

**Sixty-seventh Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 5, 2021**

HOUSE BILL NO. 1338  
(Representative Trotter)

AN ACT to create and enact a new subsection to section 4.1-33-16 and a new section to chapter 4.1-33 of the North Dakota Century Code, relating to the waiver of certification requirements during a declared state of emergency and an exemption to certification requirements for antimicrobial pesticides; to amend and reenact section 4.1-33-01 of the North Dakota Century Code, relating to the definition of antimicrobial pesticide; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 4.1-33-01 of the North Dakota Century Code is amended and reenacted as follows:

**4.1-33-01. Definitions.**

As used in this chapter:

1. "Animal" means all vertebrate and invertebrate species, including humans and other mammals, birds, fish, and shellfish.
2. "Antimicrobial pesticide" means a substance or mixture of substances intended for preventing, destroying, repelling, suppressing, or mitigating the growth of micro-organisms, including bacteria, viruses, and fungi on inanimate objects and surfaces.
3. "Applicator" means any person who applies a pesticide to land.
- ~~3-4.~~ "Certified applicator" means any individual who is certified under this chapter to purchase or use a restricted use pesticide.
- ~~4-5.~~ "Commercial applicator" means a person who, by contract or for hire, engages in the business of applying pesticides for compensation.
- ~~5-6.~~ "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission.
- ~~6-7.~~ "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissue.
- ~~7-8.~~ "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 human and other than bacteria, virus, or other micro-organism on or in living humans or other living animals, but not including equipment used for the application of pesticides when sold separately from pesticide.
- ~~8-9.~~ "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver, or supply pesticides in this state.
- ~~9-10.~~ "Environment" includes water, air, land, and all plants and humans and other animals living therein, and the interrelationships that exist among them.
- ~~10-11.~~ "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, inhabiting, or stored on or in that land. The term does not include any pressurized hand-held household apparatus used to apply any pesticide, or any

equipment or contrivance of which the individual who is applying the pesticide is the source of power or energy to make the pesticide application.

- ~~41~~.12. "Fungus" means any non-chlorophyll-bearing thallophytes, that is, 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 humans or other living animals, and except those on or in processed food, beverages, or pharmaceuticals.
- ~~42~~.13. "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.
- ~~43~~.14. "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.
- ~~44~~.15. "Labeling" means the label and all other written, printed, or graphic matter:
- a. Accompanying the pesticide or device; or
  - 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.
- ~~45~~.16. "Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, contrivances, and machinery, appurtenant to or situated on land, fixed or mobile, including any used for transportation.
- ~~46~~.17. "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.
- ~~47~~.18. "Pest" means any insect, rodent, nematode, fungus, or weed; or any other form of terrestrial or aquatic plant or animal life, viruses, bacteria, or other micro-organism, except viruses, bacteria, or other micro-organisms on or in living humans or other living animals.
- ~~48~~.19. "Pesticide" means:
- a. Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; and
  - b. Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.
- ~~49~~.20. "Pesticide dealer" means any person, other than a pesticide wholesaler, distributing pesticides.
- ~~20~~.21. "Plant regulator" means any substance or mixture of substances intended, through physiological action, to accelerate or retard the rate of growth or rate of maturation, or to otherwise alter the behavior of plants or the produce thereof, but does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments.
- ~~21~~.22. "Private applicator" means an individual who is required to be a certified applicator to buy or use a restricted use pesticide 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.

- ~~22-23.~~ "Public applicator" means an applicator who applies pesticides, other than ready-to-use pesticides, as an employee of:
- a. A governmental agency, municipal corporation, or public utility; or
  - b. A hospital, privately owned golf course, nursery, or greenhouse.
- ~~23-24.~~ "Ready-to-use pesticide" means a pesticide other than a restricted use pesticide which is applied directly from its original container consistent with label directions, and includes aerosol spray cans, ready-to-use spray containers, bait packs, and other types of containers that do not require mixing or loading before application.
- ~~24-25.~~ "Restricted use pesticide" means any pesticide formulation that is classified as restricted use by the United States environmental protection agency or the agriculture commissioner under section 4.1-34-06.
- ~~25-26.~~ "Rinsate" means a diluted mixture of pesticide obtained from triple rinsing or pressure rinsing pesticide containers or from rinsing the inside and outside of spray equipment.
- ~~26-27.~~ "Tank mix" means any pesticidal formulation used alone or in combination with another pesticide and mixed with a liquid carrier prior to application.
- ~~27-28.~~ "Unreasonable adverse effects on the environment" means 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.
- ~~28-29.~~ "Weed" means any plant that grows where not wanted.
- ~~29-30.~~ "Wildlife" means all living things that are neither human, domesticated, nor, as defined in this chapter, pests, including mammals, birds, and aquatic life.

**SECTION 2.** A new subsection to section 4.1-33-16 of the North Dakota Century Code is created and enacted as follows:

The certification requirements of this chapter do not apply to an individual applying nonrestricted-use antimicrobial pesticides.

**SECTION 3.** A new section to chapter 4.1-33 of the North Dakota Century Code is created and enacted as follows:

**Statutes - Certification requirements - Waiver for emergencies.**

If the governor declares a statewide state of disaster or emergency that affects the certification requirements under this chapter, the pesticide control board may temporarily waive statutory requirements, or any associated rules, relating to the certification for the duration of the declared state of disaster or emergency.

**SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure.

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Chief Clerk of the House

\_\_\_\_\_  
Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-seventh Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1338 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote:        Yeas 93                      Nays 0                      Absent 1

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
Chief Clerk of the House

This certifies that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote:        Yeas 46                      Nays 0                      Absent 1

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Secretary of the Senate

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2021.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2021.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2021,  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State