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DEPARTMENT OF AGRICULTURE**

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**Testimony on SB 2096  
Dutch Bialke  
General Counsel & Senior Policy Advisor  
and  
John Mortenson  
Plant Protection Specialist  
North Dakota Department of Agriculture**

**Senate Agriculture Committee  
Friday, January 6 2023, 9:00 a.m.  
Fort Union Room, State Capitol**

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Chairman Luick and members of the Senate Agriculture Committee, I am Dutch Bialke. I will testify this morning on behalf of the North Dakota Agriculture Commissioner, Doug Goehring.

Chairman Luick and members of the Committee, the Commissioner supports and recommends the passage of Senate Bill 2096. Senate Bill 2096 proposes various amendments to the Commissioner's Hemp Program, implemented in accordance with NDCC Chapter 4.1-18.1, to update the Chapter and bring the application of this agricultural hemp program into better alignment with its original intent.

I also respectfully introduce John Mortenson, Plant Protection Specialist, with the Plant Industries Division of the Agriculture Department. John is also available today to testify to the Committee about the Commissioner's Hemp Program, as well as John's recent observations while he has been performing his inspection duties across the State in relation to the Program.

Senate Bill 2096 was introduced to this Committee by the Commissioner; however, SB 2096 has been jointly developed and written within a multi-agency process. The Office of the Attorney General, the State Crime Lab, and the Department of Health have all collaborated with the Commissioner, and all these agencies solidly contributed to and all support this public health and safety regulatory bill.

In this regard, Charlene Rittenbach from the State Crime Lab is here today as well. She will testify and address any questions in general relation to the more technical and chemical aspects of the bill.

Additionally, Attorney Allyson Hicks, from the Office of the Attorney General, is here today to testify -- as to the administrative enforcement structure of the bill.

For a bit more background, the Commissioner has long recognized the substantial potential that hemp has for our State's farmers and its agriculture sector. The agricultural commodity hemp is effectively used to make a variety of commercial and industrial products, including rope, textiles, clothing, shoes, food, paper, bioplastics, insulation, and biofuel.

As this Committee is aware, the 2014 Farm Bill legalized the growing and cultivating of hemp for research purposes in compliance with North Dakota law (specifically NDCC Chapter 4.1-18.1), notwithstanding other federal law that would have otherwise criminalized such conduct.

Hemp is defined as cannabis (*Cannabis sativa L.*). Accordingly, hemp before and then after the 2014 Farm Bill was still classified as a controlled substance under federal law.

Subsequently, after the passage of the 2014 Farm Bill, the State's pilot agricultural hemp program under North Dakota's hemp laws, implemented by the Commissioner, became the gold standard for such

programs across the nation. The Commissioner's pilot program operated smoothly and effectively within both State and federal law.

In accordance with the federal Farm Bill and North Dakota law, this pilot program was limited to hemp growing and cultivation for purposes of agricultural or other academic research for the growth, cultivation, or marketing of industrial hemp.

Then, the 2018 Farm Bill removed hemp, and *derivatives* of cannabis with extremely low concentrations of the psychoactive compound delta-9-tetrahydrocannabinol (THC) (specifically, no more than 0.3 percent THC on a dry weight basis), from the definition of marijuana in the Controlled Substances Act (CSA). THC is the euphoria producing substance contained within marijuana.

Since then, however, the passage of the 2018 Farm Bill, and its *derivatives* language, has led among some to a misperception that all products made from or containing hemp, including those made with cannabidiol (CBD), are now legal to sell within interstate commerce and in North Dakota.

However, this overly-expansionist misperception does not coincide with either the construct or reasonable intent of NDCC Chapter 4.1-18.1, nor the 2018 Farm Bill. Neither construct was enacted to provide an avenue for the potential wide-scale unregulated production, sale, or distribution of hemp-derived psychotropic substances.

For a bit more background, as Ms Rittenbach from the State Crime Lab can very likely better explain, CBD does not necessarily get a person high, but, in certain dosages, it still may be psychoactive. It can potentially alter a person's consciousness. For example, the person may feel mellow, experience less pain, and be more at ease. In addition, some CBD products still do contain small amounts of THC.

Notwithstanding, many hemp-derived psychotropic substances are currently available in North Dakota, on the shelves, available for retail sale.

With this background just provided, at this time, with your permission Chairman Luick, I would request Mr. Mortenson, who works in the Plant Industries Division, to come forward and testify – to provide additional context to this Bill, and also testify to this Committee about his recent experiences and observations he has encountered as he has performed his hemp program inspection duties.

### **John Mortenson, Plant Protection Specialist**

Chairman Luick and members of the Senate Agriculture Committee, I am John Mortenson, Plant Protection Specialist, with the Plant Industries Division of the Department. I will testify about the Commissioner's Hemp Program and also about what I have observed during some of my recent hemp program inspections across North Dakota.

First some more general background about the Commissioner's Hemp Program -- the Commissioner regulates hemp production and processing in the State through licensing and inspection of growing areas and processing facilities. The Commissioner operates under the parameters laid out in NDCC Chapter 4.1-18.1.

The Commissioner issues licenses to hemp growers and hemp processors who pass the background check and pay the appropriate fee. Hemp growers are subject to inspections during the growing season and are subject to regular THC testing prior to harvest. THC testing is done to ensure that growers are growing hemp and not marijuana.

During the testing process, Department inspectors look to verify that the fields are uniform. Inspectors pull samples of the crop and have them chemically analyzed. Any hemp field exceeding the 0.3% THC limit is subject to destruction. Any grower who has three violations in a five-year period is ineligible to receive a hemp license. These guardrails are put in place to maintain the integrity of the program and prevent the production of marijuana.

In North Dakota, most of the hemp acreage goes into grain production. These crops are grown at a field scale. Many of the hemp grain producers are full time farmers and have other cash crops in their rotation. Hemp grain fields are typically 40 acres or more.

These grain fields are harvested and processed into cold pressed oil or edible food products. Hemp grain products have a “generally recognized as safe” (GRAS) status with the FDA. Examples of these products include hemp cooking oil, hemp hearts, and hemp protein powder.

In contrast, most of our hemp licenses are issued to growers producing cannabinoid type hemp. This type of hemp is grown in a horticulture type system. These fields are typically under an acre and more resemble what you would see in a marijuana type grow. The cannabinoid products produced from these fields do not have an FDA generally recognized as safe status.

Being closely involved in the industry and working with growers and processors, I have witnessed cannabinoid products that do not align with the original intent of the Commissioner’s hemp program.

Some of the products being produced from hemp cannabinoids include: THCO, THCP, HHC and Delta-9. None of these products have an FDA generally recognized as safe status. That said, to my knowledge, none of these products are being produced by hemp producers in the State who are currently licensed by the Commissioner.

Instead, these products are being produced outside of North Dakota and shipped into the State to be sold in retail establishments. In Bismarck alone, I am aware that there are several businesses selling these products on the shelves where anyone over the age of 21 can walk in and purchase them without a medical marijuana medical card.

This is different from what was generally viewed as to why the Commissioner’s hemp program was instituted – to promote an

agricultural commodity that could be used for commercial and industrial products such as cordage, hemp textiles, recyclable and biodegradable bioplastics, and even building materials such as insulation or hempcrete, similar to traditional concrete.

The Commissioner introduced and proposed SB 2096, along with the Attorney General and the Department of Health, as a public health, safety, and welfare measure to bring the Commissioner's Hemp Program in better alignment with its original intent.

The Commissioner supports and respectfully recommends the passage of Senate Bill 2096.

Chairman Luick and committee members, thank you for your consideration of SB 2096. I will stand for any questions.