

FOODS, DRUGS, OILS, AND COMPOUNDS

CHAPTER 189

H. B. No. 632
(Winge, Johnson)

IMITATION ICE CREAM LICENSES

AN ACT

To amend and reenact sections 19-06-01, 19-06-02, 19-06-03, 19-06-04, 19-06-05, and 19-06-06 of the North Dakota Century Code, relating to the licensing of imitation ice cream dealers and manufacturers, making an appropriation and declaring an emergency.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Section 19-06-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-06-01. Definitions.) In this chapter unless the context or subject matter otherwise requires:

1. "Ice milk and ice milk mix" shall mean and include any frozen, or unfrozen substance, mixture, or compound which is not ice cream, milk sherbet, ice, or frozen or malted milk as the same are defined by the department, regardless of the name under which it is sold or offered for sale:
 - a. If the freezing of such substance, mixture or compound is accompanied by agitation of the ingredients thereof;
 - b. If such substance, mixture or compound is made in imitation or semblance of ice cream;
 - c. If such substance, mixture, or compound is prepared or frozen in the same manner as ice cream is customarily prepared or frozen; or
 - d. Standards for the composition of ice milk shall be issued by the state dairy commissioner;
2. "Department" shall mean the department of agriculture and labor;
3. "Manufacturer" shall mean and include any person, firm or corporation who makes, produces or processes any ice milk for sale to retailers or consumers.

§ 2. Amendment.) Section 19-06-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-06-02. Unlawful to Sell Ice Milk at Wholesale or Retail Without License.) No manufacturer shall sell, exchange or offer for sale at wholesale or retail or have in his possession with intent to sell, offer for sale or for exchange at wholesale or retail in this state, any ice milk without first having obtained a license therefor from the department.

§ 3. Amendment.) Section 19-06-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-06-03. Application for License.) Any manufacturer making application for a license to sell at wholesale or retail ice milk shall make the same upon a form prescribed by the department, and shall show the name of the county in which the applicant seeks to do business and the location of his place of business if he is a retailer.

§ 4. Amendment.) Section 19-06-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-06-04. Licenses—Term—Revocation.) A license for the manufacturing of ice milk shall be issued by the department for a period of one year beginning on the first day of January of the year of issue and terminating on the thirty-first day of December following the date of issuance thereof. Each license shall cover but one manufacturer and shall be valid throughout the entire state. A license issued under this chapter shall not be transferable, and the department may revoke any such license for a violation of any provision of this chapter.

§ 5. Amendment.) Section 19-06-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-06-05. License Fees.) The fees for licenses to manufacture ice milk shall be ten dollars, provided, however, that only one license shall be required of a manufacturer in this state for the place where he manufactures ice milk or ice milk mix, whether said products are sold at wholesale, retail or both at such place. No ice milk manufacturer's license shall be required of any manufacturer holding a valid license to purchase and process dairy products.

§ 6. Amendment.) Section 19-06-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-06-06. Notice to Purchasers.) Any manufacturer selling ice milk to consumers shall display a sign so placed or carried as to be easily read by purchasers bearing the words "ice milk" in letters at least two inches in height and one inch in width.

§ 7. **Appropriation.)** There is hereby appropriated out of any moneys in the general fund not otherwise appropriated, the sum of \$5,660.00 or so much thereof as may be required for the payment of refunds to purchasers of retail dealers' or peddlers' licenses, or manufacturers' licenses when such manufacturer is exempted from the licensing requirements of chapter 19-06, for those licenses purchased and paid for, for the calendar year 1963, prior to the effective date of this Act.

§ 8. **Emergency.)** This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved March 13, 1963.

CHAPTER 190

H. B. No. 698
(Wagner)

LABELING OF HAZARDOUS SUBSTANCES

AN ACT

To regulate the labeling of packages of hazardous substances intended or suitable for household use and providing penalties.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Short Title.)** This Act may be cited as the "Hazardous Substances Labeling Act".

§ 2. **Definitions.)** In this chapter, unless the context or subject matter otherwise requires:

1. "Department" means the state laboratories department;
2. "Person" includes an individual, partnership, corporation, and association;
3. "Hazardous substance" means any substance except drugs and medicines or mixture of substances except drugs and medicines which is toxic, corrosive, and irritant, strong sensitizer, flammable, or which generates pressure through decomposition, heat, or other means, if such hazardous substance or mixture of hazardous substances may cause substantial personal injury or illness during any customary or reasonably anticipated handling or use; provided, however, the term "hazardous substance" shall not include substances stored and intended for use as fuel in a heating, cooking, or refrigeration system;

4. "Toxic" shall apply to any substance which has the inherent capacity to produce bodily injury to man through ingestion, inhalation, or absorption through any body surface;
5. "Highly toxic" means any substance which falls within any of the following categories: produces death within fourteen days in half or more than half of a group of ten or more laboratory white rats each weighing between 200 and 300 grams, at a single dose of 50 milligrams or less per kilogram of body weight, when orally administered; or produces death within fourteen days in half or more than half of a group of ten or more laboratory white rats each weighing between 200 and 300 grams, when inhaled continuously for a period of one hour or less at an atmospheric concentration of 200 parts per million by volume or less of gas, vapor, mist, or dust, provided such concentration is likely to be encountered by man when the substance is used in any reasonably foreseeable manner; or produces death within fourteen days in half or more than half of a group of ten or more rabbits tested in a dosage of 200 milligrams or less per kilogram of body weight, when administered by continuous contact with the bare skin for twenty-four hours or less. If the department finds that available data on human experience with any substance indicate results different from those obtained on animals in the above named dosages or concentrations, the human data shall take precedence;
6. "Corrosive" means any substance which in contact with living tissue will cause destruction of tissue by chemical action; but shall not refer to action on inanimate surfaces;
7. "Irritant" means any substance not corrosive which on immediate, prolonged, or repeated contact with normal living tissue will induce a local inflammatory reaction;
8. "Strong sensitizer" means any substance which will cause, on normal living tissue through an allergic or photodynamic process, a hypersensitivity which becomes evident on reapplication of the same hazardous substance and which is designated as such by the department. Before designating any substance as a strong sensitizer, the department shall, after public hearing, following due notice, find that the frequency of occurrence and severity of the reaction indicate a significant potential for causing hypersensitivity;
9. "Extremely flammable" shall apply to any substance which has a flash point at or below 20 degrees Fahrenheit as determined by the Tagliabue Open Cup Tester,

and the term "flammable" shall apply to any substance which has a flash point of above 20 degrees to and including 80 degrees Fahrenheit, as determined by the Tagliabue Open Cup Tester; except that the flammability of the contents of self-pressurized containers shall be determined by methods generally applicable to such containers and established by regulations issued by the department;

10. "Label" means a display of written, printed, or graphic matter upon or attached to the immediate package or container of any hazardous substance; and a requirement made by or under authority of this Act that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, unless it is easily legible through the outside container or wrapper and on all accompanying literature where there are directions for use, written, or otherwise;
11. "Immediate container" does not include package liners;
12. "Misbranded package" means any container of a hazardous substance intended or suitable for household use which fails to bear a label:
 - a. Which states conspicuously the name and place of business of the manufacturer, packer, or distributor; the common usual name, or the chemical name, or the recognized generic name, not trade name only, of the hazardous substance or of each component which contributes substantially to its hazard; the signal word "DANGER" on substances which are extremely flammable, corrosive, or highly toxic; the signal word "WARNING" or "CAUTION" on all other hazardous substances; an affirmative statement of the principal hazard or hazards, such as "FLAMMABLE", "VAPOR HARMFUL", "CAUSES BURNS", "ABSORBED THROUGH SKIN", or similar wording descriptive of the hazard; precautionary measures describing the action to be followed or avoided; instructions, when necessary, for the first-aid treatment in case of contact or exposure, if the substance is hazardous through contact or exposure; the word "POISON" for any hazardous substance which is defined as "HIGHLY TOXIC" by this section; instructions for handling and storage of packages which require special care in handling or storage; and the statement "KEEP OUT OF THE REACH OF CHILDREN", or its practical equivalent; and

- b. On which any statements required under this subsection are located prominently and are in the English language in legible type in contrast by typography, layout, or color with other printed matter on the label; provided, that the department shall, by regulations, provide for minimum information which shall appear on the labels for small packages, which labels need not include all of the information required by this subsection; provided further, that the department may permit less than the foregoing statement of the hazard or precautionary measures for labels of hazardous substances presenting only minor hazards; and the term "misbranded package" shall not apply to packages of economic poisons so labeled that if introduced in interstate commerce, it would be in compliance with the federal Insecticide, Fungicide, and Rodenticide Act, nor to packages of foods, drugs, and cosmetics so labeled that if introduced in interstate commerce, it would be in compliance with the federal Food, Drug, and Cosmetic Act nor to any package of a hazardous substance so labeled that if introduced into interstate commerce, it would be in compliance with the federal Hazardous Substances Labeling Act and rules and regulations promulgated by the Secretary of Health, Education and Welfare pursuant to that Act.

§ 3. Prohibited Acts.) The following acts and the causing thereof are hereby prohibited:

1. The sale or delivery for sale of any misbranded package of a hazardous substance;
2. The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the label of, or the doing of any other act with respect to a hazardous substance, if such act is done while the substance is held for sale and which results in the hazardous substance being in a misbranded package;
3. The refusal to permit entry or inspection as authorized by this Act; and
4. A re-use of food, drug, or cosmetic or any beverage containers still bearing original labels or identifiable as such by characteristic shape, impression, or closures as containers for hazardous substances.

§ 4. Penalties.) Any person who violates any of the provisions of this Act shall be guilty of a misdemeanor. No person shall be subject to the penalties of this section, for having violated subsection 1 of section 3 of this Act in respect of any

hazardous substance shipped or delivered for shipment for export to any foreign country, in a package marked for export and branded in accordance with the specifications of the foreign purchaser and in accordance with the laws of the foreign country.

§ 5. Stop-Sale Orders — Seizures.) The department shall issue and enforce a written or printed “stop-sale use or removal” order to the owner or custodian of any hazardous substance when the department finds that the product is being offered or exposed for sale in violation of any of the provisions of this Act, and the order shall direct that the product shall be held at a designated place until the provisions of this Act have been complied with and the product is released in writing by the department. However, the owner or custodian of such product has the right to appeal from such order to a court of competent jurisdiction in the county where the product is found, praying for a judgment as to the justification of the order, and for the discharge of the product from the order prohibiting the sale in accordance with the findings of the court. The provisions of this section shall not be construed as limiting the right of the enforcement officer to proceed as authorized by other provisions of this Act. The department shall release the hazardous substance held under any “stop-sale use or removal” order when the requirements of this Act have been complied with and upon payment of all reasonable costs and expenses incurred in connection with such order. When the department issues and enforces a “stop-sale use or removal” order against any hazardous substance declared in violation of this Act, in possession of any dealer or distributor, such dealer or distributor may return to the person from whom such hazardous substance was purchased all unbroken retail containers affected by such order and such person shall reimburse the dealer or distributor for the full purchase price, including all delivery costs. Any hazardous substance found not to be in compliance with this Act shall be subject to seizure on complaint of the department to a court of competent jurisdiction in the county in which the product is located. In the event the court finds that the hazardous substance is in violation of the provisions of this Act and orders the condemnation of the product, it shall be disposed of in any manner consistent with the character of the hazardous substance and the laws of the state. In no instance shall the disposition of the hazardous substance be ordered by the court without first giving the claimant an opportunity to apply to the court for the release of the product or for permission to process or relabel the product to bring it into compliance with this Act.

§ 6. Hearing Before Report of Criminal Violation.) Before any violation of this Act is reported by the department to

any state's attorney for institution of a criminal proceeding, the person against whom such proceedings is contemplated shall be given appropriate notice and an opportunity to present his views, either orally or in writing, with regard to such contemplated proceeding.

§ 7. Regulations and Hearings.) The department is authorized, after public hearing following due notice, to promulgate regulations for the efficient enforcement of this Act.

§ 8. Examinations and Investigations.) The department is authorized to conduct examinations, inspections, and investigations for the purposes of this Act through officers and employees of the department or through any health officer or employee of the state of North Dakota. For purposes of enforcement of this Act, officers, or employees duly designated by the department, upon presenting appropriate credentials to the owner, operator, or agent in charge, are authorized to enter, at reasonable times, any factory, warehouse, or establishment in which hazardous substances are held, or to enter any vehicle being used to transport or hold such hazardous substances; and to inspect and sample, at reasonable times and within reasonable limits and in a reasonable manner, finished hazardous substances in retail packages and labeling thereon in such factory, warehouse, establishment, or vehicle. Each such inspection shall be commenced and completed with reasonable promptness.

§ 9. Records of Shipment.) For the purpose of enforcing the provisions of this Act, carriers and persons receiving hazardous substances or holding such hazardous substances so received, shall, upon the request of an officer or employee duly designated by the department, permit such officer or employee, at reasonable times, to have access to and to copy all records showing the movement of any such hazardous substance, or the holding thereof during or after such movement, and the quantity, shipper, and consignee thereof; and it shall be unlawful for any such carrier or person to fail to permit such access to any copying of any record so requested when such request is accompanied by a statement in writing specifying the nature or kind of such hazardous substance to which such request relates; provided, that evidence obtained under this section shall not be used in a criminal prosecution of the person from whom obtained.

§ 10. Publicity.) The department may cause to be published from time to time reports summarizing any judgments, decrees, or court orders which have been rendered under this Act, including the nature of the charge and the disposition thereof. The department may also cause information to be dis-

seminated regarding hazardous substances in situations involving, in the opinion of the department, imminent danger to health. Nothing in this section shall be construed to prohibit the department from collecting, reporting, and illustrating the results of the investigations of the department.

Approved March 15, 1963.