

AN ACT

ENTITLED, An Act to revise certain provisions regarding the Department of Agriculture.

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

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

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

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

34-35-17. Any United States forest service supervisor or the secretary of agriculture may issue a permit upon an application to any person to start an open fire within the Black Hills Forest Fire Protection District if the fire is not expected to endanger the life or property of another. The permit may be denied if the climatic conditions or location of the material to be burned is such that the burning would endanger the life or property of others. A permit may be issued subject to conditions and restrictions as determined necessary to prevent the spread of the fire permitted. A permit may be revoked upon the change of climatic or other conditions which is determined to make the burning unsafe.

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

38-1-3. The secretary of agriculture shall qualify by taking and filing the constitutional oath of office with the secretary of state.

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

38-1-11. The secretary of agriculture shall, with the advice and consent of the Governor, appoint executive assistants as may be authorized by law or as may be necessary to the efficient administration of the duties of the office. Each appointed executive assistant shall qualify by taking and filing the constitutional oath of office with the secretary of state.

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

38-1-16. The secretary of agriculture may promulgate administrative rules, pursuant to chapter 1-26, concerning the administration of the department; the custody, use, and preservation of records, papers, books, property pertaining to the activities of the department; and fees for permits, inspection, and reinspection relating to any permits issued by the department.

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

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

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

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

- (1) The organization and operation of the commission;
- (2) Cooperation and assistance provided to conservation districts;

- (3) The reporting of election results and financial affairs of the conservation districts; and
- (4) The governing and administration of conservation district elections.

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

38-8-53. There is hereby created the conservation district special revenue fund to be used for the purpose of aiding, assisting, and cooperating with conservation districts of the state in securing by purchase, or otherwise, necessary equipment, trees, and other planting materials, and supplies as needed in furthering the program of conservation in these districts.

This fund shall be administered by the State Conservation Commission and expended upon vouchers approved by the commission, or its designated representative.

This loan fund shall be made available to conservation districts of the state on a reimbursable basis by the districts. The commission shall promulgate rules, pursuant to chapter 1-26, establishing criteria and procedures for making loans to the conservation districts.

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

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

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

38-8-62. A conservation district and its supervisors may:

- (1) Take over, by purchase, lease, or otherwise, and administer any natural resources conservation, flood prevention, and agricultural water management, erosion control, or

erosion prevention project located within its boundaries undertaken by the United States or any of its agencies, or of this state or any of its agencies;

- (2) Manage, as agent of the United States or any of its agencies, or of this state or any of its agencies, any natural resources conservation, flood prevention, and agricultural water management, erosion control, or erosion prevention project, or combinations thereof, within its boundaries;
- (3) Act as agent for the United States or any of its agencies, or for this state or any of its agencies, in connection with the acquisition, construction, operation, or administration of any natural resources conservation, flood prevention, and agricultural water management, erosion control, or erosion prevention project, or combinations thereof, within its boundaries; and
- (4) Accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this state, or any of its agencies, or from any other source, and to use or expend such money, services, materials, or other contributions in carrying on its operation.

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

38-8-64. A conservation district and its supervisors may make available, on terms as it prescribes, to land owners within the district, equipment, material, or supplies as may be available to assist the land owners to carry on operations for the conservation of natural resources and for the prevention and control of soil erosion, flood prevention of the conservation, development, utilization, and disposal of water.

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

38-10-3. There is hereby established a wheat commission for the utilization, research, and market development of wheat grown in South Dakota. The commission shall be composed of five members

who shall be participating growers. The members of the commission shall be appointed by the Governor. Nominations for appointments shall be submitted to the Governor by wheat producers of the state.

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

Section 13. That § 38-19-1 be amended to read as follows:

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

- (1) "Available phosphoric acid," the sum of the water-soluble and the citrate-soluble phosphoric acid and reported as phosphorus pentoxide;
- (2) "Brand," a term, design, or trademark used in connection with one or several grades of commercial fertilizer;
- (3) "Bulk commercial fertilizer," any volume of a commercial fertilizer which is transported or held for resale in an immediate reusable container in undivided quantities greater than one hundred pounds net dry weight or fifty-five U.S. gallons liquid measure;
- (4) "Bulk commercial fertilizer 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 commercial fertilizer;
- (5) "Commercial fertilizer," any substance containing any recognized plant nutrient which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl, lime, limestone, lime sludge, sewage sludge, wood ashes, gypsum, compost, and other products excluded by rule;
- (5A) "Compost," a group of organic residues or a mixture of organic residues and soil that have

- been piled, moistened, and allowed to undergo aerobic biological decomposition;
- (6) "Distribute," to import, consign, manufacture, produce, compound, mix, or blend commercial fertilizer, or to offer for sale, sell, barter, or otherwise supply commercial fertilizer in this state;
 - (7) "Distributor," any person who distributes commercial fertilizer in this state;
 - (8) "Fertilizer material," a commercial fertilizer which either:
 - (a) Contains important quantities of no more than one of the primary plant nutrients: nitrogen, phosphoric acid, and potash; or
 - (b) Has approximately eighty-five percent of its plant nutrient content present in the form of a single chemical compound; or
 - (c) Is derived from a plant or animal residue or by-product or a natural material deposit which has been processed in such a way that its content of primary plant nutrients has not been materially changed except by purification and concentration;
 - (9) "Grade," the percentage of total nitrogen, available phosphoric acid, and soluble potash stated in whole numbers in the same terms, order, and percentages as in the guaranteed analysis. However, speciality fertilizers may be guaranteed in fractional units of less than one percent of total nitrogen, available phosphoric acid, and soluble potash. Fertilizer materials, bone meal, manures, and similar raw materials may be guaranteed in fractional units;
 - (10) "Investigational allowance," allowance for variations inherent in the taking, preparation, and analysis of an official sample of commercial fertilizer;
 - (11) "Label," a display of written, printed, or graphic matter on or attached to the immediate container of any article and the outside container or wrapper of the retail package, or a statement or document accompanying a commercial fertilizer;

- (12) "Labeling," all written, printed, or graphic matter, upon or accompanying any commercial fertilizer or advertisements, brochures, posters, television, and radio announcements used in promoting the sale of commercial fertilizer;
- (13) "Licensee," any person who receives a license to distribute a commercial fertilizer under the provisions of this chapter;
- (14) "Metric ton," a net weight of one thousand kilograms;
- (15) "Mixed fertilizer," a commercial fertilizer containing any combination or mixture of fertilizer materials;
- (16) "Nitrogen," the element of nitrogen;
- (17) "Official sample," any sample of commercial fertilizer taken by the secretary of agriculture or department agent according to methods prescribed by this chapter;
- (18) "Percent" or "percentage," the percentage by weight;
- (19) "Primary nutrients," nitrogen, available phosphoric acid, and soluble potash;
- (20) "Recognized plant nutrients," primary nutrients, secondary nutrients, and micro nutrients;
- (21) Deleted by SL 2001, ch 215, § 7;
- (22) "Secondary and micro nutrients," those nutrients other than primary nutrients that are essential for the normal growth of plants and that may need to be added to the growth medium. Secondary plant nutrients include calcium, magnesium, and sulfur; micro plant nutrients include boron, chlorine, cobalt, copper, iron, manganese, molybdenum, sodium, and zinc;
- (23) "Secretary," the secretary of the Department of Agriculture;
- (24) "Sell:"
 - (a) The act of selling, transferring ownership;
 - (b) The offering and exposing for sale, exchange, or distribution;

- (c) Giving away; or
- (d) Receiving, accepting, holding or possession for sale, exchange, or distribution;
- (25) "Sewage sludge," "sludge," "biosolids," any solid, semisolid, or liquid residue removed during the treatment of municipal or domestic sewage by publicly- owned treatment works regulated under 40 CFR Part 503, as amended to January 1, 1995, and the Clean Water Act as amended to January 1, 1995;
- (26) "Soluble potash," that portion of the potash contained in fertilizers or fertilizer materials which is soluble in an aqueous ammoniacal solution of 0.8% ammonium oxalate, after boiling in a 1.14% solution of ammonium oxalate and reported as potassium oxide;
- (27) "Ton," a net weight of two thousand pounds avoirdupois.

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

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

- (1) Total nitrogen (N) _____ percent
- Available phosphoric acid (P₂O₅) or available phosphate _____ percent
- Soluble potash (K₂O) _____ percent
- (2) For unacidulated mineral phosphatic materials and basic slag, both total and available phosphoric acid and the degree of fineness shall be stated. For bone, tankage, and other organic phosphatic materials, total phosphoric acid shall be stated.
- (3) Guarantees for plant nutrients other than nitrogen, phosphoric acid, and potash may be permitted or required by regulations of the secretary of agriculture. The guarantees for such other nutrients shall be expressed in the form of the element. The sources of such other nutrients (oxides, salt, chelates, etc.) may be required to be stated on the application for registration and may be included as a parenthetical statement on the label. Other

beneficial substances or compounds, determinable by laboratory methods, also may be guaranteed by permission of the secretary and with the advice of the director of the agricultural experiment station. When any plant nutrients or other substances or compounds are guaranteed they shall be subject to inspection, analysis, and minimum standards in accord with the methods prescribed by this chapter and the regulations promulgated hereunder.

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

38-19-12. Each licensed distributor of commercial fertilizer shall file with the secretary of agriculture on forms furnished by the secretary an annual statement for the period ending December thirty-first setting forth the number of net tons of each grade of commercial fertilizer distributed in this state during the reporting period. The report is due on or before the thirty-first of January following the close of the reporting period and on the basis of the statement each licensed distributor of commercial fertilizer shall pay the inspection fee at the rate pursuant to § 38-19-10. If more than one person is involved in the distribution of a commercial fertilizer, the distributor who imports, manufactures, or produces the commercial fertilizer is responsible for the inspection fee on products produced or brought into this state. The distributor shall separately list the inspection fee on the invoice to the licensee. The last licensee shall retain the invoices showing proof of inspection fees paid for three years and shall pay the inspection fee on commercial fertilizer brought into this state unless the distributor has reported and paid the fees. If the tonnage report is not filed and the payment of inspection fee is not made within thirty days after the end of the period, a collection fee amounting to ten percent of the amount shall be assessed against the licensee and the amount of fees due constitutes a debt and becomes the basis of a judgment against the licensee. However, the minimum inspection fee is ten dollars. The secretary may verify the records on which statements of tonnage are based and each licensed distributor of commercial fertilizer shall grant the secretary permission

to verify the records on the licensee's application for license and on each tonnage report. The secretary may revoke or refuse to renew the license of any licensee failing to comply with this section. No information furnished under this section may be disclosed by the secretary or anyone having access to tonnage reports if the disclosure will in any way divulge any part of the operations of a licensee.

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

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

- (1) Net weight;
- (2) Brand and grade;
- (3) Guaranteed analysis;
- (4) The source or sources from which the nitrogen phosphorus and potassium are derived;
and
- (5) Name and address of licensee or registrant.

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

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

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

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

- (1) Net weight;
- (2) Brand name;

- (3) Analysis, including any soil amending ingredient and other ingredients and the percentage of each. In lieu of a guarantee expressed as a percentage, a product that claims the presence of a microbe or microbes shall guarantee the microbe or microbes as follows:
 - (a) Minimum number of each claimed viable organism at the genus and species level in colony forming units (CFU), spores, or propagules per gram or milliliter (cm³);
 - (b) Expiration date; and
 - (c) Storage and handling instructions;
- (4) Purpose of the product;
- (5) Directions for application; and
- (6) Name and address of the registrant.

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

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

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

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

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

- (1) "Animals," all vertebrate and invertebrate species, including man;
- (2) "Bulk pesticide," any volume of a pesticide which is transported or held in an immediate reusable container. This does not include pesticides which 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 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;
- (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 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 the person who is applying the pesticide is the source of power or energy in making the pesticide application;

- (11) "Fungus," any nonchlorophyll-bearing thallophyte, except those on or in processed food, beverages, or pharmaceuticals or those on or in living animals;
- (12) "Insect," any of the numerous small invertebrate animals belonging to the class insecta or to other allied classes of arthropods;
- (13) "Labeling," any label and other written, printed, or graphic matter:
 - (a) On the pesticide or device or any of its containers or wrappers;
 - (b) Accompanying the pesticide or device at any time; or
 - (c) To which reference is made on the label or in literature accompanying the pesticide or device, except accurate, nonmisleading reference to current official publications of any government institution or official agency of the United States or of this or any other state, authorized by law to conduct research in the field of pesticides;
- (14) "Land," all land and water areas, including airspace, and all plants, animals, structures, buildings, contrivances, and machinery, appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation;
- (15) "Licensed applicator," any certified applicator who is licensed under this chapter and who owns, manages, or is employed by a pesticide application business which is engaged in the business of applying pesticides upon the lands of another or applies pesticides while in the performance of his duties as a government employee;
- (16) "Licensed pesticide dealer," any person who is licensed under this chapter and who

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

- (17) "Nematode," any invertebrate animal of the phylum ne-mathel-minthes or nematoda;
- (18) "Pest," any insect, rodent, nematode, fungus, weed, or other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism, except viruses, bacteria, or other microorganisms on or in living man or other living animals, which the secretary by regulation may declare to be a pest;
- (19) "Pesticide," any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant or any substance or mixture of substances intended to be used as a spray adjuvant;
- (20) "Plant regulator," any substance or mixture of substances, intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments;
- (21) "Private applicator," a certified applicator who:
 - (a) Uses any pesticide other than a restricted-use pesticide for purposes of producing any agricultural commodity amounting to greater than one thousand dollars gross sales potential per year on property owned or rented by the private applicator or the private applicator's employer; or
 - (b) Uses any restricted-use pesticide for the purpose of producing any agricultural commodity on property owned or rented by the private applicator or the private applicator's employer; or

- (c) Applies any pesticide on the property of another person without compensation other than trading of personal services between producers of agricultural commodities;
- (22) "Restricted-use pesticide," any pesticide classified as a restricted-use pesticide by the secretary of the Department of Agriculture;
- (23) "Rinsate," any solution containing pesticide residue which is generated from washing or flushing of pesticide containers and pesticide equipment;
- (24) "Secretary," the secretary of the Department of Agriculture;
- (25) "Spray adjuvant," any wetting agent, spreading agent, sticker, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent intended to be used with any other pesticide as an aid to the application or to the effect thereof, and which is in a package or container separate from that of the pesticide with which it is to be used;
- (26) "Unreasonable adverse effects on the environment," any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide;
- (27) "Weed," any plant which grows where not wanted.

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

38-24B-17. The Department of Agriculture may annually inspect all nurseries in this state. The department may inspect any field, orchard, garden, plantation, park, cemetery, packing ground, building, cellar, and all places, public or private, which may be infested or infected with a pest. The department may inspect or reinspect at any time or place any nursery stock shipped in or into this state and treat it as provided in this chapter. No person may hinder, obstruct, or defeat the inspection by misrepresentation or concealment of facts or conditions or make a false declaration of acreage or

cause any concealment of nursery stock from inspection. Any person hindering, obstructing, or defeating an inspection required by this section is guilty of a Class 1 misdemeanor.

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

41-20-19. The state forester shall cooperate with the secretary of the United States Department of Agriculture in providing assistance to owners of land in tree planting and in the procurement of forest, ornamental, and fruit trees, seeds, and plants so that the seeds or plants are used effectively for planting trees for domestic, agricultural, and industrial purposes.

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

41-20-20. In all purchases of seeds or trees under the provisions of § 41-20-19, preference shall be given to trees and tree seeds grown in this state and to South Dakota dealers.

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

41-20A-5. The secretary of agriculture may establish policies to provide for the protection of homes and other structures during forest and wildland fires.

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

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

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

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

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

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

- (1) "Agricultural land," a parcel of land larger than forty acres not located in any municipality and used in farming or ranching operations carried on by the owner or operator within the preceding three- year period for the production of farm products as defined in subdivision 57A-9-102(a)(34) and includes wasteland lying within or contiguous to and in common ownership with land used in farming or ranching operations for the production of farming or ranching products;
- (2) "Ag finance counselor," a person who is trained to assist in agricultural credit matters;
- (3) "Agricultural property," agricultural land or personal property or a combination thereof used in the pursuit of, or arising out of, or related to, the occupation of farming or ranching;
- (4) "Borrower," an individual, corporation, trust, cooperative, joint venture, or any other entity entitled to contract who is engaged in farming or ranching and who derives more than sixty percent of total gross income from farming or ranching and who has been extended agricultural credit;
- (5) "Creditor," any individual, organization, cooperative, partnership, trust, or state or federally chartered corporation to whom is owed agricultural debt by a borrower;
- (6) "Federal land mediation," a process by which individuals or organizations seek to resolve

disputes with federal land management agencies;

- (7) "Agricultural credit mediation," a process by which creditors and borrowers present, discuss, and explore practical and realistic alternatives to the resolution of a borrower's debts;
- (8) "Mediator," anyone responsible for and engaged in the performance of mediation pursuant to this chapter, who is trained and certified by the Department of Agriculture;
- (9) "Oil and gas mediation," a process by which individuals or organizations seek to resolve disputes with oil and gas developers related to surface damages.

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

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

- (1) Provide mediation to borrowers and creditors seeking to resolve credit disputes;
- (2) Provide federal land mediation to individuals or organizations seeking to mediate disputes with federal land management agencies concerning decisions made by those federal agencies; and
- (3) Provide oil and gas mediation to individuals or organizations seeking to mediate disputes over surface damages related to oil or gas development.

The secretary of the Department of Agriculture shall promulgate rules, pursuant to chapter 1-26, necessary for mediation, federal land mediation, and oil and gas mediation including the establishment of fees, training requirements for mediators and ag finance counselors and their certification, mediation request forms, and any other mediation procedures as may be necessary for the prompt and expeditious mediation of agriculture related disputes, including the receipt of funds pursuant to the Agricultural Credit Act of 1987, as of January 1, 2015.

The agricultural mediation program may not, as a condition to mediation, require that any party waive any respective legal or equitable remedies or rights.

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

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

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

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

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

54-13-7. Any borrower or creditor involved in mediation may be provided resources to assist in the analysis of the borrower's business and personal financial situation, which analysis shall be conducted in a manner that assists the borrower, the borrower's family, and the creditor to prepare for mediation.

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

54-13-9. Upon receipt of a mediation request, the director of the agricultural mediation program shall notify the borrower and creditor as to whether financial preparation assistance resources are available and shall provide any other information available regarding assistance programs to borrowers.

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

54-13-10. A creditor desiring to commence an action or a proceeding in this state to enforce a debt totaling fifty thousand dollars or greater against agricultural land or agricultural property of the borrower or to foreclose a contract to sell agricultural land or agricultural property or to enforce a secured interest in agricultural land or agricultural property or pursue any other action, proceeding or remedy relating to agricultural land or agricultural property of the borrower shall file a request for mandatory mediation with the director of the agricultural mediation program. No creditor may commence any such action or proceeding until the creditor receives a mediation release as described in this chapter, or the debtor waives mediation or until a court determines after notice and hearing, that the time delay required for mediation would cause the creditor to suffer irreparable harm because there are reasonable grounds to believe that the borrower may waste, dissipate, or divert agricultural property or that the agricultural property is in imminent danger of deterioration. Dismissal of a bankruptcy proceeding, abandonment by a bankruptcy trustee, release or relief from a bankruptcy stay, or release or termination of a receivership proceeding shall have the effect of a mediation release. Any debt that is less than fifty thousand dollars may be mediated through a voluntary mediation if a request is made and accepted by both borrower and creditor.

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

54-13-11. Unless the borrower waives mediation, the director of the agricultural mediation program shall promptly send a mediation meeting notice to the borrower and to all creditors as defined in subdivision 54-13-1(5), setting a time and place for an initial mediation meeting between

the borrower, the creditor or creditors, and a mediator. An initial mediation meeting shall be held within twenty-one days of the issuance of the mediation meeting notice. Any creditors of the borrower who are not included in the definition of creditor under subdivision 54-13-1(5) are exempt from the requirements of this section. Any borrower's failure to furnish timely information requested by the director of the agricultural mediation program constitutes a waiver of the right to mediate under this chapter. Also, the failure of the borrower and the borrower's spouse, unless excused by the initiating creditor, to attend all mediation meetings constitutes a waiver of the right to mediate under this chapter.

Any creditor subject to mandatory mediation under this chapter who receives notice pursuant to this section and who participates in all mediation sessions shall be treated as an initiating creditor and be subject to the same debt collection limitations as provided in § 54-13-10.

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

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

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

54-13-13. A borrower may request mediation of any type or amount of indebtedness by applying to the director of the agricultural mediation program. The director of the agricultural mediation program may make the appropriate mediation request forms available for such purpose. The director of the agricultural mediation program may follow the same procedure as for mandatory mediation. Neither the borrower nor the creditor may be required to attend any mediation meetings under this

section. Failure to attend mediation meetings or to participate in mediation under this section does not affect the rights of a borrower or a creditor in any manner. Participation in mediation under this section is not a prerequisite to or a bar to the commencement of an action of legal proceedings by the borrower or the creditor. No mediation release may be issued unless the borrower and creditor agree in writing.

An Act to revise certain provisions regarding the Department of Agriculture.

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I certify that the attached Act
originated in the
HOUSE as Bill No. 1056

Chief Clerk
=====

Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1056
File No. _____
Chapter No. _____

=====
Received at this Executive Office
this ____ day of _____ ,
20__ at _____ M.

By _____
for the Governor
=====

The attached Act is hereby
approved this _____ day of
_____, A.D., 20__

Governor

=====
STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 20__
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State