

TITLE 19
FOODS, DRUGS, OILS, AND COMPOUNDS
CHAPTER 19-01
ADMINISTRATION

CHAPTER 19-01

19-01-01. Definitions of terms used in title. In this title, unless the context or subject matter otherwise requires:

1. "Department" means the state department of health.
2. "Person" includes both the singular and the plural, as the case demands, and includes individuals, partnerships, corporations, limited liability companies, companies, and associations, or two or more individuals having a joint or common interest.

19-01-02. Consolidated laboratories branch - Members, duties, meetings. Repealed by S.L. 1993, ch. 218, § 10.

19-01-02.1. Legislative intent. It is the intent of the legislative assembly that the department provide consumer protection services to the public by means of laboratory sampling, laboratory testing, onsite inspecting, and public information services within its jurisdiction.

19-01-03. Director of department - Appointment, bond, oath, salary. Repealed by S.L. 1987, ch. 263, § 30.

19-01-04. Assistant director - Qualifications, appointment, bond, salary, duties. Repealed by S.L. 1987, ch. 263, § 30.

19-01-05. Sheriff as local inspector - Compensation, duties. The director of the department shall appoint the sheriff of each county as the local inspector for the sheriff's county. The sheriff, under the direction and supervision of the department, shall perform such duties and make such inspections as are assigned to the sheriff by the department and is responsible for the enforcement within the sheriff's county of the directions given to the sheriff. The sheriff shall collect all fees and charges which may be collected under the provisions of this title or of any regulatory provision enforced by the department and shall account to the department therefor on or before the first of each month and at such other times as may be required by the department. The sheriff may call upon the state's attorney of the sheriff's county and upon any other law enforcement officer of the sheriff's county or of any city within the sheriff's county to assist the sheriff in the enforcement and administration of the directions of the department. The sheriff and those assisting the sheriff shall receive no additional compensation for work performed under the directions of the department but shall be allowed traveling expenses allowed in the performance of the other duties of their respective offices. Such traveling expenses must be paid out of the appropriations made for the department by the legislative assembly.

19-01-06. Offices of department - Employees - Equipment. Repealed by S.L. 1987, ch. 263, § 30.

19-01-07. Fees - Disposition. All revenues received and fees and charges collected under this title must be properly accounted for daily by the department and recorded by counties from which the fees and charges are received. The department shall forward all moneys so collected to the state treasurer monthly and the treasurer shall place the same in the state general fund. Funds may be accepted from cities, counties, states, federal agencies, and private organizations for contract services of analytical and inspection work. Such funds must be remitted by the department to the state treasurer and deposited in the operating fund of the state department of health.

19-01-08. Expenses - How paid. Repealed by S.L. 1987, ch. 263, § 30.

19-01-09. Right of inspection - Penalty. For obtaining information regarding suspected violations of any provision contained in this title, the department, its inspectors and agents, shall have free access to all places, except private homes, and all vehicles of transportation where and in which any of the products, articles, compositions, or things designated in any chapter in this title are manufactured, stored, sold, exposed for sale, prepared for sale, held, or transported. Such inspectors and other agents of the department may open any car, vehicle, package, can, jar, tub, tank, or other receptacle containing any such product, articles, composition, or thing, for the purpose of inspection, and may take therefrom such sample as may be required to permit such contents to be inspected and analyzed, upon paying or offering to pay to the person entitled thereto the full value of the sample so taken. Agents, bookkeepers, transportation officers, and other employees connected with or having control over any place or vehicle in which any such products, articles, compositions, or things, are manufactured, stored, sold, exposed for sale, prepared for sale, held, or transported, shall render all assistance and aid within their power to inspectors and agents of the department in carrying out the provisions of any chapter contained in this title. Any person obstructing any such agent or inspector of the department in making the entry or inspection or in taking the samples authorized under the provisions of this section or failing upon request to assist therein is guilty of a class A misdemeanor.

19-01-10. Department to make analyses, inspections, and examinations - Report of examination as evidence - Publication of report. The department shall make, or cause to be made, analyses, examinations, and inspections of all products, articles, compositions, or things included under this title whenever such analyses, inspections, or examinations are necessary to determine whether any of such products, articles, compositions, or things violate this title relating to the products, articles, compositions, or things in question, or violate any definition, standard, tolerance, rule, or regulation issued with regard to such products, articles, compositions, or things pursuant to any provision contained in this title. However, the state crime laboratory shall make or cause to be made, analysis, examination, inspection, or test of any product, article, composition, or thing at the request of any prosecutor, defense counsel, or law enforcement officer in the state of North Dakota when such analysis, examination, inspection, or test is made in connection with an investigation into violations of the criminal law of this state. A copy of any report issued by the department or the state crime laboratory of the examination or analyses of any product, article, composition, or thing, duly authenticated by the person making the analysis or examination, when given under oath, is prima facie evidence in all courts of the matters and facts therein contained. The department may collect samples of any product, article, composition, or thing for the purpose of making analyses, inspections, and investigations in connection with research carried on by it and may publish the reports thereof for the information of the public.

19-01-11. Possession of prohibited or regulated products, articles, compositions, or things as prima facie evidence. Possession of any product, article, composition, or thing, the manufacture, sale, or use of which is restricted, regulated, or forbidden by any provision of this title, is prima facie evidence of the intent to sell, manufacture, transport, possess, or use the same in violation of the provisions of this title relating to such product, article, composition, or thing, as the case may be.

19-01-12. Seizure of unlawful products - Search warrant. A search warrant may be issued by any judge, including a district or municipal judge, whenever probable cause is shown by affidavit or deposition under oath that any article, product, composition, or thing is being kept or is present upon certain premises which shall be particularly described or is in possession of any person who shall be named in the affidavit or deposition, and that such article, product, composition, or thing, is not in compliance with, or is being used or possessed contrary to, any applicable provision of this title or of any rule, regulation, standard, tolerance, or definition issued pursuant thereto. The search warrant must be in substantially the form described in the North Dakota Rules of Criminal Procedure. It must particularly describe the premises or the person who has possession of such article and must be signed by the judge with the name of the judge's office, and must be directed to any peace officer of the county or to the department or any of its agents. The warrant shall command the peace officer or agent of the department to search the

persons or places named and to seize all and any products, articles, compositions, or things of the kind described therein which may be held in violation of any applicable provision of this title and to bring such products, articles, compositions, or things before the judge.

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 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.

19-01-14. Service and return of search warrant and proceedings thereon. The provisions of sections 29-29-01 and 29-29-18 and rule 41 of the North Dakota Rules of Criminal Procedure, as to the service and return of a search warrant, and hearing, and return thereon to the district court, govern in cases of search warrants issued pursuant to the provisions of this chapter except that testimony of witnesses need not be reduced to writing. If the magistrate finds that the property seized is property of the kind described in the search warrant and that there is probable cause to believe that the grounds on which the search warrant was issued existed, the magistrate shall send the property so seized to the district court, together with the magistrate's return. If the magistrate finds that there is not probable cause to believe that the grounds on which the search warrant was issued existed, the magistrate shall order the property returned to the person from whom it was taken.

19-01-15. Agent is punishable for violation of any provision of title. Repealed by S.L. 1975, ch. 106, § 673.

19-01-16. Enforcement by department - Duty of state's attorney to prosecute. The department shall enforce the provisions contained in this title and may prevent the manufacture or sale of products, articles, compositions, or things not complying with any provisions of this title applicable thereto. The department shall report each violation of any such provision to the state's attorney of the county within which such violation occurred. Any state's attorney to whom the department or any of its inspectors or agents shall report any such violation, without delay, shall cause appropriate proceedings to be instituted for the enforcement of the appropriate penalty.

19-01-17. Form of license to be issued. All licenses and permits issued by the department must be uniform insofar as practicable and must be on a suitable blank provided and prescribed by the department. If two or more licenses or permits are issued to the same person or corporation, they must be on one and the same blank when possible and practicable.

19-01-18. Duties as to weights and measures. When requested so to do by the public service commission, the department, when it is possible and practicable to do so, shall perform such duties as may be required relating to the inspection and licensing of weights and measures. Each employee of the department, when engaged in the performance of such duties, shall have the same powers and shall charge and collect the same fees for the services the employee may perform as are provided in the case of an inspector in chapter 64-02. All fees, licenses, and other charges collected by the department in performing such additional duties must be considered as collections made by the department to be accounted for and disposed of as provided in this chapter.

19-01-19. Administrative procedure and judicial review. Any proceeding under this title for issuing or modifying rules and regulations and determining compliance with rules and regulations of the department must be conducted in accordance with chapter 28-32 and appeals may be taken as provided in chapter 28-32.