

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2007**

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**HOUSE BILL 1818**

Short Title: Agricultural Family Protection Act. (Public)

Sponsors: Representatives Blue, Martin (Primary Sponsors); Alexander, Faison, Glazier, Harrison, Underhill, and Wainwright.

Referred to: Agribusiness and Agricultural Economy.

April 19, 2007

A BILL TO BE ENTITLED  
AN ACT AMENDING THE LABOR AND PESTICIDE LAWS FOR THE  
PROTECTION OF AGRICULTURAL FAMILIES.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 143-466 reads as rewritten:

**"§ 143-466. Records; information; inspection; enforcement.**

(a) The Board shall require licensees to maintain records with respect to the sale and application of such pesticides as it may from time to time prescribe. Such relevant information as the Board may deem necessary may be specified by rule. The records ~~shall be kept for a period of three years from the date of the application of the pesticide to which the records refer, and shall be available for inspection and copying by the Board or its agents at its request.~~ shall be:

- (1) Kept for a period of three years from the date of the application of the pesticide to which the records refer;
- (2) Available for inspection and copying by the Board or its agents at its request; and
- (3) Provided on request within a reasonable time period to the North Carolina Department of Labor; to treating health care personnel initiating diagnostic testing or therapy for a patient with a suspected case of pesticide poisoning; to the North Carolina Department of Health and Human Services; or in the case of a workers' compensation claim, to the employee or the employee's designated representative.

Knowingly providing false records to the Board is a violation of this Article.

(b) The Board may publish information regarding injury which may result from improper application or use of pesticides and the methods and precautions designed to prevent such injury.

(c) The Board may provide for inspection of any equipment used for application of pesticides and may require repairs or other changes before its further use for pesticide

1 application. A list of requirements that equipment shall meet may be adopted by the  
2 Board by regulation.

3 (d) The Board may provide for inspection of any place of business where  
4 pesticides are stored or sold and may require changes in methods of handling,  
5 displaying and storing of all pesticides. A list of requirements that places of business  
6 must meet may be adopted by regulation of the Board.

7 (e) For the purpose of carrying out the provisions of this Article, inspectors  
8 designated by the Board may enter upon any public or private premises at reasonable  
9 times, in order:

- 10 (1) To have access for the purpose of inspecting the premises and any  
11 equipment subject to this Article and such premises on which such  
12 equipment is kept or stored;
- 13 (2) To inspect lands actually or reported to be exposed to pesticides;
- 14 (3) To inspect storage or disposal areas;
- 15 (4) To inspect or investigate complaints of injury to humans, land or  
16 plants; or
- 17 (5) To sample pesticides being applied, or to be applied.

18 No person shall refuse entry or access to any authorized representative of the Board who  
19 requests entry for purposes of inspection, and who presents appropriate credentials, nor  
20 shall any person obstruct, hamper or interfere with any such representative while in the  
21 process of carrying out his official duties. Should the Board or its designated agent be  
22 denied access to any land where such access was sought for the purposes set forth in this  
23 Article, the Board may apply to any court of competent jurisdiction for a search warrant  
24 authorizing access to such land for said purposes. The court may upon such application  
25 issue the search warrant for the purposes requested.

26 (f) For the purposes of this section, the worker protection standard of 40 C.F.R. §  
27 170, as amended, apply in this Article. Specific information required by 40 C.F.R. §  
28 170.122 and § 170.222 must be maintained as written records which also include the  
29 date, time, and field location of worker reentry to the treated area after pesticide  
30 application. Such records shall be subject to the requirements of G.S. 143-466(a).

31 (g) Any employee or representative of employees who believes that a violation of  
32 this Article exists in any workplace where the employee is employed may request an  
33 inspection of that workplace by giving notice of the alleged violation to the Board or its  
34 designated inspectors. Upon the request of the person, his name and the names of  
35 individual employees referred to therein shall not appear in any record published,  
36 released, or made available by the Department of Agriculture and Consumer Services,  
37 including the Notice of Violation. The Board and its designated inspectors may  
38 confidentially interview any employee when reasonably necessary for an investigation  
39 of a suspected violation of this Article."

40 **SECTION 2.** G.S. 95-241(a) reads as rewritten:

41 "(a) No person shall discriminate or take any retaliatory action against an  
42 employee because the employee in good faith does or threatens to do any of the  
43 following:

- 1 (1) File a claim or complaint, initiate any inquiry, investigation,  
 2 inspection, proceeding or other action, or testify or provide  
 3 information to any person with respect to any of the following:  
 4 a. Chapter 97 of the General Statutes.  
 5 b. Article 2A or Article 16 of this Chapter.  
 6 c. Article 2A of Chapter 74 of the General Statutes.  
 7 d. G.S. 95-28.1.  
 8 e. Article 16 of Chapter 127A of the General Statutes.  
 9 f. G.S. 95-28.1A.  
 10 g. Article 52 of Chapter 143 of the General Statutes.
- 11 (2) Cause any of the activities listed in subdivision (1) of this subsection  
 12 to be initiated on an employee's behalf.
- 13 (3) Exercise any right on behalf of the employee or any other employee  
 14 afforded by Article 2A or Article 16 of this ~~Chapter or Chapter~~, by  
 15 Article 2A of Chapter 74 of the General ~~Statutes~~.Statutes, or by Article  
 16 52 of Chapter 143 of the General Statutes.
- 17 (4) Comply with the provisions of Article 27 of Chapter 7B of the General  
 18 Statutes.
- 19 (5) Exercise rights under Chapter 50B. Actions brought under this  
 20 subdivision shall be in accordance with the provisions of  
 21 G.S. 50B-5.5."

22 **SECTION 3.** G.S. 95-225 is amended by adding two new subsections to  
 23 read:

24 "(h) The operator shall provide at least one working telephone. Migrants shall be  
 25 informed of its location and allowed access to the telephone. The name, address, and  
 26 telephone number of the nearest emergency medical care facility shall be posted near  
 27 the telephone in a place where it can be readily seen and read by workers, in a language  
 28 they can understand. The operator shall inform migrants promptly of any change to the  
 29 information on emergency medical care facilities.

30 (i) For purposes of this Article, the established federal standard provided in 29  
 31 C.F.R. § 1910.142(f)(1)(ii) does not apply. The following standard shall apply to  
 32 migrant housing: one showerhead within a separate shower stall shall be provided for  
 33 every eight migrants."

34 **SECTION 4.** G.S. 143-460(29) reads as rewritten:

35 "(29) 'Pesticide applicator' means any person who owns or operates a  
 36 pesticide application business or who provides, for compensation, a  
 37 service that includes the application of pesticides upon the lands or  
 38 properties of another; any public operator; any golf course operator;  
 39 any seed treater; any person engaged in demonstration or research pest  
 40 control; and any other person who applies pesticides for compensation  
 41 and is not exempt from this definition. It does not include:

- 42 a. Any person who uses or supervises the use of a pesticide (i)  
 43 only for the purpose of producing an agricultural commodity on  
 44 property owned or rented by him or his employer, or (ii) only (if

1 applied without compensation other than trading of personal  
2 services between producers of agricultural commodities) on the  
3 property of another person, or (iii) only for the purposes set  
4 forth in (i) and (ii) above.

5 b. Any person who applies pesticides for structural pest control, as  
6 defined in the North Carolina Structural Pest Control Law  
7 (G.S. Chapter 106, Article 4C).

8 c. Any person certified by the Water Treatment Facility Operators  
9 Board of Certification under Article 2 of Chapter 90A of the  
10 General Statutes or by the Wastewater Treatment Operators  
11 Plant Certification Commission under Article 3 of Chapter 90A  
12 of the General Statutes who applies pesticides labeled for the  
13 treatment of water or wastewater.

14 d. Any person who applies antimicrobial pesticides that are not  
15 classified for restricted use and are not being used for  
16 agricultural, horticultural, or forestry purposes.

17 e. Any person who applies a general use pesticide to the property  
18 of another as a volunteer, without compensation.

19 f. Any person who is employed by a licensed pesticide applicator.

20 g. Any person who produces an agricultural commodity, and  
21 whose only employees are that person's family members,  
22 defined as a parent, spouse, child, stepchild, foster child,  
23 stepparent, foster parent, brother, or sister."

24 **SECTION 5.** G.S. 143-469 reads as rewritten:

25 **"§ 143-469. Penalties.**

26 (a) Any person who shall be adjudged to have violated any provision of this  
27 Article, or any regulation of the Board adopted pursuant to this Article, shall be guilty  
28 of a Class 2 misdemeanor. In addition, if any person continues to violate or further  
29 violates any provision of this Article after written notice from the Board, the court may  
30 determine that each day during which the violation continued or is repeated constitutes a  
31 separate violation subject to the foregoing penalties.

32 (b) A civil penalty of not more than two thousand dollars (\$2,000) may be  
33 assessed by the Board against any person who violates or directly causes a violation of  
34 any provision of this Article or any rule adopted pursuant to this Article. However, a  
35 person referred to in G.S. 143-460(29)g. may only be assessed a civil penalty of not  
36 more than five hundred dollars (\$500.00) per violation.

37 (c) Proceedings for the assessment of civil penalties under this section shall be  
38 governed by Chapter 150B of the North Carolina General Statutes. If the person  
39 assessed a civil penalty fails to pay the penalty to the North Carolina Department of  
40 Agriculture and Consumer Services, the Board may institute an action in the superior  
41 court of the county in which the person resides or has his principal place of business to  
42 recover the unpaid amount of said penalty. An action to recover a civil penalty under  
43 this section shall not relieve any party from any other penalty prescribed by law.

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

6       (e)    The clear proceeds of civil penalties assessed pursuant to this section shall be  
7 remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

8           **SECTION 6.** This act is effective when it becomes law.