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**Testimony of Samantha Brunner
Plant Industries Division Director
Senate Bill 2096
House Agriculture Committee
Room 327C
March 3, 2023**

Chairman Thomas and members of the House Agriculture Committee, I am Samantha Brunner, Plant Industries Division Director with the North Dakota Department of Agriculture here representing Agriculture Commissioner, Doug Goehring. I am here today to testify in support of Senate Bill 2096.

Senate Bill 2096 proposes various amendments to the Hemp chapter, (NDCC Chapter 4.1-18.1), to update the Chapter and bring the application of this agricultural program into better alignment with its original intent.

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 worked in collaboration with the Commissioner to bring this regulatory bill that supports public health and safety.

With me here today, is Charlene Rittenbach, a forensic scientist from the State Crime Lab. She will testify and address any questions in general relation to the more technical and chemical aspects of the bill. In addition, Attorney Allyson Hicks, from the Office of the Attorney General, is here today to testify to the administrative enforcement structure of the bill.

I would like to provide a little background on hemp. Hemp and marijuana are both *Cannabis sativa L.* The difference between hemp and marijuana is the level of tetrahydrocannabinol or THC, which is the euphoria producing substance contained within marijuana.

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.

The 2014 Farm Bill legalized the growing and cultivating of hemp for research purposes in compliance with North Dakota law.

After the passage of the 2014 Farm Bill, the State's industrial hemp pilot program 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.

This pilot program was limited to hemp for purposes of agricultural or other academic research for the growth, cultivation, or marketing of industrial hemp.

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 licensing fee. Hemp growers are subject to inspections during the growing season and are subject to 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 or remediation. 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 GRAS status. Examples of these products include tinctures, topicals, cured flower and edible products such as gummies and candy products.

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

The 2018 Farm Bill removed hemp, and *derivatives* of hemp with no more than 0.3 percent THC on a dry weight basis, from the definition of marijuana in the Controlled Substances Act (CSA).

The passage of the 2018 Farm Bill, and its *derivatives* language, has led some to believe that all compounds extracted or synthesized from hemp are now legal to sell within interstate commerce and in North Dakota.

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

In January of this year the U.S. Food and Drug Administration announced that they reviewed all the potential regulatory pathways for CBD products and determined that “a new regulatory pathway for CBD is needed that balances the individuals’ desire for access to CBD products with the regulatory oversight needed to manage risks.” They also are currently denying requests to do rulemaking that would allow the marketing of CBD products as dietary supplements. They intend to work with Congress to make the necessary changes.

Some of the products being produced from hemp cannabinoids include: THCO, THCP, HHC and Delta-9. These products are psychotropic and 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 processors in the State who are currently licensed by the Commissioner.

Instead, these products are being manufactured 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 card.

In the provided handout are examples from businesses in North Dakota. The first page is a mailer that we received a few months ago and the following pages are screenshots from business’s social media pages or yelp reviews left for businesses. We have redacted identifiable information to not single out any businesses in the State.

In February of this year the U.S. Drug Enforcement Agency released a letter in which they declared that Delta-9-THCO and Delta-8-THCO, which do not occur naturally in hemp plants, do not fall under the definition of hemp, that they are considered controlled substances. These two compounds are being synthetically manufactured from legally grown hemp.

The availability of psycotropic products 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 food products, cordage, hemp textiles, recyclable and biodegradable bioplastics, and even

building materials such as insulation or hempcrete, similar to traditional concrete. Not to produce products that get people high.

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