

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE DRH30280-LD-96A (3/19)

Short Title: Strengthen Pesticide Law for Workers.

(Public)

Sponsors: Representative Blue.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN PESTICIDE LAW FOR THE PROTECTION OF WORKERS.

The General Assembly of North Carolina enacts:

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

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

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

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

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

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



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.