

FOODS, DRUGS, OILS, AND COMPOUNDS

CHAPTER 218

SENATE BILL NO. 2161

(Human Services Committee)

(At the request of the State Department of Health and
Consolidated Laboratories)

HEALTH DEPARTMENT DIVISIONS AND ABOVEGROUND STORAGE TANKS

AN ACT to create and enact six new subsections to section 23-01-05 and a new section to chapter 23-13 of the North Dakota Century Code, relating to the duties of the state health officer and storage of petroleum products in aboveground storage tanks; to amend and reenact section 19-01-13, subsection 1 of section 19-03.1-01.1, subsections 4 and 5 of section 19-03.1-37, subsection 1 of section 19-13.1-12, subsection 2 of section 19-20.1-17, section 23-01-01, and subsection 1 of section 43-43-01 of the North Dakota Century Code, relating to the powers and duties of the state department of health and consolidated laboratories; and to repeal sections 19-01-02, 19-10-22.1, 23-01-07, and 23-01-09 of the North Dakota Century Code, relating to the organizational structure and duties of the state department of health and consolidated laboratories.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-01-13 of the North Dakota Century Code is amended and reenacted as follows:

19-01-13. Department may seize unlawful products, articles, compositions, or things without search warrant. The department may seize any product, article, composition, or thing which is manufactured, sold, used, transported, kept, or offered for sale, use, or transportation, or which is held in possession with intent to use, sell, or transport the same, in violation of any provision of this title applicable to such product, article, composition, or thing, or in violation of any rule, regulation, standard, or definition relating to the product, article, composition, or thing established pursuant to any provision of this title. The ~~director, assistant director, inspector, agents, or employees~~ of the department, have the powers of a peace officer. A seizure may be made without warrant, but, as soon as practicable, the person suspected of violation must be arrested and prosecuted for the violation.

¹ **SECTION 2. AMENDMENT.** Subsection 1 of section 19-03.1-01.1 of the North Dakota Century Code is amended and reenacted as follows:

1. There is hereby established a North Dakota controlled substances board consisting of the attorney general or the attorney general's designee, the director of the ~~consolidated laboratories branch~~ forensic sciences division of the department of health and consolidated laboratories or the

¹ NOTE: Subsection 1 of section 19-03.1-01.1 was also amended by section 1 of Senate Bill No. 2093, chapter 220.

director's designee, the chairperson of the state board of medical examiners or the chairperson's designee, a member appointed by the governor, and the executive secretary of the state board of pharmacy or the executive secretary's designee. The executive secretary of the state board of pharmacy, or the executive secretary's designee, must be the chairperson of the board.

² **SECTION 3. AMENDMENT.** Subsections 4 and 5 of section 19-03.1-37 of the North Dakota Century Code are amended and reenacted as follows:

4. In all prosecutions under this chapter involving the analysis of a substance or sample thereof, a certified copy of the analytical report signed by the state toxicologist, or the toxicologist's designee, or the director of the ~~consolidated laboratories branch~~ forensic sciences division of the department of health and consolidated laboratories, or the director's designee, must be accepted as prima facie evidence of the results of the analytical findings.
5. Notwithstanding any statute or rule to the contrary, the defendant may subpoena the state toxicologist or the director of the ~~consolidated laboratories branch~~ forensic sciences division of the department of health and consolidated laboratories or any employee of either to testify at the preliminary hearing and trial of the issue at no cost to the defendant.

SECTION 4. AMENDMENT. Subsection 1 of section 19-13.1-12 of the North Dakota Century Code is amended and reenacted as follows:

1. Any person convicted of violating any of the provisions of this chapter or the rules issued thereunder or who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent the department from performing its duties in connection with the provisions of this chapter, shall be guilty of a class A misdemeanor. In all prosecutions under this chapter involving the composition of a lot of commercial feed, a certified copy of the official analysis signed by the director of the ~~consolidated laboratories branch~~ chemistry division of the department of health and consolidated laboratories, or the director's authorized agent, shall be accepted as prima facie evidence of the composition.

SECTION 5. AMENDMENT. Subsection 2 of section 19-20.1-17 of the North Dakota Century Code is amended and reenacted as follows:

2. Any person convicted of violating this chapter or the rules adopted under this chapter or who impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the department in the performance of its duty in connection with this chapter or the rules adopted under this chapter is guilty of a class A misdemeanor. In all prosecutions under this chapter involving the composition of a lot of fertilizers, soil amendments, or plant amendments, a certified copy of the official analysis signed by the director of the ~~consolidated laboratories branch~~ chemistry division of

² NOTE: Section 19-03.1-37 was also amended by section 5 of Senate Bill No. 2093, chapter 220, and by section 1 of Senate Bill No. 2336, chapter 222.

the department or the director's assigned agent must be accepted as prima facie evidence of the composition.

SECTION 6. AMENDMENT. Section 23-01-01 of the North Dakota Century Code is amended and reenacted as follows:

23-01-01. State department of health and consolidated laboratories - Officers. The state department of health and consolidated laboratories consists of a health council, a state health officer, a ~~laboratories branch director~~, section chiefs, directors of divisions, and other employees of the department.

SECTION 7. Six new subsections to section 23-01-05 of the North Dakota Century Code are created and enacted as follows:

Make bacteriological examination of bodily secretions and excretions and of waters and foods.

Make preparations and examinations of pathological tissues submitted by the state health officer, by any county superintendent of public health, or by any physician who has been regularly licensed to practice in this state.

Make all required analyses and preparations, and furnish the results thereof, as expeditiously and promptly as possible.

Cause sanitary statistics to be collected and tabulated, and cause to be ascertained by research work such methods as will lead to the improvement of the sanitation of the various parts of the state.

From time to time, cause to be issued bulletins and reports setting forth the results of the sanitary and pathological work done in the laboratories embodying all useful and important information resulting from the work carried on in the laboratories during the year, the substance of such bulletins and reports to be incorporated in the annual report of the state health officer.

Establish by rule a schedule of reasonable fees that may be charged for laboratory analysis. No charge may be made for any analysis conducted in connection with any public health incident affecting an entire region, community, or neighborhood.

SECTION 8. A new section to chapter 23-13 of the North Dakota Century Code is created and enacted as follows:

Aboveground storage tanks permitted - Limitations. Subject to local zoning ordinances, a business selling petroleum products at retail may utilize aboveground

tanks with a maximum capacity not exceeding nineteen thousand gallons [71922.6 liters] for the storage of petroleum products. No business selling petroleum products at retail may use more than five aboveground storage tanks at one location.

SECTION 9. AMENDMENT. Subsection 1 of section 43-43-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. "Advisory board" means the following or their appointed agents: state health officer as chairperson, ~~the director of the consolidated laboratories branch of the department of health and consolidated laboratories,~~ the commissioner of the North Dakota department of agriculture, and the president of the North Dakota environmental health association. The state health officer shall appoint one agent of a district or local health unit environmental health practitioner and one consumer.

SECTION 10. REPEAL. Sections 19-01-02, 19-10-22.1, 23-01-07, and 23-01-09 of the North Dakota Century Code are repealed.

Approved April 7, 1993

Filed April 8, 1993

CHAPTER 219

HOUSE BILL NO. 1401
(Representatives Rennerfeldt, Svedjan, Porter, Kerzman)
(Senators Kinnoin, Traynor)

GENERIC DRUG PRESCRIPTION

AN ACT to amend and reenact subsection 4 of section 19-02.1-14.1 of the North Dakota Century Code, relating to the prescription of generic name drug products.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 19-02.1-14.1 of the North Dakota Century Code is amended and reenacted as follows:

4. In the case of a prescription for which a maximum allowable cost program for purposes of reimbursement has been established under title XIX of the federal Social Security Act, the following also apply:
 - a. If the practitioner has instructed the pharmacist to dispense as written, the words "brand necessary" must also be written on the prescription in the practitioner's own handwriting. The pharmacist may dispense a therapeutically equivalent generic name drug product if this handwritten instruction does not appear on the prescription.
 - b. If the pharmacist is instructed orally to dispense a brand name drug as prescribed, the pharmacist shall reduce the prescription to writing and shall note the instructions on the file copy of the prescription. The prescription must then be signed by the practitioner and the words "brand necessary" must also be written on the prescription in the practitioner's own handwriting.
 - c. If the practitioner has not instructed the pharmacist to dispense a brand name drug or medicine and the patient specifically requests a brand name drug or medicine, the patient shall pay the difference between the price to the patient of the brand name drug or medicine and the therapeutically equivalent generic name drug or medicine if the price of the brand name drug or medicine is higher.

Approved April 1, 1993
Filed April 2, 1993

CHAPTER 220

SENATE BILL NO. 2093
(Judiciary Committee)(At the request of the North Dakota Controlled Substances
Board)

CONTROLLED SUBSTANCES

AN ACT to create and enact a new subdivision to subsection 4 of section 19-03.1-11 of the North Dakota Century Code, relating to controlled substances; and to amend and reenact subsection 1 of section 19-03.1-01.1, subsections 5 and 7 of section 19-03.1-05, subsection 5 of section 19-03.1-13, and subsections 4 and 5 of section 19-03.1-37 of the North Dakota Century Code, relating to controlled substances and controlled substances board membership.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹ SECTION 1. AMENDMENT. Subsection 1 of section 19-03.1-01.1 of the North Dakota Century Code is amended and reenacted as follows:

1. There is hereby established a North Dakota controlled substances board consisting of the attorney general or the attorney general's designee, the director of the ~~consolidated laboratories branch~~ forensic sciences division of the state department of health and consolidated laboratories or the director's designee, the chairperson of the state board of medical examiners or the chairperson's designee, a member appointed by the governor, and the executive secretary of the state board of pharmacy or the executive secretary's designee. The executive secretary of the state board of pharmacy, or the executive secretary's designee, must be the chairperson of the board.

SECTION 2. AMENDMENT. Subsections 5 and 7 of section 19-03.1-05 of the North Dakota Century Code are amended and reenacted as follows:

5. Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following hallucinogenic substances, including their salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this subsection only, the term "isomer" includes the optical, position and geometric isomers):
 - a. Alpha-ethyltryptamine, its optical isomers, salts and salts of isomers (also known as etryptamine; a-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole).

¹ NOTE: Subsection 1 of section 19-03.1-01.1 was also amended by section 2 of Senate Bill No. 2161, chapter 218.

- ~~b.~~ b. 4-bromo-2, 5-dimethoxy-amphetamine (also known as 4-bromo-2, 5-dimethoxy- α -methylphenethylamine; 4-bromo-2, 5-DMA).
- ~~b-~~ c. 2, 5-dimethoxy-amphetamine (also known as 2, 5-dimethoxy- α -methylphenethylamine; 2, 5-DMA).
- d. 2,5-dimethoxy-4-ethylamphetamine (also known as DOET).
- ~~e-~~ e. 4-methoxyamphetamine (also known as 4-methoxy- α -methylphenethylamine; paramethoxyamphetamine; PMA).
- ~~d-~~ f. 5-methoxy-3,4-methylenedioxy-amphetamine.
- ~~e-~~ g. 4-methyl-2,5-dimethoxy-amphetamine (also known as 4-methyl-2,5-dimethoxy- α -methylphenethylamine; "DOM" and "STP").
- ~~f-~~ h. 3,4-methylenedioxy amphetamine.
- ~~g-~~ i. 3,4-methylenedioxymethamphetamine (also known as MDMA).
- ~~h-~~ j. 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl- α -methyl-3,4(methylenedioxy)phenethylamine, N-ethyl, MDA, MDE, MDEA).
- ~~i-~~ k. N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy- α -methyl-3,4(methylenedioxy)phenylamine, and N-hydroxy MDA).
- ~~j-~~ l. 3,4,5-trimethoxy amphetamine.
- ~~k-~~ m. Bufotenine (also known as 3-(Beta-Dimethyl-aminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine).
- ~~l-~~ n. Diethyltryptamine (also known as N, N-Diethyltryptamine; DET).
- ~~m-~~ o. Dimethyltryptamine (also known as DMT).
- ~~h-~~ p. Hashish.
- ~~e-~~ q. Ibogaine (also known as 7-Ethyl-6, 6B, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5 H-pyrido [1', 2':1,2] azepino (5,4-b) indole; Tabernanthe iboga).
- ~~p-~~ r. Lysergic acid diethylamide.
- ~~q-~~ s. Marijuana.
- ~~r-~~ t. Mescaline.
- ~~s-~~ u. Parahexyl (also known as 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzol[b,d]pyran; Synhexyl).
- ~~t-~~ v. Peyote (all parts of the plant presently classified botanically as *Lophophora williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound,

manufacture, salts, derivative, mixture, or preparation of such plant, its seeds or extracts).

- ~~tt~~ w. N-ethyl-3-piperidyl benzilate.
 - ~~vv~~ x. N-methyl-3-piperidyl benzilate.
 - ~~ww~~ y. Psilocybin.
 - ~~xx~~ z. Psilocyn.
 - ~~yy~~ aa. Tetrahydrocannabinols (synthetic) equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:
 - (1) Delta-1 cis or trans tetrahydrocannabinol, and their optical isomers.
 - (2) Delta-6 cis or trans tetrahydrocannabinol, and their optical isomers.
 - (3) Delta-3,4 cis or trans tetrahydrocannabinol, and its optical isomers. (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)
 - ~~zz~~ bb. Ethylamine analog of phencyclidine (also known as N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE.)
 - ~~aaa~~ cc. Pyrrolidine analog of phencyclidine (also known as 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP.)
 - ~~bbb~~ dd. Thiophene analog of phencyclidine (also known as (1-[1-(2-thienyl)cyclohexyl] piperidine; 2-Thienylanalog of phencyclidine; TPCP, TCP).
 - ~~eee~~ ee. 1-[1-(2-thienyl)cyclohexyl]pyrrolidine (also known as TCPy).
7. Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:
- a. Aminorex (also known as 2-amino-5-phenyl-2-oxazoline, or 4,5-dihydro-5-phenyl-2-oxazolamine).
 - b. Cathinone (also known as 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone.
 - c. Fenethylamine.
 - ~~b~~ d. (\pm)cis-4-methylaminorex (also known as (\pm)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine).

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

e- f. N-ethylamphetamine.

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

SECTION 3. A new subdivision to subsection 4 of section 19-03.1-11 of the North Dakota Century Code is created and enacted as follows:

Zolpidem.

SECTION 4. AMENDMENT. Subsection 5 of section 19-03.1-13 of the North Dakota Century Code is amended and reenacted as follows:

5. Stimulants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers:

a- ~~Propylhexedrine.~~

b- Pyrovalerone.

² **SECTION 5. AMENDMENT.** Subsections 4 and 5 of section 19-03.1-37 of the North Dakota Century Code are amended and reenacted as follows:

4. In all prosecutions under this chapter involving the analysis of a substance or sample thereof, a certified copy of the analytical report signed by the state toxicologist, or the toxicologist's designee, or the director of the ~~consolidated laboratories branch~~ forensic sciences division of the state department of health and consolidated laboratories, or the director's designee, must be accepted as prima facie evidence of the results of the analytical findings.
5. Notwithstanding any statute or rule to the contrary, the defendant may subpoena the state toxicologist or the director of the ~~consolidated laboratories branch~~ forensic sciences division of the state department of health and consolidated laboratories or any employee of either to testify at the preliminary hearing and trial of the issue at no cost to the defendant.

Approved April 7, 1993
Filed April 8, 1993

² NOTE: Section 19-03.1-37 was also amended by section 3 of Senate Bill No. 2161, chapter 218, and by section 1 of Senate Bill No. 2336, chapter 222.

CHAPTER 221

SENATE BILL NO. 2058
(Senators Nalewaja, Evanson, Nelson)
(Representatives Carlisle, Mahoney)

FORFEITED PROPERTY LAW ENFORCEMENT USE

AN ACT to create and enact a new subdivision to subsection 5 of section 19-03.1-36 of the North Dakota Century Code, relating to use of forfeited property by law enforcement agencies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subdivision to subsection 5 of section 19-03.1-36 of the North Dakota Century Code is created and enacted as follows:

Use the property, including controlled substances, imitation controlled substances, and plants forfeited under subsections 6 and 7, in enforcement of this chapter. However, in a case involving the delivery of a forfeited controlled substance by a law enforcement officer or a person acting as an agent of a law enforcement officer, no prosecution or conviction for simple possession of a controlled substance under subsection 3 of section 19-03.1-23 may be based upon the forfeited controlled substances supplied by the law enforcement officer or the officer's agent.

Approved March 24, 1993
Filed March 25, 1993

CHAPTER 222

SENATE BILL NO. 2336
(Senator W. Stenehjem)

ANALYTICAL REPORT AS EVIDENCE

AN ACT to amend and reenact subsection 4 of section 19-03.1-37 of the North Dakota Century Code, relating to the receipt of certified copy of analytical findings as prima facie evidence of test results in prosecutions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹ SECTION 1. AMENDMENT. Subsection 4 of section 19-03.1-37 of the North Dakota Century Code is amended and reenacted as follows:

4. In all prosecutions under this chapter or chapter 12.1-31.1 involving the analysis of a substance or sample thereof, a certified copy of the analytical report signed by the state toxicologist, or the toxicologist's designee, or the director of the consolidated laboratories branch of the department of health and consolidated laboratories, or the director's designee, must be accepted as prima facie evidence of the results of the analytical findings.

Approved March 25, 1993
Filed March 26, 1993

¹ NOTE: Section 19-03.1-37 was also amended by section 5 of Senate Bill No. 2093, chapter 220, and by section 3 of Senate Bill No. 2161, chapter 218.

CHAPTER 223

HOUSE BILL NO. 1117
(Agriculture Committee)

(At the request of the State Department of Health and
Consolidated Laboratories)

COMMERCIAL FEED REPORTS

AN ACT to amend and reenact section 19-13.1-06 of the North Dakota Century Code, relating to commercial feed tonnage reports.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-13.1-06 of the North Dakota Century Code is amended and reenacted as follows:

19-13.1-06. Inspection fees. There must be paid to the department for all commercial feeds and customer-formula feeds, except pet foods and specialty pet foods, distributed in this state an inspection fee at the rate of twenty cents per ton [907.18 kilograms]. However, customer-formula feeds are exempted if the inspection fee is paid on the commercial feeds that they contain, and distribution of commercial feeds to manufacturers is exempted if the commercial feeds so distributed are used solely in manufacture of feeds that are registered. Every person, except as hereinafter provided, who distributes commercial feed in this state shall:

1. File, not later than the ~~fifteenth~~ thirty-first day of January ~~and July~~ of each year, a ~~semiannual~~ annual statement under oath, setting forth the number of net tons [kilograms] of commercial feeds distributed in this state during the preceding ~~six months~~ year; and upon filing such statement shall pay the inspection fee. When more than one person is involved in the distribution of a commercial feed, the person who distributes to the consumer is responsible for reporting the tonnage and paying the inspection fee.
2. Keep such records as may be necessary or required by the department to indicate accurately the tonnage of commercial feed distributed in this state, and the department has the right to examine such records to verify statements of tonnage.

Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided herein constitutes sufficient cause for the cancellation of all licenses on file for the distributor.

Approved March 15, 1993
Filed March 16, 1993

CHAPTER 224

SENATE BILL NO. 2162
(Agriculture Committee)
(At the request of the State Department of Health and
Consolidated Laboratories)

FERTILIZER REPORTS

AN ACT to amend and reenact section 19-20.1-06 of the North Dakota Century Code, relating to fertilizer tonnage reports.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-20.1-06 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-06. Inspection fees and tonnage reports. There must be paid to the department for all fertilizers, soil amendments, or plant amendments distributed in this state an inspection fee at the rate of twenty cents per ton [907.18 kilograms]. Sales to manufacturers or exchanges between them are exempt from the inspection fee. Fees collected under this section must be used for the payment of the costs of inspection, sampling, and analysis, and other expenses necessary for the administration of this chapter.

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

Every licensed person who distributes a fertilizer, soil amendment, or plant amendment to a nonlicensed person in this state shall file with the department, on forms furnished by the department, ~~a semiannual~~ an annual statement for the ~~periods ending December thirty-first and June thirtieth~~ calendar year, setting forth the number of net tons [kilograms] of each fertilizer, soil amendment, or plant amendment so distributed in this state during such period. The statement is due on or before ~~the end of the month following each semiannual period~~ January thirty-first of the following year. The person filing the statement shall pay the inspection fee at the rate stated in this section. If the tonnage statement is not filed and the payment of inspection fee is not made ~~within thirty days after the end of the semiannual period~~ by January thirty-first, a collection fee amounting to ten percent, minimum ten dollars, of the amount shall be assessed against the licensee, and the amount of fees due shall constitute a debt and become the basis of a judgment against the licensee.

Approved March 10, 1993
Filed March 11, 1993