

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H

1

HOUSE BILL 1052

Short Title: Strengthen Pesticide Law for Workers. (Public)

Sponsors: Representatives Blue, Harrison (Primary Sponsors); Glazier, Insko, Jones, Lucas, Luebke, Parmon, Weiss, and Womble.

Referred to: Agriculture, if favorable, Judiciary II.

April 6, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO STRENGTHEN PESTICIDE LAW FOR THE PROTECTION OF WORKERS.
3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** G.S. 143-466 is amended by adding a new subsection to read:

5 "(g) Any employee or any representative of an employee who suspects that a violation of
6 this Article is occurring in any workplace where the employee is employed may request an
7 inspection of that workplace by giving notice of the alleged violation to the Board or its
8 designated inspectors. The employee's name and the names of individual employees referred to
9 in the notice of violation shall not appear in any record published, released, or made available
10 by the Department of Agriculture and Consumer Services, including the notice of violation.
11 The Board and its designated inspectors may confidentially interview any employee when
12 reasonably necessary for an investigation of a suspected violation of this Article. Nothing in
13 this section shall be construed to prohibit the use of the name or statement of a witness or
14 complainant to the Board in enforcement proceedings or hearings held pursuant to this Article.
15 If a written request for any of the following statements is received by the Board no later than 12
16 days prior to the enforcement hearing, the Board shall make available to the employer at least
17 10 days prior to a scheduled enforcement hearing unredacted copies of: (i) the statements of
18 witnesses the Board intends to use at the enforcement hearing, (ii) the statements of witnesses
19 the Board intends to call to testify, or (iii) the statements of witnesses whom the Board does not
20 intend to use that might support an employer's affirmative defense or otherwise exonerate the
21 employer. If the request for an unredacted copy of any such statements of witnesses is received
22 less than 12 days before a hearing, the statement requested shall be made available as soon as
23 practicable. The Board may permit the use of names and statements of witnesses and
24 complainants and information obtained during the course of inspections or investigations
25 conducted pursuant to this Article by public officials in the performance of their public duties."

26 **SECTION 2.** G.S. 143-460 is amended by adding the following two new
27 subdivisions to read:

28 "(10a) "Employee" means an employee of an employer who is employed in a
29 business or other capacity of the employer, including any and all business
30 units and agencies owned or controlled by the employer.

31 (10b) "Employer" means a person engaged in a business that has employees,
32 including any State or political subdivision of a State, but does not include
33 the employment of domestic workers employed in the place of residence of
34 his or her employer."

35 **SECTION 3.** G.S. 143-466 is amended by adding a new subsection to read:



* H 1 0 5 2 - V - 1 *

1 "(a1) The Pesticide Board shall adopt rules requiring recording of the date, time, and field
2 location of worker reentry to the treated area after completion of the pesticide application. Such
3 records shall be subject to the requirements of subsection (a) of this section."

4 **SECTION 4.** G.S. 143-469 reads as rewritten:

5 "**§ 143-469. Penalties.**

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

12 (b) A civil penalty of not more than two thousand dollars (\$2,000) per violation may be
13 assessed by the Board against any person who violates or directly causes a violation of any
14 provision of this Article or any rule adopted pursuant to this Article. If a serious violation is
15 found by the Board, a civil penalty of not more than twenty thousand dollars (\$20,000) per
16 violation may be assessed. The Board may assess an additional penalty of up to one hundred
17 thousand dollars (\$100,000) for any violation that causes serious damage to the environment,
18 serious injury to property, or serious injury to, or death of, any person. The Board or its
19 designated representatives may in its discretion issue fines below these maximum amounts,
20 taking into particular consideration whether the violation occurred at a small farm.

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

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

32 (d1) As used in subsection (b) of this subsection, "serious violation" means a substantial
33 probability that death, serious physical harm, or serious harm to property or to the environment
34 could result from a condition that exists, or from one or more practices, means, methods,
35 operations, or processes that have been adopted or are in use, unless the person did not know,
36 and could not, with the exercise of reasonable diligence, know of the occurrence of the
37 violation.

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

40 **SECTION 5.** This act is effective when it becomes law.