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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 applying the pesticide on the person's own
land is the source of power or energy in making the pesticide
application;

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

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

D. "device" means any instrument or contrivance
other than a firearm that is intended for trapping,

1 destroying, repelling or mitigating any pest or any other
2 form of plant or animal life, other than humans and other
3 than bacteria, viruses or other microorganisms on or in any
4 living thing other than plants, but does not include
5 equipment used for the application of pesticides when sold
6 separately therefrom, or traps used to control predators or
7 rodents or sterilization using dry heat or steam;

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

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

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

18 H. "ingredient statement" means a statement that
19 contains the name and percentage of each ingredient of any
20 pesticide that is intended for one of the purposes under
21 Paragraphs (1) through (4) of Subsection N of this section,
22 and the total percentage of all ingredients in the pesticide
23 not for one of those purposes. If the pesticide contains
24 arsenic in any form, the ingredient statement shall contain a
25 statement of the percentages of total and water-soluble

1 arsenic, calculated as elemental arsenic;

2 I. "label" means the written, printed or graphic
3 matter on or attached to the pesticide or device or any of
4 its containers or wrappers;

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

15 K. "land" means all land and water areas,
16 including air space, and all living things and all
17 structures, buildings, contrivances and machinery appurtenant
18 thereto or situated thereon, fixed or mobile, including any
19 used for transportation;

20 L. "person" has the extended meaning ascribed to
21 it in Subsection E of Section 12-2A-3 NMSA 1978;

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

1 N. "pesticide" means any substance or mixture of
2 substances intended for:

3 (1) preventing, destroying, repelling or
4 mitigating any pest;

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

7 (3) artificially accelerating the drying of
8 plant tissue; or

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

16 O. "pesticide dealer" means any person who
17 distributes highly toxic pesticides, restricted use
18 pesticides or both, which pesticides are restricted by rule
19 to distribution only by licensed pesticide dealers;

20 P. "pest management consultant" means any
21 individual who offers or supplies technical advice or makes
22 recommendations to the user of highly toxic pesticides,
23 restricted use pesticides or both, which pesticides are
24 restricted by rule to distribution only by licensed pesticide
25 dealers;

1 Q. "registrant" means a person who has registered
2 any pesticide pursuant to the provisions of the Pesticide
3 Control Act;

4 R. "restricted use pesticide" means any pesticide
5 or device designated by the board as requiring specific
6 restrictions to prevent unreasonable adverse effects on the
7 environment, including humans, beneficial insect predators
8 and parasites, pollinating insects, animals, crops, wildlife
9 and lands but excluding the pests the pesticide or device is
10 intended to prevent, destroy, control or mitigate;

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

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

19 U. "private applicator" means a certified
20 applicator who uses or supervises the use of any pesticide
21 that is classified for restricted use for purposes of
22 producing any agricultural commodity on property owned or
23 rented by the certified applicator or the certified
24 applicator's employer or on the property of another person if
25 applied without compensation other than trading of personal

1 services between producers of agricultural commodities;

2 V. "public applicator" means a certified
3 applicator who as an employee of a federal, state, county or
4 municipal agency or municipal corporation uses any pesticide
5 that is classified for restricted use or any general use
6 pesticide, when applied to sites or under conditions
7 identified by rule promulgated by the board; and

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

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

16 "76-4-19. APPLICATION OF ACT TO GOVERNMENTAL ENTITIES--
17 PUBLIC APPLICATOR'S LICENSE REQUIRED.--

18 A. A public applicator shall be subject to the
19 provisions of the Pesticide Control Act and rules adopted
20 pursuant to that act.

21 B. Public applicators shall be subject to
22 examinations or other licensing provisions as provided in the
23 Pesticide Control Act or by rule promulgated by the board.

24 The department shall issue a limited license without fee to
25 the public applicator who has qualified for the license. The

1 public applicator license shall be valid only when the
2 applicator is acting as an applicator applying pesticides
3 used by federal, state, county or municipal agencies or
4 municipal corporations. Government research personnel shall
5 be exempt from this licensing requirement only when applying
6 general use pesticides to experimental plots."

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

9 "76-4-20.1. NONCOMMERCIAL APPLICATOR LICENSE.--

10 A. A noncommercial applicator shall not use a
11 restricted use or state restricted use pesticide without
12 having a valid current noncommercial applicator license
13 issued by the department for the license use categories and
14 subcategories in which the pesticide application is made.

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

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

1 classifications.

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

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

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