

FOODS AND DRUGS

CHAPTER 192

SENATE BILL NO. 2209
(Committee on State and Federal Government)
(At the request of the Attorney General)

LABORATORIES DEPARTMENT CRIMINAL INVESTIGATION ANALYSIS

AN ACT to amend and reenact section 19-01-10 of the North Dakota Century Code, relating to examination or analysis of products, articles, or things by state laboratories department chemists submitted by prosecutors or law enforcement officers.

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

SECTION 1. AMENDMENT.) Section 19-01-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-01-10. DEPARTMENT TO MAKE ANALYSES, INSPECTIONS, AND EXAMINATIONS - REPORT OF EXAMINATION AS EVIDENCE - PUBLICATION OF REPORT.) The department shall make, or cause to be made, analyses, examinations, and inspections of all products, articles, compositions, or things included under any of the provisions of this title whenever such analyses, inspections, or examinations are necessary to determine whether any of such products, articles, compositions, or things violate in any particular any provision of this title relating to the products, articles, compositions, or things in question, or violate any definition, standard, tolerance, rule, or regulation issued with regard to such products, articles, compositions, or things pursuant to any provision contained in this title. The department may also make or cause to be made, analysis, examination, inspection, or test of any product, article, composition, or thing at the request of any prosecutor, defense counsel, or law enforcement officer in the state of North Dakota when such analysis, examination, inspection, or test is made in connection with an investigation into violations of the criminal law of this state. A copy of any report of the examination or analyses of any product, article, composition, or thing, duly authenticated by the chemist making the analysis or examination, when given under oath, shall be prima facie evidence in all courts of the matters and facts therein contained. The department may collect samples of any product, article, composition, or thing for the purpose of making analyses, inspections, and investigations in connection with research carried on by it, and may publish the reports thereof for the information of the public.

CHAPTER 193

HOUSE BILL NO. 1414
(Swiontek)

PRESCRIPTION DRUG LABELS

AN ACT to create and enact a new section to the North Dakota Century Code, relating to the requirement that generic or brand names of drugs or medicines be printed on prescription labels.

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

SECTION 1. DEFINITIONS - LABEL OF PRESCRIPTION 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.
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.

Approved March 23, 1977

CHAPTER 194

HOUSE BILL NO. 1542
(Wagner)

CONTROLLED SUBSTANCES ACT AMENDMENTS

AN ACT to amend and reenact subsection 14 of section 19-03.1-01 and sections 19-03.1-05, 19-03.1-07, 19-03.1-09, and 19-03.1-11 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 14 of section 19-03.1-01 of 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; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or 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 2. AMENDMENT.) Section 19-03.1-05 of the North Dakota Century Code, is hereby amended and reenacted to read as follows:

19-03.1-05. SCHEDULE I.)

1. The controlled substances listed in this section are included in schedule I.
2. Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

- a. Acetylmethadol;
- b. Allylprodine;
- c. Alphacetylmethadol;
- d. Alphameprodine;
- e. Alphamethadol;
- f. Benzethidine;
- g. Betacetylmethadol;
- h. Betameprodine;
- i. Betamethadol;
- j. Betaprodine;
- k. Clonitazene;
- l. Dextromoramide;
- m. Dextrorphan;
- n. Diampromide;
- o. Diethylthiambutene;
- p. Difenoxin;
- q. Dimenoxadol;
- r. Dimepheptanol;
- s. Dimethylthiambutene;
- t. Dioxaphetyl butyrate;
- u. Dipipanone;
- v. Ethylmethylthiambutene;
- w. Etonitazene;
- x. Etoxeridine;
- y. Furethidine;
- z. Hydroxypethidine;
- aa. Ketobemidone;
- bb. Levomoramide;

- cc. Levophenacymorphan;
 - dd. Morpheridine;
 - ee. Noracymethadol;
 - ff. Norlevorphanol;
 - gg. Normethadone;
 - hh. Norpipanone;
 - ii. Phenadoxone;
 - jj. Phenampromide;
 - kk. Phenomorphan;
 - ll. Phenoperidine;
 - mm. Piritramide;
 - nn. Propheptazine;
 - oo. Properidine;
 - pp. Propiram;
 - qq. Racemoramide;
 - rr. Trimeperidine.
3. Any of the following opium derivatives, 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. Acetorphine;
 - b. Acetyldihydrocodeine;
 - c. Benzylmorphine;
 - d. Codeine methylbromide;
 - e. Codeine-n-oxide;
 - f. Cyprenorphine;
 - g. Desomorphine;
 - h. Dihydromorphine;

- i. Drotebanol;
 - j. Etorphine (except hydrochloride salt);
 - k. Heroin;
 - l. Hydromorphenol;
 - m. Methyldesorphine;
 - n. Methyldihydromorphine;
 - o. Morphine methylbromide;
 - p. Morphine methylsulfonate;
 - q. Morphine-n-oxide;
 - r. Myrophine;
 - s. Nicocodeine;
 - t. Nicomorphine;
 - u. Normorphine;
 - v. Pholcodine;
 - w. Thebacon.
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".)

- f. 3, 4-methylenedioxy amphetamine;
 - g. 3, 4, 4-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. 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. Lysergic acid diethylamide;
 - m. Marijuana;
 - n. Mescaline;
 - o. Peyote;
 - p. N-ethyl-3-piperidyl benzilate;
 - q. N-methyl-3-piperidyl benzilate;
 - r. Psilocybin;
 - s. Psilocyn;
 - t. Tetrahydrocannabinols;
 - u. Thiophene Analog of Phencyclidine; (Some trade or other names: 1-(1-(2-thienyl) cyclohexyl) piperidine; 2-Thienyl Analog of Phencyclidine; TPCP.)
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) mecloqualone.

SECTION 3. AMENDMENT.) Section 19-03.1-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-03.1-07. SCHEDULE II.)

1. The controlled substances listed in this section are included in schedule II.
2. Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:
 - a. Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding naloxone and its salts, and excluding naltrexone and its salts, but including the following:
 - (1) Raw opium;
 - (2) Opium extracts;
 - (3) Opium fluid extracts;
 - (4) Powdered opium;
 - (5) Granulated opium;
 - (6) Tincture of opium;
 - (7) Codeine;
 - (8) Ethylmorphine;
 - (9) Etorphine hydrochloride;
 - (10) Hydrocodone;
 - (11) Hydromorphone;
 - (12) Metopon;
 - (13) Morphine;
 - (14) Oxycodone;
 - (15) Oxymorphone;
 - (16) Thebaine.
 - b. Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subdivision a, but not including the isoquinoline alkaloids of opium.

- c. Opium poppy and poppy straw.
 - d. Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine.
 - e. Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrine alkaloids of the opium poppy.)
3. Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:
- a. Alphaprodine;
 - b. Anileridine;
 - c. Bezitramide;
 - d. Dihydrocodeine;
 - e. Diphenoxylate;
 - f. Fentanyl;
 - g. Isomethadone;
 - h. Levomethorphan;
 - i. Levorphanol;
 - j. Metazocine;
 - k. Methadone;
 - l. Methadone - intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
 - m. Moramide - intermediate, 2-methyl-3-morpholino-1, diphenyl-propane-carboxylic acid;
 - n. Pethidine;
 - o. Pethidine - intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
 - p. Pethidine - intermediate - B, ethyl-4-phenylpiperidine-4-carboxylate;

- q. Pethidine - intermediate - C,1-methyl-4-phenyl-piperidine-4-carboxylic acid;
 - r. Phenazocine;
 - s. Priminodine;
 - t. Racemethorphan;
 - u. Racemorphan.
4. Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:
- a. Amphetamine, its salts, optical isomers, and salts of its optical isomers;
 - b. Methamphetamine, including its salts, isomers, and salts of isomers;
 - c. Phenmetrazine and its salts;
 - d. Methylphenidate.
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.

SECTION 4. AMENDMENT.) Section 19-03.1-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-03.1-09. SCHEDULE III.)

- 1. The controlled substances listed in this section are included in schedule III.
- 2. 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. Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in schedule II and any other drug of the quantitative composition shown in that schedule for those drugs or which is the same except that it contains a lesser quantity of controlled substances;
 - b. Benzphetamine;
 - c. Chlorphentermine;
 - d. Clortermine;
 - e. Mazindol;
 - f. Phendimetrazine.
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. Methyprylon;
 - i. Phencyclidine;
 - j. Sulfondiethylmethane;
 - k. Sulfonethylmethane;
 - l. Sulfonmethane.
4. Nalorphine.
5. 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 1.80 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;
 - b. Not more than 1.80 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;
 - c. Not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;
 - d. Not more than 300 milligrams of dihydroceinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
 - e. Not more than 1.80 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

- f. Not more than 300 milligrams of ethylmorphine or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts;
 - g. Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;
 - h. Not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
6. The state laboratories department may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsections 2 and 3 of this section 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 stimulant or 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 stimulant or depressant effect on the central nervous system.

SECTION 5. AMENDMENT.) Section 19-03.1-11 of 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. Barbital;
 - b. Chloral betaine;
 - c. Chloral hydrate;
 - d. Chlordiazepoxide;
 - e. Clonazepam;
 - f. Clorazepate;

- g. Diazepam;
 - h. Ethchlorvynol;
 - i. Ethinamate;
 - j. Flurazepam;
 - k. Mebutamate;
 - l. Methohexital;
 - m. Meprobamate;
 - 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).
6. The state laboratories department may except by rule any compound, mixture, or preparation containing any depressant substance listed in subsection 2 of this section 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.

Approved April 6, 1977

CHAPTER 195

SENATE BILL NO. 2115
(Lips)

REPEAL OF OLEOMARGARINE TAX PROVISIONS

AN ACT to repeal sections 19-05-05, 19-05-07, 19-05-08, 19-05-09, 19-05-10, 19-05-11, 19-05-14, 19-05-18, and 19-05-19 of the North Dakota Century Code, relating to the taxation of oleo-margarine.

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

SECTION 1. REPEAL.) Sections 19-05-05, 19-05-07, 19-05-09, 19-05-10, 19-05-11, 19-05-14, 19-05-18, and 19-05-19 of the North Dakota Century Code, and section 19-05-08 of the 1975 Supplement to the North Dakota Century Code are hereby repealed.

Approved March 4, 1977

CHAPTER 196

SENATE BILL NO. 2484
(Morgan, Barth)

SALE OF HONEY

AN ACT to create and enact a new chapter of the North Dakota Century Code, relating to the sale of honey and providing a penalty.

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

SECTION 1. DEFINITIONS.) In this chapter unless the content or subject matter otherwise indicates:

1. The terms "honey", "liquid or extracted honey", "strained honey", or "pure honey" are interchangeable and mean the nectar of plants that has been transformed by, and is the natural product of the honeybee.
2. "Person" means any individual, partnership, firm, association, company, or corporation.

SECTION 2. ENFORCEMENT AUTHORITY.) The state laboratories department shall enforce the provisions of this Act.

SECTION 3. PROHIBITED ACTS.) No person shall sell, keep for sale, or offer for sale, any product which:

1. Resembles honey and is labeled as "honey".
2. Is not pure honey and is labeled with a picture or drawing of a bee, beehive, or honeycomb.
3. Contains a mixture of honey and any other ingredient and is labeled as "honey".
4. Contains honey and any other ingredient unless the container bears a label which lists the ingredients in their order or predominance. In the ingredients statement the word "honey" shall appear in the same type size as the other ingredients.

SECTION 4. USE OF WORD "HONEY" IN PRODUCTS NOT RESEMBLING HONEY.) Products which do not resemble honey but which contain honey as an ingredient may include the word "honey" in the name of the product. The relative position of the word "honey" in the product name

shall be determined by the prominence of honey as an ingredient.

SECTION 5. USE OF WORD "IMITATION" PROHIBITED.) Notwithstanding subsection 3 of section 19-02.1-10 the word "imitation" shall not be used in the name of a product which resembles honey regardless of whether or not the product contains honey.

SECTION 6. PENALTY.) Any person who violates any provision of this Act shall be guilty of a class B misdemeanor.

Approved March 23, 1977

CHAPTER 197

SENATE BILL NO. 2161
(Committee on Industry, Business & Labor)
(At the request of the State Laboratories Department)

SALE OF ADULTERATED PETROLEUM PRODUCTS

AN ACT to create and enact four new subsections to section 19-10-01 of the North Dakota Century Code, relating to definitions; and to amend and reenact sections 19-10-03 and 19-10-10 of the North Dakota Century Code, relating to the sale of adulterated lubricating oils, and to the specifications for petroleum products.

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

SECTION 1.) Four new subsections to section 19-10-01 of the North Dakota Century Code are hereby created and enacted to read as follows:

"Department" means the state laboratories department;

"Gasoline" is a refined petroleum naphtha which by its composition is suitable for use as a carburant in internal combustion engines;

"Kerosene" is a petroleum fraction which is free from water, additives, foreign and/or suspended matter, and is suitable for use as an illuminating oil;

"Lubricating oil" is any petroleum, or other product, used for the purpose of reducing friction, heat, or wear in automobiles, tractors, gasoline engines, diesel engines, and other machines;

SECTION 2. AMENDMENT.) Section 19-10-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-10-03. SALE OF ADULTERATED AND MISBRANDED GASOLINE, KEROSENE, TRACTOR FUEL, HEATING OIL, DIESEL FUEL, OR LUBRICATING OIL PROHIBITED.) No person shall sell or offer or expose for sale, any kerosene, gasoline, or other petroleum product intended to be used as kerosene or gasoline, or any tractor fuel, heating oil, diesel fuel, or lubricating oil which is adulterated or misbranded.

SECTION 3. AMENDMENT.) Section 19-10-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-10-10. SPECIFICATIONS FOR PETROLEUM PRODUCTS - TESTS USED.) Specifications for gasoline, kerosene, tractor fuel, diesel oil, heating oil, lubricating oil and liquefied petroleum gases including propane, propylene, normal butane or isobutane, and butylene shall be determined by the department and shall be based upon nationally recognized standards. When so determined by the department and adopted and promulgated as regulations and orders of the department in accordance with the provisions of chapter 28-32, such specifications shall be the specifications for such petroleum products sold in this state and official tests of such petroleum products shall be based upon test specifications so determined adopted and promulgated.

Approved March 12, 1977

CHAPTER 198

HOUSE BILL NO. 1478
(Olson, Dotzenrod, Russell, Berg)

FERTILIZERS AND SOIL CONDITIONERS

AN ACT to create and enact sections 19-20.1-03.1 and 19-20.1-03.2 of the North Dakota Century Code, relating to the licensing of fertilizer dealers and proof of product effectiveness; to amend and reenact sections 19-20.1-02, 19-20.1-03, 19-20.1-04, 19-20.1-06, 19-20.1-07, 19-20.1-08, 19-20.1-10, 19-20.1-11, 19-20.1-12, 19-20.1-13, 19-20.1-14, 19-20.1-15, 19-20.1-16, 19-20.1-17, and 19-20.1-18 of the North Dakota Century Code, relating to definitions, registration, labeling of fertilizer and soil amendments, inspection fees, tonnage reports, sampling and analysis, false statements, publications, short weight, cancellation of licenses and registration, "stop sale" orders, seizure, and providing a penalty; and to repeal sections 19-20.1-05 and 19-20.1-09 of the North Dakota Century Code, relating to labeling soil conditioners and minimum plant food content.

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

SECTION 1. AMENDMENT.) Section 19-20.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-20.1-02. DEFINITIONS OF WORDS AND TERMS.) When used in this chapter:

1. "Primary plant nutrients" are nitrogen, phosphoric acid, and potash.
2. "Commercial fertilizer" means any substance containing one or more primary plant nutrient which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl, lime limestone, wood ashes, and other products excluded by department regulation. The term includes:
 - a. "Agricultural fertilizer" which must contain a minimum of fifteen percent primary plant nutrients.

- b. "Specialty fertilizer" which is distributed primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses, and nurseries.
- c. "Micronutrient" which contains essential chemical elements which are required at low levels for normal plant growth.

d. "Fertilizer material" is a commercial fertilizer which:

- (1) contains no more than one of the primary plant nutrients, or
- (2) has approximately eighty-five percent of its primary plant nutrient content present in the form of a single chemical compound, or
- (3) is derived from a plant or animal residue or by-product or a natural material deposit which has been processed in such a way that its content of primary plant nutrients has not been materially changed except by purification or concentration.

3. "Soil amendment" means any substance which is intended to improve the physical, chemical, biological, or other characteristics of the soil to improve crop production, except the following: commercial fertilizers, agricultural liming materials, unmanipulated animal manures, unmanipulated vegetable manures, and pesticides. The term shall include commercial fertilizer if the fertilizer is represented to contain, as an active ingredient, a substance other than a primary plant nutrient or micronutrient or is represented as promoting plant growth by supplying something other than a primary plant nutrient or micronutrient.

4. "Bulk" means in a nonpackaged form.

5. "Brand" means a term, design, or trademark used in connection with one or several grades of commercial fertilizer or soil amendments.

6. Until the department prescribes the alternative form of "guaranteed analysis" in accordance with the provisions of this subsection, "guaranteed analysis" shall mean the minimum percentage of plant nutrients claimed in the following order and form:

a. Total Nitrogen (N)-----	_____	percent
Available Phosphoric Acid (P ₂ O ₅)-----	_____	percent
Soluble Potash (K ₂ O)-----	2.5_____	percent

b. For unacidulated mineral phosphatic materials and basic slag, both total and available phosphoric acid

and the degree of fineness. For bone, tankage, and other organic phosphatic materials, total phosphoric acid.

- c. Guarantees for plant nutrients other than nitrogen, phosphorus, and potassium may be permitted or required by regulation of the department. The guarantees for such other nutrients shall be expressed in the form of the element. The sources of such other nutrients, oxides, salt, chelates, etc., may be required to be stated on the application for registration and may be included as a parenthetical statement on the label. Other beneficial substances or compounds, determinable by laboratory methods, also may be guaranteed by permission of the department and with the advice of the director of the agricultural experiment station. When any plant nutrients or other substances or compounds are guaranteed, they shall be subject to inspection and analysis in accord with the methods and regulations prescribed by the department.
- d. Potential basicity or acidity expressed in terms of calcium carbonate equivalent in multiples of one hundred pounds per ton when required by regulation. At any time after July 1, 1967, when the department finds, after public hearing following due notice, that the requirement for expressing the guaranteed analysis of phosphorus and potassium in the elemental form would not impose an economic hardship on distributors and users of fertilizer by reason of conflicting labeling requirements among the states, it may require by regulation thereafter that the "guaranteed analysis" shall be in the following form:

Total Nitrogen (N)-----	_____	percent
Available Phosphorus (P)-----	_____	percent
Soluble Potassium (K)-----	_____	percent

provided, however, that the effective date of said regulation shall be not less than six months following the issuance thereof, and provided, further that for a period of two years following the effective date of said regulation, the equivalent of phosphorus and potassium may also be shown in the form of phosphoric acid and potash; provided, however, that after the effective date of a regulation issued under the provisions of this section, requiring that phosphorus and potassium be shown in the elemental form, the guaranteed analysis for nitrogen, phosphorus, and potassium shall constitute the grade.

- e. The minimum quantity of each active ingredient contained in soil amendments shall be guaranteed in terms approved by the department or prescribed by its rules.

7. "Grade" means the percentages of total nitrogen, available phosphorus or phosphoric acid, and soluble potassium or soluble potash stated in the same terms, order, and percentages as in the "guaranteed analysis".
8. "Official sample" means any sample of commercial fertilizer or soil amendment taken by the department and designated as "official" by the department.
9. "Ton" means a net weight of two thousand pounds avoirdupois.
10. "Percent" or "percentage" means the percentage by weight.
11. "Distributor" means any person who imports, consigns, manufactures, produces, compounds, mixes, or blends commercial fertilizer, or soil amendments or who sells commercial fertilizer or soil amendments in this state.
12. "Registrant" means the person who registers commercial fertilizer or soil amendments under the provisions of this chapter.
13. "Licensee" means any person licensed by the department as a distributor of agricultural fertilizer.
14. "Mobile mechanical unit" means any portable machine or apparatus used to blend, mix, or manufacture fertilizer materials.
15. "Sell" when applied to commercial fertilizer or soil amendments includes:
 - a. The act of selling, transferring ownership;
 - b. The offering and exposing for sale, exchange, or distribution;
 - c. Giving away;
 - d. Receiving, accepting, holding, or possession for sale, exchange, or distribution.
16. "Small package fertilizer" means fertilizer sold exclusively in packages of twenty-five pounds or less.
17. "Label" means all written, printed, or graphic matter upon or accompanying any commercial fertilizer or soil amendment, or advertisements, brochures, posters, or media announcements used in promoting the sale thereof.

SECTION 2. AMENDMENT.) Section 19-20.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-20.1-03. REGISTRATION.) Each brand and grade of commercial fertilizer sold as small package fertilizer or specialty fertilizer, each soil amendment, and each brand and grade of fertilizer material except unmanipulated animal and vegetable manures, shall be registered before being distributed in this state. The application for registration shall be submitted to the department on a form prescribed by the department and shall be accompanied by a fee of twenty-five dollars. Upon approval by the department, a copy of the registration shall be furnished to the applicant setting forth the information to be set out in the product label required by this chapter. All registrations expire on June thirtieth of each year. A distributor shall not be required to register any brand of commercial fertilizer or soil amendment which is already registered under this chapter by another person, providing the label complies with the issued registration.

SECTION 3.) Section 19-20.1-03.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

19-20.1-03.1. LICENSE REQUIRED.) No person shall sell at retail agricultural fertilizer in this state without first obtaining a distributor's license from the department. A license shall be obtained for each location or mobile mechanical unit used by a distributor in the state. The application for the license shall be submitted on a form prescribed by the department, and shall be accompanied by a fee of fifty dollars. All licenses shall expire on June thirtieth of each year. Licenses shall not be transferable, and each license shall be conspicuously posted at each location and shall accompany each mobile mechanical unit operating in the state.

SECTION 4.) Section 19-20.1-03.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

19-20.1-03.2. PROOF OF EFFECTIVENESS.) The department may require an applicant or registrant to furnish proof of claims made for any product covered by this chapter and may require proof of value when used as directed or recommended. The department shall rely on replicate, or the data derived therefrom, performed by a reputable investigator. The experimental data must be obtained under conditions similar to those in this state under which the product is intended to be used. The department may accept or reject other sources of proof as additional evidence.

SECTION 5. AMENDMENT.) Section 19-20.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-20.1-04. LABELING.)

1. Every product registered pursuant to this chapter shall have placed on or affixed to the container a label setting forth in clearly legible and conspicuous form the information required by the department in the registration thereof.

2. If distributed in bulk, a written or printed statement showing the net weight, brand and grade, guaranteed analysis, name and address of the distributor, and the sources from which the nitrogen, phosphorus, and potassium are derived shall accompany delivery and be supplied to the purchaser at time of delivery.
3. A commercial fertilizer, formulated according to specifications which are furnished by a consumer prior to mixing, shall be labeled to show the net weight, guaranteed analysis or number of pounds of each plant nutrient contained therein, and the name and address of the distributor.
4. The department may require the labels of specialty fertilizer sold in packages of fifty pounds or more, or sold in bulk, to contain the statement "Not intended for farm use" prominently placed thereon.

SECTION 6. AMENDMENT.) Section 19-20.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-20.1-06. INSPECTION FEES AND TONNAGE REPORTS.) There shall be paid to the department for all commercial fertilizers and soil amendments distributed in this state an inspection fee at the rate of ten cents per ton: provided, that sales to manufacturers or exchanges between them are hereby exempted. Fees so collected shall be used for the payment of the costs of inspection, sampling, and analysis, and other expenses necessary for the administration of this chapter.

Individual packages of commercial fertilizer and soil amendments sold exclusively in packages of twenty-five pounds or less shall be exempt from the provisions of this section. Where a person sells commercial fertilizer or soil amendments in packages of twenty-five pounds or less and in packages over twenty-five pounds, that portion sold in packages over twenty-five pounds shall be subject to the same inspection fee of ten cents per ton as provided in this chapter.

Every licensed person who distributes a commercial fertilizer to a nonlicensed person in this state shall file with the department, on forms furnished by the department, a semiannual statement for the periods ending December thirty-first and June thirtieth, setting forth the number of net tons of each commercial fertilizer so distributed in this state during such period. The report shall be due on or before the fifteenth day of the month following each semiannual period and upon such statement shall pay the inspection fee at the rate stated in this section. If the tonnage report is not filed and the payment of inspection fee is not made within thirty days after the end of the semiannual period, a collection fee amounting to ten percent, minimum ten dollars, of the amount shall be assessed against the licensee, and the amount of fees due shall constitute a debt and become the basis of a judgment against the licensee.

SECTION 7. AMENDMENT.) Section 19-20.1-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-20.1-07. INSPECTION FEES AND TONNAGE REPORTS.) When more than one person is involved in the distribution of a registered product, the last person who has the product registered under section 19-20.1-03 and who distributes to a nonregistrant dealer, or consumer, is responsible for reporting the tonnage and paying the inspection fee, unless the reporting and paying of fees have been made by a prior distributor of the product.

SECTION 8. AMENDMENT.) Section 19-20.1-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-20.1-08. INSPECTION, SAMPLING, ANALYSIS.) It shall be the duty of the state laboratories director, who may act through his authorized agent, to sample, inspect, make analyses of, and test commercial fertilizers and soil amendments distributed within this state at time and place and to such an extent as he may deem necessary to determine whether such commercial fertilizers or soil amendments are in compliance with the provisions of this chapter. The state laboratories director individually or through his agent, is authorized to enter upon any public or private premises or carriers during regular business hours in order to have access to commercial fertilizers or soil amendments subject to the provisions of this chapter and the rules and regulations pertaining thereto. The methods of analysis and sampling shall be those adopted by the department from sources such as the A.O.A.C. journal.

The department, in determining for administrative purposes whether any commercial fertilizer or soil amendment is deficient, shall be guided solely by the official sample obtained and analyzed by the department. The results of official analysis of any commercial fertilizer or soil amendment which has been found to be subject to penalty or other legal action shall be forwarded by the department to the registrant at least ten days before the report is submitted to the purchaser. If during that period no adequate evidence to the contrary is made available to the department, the report shall become official. Upon request the department shall furnish to the registrant a portion of any sample found subject to penalty or other legal action.

SECTION 9. AMENDMENT.) Section 19-20.1-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-20.1-10. FALSE OR MISLEADING STATEMENTS.) A commercial fertilizer or soil amendment is misbranded if it carries a false or misleading statement on the container, on the label attached to the container, or if false or misleading statements concerning the fertilizer or soil amendment are disseminated in any manner or by any means. It shall be unlawful to distribute a misbranded fertilizer or soil amendment.

SECTION 10. AMENDMENT.) Section 19-20.1-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-20.1-11. PUBLICATIONS.) The department shall 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.

SECTION 11. AMENDMENT.) Section 19-20.1-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-20.1-12. RULES AND REGULATIONS.) For the enforcement of this chapter, the state laboratories director is authorized to prescribe and enforce such rules, regulations, and tolerances relating to the labeling and distribution of commercial fertilizers and soil amendments as he may find necessary to carry into effect the full intent and meaning of this chapter. When promulgating any rules or regulations under the authority of this section, the state laboratories director shall follow the procedures provided in chapter 28-32 of the North Dakota Century Code.

SECTION 12. AMENDMENT.) Section 19-20.1-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-20.1-13. SHORT WEIGHT.) If any commercial fertilizer or soil amendment in the possession of the consumer is found by the department to be short in weight, the registrant of said commercial fertilizer or soil amendment shall within thirty days after official notice from the department pay to the consumer a penalty equal to four times the value of the actual shortage.

SECTION 13. AMENDMENT.) Section 19-20.1-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-20.1-14. CANCELLATION OF REGISTRATIONS.) The department is authorized and empowered to cancel the registration of any brand of commercial fertilizer or soil amendment and to cancel the license of any distributor or to refuse to register any brand of commercial fertilizer or soil amendment or to license any distributor as herein provided, upon satisfactory evidence that the registrant, licensee, or distributor has used fraudulent or deceptive practices in the evasions or attempted evasions of the provisions of this chapter or any rules and regulations promulgated thereunder; provided, that no registration or license shall be revoked or refused without opportunity for hearing given by the department.

SECTION 14. AMENDMENT.) Section 19-20.1-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-20.1-15. "STOP SALE" ORDERS.) The department may issue and enforce a written or printed "stop sale, use or removal" order to the owner or custodian of any lot of commercial fertilizer or soil amendment and an order to hold at a designated place when the department finds said commercial fertilizer or soil amendment is being offered or exposed for sale in violation of any of the provisions of this chapter until the law has been complied with and said commercial fertilizer or soil amendment is released in writing by the department or said violation has been otherwise legally disposed by written authority. The department shall release the commercial fertilizer or soil amendment so withdrawn when the requirements of the provisions of this chapter have been complied with and all costs and expenses incurred in connection with the withdrawal have been paid.

SECTION 15. AMENDMENT.) Section 19-20.1-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-20.1-16. SEIZURE, CONDEMNATION AND SALE.) Any lot of commercial fertilizer or soil amendment not in compliance with the provisions of this chapter shall be subject to seizure on complaint of the department to the district court in the county in which said commercial fertilizer or soil amendment is located. In the event the court finds the said commercial fertilizer or soil amendment to be in violation of this chapter and orders its condemnation, it shall be disposed of in any manner consistent with the quality of the commercial fertilizer or soil amendment and the laws of the state; provided, that in no instance shall the disposition of said commercial fertilizer or soil amendment be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said commercial fertilizer or soil amendment or for permission to process or relabel said commercial fertilizer or soil amendment to bring it into compliance with this chapter.

SECTION 16. AMENDMENT.) Section 19-20.1-17 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-20.1-17. VIOLATIONS.)

1. If it shall appear from the examination of any commercial fertilizer or soil amendment that any of the provisions of this chapter or the rules and regulations issued thereunder have been violated, the department shall cause notice of the violations to be given to the registrant, licensee, manufacturer, distributor, or possessor from whom said sample was taken; any person so notified shall be given opportunity to be heard under such rules and regulations as may be prescribed by the department. If it appears after such hearing, either in the presence or absence of the person so notified, that any of the provisions of this chapter or rules and

regulations issued thereunder have been violated, the state laboratories director may certify the facts to the proper prosecuting attorney.

2. Any person convicted of violating any of the provisions of this chapter or the rules and regulations issued thereunder or who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent said state laboratories director or his duly authorized agent in the performance of his duty in connection with the provisions of this chapter, shall be guilty of a class A misdemeanor. In all prosecutions under this chapter involving the composition of a lot of commercial fertilizers or soil amendments, a certified copy of the official analysis signed by the state laboratories director shall be accepted as prima facie evidence of the composition.
3. Nothing in this chapter shall be construed as requiring the state laboratories director or his representative to report for prosecution or for the institution of seizure proceedings as a result of minor violations of the chapter when he believes that the public interests will be best served by a suitable notice of warning in writing.
4. It shall be the duty of each state's attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.
5. The department is hereby authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule or regulation promulgated under the chapter notwithstanding the existence of other remedies at law. Said injunction to be issued without bond.

SECTION 17. AMENDMENT.) Section 19-20.1-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-20.1-18. EXCHANGES BETWEEN MANUFACTURERS.) Nothing in this chapter shall be construed to restrict or avoid sales or exchanges of commercial fertilizers or soil amendments to each other by importers, manufacturers, or manipulators who mix fertilizer materials for sale or as preventing the free and unrestricted shipments of commercial fertilizer or soil amendments to manufacturers or manipulators who have registered their brands as required by the provisions of this chapter.

SECTION 18. REPEAL.) Sections 19-20.1-05 and 19-20.1-09 of the North Dakota Century Code are hereby repealed.

Approved April 21, 1977