

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

SENATE BILL NO. 2086

Introduced by

Agriculture and Veterans Affairs Committee

(At the request of the Agriculture Commissioner)

1 A BILL for an Act to create and enact a new section to chapter 4.1-33 of the North Dakota
2 Century Code, relating to pesticide certification standards; and to amend and reenact sections
3 4.1-33-01 and 4.1-33-03, subdivision b of subsection 1 of section 4.1-33-12, section 4.1-33-13,
4 subsection 1 of section 4.1-33-16, and subsection 5 of section 4.1-33-20 of North Dakota
5 Century Code, relating to pesticide control.

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

7 **SECTION 1. AMENDMENT.** Section 4.1-33-01 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **4.1-33-01. Definitions.**

10 As used in this chapter:

- 11 1. "Animal" means ~~all~~ vertebrate and invertebrate species, including humans and other
12 mammals, birds, fish, and shellfish.
- 13 2. "Antimicrobial pesticide" means a substance or mixture of substances intended for
14 preventing, destroying, repelling, suppressing, or mitigating the growth of
15 micro-organisms, including bacteria, viruses, and fungi on inanimate objects and
16 surfaces.
- 17 3. "Applicator" means ~~any~~a person who applies a pesticide to land.
- 18 4. "Certified applicator" means ~~any~~an individual who is certified under this chapter to
19 purchase or use a restricted use pesticide.

- 1 5. "Commercial applicator" means a person who, by contract or for hire, engages in the
2 business of applying pesticides for compensation.
- 3 6. "Defoliant" means ~~any~~a substance or mixture of substances intended to cause the
4 leaves or foliage to drop from a plant, with or without causing abscission.
- 5 7. "Desiccant" means ~~any~~a substance or mixture of substances intended to artificially
6 accelerate the drying of plant tissue.
- 7 8. "Device" means ~~any~~an instrument or contrivance, other than a firearm, which is
8 intended for trapping, destroying, repelling, or mitigating any pest or any other form of
9 plant or animal life, other than human and other than bacteria, virus, or other
10 micro-organism on or in living humans or other living animals, but not including
11 equipment used for the application of pesticides when sold separately from pesticide.
- 12 9. "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver, or supply
13 pesticides in ~~this~~the state.
- 14 10. "Environment" includes water, air, land, and all plants ~~and~~, humans , and other animals
15 living ~~therein~~there, and the interrelationships ~~that exist~~existing among them.
- 16 11. "Equipment" means ~~any~~a type of ground, water, or aerial equipment or contrivance
17 using motorized, mechanical, or pressurized power and used to apply ~~any~~a pesticide
18 on land and anything that may be growing, inhabiting, or stored on or in that land. The
19 term does not include ~~any~~a pressurized hand-held household apparatus used to apply
20 ~~any~~a pesticide, or ~~any~~a equipment or contrivance of which the individual who is
21 applying the pesticide is the source of power or energy to make the pesticide
22 application.
- 23 12. "Fungus" means ~~any~~a non-chlorophyll-bearing thallophytes, that is, ~~any~~a
24 non-chlorophyll-bearing plant of a lower order than mosses and liverworts as, for
25 example, rust, smut, mildew, mold, yeast, and bacteria, except ~~those~~fungus on or in
26 living humans or other living animals, and except ~~those~~fungus on or in processed food,
27 beverages, or pharmaceuticals.
- 28 13. "Insect" means ~~any~~one of the numerous small invertebrate animals generally having
29 the body more or less obviously segmented, for the most part belonging to the class of
30 insecta, comprising six-legged, usually winged forms, and to other allied classes of

1 arthropods ~~whose~~for which members are wingless and usually have more than six
2 legs.

3 14. "Label" means the written, printed, or graphic matter on, or attached to, the pesticide
4 or device or any of ~~its~~the pesticide or device's containers or wrappers.

5 15. "Labeling" means the label and ~~all~~ other written, printed, or graphic matter:

6 a. Accompanying the pesticide or device; or

7 b. To which reference is made on the label or in literature accompanying or referring
8 to the pesticide, except when accurate nonmisleading references are made to
9 current official publications of the board, the United States environmental
10 protection agency, the United States departments of agriculture and interior, the
11 United States department of health and human services, state agricultural
12 colleges, and other similar federal or state institutions or agencies authorized by
13 law to conduct research in the field of pesticides.

14 16. "Land" means ~~all~~ land and water areas, including airspace, and ~~all~~ plants, animals,
15 structures, buildings, contrivances, and machinery, appurtenant to or situated on land,
16 fixed or mobile, including any used for transportation.

17 17. "Nematode" means an invertebrate ~~animals~~animal of the phylum nemathelminthes,
18 and class nematoda, i.e., unsegmented round worms with elongated, fusiform, or
19 saclike bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts,
20 may also be called nemas or eelworms.

21 18. "Pest" means ~~any~~an insect, rodent, nematode, fungus, or weed; or ~~any~~ other form of
22 terrestrial or aquatic plant or animal life, viruses, bacteria, or other micro-organism,
23 except viruses, bacteria, or other micro-organisms on or in living humans or other
24 living animals.

25 19. "Pesticide" means:

26 a. ~~Any~~A substance or mixture of substances intended for preventing, destroying,
27 repelling, or mitigating any pest; and

28 b. ~~Any~~A substance or mixture of substances intended for use as a plant regulator,
29 defoliant, or desiccant.

- 1 20. "Pesticide certification standards" means the requirements under title 40, Code of
2 Federal Regulations, sections 171.101 through 171.107, as those sections existed on
3 January 4, 2017.
- 4 21. "Pesticide dealer" means ~~any~~a person, other than a pesticide wholesaler, distributing
5 pesticides.
- 6 21.22. "Plant regulator" means ~~any~~a substance or mixture of substances intended, through
7 physiological action, to accelerate or retard the rate of growth or rate of maturation, or
8 to otherwise alter the behavior of plants or the produce thereof, but does not include
9 substances to the extent that they are intended as plant nutrients, trace elements,
10 nutritional chemicals, plant inoculants, or soil amendments.
- 11 22.23. "Private applicator" means an individual who is required to be a certified applicator to
12 buy or use a restricted use pesticide on property owned or rented by the applicator or
13 the applicator's employer or, if applied without compensation other than trading of
14 personal services between producers of agricultural commodities, on the property of
15 another person.
- 16 23.24. "Public applicator" means an applicator who applies pesticides, other than
17 ready-to-use pesticides, as an employee of:
- 18 a. A governmental agency, municipal corporation, or public utility; or
19 b. A hospital, privately owned golf course, nursery, or greenhouse.
- 20 24.25. "Ready-to-use pesticide" means a pesticide other than a restricted use pesticide which
21 is applied directly from its original container consistent with label directions, and
22 includes aerosol spray cans, ready-to-use spray containers, bait packs, and other
23 types of containers that do not require mixing or loading before application.
- 24 25.26. "Restricted use pesticide" means ~~any~~a pesticide formulation ~~that is~~ classified as
25 restricted use by the United States environmental protection agency or the agriculture
26 commissioner under section 4.1-34-06.
- 27 26.27. "Rinsate" means a diluted mixture of pesticide obtained from triple rinsing or pressure
28 rinsing pesticide containers or from rinsing the inside and outside of spray equipment.
- 29 27.28. "Tank mix" means ~~any~~a pesticidal formulation used alone or in combination with
30 another pesticide and mixed with a liquid carrier prior to application.

28-29. "Unreasonable adverse effects on the environment" means ~~any~~an unreasonable risk to humans or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.

29-30. "Weed" means ~~any~~a plant that grows where not wanted.

30-31. "Wildlife" means ~~all~~-living things that are ~~neither~~not human, domesticated, ~~nor~~or, as defined in this chapter, pests, including mammals, birds, and aquatic life.

SECTION 2. A new section to chapter 4.1-33 of the North Dakota Century Code is created and enacted as follows:

Standards for pesticide certification.

The pesticide certification standards as defined under section 4.1-33-01, are incorporated by reference and made part of this chapter.

SECTION 3. AMENDMENT. Section 4.1-33-03 of the North Dakota Century Code is amended and reenacted as follows:

4.1-33-03. Pesticide control board to administer chapter and adopt rules.

1. a. The pesticide control board shall administer this chapter and may adopt rules under chapter 28-32 to implement this chapter. The rules may prescribe methods to be used in the application of pesticides. The rules may relate to the time, place, manner, methods, materials, and amounts and concentrations, in connection with the application of the pesticide, and may restrict or prohibit use of pesticides in designated areas during specified periods of time and ~~shall~~must encompass all reasonable factors ~~which~~that the board deems necessary to prevent damage or injury by drift or misapplication to:
 - (1) Plants, including forage plants, on adjacent or nearby lands.
 - (2) Wildlife in the adjoining or nearby areas.
 - (3) Fish and other aquatic life in waters in proximity to the area to be treated.
 - (4) Persons, animals, or beneficial insects.
- b. In adopting rules, the board shall give consideration to pertinent research findings and recommendations of other agencies of ~~this~~the state, ~~the~~-federal government, or other reliable sources.
2. In adopting rules under this chapter, the board shall prescribe standards and requirements for the certification of applicators of pesticides. ~~These~~The standards and

requirements must relate to the use and handling of pesticides. In determining ~~these~~the standards and requirements, the board shall ~~take into consideration~~adopt standards and requirements prescribed by the United States environmental protection agency in the pesticide certification standards.

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

4. To comply with the pesticide certification standards and the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.], the board ~~may~~shall make reports to the United States environmental protection agency in the form and containing the information as ~~that~~the agency requires.

5. Rules to implement this chapter may provide for:

- a. The collection, examination, and reporting of samples of pesticides.
- b. The safe handling, transportation, storage, display, distribution, and disposal of pesticides and pesticides containers.
- c. The identification of pests under this chapter ~~when~~if the board finds particular organisms to be annoying or otherwise injurious or harmful to agriculture, health, and the environment.

SECTION 4. AMENDMENT. Subdivision b of subsection 1 of section 4.1-33-12 of the North Dakota Century Code is amended and reenacted as follows:

b. An individual who would be a private applicator, if certified, may not use any restricted use pesticide unless the individual:

- (1) Complies ~~complies~~ with the certification requirements established by the board; or
- (2) Is under the direct supervision of a certified applicator while applying a restricted use herbicide.

SECTION 5. AMENDMENT. Section 4.1-33-13 of the North Dakota Century Code is amended and reenacted as follows:

4.1-33-13. Unlawful acts –~~Grounds and grounds~~ for denial, suspension, or revocation of a certification.

1. It is a violation of this chapter for ~~any~~a person to:

- 1 4. a. Make false or fraudulent claims through any media, misrepresenting the effect of
- 2 materials or methods to be utilized, or advertise a pesticide without reference to
- 3 its classification.
- 4 2. b. Make a pesticide recommendation, application, or use inconsistent with the
- 5 labeling or other restrictions prescribed by the board.
- 6 3. c. Apply materials known by that person to be ineffective or improper.
- 7 4. d. Operate faulty or unsafe equipment.
- 8 5. e. Operate in a faulty, careless, or negligent manner.
- 9 6. f. Neglect or, after notice, refuse to comply with this chapter, the rules adopted to
- 10 implement this chapter, or any lawful order of the commissioner.
- 11 7. g. Refuse or neglect to keep and maintain the records required by this chapter or to
- 12 make reports when and as required.
- 13 8. h. Make false or fraudulent records, invoices, or reports.
- 14 9. i. Apply pesticide to the property of another, without the permission of the owner or
- 15 lessee, unless the application is made under the direction of a governmental
- 16 entity.
- 17 10. j. Use fraud or misrepresentation in making an application for, or for renewal of,
- 18 certification.
- 19 11. k. Refuse or neglect to comply with any limitations or restrictions on or in a duly
- 20 issued certification.
- 21 12. l. Aid or abet a person to evade this chapter, conspire with a person to evade this
- 22 chapter, or allow the person's certification to be used by another person.
- 23 13. m. Knowingly make false statements during or after an inspection or an
- 24 investigation.
- 25 14. n. Impersonate a federal, state, county, or city inspector or official.
- 26 15. o. Distribute any restricted use pesticide to any person who is not properly certified
- 27 to use or purchase the pesticide.
- 28 16. p. Buy, use, or supervise the use of any pesticide without first complying with the
- 29 certification requirements of this chapter, unless otherwise exempted.
- 30 17. q. Apply any pesticide that is not registered under chapter 4.1-34.

2. A certification issued under this chapter may be denied, removed, or suspended if a person:

a. Receives a criminal conviction under section 136l of the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.];

b. Is subject to a final order imposing a civil penalty under section 136l of the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.]; or

c. Is subject to a concluded enforcement action for a violation of state law or regulation relating to pesticide use.

SECTION 6. AMENDMENT. Subsection 1 of section 4.1-33-16 of the North Dakota Century Code is amended and reenacted as follows:

1. The certification requirements of this chapter do not apply to an individual applying nonrestricted use pesticides under the direct supervision of a private or commercial applicator, unless the pesticide label requires that a certified applicator personally apply the pesticide. A pesticide is applied under the direct supervision of a private or commercial applicator if the pesticide is applied by an individual acting under the instruction and control of a certified applicator who is physically available if needed. The certified applicator need not be present when the pesticide is applied. Direct supervision with respect to applications using aircraft requires that the pilot of the aircraft be appropriately certified. The certification requirements of this chapter do not apply to a competent person applying a restricted use pesticide herbicide under the direct supervision of a private applicator, unless the pesticide herbicide label requires that a certified applicator personally apply the particular pesticide herbicide. A pesticide herbicide is deemed to be applied under the direct supervision of a private applicator if it is applied by a competent person acting under the instruction and control of a private applicator who is available if and when needed, even though the private applicator is not physically present at the time and place that the pesticide herbicide is applied.

SECTION 7. AMENDMENT. Subsection 5 of section 4.1-33-20 of the North Dakota Century Code is amended and reenacted as follows:

5. After providing an opportunity for a hearing, the commissioner may deny, suspend, revoke, or modify the provision of any certification issued under this chapter, if the

1 commissioner determines that the applicant for certification or the holder of a
2 certificate has violated this chapter or any rules adopted under this chapter, or has a
3 criminal conviction ~~is~~ subject to a final order imposing a civil penalty under section 136l
4 of the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.].