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**HB 1338 Testimony
Eric Delzer
Pesticide and Fertilizer Division Director
Senate Agriculture Committee
Fort Union
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Chairman Luick and members of the Senate Agriculture Committee, my name is Eric Delzer and I am the pesticide and fertilizer division director for the North Dakota Department of Agriculture. I am here today to testify in support of house bill 1338 on behalf of Agriculture Commissioner Doug Goehring and the North Dakota Pesticide Control Board. This bill would make two changes to North Dakota Century Code (N.D.C.C.) chapter 4.1-33.

The first part of the bill addresses the commercial certification requirements for antimicrobial disinfectants as well as to define an “antimicrobial pesticide.” Under N.D.C.C. 4.1-33-07, a commercial or private applicator may not purchase, use, or supervise the use of a pesticide without first obtaining a commercial or private applicator certification. However, as an unintended consequence of this statute, applicators are prohibited from applying non restricted over the counter antimicrobial disinfectants without first obtaining a certification. This is because these products are classified under federal and state law as a class of pesticide. Under the current law, facility management staff cannot even wipe down the tables in this room with a Clorox wipe without first obtaining a pesticide applicator certification.

This unintended consequence really came to light last spring when the pandemic hit and there was an increased need for commercial cleaning services. We were able to work with the Governor’s office to get an executive order issued to temporarily waive this certification requirement. HB 1338 will add an exemption to the certification requirements for those applying nonrestricted use antimicrobial pesticides. The North Dakota Pesticide Control Board supports this exemption as the use of these products poses little to no risk and certification is unnecessary.

Another major challenge we faced last year due to the restrictions on in-person gatherings, was the April 1, 2020 expiration of several thousand pesticide applicator certifications without having a method to renew them. NDCC §4.1-33-08 requires certificates to be renewed every three years upon successfully completing an examination or attending a seminar approved by the board. The North Dakota State University Extension Pesticide Program is the entity responsible for providing these renewal seminars and administering examinations. However, due to restrictions, they were not able to do in-person seminars or exams and there were no online capabilities in place.

NDCC 4.1-33 requires the Pesticide Control Board to prescribe the standards and requirements for applicator certification but does not provide the authority to temporarily waive those requirements in an emergency. We were able to work with the Governor's office to secure an executive order extending the certifications but, due to timing, we nearly had thousands of applicators who would not have been able to purchase or apply products.

HB 1338 proposes to give the Pesticide Control Board the authority to take swift action if we ever face this kind of crisis again in the future. Placing authority for issuing temporary waivers with the Pesticide Control Board would allow for a faster response to industry needs during a declared state of disaster or emergency. Those temporary waivers would then be automatically rescinded upon the termination of the emergency declaration. While we are hopeful that we will never face those circumstances again in the future, it is necessary to be prepared and have the flexibility to take immediate action.

The emergency clause was added to HB 1338 so the executive order waiving the certification requirements can be rescinded.

Chairman Luick, and members of the committee, thank you for the opportunity to provide testimony on this bill. I would be happy to answer any questions.