

2020 South Dakota Legislature
Senate Bill 22

AMENDMENT 22A FOR THE INTRODUCED BILL

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

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

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

5 **38-20A-15. Information regarding pesticide formulas--Prohibitions--**
6 **Violations as misdemeanors--Exceptions.**

7 It is a Class 1 misdemeanor for any person to use for his the person's own
8 advantage, or to reveal, ~~other than to the secretary of agriculture or proper officials or~~
9 ~~employees of the state or to the courts of this state in response to a subpoena, or to~~
10 ~~physicians, or in emergencies to pharmacists and other qualified persons for use in the~~
11 ~~preparation of antidotes,~~ any information relative to formulas of products acquired ~~by~~
12 ~~authority of in accordance with~~ §§ 38-20A-4 to 38-20A-13, inclusive. Notwithstanding the
13 provisions of § 38-20A-48, ~~any person who, with intent to defraud, uses or reveals it is a~~
14 Class 2 misdemeanor for any person to use or reveal information relative to formulas of
15 products acquired ~~under authority of in accordance with~~ §§ 38-20A-4 to 38-20A-13,
16 inclusive, ~~commits a petty offense with the intent to defraud.~~

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

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

22 **38-20A-48. Violation of chapter--Penalties.**

23 Any person violating any provision of this chapter which is not otherwise classified
24 is guilty of a Class 2 misdemeanor, or may be subject to a civil penalty not to exceed five

1 thousand dollars per violation, or both. A civil penalty under this section shall be imposed
2 by the circuit court. Any civil penalty collected shall be deposited into the state general
3 fund.

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

5 **38-20A-49. Notice of contemplated criminal proceedings--Opportunity to**
6 **present views--Referral to state's attorney.**

7 If it appears from an examination ~~pursuant to the provisions of~~ under § 38-20A-
8 39 that a pesticide or device fails to comply with ~~the provisions of this chapter,~~ and the
9 secretary contemplates ~~instituting~~ a referral to the state's attorney to institute criminal
10 proceedings against a person, ~~he~~ the secretary shall notify that person. A person so
11 notified ~~shall be given an opportunity to~~ may present ~~his~~ the person's views within fifteen
12 days of receiving notice, either orally or in writing, with regard to the contemplated
13 proceedings. If, in the opinion of the secretary, it appears that ~~the provisions of the~~ this
14 chapter ~~have~~ has been violated by the person, the secretary shall refer the facts to the
15 state's attorney for the county in which the violation occurred with a copy of the results
16 of the analysis or the examination of the pesticide or device.

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

18 **38-20A-50. Minor violations--Written warning.**

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

23 **Section 5.** That a NEW SECTION be added:

24 **38-20A-50.1. Voluntary compliance--Administrative settlement agreements.**

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

30 **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 ~~man~~ 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 ~~of or~~ fifty-five United States gallons liquid measure. ~~This~~ The term does not include pesticides ~~which~~ 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, ~~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 man and other than bacteria, virus, or other microorganism on or in living man or other living animals, but not including equipment used for the application of pesticides when sold separately therefrom~~ 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 ~~contrivance~~ any device using motorized, mechanical, or pressurized power ~~and used to apply any pesticide on land and anything that may be growing, habitating, or stored on or in such land,~~ but does not include any pressurized, ~~hand-sized household apparatus used contrivance of which~~ device that requires the person ~~who is applying the~~

- 1 pesticide ~~is to be~~ the source of power or energy in making to make the pesticide
2 application;
- 3 (11) "Fungus," any nonchlorophyll-bearing thallophyte, except those on or in processed
4 food, beverages, or pharmaceuticals or those on or in living animals;
- 5 (12) "Insect," any of the numerous small invertebrate animals belonging to the class
6 insecta or to other allied classes of arthropods;
- 7 (13) "Labeling," any label and other written, printed, or graphic matter:
8 (a) On the pesticide or device or any of its containers or wrappers;
9 (b) Accompanying the pesticide or device at any time; or
10 (c) To which reference is made on the label or in literature accompanying the
11 pesticide or device, except accurate, nonmisleading reference to current
12 official publications of any government institution or official agency of the
13 United States or of this or any other state, authorized by law to conduct
14 research in the field of pesticides;
- 15 (14) "Land," all land and water areas, including airspace, and all plants, animals,
16 structures, buildings, contrivances, and machinery, appurtenant thereto or situated
17 thereon, fixed or mobile, including any used for transportation;
- 18 ~~(15) "Licensed applicator," any certified applicator who is licensed under this chapter and
19 who owns, manages, or is employed by a pesticide application business which is
20 engaged in the business of applying pesticides upon the lands of another or applies
21 pesticides while in the performance of his duties as a government employee;~~
- 22 ~~(16) "Licensed pesticide."~~ "Pesticide dealer," any person who is licensed under this chapter
23 and who entity that distributes restricted-use pesticides or pesticides whose uses
24 or distribution are restricted in use or distribution by regulation;
- 25 ~~(17)~~ (16) "Nematode," any invertebrate animal of the phylum ne-mathel-minthes or
26 nematoda;
- 27 ~~(18)~~ (17) "Pest," any insect, rodent, nematode, fungus, weed, or other form of
28 terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism,
29 except viruses, bacteria, or other microorganisms on or in living ~~man~~ human or
30 other living animals, which the secretary ~~by regulation may declare~~ declares to be
31 a pest;
- 32 ~~(19)~~ (18) "Pesticide," any substance or mixture of substances intended for preventing,
33 destroying, repelling, or mitigating any pest, or any substance or mixture of
34 substances intended for use as a plant regulator, defoliant, or desiccant or any
35 substance or mixture of substances intended to be used as a spray adjuvant;

- 1 ~~(20)~~(19) "Plant regulator," any substance or mixture of substances, intended, through
2 physiological action, for accelerating or retarding the rate of growth or rate of
3 maturation, or for otherwise altering the behavior of ornamental or crop plants or
4 the produce thereof, but does not include substances to the extent that they are
5 intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants,
6 or soil amendments;
- 7 ~~(21)~~(20) "Private applicator," a certified applicator over the age of eighteen who:
8 (a) Uses any pesticide other than a restricted-use pesticide for purposes of
9 producing any agricultural commodity amounting to greater than one
10 thousand dollars gross sales potential per year on property owned or rented
11 by the private applicator or the private applicator's employer; or
12 (b) Uses any restricted-use pesticide for the purpose of producing any
13 agricultural commodity on property owned or rented by the private applicator
14 or the private applicator's employer; ~~or~~
15 (c) Applies any pesticide on the property of another person without
16 compensation other than trading of personal services between producers of
17 agricultural commodities; or
18 (d) Is not regularly in the business of applying pesticides for hire amounting to a
19 principal or regular occupation and is not held out to the public as a
20 commercial applicator;
- 21 (21) "Registrant," the person registering any pesticide in accordance with the provisions
22 of this chapter;
- 23 (22) "Restricted-use pesticide," any pesticide classified as a restricted-use pesticide by
24 the secretary ~~of the Department of Agriculture;~~
- 25 (23) "Rinsate," any solution containing pesticide residue which is generated from
26 washing or flushing of pesticide containers and pesticide equipment;
- 27 (24) "Secretary," the secretary of the Department of Agriculture;
- 28 (25) "Spray adjuvant," any wetting agent, spreading agent, sticker, deposit builder,
29 adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent
30 intended to be used with any other pesticide as an aid to the application or to the
31 effect thereof, and which is in a package or container separate from that of the
32 pesticide with which it is to be used;
- 33 (26) "Unreasonable adverse effects on the environment," any unreasonable risk to ~~man~~
34 humans or the environment, taking into account the economic, social and
35 environmental costs and benefits of the use of any pesticide; and

1 (27) "Weed," any plant which grows where not wanted.

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

3 **38-21-15. Pesticide handling causing injury or pollution prohibited--Rules**
4 **and regulations--Penalty for violation.**

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

6 **38-21-16. Pesticide incidents--Report of damage--Inspection by secretary.**

7 ~~The secretary of agriculture shall establish rules pursuant to chapter 1-26 to~~
8 ~~require the reporting of significant pesticide accidents or incidents. Any person may report~~
9 ~~damage from the use of a pesticide or any alleged pesticide incident to the secretary on a~~
10 ~~form provided by the secretary, with a written statement, within thirty days after the date~~
11 ~~the damage was observed or the incident occurred. Any person alleging damage shall~~
12 ~~permit the secretary to inspect, during reasonable hours, the lands where the alleged~~
13 ~~damage or incident occurred, or any organism is alleged to have been damaged.~~

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

15 **38-21-33. Classes of certifications and licenses.**

16 ~~The secretary of agriculture may further classify or subclassify certifications or~~
17 ~~licenses to be issued under this chapter. Such~~The ~~classifications may include, but shall~~
18 ~~not be limited to soil fumigation, nonsoil fumigation, pest control operators, ornamental~~
19 ~~or agricultural pesticide applicators, and right-of-way pesticide applicators. Separate~~
20 ~~classifications may be specified as to ground, aerial, or manual methods used by any~~
21 ~~licensee to apply pesticides or to the use of pesticides to control insects and plant diseases,~~
22 ~~rodents or weeds. Each classification shall be subject to separate testing procedures and~~
23 ~~requirements.~~

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

25 **38-21-34. Applicator's license--Limitations.**

26 ~~No person shall be required to pay an additional license fee if such person desires~~
27 ~~to be licensed in two or more of the license classifications provided for by the secretary of~~
28 ~~agriculture under the authority of § 38-21-33, applicator may hold more than one~~
29 ~~applicator's license simultaneously. Any private applicator's license held by a commercial~~

1 applicator shall become invalid upon issuance of a commercial applicator's license by the
2 secretary.

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

4 **38-21-38. Personal farm use exempt.**

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

6 **38-21-40. Restricted-use pesticides--Licensure required--Restrictions--**
7 **Criteria--Penalty.**

8 No person may use any restricted-use pesticide without that person first complying
9 with the ~~certification~~ licensing requirements of this chapter ~~or such~~ and any other
10 restrictions as may be determined by the secretary ~~of agriculture~~, pursuant to § 38-21-
11 39, as necessary to prevent unreasonable adverse effects on the environment, including
12 injury to the applicator or other persons, for that specific pesticide use. In determining
13 restrictions, the secretary shall, pursuant to § 38-21-39, consider the characteristics of
14 the pesticide formulation such as the acute dermal inhalation toxicity; the persistence,
15 mobility, and susceptibility to biological concentration; the use experience which may
16 reflect an inherent misuse of an unexpected good safety record which does not always
17 follow laboratory toxicological information; the relative hazards of patterns of use such as
18 granular soil applications, ultra-low volume or dust aerial applications, or air blast sprayer
19 applications; and the extent of the intended use. Any person ~~using restricted-use~~
20 ~~pesticides without complying with the certification requirements of~~ who violates this
21 section is subject to a civil penalty not to exceed five thousand dollars per violation. Any
22 civil penalty under this section shall be imposed by the circuit court. Any civil penalty
23 collected shall be deposited into the state general fund.

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

25 **38-21-42. Renewal of license--Requirements--Exceptions.**

26 Any person holding a current valid license ~~or certification~~ may renew ~~such the~~
27 ~~license or certification~~ for the next biennium without taking another examination unless
28 the secretary ~~of agriculture~~ determines that additional knowledge related to classifications
29 for which the applicant has applied makes a new examination necessary or if additional
30 demonstration of qualifications is determined necessary for a person who has had a license
31 suspended or revoked or has had one or more previous violations of this chapter. Any

1 person whose license has expired and has not been renewed in accordance with this
2 chapter before the expiration, shall be required to take the examination to obtain a new
3 license.

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

5 **38-21-44. Suspension, revocation, or modification of license--Grounds--**
6 **Violation as misdemeanor--Civil penalty.**

7 The secretary of agriculture, pending inquiry examination and after notice and
8 opportunity for a hearing, pursuant to chapter 1-26, may ~~deny~~, suspend, revoke, or
9 modify any provision of any license ~~or certification~~ issued under this chapter and held by
10 the violator, if ~~he~~ the secretary finds that the applicant ~~or the holder of a~~ any license ~~or~~
11 ~~certification~~ has committed any of the following acts, each of which is declared to be a
12 violation of this chapter:

- 13 (1) Made false or fraudulent claims through any media, misrepresenting the effect of
14 materials or methods to be utilized;
- 15 (2) Made a pesticide recommendation or application inconsistent with the labeling or
16 mixed, loaded, stored, transported, disposed, displayed, or handled a pesticide or
17 pesticide container inconsistent with the product label or labeling. ~~However, a~~ A
18 deviation may include the loading and handling of the manufacturer's unbroken
19 immediate container and provisions set forth in section 2(ee) of the Federal
20 Insecticide, Fungicide and Rodenticide Act, as amended through July 1, 1989;
- 21 (3) Applied known ineffective or improper materials;
- 22 (4) Operated faulty or unsafe equipment;
- 23 (5) Operated in a faulty, careless, or negligent manner;
- 24 (6) Neglected or, after notice, refused to comply with the provisions of this chapter, the
25 rules adopted ~~hereunder~~ thereunderunder this chapter, or of any lawful order of the
26 secretary;
- 27 (7) Refused or neglected to keep and maintain the records required by this chapter, or
28 to make reports when and as required;
- 29 (8) Made false or fraudulent records, invoices, or reports;
- 30 (9) Engaged in the business of applying a pesticide on the lands of another without
31 having ~~such a~~ a license or certification ~~as may be~~ required by this chapter;
- 32 (10) Used fraud or misrepresentation in making an application for, or renewal of, a
33 license or certification;

- 1 (11) Refused or neglected to comply with any limitations or restrictions listed on or in a
 2 duly an issued license ~~or certification~~;
- 3 (12) Aided or abetted a licensed or an unlicensed person to evade the provisions of this
 4 chapter, conspired with such a licensed or an unlicensed person to evade the
 5 provisions of this chapter, or allowed one's license or certification to be used by
 6 another person;
- 7 (13) Made false or misleading statements to the secretary ~~or his~~ the secretary's agents
 8 during an inspection or investigation conducted under the authority of this chapter;
- 9 (14) Impersonated any federal, state, county, or city inspector or official; or
- 10 (15) ~~Fails~~ Failed to maintain the aerial requirements ~~as stated~~ provided in § 38-21-20;
 11 or
- 12 (16) Transported, stored, used, disposed of, or handled any pesticide, pesticide
 13 container, rinsate, or application equipment in a manner as to endanger or cause
 14 injury to humans, vegetation, crops, livestock, wildlife, or beneficial insects or to
 15 pollute groundwater or surface water.

16 In addition to the administrative sanctions available to the secretary ~~of agriculture~~
 17 pursuant to this section, ~~any licensed or nonlicensed, certified or noncertified person who~~
 18 ~~commits any of the above mentioned acts is guilty of~~ a violation of this section by any
 19 person is a Class 2 misdemeanor and may be assessed a civil penalty not to exceed five
 20 thousand dollars per violation by the circuit court. In addition to any criminal penalty, any
 21 person who violates this section is subject to a civil penalty not to exceed five thousand
 22 dollars per violation. Any civil penalty under this section shall be imposed by the circuit
 23 court. Any civil penalty collected shall be deposited into the state general fund. The
 24 ~~secretary of agriculture~~ is not required to seek the administrative sanctions available under
 25 this section ~~prior to~~ before referring charges or commencing an any action in circuit court
 26 against an alleged violator of this section.

27 **Section 15.** That a NEW SECTION be added:

28 **38-21-44.1. Contemplated criminal proceedings--Notice--Opportunity to**
 29 **present views--Referral to state's attorney.**

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

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

7 **Section 16.** That a NEW SECTION be added:

8 **38-21-44.2. Prosecution of violations.**

9 Each state's attorney to whom any violation of this chapter is reported shall cause
10 appropriate proceedings to be instituted and prosecuted without delay.

11 **Section 17.** That a NEW SECTION be added:

12 **38-21-44.3. Obtaining voluntary compliance--Administrative settlement**
13 **agreements.**

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

19 **Section 18.** That § 38-21-45 be AMENDED:

20 **38-21-45. Pesticide damage--Liability.**

21 Nothing in this chapter ~~shall~~ may be construed to relieve any person from liability
22 for any damage to the person or lands of another caused by the use of pesticides even
23 though ~~such~~ the use conforms to the rules and regulations promulgated under the
24 authority of this chapter.

25 **Section 19.** That § 38-21-46 be AMENDED:

26 **38-21-46. Notice of damage--Requirements--Exception.**

27 Any person claiming damages from any use of a pesticide shall ~~file with the~~
28 secretary of agriculture on a form prescribed by the secretary a written statement within
29 thirty ~~days~~ notify by certified mail the pesticide applicator of the alleged damage within the
30 earlier of:

1 (1) Thirty days after the date that the damages occurred, were observed or should
2 have been observed; or

3 (2) If a growing crop is alleged to have been damaged, the report shall be filed prior
4 to that before the time that twenty-five percent of the crop has been harvested or
5 destroyed.

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

8 **Section 20.** That § 38-21-47 be AMENDED:

9 **38-21-47. Inspection of damages--Requirements.**

10 ~~The secretary of agriculture shall, upon receipt of a statement filed pursuant to~~
11 ~~§ 38-21-46, notify the licensee and the owner or lessee of the land or other person who~~
12 ~~may be charged with the responsibility of the damages claimed, and furnish copies of such~~
13 ~~statements as may be requested. The secretary shall inspect damages whenever possible~~
14 ~~and, if he determines that the complaint has merit, he shall make such information~~
15 ~~available to the person claiming damage and to the person who is alleged to have caused~~
16 ~~the damage. Upon notifying the applicator as required under § 38-21-46, the person~~
17 ~~seeking reimbursement for the alleged damage shall permit the applicator and up to four~~
18 ~~representatives of the applicator to enter the person's property during reasonable hours~~
19 ~~for the purpose of observing and examining the alleged damage. If the person fails to~~
20 ~~allow entry, the person is barred from asserting a claim against the applicator.~~

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

22 **38-21-48. Observation of claimed damage to be permitted.**

23 **Section 22.** That § 38-21-49 be AMENDED:

24 **38-21-49. Pesticide incident--Failure to report.**

25 ~~The failure to file such a statement under~~ report an incident in accordance with the
26 ~~provisions of § 38-21-46 shall~~ § 38-21-16 is not be a violation of this chapter. ~~However,~~
27 ~~if~~ If the person failing to file ~~such a~~ report is the only one injured from ~~such the~~ use or
28 application of a pesticide by others, the secretary ~~of agriculture~~ may, when in the public
29 interest, refuse to hold a hearing for the ~~denial,~~ suspension, modification, or revocation of
30 a license ~~or certification~~ issued under this chapter.

31 **Section 23.** That § 38-21-50.1 be REPEALED.

1 **38-21-50.1. Application without license as misdemeanor--Additional penalty**
2 **for violation.**

3 **Section 24.** That § 38-21-50.2 be AMENDED:

4 **38-21-50.2. Damages to injured person.**

5 Civil penalties specified in ~~§§ 38-21-15, §§ 38-21-15.2,~~ 38-21-17, 38-21-23, 38-
6 21-33.1, 38-21-39.1, 38-21-39.2, 38-21-39.3, 38-21-40, and 38-21-44, ~~and 38-21-50.1~~
7 do not lessen the damages that may be awarded to any person injured.

8 **Section 25.** That § 38-21-58 be AMENDED:

9 **38-21-58. Application of pesticide--Licensed commercial applicator--**
10 **Personal property.**

11 Any commercial applicator who is licensed ~~or certified~~ pursuant to this chapter to
12 apply pesticides to agricultural land may apply pesticides to property owned by the
13 applicator without a private applicator's license if the commercial categories in which the
14 applicator is licensed are the appropriate applications to be made. Any ~~such~~ applicator
15 shall abide by all state and federal rules and regulations pertaining to private applicator
16 pesticide application ~~in this state~~ when applying pesticides on the applicator's own
17 property.