



2023 South Dakota Legislature

House Bill 1028

Introduced by: The Committee on Agriculture and Natural Resources at the request of the Department of Agriculture and Natural Resources

1 **An Act to modify expiration dates and enforcement actions pertaining to pesticide**
 2 **applicator licenses.**

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

4 **Section 1. That § 38-21-14 be AMENDED:**

5 **38-21-14.** Terms used in this chapter mean:

- 6 (1) "Animals," all vertebrate and invertebrate species, including humans;
- 7 (2) "Bulk pesticide," any volume of a pesticide_z which is transported or held in an
 8 immediate reusable container_z in undivided quantities greater than one hundred
 9 pounds net dry weight or fifty-five United States gallons liquid measure. ~~The_z~~
 10 provided the term does not include pesticides that are in the custody of the ultimate
 11 user and are fully prepared for use by the user;
- 12 (3) "Bulk pesticide storage facility," any area, location, tract of land, building,
 13 structure, or premises_z constructed in accordance with rules promulgated by the
 14 secretary_z pursuant to chapter 1-26, for the storage of bulk pesticides;
- 15 (4) "Certified applicator," any individual who is certified under this chapter to use any
 16 pesticide;
- 17 (5) "Commercial applicator," ~~any a~~ a certified applicator_z eighteen years of age or older_z
 18 who uses ~~any~~ pesticide_z on any property_z other than as a private applicator;
- 19 (6) "Defoliant," any substance or mixture of substances intended ~~for causing to cause~~
 20 the leaves or foliage of a plant to drop ~~from a plant,~~ with or without causing
 21 abscission;
- 22 (7) "Desiccant," any substance or mixture of substances intended ~~for to~~ artificially
 23 ~~accelerating~~ accelerate the drying of plant tissue;
- 24 (8) "Device," any instrument or contrivance intended for trapping, destroying,
 25 repelling, or mitigating insects_z or for destroying, repelling, or mitigating fungi,

- 1 weeds, rodents, or any other pests designated by the secretary, but not
 2 including ~~equipment~~;
- 3 (a) Equipment used for the application of pesticides, if sold separately, ~~and~~
 4 ~~not including rodent~~
- 5 (b) Rodent traps;
- 6 (9) "Environment," ~~includes~~ water, air, land, and all plants and animals living therein,
 7 and the interrelationships ~~which that~~ exist among ~~thesethem~~;
- 8 (10) "Equipment," any ~~type of~~ ground, water, or aerial equipment, or any device ~~using~~
 9 that uses motorized, mechanical, or pressurized power ~~used to apply any pesticide,~~
 10 but ~~does not include any~~ including a pressurized, hand-sized, household device that
 11 requires the person applying the pesticide to be the source of power or energy to
 12 make the pesticide application;
- 13 (11) "Fungus," any nonchlorophyll-bearing thallophyte, except those on or in processed
 14 food, beverages, or pharmaceuticals, or those on or in living animals;
- 15 (12) "Insect," any ~~of the numerous~~ small invertebrate ~~animals~~ animal belonging to the
 16 class insecta or to other allied classes of arthropods;
- 17 (13) "Labeling," any ~~label and other~~ written, printed, or graphic matter:
- 18 (a) ~~On That is on~~ the pesticide or device, or on any of its containers or
 19 wrappers;
- 20 (b) ~~Accompanying That accompanies~~ the pesticide or device, at any time; or
- 21 (c) To which reference is made ~~on the label or in literature~~ accompanying that
 22 accompanies the pesticide or device, except for accurate, nonmisleading
 23 ~~reference references~~ to current ~~official~~ publications of any government
 24 institution or ~~official~~ agency of the United States, or of this or any other
 25 state, authorized by law to conduct research in the field of pesticides;
- 26 (14) "Land," all land and water areas, including airspace, and all plants, animals,
 27 structures, buildings, contrivances, and machinery, appurtenant thereto or
 28 situated thereon, fixed or mobile, including any used for transportation;
- 29 (15) "Pesticide dealer," any entity that distributes restricted-use pesticides, or
 30 pesticides that are restricted in use or distribution by regulation;
- 31 (16) "Nematode," any invertebrate animal of the phylum ne-mathel-minthes or
 32 nematoda;
- 33 (17) "Pest," any insect, rodent, nematode, fungus, weed, or other form of terrestrial or
 34 aquatic plant or animal life or virus, bacteria, or other microorganism, except

- 1 viruses, bacteria, or other microorganisms on or in a living human or other living
 2 ~~animals~~animal, which the secretary declares to be a pest;
- 3 (18) "Pesticide," any substance or mixture of substances intended ~~for preventing,~~
 4 ~~destroying, repelling, or mitigating~~to:
- 5 (a) Prevent, destroy, repel, or mitigate any pest, ~~or any substance or mixture~~
 6 ~~of substances intended for use;~~
- 7 (b) Be used as a plant regulator, defoliant, or desiccant ~~or any substance or~~
 8 ~~mixture of substances intended to be;~~ or
- 9 (c) Be used as a spray adjuvant;
- 10 (19) "Plant regulator," any substance or mixture of substances, intended, through
 11 physiological action, ~~for accelerating or retarding~~to accelerate or retard the rate of
 12 growth or rate of maturation, or for otherwise altering the behavior of ornamental
 13 or crop plants, or the produce thereof, but ~~does not include~~including substances
 14 to the extent that they are intended as plant nutrients, trace elements, nutritional
 15 chemicals, plant inoculants, or soil amendments;
- 16 (20) "Private applicator," a certified applicator ~~over the age of,~~ eighteen years of age or
 17 older, who:
- 18 (a) Uses any pesticide, other than a restricted-use pesticide, for purposes of
 19 producing any agricultural commodity amounting to greater than one
 20 thousand dollars gross sales potential per year, on property owned or
 21 rented by the private applicator or the private applicator's employer; ~~or~~
- 22 (b) Uses any restricted-use pesticide for the purpose of producing any
 23 agricultural commodity on property owned or rented by the private
 24 applicator or the private applicator's employer;
- 25 (c) Applies any pesticide on the property of another ~~person,~~ without
 26 compensation, other than the trading of personal services between
 27 producers of agricultural commodities; or
- 28 (d) Is not regularly in the business of applying pesticides for hire ~~amounting to,~~
 29 as a principal or regular occupation, and is not held out to the public as a
 30 commercial applicator;
- 31 (21) "Registrant," the person registering any pesticide in accordance with ~~the provisions~~
 32 ~~of this chapter;~~
- 33 (22) "Restricted-use pesticide," any pesticide classified as a restricted-use pesticide by
 34 the secretary;

- 1 (23) "Rinsate," any solution containing pesticide residue, which is generated from the
2 washing or flushing of pesticide containers and pesticide equipment;
- 3 (24) "Secretary," the secretary of the Department of Agriculture and Natural Resources;
- 4 (25) "Spray adjuvant," any wetting agent, spreading agent, sticker, deposit builder,
5 adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent,
6 intended to be used with any other pesticide as an aid to the application or to the
7 effect thereof, and which is in a package or container separate from that of the
8 pesticide with which it is to be used;
- 9 (26) "Unreasonable adverse effects on the environment," any unreasonable risk to
10 humans or the environment, taking into account the economic, social and
11 environmental costs and benefits of the use of any pesticide; and
- 12 (27) "Weed," any plant which grows where not wanted.

13 **Section 2. That § 38-21-17.1 be AMENDED:**

14 **38-21-17.1.** A commercial applicator's license ~~shall expire on the last day of~~
15 ~~February~~ expires on March thirty-first of the second year following the year of issuance,
16 unless the license is revoked before the expiration, by the secretary, as provided for in
17 § 38-21-44.

18 **Section 3. That § 38-21-23.1 be AMENDED:**

19 **38-21-23.1.** A private applicator's license ~~shall expire on the last day of~~
20 ~~February~~ expires on March thirty-first of the third year following the year of issuance,
21 unless the license is revoked before the expiration, by the secretary, as provided for in
22 § 37-21-44.

23 **Section 4. That § 38-21-33.9 be AMENDED:**

24 **38-21-33.9.** A pesticide dealer's license ~~shall expire on the last day of~~
25 ~~February~~ expires on March thirty-first of the second year following the year of issuance,
26 unless the license is revoked before the expiration, by the secretary, as provided for in
27 § 38-21-44.

28 **Section 5. That § 38-21-44 be AMENDED:**

29 **38-21-44.** The secretary, pending examination and after notice and opportunity
30 for a hearing, pursuant to chapter 1-26, may suspend, revoke, deny, or modify any

1 provision of any license issued under this chapter and held by the violator, if the secretary
 2 finds that the holder of ~~any license or applicant~~ has committed any of the following acts,
 3 each of which is declared to be a violation of this chapter:

- 4 (1) Made false or fraudulent claims through any media, misrepresenting the effect of
 5 materials or methods to be utilized;
- 6 (2) Made a pesticide recommendation or application inconsistent with the labeling, ~~or~~
 7 mixed, loaded, stored, transported, disposed, displayed, or handled a pesticide or
 8 pesticide container inconsistent with the product label or labeling. ~~A, provided a~~
 9 deviation may include ~~the~~ ;
 10 (a) The loading and handling of the manufacturer's unbroken immediate
 11 container; ~~and provisions set forth in section 2(ee) of~~
 12 (b) Actions permitted under the Federal Insecticide, Fungicide, ~~and~~ Rodenticide
 13 Act, 7 U.S.C. § 136(ee), as amended through July 1, 1989 January 1, 2023;
- 14 (3) Applied known ineffective or improper materials;
- 15 (4) Operated faulty or unsafe equipment;
- 16 (5) Operated in a faulty, careless, or negligent manner;
- 17 (6) Neglected or, after notice, refused to comply with ~~the provisions of this chapter,~~
 18 ~~the rules adopted under this chapter, or of any lawful order of the secretary;~~
- 19 (7) Refused or neglected to keep and maintain ~~the records required by this chapter,~~
 20 or to make reports ~~when and as required;~~
- 21 (8) Made false or fraudulent records, invoices, or reports;
- 22 (9) Engaged in the business of applying a pesticide on the lands of another, ~~without~~
 23 having a license or certification required by this chapter;
- 24 (10) Used fraud or misrepresentation in ~~making an application for, or renewal of,~~
 25 applying for or renewing a license or certification;
- 26 (11) Refused or neglected to comply with any limitations or restrictions listed on an
 27 issued license;
- 28 (12) Aided or abetted a licensed or an unlicensed person to evade the provisions of this
 29 chapter, conspired with such a ~~licensed or an unlicensed~~ person to evade the
 30 provisions of this chapter, or allowed one's license or certification to be used by
 31 another person;
- 32 (13) Made false or misleading statements to the secretary or the secretary's agents
 33 during an inspection or investigation conducted under ~~the authority of this chapter;~~
- 34 (14) Impersonated any federal, state, county, or city inspector or official; ~~or~~
- 35 (15) Failed to maintain the aerial requirements, ~~as provided for in § 38-21-20;~~ ~~or~~

1 (16) Transported, stored, used, disposed of, or handled any pesticide, pesticide
2 container, rinsate, or application equipment in a manner ~~as to endanger or cause~~
3 that:

4
5 (a) Endangers or causes injury or damage to humans, vegetation, crops,
6 livestock, wildlife, or beneficial insects; ~~or to pollute~~

7 (b) Pollutes groundwater or surface water; ~~or~~

8 (17) Violated agricultural pesticide application laws of any other state or violated federal
9 agricultural pesticide application laws while in any other state.

10 In addition to the administrative sanctions available to the secretary pursuant to
11 this section, a violation of this section ~~by any person~~ is a Class 2 misdemeanor.

12 ~~In addition to any criminal penalty, any~~ Any person who violates this section is also
13 subject to a civil penalty, ~~not to exceed five thousand dollars per violation. Any~~ A civil
14 penalty under this section ~~shall~~ must be imposed by the circuit court.

15 Any civil penalty collected ~~shall~~ must be deposited into the state general fund.

16 The secretary is not required to seek the administrative sanctions available under
17 this section before referring charges or commencing any action against an alleged violator
18 of this section.