

AN ACT

RELATING TO PESTICIDES; CHANGING CERTAIN 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,

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

H. "ingredient statement" means a statement that contains the name and percentage of each ingredient of any pesticide that is intended for one of the purposes under Paragraphs (1) through (4) of Subsection N 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. "label" means the written, printed or graphic matter on or attached to the pesticide or device or any of its containers or wrappers;

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

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

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

M. "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. "pesticide" means any substance or mixture of

substances intended for:

- (1) preventing, destroying, repelling or mitigating any 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, through physiological action, but not including substances that are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants or soil amendments;

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

P. "pest management consultant" means any individual who offers or supplies technical advice or makes 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;

Q. "registrant" means a person who has registered any pesticide pursuant to the provisions of the Pesticide

Control Act;

R. "restricted use pesticide" means any pesticide or device designated by the board as requiring 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;

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 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."

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

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

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

B. Public applicators shall be subject to examinations or other licensing provisions as provided in the Pesticide Control Act or by rule promulgated by the board. The department shall issue a limited license without fee to the public applicator who has qualified for the license. The public applicator license shall be valid only when the applicator is acting as an applicator applying pesticides used

by federal, state, county or municipal agencies or municipal corporations. Government research personnel shall be exempt from this licensing requirement only when applying general use pesticides to experimental plots."

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

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

A. A noncommercial applicator 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 license under the classification for which the applicant is

certified; provided that the applicant's license is not under a suspension or revocation order and the applicant 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 commercial applicator license."