

AGRICULTURE

CHAPTER 51

SENATE BILL NO. 2213

(Committee on Agriculture)

(At the request of the Department of Agriculture)

STATE SEED COMMISSION

AN ACT to amend and reenact sections 4-09-03, 4-09-05, and 4-09-07 of the North Dakota Century Code, relating to the state seed commission and the appointment of state seed commissioner.

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

SECTION 1. AMENDMENT.) Section 4-09-03 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-09-03. STATE SEED COMMISSIONER - APPOINTMENT OF COMMISSIONER BY STATE SEED COMMISSION - DUTIES - EMPLOYEES - SALARY.)

1. The state seed commission shall be the governing board of the seed department and shall adopt rules and regulations pursuant to chapter 28-32 to effectuate the purposes of this Act.
2. The state seed commission, hereafter referred to as commission, shall be a seven member board consisting of the president of the crop improvement association, the president of the certified potato growers association, the vice president for agriculture, North Dakota state university of agriculture and applied science, the president of the North Dakota agricultural association, an elected member of the North Dakota potato council selected by the North Dakota potato council, a public representative appointed by the commissioner of agriculture, and the commissioner of agriculture, or his designee, who shall serve as chairman.
3. The commission shall meet during the months of November and June of each calendar year and may hold special meetings at the call of the chairman or by request of any two members of the commission. The secretary of the commission shall be elected for a term of one year at the June meeting by a majority vote of all members of the commission. Members of the commission shall be reimbursed for mileage and travel as specified in 54-06-09 and expenses as specified in 44-08-04 for

attendance at regular and special meetings. A commission member unable to attend a meeting of the commission may be represented by a proxy who has written authorization from such commission member.

4. The commission shall appoint a qualified manager of the seed department who shall be known as the state seed commissioner. The commission shall fix the salary of the commissioner within legislative appropriation therefor. The commissioner's appointment shall be reviewed annually by the commission, and he shall be subject to removal for cause. In the event of a vacancy in the office of seed commissioner, the commission may appoint a temporary state seed commissioner to serve until such time as a permanent commissioner is appointed. The state seed commissioner shall have responsibility for preparing the biennial budget and annual salary schedules which shall be approved by the commission prior to submission to the state budget director. The commissioner shall be directly responsible to the commission and shall make semiannual reports to the commission and such other reports as requested by the commission.

SECTION 2. AMENDMENT.) Section 4-09-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-09-05. RULES AND REGULATIONS - AUTHORITY TO MAKE.) The commissioner, with the approval of the commission, from time to time shall adopt, publish, and amend uniform rules and regulations for carrying out the purposes and enforcing the provisions of this chapter and shall alter or suspend the rules and regulations from time to time as he finds necessary. The rules, regulations, definitions of terms, and conditions promulgated by the commissioner shall be approved by the attorney general as to form and legality, filed in the office of the commissioner, and published once in a newspaper of general circulation to be designated by the commissioner, in the city where the commissioner's main office is located. Thereafter, such rules, regulations, and definitions shall have the force and effect of law. An affidavit of publication setting forth the rules, regulations, definitions, or amendments thereto as published, shall be made by the publisher of the newspaper, his agent, or the newspaper manager, and shall be filed in the office of the commissioner. Such affidavits, or copies thereof certified by the commissioner, shall be prima facie evidence of the facts therein contained and of the due adoption and publication of the rules, regulations, definitions, or amendments.

SECTION 3. AMENDMENT.) Section 4-09-07 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-09-07. OFFICIAL LABORATORIES - LOCATION - CERTIFICATES AND REPORTS - PUBLICATION.) The state seed commissioner, subject to the approval and supervision of the commission described in section 4-09-03, shall provide and maintain under his direction necessary laboratories and facilities properly equipped to make

analyses, tests, and variety and disease determinations of seeds and plants, and to effect such other results and work as may be necessary to carry out the provisions of this chapter. For these purposes, he may utilize such premises, space, and equipment at the North Dakota state university of agriculture and applied science as may be assigned to him by the state board of higher education. The state seed commissioner, subject to the approval of the state board of higher education, shall permit the facilities and services of the official laboratories to be used by such university at convenient times. When a report or certificate relating to the findings and determinations made in a laboratory is issued and signed by the state seed commissioner or a duly authorized agent, it shall be accepted as prima facie evidence of the statements therein contained, but the state seed commissioner or his analysts shall be subject to court order for a review of findings as set forth by such certificates or reports. The state seed commissioner may publish reports or explanatory material concerning seed or inspections, tests, analyses, or other determinations made by him and may enlarge the same with material setting forth the value or condition of the seed stocks which are produced in this state or in which North Dakota persons are interested. He also may publish lists of registered or certified seed.

Approved March 19, 1975

CHAPTER 52

HOUSE BILL NO. 1098
(Berg, Fleming, Tweten, Fagerholt, Olson)

POTATO INDUSTRY PROMOTION ACT AMENDMENTS

AN ACT to create and enact subsections 6, 7, 8, and 9 of section 4-10.1-03; to amend and reenact sections 4-10.1-09, 4-10.1-12, 4-10.1-14, and 4-10.1-16; and to repeal section 4-10.1-11, all of the North Dakota Century Code, relating to the Potato Industry Promotion Act.

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

SECTION 1.) Subsections 6, 7, 8, and 9 of section 4-10.1-03 of the 1973 Supplement to the North Dakota Century Code are hereby created and enacted to read as follows:

6. "Designated handler" shall mean any person who initially places potatoes, whether he is an owner, agent, or otherwise, into the channels of trade and commerce, or who is engaged in the processing of potatoes into food for human consumption in any form. A grower selling his unharvested potatoes, or delivering his potatoes from the farm on which they are produced to storage facilities, packing shed, or processing plant, within the state, shall not be considered to be a designated handler.
7. "Hundredweight" shall mean a one hundred pound unit or combination of packages making a one hundred pound unit or any shipment of potatoes based on invoices or bills of lading records.
8. "Processor" means a person who is actively engaged in the processing of potatoes for human consumption.
9. "Person" means an individual, partnership, corporation, association, grower, cooperative, or any other business unit.

SECTION 2. AMENDMENT.) Section 4-10.1-09 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-10.1-09. TAX LEVIED.) Commencing July 1, 1975, an assessment at the rate of one and one-quarter cents per hundredweight shall be levied and imposed upon all potatoes grown in the state

or sold to a designated handler. This assessment shall not be imposed upon any potatoes retained by growers to be used for seed purposes or for consumption by the grower. This assessment shall be due upon any identifiable lot or quantity of potatoes.

A designated handler of potatoes shall file an application with the council on forms prescribed and furnished by the council which shall contain the name under which the handler is transacting business within the state, place or places of business, and location of loading and shipping places of agents of the first handler, the names and addresses of the several persons constituting the firm partnership, and, if a corporation, the corporate name and the names and addresses of its principal officers and agents within the state. The council shall issue a certificate to the designated handler. A designated handler shall not sell, process, or ship any potatoes until it has furnished a certificate as required by this section.

Every designated handler of potatoes shall collect the assessment imposed by this section by charging and collecting from the seller the assessment at the rate of one and one-quarter cents per hundredweight by deducting the assessment from the purchase price of all potatoes subject to the assessment and purchased by the designated handler.

Every designated handler shall keep as a part of its permanent records a record of all purchases, sales, and shipments of raw potatoes, which may be examined by the commissioner, or his designee, at all reasonable times. Every designated handler shall report to the council stating the quantity of potatoes received, sold, or shipped by it. The report shall be made at the times and in the manner prescribed by the council. The remittance of the assessment as provided in this section shall accompany the report. All moneys levied and collected under this chapter shall be paid to the council for deposit in the state treasury to the credit of a fund designated "spud fund" to be used exclusively to carry out the intent and the purposes of this chapter.

SECTION 3. AMENDMENT.) Section 4-10.1-12 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-10.1-12. NONPARTICIPATING GROWERS - REFUNDS.) Growers may become nonparticipating growers and claim exemption from the provisions of this chapter. To claim exemption, a nonparticipating grower shall notify the council, in writing, on or before July 15 of each year, of his intention not to participate under the program and to claim a refund of the assessment herein levied on potatoes grown by him during that current year. Such grower, if he has notified the council of his intention not to participate, as herein provided, shall be eligible between June first and June fifteenth of the following year, to claim a refund of the assessments paid on such crop pursuant to this chapter. The claim for refund shall be made in the manner and form prescribed by the

council. Upon receipt of a claim for refund from an eligible, nonparticipating grower, the council shall refund the assessments paid on the crop grown during the year of the claimed exemption.

SECTION 4. AMENDMENT.) Section 4-10.1-14 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-10.1-14. COLLECTION OF UNPAID ASSESSMENT.) If a designated handler fails to pay the assessment provided herein, the collection thereof may be enforced by the council in any court with competent jurisdiction within this state.

SECTION 5. AMENDMENT.) Section 4-10.1-16 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-10.1-16. PENALTY FOR NONPAYMENT OF ASSESSMENT.) Any designated handler who shall fail to pay any assessment levied by this chapter on the date that the same becomes due shall be delinquent and the council shall levy a penalty on such delinquent payments of ten percent of the assessment due, plus interest at the rate of six percent per annum from the due date, which penalty and interest shall be collected in the manner as prescribed by section 4-10.1-14.

SECTION 5. REPEAL.) Section 4-10.1-11 of the 1973 Supplement to the North Dakota Century Code is hereby repealed.

Approved March 6, 1975

CHAPTER 53

HOUSE BILL NO. 1213
(Committee on Agriculture)
(At the request of the Department of Agriculture)

BEEKEEPER'S LICENSE FEES

AN ACT to amend and reenact section 4-12-04 of the North Dakota Century Code, relating to beekeeper's licensing fees; and declaring an emergency.

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

SECTION 1. AMENDMENT.) Section 4-12-04 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-12-04. BEEKEEPER'S LICENSE - FEES.) Any beekeeper, resident or nonresident, upon making application for a license certificate, shall pay a license fee of one dollar up to ten colonies and ten cents per colony for every colony more than ten for the total number of colonies owned or possessed by the applicant in North Dakota.

SECTION 2. EMERGENCY.) This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved February 28, 1975

CHAPTER 54

SENATE BILL NO. 2434
(Melland)

BEEKEEPING

AN ACT to create and enact a new section to the North Dakota Century Code, declaring beekeeping to be an agricultural enterprise for all purposes and to amend and reenact sections 4-12-02 and 4-12-08 of the North Dakota Century Code, relating to rules and regulations of the commissioner on honey bees.

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

SECTION 1.) A new section to the North Dakota Century Code is hereby created and enacted to read as follows:

BEEKEEPING CONSIDERED AGRICULTURAL ENTERPRISE.) Beekeeping shall be considered an agricultural enterprise for all purposes under the laws of North Dakota.

SECTION 2. AMENDMENT.) Section 4-12-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-12-02. COMMISSIONER OF AGRICULTURE TO ENFORCE PROVISIONS - PUBLIC HEARING.)

1. The commissioner of agriculture shall enforce the provisions of this chapter.
2. A public hearing may be held at the request of the commissioner of agriculture or at the request of any beekeeper concerning the effect of any emergency regulation or order promulgated by the commissioner to carry out the provisions of this chapter.

SECTION 3. AMENDMENT.) Section 4-12-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-12-08. COMMISSIONER TO MAKE REGULATIONS GOVERNING DISEASES OF BEES.) The commissioner of agriculture shall prescribe and issue such emergency regulations and orders as are necessary to prevent, eradicate, or control the introduction, spread, or dissemination of all contagious or infectious diseases of honey bees.

Approved March 19, 1975

CHAPTER 55

HOUSE BILL NO. 1208
(Committee on Agriculture)
(At the request of the Department of Agriculture)

POULTRY DIVISION

AN ACT to create and enact a poultry division within the department of agriculture, to define the duties of the commissioner of agriculture; to provide for an advisory board and licensing and bonding of poultry buyers; to repeal chapter 4-13 of the North Dakota Century Code relating to the North Dakota poultry improvement board; providing a penalty; and providing transfer of appropriation.

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

SECTION 1. DEFINITIONS.) As used in this Act, "poultry" shall mean chickens, turkeys, domestic geese, and domestic ducks.

SECTION 2. ADMINISTRATION.) Within the department of agriculture there shall be a poultry division.

SECTION 3. PURPOSES - DUTIES.) The commissioner of agriculture may promulgate rules and regulations pursuant to chapter 28-32 to effectuate the purposes of this Act, and the commissioner of agriculture, or his designee, shall enforce the provisions of this chapter. It shall be the duty of the commissioner of agriculture to:

1. Improve poultry breeding and to cooperate with the North Dakota livestock sanitary board in controlling and eradicating communicable diseases of poultry;
2. Act as the official state agency for North Dakota in cooperation with the bureau of animal industry, United States department of agriculture, for the purpose of furthering the objectives and supervising the state's participation in the national poultry improvement plan;
3. Act as the state agency to cooperate with the United States department of agriculture, to provide federal-state grading service for poultry and poultry products offered for sale at the retail level, to supervise the federal-state poultry grading service, and to enforce regulations at the retail level as to identification by grade of all poultry sold;

4. Promote generally the welfare and improvement of the poultry industry and the marketing of poultry and poultry products within the state through such means and in such manner as may be deemed by the commissioner conducive to such improvement;
5. Enforce the licensing and bonding requirements provided by this Act;
6. Administer the "turkey promotion act", as provided in chapter 4-13.1, at the advice of the North Dakota turkey federation; and
7. Consult with the advisory board as to the selection of the individual that would represent the poultry division in the department of agriculture if a change in personnel should be needed.

SECTION 4. POULTRY ADVISORY BOARD - HOW CONSTITUTED.) The advisory board shall consist of the executive officer of the live-stock sanitary board; the chairman of the animal science department of North Dakota state university of agriculture and applied science; and three members recommended by the poultry industry who shall be one representative from the egg industry, one from the turkey industry, and one from the hatchery industry. The appointed members shall serve: one for a term to expire July 1, 1976; one for a term to expire July 1, 1977; and one for a term to expire July 1, 1979. On or before July 1st in each year when a term is to expire, a member shall be appointed to serve for a term of five years. Members of the advisory board shall be reimbursed for mileage and travel as specified in 54-06-09 and expenses as specified in 44-08-04 for attendance at regular and special meetings.

SECTION 5. LICENSING - FEES - BONDING.) No person shall engage in the business of poultry buyer, processor, packer, hatchery operator, baby chick jobber, or salesman, without first securing from the North Dakota department of agriculture a license to engage therein. All such licenses shall expire on the first day of July of each year, and shall be issued or renewed only upon payment to the department of the license fees set forth herein together with the furnishing of such bond as may be required by rules and regulations promulgated by the commissioner of agriculture. The annual license fee for each foregoing operation shall be five dollars. Failure to pay any license fee or to furnish the required bond within ten days after the same shall become due or required shall constitute a violation of this Act.

SECTION 6. PENALTY.) A violation of this Act, or the rules and regulations promulgated thereunder, shall constitute an infraction, and, in addition, the commissioner of agriculture may issue under, and may restrain by injunction the continuance of any operations covered by this Act.

*SECTION 7. REPEAL.) Chapter 4-13 of the 1973 Supplement to the North Dakota Century Code is hereby repealed.

*NOTE: Section 4-13-09 was amended by section 5 of House Bill No. 1137, chapter 466.

SECTION 8. TRANSFER OF APPROPRIATION,) The appropriations for the North Dakota poultry improvement board are hereby transferred to the department of agriculture.

Approved March 17, 1975

CHAPTER 56

HOUSE BILL NO. 1478

(Leibhan, H. Johnson, Lundene, Nicholas, Mushik)

MILK STABILIZATION ASSESSMENTS

AN ACT to amend and reenact sections 4-18.1-07(1) and 4-18.1-12 of the North Dakota Century Code relating to the regulation of dairy farmer prices for all grade A milk, the amount of assessments for administration of the board, and providing an appropriation.

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

SECTION 1. AMENDMENT.) Subsection 1 of section 4-18.1-07 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The board shall establish for each marketing area the uniform minimum prices to be paid by processors to dairy farmers for raw milk.

Each stabilization plan issued by the board shall provide the means for determining which such plan is applicable to the raw milk purchases of a processor engaged in selling milk products in two or more marketing areas; and the applicability of any such plan to raw milk purchased by a processor from a particular dairy farmer shall in no way be dependent upon the location of the seller's dairy farm nor upon the location at which title passes.

In establishing or changing minimum prices to be paid by processors to dairy farmers for raw milk in each marketing area, the board shall take into consideration the following factors applicable to such area: the available supply of raw milk, the adequacy of the reserve supply of raw milk available to processors, the balance between production and consumption, the cost of dairy feed, farm wage rates, and such other factors as will effectuate the purposes and policies of this chapter. All such minimum prices shall be those which will be beneficial to the public interest, protect the dairy farmers, and ensure an adequate supply of pure and wholesome milk to the inhabitants of the state.

Any stabilization plan issued by the board may provide for a classified pricing system predicated upon utilization, and may provide for a marketwide pooling arrangement, or a handler pooling arrangement, all as defined in the Agricultural Marketing Agreement Act of 1937 (as amended) [7 U.S.C. 601 et seq.].

Any stabilization plan issued by the board for a marketing area, some portion of which is included within the marketing area of a federal milk marketing order, may require licensed processors subject to both the state stabilization plan and to the federal milk marketing order to pay minimum raw milk class prices which exceed the minimum raw milk class prices established by such federal order and may require such processors to pay all of the difference between the federal and state minimums direct to dairy farmers on a handler pool basis.

Any stabilization plan issued by the board may contain a formula to be used in computing minimum prices payable to dairy farmers. Such formula may be utilized by the board to bring about such automatic changes in minimum dairy farmer prices as are justified on the basis of changes in production costs, supply conditions, and in the other factors to be considered by the board in establishing such minimum prices.

Any stabilization plan may also contain provisions establishing the prices payable by a processor for raw milk purchased from sources other than dairy farmers and may contain such other provisions as are necessary and appropriate in order to ensure that prices paid for butterfat and milk solids not fat (whether in the form of raw milk or otherwise) shall be uniform for all processors whose raw milk purchases are regulated by the same stabilization plan.

If the board issues a stabilization plan containing a marketwide pooling arrangement, it may require that raw milk produced by dairy farmer-processors be included in such pooling arrangement.

Any stabilization plan may provide for price adjustments based upon the butterfat content of the raw milk, location where received, location of plant to which a portion of the raw milk purchased is transferred or diverted by the processor from the plant where such raw milk is normally utilized, and other such factors for which price adjustments are provided in the Agricultural Marketing Agreement Act of 1937, as amended.

SECTION 2. AMENDMENT.) Section 4-18.1-12 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-18.1-12. ASSESSMENTS BY THE BOARD.) In order to obtain funds for the administration and enforcement of the provisions of this chapter, the board shall levy an assessment upon all licensed processors of not more than eight cents per hundredweight on milk or milk equivalents used for the manufacture of milk products and frozen dairy products processed by such processors. However, this assessment shall not be applicable to milk products or frozen dairy products sold in other states.

This assessment shall be paid quarterly on or before the fifteenth of July, October, January, and April of each year. Each such payment shall be equal to the assessment due in connection with milk products and frozen dairy products processed during the calendar quarter which ends on the last day of the preceding month.

All such assessments shall be deposited by the board in the state treasury in a special fund to be known as the "milk stabilization fund". All expenses incurred in connection with the enforcement and administration of this chapter, including the salaries of employees and assistants shall be paid out of the said "milk stabilization fund" within the limits of legislative appropriations.

SECTION 3. APPROPRIATION.) It is hereby appropriated the sum of \$9,000.00.

Approved April 8, 1975

CHAPTER 57

SENATE BILL NO. 2209
(Committee on Agriculture)
(At the request of the Department of Agriculture)

NURSERY STOCK

AN ACT to amend and reenact sections 4-21.1-13 and 4-21.1-14 of the North Dakota Century Code, relating to filing of non-resident nursery certificates and exemptions of nursery stock.

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

SECTION 1. AMENDMENT.) Section 4-21.1-13 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-21.1-13. RECIPROCAL AGREEMENTS.) The commissioner may enter into reciprocal agreements with officers of other states for the recognition of official licenses and inspection certificates. Nursery stock owned by persons from such states may be sold or delivered in this state without a license or fee if like privileges are accorded to persons from this state. Any nonresident nurseryman or dealer, having a place of business in this state, shall obtain a license and pay the fees required as a dealer.

SECTION 2. AMENDMENT.) Section 4-21.1-14 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-21.1-14. EXEMPTIONS.) The commissioner may exempt certain nursery stock, nurseries, dealers, or persons dealing in the sale of annual vegetable and floral plants from all or part of the sections of this chapter.

Approved March 19, 1975

CHAPTER 58

HOUSE BILL NO. 1273
(Vander Vorst, H. Johnson)

DUTIES OF SOIL CONSERVATION DISTRICTS

AN ACT to create and enact a new subsection to section 4-22-06 and a new subsection to section 4-22-26 of the North Dakota Century Code, relating to the powers and duties of the state soil conservation committee and the powers and duties of soil conservation districts and supervisors, respectively.

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

SECTION 1.) A new subsection to section 4-22-06 of the 1973 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

To develop and administer policy guidelines which the districts shall follow in the operation of district activities.

SECTION 2.) A new subsection to section 4-22-26 of the 1973 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

To expend moneys for education, promotion, and recognition activities consistent with the purposes of this chapter.

Approved March 17, 1975

CHAPTER 59

HOUSE BILL NO. 1313
(Reimers)

FLAX TAX LEVY

AN ACT to amend and reenact section 4-28.1-01 of the North Dakota Century Code, relating to a tax levy on flax.

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

SECTION 1. AMENDMENT.) Section 4-28.1-01 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-28.1-01. FLAX TAX LEVY.) There is hereby levied and imposed a tax of one-quarter cent per bushel by weight upon all flaxseed produced in this state and sold, for whatever purpose, through commercial channels to a first purchaser. The administration and manner in which the tax is collected and paid, as well as the procedure for making application for refunds and the requirements for the making of refunds, shall be governed by the provisions of section 4-28-07 of the North Dakota Century Code, as amended, and shall apply as if the same were fully recited herein.

Approved March 12, 1975

CHAPTER 60

HOUSE BILL NO. 1364
(Jacobson, Opedahl)

INSPECTION AND TESTING OF MILK

AN ACT to amend and reenact sections 4-30-18 and 64-02-13 of the North Dakota Century Code, relating to the transfer of responsibility for inspection and testing of farm milk tank equipment from the department of weights and measures of the public service commission to the state dairy department.

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

SECTION 1. AMENDMENT.) Section 4-30-18 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-30-18. SAMPLING AND TESTING PROCEDURES - EQUIPMENT - SUPPLIES.) The procedures, equipment, chemicals, and other apparatus or substances used in the sampling, grading, or testing of milk or milk products shall conform to that described in the latest edition of "Standard Methods for the Examination of Dairy Products" published by the American Public Health Association, Inc., or the "Official Methods of Analysis of the Association of Official Agricultural Chemists", a copy of each being on file in the dairy department. No equipment, chemicals, or other apparatus or substance used in the sampling, grading, or testing of milk or milk products which is not in conformance with the requirements of this chapter shall be sold or offered for sale. The dairy commissioner may alter, amend, or prohibit any specific requirement of this section and may approve other sampling, grading, or testing procedures or equipment by issuing rules and regulations pertaining thereto but only after consulting with the director of the state laboratories department, the state health officer, and the chairman of the department of animal science at the North Dakota state university. The dairy commissioner, where he deems it appropriate, shall check calibration of farm bulk milk tanks and equipment.

SECTION 2. AMENDMENT.) Section 64-02-13 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

* 64-02-13. EMPLOYEES OF DEPARTMENT TO TEST WEIGHTS AND MEASURING DEVICES ANNUALLY.) The chief inspector or any other employee of the department may test:

*NOTE: Section 64-02-13 was also amended by section 9 of Senate Bill No. 2232, chapter 578.

1. Any scale, weight, beam, or measure of any kind;
2. Any instrument or mechanical device for measurement; or
3. Any tool, appliance, or accessory connected with any instrument for measuring;

if the same is kept, offered, used, or employed, or is offered for sale or sold for the purpose of being used or employed, by any person in determining the size, quantity, extent, area, or measurement of quantities, things, produce, or articles for distribution or consumption which may be offered or submitted by any person for sale, hire, or reward. The owner of any weight, measure, or any other apparatus, hereinbefore described, used in this state is required to have the same inspected at least once each year. If upon inspection the said weight, measure, or other apparatus shall correspond with the standards in the possession of the department, it shall be sealed with the proper device to be approved by the chief inspector except that inspections and testing of farm milk bulk tank equipment shall be made only by the state dairy department as provided in section 4-30-18 of the North Dakota Century Code as amended to date. Upon receipt of a complaint, the chief inspector shall cause such equipment to be tested and inspected within a reasonable period of time, and in the case where, as a result of such testing and inspection, the equipment is determined to be in accordance with the standards in the possession of the department, the cost of such inspection and testing shall be paid by the complainant; and in all other cases the cost of such testing and inspection shall be paid by the owner of the equipment.

Approved March 27, 1975

CHAPTER 61

HOUSE BILL NO. 1320
(H. Johnson, Leibhan)

COMPENSATION FOR WHEAT COMMISSION

AN ACT to amend and reenact section 4-28-05 of the North Dakota Century Code, relating to meetings and expenses of the wheat commission.

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

SECTION 1. AMENDMENT.) Section 4-28-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-28-05. WHEAT COMMISSION - MEETING - EXPENSES - LEGAL ADVISOR.) Upon call of the governor, the commission shall first meet and organize by electing from the membership a chairman and vice chairman, who shall hold office for one year and until their successors are elected and have qualified. Thereafter the commission shall meet at least once every calendar quarter at such times and places as shall be determined by the commission and may meet in special meetings upon such call and notice as may be prescribed by rules adopted by the commission. Members of the commission shall be reimbursed for actual expenses necessarily incurred in attending meetings and performing other official duties on the same basis as other state officers and shall be paid forty dollars for each day actually devoted to official business of the commission. The attorney general shall act as legal advisor to the commission or designate an assistant for that purpose and within the limit of the funds available to the commission it may employ other counsel to advise and represent the commission in its affairs and proceedings.

Approved March 27, 1975

CHAPTER 62

SENATE BILL NO. 2207

(Committee on Agriculture)

(At the request of the Department of Agriculture)

PEST CONTROL

AN ACT to create and enact sections 4-33-09, 4-33-10, and 4-33-11 of the North Dakota Century Code, relating to compensation for not planting host crops, to authorize political subdivisions to adopt and enforce regulations and to finance local pest control programs; to amend and reenact subsection 2 of section 4-33-01 of the North Dakota Century Code relating to definition of a "pest"; and to repeal chapter 4-31 of the North Dakota Century Code, relating to grasshopper control.

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

SECTION 1. AMENDMENT.) Subsection 2 of section 4-33-01 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. "Pest" means any insect, disease, or other organism of any character whatsoever, causing or capable of causing, directly or indirectly, injury or damage to any plants or parts thereof or any processed, manufactured, or other products of plants or any other pest that the commissioner may designate as detrimental to agriculture.

SECTION 2.) Section 4-33-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

4-33-09. AUTHORITY FOR COMPENSATION.) The commissioner, when determined necessary to fulfill the objectives of this Act, may authorize the payment of reasonable compensation to growers in infested areas for not planting host crops pursuant to instructions issued by the commissioner prior to the planting season, for losses resulting from the destruction of any regulated articles, provided, no payment shall be authorized for the destruction of regulated articles moved in violation of any regulation or any host planted contrary to instructions issued by the commissioner, and further provided, that any compensation payment program must be approved by the state legislature.

SECTION 3.) Section 4-33-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

4-33-10. AUTHORITY FOR LOCAL PEST CONTROL AND REGULATIONS.) When approved to do so by the commissioner, the governing body of any political subdivision of this state, by ordinance or resolution, may adopt and enforce regulations to control and prevent the spread of pests. The control work shall be carried on under the general direction of the commissioner. Such regulations may authorize appropriate officers and employees to enter and inspect any public or private place which might harbor pests.

SECTION 4.) Section 4-33-11 of the North Dakota Century Code is hereby created and enacted to read as follows:

4-33-11.) AUTHORITY FOR FINANCING LOCAL CONTROL PROGRAMS.) The governing body of any political subdivision of this state is authorized to appropriate money for the control of pests. Such money shall be expended according to control plans approved by the commissioner. The governing body of a political subdivision shall determine the portion, if any, of control program costs that should be paid by the political subdivision. Costs of the control program may be paid by moneys in the emergency fund. In the event the emergency fund is not sufficient to carry out the program, the governing body may expend money from the general fund and in such event the governing body may, upon approval of sixty percent of those voting in any special election or the next regularly scheduled primary or general election, levy a tax during the following year upon all taxable property in the political subdivision to fully reimburse the general fund for the amount expended except that such levy shall not exceed one mill on all taxable property. The levy herein authorized shall be in addition to any mill levy limitation provided by law.

SECTION 5. REPEAL.) Chapter 4-31 of the 1973 Supplement to the North Dakota Century Code is hereby repealed.

Approved March 27, 1975

CHAPTER 63

SENATE BILL NO. 2060
(Redlin, Rait, Sandness)
(From Legislative Council Study)

PESTICIDE ACT

AN ACT creating a pesticide control board, and relating to the distribution, storage, transportation, use and application and disposal of pesticides and devices; providing for the examination of such materials and the licensing of pesticide dealers and commercial applicators, and certification of applicators of restricted use pesticides; imposing penalties; and for other purposes.

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

SECTION 1. TITLE.) This Act shall be known as the "North Dakota Pesticide Act of 1975".

SECTION 2. CREATION OF PESTICIDE CONTROL BOARD.) There is hereby created the pesticide control board, hereinafter also called the "board", consisting of the commissioner of agriculture, the director of the cooperative extension division of the North Dakota state university of agriculture and applied science, and the director of the agricultural experiment station at North Dakota state university of agriculture and applied science. The commissioner of agriculture shall be chairman of the board and shall be responsible for the enforcement of this Act. The board shall meet at the call of the chair. The members of the board shall be compensated for their expenses in performing their duties under this Act at the same rate as other state officials and the board's expenses shall be paid from funds provided for the administration of this Act to the commissioner of agriculture. The board may act through the office of the commissioner of agriculture, and one person on the commissioner's staff may be specifically responsible to, or act as the state-level agent of, the board.

SECTION 3. ENFORCING AGENCY.) This Act shall be administered by the pesticide control board, hereinafter referred to as the "board".

SECTION 4. DECLARATION OF PURPOSE.) The legislative assembly hereby finds that pesticides are valuable to our state's agricultural production and to the protection of man and the environment from insects, rodents, weeds, and other forms of life which may be

pests; but it is essential to the public health and welfare that they be regulated to prevent adverse effects on human life and the environment. The purpose of this Act is to regulate, in the public interest, the distribution, storage, transportation, disposal, and use and application of pesticides to control pests as hereinafter defined. New pesticides are continually being discovered or synthesized which are valuable for the control of pests, and for use as defoliants, desiccants, plant regulators, and for related purposes. The dissemination of accurate scientific information as to the proper use or nonuse of any pesticide is vital to the public health and welfare and the environment, both immediate and future. Therefore, it is deemed necessary to provide for regulation of their use and application.

SECTION 5. DEFINITIONS.) As used in this Act:

1. "Animal" means all vertebrate and invertebrate species, including, but not limited to, man and other mammals, birds, fish, and shellfish.
2. "Antidote" means a practical treatment in case of poisoning and includes first-aid treatment.
3. "Beneficial insects" means those insects which, during their life cycle, are effective pollinators of plants, are parasites, or predators of pests.
4. a. "Certified applicator" means any individual who is certified or licensed under this Act as authorized to use or supervise the use of any restricted use pesticide covered by his certification.
b. "Private applicator" means a certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.
c. "Commercial applicator" means a certified applicator, whether or not he is a private applicator with respect to some uses, who uses or supervises the use of any pesticide which is classified for restricted use for any purpose or on any property other than as provided for by subdivision b.
5. "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.
6. "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissue.

7. "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 man and other than bacteria, virus, or other microorganism on or in living man or other living animals, but not including equipment used for the application of pesticides when sold separately therefrom.
8. "Distribute" means to offer for sale, hold for sale, sell, barter, or supply pesticides in this state.
9. "Environment" includes water, air, land, and all plants and man and other animals living therein, and the interrelationships which exist among these.
10. "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, but shall 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.
11. "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 man or other living animals, and except those on or in processed food, beverages, or pharmaceuticals.
12. "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.
13. "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.
14. "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, education, and welfare; state agricultural colleges; and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.
15. "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.
 16. "Nematode" means invertebrate animals of the phylum nemathelminthes, and class nematoda, i.e., unsegmented round worms with elongated, fusiform, or sac-like bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts, may also be called nemas or eelworms.
 17. "Person" means any individual, partnership, association, fiduciary, corporation, or any organized group of persons, whether or not incorporated.
 18. "Pest" means:
 - a. Any insect, snail, slug, rodent, nematode, fungus, weed; or
 - b. Any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism, except viruses, bacteria, or other microorganisms on or in living man or other living animals which are annoying or otherwise injurious or harmful to agriculture, health, and the environment.
 19. "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.
 20. "Pesticide dealer" means any person who distributes restricted use pesticides.
 21. "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 shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

22. "Protect health and the environment" means protection against any unreasonable adverse effects on public health and the environment.
23. "Public operator" means a certified applicator who applies restricted use pesticides as an employee of a state agency, municipal corporation, public utility, or other governmental agency.
24. "Restricted use pesticide" means any pesticide formulation which is classified for restricted use by the board.
25. "Snails or slugs" include all harmful mollusks.
26. "Tank mix" means any pesticidal formulation used alone or in combination with another pesticide and mixed with a liquid carrier prior to application.
27. "Unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.
28. "Weed" means any plant which grows where not wanted.
29. "Wildlife" means all living things that are neither human, domesticated, nor, as defined in this Act, pests, including, but not limited to, mammals, birds, and aquatic life.

SECTION 6. PESTICIDE CONTROL BOARD TO ADMINISTER ACT AND ADOPT REGULATIONS.)

1. The pesticide control board shall administer the provisions of this Act and shall have authority to issue regulations in conformance with provisions of chapter 28-32 to carry out the provisions of this Act. Such regulations may prescribe methods to be used in the application of pesticides. Where the board finds that such regulations are necessary to carry out the purpose and intent of this Act, such regulations 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 encompass all reasonable factors which the board deems necessary to prevent damage or injury by drift or misapplication to:
 - a. Plants, including forage plants, on adjacent or nearby lands;
 - b. Wildlife in the adjoining or nearby areas;
 - c. Fish and other aquatic life in waters in proximity to the area to be treated; and

d. Persons, animals, or beneficial insects.

In issuing such regulations, the board shall give consideration to pertinent research findings and recommendations of other agencies of this state, the federal government, or other reliable sources.

2. For the purpose of uniformity, the board may adopt, pursuant to chapter 28-32, restricted use classifications as determined by the federal environmental protection agency. The board may also by regulation determine state restricted use pesticides for the state or designated areas within the state.
3. The board, in promulgating regulations under this Act, shall prescribe standards and requirements for the licensing and certification of applicators of restricted use pesticides. These standards shall relate to the use and handling of pesticides. In determining these standards and requirements, the board shall take into consideration standards and requirements prescribed by the environmental protection agency.
4. Regulations adopted under this Act shall not permit any pesticide use which is prohibited by the Federal Insecticide, Fungicide, and Rodenticide Act or regulations or orders issued thereunder.
5. In order to comply with section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act, the board is authorized to make such reports to the United States environmental protection agency in such form and containing such information as that agency may from time to time require.
6. The board is authorized to make appropriate regulations, in accordance with chapter 28-32, for carrying out the provisions of this Act, including, but not limited to, regulations providing for:
 - a. The collection, examination, and reporting of samples of pesticides; and
 - b. The safe handling, transportation, storage, display, distribution, and disposal of pesticides and their containers.
7. The board may by regulation identify "pests" under the guidelines of the definition of the term "pest" contained within this Act when it finds particular organisms to be annoying or otherwise injurious or harmful to agriculture, health, and the environment.

SECTION 7. EXPERIMENTAL USE PERMITS.) Provided the state is

authorized by the administrator of the environmental protection agency to issue experimental use permits, the board may:

1. Issue an experimental use permit to any person applying for such permit if it determines that the applicant needs it in order to accumulate information necessary to register a pesticide. An application for an experimental use permit may be filed at the time of or before or after an application for registration is filed.
2. Prescribe terms, conditions, and period of time for the experimental use permit which shall be under its supervision.
3. Revoke any experimental use permit, at any time if it finds that its terms or conditions are being violated, or that its terms and conditions are inadequate to avoid unreasonable adverse effects on the environment.

SECTION 8. CLASSIFICATION OF LICENSES.) The board may classify commercial licenses to be issued under this Act. Such classifications may include, but not be limited to, pest control operators, ornamental or agricultural pesticide applicators, or right-of-way pesticide applicators. Separate classifications may be specified as to ground, aerial, or manual methods used by any licensee to apply restricted use pesticides or to the use of restricted use pesticides to control insects and plant diseases, rodents, or weeds. Each classification may be subject to separate testing procedures and requirements; provided that no person shall be required to pay an additional license fee if such person desires to be licensed in one or more of the license classifications provided for by the board under the authority of this section.

SECTION 9. COMMERCIAL APPLICATOR'S LICENSE.) No person who would be a commercial applicator if certified shall purchase, use, or supervise the use of a restricted use pesticide without a commercial applicator's license issued by a county treasurer, unless exempted by this Act, and without first complying with the certification standards and requirements of this Act, or other restrictions as may be determined by the board. The board shall require an annual fee of twenty dollars for each commercial applicator's license issued and a fee of five dollars for taking the examination, both of which are to be paid to the county treasurer, who shall deposit the fees in the county general fund. The license shall expire on December thirty-first of each year. If the county extension agent finds the applicant qualified to apply pesticides in the classifications he has applied for after such examinations as the board shall require by regulation, and the applicant meets all other requirements of this Act, the county treasurer of the appropriate county shall issue a commercial applicator's license limited to the classifications he is qualified in. If a license is not to be issued as applied for, the county extension agent shall inform the applicant in writing of the reasons therefor. Individuals licensed pursuant to this section shall be deemed certified commercial applicators for the use of restricted use pesticides.

SECTION 10. RENEWAL.) Any person holding a current valid license may renew such license for the next year without taking another examination unless the board determines additional knowledge related to classifications for which applicant has applied makes a new examination necessary or that a new evaluation is necessary to assure a continuing level of competence and ability to use pesticides safely and properly.

SECTION 11. NONRESIDENT APPLICATION - DESIGNATION OF AGENT FOR SERVICE OF PROCESS.) Any nonresident applying for a license under this Act to operate in the state of North Dakota shall file a written power of attorney designating the secretary of state as the agent of such nonresident upon whom service of process may be had in the event of any suit against said nonresident person, and the power of attorney shall be so prepared and in such form as to render effective the jurisdiction of the courts of the state of North Dakota over the nonresident applicant; provided, however, that any nonresident who has a duly appointed resident agent upon whom process may be served as provided by law shall not be required to designate the secretary of state as such agent. The secretary of state shall be allowed such fees therefor as provided by law for designating resident agents. The nonresident shall be furnished with a copy of the designation of the secretary of state or of a resident agent. The copy will be duly certified by the secretary of state.

SECTION 12. PESTICIDE DEALER LICENSE.)

1. It shall be unlawful for any person to distribute restricted use pesticides or assume to act as a restricted use pesticide dealer, at any time, without first having obtained an annual license from the county treasurer in each county in which the applicant operates his business, which license shall expire on December thirty-first of each year. A license shall be required for each location or outlet located within this state from which restricted use pesticides are distributed; provided that any manufacturer, registrant, or distributor who has no pesticide dealer outlet licensed within this state and who distributes such pesticides directly into this state shall obtain a pesticide dealer license from any county treasurer for his principal out-of-state location or outlet.
2. Application for a license shall be accompanied by a ten dollar annual license fee and shall be on a form prescribed by the board. The board shall promulgate regulations governing service of process on members of corporations, partnerships, or associations, and governing the listing of membership in such organizations. The application shall also state the address of each outlet to be licensed, the principal business address of the applicant, the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant, and any other necessary information prescribed by the board.

3. The provisions of this section shall not apply to any federal, state, county, or municipal agency or other political subdivision which provides pesticides only for its own programs.
4. The board shall require each pesticide dealer to demonstrate to the county extension agent his knowledge of pesticide laws and regulations; pesticide hazards; and the safe distribution, disposal, and use and application of pesticides by satisfactorily passing an examination, after which the county treasurer shall issue a license of qualification. A fee of five dollars shall be charged when an examination is requested and given.
5. Each restricted use pesticide dealer shall be responsible for the acts of each person employed by him in the solicitation and sale of restricted use pesticides and all claims and recommendations for use of such pesticides. The dealer's license shall be subject to denial, suspension, or revocation, after a hearing, for any violation of this Act, whether committed by the dealer, or by the dealer's officer, agent, or employee.

SECTION 13. APPLICATION OF ACT TO GOVERNMENTAL ENTITIES - PUBLIC OPERATOR'S LICENSE REQUIRED.)

1. All federal agencies, state agencies, municipal corporations, and any other governmental agencies, or public utilities, shall be subject to the provisions of this Act and rules adopted thereunder concerning the application of restricted use pesticides.
2. The county treasurer shall issue a limited license, without fee, to a public operator who has qualified by examination as prescribed by the board for such license. The public operator's license shall be valid only when the operator is acting as an operator applying or supervising application of restricted use pesticides used by the entities listed in subsection 1.

SECTION 14. PRIVATE APPLICATORS.)

1. No person who would be a private applicator, if certified, shall buy, use, or supervise the use of any pesticide classified for restricted use unless such person first complies with the certification requirements as determined by the board as necessary to prevent unreasonable adverse effects on the environment, including injury to the applicator or other persons, for that specific pesticide use.
2. Certification standards to determine the individual's competency with respect to the use and handling of the pesticide or class of pesticides the private applicator

is to be certified to use shall be determined by the board. In determining these standards, the board shall take into consideration similar standards of the environmental protection agency.

3. The board shall determine by regulation methods to evaluate the competence of private applicators and provisions for reevaluation as advances in technology warrant, or as necessary to assure a continuing level of competence and ability to use pesticides safely and properly. The county extension agent in the county of the residence of the applicant shall issue a certificate, without fee, to any private applicator who has qualified as prescribed by the board.

SECTION 15. UNLAWFUL ACTS - GROUNDS FOR DENIAL, SUSPENSION, OR REVOCATION OF A LICENSE OR CERTIFICATION.) The commissioner may, after opportunity for a hearing, deny, suspend, revoke, or modify any provision of any license or certification issued under this Act, if he finds that the applicant or the holder of a license or certification has committed any of the following acts, each of which is declared to be a violation of this Act:

1. Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized, or advertised a pesticide without reference to its classification;
2. Made a pesticide recommendation, application, or use inconsistent with the labeling or other restrictions prescribed by the board;
3. Applied materials known by him to be ineffective or improper;
4. Operated faulty or unsafe equipment;
5. Operated in a faulty, careless, or negligent manner;
6. Neglected, or, after notice, refused to comply with the provisions of this Act, the rules adopted hereunder, or of any lawful order of the commissioner;
7. Refused or neglected to keep and maintain the records required by this Act, or to make reports when and as required;
8. Made false or fraudulent records, invoices, or reports;
9. Operated unlicensed equipment in violation of section 17 of this Act;
10. Used fraud or misrepresentation in making an application for, or for renewal of, a license or certification;

11. Refused or neglected to comply with any limitations or restrictions on or in a duly issued license or certification;
12. Aided or abetted a licensed or an unlicensed person to evade the provisions of this Act, conspired with such a licensed or an unlicensed person to evade the provisions of this Act, or allowed his license or certification to be used by another person;
13. Knowingly made false statements during or after an inspection concerning any infestation of pests found on the land;
14. Impersonated any federal, state, county, or city inspector or official;
15. Distributed any restricted use pesticide to any person who is required by law or regulations promulgated under such law to be certified to use or purchase such restricted use pesticide unless such person or his agent to whom distribution is made is certified to use or purchase that kind of restricted use pesticide; or
16. Bought, used, or supervised the use of any restricted use pesticide without first complying with the certification requirements of this Act, unless otherwise exempted therefrom.

SECTION 16. LICENSEES TO KEEP RECORDS - DURATION - SUBMISSION TO COMMISSIONER.) The board shall require licensees, except private applicators, to maintain records with respect to applications and sales of restricted use pesticides. Such relevant information as the board may deem necessary may be specified by regulation. The records shall be kept for a period of three years from the date of the application or sale of the restricted use pesticide to which the records refer. Upon request, these records or pertinent parts thereof, shall be submitted to the commissioner.

SECTION 17. LICENSE PLATES FOR EQUIPMENT.) The board may require all motor vehicles, as defined in chapter 39-01, which are used for the application of restricted use pesticides to be identified by a license plate or decal furnished by the board. Such license plate or decal shall be issued at no cost to the licensee, and shall be affixed to the vehicle as prescribed by the board. This section shall not be interpreted to apply to aircraft engaged in aerial spraying which are licensed under section 2-05-18.

SECTION 18. RECIPROCAL AGREEMENT.) Any county extension agent may issue a certification on a reciprocal basis, without examination, to a nonresident who is certified to use restricted use pesticides under a plan substantially similar to this Act. Such a certification may be suspended or revoked in the same manner and on the same grounds as licenses and certifications pursuant to this Act, and shall be suspended or revoked if the

nonresident's home state certification is suspended or revoked.

SECTION 19. EXEMPTIONS.)

1. The licensing and certification requirements of this Act shall not apply to any person applying pesticides which are not classified for restricted use.
2. The provisions of this Act relating to licenses and certification requirements shall not apply to a competent person applying restricted use pesticides under the direct supervision of a certified applicator, unless the pesticide labeling requires that a certified applicator personally applies the particular pesticide. A pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a competent person acting under the instructions and control of a certified applicator who is available if and when needed, even though such certified applicator is not physically present at the time and place that the pesticide is applied.
3. Persons conducting laboratory-type research using restricted use pesticides and doctors of medicine and doctors of veterinary medicine applying pesticides as drugs or medication during the course of their normal practice.

SECTION 20. DISCARDING AND STORING OF PESTICIDES AND PESTICIDE CONTAINERS.) No person shall discard, store, display, or permit the disposal of surplus pesticides and empty pesticide containers and devices in such a manner as to endanger man and his environment or to endanger food, feed, or any other products that may be stored, displayed, or distributed with such pesticides. The board shall promulgate regulations governing the discarding, storage, display, or disposal of any pesticide, pesticide containers, or devices.

SECTION 21. REPORTS OF PESTICIDE ACCIDENTS, INCIDENTS, OR LOSS.)

1. The board shall, by regulation, require the reporting to the commissioner of agriculture of significant pesticide accidents or incidents involving pesticides by commercial and private applicators and dealers.
2. Any person claiming damages from a pesticide application shall report such loss in accordance with sections 28-01-40 and 28-01-41. Where damage is alleged to have occurred and the claimant has filed a report of loss in accordance with sections 28-01-40 and 28-01-41, the claimant shall permit the commissioner, the licensee, and his representatives to observe, during reasonable hours, the lands or nontarget organism alleged to have been damaged in order that such damage may be examined. Failure of the claimant to permit such observation and

examination of the damaged lands shall automatically bar the claim against the licensee. The number of licensee's representatives who may make an observation under this subsection may be limited by the board.

3. A commercial applicator shall inform any person employing him to apply to land any pesticide of the reporting requirements of section 28-01-40.

SECTION 22. SUBPOENAS.) The commissioner may issue subpoenas to compel the attendance of witnesses or production of books, documents, and records pertaining to pesticide applications and sales in the state in any hearing affecting the authority or privilege granted by a license or certification issued under the provisions of this Act.

SECTION 23. PENALTIES.)

1. Any registrant; applicator, other than a private applicator; wholesale dealer; retailer; or other distributor who knowingly violates any provision of this Act shall be guilty of a class A misdemeanor.
2. Any private applicator or other person not included in subsection 1 who knowingly violates any provision of this Act shall be guilty of a class B misdemeanor.
3. When construing and enforcing the provisions of this Act, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person shall in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed.

SECTION 24. ENFORCEMENT.)

1. The commissioner is charged with the duty of enforcing the requirements of this Act and any rules or regulations issued hereunder.
2. The commissioner may bring an action to enjoin the violation or threatened violation of any provision of this Act, or any rule or regulation made pursuant to this Act, in the district court of the county in which such violation occurs or is about to occur.
3. In the event any person violates any provision of this Act, the commissioner may issue an order requiring such person to cease and desist from the unlawful activity. In the event the violator fails to obey, the commissioner will cause the appropriate criminal complaint to be filed.
4. For the purpose of carrying out the provisions of this Act, the commissioner may enter upon any public or private premises at reasonable times, in order to:
 - a. Have access for the purpose of inspecting any

- equipment subject to this Act and the premises on which such equipment is stored or used;
- b. Inspect or sample lands actually or reported to be exposed to pesticides;
 - c. Inspect storage or disposal areas;
 - d. Inspect or investigate complaints of injury to humans or land;
 - e. Sample pesticides and tank mixes being applied or to be applied;
 - f. Observe the use and application of a pesticide; or
 - g. Have access for the purpose of inspecting any premises or other place where pesticides or devices are held for distribution, sale, or for use or for the purpose of inspecting and obtaining samples of any pesticides packaged, labeled, and released for shipment and samples of any containers or labeling for such pesticides.
5. The commissioner shall, at any reasonable time, have access to the records pertaining to pesticide application and sales of any person. He may copy or make copies of such records for the purpose of carrying out the provisions of this Act. Unless required for the enforcement of this Act, such information shall be confidential.
6. Should the commissioner be denied access to any land or records pertaining to pesticide application and sales where such access was sought for the purposes set forth in this Act, he may apply to any court of competent jurisdiction for a search warrant authorizing access to such land or records for said purposes. The court may, upon such application and upon compliance with the provisions of chapter 29-29.1, issue the search warrant for the purposes requested.

SECTION 25. INFORMATION.) The board may, in cooperation with private, local, state, or federal agencies, publish information and conduct short courses of instruction in the areas of knowledge required by this Act.

SECTION 26. DELEGATION OF DUTIES.) All authority vested in the commissioner by virtue of the provisions of this Act may, with like force and effect, be executed by such employees or agents as the commissioner may, from time to time, designate for that purpose.

SECTION 27. COOPERATION.) The board may cooperate, receive grants-in-aid, and enter into cooperative agreements with any agency of the federal government, of this state or its

subdivisions, or with any agency of another state, in order to:

1. Secure uniformity of regulations.
2. Enter into cooperative agreements with and submit plans to the environmental protection agency for approval to issue experimental use permits under the authority of this Act and the Federal Insecticide, Fungicide, and Rodenticide Act.
3. Cooperate in the enforcement of the federal pesticide control laws and state laws through the use of state or federal personnel and facilities and to implement cooperative enforcement programs.
4. Enter into contracts with other agencies, including federal agencies, for the purpose of training pesticide applicators, managers, dealers, and pesticide consultants.
5. Gain assistance in implementation of this Act.
6. Regulate certified applicators.
7. Comply with other purposes prescribed by regulation of the commissioner.

SECTION 28. DISPOSITION OF FUNDS.) All moneys received by the board under the provisions of this Act shall be deposited with the state treasurer to the credit of the general fund.

SECTION 29. PRIOR LIABILITY.) The enactment of this Act shall not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which shall already be in existence on the date this Act becomes effective.

Approved April 8, 1975