

# State of South Dakota

SEVENTY-SIXTH SESSION  
LEGISLATIVE ASSEMBLY, 2001

400E0218

## HOUSE BILL NO. 1019

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

1 FOR AN ACT ENTITLED, An Act to revise certain requirements and fees regarding various  
2 agricultural related licenses, certificates, registrations, and inspections and to provide for the  
3 disposition of certain fees.

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

5 Section 1. That § 38-12A-11 be amended to read as follows:

6 38-12A-11. No person may sell, distribute, advertise, solicit orders for, offer for sale, expose  
7 for sale, or transport seed without first obtaining from the Department of Agriculture a permit  
8 to engage in the business. A permit is not required of any person selling or advertising seed of  
9 ~~his~~ the person's own production in South Dakota, ~~provided that~~ if the seed is stored or delivered  
10 to a purchaser only on or from the farm or premises where grown or the production and sale of  
11 seed is not a primary endeavor and primary source of income to such persons. Each permit shall  
12 expire on the ~~first~~ thirty-first day of ~~July~~ December of the year following the date of issue. The  
13 ~~annual~~ biennial fee for a seed permit is: Seedsman ~~permit~~ -- ~~one~~ two hundred fifty dollars; Seed  
14 ~~producers permit~~ producer -- ~~twenty-five~~ fifty dollars; Seed ~~dealers permit~~ dealer -- ~~twenty-five~~  
15 fifty dollars. A seed dealer's permit may be issued ~~without~~ at a reduced fee ~~when~~ of twenty-five

1 dollars if all lots of seed are furnished to ~~him~~ the dealer by a seedsman or seed producer with  
2 valid South Dakota permits and all of those seedsmen and seed producers include application for  
3 the seed ~~dealers~~ permit as part of their application. ~~All fees collected under the provisions of this~~  
4 ~~chapter shall be paid into the state treasury and credited to the general fund.~~

5 Section 2. That chapter 38-12A be amended by adding thereto a NEW SECTION to read  
6 as follows:

7 Fees collected pursuant to this chapter shall be deposited with the state treasurer in a special  
8 revenue fund known as the seed fund. This fund shall consist of moneys from public and private  
9 sources including legislative appropriations, federal grants, gifts, and the fees received pursuant  
10 to this chapter. The fund shall be maintained separately and be administered by the department  
11 in order to defray the expenses of all activities associated with administering the seed program.  
12 Expenditures from the fund shall be appropriated through the normal budget process.  
13 Unexpended funds and interest shall remain in the fund until appropriated by the Legislature.

14 Section 3. That § 38-18-3 be amended to read as follows:

15 38-18-3. Any person owning, leasing, or possessing bees shall file an application registering  
16 the bees and each apiary with the secretary. The application shall be filed before the first day of  
17 ~~June~~ January each year following the year of the date of issue or within ten days of acquiring  
18 ownership or possession of any bees or apiary or before moving bees into the state and shall  
19 contain each location by legal description, the name of the landowner or lessee of the location,  
20 the number of colonies of bees in each apiary, and any other information required by the  
21 secretary. The landowner or lessee authorizing the placement of an apiary on a location may  
22 revoke the authorization by notifying the owner of the apiary and the secretary in writing. Such  
23 revocation of authorization by a landowner or lessee is not sufficient justification for a contested  
24 case hearing. If any person fails to register an apiary within the time specified by this section, the

1 landowner authorization for that location is invalid. A registration application shall be approved  
2 or rejected by the secretary in compliance with this chapter or rules promulgated pursuant to  
3 chapter 1-26. The secretary may deny applications, revoke permits, or conduct contested case  
4 hearings in accordance with rules promulgated pursuant to chapter 1-26. Any person failing to  
5 register ~~his~~ an apiary or bees pursuant to this section is guilty of a Class 2 misdemeanor. In  
6 addition to the criminal penalty imposed by this section, a person is subject to a civil penalty not  
7 to exceed five hundred dollars for each location that ~~he~~ the person has failed to register.

8 Section 4. That § 38-18-4 be amended to read as follows:

9 38-18-4. Thirty days before transporting bees or used bee equipment not included in a  
10 compliance agreement into the state, a person shall file with the secretary an application for an  
11 entrance permit. Each application for an entrance permit shall be accompanied by a  
12 nonrefundable fee of fifty dollars. A certificate of health, pursuant to § 38-18-23, shall be filed  
13 with the secretary prior to approval of the entrance permit. The secretary shall act upon an  
14 application within thirty days and may revoke entrance permits and conduct contested case  
15 hearings in accordance with this chapter or rules promulgated pursuant to chapter 1-26. The  
16 failure to apply for an entrance permit is a Class 2 misdemeanor. Any person failing to apply for  
17 an entrance permit is also subject to a civil penalty not to exceed five hundred dollars for each  
18 day ~~he~~ the person remains in violation of this section.

19 Section 5. That § 38-18-5 be amended to read as follows:

20 38-18-5. Any person registering an apiary pursuant to § 38-18-3 shall pay a registration fee  
21 of ~~ten~~ twenty-five dollars per permanent location and thirty dollars per temporary location. ~~The~~  
22 ~~registration fee shall be deposited in the general fund.~~

23 Section 6. That § 38-18-36 be amended to read as follows:

24 38-18-36. There is hereby imposed upon each bee location within the state, ~~on or before the~~

1 ~~first day of June of each year~~ at the time of registration, a continuing ~~annual~~ biennial assessment  
2 of ~~one dollar~~ two dollars per location. The Department of Agriculture shall collect and deposit  
3 the funds in the honey industry fund.

4 Section 7. That chapter 38-18 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 Except as provided by § 38-18-36, fees collected pursuant to this chapter shall be deposited  
7 with the state treasurer in a special revenue fund known as the apiary fund. This fund shall  
8 consist of moneys from public and private sources including legislative appropriations, federal  
9 grants, gifts, and the fees received pursuant to this chapter. The fund shall be maintained  
10 separately and be administered by the department in order to defray the expenses of all activities  
11 associated with administering the apiary program. Expenditures from the fund shall be  
12 appropriated through the normal budget process. Unexpended funds and interest shall remain in  
13 the fund until appropriated by the Legislature.

14 Section 8. That § 38-19-1 be amended to read as follows:

15 38-19-1. Terms, as used in this chapter, mean:

- 16 (1) "Available phosphoric acid," the sum of the water-soluble and the citrate-soluble  
17 phosphoric acid and reported as phosphorus pentoxide;
- 18 (2) "Brand," a term, design, or trademark used in connection with one or several grades  
19 of commercial fertilizer;
- 20 (3) "Bulk commercial fertilizer," any volume of a commercial fertilizer which is  
21 transported or held for resale in an immediate reusable container in undivided  
22 quantities greater than one hundred pounds net dry weight or fifty-five U.S. gallons  
23 liquid measure;
- 24 (4) "Bulk commercial fertilizer storage facility," any area, location, tract of land, building,

1 structure, or premises constructed in accordance with rules promulgated by the  
2 secretary for the storage of bulk commercial fertilizer;

3 (5) "Commercial fertilizer," any substance containing any recognized plant nutrient which  
4 is used for its plant nutrient content and which is designed for use or claimed to have  
5 value in promoting plant growth, except unmanipulated animal and vegetable  
6 manures, marl, lime, limestone, lime sludge, sewage sludge, wood ashes, gypsum,  
7 compost, and other products excluded by rule;

8 (5A) "Compost," a group of organic residues or a mixture of organic residues and soil that  
9 have been piled, moistened, and allowed to undergo aerobic biological decomposition;

10 (6) "Distribute," to import, consign, manufacture, produce, compound, mix, or blend  
11 commercial fertilizer, or to offer for sale, sell, barter, or otherwise supply commercial  
12 fertilizer in this state;

13 (7) "Distributor," any person who distributes commercial fertilizer in this state;

14 (8) "Fertilizer material," a commercial fertilizer which either:

15 (a) Contains important quantities of no more than one of the primary plant  
16 nutrients: nitrogen, phosphoric acid, and potash; or

17 (b) Has approximately eighty-five percent of its plant nutrient content present in  
18 the form of a single chemical compound; or

19 (c) Is derived from a plant or animal residue or by-product or a natural material  
20 deposit which has been processed in such a way that its content of primary  
21 plant nutrients has not been materially changed except by purification and  
22 concentration;

23 (9) "Grade," the percentage of total nitrogen, available phosphoric acid, and soluble  
24 potash stated in whole numbers in the same terms, order, and percentages as in the

1 guaranteed analysis. However, speciality fertilizers may be guaranteed in fractional  
2 units of less than one percent of total nitrogen, available phosphoric acid, and soluble  
3 potash. Fertilizer materials, bone meal, manures, and similar raw materials may be  
4 guaranteed in fractional units;

5 (10) "Investigational allowance," allowance for variations inherent in the taking,  
6 preparation, and analysis of an official sample of commercial fertilizer;

7 (11) "Label," a display of written, printed, or graphic matter on or attached to the  
8 immediate container of any article and the outside container or wrapper of the retail  
9 package, or a statement or document accompanying a commercial fertilizer;

10 (12) "Labeling," all written, printed, or graphic matter, upon or accompanying any  
11 commercial fertilizer or advertisements, brochures, posters, television, and radio  
12 announcements used in promoting the sale of commercial fertilizer;

13 (13) "Licensee," any person who receives a license to distribute a commercial fertilizer  
14 under the provisions of this chapter;

15 (14) "Metric ton," a net weight of one thousand kilograms;

16 (15) "Mixed fertilizer," a commercial fertilizer containing any combination or mixture of  
17 fertilizer materials;

18 (16) "Nitrogen," the element of nitrogen;

19 (17) "Official sample," any sample of commercial fertilizer taken by the secretary of  
20 agriculture or ~~his~~ department agent according to methods prescribed by this chapter;

21 (18) "Percent" or "percentage," the percentage by weight;

22 (19) "Primary nutrients," nitrogen, available phosphoric acid, and soluble potash;

23 (20) "Recognized plant nutrients," primary nutrients, secondary nutrients, and micro  
24 nutrients;

- 1 (21) ~~"Registrant," any person who registers specialty fertilizers for distribution under the~~  
2 ~~provisions of this chapter to nonregistrants;~~
- 3 (22) "Secondary and micro nutrients," those nutrients other than primary nutrients that are  
4 essential for the normal growth of plants and that may need to be added to the growth  
5 medium. Secondary plant nutrients include calcium, magnesium, and sulfur; micro  
6 plant nutrients include boron, chlorine, cobalt, copper, iron, manganese, molybdenum,  
7 sodium, and zinc;
- 8 (23) "Secretary," the secretary of the Department of Agriculture;
- 9 (24) "Sell:"
- 10 (a) The act of selling, transferring ownership;
- 11 (b) The offering and exposing for sale, exchange, or distribution;
- 12 (c) Giving away; or
- 13 (d) Receiving, accepting, holding or possession for sale, exchange, or distribution;
- 14 (24A) "Sewage sludge," "sludge," "biosolids," any solid, semisolid, or liquid residue  
15 removed during the treatment of municipal or domestic sewage by publicly-owned  
16 treatment works regulated under 40 CFR Part 503, as amended to January 1, 1995,  
17 and the Clean Water Act as amended to January 1, 1995;
- 18 (25) "Soluble potash," that portion of the potash contained in fertilizers or fertilizer  
19 materials which is soluble in an aqueous ammoniacal solution of 0.8% ammonium  
20 oxalate, after boiling in a 1.14% solution of ammonium oxalate and reported as  
21 potassium oxide;
- 22 (26) "Speciality fertilizer," a commercial fertilizer, lime, lime sludge, compost, sewage  
23 sludge, or products containing sewage sludge distributed for nonfarm use;
- 24 (27) "Ton," a net weight of two thousand pounds avoirdupois.

1 Section 9. That § 38-19-2.1 be amended to read as follows:

2 38-19-2.1. No person whose name appears on the label of a commercial fertilizer or who  
3 manufactures or mixes a commercial fertilizer in this state may distribute that fertilizer until ~~he~~  
4 the person has obtained a distribution license from the secretary of agriculture. A distribution  
5 license is required for each location where commercial fertilizer is manufactured or mixed. The  
6 license may be granted only after payment of a fee of twenty-five dollars by the licensee. Each  
7 license expires on the thirty-first day of December of each the year. ~~This section does not apply~~  
8 ~~to specialty fertilizers, which registration requirements appear in § 38-19-3.1 after the date of~~  
9 issuance. Any distribution license application for renewal received after the thirty-first day of  
10 January of any year shall be assessed a late payment fee equal to the original license fee, which  
11 shall be added to the original fee and shall be paid by the applicant before the renewal license is  
12 issued. Any person who fails to obtain the proper license is subject to a civil penalty not to  
13 exceed one thousand dollars per violation. Notice ~~must~~ shall be given by registered mail prior  
14 to the imposition of any civil penalty ~~being imposed.~~

15 Section 10. That § 38-19-2.2 be amended to read as follows:

16 38-19-2.2. An application for a commercial fertilizer distribution license shall include the  
17 name and address of the licensee ~~and the name and address of each distribution point operated~~  
18 ~~by the licensee in the state.~~ The licensee's name and address as it appears on the license shall  
19 appear on all labels and pertinent invoices used by the licensee and on all bulk storage units  
20 operated by the licensee in this state.

21 Section 11. That § 38-19-3.1 be repealed.

22 ~~38-19-3.1. No person may distribute in this state a specialty fertilizer to a nonregistrant until~~  
23 ~~it is registered with the secretary of agriculture by the manufacturer or distributor whose name~~  
24 ~~appears on the label. An application in duplicate for each brand and product name of each grade~~



1 of specialty fertilizer shall be made on a form furnished by the secretary and shall be accompanied  
2 with a registration and inspection fee of twenty-five dollars for each brand and product name of  
3 each grade. Two labels for each brand and product name of each grade shall accompany the  
4 application. Upon the approval of an application by the secretary, a copy of the registration shall  
5 be furnished the applicant. All registrations expire on the thirty-first day of December of each  
6 year.

7 Section 12. That § 38-19-3.2 be repealed.

8 ~~38-19-3.2. Any specialty fertilizer containing pesticides and meeting the requirements of~~  
9 ~~chapter 38-20A is exempt from annual registration as required by § 38-20A-4.~~

10 Section 13. That § 38-19-4.1 be repealed.

11 ~~38-19-4.1. An application for registration shall include the following:~~

12 ~~(1) Name and address of the manufacturer or distributor;~~

13 ~~(2) The brand and product name;~~

14 ~~(3) The grade;~~

15 ~~(4) The guaranteed analysis;~~

16 ~~(5) The net weight.~~

17 Section 14. That § 38-19-10 be amended to read as follows:

18 38-19-10. There is paid to the secretary of agriculture for all commercial fertilizer distributed  
19 to nonlicensees in this state an inspection fee of twenty up to twenty-five cents per ton. ~~This fee~~  
20 ~~is increased by thirty cents per ton which increase shall be deposited annually into the~~  
21 ~~groundwater protection fund to fund the groundwater research and education program~~  
22 ~~established pursuant to § 46A-1-85 for five years, at which point the fertilizer inspection fee for~~  
23 ~~each ton of fertilizer shall be twenty cents per ton. The secretary of agriculture may promulgate~~  
24 ~~rules pursuant to chapter 1-26 to provide for an increase in the tonnage inspection fee of up to~~

1 ~~five cents per ton. Such increase shall be commensurate with the overall cost of conducting~~  
2 ~~commercial fertilizer inspections, investigations, monitoring, providing information and~~  
3 ~~education, and taking enforcement action against violators. The secretary of agriculture shall~~  
4 ~~promulgate rules pursuant to chapter 1-26 to establish the inspection fee.~~

5 However, sales or exchanges between importers, manufacturers, or licensees are exempt  
6 from the inspection fee. ~~Also, the inspection fee does not apply to specialty fertilizer.~~

7 Section 15. That § 38-19-18 be amended to read as follows:

8 38-19-18. For the purposes of this chapter, a commercial fertilizer is deemed to be  
9 adulterated:

- 10 (1) If it contains any deleterious or harmful ingredient in sufficient amount to render it  
11 injurious to beneficial plant life when applied in accordance with directions for use on  
12 the label, or if adequate warning statements or directions for use, which may be  
13 necessary to protect plant life, are not shown on the label;
- 14 (2) If its composition falls below or differs from that which it is purported to possess by  
15 its labeling; ~~or~~
- 16 (3) If it contains unwanted crop seed or weed seed; or
- 17 (4) If it contains any deleterious or harmful ingredient in sufficient amount that, if the  
18 product is used in accordance with label instructions, it renders the commodity that  
19 is derived from the treated crop injurious to humans, wildlife, livestock, or the  
20 environment or renders the commodity unsaleable.

21 Section 16. That § 38-19-20 be repealed.

22 ~~38-19-20. The secretary of agriculture, pursuant to rules promulgated pursuant to the~~  
23 ~~provisions of chapter 1-26, may cancel the license of any person or registration of any~~  
24 ~~commercial fertilizer, or refuse to issue a license or registration as herein provided, upon~~

1 ~~satisfactory evidence that the licensee or registrant has used fraudulent or deceptive practices in~~  
2 ~~evasions or attempted evasions of the provisions of this chapter or any rules promulgated~~  
3 ~~hereunder. However, no license or registration may be revoked or refused until the licensee or~~  
4 ~~registrant has been given an opportunity to appear for a hearing by the secretary, such notice and~~  
5 ~~hearing to follow rules promulgated therefore pursuant to the provisions of chapter 1-26.~~

6 Section 17. That chapter 38-19 be amended by adding thereto a NEW SECTION to read as  
7 follows:

8 Each license applicant or licensee shall, upon request of the secretary, furnish copies of labels  
9 and labeling in order to permit the secretary to determine compliance with the provisions of this  
10 chapter.

11 Section 18. That chapter 38-19 be amended by adding thereto a NEW SECTION to read as  
12 follows:

13 The secretary of agriculture may reject the commercial fertilizer distribution license  
14 application of any firm not in compliance with the provisions of this chapter and may cancel the  
15 commercial fertilizer license of any firm subsequently found not to be in compliance with any  
16 provision of this chapter. However, no commercial fertilizer distribution license may be refused  
17 or canceled unless the licensee has been given an opportunity to be heard before the secretary  
18 and to amend the application in order to comply with the requirements of this chapter.

19 Section 19. That § 38-19A-4 be amended to read as follows:

20 38-19A-4. Each separately identified soil conditioner product shall be registered before being  
21 distributed in this state. The application for registration shall be submitted to the secretary of  
22 agriculture on the form furnished or approved by the secretary and shall be accompanied by a  
23 fee of twenty-five dollars per product. Upon approval by the secretary, a copy of the registration  
24 shall be furnished to the applicant. Each registration shall expire on December thirty-first of the

1 year following the date of issuance. Each registrant shall submit to the secretary a copy of labels  
2 and advertising literature with the registration request for each soil amendment.

3 Section 20. That § 38-19A-11 be amended to read as follows:

4 38-19A-11. Every distributor shall file with the secretary, on forms furnished by the secretary  
5 of agriculture, ~~semiannual statements~~ an annual statement for ~~periods~~ the period ending  
6 December thirty-first ~~and June thirtieth~~ of each year setting forth the number of net tons of each  
7 soil amendment distributed in the state during that period. The report shall be due within thirty  
8 days following each ~~semiannual~~ annual reporting period. If the report is not filed and the payment  
9 of the inspection fee is not made within the time period specified, a collection fee amounting to  
10 ten percent of the amount shall be assessed against the registrant. However, the minimum  
11 collection fee is ten dollars. The secretary ~~shall have the authority to~~ may examine such records  
12 to verify statements of tonnage. Such statement shall be accompanied by payment of an  
13 inspection fee of twenty cents per ton for all soil amendments distributed in this state. The  
14 secretary may allow payment of inspection fees on a calculated equivalent of volume to tons.

15 Section 21. That § 38-21-17 be amended to read as follows:

16 38-21-17. No person may engage in the business of applying pesticides to the lands of  
17 another, advertise as being in the business of applying pesticides to the lands of another at any  
18 time, apply pesticides while in the performance of his duties as a governmental employee or  
19 otherwise act as a commercial applicator without an applicator's license issued by the secretary  
20 of agriculture, unless exempted under the provisions of this chapter. The secretary shall require  
21 ~~an annual~~ a fee of twenty-five dollars for each applicator license issued. The secretary of  
22 agriculture shall issue an applicator license to government employees without a license fee. The  
23 fee exempt license is valid only when the applicator is applying pesticides in the course of his  
24 employment for the governmental entity. Any person who violates this section is subject to a civil

1 penalty not to exceed five thousand dollars per violation.

2 Section 22. That § 38-21-26 be amended to read as follows:

3 38-21-26. A licensed applicator's license shall expire on the last day of February of the  
4 second year following the year of issue unless it has been revoked or suspended prior thereto by  
5 the secretary of agriculture for cause, as provided for in § 38-21-44.

6 Section 23. That § 38-21-33.1 be amended to read as follows:

7 38-21-33.1. It is a Class 2 misdemeanor for any person to act in the capacity of a licensed  
8 pesticide dealer or advertise as a licensed pesticide dealer at any time without first having  
9 obtained ~~an annual~~ a license from the Department of Agriculture ~~which~~ that shall expire on the  
10 last day of February of the second year following the year of issue. In addition to any criminal  
11 penalty, any person who violates this section is subject to a civil penalty not to exceed five  
12 thousand dollars per violation.

13 Section 24. That § 38-21-33.5 be amended to read as follows:

14 38-21-33.5. Application for a license shall be accompanied by a fifty dollar ~~annual~~ license fee  
15 and shall be on a form prescribed by the secretary of agriculture. ~~The annual license fee for any~~  
16 ~~applicant who also holds a licensed applicator license shall be twenty-five dollars.~~

17 Section 25. That § 38-21-42 be amended to read as follows:

18 38-21-42. Any person holding a current valid license or certification may renew such license  
19 or certification for the next ~~year~~ biennium without taking another examination unless the  
20 secretary of agriculture determines that additional knowledge related to classifications for which  
21 the applicant has applied makes a new examination necessary or if additional demonstration of  
22 qualifications is determined necessary for a person who has had a license suspended or revoked  
23 or has had one or more previous violations of this chapter.

24 Section 26. That § 38-21-43 be amended to read as follows:

1 38-21-43. If the application for renewal of any license provided for in this chapter is not filed  
2 prior to March first in any year of expiration, a penalty of fifty dollars shall be assessed and added  
3 to the original fee and shall be paid by the applicant before the renewal license is issued.

4 Section 27. That § 38-24B-1 be amended to read as follows:

5 38-24B-1. Terms, as used in this chapter, ~~unless the context otherwise requires~~, mean:

6 (1) "Annual plants," ornamental or vegetable plants which are commonly grown in  
7 movable containers and transplanted to out of doors locations and which do not live  
8 for more than one growing season;

9 (2) "Dealer," any person who is not a resident nurseryman:

10 (a) Who buys nursery stock for the purpose of reselling or reshipping;

11 (b) Who makes landscape plans using nursery stock and negotiates in the purchase  
12 of nursery stock for his clients; or

13 (c) Who contracts to furnish and plant nursery stock;

14 (3) "Decorative plants," indoor plants which are commonly grown and sold in movable  
15 containers, and which are not adapted for cultivation out of doors because of climatic  
16 conditions and natural peculiarities of habit or growth and because of the purpose of  
17 their cultivation;

18 (4) "Department," the State Department of Agriculture;

19 (5) "Nursery," any grounds or premises on which nursery stock is being grown,  
20 fumigated, packed, displayed, or stored, if such stock is or will either be sold or  
21 offered for sale or distribution;

22 (6) "Nurseryman," any person who owns, leases, manages, or is in charge of a nursery;

23 (7) "Nursery stock," trees, shrubs, or other plants having a persistent woody stem; all  
24 herbaceous perennials; and parts of either of those which are capable of propagation,

1           except for seeds, true bulbs, rhizomes, corms, and tubers while in a dormant  
2           condition;

3       (8)   "Pest," any animal, plant, insect, ~~or~~ infectious transmissible or contagious disease, or  
4           other organism which is or may be dangerous or detrimental to the plant industry of  
5           the state;

6       (9)   "Regulated pest," any pest which the secretary determines is sufficiently detrimental  
7           to the plant industry of the state to warrant control or eradication measures;

8       (10) "Related plant products," seed, true bulbs, rhizomes, corms, roots, and tubers of  
9           nursery stock while in a dormant condition and nonviable plant to include forced  
10          blooming plants and Christmas trees;

11      (11) "Resident nurseryman," any nurseryman in this state who grows all or a portion of the  
12          nursery stock that ~~he~~ the nurseryman sells or distributes;

13      (12) ~~"Restricted dealer," a dealer who limits his nursery stock to only roses or herbaceous~~  
14          ~~perennials;~~

15      (13) "Secretary," the state secretary of agriculture;

16      (14) "Sod," grassy surface soil held together by matted roots of grass cultivors, mixtures,  
17          or blends of grass cultivors and used in residential and commercial landscape;

18      (15) ~~"Special nurseryman," a resident nurseryman who grows only one species of nursery~~  
19          ~~stock and does less than five hundred dollars in sales each year;~~

20      (16) "Viable," capable of germination or living and developing under normal growing  
21          conditions into a plant which would be typical in height, spread, caliper, dimension,  
22          condition, quality, and age for a plant of that species.

23      Section 28. That § 38-24B-7 be amended to read as follows:

24      38-24B-7. The Department of Agriculture may issue a certificate of inspection to any

1 nurseryman whose nursery stock has been officially inspected and found to be viable and free  
2 from pests. The ~~annual~~ biennial fee for the inspection and certification is:

3 (1) Resident nurseryman: ~~thirty two hundred~~ dollars plus thirty ~~cents~~ dollars for each acre  
4 of growing field; and

5 (2) ~~Special nurseryman: ten dollars;~~

6 ~~—(3)—Dealer: thirty one hundred dollars; ~~and~~~~

7 ~~—(4)—Restricted dealer: twenty dollars.~~

8 ~~—All fees collected pursuant to this section shall be placed in the general fund.~~

9 Section 29. That § 38-24B-9 be amended to read as follows:

10 38-24B-9. Any nurseryman whose location is outside the state may obtain a certificate of  
11 inspection to sell nursery stock within the state by filing a certified copy of ~~his~~ the official  
12 inspection certificate and paying a thirty two hundred dollar fee to the secretary of agriculture.  
13 The secretary may waive the payment of the fee if the applicant's state does not require a fee by  
14 South Dakota applicants for a like certificate in that state.

15 Section 30. That § 38-24B-12 be amended to read as follows:

16 38-24B-12. Any grower or dealer of decorative plants, annual plants, sod, or related plant  
17 products may apply to the department for a certificate of inspection. The Department of  
18 Agriculture may issue a certificate of inspection to the person whose decorative plants, annual  
19 plants, sod, or related plant products have been officially inspected and found free from pests.  
20 The fee for inspection and certification is thirty two hundred dollars plus thirty ~~cents~~ dollars for  
21 each acre of growing field and thirty ~~cents~~ dollars for each one thousand square feet of growing  
22 greenhouse.

23 Section 31. That chapter 38-24B be amended by adding thereto a NEW SECTION to read  
24 as follows:



1 Fees collected pursuant to this chapter shall be deposited with the state treasurer in a special  
2 revenue fund known as the nursery fund. This fund shall consist of moneys from public and  
3 private sources including legislative appropriations, federal grants, gifts, and the fees received  
4 pursuant to this chapter. The fund shall be maintained separately and be administered by the  
5 department in order to defray the expenses of all activities associated with administering the  
6 nursery program. Expenditures from the fund shall be appropriated through the normal budget  
7 process. Unexpended funds and interest shall remain in the fund until appropriated by the  
8 Legislature.

9 Section 32. That § 39-14-40.1 be amended to read as follows:

10 39-14-40.1. No person who manufactures a commercial feed within the state, or whose name  
11 appears on the label of a commercial feed as guarantor, may distribute a commercial feed in the  
12 state without first obtaining a commercial feed license from the secretary on forms provided by  
13 the secretary that identify the manufacturer's or guarantor's name, place of business, and location  
14 of each manufacturing facility in the state and such other appropriate information necessary for  
15 enforcement of this chapter. The fee for a new or renewal license is fifty dollars per in-state  
16 location or manufacturer name and location listed on a commercial feed label, except that in the  
17 case of in-state manufacturers who manufacture only customer formula feeds, no fee may be  
18 collected. Each license expires on the thirty-first of December of ~~each~~ the year after the date of  
19 issuance. Commercial feed license applications for renewal received after the thirty-first of  
20 January of each year shall be assessed a late payment fee equal to the original license fee, which  
21 shall be added to the original fee and shall be paid by the applicant before the renewal license is  
22 issued.

23 Section 33. That § 39-14-43 be amended to read as follows:

24 39-14-43. An inspection fee established in rules promulgated by the secretary of agriculture

1 pursuant to chapter 1-26, but not to exceed twenty-four cents per ton, shall be paid on  
2 commercial feeds distributed in this state by the person who distributes the commercial feed to  
3 the consumer subject to the following:

- 4 (1) No fee need be paid on a commercial feed if the payment has been made by a previous  
5 distributor;
- 6 (2) No fee need be paid on customer-formula feeds;
- 7 (3) No fee need be paid on commercial feeds used as ingredients for the manufacture of  
8 commercial feeds provided the fee has been paid by a previous distributor. If the fee  
9 has been paid, credit is given for the payment;
- 10 (4) In the case of a pet food which is distributed in the state only in packages of ten  
11 pounds or less, ~~an annual~~ a biennial fee of fifty dollars per product shall be paid in lieu  
12 of the inspection fee specified above;
- 13 (5) In the case of a specialty pet food which is distributed in the state only in packages of  
14 ten pounds or less, ~~an annual~~ a biennial fee of twenty-five dollars per product shall be  
15 paid in lieu of the inspection fee specified above; and
- 16 (6) The minimum inspection fee shall be ~~ten~~ twenty dollars per ~~six-month~~ twelve-month  
17 period.

18 Section 34. That § 39-14-44 be amended to read as follows:

19 39-14-44. Any person who is liable for payment of an inspection fee shall:

- 20 (1) File, not later than the last day of January ~~and July~~ of each year, ~~a semi-annual~~ an  
21 annual statement, setting forth the number of net tons of commercial feeds distributed  
22 in this state during the preceding ~~six~~ twelve months. Upon filing such statement, the  
23 person shall pay the inspection fee at the rate stated in § 39-14-43. Inspection fees  
24 that are due and have not been remitted to the Department of Agriculture ~~within thirty~~

1           ~~days following the due date~~ by January thirty-first of each year shall have a late  
2           payment fee of ten percent or ~~ten~~ twenty dollars, whichever is greater, added to the  
3           amount due when payment is finally made. The assessment of this late payment fee  
4           does not prevent the department from taking other actions as provided in this chapter;  
5           and

6           (2)   Keep such records as may be necessary or required by the secretary of agriculture,  
7           pursuant to rules promulgated pursuant to chapter 1-26, to indicate accurately the  
8           tonnage of commercial feed distributed in this state. The secretary may examine such  
9           records to verify statements of tonnage.

10          Failure to make an accurate statement of tonnage or to pay the inspection fee or comply with  
11          this section constitutes sufficient cause for cancellation of a commercial feed license or rejection  
12          of a commercial feed license application.

13          Section 35. That § 39-18-8 be amended to read as follows:

14          39-18-8. Upon approval by the secretary of agriculture, a copy of the registration of an  
15          animal remedy shall be forwarded to the applicant. All registrations are on ~~an annual~~ a biennial  
16          basis, expiring the thirty-first day of December of the year after the date of registration. ~~An~~  
17          ~~annual~~ A biennial registration fee of twenty-five dollars for each product shall be paid to the  
18          secretary upon application for registration.