

SENATE BILL NO. 2248

Introduced by

Senators Klein, Miller, Taylor

Representatives Brandenburg, D. Johnson, Mueller

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 certified pesticide applicators; to amend and reenact sections
3 4-35-05, 4-35-08, 4-35-09, 4-35-09.1, 4-35-12, 4-35-14, 4-35-15, 4-35-16, 4-35-18, 4-35-19,
4 4-35-20, 4-35-22, 4-35-23, and 4-35-24 of the North Dakota Century Code, relating to
5 pesticides; to repeal sections 4-35-17 and 4-35-28 of the North Dakota Century Code, relating
6 to license plates for vehicles used in the application of certain pesticides and the disposition of
7 funds; and to provide a penalty.

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

9 **SECTION 1. AMENDMENT.** Section 4-35-05 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **4-35-05. Definitions.** As used in this chapter:

- 12 1. "Animal" means all vertebrate and invertebrate species, including humans and
13 other mammals, birds, fish, and shellfish.
- 14 2. ~~"Antidote" means a practical treatment in case of poisoning and includes first aid~~
15 ~~treatment.~~
- 16 3. "Applicator" means any person who applies a pesticide to land.
- 17 4. ~~"Beneficial insects" means those insects that, during their life cycle, are effective~~
18 ~~pollinators of plants, are parasites, or predators of pests.~~
- 19 5. 3. "Certified applicator" means any individual who is certified under this chapter as
20 authorized to purchase or use or supervise the use of any pesticide that is
21 classified for a restricted use pesticide.
- 22 6. 4. "Commercial applicator" means a person who by contract or for hire engages in the
23 business of applying pesticides for compensation ~~to the land of another by aerial,~~
24 ~~ground, hand, or any other equipment. The term "commercial applicator" does not~~

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

- 1 classes of arthropods whose members are wingless and usually have more than
2 six legs.
- 3 ~~46.~~ 13. "Label" means the written, printed, or graphic matter on, or attached to, the
4 pesticide or device or any of its containers or wrappers.
- 5 ~~47.~~ 14. "Labeling" means the label and all other written, printed, or graphic matter:
6 a. Accompanying the pesticide or device; and
7 b. To which reference is made on the label or in literature accompanying or
8 referring to the pesticide, except when accurate nonmisleading references are
9 made to current official publications of the board; the United States
10 environmental protection agency; the United States departments of agriculture
11 and interior; the United States department of health and human services;
12 state agricultural colleges; and other similar federal or state institutions or
13 agencies authorized by law to conduct research in the field of pesticides.
- 14 ~~48.~~ 15. "Land" means all land and water areas, including airspace, and all plants, animals,
15 structures, buildings, contrivances, and machinery, appurtenant thereto or situated
16 thereon, fixed or mobile, including any used for transportation.
- 17 ~~49.~~ ~~"Mixture" means a diluted pesticide combination.~~
- 18 ~~20.~~ 16. "Nematode" means invertebrate animals of the phylum nemathelminthes, and
19 class nematoda, i.e., unsegmented round worms with elongated, fusiform, or
20 saclike bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts,
21 may also be called nemas or eelworms.
- 22 ~~21.~~ ~~"Person" means any individual, partnership, association, fiduciary, corporation,
23 limited liability company, or any organized group of persons, whether or not
24 incorporated.~~
- 25 ~~22.~~ 17. "Pest" means:
26 a. ~~Any~~ any insect, ~~snail, slug,~~ rodent, nematode, fungus, or weed; or
27 b. ~~Any~~ any other form of terrestrial or aquatic plant or animal life ~~or virus,~~
28 viruses, bacteria, or other micro-organism, except viruses, bacteria, or other
29 micro-organisms on or in living humans or other living animals ~~which are~~
30 ~~annoying or otherwise injurious or harmful to agriculture, health, and the~~
31 ~~environment.~~

- 1 ~~23.~~ 18. "Pesticide" means:
- 2 a. Any substance or mixture of substances intended for preventing, destroying,
- 3 repelling, or mitigating any pest; and
- 4 b. Any substance or mixture of substances intended for use as a plant regulator,
- 5 defoliant, or desiccant.
- 6 ~~24.~~ 19. "Pesticide dealer" means any person ~~who distributes restricted use, other than a~~
7 pesticide wholesaler, distributing pesticides.
- 8 ~~25.~~ 20. "Plant regulator" means any substance or mixture of substances intended, through
- 9 physiological action, to accelerate or retard the rate of growth or rate of maturation,
- 10 or to otherwise alter the behavior of plants or the produce thereof, but does not
- 11 include substances to the extent that they are intended as plant nutrients, trace
- 12 elements, nutritional chemicals, plant inoculants, and soil amendments.
- 13 ~~26.~~ 21. "Private applicator" means an individual who is required to be a certified applicator
14 ~~who uses or supervises the use of any pesticide that is classified for to buy or use~~
15 a restricted use, to produce any agricultural commodity pesticide on property
16 owned or rented by the applicator or the applicator's employer or, if applied without
17 compensation other than trading of personal services between producers of
18 agricultural commodities, on the property of another person.
- 19 ~~27.~~ "~~Protect health and the environment~~" means ~~protection against any unreasonable~~
20 ~~adverse effects on public health and the environment.~~
- 21 ~~28.~~ 22. "Public applicator" means an applicator who applies pesticides, other than ready to
22 use pesticides, as an employee of ~~a state or federal:~~
- 23 a. A governmental agency, municipal corporation, or public utility; ~~or~~
- 24 b. A hospital, privately owned golf course, nursery, or greenhouse, ~~or other~~
25 ~~governmental agency. Persons using only ready to use pesticides are~~
26 ~~exempt from this requirement.~~
- 27 ~~29.~~ 23. "Ready-to-use pesticide" means a pesticide ~~that~~ other than a restricted use
28 pesticide which is applied directly from its original container consistent with label
29 directions, ~~such as an~~ and includes aerosol spray ~~can, a cans,~~ ready-to-use spray
30 ~~containers~~ containers, bait packs, ~~or~~ and other types of containers that do not
31 require mixing or loading before application.

- 1 ~~30.~~ 24. "Restricted use pesticide" means any pesticide formulation ~~which that~~ is classified
2 for as restricted use by the United States environmental protection agency. ~~The~~
3 ~~term also includes a pesticide formulation classified for restricted use by~~ or the
4 agriculture commissioner under section 19-18-05.
- 5 ~~31.~~ 25. "Rinsate" means a diluted mixture of pesticide obtained from triple rinsing or
6 pressure rinsing pesticide containers or from rinsing the inside and outside of spray
7 equipment.
- 8 ~~32.~~ "Snail" or "slug" ~~includes every harmful mollusk.~~
- 9 ~~33.~~ 26. "Tank mix" means any pesticidal formulation used alone or in combination with
10 another pesticide and mixed with a liquid carrier prior to application.
- 11 ~~34.~~ 27. "Unreasonable adverse effects on the environment" means any unreasonable risk
12 to humans or the environment, taking into account the economic, social, and
13 environmental costs and benefits of the use of any pesticide.
- 14 ~~35.~~ 28. "Weed" means any plant which grows where not wanted.
- 15 ~~36.~~ 29. "Wildlife" means all living things that are neither human, domesticated, nor, as
16 defined in this chapter, pests, including mammals, birds, and aquatic life.

17 **SECTION 2. AMENDMENT.** Section 4-35-08 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **4-35-08. Classification of commercial certificates.** The board may classify
20 commercial certificates to be issued under this chapter. The classifications may include pest
21 control operators, wood treaters, ornamental or agricultural pesticide applicators, or right-of-way
22 pesticide applicators. Separate classifications may be specified as to ground, aerial, or manual
23 methods used by any applicator to apply pesticides or to the use of pesticides to control insects
24 and plant diseases, rodents, or weeds. Each classification of certification may be subject to
25 separate testing procedures and training requirements; provided that a person may be required
26 to pay an additional fee if the person desires to be certified in one or more of the classifications
27 provided for by the board under this section.

28 **SECTION 3.** A new section to chapter 4-35 of the North Dakota Century Code is
29 created and enacted as follows:

30 **Pesticide use - Required Certification.** Only a certified applicator may purchase or
31 use a restricted use pesticide.

1 **SECTION 4. AMENDMENT.** Section 4-35-09 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **4-35-09. Commercial and public applicator's certification.**

- 4 1. A commercial or public applicator may not purchase, use, or supervise the use of a
5 pesticide without first complying with the certification standards and requirements
6 of this chapter, or other restrictions as may be determined by the board.
- 7 2. An individual may be certified as a commercial or public applicator within a
8 classification if the individual successfully completes an examination for the
9 classification as prescribed by the board and administered by the North Dakota
10 state university extension service or the service's designee. An application for
11 certification must be on a form prescribed by the board and accompanied by a
12 reasonable examination fee set by the board.
- 13 3. If the North Dakota state university extension service, or its designee, finds the
14 applicant qualified to apply pesticides in the classifications for which the applicant
15 has applied, after examination as the board requires, and the applicant meets all
16 other requirements of this chapter, the North Dakota state university extension
17 service shall issue a commercial or a public applicator's certificate limited to the
18 classifications in which the applicant is qualified.
- 19 4. If certification is not to be issued as applied for, the North Dakota state university
20 extension service, or its designee, shall inform the applicant in writing of the
21 reasons for not issuing the certification. ~~Individuals certified pursuant to this~~
22 ~~section are deemed certified commercial or public applicators for the use of~~
23 ~~pesticides.~~

24 **SECTION 5. AMENDMENT.** Section 4-35-09.1 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **4-35-09.1. Proof of financial responsibility - Exceptions.**

- 27 1. A commercial ~~pesticide~~ applicator certificate may not be issued ~~or renewed~~ unless
28 the applicant furnishes proof of financial responsibility ~~as provided in this section.~~
29 ~~A commercial pesticide applicator shall furnish proof of financial responsibility on~~
30 ~~demand to the agriculture commissioner as provided in this section. Minimum~~
31 ~~financial.~~ Financial responsibility must be maintained in the amount of one

- 1 hundred thousand dollars, and may be demonstrated by a notarized letter from an
2 officer of a financial institution or from a certified public accountant attesting to the
3 existence of net assets equal to at least one hundred thousand dollars, a
4 performance bond, or a general liability insurance policy. The performance bond
5 or insurance policy must contain a provision requiring the issuing company to notify
6 the agriculture commissioner at least ten days before the effective date of
7 cancellation, termination, or other modification of the bond or insurance policy.
8 The agriculture commissioner shall immediately suspend the certification of a
9 person who fails to maintain the ~~minimum~~ financial responsibility standards of this
10 section. If there is any recovery against the ~~certificate holder~~ commercial
11 applicator, the ~~holder~~ applicator shall demonstrate continued compliance with the
12 ~~minimum standards requirements~~ of this section. ~~An employee of a commercial~~
13 ~~pesticide application business is not required to meet these standards separately if~~
14 ~~the business documents compliance with the minimum financial responsibility~~
15 ~~standards of this section.~~ An application for reinstatement of a suspended
16 certificate suspended under this section must be accompanied by proof of
17 ~~satisfaction of~~ that any judgment previously rendered against the applicant has
18 been satisfied.
- 19 2. This section does not apply to:
- 20 a. A rancher who ~~is required to~~ must obtain a commercial ~~pesticide~~ applicator
21 certificate for controlling noxious weeds on the leased federal acreage as a
22 condition of a federal grasslands lease.
- 23 b. A grazing association and its members if either the association or any
24 member ~~is required to~~ must obtain a commercial ~~pesticide~~ applicator
25 certificate for controlling noxious weeds on the leased federal acreage as a
26 condition of a federal grasslands lease.
- 27 c. A person ~~required to~~ who must be certified in the right-of-way category.
- 28 d. ~~An applicator who holds a~~ A commercial ~~pesticide certificate and is controlling~~
29 applicator who controls noxious weeds on grassland, land producing tame
30 hay, or other lands not devoted to the production of an annual crop.

- 1 e. An employee of a commercial applicator if the commercial applicator complies
2 with this section.

3 **SECTION 6. AMENDMENT.** Section 4-35-12 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **4-35-12. Pesticide dealer certification - Employees - Requirements for purchase.**

- 6 1. It is unlawful for ~~any person~~ a pesticide dealer to distribute ~~or sell~~ restricted use
7 pesticides or ~~assume to~~ act as a restricted use pesticide dealer, ~~at any time,~~
8 without first having obtained certification from the North Dakota state university
9 extension service, or the service's designee ~~in the county in which the applicant~~
10 ~~operates the applicant's principal place of business.~~ A certified person is required
11 ~~at each~~ to be at any location or outlet ~~located within this state~~ from which restricted
12 use pesticides are distributed. Any manufacturer, ~~registrant,~~ or distributor that has
13 no pesticide dealer outlet within this state and which distributes such pesticides
14 directly into this state shall obtain a pesticide dealer certificate for its principal
15 out-of-state location or outlet.
- 16 2. Application for a certificate must be accompanied by an examination fee set by the
17 board and must be on a form prescribed by the board. ~~The board shall adopt rules~~
18 ~~governing service of process on members of corporations, limited liability~~
19 ~~companies, partnerships, or associations, and governing the listing of membership~~
20 ~~in such organizations.~~ The application must also state the address of each outlet,
21 the principal business address of the applicant, the name of a person domiciled in
22 this state authorized to receive and accept service of summons of legal notices of
23 all kinds for the applicant, and any other necessary information prescribed by the
24 board.
- 25 3. The board shall require each pesticide dealer to demonstrate to the North Dakota
26 state university extension service or the service's designee knowledge of pesticide
27 laws and regulations; pesticide hazards to humans, animals, and the environment;
28 and the safe distribution, disposal, and use and application of pesticides by
29 satisfactorily passing an examination or meeting other requirements within each
30 classification for which certification is sought as prescribed by the board.

- 1 4. Each ~~restricted use~~ pesticide dealer is responsible for the acts of each person
2 employed by the dealer in the solicitation and sale of restricted use pesticides and
3 all claims and recommendations for use of such pesticides. The dealer's
4 certification is subject to ~~denial~~, suspension, or revocation, after a hearing, for any
5 violation of this chapter, whether committed by the dealer, or by the dealer's officer,
6 agent, or employee.
- 7 5. A certificate issued under this section expires as of the first day of April following
8 two years from the date of issuance. A certificate is renewable every three years
9 on April first. A certificate may be renewed upon completion of a seminar
10 approved by the board or upon successfully completing an examination required by
11 the board, or both, if required by the board. The board may require any person
12 holding a current valid certificate to take an examination within the three-year
13 period if the board determines additional knowledge related to pesticides makes an
14 additional examination necessary or that a new evaluation is necessary to assure a
15 continuing level of competence and ability to distribute pesticides safely and
16 properly.
- 17 6. Restricted use pesticides may be sold only to:
- 18 a. Persons certified as applicators by this state; and
- 19 b. Persons certified to use restricted use pesticides by another state, provided
20 the pesticide control board determines that the certifying state's requirements
21 are substantially similar to those of this state and further provided that the
22 person does not use the restricted use pesticide in this state.

23 **SECTION 7. AMENDMENT.** Section 4-35-14 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **4-35-14. Private applicators - Certification.**

- 26 1. ~~No person~~ An individual who would be a private applicator, if certified, may not
27 buy, use, or supervise the use of any restricted use pesticide classified for
28 restricted use unless ~~such person~~ the individual first complies with the certification
29 requirements ~~as determined~~ established by the board ~~as necessary to prevent~~
30 ~~unreasonable adverse effects on the environment, including injury to the applicator~~
31 ~~or other persons, for that specific pesticide use.~~

1 2. Certification standards to determine the individual's competency with respect to the
2 use and handling of the pesticide or class of pesticides the private applicator is to
3 be certified to use must be determined by the board. In determining these
4 standards, the board shall take into consideration similar standards of the
5 environmental protection agency.

6 ~~3. The board shall determine by rule methods to evaluate the competence of private~~
7 ~~applicators and provisions for reevaluation as advances in technology warrant, or~~
8 ~~as necessary to assure a continuing level of competence and ability to use~~
9 ~~pesticides safely and properly.~~ The North Dakota state university extension
10 service, or its designee, ~~in the county of the residence of the applicant~~ shall issue a
11 certificate to any private applicator who has qualified as prescribed by the board.
12 ~~However, the~~ The North Dakota state university extension service, or its designee,
13 may require any applicant required to be certified under this ~~chapter~~ section to pay
14 a reasonable ~~charge~~ fee, not greater than the cost to the North Dakota state
15 university extension service, for materials provided to the applicant for training and
16 education.

17 **SECTION 8. AMENDMENT.** Section 4-35-15 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **4-35-15. Unlawful acts - Grounds for denial, suspension, or revocation of a**
20 **certification.** ~~The commissioner, after providing an opportunity for a hearing, may deny,~~
21 ~~suspend, revoke, or modify any provision of any certification issued under this chapter, if the~~
22 ~~commissioner finds that the applicant or the holder of the certification has committed any act~~
23 ~~listed in this section. Each of the following acts is a violation of this chapter, whether committed~~
24 ~~by an applicant, by the holder of the certification, or by any other person applying or using~~
25 ~~pesticides, if the~~ It is a violation of this chapter for any person to:

- 26 1. ~~Made~~ Make false or fraudulent claims through any media, misrepresenting the
27 effect of materials or methods to be utilized, or advertised a pesticide without
28 reference to its classification.
- 29 2. ~~Made~~ Make a pesticide recommendation, application, or use inconsistent with the
30 labeling or other restrictions prescribed by the board.
- 31 3. ~~Applied~~ Apply materials known by that person to be ineffective or improper.

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- 1 4. ~~Operated~~ Operate faulty or unsafe equipment.
- 2 5. ~~Operated~~ Operate in a faulty, careless, or negligent manner.
- 3 6. ~~Neglected~~ Neglect, or, after notice, ~~refused~~ refuse to comply with this chapter, the
- 4 rules adopted to implement this chapter, or any lawful order of the commissioner.
- 5 7. ~~Refused or neglected~~ Refuse or neglect to keep and maintain the records required
- 6 by this chapter or to make reports when and as required.
- 7 8. ~~Made~~ Make false or fraudulent records, invoices, or reports.
- 8 9. ~~Operated unlicensed equipment in violation of section 4-35-17.~~ Apply pesticide to
- 9 the property of another, without the permission of the owner or lessee, unless the
- 10 application is made under the direction of a governmental entity.
- 11 10. ~~Used~~ Use fraud or misrepresentation in making an application for, or for renewal
- 12 of, certification.
- 13 11. ~~Refused or neglected~~ Refuse or neglect to comply with any limitations or
- 14 restrictions on or in a duly issued certification.
- 15 12. ~~Aided or abetted a certified or an uncertified~~ Aid or abet a person to evade the
- 16 ~~provisions of this chapter, conspired~~ conspire with ~~such a certified or an uncertified~~
- 17 a person to evade the provisions of this chapter, or allowed allow the person's
- 18 certification to be used by another person.
- 19 13. Knowingly ~~made~~ make false statements during or after an inspection or an
- 20 investigation.
- 21 14. ~~Impersonated~~ Impersonate a federal, state, county, or city inspector or official.
- 22 15. ~~Distributed~~ Distribute any restricted use pesticide to any person who is ~~required by~~
- 23 ~~law or rule to be certified to use or purchase the restricted use pesticide unless the~~
- 24 ~~person or agent to whom distribution is made is~~ not properly certified to use or
- 25 purchase ~~that kind of restricted use~~ the pesticide.
- 26 16. ~~Bought, used, or supervised~~ Buy, use, or supervise the use of any pesticide
- 27 without first complying with the certification requirements of this chapter, unless
- 28 otherwise exempted.
- 29 17. ~~Applied~~ Apply any economic poison that is not registered pursuant to chapter
- 30 19-18.

1 **SECTION 9. AMENDMENT.** Section 4-35-16 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **4-35-16. ~~Commercial and public applicators to keep records~~ - Duration Records -**
4 **Retention - Submission to commissioner.** The board shall require ~~the holders of certificates~~
5 ~~to pesticide dealers, commercial applicators, and public applicators~~ maintain records of sales
6 ~~and purchases~~ of restricted use and special exemption pesticides ~~and~~. The board shall require
7 commercial applicators and public applicators to maintain records of all applications of
8 pesticides by commercial or public applicators. The board may ~~also~~ require restricted use
9 pesticide application records of private applicators. ~~Such relevant information as the board may~~
10 ~~deem necessary may be specified by rule.~~ The records must be kept for a period of three years
11 from the date of the application ~~or, sale, or purchase~~ of the pesticide ~~to which the records refer.~~
12 Upon request, these records or pertinent parts thereof, must be submitted to the commissioner.

13 **SECTION 10. AMENDMENT.** Section 4-35-18 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **4-35-18. Reciprocal agreement.** The North Dakota state university extension service,
16 or its designee, may issue a certification on a reciprocal basis, without examination, to a
17 nonresident who is certified to buy, distribute, or use restricted use pesticides under a plan
18 substantially similar to this chapter and after the applicant has paid a fee, set by the board, not
19 greater than the fee or charge authorized under section 4-35-09, 4-35-12, or 4-35-14 if the
20 applicant would have taken the appropriate examination. Such a certification may be
21 suspended or revoked in the same manner and on the same grounds as certifications pursuant
22 to this chapter, and must be suspended or revoked if the nonresident's home state certification
23 is suspended or revoked.

24 **SECTION 11. AMENDMENT.** Section 4-35-19 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **4-35-19. Exemptions.**

27 1. The certification requirements of this chapter do not apply to ~~a competent person~~
28 an individual applying ~~general~~ non-restricted use pesticides under the direct
29 supervision of a commercial applicator, unless the pesticide label requires that a
30 certified applicator personally apply the pesticide. A pesticide is ~~deemed to be~~
31 applied under the direct supervision of a commercial applicator if the pesticide is

1 applied by ~~a competent person~~ an individual acting under the instruction and
2 control of a certified applicator who is physically available if needed. ~~The certified~~
3 ~~applicator need not be present when the pesticide is applied. Direct supervision~~
4 ~~with respect to applications using aircraft requires that the pilot of the aircraft be~~
5 ~~appropriately certified. The certification requirements of this chapter do not apply~~
6 ~~to a competent person applying restricted use pesticides under the direct~~
7 ~~supervision of a private applicator, unless the pesticide label requires that a~~
8 ~~certified applicator personally apply the particular pesticide. A pesticide is deemed~~
9 ~~to be applied under the direct supervision of a private applicator if it is applied by a~~
10 ~~competent person acting under the instruction and control of a private applicator~~
11 ~~who is available if and when needed, even though the private applicator is not~~
12 ~~physically present at the time and place that the pesticide is applied. Because~~
13 ~~direct supervision does not extend to aerial applications, the pilot must be properly~~
14 ~~certified in order to engage in aerial applications.~~

15 2. The certification requirements of this chapter do not apply to any person
16 conducting laboratory-type research using restricted use pesticides or to a doctor
17 of medicine or a doctor of veterinary medicine applying a pesticide as a drug or as
18 medication during the course of normal practice.

19 **SECTION 12. AMENDMENT.** Section 4-35-20 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **4-35-20. Discarding and storing of pesticides, pesticide containers, and pesticide**
22 **rinsate.** No person may discard, store, display, or permit the disposal of surplus pesticides,
23 empty pesticide containers and devices, or ~~pesticide~~ rinsate in such a manner as to endanger
24 the environment or to endanger food, feed, or any other products that may be stored, displayed,
25 or distributed with such pesticides. The board shall promulgate regulations governing the
26 discarding, storage, display, or disposal of any pesticide, ~~pesticide~~ rinsate, pesticide containers,
27 or devices.

28 **SECTION 13. AMENDMENT.** Section 4-35-22 of the North Dakota Century Code is
29 amended and reenacted as follows:

30 **4-35-22. Subpoenas.** The commissioner may issue subpoenas to compel the
31 attendance of witnesses or production of books, documents, and records pertaining to pesticide

1 applications ~~and, sales, and purchases~~ in the state in any hearing ~~affecting the authority or~~
2 ~~privilege granted by a certification issued under the provisions of~~ to enforce this chapter.

3 **SECTION 14. AMENDMENT.** Section 4-35-23 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **4-35-23. Penalties.**

- 6 1. Any ~~registrant; applicator; person~~ other than a private applicator; ~~wholesale dealer;~~
7 ~~retailer; or other distributor,~~ who knowingly violates ~~any provision of~~ this chapter
8 ~~shall be~~ is guilty of a class A misdemeanor.
- 9 2. Any private applicator ~~or other person not included in subsection 4~~ who knowingly
10 violates ~~any provision of~~ this chapter ~~shall be~~ is guilty of a class B misdemeanor.
- 11 3. When construing and enforcing the provisions of this chapter, the act, omission, or
12 failure of any officer, agent, or other person acting for or employed by any person
13 must in every case be also deemed to be the act, omission, or failure of such
14 person as well as that of the person employed.
- 15 4. A person who violates ~~a provision of~~ this chapter or the rules adopted under this
16 chapter is subject to a civil penalty not to exceed five thousand dollars for each
17 violation. The civil penalty may be imposed by a court in a civil proceeding or by
18 the agriculture commissioner through an adjudicative proceeding pursuant to
19 chapter 28-32. The assessment of a civil penalty does not preclude the imposition
20 of other sanctions authorized by law, this chapter, or rules adopted under this
21 chapter.
- 22 5. After providing an opportunity for a hearing, the commissioner may deny, suspend,
23 revoke, or modify the provision of any certification issued under this chapter, if the
24 commissioner determines that the applicant for certification or the holder of a
25 certificate has violated this chapter or any rules adopted under this chapter.

26 **SECTION 15. AMENDMENT.** Section 4-35-24 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **4-35-24. Enforcement.**

- 29 1. The commissioner ~~is charged with the duty of enforcing~~ shall enforce the
30 requirements of this chapter and any rules ~~or regulations issued hereunder~~
31 adopted under this chapter.

- 1 2. The commissioner may bring an action to enjoin the violation or threatened
2 violation of ~~any provision of~~ this chapter, or any rule ~~or regulation made pursuant to~~
3 adopted under this chapter, in the district court of the county in which such
4 violation occurs or is about to occur.
- 5 3. ~~In the event~~ If any person violates ~~any provision of~~ this chapter, the commissioner
6 may issue an order requiring ~~such~~ the person to cease and desist from the
7 unlawful activity. ~~In the event~~ If the violator fails to obey, the commissioner will
8 cause the appropriate criminal complaint to be filed.
- 9 4. ~~For the purpose of carrying out the provisions of this chapter, the~~ The
10 commissioner may enter upon any public or private premises at reasonable times,
11 in order to:
- 12 a. ~~Have access for the purpose of inspecting~~ Inspect any equipment subject to
13 this chapter and the premises on which ~~such~~ the equipment is stored or used.
- 14 b. Inspect or sample lands actually or reported to be exposed to pesticides.
- 15 c. Inspect storage or disposal areas.
- 16 d. Inspect or investigate complaints of injury to humans or land.
- 17 e. Draw samples of a reasonable amount of tank mix pesticides and tank mixes
18 without compensation to the ~~applicator~~ owner for values less than three
19 dollars. ~~If the value of the sample is over three dollars, the applicator has the~~
20 ~~option of being given a receipt to be paid at a later date, or of not being~~
21 ~~reimbursed.~~
- 22 f. Observe the use and application of a pesticide.
- 23 g. ~~Have access for the purpose of inspecting~~ Inspect any ~~premises or other~~
24 place where pesticides or devices are stored or held for distribution, sale, or
25 for use or for the purpose of inspecting and obtaining, and obtain samples of
26 any pesticides packaged, labeled, and released for shipment and samples of
27 any containers or labeling for ~~such~~ the pesticides.
- 28 5. a. The commissioner ~~shall~~, at any reasonable time, ~~have~~ has access to the
29 records pertaining to the pesticide application ~~and, sales of, purchases, and~~
30 repacking by any person. The commissioner may copy or make copies of
31 ~~such~~ the records for the purpose of ~~carrying out the provisions of~~ this chapter.

1 ~~Unless required for the enforcement of this chapter, such information is~~ These
2 records are confidential. However, the commissioner may use these records
3 in any way to enforce this chapter. Any record that the commissioner uses as
4 an exhibit in an enforcement action is no longer a confidential record.

5 b. If an individual alleges exposure to pesticides and if the individual's medical
6 provider requests that the commissioner reveal the name of the pesticide, the
7 commissioner may reveal the name of the pesticide to the individual making
8 the request, together with the registration number assigned by the United
9 States environmental protection agency. The commissioner may require that
10 a request under this section be made in writing.

11 6. ~~When~~ If access is refused or ~~in situations in which~~ if the commissioner feels
12 determines that critical enforcement documentation may be lost, the commissioner
13 ~~or the commissioner's designated agent for the purposes set forth in this chapter,~~
14 may apply to any court ~~of competent jurisdiction~~ for a search warrant authorizing
15 access to ~~such~~ land or records ~~for said purposes~~. The court may, upon ~~such~~
16 ~~application and upon~~ compliance with ~~the provisions of~~ chapter 29-29.1, issue the
17 search warrant for the purposes requested.

18 7. ~~If a civil penalty pursuant to section 4-35-23 is imposed by the agriculture~~
19 ~~commissioner through an administrative hearing and the civil penalty is not paid,~~
20 ~~the commissioner may collect the civil penalty by a civil proceeding in any~~
21 ~~appropriate court. Additionally, the~~ The commissioner may suspend or revoke a
22 certification issued pursuant to this chapter for failure to pay a civil penalty within
23 thirty days after a final determination is made that the civil penalty is owed.

24 **SECTION 16. REPEAL.** Sections 4-35-17 and 4-35-28 of the North Dakota Century
25 Code are repealed.