

Sixty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2025

SENATE BILL NO. 2086
(Agriculture and Veterans Affairs Committee)
(At the request of the Agriculture Commissioner)

AN ACT to create and enact a new section to chapter 4.1-33 of the North Dakota Century Code, relating to pesticide certification standards; and to amend and reenact sections 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, subsection 1 of section 4.1-33-16, and subsection 5 of section 4.1-33-20 of North Dakota Century Code, relating to pesticide control.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

4.1-33-01. Definitions.

As used in this chapter:

1. "Animal" means all vertebrate and invertebrate species, including humans and other mammals, birds, fish, and shellfish.
2. "Antimicrobial pesticide" means a substance or mixture of substances intended for preventing, destroying, repelling, suppressing, or mitigating the growth of micro-organisms, including bacteria, viruses, and fungi on inanimate objects and surfaces.
3. "Applicator" means anya person who applies a pesticide to land.
4. "Certified applicator" means anyan individual who is certified under this chapter to purchase or use a restricted use pesticide.
5. "Commercial applicator" means a person who, by contract or for hire, engages in the business of applying pesticides for compensation.
6. "Defoliant" means anya substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission.
7. "Desiccant" means anya substance or mixture of substances intended to artificially accelerate the drying of plant tissue.
8. "Device" means anyan 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 from pesticide.
9. "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver, or supply pesticides in ~~this~~the state.
10. "Environment" includes water, air, land, and all plants ~~and~~, humans, and other animals living ~~therein~~there, and the interrelationships ~~that exist~~existing among them.
11. "Equipment" means anya type of ground, water, or aerial equipment or contrivance using motorized, mechanical, or pressurized power and used to apply anya pesticide on land and anything that may be growing, inhabiting, or stored on or in that land. The term does not

include ~~anya~~ pressurized hand-held household apparatus used to apply ~~anya~~ pesticide, or ~~any~~ equipment or contrivance of which the individual who is applying the pesticide is the source of power or energy to make the pesticide application.

12. "Fungus" means ~~anya~~ non-chlorophyll-bearing thallophytes, that is, ~~anya~~ non-chlorophyll-bearing plant of a lower order than mosses and liverworts as, for example, rust, smut, mildew, mold, yeast, and bacteria, except ~~these~~fungus on or in living humans or other living animals, and except ~~these~~fungus on or in processed food, beverages, or pharmaceuticals.
13. "Insect" means anyone 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 ~~whosefor which~~ members are wingless and usually have more than six legs.
14. "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of ~~itsthe pesticide or device's~~ containers or wrappers.
15. "Labeling" means the label and all other written, printed, or graphic matter:
 - a. Accompanying the pesticide or device; or
 - 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.
16. "Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, contrivances, and machinery, appurtenant to or situated on land, fixed or mobile, including any used for transportation.
17. "Nematode" means an invertebrate ~~animals~~animal 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.
18. "Pest" means anyan insect, rodent, nematode, fungus, or weed; or ~~any~~ other form of terrestrial or aquatic plant or animal life, viruses, bacteria, or other micro-organism, except viruses, bacteria, or other micro-organisms on or in living humans or other living animals.
19. "Pesticide" means:
 - a. ~~AnyA~~ substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; and
 - b. ~~AnyA~~ substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.
20. "Pesticide certification standards" means the requirements under title 40, Code of Federal Regulations, sections 171.101 through 171.107, as those sections existed on January 4, 2017.
21. "Pesticide dealer" means ~~anya~~ person, other than a pesticide wholesaler, distributing pesticides.
- ~~21.~~22. "Plant regulator" means ~~anya~~ 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, or soil amendments.

- ~~22-23.~~ "Private applicator" means an individual who is required to be a certified applicator to buy or use a restricted use pesticide 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.
- ~~23-24.~~ "Public applicator" means an applicator who applies pesticides, other than ready-to-use pesticides, as an employee of:
- a. A governmental agency, municipal corporation, or public utility; or
 - b. A hospital, privately owned golf course, nursery, or greenhouse.
- ~~24-25.~~ "Ready-to-use pesticide" means a pesticide other than a restricted use pesticide which is applied directly from its original container consistent with label directions, and includes aerosol spray cans, ready-to-use spray containers, bait packs, and other types of containers that do not require mixing or loading before application.
- ~~25-26.~~ "Restricted use pesticide" means ~~any~~ pesticide formulation ~~that is~~ classified as restricted use by the United States environmental protection agency or the agriculture commissioner under section 4.1-34-06.
- ~~26-27.~~ "Rinsate" means a diluted mixture of pesticide obtained from triple rinsing or pressure rinsing pesticide containers or from rinsing the inside and outside of spray equipment.
- ~~27-28.~~ "Tank mix" means ~~any~~ pesticidal formulation used alone or in combination with another pesticide and mixed with a liquid carrier prior to application.
- ~~28-29.~~ "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.
- ~~29-30.~~ "Weed" means ~~any~~ 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 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:

4. a. Make false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized, or advertise a pesticide without reference to its classification.
2. b. Make a pesticide recommendation, application, or use inconsistent with the labeling or other restrictions prescribed by the board.
3. c. Apply materials known by that person to be ineffective or improper.
4. d. Operate faulty or unsafe equipment.
5. e. Operate in a faulty, careless, or negligent manner.
6. f. Neglect or, after notice, refuse to comply with this chapter, the rules adopted to implement this chapter, or any lawful order of the commissioner.
7. g. Refuse or neglect to keep and maintain the records required by this chapter or to make reports when and as required.
8. h. Make false or fraudulent records, invoices, or reports.
9. i. Apply pesticide to the property of another, without the permission of the owner or lessee, unless the application is made under the direction of a governmental entity.
10. j. Use fraud or misrepresentation in making an application for, or for renewal of, certification.
11. k. Refuse or neglect to comply with any limitations or restrictions on or in a duly issued certification.
12. l. Aid or abet a person to evade this chapter, conspire with a person to evade this chapter, or allow the person's certification to be used by another person.
13. m. Knowingly make false statements during or after an inspection or an investigation.
14. n. Impersonate a federal, state, county, or city inspector or official.
15. o. Distribute any restricted use pesticide to any person who is not properly certified to use or purchase the pesticide.
16. p. Buy, use, or supervise the use of any pesticide without first complying with the certification requirements of this chapter, unless otherwise exempted.
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 136I 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 136I 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 pesticidesherbicide under the direct supervision of a private applicator, unless the pesticideherbicide label requires that a certified applicator personally apply the particular pesticideherbicide. A pesticideAn 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 pesticideherbicide 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 commissioner determines that the applicant for certification or the holder of a certificate has violated this chapter or any rules adopted under this chapter, or has a criminal conviction 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.].

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 Sixty-ninth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2086.

Senate Vote: Yeas 46 Nays 0 Absent 1

House Vote: Yeas 68 Nays 25 Absent 1

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2025.

Approved at _____ M. on _____, 2025.

Governor

Filed in this office this _____ day of _____, 2025,

at _____ o'clock _____ M.

Secretary of State