

FOODS, DRUGS, OILS & COMPOUNDS

CHAPTER 181

S.B. No. 132

(Olson of Barnes, Foss, Bridston and Kamrath)

APPOINTMENT, ETC. DIRECTOR STATE LABORATORY DEPARTMENT

AN ACT

To amend and reenact section 19-0103 of the North Dakota Revised Code of 1943 relating to director of state laboratories department.

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

§ 1. AMENDMENT.] That section 19-0103 of the North Dakota Revised Code of 1943 be and the same is hereby amended and reenacted to read as follows:

§ 19-0103. DIRECTOR OF DEPARTMENT; APPOINTMENT; BOND; OATH; SALARY.] The commission shall appoint a director of the department who shall serve at the will of the commission. He shall act as secretary of the commission and shall keep such minutes and books as the commission shall determine. Subject to the supervision of the commission, he shall have general charge of the department. Before assuming the duties of his office, he shall furnish a bond in the sum of twenty-five thousand dollars for the faithful performance of his duties and the proper accounting for all moneys collected in his office. The premium for such bond shall be paid as an expense of the department. The director shall take the oath of office and file the same in the manner required of other state officers. He shall receive an annual salary of not more than thirty-six hundred dollars, payable monthly.

Approved March 15, 1947.

CHAPTER 182

S. B. No. 211—(Drew)

INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT

AN ACT

Relating to the distribution, sale, or transportation of adulterated or misbranded insecticides, fungicides, rodenticides, and other economic poisons and devices; regulating traffic therein; providing for registration and examination of such materials, imposing penalties, and for other purposes, and repealing chapter 19-12 of the North Dakota Revised Code of 1943, and providing for an emergency.

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

§ 1. TITLE.] This Act may be cited as the Insecticide, Fungicide, and Rodenticide Act of 1947.

§ 2. DEFINITIONS.] For the purpose of this Act, unless the context or subject otherwise requires:

1. "Economic poison" shall mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, weeds, or other forms of plant or animal life or viruses, except viruses on or in living man or other animals, which the commissioner shall declare to be a pest;
2. "Device" shall mean any instrument or contrivance intended for trapping, destroying, repelling, or mitigating insects or rodents or destroying, repelling, or mitigating fungi or weeds, or such other pests as may be designated by the commissioner, but not including equipment used for the application of economic poisons when sold separately therefrom or rodent traps;
3. "Insecticide" shall mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects which may be present in any environment whatsoever;
4. "Fungicide" shall mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi;
5. "Rodenticide" shall mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animal which the commissioner shall declare to be a pest;

6. "Herbicide" shall mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed;
7. "Insect" shall mean any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class Insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and wood lice;
8. "Fungi" shall mean all non-chlorophyll-bearing thallophytes, that is, all non-chlorophyll-bearing plants of a lower order than mosses and liverworts, as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other animals;
9. "Weed" shall mean any plant which grows where not wanted;
10. "Ingredient statement" shall mean:
 - a. A statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the economic poison or
 - b. a statement of the name of all active ingredients in the order of their predominance in the product, together with the name of each and total percentage of the inert ingredients, if there be, in the economic poison, except Option "A" shall apply if the preparation is highly toxic to man, determined as provided in Section 5 of this Act, and in addition to subsections 1 and 2 of Section 5. In case the economic poison contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, each calculated as elemental arsenic;
11. "Active ingredients" shall mean any ingredient which will prevent, destroy, repel, or mitigate insects, fungi, rodents, weeds, or other pests;
12. "Inert ingredient" shall mean an ingredient which is not an active ingredient;
13. "Antidote" shall mean the most practical immediate treatment in case of poisoning and includes first aid treatment;

14. "Person" shall mean any individual, partnership, association, corporation, or organized group of persons whether incorporated or not;
15. "Commissioner" shall mean the state food commissioner and chemist;
16. "Registrant" shall mean the person registering any economic poison pursuant to the provisions of this Act;
17. "Label" shall mean the written, printed, or graphic matter on, or attached to, the economic poison or device, or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the economic poison or device;
18. "Labeling" shall mean all labels and other written, printed, or graphic matter;
 - a. Upon the economic poison or device or any of its containers or wrappers;
 - b. Accompanying the economic poison or device at any time;
 - c. To which reference is made on the label or in literature accompanying the economic poison or device, except when accurate, non-misleading reference is made to current official publications of the United States department of agriculture or interior, the United States public health service, state experiment stations, state agricultural colleges, or other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the fields of economic poisons;
19. "Adulterated" shall apply to any economic poison if its strength or purity falls below the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the article has been wholly or in part abstracted;
20. The term "misbranded" shall apply:
 - a. To any economic poison or device if its labeling bears any statement, design or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;
 - b. To any economic poison:
 1. If it is an imitation of or is offered for sale under

- the name of another economic poison;
2. If its labeling bears any reference to registration under this Act;
 3. If the labeling accompanying it does not contain instructions for use which are necessary and, if complied with, adequate for the protection of the public;
 4. If the label does not contain a warning or caution statement which may be necessary and, if complied with, adequate to prevent injury to living man and other vertebrate animals;
 5. If the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container can not be clearly read, of the retail package which is presented or displayed under customary conditions of purchase;
 6. If any word, statement, or other information required by or under the authority of this Act to appear on the labeling is not prominently placed thereon such conspicuousness, as compared with other words, statements, designs, or graphic matter in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use, or
 7. If in the case of an insecticide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it shall be injurious to living man or other vertebrate animals or vegetation, except weeds, to which it is applied, or to the person applying such economic poison;

§ 3. PROHIBITED ACTS.] No person shall distribute, sell, or offer for sale within this state or deliver for transportation or transport in intrastate commerce or between points within this state through any point outside this state any of the following:

1. Any economic poison which has not been registered pursuant to the provisions of section 4 of this Act, or any economic poison if any of the claims made for it or any of the directions for its use differ in substance from the representations made in con-

nection with its registration, or if the composition of an economic poison differs from its composition as represented in connection with its registration; provided, that in the discretion of the commissioner, a change in the labeling or formula of an economic poison may be made within a registration period without requiring reregistration of the product;

2. Any economic poison unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one through which the required information on the immediate container can not be clearly read, a label bearing:
 - a. The name and address of the manufacturer, registrant, or person for whom manufacturer;
 - b. The name, brand, or trade mark under which said article is sold; and
 - c. The net weight or measure of the content subject, however, to such reasonable variations as the commissioner may permit;
3. Any economic poison which contains any substance or substances in quantities highly toxic to man, determined as provided in section 5 of this Act, unless the label shall bear, in addition to any other matter required by this Act:
 - a. The skull and cross bones;
 - b. The word "poison" prominently, in red, on a background of distinctly contrasting color; and
 - c. A statement of an antidote for the economic poison;
4. The economic poison commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate unless they have been distinctly colored or discolored as provided by regulations issued in accordance with this Act, or any other white powder economic poison which the commissioner, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, by regulation, shall require to be distinctly colored or discolored; unless it has been so colored

or discolored. The commissioner may exempt any economic poison to the extent that it is intended for a particular use or uses from the coloring or discoloring required or authorized by this section if he determines that such coloring or discoloring for such use or uses is not necessary for the protection of the public health.

5. Any economic poison which is adulterated or misbranded, or any device which is misbranded.

No person shall detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this Act or regulations promulgated hereunder, or to add any substance to, or take any substance from, an economic poison in a manner that may defeat the purpose of this Act.

§ 4. REGISTRATION, FEES.] Any person before selling or offering for sale any economic poison for use as an insecticide or fungicide within this state, shall file annually with the commissioner, an application for registration of such economic poison, which application shall:

1. Give the name and address of each manufacturer or distributor;
2. Give the name and brand, if any, of each product registered, together with an ingredient statement of each product registered in accordance with the provisions of subsection 10 of section 2 of this Act, and accompany each registration application there shall be filed with the commissioner a label of each product so registered. If the commissioner finds that the application conforms to law he shall issue to the applicant a certificate of registration of the product. If the application, after public hearing before the State Laboratory Commission and the Commissioner is denied the product shall not be offered for sale.
3. Be accompanied by an inspection fee of five dollars for each product for the first five products and one dollar for each additional product. But in cases where the registration fees have been paid by the manufacturer, jobber, or any person, as required by this section, then in that event nothing in this section shall be construed as applying to retail dealers selling economic poisons. At the close of each calendar month the department shall transmit to the state treasurer all moneys received for such licenses. The state treasurer shall credit such moneys to the general fund of the state.

Each registration fee of five dollars for the first five products and one dollar for each additional product registered by one registrant, shall expire on the thirty first of December following its issue and no certificate of registration shall be issued for a term longer than one year, and shall not be transferable from one person to another, or from the ownership to whom issued to another ownership, or from one place to another place or location. A penalty of fifty percent of the license or registration fee shall be imposed if license or certificate of registration is not applied for on or before January first of each year, or within the same month such economic poisons are first manufactured or sold within this state.

§ 5. DETERMINATIONS; RULES AND REGULATIONS; UNIFORMITY.] The commissioner is authorized, after opportunity for a hearing:

1. To declare as a pest any form of plant or animal life or virus which is injurious to plants, men, domestic animals, articles, or substances;
2. To determine whether economic poisons are highly toxic to man; and
3. To determine standards of coloring or discoloring for economic poisons, and to subject economic poisons to the requirements of subsection 4 of section 3 of this Act.

The commissioner, after due public hearing, may make appropriate rules and regulations for carrying out the provisions of this Act, including rules and regulations providing for the collection and examination of samples of economic poisons or devices, and also may adopt such regulations, applicable to and in conformity with the primary standards established by this Act, as have been or may be prescribed by the United States department of agriculture with respect to economic poisons in order that there may be uniformity between the requirements of the several states and the federal government.

§ 6. ENFORCEMENT.] The examination of economic poisons or devices shall be made under the direction of the commissioner for the purpose of determining whether they comply with the requirements of this Act. If it shall appear from such examination that an economic poison or device fails to comply with the provisions of this Act, and the commissioner contemplates instituting criminal proceedings against any person, the commissioner shall cause appropriate notice to be given to such person. Any person so notified shall be given an opportunity to present his views, either orally

or in writing, with regard to such contemplated proceedings and if thereafter in the opinion of the commissioner it shall appear that the provisions of the Act have been violated by such person, then the commissioner shall refer the facts to the state's attorney for the county in which the violation shall have occurred with a copy of the results of the analysis or the examination of such article. Nothing in this Act shall be construed as requiring the commissioner to report for prosecution or for the institution of libel proceedings minor violations of the Act whenever he believes that the public interests will be best served by a suitable notice of warning in writing. Each state's attorney to whom any such violation is reported shall cause appropriate proceedings to be instituted and prosecuted in the proper court of jurisdiction without delay. The commissioner, by publication in such manner as he may prescribe, shall give notice of all judgements entered in actions instituted under the authority of this Act.

§ 7. EXEMPTIONS.] The penalties provided for violations of section 3 of this Act shall not apply to:

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

No article shall be deemed in violation of this Act when intended solely for export to a foreign country, and when pre-

pared or packed according to the specifications or directions of the purchaser. If not so exported all the provisions of this Act shall apply.

§ 8. PENALTIES.]

1. Any person violating subsection 1 of section 3 of this Act shall be guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars;
2. Any person violating any provision of this Act other than subsection 1 of section 3 shall be guilty of a misdemeanor and upon conviction shall be fined not more than two hundred dollars for the first offense and upon conviction of a subsequent offense shall be fined not more than three hundred dollars. Any offense committed more than five years after a previous conviction shall be considered a first offense. In any case where a registrant was issued a warning by the commissioner pursuant to the provisions of this Act, such registrant shall upon conviction of a violation of any provision of this Act other than subsection 1 of section 3 be fined not more than two hundred dollars, or imprisoned for not more than one year, or be subject to both such fine and imprisonment, and the registration of the article with reference to which the violation occurred shall terminate automatically. An article the registration of which has been terminated may not again be registered unless the article, its labeling, and other material required to be submitted appear to the commissioner to comply with all the requirements of this Act.

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

1. In the case of an economic poison:
 - a. If it is adulterated or misbranded;
 - b. If it has not been registered under the provisions of section 4 of this Act;
 - c. If it fails to bear on its label the information required by this Act;

- d. If it is a white powder economic poison and is not colored as required under this Act.
2. In the case of a device, if it is misbranded. If the article is condemned, it shall, after entry of decree, be disposed of by destruction or sale as the court may direct and the proceeds, if such article is sold, less legal costs, shall be paid to the state treasurer. The article shall not be sold contrary to the provisions of this Act. Upon payment of cost and execution and delivery of a good and sufficient bond conditioned that the article shall not be disposed of unlawfully, the court may direct that said article be delivered to the owner thereof for relabeling or reprocessing as the case may be. When a decree of condemnation is entered against the article, court costs and fees and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of the article.

§ 10. DELEGATION OF DUTIES.] All authority vested in the commissioner by virtue of the provisions of this Act may with like force and effect be executed by such employees of the state laboratories department as the commissioner may from time to time designate for said purpose.

§ 11. COOPERATION.] The commissioner is authorized and empowered to cooperate with, and enter into agreements with, any other agency of this state, the United States department of agriculture, and any other state or agency thereof for the purpose of carrying out the provisions of this Act and securing uniformity of regulations.

§ 12. SEPARABILITY.] If any provision of this Act is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of this Act and the applicability thereof to other persons and circumstances shall not be affected thereby.

§ 13. REPEAL.] Chapter 19-12 of the North Dakota Revised Code of 1943 and all acts or parts of acts inconsistent or in conflict with the provisions thereof are hereby repealed.

§ 14. EMERGENCY.] This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval

Approved March 20, 1947.