

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 715

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
CHANGING CERTAIN PESTICIDE APPLICATOR LICENSING REQUIREMENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 76-4-3 NMSA 1978 (being Laws 1973,
Chapter 366, Section 3, as amended) is amended to read:

"76-4-3. DEFINITIONS.--As used in the Pesticide Control
Act:

A. "equipment" means any type of ground, water or
aerial equipment, device or contrivance using motorized,
mechanical or pressurized power 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 device used by a homeowner to apply a pesticide or
any equipment, device or contrivance of which the person who is

.178105.1

underscored material = new
[bracketed material] = delete

1 applying the pesticide on [~~his~~] the person's own land is the
2 source of power or energy in making the pesticide application;

3 B. "board" means the board of regents of New Mexico
4 state university;

5 C. "department" means the New Mexico department of
6 agriculture;

7 D. "device" means any instrument or contrivance
8 other than a firearm [~~which~~] that is intended for trapping,
9 destroying, repelling or mitigating any pest or any other form
10 of plant or animal life, other than [~~man~~] humans and other than
11 bacteria, viruses or other microorganisms on or in any living
12 thing other than plants, but does not include equipment used
13 for the application of pesticides when sold separately
14 therefrom, or traps used to control predators or rodents or
15 sterilization using dry heat or steam;

16 E. "distribute" means to offer for sale, hold for
17 sale, sell, barter or supply in this state;

18 F. "environment" includes water, air and land and
19 all plants and every living thing [~~therein or thereon~~] in
20 water, in air and on land and the existing interrelationships;

21 G. "insect" means any of the numerous small
22 invertebrate animals belonging principally to the class
23 insecta, including [~~but not limited to~~] beetles, bugs, bees,
24 flies, and to other allied classes of arthropods, including
25 [~~but not limited to~~] spiders, mites, ticks, millipedes,

.178105.1

1 centipedes and sowbugs;

2 H. "ingredient statement" means a statement [~~which~~]
3 that contains the name and percentage of each ingredient of any
4 pesticide [~~which~~] that is intended for one of the purposes
5 under Paragraphs (1) through (4) of Subsection N of this
6 section, and the total percentage of all ingredients in the
7 pesticide not for one of those purposes. If the pesticide
8 contains arsenic in any form, the ingredient statement shall
9 contain a statement of the percentages of total and water-
10 soluble arsenic, calculated as elemental arsenic;

11 I. "label" means the written, printed or graphic
12 matter on or attached to the pesticide or device or any of its
13 containers or wrappers;

14 J. "labeling" means all labels and all other
15 written, printed or graphic matter accompanying the pesticide
16 or device at any time; or to which reference is made on the
17 label or in literature accompanying the pesticide or device,
18 except to current official publications of the department, the
19 United States environmental protection agency, United States
20 departments of agriculture, [~~and~~] the interior [~~the department~~
21 ~~of health, education and welfare~~] and health and human
22 services, state agricultural universities and other similar
23 federal or state institutions or agencies authorized by law to
24 conduct research in the field of pesticides;

25 K. "land" means all land and water areas, including

.178105.1

1 air space, and all living things and all structures, buildings,
2 contrivances and machinery appurtenant thereto or situated
3 thereon, fixed or mobile, including any used for
4 transportation;

5 L. "person" has the extended meaning ascribed to it
6 in Subsection E of Section [~~12-2-2~~] 12-2A-3 NMSA 1978;

7 M. "pest" means any living organism injurious to
8 other living organisms, except [~~man~~] humans, viruses, bacteria
9 or other microorganisms in or on other living organisms other
10 than plants, [~~which~~] that the board by [~~regulation~~] rule
11 declares to be a pest;

12 N. "pesticide" means any substance or mixture of
13 substances intended for:

14 (1) preventing, destroying, repelling or
15 mitigating any pest;

16 (2) causing the leaves or foliage to drop from
17 a plant, with or without causing abscission;

18 (3) artificially accelerating the drying of
19 plant tissue; or

20 (4) accelerating or retarding the rate of
21 growth or rate of maturation, or for otherwise altering the
22 behavior, of ornamental or crop plants or the produce thereof,
23 through physiological action, but not including substances that
24 are intended as plant nutrients, trace elements, nutritional
25 chemicals, plant inoculants or soil amendments;

.178105.1

1 O. "pesticide dealer" means any person who
2 distributes highly toxic pesticides, restricted use pesticides
3 or both, which pesticides are restricted by [~~regulation~~] rule
4 to distribution only by licensed pesticide dealers;

5 P. "pest management consultant" means any
6 individual who offers or supplies technical advice or makes
7 recommendations to the user of highly toxic pesticides,
8 restricted use pesticides or both, which pesticides are
9 restricted by [~~regulation~~] rule to distribution only by
10 licensed pesticide dealers;

11 Q. "registrant" means a person who has registered
12 any pesticide pursuant to the provisions of the Pesticide
13 Control Act;

14 R. "restricted use pesticide" means any pesticide
15 or device designated by the board as requiring specific
16 restrictions to prevent unreasonable adverse effects on the
17 environment, including [~~man~~] humans, beneficial insect
18 predators and parasites, pollinating insects, animals, crops,
19 wildlife and lands but excluding the pests the pesticide or
20 device is intended to prevent, destroy, control or mitigate;

21 S. "unreasonable adverse effects on the
22 environment" means an unreasonable risk to [~~man~~] humans or the
23 environment, taking into account the economic, social and
24 environmental costs and benefits of the use of any pesticide;

25 T. "noncommercial applicator" means a person who

.178105.1

1 uses or demonstrates restricted use pesticides or any general
2 use pesticide, when applied to sites or under conditions
3 identified by rule promulgated by the board, and does not
4 qualify as a private applicator and is not required to have a
5 commercial applicator's license;

6 U. "private applicator" means a certified
7 applicator who uses or supervises the use of any pesticide
8 [~~which~~] that is classified for restricted use for purposes of
9 producing any agricultural commodity on property owned or
10 rented by [~~him~~] the certified applicator or [~~his~~] the certified
11 applicator's employer or on the property of another person if
12 applied without compensation other than trading of personal
13 services between producers of agricultural commodities;

14 V. "public applicator" means a certified applicator
15 who as an employee of a federal, state, county [~~city~~] or
16 municipal agency or municipal corporation uses [~~or supervises~~
17 ~~the use of~~] any pesticide [~~which~~] that is classified for
18 restricted use [~~only by certified applicators or persons under~~
19 ~~their direct supervision~~] or any general use pesticide, when
20 applied to sites or under conditions identified by rule
21 promulgated by the board; and

22 W. "commercial applicator" means a certified
23 applicator, whether or not [~~he~~] the certified applicator is a
24 private applicator with respect to some uses, who for
25 compensation uses or supervises the use of any pesticide for

1 any purpose on any property other than as provided by [~~Section~~]
 2 Sections 76-4-19 and 76-4-20.1 NMSA 1978 [~~and Section 8 of this~~
 3 ~~act~~]."

4 Section 2. Section 76-4-19 NMSA 1978 (being Laws 1973,
 5 Chapter 366, Section 19, as amended) is amended to read:

6 "76-4-19. APPLICATION OF ACT TO GOVERNMENTAL ENTITIES--
 7 PUBLIC APPLICATOR'S LICENSE REQUIRED.--

8 A. [~~All state agencies, federal agencies and~~
 9 ~~municipal corporations or any other governmental agency~~] A
 10 public applicator shall be subject to the provisions of the
 11 Pesticide Control Act and [~~regulations~~] rules adopted
 12 [~~thereunder concerning the application of pesticides unless~~
 13 ~~exempt under other sections of the Pesticide Control Act~~]
 14 pursuant to that act.

15 B. Public applicators [~~for agencies listed in this~~
 16 ~~section~~] shall be subject to examinations or other licensing
 17 provisions as provided in the Pesticide Control Act or by rule
 18 promulgated by the board. The department shall issue a limited
 19 license without fee to the public applicator who has qualified
 20 for [~~such~~] the license. The public applicator license shall be
 21 valid only when the applicator is acting as an applicator
 22 applying [~~or supervising application of restricted use~~]
 23 pesticides used by [~~such entities~~] federal, state, county or
 24 municipal agencies or municipal corporations. Government
 25 research personnel shall be exempt from this licensing

.178105.1

1 requirement only when applying general use pesticides to
2 experimental plots."

3 Section 3. Section 76-4-20.1 NMSA 1978 (being Laws 1979,
4 Chapter 394, Section 8) is amended to read:

5 "76-4-20.1. NONCOMMERCIAL APPLICATOR LICENSE.--

6 A. ~~[Any person who is not a private applicator,~~
7 ~~commercial applicator or public applicator, except a person~~
8 ~~working under their direct supervision]~~ A noncommercial
9 applicator shall not use a ~~[restricted use or state restricted~~
10 ~~use]~~ pesticide without having a valid current noncommercial
11 applicator license issued by the department for the license use
12 categories and subcategories in which the pesticide application
13 is made.

14 B. Application for an original or renewal license
15 shall be on a form prescribed by the department. An annual
16 prescribed fee shall be charged for each noncommercial
17 applicator license issued.

18 C. The department shall not issue a noncommercial
19 applicator license until the applicant has passed a written
20 certification examination to demonstrate to the department
21 ~~[his]~~ the applicant's knowledge of how to apply pesticides
22 under the classifications for which ~~[he]~~ the applicant has
23 applied and ~~[his]~~ the applicant's knowledge of the nature and
24 effect of pesticides ~~[he]~~ the applicant may apply under such
25 classifications.

.178105.1

1 D. The department shall renew any applicant's
2 license under the classification for which the applicant is
3 certified; provided that the applicant's license is not under a
4 suspension or revocation order and the applicant has complied
5 with the provisions of the Pesticide Control Act.

6 E. Nothing in this section shall imply the right to
7 apply pesticides for hire without first having obtained a
8 commercial applicator license."