

NORTH CAROLINA GENERAL ASSEMBLY
1981 SESSION

CHAPTER 592
SENATE BILL 404

AN ACT TO AMEND ARTICLE 52 OF CHAPTER 143 OF THE NORTH CAROLINA GENERAL STATUTES ENTITLED "THE NORTH CAROLINA PESTICIDE LAW OF 1971".

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-440(b) shall be rewritten to read as follows:

"(b) The board may include in any such restricted-use regulation the time and conditions of sale, distribution, or use of such restricted-use pesticides, may prohibit the use of any restricted-use pesticide for designated purposes or at designated times; may require the purchaser or user to certify that restricted-use pesticides will be used only as labeled or as further restricted by regulation, may require the certification of private applicators and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder; and may, if it deems it necessary to carry out the provisions of this Part, require that any or all restricted-use pesticides shall be purchased, possessed, or used only under permit of the board and under its direct supervision in certain areas and/or under certain conditions or in certain quantities or concentrations except that any person licensed to sell such pesticides may purchase and possess such pesticides without a permit. The board may require all persons issued such permits to maintain records as to the use of the restricted-use pesticides. The board may authorize the use of restricted-use pesticides by persons licensed under the North Carolina Structural Pest Control Act without a permit."

Sec. 2. G.S. 143-442(e) is amended by adding the following at the end thereof:

"The board may require the manufacturer or distributor of any pesticide, for which registration has been refused, cancelled, suspended or voluntarily discontinued or which has been found adulterated or deficient in its active ingredient, to remove such pesticide from the marketplace."

Sec. 3. G.S. 143-443(b)(2a) is repealed.

Sec. 4. G.S. 143-443(b) is amended by adding a new subsection (3) as follows:

"(3) For any person to use any pesticide in a manner inconsistent with its labeling."

Sec. 5. G.S. 143-447(c)(1)b is amended by adding the following at the end thereof:

"or has had its registration suspended or revoked or is the subject of a stop sale, stop use, or removal order."

Sec. 6. G.S. 143-448(d) and 143-452(c) are repealed.

Sec. 7. G.S. 143-452(h) is rewritten as follows:

"(h) Any licensee whose license is lost or destroyed may secure a duplicate license for a reasonable fee to be established by the board."

Sec. 8. G.S. 143-457 is repealed.

Sec. 9. G.S. 143-460 is amended by adding a new subsection (26a) as follows:

"(26a) The term 'pest' means any insect, rodent, nematode, fungus, weed or any other noxious or undesirable microorganism or macroorganism, except

viruses, bacteria, or other microorganisms on or in living persons or other living animals."

Sec. 10. G.S. 143-460(28) is rewritten as follows:

"(28) The term 'pesticide' means:

- a. Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and
- b. Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant."

Sec. 11. G.S. 143-460 is amended by adding a new subsection (36a) as follows:

"(36a) The phrase 'to use any pesticide in a manner inconsistent with its labeling' means to use any pesticide in a manner not permitted by the labeling; provided that the phrase shall not include:

- a. applying a pesticide at any dosage, concentration, or frequency less than that specified on the labeling,
- b. applying a pesticide against any target pest not specified on the labeling if the application is to the crop, animal, or site specified on the labeling, unless the labeling specifically states that the pesticide may be used only for the pests specified on the labeling,
- c. employing any method of application not prohibited by the labeling, or
- d. mixing pesticides or mixing a pesticide with a fertilizer when such mixture is not prohibited by the labeling."

Sec. 12. G.S. 143-469 is amended by inserting "(a)" at the beginning thereof and by adding new subsections (b) and (c) as follows:

"(b) A civil penalty of not more than two thousand dollars (\$2,000) may be assessed by the board against any person who:

- (1) sells or offers for sale any unregistered pesticide in violation of G.S. 143-442;
- (2) uses a pesticide in a manner inconsistent with its labeling;
- (3) stores or disposes of a pesticide or pesticide container by means other than means prescribed on the labeling or regulations adopted pursuant to this Article;
- (4) makes false or fraudulent claims about the effect of any pesticide or method of application of a pesticide;
- (5) violates any stop sale, stop use, or removal order adopted under G.S. 143-447;
- (6) fails to provide names and addresses of recipients of pesticides which are the subject of stop sale, stop use, or removal orders when the person is the registrant of the pesticide or has sold or distributed the pesticide;
- (7) fails to make and keep records required by this Article, fails to make reports when required by this Article or refuses to make such records and reports available for audit or inspection by the board or its agents;
- (8) falsifies all or part of any application for the registration of a pesticide or the issuance or renewal of any license under this Article;
- (9) makes false statements or provides false information in connection with any investigation conducted under this Article; or
- (10) operates as a pesticide applicator, consultant or dealer without a license.

In determining the amount of any penalty, the board may consider the degree and extent of harm caused by the violation and the cost of rectifying the damage caused by the violation.

(c) Proceedings for the assessment of civil penalties under this section shall be governed by Chapter 150A of the North Carolina General Statutes. If the person assessed a

civil penalty fails to pay the penalty to the North Carolina Department of Agriculture, the board may institute an action in the superior court of the county in which the person resides or has his principal place of business to recover the unpaid amount of said penalty. An action to recover a civil penalty under this section shall not relieve any party from any other penalty prescribed by law.

(d) Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)a. shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)a. only for willful violations."

Sec. 13. G.S. 143-470 is repealed.

Sec. 14. This act shall become effective July 1, 1981.

In the General Assembly read three times and ratified, this the 17th day of June, 1981.