
FUNGICIDES

CHAPTER 171.

[S. B. No. 49—Porterfield.]

PROHIBITING SALE OF ADULTERATED INSECTICIDES AND FUNGICIDES.

AN ACT for Preventing the Manufacture, Sale or Transportation of Adulterated Insecticides and Fungicides, and for Regulating Traffic Therein and Fixing Penalties for the Violation of this Act.

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

§ 1. It shall be unlawful for any person to manufacture within the State of North Dakota any insecticide, Paris Green, lead arsenate, or fungicide which is adulterated or misbranded within the meaning of this act.

§ 2. Any person who shall offer for shipment or deliver from any point in the State of North Dakota, to any other point in the State of North Dakota, any insecticide, or Paris Green or lead arsenate, or fungicide which is adulterated or misbranded within the meaning of this act; or, any person who shall receive, or offer to receive, any insecticide, or Paris Green, or lead arsenate, or fungicide which is adulterated or misbranded within the meaning of this act, and having received, shall sell or deliver, or shall offer for sale or delivery, such adulterated or misbranded insecticides, or Paris Green or lead arsenate, or fungicide, shall be guilty of a violation of this act.

§ 3. For the purpose of this act, an article shall be deemed to be "adulterated."

In the case of Paris Green: First, if it does not contain at least fifty per centum of arsenious oxide; second, if it contains arsenic in water-soluble forms equivalent to more than three and one-half per centum of arsenious oxide; third, if any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength.

In the case of lead arsenate: First, if it contains more than fifty per centum of water; second, if it contains total arsenic, equivalent to less than twelve and one-half per centum of arsenic oxide ($A s_2 o_3$); third, if it contains arsenic in water-soluble forms equivalent to more than seventy-five one-hundredths per centum of arsenic oxide ($A s_2 o_3$);

fourth, if any substances have been mixed and packed with it so as to reduce, lower or injuriously affect its quality or strength; *provided*, however, that extra water may be added to lead arsenate (as described in this paragraph) if the resulting mixture is labeled "lead arsenate and water," the percentage of water being plainly and correctly stated on the label.

In the case of insecticides and fungicides other than Paris Green and lead arsenate: First, if its strength or purity falls five per cent or more below the professed standard or quality under which it is sold; second, if any substance has been substituted wholly or in part for the article; third, if any valuable constituent of the article has been wholly or in part abstracted; fourth, if it is intended to use on vegetation and shall contain any substance or substances which, although preventing, destroying, repelling or mitigating insects, shall be injurious to such vegetation when used.

§ 4. The term "misbranded" as used herein shall apply to insecticides, Paris Green, lead arsenate or fungicide, or articles which enter into the composition of insecticides or fungicides, the package or label of which shall bear any statement, design or device regarding such article or the ingredients of the substances contained therein which shall be false or misleading in any particular.

§ 5. For the purpose of this act, an article shall be deemed to be "misbranded"—

In case of insecticides, Paris Green, lead arsenate and fungicides: First, if it be an imitation or offered for sale under the name of another article; second, if it be labeled or branded so as to deceive or mislead the purchaser; or if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package; third, if in package form, and if the contents are not stated in terms of weight or measure, and they are not plainly and correctly stated on the outside of the package.

In the case of insecticides other than Paris Green and lead arsenates and fungicides: First, if they contain arsenic in any of its combinations or in the elemental form and the total amount of arsenic present (expressed as per centum of metallic arsenic) is not stated on the label; second, if it contains arsenic in any of its combinations or in the elemental form and the amount of arsenic in water-soluble forms (expressed as per centum of metallic arsenic) is not stated on the label; third, if it consists partially or completely of an inert substance or substances which do not prevent, destroy, repel or mitigate insects or fungi and

does not have the names and percentage amounts of each and every one of such inert ingredients plainly and correctly stated on the label; *provided*, however, that in lieu of naming and stating the percentage amount of each and every inert ingredient the producer may at his discretion state plainly upon the label the correct names and percentage amount of each and every ingredient of the insecticide or fungicide having insecticidal or fungicidal properties, and make no mention of the inert ingredients, except insofar as to state the total percentage of inert ingredients present.

§ 6. It shall be the duty of the Food Commissioner to collect from time to time specimens of insecticides, Paris Greens, lead arsenates and fungicides in unbroken original packages, manufactured or offered for sale in the state of North Dakota, for the purpose of determining whether or not such insecticides, Paris Greens, lead arsenates and fungicides are adulterated or misbranded within the meaning of this act.

§ 7. When any citizen of the state has any reason to believe that any particular brand or lot of insecticide or Paris Green, or lead arsenate, or a fungicide, is adulterated or misbranded within the meaning of this act, he may send or deliver to the Food Commissioner at Fargo an original unbroken package of the article in question. Upon receipt of such a questionable article it shall be the duty of the commissioner to examine or cause an investigation to be made, and, at his discretion, may cause chemical examinations of such questioned articles as hereinafter provided.

§ 8. Upon the receipt of specimens of insecticides, Paris Green, lead arsenates and fungicides in unbroken original packages, as hereinbefore provided, the Food Commissioner of the Experiment Station shall make or cause to be made a chemical analysis of such specimens for the purpose of determining whether or not they comply with the requirements of this act; *provided*, that when the commissioner has information showing samples delivered to him for examination are out of lots of insecticides, Paris Greens, lead arsenates or fungicides that have already been examined a sufficient number of times to indicate whether or not they comply with the requirements of this act, then the commissioner may refuse to examine such lots and so notify the citizens of the state.

§ 9. The term "insecticide" as used in this act shall include any substance or mixture of substances intended to be used for preventing, destroying, repelling or mitigating any insects, mites or ticks which may infest vegetation, man or other animals, or household, or be present in any en-

vironment whatsoever. The term "Paris Green" as used in this Act shall include the product sold in commerce as Paris Green and chemically known as the aceto-arsenite of copper. The term "lead arsenate" as used in this Act shall include the product or products derived from arsenic acid (H_3AsO_4) by replacing one or more hydrogen atoms by lead. The term "fungicide" as used in this Act shall include any substance or mixture of substances intended to be used for preventing, destroying, repelling or mitigating any and all fungi that may infest vegetation or be present in any environment whatsoever.

§ 10. No dealer shall be prosecuted under the provisions of this Act when he can establish a guaranty signed by the wholesaler, jobber, manufacturer or other party residing in the state of North Dakota from whom he purchased such articles, to the effect that the same is not adulterated or misbranded within the meaning of this Act, designating it; said guaranty, to afford protection shall contain the name and address of the party or parties making the sale of such articles to such dealer, and in such case said party or parties shall be amenable to the prosecutions, fines, and other penalties which would attach to the prosecution, fines, and other penalties which would attach in due course to the dealer under the provisions of this Act.

§ 11. Any insecticide, Paris Green, lead arsenate or fungicide that is adulterated or misbranded within the meaning of this Act and is being transported from one point within the State of North Dakota to another point within the State of North Dakota to be sold, wholly or in part, or having been transported, remains unloaded, unsold or in original unbroken packages, or if it be sold or offered for sale in the State of North Dakota, shall be liable to be proceeded against in any district court of the State of North Dakota. If any such article is condemned as being adulterated or misbranded within the meaning of this Act, the same shall be disposed of by destruction or by sale, as said court may direct; but such goods shall not be sold in any jurisdiction contrary to the provisions of this Act or the laws of the jurisdiction; *provided*, however, that upon the payment of the costs of such proceedings and the execution and delivery of a good and sufficient bond to the effect that such articles shall not be sold or otherwise disposed of contrary to the provisions of this Act or the laws of this state, the court may by order direct that such articles be delivered to the owner thereof.

§ 12. Any person who shall violate any of the provisions of this Act shall be guilty of a misdemeanor and shall upon conviction thereof, be fined not less than twenty-five

(\$25.00) dollars nor more than two hundred (\$200.00) dollars for the first offense, and upon conviction for each subsequent offense, be fined not less than fifty (\$50.00) dollars nor more than three hundred (\$300.00) dollars, or sentenced to imprisonment for not more than thirty days, in the discretion of the court.

§ 13. The word "person" as used in this Act shall be construed to include both the plural and the singular, as the case may be, and shall include corporations, companies, societies and associations. When construing and enforcing the provisions of this Act, the act, omission or failure of any officer agent or other person acting for or employed by any corporation, company, society or association, within the scope of his employment or office, shall in every case be also deemed to be an act, omission or failure of such corporation, company, society or association, as well as that of the other person.

§ 14. WHAT CONSTITUTES VIOLATION OF THE LAW.] The doing of anything prohibited by this Act shall be evidence of the violation of the provisions of this Act relating to the things so prohibited and the omission to do anything directed to be done shall be evidence of a violation of the provisions of this Act relative to the things so directed to be done.

§ 15 All Acts and parts of Acts in conflict herewith are hereby repealed, except the Formaldehyde Law, the same being Chapter 7 of the Laws of North Dakota for 1905.

Approved February 20, 1913.