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SENATE AGRICULTURE AND VETERANS AFFAIRS COMMITTEE
FRIDAY, JANUARY 6, 2023

TESTIMONY OF ALLYSON M. HICKS
OFFICE OF ATTORNEY GENERAL
SENATE BILL NO. 2096

Mr. Chairman, members of the Committee.

I am Allyson M. Hicks, Assistant Attorney General, and I appear on behalf of the Attorney General. The Attorney General stands in support of this bill and recommends a **DO PASS** for Senate Bill 2096. As indicated by Attorney Bialke, I will be reviewing the enforcement mechanism of this bill, which is comprised of sections 5 through 12 of the bill.

As a background, last session, the Legislature took the steps to address the problem created by Delta-8, specifically by indicating that all Delta-8 THC over .3% would be violative of the Controlled Substances Act, codified in part in North Dakota Century Code chapter 19-03.1. This meant that to enforce this portion of law, law enforcement would have to get involved, and seize the suspected prohibited product. The law enforcement agency would then have to have the product tested to prove that the amount of Delta-8 THC was in excess of .3%. Unfortunately, given all the challenges faced by law enforcement and the lack of access to expedient testing for these items, mostly this law went unenforced.

When these agencies, namely the Department of Health, the Department of Agriculture, and the Office of Attorney General, came together to discuss this emerging issue and how to address it, we thought it would be more readily enforceable if civil enforcement mechanisms were in place to complement the criminal aspect currently present in the Controlled Substances Act.

For these civil enforcement mechanisms, we looked inward to the powers and abilities of my office's Consumer Protection division and how we are able to address unlawful sales and advertising practices. You will notice that these sections closely mirror language already given to the Attorney General's Office in Century Code chapter 51-15.

Subsections (4) and (5) of Section 4 of the bill relate to product labeling rules and the Food, Drug and Cosmetic Act. These products are not subject to FDA oversight for labeling because they are not considered to be products subject to FDA oversight, however, using these gives parameters for what the labeling expectations are for the hemp commodities and products intended for human consumption. Subsection 5 of section 4 is merely a restatement of federal law, however, this is an area that I repeatedly receive questions about as the general counsel for the Public Health Division of the North Dakota Department of Health and Human Services, so we felt that it was appropriate to refer to this law in the Century Code for ease of reference for the public.

Section 5 of the bill gives the Commissioner the powers to somewhat investigate the matter, including requiring forms, or attestations, regarding the

creation, sale or distribution of the hemp commodity or product; allowing examination of the products; or, by order of a court, seizure of the product.

Section 6 allows the Commissioner to issue subpoenas and conduct hearings to investigate these matters.

Section 7 indicates what remedies the Commissioner may seek should a person refuse to comply with the Commissioner's requests under the chapter. It should be noted that to obtain these remedies the Commissioner would have to apply to district court; the Commissioner cannot do these things on his own accord.

Section 8 allows the Commissioner to accept an assurance of voluntary compliance as a resolution to the issue.

Section 9 is a broad section that refers to the remedies that the Commissioner may seek to address a violation of the chapter. This includes obtaining an injunction from district court, which prevents the conduct from continuing; appointment of a receivership, which is a neutral third party who takes control of the business to bring it into compliance with the law; and issuance of a cease-and-desist order to prohibit the conduct from occurring or continuing.

Section 10 sets forth the powers of a receiver if the district court appoints one pursuant to Section 9.

Section 11 allows the Commissioner to recover reasonable attorney's fees, investigation expenses, costs and other expenses associated with an enforcement action. These costs would be recycled back into the Commissioner's general operating fund to assist with continued regulation of compliance with the chapter.

Section 12 allows a court to assess a civil penalty against a person for violation of the chapter. The penalty is set at \$5,000 per violation, and goes into the commissioner's general operating fund to assist with compliance actions.

These enforcement mechanisms have proven effective by the Office of Attorney General, although slight deviations have been made to recognize the differences in the regulated activity. Again, the Attorney General supports this bill and recommends a **DO PASS** on Senate bill 2096.

Thank you for your time and I would stand for any questions the committee may have.