

FOOD AND DRUGS

CHAPTER 285

SENATE BILL NO. 2379
(Christensen)

GENERIC DRUG DISPENSATION

AN ACT to create and enact three new subsections to section 19-02.1-14.1 of the North Dakota Century Code, relating to the selecting and dispensing of generic name drug products, the liability of pharmacists, manufacturing standards and practices; and to amend and reenact subsections 1 and 2 of section 19-02.1-14.1 of the North Dakota Century Code, relating to definitions and the labeling of prescription drugs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Subsections 1 and 2 of section 19-02.1-14.1 of the 1977 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

19-02.1-14.1. DEFINITIONS - LABEL OF PRESCRIPTION DRUGS -
SELECTING AND DISPENSING GENERIC NAME DRUGS.)

1. As used in this section, unless the subject matter or context otherwise requires:
 - a. "Brand name" means the registered trademark name given to a drug or medicine by its manufacturer, labeler, or distributor.
 - b. "Generic name" means the established name or official chemical name of the drug, drug product, or medicine.
 - c. "Therapeutically equivalent" means a generic name drug product that would elicit the same therapeutic response from the same person as a brand name drug product.
2. Drugs or medicines dispensed pursuant to a prescription shall bear a label permanently affixed to the immediate container in which the drug or medicine is dispensed and which is received by the purchaser. The label shall bear

the brand name or the generic name and strength of the drug or medicine, except when the physician or other health care provider authorized by law to prescribe drugs or medicine has notified the pharmacist that the appearance of the name on the label would be alarming to or detrimental to the well-being of the purchaser of the prescription.

SECTION 2.) Three new subsections to section 19-02.1-14.1 of the North Dakota Century Code are hereby created and enacted to read as follows:

The form for a written prescription shall have two signature lines at opposite ends of the bottom of the form. Under the line on the right side shall be clearly printed the words "dispense as written". Under the line on the left side shall be clearly printed the words "substitution permitted". The physician shall communicate his instructions to the pharmacist by signing the appropriate line. If an oral prescription for a brand name drug product is given to a pharmacist, the practitioner shall instruct the pharmacist as to whether the drug must be dispensed as prescribed or whether a therapeutically equivalent generic name drug product may be substituted in its place. The pharmacist shall note the instructions on the file copy of the prescription. The pharmacist shall not substitute a generic name drug product unless its price to the purchaser is less than the price of the prescribed drug product. The pharmacist shall inform the person receiving the drug when a prescription for a brand name drug product does not require that the prescribed drug be dispensed and of the person's right to refuse a generic name drug product selected by the pharmacist. The pharmacy file copy of every prescription shall include the brand name, if any, or the name of the manufacturer, packer, or distributor of the generic name drug dispensed. A pharmacist who selects and dispenses a therapeutically equivalent generic name drug product shall assume no greater liability for selecting the dispensed drug product than would be incurred in filling a prescription for a drug product prescribed by its generic name.

In the case of a prescription for which a maximum allowable cost program for purposes of reimbursement has been established under title XIX of the Federal Social Security Act, the following shall also apply:

- a. If the practitioner has signed the appropriate line of a prescription instructing the pharmacist to dispense as written, the words "brand necessary" must also be written on the prescription in the practitioner's own handwriting. The pharmacist may dispense a

therapeutically equivalent generic name drug product if this handwritten instruction does not appear on the prescription.

- b. If the pharmacist is instructed orally to dispense a brand name drug as prescribed, the pharmacist shall reduce the prescription to writing and shall note the instructions on the file copy of the prescription. The prescription shall then be signed by the practitioner on the appropriate line and the words "brand necessary" must also be written on the prescription in the practitioner's own handwriting.

A pharmacist may not select and dispense a generic name drug product for a prescribed drug product unless it has been manufactured with the following minimum manufacturing standards and practices by a manufacturer who:

- a. Marks capsules and tablets with identification code or monogram.
- b. Labels products with their expiration date.
- c. Provides reasonable services to accept return goods that have reached their expiration date.
- d. Provides the pharmacist with information from which it can be determined whether a drug product is therapeutically equivalent.
- e. Maintains recall capabilities for unsafe or defective drugs.

Approved March 27, 1979

CHAPTER 286

SENATE BILL NO. 2294
(Lee)

PRESCRIPTION DRUG DISPENSATION

AN ACT to amend and reenact subsection 1 of section 19-02.1-15 of the North Dakota Century Code, relating to drugs limited to dispensing on prescription.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Subsection 1 of section 19-02.1-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Except as authorized and provided in the Uniform Controlled Substances Act, a depressant, stimulant, or hallucinogenic drug; or a drug intended for use by man which is a habit-forming drug to which subsection 4 of section 19-02.1-14 applies; or a drug that, because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner; or a drug limited by an approved application under section 505 of the federal act or section 19-02.1-16 of this code to use under the professional supervision of a practitioner, shall be dispensed by prescription of a practitioner, and such prescription shall not be ~~refilled more than five times,~~ ~~nor shall it be~~ filled or refilled after ~~six months~~ one year from the date on which such prescription was issued; except that nothing herein shall be construed as preventing a practitioner from issuing a new prescription for the same drug either in writing or orally. Any oral prescription for such drug shall be promptly reduced to writing and filed by the pharmacist ~~on a new prescription blank, and shall be signed within seventy-two hours by the practitioner who issued the same.~~

Approved March 13, 1979

CHAPTER 287

SENATE BILL NO. 2052
(Legislative Council)
(Interim Committee on Criminal Justice System)

HASHISH AND MARIJUANA

AN ACT to create and enact a new subsection to section 19-03.1-01 of the North Dakota Century Code, relating to the definition of hashish; and to amend and reenact subsection 14 of section 19-03.1-01, subdivisions k through u of subsection 4 of section 19-03.1-05, and section 19-03.1-23 of the North Dakota Century Code, relating to the definition of marijuana, to the inclusion of hashish as a schedule I controlled substance, and providing penalties for possession of marijuana and hashish.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1.) A new subsection to section 19-03.1-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

"Hashish" means the resin extracted from any part of the plant Cannabis with or without its adhering plant parts, whether growing or not, and every compound, manufacture, salt, derivative, mixture, or preparation of the resin.

SECTION 2. AMENDMENT.) Subsection 14 of section 19-03.1-01 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14. "Marijuana" means all parts of the plant Cannabis whether growing or not; the seeds thereof; ~~the--resin--extracted from--any--part--of--the--plant~~ the resinous product of the combustion of the plant Cannabis; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, ~~or its seeds ex-resin.~~ It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of mature stalks ~~(except-the--resin--extracted therefrom)~~, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

* SECTION 3. AMENDMENT.) Subdivisions k through u of subsection 4 of section 19-03.1-05 of the 1977 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

k. Hashish.

- ~~k~~ l. Ibogaine. (Some trade and other names: 7-Ethyl-6, 6B,7,8,9,10,12, 13-octahydro-2-methoxy-6,9-methano-5 H-pyrido (1, 2,:1,2) azepino (5,4-b) indole;tabernanthe iboga.)
- ~~l~~ m. Lysergic acid diethylamide.
- ~~m~~ n. Marijuana.
- ~~n~~ o. Mescaline.
- ~~o~~ p. Peyote.
- ~~p~~ q. N-ethyl-3-piperidyl benzilate.
- ~~q~~ r. N-methyl-3-piperidyl benzilate.
- ~~r~~ s. Psilocybin.
- ~~s~~ t. Psilocyn.
- ~~t~~ u. Tetrahydrocannabinols.
- ~~u~~ v. Thiophene Analog of Phencyclidine. (Some trade or other names: 1-(1-(2-thienyl) cyclohexyl) piperidine; 2-Thienyl Analog of Phencyclidine; TCP.)

** SECTION 4. AMENDMENT.) Section 19-03.1-23 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-03.1-23. PROHIBITED ACTS A - PENALTIES.)

1. Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance, provided that any person whose conduct is in violation of sections ~~12-44-25,~~ 12-44-28, 12-46-24, 12-47-21, or 12-51-11 shall not be prosecuted under this subsection. Any person who violates this subsection with respect to:

- a. a A controlled substance classified in schedules I or II which is a narcotic drug, is guilty of a class A felony~~†~~.

* NOTE: Subdivisions k through u of subsection 4 of section 19-03.1-05 were also amended by section 1 of House Bill No. 1635, chapter 288.

** NOTE: Section 19-03.1-23 was also amended by section 29 of House Bill No. 1073, chapter 187, and by section 28 of House Bill No. 1044, chapter 172.

- b. ~~any~~ Any other controlled substance classified in schedule I, II, or III, is guilty of a class B felony~~7~~.
 - c. a A substance classified in schedule IV, is guilty of a class C felony~~7~~.
 - d. a A substance classified in schedule V, is guilty of a class A misdemeanor.
2. Except as authorized by this chapter, it is unlawful for any person to create, deliver, or possess with intent to deliver, a counterfeit substance, provided that any person whose conduct is in violation of sections ~~12-44-257~~ 12-44-28, 12-46-24, 12-47-21, or 12-51-11 shall not be prosecuted under this subsection. Any person who violates this subsection with respect to:
- a. a A counterfeit substance classified in schedule I or II which is a narcotic drug, is guilty of a class A felony~~7~~.
 - b. ~~any~~ Any other counterfeit substance classified in schedules I, II, or III, is guilty of a class B felony~~7~~.
 - c. a A counterfeit substance classified in schedule IV, is guilty of a class C felony~~7~~.
 - d. a A counterfeit substance classified in schedule V, is guilty of a class A misdemeanor.
3. It is unlawful for any person to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this chapter, provided that any person whose conduct is in violation of sections ~~12-44-257~~ 12-44-28, 12-46-24, 12-47-21, or 12-51-11 shall not be prosecuted under this subsection. Any person who violates this subsection is guilty of a class C felony; except that any person who violates this subsection regarding possession of one-half ounce [14.175 grams] to one ounce [28.35 grams] of marijuana, shall be guilty of a class A misdemeanor; and any person, except a person operating a motor vehicle, who violates this subsection regarding possession of less than one-half ounce [14.175 grams] of marijuana shall be guilty of a class B misdemeanor. Any person who violates this subsection regarding possession of less than one-half ounce [14.175 grams] of marijuana while operating a motor vehicle shall be guilty of a class A misdemeanor.

4. Notwithstanding the provisions of section 19-03.1-30, whenever a person pleads guilty or is found guilty of a first offense regarding possession of one ounce [28.35 grams] or less of marijuana and a judgment of guilt is entered, a court, upon motion, shall expunge that conviction from the record if the person is not subsequently convicted within two years of a further violation of chapter 19-03.1 and has not been convicted of any other criminal offense.

Filed April 3, 1979

NOTE: This bill was vetoed by the Governor and subsequently approved by a two-thirds majority of the members of the Senate and the House of Representatives.

CHAPTER 288

HOUSE BILL NO. 1635
(Stenehjem)

CONTROLLED SUBSTANCES ACT SCHEDULES

AN ACT to amend and reenact subsection 4 of section 19-03.1-05, subsection 5 of section 19-03.1-07, subsection 3 of section 19-03.1-09, section 19-03.1-11 and subsection 2 of section 19-03.1-13 of the North Dakota Century Code, relating to the schedules of controlled substances under the Uniform Controlled Substances Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT.) Subsection 4 of section 19-03.1-05 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- a. 4-bromo-2, 5-dimethoxyamphetamine. (Some trade or other names: 4-bromo-2, 5-dimethoxy-a-methylphenethylamine; 4-bromo-2, 5-DMA.)
- b. 2, 5-dimethoxyamphetamine. (Some trade or other names: 2, 5-dimethoxy-a-methylphenethylamine; 2, 5-DMA.)
- c. 4-methoxyamphetamine. (Some trade or other names: 4-methoxy-a-methylphenethylamine; paramethoxyamphetamine; PMA.)
- d. 5-methoxy-3, 4-methylenedioxyamphetamine.
- e. 4-methyl-2, 5-dimethoxyamphetamine. (Some trade and other names: 4-methyl-2, 5-dimethoxy-a-methylphenethylamine; "DOM"; and "STP".)

* NOTE: Subdivisions k through u of subsection 4 of section 19-03.1-05 were also amended by section 3 of Senate Bill No. 2052, chapter 287.

- f. 3, 4-methylenedioxy amphetamine.
- g. 3, 4, 5-trimethoxy amphetamine.
- h. Bufotenine. (Some trade and other names: 3-(B-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N,N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine.)
- i. Diethyltryptamine. (Some trade and other names: N,N-Diethyltryptamine; DET.)
- j. Dimethyltryptamine. (Some trade and other names: DMT.)
- k. Ethyl amine analog of phencyclidine. (Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE.)
- k- l. Ibogaine. (Some trade and other names: 7-Ethyl-6, 6B,7,8,9,10, 12, 13-octahydro-2-methoxy-6,9-methano-5 H-pyrido (1, 2,: 1,2) azepino (5,4-b) indole; tabernanthe iboga.)
- l- m. Lysergic acid diethylamide.
- m- n. Marijuana.
- m- o. Mescaline.
- e- p. Peyote.
- p- q. N-ethyl-3-piperidyl benzilate.
- q- r. N-methyl-3-piperidyl benzilate.
- r- s. Psilocybin.
- s- t. Psilocyn.
- u. Pyrrolidine analog of phencyclidine. (Some trade or other names: 1-(1-phenylcyclohexyl) pyrrolidine, PCPy, PHP.)
- t- v. Tetrahydrocannabinols.
- u- w. Thiophene Analog of Phencyclidine. (Some trade or other names: 1-(1-(2-thienyl) cyclohexyl) piperidine; 2-Thienyl Analog of Phencyclidine; TPCP.)

SECTION 2. AMENDMENT.) Subsection 5 of section 19-03.1-07 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
- a. Amobarbital.
 - b. Methaqualone.
 - c. Pentobarbital.
 - d. ~~Secobarbital~~ Phencyclidine.
 - e. Phencyclidine immediate precursors:
 - (1) 1-phenylcyclohexylamine.
 - (2) 1-piperidinocyclohexanecarbonitrile (PCC).
 - f. Secobarbital.

SECTION 3. AMENDMENT.) Subsection 3 of section 19-03.1-09 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:
- a. Any compound, mixture, or preparation containing:
 - (1) Amobarbital;
 - (2) Secobarbital;
 - (3) Pentobarbital;or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule.
 - b. Any suppository dosage form containing:
 - (1) Amobarbital;
 - (2) Secobarbital;
 - (3) Pentobarbital;

or any salt of any of these drugs and approved by the food and drug administration for marketing only as a suppository.

- c. Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules.
- d. Chlorhexadol.
- e. Glutethimide.
- f. Lysergic acid.
- g. Lysergic acid amide.
- h. Methypylon.

~~h--Phenethylidine~~

- ~~j~~ i. Sulfondiethylmethane.
- ~~k~~ j. Sulfonethylmethane.
- ~~l~~ k. Sulfonmethane.

SECTION 4. AMENDMENT.) Section 19-03.1-11 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-03.1-11. SCHEDULE IV.

- 1. The controlled substances listed in this section are included in schedule IV.
- 2. Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:
 - a. Barbitol.
 - b. Chloral betaine.
 - c. Chloral hydrate.
 - d. Chlordiazepoxide, but not including Librax (chlordiazepoxide hydrochloride and clindinium bromide) or Menrium (chlordiazepoxide and water soluble esterified estrogens).
 - e. Clonazepam.

- f. Clorazepate.
 - g. Diazepam.
 - h. Ethchlorvynol.
 - i. Ethinamate.
 - j. Flurazepam.
 - k. Mebutamate.
 - l. Methohexital.
 - m. Meproamate.
 - n. Methylphenobarbital.
 - o. Oxazepam.
 - p. Paraldehyde.
 - q. Petrichloral.
 - r. Phenobarbital.
3. Fenfluramine. Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible:
- a. Fenfluramine.
4. Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
- a. Diethylpropion.
 - b. Phentermine.
 - c. Pemoline (including organometallic complexes and chelates thereof).
5. Other substances. Unless specifically excepted or unless listed in another schedule, any material, compound,

mixture, or preparation which contains any quantity of the following substances, including its salts:

- a. Dextropropoxyphene (Alpha- (+) - 4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane).
- b. Pentazocine.

6. Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

- a. Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

6- 7. The state laboratories department may except by rule any compound, mixture, or preparation containing any depressant substance listed in subsection 2 from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

SECTION 5. AMENDMENT.) Subsection 2 of section 19-03.1-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

- a. Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams;
- b. Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;
- c. Not more than 100 milligrams of ethylmorphine or any of its salts, per 100 milliliters or per 100 grams;
- d. Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;
- e. Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.
- f. Not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

Approved March 3, 1979

CHAPTER 289

HOUSE BILL NO. 1601
(Stenehjem)

CONTROLLED SUBSTANCES REGULATION

AN ACT to amend and reenact subsection 2 of section 19-03.1-32 and subsection 2 of section 19-03.1-35 of the North Dakota Century Code, relating to search warrants for controlled substances, and the state laboratories department's regulatory functions under the Uniform Controlled Substances Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Subsection 2 of section 19-03.1-32 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. A search warrant relating to offenses involving controlled ~~dangerous~~ substances may be issued and executed at any time of the day or night, if the judge or magistrate issuing the warrant so specifies in the warrant.

SECTION 2. AMENDMENT.) Subsection 2 of section 19-03.1-35 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Results, information, and evidence received from the bureau relating to regulatory functions of this chapter, including results of inspections conducted by it may be relied and acted upon by the state health laboratories department in the exercise of its regulatory functions under this chapter.

Approved March 8, 1979

CHAPTER 290

HOUSE BILL NO. 1049
(Legislative Council)
(Interim Committee on Criminal Justice System)

DRUG CONVEYANCE FORFEITURE

AN ACT to amend and reenact section 19-03.1-36 of the North Dakota Century Code, relating to the forfeiture of conveyances used to illegally transport controlled substances, raw materials, products, and equipment; for the seizure of such conveyances by law enforcement agencies; and allowing for the sale of conveyances and the deposit of remainder proceeds in the state, county, or city general fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 19-03.1-36 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-03.1-36. FORFEITURES.)

1. The following are subject to forfeiture:

- a. ~~all~~ All controlled substances which have been ~~manufactured~~ manufactured, distributed, dispensed, or acquired in violation of this chapter~~7~~.
- b. ~~all~~ All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter~~7~~.
- c. ~~all~~ All property which is used, or intended for use, as a container for property described in subdivision a or b~~7~~.
- d. ~~all~~ All conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in subdivision a or b, but~~7~~:

- (1) ~~ne~~ No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter~~7~~.
 - (2) ~~ne~~ No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his knowledge or consent~~7~~.
 - (3) a ~~A~~ conveyance is not subject to forfeiture for a violation of subsection 3 of section 19-03.1-23~~7~~ and.
 - (4) a ~~A~~ forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to the act or omission.
- e. ~~all~~ All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter.
2. Property subject to forfeiture under this chapter, except conveyances, may be seized by the state laboratories department upon process issued by any district court having jurisdiction over the property. A conveyance subject to forfeiture under this chapter may be seized by a state, county, or city law enforcement agency upon process issued by any district court having jurisdiction over the conveyance. Seizure without process may be made if:
- a. ~~the~~ The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant~~7~~.
 - b. ~~the~~ The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceedings based upon this chapter~~7~~.
 - c. ~~the~~ The state laboratories department or a law enforcement agency has probable cause to believe that the property is directly or indirectly dangerous to health or safety~~7-08~~.

- d. ~~the~~ The state laboratories department or a law enforcement agency has probable cause to believe that the property was used or is intended to be used in violation of this chapter.
3. In the event of seizure pursuant to subsection 2 ~~of this section~~, proceedings under subsection 4 ~~of this section~~ shall be instituted promptly.
4. Property taken or detained under this section shall not be subject to replevin, but is deemed to be in custody of the state laboratories department or a law enforcement agency subject only to the orders and decrees of the district court having jurisdiction over the forfeiture proceedings as set out in subsection 2 ~~of this section~~. When property is seized under this chapter, the state laboratories department or a law enforcement agency may:
- a. ~~place~~ Place the property under seal.
 - b. ~~remove~~ Remove the property to a place designated by it.
 - c. ~~require~~ Require the attorney general to take custody of the property and remove it to an appropriate location for disposition in accordance with law.
5. A district court shall order a seized conveyance to be forfeited upon conviction of the person arrested, upon a guilty plea, or upon the failure of a law enforcement agency to locate and arrest after one month the person who used the conveyance subject to forfeiture. When property is forfeited under this chapter the state laboratories department or a law enforcement agency may:
- a. ~~retain~~ Retain it for official use.
 - b. ~~sell~~ Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds shall be used for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and court costs, with any remaining proceeds to be deposited in the appropriate state, county, or city general fund. When two or more law enforcement agencies are involved in seizing a conveyance, the remaining proceeds may be divided proportionately.
 - c. ~~require~~ Require the attorney general to take custody of property and remove it for disposition in accordance with law.
 - d. ~~forward~~ Forward it to the bureau for disposition.

6. Controlled substances listed in schedule I that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in schedule I, which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.
7. Species of plants from which controlled substances in schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the state.
8. The failure, upon demand by the state laboratories department, or its authorized agent, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored to produce an appropriate registration, or proof that he is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

Approved March 3, 1979

CHAPTER 291

SENATE BILL NO. 2315
(Solberg, Albers)

OLEOMARGARINE PROVISIONS REPEALED

AN ACT to repeal chapter 19-05 of the North Dakota Century Code, relating to oleomargarine.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. REPEAL.) Chapter 19-05 of the North Dakota Century Code is hereby repealed.

Approved March 8, 1979

CHAPTER 292

HOUSE BILL NO. 1508
(Marsden, Freborg, Mushik)

DISCRETIONARY PUBLICATION OF INFORMATION

AN ACT to amend and reenact sections 19-13.1-13 and 19-20.1-11 of the North Dakota Century Code, allowing the state laboratories department to publish certain information at its discretion.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 19-13.1-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-13.1-13. PUBLICATIONS.) The department ~~shall~~ may publish ~~at-least-annually~~, in such forms as it may deem proper, information concerning the sales of commercial feeds, together with such data on their production and use as it may consider advisable, and a report of the results of the analyses of official samples of commercial feeds sold within the state as compared with the analyses guaranteed in the registration and on the label, ~~provided, however, that~~. However, the information concerning production and use of commercial feeds shall not disclose the operations of any person.

SECTION 2. AMENDMENT.) Section 19-20.1-11 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-20.1-11. PUBLICATIONS.) The department ~~shall~~ may publish ~~at-least-annually-and~~ in such forms as it may deem proper:

1. Information concerning the distribution of commercial fertilizers and soil amendments.
2. Results of analyses based on official samples of commercial fertilizers and soil amendments distributed within the state as compared with the analyses guaranteed under sections 19-20.1-03 and 19-20.1-04.

Approved March 7, 1979