

# State of South Dakota

NINETIETH SESSION  
LEGISLATIVE ASSEMBLY, 2015

400W0174

## HOUSE BILL NO. 1056

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 provisions regarding the Department of  
2 Agriculture.

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

4 Section 1. That § 34-35-16 be amended to read as follows:

5 34-35-16. The starting of an open fire within the Black Hills ~~forest fire protection district~~  
6 Forest Fire Protection District by a person or a group of persons is prohibited unless a permit  
7 to do so is first obtained from the Department of Agriculture or from the United States Forest  
8 Service. An open fire as used in this section and § 34-35-17, is any fire to burn slash, brush,  
9 grass, stubble, debris, rubbish, or other inflammable material not enclosed in a stove, sparkproof  
10 incinerator, or an established fireplace approved or constructed by public agencies in designated  
11 recreation areas. A violation of this section is a Class 2 misdemeanor. Any person who violates  
12 this section is liable for civil damages for all injuries caused by the fire.

13 Section 2. That § 34-35-17 be amended to read as follows:

14 34-35-17. Any United States forest service supervisor, ~~or his designee,~~ or the secretary of  
15 agriculture ~~or his designee shall have authority to~~ may issue a permit upon an application to any



1 person to start an open fire within the Black Hills ~~forest fire protection district~~ Forest Fire  
2 Protection District if ~~in his opinion such the fire will not~~ is not expected to endanger the life or  
3 property of another, ~~or deny such permit if in his opinion.~~ The permit may be denied if the  
4 climatic conditions or location of the material to be burned is such that the burning would  
5 endanger the life or property of others ~~and he may issue a.~~ A permit may be issued subject to  
6 ~~such~~ conditions and restrictions as ~~he may consider~~ determined necessary to prevent the spread  
7 of the fire permitted; ~~and he may revoke a.~~ A permit issued by him may be revoked upon the  
8 change of climatic or other conditions which ~~he considers would~~ is determined to make the  
9 burning unsafe.

10 Section 3. That § 38-1-3 be amended to read as follows:

11 38-1-3. The secretary of agriculture shall qualify by taking and filing the constitutional oath  
12 of office with the secretary of state; ~~the constitutional oath of office and likewise filing a bond~~  
13 ~~for faithful discharge of the duties of his office in such penal sum as may be fixed by the~~  
14 ~~Governor, but in no event less than ten thousand dollars.~~

15 Section 4. That § 38-1-11 be amended to read as follows:

16 38-1-11. The secretary of agriculture shall, with the advice and consent of the Governor,  
17 appoint ~~such~~ executive assistants as may be authorized by law or as may be necessary to the  
18 efficient administration of the duties of the office, ~~and which executives.~~ Each appointed  
19 executive assistant shall qualify ~~in like manner as the secretary except that their bonds shall be~~  
20 ~~in such sum as may be fixed by the Governor, but in no event less than five thousand dollars by~~  
21 taking and filing the constitutional oath of office with the secretary of state.

22 Section 5. That § 38-1-16 be amended to read as follows:

23 38-1-16. The secretary of agriculture may promulgate administrative rules, pursuant to  
24 chapter 1-26, concerning the administration of the department; ~~the election of soybean council~~

1 ~~members, and;~~ the custody, use, and preservation of records, papers, books, property pertaining  
 2 to the activities of the department; and fees for permits, inspection, and reinspection relating  
 3 to any permits issued by the department.

4 Section 6. That § 38-7-6 be amended to read as follows:

5 38-7-6. The following persons shall serve as nonvoting members of the State Conservation  
 6 Commission: the secretary of Environment and Natural Resources; the director of the state  
 7 extension service; the director of the state agricultural experiment station located at Brookings;  
 8 the commissioner of school and public lands; the secretary of the Department of Game, Fish and  
 9 Parks ~~or his designee~~; and if approved by the United States secretary of agriculture, the state  
 10 conservationist for the United States ~~Soil~~ Natural Resources Conservation Service, ~~or their~~  
 11 ~~designee~~. A member of the commission shall hold office so long as ~~he shall retain~~ the person  
 12 retains the office by virtue of which ~~he shall be~~ the person is serving on the commission.

13 Section 7. That § 38-7-8 be amended to read as follows:

14 38-7-8. The State Conservation Commission shall keep a record of its official actions; shall  
 15 adopt a seal, which seal shall be judicially noticed; and may perform ~~such~~ acts, hold ~~such~~  
 16 hearings, and promulgate rules, pursuant to chapter 1-26, concerning:

- 17 (1) The organization and operation of the commission;
- 18 (2) Cooperation and assistance provided to conservation districts;
- 19 (3) The reporting of election results and financial affairs of the conservation districts;
- 20 and
- 21 (4) The governing and administration of conservation district elections; ~~and~~
- 22 ~~(5) The certification procedures, inspections and payments made pursuant to the~~  
 23 ~~shelterbelt program established in chapter 38-7A.~~

24 Section 8. That § 38-8-53 be amended to read as follows:

1 38-8-53. There ~~has been appropriated the sum of one hundred twenty-five thousand dollars,~~  
2 is hereby created the conservation district special revenue fund to be used as a special revenue  
3 ~~fund~~ for the purpose of aiding, assisting, and cooperating with conservation districts of the state  
4 in securing by purchase, or otherwise, necessary equipment, trees, and other planting materials,  
5 and supplies as needed in furthering the program of conservation in these districts.

6 This fund shall be ~~known as the conservation district special revenue fund and shall be~~  
7 administered by the State Conservation Commission and ~~shall be~~ expended upon vouchers  
8 approved by the commission, or its designated representative.

9 This loan fund shall be made available to conservation districts of the state on a  
10 reimbursable basis by the districts ~~participating in such special revenue funds, in accordance~~  
11 ~~with rules and regulations promulgated by the said conservation.~~ The commission shall  
12 promulgate rules, pursuant to chapter 1-26, establishing criteria and procedures for making loans  
13 to the conservation districts.

14 Section 9. That § 38-8-55 be amended to read as follows:

15 38-8-55. The board of county commissioners may contribute funds to conservation districts.  
16 The funds shall be used to hire employees, purchase supplies, and carry out district programs,  
17 for the conservation of ~~soil and water~~ natural resources that will protect the tax base of the  
18 county; and ~~to~~ provide for the general welfare of the people of the county. The money shall be  
19 paid from the general fund of the county. Any conservation district, before receiving such funds,  
20 shall file with the county commissioners a financial statement for the last three years itemizing  
21 the amount of funds received and ~~how disbursed~~ expenditures.

22 Section 10. That § 38-8-62 be amended to read as follows:

23 38-8-62. A conservation district; and the its supervisors thereof, ~~shall have the following~~  
24 ~~powers, in addition to others granted in other sections of this chapter~~ may:

1       (1) ~~To take~~ Take over, by purchase, lease, or otherwise, and ~~to~~ administer any ~~soil~~  
 2       natural resources conservation, flood prevention, and agricultural water management,  
 3       erosion control, or erosion prevention project located within its boundaries  
 4       undertaken by the United States or any of its agencies, or of this state or any of its  
 5       agencies;

6       (2) ~~To manage~~ Manage, as agent of the United States or any of its agencies, or of this  
 7       state or any of its agencies, any ~~soil~~ natural resources conservation, flood prevention,  
 8       and agricultural water management, erosion control, or erosion prevention project,  
 9       or combinations thereof, within its boundaries;

10      (3) ~~To act~~ Act as agent for the United States or any of its agencies, or for this state or any  
 11      of its agencies, in connection with the acquisition, construction, operation, or  
 12      administration of any ~~soil~~ natural resources conservation, flood prevention, and  
 13      agricultural water management, erosion control, or erosion prevention project, or  
 14      combinations thereof, within its boundaries; and

15      (4) ~~To accept~~ Accept donations, gifts, and contributions in money, services, materials,  
 16      or otherwise, from the United States or any of its agencies, or from this state, or any  
 17      of its agencies, or from any other source, and to use or expend such money, services,  
 18      materials, or other contributions in carrying on its operation.

19      Section 11. That § 38-8-64 be amended to read as follows:

20      38-8-64. A conservation district; and ~~the~~ its supervisors ~~thereof, shall have the power, in~~  
 21 ~~addition to others granted in other sections of this chapter, to~~ may make available, on such terms  
 22 as it ~~shall prescribe~~ prescribes, to land ~~occupiers~~ owners within the district, ~~such~~ equipment,  
 23 material, or supplies as may be available to assist ~~such~~ the land ~~occupiers~~ owners to carry on  
 24 operations ~~upon their lands~~ for the conservation of ~~soil and water~~ natural resources and for the

1 prevention and control of soil erosion, flood prevention of the conservation, development,  
2 utilization, and disposal of water.

3 Section 12. That § 38-10-3 be amended to read as follows:

4 38-10-3. There is hereby established a wheat commission for the utilization, research, and  
5 market development of wheat grown in South Dakota. The commission shall be composed of  
6 five members who shall be participating growers. The members of the commission shall be  
7 appointed by the Governor. Nominations for appointments shall be submitted to the Governor  
8 by wheat producers of the state.

9 The terms of members begin on October thirty-first of the calendar year in which the  
10 Governor appoints the member, unless otherwise designated by the Governor. The appointee's  
11 term is for three years and expires on October thirtieth in the third year of appointment.

12 ~~Any member's term ending June 30, 2013, or thereafter is extended to October thirtieth in~~  
13 ~~the year the term is to expire.~~

14 Section 13. 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,

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

3 (5) "Commercial fertilizer," any substance containing any recognized plant nutrient  
4 which is used for its plant nutrient content and which is designed for use or claimed  
5 to have 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  
10 decomposition;

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

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

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

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

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

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

24 (9) "Grade," the percentage of total nitrogen, available phosphoric acid, and soluble

1 potash stated in whole numbers in the same terms, order, and percentages as in the  
2 guaranteed analysis. However, speciality fertilizers may be guaranteed in fractional  
3 units of less than one percent of total nitrogen, available phosphoric acid, and soluble  
4 potash. Fertilizer materials, bone meal, manures, and similar raw materials may be  
5 guaranteed in fractional units;

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

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

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

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

16 (13A) "Manipulated manure," any substance composed primarily of animal excreta, and  
17 plant remains that have been processed by mechanical drying to thirty percent or less  
18 moisture content, or ground, pelletizing, composting, or by adding commercial  
19 fertilizer;

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

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

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

24 (17) "Official sample," any sample of commercial fertilizer taken by the secretary of



- 1 agriculture or department agent according to methods prescribed by this chapter;
- 2 (18) "Percent" or "percentage," the percentage by weight;
- 3 (19) "Primary nutrients," nitrogen, available phosphoric acid, and soluble potash;
- 4 (20) "Recognized plant nutrients," primary nutrients, secondary nutrients, and micro  
5 nutrients;
- 6 (21) Deleted by SL 2001, ch 215, § 7;
- 7 (22) "Secondary and micro nutrients," those nutrients other than primary nutrients that are  
8 essential for the normal growth of plants and that may need to be added to the growth  
9 medium. Secondary plant nutrients include calcium, magnesium, and sulfur; micro  
10 plant nutrients include boron, chlorine, cobalt, copper, iron, manganese,  
11 molybdenum, sodium, and zinc;
- 12 (23) "Secretary," the secretary of the Department of Agriculture;
- 13 (24) "Sell:"
- 14 (a) The act of selling, transferring ownership;
- 15 (b) The offering and exposing for sale, exchange, or distribution;
- 16 (c) Giving away; or
- 17 (d) Receiving, accepting, holding or possession for sale, exchange, or distribution;
- 18 ~~(24A)~~(25) "Sewage sludge," "sludge," "biosolids," any solid, semisolid, or liquid residue  
19 removed during the treatment of municipal or domestic sewage by publicly-  
20 owned treatment works regulated under 40 CFR Part 503, as amended to  
21 January 1, 1995, and the Clean Water Act as amended to January 1, 1995;
- 22 ~~(25)~~(26) "Soluble potash," that portion of the potash contained in fertilizers or fertilizer  
23 materials which is soluble in an aqueous ammoniacal solution of 0.8%  
24 ammonium oxalate, after boiling in a 1.14% solution of ammonium oxalate

1 and reported as potassium oxide;

2 ~~(26) "Speciality fertilizer," a commercial fertilizer, lime, lime sludge, compost, sewage~~  
3 ~~sludge, or products containing sewage sludge distributed for nonfarm use;~~

4 (27) "Ton," a net weight of two thousand pounds avoirdupois.

5 Section 14. That § 38-19-5 be amended to read as follows:

6 38-19-5. The term, guaranteed analysis, means the minimum percentage of plant nutrients  
7 claimed in the following order and form:

- 8 (1) Total nitrogen (N) . . . . . \_\_\_\_\_ percent
- 9 Available phosphoric acid (P2O5) or available phosphate . . . . . \_\_\_\_\_ percent
- 10 Soluble potash (K2O) . . . . . \_\_\_\_\_ percent

11 (2) For unacidulated mineral phosphatic materials and basic slag, both total and available  
12 phosphoric acid and the degree of fineness shall be stated. For bone, tankage, and  
13 other organic phosphatic materials, total phosphoric acid shall be stated.

14 (3) Guarantees for plant nutrients other than nitrogen, phosphoric acid, and potash may  
15 be permitted or required by regulations of the secretary of agriculture. The guarantees  
16 for such other nutrients shall be expressed in the form of the element. The sources of  
17 such other nutrients (oxides, salt, chelates, etc.) may be required to be stated on the  
18 application for registration and may be included as a parenthetical statement on the  
19 label. Other beneficial substances or compounds, determinable by laboratory  
20 methods, also may be guaranteed by permission of the secretary and with the advice  
21 of the director of the agricultural experiment station. When any plant nutrients or  
22 other substances or compounds are guaranteed they shall be subject to inspection,  
23 analysis, and minimum standards in accord with the methods prescribed by this  
24 chapter and the regulations promulgated hereunder.

1 Section 15. That § 38-19-12 be amended to read as follows:

2 38-19-12. Each licensed distributor of commercial fertilizer shall file with the secretary of  
3 agriculture on forms furnished by the secretary an annual statement for the period ending  
4 December thirty-first setting forth the number of net tons of each grade of commercial fertilizer  
5 distributed in this state during the reporting period. The report is due on or before the ~~thirtieth~~  
6 thirty-first of January following the close of the reporting period and on the basis of the  
7 statement each licensed distributor of commercial fertilizer shall pay the inspection fee at the  
8 rate pursuant to § 38-19-10. If more than one person is involved in the distribution of a  
9 commercial fertilizer, the distributor who imports, manufactures, or produces the commercial  
10 fertilizer is responsible for the inspection fee on products produced or brought into this state.  
11 The distributor shall separately list the inspection fee on the invoice to the licensee. The last  
12 licensee shall retain the invoices showing proof of inspection fees paid for three years and shall  
13 pay the inspection fee on commercial fertilizer brought into this state ~~or produced before July~~  
14 ~~1, 2001~~, unless the distributor has reported and paid the fees. If the tonnage report is not filed  
15 and the payment of inspection fee is not made within thirty days after the end of the period, a  
16 collection fee amounting to ten percent (~~minimum ten dollars~~) of the amount shall be assessed  
17 against the licensee and the amount of fees due constitutes a debt and becomes the basis of a  
18 judgment against the licensee. However, the minimum inspection fee is ten dollars. The  
19 secretary may verify the records on which statements of tonnage are based and each licensed  
20 distributor of commercial fertilizer shall grant the secretary permission to verify the records on  
21 the licensee's application for license and on each tonnage report. The secretary may revoke or  
22 refuse to renew the license of any licensee failing to comply with this section. No information  
23 furnished under this section may be disclosed by the secretary or anyone having access to  
24 tonnage reports if the disclosure will in any way divulge any part of the operations of a licensee.

1 Section 16. That § 38-19-15 be amended to read as follows:

2 38-19-15. Any commercial fertilizer distributed in this state in containers shall have placed  
3 on or affixed to the container a label setting forth in clearly legible and conspicuous form the  
4 following information:

- 5 (1) Net weight;
- 6 (2) Brand and grade;
- 7 (3) Guaranteed analysis;
- 8 (4) The source or sources from which the nitrogen phosphorus and potassium are derived  
9 (~~specialty fertilizers only~~); and
- 10 (5) Name and address of licensee or registrant.

11 Section 17. That § 38-19A-1 be amended by adding thereto a NEW SUBDIVISION to read  
12 as follows:

13 "Microbe," any microbiological organism or mixture of microbiological organisms intended  
14 to produce any physical, chemical, biochemical, biological, or other change in the soil;

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

16 38-19A-7. A label, in a readable and conspicuous form, shall appear on the face or display  
17 side of any soil amendment and shall consist of:

- 18 (1) Net weight;
- 19 (2) Brand name;
- 20 (3) ~~Disclaimer that the product is not recommended for use as a fertilizer substitute;~~
- 21 ~~(4)~~ Analysis, including any soil amending ingredient and other ingredients and the  
22 percentage of each. In lieu of a guarantee expressed as a percentage, a product that  
23 claims the presence of a microbe or microbes shall guarantee the microbe or  
24 microbes as follows:

1 (a) Minimum number of each claimed viable organism at the genus and species  
2 level in colony forming units (CFU), spores, or propagules per gram or  
3 milliliter (cm3);

4 (b) Expiration date; and

5 (c) Storage and handling instructions;

6 ~~(5)~~(4) Purpose of the product;

7 ~~(6)~~(5) Directions for application; and

8 ~~(7)~~(6) Name and address of the registrant.

9 The secretary of agriculture may establish rules, pursuant to chapter 1-26, to allow labeling  
10 by volume rather than weight pursuant to subdivision (1) of this section.

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

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

23 Section 20. That § 38-21-14 be amended to read as follows:

24 38-21-14. Terms used in this chapter mean:

- 1 (1) "Animals," all vertebrate and invertebrate species, including man;
- 2 (2) "Bulk pesticide," any volume of a pesticide which is transported or held in an  
3 immediate reusable container. This does not include pesticides which are in the  
4 custody of the ultimate user and are fully prepared for use by the user;
- 5 (3) "Bulk pesticide storage facility," any area, location, tract of land, building, structure,  
6 or premises constructed in accordance with rules promulgated by the secretary for the  
7 storage of bulk pesticides;
- 8 (4) "Certified applicator," any individual who is certified under this chapter to use any  
9 pesticide;
- 10 (5) "Commercial applicator," any certified applicator who uses any pesticide on any  
11 property other than as a private applicator;
- 12 (6) "Defoliant," any substance or mixture of substances intended for causing the leaves  
13 or foliage to drop from a plant, with or without causing abscission;
- 14 (7) "Desiccant," any substance or mixture of substances intended for artificially  
15 accelerating the drying of plant tissue;
- 16 (8) "Device," any instrument or contrivance, other than a firearm, which is intended for  
17 trapping, destroying, repelling, or mitigating any pest or any other form of plant or  
18 animal life, other than man and other than bacteria, virus, or other microorganism on  
19 or in living man or other living animals, but not including equipment used for the  
20 application of pesticides when sold separately therefrom;
- 21 (9) "Environment," includes water, air, land, and all plants and animals living therein,  
22 and the interrelationships which exist among these;
- 23 (10) "Equipment," any type of ground, water, or aerial equipment or contrivance using  
24 motorized, mechanical, or pressurized power and used to apply any pesticide on land

1 and anything that may be growing, habitating, or stored on or in such land, but does  
2 not include any pressurized hand-sized household apparatus used contrivance of  
3 which the person who is applying the pesticide is the source of power or energy in  
4 making the pesticide application;

5 (11) "Fungus," any nonchlorophyll-bearing thallophyte, except those on or in processed  
6 food, beverages, or pharmaceuticals or those on or in living animals;

7 (12) "Insect," any of the numerous small invertebrate animals belonging to the class  
8 insecta or to other allied classes of arthropods;

9 (13) "Labeling," any label and other written, printed, or graphic matter:

10 (a) On the pesticide or device or any of its containers or wrappers;

11 (b) Accompanying the pesticide or device at any time; or

12 (c) To which reference is made on the label or in literature accompanying the  
13 pesticide or device, except accurate, nonmisleading reference to current  
14 official publications of any government institution or official agency of the  
15 United States or of this or any other state, authorized by law to conduct  
16 research in the field of pesticides;

17 (14) "Land," all land and water areas, including airspace, and all plants, animals,  
18 structures, buildings, contrivances, and machinery, appurtenant thereto or situated  
19 thereon, fixed or mobile, including any used for transportation;

20 (15) "Licensed applicator," any certified applicator who is licensed under this chapter and  
21 who owns, manages, or is employed by a pesticide application business which is  
22 engaged in the business of applying pesticides upon the lands of another or applies  
23 pesticides while in the performance of his duties as a government employee;

24 (16) "Licensed pesticide dealer," any person who is licensed under this chapter and who

1 distributes restricted-use pesticides or pesticides whose uses or distribution are  
2 restricted by regulation;

3 (17) "Nematode," any invertebrate animal of the phylum ne-mathel-minthes or nematoda;

4 (18) "Pest," any insect, rodent, nematode, fungus, weed, or other form of terrestrial or  
5 aquatic plant or animal life or virus, bacteria, or other microorganism, except viruses,  
6 bacteria, or other microorganisms on or in living man or other living animals, which  
7 the secretary by regulation may declare to be a pest;

8 (19) "Pesticide," any substance or mixture of substances intended for preventing,  
9 destroying, repelling, or mitigating any pest, or any substance or mixture of  
10 substances intended for use as a plant regulator, defoliant, or desiccant or any  
11 substance or mixture of substances intended to be used as a spray adjuvant;

12 (20) "Plant regulator," any substance or mixture of substances, intended, through  
13 physiological action, for accelerating or retarding the rate of growth or rate of  
14 maturation, or for otherwise altering the behavior of ornamental or crop plants or the  
15 produce thereof, but does not include substances to the extent that they are intended  
16 as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil  
17 amendments;

18 (21) "Private applicator," a certified applicator who:

19 (a) Uses any pesticide other than a restricted-use pesticide for purposes of  
20 producing any agricultural commodity amounting to greater than one thousand  
21 dollars gross sales potential per year on property owned or rented by ~~him or~~  
22 ~~his~~ the private applicator or the private applicator's employer, ~~but not~~  
23 ~~including any person who applies pesticides other than restricted-use~~  
24 ~~pesticides while riding on agricultural pesticide spraying equipment commonly~~



1                   ~~known as a bean buggy or bean bar~~; or

2                   (b) Uses any restricted-use pesticide for the purpose of producing any agricultural  
3                   commodity on property owned or rented by ~~him or his~~ the private applicator  
4                   or the private applicator's employer; or

5                   (c) Applies any pesticide on the property of another person without compensation  
6                   other than trading of personal services between producers of agricultural  
7                   commodities;

8                   (22) "Restricted-use pesticide," any pesticide classified as a restricted-use pesticide by the  
9                   secretary of the Department of Agriculture;

10                  (23) "Rinsate," any solution containing pesticide residue which is generated from washing  
11                  or flushing of pesticide containers and pesticide equipment;

12                  (24) "Secretary," the secretary of the Department of Agriculture;

13                  (25) "Spray adjuvant," any wetting agent, spreading agent, sticker, deposit builder,  
14                  adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent  
15                  intended to be used with any other pesticide as an aid to the application or to the  
16                  effect thereof, and which is in a package or container separate from that of the  
17                  pesticide with which it is to be used;

18                  (26) "Unreasonable adverse effects on the environment," any unreasonable risk to man or  
19                  the environment, taking into account the economic, social and environmental costs  
20                  and benefits of the use of any pesticide;

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

22                  Section 21. That § 38-24B-17 be amended to read as follows:

23                  38-24B-17. The Department of Agriculture ~~shall at least once each year~~ may annually  
24                  inspect all nurseries in this state. The department may inspect any field, orchard, garden,

1 plantation, park, cemetery, packing ground, building, cellar, and all places, public or private,  
2 which may be infested or infected with a pest. The department may inspect or reinspect at any  
3 time or place any nursery stock shipped in or into this state and treat it as provided in this  
4 chapter. No person may hinder, obstruct, or defeat ~~such~~ the inspection by misrepresentation or  
5 concealment of facts or conditions or make a false declaration of acreage or cause any  
6 concealment of nursery stock from inspection. Any person hindering, obstructing, or defeating  
7 an inspection required by this section is guilty of a Class 1 misdemeanor.

8 Section 22. That § 41-20-19 be amended to read as follows:

9 41-20-19. The state forester shall cooperate with the secretary of the United States  
10 Department of Agriculture in providing assistance to owners of land in tree planting; and in the  
11 procurement of forest, ornamental, and fruit trees, seeds, and plants; ~~not including fruit or~~  
12 ~~ornamental trees; and in the distribution of the seeds and plants at reasonable cost so that the~~  
13 seeds or plants are used effectively for planting ~~forest~~ trees for domestic, agricultural, and  
14 industrial purposes; ~~for protecting farm buildings, crops, and fields from erosion; and for~~  
15 ~~furnishing forest cover beneficial for water conservation and for wildlife habitat.~~

16 Section 23. That § 41-20-20 be amended to read as follows:

17 41-20-20. In all purchases of seeds or trees under the provisions of § 41-20-19, preference  
18 shall be given to trees and tree seeds grown in this state and to South Dakota dealers. ~~Such~~  
19 ~~purchases shall be paid for from the fund provided for in § 41-20-22, and accruals to the fund,~~  
20 ~~and from sales of seeds and trees purchased.~~

21 Section 24. That § 41-20A-5 be amended to read as follows:

22 41-20A-5. ~~Continuing buildup of hazardous fuels increasingly threatens the safety of the~~  
23 ~~families that live within the forest-urban interface. Providing greater guidance for the collection,~~  
24 ~~accounting and reimbursement of costs associated with structural fire protection is necessary~~

1 ~~as these threats continue to escalate. Because of these increased threats, the~~ The secretary of  
2 agriculture may establish policies to provide for the protection of homes and other structures  
3 during forest and wildland fires.

4 Section 25. That § 41-20A-10 be amended to read as follows:

5 41-20A-10. The state wildland fire coordinator, with the sanction of the Department of  
6 Agriculture, may, upon request, assist and cooperate with any agency of the United States  
7 government;~~;~~ all state, county, and municipal agencies;~~;~~ any fire suppression organization; any  
8 person qualified by the state wildland fire coordinator; any person needed for an incident  
9 management team for the purposes of training and fire prevention or suppression; and with any  
10 corporation, association, partnership, or individual owning or controlling any forestland,  
11 woodland, shelterbelt, or rangeland in the protection of such forestland, woodland, shelterbelt,  
12 or rangeland, including:

- 13 (1) Creation and administration of fire protection districts;
- 14 (2) Disposal of slash, debris from logging operations, and other fire and insect hazards;
- 15 and
- 16 (3) Assistance to the state wildland fire coordinator in the prevention and suppression  
17 of fires.

18 After providing assistance in the suppression of fires pursuant to subdivision (3) of this  
19 section, the state wildland fire coordinator may collect fire suppression and extinguishment  
20 costs pursuant to this chapter if the costs were initially incurred by the coordinator or if the  
21 secretary of agriculture has repaid any of the governmental agencies or persons described by this  
22 section for goods or services used in fire suppression efforts directed by the coordinator.

23 Section 26. That § 54-13-1 be amended to read as follows:

24 54-13-1. Terms used in this chapter mean:

- 1 (1) "Agricultural land," a parcel of land larger than forty acres not located in any  
2 municipality and used in farming or ranching operations carried on by the owner or  
3 operator within the preceding three- year period for the production of farm products  
4 as defined in subdivision 57A-9-102(a)(34) and includes wasteland lying within or  
5 contiguous to and in common ownership with land used in farming or ranching  
6 operations for the production of farming or ranching products;
- 7 (2) "Ag finance counselor," a person ~~contracted by the Department of Agriculture~~  
8 ~~mediation program~~ who is trained to assist in ~~resolving agricultural loan disputes~~  
9 credit matters;
- 10 (3) "Agricultural property," agricultural land or personal property or a combination  
11 thereof used in the pursuit of, or arising out of, or related to, the occupation of  
12 farming or ranching;
- 13 (4) "Borrower," an individual, corporation, trust, cooperative, joint venture, or any other  
14 entity entitled to contract who is engaged in farming or ranching and who derives  
15 more than sixty percent of total gross income from farming or ranching and who has  
16 ~~borrowed from any one creditor on any single farm related debt in excess of fifty~~  
17 ~~thousand dollars~~ been extended agricultural credit;
- 18 (5) "Creditor," any individual, organization, cooperative, partnership, trust, or state or  
19 federally chartered corporation to whom is owed agricultural debt ~~in excess of fifty~~  
20 ~~thousand dollars~~ by a borrower. ~~A judgment creditor with a judgment of fifty~~  
21 ~~thousand dollars or more against a debtor with agricultural property is a creditor~~  
22 ~~within the meaning of this chapter~~;
- 23 (6) "Federal land mediation," ~~assistance provided to~~ a process by which individuals or  
24 organizations ~~seeking seek to mediate~~ resolve disputes with federal land management

1 agencies;

2 (7) ~~"Mediation,"~~ "Agricultural credit mediation," a process by which creditors and  
3 borrowers present, discuss, and explore practical and realistic alternatives to the  
4 resolution of a borrower's debts;

5 (8) "Mediator," anyone responsible for and engaged in the performance of mediation  
6 pursuant to this chapter, who is trained and certified by the Department of  
7 Agriculture; and

8 (9) "Oil and gas mediation," ~~assistance provided to~~ a process by which individuals or  
9 organizations ~~seeking~~ seek to ~~mediate~~ resolve disputes with oil and gas developers  
10 related to surface damages.

11 Section 27. That § 54-13-2 be amended to read as follows:

12 54-13-2. The Department of Agriculture shall administer an agriculture mediation program  
13 to:

14 (1) Provide ~~assistance~~ mediation to borrowers and creditors ~~who seek to use mediation~~  
15 ~~as a method for resolving loan~~ seeking to resolve credit disputes;

16 (2) Provide federal land mediation to individuals or organizations seeking to mediate  
17 disputes with federal land management agencies concerning decisions made by those  
18 federal agencies; and

19 (3) Provide oil and gas mediation to individuals or organizations seeking to mediate  
20 disputes over surface damages related to oil or gas development.

21 The secretary of the Department of Agriculture shall promulgate rules, pursuant to chapter  
22 1-26, necessary for mediation, federal land mediation, and oil and gas mediation including the  
23 establishment of fees, training requirements for mediators and ag finance counselors and their  
24 certification, mediation request forms, and any other mediation procedures as may be necessary

1 for the prompt and expeditious mediation of agriculture related disputes, including the receipt  
2 of funds pursuant to the Agricultural Credit Act of 1987, as of January 1, 2015.

3 The ~~agriculture~~ agricultural mediation program may not, as a condition to mediation, require  
4 that ~~the borrower of any creditor party~~ party waive any respective legal or equitable remedies or  
5 rights.

6 Section 28. That § 54-13-4 be amended to read as follows:

7 54-13-4. All staff services required by the ~~agriculture~~ agricultural mediation program shall  
8 be provided by the Department of Agriculture. The secretary of agriculture may employ a  
9 director of mediation services and ~~such~~ other agents and employees as the secretary deems  
10 necessary. The director shall serve at the pleasure of the secretary of agriculture. The mediation  
11 services shall be administered under the direction and supervision of the Department of  
12 Agriculture. All expenses incurred in carrying on the work of the ~~agriculture~~ agricultural  
13 mediation program, including the per diem and expenses of the staff, salaries, contract  
14 payments, and any other items of expense shall be paid out of funds appropriated or otherwise  
15 made available to the ~~farm~~ agricultural mediation operating fund.

16 Section 29. That § 54-13-5 be amended to read as follows:

17 54-13-5. Any fees provided under this chapter and by rule shall be borne equally between  
18 ~~the borrower and the creditor. Such parties.~~ The fees and any funds received pursuant to the  
19 Agricultural Credit Act of 1987, as of January 1, 2015, shall be deposited in the ~~farm~~  
20 agricultural mediation operating fund which is hereby created. All money in the ~~farm~~  
21 agricultural mediation operating fund created by this section is continuously appropriated for  
22 the purposes of administering the ~~farm~~ agricultural mediation program. All funds received by  
23 the ~~agriculture~~ agricultural mediation program shall be set forth in an informational budget as  
24 described in § 4-7-7.2 and be annually reviewed by the Legislature. Any disbursements from the

1 ~~farm~~ agricultural mediation operating fund shall be by authorization of the secretary of  
2 agriculture.

3 Section 30. That § 54-13-7 be amended to read as follows:

4 54-13-7. Any borrower or creditor involved in mediation ~~shall~~ may be ~~offered assistance by~~  
5 ~~the Department of Agriculture~~ provided resources to assist in the analysis of the borrower's  
6 business and personal financial situation, which analysis shall be conducted in a manner that  
7 assists the borrower ~~and~~ the borrower's family, and the creditor to prepare for mediation. ~~This~~  
8 ~~assistance may include emotion support, information and referral networks among borrowers~~  
9 ~~and programs concerned with economic crisis in rural areas, assist the borrower and the~~  
10 ~~borrower's family in developing goals which define reasonable expectations for mediation and~~  
11 ~~shall assist the borrower in evaluating the viability of his current farm or ranch business~~  
12 ~~organization given reasonable current price and yield expectations.~~

13 Section 31. That § 54-13-9 be amended to read as follows:

14 54-13-9. Upon receipt of a mediation request, the director of the ~~agriculture~~ agricultural  
15 mediation program shall ~~advise~~ notify the borrower ~~that~~ and creditor as to whether financial  
16 preparation assistance is available and may be obtained through the financial preparation  
17 ~~assistance for borrowers provided in § 54-13-7~~ resources are available and shall provide any  
18 other information available regarding assistance programs to borrowers.

19 Section 32. That § 54-13-10 be amended to read as follows:

20 54-13-10. A creditor desiring to commence an action or a proceeding in this state to enforce  
21 a debt totaling fifty thousand dollars or greater against agricultural land or agricultural property  
22 of the borrower or to foreclose a contract to sell agricultural land or agricultural property or to  
23 enforce a secured interest in agricultural land or agricultural property or pursue any other action,  
24 proceeding or remedy relating to agricultural land or agricultural property of the borrower shall

1 file a request for mandatory mediation with the director of the ~~agriculture~~ agricultural mediation  
2 program. No creditor may commence any such action or proceeding until the creditor receives  
3 a mediation release as described in this chapter, or the debtor waives mediation or until a court  
4 determines after notice and hearing, that the time delay required for mediation would cause the  
5 creditor to suffer irreparable harm because there are reasonable grounds to believe that the  
6 borrower may waste, dissipate, or divert agricultural property or that the agricultural property  
7 is in imminent danger of deterioration. Dismissal of a bankruptcy proceeding, abandonment by  
8 a bankruptcy trustee, release or relief from a bankruptcy stay, or release or termination of a  
9 receivership proceeding shall have the effect of a mediation release. Any debt that is less than  
10 fifty thousand dollars may be mediated through a voluntary mediation if a request is made and  
11 accepted by both borrower and creditor.

12 Section 33. That § 54-13-11 be amended to read as follows:

13 54-13-11. Unless the borrower waives mediation, the director of the ~~agriculture~~ agricultural  
14 mediation program shall promptly send a mediation meeting notice to the borrower and to all  
15 creditors as defined in subdivision 54-13-1(5), setting a time and place for an initial mediation  
16 meeting between the borrower, the creditor or creditors, and a mediator. An initial mediation  
17 meeting shall be held within twenty-one days of the issuance of the mediation meeting notice.  
18 Any creditors of the borrower who are not included in the definition of creditor under  
19 subdivision 54-13-1(5) are exempt from the requirements of this section. Any borrower's failure  
20 to furnish timely information requested by the director of the ~~agriculture~~ agricultural mediation  
21 program constitutes a waiver of the right to mediate under this chapter. Also, the failure of the  
22 borrower and the borrower's spouse, unless excused by the initiating creditor, to attend all  
23 mediation meetings constitutes a waiver of the right to mediate under this chapter.

24 Any creditor subject to mandatory mediation under this chapter who receives notice pursuant



1 to this section and who participates in all mediation sessions shall be treated as an initiating  
2 creditor and be subject to the same debt collection limitations as provided in § 54-13-10.

3 Section 34. That § 54-13-12 be amended to read as follows:

4 54-13-12. The total mediation period for borrower and creditor mediations shall be for a  
5 term of forty-two days after the date the director of the ~~agriculture~~ agricultural mediation  
6 program issues the notice to the borrower. The director of the ~~agriculture~~ agricultural mediation  
7 program must issue a notice to the borrower within three business days following receipt of the  
8 request for mediation from the creditor. The mediator may, after the initial meeting, schedule  
9 additional mediation meetings during the mediation period.

10 Section 35. That § 54-13-13 be amended to read as follows:

11 54-13-13. A borrower may request mediation of any type or amount of indebtedness by  
12 applying to the director of the ~~agriculture~~ agricultural mediation program. The director of the  
13 ~~agriculture~~ agricultural mediation program may make the appropriate mediation request forms  
14 available for such purpose. The director of the ~~agriculture~~ agricultural mediation program may  
15 follow the same procedure as for mandatory mediation. Neither the borrower nor the creditor  
16 may be required to attend any mediation meetings under this section. Failure to attend mediation  
17 meetings or to participate in mediation under this section does not affect the rights of a borrower  
18 or a creditor in any manner. Participation in mediation under this section is not a prerequisite  
19 to or a bar to the commencement of an action of legal proceedings by the borrower or the  
20 creditor. No mediation release may be issued unless the borrower and creditor agree in writing.