of insecta, comprising six-legged, usually winged forms, and to other allied classes of arthropods whose members are wingless and usually have more than six legs.
16. "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.
17. "Labeling" means the label and all other written, printed, or graphic matter:
  - a. Accompanying the pesticide or device; and
  - b. To which reference is made on the label or in literature accompanying or referring to the pesticide, except when accurate nonmisleading references are made to current official publications of the board; the United States environmental protection agency; the United States departments of agriculture and interior; the United States department of health and human services; state agricultural colleges; and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.
18. "Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, contrivances, and machinery, appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.
19. "Mixture" means a diluted pesticide combination.
20. "Nematode" means invertebrate animals of the phylum nemathelminthes, and class nematoda, i.e., unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts, may also be called nemas or eelworms.
21. "Person" means any individual, partnership, association, fiduciary, corporation, limited liability company, or any organized group of persons, whether or not incorporated.
22. "Pest" means:
  - a. Any insect, snail, slug, rodent, nematode, fungus, or weed; or
  - b. Any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism, except viruses, bacteria, or other micro-organisms on or in living humans or other living animals which are annoying or otherwise injurious or harmful to agriculture, health, and the environment.
23. "Pesticide" means:

- a. Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; and
  - b. Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.
24. "Pesticide dealer" means any person who distributes restricted use pesticides.
25. "Plant regulator" means any substance or mixture of substances intended, through physiological action, to accelerate or retard the rate of growth or rate of maturation, or to otherwise alter the behavior of plants or the produce thereof, but does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.
26. "Private applicator" means a certified applicator who uses or supervises the use of any pesticide that is classified for restricted use, to produce any agricultural commodity on property owned or rented by the applicator or the applicator's employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.
27. "Protect health and the environment" means protection against any unreasonable adverse effects on public health and the environment.
28. "Public applicator" means ~~a certified~~ an applicator who applies pesticides as an employee of a state or federal agency, municipal corporation, public utility, ~~hospital, privately owned golf course, nursery, greenhouse,~~ or other governmental agency. Persons using only ready-to-use pesticides are exempt from this requirement.
29. "Ready-to-use pesticide" means a pesticide that is applied directly from its original container consistent with label directions, such as an aerosol spray can, a ready-to-use spray container, bait packs, or other types of containers that do not require mixing or loading before application.
30. "Restricted use pesticide" means any pesticide formulation which 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 agriculture commissioner under section 19-18-05.
- ~~30.~~ 31. "Rinsate" means a diluted mixture of pesticide obtained from triple rinsing pesticide containers or from rinsing the inside and outside of spray equipment.
- ~~34.~~ 32. "Snail" or "slug" includes every harmful mollusk.
- ~~32.~~ 33. "Tank mix" means any pesticidal formulation used alone or in combination with another pesticide and mixed with a liquid carrier prior to application.
- ~~33.~~ 34. "Unreasonable adverse effects on the environment" means any unreasonable risk to humans or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.
- ~~34.~~ 35. "Weed" means any plant which grows where not wanted.
- ~~35.~~ 36. "Wildlife" means all living things that are neither human, domesticated, nor, as defined in this chapter, pests, including mammals, birds, and aquatic life.

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixtieth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2095 and that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote:      Yeas        43            Nays        0            Absent      4

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Secretary of the Senate

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

Vote:      Yeas        89            Nays        1            Absent      4

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
Chief Clerk of the House

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2007.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2007.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2007,

at \_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State