FOODS

CHAPTER 132
H. B. No. 253—(Frazier)

FOOD AND DRUGS ACT

An Act amending Articles 2889b4, 2889b5 and 2889b6 of the 1925 Supplement to the 1913 Compiled Laws of North Dakota, and being part of Article 40b of Chapter 38 of the Political Code, relating to food and drugs, and known as the North Dakota Food and Drugs Act.

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

§ 1. AMENDMENT.] That Section 2889b4 of the 1925 Supplement to the 1913 Compiled Laws of North Dakota be amended and re-enacted to read as follows, to-wit:

§ 2889b4. DEFINITIONS.] The term "food" as used herein shall include all articles, whether simple, mixed or compound, used for or entering into the composition of, or intended for use in the preparation of food, drink, confectionery or condiment for man or other animals. The term "drug" as used herein shall include all substances and preparations recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States or the official National Formulary or any supplement to any of them, and any substance or mixture of substances intended or designed to be used for the cure, mitigation, prevention or treatment of disease of man or other animals, and all substances and preparations, other than food, intended to affect the structure or any function of the body; provided, however, that the term "drug" shall include soap only when medicinal or curative qualities are claimed therefor.

§ 2. AMENDMENT.] That Section 2889b5 of the 1925 Supplement to the 1913 Compiled Laws of North Dakota be amended and re-enacted to read as follows, to-wit:

§ 2889b5. ADULTERATION. WHAT CONSTITUTES.] For the purpose of this Act a food or drug shall be deemed to be adulterated:

(a) In the case of drugs:

First. If, when a drug is sold under or by a name recognized in the United States Pharmacopoeia, the Homeopathic Pharmacopoeia of the United States or the National Formulary, it differs from the standard of strength, quality or purity as determined by the tests or methods of assay set forth therein; except that whenever tests or methods of assay have not been prescribed therein, or such tests or methods of assay as are prescribed are insufficient for determining whether or not such drug complies with such standard,

then they may be examined by other recognized tests or methods of assay. No drug shall be deemed to be adulterated because it differs from the standard of strength, quality, or purity set forth in the United States Pharmacopoeia, the Homeopathic Pharmacopoeia of the United States or the National Formulary, if its standard of its strength, quality or purity be plainly stated on its label. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States and not those of the United States Pharmacopoeia.

Second. If when a drug is sold under or by a name not recognized by the United States Pharmacopoeia, Homeopathic Pharmacopoeia of the United States or National Formulary, its strength, quality or purity falls below the professed standard of strength, quality or purity under which it is sold.

Third. If it contains any methyl alcohol, or if it consists in whole or in part of any filthy, decomposed or putrid substance, or if its container is composed in whole or in part of any poisonous or deleterious substance which may render it injurious to health.

(b) In the case of foods:

First. If any substance has been mixed or packed with it so as to lower, reduce or injuriously affect its quality, strength, or fitness for consumption.

Second. If any substance has been substituted wholly or in part for the article.

Third. If any valuable constituent of the article has been wholly or in part abstracted.

Fourth. If it be mixed, colored, powdered, coated, stained or otherwise treated in a manner whereby damage or inferiority is concealed, or the article is made to appear better than it really is, or if such treatment be for the purpose of imitating another article of recognized quality.

Fifth. If it contains any poisonous or deleterious substance which may render the article injurious or detrimental to health. The word "substance" as used herein shall include ingredients naturally present or added.

Sixth. If it consists in whole or in part of filthy, decomposed or putrid animal or vegetable substance, or any portion of an animal unfit for food, or if it be the product of a diseased animal or one that has died otherwise than by slaughter.

Seventh. If it does not conform to the standard of purity or quality established for the article.

§ 3. AMENDMENT.] That Section 2889b6 of the 1925 Sup-

plement to the 1913 Compiled Laws of North Dakota be amended and re-enacted to read as follows, to-wit:

§ 2889b6. MISBRANDING; WHAT CONSTITUTIES.] That the term "misbranded" as used herein shall apply to all drugs, foods or articles which enter into the composition of food, the package or label of which shall bear any statement, design or device regarding such article, or the ingredients or substances contained therein which shall be false or misleading in any particular, and to any food or drug product which is falsely branded as to locality, State or Country of origin, or in which it was manufactured or produced, or if the package or label of which does not contain the true name and address of the manufacturer, jobber or other person responsible for its being placed in commerce.

That for the purposes of this Act an article shall also be deemed to be misbranded:

(a) In the case of drugs:

First. If it be an imitation of or offered for sale under the name of another article; if its container is so made, formed or filled as to mislead the purchaser.

Second. If the contents of the package as originally put up shall have been removed, in whole or in part, and other contents shall have been placed in such package.

Third. If the package or label of which fails to bear a statement of the quantity or proportion of alcohol or any narcotic or habit forming drug.

Fourth. If the package or label shall bear or contain any statement, design or device regarding the curative or therapeutic effect of such article or any of the ingredients or substances contained therein, which is misleading, false or fraudulent.

Fifth. If, in package form, the name of the article together with the quantity of the contents in terms of weight, measure or numerical count be not plainly marked on the outside of the package.

Sixth. If it is dangerous to health when used in the dosage or with the frequency or duration prescribed in the labeling or advertising thereof.

Seventh. If it is not designated solely by a name recognized in the United States Pharmacopoeia or the National Formulary and its label fails to bear a common or usual name of the drug if such there be; or in case it is fabricated from two or more ingredients, the name of each active ingredient, and the quantity, kind and proportion of any alcohol: Provided, however, if such statements of the ingredients alone be insufficient to prevent fraud or deception or to convey to the purchaser the true nature of the product, the percentage of each ingredient shall in addition be required.

EIGHTH. If its labeling fails to bear plainly and conspicuously adequate directions for use, or adequate warning against use in those

pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application.

Ninth. If its name is recognized in the United States Pharmacopoeia, the Homeopathic Pharmacopoeia of the United States or the National Formulary, or if it purports to be a drug the name of which is so recognized and it is not packaged and labeled as prescribed therein; or if it is a drug liable to deterioration and is not packaged in such form and manner, or its label fails to bear a statement of such precautions as are required for the protection of public health.

(b) In the case of food:

First. If it be offered for sale under the distinctive name of another article.

Second. If it be labeled or branded so as to deceive or mislead the purchaser, or purport to be a foreign product when not so, or if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package.

Third. If the label fails to bear the quantity or proportion of alcohol.

Fourth. If, in package form, the name of the article, together with the quantity of the contents in terms of weight, measure or numerical count, be not plainly and conspicuously marked on the outside of the package.

Fifth. If, in package form the package be not filled with the food it purports to contain, irrespective of whether the quantity of the contents be plainly and conspicuously marked on the outside of the package in terms of weight, measure or numerical count.

Sixth. If the package containing it or its label shall bear any statement, design or device regarding the ingredients or substances contained therein, which statement, design or device shall be false or misleading in any particular.

Seventh. If it be an imitation of another article and it be not marked with the word "imitation" equally conspicuous with and immediately adjoining the name of the imitated article.

EIGHTH. If it be a compound for which no standard of purity or quality has been established and it be not marked with the word "compound" equally conspicuous with and immediately adjoining the name of the article: provided, however, that imitations, compounds, blends, mixtures or products sold under their own distinctive names shall, where necessary to prevent fraud or deception or to convey to the purchaser the true nature of the product, bear on the label a plain statement of the ingredients. If such statement of the ingredients alone be insufficient for the purpose herein designated the percentage of each ingredient shall in addition be required.

Approved March 20, 1937.

CHAPTER 133

H. B. No. 240—(Odegard and Levin)

DEFINING IMITATION ICE CREAM

An Act to amend and reenact Section 1, Chapter 159, Session Laws for 1931, as amended and reenacted by Chapter 130, Session Laws for the year 1933, and as again amended and reenacted by Chapter 142 of the Session Laws for the year 1935, defining imitation ice cream, providing penalty for violation and declaring an emergency.

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

§ 1. AMENDMENT.] That Section 1, Chapter 159, Session Laws 1931, as amended and reenacted by Chapter 130, Session Laws 1933, and as again amended and reenacted by Chapter 142 Session Laws 1935, of the State of North Dokta be amended and reenacted to read as follows:

§ 1. Imitation Ice Cream is any frozen substance, mixture or compound regardless of the name under which it is sold or offered for sale, in which the freezing is accompanied by agitation of the ingredients, or which is made in imitation or semblance of ice cream or is prepared or frozen as ice cream is customarily prepared or frozen and which is not ice cream, milk sherbet, ice or frozen or frosted Malted Milk, in accordance with the diffinitions in force under the North Dakota Food and Drug Act or contains less than twelve per centum (12%) of milk fat or weighs less than four and one-half pounds (4½) avoirdupois per gallon.

§ 2. PENALTY.] The penalty as provided for under Section 6 of Chapter 159 of the Session Laws of 1931, being the original Act, shall in all ways apply to this Act.

§ 3. EMERGENCY.] This Act is hereby declared to be an emeremergency Act and shall be in full force and effect after its passage and approval.

Approved March 9, 1937.