

## CHAPTER 4-35 PESTICIDE ACT

### **4-35-01. Title.**

This chapter must be known as the North Dakota Pesticide Act of 1975.

### **4-35-02. Creation of pesticide control board.**

There is hereby created the pesticide control board, hereinafter also called the "board", consisting of the agriculture commissioner, the director of the cooperative extension division of the North Dakota state university of agriculture and applied science, and the director of the agricultural experiment station at North Dakota state university of agriculture and applied science. The agriculture commissioner must be chairman of the board and is responsible for the enforcement of this chapter. The board shall meet at the call of the chair. The members of the board must be compensated for their expenses in performing their duties under this chapter at the same rate as other state officials and the board's expenses must be paid from funds provided for the administration of this chapter to the agriculture commissioner. The board may act through the office of the agriculture commissioner, and one person on the commissioner's staff may be specifically responsible to, or act as the state-level agent of, the board.

### **4-35-03. Enforcing agency.**

This chapter must be administered by the pesticide control board, hereinafter referred to as the "board".

### **4-35-04. Declaration of purpose.**

The legislative assembly hereby finds that pesticides are valuable to our state's agricultural production and to the protection of man and the environment from insects, rodents, weeds, and other forms of life which may be pests; but it is essential to the public health and welfare that they be regulated to prevent adverse effects on human life and the environment. The purpose of this chapter is to regulate, in the public interest, the distribution, storage, transportation, disposal, and use and application of pesticides to control pests as hereinafter defined. New pesticides are continually being discovered or synthesized which are valuable for the control of pests, and for use as defoliant, desiccant, plant regulators, and for related purposes. The dissemination of accurate scientific information as to the proper use or nonuse of any pesticide is vital to the public health and welfare and the environment, both immediate and future. Therefore, it is deemed necessary to provide for regulation of their use and application.

### **4-35-05. Definitions.**

As used in this chapter:

1. "Animal" means all vertebrate and invertebrate species, including humans and other mammals, birds, fish, and shellfish.
2. "Applicator" means any person who applies a pesticide to land.
3. "Certified applicator" means any individual who is certified under this chapter to purchase or use a restricted use pesticide.
4. "Commercial applicator" means a person who by contract or for hire engages in the business of applying pesticides for compensation.
5. "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission.
6. "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissue.
7. "Device" means 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 human and other than bacteria, virus, or other micro-organism on or in living humans or other living animals, but not including equipment used for the application of pesticides when sold separately therefrom.

8. "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver, or supply pesticides in this state.
9. "Environment" includes water, air, land, and all plants and humans and other animals living therein, and the interrelationships which exist among these.
10. "Equipment" means 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. The term does not include any pressurized hand-sized household apparatus used to apply any pesticide, or any equipment or contrivance of which the person who is applying the pesticide is the source of power or energy in making such pesticide application.
11. "Fungus" means any non-chlorophyll-bearing thallophytes, i.e., any non-chlorophyll-bearing plant of a lower order than mosses and liverworts as, for example, rust, smut, mildew, mold, yeast, and bacteria, except those on or in living humans or other living animals, and except those on or in processed food, beverages, or pharmaceuticals.
12. "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class of insecta, comprising six-legged, usually winged forms, and to other allied classes of arthropods whose members are wingless and usually have more than six legs.
13. "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.
14. "Labeling" means the label and all other written, printed, or graphic matter:
  - a. Accompanying the pesticide or device; and
  - b. To which reference is made on the label or in literature accompanying or referring to the pesticide, except when accurate nonmisleading references are made to current official publications of the board; the United States environmental protection agency; the United States departments of agriculture and interior; the United States department of health and human services; state agricultural colleges; and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.
15. "Land" means 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.
16. "Nematode" means invertebrate animals of the phylum nemathelminthes, and class nematoda, i.e., unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts, may also be called nemas or eelworms.
17. "Pest" means any insect, rodent, nematode, fungus, or weed; or any other form of terrestrial or aquatic plant or animal life, viruses, bacteria, or other micro-organism, except viruses, bacteria, or other micro-organisms on or in living humans or other living animals.
18. "Pesticide" means:
  - a. Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; and
  - b. Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.
19. "Pesticide dealer" means any person, other than a pesticide wholesaler, distributing pesticides.
20. "Plant regulator" means any substance or mixture of substances intended, through physiological action, to accelerate or retard the rate of growth or rate of maturation, or to otherwise alter the behavior of 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, and soil amendments.
21. "Private applicator" means an individual who is required to be a certified applicator to buy or use a restricted use pesticide on property owned or rented by the applicator or the applicator's employer or, if applied without compensation other than trading of

- personal services between producers of agricultural commodities, on the property of another person.
22. "Public applicator" means an applicator who applies pesticides, other than ready-to-use pesticides, as an employee of:
    - a. A governmental agency, municipal corporation, or public utility; or
    - b. A hospital, privately owned golf course, nursery, or greenhouse.
  23. "Ready-to-use pesticide" means a pesticide other than a restricted use pesticide which is applied directly from its original container consistent with label directions, and includes aerosol spray cans, ready-to-use spray containers, bait packs, and other types of containers that do not require mixing or loading before application.
  24. "Restricted use pesticide" means any pesticide formulation that is classified as restricted use by the United States environmental protection agency or the agriculture commissioner under section 19-18-05.
  25. "Rinsate" means a diluted mixture of pesticide obtained from triple rinsing or pressure rinsing pesticide containers or from rinsing the inside and outside of spray equipment.
  26. "Tank mix" means any pesticidal formulation used alone or in combination with another pesticide and mixed with a liquid carrier prior to application.
  27. "Unreasonable adverse effects on the environment" means any unreasonable risk to humans or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.
  28. "Weed" means any plant which grows where not wanted.
  29. "Wildlife" means all living things that are neither human, domesticated, nor, as defined in this chapter, pests, including mammals, birds, and aquatic life.

**4-35-06. Pesticide control board to administer chapter and adopt regulations.**

1. a. The pesticide control board shall administer this chapter and may adopt rules in accordance with chapter 28-32 to implement this chapter. The rules may prescribe methods to be used in the application of pesticides. The rules may relate to the time, place, manner, methods, materials, and amounts and concentrations, in connection with the application of the pesticide, and may restrict or prohibit use of pesticides in designated areas during specified periods of time and shall encompass all reasonable factors which the board deems necessary to prevent damage or injury by drift or misapplication to:
  - (1) Plants, including forage plants, on adjacent or nearby lands.
  - (2) Wildlife in the adjoining or nearby areas.
  - (3) Fish and other aquatic life in waters in proximity to the area to be treated.
  - (4) Persons, animals, or beneficial insects.
- b. In adopting rules, the board shall give consideration to pertinent research findings and recommendations of other agencies of this state, the federal government, or other reliable sources.
2. The board, in adopting rules under this chapter, shall prescribe standards and requirements for the certification of applicators of pesticides. These standards and requirements must relate to the use and handling of pesticides. In determining these standards and requirements, the board shall take into consideration standards and requirements prescribed by the environmental protection agency.
3. Rules adopted under this chapter may not permit any pesticide use which is prohibited by the federal Insecticide, Fungicide, and Rodenticide Act or regulations or orders issued thereunder.
4. In order to comply with section 4 of the federal Insecticide, Fungicide, and Rodenticide Act, the board may make such reports to the United States environmental protection agency in such form and containing such information as that agency may from time to time require.
5. Rules to implement this chapter may provide for:
  - a. The collection, examination, and reporting of samples of pesticides.
  - b. The safe handling, transportation, storage, display, distribution, and disposal of pesticides and their containers.

- c. The identification of pests under this chapter when the board finds particular organisms to be annoying or otherwise injurious or harmful to agriculture, health, and the environment.

#### **4-35-06.1. Limitation on authority of political subdivisions regarding pesticides.**

No political subdivision, including a home rule city or county, may adopt or continue in effect any ordinance, resolution, or home rule charter regarding the registration, labeling, distribution, sale, handling, use, application, transportation, or disposal of pesticides. This section does not apply to city zoning ordinances.

#### **4-35-06.2. Crop protection product harmonization and registration board - Recovery of funds.**

The crop protection product harmonization and registration board may accept funds received for expenses paid relating to the registration of pesticides or donations offered to or for the benefit of the board. All moneys received under this section must be deposited in the minor use pesticide fund to pay expenses relating to the registration of pesticides or for the specific purpose for which they are given. The board shall attempt, whenever possible, to recover funds expended relating to the registration of pesticides and shall adopt rules to administer this section.

#### **4-35-06.3. Minor use pesticide fund - Continuing appropriation.**

The minor use pesticide fund is created as a special fund in the state treasury. All moneys in the fund are appropriated on a continuing basis to the crop protection product harmonization and registration board for the purpose of conducting or commissioning studies, investigations, and evaluations regarding the registration and use of pesticides for minor crops, minor uses, and other uses as determined by the board.

#### **4-35-07. Experimental use permits.**

Repealed by S.L. 2003, ch. 188, § 3.

#### **4-35-08. Classification of commercial certificates.**

The board may classify commercial certificates to be issued under this chapter. The classifications may include pest control operators, wood treaters, ornamental or agricultural pesticide applicators, or right-of-way pesticide applicators. Separate classifications may be specified as to ground, aerial, or manual methods used by any applicator to apply pesticides or to the use of pesticides to control insects and plant diseases, rodents, or weeds. Each classification of certification may be subject to separate testing procedures and training requirements; provided that a person may be required to pay an additional fee if the person desires to be certified in one or more of the classifications provided for by the board under this section.

#### **4-35-09. Commercial and public applicator's certification.**

1. A commercial or public applicator may not purchase, use, or supervise the use of a pesticide without first complying with the certification standards and requirements of this chapter, or other restrictions as may be determined by the board.
2. An individual may be certified as a commercial or public applicator within a classification if the individual successfully completes an examination for the classification as prescribed by the board and administered by the North Dakota state university extension service or the service's designee. An application for certification must be on a form prescribed by the board and accompanied by a reasonable examination fee set by the board.
3. If the North Dakota state university extension service, or its designee, finds the applicant qualified to apply pesticides in the classifications for which the applicant has applied, after examination as the board requires, and the applicant meets all other requirements of this chapter, the North Dakota state university extension service shall

issue a commercial or a public applicator's certificate limited to the classifications in which the applicant is qualified.

4. If certification is not to be issued as applied for, the North Dakota state university extension service, or its designee, shall inform the applicant in writing of the reasons for not issuing the certification.

#### **4-35-09.1. Proof of financial responsibility - Exceptions.**

1. A commercial applicator certificate may not be issued unless the applicant furnishes proof of financial responsibility. Financial responsibility must be maintained in the amount of one hundred thousand dollars, and may be demonstrated by a notarized letter from an officer of a financial institution or from a certified public accountant attesting to the existence of net assets equal to at least one hundred thousand dollars, a performance bond, or a general liability insurance policy. The performance bond or insurance policy must contain a provision requiring the issuing company to notify the agriculture commissioner at least ten days before the effective date of cancellation, termination, or other modification of the bond or insurance policy. When requested by the agriculture commissioner, a commercial applicator immediately shall furnish proof of compliance with this section. If the applicator is unable to furnish the required proof, the commissioner may stop a pesticide application and not allow resumption until the applicator furnishes proof of compliance. The agriculture commissioner shall immediately suspend the certification of a commercial applicator who fails to maintain the financial responsibility standards of this section. If there is any recovery against the commercial applicator, the applicator shall demonstrate continued compliance with the requirements of this section. An application for reinstatement of a certificate suspended under this section must be accompanied by proof that any judgment previously rendered against the applicant has been satisfied.
2. This section does not apply to:
  - a. A rancher who must obtain a commercial applicator certificate for controlling noxious weeds on the leased federal acreage as a condition of a federal grasslands lease.
  - b. A grazing association and its members if either the association or any member must obtain a commercial applicator certificate for controlling noxious weeds on the leased federal acreage as a condition of a federal grasslands lease.
  - c. A person who must be certified in the right-of-way category.
  - d. A commercial applicator who controls noxious weeds on grassland, land producing tame hay, or other lands not devoted to the production of an annual crop.
  - e. An employee of a commercial applicator if the commercial applicator complies with this section.

#### **4-35-10. Expiration of certification - Renewal.**

A certificate issued under section 4-35-09 expires as of the first day of April following two years from the date of issuance. A certificate is renewable every three years on April first. A certificate may be renewed upon completion of a seminar approved by the board or upon successfully completing an examination required by the board, or both, if required by the board. The board shall require a person holding a current valid certificate to take an examination within the three-year period if the board determines additional knowledge related to classifications for which the applicant has applied makes a new examination necessary or that a new evaluation is necessary to assure a continuing level of competence and ability to use pesticides safely and properly.

#### **4-35-11. Nonresident application - Designation of agent for service of process.**

Any nonresident applying for certification as an applicator or dealer under this chapter to operate in this state shall file a written power of attorney designating the North Dakota state university extension service or its designee as the agent of such nonresident upon whom

service of process may be had in the event of any suit against said nonresident person, and the power of attorney must be so prepared and in such form as to render effective the jurisdiction of the courts of this state over the nonresident applicant; provided, however, that any nonresident who has a duly appointed resident agent upon whom process may be served as provided by law is not required to designate the extension service as such agent. The extension service is allowed such fees therefor as provided by law for designating resident agents. The nonresident must be furnished with a copy of the designation of the extension service or of a resident agent. The copy will be duly certified by the extension service.

#### **4-35-12. Pesticide dealer certification - Employees - Requirements for purchase.**

1. It is unlawful for a pesticide dealer to distribute restricted use pesticides or act as a restricted use pesticide dealer, without first having obtained certification from the North Dakota state university extension service, or the service's designee. A certified person is required to be at any location or outlet from which restricted use pesticides are distributed. Any manufacturer or distributor that has no pesticide dealer outlet within this state and which distributes such pesticides directly into this state shall obtain a pesticide dealer certificate for its principal out-of-state location or outlet.
2. Application for a certificate must be accompanied by an examination fee set by the board and must be on a form prescribed by the board. The application must also state the address of each outlet, the principal business address of the applicant, the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant, and any other necessary information prescribed by the board.
3. The board shall require each pesticide dealer to demonstrate to the North Dakota state university extension service or the service's designee knowledge of pesticide laws and regulations; pesticide hazards to humans, animals, and the environment; and the safe distribution, disposal, and use and application of pesticides by satisfactorily passing an examination or meeting other requirements within each classification for which certification is sought as prescribed by the board.
4. Each pesticide dealer is responsible for the acts of each person employed by the dealer in the solicitation and sale of restricted use pesticides and all claims and recommendations for use of such pesticides. The dealer's certification is subject to suspension or revocation, after a hearing, for any violation of this chapter, whether committed by the dealer, or by the dealer's officer, agent, or employee.
5. A certificate issued under this section expires as of the first day of April following two years from the date of issuance. A certificate is renewable every three years on April first. A certificate may be renewed upon completion of a seminar approved by the board or upon successfully completing an examination required by the board, or both, if required by the board. The board may require any person holding a current valid certificate to take an examination within the three-year period if the board determines additional knowledge related to pesticides makes an additional examination necessary or that a new evaluation is necessary to assure a continuing level of competence and ability to distribute pesticides safely and properly.
6. Restricted use pesticides may be sold only to:
  - a. Persons certified as applicators by this state; and
  - b. Persons certified to use restricted use pesticides by another state, provided the pesticide control board determines that the certifying state's requirements are substantially similar to those of this state and further provided that the person does not use the restricted use pesticide in this state.

#### **4-35-12.1. Stop-sale orders.**

Whenever any pesticide or device is found by the commissioner and there is reason to believe on the basis of inspection or tests that the pesticide or device is in violation of any of the provisions of this chapter, or when the registration of the pesticide has been canceled by the state or United States environmental protection agency or has been suspended, the commissioner may issue a written or printed "stop-sale, use, or removal" order to any person

who owns, controls, or has custody of the pesticide or device, and after receipt of the order, no person may sell, use, or remove the pesticide or device described in the order except in accordance with the provisions of the order.

**4-35-13. Application of act to governmental entities.**

All governmental agencies and public utilities are subject to this chapter and rules adopted to implement this chapter.

**4-35-14. Private applicators - Certification.**

1. a. An individual who would be a private applicator, if certified, may not buy any restricted use pesticide unless the individual first complies with the certification requirements established by the board.
- b. An individual who would be a private applicator, if certified, may not use any restricted use pesticide unless the individual:
  - (1) Complies with the certification requirements established by the board; or
  - (2) Is under the direct supervision of a certified applicator.
2. Certification standards to determine the individual's competency with respect to the use and handling of the pesticide or class of pesticides the private applicator is to be certified to use must be determined by the board. In determining these standards, the board shall take into consideration similar standards of the environmental protection agency. The North Dakota state university extension service, or its designee, shall issue a certificate to any private applicator who has qualified as prescribed by the board. The North Dakota state university extension service, or its designee, may require any applicant required to be certified under this section to pay a reasonable fee, not greater than the cost to the North Dakota state university extension service, for materials provided to the applicant for training and education.

**4-35-15. Unlawful acts - Grounds for denial, suspension, or revocation of a certification.**

It is a violation of this chapter for any person to:

1. Make false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized, or advertised a pesticide without reference to its classification.
2. Make a pesticide recommendation, application, or use inconsistent with the labeling or other restrictions prescribed by the board.
3. Apply materials known by that person to be ineffective or improper.
4. Operate faulty or unsafe equipment.
5. Operate in a faulty, careless, or negligent manner.
6. Neglect, or, after notice, refuse to comply with this chapter, the rules adopted to implement this chapter, or any lawful order of the commissioner.
7. Refuse or neglect to keep and maintain the records required by this chapter or to make reports when and as required.
8. Make false or fraudulent records, invoices, or reports.
9. Apply pesticide to the property of another, without the permission of the owner or lessee, unless the application is made under the direction of a governmental entity.
10. Use fraud or misrepresentation in making an application for, or for renewal of, certification.
11. Refuse or neglect to comply with any limitations or restrictions on or in a duly issued certification.
12. Aid or abet a person to evade this chapter, conspire with a person to evade this chapter, or allow the person's certification to be used by another person.
13. Knowingly make false statements during or after an inspection or an investigation.
14. Impersonate a federal, state, county, or city inspector or official.
15. Distribute any restricted use pesticide to any person who is not properly certified to use or purchase the pesticide.

16. Buy, use, or supervise the use of any pesticide without first complying with the certification requirements of this chapter, unless otherwise exempted.
17. Apply any pesticide that is not registered pursuant to chapter 19-18.

**4-35-16. Records - Retention - Submission to commissioner.**

The board shall require pesticide dealers, commercial applicators, and public applicators maintain records of sales and purchases of restricted use and special exemption pesticides. The board shall require commercial applicators and public applicators to maintain records of all applications of pesticides. The board may require restricted use pesticide application records of private applicators. The records must be kept for a period of three years from the date of the application, sale, or purchase of the pesticide. Upon request, these records or pertinent parts thereof, must be submitted to the commissioner.

**4-35-17. License plates for equipment.**

Repealed by S.L. 2009, ch. 77, § 15.

**4-35-18. Reciprocal agreement.**

The North Dakota state university extension service, or its designee, may issue a certification on a reciprocal basis, without examination, to a nonresident who is certified to buy, distribute, or use restricted use pesticides under a plan substantially similar to this chapter and after the applicant has paid a fee, set by the board, not greater than the fee or charge authorized under section 4-35-09, 4-35-12, or 4-35-14 if the applicant would have taken the appropriate examination. Such a certification may be suspended or revoked in the same manner and on the same grounds as certifications pursuant to this chapter, and must be suspended or revoked if the nonresident's home state certification is suspended or revoked.

**4-35-19. Certification requirements - Exemptions.**

1. The certification requirements of this chapter do not apply to an individual applying non-restricted use pesticides under the direct supervision of a commercial applicator, unless the pesticide label requires that a certified applicator personally apply the pesticide. A pesticide is applied under the direct supervision of a commercial applicator if the pesticide is applied by an individual acting under the instruction and control of a certified applicator who is physically available if needed. The certified applicator need not be present when the pesticide is applied. Direct supervision with respect to applications using aircraft requires that the pilot of the aircraft be appropriately certified. The certification requirements of this chapter do not apply to a competent person applying restricted use pesticides under the direct supervision of a private applicator, unless the pesticide label requires that a certified applicator personally apply the particular pesticide. A pesticide is deemed to be applied under the direct supervision of a private applicator if it is applied by a competent person acting under the instruction and control of a private applicator who is available if and when needed, even though the private applicator is not physically present at the time and place that the pesticide is applied.
2. The certification requirements of this chapter do not apply to any person conducting laboratory-type research using restricted use pesticides or to a doctor of medicine or a doctor of veterinary medicine applying a pesticide as a drug or as medication during the course of normal practice.

**4-35-20. Discarding and storing of pesticides, pesticide containers, and rinsate.**

No person may discard, store, display, or permit the disposal of surplus pesticides, empty pesticide containers and devices, or rinsate in such a manner as to endanger the environment or to endanger food, feed, or any other products that may be stored, displayed, or distributed with such pesticides. The board shall promulgate regulations governing the discarding, storage, display, or disposal of any pesticide, rinsate, pesticide containers, or devices.



#### **4-35-21. Reports of pesticide accidents or loss.**

Repealed by S.L. 2007, ch. 67, § 2.

#### **4-35-21.1. Reports of loss through pesticide application required.**

Repealed by S.L. 2007, ch. 67, § 2.

#### **4-35-21.2. Contents of verified reports of damage.**

Repealed by S.L. 2007, ch. 67, § 2.

#### **4-35-21.3. Pesticide application - Alleged property damage - Notification of applicator.**

1. a. Before a person may file a civil action seeking reimbursement for property damage allegedly stemming from the application of a pesticide, the person shall notify by certified mail the pesticide applicator of the alleged damage within the earlier of:
  - (1) Twenty-eight days from the date the person first knew or should have known of the alleged damage; or
  - (2) Before twenty percent of the crop or field allegedly damaged is harvested or destroyed.
- b. Subdivision a does not apply if the person seeking reimbursement for property damage was the applicator of the pesticide.
2. Upon notifying the applicator as required under subsection 1, the person seeking reimbursement for the alleged property damage shall permit the applicator and up to four representatives of the applicator to enter the person's property for the purpose of observing and examining the alleged damage. If the person fails to allow entry, the person is barred from asserting a claim against the applicator.

#### **4-35-22. Subpoenas.**

The commissioner may issue subpoenas to compel the attendance of witnesses or production of books, documents, and records pertaining to pesticide applications, sales, and purchases in the state in any hearing to enforce this chapter.

#### **4-35-23. Penalties.**

1. Any person other than a private applicator who knowingly violates this chapter is guilty of a class A misdemeanor.
2. Any private applicator who knowingly violates this chapter is guilty of a class B misdemeanor.
3. When construing and enforcing the provisions of this chapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person must in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed.
4. A person who violates this chapter or the rules adopted under this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation. The civil penalty may be imposed by a court in a civil proceeding or by the agriculture commissioner through an adjudicative proceeding pursuant to chapter 28-32. The assessment of a civil penalty does not preclude the imposition of other sanctions authorized by law, this chapter, or rules adopted under this chapter.
5. After providing an opportunity for a hearing, the commissioner may deny, suspend, revoke, or modify the provision of any certification issued under this chapter, if the commissioner determines that the applicant for certification or the holder of a certificate has violated this chapter or any rules adopted under this chapter.

#### **4-35-24. Enforcement.**

1. The commissioner shall enforce the requirements of this chapter and any rules adopted under this chapter.

2. The commissioner may bring an action to enjoin the violation or threatened violation of this chapter, or any rule adopted under this chapter, in the district court of the county in which such violation occurs or is about to occur.
3. If any person violates this chapter, the commissioner may issue an order requiring the person to cease and desist from the unlawful activity. If the violator fails to obey, the commissioner will cause the appropriate criminal complaint to be filed.
4. The commissioner may enter upon any public or private premises at reasonable times, in order to:
  - a. Inspect any equipment subject to this chapter and the premises on which the equipment is stored or used.
  - b. Inspect or sample lands actually or reported to be exposed to pesticides.
  - c. Inspect storage or disposal areas.
  - d. Inspect or investigate complaints of injury to humans or land.
  - e. Draw samples of a reasonable amount of tank mix pesticides and tank mixes without compensation to the owner for values less than three dollars.
  - f. Observe the use and application of a pesticide.
  - g. Inspect any place where pesticides or devices are stored or held for distribution, sale, or use, and obtain samples of any pesticides packaged, labeled, and released for shipment and samples of any containers or labeling for the pesticides.
5.
  - a. The commissioner, at any reasonable time, has access to records pertaining to the pesticide application, sales, purchases, and repackaging by any person. The commissioner may copy or make copies of the records for the purpose of this chapter. These records are confidential. However, the commissioner may use these records in any way to enforce this chapter. Any record that the commissioner uses as an exhibit in an enforcement action is no longer a confidential record.
  - b. If an individual alleges exposure to pesticides and if the individual's medical provider requests that the commissioner reveal the name of the pesticide, the commissioner may reveal the name of the pesticide to the individual making the request, together with the registration number assigned by the United States environmental protection agency. The commissioner may require that a request under this section be made in writing.
6. If access is refused or if the commissioner determines that critical enforcement documentation may be lost, the commissioner may apply to any court for a search warrant authorizing access to land or records. The court may, upon compliance with chapter 29-29.1, issue the search warrant for the purposes requested.
7. The commissioner may suspend or revoke a certification issued pursuant to this chapter for failure to pay a civil penalty within thirty days after a final determination is made that the civil penalty is owed.

**4-35-25. Information.**

The board may, in cooperation with private, local, state, or federal agencies, publish information and conduct short courses of instruction in the areas of knowledge required by this chapter.

**4-35-26. Delegation of duties.**

All authority vested in the commissioner by virtue of the provisions of this chapter may, with like force and effect, be executed by such employees or agents as the commissioner may, from time to time, designate for that purpose.

**4-35-27. Cooperation.**

The board may cooperate, receive grants-in-aid, and enter into cooperative agreements with any agency of the federal government, of this state or its subdivisions, or with any agency of another state, in order to:

1. Secure uniformity of regulations.
2. Enter into cooperative agreements with and submit plans to the environmental protection agency for approval to issue experimental use permits under the authority of this chapter and the federal Insecticide, Fungicide, and Rodenticide Act.
3. Cooperate in the enforcement of the federal pesticide control laws and state laws through the use of state or federal personnel and facilities and to implement cooperative enforcement programs.
4. Enter into contracts with other agencies, including federal agencies, for the purpose of training pesticide applicators, managers, dealers, and pesticide consultants.
5. Gain assistance in implementation of this chapter.
6. Regulate certified applicators.
7. Comply with other purposes prescribed by regulation of the commissioner.

**4-35-28. Disposition of funds.**

All moneys received by the board under the provisions of this chapter must be deposited to the credit of the certification and training fund under the control of the board.

**4-35-29. Prior liability.**

Repealed by S.L. 2009, ch. 77, § 15.

**4-35-30. Crop protection product harmonization and registration board - Duties - Grants.**

1. The crop protection product harmonization and registration board consists of:
  - a. The governor or the governor's designee;
  - b. The agriculture commissioner or the commissioner's designee;
  - c. The chairman of the house agriculture committee or the chairman's designee;
  - d. The chairman of the senate agriculture committee or the chairman's designee;
  - e. A member of the house or senate agriculture committee who is not a member of the faction in which the committee chairman is a member, appointed by the legislative management chairman;
  - f. A crop protection product dealer in the state appointed by the governor from a list of three nominees submitted by the North Dakota agricultural association;
  - g. A consumer of crop protection products appointed by the governor from a list of three nominees submitted by the North Dakota grain growers association;
  - h. A consumer of crop protection products appointed by the governor from a list of three nominees submitted by the North Dakota oilseed council;
  - i. A representative of the crop protection product manufacturing industry appointed by the chairman of the legislative management; and
  - j. The director of the North Dakota state university agricultural experiment station.
2. The representative of the crop protection product manufacturing industry and the director of the agricultural experiment station shall serve as nonvoting members. The governor or the governor's designee shall serve as chairman of the board.
3. The board shall:
  - a. Identify and prioritize crop protection product labeling needs;
  - b. Explore the extent of authority given to this state under the federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136a];
  - c. Identify the data necessary to enable registration of a use to occur in a timely manner;
  - d. Determine what research, if any, is necessary to fulfill data requirements for activities listed in this section;
  - e. Request the agriculture commissioner to pursue specific research funding options from public and private sources;
  - f. Request the North Dakota state university agricultural experiment station to pursue specific research to coordinate registration efforts; and

- g. Pursue any opportunities to make more crop protection product options available to agricultural producers in this state through any means the board determines advisable.
4. The board may contract with a consultant to conduct studies or provide research or information regarding crop protection product registration and labeling needs.
5. The board may administer a grant program through which agriculture commodity groups may apply for funds to be used by the groups to address issues related to the registration of crop protection products. To be eligible for receipt of a grant, an applicant must submit an application to the board which requests a specific amount of funds, specifies the exact purposes for which the grant would be used, and provides a detailed timetable for the use of the grant funds. The board may impose any additional conditions it determines appropriate for grant recipients, including requiring periodic reports and furnishing of matching funds. The board may terminate funding of a previously approved grant at any time if the board is dissatisfied with the performance of the grant recipient.
6. The board may use not more than fifteen percent of the funds under its supervision for administrative purposes, including the cost of contracting for administrative services and reimbursement of board member expenses. The members of the board who are members of the legislative assembly are entitled to compensation from the legislative council for attendance at board meetings at the rate provided for members of the legislative assembly for attendance at interim committee meetings and are entitled to reimbursement for expenses incurred in attending the meetings in the amounts provided by law for other state officers.
7. The board may adopt rules to implement this section.