

FOODS, DRUGS, OILS, AND COMPOUNDS

CHAPTER 181

HOUSE BILL NO. 1353

(Representatives Carlisle, Meier, Thoreson)
(Senators Dever, Klein, Robinson)

METHAMPHETAMINE PRECURSOR DRUG SALE REGULATION

AN ACT to create and enact three new subsections to section 19-03.1-01 and two new sections to chapter 19-03.4 of the North Dakota Century Code, relating to the definitions, prima facie proof of intent, and the retail or over-the-counter sale of methamphetamine precursor drugs; to amend and reenact section 19-03.1-01 and subsection 13 of section 19-03.4-01 of the North Dakota Century Code, relating to definitions used in the Uniform Controlled Substance Act and the definition of drug paraphernalia; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-03.1-01 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-01. Definitions. As used in this chapter and in chapters 19-03.2 and 19-03.4, unless the context otherwise requires:

1. "Administer" means to apply a controlled substance, whether by injection, inhalation, ingestion, or any other means, directly to the body of a patient or research subject by:
 - a. A practitioner or, in the practitioner's presence, by the practitioner's 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. "Anabolic steroids" means any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestins, and corticosteroids.
4. "Board" means the state board of pharmacy.

5. "Bureau" means the drug enforcement administration in the United States department of justice or its successor agency.
6. "Controlled substance" means a drug, substance, or immediate precursor in schedules I through V as set out in this chapter.
7. "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.
8. "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.
9. "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.
10. "Dispenser" means a practitioner who dispenses.
11. "Distribute" means to deliver other than by administering or dispensing a controlled substance.
12. "Distributor" means a person who distributes.
13. "Drug" means:
 - a. Substances recognized as drugs in the official United States pharmacopeia, national formulary, or the official homeopathic pharmacopeia of the United States, or any supplement to any of them;
 - b. Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in individuals or animals;
 - c. Substances, other than food, intended to affect the structure or any function of the body of individuals or animals; and
 - d. Substances intended for use as a component of any article specified in subdivision a, b, or c. The term does not include devices or their components, parts, or accessories.
14. "Hashish" means the resin extracted from any part of the plant cannabis with or without its adhering plant parts, whether growing or not, and every compound, manufacture, salt, derivative, mixture, or preparation of the resin.
15. "Immediate precursor" means a substance:
 - a. That the board has found to be and by rule designates as being the principal compound commonly used or produced primarily for use in the manufacture of a controlled substance;

- b. That is an immediate chemical intermediary used or likely to be used in the manufacture of the controlled substance; and
 - c. The control of which is necessary to prevent, curtail, or limit the manufacture of the controlled substance.
16. "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. The term does not include the preparation or compounding of a controlled substance by an individual for the individual's own use or the preparation, compounding, packaging, or labeling of a controlled substance:
- a. By a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or
 - b. By a practitioner, or by the practitioner's authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.
17. "Marijuana" means all parts of the plant cannabis whether growing or not; the seeds thereof; the resinous product of the combustion of the plant cannabis; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds. The term 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, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.
18. "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.

19. "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. The term does not include, unless specifically designated as controlled under section 19-03.1-02, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). The term includes its racemic and levorotatory forms.
20. "Opium poppy" means the plant of the species *papaver somniferum* L., except its seeds.
21. "Person" means individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.
22. "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.
23. "Practitioner" means:
 - a. A physician, dentist, veterinarian, pharmacist, scientific investigator, or other person licensed, registered, or otherwise permitted by the jurisdiction in which the individual is practicing to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research.
 - 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.
24. "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.
25. "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.
26. "Ultimate user" means an individual who lawfully possesses a controlled substance for the individual's own use or for the use of a member of the individual's household or for administering to an animal owned by the individual or by a member of the individual's household.

SECTION 2. Three new subsections to section 19-03.1-01 of the North Dakota Century Code are created and enacted as follows:

"Methamphetamine precursor drug" means a drug or product containing ephedrine, pseudoephedrine, or any of their salts, optical isomers, or salts of optical isomers;

"Over-the-counter sale" means a retail sale of a drug or product other than a controlled, or imitation controlled, substance;

"Sale" includes barter, exchange, or gift, or offer therefor, and each such transaction made by a person, whether as principal, proprietor, agent, servant, or employee;

SECTION 3. AMENDMENT. Subsection 13 of section 19-03.4-01 of the North Dakota Century Code is amended and reenacted as follows:

13. Ingredients or components to be used or intended or designed to be used in manufacturing, producing, processing, preparing, testing, or analyzing a controlled substance, whether or not otherwise lawfully obtained, including anhydrous ammonia, nonprescription medications, methamphetamine precursor drugs, or lawfully dispensed controlled substances.

SECTION 4. A new section to chapter 19-03.4 of the North Dakota Century Code is created and enacted as follows:

Prima facie proof of intent. Possession of more than twenty-four grams of a methamphetamine precursor drug or combination of methamphetamine precursor drugs calculated in terms of ephedrine HCl and pseudoephedrine HCl is prima facie evidence of intent to violate sections 19-03.4-03 and 19-03.4-04. This subsection does not apply to a practitioner as defined in subsection 23 of section 19-03.1-01 or to a product possessed in the course of a legitimate and lawful business.

SECTION 5. A new section to chapter 19-03.4 of the North Dakota Century Code is created and enacted as follows:

Retail or over-the-counter sale of methamphetamine precursor drugs - Penalty.

1. The retail sale of nonliquid methamphetamine precursor drugs is limited to:
 - a. Sales in packages containing not more than a total of three grams of one or more methamphetamine precursor drugs, calculated in terms of ephedrine HCl and pseudoephedrine HCl; and
 - b. Sales in blister packs, each blister containing not more than two dosage units, or when the use of blister packs is technically infeasible, sales in unit dose packets or pouches.
2. A person may not deliver in a single over-the-counter sale more than two packages of a methamphetamine precursor drug or a combination of methamphetamine precursor drugs.
3. A person may not deliver in an over-the-counter sale a methamphetamine precursor drug to a person under the age of eighteen years.
4. It is a prima facie case of a violation of subsection 3 if the person making the sale did not require and obtain proof of age from the purchaser, unless from the purchaser's outward appearance the person would reasonably presume the purchaser to be twenty-five years of age or older. "Proof of age" means a document issued by a governmental agency which:

- a. Contains a description of the person or a photograph of the person, or both, and gives the person's date of birth; and
- b. Includes a passport, military identification card, or driver's license.
5. It is an affirmative defense to a violation of subsection 3 if:
 - a. The person making the sale required and obtained proof of age from the purchaser;
 - b. The purchaser falsely represented the purchaser's proof of age by use of a false, forged, or altered document;
 - c. The appearance of the purchaser was such that an ordinary and prudent person would believe the purchaser to be at least eighteen years of age; and
 - d. The sale was made in good faith and in reliance upon the appearance and representation of proof of age of the purchaser.
6. This section does not apply to pediatric products labeled pursuant to federal regulation primarily intended for administration to children under twelve years of age according to label instructions or to a product that the state board of pharmacy, upon application of a manufacturer, exempts from this section because the product has been formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine, or its salts or precursors.
7. A person who willfully violates subsection 1 is guilty of a class A misdemeanor. A person who willfully violates subsection 2 or 3 is guilty of an infraction.
8. A person who is the owner, operator, or manager of the retail outlet or who is the supervisor of the employee or agent committing a violation of this section of the outlet where methamphetamine precursor drugs are available for sale is not subject to the penalties of this section if the person:
 - a. Did not have prior knowledge of, participate in, or direct the employee or agent to commit, the violation of this section; and
 - b. Documents that the employee or agent, at the time of initial employment and each calendar year thereafter, participated in a training program approved by the attorney general providing the employee or agent with information regarding the state and federal regulations governing the sale, possession, and packaging of such drugs.

The approval of the training program by the attorney general is not subject to chapter 28-32.
9. A political subdivision, including a home rule city or county, may not enact any ordinance relating to the sale by a retail distributor of over-the-counter products containing ephedrine, pseudoephedrine, or phenylpropanolamine. Any existing ordinance is void.

SECTION 6. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 7, 2003

Filed April 7, 2003

CHAPTER 182

HOUSE BILL NO. 1146

(Judiciary Committee)

(At the request of the Board of Pharmacy)

CONTROLLED SUBSTANCE SCHEDULE

AN ACT to amend and reenact subsection 4 of section 19-03.1-09 and subsection 4 of section 19-03.1-11 of the North Dakota Century Code, relating to controlled substances.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 19-03.1-09 of the North Dakota Century Code is amended and reenacted as follows:

4. Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system:
 - a. Any compound, mixture, or preparation containing:
 - (1) Amobarbital;
 - (2) Secobarbital;
 - (3) Pentobarbital;or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule.
 - b. Any suppository dosage form containing:
 - (1) Amobarbital;
 - (2) Secobarbital;
 - (3) Pentobarbital;or any salt of any of these drugs and approved by the food and drug administration for marketing only as a suppository.
 - c. Any substance that 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 thereof.
 - d. Buprenorphine.
 - e. Chlorhexadol.

- e. f. Dronabinol (synthetic) [(-)-delta-9-(trans)-tetrahydrocannabinol] in sesame oil and encapsulated in a soft gelatin capsule in a United States food and drug administration-approved drug product.
- f. g. Gamma-hydroxybutyric acid in a United States food and drug administration-approved drug product.
- g. h. Glutethimide.
- h. i. Ketamine.
- i. j. Lysergic acid.
- j. k. Lysergic acid amide.
- k. l. Methyprylon.
- l. m. Sulfondiethylmethane.
- m. n. Sulfonethylmethane.
- n. o. Sulfonmethane.
- o. p. Tiletamine and zolazepam or any salt thereof. Some trade or other names for a tiletamine-zolazepam combination product: Telazol. Some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Some trade or other names for zolazepam: 4-2(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e][1,4]- diazepin-7(1H)-one, flupyrazapon.

SECTION 2. AMENDMENT. Subsection 4 of section 19-03.1-11 of the North Dakota Century Code is amended and reenacted as follows:

4. Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following 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:
 - a. Alprazolam.
 - b. Barbital.
 - c. Bromazepam.
 - d. Butorphanol.
 - e. Camazepam.
 - f. Chloral betaine.
 - g. Chloral hydrate.
 - h. Chlordiazepoxide.

- i. Clobazam.
- j. Clonazepam.
- k. Clorazepate.
- l. Clotiazepam.
- m. Cloxazolam.
- n. Delorazepam.
- o. Diazepam.
- p. Dichloralphenazone.
- q. Estazolam.
- ~~q~~ r. Ethchlorvynol.
- ~~r~~ s. Ethinamate.
- ~~s~~ t. Ethyl loflazepate.
- ~~t~~ u. Fludiazepam.
- ~~u~~ v. Flurazepam.
- ~~v~~ w. Halazepam.
- ~~w~~ x. Haloxazolam.
- ~~x~~ y. Ketazolam.
- ~~y~~ z. Loprazolam.
- ~~z~~ aa. Lorazepam.
- ~~aa~~ bb. Lormetazepam.
- ~~bb~~ cc. Mebutamate.
- ~~cc~~ dd. Medazepam.
- ~~dd~~ ee. Meprobamate.
- ~~ee~~ ff. Methohexital.
- ~~ff~~ gg. Methylphenobarbital (also known as mephobarbital).
- ~~gg~~ hh. Midazolam.
- ~~hh~~ ii. Nimetazepam.
- ~~ii~~ jj. Nitrazepam.

jj	<u>kk</u>	Nordiazepam.
kk	<u>ll</u>	Oxazepam.
ll	<u>mm</u>	Oxazolam.
mm	<u>nn</u>	Paraldehyde.
nn	<u>oo</u>	Petrichloral.
oo	<u>pp</u>	Phenobarbital.
pp	<u>qq</u>	Pinazepam.
qq	<u>rr</u>	Prazepam.
rr	<u>ss</u>	Quazepam.
ss	<u>tt</u>	Sibutramine.
tt	<u>uu</u>	Temazepam.
uu	<u>vv</u>	Tetrazepam.
vv	<u>ww</u>	Triazolam.
ww	<u>xx</u>	Zaleplon.
xx	<u>yy</u>	Zolpidem.

Approved March 25, 2003
Filed March 25, 2003

CHAPTER 183**HOUSE BILL NO. 1351**

(Representatives Delmore, Dosch, Hawken)
(Senators Cook, Flakoll, Holmberg)

**CONTROLLED SUBSTANCE EXPOSURE OF
CHILDREN AND VULNERABLE ADULTS**

AN ACT to create and enact section 19-03.1-22.2 of the North Dakota Century Code, relating to exposure of children or vulnerable adults to controlled substances; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 19-03.1-22.2 of the North Dakota Century Code is created and enacted as follows:

19-03.1-22.2. Endangerment of child or vulnerable adult.

1. For purposes of this section:
 - a. "Chemical substance" means a substance intended to be used as a precursor in the manufacture of a controlled substance or any other chemical intended to be used in the manufacture of a controlled substance. Intent under this subsection may be demonstrated by the substance's use, quantity, manner of storage, or proximity to other precursors or to manufacturing equipment.
 - b. "Child" means an individual who is under the age of eighteen years.
 - c. "Controlled substance" means the same as that term is defined in section 19-03.1-01, except the term does not include less than one-half ounce of marijuana.
 - d. "Drug paraphernalia" means the same as that term is defined in section 19-03.4-01.
 - e. "Prescription" means the same as that term is described in section 19-03.1-22.
 - f. "Vulnerable adult" means either a disabled adult or vulnerable elderly adult as those terms are defined in section 12.1-31-07.
2. Unless a greater penalty is otherwise provided by law, a person who knowingly or intentionally causes or permits a child or vulnerable adult to be exposed to, to ingest or inhale, or to have contact with a controlled substance, chemical substance, or drug paraphernalia as defined in subsection 1, is guilty of a class C felony.
3. Unless a greater penalty is otherwise provided by law, a person who violates subsection 2, and a child or vulnerable adult actually suffers

bodily injury by exposure to, ingestion of, inhalation of, or contact with a controlled substance, chemical substance, or drug paraphernalia, is guilty of a class B felony unless the exposure, ingestion, inhalation, or contact results in the death of the child or vulnerable adult, in which case the person is guilty of a class A felony.

4. It is an affirmative defense to a violation of this section that the controlled substance was provided by lawful prescription for the child or vulnerable adult and that it was administered to the child or vulnerable adult in accordance with the prescription instructions provided with the controlled substance.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 9, 2003

Filed April 9, 2003

CHAPTER 184**HOUSE BILL NO. 1111**

(Judiciary Committee)

(At the request of the Attorney General)

**DRUG PARAPHERNALIA REPORTING AND
FORFEITURE**

AN ACT to amend and reenact subsection 3 of section 12-60-16.4 and subdivision g of subsection 1 and subdivision e of subsection 5 of section 19-03.1-36 of the North Dakota Century Code, relating to drug paraphernalia offense reporting and forfeiture and use of forfeited property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 12-60-16.4 of the North Dakota Century Code is amended and reenacted as follows:

3. Class A and B misdemeanor offenses in chapters 19-03.1 ~~and~~, 19-03.2, and 19-03.4 and in sections 12-47-21 and 20.1-01-18.

⁸¹ **SECTION 2. AMENDMENT.** Subdivision g of subsection 1 of section 19-03.1-36 of the North Dakota Century Code is amended and reenacted as follows:

- g. All drug paraphernalia as defined in ~~title 12-1~~ chapter 19-03.4.

⁸² **SECTION 3. AMENDMENT.** Subdivision e of subsection 5 of section 19-03.1-36 of the North Dakota Century Code is amended and reenacted as follows:

- e. 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~~ 6 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 13, 2003

Filed March 13, 2003

⁸¹ Section 19-03.1-36 was also amended by section 3 of House Bill No. 1111, chapter 184, and section 11 of Senate Bill No. 2046, chapter 48.

⁸² Section 19-03.1-36 was also amended by section 2 of House Bill No. 1111, chapter 184, and section 11 of Senate Bill No. 2046, chapter 48.

CHAPTER 185

HOUSE BILL NO. 1128

(Agriculture Committee)

(At the request of the Agriculture Commissioner)

LIVESTOCK MEDICINE REGULATION

AN ACT to amend and reenact sections 19-14-01, 19-14-02, 19-14-03, 19-14-04, 19-14-05, 19-14-06, 19-14-07, and 19-14-08 of the North Dakota Century Code, relating to the regulation of livestock medicines; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-14-01 of the North Dakota Century Code is amended and reenacted as follows:

19-14-01. Livestock medicine defined Definitions. ~~The term~~ As used in this chapter:

1. "Commissioner" means the agriculture commissioner.
2. "livestock Livestock medicine" as used in this chapter includes all devices, remedies, cures, tonics, powders, proprietary medicines, ~~medicated stock feeds~~ type A medicated articles, and similar preparations for the treatment or prevention of any disease of livestock, poultry, or other domestic animals which are administered internally for their stimulating, invigorating, curative, or other than nutritive powers, and also all powders, sprays, dips, and other preparations for external use in the curing of scab or the eradication of ticks, lice, and other mites and parasites on livestock, poultry, or other domestic animals. The term does not include medicines which are manufactured, sold, or recommended primarily for human use.
3. "Type A medicated article" includes a product with standardized potency containing one or more new animal drugs intended for use in the manufacture of another medicated article or a medicated feed.

SECTION 2. AMENDMENT. Section 19-14-02 of the North Dakota Century Code is amended and reenacted as follows:

19-14-02. Registration of livestock medicine. The commissioner of ~~agriculture~~, upon the application of the manufacturer or distributor of livestock medicine and the payment of the registration fee prescribed in section 19-14-04, shall register any livestock medicine that does not violate this chapter. Registration covers a two-year period beginning July first and ending June thirtieth of ~~the second~~ ensuing every even numbered year unless it is canceled sooner because a change is made in the ingredients or formula of manufacture or in the name, brand, or trademark under which the medicine is sold. In the event of any change, the medicine must be registered anew in the same manner as upon an original application.

SECTION 3. AMENDMENT. Section 19-14-03 of the North Dakota Century Code is amended and reenacted as follows:

19-14-03. Regulations for sale. No person may sell, offer, or expose for sale, have in possession with intent to sell, any livestock medicine:

1. Which is sold under a name, brand, trademark, or labeling which is misleading, deceptive, or false, or which is dangerous to animals under the conditions of use prescribed in the labeling or advertising thereof.
2. Which purports to cure any infectious disease of domestic animals for which no genuine cure is known.
3. Which has not been registered by the commissioner of agriculture for sale in this state. The certificate of registration must include a disclosure of the name and quantity or proportion of each active ingredient and the names of the inert ingredients or fillers.
4. Which does not have printed or written upon the label of each package sold at retail, in type not less than one-fourth the size of the largest type on the package:
 - a. The common name in English of all active ingredients in the order of their predominance in the product;
 - b. A statement of the actual percentage or relative amounts of each ingredient active and inert. In the case of certain products (such as coated medicinal tablets), it may be impractical to state the quantity or proportion of inert ingredients and exemptions must be established by rules adopted by the commissioner;
 - c. The net contents, by weight, measure, or numerical count of the package;
 - d. The name and principal address of the manufacturer or person responsible for placing the livestock medicine on the market; and
 - e. Complete and explicit directions for use of the medicine.
5. When the contents of the package as originally ~~put up~~ manufactured have been removed in whole or in part, and other contents have been placed in such package.

⁸³ **SECTION 4. AMENDMENT.** Section 19-14-04 of the North Dakota Century Code is amended and reenacted as follows:

19-14-04. Registration fee. Prior to each two-year registration ending June thirtieth of every even numbered year, a registration fee of twenty dollars must be paid to the commissioner of agriculture for each livestock medicine that is registered. A person submitting an application for registration which is received by the

⁸³ Section 19-14-04 was also amended by section 11 of Senate Bill No. 2009, chapter 30.

commissioner after July thirty-first of that year shall pay an additional late registration fee of ten dollars.

SECTION 5. AMENDMENT. Section 19-14-05 of the North Dakota Century Code is amended and reenacted as follows:

19-14-05. Commissioner may cancel registration. The commissioner of ~~agriculture~~ may cancel the registration of any livestock medicine that is sold subsequent to its registration in violation of this chapter. The commissioner of ~~agriculture~~ may cancel the registration whenever a change is made in the ingredients or formula of the manufacture or in the name, brand, or trademark under which the medicine is sold, unless the medicine has been reregistered.

SECTION 6. AMENDMENT. Section 19-14-06 of the North Dakota Century Code is amended and reenacted as follows:

19-14-06. Commissioner may adopt rules, take testimony, grant public hearings. The commissioner of ~~agriculture~~ may adopt rules pursuant to chapter 28-32 governing applications for registration, the submission of samples for analysis, and all other matters necessary to give effect to this chapter. The commissioner of ~~agriculture~~ may take expert and other testimony whenever the commissioner deems testimony advisable and, upon request, shall grant a public hearing prior to the cancellation of a registration and also to any manufacturer or distributor whose request for registration of any livestock medicine has been denied.

SECTION 7. AMENDMENT. Section 19-14-07 of the North Dakota Century Code is amended and reenacted as follows:

19-14-07. Enforcement of chapter. The commissioner of ~~agriculture~~ shall enforce this chapter by inspection, chemical analysis, and any other appropriate method. All samples for analysis must be taken from stocks held within, or intended for sale in, this state. The commissioner of ~~agriculture~~ may ~~call upon~~ require any manufacturer or distributor applying for registration of a livestock medicine to supply samples of the medicine for analysis. The commissioner may institute such action at law or in equity as may appear necessary to enforce compliance with the provisions of this chapter, and in addition to any other remedy, may apply to the district court for relief by injunction, mandamus, or any other appropriate remedy in equity. In such actions, the commissioner is not required to give or post bond in any action to which the commissioner is a party whether upon appeal or otherwise.

SECTION 8. AMENDMENT. Section 19-14-08 of the North Dakota Century Code is amended and reenacted as follows:

19-14-08. Penalty - Criminal - Civil. Any person who ~~sells, offers, or exposes for sale, or has in possession with intent to sell, any livestock medicine in violation of~~ violates any of the provisions of this chapter or any rule adopted pursuant to this chapter, or who willfully and falsely represents that any livestock medicine is registered for sale in this state when in fact it is not so registered, is guilty of a class B misdemeanor. In addition to the criminal penalty provided in this section, a person who violates a provision of this chapter or a rule adopted pursuant to this chapter is subject to a civil penalty not to exceed five hundred dollars per violation. Each day of noncompliance constitutes a separate violation for purposes of penalty assessments. The civil penalty may be imposed by a court in a civil proceeding or by the agriculture commissioner through an administrative hearing pursuant to chapter 28-32.

Approved March 18, 2003

Filed March 19, 2003

CHAPTER 186

HOUSE BILL NO. 1158

(Agriculture Committee)

(At the request of the Agriculture Commissioner)

PESTICIDE REGISTRATIONS

AN ACT to amend and reenact section 4-28-03, subsections 18, 19, and 28 of section 19-18-02, and sections 19-18-04, 19-18-04.1, and 19-18-07 of the North Dakota Century Code, relating to pesticide registrations; to repeal section 19-18-02.2 of the North Dakota Century Code, relating to wheat commission membership and a pesticide residue advisory board; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-28-03 of the North Dakota Century Code is amended and reenacted as follows:

4-28-03. Wheat commission - Members. There is hereby created the North Dakota state wheat commission which consists of seven members. One member must be appointed or elected from each of the districts of the state established by the provisions of this chapter and one member must be appointed or elected from the state at large. Each member, except the member from the state at large, must be a bona fide resident of and a qualified elector in the district the member represents, must have farming operations in such district, and must have been actually engaged in the production of wheat and have derived a substantial portion of the member's income therefrom for at least five years next preceding the member's appointment or election. The member from the state at large must have similar qualifications except as limited by district lines.

Not more than sixty days prior to expiration of the term of the member from the state at large, a nominating committee consisting of the agriculture commissioner, the president of the North Dakota crop improvement association, the director of the North Dakota agricultural experiment station, the director of the North Dakota state university extension service, the president of the North Dakota farm bureau, the president of the North Dakota farmers union, ~~and~~ the president of the North Dakota grain dealers association, the president of the North Dakota grain growers association, and an individual who is a resident of this state and a member of the United States durum growers association, or their duly authorized representatives, shall submit to the governor a list of three names and within sixty days after expiration of the term the governor shall appoint, from the nominees so named, the member at large to the commission.

Each member of the commission shall hold office for a term of four years and until the member's successor has been selected and has qualified except that the commissioners elected and serving from the first and fourth districts shall hold office for terms ending on June 30, 1984; the commissioners elected and serving from the second and fifth districts shall hold office for terms ending on June 30, 1985; and the commissioners elected and serving from the third and sixth districts shall hold office for terms ending on June 30, 1982; and the commissioner appointed and serving as the state at large member shall hold office for a term ending on June 30, 1983. No producer is entitled to serve more than three terms.

At least sixty days prior to the expiration of the term of office of a commissioner representing any district, a meeting of producers must be held in each county in the district for the purpose of electing a county representative. The county agent shall call such meeting by publishing notice in the official newspaper of the county for two successive weeks, the last publication to be not less than five nor more than ten days prior to the meeting. The meeting must be held at a central location within the county and must be called to order by the county agent. The county agent, in cooperation with the cooperative extension service, shall conduct all elections under this section in each county in the manner the county agent deems fair and reasonable. Votes must be canvassed by the county agent and certified by the county agent with the name and post-office address of the elected county representative to the director of the North Dakota state university extension service who shall thereupon, as expeditiously as possible, call a meeting of the county representatives of the district. Notice of such meeting must be sent to each county representative by registered or certified mail not less than five days prior to the meeting which must be held at a central location within the district. At such district meeting, the county representatives shall elect one of their number as the district member of the commission. The ballots at such meeting must be canvassed by the North Dakota state university extension service and the result of election certified to the governor by the director. Additional meetings of county representatives may be called by the state wheat commission for the purpose of promoting its programs. All expenses of all such meetings and elections must be paid from commission funds. County representatives must be reimbursed for expenses necessarily incurred in attending meetings and performing other official duties on the same basis as other state officers. Any vacancy occurring on the commission other than by expiration of term of office must be filled by the county representatives who shall elect one of their number as the district member of the commission for the remainder of the unexpired term. If the vacancy is from the state at large, appointment must be made from three nominations submitted by the nominating committee as in the case of the original appointment.

SECTION 2. AMENDMENT. Subsections 18, 19, and 28 of section 19-18-02 of the North Dakota Century Code are amended and reenacted as follows:

18. "Labeling" means all labels and other written, printed, or graphic matter:
 - a. Upon the pesticide or device or any of its containers or wrappers;
 - b. Accompanying the pesticide or device at any time; or
 - c. To which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, ~~nonmisleading~~ non-misleading reference is made to current official publications of ~~the environmental protection agency, the United States department of agriculture or interior, state agricultural experiment stations or centers, state agricultural colleges, or other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the fields of pesticides~~ a state or federal agency, state agricultural experiment station, or state agricultural college.

19. "Misbranded" applies:
 - a. To any pesticide or device if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular; and

b. To any pesticide:

- (1) If it is an imitation of or is offered for sale under the name of another pesticide;
- (2) If its labeling bears any reference to registration under this chapter;
- (3) If the labeling accompanying it does not contain directions for use which are necessary and, if complied with, adequate to protect health and the environment;
- (4) If the label does not contain a warning or caution statement which may be necessary and, if complied with, adequate to protect health and the environment;
- (5) If the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package that is presented or displayed under customary conditions of purchase; except that a pesticide is not misbranded under this subsection if:
 - (a) The size or form of the immediate container, or the outside container or wrapper of the retail package, makes it impracticable to place the ingredient statement on the part that is presented or displayed under customary conditions of purchase; and
 - (b) The ingredient statement appears prominently on another part of the immediate container, or outside container or wrapper, permitted by the commissioner;
- (6) The labeling does not contain a statement of the use classification under which the product is registered if the product is a restricted use pesticide;
- (7) There is not affixed to its container, and to the outside container or wrapper of the retail package, if there is one, through which the required information on the immediate container cannot be clearly read, a label bearing:
 - (a) The name and address of the producer, registrant, or person for whom produced;
 - (b) The name, brand, or trademark under which the pesticide is sold; and
 - (c) The net weight or measure of the content; and
 - (d) ~~When required by regulation of the commissioner to effectuate the purposes of this chapter, the registration number assigned to the pesticide under this chapter, and the use classification;~~

- (8) The pesticide contains any substance or substances in quantities highly toxic to man, unless the label bears, in addition to any other matter required by this chapter:
 - (a) The skull and crossbones;
 - (b) The word "poison" prominently in red on a background of distinctly contrasting color; and
 - (c) A statement of a practical treatment (first aid or otherwise) in case of poisoning by the pesticide;
- (9) If any word, statement, or other information required by or under the authority of this chapter to appear on the labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or graphic matter in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
- (10) If in the case of an insecticide, nematocide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it is injurious to living man or other vertebrate animals or vegetation, except weeds, to which it is applied, or to the person applying the pesticide; or
- (11) If a plant regulator, defoliant, or desiccant when used as directed is injurious to man or other vertebrate animals, or the vegetation to which it is applied; provided, that the physical or physiological effect on plants or parts thereof may 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.

28. "Restricted use pesticides" means any pesticide ~~that the commissioner has found and determined under the provisions of this chapter to be injurious to persons, beneficial insects, animals, crops, or to the environment other than the pests the pesticide is intended to repel, destroy, control, or mitigate~~ formulation that is classified for restricted use by the United States environmental protection agency. The term also includes a pesticide formulation classified for restricted use by the commissioner pursuant to section 19-18-05.

⁸⁴ **SECTION 3. AMENDMENT.** Section 19-18-04 of the North Dakota Century Code is amended and reenacted as follows:

⁸⁴ Section 19-18-04 was also amended by section 1 of Senate Bill No. 2319, chapter 187.

19-18-04. (Effective through June 30, 2003) Registration - Fees.

1. Any person before selling or offering for sale any pesticide for use within this state shall file biennially with the commissioner an application for registration of the pesticide. The application must:
 - a. Give the name and address of each manufacturer or distributor.
 - b. Give the name and brand of each product registered.
 - c. Be accompanied by a current label of each product so registered.
 - d. Be accompanied by a registration fee of three hundred fifty dollars for each product registered. At the close of each calendar month, the commissioner shall transmit to the state treasurer all moneys received for the registrations. The state treasurer shall credit fifty dollars for each registered product to the general fund in the state treasury and the remainder of the registration fee for each registered product to the environment and rangeland protection fund.
 - e. Be accompanied by a material safety data sheet.
2. The commissioner may require an applicant or registrant to provide efficacy, toxicity, residue, and any other data necessary to determine if the pesticide will perform its intended function without unreasonable adverse effects on the environment. If the commissioner finds that the application conforms to law, the commissioner shall issue to the applicant a certificate of registration of the product. If after public hearing before the commissioner the application is denied, the product may not be offered for sale.
3. Each registration covers a two-year period beginning January first and expiring December thirty-first of the following year. A certificate of registration may not be issued for a term longer than two years, and is not 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 must be imposed if the license or certificate of registration is not applied for on or before January thirty-first following the expiration date, or within the same month the pesticides are first manufactured or sold within this state. Each product must go through a two-year discontinuance period in order to clear all outstanding products in the channel of trade.
4. This section does not apply to a pesticide sold by a retail dealer if the registration fee has been paid by the manufacturer, jobber, or any other person, as required by this section.

(Effective July 1, 2003) Registration - Fees. Any person before selling or offering for sale any pesticide for use within this state shall file biennially with the commissioner an application for registration of the pesticide. The application must:

1. Give the name and address of each manufacturer or distributor.
2. Give the name and brand of each product to be registered.

3. Be accompanied by a current label of each product ~~to be~~ to be registered.
4. Be accompanied by a registration fee of three hundred dollars for each product to be registered. At the close of each calendar month, the commissioner shall transmit to the state treasurer all moneys received for the registrations. The state treasurer shall credit fifty dollars for each registered product to the general fund in the state treasury and the remainder of the registration fee for each registered product to the environment and rangeland protection fund.
5. Be accompanied by a material safety data sheet for each product to be registered.

The commissioner may require an applicant or registrant to provide efficacy, toxicity, residue, and any other data necessary to determine if the pesticide will perform its intended function without unreasonable adverse effects on the environment. If the commissioner finds that the application conforms to law, the commissioner shall issue to the applicant a certificate of registration of the product. ~~If after public hearing before the commissioner the application is denied, the product may not be offered for sale.~~

Each registration covers a designated two-year period beginning January first of each even-numbered year and expiring December thirty-first of the following year. A certificate of registration may not be issued for a term longer than two years, and is not 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 must be imposed if the license or certificate of registration is not applied for on or before January thirty-first following the expiration date, ~~or within the same month the pesticides are first manufactured or sold within this state~~. Each product must go through a two-year discontinuance period in order to clear all outstanding products in the channel of trade.

This section does not apply to a pesticide sold by a retail dealer if the registration fee has been paid by the manufacturer, jobber, or any other person, as required by this section.

SECTION 4. AMENDMENT. Section 19-18-04.1 of the North Dakota Century Code is amended and reenacted as follows:

19-18-04.1. Reporting requirements. Upon request of the commissioner, a registrant shall report the amount and type of each registered pesticide sold, offered for sale, or otherwise distributed in the state. The report must be filed ~~by March first~~ within thirty days after receiving the commissioner's request. The information required must include the brand name, amount, and formulation of each pesticide sold, offered for sale, or otherwise distributed in the state. However, specific brand names may not be identified in any report or otherwise made public.

SECTION 5. AMENDMENT. Section 19-18-07 of the North Dakota Century Code is amended and reenacted as follows:

19-18-07. Exemptions. The penalties provided for violations of section 19-18-03 do not apply to:

1. Any carrier while lawfully engaged in transporting a pesticide within this state, if the carrier, upon request, permits the commissioner to copy all records showing the transactions in and movement of the articles.

2. Public officials of this state and the federal government engaged in the performance of their official duties.
3. The manufacturer or shipper of a pesticide for experimental use only:
 - a. By or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of pesticides; or
 - b. By others if the pesticide is not sold and if the container thereof is plainly and conspicuously marked "For experimental use only - not to be sold", together with the manufacturer's name and address. ~~If a written permit has been obtained from the commissioner, pesticides may be sold for experimental purposes subject to such restrictions and conditions as may be set forth in the permit.~~
4. A person using, distributing, selling, or offering for sale an unregistered pesticide for which the United States environmental protection agency has granted an emergency exemption for at least one use in North Dakota under section 18 of the federal Act.

No article may be deemed in violation of this chapter when intended solely for export to a foreign country and when prepared or packed according to the specifications or directions of the purchaser. If not so exported, all the provisions of this chapter apply.

SECTION 6. REPEAL. Section 19-18-02.2 of the North Dakota Century Code is repealed.

SECTION 7. EMERGENCY. Sections 1 and 4 of this Act are declared to be an emergency measure.

Approved May 2, 2003
Filed May 2, 2003

CHAPTER 187

SENATE BILL NO. 2319

(Senators Nichols, Christmann, Lyson)
(Representatives Onstad, Rennerfeldt, Warner)

PESTICIDE REGISTRATION FEES

AN ACT to amend and reenact section 19-18-04 of the North Dakota Century Code, relating to pesticide registration fees; to provide an appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁸⁵ **SECTION 1. AMENDMENT.** Section 19-18-04 of the North Dakota Century Code is amended and reenacted as follows:

19-18-04. (Effective through June 30, ~~2003~~ 2005) Registration - Fees.

1. Any person before selling or offering for sale any pesticide for use within this state shall file biennially with the commissioner an application for registration of the pesticide. The application must:
 - a. Give the name and address of each manufacturer or distributor.
 - b. Give the name and brand of each product registered.
 - c. Be accompanied by a current label of each product so registered.
 - d. Be accompanied by a registration fee of three hundred fifty dollars for each product registered. At the close of each calendar month, the commissioner shall transmit to the state treasurer all moneys received for the registrations. The state treasurer shall credit fifty dollars for each registered product to the general fund in the state treasury and the remainder of the registration fee for each registered product to the environment and rangeland protection fund.
 - e. Be accompanied by a material safety data sheet.
2. The commissioner may require an applicant or registrant to provide efficacy, toxicity, residue, and any other data necessary to determine if the pesticide will perform its intended function without unreasonable adverse effects on the environment. If the commissioner finds that the application conforms to law, the commissioner shall issue to the applicant a certificate of registration of the product. If after public hearing before the commissioner the application is denied, the product may not be offered for sale.

⁸⁵ Section 19-18-04 was also amended by section 3 of House Bill No. 1158, chapter 186.

3. Each registration covers a two-year period beginning January first and expiring December thirty-first of the following year. A certificate of registration may not be issued for a term longer than two years, and is not 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 must be imposed if the license or certificate of registration is not applied for on or before January thirty-first following the expiration date, or within the same month the pesticides are first manufactured or sold within this state. Each product must go through a two-year discontinuance period in order to clear all outstanding products in the channel of trade.
4. This section does not apply to a pesticide sold by a retail dealer if the registration fee has been paid by the manufacturer, jobber, or any other person, as required by this section.

(Effective July 1, 2003 2005) Registration - Fees. Any person before selling or offering for sale any pesticide for use within this state shall file biennially with the commissioner an application for registration of the pesticide. The application must:

1. Give the name and address of each manufacturer or distributor.
2. Give the name and brand of each product registered.
3. Be accompanied by a current label of each product so registered.
4. Be accompanied by a registration fee of three hundred dollars for each product registered. At the close of each calendar month, the commissioner shall transmit to the state treasurer all moneys received for the registrations. The state treasurer shall credit fifty dollars for each registered product to the general fund in the state treasury and the remainder of the registration fee for each registered product to the environment and rangeland protection fund.
5. Be accompanied by a material safety data sheet.

The commissioner may require an applicant or registrant to provide efficacy, toxicity, residue, and any other data necessary to determine if the pesticide will perform its intended function without unreasonable adverse effects on the environment. If the commissioner finds that the application conforms to law, the commissioner shall issue to the applicant a certificate of registration of the product. If after public hearing before the commissioner the application is denied, the product may not be offered for sale.

Each registration covers a two-year period beginning January first and expiring December thirty-first of the following year. A certificate of registration may not be issued for a term longer than two years, and is not 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 must be imposed if the license or certificate of registration is not applied for on or before January thirty-first following the expiration date, or within the same month the pesticides are first manufactured or sold within this state. Each product must go through a two-year discontinuance period in order to clear all outstanding products in the channel of trade.

This section does not apply to a pesticide sold by a retail dealer if the registration fee has been paid by the manufacturer, jobber, or any other person, as required by this section.

SECTION 2. APPROPRIATION. There is appropriated out of any moneys in the environment and rangeland protection fund in the state treasury, not otherwise appropriated, the sum of \$250,000, or so much of the sum as may be necessary, to the agriculture commissioner for the purpose of controlling and eradicating saltcedar, for the biennium beginning July 1, 2003, and ending June 30, 2005. The agriculture commissioner shall report to the fifty-ninth legislative assembly the persons receiving funds under this Act, the dollars received, the efforts undertaken by the recipient to control and eradicate saltcedar, and the effectiveness of those efforts.

Approved April 11, 2003
Filed April 14, 2003

CHAPTER 188

SENATE BILL NO. 2081

(Agriculture Committee)

(At the request of the Agriculture Commissioner)

PESTICIDE PERMITS AND USE

AN ACT to create and enact a new section to chapter 19-18 of the North Dakota Century Code, relating to experimental use permits; to amend and reenact section 4-35-06 of the North Dakota Century Code, relating to restricted use pesticides; and to repeal section 4-35-07 of the North Dakota Century Code, relating to experimental use permits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 19-18 of the North Dakota Century Code is created and enacted as follows:

Experimental use permits. Provided the state is authorized by the administrator of the environmental protection agency to issue experimental use permits, the commissioner may:

1. Issue an experimental use permit to a person applying for a permit if the commissioner determines that the applicant requires the permit to accumulate information necessary to register a pesticide use. An application for an experimental use permit may be filed at the time of or before or after an application for registration is filed.
2. Prescribe terms, conditions, and the period of time for use under the experimental use permit.
3. Revoke an experimental use permit, at any time, if the commissioner finds that its terms or conditions are being violated or that its term and conditions are inadequate to avoid unreasonable adverse effects to human health or the environment.

SECTION 2. AMENDMENT. Section 4-35-06 of the North Dakota Century Code is amended and reenacted as follows:

4-35-06. Pesticide control board to administer chapter and adopt regulations.

1. a. The pesticide control board shall administer this chapter and may adopt rules in accordance with chapter 28-32 to implement this chapter. The rules may prescribe methods to be used in the application of pesticides. The rules may relate to the time, place, manner, methods, materials, and amounts and concentrations, in connection with the application of the pesticide, and may restrict or prohibit use of pesticides in designated areas during specified periods of time and shall encompass all reasonable factors which the board deems necessary to prevent damage or injury by drift or misapplication to:

- (1) Plants, including forage plants, on adjacent or nearby lands.
 - (2) Wildlife in the adjoining or nearby areas.
 - (3) Fish and other aquatic life in waters in proximity to the area to be treated.
 - (4) Persons, animals, or beneficial insects.
- b. In adopting rules, the board shall give consideration to pertinent research findings and recommendations of other agencies of this state, the federal government, or other reliable sources.
2. ~~For the purpose of uniformity, the board may adopt restricted use classifications as determined by the federal environmental protection agency. The board may also by rule determine state restricted use pesticides for the state or designated areas within the state.~~
- ~~3.~~ The board, in adopting rules under this chapter, shall prescribe standards and requirements for the certification of applicators of pesticides. These standards and requirements must relate to the use and handling of pesticides. In determining these standards and requirements, the board shall take into consideration standards and requirements prescribed by the environmental protection agency.
4. 3. Rules adopted under this chapter may not permit any pesticide use which is prohibited by the Federal Insecticide, Fungicide, and Rodenticide Act or regulations or orders issued thereunder.
- ~~5.~~ 4. In order to comply with section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act, the board may make such reports to the United States environmental protection agency in such form and containing such information as that agency may from time to time require.
- ~~6.~~ 5. Rules to implement this chapter may provide for:
- a. The collection, examination, and reporting of samples of pesticides.
 - b. The safe handling, transportation, storage, display, distribution, and disposal of pesticides and their containers.
 - c. The identification of pests under this chapter when the board finds particular organisms to be annoying or otherwise injurious or harmful to agriculture, health, and the environment.

SECTION 3. REPEAL. Section 4-35-07 of the North Dakota Century Code is repealed.

Approved March 12, 2003
 Filed March 12, 2003

CHAPTER 189

SENATE BILL NO. 2110

(Agriculture Committee)

(At the request of the Agriculture Commissioner)

FERTILIZER AND SOIL CONDITIONER REGISTRATION AND FEES

AN ACT to amend and reenact sections 19-20.1-03, 19-20.1-03.1 and 19-20.1-06 of the North Dakota Century Code, relating to registration and inspection fees of fertilizer and soil conditioners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-20.1-03 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-03. Registration. Each brand and grade of fertilizer, material, foliar fertilizer, micronutrient, specialty fertilizer, soil amendment, or plant amendment must be registered in the name of the person whose name appears upon the label before being offered for sale or distributed in this state. The application for registration must be submitted to the commissioner on a form furnished by the commissioner and must be accompanied by a fee of fifty dollars. Upon approval by the commissioner, a certificate of registration must be furnished to the applicant. Registrations cover a two-year period beginning July first and ending June thirtieth of every even-numbered year. Distribution of fertilizer products without prior registration or renewal received after July thirty-first must be assessed a penalty of twenty-five dollars per product. A distributor is not required to register any brand of fertilizer, soil amendment, or plant amendment that is already registered under this chapter by another person, providing the label complies with the issued registration. Compost that is transferred between parties without compensation is exempt from these requirements.

SECTION 2. AMENDMENT. Section 19-20.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-03.1. License required - Penalty. A person may not distribute any fertilizer, soil amendment, or plant amendment in this state without first obtaining a distributor's license from the commissioner. However, a distributor's license is not required for those distributors selling only specialty fertilizers. A license must be obtained for each location or mobile mechanical unit used by a distributor in the state. The application for the license must be submitted on a form furnished by the commissioner and must be accompanied by a fee of one hundred dollars. A license covers a two-year period beginning July first and ending June thirtieth ~~of the second ensuing year~~ every even-numbered year. License renewal applications received after July thirty-first may be assessed a penalty fee of twenty dollars. Licenses are not transferable, and each license must be conspicuously posted at each location and must accompany each mobile mechanical unit operating in the state.

SECTION 3. 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 commissioner 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]. The inspection fee may not be less than ten dollars. 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], including the minimum ten dollar fee, 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 commissioner, on forms furnished by the commissioner, an annual statement for the calendar year, setting forth the number of net tons [kilograms] of each fertilizer, soil amendment, or plant amendment so distributed in this state during the period. A licensed end user shall report all sales and purchases and pay the appropriate tonnage tax. The statement is due on or before 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 by January thirty-first, a collection fee amounting to ten percent, minimum ten dollars, of the amount must be assessed against the licensee, and the amount of fees due constitute a debt and become the basis of a judgment against the licensee.

Approved March 12, 2003
Filed March 12, 2003

CHAPTER 190

SENATE BILL NO. 2111

(Industry, Business and Labor Committee)
(At the request of the Agriculture Commissioner)

ANHYDROUS AMMONIA FACILITY LICENSING

AN ACT to amend and reenact section 19-20.2-03 of the North Dakota Century Code, relating to licensing of anhydrous ammonia facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-20.2-03 of the North Dakota Century Code is amended and reenacted as follows:

19-20.2-03. License required - ~~Construction of anhydrous~~ Construction of anhydrous ammonia facilities constructed after June 30, 1985. No anhydrous ammonia storage facility may be ~~constructed or~~ operated without a license issued by the commissioner of agriculture and the board of county commissioners of the county in which the facility is ~~to be~~ constructed. An application for a license to site and operate an anhydrous ammonia storage facility must be made to the commissioner of agriculture and to the board of county commissioners. The commissioner or the board may deny a license for failure to remit the proper fee to the commissioner of agriculture, for failure to comply with the siting requirements of this chapter and rules adopted pursuant to this chapter if constructed after June 30, 1985, or for failure to comply with local siting requirements. The commissioner of agriculture also may deny a license if the chief boiler inspector does not certify that the facility meets the initial inspection standards required by this chapter and by any rules adopted pursuant to this chapter. In order to obtain a license, an individual shall submit two sets of drawings or photographs and signed affidavits stating and showing the facility has been measured and meets the siting requirements along with the application for license. The drawings or photographs must show the proposed location of the tank, the locations, and the surroundings in all directions. One set of drawings or photographs is for the commissioner of agriculture and the other is for the board of county commissioners.

Approved April 8, 2003

Filed April 9, 2003

CHAPTER 191**HOUSE BILL NO. 1352**

(Representatives DeKrey, Eckre, Nicholas)
(Senators Bowman, Flakoll, Schobinger)

ANHYDROUS AMMONIA SECURITY AND IMMUNITY

AN ACT to create and enact a new section to chapter 19-20.2 and a new section to chapter 32-03 of the North Dakota Century Code, relating to adoption of rules regarding the security of anhydrous ammonia nurse tanks and immunity for theft of anhydrous ammonia.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 19-20.2 of the North Dakota Century Code is created and enacted as follows:

Rules relating to security measures for nurse tanks. The insurance commissioner shall adopt rules identifying a critical methamphetamine use zone in the state and establishing appropriate security measures to be implemented by the owners and users of anhydrous ammonia nurse tanks located within the zone as a pilot project. The insurance commissioner may establish the duration of the pilot project, and may require the locking of anhydrous ammonia nurse tanks or other security measures as are deemed necessary to curb the illegal theft of anhydrous ammonia within the zone. The insurance commissioner shall enforce any rules adopted pursuant to this section.

SECTION 2. A new section to chapter 32-03 of the North Dakota Century Code is created and enacted as follows:

Immunity for theft of anhydrous ammonia. The owner of anhydrous ammonia is immune from civil liability for any loss, damage, or injury from the theft by another or attempted theft by another of anhydrous ammonia from the tank, equipment, or storage facility in which it is contained. For purposes of this section, "owner" means:

1. A person who lawfully owns anhydrous ammonia;
2. A person who lawfully owns a container, equipment, or storage facility containing anhydrous ammonia;
3. A person responsible for the installation or operation of an anhydrous ammonia container, equipment, or storage facility;
4. A person who lawfully sells anhydrous ammonia;
5. A person who lawfully purchases anhydrous ammonia for agricultural purposes; and

6. A person who operates or uses anhydrous ammonia containers, equipment, or storage facilities when lawfully applying anhydrous ammonia for agricultural purposes.

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