FOODS, DRUGS, OILS, AND COMPOUNDS

CHAPTER 179

HOUSE BILL NO. 1087

(Human Services Committee)
(At the request of the State Department of Health)

AN ACT to amend and reenact section 19-01-07 of the North Dakota Century Code, relating to fees collected by the state department of health for providing inspections; and to repeal sections 19-01-05 and 19-01-18 of the North Dakota Century Code, relating to inspections performed by the sheriff and by the state department of health.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-01-07 of the North Dakota Century Code is amended and reenacted as follows:

19-01-07. ~~Fees - Disposition~~Contract services.

~~All revenues received and fees and charges collected under this title must be properly accounted for daily by the department and recorded by counties from which the fees and charges are received. The department shall forward all moneys so collected to the state treasurer monthly and the treasurer shall place the same in the state general fund.~~ Funds may be accepted by the department from cities, counties, states, federal agencies, and private organizations for contract services of analytical and inspection work. Such funds must be remitted by the department to the state treasurer and deposited in the operating fund of the state department of health.

SECTION 2. REPEAL. Sections 19-01-05 and 19-01-18 of the North Dakota Century Code are repealed.

Approved March 27, 2013
Filed March 27, 2013

CHAPTER 180

HOUSE BILL NO. 1363

(Representatives Keiser, N. Johnson, Kasper, Pollert, Weisz, Mock, M. Nelson)
(Senators Klein, J. Lee, Heckaman)

AN ACT to create and enact a new section to chapter 19-02.1 of the North Dakota Century Code, relating to maximum allowable cost lists for pharmaceuticals; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 19-02.1 of the North Dakota Century Code is created and enacted as follows:

Maximum allowable cost lists for pharmaceuticals - Pharmacy benefits managers - Penalty.

1. For the purposes of this section:

   a. "Determination" means a decision that settles and ends a controversy or the resolution of a question through appeal.

   b. "Maximum allowable cost price" means a maximum reimbursement amount for a group of therapeutically equivalent and pharmaceutically equivalent multiple source drugs.

   c. "Multiple source drug" means a therapeutically equivalent drug that is available from at least two manufacturers.

   d. "Pharmacy benefits manager" has the same meaning as in section 19-03.6-01.

2. With respect to each contract between a pharmacy benefits manager and a pharmacy, each pharmacy benefits manager shall:

   a. Provide to the pharmacy, at the beginning of each contract and contract renewal, the sources utilized to determine the maximum allowable cost pricing of the pharmacy benefits manager.

   b. Update any maximum allowable cost price list at least every seven business days, and provide prompt notification of the pricing changes to network pharmacies.

   c. Disclose the sources utilized for setting maximum allowable cost price rates on each maximum allowable cost price list included under the contract and identify each maximum allowable cost price list that applies to the contracted pharmacy. A pharmacy benefits manager shall make the list of the maximum allowable costs available to a contracted pharmacy in a format that is readily accessible and usable to the contracted pharmacy.

d. Ensure maximum allowable cost prices are not set below sources utilized by the pharmacy benefits manager.

e. Provide a reasonable administrative appeals procedure to allow a dispensing pharmacy provider to contest a listed maximum allowable price rate. The pharmacy benefits manager shall provide a determination to a provider that has contested a maximum allowable price rate within seven business days. If an update to the maximum allowable price rate for an appealed drug is warranted, the pharmacy benefits manager shall make the change based on the date of the determination and make the adjustment effective for all similarly situated pharmacy providers in this state within the network.

f. Ensure dispensing fees are not included in the calculation of maximum allowable cost price reimbursement to pharmacy providers.

3. A pharmacy benefits manager may not place a prescription drug on a maximum allowable price list unless:

a. The drug has at least two nationally available, therapeutically equivalent, multiple source drugs or a generic drug is available only from one manufacturer;

b. The drug is listed as therapeutically equivalent and pharmaceutically equivalent or "A" or "B" rated in the United States food and drug administration's most recent version of the "Orange Book" or the drug is "Z" rated; and

c. The drug is generally available for purchase by pharmacies in the state from national or regional wholesalers and not obsolete.

4. This section does not apply to state medicaid programs.

5. A pharmacy benefits manager that violates this section is guilty of a class B misdemeanor.

Approved April 12, 2013
Filed April 12, 2013

CHAPTER 181

SENATE BILL NO. 2190

(Senators Dever, Berry, J. Lee)
(Representatives Damschen, Devlin, Rohr)

AN ACT to create and enact a new section to chapter 19-02.1 of the North Dakota Century Code, relating to biosimilar biological products.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 19-02.1 of the North Dakota Century Code is created and enacted as follows:

Biosimilar biological products.

1. In this section:

   a. "Biological product", "biosimilar", "interchangeable", "interchangeable biological product", "license", and "reference product" mean the same as these terms mean under section 351 of the Public Health Service Act [42 U.S.C. 262].

   b. "Prescription" means a product that is subject to section 503(b) of the federal Food, Drug, and Cosmetic Act [21 U.S.C. 353(b)].

2. A pharmacy may substitute a prescription biosimilar product for a prescribed product only if:

   a. The biosimilar product has been determined by the United States food and drug administration to be interchangeable with the prescribed product;

   b. The prescribing practitioner does not specifically indicate in the practitioner's own handwriting "brand medically necessary" on a written prescription, does not expressly indicate that an oral prescription is to be dispensed as communicated, or has not taken a specific overt action to include the "brand medically necessary" language with an electronically transmitted prescription;

   c. The pharmacist informs the individual receiving the biological product that the biological product may be substituted with a biosimilar product and that the individual has a right to refuse the biosimilar product selected by the pharmacist and the individual chooses not to refuse;

   d. The pharmacist notifies the prescribing practitioner orally, in writing, or by electronic transmission within twenty-four hours of the substitution; and

   e. The pharmacy and the prescribing practitioner retain a record of the interchangeable biosimilar substitution for a period of no less than five years.

3. The board of pharmacy shall maintain on its public website a current list, or an internet link to a United States food and drug administration-approved list, of biosimilar biological products determined to be interchangeable under subdivision a of subsection 2.

Approved March 28, 2013
Filed March 28, 2013

CHAPTER 182

HOUSE BILL NO. 1072

(Judiciary Committee)
(At the request of the State Board of Pharmacy)

AN ACT to amend and reenact section 19-02.1-15.1 of the North Dakota Century Code, relating to a criminal penalty for serving as an agent, intermediary, or other entity causing use of the internet to bring together a buyer and seller for dispensing a controlled substance or other specified drug.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-02.1-15.1 of the North Dakota Century Code is amended and reenacted as follows:

19-02.1-15.1. Requirements for dispensing controlled substances and specified drugs - Penalty.

1. As used in this section:

   a. "Controlled substance" has the meaning set forth in section 19-03.1-01.

   b. "Deliver, distribute, or dispense by means of the internet" refers, respectively, to delivery, distribution, or dispensing of a controlled substance or specified drug that is caused or facilitated by means of the internet.

   c. "In-person medical evaluation" means a medical evaluation that is conducted with the patient in the physical presence of the practitioner, without regard to whether portions of the evaluation are conducted by other practitioners, and must include one of the following actions:

      (1) The prescribing practitioner examines the patient at the time the prescription or drug order is issued;

      (2) The prescribing practitioner has performed a prior examination of the patient within twelve months;

      (3) Another prescribing practitioner practicing within the same health system, group, or clinic as the prescribing practitioner has examined the patient within twelve months;

      (4) A consulting practitioner to whom the prescribing practitioner has referred the patient has examined the patient within twelve months; or

      (5) The referring practitioner has performed an examination in the case of a consultant practitioner issuing a prescription or drug order when providing services by means of telemedicine.

d. "Internet" and "practice of telemedicine" have the meanings set forth in the Ryan Haight Online Pharmacy Consumer Protection Act of 2008 [Pub. L. 110-425; 21 U.S.C. 802-803].

e. "Specified drugs" mean:

(1) A skeletal muscle relaxant containing carisoprodol, chlorphenesin, chlorzoxazone, metaxalone, or methocarbamol;

(2) A centrally acting analgesic with opioid activity such as tapentadol or tramadol;

(3) A drug containing butalbital; and

(4) Phosphodiesterase type 5 inhibitors when used to treat erectile dysfunction.

f. "Valid prescription" means a prescription that is issued for a legitimate medical purpose in the usual course of professional practice by a practitioner who has conducted an in-person medical evaluation of the patient.

2. A controlled substance or specified drug may not be delivered, distributed, or dispensed without a valid prescription. It is also unlawful for a person to knowingly or intentionally aid or abet in these activities. An example of such an activity includes knowingly or intentionally serving as an agent, intermediary, or other entity that causes the internet to be used to bring together a buyer and seller to engage in the dispensing of a controlled substance or specified drug.

3. This section applies to the delivery, distribution, and dispensing of a controlled substance or specified drug by means of the internet or any other electronic means from a location whether within or outside this state to a person or an address in this state.

4. Nothing in this section may be construed:

a. To apply to the delivery, distribution, or dispensing of a controlled substance or specified drug by a practitioner engaged in the practice of telemedicine in accordance with applicable federal and state laws;

b. To prohibit or limit the use of electronic prescriptions for a controlled substance or any other drug;

c. To prohibit a physician from prescribing a controlled substance or specified drug through the use of a guideline or protocol established with an allied health professional, resident, or medical student under the direction and supervision of the physician;

d. To prohibit a practitioner from issuing a prescription or dispensing a controlled substance or specified drug in accordance with administrative rules adopted by a state agency authorizing expedited partner therapy in the management of a sexually transmitted disease; or

e. To limit prescription, administration, or dispensing of a controlled substance or specified drug through a distribution mechanism approved by the state health officer in order to prevent, mitigate, or treat a pandemic illness, infectious disease outbreak, or intentional or accidental release of a biological, chemical, or radiological agent.

5. A person who violates this section is guilty of a class C felony.

Approved March 26, 2013
Filed March 27, 2013

CHAPTER 183

HOUSE BILL NO. 1133

(Representatives Larson, Porter, Delmore)
(Senators Anderson, Berry, Nelson)

A BILL to create and enact a new section to chapter 19-03.1 of the North Dakota Century Code, relating to controlled substance analogs; to amend and reenact subsection 7 of section 12-44.1-21, subsection 5 of section 12-46-24, subsection 7 of section 12-47-21, section 19-03.1-01, subdivision b of subsection 1 of section 19-03.1-23, and subsection 7 of section 19-03.1-23 of the North Dakota Century Code, relating to controlled substance analogs; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 7 of section 12-44.1-21 of the North Dakota Century Code is amended and reenacted as follows:

7. As used in this section, "controlled substance" is as defined in ~~subsection 6 of~~ section 19-03.1-01 and includes counterfeit substances as defined in ~~subsection 7 of~~ section 19-03.1-01. As used in this section, "willfully" is as defined in section 12.1-02-02. As used in this section, "alcohol" and "alcoholic beverage" are as defined in section 5-01-01. As used in this section, "tobacco" means any form of tobacco, including cigarettes, cigars, snuff, or tobacco in any form in which it may be used for smoking or chewing. As used in this section, a wireless electronic communication device includes a cellular telephone, personal digital assistant, pager, mobile broadband card, internet router, digital camera, two-way radio, modem, or any other electronic device capable of wireless transmission, reception, interception, or storage of oral communications, text, e-mail, video or photograph images, data signals, or radio communications, and also includes a component of a wireless electronic device, regardless whether the component itself is able to transmit, store, or receive oral communications, text, e-mail, video or photograph images, data signals, or radio communications. A wireless electronic communications device does not include a medically prescribed device or any other device approved by the department.

SECTION 2. AMENDMENT. Subsection 5 of section 12-46-24 of the North Dakota Century Code is amended and reenacted as follows:

5. As used in this section, "controlled substance" is as defined in ~~subsection 6 of~~ section 19-03.1-01 and includes counterfeit substances as defined in ~~subsection 7 of~~ section 19-03.1-01.

SECTION 3. AMENDMENT. Subsection 7 of section 12-47-21 of the North Dakota Century Code is amended and reenacted as follows:

7. As used in this section, "controlled substance" is as defined in ~~subsection 6 of~~ section 19-03.1-01 and includes counterfeit substances as defined in ~~subsection 7 of~~ section 19-03.1-01. As used in this section, "willfully" is as defined in section 12.1-02-02. As used in this section, "alcohol" and "alcoholic

beverage" are as defined in section 5-01-01. As used in this section, "tobacco" means any form of tobacco, including cigarettes, cigars, snuff, or tobacco in any form in which it may be used for smoking or chewing. As used in this section, a wireless electronic communications device includes a cellular telephone, personal digital assistant, pager, mobile broadband card, internet router, digital camera, two-way radio, modem, or any other electronic device capable of wireless transmission, reception, interception, or storage of oral communications, text, electronic mail, video or photograph images, data signals, or radio communications, and also includes a component of a wireless electronic device, regardless whether the component itself is able to transmit, store, or receive oral communications, text, electronic mail, video or photograph images, data signals, or radio communications. A wireless electronic communications device does not include a medically prescribed device or any other device approved by the department.

SECTION 4. AMENDMENT. Section 19-03.1-01 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-01. Definitions.

As used in this chapter and in chapters 19-03.2 and 19-03.4, unless the context otherwise requires:

1. "Administer" means to apply a controlled substance, whether by injection, inhalation, ingestion, or any other means, directly to the body of a patient or research subject by:

   a. A practitioner or, in the practitioner's presence, by the practitioner's authorized agent; or

   b. The patient or research subject at the direction and in the presence of the practitioner.

2. "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

3. "Anabolic steroids" means any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestins, and corticosteroids.

4. "Board" means the state board of pharmacy.

5. "Bureau" means the drug enforcement administration in the United States department of justice or its successor agency.

6. "Controlled substance" means a drug, substance, or immediate precursor in schedules I through V as set out in this chapter.

7. <u>"Controlled substance analog":</u>

   a. <u>Means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance in a schedule I or II and:</u>

(1) Which has a stimulant, depressant, or hallucinogenic effect on the central nervous system which is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II; or

(2) With respect to a particular individual, which the individual represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II.

b. Does not include:

(1) A controlled substance;

(2) Any substance for which there is an approved new drug application; or

(3) With respect to a particular individual, any substance, if an exemption is in effect for investigational use, for that individual, under section 505 of the federal Food, Drug and Cosmetic Act [21 U.S.C. 355] to the extent conduct with respect to the substance is pursuant to the exemption.

8. "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

~~8.~~9. "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance whether or not there is an agency relationship.

~~9.~~10. "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.

~~10.~~11. "Dispenser" means a practitioner who dispenses.

~~11.~~12. "Distribute" means to deliver other than by administering or dispensing a controlled substance.

~~12.~~13. "Distributor" means a person who distributes.

~~13.~~14. "Drug" means:

a. Substances recognized as drugs in the official United States pharmacopeia national formulary, or the official homeopathic pharmacopeia of the United States, or any supplement to any of them;

b. Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in individuals or animals;

c. Substances, other than food, intended to affect the structure or any function of the body of individuals or animals; and

d. Substances intended for use as a component of any article specified in subdivision a, b, or c. The term does not include devices or their components, parts, or accessories.

~~14.~~15. "Hashish" means the resin extracted from any part of the plant cannabis with or without its adhering plant parts, whether growing or not, and every compound, manufacture, salt, derivative, mixture, or preparation of the resin.

~~15.~~16. "Immediate precursor" means a substance:

a. That the board has found to be and by rule designates as being the principal compound commonly used or produced primarily for use in the manufacture of a controlled substance;

b. That is an immediate chemical intermediary used or likely to be used in the manufacture of the controlled substance; and

c. The control of which is necessary to prevent, curtail, or limit the manufacture of the controlled substance.

~~16.~~17. "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container. The term does not include the preparation or compounding of a controlled substance by an individual for the individual's own use or the preparation, compounding, packaging, or labeling of a controlled substance:

a. By a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

b. By a practitioner, or by the practitioner's authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

~~17.~~18. "Marijuana" means all parts of the plant cannabis whether growing or not; the seeds thereof; the resinous product of the combustion of the plant cannabis; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of mature stalks, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

~~18.~~19. "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

a. Opium and opiate and any salt, compound, derivative, or preparation of opium or opiate.

b. Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subdivision a, but not including the isoquinoline alkaloids of opium.

c. Opium poppy and poppy straw.

d. Coca leaves and any salt, compound, derivative, or preparation of coca leaves, any salt, compound, isomer, derivative, or preparation thereof which 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.

~~19.~~20. "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. The term does not include, unless specifically designated as controlled under section 19-03.1-02, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). The term includes its racemic and levorotatory forms.

~~20.~~21. "Opium poppy" means the plant of the species papaver somniferum L., except its seeds.

~~21.~~22. "Over-the-counter sale" means a retail sale of a drug or product other than a controlled, or imitation controlled, substance.

~~22.~~23. "Person" means individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

~~23.~~24. "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

~~24.~~25. "Practitioner" means:

a. A physician, dentist, veterinarian, pharmacist, scientific investigator, or other person licensed, registered, or otherwise permitted by the jurisdiction in which the individual is practicing to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research.

b. A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state.

~~25.~~26. "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.

~~26.~~27. "Sale" includes barter, exchange, or gift, or offer therefor, and each such transaction made by a person, whether as principal, proprietor, agent, servant, or employee.

~~27.~~28. "Scheduled listed chemical product" means a product that contains ephedrine, pseudoephedrin, or phenylpropanolamine, or each of the salts, optical isomers, and salts of optical isomers of each chemical, and that may be marketed or distributed in the United States under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] as a nonprescription drug unless prescribed by a licensed physician.

~~28.~~29. "State" when applied to a part of the United States includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States.

~~29.~~30. "Ultimate user" means an individual who lawfully possesses a controlled substance for the individual's own use or for the use of a member of the individual's household or for administering to an animal owned by the individual or by a member of the individual's household.

[88] **SECTION 5. AMENDMENT.** Subdivision b of subsection 1 of section 19-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

b. Any other controlled substance classified in schedule I, II, or III, or a controlled substance analog is guilty of a class B felony. Except for a person who manufactures, delivers, or possesses with the intent to manufacture or deliver marijuana, any person found guilty under this subdivision must be sentenced:

(1) For a second offense, to imprisonment for at least three years.

(2) For a third or subsequent offense, to imprisonment for ten years.

[89] **SECTION 6. AMENDMENT.** Subsection 7 of section 19-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

7. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess a controlled substance or a controlled substance analog unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this chapter, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. Except as otherwise provided in this subsection, any person who violates this subsection is guilty of a class C felony. If, at the time of the offense the person is in or on, or within one thousand feet [300.48 meters] of the real property comprising a public or private elementary or secondary school or a public career and technical education school, the person is guilty of a class B felony. Any person who violates this subsection regarding possession of one-half ounce [14.175 grams] to one ounce [28.35 grams] of marijuana is guilty of a class A misdemeanor. 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 is guilty of a class B misdemeanor. Any person who violates this subsection

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[88] Section 19-03.1-23 was also amended by section 6 of House Bill No. 1133, chapter 183.

[89] Section 19-03.1-23 was also amended by section 5 of House Bill No. 1133, chapter 183.

regarding possession of less than one-half ounce [14.175 grams] of marijuana while operating a motor vehicle is guilty of a class A misdemeanor.

SECTION 7. A new section to chapter 19-03.1 of the North Dakota Century Code is created and enacted as follows:

Controlled substance analog use - Venue for violation - Penalty.

1. The use of controlled substance analog includes the ingestion, inhalation, absorption, or any other method of taking the controlled substance analog into the body. An individual who intentionally uses a controlled substance analog is guilty of a class C felony, unless the individual obtains the analog directly from a practitioner or pursuant to a valid prescription or order of a practitioner.

2. The venue for a violation under this section exists in the jurisdiction in which the substance was used or in which the substance was detected.

SECTION 8. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 26, 2013
Filed April 26, 2013

CHAPTER 184

HOUSE BILL NO. 1070

(Judiciary Committee)
(At the request of the State Board of Pharmacy)

AN ACT to amend and reenact sections 19-03.1-05, 19-03.1-09, 19-03.1-11, and 19-03.1-13 of the North Dakota Century Code, relating to the scheduling of controlled substances; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-03.1-05 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-05. Schedule I.

1. The controlled substances listed in this section are included in schedule I.

2. Schedule I 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. 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 those isomers, esters, ethers, and salts is possible within the specific chemical designation:

   a. Acetyl-alpha-methylfentanyl (also known as N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide).

   b. Acetylmethadol.

   c. Allylprodine.

   d. Alphacetylmethadol.

   e. Alphameprodine.

   f. Alphamethadol.

   g. Alpha-methylfentanyl (also known as N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine).

   h. Alpha-methylthiofentanyl (also known as N-[1-methyl-2- (2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide).

   i. Benzethidine.

   j. Betacetylmethadol.

k. Beta-hydroxyfentanyl (also known as N-[1-(2-hydroxy-2- phenethyl)-4-piperidinyl]-N-phenylpropanamide).

l. Beta-hydroxy-3-methylfentanyl (also known as N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide).

m. Betameprodine.

n. Betamethadol.

o. Betaprodine.

p. Clonitazene.

q. Dextromoramide.

r. Diampromide.

s. Diethylthiambutene.

t. Difenoxin.

u. Dimenoxadol.

v. Dimepheptanol.

w. Dimethylthiambutene.

x. Dioxaphetyl butyrate.

y. Dipipanone.

z. Ethylmethylthiambutene.

aa. Etonitazene.

bb. Etoxeridine.

cc. Furethidine.

dd. Hydroxypethidine.

ee. Ketobemidone.

ff. Levomoramide.

gg. Levophenacylmorphan.

hh. 3-Methylfentanyl (also known as N-[3-methyl-1-(2-phenylethyl) 4-piperidyl]-N-phenylpropanamide).

ii. 3-Methylthiofentanyl (also known as N-[3-methyl-1-(2- thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide).

jj. Morpheridine.

kk. MPPP (also known as 1-methyl-4-phenyl-4-propionoxypiperidine).

ll. Noracymethadol.

mm. Norlevorphanol.

nn. Normethadone.

oo. Norpipanone.

pp. Para-fluorofentanyl (also known as N-(4-fluorophenyl)-N-[1-(2- phenethyl)-4-piperidinyl] propanamide).

qq. PEPAP (1-(2-Phenylethyl)-4-Phenyl-4-acetoxypiperidine).

rr. Phenadoxone.

ss. Phenampromide.

tt. Phenomorphan.

uu. Phenoperidine.

vv. Piritramide.

ww. Proheptazine.

xx. Properidine.

yy. Propiram.

zz. Racemoramide.

aaa. Thiofentanyl (also known as N-phenyl-N-[1-(2-thienyl)ethyl-4- piperidinyl]-propanamide).

bbb. Tilidine.

ccc. Trimeperidine.

4. Opium derivatives. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

   a. Acetorphine.

   b. Acetyldihydrocodeine.

   c. Benzylmorphine.

   d. Codeine methylbromide.

   e. Codeine-N-Oxide.

   f. Cyprenorphine.

g. Desomorphine.

h. Dihydromorphine.

i. Drotebanol.

j. Etorphine (except hydrochloride salt).

k. Heroin.

l. Hydromorphinol.

m. Methyldesorphine.

n. Methyldihydromorphine.

o. Morphine methylbromide.

p. Morphine methylsulfonate.

q. Morphine-N-Oxide.

r. Myrophine.

s. Nicocodeine.

t. Nicomorphine.

u. Normorphine.

v. Pholcodine.

w. Thebacon.

5. Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following hallucinogenic substances, including their salts, isomers, and salts of isomers whenever the existence of 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. Alpha-ethyltryptamine, its optical isomers, salts, and salts of isomers (also known as etryptamine; a-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole).

   b. Alpha-methyltryptamine.

   c. ~~4-bromo-2, 5-dimethoxy-amphetamine (also known as 4-bromo-2, 5-dimethoxy-a-methylphenethylamine; 4-bromo-2, 5-DMA).~~

   ~~d. 4-bromo-2, 5-dimethoxyphenethylamine (also known as 4-bromo-2, 5-DMPEA).~~

   ~~e. 2,5-dimethoxy-amphetamine (also known as 2, 5-dimethoxy-a-methylphenethylamine; 2, 5-DMA).~~

~~f. 2,5-dimethoxy-4-ethylamphetamine (also known as DOET).~~

~~g. 2,5-dimethoxy-4-(n)-propylthiophenethylamine (also known as 2C-T-7).~~

~~h.~~ 4-methoxyamphetamine (also known as 4-methoxy-a-methylphenethylamine; paramethoxyamphetamine; PMA).

~~i. 5-methoxy-3,4-methylenedioxy-amphetamine.~~

~~j. 4-methyl-2,5-dimethoxy-amphetamine (also known as 4-methyl-2,5-dimethoxy-a-methylphenethylamine; DOM and STP).~~

~~k. 5-Methoxy-N,N-Dimethyltryptamine.~~

~~l. 3,4-methylenedioxy amphetamine.~~

~~m. 3,4-methylenedioxymethamphetamine (also known as MDMA).~~

~~n. 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl, MDA, MDE, MDEA.~~

~~o.~~d. N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenylamine, and N-hydroxy MDA.

~~p. 3,4,5-trimethoxy amphetamine.~~

~~q. Bufotenine (also known as 3-(Beta-Dimethyl-aminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine).~~

~~r. 5-methoxy-N,N-diisopropyltryptamine.~~

~~s. Diethyltryptamine (also known as N, N-Diethyltryptamine; DET).~~

~~t. Dimethyltryptamine (also known as DMT).~~

~~u.~~e. Hashish.

~~v.~~f. Ibogaine (also known as 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).

~~w.~~g. Lysergic acid diethylamide.

~~x.~~h. Marijuana.

~~y. Mescaline.~~

~~z.~~i. Parahexyl (also known as 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro- 6,6,9-trimethyl-6H-dibenzol[b,d]pyran; Synhexyl).

~~aa.~~j. Peyote (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 its extracts).

~~bb.~~k. N-ethyl-3-piperidyl benzilate.

~~cc.~~l. N-methyl-3-piperidyl benzilate.

~~dd.~~m. Psilocybin.

~~ee. Psilocyn.~~

~~ff.~~n. Tetrahydrocannabinols, meaning tetrahydrocannabinols naturally contained in a plant of the genus Cannabis (cannabis plant), as well as synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of such plant, including synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following:

(1) Delta-1 cis or trans tetrahydrocannabinol, and their optical isomers.

(2) Delta-6 cis or trans tetrahydrocannabinol, and their optical isomers.

(3) Delta-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.)

~~gg.~~o. Cannabinoids, synthetic. ~~This subdivision contains the synthetic chemicals which have similar effects on the cannabinoid receptors.~~ It includes the chemicals and chemical groups listed below, including their homologues, salts, isomers, and salts of isomers. The term "isomer" includes the optical, position, and geometric isomers.

(1) Naphthoylindoles. Any compound containing a 3-(1-naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl ~~or~~, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. Examples include:

(a) 1-Pentyl-3-(1-naphthoyl)indole - Other names: JWH-018 and AM-678.

(b) 1-Butyl-3-(1-naphthoyl)indole - Other names: JWH-073.

(c) 1-Pentyl-3-(4-methoxy-1-naphthoyl)indole - Other names: JWH-081.

(d) 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole - Other names: JWH-200.

(e) 1-Propyl-2-methyl-3-(1-naphthoyl)indole - Other names: JWH-015.

(f) 1-Hexyl-3-(1-naphthoyl)indole - Other names: JWH-019.

(g) 1-Pentyl-3-(4-methyl-1-naphthoyl)indole - Other names: JWH-122.

(h) 1-Pentyl-3-(4-ethyl-1-naphthoyl)indole - Other names: JWH-210.

(i) 1-Pentyl-3-(4-chloro-1-naphthoyl)indole - Other names: JWH-398.

(j) 1-(5-fluoropentyl)-3-(1-naphthoyl)indole - Other names: AM-2201.

(2) Naphthylmethylindoles. Any compound containing a 1H-indol-3-yl-(1-naphthyl)methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl ~~or~~, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. Examples include:

(a) 1-Pentyl-1H-indol-3-yl-(1-naphthyl)methane - Other names: JWH-175.

(b) 1-Pentyl-1H-indol-3-yl-(4-methyl-1-naphthyl)methane - Other names: JWH-184.

(3) Naphthoylpyrroles. Any compound containing a 3-(1-naphthoyl)pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl ~~or~~, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group whether or not further substituted in the pyrrole ring to any extent, whether or not substituted in the naphthyl ring to any extent. Examples include: (5-(2-fluorophenyl)-1-pentylpyrrol-3-yl)-naphthalen-1-ylmethanone - Other names: JWH-307.

(4) Naphthylmethylindenes. Any compound containing a naphthylideneindene structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl ~~or~~, 2 (4 morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group whether or not further substituted in the indene ring to any extent, whether or not substituted in the naphthyl ring to any extent. Examples include: E-1-[1-(1-Naphthalenylmethylene)-1H-inden-3-yl]pentane - Other names: JWH-176.

(5) Phenylacetylindoles. Any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl ~~or~~, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group whether or not further substituted in the indole ring to any extent, whether or not substituted in the phenyl ring to any extent. Examples include:

(a) 1-(2-cyclohexylethyl)-3-(2-methoxyphenylacetyl)indole - Other names: RCS-8.

(b) 1-Pentyl-3-(2-methoxyphenylacetyl)indole - Other names: JWH-250.

(c) 1-Pentyl-3-(2-methylphenylacetyl)indole - Other names: JWH-251.

(d) 1-Pentyl-3-(2-chlorophenylacetyl)indole - Other names: JWH-203.

(6) Cyclohexylphenols. Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl ~~or~~, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group whether or not substituted in the cyclohexyl ring to any extent. Examples include:

(a) 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol - Other names: CP 47,497.

(b) 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol - Other names: Cannabicyclohexanol and CP 47,497 C8 homologue.

(c) 5-(1,1-dimethylheptyl)-2-[(1R,2R)-5-hydroxy-2-(3-hydroxypropyl)cyclohexyl] phenol - Other names: CP 55,940.

(7) Benzoylindoles. Any compound containing a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl ~~or~~, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. Examples include:

(a) 1-Pentyl-3-(4-methoxybenzoyl)indole - Other names: RCS-4.

(b) (1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole) - Other names: AM-694.

(c) (4-Methoxyphenyl)-[2-methyl-1-(2-(4-morpholinyl)ethyl)indol-3-yl] methanone - Other names: WIN 48,098 and Pravadoline.

(8) Tetramethylcyclopropanoylindoles. Any compound containing a 3-tetramethylcyclopropanoylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3- morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the tetramethylcyclopropanoyl ring to any extent.

(a) (1-Pentylindol-3-yl)-(2,2,3,3-tetramethylcyclopropyl)methanone - Other names: UR-144.

(b) (1-(5-fluoropentyl)indol-3-yl)-(2,2,3,3-tetramethylcyclopropyl) methanone - Other names: XLR-11.

(c) (1-(2-morpholin-4-ylethyl)-1H-indol-3-yl)-(2,2,3,3-tetramethylcyclopropyl)methanone - Other names: A-796,260.

(9) Others specifically named:

(a) (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol - Other names: HU-210.

(b) (6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol - Other names: Dexanabinol and HU-211.

(c) 2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-napthalenylmethanone - Other names: WIN 55,212-2.

(d) 1-[(N-methylpiperidin-2-yl)methyl]-3-(adamant-1-oyl)indole - Other names: AM-1248.

(e) *N*-Adamantyl-1-pentyl-1*H*-indole-3-carboxamide - Other names: JWH-018 adamantyl carboxamide.

(f) *N*-Adamantyl-1-fluoropentylindole-3-carboxamide - Other names: STS-135.

(g) N-Adamantyl-1-pentyl-1H-Indazole-3-carboxamide - Other names: AKB 48.

(h) 1-Pentyl-3-(1-adamantoyl)indole - Other names: AB-001 and JWH-018 adamantyl analog.

(i) Naphthalen-1-yl-(4-pentyloxynaphthalen-1-yl)methanone - Other names: CB-13.

p. Substituted phenethylamines. This includes any compound, unless specifically excepted, specifically named in this schedule, or listed under a different schedule, structurally derived from phenylethan-2-amine by substitution on the phenyl ring in any of the following ways, that is to say, by substitution with a fused methylenedioxy ring, fused furan ring, or fused tetrahydrofuran ring; by substitution with two alkoxy groups; by substitution with one alkoxy and either one fused furan, tetrahydrofuran, or tetrahydropyran ring system; or by substitution with two fused ring systems from any combination of the furan, tetrahydrofuran, or tetrahydropyran ring systems.

(1) Whether or not the compound is further modified in any of the following ways, that is to say:

(a) By substitution of phenyl ring by any halo, hydroxyl, alkyl, trifluoromethyl, alkoxy, or alkylthio groups;

(b) By substitution at the 2-position by any alkyl groups; or

(c) By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl, hydroxybenzyl, methylenedioxybenzyl, or methoxybenzyl groups.

(2) Examples include:

(a) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (also known as 2C-C or 2,5-Dimethoxy-4-chlorophenethylamine).

(b) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (also known as 2C-D or 2,5-Dimethoxy-4-methylphenethylamine).

(c) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (also known as 2C-E or 2,5-Dimethoxy-4-ethylphenethylamine).

(d) 2-(2,5-Dimethoxyphenyl)ethanamine (also known as 2C-H or 2,5-Dimethoxyphenethylamine).

(e) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (also known as 2C-I or 2,5-Dimethoxy-4-iodophenethylamine).

(f) 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (also known as 2C-N or 2,5-Dimethoxy-4-nitrophenethylamine).

(g) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (also known as 2C-P or 2,5-Dimethoxy-4-propylphenethylamine).

(h) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (also known as 2C-T-2 or 2,5-Dimethoxy-4-ethylthiophenethylamine).

(i) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (also known as 2C-T-4 or 2,5-Dimethoxy-4-isopropylthiophenethylamine).

(j) 2-(4-bromo-2,5-dimethoxyphenyl)ethanamine (also known as 2C-B or 2,5-Dimethoxy-4-bromophenethylamine).

(k) 2-(2,5-dimethoxy-4-(methylthio)phenyl)ethanamine (also known as 2C-T or 4-methylthio-2,5-dimethoxyphenethylamine).

(l) 1-(2,5-dimethoxy-4-iodophenyl)-propan-2-amine (also known as DOI or 2,5-Dimethoxy-4-iodoamphetamine).

(m) 1-(4-Bromo-2,5-dimethoxyphenyl)-2-aminopropane (also known as DOB or 2,5-Dimethoxy-4-bromoamphetamine).

(n) 1-(4-chloro-2,5-dimethoxy-phenyl)propan-2-amine (also known as DOC or 2,5-Dimethoxy-4-chloroamphetamine).

(o) 2-(4-bromo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl] ethanamine (also known as 2C-B-NBOMe; 2,5B-NBOMe or 2,5-Dimethoxy-4-bromo-N-(2-methoxybenzyl)phenethylamine).

(p) 2-(4-iodo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl] ethanamine (also known as 2C-I-NBOMe; 2,5I-NBOMe or 2,5-Dimethoxy-4-iodo-N-(2-methoxybenzyl)phenethylamine).

(q) N-(2-Methoxybenzyl)-2-(3,4,5-trimethoxyphenyl)ethanamine (also known as mescaline-NBOMe or 3,4,5-trimethoxy-N-(2-methoxybenzyl)phenethylamine).

(r) 2-(4-chloro-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine (also known as 2C-C-NBOMe; 2,5C-NBOMe or 2,5-Dimethoxy-4-chloro-N-(2-methoxybenzyl) phenethylamine).

(s) 2-(7-Bromo-5-methoxy-2,3-dihydro-1-benzofuran-4-yl)ethanamine (also known as 2CB-5-hemiFLY).

(t) 2-(8-bromo-2,3,6,7-tetrahydrofuro [2,3-f][1]benzofuran-4-yl)ethanamine (also known as 2C-B-FLY).

(u) 2-(10-Bromo-2,3,4,7,8,9-hexahydropyrano[2,3-g]chromen-5-yl) ethanamine (also known as 2C-B-butterFLY).

(v) N-(2-Methoxybenzyl)-1-(8-bromo-2,3,6,7-tetrahydrobenzo[1,2-b:4,5-b']difuran-4-yl)-2-aminoethane (also known as 2C-B-FLY-NBOMe).

(w) 1-(4-Bromofuro[2,3-f][1]benzofuran-8-yl)propan-2-amine (also known as bromo-benzodifuranyl-isopropylamine or bromo-dragonFLY).

(x) N-(2-Hydroxybenzyl)-4-iodo-2,5-dimethoxyphenethylamine (also known as 2C-I-NBOH or 2,5I-NBOH).

(y) 5-(2-Aminopropyl)benzofuran (also known as 5-APB).

(z) 6-(2-Aminopropyl)benzofuran (also known as 6-APB).

(aa) 5-(2-Aminopropyl)-2,3-dihydrobenzofuran (also known as 5-APDB).

(bb) 6-(2-Aminopropyl)-2,3,-dihydrobenzofuran (also known as 6-APDB).

(cc) 2,5-dimethoxy-amphetamine (also known as 2,5-dimethoxy-a-methylphenethylamine; 2,5-DMA).

(dd) 2,5-dimethoxy-4-ethylamphetamine (also known as DOET).

(ee) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (also known as 2C-T-7).

(ff) 5-methoxy-3,4-methylenedioxy-amphetamine.

(gg) 4-methyl-2,5-dimethoxy-amphetamine (also known as 4-methyl-2,5-dimethoxy-a-methylphenethylamine; DOM and STP).

(hh) 3,4-methylenedioxy amphetamine (also known as MDA).

(ii) 3,4-methylenedioxymethamphetamine (also known as MDMA).

(jj) 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, MDE, MDEA).

(kk) 3,4,5-trimethoxy amphetamine.

(ll) Mescaline (also known as 3,4,5-trimethoxyphenethylamine).

q. Substituted tryptamines. This includes any compound, unless specifically excepted, specifically named in this schedule, or listed under a different schedule, structurally derived from 2-(1H-indol-3-yl)ethanamine (i.e., tryptamine) by mono- or di-substitution of the amine nitrogen with alkyl or alkenyl groups or by inclusion of the amino nitrogen atom in a cyclic structure whether or not the compound is further substituted at the alpha-position with an alkyl group or whether or not further substituted on the indole ring to any extent with any alkyl, alkoxy, halo, hydroxyl, or acetoxy groups. Examples include:

(1) 5-methoxy-N,N-diallyltryptamine (also known as 5-MeO-DALT).

(2) 4-acetoxy-N,N-dimethyltryptamine (also known as 4-AcO-DMT or O-Acetylpsilocin).

(3) 4-hydroxy-N-methyl-N-ethyltryptamine (also known as 4-HO-MET).

(4) 4-hydroxy-N,N-diisopropyltryptamine (also known as 4-HO-DIPT).

(5) 5-methoxy-N-methyl-N-isopropyltryptamine (also known as 5-MeO-MiPT).

(6) 5-methoxy-N,N-dimethyltryptamine (also known as 5-MeO-DMT).

(7) Bufotenine (also known as 3-(Beta-Dimethyl-aminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine).

(8) 5-methoxy-N,N-diisopropyltryptamine (also known as 5-MeO-DiPT).

(9) Diethyltryptamine (also known as N,N-Diethyltryptamine; DET).

(10) Dimethyltryptamine (also known as DMT).

(11) Psilocyn.

r. 1-[3-(trifluoromethylphenyl)]piperazine (also known as TFMPP).

s. 1-[4-(trifluoromethylphenyl)]piperazine.

t. 6,7-dihydro-5H-indeno-(5,6-d)-1,3-dioxol-6-amine (also known as 5,6-Methylenedioxy-2-aminoindane or MDAI).

u. 2-(Ethylamino)-2-(3-methoxyphenyl)cyclohexanone (also known as Methoxetamine or MXE).

~~hh.~~v. Ethylamine analog of phencyclidine (also known as N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE).

~~ii.~~w. Pyrrolidine analog of phencyclidine (also known as 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP).

~~jj.~~x. Thiophene analog of phencyclidine (also known as (1-[1-(2-thienyl) cyclohexyl] piperidine; 2-Thienylanalog of phencyclidine; TPCP, TCP).

~~kk.~~y. 1-[1-(2-thienyl)cyclohexyl]pyrrolidine (also known as TCPy).

~~ll.~~z. Salvia divinorum, salvinorin A, or any of the active ingredients of salvia divinorum.

6. Depressants. Unless specifically excepted or unless listed in another schedule, any material compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

   a. Flunitrazepam.

   b. Gamma-hydroxybutyric acid.

   c. Mecloqualone.

   d. Methaqualone.

7. 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. Aminorex (also known as 2-amino-5-phenyl-2-oxazoline, or 4,5-dihydro-5-phenyl-2-oxazolamine).

   b. Cathinone ~~(also known as 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone)~~.

   c. Substituted cathinones. Any compound, material, mixture, preparation, or other product, unless listed in another schedule or an approved food and drug administration drug (e.g., buproprion, pyrovalerone), structurally derived from 2-aminopropan-1-one by substitution at the 1-position with either phenyl, naphthyl, or thiophene ring systems, whether or not the compound is further modified in any of the following ways:

      (1) By substitution in the ring system to any extent with alkyl, alkylenedioxy, alkoxy, haloalkyl, hydroxyl, or halide substituents, whether or not further substituted in the ring system by one or more other univalent substitutents;

      (2) By substitution at the 3-position with an acyclic alkyl substituent;

(3) By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl, or methoxybenzyl groups; or

(4) By inclusion of the 2-amino nitrogen atom in a cyclic structure.

Some trade or other names:

(a) 3,4-Methylenedioxy-alpha-pyrrolidinopropiophenone (also known as MDPPP).

(b) 3,4-Methylenedioxy-N-ethylcathinone (also known as Ethylone, MDEC, or bk-MDEA).

(c) 3,4-Methylenedioxy-N-methylcathinone (also known as Methylone or bk-MDMA).

(d) 3,4-Methylenedioxypyrovalerone (also known as MDPV).

(e) 3,4-Dimethylmethcathinone (also known as 3,4-DMMC).

(f) 2-(methylamino)-1-phenylpentan-1-one (also known as Pentedrone).

(g) 2-Fluoromethcathinone.

(h) 3-Fluoromethcathinone.

(i) 4-Methylethcathinone (also known as 4-MEC).

(j) 4-Fluoromethcathinone (also known as Flephedrone).

(k) 4-Methoxy-alpha-pyrrolidinopropiophenone (also known as MOPPP).

(l) 4-Methoxymethcathinone (also known as Methedrone; bk-PMMA).

(m) 4'-Methyl-alpha-pyrrolidinobutiophenone (also known as MPBP).

(n) Alpha-methylamino-butyrophenone (also known as Buphedrone or MABP).

(o) Alpha-pyrrolidinobutiophenone (also known as alpha-PBP).

(p) Alpha-pyrrolidinopropiophenone (also known as alpha-PPP).

(q) Alpha-pyrrolidinopentiophenone (also known as Alpha-pyrrolidinovalerophenone or alpha-PVP).

(r) Beta-keto-N-methylbenzodioxolylbutanamine (also known as Butylone or bk-MBDB).

(s) Ethcathinone (also known as N-Ethylcathinone).

(t) 4-Methylmethcathinone (also known as Mephedrone or 4-MMC).

(u) Methcathinone.

(v) N,N-dimethylcathinone (also known as metamfepramone).

(w) Naphthylpyrovalerone (naphyrone).

d. Fenethylline.

e. Fluoroamphetamine.

f. Fluoromethamphetamine.

~~d. Mephedrone (2-methylamino-1-p-tolylpropan-1-one) also known as 4-methylmethcathinone (4-MMC), 4-methylephedrone.~~

~~e.~~g. (±)cis-4-methylaminorex (also known as (±)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine).

~~f. 3,4-Methylenedioxypyrovalerone (MDPV).~~

~~g. Methcathinone (also known as (2-methylamino-1-phenylpropan-1-one).~~

h. N-Benzylpiperazine (also known as BZP, 1-benzylpiperazine).

i. N-ethylamphetamine.

j. N, N-dimethylamphetamine (also known as N,N-alpha-trimethyl-benzeneethanamine; N,N-alpha-trimethylphenethylamine).

SECTION 2. AMENDMENT. Section 19-03.1-09 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-09. Schedule III.

1. The controlled substances listed in this section are included in schedule III.

2. Schedule III 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. Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

   a. Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in schedule II and any other drug of the quantitative composition shown in that schedule for those drugs or which is the same except that it contains a lesser quantity of controlled substances.

   b. Benzphetamine.

   c. Chlorphentermine.

   d. Clortermine.

e. Phendimetrazine.

4. Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system:

a. Any compound, mixture, or preparation containing:

(1) Amobarbital;

(2) Secobarbital;

(3) Pentobarbital;

or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule.

b. Any suppository dosage form containing:

(1) Amobarbital;

(2) Secobarbital;

(3) Pentobarbital;

or any salt of any of these drugs and approved by the food and drug administration for marketing only as a suppository.

c. Any substance that contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules thereof.

d. Chlorhexadol.

e. Embutramide.

f. Gamma-hydroxybutyric acid in a United States food and drug administration-approved drug product.

g. Ketamine.

h. Lysergic acid.

i. Lysergic acid amide.

j. Methyprylon.

k. Sulfondiethylmethane.

l. Sulfonethylmethane.

m. Sulfonmethane.

n. 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(2-fluorophenyl)-6, 8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e][1,4]-diazepin-7(1H)-one, flupyrazapon.

5. Nalorphine.

6. Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

   a. (1) 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.

   (2) 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.

   (3) Not more than 300 milligrams of hydrocodone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

   (4) Not more than 300 milligrams of hydrocodone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

   (5) 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.

   (6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

   (7) 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.

   (8) 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.

   b. Buprenorphine.

7. Anabolic steroids. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any of the following anabolic steroids:

   a. 3beta,17-dihydroxy-5a-androstane;

   b. 3alpha,17beta-dihydroxy-5a-androstane;

c. 5alpha-androstan-3,17-dione;

d. 1-androstenediol (3beta,17beta-dihydroxy-5alpha-androst-1-ene);

e. 1-androstenediol (3alpha,17beta-dihydroxy-5alpha-androst-1-ene);

f. 4-androstenediol (3beta,17beta-dihydroxy-4-ene);

g. 5-androstenediol (3beta,17beta-dihydroxy-androst-5-ene);

h. 1-androstenedione ([5alpha]-androst-1-en-3,17-dione);

i. 4-androstenedione (androst-4-en-3,17-dione);

j. 5-androstenedione (androst-5-en-3,17-dione);

k. Bolasterone (7alpha,17alpha-dimethyl-17beta-hydroxyandrost-4-en-3-one);

l. Boldenone (17beta-hydroxyandrost-1,4,-diene-3-one);

m. Boldione (androsta-1,4-diene-3,17-dione);

n. Calusterone (7beta,17alpha-dimethyl-17beta-hydroxyandrost-4-en-3-one);

o. Clostebol (4-chloro-17beta-hydroxyandrost-4-en-3-one);

p. Dehydrochloromethyltestosterone (4-chloro-17beta-hydroxy-17alpha-methyl-androst-1,4-dien-3-one);

q. Delta-1-dihydrotestosterone (also known as '1-testosterone') (17beta-hydroxy-5alpha-androst-1-en-3-one);

r. Desoxymethyltestosterone (17a-methyl-5a-androst-2-en-17ol) (also known as madol);

s. 4-dihydrotestosterone (17beta-hydroxy-androstan-3-one);

t. Drostanolone (17beta-hydroxy-2alpha-methyl-5alpha-androstan-3-one);

u. Ethylestrenol (17alpha-ethyl-17beta-hydroxyestr-4-ene);

v. Fluoxymesterone (9-fluoro-17alpha-methyl-11beta, 17beta-dihydroxyandrost-4-en-3-one);

w. Formebolone (2-formyl-17alpha-methyl-11alpha, 17beta-dihydroxyandrost-1,4-dien-3-one);

x. Furazabol (17alpha-methyl-17beta-hydroxyandrostano[2,3-c]-furazan);

y. 13beta-ethyl-17alpha-hydroxygon-4-en-3-one;

z. 4-hydroxytestosterone (4,17beta-dihydroxy-androst-4-en-3-one);

aa. 4-hydroxy-19-nortestosterone (4,17beta-dihydroxy-estr-4-en-3-one);

bb. Mestanolone (17alpha-methyl-17beta-hydroxy-5-androstan-3-one);

cc. Mesterolone (1alpha-methyl-17beta-hydroxy-[5alpha]-androstan-3-one);

dd. Methandienone (17alpha-methyl-17beta-dihydroxyandrost-1,4-dien-3-one);

ee. Methandriol (17alpha-methyl-3beta,17beta-dihydroxyandrost-5-ene);

ff. Methasterone (2[alpha],17[alpha]-dimethyl-5[alpha]-androstan-17[beta]-ol-3-one);

~~gg.~~ Methenolone (1-methyl-17beta-hydroxy-5alpha-androst-1-en-3-one);

~~gg.~~hh. 17alpha-methyl-3beta,17beta-dihydroxy-5a-androstane;

~~hh.~~ii. 17alpha-methyl-3alpha,17beta-dihydroxy-5a-androstane;

~~ii.~~jj. 17alpha-methyl-3beta,17beta-dihyroxyandrost-4-ene;

~~jj.~~kk. 17alpha-methyl-4-hydroxynandrolone (17alpha-methyl-4-hydroxy-17beta-hydroxyestr-4-en-3-one);

~~kk.~~ll. Methyldienolone (17alpha-methyl-17beta-hydroxyestra-4,9(10)-dien-3-one);

~~ll.~~mm. Methyltrienolone (17alpha-methyl-17beta-hydroxyestra-4,9(11)-trien-3-one);

~~mm.~~nn. Methyltestosterone (17alpha-methyl-17beta-hydroxyandrost-4-en-3-one);

~~nn.~~oo. Mibolerone (7alpha,17alpha-dimethyl-17beta-hydroxyestr-4-en-3-one);

~~oo.~~pp. 17alpha-methyl-delta1-dihydrotestosterone (17bbeta-hydroxy-17alpha-methyl-5alpha-androst-1-en-3-one) (also known as '17-alpha-methyl-1-testosterone');

~~pp.~~qq. Nandrolone (17beta-hydroxyestr-4-en-3-one);

~~qq.~~rr. 19-nor-4-androstenediol (3beta,17beta-dihydroxyestr-4-ene);

~~rr.~~ss. 19-nor-4-androstenediol (3alpha,17beta-dihydroxyestr-4-ene);

~~ss.~~tt. 19-nor-5-androstenediol (3beta,17beta-dihydroxyestr-5-ene);

~~tt.~~uu. 19-nor-5-androstenediol (3alpha,17-beta-dihydroxyester-5-ene);

~~uu.~~vv. 19-nor-4-androstenedione (estr-4-en-3,17-dione);

~~vv.~~ww. 19-nor-4,9(10)-androstadienedione (estra-4,9(10)-diene-3,17-dione);

~~ww.~~xx. 19-nor-5-androstenedione (estr-5-en-3,17-dione);

~~xx.~~yy. Norboletheone (13beta,17alpha-diethyl-17beta-hydroxygon-4-en-3-one);

~~yy.~~zz. Norclostebol (4-chloro-17beta-hydroxyestr-4-en-3-one);

~~zz.~~aaa. Norethandrolone (17alpha-ethyl-17beta-hydroxyestr-4-en-3-one);

~~aaa.~~bbb. Normethandrolone (17alpha-methyl-17beta-hydroxyestr-4-en-3-one);

~~bbb.~~ccc. Oxandrolone (17alpha-methyl-17beta-hydroxy-2-oxa-[5alpha]-androstan-3-one);

~~ccc.~~ddd. Oxymesterone (17alpha-methyl-4-17beta-dihydroxyandrost-4-en-3-one);

~~ddd.~~eee. Oxymetholone (17alpha-methyl-2-hydroxymethylene-17beta-hydroxy [5alpha]-androstan-3-one);

~~eee.~~fff. Stanozolol (17alpha-methyl-17beta-hydroxy[5alpha]-androst-2-eno[3,2-c]-pyrazole);

~~fff.~~ggg. Stenbolone (17beta-hydroxy-2-methyl-[5alpha]-androst-1-en-3-one);

~~ggg.~~hhh. Prostanozol (17[beta]- hydroxy-5[alpha]-androstano[3,2-c]pyrazole);

iii. Testolactone (13-hydroxy-3-oxo-13,17-secoandrosta-1,4-dien-17-oic acid lactone);

~~hhh.~~jjj. Testosterone (17beta-hydroxyandrost-4-en-3-one);

~~iii.~~kkk. Tetrahydrogestrinone (13beta,17alpha-diethyl-17beta-hydroxygon-4,9,11-trien-3-one);

jjj.~~lll.~~ Trenbolone (17beta-hydroxyestr-4,9,11-trien-3-one);

or any salt, ester, or isomer of a drug or substance described or listed in this subsection, if that salt, ester, or isomer promotes muscle growth.

The term does not include an anabolic steroid that is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the secretary of health and human services for administration unless any person prescribes, dispenses, possesses, delivers, or distributes for human use.

8. Hallucinogenic substances.

   a. Dronabinol (synthetic) [(-)-delta-9-(trans)-tetrahydrocannabinol] in sesame oil and encapsulated in a soft gelatin capsule in a United States food and drug administration-approved drug product.

   b. Any product in hard or soft gelatin capsule form containing natural dronabinol (derived from the cannabis plant) or synthetic dronabinol (produced from synthetic materials) in sesame oil, for which an abbreviated new drug application has been approved by the food and drug administration under section 505(j) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355(j)] which references as its listed drug the drug product referred to in subdivision a.

9. The board may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsections 3 and 4 from the application of all or any part of this chapter if the compound,

mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

SECTION 3. AMENDMENT. Section 19-03.1-11 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-11. Schedule IV.

1. The controlled substances listed in this section are included in schedule IV.

2. Schedule IV 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 any of the following narcotic drugs or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

   a. Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

   b. Dextropropoxyphene (also known as alpha-(+)-4-dimethylamino- 1,2-diphenyl-3-methyl-2-propionoxybutane).

   c. Tramadol.

4. Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances, including their salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

   a. Alprazolam.

   b. Barbital.

   c. Bromazepam.

   d. Camazepam.

   e. Carisoprodol.

   f. Chloral betaine.

   g. Chloral hydrate.

   h. Chlordiazepoxide.

   i. Clobazam.

   j. Clonazepam.

k. Clorazepate.

l. Clotiazepam.

m. Cloxazolam.

n. Delorazepam.

o. Diazepam.

p. Dichloralphenazone.

q. Estazolam.

r. Ethchlorvynol.

s. Ethinamate.

t. Ethyl loflazepate.

u. Fludiazepam.

v. Flurazepam.

w. Fospropofol.

x. Halazepam.

y. Haloxazolam.

z. Indiplon.

aa. Ketazolam.

bb. Loprazolam.

cc. Lorazepam.

dd. Lorcaserin.

ee. Lormetazepam.

~~ee.~~ff. Mebutamate.

~~ff.~~gg. Medazepam.

~~gg.~~hh. Meprobamate.

~~hh.~~ii. Methohexital.

~~ii.~~jj. Methylphenobarbital (also known as mephobarbital).

~~jj.~~kk. Midazolam.

~~kk.~~ll. Nimetazepam.

~~ll.~~mm. Nitrazepam.

~~mm.~~nn. Nordiazepam.

~~nn.~~oo. Oxazepam.

~~oo.~~pp. Oxazolam.

~~pp.~~qq. Paraldehyde.

~~qq.~~rr. Petrichloral.

~~rr.~~ss. Phenobarbital.

~~ss.~~tt. Pinazepam.

~~tt.~~uu. Propofol.

~~uu.~~vv. Prazepam.

~~vv.~~ww. Quazepam.

~~ww.~~xx. Temazepam.

~~xx.~~yy. Tetrazepam.

~~yy.~~zz. Triazolam.

~~zz.~~aaa. Zaleplon.

~~aaa.~~bbb. Zolpidem.

~~bbb.~~ccc. Zopiclone.

5. Fenfluramine. Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible: Fenfluramine.

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.

   e. Mazindol.

   f. Mefenorex.

g. Modafinil.

h. Pemoline (including organometallic complexes and chelates thereof).

i. Phentermine.

j. Pipradrol.

k. Sibutramine.

l. SPA ((-)-1-dimethylamino-1, 2-diphenylethane).

7. Other substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of:

a. Pentazocine, including its salts.

b. Butorphanol, including its optical isomers.

8. The board may except by rule any compound, mixture, or preparation containing any depressant substance listed in subsection 2 from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

SECTION 4. AMENDMENT. Section 19-03.1-13 of the North Dakota Century Code is amended and reenacted 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 any of the following narcotic drugs and their 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. Depressants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible:

   a. Ezogabine N-[2-amino-4-(4-fluorobenzylamino)-phenyl]-carbamic acid ethyl ester.

   b. Lacosamide [(R)-2-acetoamido-N-benzyl-3-methoxy-propionamide].

   ~~b.~~c. Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid].

6. 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: Pyrovalerone.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 26, 2013
Filed March 27, 2013

CHAPTER 185

SENATE BILL NO. 2089

(Human Services Committee)
(At the request of the State Board of Pharmacy)

AN ACT to amend and reenact section 19-03.5-02 and subdivision e of subsection 3 of section 19-03.5-03 of the North Dakota Century Code, relating to state board of pharmacy prescription monitoring programs and access to prescription drug information.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-03.5-02 of the North Dakota Century Code is amended and reenacted as follows:

19-03.5-02. Requirements for prescription drug monitoring program.

1. The board shall establish and maintain a program for the monitoring of prescribing and dispensing of all controlled substances.

2. Each dispenser shall submit to the board by electronic means information regarding each prescription dispensed for a controlled substance. ~~The information submitted for each prescription must include all of the data elements in the American Society for Automation in Pharmacy Rules-Based Standard Implementation Guide for Prescription Monitoring Programs issued August 31, 2005, version 003, release 000.~~The board shall establish and update rules to direct dispensers on the version of the American Society for Automation in Pharmacy Rules-Based Standard Implementation Guide for Prescription Monitoring Programs in which the dispensing history must be submitted to the central repository.

3. Each dispenser shall submit the information in accordance with transmission methods and frequency established by the board.

4. The board may issue an extension of time to a dispenser that is unable to submit prescription information by electronic means.

SECTION 2. AMENDMENT. Subdivision e of subsection 3 of section 19-03.5-03 of the North Dakota Century Code is amended and reenacted as follows:

e. The department of human services for purposes regarding the utilization of controlled substances by a medicaid recipient or establishment and enforcement of child support and medical support;

Approved April 1, 2013
Filed April 1, 2013

CHAPTER 186

HOUSE BILL NO. 1326

(Representatives Pollert, D. Johnson, Haak)
(Senators Klein, Wanzek, Heckaman)

AN ACT to create and enact six new sections to chapter 19-13.1 and sections 19-13.1-06.1 and 19-13.1-06.2 of the North Dakota Century Code, relating to the manufacturing and distribution of commercial feed; to amend and reenact sections 19-13.1-02, 19-13.1-04, 19-13.1-06, 19-13.1-07, 19-13.1-08, 19-13.1-09, 19-13.1-11, 19-13.1-12, and 19-13.1-13 of the North Dakota Century Code, relating to the manufacturing and distribution of commercial feed; to repeal sections 19-13.1-01, 19-13.1-03, and 19-13.1-10 of the North Dakota Century Code, relating to rules, enforcement, and registration and licensing requirements applicable to commercial feed; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-13.1-02 of the North Dakota Century Code is amended and reenacted as follows:

19-13.1-02. Definitions ~~of words and terms~~.

~~When used in~~In this chapter, unless the context otherwise requires:

1. "Brand name" means any word, name, symbol, or device, ~~or any~~singly or in combination ~~thereof, identifying the~~, that identifies commercial feed ~~of a distributor and distinguishing it~~and distinguishes it from that of all others.

2. "Commercial feed" means ~~all materials, except whole seeds unmixed or physically altered entire unmixed seeds when not adulterated within the meaning of section 19-13.1-07, which are distributed for use as feed or for mixing in feed. The commissioner, by rule, may exempt from this definition, or from specific provisions of this chapter, commodities such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances when such commodities, compounds, or substances are not intermixed or mixed with other materials and are not adulterated within the meaning of section 19-13.1-07~~any materials, singly or in combination, that are distributed, or which are intended to be distributed, for use as feed or for mixing in feed, except for:

   a. Unmixed whole seeds and unmixed physically altered seeds, provided they are not chemically changed or adulterated;

   b. Commodities such as hay, straw, stover, silage, cobs, husks, and hulls, provided the commodities are:

      (1) Not intermixed or mixed with other materials;

      (2) Not adulterated; and

      (3) Specifically exempted by the agriculture commissioner;

c. Individual chemical compounds or substances, provided they are:

(1) Not intermixed or mixed with other materials;

(2) Not adulterated; and

(3) Specifically exempted by the agriculture commissioner; and

d. Unprocessed grain screenings or unprocessed mixed grain screenings, provided:

(1) The distributor does not make oral or written reference to the nutritional value of the screenings;

(2) The screenings are not adulterated; and

(3) The screenings are specifically exempted by the agriculture commissioner.

3. "Contract feeder" means ~~a person who, as~~ an independent contractor~~,~~ that feeds commercial feed to animals pursuant to a contract ~~whereby such~~under which the commercial feed is supplied, furnished, or otherwise provided to ~~such~~the person and ~~whereby such~~the person's remuneration is determined ~~all~~in whole or in part by feed consumption, mortality, profits, or the amount or quality of the product.

4. "Customer-formula feed" means a ~~mixture of commercial feeds or feed ingredients each batch of which is mixed~~commercial feed that is manufactured according to the specific instructions of the final purchaser ~~or contract feeder~~.

5. "Distribute" means to ~~offer~~:

a. Offer for sale, sell, exchange, or barter commercial feed or customer-formula feed; or ~~to supply~~

b. Supply, furnish, or otherwise provide commercial feed or customer-formula feed to a contract feeder. ~~"Distributor" means any person who distributes.~~

6. "Drug" means ~~any~~:

a. Any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of ~~diseases in animals other than man~~disease in an animal other than a human; and ~~articles~~

b. Any article, other than feed, that is intended to affect the structure or ~~any~~ function of ~~the animal~~an animal's body.

7. "Feed ingredient" means each of the constituent materials making up a commercial feed.

8. "Label" means ~~a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed or on the invoice or delivery slip with which a commercial feed or customer-formula feed is distributed.~~

~~9. "Labeling" means all labels and other written, printed, or graphic matter upon a commercial feed or any of its containers or wrapper or accompanying such commercial feed~~any printed or stamped information on or attached to a commercial feed container or its wrapper and written information accompanying the distribution of a commercial feed or customer-formula feed.

~~10.~~9. "Manufacture" means to grind, mix, ~~or~~ blend, or further process a commercial feed for distribution.

~~11. "Mineral feed" means a substance or mixture of substances designed or intended to supply primarily mineral elements or inorganic nutrients.~~

~~12.~~10. "Official sample" means any sample of feed taken by the ~~commissioner and designated as "official" by the~~agriculture commissioner in accordance with section 19-13.1-09.

~~13. "Percent" or "percentage" means percentage by weight.~~

~~14. "Person" includes individual, partnership, corporation, limited liability company, and association.~~

~~15. "Pet" means any domesticated animal normally maintained in or near the household of the owner.~~

~~16.~~11. "Pet food" means any commercial feed prepared and distributed for consumption by ~~pets~~dogs or cats.

~~17.~~12. "Product name" means ~~the name of the commercial feed which~~a term that identifies ~~it~~a commercial feed as to its kind, class, or specific use and which distinguishes that feed from all other products bearing the same brand name.

~~18. "Retail" means to sell to the consumer or final purchaser.~~

~~19. "Sell" or "sale" includes exchange.~~

~~20.~~13. "Specialty pet food" means ~~any~~a commercial feed prepared and distributed for consumption by ~~any animal normally maintained in confinement, including~~canaries, finches, gerbils, goldfish, hamsters, mynahs, psittacine birds, ~~fish,~~ snakes, turtles, and ~~zoo animals~~any other domesticated animal normally maintained in a cage or a tank.

~~21. "Ton" means a net weight of two thousand pounds avoirdupois [907.18 kilograms].~~

SECTION 2. A new section to chapter 19-13.1 of the North Dakota Century Code is created and enacted as follows:

Manufacturer's license - Retailer's license.

1. a. A person shall obtain a commercial feed manufacturer's license for each facility at which the person manufacturers commercial feed if the person distributes the feed within this state.

   b. A person shall obtain a commercial feed manufacturer's license if the person's name appears on the label of a commercial feed as a guarantor.

c. This subsection does not apply to a person that manufactures or guarantees pet food or specialty pet food.

2. A person shall obtain a commercial feed retailer's license for each facility at which the person sells commercial feed other than pet food or specialty pet food. This subsection does not apply to a person licensed as a commercial feed manufacturer.

3. In order to obtain an initial license required by this section, a person shall submit an application form at the time and in the manner required by the agriculture commissioner and:

   a. If the person is applying for a manufacturer's license, a fee in the amount of one hundred twenty dollars for a manufacturer's license; or

   b. If the person is applying for a retailer's license, a fee in the amount of sixty dollars.

4. In order to renew a license required by this section, a person shall submit an application form at the time and in the manner required by the commissioner and:

   a. If the person is applying for a manufacturer's license renewal, a fee in the amount of one hundred dollars; or

   b. If the person is applying for a retailer's license renewal, a fee in the amount of fifty dollars.

5. A license issued under this section is valid during the period beginning on January first of an even-numbered year and ending on December thirty-first of the ensuing odd-numbered year.

6. If a person fails to renew a license within thirty-one days of its expiration, that person must apply for an initial license.

SECTION 3. A new section to chapter 19-13.1 of the North Dakota Century Code is created and enacted as follows:

Product registration.

Each commercial feed manufacturer required to be licensed under this chapter shall register all feeds distributed in this state with the agriculture commissioner, at the time and in the manner required by the commissioner. This section does not apply to customer-formula feeds.

SECTION 4. A new section to chapter 19-13.1 of the North Dakota Century Code is created and enacted as follows:

License - Registration - Hearing.

1. a. The agriculture commissioner may refuse to issue a license to an applicant that is not in compliance with this chapter.

   b. The commissioner may revoke a license if the licensee is not in compliance with this chapter.

c. The commissioner may refuse to register any feed and may cancel the registration of any feed if the registrant is not in compliance with this chapter.

2. Before the commissioner may act under this section, the commissioner shall provide the affected person with an opportunity for an informal hearing.

SECTION 5. A new section to chapter 19-13.1 of the North Dakota Century Code is created and enacted as follows:

Pet food - Specialty pet food - Registration - Penalty.

1. Before being distributed in this state, each pet food product and each specialty pet food product must be registered. This requirement does not apply to a distributor, provided the pet food or specialty pet food is registered by another person.

2. In order to register pet food and specialty pet food, a person shall submit:

   a. An application form at the time and in the manner required by the agriculture commissioner; and

   b. A fee in the amount of one hundred twenty dollars.

3. In order to renew a registration required by this section, a person shall submit:

   a. An application form at the time and in the manner required by the commissioner; and

   b. A fee in the amount of one hundred dollars.

4. A registration issued under this section is valid during the period beginning on January first of an even-numbered year and ending on December thirty-first of the ensuing odd-numbered year.

5. If a person fails to renew a registration within thirty-one days of its expiration, that person must apply for an initial registration.

6. Upon approving an application for an initial registration or a renewed registration, the commissioner shall furnish a certificate of registration to the applicant. A certificate of registration is not transferable.

7. Any person violating this section is subject to a penalty of twenty-five dollars for each product that must be registered.

SECTION 6. AMENDMENT. Section 19-13.1-04 of the North Dakota Century Code is amended and reenacted as follows:

19-13.1-04. ~~Labeling~~Commercial feed - Label - Content.

~~Any~~Except as provided in section 7 of this Act, any commercial feed that is distributed in this state must be ~~accompanied by a legible label bearing the information prescribed by rule~~ labeled. The label must include:

1. The product's name, including any brand name under which the product is distributed;

2. The product's weight, volume, or quantity, as appropriate;

3. A guaranteed analysis expressed on an "as is" basis;

4. Unless waived by the agriculture commissioner in the interest of consumers, the commonly accepted name of each ingredient or, if permitted by the commissioner, a collective term for a group of ingredients that perform a similar function;

5. The name and principal mailing address of the manufacturer or the distributor;

6. Directions for use of any commercial feed containing drugs; and

7. Any precautionary statements recommended by the commissioner to ensure the safe and effective use of the feed.

SECTION 7. A new section to chapter 19-13.1 of the North Dakota Century Code is created and enacted as follows:

Customer-formula feed - Label - Content.

Any customer-formula feed that is distributed in this state must be labeled.

1. The label must include:

   a. The name and address of the manufacturer;

   b. The name and address of the purchaser;

   c. The date of delivery;

   d. The product's name;

   e. The weight, volume, or quantity, as appropriate, of each ingredient, including commercial feed; and

   f. Any precautionary statement recommended by the agriculture commissioner to ensure the safe and effective use of the feed.

2. If the feed contains drugs, the label must also include:

   a. The purpose of each drug;

   b. The weight, volume, or quantity, as appropriate, of each drug; and

   c. The name of each active ingredient.

SECTION 8. AMENDMENT. Section 19-13.1-06 of the North Dakota Century Code is amended and reenacted as follows:

19-13.1-06. Inspection ~~fees~~fee.

~~There must be paid to the commissioner for all commercial feeds and customer-formula feeds, except pet foods and specialty pet foods, distributed in this state an~~

1. An inspection fee at the rate of twenty cents per ton [907.18 kilograms] ~~with a minimum of ten dollars. However, customer-formula feeds are exempted if the inspection fee is paid on the commercial feeds that they contain and distribution of commercial feeds to manufacturers is exempted if the commercial feeds so distributed are used solely in manufacture of feeds that are registered. Every person, except as hereinafter provided, who distributes commercial feed in this state shall:~~

~~1. File, not later than the thirty-first day of January of each year, an annual statement under oath setting forth the number of net tons [kilograms] of commercial feeds distributed in this state during the preceding year; and upon filing such statement shall pay the inspection fee. If the statement is not received by January thirty-first, a penalty of ten percent of the amount owed, with a minimum of ten dollars and a maximum of two hundred fifty dollars, may be assessed. The person whose name appears on the label as the manufacturer, guarantor, or distributor shall assume the liability for reporting and paying the inspection fee.~~

~~2. Keep such records as may be necessary or required by the commissioner to indicate accurately the tonnage of commercial feed distributed in this state and the commissioner has the right to examine such records to verify statements of tonnage.~~

~~Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided herein constitutes sufficient cause for the cancellation of all licenses on file for the distributor~~is imposed on all commercial feed distributed in this state. The minimum fee payable under this section is ten dollars.

2. Subsection 1 does not apply if:

   a. The fee was paid earlier in the year by another person;

   b. The commercial feed is to be used in the manufacturing of a registered commercial feed;

   c. The feed is a customer-formula feed and the fee has been paid on the commercial feeds used as ingredients; or

   d. The manufacturer produces only customer-formula feed.

SECTION 9. Section 19-13.1-06.1 of the North Dakota Century Code is created and enacted as follows:

19-13.1-06.1. Inspection fee - Responsibility for payment - Penalty.

1. The person responsible for payment of the inspection fee is:

   a. The manufacturer listed on the label;

   b. The guarantor listed on the label; or

   c. The distributor listed on the label.

2. Before the close of business on each February fifteenth, the person responsible for the payment of the inspection fee shall provide to the agriculture commissioner:

a. A sworn statement indicating the number of net tons [kilograms] of commercial feed, by class, that the person distributed in this state during the immediately preceding calendar year; and

b. The inspection fees due in accordance with this chapter.

3. If the person responsible for the payment of the inspection fee fails to submit the assessments as required by this section, the commissioner may impose a penalty equal to ten percent of the amount due, plus interest at the rate of six percent per annum from the due date. If imposed, a penalty under this section may not be less than ten dollars nor more than two hundred and fifty dollars.

SECTION 10. Section 19-13.1-06.2 of the North Dakota Century Code is created and enacted as follows:

19-13.1-06.2. Inspection fee - Records.

1. The person responsible for payment of the inspection fee shall maintain, for a period of three years, records of all transactions necessary to verify the statement of tonnage required by section 19-13.1-06.1.

2. The person shall make the records required by this section available to the agriculture commissioner for examination upon request.

3. If the commissioner determines that the records required by this section were not maintained accurately, the commissioner may cancel all licenses on file for the distributor.

SECTION 11. AMENDMENT. Section 19-13.1-07 of the North Dakota Century Code is amended and reenacted as follows:

19-13.1-07. Adulteration.

~~No~~A person may not distribute ~~an adulterated feed. A~~any commercial feed ~~or customer-formula feed~~that is adulterated~~:~~.

1. ~~a.If it bears~~Commercial feed is adulterated if it contains any poisonous or deleterious substance that may render ~~it~~the feed injurious to health. ~~If~~However, if the substance is not an added substance, the commercial feed ~~is not~~may be considered adulterated under this subsection only if the ~~quantity of the~~ substance ~~in the commercial feed does not ordinarily~~is present in sufficient quantity to render it injurious to health~~;~~.

~~b.~~2. ~~If it bears or~~Commercial feed is adulterated if it contains any added substance that is poisonous, ~~added~~ deleterious, or ~~added~~ nonnutritive ~~substance that is~~, and unsafe within the meaning of section 406 of the Federal Food, Drug, and Cosmetic Act, as amended [~~Pub. L. 75-717; 52 Stat. 1049;~~ 21 U.S.C. 346] ~~other than one which is a~~. This subsection does not apply to any pesticide ~~chemical~~ in or on a raw agricultural commodity or to a food additive~~;~~.

~~c.~~3. ~~If it is, or it bears or~~Commercial feed is adulterated if it contains~~,~~ any food additive that is unsafe within the meaning of section 409 of the Federal Food, Drug, and Cosmetic Act, as amended [~~Pub. L. 85-929; 72 Stat. 1785;~~ 21 U.S.C. 348]~~;~~.

~~d.~~4. a. ~~If~~Commercial feed is adulterated if it is a raw agricultural commodity and it ~~bears or~~ contains a pesticide ~~chemical~~ that is unsafe within the meaning of section 408a of the Federal Food, Drug, and Cosmetic Act, as amended [~~Pub. L. 85-791; 68 Stat. 511;~~ 21 U.S.C. 346a]. ~~Except that when~~

b. However, if a pesticide ~~chemical~~ has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under section 408 of the Federal Food, Drug, and Cosmetic Act, as amended [~~Pub. L. 85-791; 68 Stat. 511;~~ 21 U.S.C. 346a] and if the raw agricultural commodity has been subjected to ~~processing~~a process such as canning, cooking, dehydration, freezing, ~~dehydrating,~~ or milling, ~~the residue of the~~any pesticide ~~chemical~~residue remaining in or on the processed feed may not be deemed unsafe ~~if the~~, provided:

(1) The residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice; and ~~the~~

(2) The concentration of the residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity ~~unless~~.

c. The exception set forth in subdivision b does not apply if the feeding of such processed feed ~~will result or is likely to~~may result in ~~a pesticide residue in~~ the edible product of the animal~~, which~~ evidencing a pesticide residue that is unsafe within the meaning of section 408a of the Federal Food, Drug, and Cosmetic Act, as amended [~~Pub. L. 85-791; 68 Stat. 511;~~ 21 U.S.C. 346a]~~;~~.

~~e.~~5. ~~If it is, or it bears or~~Commercial feed is adulterated if it contains~~,~~ any color additive that is unsafe within the meaning of section 721 of the Federal Food, Drug, and Cosmetic Act, as amended [~~Pub. L. 102-571; 106 Stat. 4498;~~ 21 U.S.C. 379e]~~; or~~.

~~f.~~6. ~~If it is, or it bears or~~Commercial feed is adulterated if it contains~~,~~ any new animal drug ~~which~~that is unsafe within the meaning of section 512 of the Federal Food, Drug, and Cosmetic Act, as amended [~~Pub. L. 90-399; 82 Stat. 343;~~ 21 U.S.C. 360b]~~;~~.

~~2.~~7. In addition to the foregoing subsections, commercial feed is adulterated if:

a. ~~If any~~Any valuable constituent has been omitted, in whole or in part ~~omitted or abstracted therefrom or any less valuable substance substituted therefor~~, thereby providing a lower nutritive value in the finished product;

~~3.~~ b. ~~If its~~The composition or quality of the feed falls below or differs from that which ~~it is purported or is represented to possess by its labeling~~is stated on its label;

~~4.~~ c. ~~If it~~The feed contains added hulls, screenings, straw, cobs, or other high fiber material, unless ~~the name of each such~~each material is stated on the label;

~~5.~~ d. ~~If it~~The feed contains viable weed seeds in amounts exceeding the limits ~~which~~that the commissioner ~~shall establish~~establishes by rule;

~~6.~~ e. ~~If it~~The feed contains a drug and the methods used in or the facilities or controls used for its manufacturing, processing, or packaging do not conform to current good manufacturing practice rules adopted by the commissioner ~~to assure that the drug meets the requirement of this chapter as to safety and has the identity and strength and meets the quality and purity characteristics that it purports or is represented to possess~~;

~~7.~~ f. ~~If it~~The feed consists in whole or in part of any filthy, putrid, or decomposed substance, or if ~~it~~the feed is otherwise unfit for ~~feed~~its intended use;

~~8.~~ g. ~~If it~~The feed has been prepared, packed, or held under unsanitary conditions~~, whereby it~~ that may have caused it to become contaminated with filth~~,~~ or ~~whereby it may have been~~ rendered injurious to health;

~~9.~~ h. ~~If it is,~~The feed consists in whole or in part~~,~~ of the product of a diseased animal or of an animal that has died otherwise than by slaughter which is unsafe within the meaning of section 402(a)(1) or (2) of the Federal Food, Drug, and Cosmetic Act, as amended [~~Pub. L. 75-717; 52 Stat. 1046;~~ 21 U.S.C. 342];

~~10.~~ i. ~~If its~~The feed's container is composed, in whole or in part, of any poisonous or deleterious substance that may render the contents injurious to health;

j. The feed has been packaged in bags or totes that previously contained pesticide products, treated seeds, or other hazardous materials; or

~~11.~~ k. ~~If it~~The feed has been intentionally subjected to radiation, unless the use of the radiation was in conformity with the regulation or exemption in effect pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act, as amended [~~Pub. L. 85-929; 72 Stat. 1785;~~ 21 U.S.C. 348].

SECTION 12. AMENDMENT. Section 19-13.1-08 of the North Dakota Century Code is amended and reenacted as follows:

19-13.1-08. Misbranding.

~~No~~A person may not distribute any commercial feed that is misbranded ~~feed~~. ~~A commercial feed or customer-formula feed is~~Commercial feed is misbranded if:

1. ~~If its labeling~~Its label is false or misleading ~~in any particular.~~;

2. ~~If it~~It is distributed under the name of another commercial feed~~.~~;

3. ~~If it~~It is not labeled ~~as required in section 19-13.1-04 and in rules prescribed under~~in accordance with this chapter~~.~~;

4. ~~If it~~It purports to be or is represented as being a commercial feed, or if it purports to contain or is represented as containing a commercial feed ingredient, unless the commercial feed or feed ingredient conforms to the definition of identity, if any, prescribed by rules of the agriculture commissioner~~; in the adopting of the rules the commissioner shall give due regard to commonly accepted definitions such as those issued by the association of American feed control officials.~~; or

5. ~~If any word, statement, or other~~Any information required ~~by or under authority of this chapter to appear~~ on the label ~~or labeling~~ is not prominently placed ~~thereon~~, with ~~such~~ conspicuousness, ~~as compared with other words, statements, designs, or devices in the labeling, and in such terms~~so as to render it ~~likely to be read and understood~~readable and comprehensible by ~~the ordinary~~an individual under customary conditions of purchase and use.

SECTION 13. AMENDMENT. Section 19-13.1-09 of the North Dakota Century Code is amended and reenacted as follows:

19-13.1-09. Inspection, sampling, analysis.

1. a. For ~~the purpose of enforcement of~~purposes of enforcing this chapter, ~~and in order to determine whether its provisions have been complied with, including whether or not any operations may be subject to such provisions,~~designated officers ~~or~~and employees ~~duly designated by~~of the agriculture commissioner~~, upon presenting appropriate credentials, and a written notice to the owner, operator, or agent in charge, are authorized to~~ may enter and inspect, during normal business hours, any factory, warehouse, or establishment ~~within the~~in this state, in which commercial feeds are manufactured, processed, packed, or held for distribution, ~~or to~~provided the individuals first present their credentials and written notice to the owner or manager.

   b. For purposes of enforcing this chapter, designated officers and employees of the commissioner may enter and inspect any vehicle being used to transport or hold ~~such feeds; and to inspect~~commercial feed, provided the individuals first present their credentials and written notice to the owner, manager, or driver.

2. Any inspection authorized under this section must take place at reasonable times ~~and~~, within reasonable limits, and in a reasonable manner~~, the factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling therein~~. The inspection may include the verification of ~~only such~~ records and production and control procedures, as ~~may be~~ necessary to determine compliance with ~~the good manufacturing practice rules established under subsection 6 of section 19-13.1-07~~this chapter and rules implemented under this chapter.

~~2.~~3. A separate notice must be given for each ~~such~~authorized inspection~~, but a~~. However, a separate notice is not required for each entry made during the period covered by the inspection. Each inspection must be commenced and completed with reasonable promptness. Upon completion of the inspection, the ~~person~~individual in charge of the facility or the individual in charge of the vehicle must be ~~so~~ notified.

~~3.~~4. If the officer or employee making an inspection of a factory, warehouse, or other establishment has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises, the officer or employee shall give to the owner~~, operator, or agent in charge~~ or manager a receipt describing the samples obtained.

~~4.~~5. ~~If the owner, or agent of the owner, of any factory, warehouse, or establishment described in subsection 1 refuses to admit the officer or agent to inspect in accordance with~~If an officer or employee of the commissioner is denied entry as authorized by this section, the commissioner ~~is authorized~~

~~to~~may obtain a warrant ~~from any state court~~ directing the owner or ~~the owner's agent~~manager to submit the premises described in the warrant to inspection.

~~5.~~6. Any ~~agent~~officer or employee of the commissioner ~~is~~ authorized to enter ~~upon any public or private premises, including any vehicle of transport, during regular business hours to have access to, and to~~any structure or vehicle in accordance with this section, may obtain samples~~,~~ and ~~to~~ examine records relating to distribution of commercial feeds ~~to enforce this chapter~~.

~~6.~~7. Sampling under this section must be conducted in accordance with generally recognized methods and any analysis of the samples taken must be conducted in accordance with ~~methods published by the association of official analytical chemists or in accordance with other~~ generally recognized laboratory methods.

~~7.~~8. The commissioner shall forward the results of ~~all analyses of official samples must be forwarded by the commissioner~~any sample analysis to the person named on the label and to the purchaser. ~~When the inspection and analysis of an official sample~~

9. If an analysis indicates that a commercial feed has been adulterated or misbranded, the ~~registrant~~person named on the label may ~~request a portion of the sample concerned,~~ within thirty days following receipt of the analysis, request that the commissioner provide to the person a portion of the sample.

~~8.~~10. In determining for administrative purposes whether a commercial feed is deficient in any component, the commissioner must be guided by the official sample ~~obtained and analyzed as provided for in this chapter~~.

SECTION 14. AMENDMENT. Section 19-13.1-11 of the North Dakota Century Code is amended and reenacted as follows:

19-13.1-11. Detained commercial feeds.

1. ~~When~~If the agriculture commissioner has reasonable cause to believe ~~any~~a lot of commercial feed is being distributed in violation of this chapter or ~~of~~ any ~~of the prescribed regulations under~~rules implementing this chapter, the commissioner may issue ~~and enforce a written or printed~~a "withdrawal from distribution" order, ~~warning~~prohibiting the distributor ~~not to dispose~~from disposing of the lot ~~of feed in any manner~~ until written permission is given by the commissioner or ~~the~~by a court. The commissioner shall release the lot of commercial feed ~~so withdrawn when the provisions and rules have been complied with~~when there has been compliance with this chapter and the rules implementing this chapter. If compliance is not obtained within thirty days, the commissioner may begin, or upon request of the distributor shall begin, proceedings for condemnation.

2. Any lot of commercial feed not in compliance with ~~the provisions and regulations~~this chapter or rules implementing this chapter is subject to seizure on complaint of the commissioner to a court of competent jurisdiction ~~in the area in which the commercial feed is located~~. If the court finds the commercial feed to be in violation of this chapter or rules implementing this chapter and orders the condemnation of the commercial feed, it must be disposed of in any manner consistent with the quality of the commercial feed and the laws of the state~~; provided, that in no instance may the~~. A court may not order disposition of the commercial feed ~~be ordered by the court~~ without first giving the claimant

an opportunity to apply ~~to the court~~ for its release ~~of the commercial feed~~ or for permission to process or relabel the commercial feed to bring it into compliance with this chapter and rules implementing this chapter.

SECTION 15. AMENDMENT. Section 19-13.1-12 of the North Dakota Century Code is amended and reenacted as follows:

19-13.1-12. Penalties.

1. Any person convicted of violating this chapter or the rules ~~issued thereunder or who~~implementing this chapter and any person that impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the agriculture commissioner from performing the commissioner's duties in connection with ~~the provisions of~~ this chapter is guilty of a class A misdemeanor. In all prosecutions under this chapter involving the composition of a lot of commercial feed, a certified copy of the official analysis signed by the person performing the analysis, or that person's authorized agent, must be accepted as prima facie evidence of the composition.

2. This chapter does not require the commissioner to seek prosecution or ~~the institution of seizure proceedings~~take any other legal action based on minor violations of the chapter ~~when~~if the commissioner deems that the public interest will be best served by a suitable ~~notice of~~written warning ~~in writing~~.

3. Each state's attorney to whom any violation is reported shall cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the commissioner reports a violation for prosecution, the commissioner shall provide an opportunity ~~shall be given~~for the distributor to present the distributor's view to the commissioner.

4. The commissioner may apply for and the court may grant a temporary or permanent injunction restraining any person from violating or continuing to violate this chapter or any rule ~~adopted under the~~implementing this chapter ~~notwithstanding the existence of other remedies at law. The~~. An injunction is to be issued without bond.

5. Any person adversely affected by an act, order, or ruling made pursuant to this chapter may within forty-five days thereafter bring action in the district court for Burleigh County for new trial of the issues bearing upon such act, order, or ruling, and upon such trial the court may issue and enforce such orders, judgments, or decrees as the court may deem proper, just, and equitable.

SECTION 16. AMENDMENT. Section 19-13.1-13 of the North Dakota Century Code is amended and reenacted as follows:

19-13.1-13. Publications.

1. The agriculture commissioner may publish~~, in such forms as the commissioner may determine proper,~~ information ~~concerning the sales of~~regarding commercial feeds, ~~together with such data on~~including their production, sales, and use ~~as the commissioner may consider advisable, and a report of the results of~~, and publish a comparison of the analyses of official samples of commercial feeds sold ~~within the~~in this state~~. However, the information concerning~~ with the analyses guaranteed in their registration and on their label.

2. Information regarding the production and use of commercial feeds may not disclose the operations of any person.

SECTION 17. A new section to chapter 19-13.1 of the North Dakota Century Code is created and enacted as follows:

Certificates - Fees.

The agriculture commissioner may:

1. Implement a program to inspect, audit, and certify commercial feed manufacturing and distribution facilities, at the request of an owner;

2. Issue commercial feed export certificates; and

3. Establish a schedule of fees for the services provided under this section.

SECTION 18. REPEAL. Sections 19-13.1-01, 19-13.1-03, and 19-13.1-10 of the North Dakota Century Code are repealed.

Approved March 27, 2013
Filed March 27, 2013

CHAPTER 187

HOUSE BILL NO. 1227

(Representatives Kempenich, D. Johnson, Pollert, J. Kelsh)
(Senators Klein, Miller, Heckaman)

AN ACT to create and enact section 19-20.1-17.1 of the North Dakota Century Code, relating to the imposition of civil penalties; to amend and reenact sections 19-20.1-02, 19-20.1-03, 19-20.1-03.1, 19-20.1-03.4, 19-20.1-04, 19-20.1-06, 19-20.1-08, 19-20.1-10, 19-20.1-11, 19-20.1-12, 19-20.1-13, 19-20.1-14, 19-20.1-15, 19-20.1-16, 19-20.1-17, and 19-20.1-18 of the North Dakota Century Code, relating to fertilizers, fertilizer materials, micronutrients, specialty fertilizers, soil amendments, and plant amendments; to repeal sections 19-20.1-01, 19-20.1-03.3, 19-20.1-05.1, 19-20.1-07, and 19-20.2-11 of the North Dakota Century Code, relating to the agriculture commissioner, protected information, rulemaking, and storage and fees; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

19-20.1-02. Definitions of words and terms.

When used in this chapter:

1. "Brand" means a term, design, or trademark, used in connection with one or several grades of fertilizer, fertilizer material, micronutrients, specialty fertilizer, soil amendments, or plant amendments.

2. "Bulk" means in a nonpackaged form.

3. "Compost" means a material derived primarily or entirely from biological decomposition of vegetative organic matter or animal manure that does not have inorganic fertilizer added other than to promote decomposition.

4. "Deficiency" means that amount of plant nutrient or active ingredient found by analysis is less than the amount guaranteed resulting from a lack of nutrient or active ingredients or from lack of uniformity.

5. "Distributor" means any person who imports, consigns, manufactures, produces, compounds, mixes, or blends fertilizer, fertilizer materials, micronutrients, specialty fertilizers, soil amendments, or plant amendments, or who sells or offers for sale fertilizer, fertilizer materials, micronutrients, specialty fertilizers, soil amendments, or plant amendments in this state.

6. "End user" means a person who uses a fertilizer, fertilizer materials, micronutrients, specialty fertilizers, soil amendment, or plant amendment in a manner for which the product was intended.

7. "Fertilizer" means any substance containing one or more recognized plant nutrients which is used for its plant nutrient content and which is designed for

use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes, and other products excluded by the commissioner by rule.

8. "Fertilizer material" means a fertilizer which:

   a. Contains no more than one of the primary plant nutrients;

   b. Has approximately eighty-five percent of its primary plant nutrient content present in the form of a single chemical compound; or

   c. Is derived from a plant or animal residue or byproduct or a natural material deposit which has been processed in such a way that its content of primary plant nutrients has not been materially changed except by purification or concentration.

9. ~~"Foliar fertilizer" means a fertilizer designed and ordinarily applied directly to growing plant foliage to stimulate further growth.~~

10. "Grade" means the percentages of total nitrogen, available phosphate, and soluble potassium or soluble potash stated in the same terms, order, and percentages as in the "guaranteed analysis". "Guaranteed analysis" means the minimum percentage of plant nutrients claimed.

11. ~~"Inert" means any ingredient not active.~~

~~12.~~10. "Investigational allowance" means an allowance for variations inherent in the taking, preparation, and analysis of an official sample of fertilizer, soil amendment, or plant amendment.

~~13.~~11. "Label" means all written, printed, or graphic matter upon or accompanying any fertilizer, fertilizer material, micronutrients, specialty fertilizer, soil amendment, or plant amendment and any printed material or media announcements used in promoting ~~the~~their sale ~~thereof~~.

~~14.~~12. "Licensee" means any person licensed by the commissioner to distribute a fertilizer, fertilizer material, micronutrients, specialty fertilizer, soil amendment, or plant amendment.

~~15.~~13. "Manipulated" means fertilizers, fertilizer materials, micronutrients, specialty fertilizers, soil amendments, or plant amendments that are manufactured, blended, or mixed, or animal or vegetable manures that have been treated in any manner, including mechanical drying, grinding, pelleting, and other means, or by adding other chemicals or substances.

~~16.~~14. "Micronutrient" means a fertilizer that contains only essential chemical elements that are required at low levels for normal plant growth.

~~17.~~15. "Mobile mechanical unit" means any portable machine or apparatus used to blend, mix, or manufacture fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, or plant amendments.

~~18.~~16. "Official sample" means any sample of fertilizer, fertilizer material, micronutrients, specialty fertilizer, soil amendment, or plant amendment, taken by the commissioner and designated as "official" by the commissioner.

~~19.~~17. "Organic" in reference to fertilizer nutrients refers only to naturally occurring substances generally recognized as the hydrogen compounds of carbon and their derivatives or synthetic products of similar composition with a water insoluble nitrogen content of at least sixty percent of the guaranteed total nitrogen.

~~20.~~18. "Percent" or "percentage" means the percentage by weight.

~~21.~~19. "Plant amendment" means a substance applied to plants or seeds which is intended to improve germination, growth, yield, product quality, reproduction, flavor, or other desirable characteristics of plants except fertilizers, unless the fertilizer is represented to contain, as an active ingredient, a substance other than a primary plant nutrient or micronutrient, or is represented as promoting plant growth by supplying something other than a primary plant nutrient or micronutrient.

~~22.~~20. "Plant nutrient" means a nutrient generally recognized as beneficial for plant growth, including nitrogen, phosphorus, potassium, calcium, magnesium, sulfur, boron, chlorine, cobalt, copper, iron, manganese, molybdenum, sodium, and zinc.

~~23.~~21. "Primary plant nutrients" means nitrogen, phosphate, and potash.

~~24.~~22. "Registrant" means the person who registers fertilizers, soil amendments, or plant amendments under the provisions of this chapter.

~~25.~~23. "Sell" when applied to fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, or plant amendments includes:

a. The act of selling or transferring ownership.

b. The offering ~~and exposing~~ for sale, exchange, or distribution.

c. Giving away.

d. Receiving, accepting, holding, or possessing for sale, exchange, or distribution.

~~26. "Small package fertilizer" means fertilizer sold exclusively in packages of twenty-five pounds [11.34 kilograms] or less.~~

~~27.~~24. "Soil amendment" means any substance ~~which~~that is intended to improve the characteristics of the soil except fertilizers, unmanipulated animal manures, unmanipulated vegetable manures, and pesticides. The term includes fertilizer if the fertilizer is represented to contain, as an active ingredient, a substance other than a primary plant nutrient or micronutrient or is represented as promoting plant growth by supplying something other than a primary plant nutrient or micronutrient.

~~28.~~25. "Specialty fertilizer" means a fertilizer distributed primarily for nonfarm use.

~~29.~~26. "Ton" means a net weight of two thousand pounds avoirdupois [907.18 kilograms].

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

19-20.1-03. ~~Registration~~Product registration - Fees.

1. Each brand and grade of fertilizer, fertilizer material, ~~foliar fertilizer,~~ micronutrient, specialty fertilizer, soil amendment, ~~or~~and plant amendment must be registered in the name of the person whose name appears upon the label before being offered for sale or distributed in this state.

2. The application for registration must be submitted to the commissioner on a form furnished by the commissioner and must be accompanied by ~~a~~:

   a. A current product label; and

   b. A fee of fifty dollars~~. Upon approval by the commissioner, a certificate of registration must be furnished to the applicant. Registrations cover~~ per product.

3. A registration is effective for a two-year period beginning July first and ending June thirtieth of ~~every~~each even-numbered year. ~~Distribution of fertilizer products without prior registration or~~

4. Any request for a registration renewal received after July thirty-first must be assessed a penalty of ~~twenty-five~~one hundred dollars per product. ~~A distributor is not required~~

5. a. This section does not require a distributor to register any ~~brand of fertilizer, soil amendment, or plant amendment that~~product listed in subsection 1 if that product is already registered under this chapter by another person, providing the label complies with the issued registration. ~~Compost~~

   b. This section does not require the registration of compost that is transferred between parties without compensation ~~is exempt from these requirements~~.

6. The agriculture commissioner shall forward all fees received under this section to the state treasurer for deposit in the environment and rangeland protection fund.

SECTION 3. AMENDMENT. Section 19-20.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-03.1. ~~License required - Penalty~~Distributor's license - Fees.

1. A person may not distribute any fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment in this state without first obtaining a distributor's license from the commissioner. ~~However, a distributor's license is not required for those distributors selling only specialty fertilizers.~~

2. A license ~~must be obtained~~is required for each location or mobile mechanical unit used by a distributor in the state.

3. The application for the license must be submitted on a form furnished by the commissioner and must be accompanied by a fee of one hundred dollars.

4. A license ~~covers~~is effective for a two-year period beginning July first and ending June thirtieth of ~~every~~each even-numbered year.

5. License renewal applications received after July thirty-first ~~may~~must be assessed a penalty ~~fee of twenty~~of one hundred dollars per location. ~~Licenses are~~

6. A license issued under this section:

   a. Is not transferable~~, and each license must~~;

   b. Must be conspicuously posted at each location; and ~~must accompany~~

   c. Must be carried in each mobile mechanical unit operating in the state.

7. The requirements of this section do not apply to persons that distribute only:

   a. Specialty fertilizers; or

   b. Seed inoculants.

8. The agriculture commissioner shall forward all fees received under this section to the state treasurer for deposit in the environment and rangeland protection fund.

SECTION 4. AMENDMENT. Section 19-20.1-03.4 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-03.4. Guaranteed analysis.

~~Until the commissioner prescribes the alternative form of guaranteed analysis in accordance with the provisions of this section, guaranteed~~

1. Guaranteed analysis must be claimed ~~in the following order and form~~as follows:

   ~~1.~~a. Total Nitrogen (N) _____ percent;

   b. Available Phosphate (P_2O_5) _____ percent; and

   c. Soluble Potash (K_2O) _____ percent.

2. ~~For~~In the case of unacidulated mineral phosphatic materials and basic slag, bone, tankage, and other organic phosphatic materials, the total phosphate or degree of fineness, or both, may also be guaranteed.

3. ~~Guarantees~~Rules implemented under this chapter may allow or require guarantees for plant nutrients other than nitrogen, phosphorus, and potassium ~~may be permitted or required by rules adopted by the commissioner~~. ~~The guarantees for any other nutrients~~

   a. Guarantees under this subsection must be expressed in the form of the element.

   b. The commissioner may require that the sources of other nutrients, including oxides, salt, and chelates, ~~may be required to~~ be stated on the

application for registration and ~~may be~~ included as a parenthetical statement on the label.

c. Other beneficial substances or compounds, determinable by laboratory methods, ~~also~~ may be guaranteed ~~by~~with permission of the commissioner ~~and with the advice of~~after consultation with the director of the ~~agricultural experiment station~~North Dakota state university extension service.

4. When any plant nutrients or other substances or compounds are guaranteed, they are subject to inspection and analysis in accord with the methods and rules prescribed by the commissioner.

~~4.~~5. a. The commissioner ~~may~~, by rule, may require potential basicity or acidity expressed in terms of calcium carbonate equivalent in multiples of one hundred pounds [45.36 kilograms] per ton [907.18 kilograms].

~~5.~~ b. The guaranteed analysis of a soil amendment or plant amendment must be an accurate statement of composition, including the percentages of each ingredient. If the product is a microbiological product, the number of viable micro-organisms per milliliter for a liquid or the number of viable micro-organisms per gram for a dry product must also be listed.

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

19-20.1-04. ~~Labeling~~Label requirement.

~~1.~~ Any fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment distributed in this state ~~in containers must have placed on or affixed to the container a label setting forth in clearly legible and conspicuous form the information required by the commissioner~~must be labeled.

1. If the product is in a container, the label must be plainly printed in English and conspicuously placed on or attached to the container. The label must include:

   a. The net weight;

   b. The brand;

   c. The grade, unless no primary nutrients are claimed;

   d. The guaranteed analysis; and

   e. The name and address of the registrant.

2. If the product is distributed in bulk, a ~~written or printed statement showing the net weight, brand and grade, guaranteed analysis, name and address of the distributor, and the sources from which the nitrogen, phosphorus, and potassium are derived~~document providing the same information required in subsection 1 must accompany the delivery and be ~~supplied to the purchaser~~provided to the end user at the time of delivery.

3. A fertilizer formulated according to specifications that are furnished by a consumer prior to mixing must be labeled to show the net weight, the guaranteed analysis or ~~number of pounds [kilograms]~~amount of each plant

nutrient it contains in pounds [kilograms], and the name and address of the ~~distributor.~~

~~4. The commissioner may require the labels of specialty fertilizer sold in packages of fifty pounds [22.68 kilograms] or more, or sold in bulk, to contain the prominent statement "Not intended for farm use"~~registrant.

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

19-20.1-06. Inspection fees ~~and tonnage~~ - Tonnage reports - Penalty.

1. a. ~~There~~An inspection fee in the amount of twenty cents per ton [907.18 kilograms] must be paid to the commissioner ~~for~~on all ~~fertilizers~~fertilizer, fertilizer material, micronutrients, specialty fertilizer, soil amendments, ~~or~~ and plant amendments distributed in this state ~~an inspection fee at the rate of twenty cents per ton~~ [907.18 kilograms]. The inspection fee may not be less than ten dollars. ~~Sales to manufacturers~~

   b. This subsection does not apply to:

      (1) Manufacturers, distributors, or exchanges of product between them ~~are exempt from the inspection fee. Fees collected under this section must be forwarded to the state treasurer for deposit in the environment and rangeland protection fund.~~

~~Individual packages of~~; or

      (2) Individual fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, or plant amendments sold exclusively in packages of twenty-five pounds [11.34 kilograms] or less ~~are exempt from the provisions of this section. If a person sells fertilizer, soil amendments, or plant amendments in packages of twenty-five pounds [11.34 kilograms] or less and in packages over twenty-five pounds [11.34 kilograms], that portion sold in packages over twenty-five pounds [11.34 kilograms] is subject to the same inspection fee of twenty cents per ton [907.18 kilograms], including the minimum ten dollar fee, as provided in this chapter~~.

2. a. ~~Every~~On or before January thirty-first, each licensed person who distributes a fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment to ~~a nonlicensed person~~an end user in this state shall ~~file with the commissioner, on forms furnished by the commissioner, an annual statement for the calendar year, setting forth~~:

      (1) File with the commissioner a form stating the number of net tons [kilograms] of each ~~fertilizer, soil amendment, or plant amendment so~~listed product distributed in this state during the ~~period. A licensed end user shall report all sales and purchases and pay the appropriate tonnage tax. The statement is due on or before January thirty-first of the following year. The person filing the statement shall pay the inspection fee at the rate stated in this section. If the tonnage statement is not filed and the payment of inspection fee is not made by January thirty-first, a collection fee amounting to ten percent, minimum ten dollars, of the amount must be assessed against the licensee, and~~

~~the amount of fees due constitute a debt and become the basis of a judgment against the licensee~~preceding calendar year; and

(2) Submit to the commissioner the inspection fee required by this section.

b. If a person fails to submit an inspection fee, at the time and in the manner required by this section, the commissioner may impose a penalty equal to ten percent of the amount due. The penalty must be equal to at least ten dollars.

3. a. On or before January thirty-first, each licensed person that distributes a fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment to a licensed entity in this state shall file with the commissioner a form stating the number of net tons [kilograms] of each listed product distributed in this state during the preceding calendar year.

b. If a person fails to file the form, at the time and in the manner required by this subsection, the commissioner may impose a late fee of thirty-five dollars.

4. Each distributor shall keep all records regarding purchases and sales for a period of three years. The records may be examined by the commissioner upon request.

5. The agriculture commissioner shall forward all fees received under this section to the state treasurer for deposit in the environment and rangeland protection fund.

SECTION 7. AMENDMENT. Section 19-20.1-08 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-08. Inspection, sampling, analysis.

1. ~~The commissioner shall~~In order to determine compliance with this chapter and rules implemented under this chapter, the commissioner may enter upon real property and access any structure and personal property, during regular business hours, to sample, inspect, make analyses of, and test fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, and plant amendments distributed ~~within~~in this state ~~at any time and place and to such an extent as the commissioner may deem necessary to determine whether these products are in compliance with this chapter. The commissioner is authorized to enter upon any public or private premises or carriers during regular business hours in order to have access to products subject to this chapter and the rules adopted under this chapter~~.

2. The methods of analysis and sampling must be those adopted by the commissioner from sources such as the ~~A.O.A.C. journal~~Journal of the AOAC. In cases not covered by these methods, or if methods are available in which improved applicability has been demonstrated, the commissioner may adopt appropriate methods from other sources.

3. ~~In sampling a lot of fertilizer, a~~A single package may constitute ~~the~~an official sample. ~~The commissioner, in~~In determining for administrative purposes whether any fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment is deficient, the commissioner must be

guided solely by the commissioner's analysis of the official sample ~~obtained and analyzed by the commissioner~~. ~~The~~

4. If the results of the commissioner's official analysis ~~of any~~indicate that a fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment ~~that has been found to~~may be the subject ~~to~~of a penalty or other legal action ~~must be forwarded by~~, the commissioner shall forward the analysis to the registrant at least ten days before the report is submitted to the purchaser. If during that period no adequate evidence to the contrary is made available to the commissioner, the report becomes official. ~~Official~~

5. The commissioner shall retain any official samples found to be deficient ~~must be retained by the commissioner~~ for thirty days from issuance of the analytical report.

6. Upon request, the commissioner shall furnish to the registrant a portion of any sample found to be the subject ~~to~~of a penalty or other legal action.

SECTION 8. AMENDMENT. Section 19-20.1-10 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-10. Misbranding.

1. A person may not distribute a misbranded fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment. For purposes of this section, a fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment is misbranded if ~~false~~:

   a. False or misleading statements concerning the product are disseminated in any manner or by any means~~, if it~~;

   b. The product carries a false or misleading statement on the label ~~or labeling, if it~~;

   c. The product is distributed under the name of another product~~, if it~~;

   d. The product is not labeled as required by ~~section 19-20.1-04 and in accordance with rules adopted~~this chapter or rules implemented under this chapter~~, and if it~~; or

   e. The product purports to be or is represented as a fertilizer, or is represented as containing a plant nutrient or fertilizer unless the plant nutrient or fertilizer conforms to the definition of identity, if any, prescribed ~~by~~in rule ~~of~~by the commissioner.

2. In adopting ~~these~~ rules, the commissioner shall give due regard to commonly accepted definitions and official fertilizer terms such as those issued by the association of American plant food control officials. ~~It is unlawful to distribute a misbranded fertilizer, soil amendment, or plant amendment.~~

SECTION 9. AMENDMENT. Section 19-20.1-11 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-11. Publications.

The commissioner may publish ~~in the forms the commissioner determines proper~~:

1. Information concerning the distribution of fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, and plant amendments~~.~~; and

2. Results of analyses based on official samples of fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, and plant amendments distributed within the state as compared with the analyses guaranteed under sections 19-20.1-03 and 19-20.1-04.

SECTION 10. AMENDMENT. Section 19-20.1-12 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-12. Rules.

For the enforcement of this chapter, the commissioner ~~is authorized to~~may adopt and enforce rules relating to investigational allowances, definitions, records, licensing, inspection, analysis, labeling, storage, and distribution of fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, and plant amendments ~~as necessary to carry into effect the full intent and meaning of this chapter~~.

SECTION 11. AMENDMENT. Section 19-20.1-13 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-13. Deficiencies.

1. A product is deficient if one or more of its guaranteed primary plant nutrients or other guaranteed active ingredients falls below the investigational allowances and compensations as established by rule or if the overall index value of the fertilizer is shown below the level established by rule.

2. A deficiency in an official sample of mixed fertilizer resulting from nonuniformity is not distinguishable from a deficiency due to actual plant nutrient shortage and is properly subject to official action.

3. For the purpose of determining the commercial index value to be applied, the commissioner shall determine at least annually the values per unit of nitrogen, available phosphate, and soluble potash in fertilizers in this state.

4. If any fertilizer, fertilizer material, micronutrients, specialty fertilizer, soil amendment, or plant amendment in the possession of the consumer is found by the commissioner to be short in weight, the registrant of the product shall within thirty days after official notice from the commissioner pay to the consumer a penalty equal to four times the value of the actual shortage.

SECTION 12. AMENDMENT. Section 19-20.1-14 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-14. Cancellation of registrations.

1. The commissioner may cancel the registration of any brand of fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment ~~and~~, may cancel the license of any distributor ~~or~~, may refuse to register any brand of fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment ~~or~~, and may refuse to license any distributor ~~as herein provided~~, upon satisfactory evidence that the registrant, licensee, or distributor ~~has~~ used fraudulent or deceptive practices in

the evasions or attempted evasions of ~~the provisions of~~ this chapter or any rules ~~adopted~~implemented under this chapter. ~~No~~

2. The commissioner may not refuse a registration or revoke a license ~~may be revoked or refused~~ without first providing an opportunity for a hearing ~~given by the commissioner~~.

SECTION 13. AMENDMENT. Section 19-20.1-15 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-15. Stop-sale orders.

The commissioner may issue ~~and enforce a written or printed~~a "stop-sale, use, or removal" order to the owner or custodian of any lot of fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment ~~and an order to hold at a designated place when~~, if the commissioner finds ~~the fertilizer, soil amendment, or plant amendment~~that the product is being offered ~~or exposed~~ for sale in violation of this chapter or a rule ~~adopted~~implemented under this chapter ~~until the law or rule has been complied with and the fertilizer, soil amendment, or plant amendment is released in writing by the commissioner or the violation has been otherwise legally disposed by written authority. The commissioner shall release the fertilizer, soil amendment, or plant amendment so withdrawn when the requirements of this chapter and the rules adopted under this chapter have been complied with and all costs and expenses incurred in connection with the withdrawal have been paid~~. The order must remain in effect until the commissioner:

1. Determines that the violation has been corrected;

2. Has given written authorization for the disposal of the product; or

3. Has given written authorization for the product to be offered for sale.

SECTION 14. AMENDMENT. Section 19-20.1-16 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-16. Seizure, condemnation, and sale.

1. Any lot of fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment, not in compliance with this chapter and the rules ~~adopted under~~implementing this chapter, is subject to seizure on complaint of the commissioner to the district court ~~in~~of the county in which the ~~fertilizer, soil amendment, or plant amendment~~product is located. ~~In the event~~

2. If the court finds the ~~fertilizer, soil amendment, or plant amendment~~product to be in violation of this chapter or a rule ~~adopted under~~implementing this chapter and orders its condemnation, it must be disposed of in any manner consistent with the quality of the ~~fertilizer, soil amendment, or plant amendment~~product and the laws of the state. ~~In no instance may the~~

3. A court may not order disposition of the ~~fertilizer, soil amendment, or plant amendment be ordered by the court~~product without first giving the claimant an opportunity to apply ~~to the court~~ for its release ~~of the fertilizer, soil amendment, or plant amendment~~ or for permission to process or relabel the ~~fertilizer, soil amendment, or plant amendment~~product in order to bring it into compliance with this chapter and the rules ~~adopted under~~implementing this chapter.

SECTION 15. AMENDMENT. Section 19-20.1-17 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-17. Violations - ~~Penalty~~Criminal penalty.

1. If it appears from the examination of any fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment that ~~any of the provisions of~~ this chapter or the rules ~~adopted under~~implementing this chapter have been violated, the commissioner shall cause notice of the violations to be given to the registrant, licensee, manufacturer, distributor, or possessor from whom the sample was taken. Any person so notified must be given an opportunity to be heard ~~under rules adopted by the commissioner~~. If it appears after the hearing, either in the presence or absence of the person so notified, that ~~any of the provisions of~~ this chapter or rules ~~adopted under~~implementing this chapter have been violated, the commissioner may certify the facts to the proper prosecuting attorney.

2. Any person ~~convicted of violating~~that violates this chapter or the rules ~~adopted under~~implementing this chapter or ~~who~~that impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the commissioner in the performance of the commissioner's duty ~~in connection with this chapter or the rules adopted under this chapter~~ is guilty of a class A misdemeanor.

3. In all prosecutions under this chapter involving the composition of a lot of fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, or plant amendments, a certified copy of the official analysis signed by the person performing the analysis or that person's assigned agent must be accepted as prima facie evidence of the composition.

~~3.~~4. ~~Nothing in this chapter may be construed as requiring the~~The commissioner is not required to report for prosecution or ~~for the institution of~~institute seizure proceedings ~~as a result of~~for minor violations of the chapter ~~when~~if the commissioner believes that the public ~~interests~~interest will be best served by a suitable ~~notice of~~written warning ~~in writing~~.

~~4. It is the duty of each state's attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.~~

5. The commissioner may apply for and the court may grant a temporary or permanent injunction restraining any person from violating or continuing to violate this chapter or any rule ~~adopted under~~implementing this chapter, notwithstanding the existence of other remedies at law. An injunction under this section must be issued without bond.

SECTION 16. Section 19-20.1-17.1 of the North Dakota Century Code is created and enacted as follows:

19-20.1-17.1. Violations - Civil penalty.

Any person that violates this chapter or a rule implementing this chapter is subject to a civil penalty in an amount up to two thousand five hundred dollars per violation. The civil penalty may be imposed by a court or by the agriculture commissioner in an administrative hearing.

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

19-20.1-18. Exchanges between manufacturers.

Nothing in this chapter may be construed to restrict or avoid sales or exchanges of fertilizers, fertilizer materials, micronutrients, specialty fertilizers, soil amendments, or plant amendments to each other by importers, manufacturers, or manipulators who mix fertilizers, fertilizer materials, micronutrients, specialty fertilizers, soil amendments, or plant amendments for sale or as preventing the free and unrestricted shipments of fertilizer, fertilizer materials, micronutrients, specialty fertilizers, soil amendments, or plant amendments to manufacturers or manipulators who have registered their brands as required by this chapter.

SECTION 18. REPEAL. Sections 19-20.1-01, 19-20.1-03.3, 19-20.1-05.1, 19-20.1-07, and 19-20.2-11 of the North Dakota Century Code are repealed.

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