

FOOD, DRUGS, OILS, AND COMPOUNDS

CHAPTER 264

SENATE BILL NO. 2169
(Committee on Human Services and Veterans Affairs)
(At the request of the State Department of
Health and Consolidated Laboratories)

FOOD, DRUGS, COSMETICS, AND PETROLEUM PRODUCTS

AN ACT to create and enact two new subsections to section 19-02.1-10, two new subsections to section 19-02.1-14, and a new subsection to section 19-02.1-18 of the North Dakota Century Code, relating to food, drugs, devices, and cosmetics; and to amend and reenact section 19-01-17, subsection 19 of section 19-02.1-01, sections 19-02.1-09, 19-02.1-11, 19-06.1-05, 19-08-02, subsection 2 of section 19-10-01, sections 19-10-16, 19-16.1-01, 19-16.1-10, and 19-17-01 of the North Dakota Century Code, relating to food, drugs, cosmetics, and petroleum products; and to repeal section 19-07-05 and chapter 19-11 of the North Dakota Century Code, relating to egg bonding and paints.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-01-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-01-17. Form of license to be issued. All licenses and permits issued by the department shall be uniform insofar as practicable and shall be on a suitable blank provided and prescribed by the ~~commission~~ department. If two or more licenses or permits are issued to the same person or corporation, they shall be on one and the same blank when possible and practicable.

SECTION 2. AMENDMENT. Subsection 19 of section 19-02.1-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19. "Pesticide chemical" means any substance which, alone, in chemical combination, or in formulation with one or more other substances is ~~an "economic poison"~~ a "pesticide" within the meaning of chapter 19-18, and which is used in the production, storage, or transportation of raw agricultural commodities.

SECTION 3. AMENDMENT. Section 19-02.1-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-02.1-09. Food - Adulteration defined. A food shall be deemed to be adulterated for any of the following reasons:

1. If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health.

2. If it bears or contains any added poisonous or added deleterious substance, other than one which is:
 - a. A pesticide chemical in or on a raw agricultural commodity;
 - b. A food additive; or
 - c. A color additive which is unsafe within the meaning of subsection 1 of section 19-02.1-12.
3. If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of subsection 1 of section 19-02.1-12.
4. If it is or bears or contains, any food additive which is unsafe within the meaning of subsection 1 of section 19-02.1-12.

Provided, that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or tolerance prescribed under subsection 1 of section 19-02.1-12, and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed food shall not, notwithstanding the provisions of section 19-02.1-12 and this subsection, be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice, and the concentration of such residue in the processed food when ready-to-eat, is not greater than the tolerance prescribed for the raw agricultural commodity.

5. If it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for food.
6. If it has been produced, prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health.
7. If it is the product of a diseased animal or an animal which has died otherwise than by slaughter, or that has been fed upon the uncooked offal from a slaughterhouse.
8. If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.
9. If any valuable constituent has been in whole or in part omitted or abstracted therefrom.
10. If any substance has been substituted wholly or in part therefor.
11. If damage or inferiority has been concealed in any manner.
12. If any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its

quality or strength or make it appear better or of greater value than it is.

13. If it is confectionery and it bears or contains any alcohol or nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of one percent, harmless natural wax not in excess of four-tenths of one percent, harmless natural gum, and pectin; provided, that this subsection shall not apply to any confectionery by reason of its containing less than one-half of one percent by volume of alcohol derived solely from the use of flavoring extracts, or to any chewing gum by reason of its containing harmless nonnutritive masticatory substances has partially or completely imbedded therein any non-nutritive object. This subsection does not apply in the case of any non-nutritive object if, in the judgment of the department as provided by rules, the object is of practical functional value to the confectionery product and would not render the product injurious or hazardous to health. This subsection does not apply to any confectionery, by reason of its containing less than one-half of one percent by volume of alcohol derived solely from the use of flavoring extracts. This subsection does not apply to a non-nutritive substance that is in or on confectionery by reason of its use for some practical functional purpose in the manufacture, packaging, or storage of such confectionery if the use of the substance does not promote deception of the consumer or otherwise result in adulteration or misbranding in violation of any provision of this chapter. To avoid or resolve uncertainty as to the application of this subsection, the department may issue rules allowing or prohibiting use of particular non-nutritive substances.
14. If it is or bears or contains any color additive which is unsafe within the meaning of subsection 1 of section 19-02.1-12.
15. If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to federal law.

SECTION 4. Two new subsections to section 19-02.1-10 of the North Dakota Century Code are hereby created and enacted to read as follows:

If it is a raw agricultural commodity that is the produce of the soil, bearing or containing a pesticide chemical applied after harvest, unless the shipping container of the commodity bears labeling that declares the presence of the chemical in or on the commodity and the common or usual name and the function of the chemical. No such declaration is required while the commodity, having been removed from the shipping container, is being held or displayed for sale at retail out of the container in accordance with the custom of the trade.

If its packaging or labeling is in violation of an applicable regulation issued under section 3 or 4 of the Poison Prevention Packaging Act of 1970.

SECTION 5. AMENDMENT. Section 19-02.1-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-02.1-11. Emergency permit control. Whenever the department finds after investigation that the distribution in the state of North Dakota of any class of food may, by reason of contamination with microorganisms during manufacture, processing, or packing thereof in any locality, be injurious to health and that such injurious nature cannot be adequately determined after such articles have entered commerce, it then, and in such case only, shall promulgate regulations providing for the issuance, to manufacturers, processors, or packers of such class of food in such locality, of permits to which shall be attached such conditions governing the manufacture, processing, or packaging, or packing of such class of food, for such temporary period of time, as may be necessary to protect the public health; and after the effective date of such regulations, and during such temporary period, no person shall introduce or deliver for introduction into commerce any such food manufactured, processed, or packed by any such manufacturer, processor, or packer unless such manufacturer, processor, or packer holds a permit issued by the department as provided by such regulations.

The state laboratories director department is authorized to suspend immediately upon notice any permit issued under authority of this section if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the state laboratories director department shall, immediately after prompt hearing and inspection of the establishment, reinstate such permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit, as originally issued, or as amended.

Any officer or employee duly designated by the state laboratories director department shall have access to any factory or establishment, the operator of which holds a permit from the department for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and denial of access for such inspection shall be grounds for suspension of the permit until such access is freely given by the operator.

SECTION 6. Two new subsections to section 19-02.1-14 of the North Dakota Century Code are hereby created and enacted to read as follows:

If it is a device and it has an established name, unless its label bears, to the exclusion of any other nonproprietary name, its established name, as defined in subsection 6, prominently printed in type at least half as large as that used thereon for any proprietary name or designation for the device, except that to the extent compliance with the requirements of this subsection is impracticable, exemptions will be established by rules adopted by the department. As used in this subsection the term "established name" with respect to a device means:

- a. The applicable official name of the device designated pursuant to federal law.
- b. If there is no official name of the device designated pursuant to federal law and the device is an article recognized in an official compendium, then the official title of the device in the compendium.
- c. If neither subdivision a nor subdivision b applies, then any common or usual name of the device.

If it is a device subject to a performance standard established under federal law, unless it bears labeling prescribed in the performance standard.

SECTION 7. A new subsection to section 19-02.1-18 of the North Dakota Century Code is hereby created and enacted to read as follows:

If its packaging or labeling is in violation of an applicable regulation issued pursuant to section 3 or 4 of the Poison Prevention Packaging Act of 1970.

SECTION 8. AMENDMENT. Section 19-06.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-06.1-05. Enforcement authority. The state ~~laboratories~~ department of health and consolidated laboratories shall enforce the provisions of this chapter.

SECTION 9. AMENDMENT. Section 19-08-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-08-02. Beverage - Definition. The term "beverage" as used in this chapter ~~shall include intoxicating liquors~~ includes, carbonated and noncarbonated soda water, ginger ale, root beer, aromatic flavors, cereal or malt beverages, apple cider, tomato juice, grape juice and other fruit juices, imitations or compounds of any of these, concentrated extracts and essences from which beverages are made, mineral or spring water sold under private label, and potable water sold by a private individual, firm, or corporation for household or culinary purposes.

SECTION 10. AMENDMENT. Subsection 2 of section 19-10-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. "Department" means the state ~~laboratories~~ department of health and consolidated laboratories.

SECTION 11. AMENDMENT. Section 19-10-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-10-16. Department may prohibit sale of certain gasolines or motor fuels. The department may prohibit the sale of any so-called "gasoline improver" or motor fuel dope, oil additive, and of any gasoline mixed or compounded with any other chemical, substance, or solution which may be detrimental to the public health, injurious to internal combustion engines, or concerning which unsubstantiated claims are made. However, it may not prohibit the sale of any material, substance, or solution which has been favorably reported on by the United States bureau of standards or by the surgeon general or bureau of public health of the United States.

SECTION 12. AMENDMENT. Section 19-16.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-16.1-01. Administration. This chapter shall be administered by the state ~~laboratories~~ department of health and consolidated laboratories, hereinafter referred to as the department.

SECTION 13. AMENDMENT. Section 19-16.1-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-16.1-10. Submission of formula. The department may, for the purpose of registration, require the applicant to furnish a statement of the formula of such antifreeze, unless the applicant can furnish other satisfactory evidence that such antifreeze is not adulterated or misbranded. The statement need not include inhibitor or other ingredients which total less than five percent by weight of the antifreeze. All statements of formula and other trade secrets furnished under this section shall be privileged and confidential and shall not be made public or open to the inspection of any persons, firms, associations, or corporations other than the ~~commissioner~~ department. No such statement shall be subject to subpoena nor shall the same be exhibited or disclosed before any administrative or judicial tribunal by virtue of any order or subpoena of such tribunal without the consent of the applicant furnishing such statement to the department.

SECTION 14. AMENDMENT. Section 19-17-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-17-01. Definitions. When used in this chapter, unless the context otherwise requires:

1. ~~"Commissioner"~~ means the state food commissioner and chemist of the state of North Dakota:
- ~~2.~~ "Flour" includes and ~~shall be~~ is limited to the foods commonly known in the milling and baking industries as:
 - a. White flour, also known as wheat flour or plain flour;
 - b. Bromated flour;
 - c. Self-rising flour, also known as self-rising white flour or self-rising wheat flour; and
 - d. Phosphated flour, also known as phosphated white flour or phosphated wheat flour,

but excludes whole wheat flour and also excludes special flours not used for bread, roll, bun, or biscuit baking, such as specialty, cake, pancake, and pastry flours.
- ~~3.~~ 2. "Person" means an individual, a corporation, a partnership, an association, a joint stock company, a trust, or any group of persons whether incorporated or not, engaged in the commercial manufacture or sale of flour, white bread, or rolls.
- ~~4.~~ 3. "Rolls" includes plain white rolls and buns of the semibread dough type namely: soft rolls, such as hamburger rolls, hot dog rolls, Parker House rolls, and hard rolls, such as Vienna rolls, Kaiser rolls, but shall not include yeast-raised sweet rolls or sweet buns made with fillings or coatings, such as cinnamon rolls or buns and butterfly rolls.
- ~~5.~~ 4. "White bread" means any bread made with flour (as defined in subsection 1) whether baked in a pan or on a hearth or screen,

which is commonly known or usually represented and sold as white bread, including Vienna bread, French bread, and Italian bread.

SECTION 15. REPEAL. Chapter 19-11 of the North Dakota Century Code, and section 19-07-05 of the 1987 Supplement to the North Dakota Century Code are hereby repealed.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 265

HOUSE BILL NO. 1298
(Representatives R. Larson, Ulmer, Gerl)
(Senators Stenehjem, Todd)

GENERIC DRUGS

AN ACT to amend and reenact subsections 3 and 4 of section 19-02.1-14.1 of the North Dakota Century Code, relating to selecting and dispensing generic drugs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 3 and 4 of section 19-02.1-14.1 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

3. 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. If a practitioner prescribes a drug by its brand name, the pharmacist may exercise professional judgment in the economic interest of the patient by selecting a drug product with the same generic name and demonstrated therapeutical equivalency as the one prescribed for dispensing and sale to the patient unless the practitioner specifically indicates in the practitioner's own handwriting "brand necessary" on a written prescription or expressly indicates that an oral prescription is to be dispensed as communicated. The pharmacist shall note the instructions on the file copy of the prescription. A reminder legend must be placed on all prescription forms. The legend must state: "In order to require that a brand name product be dispensed, the practitioner must handwrite the words 'brand necessary'." The legend printed on the prescription form must be in at least sixteen-point uppercase print. 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. In addition, a pharmacist shall not substitute drug products in the following dosage forms: enteric coated tablets, controlled release products, injectable suspensions other than antibiotics, suppositories containing active ingredients for which systemic absorption is necessary for therapeutic activity, and different delivery systems for aerosol and nebulizer drugs. In the event that any drug listed above is, subsequent to January 1, 1982,

determined to be therapeutically equivalent, then the previously mentioned substitution ban shall be automatically removed for that drug. 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. The practitioner is not liable for the substitution made by a pharmacist.

4. 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~~ instructed 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.

Approved April 7, 1989
Filed April 7, 1989

CHAPTER 266

SENATE BILL NO. 2232
(Thane)

CONTROLLED SUBSTANCE SCHEDULES

AN ACT to amend and reenact subsections 3 and 5 of section 19-03.1-05, subdivision d of subsection 3 of section 19-03.1-07, subsections 4 and 8 of section 19-03.1-07, subsections 4 and 6 of section 19-03.1-09, subsections 4 and 6 of section 19-03.1-11, section 19-03.1-13, and subsection 4 of section 19-03.1-37 of the North Dakota Century Code, relating to controlled substances.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 3 and 5 of section 19-03.1-05 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

3. Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of ~~such~~ those isomers, esters, ethers, and salts is possible within the specific chemical designation:
 - a. Acetyl-Alpha-Methylfentanyl (N-(1-(1-methyl-2-phenethyl)-4-piperidiny)-N-phenylacetamide).
 - b. Acetylmethadol.
 - c. Allylprodine.
 - d. Alphacetylmethadol.
 - e. Alphameprodine.
 - f. Alphamethadol.
 - g. Alpha-methylfentanyl (~~(N-(1-methyl-2-(2-thienyl)ethyl-4-piperidiny)-N-phenylpropanamide)~~ (N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidy] propionanilide; ~~1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine~~).
 - h. Alpha-Methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidiny]-N-phenylpropanamide).
 - i. ~~Benzylfentanyl~~.
 - j. Benzethidine.
 - ~~k.~~ j. Betacetylmethadol.

- ~~h~~ k. Beta-hydroxyfentanyl (N-(1-(2-hydroxy-2-phenethyl)-4-piperidiny)-N-phenylpropanamide).
- ~~m~~ l. Beta-hydroxy 3-methylfentanyl (N-(1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidiny)-N-phenylpropanamide).
- ~~n~~ m. Betameprodine.
- ~~o~~ n. Betamethadol.
- ~~p~~ o. Betaprodine.
- ~~q~~ p. Clonitazene.
- ~~r~~ q. Dextromoramide.
- ~~s~~ r. Diampronide.
- ~~t~~ s. Diethylthiambutene.
- ~~u~~ t. Difenoxin.
- ~~v~~ u. Dimenoxadol.
- ~~w~~ v. Dimepheptanol.
- ~~x~~ w. Dimethylthiambutene.
- ~~y~~ x. Dioxaphetyl butyrate.
- ~~z~~ y. Dipipanone.
- ~~aa~~ z. Ethylmethylthiambutene.
- ~~bb~~ aa. Etonitazene.
- ~~cc~~ bb. Etoxidine.
- ~~dd~~ cc. Furethidine.
- ~~ee~~ dd. Hydroxypethidine.
- ~~ff~~ ee. Ketobemidone.
- ~~gg~~ ff. Levomoramide.
- ~~hh~~ gg. Levophenacymorphan.
- hh. 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide).
- ii. 3-Methylthiofentanyl (N-[3-methyl-1-(2-thienyl)ethyl-4-piperidiny]-N-phenylpropanamide).
- jj. Morpheridine.
- kk. MPPP (1-methyl-4-phenyl-4-propionoxypiperidine).

- ~~jj.~~ ll. Noracymethadol.
- ~~kk.~~ mm. Norlevorphanol.
- ~~ll.~~ nn. Normethadone.
- ~~mm.~~ oo. Norpipanone.
- ~~nn.~~ † Methyl 4 Phenyl 4 Propionoxypiperidine. (MPPP).
- ~~pp.~~ Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidiny] propanamide).
- ~~oo.~~ qq. PEPAP _____ (1-(2-Phenylethyl)-4-Phenyl-4-Acetyloxypiperidine). (PEPAP).
- ~~pp.~~ Para fluorofentanyl.
- ~~qq.~~ rr. Phenadoxone.
- ~~rr.~~ ss. Phenampromide.
- ~~ss.~~ tt. Phenomorphan.
- ~~tt.~~ uu. Phenoperidine.
- ~~uu.~~ vv. Piritramide.
- ~~vv.~~ ww. Proheptazine.
- ~~ww.~~ xx. Properidine.
- ~~xx.~~ yy. Propiram.
- ~~yy.~~ zz. Racemoramide.
- ~~aaa.~~ Thiofentanyl (N-phenyl-N-[1-(2-thienyl) ethyl-4-piperidiny]-propanamide).
- ~~zz.~~ bbb. Tilidine.
- ~~aaa.~~ 3-methylthiofentanyl (N-(1-(3-methyl-1-(2-thienyl)ethyl-4-piperidiny] N-phenylpropanamide)
- ~~bbb.~~ Thenylfentanyl.
- ~~ccc.~~ Thiofentanyl (N-phenyl N-(1-(2-thienyl)ethyl-4-piperidiny] propanamide).
- ~~ddd.~~ Trimeperidine.
5. Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains containing any quantity of the following hallucinogenic substances, or which contains any of its including their salts, isomers, and salts of isomers whenever the existence of such those salts, isomers, and salts of isomers is

possible within the specific chemical designation (for purposes of this subsection only, the term "isomer" includes the optical position and geometric isomers):

- a. 4-bromo-2, 5-dimethoxy-amphetamine. (Some trade or other names: 4-bromo-2, 5-dimethoxy-a-methylphenethylamine; 4-bromo-2, 5-DMA.)
- b. 2, 5-dimethoxy-amphetamine. (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, 4methylenedioxy-amphetamine.
- e. 4-methyl-2, 5-dimethoxyamphetamine. (Some trade and other names: 4-methyl-2, 5dimethoxy-a-methylphenethylamine; ~~"DOM"~~; DOM and ~~"STP"~~ STP.)
- f. 3, 4-methylenedioxy amphetamine.
- g. 3, 4-methylenedioxymethamphetamine (MDMA).
- h. 3, 4, 5-trimethoxy amphetamine.
- ~~h-~~ i. Bufotenine. (Some trade and other names: 3-B Beta Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N, N-dimethyltryptamine; mappine.)
- ~~i-~~ j. Diethyltryptamine. (Some trade ~~and~~ or other names: N,N-Diethyltryptamine; DET.)
- ~~j-~~ k. Dimethyltryptamine. (Some trade and other names: DMT.)
- l. Hashish.
- ~~k-~~ m. 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-~~ n. Lysergic acid diethylamide.
- ~~m-~~ o. ~~Marihuana~~ Marijuana.
- ~~n-~~ p. Mescaline.
- ~~o-~~ q. Parahexyl-~~7374~~. (Some trade or other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,9-trimethyl-6H-dibenzol[b,d]pyran; Synhexyl.)
- ~~p-~~ r. Peyote, meaning all parts of the plant presently classified botanically as *Lophophora williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds or extracts.

- q. s. N-ethyl-3-piperidyl benzilate.
- r. t. N-methyl-3-piperidyl benzilate.
- s. u. Psilocybin.
- t. v. Psilocyn.
- u. w. Tetrahydrocannabinols. Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:
- (1) cis or trans tetrahydrocannabinol, and their optical isomers.
 - (2) 6 cis or trans tetrahydrocannabinol, and their optical isomers.
 - (3) 3, 4 cis or trans tetrahydrocannabinol, and its optical isomers. (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)
- v. x. Ethylamine analog of phencyclidine. (Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE.)
- w. y. Pyrrolidine analog of phencyclidine. (Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCy, PHP.)
- x. z. Thiophene Analog of Phencyclidine. (Some trade or other names: (1-(1-(2-thienyl) cyclohexyl) piperidine; 2-Thienyl Analog of Phencyclidine; TPCP, TCP.)
- y. ~~3. 4-Methylenedioxymethamphetamine~~ ~~←MDMA→~~

SECTION 2. AMENDMENT. Subdivision d of subsection 3 of section 19-03.1-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- d. Coca leaves and any salt, compound, derivative, or preparation of coca leaves, including cocaine and ecgonine and their salts, isomers, derivatives, and salts of isomers and derivatives, and any salt, compound, derivative, or preparation thereof ~~which~~ that is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

SECTION 3. AMENDMENT. Subsections 4 and 8 of section 19-03.1-07 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

4. Opiates. Unless specifically excepted or unless in another schedule, any of the following opiates, including ~~its~~ their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of ~~these such~~ those isomers, esters, ethers, and salts is possible within the specific chemical designation, dextropropoxyphene excepted:
- a. Alfentanil.
 - b. Alphaprodine.
 - c. Anileridine.
 - d. Bezitramide.
 - e. Bulk dextropropoxyphene (nondosage forms).
 - f. Carfentanil.
 - g. Dihydrocodeine.
 - ~~g~~ h. Diphenoxylate.
 - ~~h~~ i. Fentanyl.
 - ~~i~~ j. Isomethadone.
 - ~~j~~ k. Levomethorphan.
 - ~~k~~ l. Levorphanol.
 - ~~l~~ m. Metazocine.
 - ~~m~~ n. Methadone.
 - ~~n~~ o. Methadone - Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane.
 - ~~o~~ p. Moramide - Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid.
 - ~~p~~ q. Pethidine (meperidine).
 - ~~q~~ r. Pethidine - Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine.
 - ~~r~~ s. Pethidine - Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate.
 - ~~s~~ t. Pethidine - Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.
 - ~~t~~ u. Phenazocine.
 - ~~u~~ v. Priminodine.
 - ~~v~~ w. Racemethorphan.

~~w~~ x. Racemorphan.

~~x~~ y. Sufentanil.

8. Hallucinogenic substances.

a. Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a ~~U.S. Food federal food and Drug Administration~~ drug administration approved drug product. (Some other names for dronabinol: (6aR-trans)-6a, 7, 8, 10a-tetrahydro-6, 6, 9-trimethyl-3-pentyl-6H-dibenzo [b, d] pyran-10l, or (-)-delta-9-(trans)-tetrahydrocannabinol) (THC).

b. Nabilone [another name for nabilone (\pm)-trans-3-(1,1-dimethylheptyl)-6, 6a, 7, 8, 10, 10a-hexahydro-1-hydroxy-6, 6-dimethyl-9Hdibenzo[b,d]pyran-9-one].

SECTION 4. AMENDMENT. Subsections 4 and 6 of section 19-03.1-09 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

4. Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation ~~which contains~~ containing 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~~ containing 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 thereof.

d. Chlorhexadol.

e. Glutethimide.

- f. Lysergic acid.
 - g. Lysergic acid amide.
 - h. Methyprylon.
 - i. Sulfondiethylmethane.
 - j. Sulfonethylmethane.
 - k. Sulfonmethane.
 - l. Tiletamine and zolazepam or any salt thereof. Some trade or other names for a tiletamine-zolazepam combination product: Telazol. Some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Some trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e][1,4]-diazepin-7(1H)-one, flupyrzapon.
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** their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:
- a. Not more than 1.80 grams of codeine 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 per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
 - c. Not more than 300 milligrams of dihydrocodeinone 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 dihydrocodeinone 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 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 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, nonnarcotic ingredients in recognized therapeutic amounts.

- h. Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

SECTION 5. AMENDMENT. Subsections 4 and 6 of section 19-03.1-11 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

4. Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation ~~which contains~~ containing any quantity of the following substances, including ~~its~~ their salts, isomers, and salts of isomers whenever the existence of ~~such~~ those salts, isomers, and salts of isomers is possible within the specific chemical designation:
- a. Alprazolam.
 - b. Barbital.
 - c. Bromazepam.
 - d. Camazepam.
 - e. Chloral betaine.
 - f. Chloral hydrate.
 - g. Chlordiazepoxide.
 - h. Clobazam.
 - i. Clonazepam.
 - j. Clorazepate.
 - k. Clotiazepam.
 - l. Cloxazolam.
 - m. Delorazepam.
 - n. Diazepam.
 - o. Estazolam.
 - p. Ethchlorvynol.
 - q. Ethinamate.
 - r. Ethyl ~~loflazepate~~ loflazepate.
 - ~~s. Ethylloflazepate.~~
 - ~~t.~~ s. Fludiazepam.

- ~~u-~~ t. Flunitrazepam.
~~v-~~ u. Flurazepam.
~~w-~~ v. Halazepam.
~~x-~~ w. Haloxazolam.
~~y-~~ x. Ketazolam.
~~z-~~ y. Loprazolam.
~~aa-~~ z. Lorazepam.
~~bb-~~ aa. Lormetazepam.
~~cc-~~ bb. Mebutamate.
~~dd-~~ cc. Medazepam.
~~ee-~~ dd. Meprobamate.
~~ff-~~ ee. Methohexital.
~~gg-~~ ff. Methylphenobarbital (mephobarbital).
~~hh-~~ gg. Midazolam.
~~ii-~~ hh. Nimetazepam.
~~jj-~~ ii. Nitrazepam.
~~kk-~~ jj. Nordiazepam.
~~ll-~~ kk. Oxazepam.
~~mm-~~ ll. Oxazolam.
~~nn-~~ mm. Paraldehyde.
~~oo-~~ nn. Petrichloral.
~~pp-~~ oo. Phenobarbital.
~~qq-~~ pp. Pinazepam.
~~rr-~~ qq. Prazepam.
~~ss-~~ rr. Quazepam.
~~tt-~~ ss. Temazepam.
~~uu-~~ tt. Tetrazepam.
~~vv-~~ uu. Triazolam.

6. 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, and salts of isomers:
- a. Cathine.
 - b. Diethylpropion.
 - c. Fencamfamin.
 - d. Fenproporex.
 - ~~b-~~ e. Mazindol.
 - f. Mefenorex.
 - ~~c-~~ g. Pemoline (including organometallic complexes and chelates thereof).
 - ~~d-~~ h. Phentermine.
 - ~~e-~~ i. Pipradrol.
 - ~~f-~~ j. SPA ((-)-1-dimethylamino-1, 2-diphenylethane).

SECTION 6. AMENDMENT. Section 19-03.1-13 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-03.1-13. Schedule V.

1. The controlled substances listed in this section are included in schedule V.
2. Schedule V consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.
3. Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing buprenorphine or its salts.
4. Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, which includes 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 narcotic drugs alone.
 - a. Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.

- b. Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.
 - c. Not more than 100 milligrams of ethylmorphine 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.
5. Stimulants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers:
- a. Propyhexedrine.
 - b. Pyrovalerone.

SECTION 7. AMENDMENT. Subsection 4 of section 19-03.1-37 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. In all prosecutions under this chapter involving the analysis of a substance or sample thereof, a certified copy of the analytical report signed by the state toxicologist, or the toxicologist's designee, or the director of the consolidated laboratories branch of the department of health and consolidated laboratories ~~shall,~~ or the director's designee, must be accepted as prima facie evidence of the results of the analytical findings.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 267

SENATE BILL NO. 2441
(Senators Stenehjem, Olson, Maxson)
(Representatives Wentz, Schneider)

DRUG OFFENSE CULPABILITY

AN ACT to amend and reenact section 19-03.1-23 of the North Dakota Century Code, relating to culpability for certain drug offenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-03.1-23 of the 1987 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 willfully, as defined in section 12.1-02-02, manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance; provided, that any person whose conduct is in violation of section 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 controlled substance classified in schedule I or II which is a narcotic drug, is guilty of a class A felony.
 - b. Any other controlled substance classified in schedule I, II, or III, is guilty of a class B felony, except that any person who delivers one hundred pounds [45.36 kilograms] or more of marijuana is guilty of a class A felony.
 - c. A substance classified in schedule IV, is guilty of a class C felony.
 - d. 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 willfully, as defined in section 12.1-02-02, create, deliver, or possess with intent to deliver, a counterfeit substance; provided, that any person whose conduct is in violation of section 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 counterfeit substance classified in schedule I or II which is a narcotic drug, is guilty of a class A felony.

- b. Any other counterfeit substance classified in schedule I, II, or III, is guilty of a class B felony.
 - c. A counterfeit substance classified in schedule IV, is guilty of a class C felony.
 - d. A counterfeit substance classified in schedule V, is guilty of a class A misdemeanor.
3. It is unlawful for any person to willfully, as defined in section 12.1-02-02, 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 section 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 this chapter and has not been convicted of any other criminal offense.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 268

SENATE BILL NO. 2176
(Committee on Judiciary)
(At the request of the Attorney General)

CONTROLLED SUBSTANCE VIOLATION FORFEITURES

AN ACT to create and enact sections 19-03.1-36.1, 19-03.1-36.2, 19-03.1-36.3, 19-03.1-36.4, 19-03.1-36.5, 19-03.1-36.6, and 19-03.1-36.7 of the North Dakota Century Code, relating to forfeiture procedures; to amend and reenact subsections 1, 5, and 6 of section 19-03.1-36 of the North Dakota Century Code, relating to forfeitures; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1, 5, and 6 of section 19-03.1-36 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. The following are subject to forfeiture:
 - a. All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this chapter.
 - b. All imitation controlled substances as defined by sections 19-03.2-01 and 19-03.2-02.
 - c. 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.
 - d. All property which is used, or intended for use, as a container for property described in subdivision a, b, or c.
 - e. 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, b, or c, but:
 - (1) 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.
 - (2) 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.

- (3) A conveyance is not subject to forfeiture for a violation of subsection 3 of section 19-03.1-23, or subsection 3 of section 19-03.2-03.
 - (4) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if they neither had knowledge of nor consented to the act or omission.
- f. 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.
 - g. All drug paraphernalia as defined in title 12.1.
 - h. All money, coin, currency, and everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of this chapter or an imitation controlled substance in violation of chapter 19-03.2, and all proceeds traceable to any violation of this chapter. The property described in this subdivision shall be forfeited in the same manner and procedure as conveyances real and personal property, assets, profits, income, proceeds, or an interest therein, acquired or derived from the unlawful purchase, attempted purchase, delivery, attempted delivery, manufacturing, or attempted manufacturing of any controlled substance or imitation controlled substance.
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 board or a law enforcement agency may:
- a. Retain it for official use or transfer the custody or ownership of any forfeited property to any federal, state, or local agency. The board shall ensure the equitable transfer of any forfeited property to the appropriate federal, state, or local law enforcement agency so as to reflect generally the contribution of that agency participating directly in any of the acts that led to the seizure or forfeiture of the property. A decision to transfer the property is not subject to review.
 - b. 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, subject to section 54-12-14, 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 the attorney general to take custody of property and remove it for disposition in accordance with law.
 - d. Forward it to the bureau for disposition.
6. Controlled substances listed in schedule F as defined in this chapter and imitation controlled substances as defined in chapter 19-03.2 that are possessed, transferred, sold, or offered for sale in violation of this chapter and drug paraphernalia as defined in chapter 12.1-31.1 are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in schedule F as defined in this chapter and imitation controlled substances as defined in chapter 19-03.2, which are seized or come into the possession of the state and drug paraphernalia as defined in chapter 12.1-31.1, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.

SECTION 2. Section 19-03.1-36.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

19-03.1-36.1. Manner of forfeiture. Property subject to forfeiture under this chapter, other than property that may be summarily forfeited, may be forfeited by order of a district court only after:

1. A written consent to forfeiture executed by the owner of the property and all persons with a legal interest in the property to be forfeited has been filed with the court; or
2. Commencement of forfeiture proceedings.

SECTION 3. Section 19-03.1-36.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

19-03.1-36.2. Forfeiture proceeding as civil action - Standard of proof. Forfeiture proceedings are civil actions against the property to be forfeited and the standard of proof is a preponderance of the evidence.

SECTION 4. Section 19-03.1-36.3 of the North Dakota Century Code is hereby created and enacted to read as follows:

19-03.1-36.3. Summons and complaint for forfeiture of property - Contents of complaint - Notice. When property described in subsection 1 of section 19-03.1-36 is to be forfeited, other than property described in subsection 6 of section 19-03.1-36, and in the absence of a written consent to forfeiture, forfeiture proceedings must be commenced by the filing of a summons and complaint for forfeiture of the property in the district court of the county in which the property was seized, is being held, or is located. In the case of real property, the summons and complaint must be filed in the county in which the real property, or some part of the real property, is located. The proceedings must be brought in the name of the state. The complaint must describe the property, state its location, state its present custodian, state the name of each owner if known, state the name of each party with a legal interest in the property if known or of legal record, allege the essential elements of the violation that is claimed to exist, and must conclude with a prayer to enforce the forfeiture. Notice of the forfeiture proceedings must be given to each known owner and known person with a legal interest in the property to be forfeited by serving a copy of

the summons and complaint in accordance with the North Dakota Rules of Civil Procedure. The procedure governing the proceedings, except as otherwise provided in this chapter, is the same as that prescribed for civil proceedings.

SECTION 5. Section 19-03.1-36.4 of the North Dakota Century Code is hereby created and enacted to read as follows:

19-03.1-36.4. Answer by claimant of property - Time for filing. Within twenty days after the service of the summons and complaint for forfeiture, the owner of the property to be forfeited and any other person with a legal interest in the property may file an answer claiming an interest in that property and claiming that person's interest is not subject to forfeiture under this chapter.

SECTION 6. Section 19-03.1-36.5 of the North Dakota Century Code is hereby created and enacted to read as follows:

19-03.1-36.5. Disposition of property if no answer filed. If at the end of twenty days after the summons and complaint have been served there is no answer filed with the court against the complaint for forfeiture, the court shall order the forfeiture and disposition of the property as prayed for in the complaint.

SECTION 7. Section 19-03.1-36.6 of the North Dakota Century Code is hereby created and enacted to read as follows:

19-03.1-36.6. Hearing on contested forfeiture - Order releasing or forfeiting property. If an answer is filed within the time limits in this chapter, the forfeiture proceedings must be set for hearing before the court. At the hearing, the state shall establish probable cause for instituting the forfeiture action following which any owner or person with a legal interest in the property to be forfeited who has filed an answer to the complaint has the burden of proving that the property to be forfeited is not subject to forfeiture under this chapter. If the court finds that the property is not subject to forfeiture under this chapter, the court shall order the property released to the owner or other person with a legal interest in the property as that person's right, title, or interest appears. The court shall order the property forfeited if it determines that such property or an interest therein is subject to forfeiture.

SECTION 8. Section 19-03.1-36.7 of the North Dakota Century Code is hereby created and enacted to read as follows:

19-03.1-36.7. Legal interest in property. A person alleging a bona fide legal interest in property to be forfeited must establish by a preponderance of the evidence that such legal interest existed at the time of seizure or taking of custody of the property. In the case of a claimed bona fide security interest in the property, the person claiming such interest must establish by a preponderance of the evidence that the security interest in the property to be forfeited existed or was of public record at the time of seizure or taking of custody of the property.

SECTION 9. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 6, 1989
Filed April 7, 1989

CHAPTER 269

HOUSE BILL NO. 1352
(Haugen, J. DeMers, Tollefson)

ANABOLIC STEROIDS

AN ACT to create and enact a new section to chapter 19-04 of the North Dakota Century Code, relating to the distribution of anabolic steroids; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 19-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Distribution of anabolic steroids prohibited - Exception - Penalty. A person who distributes or possesses with the intent to distribute an anabolic steroid for any use in humans other than the treatment of disease under the prescription of a physician is guilty of a class B felony.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 270

HOUSE BILL NO. 1407
(Ulmer)**PETROLEUM INSPECTION, REPORTS, AND BONDS**

AN ACT to amend and reenact sections 19-10-19, 19-10-20, and 19-10-21 of the North Dakota Century Code, relating to inspection fees for petroleum products in North Dakota, reporting of petroleum products, and bonds required of petroleum dealers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

19-10-19. Inspection fees. Every person ~~shipping or transporting kerosene, gasoline, tractor fuel, heating oil, or diesel fuel into this state for sale or consignment or with intent to sell or consign the same, or holding any such product for sale in this state, licensed by the tax commissioner as a motor vehicle fuel, special fuels, or liquified petroleum wholesale dealer shall pay to the department tax commissioner an inspection fee of one-fortieth of a cent per gallon [3.79 liters] for each and every gallon [3.79 liters] thereof so shipped or transported into the state, or held for sale within the state. An inspection fee shall not be required for a shipment or consignment of gasoline, kerosene, tractor fuel, heating oil, or diesel fuel when the inspection fee has already been paid by another dealer of gasoline, kerosene, tractor fuel, heating oil, or diesel fuel sold or used during a calendar month except those gallons sold out-of-state or those gallons sold as original package sales as defined in chapters 57-43.1 and 57-43.2. The fee shall must accompany the monthly report required in the following section and shall be is due on the first no later than the twenty-fifth day of each calendar month for the preceding month. Such fee shall become delinquent when ten days past due~~ The tax commissioner shall forward all money collected under this section to the state treasurer monthly, and the state treasurer shall place the money in the general fund of the state. The provisions of chapters 57-43.1 and 57-43.2 pertaining to the administration of motor vehicle fuel and special fuels taxes not in conflict with the provisions of this chapter govern the administration of the inspection fee levied by this chapter.

SECTION 2. AMENDMENT. Section 19-10-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-10-20. Report to ~~department tax commissioner~~ of petroleum products - Contents. ~~On the first No later than the twenty-fifth day of each calendar month, every receiver or consignee of any gasoline, kerosene, tractor fuel, heating oil, or diesel fuel shall person licensed by the tax commissioner as a motor vehicle fuel, special fuels, or liquefied petroleum wholesale dealer shall send to the department tax commissioner a correct report of all shipments, consignments, or receipts purchases and sales of gasoline,~~

kerosene, tractor fuel, heating oil, or diesel fuel during the preceding month. The report shall must include the following:

- 1- The number of gallons [liters] of gasoline, kerosene, tractor fuel, heating oil, and diesel fuel received.
- 2- The grade or class of each shipment or consignment.
- 3- The date received.
- 4- The name of the consignor.
- 5- The name of the person, firm, or corporation transporting or delivering the petroleum products to the consignee the same information as required in chapters 57-43.1 and 57-43.2 for motor vehicle fuel and special fuels tax collection purposes.

Failure to send such the report and the inspection fee required by the preceding section to the department shall constitute tax commissioner constitutes a violation of the provisions of this chapter.

SECTION 3. AMENDMENT. Section 19-10-21 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-10-21. Bond may be required of dealer in petroleum products. The department tax commissioner may require any person importing gasoline, kerosene, tractor fuel, heating oil, or diesel fuel for sale or consignment within this state or in possession of any such petroleum products with intent to sell the same, to deposit with the department licensed by the tax commissioner as a motor vehicle fuel, special fuels, or liquefied petroleum wholesale dealer, to furnish a surety bond payable to the state of North Dakota in the penal sum of five hundred dollars, or in twice the amount of inspection fees due for any calendar month, whichever amount is the greater, guaranteeing to the state true reports of receipts purchases and sales of gasoline, kerosene, tractor fuel, heating oil, and diesel fuel and the payment of all inspection fees provided for in this chapter. The bond shall be approved as to its sufficiency by the department The tax commissioner shall determine the sufficiency of the bond. A single bond may cover dealing in one or all of the petroleum products mentioned in this chapter. When any inspection fee is not paid within twenty days after it has become delinquent, the person bonding the delinquent may be called upon to make good upon the bond for such delinquent fees.

Approved April 3, 1989
Filed April 3, 1989

CHAPTER 271

SENATE BILL NO. 2492
(Mutch, Vosper)

ABOVEGROUND PETROLEUM TANKS

AN ACT to create and enact a new section to chapter 19-10 of the North Dakota Century Code, relating to aboveground storage tanks.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 19-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

Aboveground storage tanks permitted - Limitations. Subject to local zoning ordinances, a business selling petroleum products at retail may utilize aboveground tanks with a maximum capacity not exceeding nineteen thousand gallons [71922.6 liters] for the storage of petroleum products. No business may use more than five aboveground storage tanks at one location.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 272

SENATE BILL NO. 2170
(Committee on Agriculture)
(At the request of the State Department of Health
and Consolidated Laboratories)

PESTICIDE REGISTRATION AND SALE

AN ACT to amend and reenact sections 19-18-02, 19-18-03, 19-18-04, 19-18-05, 19-18-06, 19-18-06.1, 19-18-07, 19-18-08, 19-18-09, 19-18-10, and 19-18-11 of the North Dakota Century Code, relating to the registration and sale of pesticides.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 19-18-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-18-02. Definitions. For the purposes of this chapter, unless the context or subject matter otherwise requires:

1. "Active ingredient" means:
 - a. In the case of ~~an economic poison~~ a pesticide other than a plant regulator, defoliant, or desiccant, any ingredient which will prevent, destroy, repel, or mitigate ~~insects, fungi, rodents, weeds, or other~~ pests.
 - b. In the case of a plant regulator, any ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the ~~produce~~ product thereof.
 - c. In the case of a defoliant, any ingredient which will cause the leaves or foliage to drop from a plant.
 - d. In the case of a desiccant, any ingredient which will artificially accelerate the drying of plant tissue.
2. "Adulterated" applies to any ~~economic poison~~ pesticide if its strength or purity falls below the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the ~~article pesticide~~, or if any valuable constituent of the ~~article pesticide~~ pesticide has been wholly or in part abstracted.
3. "Antidote" means the most practical immediate treatment in case of poisoning and includes first aid treatment.

* NOTE: Section 19-18-02 was also amended by section 19 of Senate Bill No. 2005, chapter 34.

4. "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant with or without causing abscission.
5. "Department" means the state department of health and consolidated laboratories.
6. "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissues.
- ~~6-~~ 7. "Device" means any instrument or contrivance intended for trapping, destroying, repelling, or mitigating insects or rodents or destroying, repelling, or mitigating fungi, nematodes, or weeds, or such other pests as may be designated by the department, pests but not including equipment used for the application of economic poisons pesticides when sold separately therefrom, or rodent traps.
7. "Economic poison" means any substance intended for preventing, destroying, repelling, or mitigating any insects, rodents, nematodes, snails, slugs, fungi, weeds, or other forms of plant or animal life or viruses, bacteria, or other micro-organisms, and any substance intended for use as a plant regulator, defoliant, or desiccant.
8. "Environment" means air, water, land and all plants and man and other animals living therein, and the interrelationships which exist among these.
9. "Federal Act" means the Federal Insecticide, Fungicide, and Rodenticide Act.
10. "Fungi" means all non-chlorophyll-bearing thallophytes, that is, all non-chlorophyll-bearing plants of a lower order than mosses and liverworts, as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other animals, and those on or in processed food, beverages, or pharmaceuticals.
- ~~9-~~ 11. "Fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi.
- ~~10-~~ 12. "Herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.
- ~~11-~~ 13. "Inert ingredient" means an ingredient which is not an active ingredient.
- ~~12-~~ 14. "Ingredient statement" means:
 - a. A statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the economic poison pesticide; or
 - b. A statement of the name of all active ingredients in the order of their predominance in the product, together with the name of each and total percentage of the inert ingredients, if there be, in the economic poison pesticide, except subdivision a shall apply if the preparation is highly toxic to man,

determined as provided in section 19-18-05, and in addition to subsections 1 and 2 of section 19-18-05. In case the economic poison pesticide contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, each calculated as elemental arsenic.

- +3- 15. "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class Insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and wood lice.
- +4- 16. "Insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects which may be present in any environment whatsoever.
- +5- 17. "Label" means the written, printed, or graphic matter on, or attached to, the economic poison pesticide or device, or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the economic poison or device any of its containers or wrappers.
- +6- 18. "Labeling" means all labels and other written, printed, or graphic matter:
- a. Upon the economic poison pesticide or device or any of its containers or wrappers;
 - b. Accompanying the economic poison pesticide or device at any time;
 - c. To which reference is made on the label or in literature accompanying the economic poison pesticide or device, except when accurate, nonmisleading reference is made to current official publications of the environmental protection agency, the United States department of agriculture or interior, the United States public health service, state experiment stations, state agricultural colleges, or other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the fields of economic poisons pesticides.
- +7- 19. "Misbranded" applies:
- a. To any economic poison pesticide or device if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;
 - b. To any economic poison pesticide:
 - (1) If it is an imitation of or is offered for sale under the name of another economic poison pesticide;

- (2) If its labeling bears any reference to registration under this chapter;
- (3) If the labeling accompanying it does not contain instructions directions for use which are necessary and, if complied with, adequate for the protection of the public to protect health and the environment;
- (4) If the label does not contain a warning or caution statement which may be necessary and, if complied with, adequate to prevent injury to living man and other vertebrate animals protect health and the environment;
- (5) If the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase; except that a pesticide is not misbranded under this subsection if:
 - (a) The size or form of the immediate container, or the outside container or wrapper of the retail package, makes it impracticable to place the ingredient statement on the part which is presented or displayed under customary conditions of purchase; and
 - (b) The ingredient statement appears prominently on another part of the immediate container, or outside container or wrapper, permitted by the department.
- (6) The labeling does not contain a statement of the use classification under which the product is registered;
- (7) There is not affixed to its container, and to the outside container or wrapper of the retail package, if there is one, through which the required information on the immediate container cannot be clearly read, a label bearing:
 - (a) The name and address of the producer, registrant, or person for whom produced;
 - (b) The name, brand, or trademark under which the pesticide is sold;
 - (c) The net weight or measure of the content;
 - (d) When required by regulation of the department to effectuate the purposes of this chapter, the registration number assigned to the pesticide under this chapter, and the use classification.
- (8) The pesticide contains any substance or substances in quantities highly toxic to man, unless the label bears, in addition to any other matter required by this chapter:

- (a) The skull and crossbones;
- (b) The word "poison" prominently in red on a background of distinctly contrasting color; and
- (c) A statement of a practical treatment (first aid or otherwise) in case of poisoning by the pesticide.
- ~~6~~ (9) If any word, statement, or other information required by or under the authority of this chapter to appear on the labeling is not prominently placed thereon such conspicuousness, as compared with other words, statements, designs, or graphic matter in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
- ~~7~~ (10) If in the case of an insecticide, nematocide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it shall be injurious to living man or other vertebrate animals or vegetation, except weeds, to which it is applied, or to the person applying such economic poison pesticide; or
- ~~8~~ (11) If a plant regulator, defoliant, or desiccant when used as directed shall be injurious to man or other vertebrate animals, or the vegetation to which it is applied; provided, that physical or physiological effect on plants or parts thereof shall not be deemed injurious when this is the purpose for which the plant regulator, defoliant, or desiccant is applied in accordance with label claims and recommendations.
- ~~18~~ 20. "Nematocide" means any substance intended to prevent, destroy, repel, or mitigate nematodes.
- ~~19~~ 21. "Nematode" means any of the nonsegmented roundworms harmful to agricultural plants.
- ~~20~~ 22. "Person" means any individual, partnership, association, corporation, or organized group of persons whether incorporated or not.
- ~~21~~ 23. "Pest" means any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life, viruses, bacteria, or other micro-organisms except viruses, bacteria, or other micro-organisms on or in living man or other living animals.
24. "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pests and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.
- ~~22~~ 25. "Plant regulator" means any substance or mixture of substances intended, through physiological action, to accelerate or retard the rate of growth or maturation, or to otherwise alter the behavior of ornamental or crop plants or the produce thereof, but shall not

include substances insofar as they are intended to be used as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments. The term "plant regulator" does not include any of such of those nutrient mixtures or soil amendments as are commonly known as vitamin-hormone horticultural products, intended for improvement, maintenance, survival, health, and propagation of plants, and as are not for pest destruction and are nontoxic and nonpoisonous in the undiluted packaged concentration.

- ~~26.~~ "Protect health and environment" means protection against any unreasonable adverse affects on the environment.
- ~~23-~~ 27. "Registrant" means the person registering any economic poison pesticide pursuant to the provisions of this chapter.
- ~~24-~~ 28. "Restricted use pesticides" means any pesticide which the department has found and determined under the provisions of this chapter to be injurious to persons, pollinating beneficial insects, animals, crops, or lands in addition to the environment other than the pests it is intended to repel, destroy, control, or mitigate.
- ~~25-~~ 29. "Rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animal which the department shall declare to be a pest.
- ~~26-~~ 30. "Snails or slugs" include all harmful agricultural mollusks.
31. "Unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.
- ~~27-~~ 32. "Weed" means any plant which grows where not wanted.

SECTION 2. AMENDMENT. Section 19-18-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-18-03. Prohibited acts. No person ~~shall~~ may distribute, sell, or offer for sale within this state or deliver for transportation or transport in intrastate commerce or between points within this state through any point outside this state any of the following:

1. Any economic poison pesticide which has not been registered pursuant to the provisions of section 19-18-04, or any economic poison pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the composition of an economic poison a pesticide differs from its composition as represented in connection with its registration; provided, that in the discretion of the department, a change in the labeling or formula of an economic poison a pesticide may be made within a registration period without requiring reregistration of the product.
2. Any economic poison pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container, or in a container

repackaged by a facility or person with a federal environmental protection agency issued establishment number, and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one, through which the required labeling information on the immediate container cannot be clearly read: a label bearing:

- a. The name and address of the manufacturer, registrant, or person for whom manufactured;
 - b. The name, brand, or trademark under which said article is sold; and
 - c. The net weight or measure of the content subject, however, to such reasonable variations as the department may permit.
3. Any economic poison which contains any substance or substances in quantities highly toxic to man, determined as provided in section 19-10-05, unless the label shall bear, in addition to any other matter required by this chapter:
- a. The skull and crossbones;
 - b. The word "poison" prominently, in red, on a background of distinctly contrasting color; and
 - c. A statement of an antidote for the economic poison.
4. 3. The economic poison pesticide commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate unless they have been distinctly colored or discolored as provided by regulations issued in accordance with this chapter, or any other white powder economic poison pesticide which the department, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, by regulation, shall require to be distinctly colored or discolored; unless it has been so colored or discolored. The department may exempt any economic poison pesticide to the extent that it is intended for a particular use or uses from the coloring or discoloring required or authorized by this section if the department determines that such coloring or discoloring for such use or uses is not necessary for the protection of the public health.
5. 4. Any economic poison pesticide which is adulterated or misbranded, or any device which is misbranded.
5. No person shall detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this chapter or regulations promulgated hereunder, or to add any substance to, or take any substance from, an economic poison a pesticide in a manner that may defeat the purpose of this chapter.
6. No person shall use for the person's own advantage or reveal other than in response to a proper subpoena, except to a physician or

other qualified person for use in the preparation of an antidote, any information relative to the formula of any product acquired by authority of ~~subsection 4~~ this chapter.

* SECTION 3. AMENDMENT. Section 19-18-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-18-04. Registration - Fees. Any person before selling or offering for sale any ~~economic poison~~ pesticide for use within this state shall file annually with the department an application for registration of such ~~economic poison~~ pesticide. The application must:

1. Give the name and address of each manufacturer or distributor.
2. Give the name and brand, ~~if any,~~ of each product registered, ~~together with an ingredient statement of each product registered in accordance with the provisions of subsection 13 of section 19-18-02,~~ and ~~accompanying each registration application there shall be filed with the department a label of each product so registered. If the department finds that the application conforms to law,~~ the department shall issue to the applicant a certificate of registration of the product. ~~If after public hearing before the department the application is denied, the product shall not be offered for sale.~~
3. Be accompanied by a current label of each product so registered.
4. Be accompanied by an inspection fee of twenty-five dollars for each product. But in cases where the registration fees have been paid by the manufacturer, jobber, or any person, as required by this section, then in that event nothing in this section shall be construed as applying to retail dealers selling economic poisons pesticides. At the close of each calendar month, the department shall transmit to the state treasurer all moneys received for such licenses. The state treasurer shall credit such moneys to the general fund of the state.
5. Be accompanied by a material safety data sheet.

The department may require an applicant or registrant to provide efficacy, toxicity, residue, and any other data necessary to determine if the pesticide will perform its intended function without unreasonable adverse effects on the environment. If the department finds that the application conforms to law, the department shall issue to the applicant a certificate of registration of the product. If after public hearing before the department the application is denied, the product may not be offered for sale.

Each registration expires on the thirty-first of December following its issuance. A certificate of registration may not be issued for a term longer than one year, and is not transferable from one person to another, or from the ownership to whom issued to another ownership, or from one place to another place or location. A penalty of fifty percent of the license or registration fee shall be imposed if the license or certificate of registration is not applied for on or before January first of each year, within the same month such ~~economic poisons~~ pesticides are first manufactured or sold within this state.

* NOTE: Section 19-18-04 was also amended by section 11 of Senate Bill No. 2056, chapter 69.

SECTION 4. AMENDMENT. Section 19-18-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-18-05. Determinations - Rules and regulations - Uniformity. The department is authorized, after opportunity for a hearing:

1. To declare as a pest any form of plant or animal life or virus which is injurious to plants, men, domestic animals, articles, or substances.
2. To determine whether economic poisons pesticides are highly toxic to man and whether the use thereof should be restricted.
3. To determine standards of coloring or discoloring for economic poisons pesticides, and to subject economic poisons pesticides to the requirements of subsection 4 3 of section 19-18-03.

The department may adopt appropriate rules and regulations pursuant to chapter 28-32 for carrying out the provisions of this chapter, including rules and regulations providing for the collection and examination of samples of economic poisons pesticides or devices, and also may adopt such regulations, applicable to and in conformity with the primary standards established by this chapter, as have been or may be prescribed by the United States environmental protection agency with respect to economic poisons pesticides in order that there may be uniformity between the requirements of the several states and the federal government.

SECTION 5. AMENDMENT. Section 19-18-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-18-06. Enforcement. The examination of economic poisons pesticides or devices shall be made under the direction of the department for the purpose of determining whether they comply with the requirements of this chapter. If it shall appear from such examination that an economic poison a pesticide or device fails to comply with the provisions of this chapter, and the department contemplates instituting criminal proceedings against any person, the department shall cause appropriate notice to be given to such person. Any person so notified shall be given an opportunity to present their views, either orally or in writing, with regard to such contemplated proceedings and if thereafter in the opinion of the department it shall appear that the provisions of the chapter have been violated by such person, then the department shall refer the facts to the state's attorney for the county in which the violation shall have occurred with a copy of the results of the analysis or the examination of such article. Nothing in this chapter shall be construed as requiring the department to report for prosecution or for the institution of libel proceedings minor violations of the chapter whenever the department believes that the public interests will be best served by a suitable notice of warning in writing. Each state's attorney to whom any such violation is reported shall cause appropriate proceedings to be instituted and prosecuted in the proper court of jurisdiction without delay. The department, by publication in such manner as the department may prescribe, shall give notice of all judgments entered in actions instituted under the authority of this chapter.

SECTION 6. AMENDMENT. Section 19-18-06.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-18-06.1. "Stop-sale" orders. The department may issue and enforce a stop-sale order to the owner or custodian of any economic poison pesticide when the department finds that the product is being offered for sale in violation of the provisions of this chapter, and the order shall direct that the product be held at a designated place until released in writing by the department. The owner or custodian of such product shall have the right to petition a court of competent jurisdiction in the county where the product is found for an order releasing the product for sale in accordance with the findings of the court.

SECTION 7. AMENDMENT. Section 19-18-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-18-07. Exemptions. The penalties provided for violations of section 19-18-03 shall not apply to:

1. Any carrier while lawfully engaged in transporting an economic poison a pesticide within this state, if such carrier, upon request, shall permit the department to copy all records showing the transactions in and movement of the articles.
2. Public officials of this state and the federal government engaged in the performance of their official duties.
3. The manufacturer or shipper of an economic poison a pesticide for experimental use only:
 - a. By or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of economic poisons pesticides; or
 - b. By others if the economic poison pesticide is not sold and if the container thereof is plainly and conspicuously marked "For experimental use only - not to be sold", together with the manufacturer's name and address. If a written permit has been obtained from the department, economic poisons pesticides may be sold for experiment purposes subject to such restrictions and conditions as may be set forth in the permit.

No article shall be deemed in violation of this chapter when intended solely for export to a foreign country, and when prepared or packed according to the specifications or directions of the purchaser. If not so exported all the provisions of this chapter shall apply.

SECTION 8. AMENDMENT. Section 19-18-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-18-08. Penalties. Any person violating any provision of this chapter shall be guilty of an infraction. In any case where a registrant was issued a warning by the commissioner department pursuant to the provisions of this chapter, such registrant shall upon violating any provision of this chapter other than subsection 1 of section 19-18-03 be guilty of a class A misdemeanor, and the registration of the article with reference to which the violation occurred shall terminate automatically. An article A pesticide the registration of which has been terminated may not again be registered unless the article pesticide, its labeling, and other material required to be

submitted appear to the commissioner department to comply with all the requirements of this chapter.

SECTION 9. AMENDMENT. Section 19-18-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-18-09. Seizures. Any economic poison pesticide or device that is distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state shall be liable to be proceeded against in any proper court of jurisdiction in any county of the state where it may be found and seized for confiscation by process of libel for condemnation:

1. In the case of an economic poison a pesticide:
 - a. If it is adulterated or misbranded;
 - b. If it has not been registered under the provisions of section 19-18-04;
 - c. If it fails to bear on its label the information required by this chapter;
 - d. If it is a white powder economic poison pesticide and is not colored as required under this chapter.
2. In the case of a device, if it is misbranded. If the article pesticide is condemned, it shall, after entry of decree, be disposed of by destruction or sale as the court may direct and the proceeds, if such article pesticide is sold, less legal costs, shall be paid to the state treasurer. The article pesticide shall not be sold contrary to the provisions of this chapter. Upon payment of cost and execution and delivery of a good and sufficient bond conditioned that the article pesticide shall not be disposed of unlawfully, the court may direct that said article pesticide be delivered to the owner thereof for relabeling or reprocessing as the case may be. When a decree of condemnation is entered against the article pesticide, court costs and fees and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of the article pesticide.

SECTION 10. AMENDMENT. Section 19-18-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-18-10. Delegation of duties. All authority vested in the commissioner department by virtue of the provisions of this chapter may with like force and effect be executed by such employees of the department as the commissioner department may from time to time designate for said purpose.

SECTION 11. AMENDMENT. Section 19-18-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-18-11. Cooperation. The commissioner department is authorized and empowered to cooperate with, and enter into agreements with, any other agency of this state or of the federal government or any other state or agency thereof for the purpose of carrying out the provisions of this chapter and securing uniformity of regulations.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 273

HOUSE BILL NO. 1476
(Dalrymple, Belter)

ANHYDROUS AMMONIA HOSES

AN ACT to create and enact two new subsections to section 19-20.2-06 of the North Dakota Century Code, relating to anhydrous ammonia transfer hose requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new subsections to section 19-20.2-06 of the 1987 Supplement to the North Dakota Century Code are hereby created and enacted to read as follows:

A transfer hose must have etched, cast, or impressed on the outer coating all of the following:

- a. The words "ANHYDROUS AMMONIA".
- b. The maximum working pressure of the transfer hose.
- c. The name of the manufacturer of the hose.
- d. The date of manufacture or the expiration date of the hose.

A transfer hose cut, scraped, cracked, or weathered so that the inner white cord is visible must be replaced. A transfer hose with an expiration date printed on the hose must be replaced prior to that date. Transfer hoses without an expiration date must be replaced as follows:

- a. Rayon hoses must be replaced within two years of the date of manufacture.
- b. Nylon hoses must be replaced within four years of the date of manufacture.
- c. Steel reinforced hoses must be replaced within six years of the date of manufacture.

Notwithstanding the replacement dates determined under this subsection for transfer hoses with or without an expiration date, an additional year must be allowed for replacement of transfer hoses in order to take into account delays in the original installation of transfer hoses.

Approved April 10, 1989
Filed April 11, 1989