



2020 South Dakota Legislature
Senate Bill 22
ENROLLED

AN ACT

An Act to revise certain provisions regarding pesticide registration, pesticide application, and enforcement of pesticide laws.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 38-20A-15 be AMENDED:

**38-20A-15. Information regarding pesticide formulas--Prohibitions--
Violations as misdemeanors--Exceptions.**

It is a Class 1 misdemeanor for any person to use for the person's own advantage, or to reveal any information relative to formulas of products acquired in accordance with §§ 38-20A-4 to 38-20A-13, inclusive. Notwithstanding the provisions of § 38-20A-48, it is a Class 2 misdemeanor for any person to use or reveal information relative to formulas of products acquired in accordance with §§ 38-20A-4 to 38-20A-13, inclusive, with the intent to defraud.

This section does not apply to information revealed to the secretary, or to any official or employee of this state, or to the courts of this state in response to a subpoena, or, in an emergency, to physicians, pharmacists, and other qualified persons for use in the preparation of antidotes.

Section 2. That § 38-20A-48 be AMENDED:

38-20A-48. Violation of chapter--Penalties.

Any person violating any provision of this chapter which is not otherwise classified is guilty of a Class 2 misdemeanor, or may be subject to a civil penalty not to exceed five thousand dollars per violation, or both. A civil penalty under this section shall be imposed by the circuit court. Any civil penalty collected shall be deposited into the state general fund.

Section 3. That § 38-20A-49 be AMENDED:

38-20A-49. Notice of contemplated criminal proceedings--Opportunity to present views--Referral to state's attorney.

If it appears from an examination under § 38-20A-39 that a pesticide or device fails to comply with this chapter, and the secretary contemplates a referral to the state's attorney to institute criminal proceedings against a person, the secretary shall notify that person. A person so notified may present the person's views within thirty days of receiving notice, either orally or in writing, with regard to the contemplated proceedings. If, in the opinion of the secretary, it appears that this chapter has been violated, the secretary shall refer the facts to the state's attorney for the county in which the violation occurred with a copy of the results of the analysis or the examination of the pesticide or device.

Section 4. That § 38-20A-50 be AMENDED:

38-20A-50. Minor violations--Written warning.

Nothing in this chapter requires the secretary to refer for prosecution or for institution of other proceedings minor violations of this chapter whenever the secretary believes that the public interests will be best served by a written warning.

Section 5. That a NEW SECTION be added:

38-20A-50.1. Voluntary compliance--Administrative settlement agreements.

Nothing in this chapter prevents the department from obtaining voluntary compliance with this chapter through a conference, settlement, or any other appropriate means. The secretary may enter into an administrative settlement agreement regarding any violation of this chapter, including stipulated settlements of any civil penalty authorized under this title.

Section 6. That § 38-21-14 be AMENDED:

38-21-14. Definitions.

Terms used in this chapter mean:

- (1) "Animals," all vertebrate and invertebrate species, including humans;
- (2) "Bulk pesticide," any volume of a pesticide which is transported or held in an immediate reusable container in undivided quantities greater than one hundred pounds net dry weight or fifty-five United States gallons liquid measure. The term does not include pesticides that are in the custody of the ultimate user and are fully prepared for use by the user;

- (3) "Bulk pesticide storage facility," any area, location, tract of land, building, structure, or premises constructed in accordance with rules promulgated by the secretary for the storage of bulk pesticides;
- (4) "Certified applicator," any individual who is certified under this chapter to use any pesticide;
- (5) "Commercial applicator," any certified applicator eighteen years of age or older who uses any pesticide on any property other than as a private applicator;
- (6) "Defoliant," any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission;
- (7) "Desiccant," any substance or mixture of substances intended for artificially accelerating the drying of plant tissue;
- (8) "Device," any instrument or contrivance intended for trapping, destroying, repelling, or mitigating insects or for destroying, repelling, or mitigating fungi, weeds, rodents, or any other pests designated by the secretary, but not including equipment used for the application of pesticides if sold separately, and not including rodent traps;
- (9) "Environment," includes water, air, land, and all plants and animals living therein, and the interrelationships which exist among these;
- (10) "Equipment," any type of ground, water, or aerial equipment or any device using motorized, mechanical, or pressurized power used to apply any pesticide but does not include any pressurized, hand-sized household device that requires the person applying the pesticide to be the source of power or energy to make the pesticide application;
- (11) "Fungus," any nonchlorophyll-bearing thallophyte, except those on or in processed food, beverages, or pharmaceuticals or those on or in living animals;
- (12) "Insect," any of the numerous small invertebrate animals belonging to the class insecta or to other allied classes of arthropods;
- (13) "Labeling," any label and other written, printed, or graphic matter:
 - (a) On the pesticide or device or any of its containers or wrappers;
 - (b) Accompanying the pesticide or device at any time; or
 - (c) To which reference is made on the label or in literature accompanying the pesticide or device, except accurate, nonmisleading reference to current official publications of any government institution or official agency of the United States or of this or any other state, authorized by law to conduct research in the field of pesticides;

- (14) "Land," 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;
- (15) "Pesticide dealer," any entity that distributes restricted-use pesticides or pesticides restricted in use or distribution by regulation;
- (16) "Nematode," any invertebrate animal of the phylum ne-mathel-minthes or nematoda;
- (17) "Pest," any insect, rodent, nematode, fungus, weed, or other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism, except viruses, bacteria, or other microorganisms on or in living human or other living animals, which the secretary declares to be a pest;
- (18) "Pesticide," any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant or any substance or mixture of substances intended to be used as a spray adjuvant;
- (19) "Plant regulator," any substance or mixture of substances, intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments;
- (20) "Private applicator," a certified applicator over the age of eighteen who:
 - (a) Uses any pesticide other than a restricted-use pesticide for purposes of producing any agricultural commodity amounting to greater than one thousand dollars gross sales potential per year on property owned or rented by the private applicator or the private applicator's employer; or
 - (b) Uses any restricted-use pesticide for the purpose of producing any agricultural commodity on property owned or rented by the private applicator or the private applicator's employer;
 - (c) Applies any pesticide on the property of another person without compensation other than trading of personal services between producers of agricultural commodities; or
 - (d) Is not regularly in the business of applying pesticides for hire amounting to a principal or regular occupation and is not held out to the public as a commercial applicator;

- (21) "Registrant," the person registering any pesticide in accordance with the provisions of this chapter;
- (22) "Restricted-use pesticide," any pesticide classified as a restricted-use pesticide by the secretary;
- (23) "Rinsate," any solution containing pesticide residue which is generated from washing or flushing of pesticide containers and pesticide equipment;
- (24) "Secretary," the secretary of the Department of Agriculture;
- (25) "Spray adjuvant," any wetting agent, spreading agent, sticker, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent intended to be used with any other pesticide as an aid to the application or to the effect thereof, and which is in a package or container separate from that of the pesticide with which it is to be used;
- (26) "Unreasonable adverse effects on the environment," any unreasonable risk to humans or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide; and
- (27) "Weed," any plant which grows where not wanted.

Section 7. That § 38-21-15 be REPEALED.

38-21-15. Pesticide handling causing injury or pollution prohibited--Rules and regulations--Penalty for violation.

Section 8. That § 38-21-16 be AMENDED:

38-21-16. Pesticide incidents--Report of damage--Inspection by secretary.

Any person may report damage from the use of a pesticide or any alleged pesticide incident to the secretary on a form provided by the secretary, with a written statement, within thirty days after the date the damage was observed or the incident occurred. Any person alleging damage shall permit the secretary to inspect, during reasonable hours, the lands where the alleged damage or incident occurred, or any organism is alleged to have been damaged.

Section 9. That § 38-21-33 be AMENDED:

38-21-33. Classes of certifications and licenses.

The secretary may further classify or subclassify certifications to be issued under this chapter. The classifications may include soil fumigation, nonsoil fumigation, pest

control operators, ornamental or agricultural pesticide applicators, and right-of-way pesticide applicators. Separate classifications may be specified as to ground, aerial, or manual methods used by any licensee to apply pesticides or to the use of pesticides to control insects and plant diseases, rodents or weeds. Each classification shall be subject to separate testing procedures and requirements.

Section 10. That § 38-21-34 be AMENDED:

38-21-34. Applicator's license--Limitations.

No applicator may hold more than one applicator's license simultaneously. Any private applicator's license held by a commercial applicator shall become invalid upon issuance of a commercial applicator's license by the secretary.

Section 11. That § 38-21-38 be REPEALED.

38-21-38. Personal farm use exempt.

Section 12. That § 38-21-40 be AMENDED:

38-21-40. Restricted-use pesticides--Licensure required--Restrictions--Criteria--Penalty.

No person may use any restricted-use pesticide without that person first complying with the licensing requirements of this chapter and any other restrictions as may be determined by the secretary, pursuant to § 38-21-39, as necessary to prevent unreasonable adverse effects on the environment, including injury to the applicator or other persons, for that specific pesticide use. In determining restrictions, the secretary shall, pursuant to § 38-21-39, consider the characteristics of the pesticide formulation such as the acute dermal inhalation toxicity; the persistence, mobility, and susceptibility to biological concentration; the use experience which may reflect an inherent misuse of an unexpected good safety record which does not always follow laboratory toxicological information; the relative hazards of patterns of use such as granular soil applications, ultra-low volume or dust aerial applications, or air blast sprayer applications; and the extent of the intended use. Any person who violates this section is subject to a civil penalty not to exceed five thousand dollars per violation. Any civil penalty under this section shall be imposed by the circuit court. Any civil penalty collected shall be deposited into the state general fund.

Section 13. That § 38-21-42 be AMENDED:

38-21-42. Renewal of license--Requirements--Exceptions.

Any person holding a current valid license may renew the license for the next biennium without taking another examination unless the secretary determines that additional knowledge related to classifications for which the applicant has applied makes a new examination necessary or if additional demonstration of qualifications is determined necessary for a person who has had a license suspended or revoked or has had one or more previous violations of this chapter. Any person whose license has expired and has not been renewed in accordance with this chapter before the expiration, shall be required to take the examination to obtain a new license.

Section 14. That § 38-21-44 be AMENDED:

38-21-44. Suspension, revocation, or modification of license--Grounds--Violation as misdemeanor--Civil penalty.

The secretary, pending examination and after notice and opportunity for a hearing pursuant to chapter 1-26, may suspend, revoke, or modify any provision of any license issued under this chapter and held by the violator, if the secretary finds that the holder of any license has committed any of the following acts, each of which is declared to be a violation of this chapter:

- (1) Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized;
- (2) Made a pesticide recommendation or application inconsistent with the labeling or mixed, loaded, stored, transported, disposed, displayed, or handled a pesticide or pesticide container inconsistent with the product label or labeling. A deviation may include the loading and handling of the manufacturer's unbroken immediate container and provisions set forth in section 2(ee) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended through July 1, 1989;
- (3) Applied known ineffective or improper materials;
- (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 under this chapter, or of any lawful order of the secretary;
- (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) Engaged in the business of applying a pesticide on the lands of another without having a license or certification required by this chapter;
- (10) Used fraud or misrepresentation in making an application for, or renewal of, a license or certification;
- (11) Refused or neglected to comply with any limitations or restrictions listed on an issued license;
- (12) Aided or abetted a licensed or an unlicensed person to evade the provisions of this chapter, conspired with such a licensed or an unlicensed person to evade the provisions of this chapter, or allowed one's license or certification to be used by another person;
- (13) Made false or misleading statements to the secretary or the secretary's agents during an inspection or investigation conducted under the authority of this chapter;
- (14) Impersonated any federal, state, county, or city inspector or official; or
- (15) Failed to maintain the aerial requirements as provided in § 38-21-20; or
- (16) Transported, stored, used, disposed of, or handled any pesticide, pesticide container, rinsate, or application equipment in a manner as to endanger or cause injury to humans, vegetation, crops, livestock, wildlife, or beneficial insects or to pollute groundwater or surface water.

In addition to the administrative sanctions available to the secretary pursuant to this section, a violation of this section by any person is a Class 2 misdemeanor. In addition to any criminal penalty, any person who violates this section is subject to a civil penalty not to exceed five thousand dollars per violation. Any civil penalty under this section shall be imposed by the circuit court. Any civil penalty collected shall be deposited into the state general fund. The secretary is not required to seek the administrative sanctions available under this section before referring charges or commencing any action against an alleged violator of this section.

Section 15. That a NEW SECTION be added:

38-21-44.1. Contemplated criminal proceedings--Notice--Opportunity to present views--Referral to state's attorney.

If it appears from an examination pursuant to this chapter that there has been a violation of this chapter, and the secretary contemplates a referral to the state's attorney for criminal proceedings against a person, the secretary shall notify that person in writing. A person so notified may present the person's views within thirty days of receiving notice, either orally or in writing, with regard to the contemplated proceedings. If, in the opinion

of the secretary, it appears that this chapter has been violated by the person, the secretary shall refer the facts to the state's attorney for the county in which the violation occurred with a copy of the results of the analysis, the examination of the pesticide or device or any other relevant evidence, and information in the possession of the secretary. This referral by the secretary is not required if it appears to the secretary that the violation is minor, and the secretary believes that the public will be best served by a written warning.

Section 16. That a NEW SECTION be added:

38-21-44.2. Obtaining voluntary compliance--Administrative settlement agreements.

Nothing in this chapter prevents the department from obtaining voluntary compliance with the provisions of this chapter through a conference, settlement, or any other appropriate means. The secretary may enter into an administrative settlement agreement regarding any violation of the provisions of this chapter including stipulated settlements of any civil penalty or administrative sanction authorized under this title.

Section 17. That § 38-21-45 be AMENDED:

38-21-45. Pesticide damage--Liability.

Nothing in this chapter may be construed to relieve any person from liability for any damage to another caused by the use of pesticides even though the use conforms to the rules promulgated under the authority of this chapter.

Section 18. That § 38-21-46 be AMENDED:

38-21-46. Notice of damage--Requirements--Exception.

Any person claiming damages from any use of a pesticide shall notify by certified mail the pesticide applicator of the alleged damage within the earlier of:

- (1) Thirty days after the date that the damages were observed or should have been observed; or
- (2) If a growing crop is alleged to have been damaged, before the time that twenty-five percent of the crop has been harvested or destroyed.

This section does not apply if the person seeking reimbursement for damage was the applicator of the pesticide.

Section 19. That § 38-21-47 be AMENDED:

38-21-47. Inspection of damages--Requirements.

Upon notifying the applicator as required under § 38-21-46, the person seeking reimbursement for the alleged damage shall permit the applicator and up to four representatives of the applicator to enter the person's property during reasonable hours for the purpose of observing and examining the alleged damage. If the person fails to allow entry, the person is barred from asserting a claim against the applicator.

Section 20. That § 38-21-48 be REPEALED.

38-21-48. Observation of claimed damage to be permitted.

Section 21. That § 38-21-49 be AMENDED:

38-21-49. Pesticide incident--Failure to report.

The failure to report an incident in accordance with the provisions of § 38-21-16 is not a violation of this chapter. If the person failing to file a report is the only one injured from the use or application of a pesticide by others, the secretary may, when in the public interest, refuse to hold a hearing for the suspension, modification, or revocation of a license issued under this chapter.

Section 22. That § 38-21-50.1 be REPEALED.

38-21-50.1. Application without license as misdemeanor--Additional penalty for violation.

Section 23. That § 38-21-50.2 be AMENDED:

38-21-50.2. Damages to injured person.

Civil penalties specified in §§ 38-21-15.2, 38-21-17, 38-21-23, 38-21-33.1, 38-21-39.1, 38-21-39.2, 38-21-39.3, 38-21-40, and 38-21-44 do not lessen the damages that may be awarded to any person injured.

Section 24. That § 38-21-58 be AMENDED:

38-21-58. Application of pesticide--Licensed commercial applicator--Personal property.

Any commercial applicator who is licensed pursuant to this chapter to apply pesticides to agricultural land may apply pesticides to property owned by the applicator without a private applicator's license if the commercial categories in which the applicator

is licensed are the appropriate applications to be made. Any applicator shall abide by all state and federal rules and regulations pertaining to private applicator pesticide application when applying pesticides on the applicator's own property.

An Act to to revise certain provisions regarding pesticide registration, pesticide application, and enforcement of pesticide laws.

I certify that the attached Act originated in
the:
Senate as Bill No. 22

Received at this Executive Office
this ____ day of _____,
2020 at _____ M.

Secretary of the Senate

By _____
for the Governor

President of the Senate

The attached Act is hereby
approved this ____ day of
_____, A.D., 2020

Attest:

Secretary of the Senate

Governor

STATE OF SOUTH DAKOTA,

ss.

Office of the Secretary of State

Speaker of the House

Attest:

Filed _____, 2020
at _____ o'clock __ M.

Chief Clerk

Secretary of State

Senate Bill No. 22
File No. _____
Chapter No. _____

By _____
Asst. Secretary of State