

HOUSE BILL NO. 1322

Introduced by

Representatives Belter, Warner

Senator Thane

1 A BILL for an Act to create and enact a new section to chapter 4-35 of the North Dakota
2 Century Code, relating to financial responsibility for the application of nonrestricted use
3 pesticides; and to amend and reenact section 4-35-09.1 of the North Dakota Century Code,
4 relating to financial responsibility for the application of restricted use pesticides.

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

6 **SECTION 1. AMENDMENT.** Section 4-35-09.1 of the 1997 Supplement to the North
7 Dakota Century Code is amended and reenacted as follows:

8 **4-35-09.1. Proof of financial responsibility.**

- 9 1. A Except as provided in subsection 2, a commercial pesticide applicator certificate
10 may not be issued or renewed unless the applicant furnishes proof of financial
11 responsibility as provided in this section. Minimum financial responsibility must be
12 demonstrated annually in the amount of one hundred thousand dollars, and may
13 be demonstrated by a notarized letter from an officer of a financial institution or
14 from a certified public accountant attesting to the existence of net assets equal to
15 at least one hundred thousand dollars, a performance bond, or a general liability
16 insurance policy. The performance bond or insurance policy must contain a
17 provision requiring the issuing company to notify the agriculture commissioner of
18 ~~agriculture~~ at least ten days before the effective date of cancellation, termination,
19 or other modification of the bond or insurance policy.
- 20 2. A commercial pesticide applicator certificate may not be issued or renewed for the
21 category of agricultural pest control, whether by ground or by air, or for the
22 right-of-way category unless the applicant furnishes proof of financial responsibility
23 annually in the amount of one hundred thousand dollars. Proof of financial
24 responsibility may be demonstrated by a general liability insurance policy that

1 includes comprehensive chemical liability coverage for both drift and misapplication
2 or by an irrevocable letter of credit from a state-recognized financial institution for
3 general liability and chemical liability claims. The insurance policy or letter of credit
4 must contain a provision requiring the issuing company to notify the agriculture
5 commissioner at least ten days before the effective date of cancellation,
6 termination, or other modification of the policy or letter of credit.

7 3. If a claim arises against a commercial applicator who is required to meet the
8 financial responsibility requirements of subsection 2, and who has done so by
9 means of an irrevocable letter of credit, the commissioner shall obtain the services
10 of a certified insurance adjuster to evaluate the claim. If the adjuster determines
11 that the claim is valid, the commissioner shall direct the financial institution that
12 issued the letter of credit to forward to the commissioner an amount equal to the
13 amount of the claim, together with any handling and adjuster fees. The
14 commissioner shall forward the claim amount to the claimant and deposit any
15 remaining fees in the minor use pesticide fund. If the adjuster determines that the
16 claim is invalid, the claimant shall reimburse the commissioner for any handling
17 and adjuster fees.

18 4. The commissioner of agriculture must immediately request the suspension of the
19 certification of a person who fails to maintain the minimum financial responsibility
20 standards of this section. If there is any recovery against the certificate holder, the
21 holder must demonstrate continued compliance with the minimum standards of this
22 section. An employee of a commercial pesticide application business is not
23 required to meet these standards separately if the business documents compliance
24 with the minimum financial responsibility standards of this section. An application
25 for reinstatement of a suspended certificate under this section must be
26 accompanied by proof of satisfaction of any judgment previously rendered. A
27 rancher is exempt from this section if the rancher is required to obtain a
28 commercial pesticide applicator certificate for controlling noxious weeds on the
29 leased federal acreage as a condition of a federal grasslands lease.

30 **SECTION 2.** A new section to chapter 4-35 of the North Dakota Century Code is
31 created and enacted as follows:

1 **Proof of financial responsibility - Nonrestricted use chemicals.** Before applying
2 nonrestricted use chemicals commercially, for purposes of agricultural pest control, whether by
3 ground or by air, and before applying nonrestricted use chemicals to any right of way
4 commercially, a person shall furnish to the agriculture commissioner proof of financial
5 responsibility in the amount and manner required of commercial pesticide applicators by
6 subsection 2 of section 4-35-09.1. If a claim arises against a person who is required to furnish
7 proof of financial responsibility under this section and who has done so by means of an
8 irrevocable letter of credit, the commissioner shall obtain the services of a certified insurance
9 adjuster to evaluate the claim. If the adjuster determines that the claim is valid, the
10 commissioner shall direct the financial institution that issued the letter of credit to forward to the
11 commissioner an amount equal to the amount of the claim, together with any handling and
12 adjuster fees. The commissioner shall forward the claim amount to the claimant and deposit
13 any remaining fees in the minor use pesticide fund. If the adjuster determines that the claim is
14 invalid, the claimant shall reimburse the commissioner for any handling and adjuster fees.