FOODS, DRUGS, OILS AND COMPOUNDS

CHAPTER 166

H. B. No. 548
(Bier, Boustead, Giffey, Glaspey, Haugland, Mueller, Winge)
(From LRC Study)

STATE LABORATORY POWERS AND DUTIES

AN ACT

To amend and reenact sections 19-01-02 and 19-08-04 of the North Dakota Century Code, relating to the powers and duties of the state laboratories commission, and to the inspection and chemical analysis of beverages.

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

§ 1. Amendment.) Section 19-01-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-01-02. State Laboratories Department — State Laboratories Commission — Members, Duties, Meetings, Quorum.) The state laboratories department shall be maintained as one of the departments of the state. The management, control, and supervision of such department shall be placed in the state laboratories commission, which shall be composed of the governor, who shall act as chairman thereof, the state treasurer, and the attorney general. It shall meet whenever necessary, and at least once a month. The commission shall adopt such rules and regulations as may be necessary for the full and complete enforcement of the regulatory laws of the state under its jurisdiction. The commission shall also establish, and may alter as the need arises, a fee schedule for private samples that are submitted to the department for laboratory analysis. A majority of the members of the commission shall constitute a quorum for the transaction of business.

§ 2. Amendment.) Section 19-08-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-08-04. License Required.) The department may, in its discretion, require manufacturers, importers, jobbers, or other retailers to furnish suitable samples to the department for inspection and chemical analysis. If any beverage does not meet all requirements of law, the department shall refuse to

license it and shall prevent its sale. The license fee shall be paid annually during the month of December or prior to placing the beverage on the market. The license shall expire December thirty-first next following its issuance. If the manufacturer or jobber secures a license for a product, subsequent sellers, including retailers and dispensers, need not again secure a license for the same product, and no dispenser shall be required to secure a license for a product prepared for his own use from a product already licensed.

Approved February 22, 1967.

CHAPTER 167

S. B. No. 300
(Christensen)

STATE LABORATORIES VOUCHERS

AN ACT

To amend and reenact section 19-01-08 of the North Dakota Century Code, relating to the state laboratories vouchers.

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

§ 1. **Amendment.)** Section 19-01-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-01-08. Expenses—How Paid.) Vouchers for all salaries and expenses incurred by the director, assistant director, and employees of the department in performing their respective duties, when approved by the commission or director, shall be forwarded to the state auditing board monthly for audit and approval. When the vouchers are audited and approved by such board, they shall be certified to the department of accounts and purchases, which shall prepare, and the state auditor shall sign, warrants upon the state treasurer for the salaries and expenses specifying that the warrants are to be paid from the general fund out of appropriations made for the department by the legislative assembly. The state treasurer shall pay the expenses in accordance with such direction.

Approved March 4, 1967.

CHAPTER 168

S. B. No. 40
(Christensen, Morgan, Ringsak)
(From LRC Study)

FOOD, DRUG, AND COSMETIC ACT

AN ACT

To create a method of regulating foods, drugs, and cosmetics, and to repeal sections 19-02-01, 19-02-02, 19-02-03, 19-02-04, 19-02-05, 19-02-06, 19-02-07, 19-02-08, 19-02-11, 19-02-12, 19-02-14.1, 19-02-25, 19-02-26, 19-02-27, 19-02-28, and 19-02-29 and chapter 19-09 of the North Dakota Century Code, relating to foods, drugs, and cosmetics, and providing a penalty.

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

§ 1. Title.) This Act may be cited as the "North Dakota Food, Drug, and Cosmetic Act".

§ 2. Definitions.) For the purpose of this Act:

1. "Department" means the state laboratories department.
2. "Person" includes individual, partnership, corporation, and association.
3. "Food" means
   a. Articles used for food or drink for man or other animals;
   b. Chewing gum;
   c. Articles used for components of any such article.
4. "Drug" means
   a. Articles recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them;
   b. Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;
   c. Articles (other than food) intended to affect the structure or any function of the body of man or other animals;
   d. Articles intended for use as a component of any article specified in subdivisions a, b, or c, but does not include devices or their components, parts, or accessories.

5. "Device" (except when used in subsection 11 of this section and in subsection 10 of section 3, subsection 6 of section 11, subsections 3 and 16 of section 15, and subsection 3 of section 19) means instruments, apparatus and contrivances, including their components, parts, and accessories, intended
   a. For use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;
   b. To affect the structure or any function of the body of man or other animals.
6. "Cosmetic" means
   a. Articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance;
   b. Articles intended for use as a component of any such articles, except that such term shall not include soap.
7. "Official compendium" means the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, official national formulary, or any supplement to any of them.
8. "Label" means a display of written, printed or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this Act that any word, statement, or other information appearing on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.
9. "Immediate container" does not include package liners.
10. "Labeling" means all labels and other written, printed, or graphic matter
    a. Upon an article or any of its containers or wrappers; or
    b. Accompanying such article.
11. If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account (among other things)

not only representations made or suggested by statement, word, design, device, sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.

12. "Advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

13. The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body.

14. "New drug" means

    a. Any drug the composition of which is such that such drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or

    b. Any drug the composition of which is such that such drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions.

15. "Contaminated with filth" applies to any food, drug, device, or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

16. The provisions of this Act regarding the selling of food, drugs, devices, or cosmetics, shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such article for sale; and the sale, dispensing, and giving of

any such article, and the supplying or applying of any such articles in the conduct of any food, drug, or cosmetic establishment.

17. "Pesticide chemical" means any substance which, alone, in chemical combination, or in formulation with one or more other substances is an "economic poison" within the meaning of chapter 19-18 of the North Dakota Century Code as now enacted or as hereafter amended, and which is used in the production, storage, or transportation of raw agricultural commodities.

18. "Raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

19. "Food additive" means any substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use) if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use, except that such term does not include

    a. A pesticide chemical in or on a raw agricultural commodity; or

    b. A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity; or

    c. A color additive; or

    d. Any substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the Federal Act; the Poultry Products Inspection Act (21 U.S.C. 451 and the following); or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 71 and the following).

20. "Color additive" means a material which

    a. Is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity from a vegetable, animal, mineral, or other source; or

    b. When added or applied to a food, drug, or cosmetic, or to the human body or any part thereof, is capable (alone or through reaction with other substance) of imparting color thereto, except that such term does not include any material which has been or hereafter is exempted under the Federal Act.

21. "Color" includes black, white, and intermediate grays.

22. "Federal Act" means the Federal Food, Drug, and Cosmetic Act, as amended (Title 21 U.S.C. 301 et seq).

Nothing in subsection 20 of section 2 of this Act shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.

§ 3. Prohibited Acts.) The following acts and the causing thereof within the state of North Dakota are hereby prohibited:

1. The manufacture, sale, or delivery, holding or offering for sale of any food, drug, device, or cosmetic that is adulterated or misbranded.

2. The adulteration or misbranding of any food, drug, device or cosmetic.

3. The receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

4. The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of sections 12 or 17 of this Act.

5. The dissemination of any false advertisement.

6. The refusal to permit entry or inspection, or to permit the taking of a sample, as authorized by section 22 of this Act.

7. The giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in the state of North Dakota from whom he received in good faith the food, drug, device, or cosmetic.

8. The removal or disposal of a detained or embargoed article in violation of section 6 of this Act.

9. The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food, drug, device, or cosmetic, if such act is done while such article is held for sale and results in such article being adulterated or misbranded.

10. Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under the provisions of this Act or of the Federal Act.

11. The using, on the labeling of any drug or in any advertisement relating to such drug, or any representation or suggestion that an application with respect to such drug is effective under section 17 of this Act, or that such drug complies with the provisions of such section.

12. In the case of a prescription drug distributed or offered for sale in this state, the failure of the manufacturer, packer, or distributor thereof to maintain for transmittal, or to transmit, to any practitioner licensed by applicable law to administer such drug who makes written request for information as to such drug, true and correct copies of all printed matter which is required to be included in any package in which that drug is distributed or sold, or such other printed matter as is approved under the Federal Act. Nothing in this paragraph shall be construed to exempt any person from any labeling requirement imposed by or under other provisions of this Act.

13. Placing or causing to be placed upon any drug or device or container thereof, with intent to defraud, the trade name or other identifying mark, or imprint of another or any likeness of any of the foregoing; selling, dispensing, disposing of or causing to be sold, dispensed or disposed of or concealing or keeping in possession, control or custody, with intent to sell, dispense or dispose of, any drug, device or any container thereof, with knowledge that the trade name or other identifying mark or

imprint of another or any likeness of any of the foregoing has been placed thereon in a manner prohibited by this subsection; or making, selling, disposing of or causing to be made, sold or disposed of or keeping in possession, control or custody, or concealing, with intent to defraud, any punch, die, plate, or other thing designed to print, imprint, or reproduce that trade name or other identifying mark or imprint of another or any likeness of any of the foregoing upon any drug, device or container thereof.

14. Dispensing or causing to be dispensed a different drug or brand of drug in place of the drug or brand of drug ordered or prescribed without the express permission in each case of the person ordering or prescribing.

§ 4. Injunction Proceedings.) In addition to the remedies hereinafter provided the department is hereby authorized to apply to the district court of Burleigh County for, and such court shall have jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of section 3 of this Act, irrespective of whether or not there exists an adequate remedy at law.

§ 5. Penalties and Guarantee.) 1. Any person who violates any of the provisions of section 3 of this Act shall be guilty of a misdemeanor and shall on conviction thereof be subject to a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail for not less than ten days nor more than thirty days, or by both such fine and imprisonment; but if the violation is committed after a conviction of such person under this section has become final, such person shall be subject to a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than ninety days, or by both such fine and imprisonment.

2. No person shall be subject to the penalties of subsection 1 of this section, for having violated subsections 1 or 3 of section 3 of this Act if he established a guaranty or undertaking signed by, and containing the name and address of, the person residing in the state of North Dakota from whom he received in good faith the article, to the effect that such article is not adulterated or misbranded within the meaning of this Act, designating this Act.

3. No publisher, radio-broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to

which a false advertisement relates, shall be liable under this section by reason of the dissemination by him of such false advertisement, unless he has refused, on the request of the department to furnish the department the name and post office address of the manufacturer, packer, distributor, seller, or advertising agency, residing in the state of North Dakota who caused him to disseminate such advertisement.

§ 6. Seizure.) 1. Whenever a duly authorized agent of the department finds or has probable cause to believe, that any food, drug, device, or cosmetic is adulterated, or so misbranded as to be dangerous or fraudulent, within the meaning of this Act, he shall affix to such article a tag or other appropriate marking, giving notice that such article is, or is suspected of being, adulterated or misbranded and has been detained or embargoed, and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court. It shall be unlawful for any person to remove or dispose of such detained or embargoed article by sale or otherwise without such permission.

2. When an article detained or embargoed under subsection 1 of this section has been found by such agent to be adulterated, or misbranded, he shall petition the judge of the district court in the county in which the article is detained or embargoed for a libel for condemnation of such article. When such agent has found that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

3. If the court finds that a detained or embargoed article is adulterated or misbranded, such article shall, after entry of the decree, be destroyed at the expense of the claimant thereof, under the supervision of such agent, and all court costs and fees, and storage and other proper expenses, shall be taxed against the claimant of such article or his agent; provided, that when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decrees and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such article shall be so labeled or processed, has been executed, may by order direct that such article be delivered to claimant thereof for such labeling or processing under the supervision of an agent of the department. The expense of such supervision shall be paid by claimant. Such shall be returned to the claimant of the article on the representation to the court by the department that the article is no longer in violation of this Act, and that the expenses of such supervision have been paid.

4. Whenever the state laboratories director or any of his authorized agents shall find in any room, building, vehicle of transportation or other structure, any meat, sea food, poultry, vegetable, fruit or other perishable articles which are unsound, or contain any filthy, decomposed or putrid substance, or that may be poisonous or deleterious to health or otherwise unsafe, the same being hereby declared to be a nuisance, the state laboratories director or his authorized agent, shall forthwith condemn or destroy the same, or in any other manner render the same unsaleable as human food.

§ 7. **Prosecutions—State's Attorney.)** It shall be the duty of each state's attorney, to whom the department reports any violation of this Act, to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law. Before any violation of this Act is reported to any such attorney for the institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views before the department or its designated agent, either orally or in writing, in person, or by attorney, with regard to such contemplated proceeding.

§ 8. **Minor Violations.)** Nothing in this Act shall be construed as requiring the state laboratories director to report for the institution of proceedings under this Act, minor violations of this Act, whenever the state laboratories director believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

§ 9. **Food—Definitions and Standards.)** Whenever in the judgment of the department such action will promote honesty and fair dealing in the interest of consumers, the department shall promulgate regulations fixing and establishing for any food or class of food a reasonable definition and standard of identity, and/or reasonable standard of quality and/or fill of container. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the department shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label. The definitions and standards so promulgated shall conform so far as practicable to the definitions and standards promulgated under authority of the Federal Act.

§ 10. **Food—Adulteration Defined.)** A food shall be deemed to be adulterated for any of the following reasons:

1. If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food

shall not be considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health.

2. If it bears or contains any added poisonous or added deleterious substance, other than one which is
   a. A pesticide chemical in or on a raw agricultural commodity; or
   b. A food additive; or
   c. A color additive which is unsafe within the meaning of subsection 1 of section 13 of this Act.
3. If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of subsection 1 of section 13 of this Act.
4. If it is or bears or contains, any food additive which is unsafe within the meaning of subsection 1 of section 13 of this Act.

Provided that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or tolerance prescribed under subsection 1 of section 13 of this Act, and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed food shall not, notwithstanding the provisions of section 13 of this Act and subsection 4 of this section, be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice, and the concentration of such residue in the processed food when ready-to-eat, is not greater than the tolerance prescribed for the raw agricultural commodity.

5. If it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for food.
6. If it has been produced, prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health.
7. If it is the product of a diseased animal or an animal which has died otherwise than by slaughter, or that has been fed upon the uncooked offal from a slaughterhouse.
8. If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

9. If any valuable constituent has been in whole or in part omitted or abstracted therefrom.

10. If any substancee has been substituted wholly or in part therefor.

11. If damage or inferiority has been concealed in any manner.

12. If any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength or make it appear better or of greater value than it is.

13. If it is confectionery and it bears or contains any alcohol or nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of one percent, harmless natural wax not in excess of four-tenths of one percent, harmless natural gum, and pectin; provided, that this subsection shall not apply to any confectionery by reason of its containing less than one-half of one percent by volume of alcohol derived solely from the use of flavoring extracts, or to any chewing gum by reason of its containing harmless nonnutritive masticatory substances.

14. If it is or bears or contains any color additive which is unsafe within the meaning of subsection 1 of section 13 of this Act.

§ 11. Food—Misbranding Defined.) A food shall be deemed to be misbranded:

1. If its labeling is false or misleading in any particular.

2. If it is offered for sale under the name of another food.

3. If it is an imitation of another food for which a definition and standard of identity has been prescribed by regulations as provided by section 9 of this Act or if it is an imitation of another food that is not subject to subsection 7 of this section, unless its label bears in type of uniform size and prominence, the word, imitation, and, immediately thereafter, the name of the food imitated.

4. If its container is so made, formed, or filled as to be misleading.

5. If in package form, unless it bears a label containing
   a. The name and place of business of the manufacturer, packer, or distributor;
   b. An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count;

Provided, that under subdivision 2 of this subsection reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the department.

6. If any word, statement, or other information required by or under authority of this Act 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 as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

7. If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by section 9 of this Act unless it conforms to such definition and standard, its label bears the name of the food specified in the definition and standard, and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food.

8. If it purports to be or is represented as

   a. A food for which a standard of quality has been prescribed by regulations as provided by section 9 of this Act and its quality falls below such standard unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard; or

   b. A food for which a standard or standards of fill of container have been prescribed by regulation as provided by section 9 of this Act, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard.

9. If it is not subject to the provisions of subsection 7 of section 11 of this Act, unless it bears labeling clearly giving

   a. The common or usual name of the food, if any there be;

   b. The common or usual name of each such ingredient, in case it is fabricated from two or more ingredients, except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each;

Provided, that to the extent that compliance with the requirements of subdivision b of subsection 9 of this Act is impractical or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the department and, provided further, that the requirements of subdivision b of subsection 9 of this Act shall not apply to food products which are packaged at the direction of purchasers at retail at the time of sale, the ingredients of which are disclosed to the purchasers by other means in accordance with regulations promulgated by the department.

10. If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the department determines to be, and by regulations prescribes as, necessary in order to fully inform purchasers as to its value for such uses.

11. If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; provided, that the extent that compliance with the requirements of this subsection is impracticable, exemptions shall be established by regulations promulgated by the department.

12. If it is a product intended as an ingredient of another food and when used according to the directions of the purveyor will result in the final food product being adulterated or misbranded.

13. If it is a color additive unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive prescribed under the provisions of the Federal Act.

§ 12. **Emergency Permit Control.)** Whenever the department finds after investigation that the distribution in the state of North Dakota of any class of food may, by reason of contamination with micro-organisms during manufacture, processing, or packing thereof in any locality, be injurious to health and that such injurious nature cannot be adequately determined after such articles have entered commerce, it then, and in such case only, shall promulgate regulations providing for the issuance, to manufacturers, processors, or packers of such class of food in such locality, of permits to which shall be attached such conditions governing the manufacture, processing, or packaging, or packing of such class of food, for such temporary period of time, as may be necessary to protect the public health; and after the effective date of such regulations, and during such temporary period, no person shall introduce or deliver for introduction into commerce any such food manu-

factured, processed, or packed by any such manufacturer, processor, or packer unless such manufacturer, processor, or packer holds a permit issued by the department as provided by such regulations.

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

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

§ 13. Food—Tolerances for Added Poisonous Ingredients.) 1. Any added poisonous or deleterious substance, any food additive, any pesticide chemical in or on a raw agricultural commodity, or any color additive, shall with respect to any particular use or intended use be deemed unsafe for the purpose of application of subsection 2 of section 10 of this Act with respect to any food, subsection 1 of section 14 of this Act with respect to any drug or device, or subsection 1 of section 18 of this Act with respect to any cosmetic, unless there is in effect a regulation pursuant to subsection 2 of this section limiting the quantity of such substance, and the use or intended use of such substance conform to the terms prescribed by such regulation. While such regulation relating to such substance is in effect, a food, drug or cosmetic shall not, by reason of bearing or containing such substance in accordance with the regulation, be considered adulterated within the meaning of subsection 1 of section 10, subsection 1 of section 14, or subsection 1 of section 18 of this Act.

2. The department, whenever public health or other considerations in the state so require, is authorized to adopt, amend, or repeal regulations whether or not in accordance with regulations promulgated under the Federal Act prescribing therein tolerances for any added poisonous or deleterious substances, for food additives, for pesticide chemicals in or on raw agricultural commodities, or for color additives, including,

but not limited to, zero tolerances, and exemptions from tolerances in the case of pesticide chemicals in or on raw agricultural commodities, and prescribing the conditions under which a food additive or a color additive may be safely used and exemptions where such food additive or color additive is to be used solely for investigational or experimental purposes, upon its own motion or upon the petition of any interested party requesting that such a regulation be established, and it shall be incumbent upon such petitioner to establish by data submitted to the department that a necessity exists for such regulation, and that its effect will not be detrimental to the public health. If the data furnished by the petitioner is not sufficient to allow the department to determine whether such regulation should be promulgated, the department may require additional data to be submitted and failure to comply with the request shall be sufficient grounds to deny the request. In adopting, amending or repealing regulations relating to such substances the department shall consider among other relevant factors, the following which the petitioner, if any, shall furnish:

a. The name and all pertinent information concerning such substance including where available, its chemical identity and composition, a statement of the conditions of the proposed use, including directions, recommendations and suggestions and including specimens of proposed labeling, all relevant data bearing on the physical or other technical effect and the quantity required to produce such effect;

b. The probable composition of any substance formed in or on a food, drug, or cosmetic resulting from the use of such substance;

c. The probable consumption of such substance in the diet of man and animals taking into account any chemically or pharmacologically related substance in such diet;

d. Safety factors which, in the opinion of experts qualified by scientific training and experience to evaluate the safety of such substances for the use or uses for which they are proposed to be used, are generally recognized as appropriate for the use of animal experimentation data;

e. The availability of any needed practicable methods of analysis for determining the identity and quantity of such substance in or on an article, any substance formed in or on such article because of the use of such substance, and the pure substance and all intermediates and impurities;

f. Facts supporting a contention that the proposed use of such substance will serve a useful purpose.

§ 14. Drugs and Devices—Adulteration Defined.) A drug or device shall be deemed to be adulterated:

1. If it consists in whole or in part of any filthy, putrid or decomposed substance.

2. If it has been produced, prepared, packed, or held under unsanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health.

3. If it is a drug and the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that such drug meets the requirements of this Act as to safety and has the identity and strength, and meets the quality and purity characteristics, which it purports or is represented to possess.

4. If it is a drug and its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

5. If it is a drug and it bears or contains, for purposes of coloring only, a color additive which is unsafe within the meaning of subsection 1 of section 13 of this Act or it is a color additive, the intended use of which in or on drugs is for purposes of coloring only, and is unsafe within the meaning of subsection 1 of section 13 of this Act.

6. If it purports to be or is represented as a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in such compendium. Such determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in such compendium, or in the absence of or inadequacy of such tests or methods of assay, those prescribed under authority of the Federal Act. No drug defined in an official compendium shall be deemed to be adulterated under this subsection because it differs from the standard of strength, quality, or purity therefor set forth in such compendium, if its difference in strength, quality, or purity from such standard is 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 pharma-

copoeia 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 to those of the United States pharmacopoeia.

7. If it is not subject to the provisions of subsection 6 of this section and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess.

8. If it is a drug and any substance has been mixed or packed therewith so as to reduce its quality or strength; or substituted wholly or in part therefor.

§ 15. Drugs and Devices—Misbranding Defined.) A drug or device shall be deemed to be misbranded:

1. If its labeling is false or misleading in any particular.

2. If in package form unless it bears a label containing

   a. The name and place of business of the manufacturer, packer, or distributor; and

   b. An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count;

Provided, that under subdivision b of subsection 2 of this section reasonable variations shall be permitted, and exemptions as to small packages shall be allowed, in accordance with regulations prescribed by the department or issued under the Federal Act.

3. If any word, statement, or other information required by or under authority of this Act 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 as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

4. If it is for use by man and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marihuana, morphine, opium, paraldehyde, peyote, or sulphonmethane, or any chemical derivative of such substance, which derivative, after investigation, has been found to be and designated as, habit forming, by regulations issued by the department under this Act, or by regulations issued pursuant to section 502 (d) of the Federal Act, unless its label

bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning—May be habit forming".

5. If it is a drug, unless its label bears, to the exclusion of any other non-proprietary name (except the applicable systematic chemical name or the chemical formula):
   a. The established name (as defined in subsection 6 of this section) of the drug, if such there be;
   b. The established name and quantity of each active ingredient, in case it is fabricated from two or more ingredients, including the kind and quantity or proportion of any alcohol, and also including, whether active or not, the established name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein;

Provided, that the requirement for stating the quantity of the active ingredients, other than the quantity of those specifically named in this subsection shall apply only to prescription drugs; provided further, that to the extent that compliance with the requirements of subdivision b of subsection 6 of this section is impracticable, exemptions shall be allowed under regulations promulgated by the department, or under the Federal Act.

6. As used in subsections 5 and 6 of this section, the term "established name", with respect to a drug or ingredient thereof, means:
   a. The applicable official name designated pursuant to section 508 of the Federal Act;
   b. If there is no such name and such drug, or such ingredient, is an article recognized in an official compendium, then the official title thereof in such compendium;
   c. If neither subdivisions a or b of this subsection applies, then the common or usual name, if any, of such drug or of such ingredient;

Provided further, that where subdivision b of this subsection applies to an article recognized in the United States pharmacopoeia and in the homeopathic pharmacopoeia under different official titles, the official title used in the United States pharmacopoeia shall apply unless it is labeled and offered for sale as a homeopathic drug, in which case the official title used in the homeopathic pharmacopoeia shall apply.

7. Unless its labeling bears
   a. Adequate directions for use; and
   b. Such adequate warnings 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, in such manner and form, as are necessary for the protection of users;

Provided, that where any requirement of subdivision a of subsection 7 of this Act, as applied to any drug or device, is not necessary for the protection of the public health, the department shall promulgate regulations exempting such drug or device from such requirements; provided, further, that articles exempted under regulations issued under section 502 (f) of the Federal Act may also be exempt.

8. If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein; provided, that the method of packing may be modified with the consent of the department, or if consent is obtained under the Federal Act. 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 with respect to packaging and labeling 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 to those of the United States pharmacopoeia; provided further, that in the event of inconsistency between the requirements of this subsection and those of subsections 5 and 6 of this section as to the name by which the drug or its ingredients shall be designated, the requirements of subsections 5 and 6 of this section shall prevail.

9. If it has been found by the department or under the Federal Act to be a drug liable to deterioration, unless it is packaged in such form and manner, and its label bears a statement of such precautions, as the regulations issued by the department or under the Federal Act require as necessary for the protection of public health. No such regulation shall be established for any drug recognized in an official compendium until the department shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body

shall have failed within a reasonable time to prescribe such requirements.

10. If it is a drug and
    a. Its container is so made, formed, or filled as to be misleading; or
    b. If it is an imitation of another drug; or
    c. If it is offered for sale under the name of another drug.
11. If it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof.
12. If it is, or purports to be, or is represented as a drug composed wholly or partly of insulin, unless it is from a batch with respect to which a certificate or release has been issued pursuant to section 506 of the Federal Act, and such certificate or release is in effect with respect to such drug.
13. If it is, or purports to be, or is represented as a drug composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin, or any other antibiotic drug, or any derivative thereof, unless it is from a batch with respect to which a certificate or release has been issued pursuant to section 507 of the Federal Act, and such certificate or release is in effect with respect to such drug; provided, that this subsection shall not apply to any drug or class of drugs exempted by regulations promulgated under section 507 (c) or (d) of the Federal Act. For the purpose of this subsection the term "antibiotic drug" means any drug intended for use by man containing any quantity of any chemical substance which is produced by a micro-organism and which has the capacity to inhibit or destroy micro-organisms in dilute solution (including the chemically synthesized equivalent of any such substance).
14. If it is a color additive, the intended use of which in or on drugs is for the purpose of coloring only, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive, prescribed under the provisions of subsection 2 of section 13 of this Act or of the Federal Act.
15. In the case of any prescription drug distributed or offered for sale in this state, unless the manufacturer, packer, or distributor thereof includes in all advertise-

ments and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that drug a true statement of the established name as defined in subsection 6 of section 15 of this Act, the formula showing quantitatively each ingredient of such drug to the extent required for labels under section 502 (e) of the Federal Act, and such other information in brief summary relating to side effects, contraindications, and effectiveness as shall be required in regulations issued under the Federal Act.

16. If a trade-mark, trade name or other identifying mark, imprint or device of another or any likeness of the foregoing has been placed thereon or upon its container with intent to defraud.

17. Drugs and devices which are, in accordance with the practice of the trade, to be processed, labeled or repacked in substantial quantities at establishments other than those where originally processed or packed shall be exempt from any labeling or packaging requirements of this Act; provided, that such drugs and devices are being delivered, manufactured, processed, labeled, repacked or otherwise held in compliance with regulations issued by the department, or under the Federal Act.

§ 16. Drugs Limited to Dispensing on Prescription.) 1. A drug intended for use by man which is a habit-forming drug to which subsection 4 of section 15 applies; or because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer such drug; or is limited by an approved application under section 505 of the Federal Act or section 17 of this Act to use under the professional supervision of a practitioner licensed by law to administer such drug, shall be dispensed only upon a written prescription of a practitioner licensed by law to administer such drug, or upon an oral prescription of such practitioner which is reduced promptly to writing and filed by the pharmacist, or by refilling any such written or oral prescription if such refilling is authorized by the prescriber either in the original prescription or by oral order which is reduced promptly to writing and filed by the pharmacist. The act of dispensing a drug contrary to the provisions of this paragraph shall be deemed to be an act which results in a drug being misbranded while held for sale.

2. Any drug dispensed by filling or refilling a written or oral prescription of a practitioner licensed by law to administer such drug shall be exempt from the requirements of section 15,

except subsection 1, subdivisions b and c of subsection 10, subsections 12 and 13, and the packaging requirements of subsections 8 and 9 of section 15 of this Act, if the drug bears a label containing the name and address of the dispenser, the serial number and date of the prescription or of its filling, the name of the prescriber and, if stated in the prescription, the name of the patient, and the directions for use and cautionary statements, if any, contained in such prescription. This exemption shall not apply to any drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail, or to a drug dispensed in violation of subsection 1 of this section.

3. The department may, by regulation, remove drugs subject to subsection 4 of section 15 and section 17 of this Act from the requirements of subsection 1 of this section when such requirements are not necessary for the protection of the public health. Drugs removed from the prescription requirements of the Federal Act by regulations issued thereunder may also, by regulations issued by the department, be removed from the requirements of subsection 1 of this section.

4. A drug which is subject to subsection 1 of this section shall be deemed to be misbranded if at any time prior to dispensing its label fails to bear the statement "Caution: Federal Law Prohibits Dispensing Without Prescription", or "Caution: State Law Prohibits Dispensing Without Prescription". A drug to which subsection 1 of this section does not apply shall be deemed to be misbranded if at any time prior to dispensing its label bears the caution statement quoted in the preceding sentence.

5. Nothing in this section shall be construed to relieve any person from any requirement prescribed by or under authority of law with respect to drugs now included or which may hereafter be included within the classifications of narcotic drugs or marihuana as defined in the applicable federal and state laws relating to narcotic drugs and marihuana.

§ 17. New Drugs.) 1. No person shall sell, deliver, offer for sale, hold for sale or give away any new drug unless:

a. An application with respect thereto has been approved and said approval has not been withdrawn under section 505 of the Federal Act; or

b. When not subject to the Federal Act, unless such drug has been tested and has been found to be safe for use and effective in use under the conditions prescribed, recommended, or suggested in the labeling thereof, and prior to selling or offering for sale such drug, there has been filed with the department an application setting forth:

(1) Full reports of investigations which have been made to show whether or not such drug is safe for use and whether such drug is effective in use;

(2) A full list of the articles used as components of such drug;

(3) A full statement of the composition of such drug;

(4) A full description of the methods used in, and the facilities and controls used for, the manufacture, processing and packing of such drug;

(5) Such samples of such drug and of the articles used as components thereof as the department may require;

(6) Specimens of the labeling proposed to be used for such drug.

2. An application provided for in subdivision b of subsection 1 of this section shall become effective on the one hundred eightieth day after the filing thereof, except that if the department finds, after due notice to the applicant and giving him an opportunity for a hearing, that the drug is not safe or not effective for use under the conditions prescribed, recommended, or suggested in the proposed labeling thereof, he shall, prior to the effective date of the application, issue an order refusing to permit the application to become effective.

3. An order refusing to permit an application under this section to become effective may be revoked by the department.

4. This section shall not apply:

a. To a drug intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety and effectiveness of drugs, provided the drug is plainly labeled in compliance with regulations issued by the department or pursuant to section 505 (i) or 507 (d) of the Federal Act; or

b. To a drug sold in this state at any time prior to the enactment of this Act or introduced into interstate commerce at any time prior to the enactment of the Federal Act; or

c. To any drug which is licensed under the Virus, Serum, and Toxin Act of July 1, 1902 (U.S.C. 1958 ed. Title 42 chapter 6A sec. 262); or

d. To any drug which is subject to subsection 5 of section 15 of this Act.

5. The provisions of subsection 14 of section 2 of this Act shall not apply to any drug which, on October 9, 1962, or on the date immediately preceding the enactment of this subsection:

a. Was commercially sold or used in this state or in the United States;

b. Was not a new drug as defined by subsection 14 of section 2 of this Act as then in force;

c. Was not covered by an effective application under section 17 of this Act or under section 505 of the Federal Act, when such drug is intended solely for use under conditions prescribed, recommended, or suggested in labeling with respect to such drug.

§ 18. Cosmetics—Adulteration Defined.) A cosmetic shall be deemed to be adulterated:

1. If it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling or advertisement thereof, or under such conditions of use as are customary or usual; provided, that this provision shall not apply to coal-tar hair dye, the label of which bears the following legend conspicuously displayed thereon: "Caution—this product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness", and the labeling of which bears adequate directions for such preliminary testing. For the purpose of this subsection and subsection 5 of this section, the term "hair dye" shall not include eyelash dyes or eyebrow dyes.

2. If it consists in whole or in part of any filthy, putrid, or decomposed substance.

3. If it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.

4. If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

5. If it is not a hair dye and it is, or it bears or contains a color additive which is unsafe within the meaning of subsection 1 of section 13 of this Act.

§ 19. Cosmetics—Misbranding Defined.) A cosmetic shall be deemed to be misbranded:

1. If its labeling is false or misleading in any particular.

2. If in package form unless it bears a label containing:

   a. The name and place of business of the manufacturer, packer, or distributor; and

   b. An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count;

Provided, that under subdivision b of subsection 2 of this section reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulations prescribed by the department.

3. If any word, statement, or other information required by or under authority of this Act 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 as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

4. If its container is so made, formed or filled as to be misleading.

5. If it is a color additive, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive prescribed under the provisions of the Federal Act. This subsection shall not apply to packages of color additives which, with respect to their use for cosmetics, are marketed and intended for use only in or on hair dyes (as defined in the last sentence of subsection 1 of section 18 of this Act).

§ 20. False Advertising.) 1. An advertisement of a food, drug, device, or cosmetic shall be deemed to be false if it is false or misleading in any particular.

2. For the purpose of this Act the advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecytitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis media, paralysis, pneumonia, poliomyelitis (infantile paralysis), prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, venereal disease,

shall also be deemed to be false, except that no advertisement not in violation of subsection 1 of this section shall be deemed to be false under this subsection if it is disseminated only to members of the medical, dental, pharmaceutical or veterinary professions, or appears only in the scientific periodicals of these professions, or is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly in the sale of such drugs or devices; provided, that whenever the department determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, the department shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such conditions and restrictions as the department may deem necessary in the interests of public health; and provided further, that this subsection shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious.

§ 21. **Regulations—Hearings.)** The authority to promulgate regulations for the efficient enforcement of this Act is hereby vested in the state laboratories department. The department is hereby authorized to make the regulations promulgated under this Act conform, insofar as practicable, with those promulgated under the Federal Act.

Hearings authorized or required by this Act shall be conducted by the state laboratories director or such officer, agent, or employee as the state laboratories director may designate for the purpose. When promulgating any regulations contemplated by section 9, subsection 10 of section 11, section 12, subsections 4, 7, 8, 9, 14, and 17 of section 15, subsection 3 of section 16 or subsection 2 of section 20 of this Act, the department shall follow the procedures provided for in chapter 28-32 of the North Dakota Century Code.

§ 22. **Inspections—Examinations.)** The state laboratories director or his duly authorized agent shall have free access at all reasonable hours to any factory, warehouse, or establishment in which foods, drugs, devices, or cosmetics are manufactured, processed, packed, or held for introduction into commerce, or to enter any vehicle being used to transport or hold such foods, drugs, devices, or cosmetics in commerce, for the purpose:

1. Of inspecting such factory, warehouse, establishment, or vehicle to determine if any of the provisions of this Act are being violated;

2. To secure samples or specimens of any food, drug, device, or cosmetic after paying or offering to pay for such

sample. It shall be the duty of the state laboratories director to make or cause to be made examinations of samples secured under the provisions of this section to determine whether or not any provision of this Act is being violated.

§ 23. **Publicity.)** The department may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this Act, including the nature of the charge and the disposition thereof.

The department may also cause to be disseminated such information regarding food, drugs, devices, and cosmetics as the department deems necessary in the interest of public health and the protection of the consumer against fraud. Nothing in this section shall be construed to prohibit the department from collecting, reporting, and illustrating the results of the investigations of the department.

§ 24. **Repeal.)** Sections 19-02-01, 19-02-02, 19-02-03, 19-02-04, 19-02-05, 19-02-06, 19-02-07, 19-02-08, 19-02-11, 19-02-12, 19-02-14.1, 19-02-25, 19-02-26, 19-02-27, 19-02-28, and 19-02-29 and chapter 19-09 of the North Dakota Century Code are hereby repealed.

Approved March 8, 1967.

CHAPTER 169

H. B. No. 711
(Aamoth, Boustead)

ADMINISTRATION AND TAXATION OF OLEOMARGARINE

AN ACT

To create and enact sections 19-05-17, 19-05-18, and 19-05-19 of the North Dakota Century Code and to amend and reenact sections 19-05-01, 19-05-02, 19-05-03, 19-05-04, 19-05-05, 19-05-06, 19-05-07, 19-05-08, 19-05-09, 19-05-10, 19-05-11, 19-05-12, 19-05-13, 19-05-14, 19-05-15, and 19-05-16 of the North Dakota Century Code, relating to definition, sale, and the administration of the taxation of oleomargarine.

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

§ 1. **Amendment.)** Section 19-05-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-05-01. Definitions.) The term "oleomargarine" as used in this chapter shall mean oleomargarine or margarine the plastic food prepared with one or more ingredients such as rendered fat, oil, or stearin from cattle, sheep, swine or goats and any vegetable food fat, oil, or stearin into which is mixed a small amount of sweet cream, milk, or nonfat dry milk, or other permitted ingredients as may be determined by regulation by the state laboratories department.

§ 2. Amendment.) Section 19-05-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-05-02. Authority to Establish Definitions, Rules, Regulations, Standards, and Ingredients.) The state laboratories department shall fix, adopt, publish, and enforce definitions, rules, regulations with regard to the provisions of this chapter and establish standards of quality, purity, and determine ingredients of oleomargarine for the purpose of:

1. Securing uniformity, as far as practicable, in the laws of this state and of the federal government and the ordinances of municipalities within this state;
2. Preventing fraud and deception in the manufacture, use, sale, and transportation of food;
3. Preserving the public health; and
4. Carrying out the intent of this chapter.

Definitions, rules, regulations, and standards fixed, adopted, and published under the provisions of this chapter shall have the force and effect of law.

§ 3. Amendment.) Section 19-05-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-05-03. Labeling Oleomargarine, Margarine, and Imitation Butter.) No person shall sell or expose for sale, manufacture, or make oleomargarine or any other substance made in imitation or semblance of pure butter, unless the tubs, firkins, or other original packages are distinctly, legibly, and durably branded or marked by letters not less than one inch in length and one-half inch in width in a conspicuous place with the words "oleomargarine", "margarine", or "imitation butter". Retail packages containing oleomargarine or any other substance made in imitation or semblance of pure butter shall be plainly and conspicuously labeled with the words "oleomargarine", "margarine", or "imitation butter", as the case may be.

§ 4. Amendment.) Section 19-05-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-05-04. When Sale in Knowledge of Violation To Be Imputed to Vendor.) The sale or offer for sale of oleomargarine, margarine, or any other imitation butter in packages not branded, stamped, marked, or labeled as required in this chapter shall be prima facie evidence of knowledge of the character of such substance on the part of the person or his employer selling or offering the same for sale.

§ 5. Amendment.) Section 19-05-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-05-05. License—To Whom Granted, Duration, Contents.) 1. No manufacturer, wholesaler, distributor, jobber, or any person acting as such, doing business in this state, shall sell, exchange, or offer for sale, or have in possession with intent to sell, offer for sale, or for exchange, any oleomargarine without first having obtained a license therefor from the state laboratories department.

2. For the purposes of this chapter, "doing business in this state" shall mean any manufacturer, wholesaler, distributor, jobber or any person acting as such having or maintaining within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or by making delivery into this state by his own vehicle or by contract carrier, or by the sending of catalogs or other circulars into this state offering margarine for sale to customers in this state, or by any agent, operating within this state under the authority of the manufacturer, wholesaler, distributor, jobber or any person acting as such or its subsidiary, whether such place of business or agent is located in this state permanently or temporarily or whether or not such a firm is authorized to do business within this state.

3. For the purpose of purchasing oleomargarine revenue stamps, the state tax commissioner, upon application, may authorize the purchase of oleomargarine revenue stamps by any such firm or person not "doing business in this state", who to the satisfaction of the state tax commissioner, furnishes adequate security to insure the payment of the tax. Such authority may be canceled at any time, if the state tax commissioner considers the security inadequate.

4. Each license shall be numbered and shall show the residence and place of business of the licensee. It shall be issued for a period of one year beginning July first of the

year in which it is issued and ending June thirtieth of the year following issuance thereof unless it is revoked prior to such date. Each license shall cover but one place of business. The state laboratories department may revoke the license of any person violating any of the provisions of this chapter. Said department shall notify the tax commissioner in writing immediately of any such revocation.

§ 6. **Amendment.)** Section 19-05-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-05-06. License Fee.) The fee for a license issued under the provisions of this chapter, shall be as follows:

1. For a manufacturer, ten dollars;

2. For a wholesaler, distributor, or jobber, five dollars.

No license shall be issued until after the required fee has been paid. 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.

§ 7. **Amendment.)** Section 19-05-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-05-07. Surety Bond.) 1. Each manufacturer, wholesaler, distributor, jobber or any person acting as such, doing business in this state, shall at the time of application for license, submit to the tax commissioner a surety bond in an amount to be determined by the tax commissioner if such applicant shall desire to purchase oleomargarine revenue stamps for the purpose of stamping oleomargarine containers for sale in this state.

2. For the purposes of this chapter, the amount of the surety bond shall be in an amount not less than one thousand dollars nor more than five thousand dollars for licensees maintaining a permanent location within this state, and for licensees and non-licensees not maintaining a location within this state, who request authorization to purchase oleomargarine revenue stamps, an amount to be determined by the state tax commissioner as sufficient to secure the payment of the tax.

3. The state tax commissioner shall have the authority to waive the requirement of the surety bond in any situation where payment for the purchase of oleomargarine revenue stamps is made by certified check or cashier's check. Once the

bond requirement has been waived, the state tax commissioner shall not be precluded from revoking the waiver at his discretion.

§ 8. Amendment.) Section 19-05-08 of the 1965 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-05-08. Tax on Oleomargarine—Containers for Sale—Tax Stamps To Be Affixed—Reports—Penalty.) 1. The state tax commissioner shall collect a tax of ten cents per pound upon all oleomargarine held for sale or consumption in this state. An additional tax of ten cents per pound shall be collected upon all oleomargarine which is yellow in color held for sale or consumption in this state. Oleomargarine shall not be sold in this state in packages containing less than one pound nor more than thirty pounds. Before a box, carton, or container of oleomargarine is held for distribution by a manufacturer, wholesaler, distributor, jobber, or any person acting as such, or by a retailer, or held for consumption by any person, he shall attach to each package a stamp denoting the payment of the tax upon the oleomargarine therein contained.

2. On or before the tenth day of each month all manufacturers, wholesalers, distributors, jobbers, or any person acting as such holding or selling oleomargarine in this state shall make such reports to the state tax commissioner as he may prescribe. If any manufacturer, wholesaler, distributor, jobber, or any person acting as such liable for any tax imposed by this chapter shall fail to pay such tax by purchasing and attaching the specified revenue stamps there shall be added to the tax a penalty of five percent per month of the total amount of tax unpaid from the date of acquisition of the oleomargarine until paid. All such taxes and penalties may be collected by assessment and distraint, and no court of this state shall enjoin the collection of any such tax or civil penalty. The state tax commissioner may forgive all or part of any such penalty for good cause shown.

3. Every person who has in their possession any oleomargarine upon which the tax in this chapter has not been imposed, shall immediately upon acquisition of the untaxed oleomargarine notify the state tax commissioner of the oleomargarine in their possession and remit the tax as provided in this chapter, or they shall give notice and request that the state tax commissioner compute and assess the tax. For the purposes of this section, notice shall be given by telegram or letter, and such notice shall constitute notice from the time of the sending of the telegram and from the postmarked date of the letter. The notice shall state the brand of oleomargarine

and the number and size of containers. The same such penalty and collection provisions as apply in subsection 2 of this section shall apply to this subsection.

4. Oleomargarine shall be held to be yellow in color when it has a tint or shade containing more than one and six-tenths degree of yellow or of yellow and red collectively but an excess of yellow over red, measured in the terms of the lovibond tintometer scale or its equivalent.

§ 9. Amendment.) Section 19-05-09 of the 1965 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-05-09. Tax Commissioner to Supply Stamps—Tax Deposited in General Fund—Unlawful for Manufacturer, Wholesaler, Distributor, Jobber, or Any Person Acting as Such to Sell or Dispose of Stamps—Tax Meter Machines.) 1. The state tax commissioner shall prepare and purchase suitable stamps denoting the payment of the tax for use on each kind of package described in this chapter. The state tax commissioner shall keep an accurate record of all stamps coming into and leaving his hands. The moneys received from the sale of oleomargarine stamps shall be deposited in the general fund of this state. No manufacturer, wholesaler, distributor, jobber or any person acting as such shall sell or dispose of any stamps received by him under the provisions of this chapter to another manufacturer, wholesaler, distributor, jobber or any person acting as such or to any other person. If a manufacturer, wholesaler, distributor, jobber or any person acting as such owns or operates more than one place of business, stamps may be distributed to the various places of business by the main office, but each place of business shall have a separate license.

2. The state tax commissioner, in lieu of selling stamps, may authorize any manufacturer, wholesaler, distributor, jobber or any person acting as such, located within or without the state to stamp oleomargarine with a tax meter machine, and, under such regulations as he shall prescribe, may provide for the leasing of a tax meter machine to any such manufacturer, wholesaler, distributor, jobber or any person acting as such and for supervising and checking the operation thereof. In such case, the state tax commissioner shall collect and receive the tax prescribed by this chapter on all oleomargarine sold in or delivered to dealers in the state for sale, barter, gifts, or any other purpose, and any oleomargarine so stamped with a tax meter machine need not have affixed thereon stamps prescribed in this chapter, and the same may be possessed lawfully and sold by any wholesale or retail dealer in this state.

3. The state tax commissioner shall have the authority to appoint and designate such tax meter machine setting agents both within and without this state as he shall deem necessary. Such agents shall be bonded in an amount as determined by the state tax commissioner and the cost of the bond and any charges by the agent for the setting of the tax meter machines shall be paid by the manufacturer, wholesaler, distributor, jobber or any person acting as such who has requested the appointment of the setting agent for the purpose of setting their tax meter machine.

§ 10. Amendment.) Section 19-05-10 of the 1965 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-05-10. Correction of Errors — Redemption of Stamps — Issuance of Credit or Refund—Accounting and Destruction of Returned Stamps.) 1. If it shall appear that as a result of a mistake an amount of tax, penalty, or interest has been paid which was not due under the provisions of this chapter, then such amount shall become due under this chapter, and the amount shall be credited or refunded to such person or firm by the tax commissioner. In like manner, if it shall appear that as a result of a mistake an amount of tax, penalty, or interest has not been paid which was due under the provisions of this chapter, then such amount shall become due under this chapter, and the state tax commissioner shall pursue immediate collection under the provisions of this chapter.

2. The state tax commissioner, upon request, shall redeem and make repayment for unused stamps. Whenever a manufacturer, wholesaler, distributor, jobber or any person acting as such destroys oleomargarine stamps accidentally or intentionally, because of staleness or other unfitness for sale, a credit or refund for the stamps removed from such oleomargarine shall be given to the manufacturer, wholesaler, distributor, jobber or any person acting as such under the terms and conditions as prescribed by the state tax commissioner.

3. Whenever by any provisions of this chapter a credit or refund is authorized, the state tax commissioner shall issue a credit applicable to future obligations under this chapter or certify the amount of the refund, the reasons therefor and the name of the payee to the director of the department of accounts and purchases, who shall thereupon draw a warrant on the fund to which the payment had been credited in the amount specified payable to the named payee.

4. Whenever the state tax commissioner shall desire to destroy oleomargarine revenue stamps which represent an outdated denomination or which have been taken from oleo-

margarine packages containing oleomargarine determined unfit for sale, the state tax commissioner shall have the authority to destroy the stamps in a suitable manner after the number of stamps to be destroyed have been verified in writing by the state tax commissioner and the state auditor or their agents or employees.

§ 11. Amendment.) Section 19-05-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-05-11. Open Stock To Be Kept in Required Form—Records of Account.) Every manufacturer, wholesaler, distributor, jobber, or any person acting as such, and retail dealer in oleomargarine shall keep all surplus and open stock in such form as may be prescribed by the state laboratories department and the state tax commissioner. A manufacturer, wholesaler, distributor, jobber, or any person acting as such shall keep a record of all sales of oleomargarine and a retail dealer shall keep a record of all purchases thereof. Such records shall include invoices or bills for all purchases of oleomargarine and at all times during business hours shall be subject to inspection by the state laboratories department and the state tax commissioner or its agents.

§ 12. Amendment.) Section 19-05-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-05-12. Notice Required When Oleomargarine or Margarine Is Used Where Meals Are Served.) The keeper or proprietor of any hotel, boardinghouse, restaurant, lunch counter, or other place where meals are served, who uses or serves for his guests as a substitute for butter any oleomargarine or margarine as defined in this chapter, shall print plainly and conspicuously on the bill of fare, if there is one, the words "oleomargarine used here" or "margarine used here". He also shall post conspicuously in different parts of each room where meals are served, and in places where they can be easily seen and read, signs bearing the words "oleomargarine used here" or "margarine used here" in letters at least one inch high and at least one-half inch wide.

§ 13. Amendment.) Section 19-05-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-05-13. Unlawful for Consumer to Use Oleomargarine Not Stamped—Unlawful to Transport Unstamped Oleomargarine—Penalty.) 1. No person shall use or consume within this state any oleomargarine unless the same has been taken from a

package or container having attached thereto the stamp or stamps affixed under this chapter to denote the payment of the tax thereon.

2. It shall be unlawful for any person to transport into, receive, carry, or move from place to place in this state, by automobile, truck, boat, airplane, conveyance, vehicle, or other means of transportation, except in the course of interstate commerce, any unstamped oleomargarine, and any such automobile, truck, boat, airplane, conveyance, vehicle, or other means of transportation in which any oleomargarine is transported or carried in violation of this chapter, and any oleomargarine and other equipment or personal property used as an incident to such transportation and found in such means of transportation, shall be subject to seizure by the tax commissioner, or by any sheriff or other police officer, with or without process, and shall be subject to forfeiture in the manner provided in section 19-05-14. Violation of this subsection shall constitute a felony.

§ 14. **Amendment.)** Section 19-05-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-05-14. Procedure in Case of Seizure — Determination — Judgment.) The procedure in case of seizure of oleomargarine or equipment as provided in section 19-05-13 or any other product taxed pursuant to this chapter shall be as follows:

1. Upon the seizure of any oleomargarine and within two days thereafter, the officer making such seizure shall deliver an inventory of the property seized to the person from whom such seizure was made, if known, and shall file a copy thereof with the state tax commissioner.

2. Within ten days after the date of the service of such inventory, the person from whom the seizure was made, or any other person claiming an interest in the property seized, may file a demand for a judicial determination of the question as to whether such property was, or lawfully is, subject to seizure and forfeiture. Thereupon the state tax commissioner, within thirty days, shall institute an action in the district court of the county where such seizure was made to determine the issue of forfeiture. Such action shall be brought in the name of the state of North Dakota, and shall be prosecuted by the state's attorney, the state tax commissioner, or by the attorney general. The district court shall hear such action as a court case, and shall try and determine the issues of law and fact involved.

3. In case a judgment of forfeiture is entered, the state tax commissioner, unless such judgment is stayed pending an appeal to the supreme court, as soon as convenient, shall sell such forfeited property and cover the proceeds, less court costs, into the common school fund of the state.

4. In case a demand for a judicial determination is made and no action is commenced as provided in this section, such property shall be released by the state tax commissioner and redelivered to the person entitled thereto.

5. In the event that no demand for judicial determination is made, such seized property shall be deemed, forfeited to the state by operation of law, and the state tax commissioner thereupon may sell the same.

6. In case of the seizure of an automobile, truck, boat, airplane, conveyance, vehicle, or other means of transportation pursuant to the provisions of this chapter, the officer making the seizure shall file an inventory, and upon a demand for a judicial determination as provided in this section, the state tax commissioner, within thirty days thereafter, shall commence an action in the district court of the county where such seizure was made to declare a forfeiture of such vehicle or other means of transportation, and such action shall be heard and determined as other forfeiture actions instituted under this chapter, and

7. Whenever the state tax commissioner is satisfied that any person from whom property is seized was acting in good faith and without intent to evade the revenue provisions of this chapter, he shall release the property seized without further legal proceedings.

§ 15. Amendment.) Section 19-05-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-05-15. Forging or Counterfeiting Stamps—Punishment.) Any person who, with intent to defraud the state, makes, alters, forges, or counterfeits any license or stamps provided for in this chapter or assists therein or who has in his possession any forged, counterfeited, spurious, or altered license or stamps, knowing the same to be forged, counterfeited, spurious, or altered, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the penitentiary for not more than three years, or by both such fine and imprisonment.

§ 16. Amendment.) Section 19-05-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-05-16. Penalty.) Unless it is otherwise provided in this chapter, any person violating any of the provisions of this chapter is guilty of a misdemeanor, and for the first offense shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment. For the second and each subsequent offense, he shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not less than thirty days nor more than ninety days, or by both such fine and imprisonment.

§ 17.) Section 19-05-17 of the North Dakota Century Code is hereby created and enacted to read as follows:

19-05-17. Enforcement—Duty of Law Enforcement Officers.) Every officer who has the duty of enforcing the laws of this state shall be charged with the enforcement of the provisions of this chapter, and for failure to enforce the same, shall be subject to removal from office.

§ 18.) Section 19-05-18 of the North Dakota Century Code is hereby created and enacted to read as follows:

19-05-18. Hearing—Appeals from Decision of the State Tax Commissioner.) Except as provided in section 19-05-14, any person aggrieved because of any action or decision of the state tax commissioner under the provisions of this chapter, shall have the right to a hearing by the state tax commissioner and shall have the right to appeal from the decision of the state tax commissioner on such hearing, all in accordance with the provisions of chapter 28-32 of the title Judicial Procedure, Civil.

§ 19.) Section 19-05-19 of the North Dakota Century Code is hereby created and enacted to read as follows:

19-05-19. Tax Commissioner to Administer Taxation Provisions of This Chapter.) In administering this chapter, the tax commissioner and his agents shall exercise the following powers:

1. The tax commissioner and his authorized agents shall enforce the provisions of this chapter and shall have the powers of peace officers. They may arrest violators of the provisions of this chapter and enter complaint before any court of competent jurisdiction, and may seize without formal warrant, and use as evidence, any forged, counterfeit, spurious, or altered license or stamp, and untaxed oleomargarine found in the possession of any person in violation of this chapter;

2. The tax commissioner may prescribe rules and regulations not inconsistent with the provisions of this chapter for its detailed and efficient administration.

Approved March 3, 1967.

CHAPTER 170

H. B. No. 658
(Johnson(23), Bier)

ICE MILK MANUFACTURER'S LICENSE

AN ACT

To amend and reenact sections 19-06-03 and 19-06-04 of the North Dakota Century Code, relating to the wholesale or retail sale of ice milk, and to provide that current licenses shall be extended.

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

§ 1. **Amendment.)** Section 19-06-03 of the 1965 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-06-03. Application for License.) Any manufacturer making application for a license to sell ice milk at wholesale or retail shall make the same upon a form prescribed by the department, and shall show the name of the county in which the applicant seeks to do business and the location of his place of business if he is a retailer.

§ 2. **Amendment.)** Section 19-06-04 of the 1965 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-06-04. Licenses—Term—Revocation.) A license for the manufacturing of ice milk shall be issued by the department for a period of one year beginning on the first day of April of the year of issue and terminating on the thirty-first day of March following the date of issuance thereof. Each license shall cover but one manufacturer and shall be valid throughout the entire state. A license issued under this chapter shall not be transferable, and the department may revoke any such license for a violation of any provision of this chapter.

§ 3. **Present Licenses Continue in Effect.)** A license for the manufacture of ice milk issued for the year 1967 shall not expire until the thirty-first day of March, 1968.

Approved February 24, 1967.

CHAPTER 171

S. B. No. 38
(Christensen, Morgan, Ringsak)
(From LRC Study)

NORTH DAKOTA COMMERCIAL FEED LAW OF 1967

AN ACT

To regulate the distribution of commercial feeds and customer-formula feeds, and to repeal chapter 19-13 of the North Dakota Century Code, relating to commercial feeding stuffs, and providing a penalty.

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

§ 1. Title.) This Act shall be known as the "North Dakota Commercial Feed Law of 1967".

§ 2. Enforcing Official.) This Act shall be administered by the state laboratories department, hereinafter referred to as the "department".

§ 3. Definitions of Words and Terms.) When used in this Act:

1. "Person" includes individual, partnership, corporation, and association.
2. "Distribute" means to offer for sale, sell or barter, commercial feed or customer-formula feed; or to supply, furnish, or otherwise provide commercial feed or customer-formula feed to a contract feeder. "Distributor" means any person who distributes.
3. "Sell" or "sale" includes exchange.
4. "Commercial feed" means all materials which are distributed for use as feed or for mixing in feed, for animals other than man except:
   a. Unmixed seed, whole or processed, made directly from the entire seed;
   b. Hay, straw, stover, silage, cobs, husks, and hulls when unground and when unmixed with other materials;
   c. Individual chemical compounds when not mixed with other materials.
5. "Feed ingredient" means each of the constituent materials making up a commercial feed.

6. "Mineral feed" shall mean a substance or mixture of substances designed or intended to supply primarily mineral elements or inorganic nutrients.

7. "Customer-formula feed" means a mixture of commercial feeds and/or materials each batch of which mixture is mixed according to the specific instructions of the final purchaser, or contract feeder.

8. "Brand name" means any word, name, symbol, or device, or any combination thereof, identifying the commercial feed of a distributor and distinguishing it from that of others.

9. "Product name" means the name of the commercial feed which identifies it as to kind, class, or specific use.

10. "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.

11. "Ton" means a net weight of two thousand pounds avoirdupois.

12. "Percent" or "percentage" means percentage by weight.

13. "Official sample" means any sample of feed taken by the state laboratories director or his agent and designated as "official" by the department.

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

§ 4. **Registration.)** 1. Each commercial feed shall be registered before being distributed in this state; provided, however, that customer-formula feeds are exempt from registration. The application for registration shall be submitted on forms furnished by the department, and, if the department so requests, shall also be accompanied by a label or other printed matter describing the product. Upon approval by the department a copy of the registration shall be furnished to the applicant. All registrations are considered permanent unless new registrations are called for by the department or unless canceled by the registrant. The application shall include the information required by subsections 2, 3, 4, and 5 of section 5 of this Act. The department may by regulation permit on the

registration the alternative listing of ingredients of comparable feeding value, provided that the label for each package shall state the specific ingredients which are in such package.

2. A distributor shall not be required to register any brand of commercial feed which is already registered under this Act by another person. Changes in the guarantee of either chemical or ingredient composition of a registered commercial feed may be permitted provided there is satisfactory evidence that such changes would not result in a lowering of the feeding value of the product for the purpose for which designed. The department is empowered to refuse registration of any application not in compliance with the provisions of this Act and to cancel any registration subsequently found not to be in compliance with any provision of this Act; provided, however, that no registration shall be refused or canceled until the registrant shall have been given opportunity to be heard before the department and to amend his application in order to comply with the requirements of this Act.

§ 5. **Labeling.)** Any commercial feed distributed in this state shall be accompanied by a legible label bearing the following information:

1. The net weight.
2. The product name and brand name, if any, under which the commercial feed is distributed.
3. The guaranteed analysis of the commercial feed, listing the minimum percentage of crude protein, minimum percentage of crude fat, and maximum percentage of crude fiber; additional guarantees required to be or intentionally shown, shall appear only in the guaranteed analysis section of the label after the guarantee for maximum crude fiber. For all mineral feeds and for those commercial feeds containing a level of added mineral ingredients established by regulation, the list shall include the following, if added: minimum and maximum percentages of calcium (Ca), minimum percentage of phosphorus (P), minimum percentage of iodine (I), and minimum and maximum percentages of salt (naCl). Other substances or elements, determinable by laboratory methods, may be guaranteed by permission of the department. When any items are guaranteed, they shall be subject to inspection and analysis in accordance with the methods and regulations that may be prescribed by the department. The department may by regulation designate certain commercial feeds which need not be labeled to show guarantees for crude protein, crude fat, and crude fiber.

4. The common or usual name of each ingredient used in the manufacture of the commercial feed, except as the department may, by regulation, permit the use of a collective term for a group of ingredients all of which perform the same function. An ingredient statement is not required for single standardized ingredient feeds which are officially defined.

5. The name and principal address of the person responsible for distributing the commercial feed.

§ 6. **Additional Labeling Requirements.)** When a commercial feed is distributed in this state in bags or other containers, the label shall be placed on or affixed to the container; when a commercial feed is distributed in bulk the label shall accompany delivery and be furnished to the purchaser at time of delivery. A customer-formula feed shall be labeled by invoice. The invoice, which is to accompany delivery and be supplied to the purchaser at the time of delivery, shall bear the following information:

1. Name and address of the mixer.

2. Name and address of the purchaser.

3. Date of sale.

4. The product name and brand name, if any, and number of pounds of each registered commercial feed used in the mixture and the name and number of pounds of each other feed ingredient added.

If a commercial feed or a customer-formula feed contains a non-nutritive substance which is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease or which is intended to affect the structure or any function of the animal body, the department may require the label to show the amount present, directions for use, and/or warnings against misuse of the feed.

§ 7. **Inspection Fees.)** There shall be paid to the department for all commercial feeds distributed in this state an inspection fee at the rate of twenty cents per ton; provided, however, that customer-formula feeds are hereby exempted if the inspection fee is paid on the commercial feeds which they contain; and provided, further, that distribution of commercial feeds to manufacturers is hereby exempted if the commercial feeds so distributed are used solely in manufacture of feeds which are registered; and provided, further, that any distributor shall pay an annual registration fee of fifteen dollars ($15.00) for each brand of commercial feed distributed only in individual packages of ten pounds or less,

and the distributor of such brand shall not be required to pay the inspection fee on such packages of the brand so registered. All fees received by the state laboratories department, as provided for in this Act, shall be properly recorded by it and forwarded monthly to the treasurer of the state of North Dakota.

Every person, except as hereinafter provided, who distributes commercial feed in this state shall:

1. File, not later than the fifteenth day of January and July of each year, a semiannual statement under oath, setting forth the number of net tons of commercial feeds distributed in this state during the preceding six months; and upon filing such statement shall pay the inspection fee. When more than one person is involved in the distribution of a commercial feed, the person who distributes to the consumer is responsible for reporting the tonnage and paying the inspection fee.
2. Keep such records as may be necessary or required by the department to indicate accurately the tonnage of commercial feed distributed in this state, and the department shall have 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 shall constitute sufficient cause for the cancellation of all registrations on file for the distributor.

§ 8. **Adulteration.)** No person shall distribute an adulterated feed. A commercial feed or customer-formula feed shall be deemed to be adulterated:

1. If any poisonous, deleterious, or non-nutritive ingredient has been found in sufficient amount to render it injurious to health when fed in accordance with directions for use on the label.
2. If any valuable constituent has been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor.
3. If its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling.
4. If it contains added hulls, screenings, straw, cobs, or other high fiber material unless the name of each such material is stated on the label.
5. If it contains viable weed seeds in amounts exceeding the limits which the department shall establish by rule or regulation.

§ 9. Misbranding.) No person shall distribute misbranded feed. A commercial feed or customer-formula feed shall be deemed to be misbranded:

1. If its labeling is false or misleading in any particular.
2. If it is distributed under the name of another feed.
3. If it is not labeled as required in section 5 of this Act and in regulations prescribed under this Act.
4. If it purports to be or is represented as a feed ingredient, or if it purports to contain or is represented as containing a feed ingredient, unless such feed ingredient conforms to the definition of identity, if any, prescribed by regulation of the department; in the adopting of such regulations the department shall give due regard to commonly accepted definitions such as those issued by the association of American feed control officials.
5. If any word, statement, or other information required by or under authority of this Act 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 as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

§ 10. Inspection—Sampling—Analysis.) It shall be the duty of the state laboratories director, who may act through his authorized agent, to sample, inspect, make analyses of, and test commercial feeds and customer-formula feeds distributed within this state at such time and place to such an extent as he may deem necessary to determine whether such feeds are in compliance with the provisions of this Act. The state laboratories director, individually or through his agent, is authorized to enter upon any public or private premises including any vehicle of transport during regular business hours in order to have access to commercial feeds and customer-formula feeds and to records relating to their distribution. The methods of sampling and analysis shall be those adopted by the department from sources such as the journal of the association of official agricultural chemists.

The department, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided solely by the official sample as defined in subsection 13 of section 3 of this Act and obtained and analyzed as provided for in this section. When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded, the results

of analysis shall be forwarded by the department to the distributor and the purchaser. Upon request within thirty days the department shall furnish to the distributor a portion of the sample concerned.

§ 11. Rules and Regulations.) The state laboratories department is hereby charged with the enforcement of this Act, and is empowered to promulgate and adopt such reasonable rules and regulations as may be necessary in order to secure the efficient administration of this Act. When promulgating any rules or regulations under the authority of this section, the department shall follow the procedures provided for in chapter 28-32 of the North Dakota Century Code. Publicity concerning the public hearing shall be reasonably calculated to give interested parties adequate notice and adequate opportunity to be heard.

§ 12. Detained Commercial Feeds.) When the state laboratories director or his authorized agent has reasonable cause to believe any lot of commercial feed is being distributed in violation of any of the provisions of this Act or of any of the prescribed regulations under this Act, he may issue and enforce a written or printed "withdrawal from distribution" order, warning the distributor not to dispose of the lot of feed in any manner until written permission is given by the department or the court. The department shall release the lot of commercial feed so withdrawn when said provisions and regulations have been complied with. If compliance is not obtained within thirty days, the department may begin, or upon request of the distributor shall begin, proceedings for condemnation.

Any lot of commercial feed not in compliance with said provisions and regulations shall be subject to seizure on complaint of the state laboratories director to a court of competent jurisdiction in the area in which said commercial feed is located. In the event the court finds the said commercial feed to be in violation of this Act and orders the condemnation of said commercial feed, it shall 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 shall the disposition of said commercial feed be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said commercial feed or for permission to process or relabel said commercial feed to bring it into compliance with this Act.

§ 13. Penalties.) Any person convicted of violating any of the provisions of this Act or the rules and regulations issued thereunder or who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent said state laboratories director or his duly authorized agent in performance of his

duty in connection with the provisions of this Act, shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined in the sum of fifty dollars for the first offense and in the sum of one hundred dollars for each subsequent offense. In all prosecutions under this Act involving the composition of a lot of commercial feed, a certified copy of the official analysis signed by the state laboratories director shall be accepted as prima facie evidence of the composition.

Nothing in this Act shall be construed as requiring the state laboratories director or his representative to report for prosecution or for the institution of seizure proceedings as a result of minor violations of the Act when he believes that the public interest will be best served by a suitable notice of warning in writing.

It shall be the duty of each state's attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the department reports a violation for such prosecution, an opportunity shall be given the distributor to present his view to the department.

The department is hereby authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this Act or any rule or regulation promulgated under the Act notwithstanding the existence of other remedies at law. Said injunction to be issued without bond.

Any person adversely affected by an act, order, or ruling made pursuant to the provisions of this Act 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.

§ 14. Publications.) The department shall publish at least annually, in such forms as it may deem proper, information concerning the sales of commercial feeds, together with such data on their production and use as it may consider advisable, and a report of the results of the analyses of official samples of commercial feeds sold within the state as compared with the analyses guaranteed in the registration and on the label; provided, however, that the information concerning production and use of commercial feeds shall not disclose the operations of any person.

§ 15. Repeal.) Chapter 19-13 of the North Dakota Century Code is hereby repealed.

Approved February 6, 1967.

CHAPTER 172

S. B. No. 39
(Morgan, Ringsak)
(From LRC Study)

NORTH DAKOTA FERTILIZER AND SOIL CONDITIONER LAW OF 1967

AN ACT

To regulate the sale and distribution of commercial fertilizers and soil conditioners, and to repeal chapter 19-20 of the North Dakota Century Code, relating to commercial fertilizers, and providing a penalty.

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

§ 1. Title.) This Act shall be known as the "North Dakota Fertilizer and Soil Conditioner Law of 1967".

§ 2. Enforcing Official.) This Act shall be administered by the state laboratories department of the state of North Dakota, hereinafter referred to as the "department".

§ 3. Definitions of Words and Terms.) When used in this Act:

1. "Commercial fertilizer" means any substance containing one or more recognized plant nutrient(s) 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 gypsum).

2. "Mixed fertilizers" is a commercial fertilizer containing any combination or mixtures of fertilizer materials designed for use or claimed to have value in promoting plant growth.

3. "Specialty fertilizer" is a commercial fertilizer distributed primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses and nurseries.

4. "Bulk fertilizers" means commercial fertilizer distributed in a non-packaged form.

5. "Brand" means a term, design, or trade-mark used in connection with one or several grades of commercial fertilizer.

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

   a. Total Nitrogen (N) _____percent
   Available Phosphoric Acid (P_2O_5) _____percent
   Soluble Potash (K_2O) _____percent

   b. For unacidulated mineral phosphatic materials and basic slag, both total and available phosphoric acid and the degree of fineness. For bone, tankage, and other organic phosphatic materials, total phosphoric acid.

   c. Guarantees for plant nutrients other than nitrogen, phosphorus and potassium may be permitted or required by regulation of the department. The guarantees for such other nutrients shall be expressed in the form of the element. The sources of such other nutrients (oxides, salt, chelates, etc.) may be required to be stated on the application for registration and may be included as a parenthetical statement on the label. Other beneficial substances or compounds, determinable by laboratory methods, also may be guaranteed by permission of the department and with the advice of the director of the agricultural experiment station. When any plant nutrients or other substances or compounds are guaranteed they shall be subject to inspection and analysis in accord with the methods and regulations precribed by the department.

   d. Potential basicity or acidity expressed in terms of calcium carbonate equivalent in multiples of one hundred pounds per ton when required by regulation.

   At any time after July 1, 1967, when the department finds, after public hearing following due notice, that the requirement for expressing the guaranteed analysis of phosphorus and potassium in elemental form would not impose an economic hardship on distributors and users of fertilizer by reason of conflicting labeling requirements among the states, they may require by regulation thereafter that the "guaranteed analysis" shall be in the following form:

   Total Nitrogen (N) _____percent
   Available Phosphorus (P) _____percent
   Soluble Potassium (K) _____percent

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

7. "Grade" means the percentages of total nitrogen, available phosphorus or phosphoric acid, and soluble potassium or soluble potash stated in whole numbers in the same terms, order and percentages as in the "guaranteed analysis".

8. "Official sample" means any sample of commercial fertilizer taken by the state laboratories director or his agent and designated as "official" by the department.

9. "Ton" means a net weight of two thousand pounds avoirdupois.

10. "Percent" or "percentage" means the percentage by weight.

11. "Person" includes individual, partnership, association, firm, and corporation.

12. "Distributor" means any person who imports, consigns, manufactures, produces, compounds, mixes, or blends commercial fertilizer, or who offers for sale, sells, barters, or otherwise supplies commercial fertilizer in this state.

13. Words importing the singular number may extend and be applied to several persons or things and words importing the plural number may include the singular.

14. "Registrant" means the person who registers commercial fertilizer under the provisions of this Act.

As used in this Act, soil conditioners, aggregants, or additives are any synthetic organic chemical substances, or chemically or physically modified natural substances, or naturally occurring substances, or manufacturing byproducts, mixed or unmixed, which are represented as having a primary function of forming or stabilizing soil aggregants in soil to which it is to be applied and thereby improving the resistance

of such soil to the slaking action of water, increasing its water and air permeability, improving the resistance of its surface to crusting, improving its ease of cultivation, or otherwise favorably modifying its structural or physical properties.

The terms "soil conditioners, aggregants, or additives" exclude such products having recognized guaranteed plant nutrient elements or compounds; auxiliary plant chemicals such as hormones, bacterial inoculants, and liming materials sold for agricultural purposes.

The terms "soil conditioners, aggregants, or additives" shall include hays, straws, peat, leaf mold, sand, charcoal, pumice, perlite, expanded vermiculite, sintered shale, diatomite, clay and products of similar nature, potting media if sold with no claim for chemical constituents and intended for use solely because of their physical nature.

§ 4. **Registration.)** Each brand and grade of commercial fertilizer shall be registered before being distributed in this state. The application for registration shall be submitted to the department on form furnished by the department and shall be accompanied by a fee of five dollars except that those brands or grades sold in packages of 25 pounds or less shall be registered at a fee of twenty-five dollars each. Upon approval by the department a copy of the registration shall be furnished to the applicant. All registrations expire on June 30 of each year. The application shall include the following information:

1. The net weight.
2. The brand and grade.
3. The guaranteed analysis.
4. The name and address of the registrant.
5. The sources from which the nitrogen, phosphorus, and potassium are derived.

A distributor shall not be required to register any brand of commercial fertilizer which is already registered under this Act by another person. A distributor shall not be required to register a commercial fertilizer formulated according to specifications which are furnished by a consumer prior to mixing; but shall be required to label such fertilizer as provided in subsection 3 of section 5 of this Act.

§ 5. **Labeling Fertilizers.)**

1. Any commercial fertilizer distributed in this state in containers shall have placed on or affixed to the container a label setting forth in clearly legible and con-

spicuous form the information required by subsections 1, 2, 3, and 4 of section 4 of this Act.

2. If distributed in bulk, a written or printed statement of the information required by subsections 1, 2, 3, and 4 of section 4 of this Act shall accompany delivery and be supplied to the purchaser at time of delivery.

3. A commercial fertilizer, formulated according to specifications which are furnished by a consumer prior to mixing, shall be labeled to show the net weight, guaranteed analysis, and the name and address of the distributor.

§ 6. Labeling Soil Conditioners.) Any soil container offered for sale or sold or distributed in this state in bags, barrels or other containers shall have placed on or affixed to the container the net weight, brand name, name and address of manufacturer, ingredient list using the common or usual English name of each component in the soil conditioner product at the time of blending or mixing, and the statement "NOT A PLANT FOOD PRODUCT" printed either on tags affixed to the end of the package or on the package or container if the label is printed thereon in type that is plainly legible. The statement "NOT A PLANT FOOD PRODUCT" shall be in a prominent location on the label and shall be printed in easily legible type of the same size used in the brand and product name, and which is in contrast by typography, layout, or color with other printed matter on the label. If transported in bulk, the net weight and data in written or printed form, as required by this section, shall accompany delivery and be supplied to each and every purchaser.

§ 7. Inspection Fees.) There shall be paid to the department for all commercial fertilizers distributed in this state an inspection fee at the rate of ten cents per ton: Provided, that sales to manufacturers or exchanges between them are hereby exempted. Fees so collected shall be used for the payment of the costs of inspection, sampling, and analysis, and other expenses necessary for the administration of this Act.

On individual packages of commercial fertilizer containing 25 pounds or less, there shall be paid in lieu of the annual registration fee of five dollars per brand and the ten cents per ton inspection fee, an annual registration fee and inspection fee of twenty-five dollars for each brand and grade sold or distributed. Where a person sells commercial fertilizer in packages of 25 pounds or less and in packages over 25 pounds, this annual registration and inspection fee of twenty-five dollars shall apply only to that portion sold in packages of 25 pounds or less, and that portion sold in packages over 25

pounds shall be subject to the same inspection fee of ten cents per ton as provided in this Act.

Every person who distributes a commercial fertilizer in this state shall file with the department, on forms furnished by the department, a semiannual statement for the periods ending December 31 and June 30, setting forth the number of net tons of each commercial fertilizer distributed in this state during such period. The report shall be due on or before the fifteenth day of the month following each semiannual period and upon such statement shall pay the inspection fee at the rate stated in this section. If the tonnage report is not filed and the payment of inspection fee is not made within thirty days after the end of the semiannual period, a collection fee amounting to ten percent (minimum $10.00) of the amount shall be assessed against the registrant, and the amount of fees due shall constitute a debt and become the basis of a judgment against the registrant.

When more than one person is involved in the distribution of a commercial fertilizer, the last person who has the fertilizer registered and who distributes to a non-registrant (dealer or consumer) is responsible for reporting the tonnage and paying the inspection fee, unless the report and payment have been previously made by a prior distributor of a fertilizer.

§ 8. **Tonnage Reports.)** When more than one person is involved in the distribution of a commercial fertilizer, the last person who has the fertilizer registered and who distributes to a non-registrant (dealer or consumer) is responsible for reporting the tonnage and paying the inspection fee, unless the reporting and paying of fees have been made by a prior distributor of the fertilizer.

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

The department, in determining for administrative purposes whether any commercial fertilizer is deficient in plant food,

shall be guided solely by the official sample as defined in subsection 8 of section 3 of this Act, and obtained and analyzed as provided for in this section. The results of official analysis of any commercial fertilizer which has been found to be subject to penalty or other legal action shall be forwarded by the department to the registrant at least ten days before the report is submitted to the purchaser. If during that period no adequate evidence to the contrary is made available to the department, the report shall become official. Upon request the department shall furnish to the registrant a portion of any sample found subject to penalty or other legal action.

§ 10. **Minimum Plant Food Content.)** No superphosphate containing less than sixteen percent available phosphoric acid nor any mixed fertilizer in which the sum of the guarantees for the nitrogen, available phosphoric acid, and soluble potash totals less than twenty percent shall be distributed in this state except for mixed fertilizers containing twenty-five percent or more of their nitrogen in water-insoluble form of plant or animal origin, in which case the total nitrogen, available phosphoric acid, and soluble potash shall not total less than eighteen percent. If guarantees are expressed in elemental form, the appropriate conversions shall be made to available phosphorus and soluble potassium.

§ 11. **False or Misleading Statements.)** A commercial fertilizer or soil conditioner is misbranded if it carries a false or misleading statement on the container, on the label attached to the container, or if false or misleading statements concerning the fertilizer or soil conditioner are disseminated in any manner or by any means. It shall be unlawful to distribute a misbranded fertilizer or soil conditioner.

§ 12. **Publications.)** The department shall publish at least annually and in such forms as they may deem proper:

1. Information concerning the distribution of commercial fertilizers and soil conditioners.
2. Results of analyses based on official samples of commercial fertilizers distributed within the state as compared with the analyses guaranteed under sections 4 and 5 of this Act.

§ 13. **Rules and Regulations.)** For the enforcement of this Act, the state laboratories director is authorized to prescribe and enforce such rules, regulations, and tolerances relating to the distribution of commercial fertilizers and soil conditioners as he may find necessary to carry into effect the full intent and meaning of this Act. When promulgating any rules or

regulations under the authority of this section, the state laboratories director shall follow the procedures provided for in chapter 28-32 of the North Dakota Century Code.

§ 14. Short Weight.) If any commercial fertilizer in the possession of the consumer is found by the department to be short in weight, the registrant of said commercial fertilizer shall within thirty days after official notice from the department pay to the consumer a penalty equal to four times the value of the actual shortage.

§ 15. Cancellation of Registrations.) The department is authorized and empowered to cancel the registration of any brand of commercial fertilizer or to refuse to register any brand of commercial fertilizer as herein provided, upon satisfactory evidence that the registrant has used fraudulent or deceptive practices in the evasions or attempted evasions of the provisions of this Act or any rules and regulations promulgated thereunder; provided, that no registration shall be revoked or refused until the registrant shall have been given the opportunity to appear for a hearing by the department.

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

§ 17. Seizure — Condemnation — Sale.) Any lot of commercial fertilizer or soil conditioner not in compliance with the provisions of this Act shall be subject to seizure on complaint of the department to the district court in the county in which said commercial fertilizer or soil conditioner is located. In the event the court finds the said commercial fertilizer or soil conditioner to be in violation of this Act and orders its condemnation, it shall be disposed of in any manner consistent with the quality of the commercial fertilizer or soil conditioner and the laws of the state; provided, that in no instance shall the disposition of said commercial fertilizer or soil conditioner be ordered by the court without first giving the claimant an

opportunity to apply to the court for release of said commercial fertilizer or soil conditioner or for permission to process or relabel said commercial fertilizer or soil conditioner to bring it into compliance with this Act.

§ 18. Violations.) If it shall appear from the examination of any commercial fertilizer or soil conditioner that any of the provisions of this Act or the rules and regulations issued thereunder have been violated, the department shall cause notice of the violations to be given to the registrant, manufacturer, distributor, or possessor from whom said sample was taken; any person so notified shall be given opportunity to be heard under such rules and regulations as may be prescribed by the department. If it appears after such hearing, either in the presence or absence of the person so notified, that any of the provisions of this Act or rules and regulations issued thereunder have been violated, the state laboratories director may certify the facts to the proper prosecuting attorney.

Any person convicted of violating any of the provisions of this Act or the rules and regulations issued thereunder or who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent said state laboratories director or his duly authorized agent in the performance of his duty in connection with the provisions of this Act, shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined not less than five hundred dollars for the first offense and not less than one thousand dollars for each subsequent offense. In all prosecutions under this Act involving the composition of a lot of commercial fertilizers or soil conditioners, a certified copy of the official analysis signed by the state laboratories director shall be accepted as prima facie evidence of the composition.

Nothing in this Act shall be construed as requiring the state laboratories director or his representative to report for prosecution or for the institution of seizure proceedings as a result of minor violations of the Act when he believes that the public interests will be best served by a suitable notice of warning in writing.

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

The department is hereby authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this Act or any rule or regulation promulgated under the Act notwithstanding the existence of other remedies at law. Said injunction to be issued without bond.

§ 19. Exchanges Between Manufacturers.) Nothing in this Act shall be construed to restrict or avoid sales or exchanges of commercial fertilizers to each other by importers, manufacturers, or manipulators who mix fertilizer materials for sale or as preventing the free and unrestricted shipments of commercial fertilizer to manufacturers or manipulators who have registered their brands as required by the provisions of this Act.

§ 20. Constitutionality.) If any clause, sentence, paragraph, or part of this Act shall for any reason be judged invalid by any court of competent jurisdiction, such judgment shall not affect, impair, or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 21. Repeal.) Chapter 19-20 of the North Dakota Century Code is hereby repealed.

Approved February 9, 1967.