



2023 South Dakota Legislature
House Bill 1028
ENROLLED

AN ACT

ENTITLED An Act to modify expiration dates and enforcement actions pertaining to pesticide applicator licenses.

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

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

38-21-14. 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, provided 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, pursuant to chapter 1-26, for the storage of bulk pesticides;
- (4) "Certified applicator," any individual who is certified under this chapter to use any pesticide;
- (5) "Commercial applicator," a certified applicator, eighteen years of age or older, who uses pesticide, on any property, other than as a private applicator;
- (6) "Defoliant," any substance or mixture of substances intended to cause the leaves or foliage of a plant to drop, with or without causing abscission;
- (7) "Desiccant," any substance or mixture of substances intended to artificially accelerate 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:
 - (a) Equipment used for the application of pesticides, if sold separately; and

- (b) Rodent traps;
- (9) "Environment," water, air, land, and all plants and animals living therein, and the interrelationships that exist among them;
- (10) "Equipment," any ground, water, or aerial equipment, or any device that uses motorized, mechanical, or pressurized power to apply pesticide, but not including a 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 small invertebrate animal belonging to the class insecta or to other allied classes of arthropods;
- (13) "Labeling," any written, printed, or graphic matter:
 - (a) That is on the pesticide or device, or on any of its containers or wrappers;
 - (b) That accompanies the pesticide or device, at any time; or
 - (c) To which reference is made in literature that accompanies the pesticide or device, except for accurate, nonmisleading references to current publications of any government institution or 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 that are 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 a living human or other living animal, which the secretary declares to be a pest;
- (18) "Pesticide," any substance or mixture of substances intended to:
 - (a) Prevent, destroy, repel, or mitigate any pest;
 - (b) Be used as a plant regulator, defoliant, or desiccant; or
 - (c) Be used as a spray adjuvant;

- (19) "Plant regulator," any substance or mixture of substances, intended, through physiological action, to accelerate or retard the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants, or the produce thereof, but not including 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, eighteen years of age or older, 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;
 - (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, without compensation, other than the trading of personal services between producers of agricultural commodities; or
 - (d) Is not regularly in the business of applying pesticides for hire, as 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 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 the washing or flushing of pesticide containers and pesticide equipment;
- (24) "Secretary," the secretary of the Department of Agriculture and Natural Resources;
- (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 2. That § 38-21-17.1 be AMENDED:

38-21-17.1. A commercial applicator's license expires on March thirty-first of the second year following the year of issuance, unless the license is revoked before the expiration, by the secretary, as provided for in § 38-21-44.

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

38-21-23.1. A private applicator's license expires on March thirty-first of the third year following the year of issuance, unless the license is revoked before the expiration, by the secretary, as provided for in § 37-21-44.

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

38-21-33.9. A pesticide dealer's license expires on March thirty-first of the second year following the year of issuance, unless the license is revoked before the expiration, by the secretary, as provided for in § 38-21-44.

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

38-21-44. The secretary, pending examination and after notice and opportunity for a hearing, pursuant to chapter 1-26, may suspend, revoke, deny, or modify any provision of any license issued under this chapter and held by the violator, if the secretary finds that the holder or applicant 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, provided a deviation may include:
 - (a) The loading and handling of the manufacturer's unbroken immediate container; and
 - (b) Actions permitted under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136(ee), as amended through January 1, 2023;
- (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 this chapter, rules adopted under this chapter, or any lawful order of the secretary;
- (7) Refused or neglected to keep and maintain records required by this chapter, or to make reports 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 applying for or renewing 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 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 this chapter;
- (14) Impersonated any federal, state, county, or city inspector or official;
- (15) Failed to maintain the aerial requirements, as provided for in § 38-21-20;
- (16) Transported, stored, used, disposed of, or handled any pesticide, pesticide container, rinsate, or application equipment in a manner that:
 - (a) Endangers or causes injury or damage to humans, vegetation, crops, livestock, wildlife, or beneficial insects; or
 - (b) Pollutes groundwater or surface water; or
- (17) Violated agricultural pesticide application laws of any other state or violated federal agricultural pesticide application laws while in any other state.

In addition to the administrative sanctions available to the secretary pursuant to this section, a violation of this section is a Class 2 misdemeanor.

Any person who violates this section is also subject to a civil penalty, not to exceed five thousand dollars per violation. A civil penalty under this section must be imposed by the circuit court.

Any civil penalty collected must 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.

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

I certify that the attached Act originated in
the:
House as Bill No. 1028

Received at this Executive Office
this ____ day of _____,
2023 at _____ M.

Chief Clerk

By _____
for the Governor

Speaker of the House

The attached Act is hereby
approved this _____ day of
_____, A.D., 2023

Attest:

Chief Clerk

Governor

STATE OF SOUTH DAKOTA,

ss.

Office of the Secretary of State

President of the Senate

Attest:

Filed _____, 2023
at _____ o'clock __ M.

Secretary of the Senate

Secretary of State

House Bill No. 1028
File No. _____
Chapter No. _____

By _____
Asst. Secretary of State