

1 SENATE BILL 103

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 Mimi Stewart

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9  
10 AN ACT

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

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

19 "76-4-1. SHORT TITLE.--~~[This act]~~ Chapter 76, Article 4  
20 NMSA 1978 may be cited as the "Pesticide Control Act"."

21 SECTION 2. Section 76-4-3 NMSA 1978 (being Laws 1973,  
22 Chapter 366, Section 3, as amended by Laws 2009, Chapter 101,  
23 Section 1 and by Laws 2009, Chapter 109, Section 1) is amended  
24 to read:

25 "76-4-3. DEFINITIONS.--As used in the Pesticide Control

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1 Act:

2 ~~[A. "equipment" means any type of ground, water or~~  
3 ~~aerial equipment, device or contrivance using motorized,~~  
4 ~~mechanical or pressurized power to apply any pesticide on land~~  
5 ~~and anything that may be growing, habitating or stored on or in~~  
6 ~~such land, but does not include any pressurized hand-sized~~  
7 ~~household device used by a homeowner to apply a pesticide or~~  
8 ~~any equipment, device or contrivance of which the person who is~~  
9 ~~applying the pesticide on the person's own land is the source~~  
10 ~~of power or energy in making the pesticide application;~~

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

13 B. "commercial applicator" means a licensed  
14 applicator, whether or not the licensed applicator is also a  
15 private applicator with respect to some uses, who for  
16 compensation uses or supervises the use of any pesticide for  
17 any purpose on any property other than as provided by Sections  
18 76-4-19 and 76-4-20.1 NMSA 1978;

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

21 D. "device" means ~~[any]~~ an instrument or  
22 contrivance other than a firearm that is intended for trapping,  
23 destroying, repelling or mitigating any pest or any other form  
24 of plant or animal life, other than humans and other than  
25 bacteria, viruses or other microorganisms on or in any living

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1 thing other than plants, but does not include equipment used  
2 for the application of pesticides when sold separately  
3 ~~[therefrom]~~ from a pesticide, or traps used to control  
4 predators or rodents or sterilization using dry heat or steam;

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

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

10 G. "equipment" means any type of ground, water or  
11 aerial equipment, device or contrivance using motorized,  
12 mechanical or pressurized power to apply a pesticide on land  
13 and anything that may be growing, habitating or stored on or in  
14 such land, but does not include a pressurized hand-sized  
15 household device used by a homeowner to apply a pesticide or  
16 any equipment, device or contrivance of which the person who is  
17 applying the pesticide on the person's own land is the source  
18 of power or energy in making the pesticide application;

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

24 ~~[H.]~~ I. "ingredient statement" means a statement  
25 that contains the name and percentage of each ingredient of

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

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

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

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

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

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

14           O. "not pollinated by insects" means agricultural  
15 crops not visited by pollinators, including crops that either  
16 do not bloom or are not allowed to bloom before harvest;

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

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

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

25                   (1) preventing, destroying, repelling or

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1 mitigating [~~any~~] a pest;

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

4 (3) artificially accelerating the drying of  
5 plant tissue; or

6 (4) accelerating or retarding the rate of  
7 growth or rate of maturation, or for otherwise altering the  
8 behavior, of ornamental or crop plants or the produce [~~thereof~~]  
9 of ornamental or crop plants, through physiological action, but  
10 not including substances that are intended as plant nutrients,  
11 trace elements, nutritional chemicals, plant inoculants or soil  
12 amendments;

13 [~~0-~~] S. "pesticide dealer" means [~~any~~] a person  
14 [~~who distributes~~] licensed to distribute highly toxic  
15 pesticides, restricted use pesticides or both, which pesticides  
16 are restricted by rule to distribution only by [~~licensed~~]  
17 pesticide dealers;

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

24 U. "private applicator" means a certified  
25 applicator who uses or supervises the use of a pesticide that

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1 is classified for restricted use for purposes of producing an  
2 agricultural commodity on property owned or rented by the  
3 certified applicator or the certified applicator's employer or  
4 on the property of another person if applied without  
5 compensation other than trading of personal services between  
6 producers of agricultural commodities;

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

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

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

23 ~~[S. "unreasonable adverse effects on the~~  
24 ~~environment" means an unreasonable risk to humans or the~~  
25 ~~environment, taking into account the economic, social and~~

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1 ~~environmental costs and benefits of the use of any pesticide;~~

2 ~~T. "noncommercial applicator" means a person who~~  
3 ~~uses or demonstrates restricted use pesticides 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 that~~  
8 ~~is classified for restricted use for purposes of producing any~~  
9 ~~agricultural commodity on property owned or rented by the~~  
10 ~~certified applicator or the certified applicator's employer or~~  
11 ~~on the property of another person if applied without~~  
12 ~~compensation other than trading of personal services between~~  
13 ~~producers of agricultural commodities;~~

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

20 ~~W. "commercial applicator" means a certified~~  
21 ~~applicator, whether or not the certified applicator is a~~  
22 ~~private applicator with respect to some uses, who for~~  
23 ~~compensation uses or supervises the use of any pesticide for~~  
24 ~~any purpose on any property other than as provided by Sections~~  
25 ~~76-4-19 and 76-4-20.1 NMSA 1978.]~~

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1                   Y. "unreasonable adverse effects on the  
2 environment" means an unreasonable risk to humans; animals,  
3 including wildlife and domestic animals; beneficial  
4 pollinators, insect predators and parasites; crops; land;  
5 habitats; aquatic life; or other damages, but excluding the  
6 pests the pesticide or device is intended to prevent, destroy,  
7 control or mitigate and taking into account the economic,  
8 social and environmental costs and benefits of the use of any  
9 pesticide."

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

12                   "76-4-5. PROHIBITED ACTS.--

13                   A. It is unlawful for [~~any~~] a person to distribute  
14 within the state, to deliver for transportation or to transport  
15 in intrastate commerce or between points within this state  
16 through any point outside this state or to use any of the  
17 following:

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

21                                   (2) [~~any~~] a pesticide if any of the claims  
22 made for it or any of the directions for its use or other  
23 labeling differs from the representations made in connection  
24 with its registration or if the composition as represented in  
25 connection with its registration differs. However, at the

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1 discretion of the department, a change in the labeling of a  
2 pesticide, except changes in the ingredient statement, may be  
3 made within a registration period without requiring  
4 reregistration of the product if the change will not have  
5 unreasonable adverse effects on the environment;

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

15 (4) ~~[any]~~ a pesticide ~~[which]~~ that has not  
16 been colored or discolored as required by the Pesticide Control  
17 Act;

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

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

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

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

12 B. It is unlawful:

13 (1) to distribute a restricted use pesticide  
14 to [~~any~~] a person who is required by law or [~~regulations~~] rules  
15 promulgated pursuant to the Pesticide Control Act to be  
16 licensed or certified to use the restricted use pesticide and  
17 the person, including the license holder's or certificate  
18 holder's agent, does not have a permit to use or purchase the  
19 kind and quantity of the restricted use [~~pesticides, unless the~~  
20 person or his agent to whom sale or delivery is made has a  
21 valid permit to use or purchase the kind and quantity of the  
22 restricted use] pesticide; provided, however, subject to  
23 conditions established by the department, [~~such~~] a permit may  
24 be obtained from [~~any~~] a person who has been designated by the  
25 department to issue permits immediately prior to distribution;

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

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

14 (4) for ~~[any]~~ a person to use for ~~[his own]~~  
15 personal advantage or to reveal ~~[other than to the department,~~  
16 ~~or to the courts of the state in response to a subpoena, or to~~  
17 ~~physicians, or in emergencies to pharmacists and other~~  
18 ~~qualified person for use in the preparation of a practical~~  
19 ~~treatment including first aid, in case of poisoning]~~ any  
20 information relative to formulas of products acquired by  
21 authority of the Pesticide Control Act; provided, however, that  
22 a person may reveal formula information to:

- 23 (a) the department;  
24 (b) the courts of the state in response  
25 to a subpoena;

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(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 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

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

4 B. The department may allow the sale or use of  
5 neonicotinoid class pesticides in the following cases:

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

10 (2) the spraying, releasing, depositing or  
11 application is by a licensed applicator for use in commercial  
12 agriculture on crops not pollinated by insects;

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

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

18 (5) the product's use is intended for indoor  
19 use in an enclosed space to eradicate, control or mitigate  
20 pests;

21 (6) a wood product has been treated using a  
22 neonicotinoid class pesticide; or

23 (7) the blooming or flowering plant, plant  
24 materials or seed is clearly and conspicuously labeled as  
25 having been treated with a neonicotinoid class pesticide and

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1 includes a description of the risks to pollinators and other  
2 nontarget organisms associated with the use of neonicotinoid  
3 class pesticides."

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

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

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

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

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

24 (2) the name of the pesticide or device;

25 (3) other necessary information required for

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1 completion of the application for registration form;

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

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

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

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

24 E. The board may prescribe other necessary  
25 information by [~~regulation~~] rule.

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

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

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

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

22 J. Every pesticide dealer shall maintain a  
23 pesticide register in which to record all restricted use  
24 pesticides distributed to private applicators. The register  
25 shall include the name and address of the private applicator

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1 and other information as prescribed by the board. Registers  
2 shall be maintained for the length of time established by the  
3 department.

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

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

13 "76-4-9. DEPARTMENT TO ADMINISTER AND ENFORCE ACT--BOARD  
14 TO ADOPT [REGULATIONS] RULES--SCOPE OF [REGULATIONS] RULES.--  
15 The department shall administer and enforce the provisions of  
16 the Pesticide Control Act and [~~regulations~~] rules promulgated  
17 by the board in accordance with that act.

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

22 (1) declaring as a pest any form of plant or  
23 animal life or virus, other than [~~man~~] humans and other than  
24 bacteria, viruses and other microorganisms on or in living  
25 [~~man~~] humans or other living animals, [~~which~~] that is injurious

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1 to health or the environment;

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

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

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

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

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

23 (7) establishing standards with respect to the  
24 package, container or wrapping in which a pesticide is  
25 distributed;

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

7 (9) procedures for making pesticide  
8 recommendation;

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

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

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

18 (13) certification of private applicators;

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

22 (15) regulating the labeling of devices;

23 (16) procedures and techniques to be used in  
24 sampling land, including agricultural products that are to be  
25 consumed by [~~man~~] humans or animals, for pesticide residues;

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

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

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

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

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

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

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

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

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

23 "76-4-10. SAMPLING AND EXAMINATION OF PESTICIDES OR  
24 DEVICES--RESIDUE ANALYSIS.--

25 A. The sampling and examination of pesticides or

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1 devices shall be made under the direction of the department for  
2 the purpose of determining if they comply with the requirements  
3 of the Pesticide Control Act.

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

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

17 "76-4-20. [NEW MATERIAL] PRIVATE APPLICATORS--  
18 CERTIFICATION--EXAMINATION--USE PERMITS--SPECIAL PERMITS.--

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

25 B. A person who is not otherwise licensed pursuant

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1 to the Pesticide Control Act shall not use a restricted use  
2 pesticide without being certified as a private applicator and  
3 receiving a use permit from the department. A separate  
4 certification is required for each restricted use pesticide the  
5 private applicator proposes to use, and the certification must  
6 be issued before the restricted use pesticide is purchased or  
7 otherwise obtained and used.

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

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

15 (2) pay the prescribed examination and  
16 certification fees.

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

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

23 F. A private applicator shall obtain a restricted  
24 use pesticide permit prior to purchase and use of a covered  
25 pesticide. A separate permit is required for each pesticide



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

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

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

23 "76-4-20.1. NONCOMMERCIAL APPLICATOR LICENSE.--

24 A. A ~~[noncommercial applicator]~~ person who is not  
25 otherwise licensed pursuant to the Pesticide Control Act shall

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1 not use a restricted use or state restricted use pesticide  
2 without having a valid current noncommercial applicator license  
3 issued by the department for the license use categories and  
4 subcategories in which the pesticide application is made.

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

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

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

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

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

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

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

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

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

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

24                       (2) educational and training materials for  
25 pesticide dealers; pest management consultants and licensed or

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1 certified applicators, including commercial, public, private  
2 and noncommercial applicators, and operators; farmers and  
3 ranchers; and owners and employees of nurseries and other  
4 wholesale or retail sellers of plants and plant materials  
5 regarding the best practices for avoiding adverse effects from  
6 pesticides on populations of bees and other pollinating  
7 insects.

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

16 C. The department shall:

17 (1) design the educational and training  
18 materials so as to ensure that all classes of pesticide  
19 applicators applying or supervising the application of a  
20 pesticide are knowledgeable regarding alternatives to, the  
21 appropriateness of and precautions for pesticide use that may  
22 be injurious to the health of bees and other pollinating  
23 insects; and

24 (2) make the educational and training  
25 materials part of the education required for taking any

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1 licensing or certification examination or continuing education  
2 requirement under the Pesticide Control Act."

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

5 "76-4-23. GROUNDS FOR DENIAL, SUSPENSION OR REVOCATION OF  
6 LICENSE, PERMIT OR [~~CERTIFICATION~~] CERTIFICATE--ACTS  
7 CONSTITUTING A VIOLATION OF THE PESTICIDE CONTROL ACT.--

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

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

16 (1) make a false or fraudulent claim through  
17 any media [~~which~~] that misrepresents the effect of material or  
18 methods to be used;

19 (2) make a pesticide recommendation or to use  
20 a pesticide in a manner inconsistent with the labeling;

21 (3) apply known ineffective or improper  
22 materials;

23 (4) operate faulty or unsafe apparatus;

24 (5) operate in a faulty, careless or negligent  
25 manner;

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

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

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

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

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

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

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

23 (13) make false or misleading statements  
24 during or after an inspection concerning any infestation or  
25 infection of pests found on land;

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

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

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

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

14 [~~(17)~~] (18) make pesticide recommendations or  
15 apply pesticides without having the proper [~~certification or~~]  
16 license or certificate.

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

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