

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION  
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2167

2001 SENATE AGRICULTURE

SB 2167

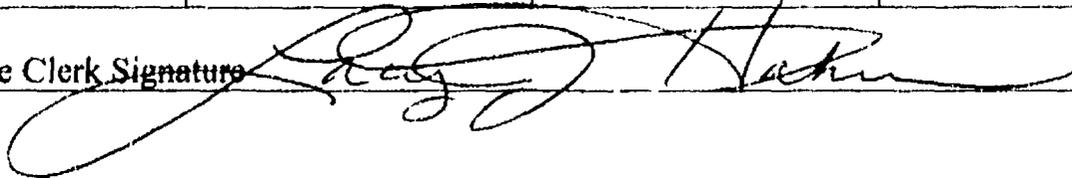
2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2167

Senate Agriculture Committee

Conference Committee

Hearing Date January 11, 2001

Tape Number	Side A	Side B	Meter #
Jan. 11 1		X	32.3 - End
Jan. 18 1		X	22.0 - 30.2
Committee Clerk Signature 			

Minutes:

The hearing was opened on SB 2167 relating to regulation of pesticide applicators.

**Jeff Olson:** Program Manager Plant Industries of North Dakota Department of Agriculture, see attached testimony.

**Senator Wanzek:** Does this amendment exclusively pertain to custom and commercial applicators?

**Jeff Olson:** Only custom and commercial applicators would be required to be certified, not private applicators.

**Senator Wanzek:** If custom and commercial applicators are not using restricted use pesticides they do not need to be certified?

**Jeff Olson:** Currently they do not have to be.

**Senator Urlacher:** Are dealer certified to provide information without liability?

**Jeff Olson:** As long as a dealer is only selling not applying the restricted use pesticide They are not required to be certified. The law only states that when a dealer or consultant applies

restricted use pesticides they need to be certified, if they apply general use pesticide they do not need to be certified and if they sell either of the two they also don't need to be certified.

**Senator Kroeplin:** Is this going to require that at least one person at an elevator, for example, have to be certified?

**Jeff Olson:** Yes that would require at least one person be certified because they are giving recommendations concerning products, amounts and leaf stages. The cost and time of the certification is minimal and a refresher course is required every three years to maintain certification.

**Senator Kroeplin:** In an owner/operator case do they both have to be certified or just one?

**Jeff Olson:** The business has to have certification and most businesses have all of their employees certified. I believe that under the law there is a provision that allows applicators that are not certified to be under the direct supervision of a certified applicator and the actual applicator would not have to be certified.

**Gary Knutson:** North Dakota Agriculture Association, asked for clarification of the pesticide certification.

**Senator Wanzek:** The way this is stated only commercial and custom applicators have to be certified, does crop scouts also have to be certified?

**Jeff Olson:** The intent of this bill was to require anyone who makes a recommendation be certified.

**Senator Wanzek:** What this is saying is that there should be someone at the site that is accountable?

**Jeff Olson:** Yes, a foreman or someone in control.

The hearing was closed.

Committee began discussion on the testimon.,

**Senator Urlacher:** There is a lot of farmer to dealer recommendations, I would assume that those who sell are certified and I wouldn't want to see it stopped because of liability by passing the information or education process.

January 18, 2001, action was taken on this bill as follows:

**Senator Klein:** moved to accept the amendment. **Senator Erbele** seconded. Roll call vote was taken, 6 Yeas, 0 No, 0 Absent and not voting.

Page 3  
Senate Agriculture Committee  
Bill/Resolution Number SB 2167  
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Senator Klein motioned to DO PASS the bill as amended. Senator Nichols seconded the motion. 6 Yeas, 0 No, 0 Absent and not voting. Senator Kroeplin will carry the bill.

**PROPOSED AMENDMENT TO SENATE BILL 2167**

Page 1, line 7, after "commercial" insert "or custom" and remove ", "  
Page 1, line 8, remove "recommend," and overstrike "restricted use"

**SECTION 1. AMENDMENT.** Subsection 1 of section 4-35-09 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. ~~No~~ A person who would be a commercial or custom applicator if certified may not purchase or use a ~~restricted-use~~ pesticide without first complying with the certification standards and requirements of this chapter, or other restrictions as may be determined by the board.

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1. No A person who would be a commercial or custom applicator if certified may not purchase, recommend, or use a ~~restricted-use~~ pesticide without first complying with the certification standards and requirements of this chapter, or other restrictions as may be determined by the board.

Renumber accordingly





REPORT OF STANDING COMMITTEE (410)  
January 19, 2001 12:53 p.m.

Module No: SR-09-1296  
Carrier: Kroepflin  
Insert LC: 18194.0101 Title: .0200

**REPORT OF STANDING COMMITTEE**

**SB 2167: Agriculture Committee (Sen. Wanzek, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2167 was placed on the Sixth order on the calendar.

Page 1, line 7, after "commercial" insert "or custom" and remove the underscored comma

Page 1, line 8, remove "recommend," and overstrike "restricted use"

Renumber accordingly

2001 HOUSE AGRICULTURE

SB 2167

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2167

House Agriculture Committee

Conference Committee

Hearing Date 3--2--01

Tape Number	Side A	Side B	Meter #
TWO	A		1580 TO 2993
Committee Clerk Signature <i>Edward D. Clayton</i>			

Minutes:

1A: 1580 CHAIRMAN NICHOLAS: Committee Members we will open the hearing on SB2167.

JEFF OLSON: Chairman Nicholas and members of the Committee. My name is Jeff Olson I am the Program Manager for the Plant Industries Area in the Department of Agriculture. I am here to testify in support of SB 2167. Printed testimony---please see attachment. Also there was an amendment that was passed out and that proposed amendment is attached. Please see attachments. The amendments dose some house cleaning. Some changes came to light. I thought I had them all covered but I didn't and Sen Wanzek suggested that I submit the amendments to this committee and then got through that process rather then doing another complete bill.. I will take any question that you might have.

REPRESENTATIVE PIETSCH: Even though you do not have any jurisdiction. About how many commercial applicators are there.

JEFF: I am not sure of the number of urban applicators there are but what this Bill would do would bring approximately an additional commercial applicators to require certification. It would increase the pool from approximately 2000 we have now that we are required to be certified would add 1500 or so.

REPRESENTATIVE LEMIEUX: When we talk about the certification process, is there a difference between commercial and private certification. Is there a differential in fees. The availability of schooling. If you are going to put another 1500 people on board what's the impact?

JEFF: There is additional training on commercial applicators and certification then is required for private applicators. In closer group areas. The cost is more for a commercial applicator. \$53.00 for commercial for on category. Most people would only have to be certified for one. The cost is \$19.00 for non-commercial. NDSE EXTENSION SERVICE handles the certification training program. We work in conjunction with them but they are in charge of putting on the classes and they hold classes every Feb. and March across the state.

If you need something outside of the time frame all you have to do is go to the extension service and they can give you one on one testing to get certified..

REPRESENTATIVE LLOYD: Can you be a commercial applicator with out being certified?

JEFF: Mr. Chairman, right now yes you can as long as you apply only for general use pesticide.

REPRESENTATIVE RENNER: Jeff, this farmers that are applying this general use chemical, they would not be impacted by this legislation.

JEFF: You are correct. It only applies to someone that is commercially licensed to apply commercially. Or applies for a fee.

REPRESENTATIVE LLOYD: I still have a problem "C" where it says commercial applicators means a certified applicator. On the engrossed Bill, under the amendment it says commercial applicator gets certified.

JEFF: The language that you see on the bill was reworked up at the the legislative council when it was presented on the engrossed bill. My understanding is that the way it is termed on each one means the same even though the certified statement is a different location.

JEFF: I understand where you are coming from and I agree the word if probably needs to be extracted from the Bill in order to make it fit in with definition that is already occurred.

CHAIRMAN NICHOLAS: Any other questions committee members?

THANK YOU JEFF ANY MORE SUPPORT FOR SB2167?

OPPOSITION? O.K. COMMITTEE MEMBERS WE HAVE 2167. REPRESENTATIVE LLOYD WHY DON'T WE HOLD THIS BILL UNTIL NEXT WEEK. WHY DON'T YOU HAVE THE LEGISLATIVE COUNCIL WORK WITH YOU AND WE CAN GET THAT DRAFTING ALONG WITH THE AGR. DEPARTMENT AND GET THAT DRAFTED PROPERLY. WE WILL CLOSE ON SB 2167 1A:2993

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2167

House Agriculture Committee

Conference Committee

Hearing Date 3--16--01

Tape Number	Side A	Side B	Meter #
ONE	A		2500 TO 3771
Committee Clerk Signature <i>Edward D. Clayton</i>			

Minutes:

CHAIRMAN NICHOLAS: COMMITTEE MEMBERS, WE WILL OPEN ON SB 2167.

JEFF KNUTSON: THIS AMENDMENT THAT YOU ARE LOOKING AT OVER STRIKES THE IF CERTIFIED OFF THE ORIGINAL BILL AND THE REMAINING SECTIONS ON THE AMENDMENTS ARE CLEAN UP ACTIVITIES THAT THIS BILL WOULD AFFECT UNDER OTHER SECTIONS OF THE LAW.

Representative Kingsbury: Dose this apply to aerial applicators.

JEFF KNUTSON: This Bill dose not affect the aril applicators from what they already have to apply for now. The bill brings in lawn and garden that businesses that right now we don't have any jurisdiction over right now. They use general use pesticides and according to the law general use pesticides are not required certification. We are getting more compilations from home owners as to these general use pesticides within the towns. Where children are playing. Wind drift problem.

We figure it is going to increase about fifteen hundred new business's that will be required to be certified. There is a fee that they charge for commercial applicators. I believe it is \$150.00 dollars. To get certified. It basically takes care of itself. The policing of the certification remains with the Agr. Department as it always has.

REPRESENTATIVE LLOYD: On page 7 under section 7 of the amendments number 2 It says the certification requirements of this chapter do not apply to any person conducting laboratory-type research using restricted use pesticides. My question is. Most field researchers are required to follow EPA GUIDELINES called good laboratory practices they consider the field a search laboratory, where dose that fit under this. Right now we are considered a laboratory but we have to follow to be certified. To me this a change from what we are currently required to do.

JEFF: The way the law is presently it is required of one person needs to be certified if they are applying restrictive use pesticides. They can supervise people under them that do not have the certification. This will not change that. It is still going to require a laboratory to be certified. Not all the employees need to be certified as long as they are under the direct supervision of a certified applicator. As long as a person only uses a general use pesticide, they do not have to be certified. Most urban don't use restricted use. This will not affect private applicators, as long as you are applying your own pesticides or if you are working with a neighbor you will not need to be certified any more then you are right now. It only pertains to commercial applicators.

CHAIRMAN NICHOLAS: O.K. THE CHAIR WILL ENTERTAIN A MOTION ON THE AMENDMENTS ON 2167. SO MOVED BY REPRESENTATIVE LLOYD, SECONDED BY REPRESENTATIVE PEITSCH. ALL IN FAVOR SAY YES. THE CHAIR WILL

Page 3  
House Agriculture Committee  
Bill/Resolution Number SB 2167  
3--16--01

ENTERTAIN A MOTION 2167 AS AMENDED. REPRESENTATIVE LLOYE MOVED  
FOR A DO PASS AND REPRESENTATIVE SECONDED. ANY FURTHER DISCUSSION/  
THE CLERK WILL TAKE THE ROLL. THERE WERE 13 YES""""0 NO""""2 ABSEBT  
REPRESENTATIVE LLOYD WILL CARRY THE BILL.  
WE WILL CLOSE ON SB 2167.

YK  
3/16/01  
1067

HOUSE AMENDMENTS TO ENGROSSED SB 2167 HOUSE AGR. 3-16-01  
Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 4-35-05, 4-35-06, 4-35-08, 4-35-09, 4-35-13, 4-35-15, and 4-35-19 and subsection 4 of section 4-35.1-01 of the North Dakota Century Code, relating to pesticide applicators.

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

**SECTION 1. AMENDMENT.** Section 4-35-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

1. "Animal" means all vertebrate and invertebrate species, including, ~~but not limited to, man~~ humans and other mammals, birds, fish, and shellfish.
2. "Antidote" means a practical treatment in case of poisoning and includes first aid treatment.
- ~~2-1-~~ 3. "Applicator" means any person who applies a pesticide to land.
- ~~3-~~ 4. "Beneficial insects" means those insects ~~which~~ that, during their life cycle, are effective pollinators of plants, are parasites, or predators of pests.
- ~~4-a-~~ 5. "Certified applicator" means any individual who is certified under this chapter as authorized to use any ~~restricted-use~~ pesticide covered by the applicator's 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 the applicator or the applicator's employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.
  - e-
6. "Commercial applicator" means a certified applicator, ~~whether or not the applicator is a private applicator with respect to some uses,~~ who uses any pesticide ~~which is classified for restricted use,~~ for any purpose or on any property, other than as provided for by ~~subdivision b~~ a private applicator.
7. "Custom applicator means a certified applicator who uses any pesticide, for any purpose, or on any property, other than as provided for by a private applicator."
- ~~5-~~ 8. "Dealer" means any person who sells a pesticide to an end user.
- ~~6-~~ 9. "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.

- 7. 10. "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissue.
- 8. 11. "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~~ human and other than bacteria, virus, or other micro-organism on or in living ~~man~~ humans or other living animals, but not including equipment used for the application of pesticides when sold separately therefrom.
- 9. 12. "Distribute" means to offer for sale, hold for sale, sell, barter, or supply pesticides in this state.
- 10. 13. "Environment" includes water, air, land, and all plants and ~~man~~ humans and other animals living therein, and the interrelationships which exist among these.
- 11. 14. "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~~. The term does 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.
- 12. 15. "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~~ humans or other living animals, and except those on or in processed food, beverages, or pharmaceuticals.
- 13. 16. "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.
- 14. 17. "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.
- 15. 18. "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 and human services; state agricultural colleges; and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.
- 16. 19. "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.
- 17. 20. "Mixture" means a diluted pesticide combination.

- 18- 21. "Nematode" means invertebrate animals of the phylum nemathelminthes, and class nematoda, i.e., unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts, may also be called nemas or eelworms.
- 19- 22. "Person" means any individual, partnership, association, fiduciary, corporation, limited liability company, or any organized group of persons, whether or not incorporated.
- 20- 23. "Pest" means:
- Any insect, snail, slug, rodent, nematode, fungus, weed; or
  - Any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism, except viruses, bacteria, or other micro-organisms on or in living ~~man~~ humans or other living animals which are annoying or otherwise injurious or harmful to agriculture, health, and the environment.
- 21- 24. "Pesticide" means:
- Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; and
  - Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.
- 22- 25. "Pesticide dealer" means any person who distributes restricted use pesticides.
- 23- 26. "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 does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.
27. "Private applicator" means a certified applicator who uses or supervises the use of any pesticide that is classified for restricted use, to produce any agricultural commodity on property owned or rented by the applicator or the applicator's employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.
- 24- 28. "Protect health and the environment" means protection against any unreasonable adverse effects on public health and the environment.
- 25- 29. "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.
- 26- 30. "Restricted use pesticide" means any pesticide formulation which is classified for restricted use by the board.
- 27- 31. "Rinsate" means a diluted mixture of pesticide obtained from triple rinsing pesticide containers or from rinsing the inside and outside of spray equipment.
- 28- 32. "Snails or slugs" ~~include~~ includes all harmful mollusks.

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HOUSE AMENDMENTS TO ENGROSSED SB 2167 HSE. AGR. 3-16-01

- 29. 33. "Tank mix" means any pesticidal formulation used alone or in combination with another pesticide and mixed with a liquid carrier prior to application.
- 30. 34. "Unreasonable adverse effects on the environment" means any unreasonable risk to ~~man~~ humans or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.
- 31. 35. "Weed" means any plant which grows where not wanted.
- 32. 36. "Wildlife" means all living things that are neither human, domesticated, nor, as defined in this chapter, pests, including, ~~but not limited to,~~ mammals, birds, and aquatic life.

SECTION 2. AMENDMENT. Section 4-35-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-35-06. Pesticide control board to administer chapter and adopt regulations.

- 1. a. The pesticide control board shall administer ~~the provisions of this chapter and has authority to issue regulations in conformance with provisions of~~ may adopt rules under chapter 28-32 to carry out the ~~provisions of this chapter. Such regulations~~ The rules 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 chapter, such regulations~~ The rules may relate to the time, place, manner, methods, materials, and amounts and concentrations, in connection with the application of the pesticide, and may restrict or prohibit use of pesticides in designated areas during specified periods of time and shall encompass all reasonable factors which the board deems necessary to prevent damage or injury by drift or misapplication to:
  - a. (1) Plants, including forage plants, on adjacent or nearby lands.
  - b. (2) Wildlife in the adjoining or nearby areas.
  - c. (3) Fish and other aquatic life in waters in proximity to the area to be treated.
  - d. (4) Persons, animals, or beneficial insects.
- b. ~~In issuing such regulations~~ adopting rules, 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 rule determine state restricted use pesticides for the state or designated areas within the state.
- 3. The board, in adopting rules under this chapter, shall prescribe standards and requirements for the certification of applicators of ~~restricted use~~ pesticides. These standards and requirements must 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~~ Rules adopted under this chapter may 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~~ may 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 chapter, including, but not limited to, regulations providing~~ Rules adopted under this chapter may provide for:
  - a. The collection, examination, and reporting of samples of pesticides.
  - b. The safe handling, transportation, storage, display, distribution, and disposal of pesticides and their containers.
7. ~~c.~~ The board may by regulation identify The identification of "pests" under the guidelines of the definition of the term "pest" contained within, as defined in this chapter when ~~it~~ the board finds particular organisms to be annoying or otherwise injurious or harmful to agriculture, health, and the environment.

**SECTION 3. AMENDMENT.** Section 4-35-08 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**4-35-08. Classification of certificates.** The board may classify commercial certificates to be issued under this chapter. ~~Such~~ The classifications may include pest control operators, wood treaters, 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 applicator to apply ~~restricted-use~~ pesticides or to the use of ~~restricted-use~~ pesticides to control insects and plant diseases, rodents, or weeds. Each classification of certification may be subject to separate testing procedures and training requirements; provided that a person may be required to pay an additional fee if ~~such~~ the person desires to be certified in one or more of the classifications provided for by the board under ~~the authority of~~ this section.

**SECTION 4. AMENDMENT.** Section 4-35-09 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**4-35-09. Commercial or custom applicator's certification.**

1. ~~No person who would be a~~ A commercial applicator if certified or a custom applicator may not purchase or use a ~~restricted-use~~ pesticide without first complying with the certification standards and requirements of this chapter, or other restrictions as may be determined by the board.
2. An individual may be certified as a commercial applicator or as a custom applicator within a classification if the individual successfully completes an examination for the classification as prescribed by the board and administered by the North Dakota state university extension service or the service's designee. An application for certification must be on a form prescribed by the board and accompanied by a reasonable examination fee set by the board.
3. If the North Dakota state university extension service, or its designee, finds the applicant qualified to apply pesticides in the classifications ~~he~~ for which the applicant has applied ~~for~~, after examination as the board requires, and

the applicant meets all other requirements of this chapter, the North Dakota state university extension service shall issue a commercial applicator's certificate or a custom applicator's certificate limited to the classifications in which the applicant is qualified ~~in~~.

4. If certification is not to be issued as applied for, the North Dakota state university extension service, or its designee, shall inform the applicant in writing of the reasons for not issuing the certification. Individuals certified pursuant to this section are deemed certified commercial applicators or certified custom applicators, for the use of ~~restricted-use~~ pesticides.

**SECTION 5. AMENDMENT.** Section 4-35-13 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**4-35-13. Application of act to governmental entities.** All ~~federal agencies, state agencies, municipal corporations, and any other governmental agencies, or and~~ public utilities, are subject to this chapter and rules adopted ~~thereunder concerning the application of restricted-use pesticides~~ under this chapter.

**SECTION 6. AMENDMENT.** Section 4-35-15 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

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 that person 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 chapter, the rules adopted hereunder~~ under this chapter, or ~~of any lawful order of the commissioner.~~
7. Refused or neglected to keep and maintain the records required by this chapter, 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 4-35-17.
10. Used fraud or misrepresentation in making an application for, or for renewal of, certification.
11. Refused or neglected to comply with any limitations or restrictions on or in a duly issued certification.

12. Aided or abetted a certified or an uncertified person to evade the provisions of this chapter, conspired with such a certified or an uncertified person to evade the provisions of this chapter, or allowed the person's certification to be used by another person.
13. Knowingly made false statements during or after an inspection or an investigation.
14. Impersonated ~~any a~~ federal, state, county, or city inspector or official.
15. Distributed any restricted use pesticide to any person who is required by law or rule to be certified to use or purchase ~~such the~~ restricted use pesticide unless ~~such the~~ person or his agent to whom distribution is made is certified to use or purchase that kind of restricted use pesticide.
16. Bought, used, or supervised the use of any ~~restricted use~~ pesticide without first complying with the certification requirements of this chapter, unless otherwise exempted ~~therefrom.~~
17. Applied any economic poison ~~which that~~ is not registered pursuant to the ~~provisions of~~ chapter 19-18.

**SECTION 7. AMENDMENT.** Section 4-35-19 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

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

**SECTION 8. AMENDMENT.** Subsection 4 of section 4-35.1-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. "Pesticide" means that term ~~as defined by subsection 24 of in~~ section 4-35-05."

Renumber accordingly

3-16-01

Date:  
Roll Call Vote #:

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2107

House AGRICULTURE Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee Lloyd 2107

Legislative Council Amendment Number As Amended

Action Taken Do Pass

Motion Made By Lloyd Seconded By Koppang

Representatives	Yes	No	Representatives	Yes	No
Eugene Nicholas, Chairman	✓		Rod Froelich	✓	
Dennis E. Johnson - Vice Chairman	✓		Doug Lemieux	✓	
Rick Berg			Philip Mueller	✓	
Michael Brandenburg			Kenton Onstad	✓	
Joyce Kingsbury	✓		Sally M. Slandvig	✓	
Myron Koppang	✓		Dennis J. Renner	✓	
Edward H. Lloyd	✓		Dwight Wrangham	✓	
Bill Pietsch	✓				

Total (Yes) 13 No 0

Absent 2

Floor Assignment Lloyd

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

SB 2167, as engrossed and amended: Agriculture Committee (Rep. Nicholas, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2167, as amended, was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 4-35-05, 4-35-06, 4-35-08, 4-35-09, 4-35-13, 4-35-15, and 4-35-19 and subsection 4 of section 4-35.1-01 of the North Dakota Century Code, relating to pesticide applicators.

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

**SECTION 1. AMENDMENT.** Section 4-35-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

1. "Animal" means all vertebrate and invertebrate species, including, ~~but not limited to, man~~ humans and other mammals, birds, fish, and shellfish.
2. "Antidote" means a practical treatment in case of poisoning and includes first aid treatment.
- ~~2.1.~~ 3. "Applicator" means any person who applies a pesticide to land.
- ~~3.~~ 4. "Beneficial insects" means those insects ~~which~~ that, during their life cycle, are effective pollinators of plants, are parasites, or predators of pests.
- ~~4.a.~~ 5. "Certified applicator" means any individual who is certified under this chapter as authorized to use ~~any restricted-use~~ pesticide covered by the applicator's 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 the applicator or the applicator's employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.~~
  - ~~e.~~
6. "Commercial applicator" means a certified applicator, ~~whether or not the applicator is a private applicator with respect to some uses,~~ who uses any pesticide ~~which is classified for restricted use,~~ for any purpose or on any property, other than as provided for by ~~subdivision b~~ a private applicator.
7. "Custom applicator means a certified applicator who uses any pesticide, for any purpose, or on any property, other than as provided for by a private applicator."
- ~~5.~~ 8. "Dealer" means any person who sells a pesticide to an end user.
- ~~6.~~ 9. "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.

- 7- 10. "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissue.
- 8- 11. "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~~ human and other than bacteria, virus, or other micro-organism on or in living ~~man~~ humans or other living animals, but not including equipment used for the application of pesticides when sold separately therefrom.
- 9- 12. "Distribute" means to offer for sale, hold for sale, sell, barter, or supply pesticides in this state.
- 10- 13. "Environment" includes water, air, land, and all plants and ~~man~~ humans and other animals living therein, and the interrelationships which exist among these.
- 11- 14. "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~~. The term does 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.
- 12- 15. "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~~ humans or other living animals, and except those on or in processed food, beverages, or pharmaceuticals.
- 13- 16. "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.
- 14- 17. "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.
- 15- 18. "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 and human services; state agricultural colleges; and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.
- 16- 19. "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.

- ~~17.~~ 20. "Mixture" means a diluted pesticide combination.
- ~~18.~~ 21. "Nematode" means invertebrate animals of the phylum nemathelminthes, and class nematoda, i.e., unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts, may also be called nemas or eelworms.
- ~~19.~~ 22. "Person" means any individual, partnership, association, fiduciary, corporation, limited liability company, or any organized group of persons, whether or not incorporated.
- ~~20.~~ 23. "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 micro-organism, except viruses, bacteria, or other micro-organisms on or in living ~~man~~ humans or other living animals which are annoying or otherwise injurious or harmful to agriculture, health, and the environment.
- ~~21.~~ 24. "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.
- ~~22.~~ 25. "Pesticide dealer" means any person who distributes restricted use pesticides.
- ~~23.~~ 26. "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 does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.
27. "Private applicator" means a certified applicator who uses or supervises the use of any pesticide that is classified for restricted use, to produce any agricultural commodity on property owned or rented by the applicator or the applicator's employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.
- ~~24.~~ 28. "Protect health and the environment" means protection against any unreasonable adverse effects on public health and the environment.
- ~~25.~~ 29. "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.

26. ~~30.~~ "Restricted use pesticide" means any pesticide formulation which is classified for restricted use by the board.
27. ~~31.~~ "Rinsate" means a diluted mixture of pesticide obtained from triple rinsing pesticide containers or from rinsing the inside and outside of spray equipment.
28. ~~32.~~ "Snails or slugs" ~~include~~includes all harmful mollusks.
29. ~~33.~~ "Tank mix" means any pesticidal formulation used alone or in combination with another pesticide and mixed with a liquid carrier prior to application.
30. ~~34.~~ "Unreasonable adverse effects on the environment" means any unreasonable risk to ~~man~~humans or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.
31. ~~35.~~ "Weed" means any plant which grows where not wanted.
32. ~~36.~~ "Wildlife" means all living things that are neither human, domesticated, nor, as defined in this chapter, pests, including, ~~but not limited to,~~ mammals, birds, and aquatic life.

**SECTION 2. AMENDMENT.** Section 4-35-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**4-35-06. Pesticide control board to administer chapter and adopt regulations.**

1. a. The pesticide control board shall administer ~~the provisions of this chapter and has authority to issue regulations in conformance with provisions of~~ may adopt rules under chapter 28-32 to carry out the provisions of this chapter. ~~Such regulations~~ The rules 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 chapter, such regulations~~ The rules may relate to the time, place, manner, methods, materials, and amounts and concentrations, in connection with the application of the pesticide, and may restrict or prohibit use of pesticides in designated areas during specified periods of time and shall encompass all reasonable factors which the board deems necessary to prevent damage or injury by drift or misapplication to:
- a. (1) Plants, including forage plants, on adjacent or nearby lands.
  - b. (2) Wildlife in the adjoining or nearby areas.
  - c. (3) Fish and other aquatic life in waters in proximity to the area to be treated.
  - d. (4) Persons, animals, or beneficial insects.
- b. In ~~issuing such regulations~~ adopting rules, 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~~ rule determine state restricted use pesticides for the state or designated areas within the state.
3. The board, in adopting rules under this chapter, shall prescribe standards and requirements for the certification of applicators of ~~restricted-use~~ pesticides. These ~~standards and requirements~~ must 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~~ Rules adopted under this chapter may 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~~ may 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 chapter, including, but not limited to, regulations providing~~ Rules adopted under this chapter may provide for:
  - a. The collection, examination, and reporting of samples of pesticides.
  - b. The safe handling, transportation, storage, display, distribution, and disposal of pesticides and their containers.
7. ~~The board may by regulation identify~~ The identification of "pests" under the guidelines of the definition of the term "pest" contained within, as defined in this chapter when the board finds particular organisms to be annoying or otherwise injurious or harmful to agriculture, health, and the environment.

**SECTION 3. AMENDMENT.** Section 4-35-08 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**4-35-08. Classification of certificates.** The board may classify commercial certificates to be issued under this chapter. ~~Such~~ The classifications may include pest control operators, wood treaters, 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 applicator to apply ~~restricted-use~~ pesticides or to the use of ~~restricted-use~~ pesticides to control insects and plant diseases, rodents, or weeds. Each classification of certification may be subject to separate testing procedures and training requirements; provided that a person may be required to pay an additional fee ~~if~~ such the person desires to be certified in one or more of the classifications provided for by the board under ~~the authority of~~ this section.

**SECTION 4. AMENDMENT.** Section 4-35-09 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**4-35-09. Commercial or custom applicator's certification.**

1. ~~No person who would be a~~ A commercial applicator if certified or a custom applicator may not purchase or use a ~~restricted use~~ pesticide without first complying with the certification standards and requirements of this chapter, or other restrictions as may be determined by the board.
2. An individual may be certified as a commercial applicator or as a custom applicator within a classification if the individual successfully completes an examination for the classification as prescribed by the board and administered by the North Dakota state university extension service or the service's designee. An application for certification must be on a form prescribed by the board and accompanied by a reasonable examination fee set by the board.
3. If the North Dakota state university extension service, or its designee, finds the applicant qualified to apply pesticides in the classifications ~~for which the applicant has applied for,~~ after examination as the board requires, and the applicant meets all other requirements of this chapter, the North Dakota state university extension service shall issue a commercial applicator's certificate or a custom applicator's certificate limited to the classifications in which the applicant is qualified.
4. If certification is not to be issued as applied for, the North Dakota state university extension service, or its designee, shall inform the applicant in writing of the reasons for not issuing the certification. Individuals certified pursuant to this section are deemed certified commercial applicators or certified custom applicators, for the use of ~~restricted use~~ pesticides.

**SECTION 5. AMENDMENT.** Section 4-35-13 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**4-35-13. Application of act to governmental entities.** ~~All federal agencies, state agencies, municipal corporations, and any other governmental agencies, or and public utilities,~~ are subject to this chapter and rules adopted ~~thereunder~~ concerning the application of restricted use pesticides under this chapter.

**SECTION 6. AMENDMENT.** Section 4-35-15 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

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 that person 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 chapter, the rules adopted hereunder~~ under this chapter, or of any lawful order of the commissioner.
7. Refused or neglected to keep and maintain the records required by this chapter, 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 4-35-17.
10. Used fraud or misrepresentation in making an application for, or for renewal of, certification.
11. Refused or neglected to comply with any limitations or restrictions on or in a duly issued certification.
12. Aided or abetted a certified or an uncertified person to evade the provisions of this chapter, conspired with such a certified or an uncertified person to evade the provisions of this chapter, or allowed the person's certification to be used by another person.
13. Knowingly made false statements during or after an inspection or an investigation.
14. Impersonated ~~any~~ a federal, state, county, or city inspector or official.
15. Distributed any restricted use pesticide to any person who is required by law or rule to be certified to use or purchase ~~such~~ the restricted use pesticide unless ~~such~~ the person or ~~his~~ agent to whom distribution is made is certified to use or purchase that kind of restricted use pesticide.
16. Bought, used, or supervised the use of any ~~restricted use~~ pesticide without first complying with the certification requirements of this chapter, unless otherwise exempted ~~therefrom~~.
17. Applied any economic poison ~~which~~ that is not registered pursuant to the ~~provisions of chapter 19-18~~.

**SECTION 7. AMENDMENT.** Section 4-35-19 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

1. ~~The certification requirements of this chapter do not apply to any person applying pesticides that are not classified for restricted use.~~
2. The provisions of this chapter relating to certification requirements do not apply to a competent person applying restricted use pesticides under the direct supervision of a private applicator, unless the pesticide labeling label requires that a certified applicator personally ~~applies~~ apply the particular pesticide. A pesticide is ~~considered~~ deemed to be applied under the direct supervision of a private applicator if it is applied by a competent person acting under the ~~instructions~~ instruction and control of a private applicator

who is available if and when needed, even though ~~such~~ the private applicator is not physically present at the time and place that the pesticide is applied.

3. 2. ~~Persons~~ The certification requirements of this chapter do not apply to any person conducting laboratory-type research using restricted use pesticides and doctors or to a doctor of medicine and doctors or a doctor of veterinary medicine applying pesticides as drugs a pesticide as a drug or as medication during the course of their normal practice.

**SECTION 8. AMENDMENT.** Subsection 4 of section 4-35.1-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. "Pesticide" means that term as defined by ~~subsection 21 of~~ in section 4-35-05."

Renumber accordingly

2001 SENATE AGRICULTURE

CONFERENCE COMMITTEE

SB 2167



little bit further than. I am trying to remember if you guys did that again or what. You can just fill me in with the amendments.

REP. LLOYD: There is only one word originally that we wanted corrected and that was a word "certified" if I recall right. And that's because the Ag Commissioner brought down a whole list of things to discuss and then the discussion and then the discussion, his discussion did not agree with what was already in the bill. And so, we said, well, it appeared to me that you got to go back and correct this before we even act on the bill. And so then Nichols appointed myself and there were three of us on there to go and evaluate it and what we went and asked council to help us rewrite it, so she got with Anita and she got with the commissioner personal and they then rewrote it, and when they did rewrite they did the whole thing which is good, because now we at least have the whole thing in front of us as to what the changes were that were made in the bill that you saw, which was, would've been a paragraph long. And that was taking out the word "restrictive use" and adding the words "or custom". That was on the other bill so what you have before you is the entire bill with all those modifications. The key that was added really was custom applicator and what the situation is the, what they call a commercial applicator or custom applicator which are the people that apply pesticides on lawns within the city limits. This is their target. They figure there is 1500 of them that are not certified that should be, if you include the general use as part of their educational program. They included the general use as part of their educational program because they are, they have been caught spraying like 2-4D or something like that on to plants and then little kids playing around them and never warning the parents or telling the kids not to play around them. Now that may not be dangerous to an adult to a younger child it might be, depending upon contact. And so while 2-4D is obviously not a restricted use pesticide, and so they did remove that fact that person would be certified if you were applying a

restrictive use pesticide or a general use pesticide. That is included in there. That does include a crop of people; an individual who supervises crop scouts but does not include crop scouts. In other words you got to have a person who is monitors, who is in charge of these personal. And that person, at least one of those people must be certified. But not everybody has to be certified. That is the jest of it.

SENATOR WANZEK: Rep. Lloyd, as far as requiring even one person of a crop scouting service to be certified, even if they don't fly, even if they don't actually make any applications or handle chemicals, if their just making, providing consulting service or making recommendations, one of them has to be certified?

REP. LLOYD: It is my understanding that is true. And that was also a fight, when I was in National Alliance of Independent Crop Consultants we went directly to the EPA and at first they gave us an exemption but that has been changed a little bit and so, basically they have to.

(Ex.8.4- 8.7)

SENATOR WANZEK: Rep. Lloyd you applied to a small lot site or table, but that's your lot and your not doing custom application?

REP. LLOYD: Correct and that's on my land. I own that land.

SENATOR WANZEK: So do you need a custom applicator license or a do you need a private.

REP. LLOYD: No, I have to have a whats' use to be known as a the certified, now its called, custom or commercial license. Because certified applicator means any individual who is certified under this chapter, so the word certified applicator really doesn't apply anymore. You are either a custom applicator who is certified to apply pesticides whether for general use or restrictive use. That is the way that is used now.

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SENATOR URLACHER: These Scouts do they work under a company or do they work as individuals?

REP. LLOYD: Yes.

SENATOR URLACHER: As individuals.

REP. LLOYD: Both.

SENATOR URLACHER: So are we saying that any household that sprays their lawn with chemicals and this sort of thing.

REP. LLOYD: No, that would be a private applicator. A homeowner would be a private applicator, just like a farmer is a private applicator. Private applicator does not apply to restricted use chemicals does not have to be certified.

SENATOR URLACHER: I am sorry could you repeat that, Rep. Lloyd, I think your actually repeating what I am trying to read here.

REP. LLOYD: A private applicator who does not apply restricted use chemicals does not need to be certified. That's current law also, there is no change.

SENATOR URLACHER: I guess that is one of my concerns that we're not, I mean as a private applicator, if I am not out there holding myself out as a service for other people or for a customers and I am just applying on my own land and I am not applying restricted use then I don't have to be certified.

REP. LLOYD: Nope, don't have to have any schooling whatsoever.

SENATOR URLACHER: Well now a person selling chemicals which also provides information to his customers, do they have to be certified?

REP. LLOYD: Not every individual in that company would have to certified.

SENATOR URLACHER: Just one?

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REP. LLOYD: One would have to be certified.

SENATOR URLACHER: Even though the other party maybe giving out information.

REP. LLOYD: That's correct. Because there giving, the other party would be giving out information under the authority of the person who is certified.

SENATOR URLACHER: So the first party is liable?

REP. LLOYD: That's correct.

SENATOR WANZEK: Can you provide a justification why that would need to be, I am, if your running a consultants, if their not going to be handling or applying or doing anything of that sort as far as the chemicals what is the justification of requiring them to have a certification if their just providing advise for consultants?

REP. LLOYD: Actually I'll answer the little differently than you asked the question. Quite frankly, all of the consultants, now the word scout and consultant are two different groups of people. But all of the consultants are certified by their own trade. In other words we demand that, that is part of their trade. They either have it certified through CCA exam which is really a tough exam, or else certified through the state. I don't know of any consultant that is not certified through the state already. So they get a restricted use license like everybody else. That is part of their organizational responsibilities. We actually carry it beyond what is required, so that is done automatically. A scout is a person who comes in and is working and is still in college and comes out and works the summers and just helps them count weeds or in this type of thing they do not have to be certified because they are under the auspices of a person who is the actual consultant. So they are already more educated and schooled in the process. The reason they need to be certified in some respects because if they go into the field that has been sprayed with an organic phosphate they walk into that field and they can become very sick in that field, fall down and die

right there in that field if that field was sprayed 3-4 hours ago. You've got to be aware of what the farmer is spraying, they have to know those chemicals. To me it is just a real safety issue.

SENATOR URLACHER: Don't they have to have those fields, a notification on them? It seems like there was a law at one time that you had to a warning sign.

REP LLOYD: Certain ones, yes. Anything with a melathion...

SENATOR URLACHER: Parathyion...peridan.

REP. LLOYD: There is about 20 of them or so now that we commonly use that have to be done, like even less than 10 years ago. Like parathion was the only one. Now they've got a multitude of chemicals that you have to post and its got to be on all the places where you enter, four corners plus any other place in the field that you might enter.

SENATOR URLACHER: All these would be restricted use?

REP. LLOYD: Yes, those are all restricted use.

A general use pesticide there is no posting required.

SENATOR URLACHER: I didn't realize Rep. Lloyd even as the farmer may plant my own sometimes that some of those are.

REP. LLOYD: You are supposed to post.

SENATOR URLACHER: While that, even that I was maybe that kind of risk when there spraying and you get out and walk behind the sprayer and check, I've not figured out a way yet to not be exposed to it when your spraying. How do you entirely not expose yourself to the pesticides when you have those kinds of problems at time.

REP. LLOYD: The way you do that is by wearing a full gas mask if you have to with the canisters on it for breathing and the full suit and the rubber boots and full rubber gloves which we have to wear when we apply certain pesticides, so it can be done. But it is not really easy with

those rubber gloves to get some of the smaller. ( Ex.14.7- 15.0) That is the essence of the bill in regard with regard to it. They cleaned it up considerably and that is why so long. I guess some of that was at my insistence to make sure we knew what they were really doing and they corrected that one word that we did not agree with the information they brought down to us.

SENATOR WANZEK: Can you tell which word that is?

REP. LLOYD: A word in the original bill? If certified, did not agree. They had to take out the word "if certified". That's the word that did not agree with what they were trying to make it do. That is the way that I read it and they did change that. If you are a commercial applicator you are certified. There is no "if" certified, you just are or else your not a commercial applicator. That was my point.

SENATOR ONSTAD: So when we took that out, that's kind of where it led to the whole definition process commercial custom. It went to all of these other sections to clean that up.

SENATOR URLACHER: I have to thank them for clarifying that thought. Are we creating something here that isn't broke? Have we had a big problem out there and were just...

SENATOR WANZEK: As I recall Senator Urlacher even in the Senate and Jeff Olson from the Department of Agriculture saying that the problem and Rep. Lloyd referred to it, is a lot of the applicators who are in town doing lawn work and maybe there are some situations that aren't really dangerous, but the perception is a lot (refer to previous example) This needs to be monitored a little bit, and I think that is where it might have been broken.

REP. LLOYD: The only thing that concerns me I guess is that I think some of the essence of the change was also because of majority, not just 51% but probably 75-80% of the pesticides applied in the state are general use pesticides. And I think there might even be a little bit of pressure from the EPA to make sure that everybody that's applying the pesticide is certified concept. I can't say

that with actual fact, but the things that have been going on lead me to believe that. I know that means stuff like Roundup, 2-4D and MCPA and all those are so available use, with this bill we're going to require that anybody who applies has to be certified.

No, a private applicator would not have to. The real essence is that if your called a custom applicator then you must be certified whether you apply general use or restricted use.

SENATOR WANZEK: A certified applicator means on page one any individual certified under this chapter has authorized the use any pesticides has to be certified but your saying when you look at the definition of private applicator needs a certified applicator who uses or supervises the use of any pesticide that is classified or restricted use. Jeff, can you help me there? I am not saying they shouldn't be certified and it appears to me that we're saying that all applicators whether your custom or private you might need to be certified?

JEFF OLSON: Program manager, Front Industries division for the Department of Agriculture. What this bill is changing is basically one thing. And that including commercial applicators that apply general use pesticides, to require them to be certified. The private applicators aren't going to change at all. If you use restricted use pesticides now, your required to be certified. If you only use general use pesticides your not required to be certified and that's going to stay the same. The only thing we're including in the certified applicator is a commercial applicator who only uses general use pesticides. That's the definition of private applicator holds out the outline what type of private applicator needs to be certified. So if its not stated in there, for this case the definition does specifically include restricted use pesticide. That means you need to be certified to apply a restrictive use pesticide, but you don't need to be certified for a general use like your 2-4D and Roundup.

SENATOR WANZEK: Why did we overstrike the language there and it just looks like the same language is put into a different area that.

JEFF OLSON: In consultation with Paul Jamalus our Attorney General, Assistant Attorney General for the Agriculture Department, and working with the Legislative Council to get things grouped in a proper locations and proper meanings, when we wanted to pull private applicator out specifically on its own term in the definition instead of underneath "a certified", so it wouldn't get caught under declining of certification for general use. So if we pull that out on its own and then put a specific definition for private applicator then that pulls it out of the requirement for certification for general use. We spell it out specifically on what a private applicator needs to be certified for.

SENATOR WANZEK: In other words by saying private applicator means a certified applicator needs a supervisor use of any pesticides as classified for restricted use it is implied that if there just using it for general use your not, you don't need to be a private certified applicator.

JEFF OLSON: That's correct. You don't need to be certified if your just using general.

SENATOR WANZEK: So that doesn't change the law.

JEFF OLSON: That doesn't change anything.

SENATOR WANZEK: We're just doing what we did in the Senate but we're just cleaning it all the way through the whole chapter?

JEFF OLSON: That's right Mr. Chairman. There was sections of the chapter that got caught, that I missed, initially, after it had already gotten through this committee the first time and I needed changes so we added them on to the amendments on the House side to get them up. The Legislative Council went through this and cleaned it up wordage wise, politically correct statements and stuff so that kind of increased the length of this particular amendment also.

REP. WRANGHAM: Maybe, I don't know who can help me with this, but what I understood when we had it in committee I am not finding now. The lawn service in Bismarck, ND typically sprays yards and trees and things like that, now he would be classified a commercial or a custom applicator. Now, we understood that in committee that the people that work for him who are actually out applying the chemical would not have to be certified.

JEFF OLSON: Rep. Wrangham, that is correct. There is another section of law that pulls that particular out as long as he is supervised by a person who is certified.

REP. WRANGHAM: Could you help me with what section that is?

JEFF OLSON: Yes, its here, I saw it.

REP. WRANGHAM: Well I see it here for private applicators, but not for others.

JEFF OLSON: I don't know if its in the.

SENATOR WANZEK: Page 7, section 4. That's where your commercial applicator specification is listed.

JEFF OLSON: That isn't full that doesn't have that particular section in it that always needed corrections that needed to be in that particular section. But I can find that for you, I don't have it with me, Rep. Wrangham.

REP. WRANGHAM: I thought that we we're assured of that and now I see that is kind of page 10 at the top, its specified their in that type of language but it is only for private applicators. So I guess I do want to be reassured that is the way it is.

SENATOR WANZEK: I would say that whole section would apply.

REP. WRANGHAM: Under the direct supervision of a private applicator. It looks specific to me.

SENATOR WANZEK: If I as a private applicator, I'm farming and applying chemicals of my

own and I have somebody hired and he is working under my supervision, that he can apply restrictive use chemicals, without being certified, as long as I am certified.

JEFF OLSON: And that is the same way we enforce it on the commercial side also. If their employee isn't certified, they have to be under the direct supervision of somebody who is certified.

REP. WRANGHAM: But then I am still responsible if that hired help goofs up and kills the neighbors juneberries or something. I am responsible. Not him.

JEFF OLSON: That's correct.

REP. ONSTAD: Along with that I think, somewhere in that part the label and so on, if your the boss you say, and your suppose to inform those people of their requirements and responsibilities. I am liable for their safety as well.

JEFF OLSON: That's right. The supervisor is responsible for making sure that the entire label directions are followed if that person is applying a pesticide underneath his decision. That is under the 5th regulation.

SENATOR WANZEK: In title 4: 35- 13 unlawful acts, grounds for denial, suspension or revocation. We still left #13" knowingly made false statements during an inspection or an investigation". Will you refresh my memory why we did that again? Was there something during the investigation where somebody I think you kind of laid it out. I remember you laid it out in the initial hearing, but I am trying to remember why that is important.

JEFF OLSON: Which exemption, the unlawful act of pesticides #15?

SENATOR WANZEK: #13. Where we add the words " or investigation".

JEFF OLSON: Right now, if somebody knowingly makes a false statement during an investigation and the investigation is when we've had a complaint filed against that particular

applicator. There is no recourse for us to go after them for lying to us. They could give us some false information and there is nothing holding them to give us the truth basically. In a inspection and they make a false statement then we have grounds to go after them on that aspect. But we don't have it if we do an investigation brought on by a complaint.

SENATOR WANZEK: Do you still have to prove they knew they were making a false statement?

JEFF OLSON: When we do an investigation only up the receipt of a complaint. Once we receive a complaint then we have to do a thorough investigation to find out if that applicator actually violated the pesticide laws.

SENATOR WANZEK: If you go back and you found out it was false information do you still have to prove they knew they made false information? Do you know what I am saying?

JEFF OLSON: They knowingly made it, you get the false information and you'd almost have to prove by that word I would think that they knew it was false.

SENATOR WANZEK: Prove it?

JEFF OLSON: We would have to prove it. Instances of two sets of books found where they kept the record but then once they knew they had a complaint filed against them and had given us a different sheet that didn't match up, what the original was. Once we got into a deeper inspection we found the record did end up in a different file. That's why we can prove that they knowingly made a false statement. We aren't going to prosecute or condemn anybody if they inadvertently mixed up, we can't prove they knowingly did it. Then it just is a mistake. We only have a recourse when we go into an inspection. Inspections are just random acts of going in and checking records.

REP. LLOYD: What do you call a private applicator who applies only general use pesticides.

JEFF OLSON: A farmer. Basically an applicator, there is no name for them. They apply general use pesticide.

REP. ONSTAD: And if he is getting paid though? He is getting paid to do that.

JEFF OLSON: If he is getting paid as an employee?

REP. ONSTAD: If you take what Rep. Lloyd had mentioned and add to his question, is he getting paid there?

JEFF OLSON: If he has a business that and that he can get paid for his service of applying a pesticide then he will be classified either as a commercial or custom applicator and would need to be certified. They don't want to get confused.

REP. LLOYD: If one of my neighbors sprays one of my fields for me, 40 acres with a general use and I pay him for that, he is still is a farmer?

JEFF OLSON: There is a section that does pull, I think it is in the definition of a private applicator where you can do services for a neighbor for returned services or for agreement with.

SENATOR WANZEK. Now as I read the language I am trying to understand what's the difference between a commercial applicator and a custom applicator?

JEFF OLSON: Previously, a private applicator wasn't included in the act but was included in our regulations, our administrative rules. And it took me awhile to figure out what the differences in the definition were. Basically the definitions here are the same in the statute, in the administrative rules there is a slight difference and I am not coming up with that difference right now.

SENATOR WANZEK: So you need both definitions though because of the rules?

JEFF OLSON: Right.

SENATOR WANZEK: Why don't we don't just cleanup and call it custom or private?

JEFF OLSON: The main purpose is because of the new section we put in included the "custom" so we could catch the custom applicators that were outlined in our administrative rules. One of the problems I had with that is that I had no statute definition for custom applicator. Easier to include it cause there is references to both custom and commercial applicators out in the business world.

REP. WRANGHAM: This is the first time I've seen legislation that was crafted to match administrative rules. That is a milestone in my career. I am going to remember that the next time we have an administrative rules hearing.

JEFF OLSON: I knew this and I got caught, my first time going through this legislative process and I got caught on not making sure I had all my ducks in a row before all the bills came out.

REP. WRANGHAM: I would like us to delay action until we check this out further, because when I voted on this bill in committee and so forth, I know their we people who were very concerned at and we discussed it in committee that X lawn service who has a turnover of college kids working for him is not going to be able certify everybody that is going to go out and applies for him. I was assured he wouldn't have to. Now if there is another section of law, I just want to be sure I am not selling the commercial applicators who do want to work down the river and give more information.

SENATOR WANZEK: As chairman that would be my request as we're talking.

Conference committee closed.

April 18, 2001

SENATOR WANZEK called the Conference Committee to order. All committee members present.

SENATOR WANZEK; Since we last met we talked a lot about some of the definitions. Jeff Olson has presented me with some proposed amendments to maybe clean that up. Rep. Lloyd I see you have some amendments that you are handing out right now.

REP. LLOYD; I will let Rep. Wrangham distribute them and then discuss them because it was his observation that caught some of the thing we thought were in there and you also discussed one of the aspects which was the word custom operator. I will let Rep. Wrangham discuss it.

REP. WRANGHAM; The main concerns I had were answered with the amendment that now appears on Page 7. Number one is the additional language under 4-35-19. This was added so that the commercial applicators who do work mostly in the cities wouldn't have to be certified for applying general use pesticides. In other words they could hire someone and as long as they gave proper instruction that person could go out and apply the general use pesticides as long as the person who is certified was available to answer any questions they might have. Maybe Jeff Olson could address some of those clarifications.

SENATOR WANZEK; Jeff, are you familiar with the amendments that Rep. Lloyd handed out?

JEFF OLSON; Program Manager Plant Industries Division, ND Dept. Of Ag. Rep. Lloyd passed out the complete amendment with the recommended changes that I passed out to each member of the conference committee on Monday. What I have proposed is to strick any reference to custom applicator because that is taken care of with the change in definition in commercial applicator and I will change my administrative rules as such to delete that portion out of my administrative rule sections. The other recommendation that I made was to insert the one exemption that Rep. Wrangham just spoke about to exempt only people applying general use pesticides under the direct supervision of certified applicator. If the person is going to apply restricted use pesticide that person would have to be certified. This is only going to exempt

people who are applying general use pesticides under the supervision of a certified commercial applicator. I think that should answer the questions as far as trying to clean up the language and answer any of the question that came up last week. Mr. Chairman do you want me to go through all of the changes on this or just the ones that are spelled out differently in these amendments?

SENATOR WANZEK; I don't know how the rest of the committee feels. Why is private applicator is change and added more towards the end. Wouldn't it be more appropriate to put the private applicator definition up closer to the commercial applicator so you can compare them? Would that be a problem?

JEFF OLSON; In the current law private applicator does appear underneath commercial applicator but with the change of definition of commercial applicator to include all pesticides we didn't want private applicator to be caught underneath that same definition. That would require any private applicator who applies a general use pesticide to be certified. By pulling that out on it own then we can separate out the restricted use and general use pesticides applied by the private applicator. The only thing this bill changes in the current law is that it requires any commercial applicator whether they are applying restricted use or commercial to be certified. Current law states that only applicators have to be certified for commercial. By changing our definition of commercial, private did not fit under there and structure is in alphabetical order that is why private ended up on Page 3.

REP. ONSTAD; If you are being paid to apply a chemical whether it is restricted use or non restricted use, if you are being paid to do the application either you or your supervisor are certified, is that correct?

JEFF OLSON; That is correct. What that does is require one layer of education for applying pesticides and that is what trying to do. We are trying to improve the educational purposes out

there on applying these pesticides. If we have a supervisor that is certified then we are hoping that that supervisor instructs his workers in the proper handling and use of that pesticide. We are not putting an economic burden on those commercial applicator by requiring everyone to be certified will exempt them and we are hoping that those people are educated by the owner or supervisors on proper handling technique and application of pesticides.

REP. LLOYD; Could we have Jeff remark in regard to farmers specifically and how they are treated.

JEFF OLSON; The way the law is stated right now and this new law isn't going to effect private applicators, farmers are considers private applicators unless they have a side business of commercial. Then they would fall under commercial application. They go in and take the certification test under the appropriate category that fits their needs and purposes and with that certification farmers, are with the exemption number two, are allowed to hire somebody to apply that restricted use pesticide under their direct supervision. This doesn't change anything for the farmers or any private applicator.

REP. WRANGHAM; To follow up on Senator Wanzek's question I agree it would be handier to have that up there. Jeff would you have a problem with moving the private applicator definition to #7 and renumbered accordingly?

JEFF OLSON; We don't have a problem with that I think Legislative Council puts things in alphabetical order that is why private applicator ended up farther down because now it is on it's own instead of been a subgroup of another definition.

SENATOR WANZEK; As I see it we are to the point where we have two kinds of certified applicators, a commercial applicator and a private applicator. In the definition we are talking about a certified applicator and then we should almost have a subset of those two to make it clear

that these are the kinds of applicators that we are talking about. We have kinds commercial and private.

JEFF OLSON; In private you would have to specify that private applicator that applies restricted use pesticides. You could put those as a subset.

SENATOR WANZEK; I am just trying to have it simpler.

JEFF OLSON; I think that is something that could be added to the definition of certified applicator.

SENATOR WANZEK; It really wouldn't be changing the substance of the bill.

JEFF OLSON; No it wouldn't. We wouldn't have a problem with it.

SENATOR WANZEK; As I was reading the definition of private applicator, which has not changed, it says if applied without compensation other than trading a personal services between producers of agricultural commodities.

JEFF OLSON; That is an exemption as far as being considered commercial.

SENATOR WANZEK; Jeff had gone over the changes that were mostly directed towards eliminating the confusion over custom and commercial applicators. They appear to be the identical verbiage as far as the definition. So we will just have a commercial applicator, not a custom and commercial applicator anymore. We'll have a private applicator certification and also adding the language to make it clear that workers working under a commercial applicator do not necessarily need to be commercially certified as long as they are not applying restricted use chemicals.

JEFF OLSON; As long as they are working under the supervision of a certified applicator. A lot of the other language in this amendment was housekeeping done by the Legislative Council to make thing more politically correct.

SENATOR WANZEK; As a chairman I do not detect any confrontational issues, seems like most everybody is in agreement. The only thing I would like to do is possibly have one more meeting. I don't want to rush this. If there are any other issues I hope that we can bring them out now so we can address them without having to come back time after time.

SENATOR NICHOLS; Are you going to want to have Legislative Council redo these with the private applicator definition put in right next to commercial?

SENATOR WANZEK; I would like to ask them if that makes sense or if that can be done, unless the committee feels strongly otherwise.

REP. LLOYD; I had Anita from Legislative Council do these.

SENATOR WANZEK; I just think it helps make it clearer what we are talking about. There are two kinds of certified applicators.

JEFF OLSON; If any of the committee members have question on the bill please feel free to give me a call and I will come down to where ever you are at and try to explain it.

REP. LLOYD; As I understand we'll have #5 as the certified applicator, 5a is a commercial applicator, 5b is a private applicator and then #7 will become #6. Is that correct?

SENATOR WANZEK; That is my thinking.

JEFF OLSON; I am not sure, we would have to talk to the Legislative Council and see if by moving private applicator underneath certified if that is going to restrict what we intend for the private applicator.

SENATOR WANZEK; Although private applicator was there before?

JEFF OLSON; But now we have changed the definition of certified applicator and removed the reference of restricted use to include all pesticides but if you want to add to the definition of certified you could but a short sentence in. My understanding is that if I put private applicator

under certified it is going to have to follow what certified is defined as and be included in that and that would take out our intent on the private applicator.

REP. LLOYD; My concern is that #26 will still have to be in there in some form because you have to put it in there to cover the part that you can't include up under #5.

SENATOR WANZEK; It is possible that they won't change at all. It might confuse us that a private applicator will have to have a license regardless of general use or restricted use chemicals being applied.

JEFF OLSON; After the term means you could say certified applicator means a commercial applicator or private applicator who applies restricted use pesticides. Specifically spell out the two applicator in that sentence. That is one alternative.

SENATOR WANZEK; I think we have all the issue this committee is going to deal with in the amendment. I would just like to take more time and read through these.

SENATOR WANZEK closed the Conference Committee.

April 19, 2001

Senator Wanzek called the Conference Committee to order. All committee members present.

SENATOR WANZEK; Rep. Lloyd, after the meeting you went and visited with Anita then you and I visited a little bit. There was a thought that struck me about certified applicators and the definition change and what I want to make it simple that we have 2 kinds of certified applicators, a commercial applicator and a private applicator. We had changed the definition of certified applicator to be, any individual certified under this chapter as authorized to use any pesticide covered by the applicator certification is the way it was worded. What I had Anita do is was say certified applicator means any individual who is certified under this chapter. And the mistake is, if you look at the language up on #3 under applicator that added language, the term includes a

commercial applicator and a private applicator should follow the definition of certified applicator rather than where it is at. Because an applicator could be a farmer. We don't want that language up there because a commercial applicator and a private applicator are also certified applicators. An applicator as I understand could be a farmer who is not certified who is applying just general use pesticides and they would not be considered a certified applicator. We want to make sure we add that language. It should be down under certified applicator and Anita said we could make that part of our motion and she would correct it when we do the final version and I will make sure to look for it before I sign it. Does everybody understand that?

SENATOR NICHOLS; Commercial applicator and private applicator will be a part of or follow certified applicator then with this change?

SENATOR WANZEK; I thought it should but Anita thought it should still stay in alphabetical order. She said that it has the same effect. It is clear to me now that we have 2 kinds of certified applicators, a commercial applicator and a private applicator. A plain applicator could be someone who isn't certified. All the other amendments should have remained the same as what we had presented to us yesterday if you want to take a moment and look over them and make sure that nothing was added or left out. I think that in Section 7 was Rep. Wrangham's concern where we still have the language under the certification requirements. I think that was left the way we read it yesterday.

REP. LLOYD; I have a real concern with the entire section. I think we need to rework it at some point and time. I think it could be narrowed down to less than 4 page. There is some additional language that obviously needs to be cleared in terms of technicalities. We need to clean it up sometime but I don't think we need to do it now.

SENATOR WANZEK; Rep. Lloyd, in visiting with Anita we came to the same conclusion. I don't know that we want to tackle that now. I agree with you and I think just by a couple of these changes at least makes more clear as far as what kind of certified license applicators would have in the code now.

REP. LLOYD; As I would read #5 and it says certified applicator means any applicator who is certified under this chapter. The term includes commercial applicator and a private applicator?

SENATOR WANZEK; Right.

REP. ONSTAD; Do janitors of schools have to be certified to spray the lawns and inside the school?

JEFF OLSON; The question is does a janitors or groundskeepers who is applying a pesticide in the line of work need to be certified. Yes they would have to but most of them are already certified, especially for restricted pesticides. For general use pesticide I am going to say no they do not have to because they not doing it for a business for return of income but they are doing restricted use even though they work for someone else whether it is government entity or its a private entity then they would have to be certified.

SENATOR WANZEK; Could you repeat that last sentence?

JEFF OLSON; If they are applying restricted use then they would have to be certified.

SENATOR WANZEK; Have a general applicators license?

JEFF OLSON; Correct.

SENATOR WANZEK; They don't need a commercial applicators license?

JEFF OLSON; They are not doing it for money.

SENATOR WANZEK; What about a groundskeeper at a golf course?

JEFF OLSON; He wouldn't have to but generally they already have somebody who is certified so he would be under the supervision of a certified applicator. Most of these already have at least one person who is certified on staff because there are occasions where they use restricted use pesticide. They would fall under the supervision definition of either a commercial or private applicator.

REP. WRANGHAM; As I read private applicator the only person who can qualify as a private applicator is someone who is engaged in producing an agricultural commodity, is that not correct?

JEFF OLSON; That is correct the way I read that.

REP. WRANGHAM; So then a janitor or someone at a school can not be a private applicator?

JEFF OLSON; Correct my mistake.

REP. LLOYD; If he is a commercial applicator then he has to be certified and I rather doubt that they are.

JEFF OLSON; I wish I had brought the whole section down because I thought another part of exemption that omitted government type employees.

SENATOR WANZEK; I think it underscores again what Rep. Lloyd is saying. It would be nice if we had a lot more time.

JEFF OLSON; We had a committee look at this, made up a wide variety of applicators and they didn't look at it more so as cleaning up the language as Rep. Lloyd is referring to here but more on substance type issues.

SENATOR WANZEK; Private applicator, if you took out the language to produce any agricultural commodity on property owned or rented if it just said a certified applicator who uses or supervise the use of any pesticide that is classified for restricted use if applied without

compensation other than trading. Then we could be opening it up a lot there too if we change too much. You say there is another section in the rules that deals that?

JEFF OLSON; I remember reading something where government entities on the federal land there are certain situations where they aren't required to be certified even though we try to they are exempt from state law but fall under the federal guidelines. I don't recall exactly what that would be. In the next 2 years my division will go through this particular section of law and work with Legislative Council to have something ready for the next session to condense thing and make the more clear to everybody.

REP. ONSTAD; I think it is a good idea if they aren't they should be well aware of what they are doing and that is the whole purpose of being certified, to have a real understanding of what you are doing. I hope it covers those people because I think it is important.

JEFF OLSON; Through EPA the state is involved in integrated pest management in schools and public places. They have a new program they are working with and we are in conjunction with that trying to do more of a voluntary type education program to those people who are responsible. EPA on a national level has also recognized this for the department and schools in the large cities and communities across the country. We are participating in that. Jerry Thompson is my representative and we are working with the public school system and other public entities to voluntarily get these people educated.

REP. LLOYD; Jeff, do you know anywhere in the bill where it specifies what a public operator does other than on #28?

JEFF OLSON; Not off the top of my head. I would have to go back and read through this.

REP. LLOYD; That is an example, that is the clean up that we have to do eventually.

JEFF OLSON; Looking at these amendments, they don't include the whole chapter.

SENATOR WANZEK; I agree. I think that as far as recognizing importance of those other applicators I think the majority of the applicator are in the agricultural environment and to that point we have clarified what it looks like to me, what a commercial applicator and a private applicator are.

JEFF OLSON; Correct.

SENATOR WANZEK; Is there any other discussion on the amendments or any question of Jeff?

If we were to move these amendments we would want to make it clear that that new language underscored in Section 1 Subsection 3 is meant to be under certified applicator definition not applicator.

SENATOR NICHOLS; I move a DO PASS on the amendments 18194.0207 to SB 2167 with the correction.

REP. LLOYD; I second that motion.

SENATOR WANZEK; Is there any further discussion? The amendments have the motion that the House recede from it's amendments and we further amend.

Roll call vote: 6 Yeas, 0 No, 0 Absent and Not Voting.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2167

That the House recede from its amendments as printed on pages 938-944 of the Senate Journal and pages 1003-1009 of the House Journal and that Engrossed Senate Bill No. 2167 be amended as follows: <sup>9</sup>

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 4-35-05, 4-35-06, 4-35-08, 4-35-09, 4-35-13, 4-35-15, and 4-35-19, and subsection 4 of section 4-35.1-01 of the North Dakota Century Code, relating to pesticide applicators.

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

**SECTION 1. AMENDMENT.** Section 4-35-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

1. "Animal" means all vertebrate and invertebrate species, including, ~~but not limited to, man~~ humans and other mammals, birds, fish, and shellfish.
2. "Antidote" means a practical treatment in case of poisoning and includes first aid treatment.
- ~~2-4~~ 3. "Applicator" means any person who applies a pesticide to land.
- ~~3~~ 4. "Beneficial insects" means those insects ~~which~~ that, during their life cycle, are effective pollinators of plants, are parasites, or predators of pests.
- ~~4-a~~ 5. "Certified applicator" means any individual who is certified under this chapter ~~as authorized to use any restricted use pesticide covered by the applicator's certification.~~ The term includes a commercial applicator and a private applicator.
  - ~~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 the applicator or the applicator's employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.~~
- ~~6~~ 6. "Commercial applicator" means a certified applicator, ~~whether or not the applicator is a private applicator with respect to some uses,~~ who uses any pesticide ~~which is classified for restricted use,~~ for any purpose or on any property, other than as provided for by ~~subsection b~~ a private applicator.
- ~~5~~ 7. "Dealer" means any person who sells a pesticide to an end user.
- ~~6~~ 8. "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.

- ~~7~~ 9. "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissue.
- ~~8~~ 10. "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~~ human and other than bacteria, virus, or other micro-organism on or in living ~~man~~ humans or other living animals, but not including equipment used for the application of pesticides when sold separately therefrom.
- ~~9~~ 11. "Distribute" means to offer for sale, hold for sale, sell, barter, or supply pesticides in this state.
- ~~10~~ 12. "Environment" includes water, air, land, and all plants and ~~man~~ humans and other animals living therein, and the interrelationships which exist among these.
- ~~11~~ 13. "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~~. The term does 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.
- ~~12~~ 14. "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~~ humans or other living animals, and except those on or in processed food, beverages, or pharmaceuticals.
- ~~13~~ 15. "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.
- ~~14~~ 16. "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.
- ~~15~~ 17. "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 and human services; state agricultural colleges; and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.
- ~~16~~ 18. "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.
- ~~17~~ 19. "Mixture" means a diluted pesticide combination.

- ~~18.~~ 20. "Nematode" means invertebrate animals of the phylum nemathelminthes, and class nematoda, i.e., unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts, may also be called nemas or eelworms.
- ~~19.~~ 21. "Person" means any individual, partnership, association, fiduciary, corporation, limited liability company, or any organized group of persons, whether or not incorporated.
- ~~20.~~ 22. "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 micro-organism, except viruses, bacteria, or other micro-organisms on or in living ~~man~~ humans or other living animals which are annoying or otherwise injurious or harmful to agriculture, health, and the environment.
- ~~21.~~ 23. "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.
- ~~22.~~ 24. "Pesticide dealer" means any person who distributes restricted use pesticides.
- ~~23.~~ 25. "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 does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.
26. "Private applicator" means a certified applicator who uses or supervises the use of any pesticide that is classified for restricted use, to produce any agricultural commodity on property owned or rented by the applicator or the applicator's employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.
- ~~24.~~ 27. "Protect health and the environment" means protection against any unreasonable adverse effects on public health and the environment.
- ~~25.~~ 28. "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.
- ~~26.~~ 29. "Restricted use pesticide" means any pesticide formulation which is classified for restricted use by the board.
- ~~27.~~ 30. "Rinsate" means a diluted mixture of pesticide obtained from triple rinsing pesticide containers or from rinsing the inside and outside of spray equipment.
- ~~28.~~ 31. ~~"Snails or slugs" include all~~ "Snail" or "slug" includes every harmful mollusk.

- ~~29-~~ 32. "Tank mix" means any pesticidal formulation used alone or in combination with another pesticide and mixed with a liquid carrier prior to application.
- ~~30-~~ 33. "Unreasonable adverse effects on the environment" means any unreasonable risk to ~~man~~ humans or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.
- ~~31-~~ 34. "Weed" means any plant which grows where not wanted.
- ~~32-~~ 35. "Wildlife" means all living things that are neither human, domesticated, nor, as defined in this chapter, pests, including, ~~but not limited to,~~ mammals, birds, and aquatic life.

**SECTION 2. AMENDMENT.** Section 4-35-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**4-35-06. Pesticide control board to administer chapter and adopt regulations.**

1. a. The pesticide control board shall administer ~~the provisions of this chapter and has authority to issue regulations in conformance with provisions of~~ may adopt rules in accordance with chapter 28-32 to carry out the provisions of implement this chapter. ~~Such regulations~~ The rules 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 chapter, such regulations~~ The rules may relate to the time, place, manner, methods, materials, and amounts and concentrations, in connection with the application of the pesticide, and may restrict or prohibit use of pesticides in designated areas during specified periods of time and shall encompass all reasonable factors which the board deems necessary to prevent damage or injury by drift or misapplication to:
    - ~~a-~~ (1) Plants, including forage plants, on adjacent or nearby lands.
    - ~~b-~~ (2) Wildlife in the adjoining or nearby areas.
    - ~~c-~~ (3) Fish and other aquatic life in waters in proximity to the area to be treated.
    - ~~d-~~ (4) Persons, animals, or beneficial insects.
  - b. ~~In issuing such regulations~~ adopting rules, 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 rule determine state restricted use pesticides for the state or designated areas within the state.
  3. The board, in adopting rules under this chapter, shall prescribe standards and requirements for the certification of applicators of ~~restricted use~~ pesticides. These standards and requirements must 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~~ Rules adopted under this chapter may 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~~ may 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 chapter, including, but not limited to, regulations providing~~ Rules to implement this chapter may provide for:
  - a. The collection, examination, and reporting of samples of pesticides.
  - b. The safe handling, transportation, storage, display, distribution, and disposal of pesticides and their containers.
7. ~~The board may by regulation identify "pests" under the guidelines of the definition of the term "pest" contained within~~ The identification of pests under this chapter when it the board finds particular organisms to be annoying or otherwise injurious or harmful to agriculture, health, and the environment.

**SECTION 3. AMENDMENT.** Section 4-35-08 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**4-35-08. Classification of certificates.** The board may classify commercial certificates to be issued under this chapter. ~~Such~~ The classifications may include pest control operators, wood treaters, 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 applicator to apply ~~restricted-use~~ pesticides or to the use of ~~restricted-use~~ pesticides to control insects and plant diseases, rodents, or weeds. Each classification of certification may be subject to separate testing procedures and training requirements; provided that a person may be required to pay an additional fee if ~~such~~ the person desires to be certified in one or more of the classifications provided for by the board under ~~the authority of~~ this section.

**SECTION 4. AMENDMENT.** Section 4-35-09 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**4-35-09. Commercial applicator's certification.**

1. ~~No person who would be a~~ A commercial applicator if certified may not purchase or use a ~~restricted-use~~ pesticide without first complying with the certification standards and requirements of this chapter, or other restrictions as may be determined by the board.
2. An individual may be certified as a commercial applicator within a classification if the individual successfully completes an examination for the classification as prescribed by the board and administered by the North Dakota state university extension service or the service's designee. An application for certification must be on a form prescribed by the board and accompanied by a reasonable examination fee set by the board.
3. If the North Dakota state university extension service, or its designee, finds the applicant qualified to apply pesticides in the classifications he for which the applicant has applied for, after examination as the board requires, and the applicant meets all other requirements of this chapter, the North Dakota

state university extension service shall issue a commercial applicator's certificate limited to the classifications in which the applicant is qualified in.

4. If certification is not to be issued as applied for, the North Dakota state university extension service, or its designee, shall inform the applicant in writing of the reasons for not issuing the certification. Individuals certified pursuant to this section are deemed certified commercial applicators for the use of ~~restricted-use~~ pesticides.

**SECTION 5. AMENDMENT.** Section 4-35-13 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**4-35-13. Application of act to governmental entities.** All ~~federal agencies, state agencies, municipal corporations, and any other~~ governmental agencies, or and public utilities, are subject to this chapter and rules adopted ~~thereunder concerning the application of restricted-use pesticides to implement this chapter.~~

**SECTION 6. AMENDMENT.** Section 4-35-15 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

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 that person 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 chapter, the rules adopted hereunder to implement this chapter, or of any~~ lawful order of the commissioner.
7. Refused or neglected to keep and maintain the records required by this chapter, 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 4-35-17.
10. Used fraud or misrepresentation in making an application for, or for renewal of, certification.
11. Refused or neglected to comply with any limitations or restrictions on or in a duly issued certification.

12. Aided or abetted a certified or an uncertified person to evade the provisions of this chapter, conspired with such a certified or an uncertified person to evade the provisions of this chapter, or allowed the person's certification to be used by another person.
13. Knowingly made false statements during or after an inspection or an investigation.
14. Impersonated ~~any~~ a federal, state, county, or city inspector or official.
15. Distributed any restricted use pesticide to any person who is required by law or rule to be certified to use or purchase ~~such~~ the restricted use pesticide unless ~~such~~ the person or ~~his~~ agent to whom distribution is made is certified to use or purchase that kind of restricted use pesticide.
16. Bought, used, or supervised the use of any ~~restricted-use~~ pesticide without first complying with the certification requirements of this chapter, unless otherwise exempted ~~therefrom~~.
17. Applied any economic poison ~~which~~ that is not registered pursuant to the ~~provisions of~~ chapter 19-18.

**SECTION 7. AMENDMENT.** Section 4-35-19 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

1. The certification requirements of this chapter do not apply to ~~any~~ a competent person applying general use pesticides that are not classified for restricted use under the direct supervision of a commercial applicator, unless the pesticide label requires that a certified applicator personally apply the pesticide. A pesticide is deemed to be applied under the direct supervision of a commercial applicator if the pesticide is applied by a competent person acting under the instruction and control of a certified applicator who is physically available if needed. The certified applicator need not be present when the pesticide is applied. Direct supervision with respect to applications using aircraft requires that the pilot of the aircraft be appropriately certified.
- 2- The ~~provisions~~ certification requirements of this chapter ~~relating to~~ certification requirements do not apply to a competent person applying restricted use pesticides under the direct supervision of a private applicator, unless the pesticide ~~labeling~~ label requires that a certified applicator personally ~~applies~~ apply the particular pesticide. A pesticide is ~~considered~~ deemed to be applied under the direct supervision of a private applicator if it is applied by a competent person acting under the ~~instructions~~ instruction and control of a private applicator who is available if and when needed, even though ~~such~~ the private applicator is not physically present at the time and place that the pesticide is applied.
- 3- 2. ~~Persons~~ The certification requirements of this chapter do not apply to any person conducting laboratory-type research using restricted use pesticides and doctors or to a doctor of medicine and doctors or a doctor of veterinary medicine applying pesticides as drugs a pesticide as a drug or as medication during the course of their normal practice.

**SECTION 8. AMENDMENT.** Subsection 4 of section 4-35.1-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. "Pesticide" means that term as defined by ~~subsection 21 of~~ in section 4-35-05."

Renumber accordingly

Date: 4-19-01  
 Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO. SB 2167

Senate Agriculture Committee

Subcommittee on \_\_\_\_\_

or

Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken House recedes from the House amendments + amend

Motion Made By Senator Nichols Seconded By Rep. Lloyd

Senators	Yes	No	Representatives	Yes	No
Senator Wanyek	✓		Rep. Lloyd	✓	
Senator Wretcher	✓		Rep. Wrengham	✓	
Senator Nichols	✓		Rep. Onstad	✓	

Total (Yes) 6 No 0

Absent 0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

**REPORT OF CONFERENCE COMMITTEE**

**SB 2167, as engrossed:** Your conference committee (Sens. Wanzek, Urlacher, Nichols and Reps. Lloyd, Wrangham, Onstad) recommends that the **HOUSE RECEDE** from the House amendments on SJ pages 938-944, adopt amendments as follows, and place SB 2167 on the Seventh order:

That the House recede from its amendments as printed on pages 938-944 of the Senate Journal and pages 1003-1009 of the House Journal and that Engrossed Senate Bill No. 2167 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 4-35-05, 4-35-06, 4-35-08, 4-35-09, 4-35-13, 4-35-15, 4-35-19, and subsection 4 of section 4-35.1-01 of the North Dakota Century Code, relating to pesticide applicators.

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

**SECTION 1. AMENDMENT.** Section 4-35-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

1. "Animal" means all vertebrate and invertebrate species, including, ~~but not limited to, man~~ humans and other mammals, birds, fish, and shellfish.
2. "Antidote" means a practical treatment in case of poisoning and includes first aid treatment.
- ~~2.4.~~ 3. "Applicator" means any person who applies a pesticide to land.
- ~~3.~~ 4. "Beneficial insects" means those insects ~~which that~~, during their life cycle, are effective pollinators of plants, are parasites, or predators of pests.
- ~~4. a.~~ 5. "Certified applicator" means any individual who is certified under this chapter ~~as authorized to use any restricted use pesticide covered by the applicator's certification. The term includes a commercial applicator and a private applicator.~~
- ~~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 the applicator or the applicator's employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.~~
- ~~6.~~ 6. "Commercial applicator" means a certified applicator, ~~whether or not the applicator is a private applicator with respect to some uses,~~ who uses any pesticide ~~which is classified for restricted use,~~ for any purpose or on any property, other than as provided for by ~~subsection b~~ a private applicator.
- ~~5.~~ 7. "Dealer" means any person who sells a pesticide to an end user.

- ~~6.~~ 8. "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.
- ~~7.~~ 9. "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissue.
- ~~8.~~ 10. "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~~ human and other than bacteria, virus, or other micro-organism on or in living ~~man~~ humans or other living animals, but not including equipment used for the application of pesticides when sold separately therefrom.
- ~~9.~~ 11. "Distribute" means to offer for sale, hold for sale, sell, barter, or supply pesticides in this state.
- ~~10.~~ 12. "Environment" includes water, air, land, and all plants and ~~man~~ humans and other animals living therein, and the interrelationships which exist among these.
- ~~11.~~ 13. "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~~. The term does 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.
- ~~12.~~ 14. "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~~ humans or other living animals, and except those on or in processed food, beverages, or pharmaceuticals.
- ~~13.~~ 15. "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.
- ~~14.~~ 16. "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.
- ~~15.~~ 17. "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 and human services; state agricultural colleges; and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

16. 18. "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.
17. 19. "Mixture" means a diluted pesticide combination.
18. 20. "Nematode" means invertebrate animals of the phylum nemathelminthes, and class nematoda, i.e., unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts, may also be called nemas or eelworms.
19. 21. "Person" means any individual, partnership, association, fiduciary, corporation, limited liability company, or any organized group of persons, whether or not incorporated.
20. 22. "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 micro-organism, except viruses, bacteria, or other micro-organisms on or in living ~~man~~ humans or other living animals which are annoying or otherwise injurious or harmful to agriculture, health, and the environment.
21. 23. "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.
22. 24. "Pesticide dealer" means any person who distributes restricted use pesticides.
23. 25. "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 does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.
26. 26. "Private applicator" means a certified applicator who uses or supervises the use of any pesticide that is classified for restricted use, to produce any agricultural commodity on property owned or rented by the applicator or the applicator's employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.
24. 27. "Protect health and the environment" means protection against any unreasonable adverse effects on public health and the environment.

25. ~~28.~~ 28. "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.
26. ~~29.~~ 29. "Restricted use pesticide" means any pesticide formulation which is classified for restricted use by the board.
27. ~~30.~~ 30. "Rinsate" means a diluted mixture of pesticide obtained from triple rinsing pesticide containers or from rinsing the inside and outside of spray equipment.
28. ~~31.~~ 31. ~~"Snails or slugs" include all~~ "Snail" or "slug" includes every harmful mollusk mollusk.
29. ~~32.~~ 32. "Tank mix" means any pesticidal formulation used alone or in combination with another pesticide and mixed with a liquid carrier prior to application.
30. ~~33.~~ 33. "Unreasonable adverse effects on the environment" means any unreasonable risk to ~~man~~ humans or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.
31. ~~34.~~ 34. "Weed" means any plant which grows where not wanted.
32. ~~35.~~ 35. "Wildlife" means all living things that are neither human, domesticated, nor, as defined in this chapter, pests, including, ~~but not limited to,~~ mammals, birds, and aquatic life.

**SECTION 2. AMENDMENT.** Section 4-35-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**4-35-06. Pesticide control board to administer chapter and adopt regulations.**

1. a. The pesticide control board shall administer ~~the provisions of this chapter and has authority to issue regulations in conformance with provisions of~~ may adopt rules in accordance with chapter 28-32 to carry out the provisions of ~~implement~~ this chapter. ~~Such regulations~~ The rules 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 chapter, such regulations~~ The rules may relate to the time, place, manner, methods, materials, and amounts and concentrations, in connection with the application of the pesticide, and may restrict or prohibit use of pesticides in designated areas during specified periods of time and shall encompass all reasonable factors which the board deems necessary to prevent damage or injury by drift or misapplication to:
- e. (1) Plants, including forage plants, on adjacent or nearby lands.
  - e. (2) Wildlife in the adjoining or nearby areas.
  - e. (3) Fish and other aquatic life in waters in proximity to the area to be treated.
  - e. (4) Persons, animals, or beneficial insects.



**SECTION 4. AMENDMENT.** Section 4-35-09 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**4-35-09. Commercial applicator's certification.**

1. ~~No person who would be a~~ A commercial applicator ~~if certified~~ may not purchase or use a ~~restricted-use~~ pesticide without first complying with the certification standards and requirements of this chapter, or other restrictions as may be determined by the board.
2. An individual may be certified as a commercial applicator within a classification if the individual successfully completes an examination for the classification as prescribed by the board and administered by the North Dakota state university extension service or the service's designee. An application for certification must be on a form prescribed by the board and accompanied by a reasonable examination fee set by the board.
3. If the North Dakota state university extension service, or its designee, finds the applicant qualified to apply pesticides in the classifications ~~he for which~~ the applicant has applied for, after examination as the board requires, and the applicant meets all other requirements of this chapter, the North Dakota state university extension service shall issue a commercial applicator's certificate limited to the classifications in which the applicant is qualified ~~in~~.
4. If certification is not to be issued as applied for, the North Dakota state university extension service, or its designee, shall inform the applicant in writing of the reasons for not issuing the certification. Individuals certified pursuant to this section are deemed certified commercial applicators for the use of ~~restricted-use~~ pesticides.

**SECTION 5. AMENDMENT.** Section 4-35-13 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**4-35-13. Application of act to governmental entities.** ~~All federal agencies, state agencies, municipal corporations, and any other governmental agencies, or and public utilities, are subject to this chapter and rules adopted thereunder concerning the application of restricted-use pesticides to implement this chapter.~~

**SECTION 6. AMENDMENT.** Section 4-35-15 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

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 that person 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 chapter, the rules adopted hereunder to implement this chapter, or of any~~ lawful order of the commissioner.
7. Refused or neglected to keep and maintain the records required by this chapter, 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 4-35-17.
10. Used fraud or misrepresentation in making an application for, or for renewal of, certification.
11. Refused or neglected to comply with any limitations or restrictions on or in a duly issued certification.
12. Aided or abetted a certified or an uncertified person to evade the provisions of this chapter, conspired with such a certified or an uncertified person to evade the provisions of this chapter, or allowed the person's certification to be used by another person.
13. Knowingly made false statements during or after an inspection or an investigation.
14. Impersonated ~~any~~ a federal, state, county, or city inspector or official.
15. Distributed any restricted use pesticide to any person who is required by law or rule to be certified to use or purchase ~~such~~ the restricted use pesticide unless ~~such~~ the person or ~~his~~ agent to whom distribution is made is certified to use or purchase that kind of restricted use pesticide.
16. Bought, used, or supervised the use of any ~~restricted use~~ pesticide without first complying with the certification requirements of this chapter, unless otherwise exempted ~~therefrom~~.
17. Applied any economic poison ~~which~~ that is not registered pursuant to the ~~provisions of~~ chapter 19-18.

**SECTION 7. AMENDMENT.** Section 4-35-19 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

1. The certification requirements of this chapter do not apply to ~~any~~ a competent person applying general use pesticides that are not classified for restricted use under the direct supervision of a commercial applicator, unless the pesticide label requires that a certified applicator personally apply the pesticide. A pesticide is deemed to be applied under the direct supervision of a commercial applicator if the pesticide is applied by a

competent person acting under the instruction and control of a certified applicator who is physically available if needed. The certified applicator need not be present when the pesticide is applied. Direct supervision with respect to applications using aircraft requires that the pilot of the aircraft be appropriately certified.

- ~~2.~~ 2. The ~~provisions~~ certification requirements of this chapter ~~relating to certification requirements~~ do not apply to a competent person applying restricted use pesticides under the direct supervision of a private applicator, unless the pesticide ~~labeling~~ label requires that a certified applicator personally ~~applies~~ apply the particular pesticide. A pesticide is ~~considered~~ deemed to be applied under the direct supervision of a private applicator if it is applied by a competent person acting under ~~the instructions~~ instruction and control of a private applicator who is available if and when needed, even though ~~such~~ the private applicator is not physically present at the time and place that the pesticide is applied.
- ~~3.~~ 2. ~~Persons~~ The certification requirements of this chapter do not apply to any person conducting laboratory-type research using restricted use pesticides ~~and deeters or to a doctor of medicine and deeters or a doctor of veterinary medicine applying pesticides as drugs~~ a pesticide as a drug or as medication during the course of their normal practice.

**SECTION 8. AMENDMENT.** Subsection 4 of section 4-35-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. "Pesticide" means that term as defined by ~~subsection 24 of~~ in section 4-35-05."

Renumber accordingly

Engrossed SB 2167 was placed on the Seventh order of business on the calendar.

REPORT OF CONFERENCE COMMITTEE  
(ACCEDE/RECEDE) - 420

07398

(Bill Number) SB 2167 (, as (re)engrossed):

Your Conference Committee

For the Senate:

For the House:

Sen. Wangek P  
Sen. Wrlacher P  
Sen. Nichols P

Rep. Lloyd P  
Rep. Wrangham P  
Rep. Onstad P

recommends that the (SENATE<sup>723/724</sup>/HOUSE<sup>725/726</sup>) (ACCEDE to) (RECEDE from)<sup>S724/H726 S723/H725</sup>  
the (Senate/House) amendments on (S)/HJ) page(s) 938 - 944

and place \_\_\_\_\_ on the Seventh order.  
727

, adopt (further) amendments as follows, and place  
\_\_\_\_\_ on the Seventh order:

having been unable to agree, recommends that the committee be discharged  
and a new committee be appointed. 690/515

((Re)Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the  
calendar.

DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_

CARRIER: \_\_\_\_\_

LC NO. \_\_\_\_\_ of amendment

LC NO. \_\_\_\_\_ of engrossment

Emergency clause added or deleted \_\_\_\_\_

Statement of purpose of amendment \_\_\_\_\_

(1) LC (2) LC (3) DESK (4) COMM.

2001 TESTIMONY

SB 2167

COMMISSIONER OF AGRICULTURE  
ROGER JOHNSON



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DEPARTMENT OF AGRICULTURE  
State of North Dakota  
600 E. Boulevard Ave. Dept. 602  
Bismarck, ND 58505-0020

**NORTH DAKOTA DEPARTMENT OF AGRICULTURE  
LEGISLATIVE TESTIMONY**

Testimony of Jeff Olson, Program Manager  
Plant Industries  
North Dakota Department of Agriculture  
Senate Bill 2167  
January 11, 2001  
9:30 a.m.  
Senate Agriculture Committee  
Roosevelt Room

Chairman Wanzek and members of the committee. My name is Jeff Olson. I am the Program Manager for the Plant Industries Area in the Department of Agriculture. I am here to testify in support of SB 2167.

In 2000, the Department of Agriculture formed a Pesticide Law Review Committee consisting of representatives of retail agricultural dealers, agricultural commercial applicators, farmers, aerial applicators, NDSU extension, the North Dakota Agricultural Association, the Ornamental and Turf Association and the Department of Agriculture. Senate Bill 2167 is the result of the committee's work.

The bill request changes to subsection 1 of section 4-35-09 and subsection 13 of section 4-35-15 of the 1999 Supplement to the North Dakota Century Code. At the end of my testimony, I will be presenting an amendment to SB 2167 that would make another change to subsection 1 of section 4-35-09.

Section 1 of the bill requires that persons making pesticide application recommendations become certified. The committee believes anyone who makes pesticide recommendations (crop consultants) should be certified. The persons making the recommendations need to be as knowledgeable or more knowledgeable than the person to whom they are making the recommendations. The committee believes that the certification process would make these people more aware of the hazards of pesticide recommendations.

Section 2 of the bill is the addition to subsection 13 of section 4-35-15.

The Department of Agriculture Pesticide Division investigates approximately 50-60 misapplication complaints each year. The law already gives the Department the ability to take action against someone who provides false information during an inspection. This change gives us with the ability to take action against someone who provides false information during a complaint investigation. It would also help clarify the present law.

*\*Handout the Amendment.*

#### Amendment to SB 2167 Testimony

The amended change is to require all persons who make commercial and custom applications to become certified before they apply pesticides. The committee believes

that additional education will help custom applicators do a better job of applying pesticides. Certification results from the successful completion of the NDSU Extension Certification Program, which provides information on pesticide safety and safety equipment, pesticide drift, sprayer calibration, emerging pesticide issues, integrated pest management, pesticide laws and application technology.

Currently, only applicators that apply restricted use pesticides must be certified. However, the vast majority of pesticides applied in North Dakota are general use pesticides. Roundup, 2,4-D, MCPA, Buctril, Bronate, Puma, Discover, Follcur, Sonalon, Treflan, Prowl, Basagran, and Poast are a few of the general use pesticides used in the state. Based on pesticide use surveys and pesticide sales records, it is estimated that over 75 percent of the pesticides applied in North Dakota are general use.

The Pesticide Law Review Committee strongly believes that requiring certification of everyone who does custom or commercial applications would help alleviate some of the pesticide misapplication complaints that occur each year. Most of these complaints are the result of pesticide applications that drifted onto another person's property. The committee believes that training would make applicators more aware of the hazards of pesticide drift and the consequences of applying pesticides in poor or marginal spraying conditions.

Thank you for your consideration.

COMMISSIONER OF AGRICULTURE  
ROGER JOHNSON



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**NORTH DAKOTA DEPARTMENT OF AGRICULTURE  
LEGISLATIVE TESTIMONY**

Testimony of Jeff Olson, Program Manager  
Plant Industries  
North Dakota Department of Agriculture  
Senate Bill 2167  
February 2, 2001  
10:30 a.m.  
House Agriculture Committee  
Peace Garden Room

Chairman Nicholas and members of the committee. My name is Jeff Olson. I am the Program Manager for the Plant Industries Area in the Department of Agriculture. I am here to testify in support of SB 2167.

In 2000, the Department of Agriculture formed a Pesticide Law Review Committee consisting of representatives of retail agricultural dealers, agricultural commercial applicators, farmers, aerial applicators, NDSU extension, the North Dakota Agricultural Association, the Ornamental and Turf Association and the Department of Agriculture.

Senate Bill 2167 is the result of the committee's work.

This bill requests changes to subsection 1 of section 4-35-09 and subsection 13 of section 4-35-15 of the 1999 Supplement to the North Dakota Century Code. At the end of my testimony, I will be presenting an amendment to SB 2167 that does some housekeeping to other sections of NDCC 4-35 if this bill is approved.

**Section 1** of the bill requires all persons who make commercial and custom applications to become certified before they apply pesticides. The committee believes that additional education will help custom applicators do a better job of applying pesticides. Certification results from the successful completion of the NDSU Extension Certification Program, which provides information on pesticide safety and safety equipment, pesticide drift, sprayer calibration, emerging pesticide issues, integrated pest management, pesticide laws and application technology.

Currently, only applicators that apply restricted use pesticides must be certified. However, the vast majority of pesticides applied in North Dakota are general use pesticides. Roundup, 2,4-D, MCPA, Buctril, Bronate, Puma, Discover, Follicur, Sonalon, Treflan, Prowl, Basagran, and Poast are a few of the general use pesticides used in the state. Based on pesticide use surveys and pesticide sales records, it is estimated that over 75 percent of the pesticides applied in North Dakota are general use.

The Pesticide Law Review Committee strongly believes that requiring certification of everyone who does custom or commercial applications would help alleviate some of the pesticide misapplication complaints that occur each year. Most of these complaints are the result of pesticide applications that drifted onto another person's property. An

Increasing number of complaints from urban residents are reported to the Department because of inappropriate application of pesticides. The committee believes that training would make applicators more aware of the hazards of pesticide drift and the consequences of applying pesticides in poor or marginal spraying conditions.

**Section 2** of the bill is the addition to subsection 13 of section 4-35-15.

The Department of Agriculture Pesticide Division investigates approximately 50-60 misapplication complaints each year. The law already gives the Department the ability to take action against someone who provides false information during an inspection. This change gives us the ability to take action against someone who provides false information during a complaint investigation. It would also help clarify the present law.

*\*Handout the Amendment.*

#### Amendment to SB 2167 Testimony

The amendment to SB 2167 makes changes to sections of NDCC 4-35 that deals with the certification of commercial and custom applicators based on the changes allowed under this bill.

Thank you for your consideration.

## PROPOSED AMENDMENT TO SENATE BILL 2167

### 4-35-05. Definitions.

4. a. "Certified applicator" means any individual who is certified under this chapter as authorized to use any ~~restricted-use~~ pesticide covered by the applicator's 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 the applicator or the applicator's employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.

c. "Commercial applicator" means a certified applicator, whether or not the applicator is a custom or private applicator with respect to some uses, who uses any pesticide ~~which is classified for restricted use~~ for any purpose or on any property other than as provided for by subdivision b.

25. "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.

### 4-35-06. Pesticide control board to administer chapter and adopt regulations.

3. The board, in adopting rules under this chapter, shall prescribe standards and

requirements for the certification of applicators of ~~restricted-use~~ pesticides. These standards must 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.

**4-35-08. Classification of certificates.** The board may classify commercial certificates to be issued under this chapter. Such classifications may include pest control operators, wood treaters, 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 applicator to apply ~~restricted use~~ pesticides or to the use of ~~restricted-use~~ pesticides to control insects and plant diseases, rodents, or weeds. Each classification of certification may be subject to separate testing procedures and training requirements; provided that a person may be required to pay an additional fee if such person desires to be certified in one or more of the classifications provided for by the board under the authority of this section.

**4-35-13. Application of act to governmental entities.** All federal agencies, state agencies, municipal corporations, and any other governmental agencies, or public utilities, are subject to this chapter and rules adopted thereunder concerning the application of ~~restricted-use~~ pesticides.

**4-35-15. Unlawful acts – Grounds for denial, suspension, or revocation of a certification.**

16. Bought, used, or supervised the use of any ~~restricted-use~~ pesticide without first complying with the certification requirements of this chapter, unless otherwise exempted therefrom.

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

~~1. The certification requirements of this chapter do not apply to any person applying pesticides that are not classified for restricted use.~~

21. The provisions of this chapter relating to certification requirements do not apply to a competent person applying restricted use pesticides under the direct supervision of a private applicator, unless the pesticide labeling requires that a certified applicator personally applies the particular pesticide. A pesticide is considered to be applied under the direct supervision of a private applicator if it is applied by a competent person acting under the instructions and control of a private applicator who is available if and when needed, even though such private applicator is not physically present at the time and place that the pesticide is applied.

32. 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.