

SENATE BILL 103

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Mimi Stewart

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO THE ENVIRONMENT; RESTRICTING THE USE OF NEONICOTINOID CLASS PESTICIDES; PROVIDING EXCEPTIONS; REQUIRING AN EDUCATION AND TRAINING PROGRAM; AMENDING AND ENACTING SECTIONS OF THE PESTICIDE CONTROL ACT.

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

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

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"76-4-1. SHORT TITLE.--~~[This act]~~ Chapter 76, Article 4 NMSA 1978 may be cited as the "Pesticide Control Act".

SECTION 2. Section 76-4-3 NMSA 1978 (being Laws 1973, Chapter 366, Section 3, as amended by Laws 2009, Chapter 101, Section 1 and by Laws 2009, Chapter 109, Section 1) 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 applying the pesticide on the person's own land is the source of power or energy in making the pesticide application;~~

B.] A. "board" means the board of regents of New Mexico state university;

B. "commercial applicator" means a licensed applicator, whether or not the licensed applicator is also a private applicator with respect to some uses, who for compensation uses or supervises the use of any pesticide for any purpose on any property other than as provided by Sections 76-4-19 and 76-4-20.1 NMSA 1978;

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

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

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

F. "environment" includes water, air and land and all plants and every living thing in water, in air and on land and the existing interrelationships;

G. "equipment" means any type of ground, water or aerial equipment, device or contrivance using motorized, mechanical or pressurized power to apply a pesticide on land and anything that may be growing, habitating or stored on or in such land, but does not include a 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 applying the pesticide on the person's own land is the source of power or energy in making the pesticide application;

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[G.] H. "insect" means any of the numerous small invertebrate animals belonging principally to the class insecta, including beetles, bugs, bees and flies, and to other allied classes of arthropods, including spiders, mites, ticks, millipedes, centipedes and sowbugs;

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

[I.] J. "label" means the written, printed or graphic matter on or attached to the pesticide or device or any of its containers or wrappers;

[J.] K. "labeling" means all labels and all other written, printed or graphic matter accompanying the pesticide or device at any time; or to which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of the department; the United States environmental protection agency; United States departments of agriculture, the interior and health and human services; state agricultural universities and other similar

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federal or state institutions or agencies authorized by law to conduct research in the field of pesticides;

[K-] L. "land" means all land and water areas, including air space, and all living things and all structures, buildings, contrivances and machinery appurtenant [~~thereto~~] to the land or situated [~~thereon~~] on the land, fixed or mobile, including any used for transportation;

M. "neonicotinoid class pesticide" means a pesticide belonging to the neonicotinoid class of chemicals that act selectively on nicotine acetylcholine receptors of organisms and are absorbed into plant tissue and that can be present in pollen and nectar, including acetamiprid, clothianidin, dinotefuran, imidacloprid, nithiazine, nitenpyram, thiacloprid and thiamethoxam and any other pesticide identified as a neonicotinoid by the United States environmental protection agency;

N. "noncommercial applicator" means a person licensed to use or demonstrate restricted use pesticides who does not qualify as a private applicator and who is not required to have a commercial applicator's license;

O. "not pollinated by insects" means agricultural crops not ~~visited by pollinators, including crops that either do not bloom or are not allowed to bloom before harvest~~ dependent on insect pollination ;

[L-] P. "person" has the extended meaning ascribed

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to it in Subsection E of Section 12-2A-3 NMSA 1978;

[M-] Q. "pest" means any living organism injurious to other living organisms, except humans, viruses, bacteria or other microorganisms in or on other living organisms other than plants, that the board by rule declares to be a pest;

[N-] R. "pesticide" means [~~any~~] a substance or mixture of substances intended for:

- (1) preventing, destroying, repelling or mitigating [~~any~~] a pest;
- (2) causing the leaves or foliage to drop from a plant, with or without causing abscission;
- (3) artificially accelerating the drying of plant tissue; or
- (4) 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~~] of ornamental or crop plants, through physiological action, but not including substances that are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants or soil amendments;

[O-] S. "pesticide dealer" means [~~any~~] a person [~~who distributes~~] licensed to distribute STBTC→~~SCONG~~→~~highly toxic~~←~~SCONG~~←STBTC STBTC→~~highly toxic~~←STBTC pesticides, restricted use pesticides or both, which pesticides are restricted by rule to distribution only by [~~licensed~~] pesticide

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dealers;

[P-] T. "pest management consultant" means [~~any individual who offers or supplies~~] a person licensed to offer or supply technical advice or [~~makes~~] make recommendations to the user of highly toxic pesticides, restricted use pesticides or both, which pesticides are restricted by rule to distribution only by [~~licensed~~] pesticide dealers;

U. "private applicator" means a certified applicator who uses or supervises the use of a pesticide that is classified for restricted use for purposes of producing an agricultural commodity on property owned or rented by the certified applicator or the certified applicator's employer or on the property of another person if applied without compensation other than trading of personal services between producers of agricultural commodities;

V. "public applicator" means a licensed applicator who as an employee of a federal, state, county or municipal agency or municipal corporation uses a pesticide classified for restricted use or general use to apply to sites or under conditions identified by rule promulgated by the board;

[Q-] W. "registrant" means a person who has registered [~~any~~] a pesticide pursuant to the provisions of the Pesticide Control Act;

[R-] X. "restricted use pesticide" means any pesticide or device designated by the board as requiring

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specific restrictions to prevent unreasonable adverse effects on the environment, including humans, beneficial insect predators and parasites, pollinating insects, animals, crops, wildlife and lands, but excluding the pests the pesticide or device is intended to prevent, destroy, control or mitigate; and

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

~~T. "noncommercial applicator" means a person who uses or demonstrates restricted use pesticides and does not qualify as a private applicator and is not required to have a commercial applicator's license;~~

~~U. "private applicator" means a certified applicator who uses or supervises the use of any pesticide that is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by the certified applicator or the certified applicator's employer or on the property of another person if applied without compensation other than trading of personal services between producers of agricultural commodities;~~

~~V. "public applicator" means a certified applicator who as an employee of a federal, state, county or municipal agency or municipal corporation uses any pesticide that is~~

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~~classified for restricted use or any general use pesticide,  
when applied to sites or under conditions identified by rule  
promulgated by the board; and~~

~~W. "commercial applicator" means a certified  
applicator, whether or not the certified applicator is a  
private applicator with respect to some uses, who for  
compensation uses or supervises the use of any pesticide for  
any purpose on any property other than as provided by Sections  
76-4-19 and 76-4-20.1 NMSA 1978.]~~

Y. "unreasonable adverse effects on the  
environment" means STBTC→~~SCONG~~→~~an unreasonable~~←~~SCONG~~  
~~SCONG~~→~~a~~←~~SCONG~~←STBTC STBTC→an unreasonable←STBTC risk to  
humans; animals, including wildlife and domestic animals;  
beneficial pollinators, insect predators and parasites; crops;  
land; habitats; aquatic life; or other damages, but excluding  
the pests the pesticide or device is intended to prevent,  
destroy, control or mitigate and taking into account the  
economic, social and environmental costs and benefits of the  
use of any pesticide."

SECTION 3. Section 76-4-5 NMSA 1978 (being Laws 1973,  
Chapter 366, Section 5) is amended to read:

"76-4-5. PROHIBITED ACTS.--

A. It is unlawful for [any] a person to distribute  
within the state, to deliver for transportation or to transport  
in intrastate commerce or between points within this state

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through any point outside this state or to use any of the following:

(1) [~~any~~] a pesticide [~~which~~] that has not been registered in accordance with the Pesticide Control Act or [~~regulations adopted~~] rules promulgated pursuant to that act;

(2) [~~any~~] a pesticide if any of the claims made for it or any of the directions for its use or other labeling differs from the representations made in connection with its registration or if the composition as represented in connection with its registration differs. However, at the discretion of the department, a change in the labeling of a pesticide, except changes in the ingredient statement, may be made within a registration period without requiring reregistration of the product if the change will not have unreasonable adverse effects on the environment;

(3) [~~any~~] a pesticide [~~unless it~~] that is not in the unbroken immediate container of the registrant or manufacturer and to which there is not affixed to the container, and to the outside container or wrapper of the retail package if there is one through which the required information on the immediate container cannot be clearly read, a label bearing the information required [~~in~~] by the Pesticide Control Act and the [~~regulations adopted~~] rules promulgated pursuant to that act;

(4) [~~any~~] a pesticide [~~which~~] that has not

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been colored or discolored as required by the Pesticide Control Act;

(5) ~~[any]~~ a pesticide ~~[which]~~ that does not meet the professed standard of quantity or quality, as expressed on the labeling under which it is sold, or in which ~~[any]~~ a substance has been substituted wholly or in part for the pesticide, or if ~~[any]~~ a valuable constituent has been wholly or in part abstracted or if ~~[any]~~ a contaminant is misbranded or is present in an amount determined by the department to be a hazard;

(6) ~~[any]~~ a device ~~[which]~~ that is misbranded;  
~~[or]~~

(7) ~~[any]~~ a pesticide in containers violating ~~[regulations adopted]~~ rules promulgated pursuant to the Pesticide Control Act or pesticides found in damaged containers ~~[which]~~ that constitute a hazard to the environment; or

(8) a neonicotinoid class pesticide unless the pesticide has been granted an exception pursuant to the Pesticide Control Act and the person distributing, delivering for transportation or transporting or using the pesticide has proof of the exception.

B. It is unlawful:

(1) to distribute a restricted use pesticide to ~~[any]~~ a person who is required by law or ~~[regulations]~~ rules promulgated pursuant to the Pesticide Control Act to be

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licensed or certified to use the restricted use pesticide and the person, including the license holder's or certificate holder's agent, does not have a permit to use or purchase the kind and quantity of the restricted use [~~pesticides, unless the person or his agent to whom sale or delivery is made has a valid permit to use or purchase the kind and quantity of the restricted use~~] pesticide; provided, however, subject to conditions established by the department, [~~such~~] a permit may be obtained from [~~any~~] a person who has been designated by the department to issue permits immediately prior to distribution;

(2) for [~~any~~] a person to detach, alter, deface or destroy, wholly or in part, any label or labeling provided for in the Pesticide Control Act or [~~regulations adopted~~] rules promulgated pursuant to that act or to add any substance to or take any substance from a pesticide in a manner that may defeat the purpose of the Pesticide Control Act or the [~~regulations adopted thereunder~~] rules promulgated pursuant to that act;

(3) for [~~any~~] a person to use or cause to be used [~~any~~] a restricted use pesticide contrary to directions on the label or to [~~regulations~~] rules of the board if those [~~regulations~~] rules differ from or further restrict the labeling;

(4) for [~~any~~] a person to use for [~~his own~~] personal advantage or to reveal [~~other than to the department,~~

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~~or to the courts of the state in response to a subpoena, or to physicians, or in emergencies to pharmacists and other qualified person for use in the preparation of a practical treatment including first aid, in case of poisoning]~~ any information relative to formulas of products acquired by authority of the Pesticide Control Act; provided, however, that a person may reveal formula information to:

(a) the department;

(b) the courts of the state in response to a subpoena;

(c) physicians; or

(d) pharmacists or other qualified persons in emergencies to prepare a practical treatment, including first aid, in case of poisoning;

(5) for [~~any~~] a person to handle, transport, store, display, distribute or use pesticides in such a manner as to endanger [~~man and his~~] the environment or to endanger food, feed or any other products that may be transported, stored, displayed or distributed with [~~such~~] the pesticides; or

(6) for [~~any~~] a person to dispose of, discard or store [~~any~~] pesticides or pesticide containers in a manner that may cause injury to humans, vegetation, crops, livestock, wildlife or domestic animals or pollinating insects or to pollute any water supply or waterway."

SECTION 4. A new section of the Pesticide Control Act is

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enacted to read:

"[NEW MATERIAL] NEONICOTINOID CLASS PESTICIDES--  
PROHIBITIONS--EXCEPTIONS.--

A. Except as otherwise provided in this section:

(1) no pesticide dealer or other person shall distribute a neonicotinoid class pesticide or any substance or product containing a neonicotinoid class pesticide;

(2) neonicotinoid class pesticides shall not be sprayed, released, deposited or applied on any property in New Mexico; and

(3) no blooming or flowering plants, plant material or seed that has been treated with a neonicotinoid class pesticide shall be sold in New Mexico.

B. STBTC→For the purposes of this subsection, neonicotinoid class pesticides shall not be designated as restricted use pesticides unless they are designated as such by the United States environmental protection agency.←STBTC The department may allow the sale or use of neonicotinoid class pesticides in the following cases:

(1) the distribution of the neonicotinoid class pesticides or substances containing a neonicotinoid class pesticide for use in commercial agriculture on crops not pollinated by insects;

(2) the spraying, releasing, depositing or application is by a licensed applicator for use in commercial

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agriculture on crops not pollinated by insects;

(3) the product's use is intended for pet care for the eradication, control or mitigation of parasites harmful to domestic animals;

(4) the product's use is intended for the eradication, control or mitigation of lice or bedbugs;

(5) the product's use is intended for indoor use ~~SCONC→in an enclosed space←SCONC~~ ~~SCONC→or outside around foundations and other parts of structures←SCONC~~ to eradicate, control or mitigate pests;

~~SCONC→(6) a wood product has been treated using a neonicotinoid class pesticide; or←SCONC~~

~~SCONC→(6) a wood preservative pesticide or wood preservative products that contain neonicotinoid class pesticides or similar pesticides used to treat wood products; or←SCONC~~

(7) the blooming or flowering plant, plant materials or seed is clearly and conspicuously labeled as having been treated with a neonicotinoid class pesticide and includes a description of the risks to pollinators and other nontarget organisms associated with the use of neonicotinoid class pesticides ~~SCONC→~~; ~~provided that if the distributor cannot confirm the blooming or flowering plant, plant materials or seed was not treated with a neonicotinoid class pesticide, the product must have a clear and conspicuous label indicating~~

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that a neonicotinoid class pesticide may have been used and including a description of the risks to pollinators and other nontarget organisms associated with the use of neonicotinoid class pesticides before the product may be sold ←SCONC ."

SECTION 5. Section 76-4-6 NMSA 1978 (being Laws 1973, Chapter 366, Section 6) is amended to read:

"76-4-6. PESTICIDE REGISTRATION--DEALER'S PESTICIDE REGISTER.--

A. Each pesticide or device that is distributed within the state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state shall be registered with the department and subject to the provisions of the Pesticide Control Act; however, the registration is not required if a pesticide is shipped from one plant or warehouse to another plant or warehouse operated by the same person and used solely at [~~such~~] that plant or warehouse as a constituent part to make a pesticide [~~which~~] that is registered under the provisions of the Pesticide Control Act.

B. The applicant for registration shall file a statement with the [~~board which~~] department that includes:

(1) the name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant's;

(2) the name of the pesticide or device;

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(3) other necessary information required for completion of the application for registration form;

(4) a complete copy of the labeling accompanying the pesticide or device and a statement of all claims, including the directions and precautions for use; and

(5) the use classification of the pesticide if required by federal or state [~~regulations~~] rules.

C. The department, when it deems it necessary in the administration of the Pesticide Control Act, may require the submission of the complete formula of any pesticide, including all ingredients [~~which~~] that will prevent, destroy, repel, control or mitigate pests or [~~which~~] that will act as a plant regulator, defoliant or desiccant or those [~~which~~] ingredients that act as a functioning agent in a spray adjuvant, and all ingredients [~~which~~] that do not perform these functions.

D. The department may require a full description of the tests made and the results [~~thereof~~] upon which the claims are based on any pesticide or device or on any pesticide or device on which restrictions are being considered. In the case of renewal of registration, the applicant shall be required to furnish only information [~~which~~] that is different from that furnished when the pesticide was registered or reregistered during the previous license year.

E. The board may prescribe other necessary

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information by [~~regulation~~] rule.

F. The applicant desiring to register a pesticide or device shall pay an annual prescribed registration fee for each pesticide or device registered.

G. [~~Any~~] A registration approved by the department and in effect on December 31 of the year for which a renewal application has been made and the proper fee paid, shall continue in full force [~~and effect~~] until the department notifies the applicant that the registration has been renewed or denied [~~in accord with the provisions of the Pesticide Control Act~~]. Forms for reregistration shall be mailed to registrants at least thirty days prior to the due date.

H. If it appears to the department that the composition of the pesticide warrants the proposed claims for it and if the pesticide or device and its labeling and other material submitted comply with the requirements of the Pesticide Control Act, the department shall register the pesticide or device.

I. All federal, state and county agencies or municipalities shall register all pesticides or devices distributed by them but shall not be required to pay the registration fee.

J. Every pesticide dealer shall maintain a pesticide register in which to record all restricted use pesticides distributed to private applicators. The register

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shall include the name and address of the private applicator and other information as prescribed by the board. Registers shall be maintained for the length of time established by the department.

K. A pesticide dealer shall not under any circumstances distribute a restricted use pesticide to a private applicator who does not present a certificate and use permit specific to the pesticide sought to be delivered to the private applicator or who refuses to sign the register, which serves as signed acknowledgment that the private applicator understands and will abide by the label precautions."

SECTION 6. Section 76-4-9 NMSA 1978 (being Laws 1973, Chapter 366, Section 9, as amended) is amended to read:

"76-4-9. DEPARTMENT TO ADMINISTER AND ENFORCE ACT--BOARD TO ADOPT [REGULATIONS] RULES--SCOPE OF [REGULATIONS] RULES--- The department shall administer and enforce the provisions of the Pesticide Control Act and [~~regulations~~] rules promulgated by the board in accordance with that act.

A. The board may, after notice and public hearing, adopt [~~regulations~~] rules for carrying out the purpose and provisions of the Pesticide Control Act, including [~~regulations~~] rules providing for:

(1) declaring as a pest any form of plant or animal life or virus, other than [~~man~~] humans and other than bacteria, viruses and other microorganisms on or in living

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[~~man~~] humans or other living animals, [~~which~~] that is injurious to health or the environment;

(2) designating certain pesticides [~~to be~~], including neonicotinoid class pesticides, as highly toxic to [~~any animal, including man~~] animals, including humans, or pollinators;

(3) determining standards for identifying pesticides by color, taste, odor or form;

(4) [~~the collection and examination of~~] collecting and examining devices or samples of pesticides for analysis;

(5) requiring pesticide applicators, including private applicators, to notify [~~land owners~~] landowners of property adjoining [~~the property to be treated~~] or in the immediate vicinity [~~thereof~~] of the property to be treated of a proposed application of a pesticide if such notice is necessary to carry out the purpose of the Pesticide Control Act and for a hearing before the director of the department [~~of any objecting owner of property adjoining the property to be treated~~] by an objecting landowner before the application of the pesticide;

(6) the safe handling, transportation, storage, display, distribution, use and disposal of pesticides and their containers;

(7) establishing standards with respect to the package, container or wrapping in which a pesticide is

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distributed;

(8) restricting or prohibiting the use of certain types of containers or packages for specific pesticides. These restrictions may apply to type of construction, strength and size or any combination [~~thereof~~] to alleviate danger of spillage, breakage, misuse or any other hazard to the public;

(9) procedures for making pesticide recommendation;

(10) adopting a list of restricted use pesticides for the state or for designated areas within the state;

(11) regulating the time and conditions of distribution, sale or use of the restricted use pesticides;

(12) requiring all [~~persons issued licenses to offer technical advice, to sell or to use restricted use pesticides~~] licensees to maintain records as prescribed by the department;

(13) certification of private applicators;

(14) label requirements of all pesticides required to be registered under provisions of the Pesticide Control Act;

(15) regulating the labeling of devices;

(16) procedures and techniques to be used in sampling land, including agricultural products that are to be

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consumed by ~~man~~ humans or animals, for pesticide residues;

(17) classifying pesticides for general use, restricted use or both;

(18) prescribing methods to be used in the application of pesticides where the department finds that such ~~[regulations]~~ rules are necessary to carry out the purpose and intent of the Pesticide Control Act. Such ~~[regulations]~~ rules may relate to the time, manner, methods, materials and amounts and concentrations in connection with the application of the pesticides and may restrict or prohibit use of pesticides in designated areas during specified periods of time and shall encompass all reasonable factors ~~[which]~~ that the department deems necessary to prevent damage or injury by drift or misapplication to plants, including forage plants, or adjacent or nearby lands; wildlife in the adjoining or nearby areas; fish and other aquatic life in waters in reasonable proximity to the area to be treated; and humans, animals, ~~[or]~~ pollinators and other beneficial insects. In issuing such ~~[regulations]~~ rules, the board shall give consideration to pertinent research findings and recommendations of other agencies of the state, the federal government ~~[or]~~ and other reliable sources;

(19) requiring any pesticide use dilution to be colored or discolored if it determines that such requirement is feasible and is necessary for the protection of health and

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the environment;

(20) establishing good pesticide use and handling practices for commercial pesticide applicators;

(21) establishing requirements for supervision of [~~servicemen~~] servicers of structural pest control applicators; and

(22) regulating false or misleading [~~advertisement~~] advertising in the sales or use of pesticides and devices.

B. The board shall adopt [~~regulations~~] rules that are consistent with [~~regulations~~] rules of the [~~New Mexico~~] environmental improvement board, the [~~New Mexico~~] water quality control commission and the laws administered by the regulations of the United States environmental protection agency.

C. The department [~~is authorized to~~] may specify the quantities and concentrations of restricted use pesticides that may be applied. When specifying quantities and concentrations, the department's decision shall require a reasoned analysis of the potential unreasonable adverse effects on the environment of the proposed quantities or concentrations of the restricted use pesticide."

SECTION 7. Section 76-4-10 NMSA 1978 (being Laws 1973, Chapter 366, Section 10) is amended to read:

"76-4-10. SAMPLING AND EXAMINATION OF PESTICIDES OR DEVICES--RESIDUE ANALYSIS.--

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A. The sampling and examination of pesticides or devices shall be made under the direction of the department for the purpose of determining if they comply with the requirements of the Pesticide Control Act.

B. The sampling of land, including agricultural products that are to be consumed by ~~man~~ humans or animals, including pollinators, may be made by the department to determine if pesticide residues are present that will cause unreasonable adverse effects on the environment or if the residues exceed the tolerance established by the United States environmental protection agency [~~New Mexico environmental improvement agency~~] or the department of environment or restrictions established by other federal or state regulatory agencies."

SECTION 8. Section 76-4-20 NMSA 1978 (being Laws 1973, Chapter 366, Section 20, as amended) is repealed and a new Section 76-4-20 NMSA 1978 is enacted to read:

"76-4-20. [NEW MATERIAL] PRIVATE APPLICATORS--  
CERTIFICATION--EXAMINATION--USE PERMITS--SPECIAL PERMITS.--

A. The board shall promulgate rules for the certification of private applicators. The rules shall include such requirements as necessary to prevent unreasonable adverse effects on the environment, including injury to the applicator or other persons, and shall take into consideration standards of the United States environmental protection agency.

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B. A person who is not otherwise licensed pursuant to the Pesticide Control Act shall not use a restricted use pesticide without being certified as a private applicator and receiving a use permit from the department. A separate certification is required for each restricted use pesticide the private applicator proposes to use, and the certification must be issued before the restricted use pesticide is purchased or otherwise obtained and used.

C. An application for certification shall include acknowledgment that the applicant understands and will abide by label precautions on the restricted use pesticide covered by the application. An applicant shall:

(1) be required to pass a written examination demonstrating competency with respect to the use and handling of the restricted use pesticide covered by the examination; and

(2) pay the prescribed examination and certification fees.

D. If a person does not qualify for a private applicator certificate, the department shall inform the applicant in writing.

E. A private applicator certificate shall be valid for a period of not less than three years as established by the board.

F. A private applicator shall obtain a restricted use pesticide permit prior to purchase and use of a covered

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pesticide. A separate permit is required for each pesticide for which the private applicator is certified and for each period of use. Each permit shall include the crops, location and acreage for the seasonal or temporary period for which the permit is issued. Permits shall only be issued for registered or experimental uses and shall be subject to other limitations as specified by the department, including limiting the areas of use, the timing or method of application and limiting the amount of the pesticide to that needed to cover the acreage to be treated.

G. A special review permit is required for each application involving a specific risk to the environment, including risk to pollinators. The application for a special review permit shall include detailed information on the intended use, the responsible person in charge and the equipment and conditions under which the pesticide application is to be made. The department may issue a special review permit with additional restrictions such as on-site inspection or supervision."

**SECTION 9.** Section 76-4-20.1 NMSA 1978 (being Laws 1979, Chapter 394, Section 8, as amended by Laws 2009, Chapter 101, Section 3 and by Laws 2009, Chapter 109, Section 3) is amended to read:

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

A. A ~~[noncommercial applicator]~~ person who is not

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otherwise licensed pursuant to the Pesticide Control Act shall not use a restricted use or state restricted use pesticide without having a valid current noncommercial applicator license issued by the department for the license use categories and subcategories in which the pesticide application is made.

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

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

D. The department shall renew [~~any applicant's~~] a noncommercial applicator license under the classification for which the [~~applicant is certified; provided that~~] noncommercial applicator is licensed if the [~~applicant's~~] license is not under a suspension or revocation order and the [~~applicant~~] licensee has complied with the provisions of the Pesticide Control Act.

E. Nothing in this section shall imply the right to apply pesticides for hire without first having obtained a

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commercial applicator license."

SECTION 10. A new section of the Pesticide Control Act is enacted to read:

"[NEW MATERIAL] CONTINUING EDUCATION FOR LICENSEES AND CERTIFICATE HOLDERS.--Continuing education is required for any person holding a license or certificate pursuant to the Pesticide Control Act. The board shall promulgate rules pertaining to continuing education, including whether annual or biennial continuing education is required, which may be different depending on the pesticide classifications for which dealers, applicators, operators or consultants are licensed or certified, and how many hours of continuing education are required in that period."

SECTION 11. A new section of the Pesticide Control Act is enacted to read:

"[NEW MATERIAL] POLLINATOR HEALTH OUTREACH AND EDUCATION PLAN--EDUCATIONAL AND TRAINING MATERIALS DEVELOPMENT.--

A. The department, in consultation with the college of agriculture, consumer and environmental sciences at New Mexico state university, shall develop:

(1) a pollinator health outreach and education plan to educate the public regarding the best practices for avoiding adverse effects from pesticides on populations of bees and other pollinating insects; and

(2) educational and training materials for

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pesticide dealers; pest management consultants and licensed or certified applicators, including commercial, public, private and noncommercial applicators, and operators; farmers and ranchers; and owners and employees of nurseries and other wholesale or retail sellers of plants and plant materials regarding the best practices for avoiding adverse effects from pesticides on populations of bees and other pollinating insects.

B. The educational and training materials shall include measures that pesticide dealers; pest management consultants and licensed or certified applicators, including commercial, public, private and noncommercial applicators, and operators; farmers and ranchers; and owners and employees of nurseries and other wholesale or retail sellers of plants and plant materials are required to take to protect native bees, honeybees and other pollinators.

C. The department shall:

(1) design the educational and training materials so as to ensure that all ~~SCONC~~→applicable←~~SCONC~~ classes of pesticide applicators applying or supervising the application of a pesticide are knowledgeable regarding alternatives to, the appropriateness of and precautions for pesticide use that may be injurious to the health of bees and other pollinating insects; and

(2) make the educational and training

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materials part of the education required for taking any licensing or certification examination or continuing education requirement under the Pesticide Control Act."

SECTION 12. Section 76-4-23 NMSA 1978 (being Laws 1973, Chapter 366, Section 23, as amended) is amended to read:

"76-4-23. GROUNDS FOR DENIAL, SUSPENSION OR REVOCATION OF LICENSE, PERMIT OR [~~CERTIFICATION~~] CERTIFICATE--ACTS CONSTITUTING A VIOLATION OF THE PESTICIDE CONTROL ACT.--

A. The department may deny application for any license, permit or [~~certification~~] certificate or may suspend any license, permit or [~~certification~~] certificate when it has reason to believe that the applicant for or the holder of such license, permit or [~~certification~~] certificate has violated any of the provisions of Subsection B of this section.

B. It is a violation of the Pesticide Control Act for any person to:

- (1) make a false or fraudulent claim through any media [~~which~~] that misrepresents the effect of material or methods to be used;
- (2) make a pesticide recommendation or to use a pesticide in a manner inconsistent with the labeling;
- (3) apply known ineffective or improper materials;
- (4) operate faulty or unsafe apparatus;
- (5) operate in a faulty, careless or negligent

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manner;

(6) refuse or, after notice, neglect to comply with the provisions of the Pesticide Control Act or the rules [~~and regulations~~] adopted pursuant [~~thereto~~] to that act;

(7) refuse or neglect to keep and maintain the records or to make reports when and as required by the Pesticide Control Act or rules [~~and regulations~~] adopted pursuant [~~thereto~~] to that act;

(8) make false or fraudulent records, invoices or reports;

(9) engage in the business of applying a pesticide on the land of another without having a licensed applicator or operator in direct "on-the-job" supervision;

(10) use fraud or misrepresentation in making an application for a license or renewal of a license;

(11) refuse or neglect to comply with any limitation or restriction on or in a duly issued license or permit;

(12) aid or abet a licensed or an unlicensed person to evade any provision of the Pesticide Control Act, conspire with a licensed or an unlicensed person to evade the provisions of [~~the Pesticide Control~~] that act or allow one's license to be used by an unlicensed person;

(13) make false or misleading statements during or after an inspection concerning any infestation or

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infection of pests found on land;

(14) impersonate any state, county or [city] municipal inspector or official;

(15) perform the type of pest control under the conditions and in the locality in which [he] the person operates or has operated, whether or not [he] the person has previously passed an examination, when not qualified;

(16) use or supervise the use of a pesticide [which] that is restricted to use by licensed or certified applicators when not qualified as a licensed or certified applicator; [or]

(17) use or supervise the use of a neonicotinoid class pesticide except as provided in the Pesticide Control Act; or

[~~(17)~~] (18) make pesticide recommendations or apply pesticides without having the proper [~~certification or~~] license or certificate.

C. [~~Any~~] A person who has had a license, permit or [~~certification~~] certificate denied, suspended or revoked by the department may request a hearing before the department. The request for a hearing shall be made within fifteen days of receipt of a certified letter notifying [~~him~~] the person of the department's action."

**SECTION 13. EFFECTIVE DATE.**--The effective date of the provisions of this act is July 1, 2021.

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