FOODS AND DRUGS

CHAPTER 234

HOUSE BILL NO. 1307
(Olienyk, White)

MISBRANDING OF FOODS

AN ACT to create and enact subdivision c of subsection 5 of section 19-02.1-10 of the North Dakota Century Code relating to the misbranding of foods.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Subdivision c of subsection 5 of section 19-02.1-10 of the 1969 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

c. In the case of beverages that are manufactured, distributed and sold under a franchise or trademark name indicated thereon, whereby the person, firm or corporation owning the franchise or trademark has control over the distribution, such beverages may be exempt from this subsection, if a certified statement is filed with the state laboratories director, stating the name and address of the manufacturer or distributor, and a statement signed by the manufacturer or distributor that they assume all responsibility and liability for the product named, which is being sold, or offered for sale, under such name within the area of the state designated, which certificate shall be in the following form:

NORTH DAKOTA STATE LABORATORIES DEPARTMENT
BISMARCK, NORTH DAKOTA

BEVERAGE LABELING EXEMPTIONS CERTIFICATE

I _____, the undersigned, an agent of and having authority to sign do hereby certify that the following information is correct.

Name and address of company requesting exemption:

_____

Name: _____
Street Address: _____
City or Town: _____
State: _____

Name of Product: _____
Brand Name: _____

In order to be exempt from subdivions a and b of subsection 5 of section 19-02.1-10 of the 1969 Supplement to the North Dakota Century Code, relating to misbranding of food, which requires the name and address of the real manufacturer or other persons responsible for placing the product upon the market, I the undersigned, do bind the company listed above by agreeing to assume all responsibility for the product named in this certificate which is being sold, or offered for sale under such name and brand name within the area consisting of _____
_____
in the State of North Dakota.

Note: The area must be designated by counties or other legal subdivisions of the city, county, or state.

Firm: _____
Signed: _____
Title: _____
Address: _____

Note: If signed by a person other than an officer of the company, authorization for signature must accompany this form. This certificate must be acknowledged.

Approved March 22, 1971

CHAPTER 235

HOUSE BILL NO. 1558
(Wilkie)

UNIFORM CONTROLLED SUBSTANCES ACT

AN ACT to establish a coordinated and codified system of drug control, to create a closed regulatory system for the legitimate handlers of controlled drugs, to prohibit certain activities relating to controlled drugs, to provide penalties for violations thereof, to amend and reenact section 19-01-02; subsection 9 of section 19-02.1-05; subsection 4 of section 19-02.1-01; subsection 1 of section 19-02.1-15; and section 19-02.1-20; of the North Dakota Century Code and to repeal chapter 19-03 of the North Dakota Century Code, relating to narcotics, and to repeal subsection 23 of section 19-02.1-01; subsections 15, 16, 17, 18, 19, 20, and 21 of section 19-02.1-02; subsection 4 of section 19-02.1-04; subsections 5 and 6 of section 19-02.1-05; and section 19-02.1-23 of the North Dakota Century Code relating to drugs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. DEFINITIONS.) As used in this Act:

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

   a. a practitioner (or, in his presence, by his authorized agent), or

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

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

3. "Bureau" means the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice or its successor agency.

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

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

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

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

8. "Dispenser" means a practitioner who dispenses.

9. "Distribute" means to deliver other than by administering or dispensing a controlled substance.

10. "Distributor" means a person who distributes.

11. "Drug" means

    a. substances recognized as drugs 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. substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

    c. substances (other than food) intended to affect the structure or any function of the body of man or animals; and

    d. substances intended for use as a component of any article specified in subdivisions a, b, or c of this subsection. It does not include devices or their components, parts or accessories.

12. "Immediate Precursor" means a substance which the state laboratories department has found to be and by rule designates as being the principal compound

commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

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

    a. by a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice, or

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

14. "Marihuana" means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

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

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

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

alkaloids of opium.

c. Opium poppy and poppy straw.

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

16. "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under section 2 of this Act, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

17. "Opium poppy" means the plant of the species Papaver somniferum L., except its seeds.

18. "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

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

20. "Practitioner" means:

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

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

21. "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

22. "State" when applied to a part of the United States, includes any state, district, commonwealth, territory,

insular possession thereof, and any area subject to the legal authority of the United States of America.

23. "Ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

SECTION 2. AUTHORITY TO CONTROL.)

1. The North Dakota state laboratories department shall administer this Act and may add substances to or delete or reschedule all substances enumerated in the schedules in sections 5, 7, 9, 11 or 13 pursuant to the procedures of chapter 28-32 of the North Dakota Century Code. In making a determination regarding a substance, the state laboratories department shall consider the following:

   a. the actual or relative potential for abuse;

   b. the scientific evidence of its pharmacological effect, if known;

   c. the state of current scientific knowledge regarding the substance;

   d. the history and current pattern of abuse;

   e. the scope, duration, and significance of abuse;

   f. the risk to the public health;

   g. the potential of the substance to produce psychic or physiological dependence liability; and

   h. whether the substance is an immediate precursor of a substance already controlled under this Act.

2. After considering the factors enumerated in subsection 1, the state laboratories department shall make findings with respect thereto and issue a rule controlling the substance if it finds the substance has a potential for abuse.

3. If the state laboratories department designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

4. If any substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice thereof is given to the state health

department, the state laboratories department shall similarly control the substance under this Act after the expiration of thirty days from publication in the federal register of a final order designating a substance as a controlled substance or rescheduling, or deleting a substance, unless within that thirty day period, the state laboratories department objects to inclusion, rescheduling, or deletion. In that case, the state laboratories department shall publish the reasons for objection and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the state laboratories department shall publish its decision, which shall be final unless altered by statute. Upon publication of objection to inclusion, rescheduling, or deletion under this Act by the state laboratories department, control under this Act is stayed until the state health department publishes its decision.

5. Authority to control under this section does not extend to distilled spirits, wine, malt beverages, or tobacco as those terms are defined or used in title 5 of the North Dakota Century Code.

SECTION 3. NOMENCLATURE.) The controlled substances listed or to be listed in the schedules in sections 5, 7, 9, 11 and 13 are included by whatever official, common, usual, chemical, or trade name designated.

SECTION 4. SCHEDULE I TESTS.) The state laboratories department shall place a substance in schedule I if it finds that the substance:

1. has high potential for abuse; and

2. has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

SECTION 5. SCHEDULE I.)

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

2. Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

   a. Acetylmethadol;
   b. Allylprodine;
   c. Alphacetylmethadol;
   d. Alphameprodine;

e. Alphamethadol;
f. Benzethidine;
g. Betacetylmethadol;
h. Betameprodine;
i. Betamethadol;
j. Betaprodine;
k. Clonitazene;
l. Dextromoramide;
m. Dextrorphan;
n. Diampromide;
o. Diethylthiambutene;
p. Dimenoxadol;
q. Dimepheptanol;
r. Dimethylthiambutene;
s. Dioxaphetyl butyrate;
t. Dipipanone;
u. Ethylmethylthiambutene;
v. Etonitazene;
w. Etoxeridine;
x. Furethidine;
y. Hydroxypethidine;
z. Ketobemidone;
aa. Levomoramide;
bb. Levophenacylmorphan;
cc. Morpheridine;
dd. Noracymethadol;
ee. Norlevorphanol;
ff. Normethadone;
gg. Norpipanone;
hh. Phenadoxone;
ii. Phenampromide;
jj. Phenomorphan;
kk. Phenoperidine;
ll. Piritramide;
mm. Proheptazine;
nn. Properidine;
oo. Racemoramide;
pp. Trimeperidine

3. Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

a. Acetorphine;
b. Acetyldihydrocodeine;
c. Benzylmorphine;
d. Codeine methylbromide;
e. Codeine-n-oxide;
f. Cypremorphine;
g. Desomorphine;
h. Dihydromorphine;
i. Etorphine;

j. Heroin;
k. Hydromorphinol;
l. Methyldesorphine;
m. Methyldihydromorphine;
n. Morphine methylbromide;
o. Morphine methylsulfonate;
p. Morphine-n-oxide;
q. Myrophine;
r. Nicocodeine;
s. Nicomorphine;
t. Normorphine;
u. Pholcodine;
v. Thebacon;

4. Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

a. 3,4-methylenedioxy amphetamine;
b. 5-methoxy-3, 4-methylenedioxy amphetamine;
c. 3,4,5-trimethoxy amphetamine;
d. Bufotenine;
e. Diethyltryptamine;
f. Dimethyltryptamine;
g. 4-methyl-2, 5-dimethoxylamphetamine;
h. Ibogaine;
i. Lysergic acid diethylamide;
j. Marihuana;
k. Mescaline;
l. Peyote;
m. N-ethyl-3-piperidyl benzilate;
n. N-methyl-3-piperidyl benzilate;
o. Psilocybin;
p. Psilocyn;
q. Tetrahydrocannabinols;

SECTION 6. SCHEDULE II TESTS.) The state laboratories department shall place a substance in Schedule II if it finds that:

1. The substance has high potential for abuse;

2. The substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and

3. The abuse of the substance may lead to severe psychic or physical dependence.

SECTION 7. SCHEDULE II.)

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

2. Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis.

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

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

   c. Opium poppy and poppy straw.

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

3. Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

   a. Alphaprodine;
   b. Anileridine;
   c. Bezitramide;
   d. Dihydrocodeine;
   e. Diphenoxylate;
   f. Fentanyl;
   g. Isomethadone;
   h. Levomethorphan;
   i. Levorphanol;
   j. Metazocine;
   k. Methadone;
   l. Methadone - intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
   m. Moramide - intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
   n. Pethidine;
   o. Pethidine - intermediate - A, 4-cyano-1-methyl-4-phenylpiperidine;
   p. Pethidine - intermediate - B, ethyl-4-phenylpiperidine-4-carboxylate;

q. Pethidine - intermediate - C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
r. Phenazocine;
s. Priminodine;
t. Racemethorphan;
u. Racemorphan.

SECTION 8. SCHEDULE III TESTS.) The state laboratories department shall place a substance in schedule III if it finds that:

1. the substance has a potential for abuse less than the substances listed in schedules I and II;

2. the substance has currently accepted medical use in treatment in the United States; and

3. abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

SECTION 9. SCHEDULE III.)

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

2. Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

   a. Amphetamine, its salts, optical isomers, and salts of its optical isomers;

   b. Phenmetrazine and its salts;

   c. Any substance which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers;

   d. Methylphenidate.

3. Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

   a. Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules;
   b. Chlorhexadol;
   c. Glutethimide;
   d. Lysergic acid;

e. Lysergic acid amide;
f. Methyprylon;
g. Phenyclidine;
h. Sulfondiethylmethane;
i. Sulfonethylmethane;
j. Sulfonmethane.

4. Nalorphine.

5. Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

a. Not more than 1.80 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

b. Not more than 1.80 grams of codeine, or any of its salts per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

c. Not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

d. Not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

e. Not more than 1.80 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

f. Not more than 300 milligrams of ethylmorphine or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts;

g. Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

h. Not more than 50 milligrams of morphine, or any

of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

6. The state laboratories department may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsection 2 and 3 of this section from the application of all or any part of this Act if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

SECTION 10. SCHEDULE IV TESTS.) The state laboratories department shall place a substance in schedule IV if it finds that:

1. the substance has a low potential for abuse relative to substances in schedule III;

2. the substance has currently accepted medical use in treatment in the United States; and

3. abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in schedule III.

SECTION 11. SCHEDULE IV.)

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

2. Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

a. Barbital;
b. Chloral betaine;
c. Chloral hydrate;
d. Chordiazepoxide and its salts;
e. Diazepam;
f. Ethchlorvynol;
g. Ethinamate;
h. Methohexital;
i. Meprobamate;
j. Methylphenobarbital;
k. Paraldehyde;
l. Petrichloral;
m. Phenobarbital;

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

SECTION 12. SCHEDULE V TESTS.) The state laboratories department shall place a substance in schedule V if it finds that:

1. the substance has low potential for abuse relative to the controlled substances listed in schedule IV;

2. the substance has currently accepted medical use in treatment in the United States; and

3. the substance has limited physical dependence or psychological dependence liability relative to the controlled substances listed in schedule IV.

SECTION 13. SCHEDULE V.)

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

2. Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

   a. Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams;

   b. Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;

   c. Not more than 100 milligrams of ethylmorphine or any of its salts, per 100 milliliters or per 100 grams;

   d. Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

   e. Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

SECTION 14. REPUBLISHING OF SCHEDULES.) The state labora-

tories department shall revise and republish the schedules semiannually for two years from the effective date of this Act, and thereafter annually.

SECTION 15. RULES.) The state laboratories department may promulgate rules and charge reasonable fees relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances within this state.

SECTION 16. REGISTRATION REQUIREMENTS.)

1. Every person who manufactures, distributes, or dispenses any controlled substance within this state or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance within this state, must obtain annually a registration issued by the state laboratories department in accordance with its rules.

2. Persons registered by the state laboratories department under this Act to manufacture, distribute, dispense, or conduct research with controlled substances may possess, manufacture, distribute, dispense, or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this Act.

3. The following persons need not register and may lawfully possess controlled substances under this Act:

   a. an agent or employee of any registered manufacturer, distributor, or dispenser of any controlled substance if he is acting in the usual course of his business or employment;

   b. a common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment.

   c. an ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a schedule V substance.

4. The state laboratories department may waive by rule the requirement for registration of certain manufacturers, distributors, or dispensers if it finds it consistent with the public health and safety.

5. A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances.

6. The state laboratories department may inspect the establishment of a registrant or applicant for registration in accordance with the state health department rule.

SECTION 17. REGISTRATION.)

1. The state laboratories department shall register an applicant to manufacture or distribute controlled substances included in sections 5, 7, 9, 11, and 13 unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the state laboratories department shall consider the following factors:

   a. maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels;

   b. compliance with applicable state and local laws;

   c. any convictions of the applicant under any federal and state laws relating to any controlled substance;

   d. past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversion;

   e. furnishing by the applicant of false or fraudulent material in any application filed under this Act;

   f. suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense controlled substances as authorized by federal law; and

   g. any other factors relevant to and consistent with the public health and safety.

2. Registration under subsection 1 of this section does not entitle a registrant to manufacture and distribute controlled substances in schedule I or II other than those specified in the registration.

3. Practitioners must be registered to dispense any controlled substances or to conduct research with controlled substances in schedules II through V if they are authorized to dispense or conduct research under the law of this state. The state laboratories department need not require separate registration under this Act for practitioners engaging in research with nonnarcotic controlled substances in schedules II through V where the registrant is already registered under

this Act in another capacity. Practitioners registered under federal law to conduct research with schedule I substances may conduct research with schedule I substances within this state upon furnishing the state health department evidence of that federal registration.

4. Compliance by manufacturers and distributors with the provisions of the federal law respecting registration (excluding fees) entitles them to be registered under this Act.

SECTION 18. REVOCATION AND SUSPENSION OF REGISTRATION.)

1. A registration under section 17 to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the state laboratories department upon a finding that the registrant:

   a. has furnished false or fraudulent material information in any application filed under this Act;

   b. has been convicted of a felony under any state or federal law relating to any controlled substance; or

   c. has had his federal registration suspended or revoked to manufacture, distribute, or dispense controlled substances.

2. The state laboratories department may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

3. If the state laboratories department suspends or revokes a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances may be forfeited to the state.

4. The state laboratories department shall promptly notify the bureau of all orders suspending or revoking registration and all forfeitures of controlled substances.

SECTION 19. ORDER TO SHOW CAUSE.)

1. Before denying, suspending or revoking a registration, or refusing a renewal of registration, the state laboratories department shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended, or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefor and shall call upon the applicant or registrant to appear before the state laboratories department at a time and place not less than thirty days after the date of service of the order, but in the case of a denial or renewal of registration the show cause order shall be served not later than thirty days before the expiration of the registration. These proceedings shall be conducted in accordance with the Administrative Agencies Practices Act as set out in chapter 28-32 of the North Dakota Century Code without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing.

2. The state laboratories department may suspend, without an order to show cause, any registration simultaneously with the institution of proceedings under section 18, or where renewal of registration is refused, if it finds that there is an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the state laboratories department or dissolved by a court of competent jurisdiction.

SECTION 20. RECORDS OF REGISTRANTS.) Persons registered to manufacture, distribute, or dispense controlled substances under this Act shall keep records and maintain inventories in conformance with the record-keeping and inventory requirements of federal law and with any additional rules the state laboratories department issues.

SECTION 21. ORDER FORMS.) Controlled substances in schedule I and II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section.

SECTION 22. PRESCRIPTIONS.)

1. Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in schedule II may be dispensed without the written prescription of a practitioner.

2. In emergency situations, as defined by rule of the

state laboratories department, schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of section 20. No prescription for a schedule II substance may be refilled.

3. Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in schedule III or IV, which is a prescription drug as determined under this Act or chapter 19-02.1 of the North Dakota Century Code, shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner. Any oral prescription for such drugs shall be promptly reduced to writing by the pharmacist on a new prescription blank and shall be signed within seventy-two hours by the practitioner who issued the same.

4. A controlled substance included in schedule V shall not be distributed or dispensed other than for a medical purpose.

SECTION 23. PROHIBITED ACTS A - PENALTIES.)

1. Except as authorized by this Act, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance. Any person who violates this subsection with respect to:

   a. a controlled substance classified in schedules I or II which is a narcotic drug, is guilty of a crime and upon conviction may be imprisoned for not more than twenty years or fined not more than $10,000, or both;

   b. any other controlled substance classified in schedule I, II, or III, is guilty of a crime and upon conviction may be imprisoned for not more than ten years, or fined not more than $5,000, or both;

   c. a substance classified in schedule IV, is guilty of a crime and upon conviction may be imprisoned for not more than five years, or fined not more than $2,500, or both;

   d. a substance classified in schedule V, is guilty of a crime and upon conviction may be imprisoned for not more than one year, fined not more than $1,000, or both.

2. Except as authorized by this Act, it is unlawful for any person to create, deliver, or possess with intent to deliver, a counterfeit substance. Any person who violates this subsection with respect to:

   a. a counterfeit substance classified in schedule I or II which is a narcotic drug, is guilty of a crime and upon conviction may be imprisoned for not more than twenty years, fined not more than $10,000, or both;

   b. any other counterfeit substance classified in schedules I, II, or III, is guilty of a crime and upon conviction may be imprisoned for not more than ten years, fined not more than $5,000, or both;

   c. a counterfeit substance classified in schedule IV, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than $2,500, or both;

   d. a counterfeit substance classified in schedule V, is guilty of a crime and upon conviction may be imprisoned for not more than one year, fined not more than $500, or both.

3. It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this Act. Any person who violates this subsection is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than $2,500, or both; except that any person who violates this subsection regarding possession of marihuana, shall be guilty of a crime and upon conviction may be fined not more than $500 or imprisoned in the county jail or in the state penitentiary for not more than one year or both.

SECTION 24. PROHIBITED ACTS B - PENALTIES.)

1. It is unlawful for any person:

   a. who is subject to the provisions of sections 15 through 22 of this Act to distribute or dispense a controlled substance in violation of section 22;

   b. who is a registrant, to manufacture a controlled substance not authorized by his registration, or to distribute or dispense a controlled substance

not authorized by his registration to another registrant or other authorized person;

c. to refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice or information required under this Act;

d. to refuse an entry into any premises for any inspection authorized by this Act; or

e. knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place, which is resorted to by persons using controlled substances in violation of this Act for the purpose of using these substances, or which is used for keeping or selling them in violation of this Act.

2. Any person who violates this section is guilty of a felony and upon conviction may be imprisoned for not more than one year, fined not more than $5,000, or both.

SECTION 25. PROHIBITED ACTS C - PENALTIES.)

1. It is unlawful for any person knowingly or intentionally:

a. to distribute as a registrant a controlled substance classified in schedules I or II, except pursuant to an order form as required by section 21 of this Act;

b. to use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person;

c. to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge;

d. to furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this Act, or any record required to be kept by this Act; or

e. to make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance.

2. Any person who violates this section is guilty of a felony and upon conviction may be imprisoned for not more than one year, or fined not more than $500, or both.

SECTION 26. DISPOSING OF NEEDLES AND PARAPHERNALIA.) Any registrant who shall use, administer, dispense or cause to be used, administered or dispensed any drug or controlled substance in a manner requiring the use of any type of syringe, needle, eye dropper or other similar paraphernalia shall destroy and dispose of said syringe, needle, eye dropper, or other similar paraphernalia in a manner that will prevent its reuse by any person other than the registrant. The state laboratories department may promulgate rules and regulations setting out the specific manner in which the provisions of this section shall be carried out. Any registrant who shall violate the provisions of this section shall be guilty of a misdemeanor.

SECTION 27. PENALTIES UNDER OTHER LAWS.) Any penalty imposed for violation of this Act is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law.

SECTION 28. BAR TO PROSECUTION.) If a violation of this Act is a violation of a federal law or the law of another state, a conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state.

SECTION 29. DISTRIBUTION TO PERSONS UNDER AGE 18.) Any person 18 years of age or over who violates subsection 1 of section 23 by distributing a controlled substance listed in schedules I or II which is a narcotic drug to a person under 18 years of age who is at least three years his junior is punishable by the fine authorized by subdivision a of subsection 1 of section 23, by a term of imprisonment of up to twice that authorized by subdivision a of subsection 1 of section 23 or by both. Any person 18 years of age or over who violates subsection 1 of section 23 by distributing any other controlled substance listed in schedules I, II, III, IV and V, to a person under 18 years of age who is at least three years his junior is punishable by the fine authorized by subdivisions b, c, and d of subsection 1 of section 23, by a term of imprisonment up to twice that authorized by subdivisions b, c, and d of subsection 1 of section 23, or both.

SECTION 30. CONDITIONAL DISCHARGE FOR POSSESSION AS FIRST OFFENSE.) Whenever any person who has not previously been convicted of any offense under this Act or under any statute of the United States or of any state relating to narcotic drugs, marihuana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty to or is found guilty of possession of a controlled substance under subsection 3 of section 23, the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon

terms and conditions. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions under section 31. There may be only one discharge and dismissal under this section with respect to any person.

SECTION 31. SECOND OR SUBSEQUENT OFFENSES.)

1. Any person convicted of a second or subsequent offense under this Act may be imprisoned for a term up to twice the term otherwise authorized, fined an amount up to twice that otherwise authorized, or both.

2. For the purposes of this section, an offense is considered a second or subsequent offense, if, prior to his conviction of the offense, the offender has at any time been convicted under this Act or under any statute of the United States or of any state relating to narcotic drugs, marihuana, depressant, stimulant, or hallucinogenic drugs.

3. This section does not apply to offenses under subsection 3 of section 23.

SECTION 32. POWERS OF ENFORCEMENT PERSONNEL - SEARCH WARRANTS.)

1. Any officer or employee of the state bureau of criminal identification and apprehension designated by the attorney general of this state may:

   a. carry firearms in the performance of his official duties;

   b. execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas, and summonses issued under the authority of this state;

   c. make arrests without warrant for any offense under this Act committed in his presence, or if he has probable cause to believe that the person to be arrested has committed or is committing a violation of this Act which may constitute a felony;

   d. make seizures of property pursuant to this Act; or

e. perform other law enforcement duties as the attorney general designates.

2. A search warrant relating to offenses involving controlled dangerous substances may be issued and executed at any time of the day or night, if the judge or magistrate issuing the warrant so specifies in the warrant.

3. Any officer authorized to execute a search warrant, without notice of his authority and purpose, may break open an outer or inner door or window of a building, or any part of the building, or anything therein, if the judge or magistrate issuing the warrant has probable cause to believe that if such notice were to be given the property sought in the case may be easily and quickly destroyed or disposed of, or that danger to the life or limb of the officer or another may result, and has included in the warrant a direction that the officer executing it shall not be required to give such notice. Any officer acting under such warrant, as soon as practicable after entering the premises, shall identify himself and state the purpose of his entering the premises and his authority for doing so.

SECTION 33. ADMINISTRATIVE INSPECTIONS AND WARRANTS.)

1. Issuance and execution of administrative inspection warrants shall be as follows:

a. A district judge within his jurisdiction, and upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections authorized by this Act or rules hereunder and seizures of property appropriate to the inspections. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of this Act or rules thereunder, sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant;

b. A warrant shall issue only upon an affidavit of a designated officer or employee having knowledge of the facts alleged, sworn to before the judge or magistrate and establishing the grounds for issuing the warrant. If the judge or magistrate is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he shall issue a warrant identifying the area, premises, building, or conveyance to be

inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any. The warrant shall:

(1) state the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof;

(2) be directed to a person authorized to execute it;

(3) command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified;

(4) identify the item or types of property to be seized, if any;

(5) direct that it be served during normal business hours and designate the judge or magistrate to whom it shall be returned;

c. A warrant issued pursuant to this section must be executed and returned within ten days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant;

d. The judge or magistrate who has issued a warrant shall attach thereto a copy of the return and all papers returnable in connection therewith and file them with the clerk of the district court for the county in which the inspection was made.

2. The state laboratories department may make administrative inspections of controlled premises in accordance with the following provisions:

a. For purposes of this section only, "controlled premises" means:

(1) places where persons registered or exempted from registration requirements under this Act are required to keep records; and

(2) places including factories, warehouses, establishments, and conveyances in which persons registered or exempted from registration requirements under this Act are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substance.

b. When authorized by an administrative inspection warrant issued pursuant to subsection 1 of this section an officer or employee designated by the state laboratories department, upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, may enter controlled premises for the purpose of conducting an administrative inspection.

c. When authorized by an administrative inspection warrant, an officer or employee designated by the state laboratories department may:

(1) inspect and copy records required by this Act to be kept;

(2) inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in subdivision e of subsection 2 of this section, all other things therein, including records, files, papers, processes, controls, and facilities bearing on violation of this Act; and

(3) inventory any stock of any controlled substance therein and obtain samples thereof;

d. This section does not prevent the inspection without a warrant of books and records pursuant to an administrative subpoena issued in accordance with section 28-32-09 of the North Dakota Century Code, nor does it prevent entries and administrative inspections, including seizures of property, without a warrant:

(1) if the owner, operator, or agent in charge of the controlled premises consents;

(2) in situations presenting imminent danger to health or safety;

(3) in situations involving inspection of conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

(4) in any other exceptional emergency circumstances where time or opportunity to apply for a warrant is lacking; or

(5) in all other situations in which a warrant is not constitutionally required;

e. An inspection authorized by this section shall not extend to financial data, sales data, other than shipment data, or pricing data unless the owner, operator or agent in charge of the controlled premises consents in writing.

SECTION 34. INJUNCTIONS.)

1. The district courts of this state shall have jurisdiction to restrain or enjoin violations of this Act.

2. The defendant may demand trial by jury for an alleged violation of an injunction or restraining order under this section.

SECTION 35. COOPERATIVE ARRANGEMENTS AND CONFIDENTIALITY.)

1. The state laboratories department shall cooperate with federal and other state agencies in discharging its responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, it may:

a. arrange for exchange of information among governmental officials concerning the use and abuse of controlled substances;

b. coordinate and cooperate in training programs concerning controlled substance law enforcement at local and state levels;

c. cooperate with the bureau by establishing a centralized unit to accept, catalogue, file, and collect statistics, including records of drug dependent persons and other controlled substance law offenders within the state, and make the information available for federal, state and local law enforcement purposes. It shall not furnish the name or identity of a patient or research subject whose identity

could not be obtained under subsection 3; and

d. conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted.

2. Results, information, and evidence received from the bureau relating to the regulatory functions of this Act, including results of inspections conducted by it may be relied and acted upon by the state health department in the exercise of its regulatory functions under this Act.

3. A practitioner engaged in medical practice or research is not required or compelled to furnish the name or identity of a patient or research subject to the state laboratories department nor may he be compelled in any state or local civil, criminal, administrative, legislative or other proceedings to furnish the name or identity of an individual that the practitioner is obligated to keep confidential.

SECTION 36. FORFEITURES.)

1. The following are subject to forfeiture:

a. all controlled substances which have been manufactured, distributed, dispensed or acquired in violation of this Act;

b. all raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this Act;

c. all property which is used, or intended for use, as a container for property described in subdivision a or b;

d. all conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in subdivision a or b, but;

(1) no conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this Act;

(2) no conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his knowledge or consent;

(3) a conveyance is not subject to forfeiture for a violation of subsection 3 of section 23 of this Act; and

(4) a forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to the act or omission.

e. all books, records, and research products and materials, including formulas, micro-film, tapes, and data which are used, or intended for use, in violation of this Act.

2. Property subject to forfeiture under this Act may be seized by the state laboratories department upon process issued by any district court having jurisdiction over the property. Seizure without process may be made if:

a. the seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

b. the property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceedings based upon this Act;

c. the state laboratories department has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

d. the state laboratories department has probable cause to believe that the property was used or is intended to be used in violation of this Act.

3. In the event of seizure pursuant to subsection 2 of this section, proceedings under subsection 4 of this section shall be instituted promptly.

4. Property taken or detained under this section shall not be subject to replevin, but is deemed to be in custody of the state laboratories department subject only to the orders and decrees of the district court having jurisdiction over the forfeiture proceedings as set out in subsection 2 of this section. When property is seized under this Act, the state laboratories

department may:

a. place the property under seal;

b. remove the property to a place designated by it; or

c. require the attorney general to take custody of the property and remove it to an appropriate location for disposition in accordance with law.

5. When property is forfeited under this Act the state laboratories department may:

a. retain it for official use;

b. sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds shall be used for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and court costs;

c. require the attorney general to take custody of property and remove it for disposition in accordance with law; or

d. forward it to the bureau for disposition.

6. Controlled substances listed in schedule I that are possessed, transferred, sold, or offered for sale in violation of this Act are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in schedule I, which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.

7. Species of plants from which controlled substances in schedules I and II may be derived which have been planted or cultivated in violation of this Act, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the state.

8. The failure, upon demand by the state laboratories department, or its authorized agent, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored to produce an appropriate registration, or proof that he is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

SECTION 37. BURDEN OF PROOF; LIABILITIES.)

1. It is not necessary for the state to negate any exemption

or exception in this Act in any complaint, information, indictment or other pleading or in any trial, hearing, or other proceeding under this Act. The burden of proof of any exemption or exception is upon the person claiming it;

2. In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this Act, he is presumed not to be the holder of the registration or form. The burden of proof is upon him to rebut the presumption.

3. No liability is imposed by this Act upon any authorized state, county or municipal officer, engaged in the lawful performance of his duties.

SECTION 38. JUDICIAL REVIEW.) All final determinations, findings and conclusions of the state laboratories department under this Act are final and conclusive decisions of the matters involved. Any person aggrieved by the decision may obtain review of the decision in the district court. Findings of fact by the state laboratories department, if supported by substantial evidence are conclusive.

SECTION 39. EDUCATION AND RESEARCH.)

1. The state laboratories department shall carry out educational programs designed to prevent and deter misuse of controlled substances. In connection with these programs it may:

   a. promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;

   b. assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;

   c. consult with interested groups and organizations to aid them in solving administrative and organizations problems;

   d. evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances;

   e. disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them; and,

f. assist in the educational and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

2. The state laboratories department shall encourage research on misuse and abuse of controlled substances. In connection with the research, and in furtherance of the enforcement of this Act, it may:

a. establish methods to assess accurately the effects of controlled substances and identify and characterize those with potential for abuse;

b. make studies and undertake programs of research to:

(1) develop new or improved approaches, techniques, systems, equipment and devices to strengthen the enforcement of this Act;

(2) determine patterns of misuse and abuse of controlled substances and the social effects thereof; and

(3) improve methods for preventing, predicting, understanding and dealing with the misuse and abuse of controlled substances; and,

c. enter contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of controlled substances.

3. The state laboratories department may enter into contracts for educational and research activities without performance bonds and without regard to statutory provisions affecting such contracts.

4. The state laboratories department may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are the subjects of the research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.

5. The state laboratories department may authorize the possession and distribution of controlled substances by persons engaged in research. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of controlled substances to

the extent of the authorization.

SECTION 40. PENDING PROCEEDINGS.)

1. Prosecution for any violation of law occurring prior to the effective date of this Act is not affected or abated by this Act. If the offense being prosecuted is similar to one set out in sections 23 through 30 of this Act, then the penalties under these sections apply if they are less than those under prior law.

2. Civil seizures or forfeitures and injunctive proceedings commenced prior to the effective date of this Act are not affected by this Act.

3. All administrative proceedings pending under prior laws which are superseded by this Act shall be continued and brought to a final determination in accord with the laws and rules in effect prior to the effective date of the Act. Any substance controlled under prior law which is not listed within schedules I through V, is automatically controlled without further proceedings and shall be listed in the appropriate schedule.

4. The state laboratories department shall initially permit persons to register who own or operate any establishment engaged in the manufacture, distribution, or dispensing of any controlled substance prior to the effective date of the Act and who are registered or licensed by the state.

5. This Act applies to violations of law, seizures and forfeiture, injunctive proceedings, administrative proceedings and investigations which occur following its effective date.

SECTION 41. CONTINUATION OF RULES.) Any orders and rules promulgated under any law affected by this Act in effect on the effective date of this Act and not in conflict with it continue in effect until modified, superseded or repealed.

SECTION 42. UNIFORMITY OF INTERPRETATION.) This Act shall be so applied and construed as to effectuate its general purpose and make uniform the law with respect to the subject of this Act among those states which enact it.

SECTION 43. SHORT TITLE.) This Act may be cited as the Uniform Controlled Substances Act.

SECTION 44. 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 rules and regulations as may be necessary for the full and complete enforcement of the regulatory laws of the state under its jurisdiction, but such rules and regulations shall not be inconsistent with the provisions of the Uniform Controlled Substances Act. 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.

SECTION 45. AMENDMENT.) Subsection 9 of section 19-02.1-05 of the 1969 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. Whenever in any proceedings under this section the condemnation of any equipment or conveyance or other thing, other than a drug, is decreed, the court shall allow the claim of any claimant, to the extent of such claimaint's interest, for remission or mitigation of such forfeiture if such claimant proves to the satisfaction of the court that:

   a. He has not committed or caused to be committed any prohibited act referred to in subsection 5 of this section or the Uniform Controlled Substances Act, and has no interest in any drug or controlled substance referred to therein;

   b. He has an interest in such equipment, or other thing as owner or lienor or otherwise, acquired by him in good faith; and

   c. He at no time had any knowledge or reason to believe that such equipment, conveyance, or other things was being or would be used in, or to facilitate, the violation of the laws of this state relating to depressant, stimulant or hallucinogenic drugs or counterfeit drugs.

SECTION 46. AMENDMENT.) Subsection 4 of section 19-02.1-01 of the 1969 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

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. Provided, however, that "drug", for the purpose of this chapter, and as defined by this subsection, shall not include those controlled substances or drugs regulated by or under the authority of the Uniform Controlled Substances Act, with respect to such drugs, the Uniform Controlled Substances Act shall take precedence over and supplant the provisions of this chapter only so far as its authority and control is synonymous with the provisions of this chapter.

SECTION 47. AMENDMENT.) Subsection 1 of section 19-02.1-15 of the 1969 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-02.1-15. DRUGS LIMITED TO DISPENSING ON PRESCRIPTION.)

1. Except as authorized and provided in the Uniform Controlled Substances Act, a depressant, stimulant, or hallucinogenic drug; or a drug intended for use by man which is a habit-forming drug to which subsection 4 of section 19-02.1-14 applies; or a drug that, 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; or a drug limited by an approved application under section 505 of the Federal Act or section 19-02.1-16 of this Code to use under the professional supervision of a practitioner, shall be dispensed by prescription of a practitioner, and such prescription shall not be refilled more than five times, nor shall it be filled or refilled after six months from the date on which such prescription was issued; except that nothing herein shall be construed as preventing a practitioner from issuing a new prescription for the same drug either in writing or orally. Any oral prescription for such drug shall be promptly reduced to writing by the pharmacist on a new prescription blank, and shall be signed within

seventy-two hours by the practitioner who issued the same.

SECTION 48. AMENDMENT.) Section 19-02.1-20 of the 1969 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-02.1-20. REGULATIONS - HEARINGS.) The authority to promulgate regulations for the efficient enforcement of this chapter is hereby vested in the state laboratories department. The department is hereby authorized to make the regulations promulgated under this chapter conform, in so far as practicable, with those promulgated under the federal act. Regulations shall conform and be consistent with the provisions of the Uniform Controlled Substances Act.

Hearings authorized or required by this chapter 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 19-02.1-08, subsection 10 of section 19-02.1-10, section 19-02.1-11, subsections 4, 7, 8, 9, 14 and 17 of section 19-02.1-14, subsection 3 of section 19-02.1-15 or subsection 2 of section 19-02.1-19, the department shall follow the procedures provided for in chapter 28-32 of the North Dakota Century Code.

SECTION 49. REPEAL.) Chapter 19-03 of the North Dakota Century Code and the 1969 Supplement to the North Dakota Century Code, relating to narcotics, and subsection 23 of section 19-02.1-01; subsections 15, 16, 17, 18, 19, 20, and 21 of section 19-02.1-02; subsection 4 of section 19-02.1-04; subsections 5 and 6 of section 19-02.1-05; and section 19-02.1-23 of the 1969 Supplement to the North Dakota Century Code are hereby repealed.

Approved March 30, 1971

CHAPTER 236

SENATE BILL NO. 2040
(Goldberg, L. Larson, Lowe, Melland, Wenstrom, Wilhite)
(Legislative Council Study)

OLEOMARGARINE SALES LICENSE

AN ACT to amend and reenact section 19-05-05, subsections 1 and 2 of section 19-05-07, subsection 1 of section 19-05-09, section 19-05-15, and subsection 1 of section 19-05-19 of the North Dakota Century Code, and to repeal section 19-05-06 of the North Dakota Century Code, relating to the discontinuance of the requirement for a license to sell oleomargarine.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 19-05-05 of the 1969 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-05-05. TAX COMMISSIONER MAY ISSUE TAX STAMPS TO PERSONS OR FIRMS NOT DOING BUSINESS IN THIS STATE.)

1. 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 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.

2. 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 persons 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.

SECTION 2. AMENDMENT.) Subsections 1 and 2 of section 19-05-07 of the 1969 Supplement to the North Dakota Century Code are 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 before purchasing tax stamps, submit to the tax commissioner a surety bond in an amount to be determined by the tax commissioner.

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 purchasers of tax stamps maintaining a permanent location within this state, and for purchasers of tax stamps 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.

SECTION 3. AMENDMENT.) Subsection 1 of section 19-05-09 of the 1969 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

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.

SECTION 4. AMENDMENT.) Section 19-05-15 of the 1969 Supplement to 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 stamps provided for in this chapter or assists therein or who has in his possession any forged, counterfeited, spurious, or altered stamp, 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.

SECTION 5. AMENDMENT.) Subsection 1 of section 19-05-19 of the 1969 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

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 stamp, and untaxed oleomargarine found in the possession of any person in violation of this chapter.

SECTION 6. REPEAL.) Section 19-05-06 of the 1969 Supplement to the North Dakota Century Code is hereby repealed.

Approved March 11, 1971

CHAPTER 237

HOUSE BILL NO. 1084
(W. Erickson, Hickle, Hilleboe, Rivinius, Rundle)
(From Legislative Council Study)

EGG ADVISORY BOARD

AN ACT to amend and reenact section 19-07-02 of the North Dakota Century Code, relating to the rulemaking power of the state laboratories department; and to repeal section 19-07-03 of the North Dakota Century Code, relating to the egg advisory board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 19-07-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-07-02. RULEMAKING POWER.) The department shall adopt and publish, only upon approval by a majority vote at a meeting of the poultry improvement board, appropriate regulations to establish standards for candling, grading, and inspecting eggs as to size, quality, purity, strength, holding requirements, and sanitation, and shall be guided in establishing such standards by United States department of agriculture regulations governing the grading and inspecting of eggs.

SECTION 2. REPEAL.) Section 19-07-03 of the North Dakota Century Code is hereby repealed.

Approved February 26, 1971

CHAPTER 238

SENATE BILL NO. 2107
(Nasset)

REGULATING ANTIFREEZE DISTRIBUTION

AN ACT to create and enact chapter 19-16.1 of the North Dakota Century Code relating to the sale and distribution of antifreeze, providing for the regulation thereof by the state laboratories department and providing a penalty; and to repeal chapter 19-16 of the North Dakota Century Code relating to the sale and distribution of antifreeze.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1.) Chapter 19-16.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

19-16.1-01. ADMINISTRATION.) This Act shall be administered by the state laboratories department, hereinafter referred to as the department.

19-16.1-02. DEFINITIONS.) In this chapter, unless the context or subject matter otherwise requires:

1. "Antifreeze" means any substance or preparation sold, distributed or intended for use as the cooling liquid, or to be added to the cooling liquid, in the cooling system of internal combustion engines to prevent freezing of the cooling liquid, to lower its freezing point, or to raise its boiling point.

2. "Person" means any individual, partnership, association, firm or corporation.

3. "Distribute" means to hold with intent to sell to the consumer, offer for sale, to sell, barter or otherwise supply.

4. "Package" means a sealed retail package, drum, or other container in which antifreeze is distributed to the consumer, or a container holding no more than fifty-five gallons from which the antifreeze is directly installed in the cooling system by seller or reseller.

5. "Label" means any display of written, printed or graphic matter on, or attached to, a package, or to the outside individual container or wrapper of the package.

19-16.1-03. REGISTRATION.) Before any antifreeze may be distributed in this state, the manufacturer or person whose name appears on the label shall make application to the department on forms provided by the latter for registration for each antifreeze which he desires to distribute. The application shall be accompanied by specimens or facsimiles of its labeling, an inspection fee of twenty dollars for each product, and by a properly labeled sample of the antifreeze. The department shall inspect, test or analyze the antifreeze and review the label. If the antifreeze and labeling is not adulterated or misbranded the department shall issue a certificate or registration, authorizing the distribution of such antifreeze in this state for one year. If the antifreeze or label is not in conformity with the law, the department shall refuse to register the antifreeze and shall return the application to the applicant, stating the reasons therefor. All inspection fees received by the department shall be remitted to the state treasurer for deposit in the state general fund.

19-16.1-04. ADULTERATION.) Antifreeze shall be deemed to be adulterated:

1. If, in the form in which it is sold and directed to be used, it would be injurious to the cooling system of an internal combustion engine, or if when used in the cooling system of such an engine it would make the operation of the engine dangerous to the user.

2. If its strength, quality or purity falls below the standard of strength, quality or purity under which it is sold or offered for sale.

19-16.1-05. MISBRANDING.) Antifreeze shall be deemed to be misbranded:

1. If it does not bear a label which specifically identifies the product; states the name and place of business of the registrant, the net quantity of contents in terms of liquid measure, separately and accurately in a uniform location under the principal display panel, and contains a statement warning of any hazard of substantial injury to human beings which may result from the intended use or reasonably foreseeable misuse of the antifreeze;

2. If the product is to be diluted with another substance for use and its labeling does not contain a statement or chart showing appropriate amounts of

each substance to be used to provide protection from freezing at various degrees of temperature;

3. If the labeling contains a corrosion protection claim and does not include a statement of the amount to be used to provide such protection;

4. If its labeling contains any claim that it has been approved or recommended by the department; or

5. If its labeling is false, deceptive, misleading, or is illegal under any law of the state or under any applicable federal law.

19-16.1-06. RULES AND REGULATIONS.) The department is hereby empowered to promulgate and adopt such reasonable rules, regulations and standards as may be necessary in order to secure the efficient administration of this law.

19-16.1-07. INSPECTION, SAMPLING AND ANALYSIS.) The department is hereby authorized at reasonable hours to enter, inspect and examine all places and property where antifreeze is stored or distributed for the purpose of taking reasonable samples of antifreeze for analysis together with specimens of labeling. It shall be the duty of the department to examine promptly all samples received in connection with the administration and enforcement of this law, and to report the results to the owner and the registrant of the antifreeze.

19-16.1-08. PROHIBITED ACTS.) It shall be unlawful to:

1. Distribute any antifreeze which has not been registered in accordance with this chapter or whose label is different from that accepted for registration.

2. Distribute any antifreeze which is adulterated or misbranded.

3. Refuse to permit entry or inspection or to permit the acquisition of a sample of any antifreeze as authorized by this chapter.

4. Dispose of any antifreeze under "withdrawal from distribution" order in accordance with this chapter except as provided in this chapter.

5. Distribute any antifreeze unless it is in the registrant's or manufacturer's package, except that a distributor may obtain written authorization from the department annually to distribute antifreeze in bulk using a container supplied by the customer, provided the distributor attaches to the container

a label bearing all of the information required by this chapter.

6. Use the term "ethylene glycol" on the label of a product which contains other glycols unless it is qualified by the word "base", "type" or wording of similar import, and unless the product contains a minimum ethylene glycol content of seventy-five percent by regulation weight and a minimum total glycol content of ninety-three percent by weight. It must also have a corrected specific gravity to give reliable freezing point readings on a commercial ethylene glycol type hydrometer and a freezing point, when mixed with an equal volume of water, of thirty-two degrees Fahrenheit below zero or lower.

19-16.1-09. ENFORCEMENT.) When the department finds any antifreeze being distributed in violation of this chapter or of any of the laws or any of the rules and prescribed regulations duly promulgated and adopted under this chapter, it may issue and enforce a written or printed "withdrawal from distribution" order, warning the distributor not to dispose of any of the lot of antifreeze in any manner until written permission is given by the department or a court of competent jurisdiction. Copies of such orders shall also be sent by registered or certified mail to the registrant or to the person whose name and address appears on the label of the antifreeze. The department shall release for distribution the lot of antifreeze so withdrawn upon compliance with applicable rules and regulations, or for return to the registrant or the person whose name and address appears on the label for reprocessing or relabeling as may be required. If compliance is not obtained within thirty days, the department may begin proceedings for condemnation. Any lot of antifreeze not in compliance with the law shall be subject to seizure upon complaint of the department in the district court of the county in which it is located or in the district court of Burleigh County.

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

except as provided in this section, shall be a misdemeanor.

19-16.1-11. PENALTY.) Any person who shall violate or fail to comply with any of the provisions of this chapter shall be guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars, or by imprisonment for not more than thirty days, or by both such fine and imprisonment.

19-16.1-12. PROSECUTIONS - STATE'S ATTORNEY.) It shall be the duty of each state's attorney to whom the department reports any violation of this chapter to cause appropriate proceedings to be instituted in the proper courts without delay in the manner required by law. However, nothing in this chapter shall be construed as requiring the state laboratories department to report minor violations for the institution of proceedings under this chapter whenever it believes that the public interest will be adequately served by suitable written notice or warning.

19-16.1-13. INJUNCTION PROCEEDINGS.) In addition to other remedies herein provided, the department is authorized to apply to the district court of Burleigh County for a temporary or permanent injunction restraining any person from violating any provision of this chapter irrespective of whether or not there exists an adequate remedy at law; appropriate costs shall be taxed by the court for any and all expenses to the department for the injunctive proceedings.

19-16.1-14. REPORTS BY DEPARTMENT.) Except as otherwise provided herein, state laboratories department may publish reports of any analyses, inspections, or research done under this chapter for the information of the public.

SECTION 2. REPEAL.) Chapter 19-16 of the North Dakota Century Code is hereby repealed.

Approved February 19, 1971

CHAPTER 239

SENATE BILL NO. 2126
(Morgan)

REGULATING ECONOMIC POISONS

AN ACT to create and enact seven additional subsections to section 19-18-02, paragraph 8 of subdivision b of subsection 20 of section 19-18-02, and section 19-18-06.1 of the North Dakota Century Code, and to amend and reenact subsections 1, 2, and 11 of section 19-18-02, sections 19-18-03 and 19-18-04, subsection 2 of section 19-18-05, and section 19-18-11 of the North Dakota Century Code, relating to the regulation of the distribution, sale, and labeling of economic poisons, and cooperation with the federal government.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1.) Seven additional subsections of section 19-18-02 of the North Dakota Century Code are hereby created and enacted to read as follows:

"Nematocide" means any substance intended to prevent, destroy, repel, or mitigate nematodes. "Plant regulator" means any substance intended through physiological action to accelerate or retard the rate of growth or maturation, or to otherwise alter the behavior of ornamental or crop plants or the produce thereof, but shall not include substances insofar as they are intended to be used as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments.
"Defoliant" means any substance intended to cause the leaves or foliage to drop from a plant with or without causing abscission.
"Desiccant" means any substance intended to artificially accelerate the drying of plant tissues.
"Snails or slugs" include all harmful agricultural mollusks.
"Nematode" means any of the nonsegmented roundworms harmful to agricultural plants.
"Restricted use pesticides" means any pesticide which the department has found and determined under the provisions of this chapter to be injurious to persons, pollinating insects, animals, crops, or lands in addition to the pests it is intended to repel, destroy, control, or mitigate.

SECTION 2.) Paragraph 8 of subdivision b of subsection 20 of section 19-18-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

(8) If a plant regulator, defoliant, or desiccant when used as directed shall be injurious to man or other vertebrate animals, or the vegetation to which it is applied, provided, that physical or physiological effect on plants or parts thereof shall not be deemed injurious when this is the purpose for which the plant regulator, defoliant, or desiccant is applied in accordance with label claims and recommendations.

SECTION 3.) Section 19-18-06.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

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

SECTION 4.) Subsections 1, 2, and 11 of section 19-18-02 are hereby amended and reenacted to read as follows:

1. "Economic poison" shall mean any substance intended for preventing, destroying, repelling, or mitigating any insects, rodents, nematodes, snails, slugs, fungi, weeds, or other forms of plant or animal life or viruses, except viruses on or in living man or other animals, which the commissioner shall declare to be a pest; and any substance intended for use as a plant regulator, defoliant, or desiccant;

2. "Device" shall mean any instrument or contrivance intended for trapping, destroying, repelling, or mitigating insects or rodents or destroying, repelling, or mitigating fungi, nematodes, or weeds, or such other pests as may be designated by the commissioner, but not including equipment used for the application of economic poisons when sold separately therefrom or rodent traps;

11. "Active ingredient" shall mean:

a. In the case of an economic poison other than a plant regulator, defoliant, or desiccant, any ingredient which will prevent, destroy, repel, or mitigate insects, fungi, rodents, weeds, or other pests;

b. In the case of a plant regulator, any ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the produce thereof;

c. In the case of a defoliant, any ingredient which will cause the leaves or foliage to drop from a plant;

d. In the case of a desiccant, any ingredient which will artificially accelerate the drying of plant tissue;

SECTION 5. AMENDMENT.) Section 19-18-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

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

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

2. Any economic poison unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one through which the required information on the immediate container cannot be clearly read, a label bearing:

   a. The name and address of the manufacturer, registrant, or person for whom manufactured;

b. The name, brand, or trade-mark under which said article is sold; and

c. The net weight or measure of the content subject, however, to such reasonable variations as the commissioner may permit;

3. Any economic poison which contains any substance or substances in quantities highly toxic to man, determined as provided in section 19-18-05, unless the label shall bear, in addition to any other matter required by this chapter:

a. The skull and cross bones;

b. The word "poison" prominently, in red, on a background of distinctly contrasting color; and

c. A statement of an antidote for the economic poison;

4. The economic poison commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate unless they have been distinctly colored or discolored as provided by regulations issued in accordance with this chapter, or any other white powder economic poison which the commissioner, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, by regulation, shall require to be distinctly colored or discolored; unless it has been so colored or discolored. The commissioner may exempt any economic poison to the extent that it is intended for a particular use or uses from the coloring or discoloring required or authorized by this section if he determines that such coloring or discoloring for such use or uses is not necessary for the protection of the public health;

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

No person shall detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this chapter or regulations promulgated hereunder, or to add any substance to, or take any substance from, an economic poison in a manner that may defeat the purpose of this chapter. No person shall use for his own advantage or reveal other than in response to a proper subpoena, except to a physician or other qualified person for use in the preparation of an antidote, any information relative to the formula of any product acquired by authority of subsection 4 of this section.

SECTION 6. AMENDMENT.) Section 19-18-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-18-04. REGISTRATION, FEES.) Any person before selling or offering for sale any economic poison for use within this state, shall file annually with the commissioner, an application for registration of such economic poison, which application shall:

1. Give the name and address of each manufacturer or distributor;

2. Give the name and brand, if any, of each product registered, together with an ingredient statement of each product registered in accordance with the provisions of subsection 10 of section 19-18-02, and accompanying each registration application there shall be filed with the commissioner a label of each product so registered. If the commissioner finds that the application conforms to law, he shall issue to the applicant a certificate of registration of the product. If the application, after public hearing before the state laboratory commission and the commissioner is denied the product shall not be offered for sale;

3. Be accompanied by an inspection fee of five dollars for each product. But in cases where the registration fees have been paid by the manufacturer, jobber, or any person, as required by this section, then in that event nothing in this section shall be construed as applying to retail dealers selling economic poisons. At the close of each calendar month, the department shall transmit to the state treasurer all moneys received for such licenses. The state treasurer shall credit such moneys to the general fund of the state.

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

SECTION 7. AMENDMENT.) Subsection 2 of section 19-18-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. To determine whether economic poisons are highly toxic to man and whether the use thereof should be restricted; and

SECTION 8. AMENDMENT.) Section 19-18-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

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

Approved March 29, 1971

CHAPTER 240

SENATE BILL NO. 2071
(Doherty, Longmire, Pyle, Unruh)
(Legislative Council Study)

REGULATING HAZARDOUS SUBSTANCES

AN ACT to create and enact section 19-21-04.1 of the North Dakota Century Code, and to amend and reenact sections 19-21-01, 19-21-02, and 19-21-05 of the North Dakota Century Code, relating to the labeling and regulation of misbranded and banned hazardous substances, setting forth the powers and duties of the state laboratories department, and providing penalties.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 19-21-01 of the 1969 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-21-01. DEFINITIONS.) In this chapter, unless the context or subject matter otherwise requires:

1. "Department" means the state laboratories department.

2. "Person" includes an individual, partnership, corporation, and association.

3. "Hazardous substance" means any substance, except drugs and medicines, or mixture of substances, except drugs and medicines, which is toxic, corrosive, an irritant, a strong sensitizer, flammable, or which generates pressure through decomposition, heat, or other means, if such hazardous substance or mixture of hazardous substances may cause substantial personal injury or illness during or as a proximate result of any customary or reasonably anticipated handling or use; provided that the term "hazardous substance" shall not include:

   a. Substances stored in containers and intended for use as fuel in a heating, cooking, or refrigeration system.

   b. Economic poisons subject to the federal or the North Dakota Insecticide, Fungicide, and Rodenticide Act.

c. Any source material, special nuclear material, or byproduct material as defined in the Atomic Energy Act of 1954, as amended, and regulations issued pursuant thereto by the atomic energy commission.

The term "hazardous substance" shall apply to any article which is not an economic poison within the meaning of the federal or North Dakota Insecticide, Fungicide, or Rodenticide Act, and which is a hazardous substance within the meaning of this subsection by reason of bearing or containing an economic poison.

4. "Toxic" shall apply to any substance, other than a radioactive substance, which has the inherent capacity to produce bodily injury to man through ingestion, inhalation, or absorption through any body surface.

5. "Highly toxic" means any substance which falls within any of the following categories: produces death within fourteen days in half or more than half of a group of ten or more laboratory white rats each weighing between 200 and 300 grams, at a single dose of 50 milligrams or less per kilogram of body weight, when orally administered; or produces death within fourteen days in half or more than half of a group of ten or more laboratory white rats each weighing between 200 and 300 grams, when inhaled continuously for a period of one hour or less at an atmospheric concentration of 200 parts per million by volume or less of gas, vapor, mist, or dust, provided such concentration is likely to be encountered by man when the substance is used in any reasonably foreseeable manner; or produces death within fourteen days in half or more than half of a group of ten or more rabbits tested in a dosage of 200 milligrams or less per kilogram of body weight, when administered by continuous contact with the bare skin for twenty-four hours or less. If the department finds that available data on human experience with any substance indicate results different from those obtained on animals in the above-named dosages or concentrations, the human data shall take precedence.

6. "Corrosive" means any substance which in contact with living tissue will cause destruction of tissue by chemical action; but shall not refer to action on inanimate surfaces.

7. "Irritant" means any substance, not corrosive, which on immediate, prolonged, or repeated contact with normal living tissue will induce a local inflammatory reaction.

8. "Strong sensitizer" means any substance which will cause, on normal living tissue through an allergic or photodynamic process, a hypersensitivity which becomes evident on reapplication of the same hazardous substance and which is designated as such by the department. Before designating any substance as a strong sensitizer, the department shall, after public hearing, following due notice, find that the frequency of occurrence and severity of the reaction indicate a significant potential for causing hypersensitivity.

9. "Extremely flammable" shall apply to any substance which has a flash point at or below 20 degrees Fahrenheit as determined by the Tagliabue Open Cup Tester, and the term "flammable" shall apply to any substance which has a flash point of above 20 degrees to and including 80 degrees Fahrenheit, as determined by the Tagliabue Open Cup Tester; except that the flammability of solids and of the contents of self-pressurized containers shall be determined by methods generally applicable to such materials or containers, respectively, and established by regulations issued by the department, which regulations shall also define the terms "flammable" and "extremely flammable" in accord with such methods.

10. "Label" means a display of written, printed, or graphic matter upon or attached to the immediate package or container of any hazardous substance or, in the case of an article which is unpackaged or is not packaged in an immediate container intended or suitable for delivery to the ultimate consumer, a display of this matter directly on the article involved, or on a tag or other suitable material affixed thereto; and a requirement made by or under authority of this chapter that any word, statement, or other information appearing on the label shall not be considered to be in compliance with this chapter unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, unless it is easily legible through the outside container or wrapper, and unless it appears on all accompanying literature where there are directions for use, written, or otherwise.

11. "Immediate container" does not include package liners.

12. "Misbranded hazardous substance" means a hazardous substance, including a toy or other article intended for use by children which is a hazardous substance, or which bears or contains a hazardous substance in a manner so as to be susceptible of access by a child to whom the toy or other article is entrusted, which is intended, or packaged in a form suitable for household use, or use by children, which, unless exempted by regulation, fails to bear a label:

a. Which states conspicuously the name and place of business of the manufacturer, packer, or distributor; the common usual name, or the chemical name, or the recognized generic name, not trade name only, of the hazardous substance or of each component which contributes substantially to its hazard; the signal word "DANGER" on substances which are extremely flammable, corrosive, or highly toxic; the signal word "WARNING" or "CAUTION" on all other hazardous substances; an affirmative statement of the principal hazard or hazards, such as "FLAMMABLE", "VAPOR HARMFUL", "CAUSES BURNS", "ABSORBED THROUGH SKIN", or similar wording descriptive of the hazard; precautionary measures describing the action to be followed or avoided; instructions, when necessary, for the first-aid treatment in case of contact or exposure, if the substance is hazardous through contact or exposure; the word "POISON" for any hazardous substance which is defined as "HIGHLY TOXIC" by this section; instructions for handling and storage of packages which require special care in handling or storage; and the statement "KEEP OUT OF REACH OF CHILDREN", or its practical equivalent or, if the article is intended for use by children and is not a banned hazardous substance, adequate directions for the protection of children from the hazard.

b. On which any statements required under this subsection are located prominently and are in the English language in legible type in contrast by typography, layout, or color with other printed matter on the label; provided, that the department shall, by regulations, provide for minimum information which shall appear on the labels for small packages, which labels need not include all of the information required by this subsection; provided further, that the department may permit less than the foregoing statement of the hazard or precautionary measures for labels of hazardous substances presenting only minor hazards; and the term "misbranded hazardous substance" shall not apply to packages of economic poisons so labeled that if introduced in interstate commerce, it would be in compliance with the Federal Insecticide, Fungicide, and Rodenticide Act, nor to packages of foods, drugs, and cosmetics so labeled that if introduced in interstate commerce, it would be in compliance with the Federal Food, Drug, and Cosmetic Act, nor to any package of a hazardous substance so labeled that if introduced into interstate

commerce, it would be in compliance with the Federal Hazardous Substances Labeling Act and rules and regulations promulgated by the secretary of health, education and welfare pursuant to that Act.

13. "Radioactive substance" means a substance which emits ionizing radiation.

14. "Banned hazardous substance" means:

a. Any toy, or other article, intended for use by children, which is a hazardous substance, or which bears or contains a hazardous substance in a manner so as to be susceptible of access by a child to whom the toy, or other article, is entrusted; or

b. Any hazardous substance intended, or packaged in a form suitable, for use in the household, which the department, by regulation, classifies as a "banned hazardous substance", on the basis of a finding that, notwithstanding cautionary labeling as required under this chapter, the degree or nature of the hazard involved in the presence or use of the substance in households is such that the protection of the public health and safety can only be adequately served by keeping the substance out of the channels of commerce.

Provided, the department, by regulation, shall exempt from subdivision a of this subsection those articles, such as chemical sets, which by reason of functional purpose require the inclusion of the hazardous substance involved, and which bear labeling giving adequate directions and warnings for safe use, and are intended for use by children who have attained sufficient maturity and may reasonably be expected to read and heed these directions and warnings.

SECTION 2. AMENDMENT.) Section 19-21-02 of the 1969 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-21-02. PROHIBITED ACTS.) The following acts and the causing thereof are hereby prohibited:

1. The sale or delivery for sale of any misbranded hazardous substance or banned hazardous substance.

2. The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the label of, or the doing of any other act with respect

to a hazardous substance, if such act is done while the substance is held for sale and which results in the hazardous substance being a misbranded or banned hazardous substance.

3. The refusal to permit entry, inspection, or copying of records as authorized by this chapter.

4. A re-use of food, drug, or cosmetic or any beverage containers still bearing original labels or identifiable as such by characteristic shape, impression, or closures as containers for hazardous substances.

5. The use by any person to his own advantage, or revealing, other than to the department, or to the courts when relevant in any judicial proceeding under this chapter, of any information acquired under authority of section 19-21-06 concerning any method of process which, as a trade secret, is entitled to protection.

SECTION 3.) Section 19-21-04.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

19-21-04.1. INJUNCTION PROCEEDINGS.) In addition to any other remedy provided in this chapter, the department is hereby authorized to apply to the district court of Burleigh County, 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 19-21-02, irrespective of whether or not there exists an adequate remedy at law.

SECTION 4. AMENDMENT.) Section 19-21-05 of the 1969 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-21-05. REGULATIONS AND HEARINGS.) The department is authorized, after public hearing following due notice, to promulgate regulations for the efficient enforcement of this chapter. If the department finds that, because of the size of the package involved or because of the minor hazard presented by the substance contained therein, or for other good and sufficient reasons, full compliance with the labeling requirements otherwise applicable under this chapter is impracticable or is not necessary for the adequate protection of the public health and safety, it shall promulgate regulations exempting the substance from these requirements, to an extent consistent with adequate protection of the public health and safety.

If the department finds that an article subject to this chapter cannot be labeled adequately to protect the public health and safety, or the article presents an imminent danger to the public health and safety, it may declare the article

to be a banned hazardous substance and require its removal from commerce.

The department shall cause the regulations promulgated under this chapter to conform with the regulations established pursuant to the Federal Hazardous Substances Act.

Approved February 19, 1971