

2023 SENATE AGRICULTURE AND VETERANS AFFAIRS

SB 2096

2023 SENATE STANDING COMMITTEE MINUTES

Agriculture and Veterans Affairs Committee Fort Union Room, State Capitol

SB 2096
1/6/2023

Relating to administrative rules, hemp commodities or products of the commissioner, and civil enforcement remedies; relating to definitions, prohibited acts by licensees, schedule I controlled substances tetrahydrocannabinols; and to provide a penalty.

8:58 AM Chairman Luick opened the meeting.

Members present: Chairman Luick, Vice Chairman Myrdal, Senator Lemm, Senator Weber, Senator Weston, Absent: Senator Hogan.

Discussion Topics:

- ND hemp laws
- CBD (cannabidiol)
- THC
- Uniform process
- Hemp licensing
- Public health, safety, and welfare

8:58 AM Dutch Bialke, General Counsel and Senior Policy Advisor, North Dakota Department of Agriculture, testified in favor of SB 2096. #12480

9:09 AM John Martinson, Plant Protection Specialist, North Dakota Department of Agriculture, speaking on behalf of North Dakota Agriculture Commissioner, testified in favor of SB 2096. #12493.

9:18 AM Charlene Rittenbach, Forensic Scientist, North Dakota Office of Attorney General, General Crime Lab Division, testified in Favor of SB 2096 #12488.

9:27 AM Allyson M. Hicks, Assistant Attorney General, on behalf of the Office of the Attorney General, testified in favor of SB 2096. #12474

Additional Written Testimony:

Sam Wagner #13079

9:43 AM Chairman Luick closed the hearing on SB 2096.

Brenda Cook, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Agriculture and Veterans Affairs Committee Fort Union Room, State Capitol

SB 2096
1/19/2023

Relating to administrative rules, hemp commodities or products of the commissioner, and civil enforcement remedies; relating to definitions, prohibited acts by licensees, schedule I controlled substances tetrahydrocannabinols; and to provide a penalty.

10:28 AM Chairman Luick called the meeting to order.

Members present: Chairman Luick, Vice Chairman Myrdal, Senator Lemm, Senator Hogan, Senator Weston, and Senator Weber.

Discussion Topics:

- Hemp commodities or products
- Committee action

10:28 AM John Mortenson, Plant Protection Specialist, North Dakota Department of Agriculture answered questions regarding SB 2096.

10:31 AM Senator Myrdal moved DO PASS on SB 2096.
Seconded by Senator Weston.

Roll call vote:

Senators	Vote
Senator Larry Luick	Y
Senator Janne Myrdal	Y
Senator Kathy Hogan	N
Senator Randy D. Lemm	Y
Senator Mark F. Weber	Y
Senator Kent Weston	Y

Motion passed. Vote 5-1-0
Senator Luick will carry the bill.

10:34 AM Chairman Luick closed the meeting on SB 2096.

Brenda Cook, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2096: Agriculture and Veterans Affairs Committee (Sen. Luick, Chairman) recommends **DO PASS** (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2096 was placed on the Eleventh order on the calendar. This bill does not affect workforce development.

2023 HOUSE AGRICULTURE

SB 2096

2023 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Room JW327C, State Capitol

SB 2096
3/3/2023

Relating to definitions, prohibited acts by licensees, schedule I controlled substances tetrahydrocannabinols; and to provide a penalty.
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Chairman Thomas call the meeting to order 9:02 AM

Members present: Chairman Thomas, Vice Chairman Beltz, Representatives Finley-DeVillie, Fisher, Headland, Henderson, Kiefert, Olson, Prichard, Schreiber-Beck, Tveit, VanWinkle.

Member absent: Representative Christy.

Discussion Topics:

- Acres of hemp
- THC levels
- Annual hemp licenses
- Hemp production
- Age requirements
- Property packages
- Specific complaints
- Retail products
- 3rd party testing

In Favor:

Samantha Brunner, Plant Industries Division Director, ND Dept of Agriculture, #21838

John Mortenson, Hemp Program Coordinator, ND Dept of Agriculture, #21872

Charlene Rittenbach, Forensic Scientist, ND Office of the Attorney General, Crime Laboratory Division, #21891

Allyson Hicks, Assistant Attorney General, ND Office of the Attorney General, #21819

Opposed:

Matthew Yde, Owner of two "Your CBD Stores", #21592, #21593

Samuel Wagner, Ag and Food Field Organizer, Dakota Resource Council, #21635

Additional written testimony:

Kevin Soiseth, VP Quality, Regulatory, R&D, Swanson Health Products, #21794

Chairman Thomas adjourned the meeting 10:15 AM

Diane Lillis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Room JW327C, State Capitol

SB 2096
3/31/2023

Relating to definitions, prohibited acts by licensees, schedule I controlled substances tetrahydrocannabinols; and to provide a penalty.
--

Chairman Thomas call the meeting to order 10:02 AM

Members present: Chairman Thomas, Vice Chairman Beltz, Representatives Christy, Finley-DeVille, Fisher, Headland, Henderson, Kiefert, Olson, Prichard, Schreiber-Beck, Tveit, VanWinkle.

Discussion Topics:

- Administrative rules
- Derived chemical
- Cannabinoid levels
- Consumer products
- Grain bond
- Quality assurance

Allyson Hicks, Assistant Attorney General, ND Office of the Attorney General, (no written testimony)

John Mortenson, Hemp Program Coordinator, ND Dept of Agriculture (no written testimony)
Samantha Brunner, Plant Industries Division Director, ND Dept of Agriculture (no written testimony)

Charlene Rittenbach, Forensic Scientist, ND Office of the Attorney General, Crime Laboratory Division (no written testimony)

Matthew Yde, Owner of "Your CBD Stores", Fargo and Grand Forks, ND (no written testimony)

Representative Schreiber-Beck moved amendment, #27174, LC #23.8110.01001 and to also strike sentence on page 3 line 7 "The maximum concentration or amount of total tetrahydrocannabinol permitted in a hemp topical is fifty milligrams per container".

Representative Beltz seconded.

Roll call vote:

Representatives	Vote
Representative Paul J. Thomas	Y
Representative Mike Beltz	Y
Representative Josh Christy	Y
Representative Lisa Finley-DeVille	Y
Representative Jay Fisher	Y
Representative Craig Headland	Y

Representative Donna Henderson	Y
Representative Dwight Kiefert	Y
Representative SuAnn Olson	Y
Representative Brandon Prichard	N
Representative Cynthia Schreiber-Beck	Y
Representative Bill Tveit	N
Representative Lori VanWinkle	AB

Motion passed 10-2-1

Representative Christy moved to further amend by adding on Page 2, line 13; CBC and CBN.
Representative Henderson seconded.

Representative Christy withdraws his motion.

Chairman Thomas adjourned the meeting 11:40 AM

Diane Lillis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Room JW327C, State Capitol

SB 2096
4/6/2023

Relating to definitions, prohibited acts by licensees, schedule I controlled substances tetrahydrocannabinols; and to provide a penalty.
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Chairman Thomas call the meeting to order 10:20 AM

Members present: Chairman Thomas, Vice Chairman Beltz, Representatives Christy, Finley-DeVillie, Fisher, Headland, Henderson, Kiefert, Olson, Prichard, Schreiber-Beck, Tveit, VanWinkle.

Discussion Topics:

- Rules process
- Framework

Allyson Hicks, Assistant Attorney General, ND Office of the Attorney General, presented an amendment, #27350

Representative Headland moved to adopt the amendment, #27350.
Representative Beltz seconded.

Roll call vote:

Representatives	Vote
Representative Paul J. Thomas	Y
Representative Mike Beltz	Y
Representative Josh Christy	Y
Representative Lisa Finley-DeVillie	Y
Representative Jay Fisher	Y
Representative Craig Headland	Y
Representative Donna Henderson	Y
Representative Dwight Kiefert	Y
Representative SuAnn Olson	Y
Representative Brandon Prichard	Y
Representative Cynthia Schreiber-Beck	Y
Representative Bill Tveit	Y
Representative Lori VanWinkle	Y

Motion passed 13-0-0

Representative VanWinkle moved to further amend Page 2, line 7 after “(CBG)”, including broad spectrum, full spectrum, and isolate products,”
Representative Fisher seconded.

Roll call vote:

Representatives	Vote
Representative Paul J. Thomas	Y
Representative Mike Beltz	Y
Representative Josh Christy	Y
Representative Lisa Finley-DeVille	Y
Representative Jay Fisher	Y
Representative Craig Headland	Y
Representative Donna Henderson	Y
Representative Dwight Kiefert	Y
Representative SuAnn Olson	Y
Representative Brandon Prichard	Y
Representative Cynthia Schreiber-Beck	Y
Representative Bill Tveit	Y
Representative Lori VanWinkle	Y

Motion passed 13-0-0

Representative Beltz moved a do pass as amended.
Representative Henderson seconded.

Roll call vote:

Representatives	Vote
Representative Paul J. Thomas	Y
Representative Mike Beltz	Y
Representative Josh Christy	Y
Representative Lisa Finley-DeVille	Y
Representative Jay Fisher	Y
Representative Craig Headland	Y
Representative Donna Henderson	Y
Representative Dwight Kiefert	Y
Representative SuAnn Olson	Y
Representative Brandon Prichard	N
Representative Cynthia Schreiber-Beck	Y
Representative Bill Tveit	N
Representative Lori VanWinkle	y

Motion passed 11-2-0

Representative Beltz will carry the bill.

Chairman Thomas adjourned the meeting 10:36 AM

Diane Lillis, Committee Clerk

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4-6-23

PROPOSED AMENDMENTS TO SENATE BILL NO. 2096

Page 1, line 4, after the comma insert "section 4.1-59-09 of the North Dakota Century Code, as created by section 2 of House Bill No. 1393, as approved by the sixty-eighth legislative assembly, and"

Page 1, line 7, after "tetrahydrocannabinols" insert ", and bonding requirements for grain buyers"

Page 1, line 12, after "1." insert """Broad spectrum" means hemp extract or hemp commodity or product containing naturally occurring hemp-derived cannabinoids, terpenes, and other naturally occurring compounds, but where tetrahydrocannabinol has been removed to nondetectable levels using a fit-for-purpose method, with a total tetrahydrocannabinol level not to exceed an amount determined by the commissioner.

2. "Chemically derived cannabinoid" means a chemical substance created by a chemical reaction that changes the molecular structure of any chemical substance derived from the plant cannabis. The term does not include cannabinoids produced by decarboxylation from a naturally occurring cannabinoid acid without the use of a chemical catalyst.

3. "Full spectrum" means hemp extract or hemp commodity or product containing naturally occurring hemp-derived cannabinoids, terpenes, and other naturally occurring compounds, processed without intentional complete removal of any compound and without the addition of isolated cannabinoids, with a total tetrahydrocannabinol level not to exceed an amount determined by the commissioner.

4."

Page 1, line 19, overstrike "2." and insert immediately thereafter "5."

Page 1, line 19, after "hemp" insert "or hemp extract"

Page 2, line 6, remove "and"

Page 2, line 7, after "(4)" insert "Cannabidiol, also known as CBD, products and cannabigerol, also known as CBG, including broad spectrum, full spectrum, and isolate products, with a total tetrahydrocannabinol level not to exceed an amount determined by the commissioner; and

(5)"

Page 2, line 12, remove "Hemp extract:"

Page 2, line 13, remove "(3)"

Page 2, line 14, remove ", edible, or combustible"

Page 2, line 15, replace "(4)" with "(3)"

Page 2, line 15, after "containing" insert "delta-8 tetrahydrocannabinol, also known as delta-8 THC;"

(4) A product containing"

Page 2, line 16, remove "Delta-8 tetrahydrocannabinol, also known as delta-8 THC;"

Page 2, line 17, remove "(b)"

Page 2, line 19, replace "(c)" with "(b)"

Page 2, line 20, replace "(d)" with "(c)"

Page 2, line 23, replace "3." with "4."

Page 2, line 26, replace "4." with:

5. "Hemp tincture" means a solution that may not exceed thirty milliliters consisting of:

- a. At least twenty-five percent of non-denatured alcohol, in addition to a hemp extract, and other ingredients intended for human consumption or ingestion; or
- b. Glycerin or plant-based oil and hemp extract, and is intended for human consumption or ingestion.

6."

Page 2, line 29, replace "5." with:

7. "Isolate" means hemp extract or hemp commodity or product comprised of a single cannabinoid compound.

8."

Page 3, remove lines 3 through 6.

Page 3, line 7, replace "7." with "9."

Page 4, line 8, after "cannabinoids" insert "or delta-8 tetrahydrocannabinol"

Page 8, line 11, replace "commissioner's" with "attorney general's"

Page 8, line 11, remove "for use in regulating compliance with this"

Page 8, line 12, remove "chapter"

Page 8, after line 20, insert:

"SECTION 13. AMENDMENT. Section 4.1-59-09 of the North Dakota Century Code, as created by section 2 of House Bill No. 1393, as approved by the sixty-eighth legislative assembly, is amended and reenacted as follows:

4.1-59-09. Bond filed by grain buyer.

1. Before a license is effective for a grain buyer under this chapter, the applicant for the license shall file a bond with the commissioner which must:

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- a. Be in a sum not less than one hundred thousand dollars.
 - b. Be continuous, unless the corporate surety by certified mail notifies the licensee and the commissioner the surety bond will be canceled ninety days after receipt of the notice of cancellation.
 - c. Run to this state for the benefit of all persons selling grain to or through the grain buyer.
 - d. Be conditioned:
 - (1) For the faithful performance of the licensee's duties as a grain buyer.
 - (2) For compliance with the provisions of law and the rules of the commissioner relating to the purchase of grain by the commissioner monthly.
 - e. Be for the specific purpose of:
 - (1) Protecting the sellers of grain.
 - (2) Covering the costs incurred by the commissioner in the administration of the licensee's insolvency.
 - f. Not accrue to the benefit of any person entering a credit-sale contract with a grain buyer.
2. The aggregate liability of the surety under a bond does not accumulate for each successive annual license renewal period during which the bond is in force but, for losses during any annual license renewal period, is limited in the aggregate to the bond amount stated or changed by appropriate endorsement or rider.
 3. The commissioner shall set the amount of the bond and may require an increase in the amount of a bond as the commissioner deems necessary to accomplish the purposes of this section.
 4. The amount of the bond for a grain buyer must be based on the dollar value of the grain purchased, solicited, or merchandised.
 5. A grain buyer shall report purchases, solicitations, and merchandising agreements to the commissioner monthly.
 6. The surety on the bond must be a corporate surety company, approved by the commissioner and authorized to do business within the state. The commissioner may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond when, in the commissioner's judgment, cash, a negotiable instrument, or a personal surety bond properly will protect the holders of outstanding receipts."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2096: Agriculture Committee (Rep. Thomas, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2096 was placed on the Sixth order on the calendar.

Page 1, line 4, after the comma insert "section 4.1-59-09 of the North Dakota Century Code, as created by section 2 of House Bill No. 1393, as approved by the sixty-eighth legislative assembly, and"

Page 1, line 7, after "tetrahydrocannabinols" insert ", and bonding requirements for grain buyers"

Page 1, line 12, after "1." insert "\"Broad spectrum\" means hemp extract or hemp commodity or product containing naturally occurring hemp-derived cannabinoids, terpenes, and other naturally occurring compounds, but where tetrahydrocannabinol has been removed to nondetectable levels using a fit-for-purpose method, with a total tetrahydrocannabinol level not to exceed an amount determined by the commissioner.

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3. "Full spectrum" means hemp extract or hemp commodity or product containing naturally occurring hemp-derived cannabinoids, terpenes, and other naturally occurring compounds, processed without intentional complete removal of any compound and without the addition of isolated cannabinoids, with a total tetrahydrocannabinol level not to exceed an amount determined by the commissioner.

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Page 2, line 23, replace "3." with "4."

Page 2, line 26, replace "4." with:

"5. "Hemp tincture" means a solution that may not exceed thirty milliliters consisting of:

a. At least twenty-five percent of non-denatured alcohol, in addition to a hemp extract, and other ingredients intended for human consumption or ingestion; or

b. Glycerin or plant-based oil and hemp extract, and is intended for human consumption or ingestion.

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Page 2, line 29, replace "5." with:

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Page 8, line 11, remove "for use in regulating compliance with this"

Page 8, line 12, remove "chapter"

Page 8, after line 20, insert:

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1. Before a license is effective for a grain buyer under this chapter, the applicant for the license shall file a bond with the commissioner which must:
 - a. Be in a sum not less than one hundred thousand dollars.
 - b. Be continuous, unless the corporate surety by certified mail notifies the licensee and the commissioner the surety bond will be canceled ninety days after receipt of the notice of cancellation.

- c. Run to this state for the benefit of all persons selling grain to or through the grain buyer.
 - d. Be conditioned:
 - (1) For the faithful performance of the licensee's duties as a grain buyer.
 - (2) For compliance with the provisions of law and the rules of the commissioner relating to the purchase of grain by the commissioner monthly.
 - e. Be for the specific purpose of:
 - (1) Protecting the sellers of grain.
 - (2) Covering the costs incurred by the commissioner in the administration of the licensee's insolvency.
 - f. Not accrue to the benefit of any person entering a credit-sale contract with a grain buyer.
2. The aggregate liability of the surety under a bond does not accumulate for each successive annual license renewal period during which the bond is in force but, for losses during any annual license renewal period, is limited in the aggregate to the bond amount stated or changed by appropriate endorsement or rider.
 3. The commissioner shall set the amount of the bond and may require an increase in the amount of a bond as the commissioner deems necessary to accomplish the purposes of this section.
 4. The amount of the bond for a grain buyer must be based on the dollar value of the grain purchased, solicited, or merchandised.
 5. A grain buyer shall report purchases, solicitations, and merchandising agreements to the commissioner monthly.
 6. The surety on the bond must be a corporate surety company, approved by the commissioner and authorized to do business within the state. The commissioner may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond when, in the commissioner's judgment, cash, a negotiable instrument, or a personal surety bond properly will protect the holders of outstanding receipts."

Renumber accordingly

TESTIMONY

SB 2096



STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL
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(701) 328-2210

Drew H. Wrigley
ATTORNEY GENERAL

SENATE AGRICULTURE AND VETERANS AFFAIRS COMMITTEE
FRIDAY, JANUARY 6, 2023

TESTIMONY OF ALLYSON M. HICKS
OFFICE OF ATTORNEY GENERAL
SENATE BILL NO. 2096

Mr. Chairman, members of the Committee.

I am Allyson M. Hicks, Assistant Attorney General, and I appear on behalf of the Attorney General. The Attorney General stands in support of this bill and recommends a **DO PASS** for Senate Bill 2096. As indicated by Attorney Bialke, I will be reviewing the enforcement mechanism of this bill, which is comprised of sections 5 through 12 of the bill.

As a background, last session, the Legislature took the steps to address the problem created by Delta-8, specifically by indicating that all Delta-8 THC over .3% would be violative of the Controlled Substances Act, codified in part in North Dakota Century Code chapter 19-03.1. This meant that to enforce this portion of law, law enforcement would have to get involved, and seize the suspected prohibited product. The law enforcement agency would then have to have the product tested to prove that the amount of Delta-8 THC was in excess of .3%. Unfortunately, given all the challenges faced by law enforcement and the lack of access to expedient testing for these items, mostly this law went unenforced.

When these agencies, namely the Department of Health, the Department of Agriculture, and the Office of Attorney General, came together to discuss this emerging issue and how to address it, we thought it would be more readily enforceable if civil enforcement mechanisms were in place to complement the criminal aspect currently present in the Controlled Substances Act.

For these civil enforcement mechanisms, we looked inward to the powers and abilities of my office's Consumer Protection division and how we are able to address unlawful sales and advertising practices. You will notice that these sections closely mirror language already given to the Attorney General's Office in Century Code chapter 51-15.

Subsections (4) and (5) of Section 4 of the bill relate to product labeling rules and the Food, Drug and Cosmetic Act. These products are not subject to FDA oversight for labeling because they are not considered to be products subject to FDA oversight, however, using these gives parameters for what the labeling expectations are for the hemp commodities and products intended for human consumption. Subsection 5 of section 4 is merely a restatement of federal law, however, this is an area that I repeatedly receive questions about as the general counsel for the Public Health Division of the North Dakota Department of Health and Human Services, so we felt that it was appropriate to refer to this law in the Century Code for ease of reference for the public.

Section 5 of the bill gives the Commissioner the powers to somewhat investigate the matter, including requiring forms, or attestations, regarding the

creation, sale or distribution of the hemp commodity or product; allowing examination of the products; or, by order of a court, seizure of the product.

Section 6 allows the Commissioner to issue subpoenas and conduct hearings to investigate these matters.

Section 7 indicates what remedies the Commissioner may seek should a person refuse to comply with the Commissioner's requests under the chapter. It should be noted that to obtain these remedies the Commissioner would have to apply to district court; the Commissioner cannot do these things on his own accord.

Section 8 allows the Commissioner to accept an assurance of voluntary compliance as a resolution to the issue.

Section 9 is a broad section that refers to the remedies that the Commissioner may seek to address a violation of the chapter. This includes obtaining an injunction from district court, which prevents the conduct from continuing; appointment of a receivership, which is a neutral third party who takes control of the business to bring it into compliance with the law; and issuance of a cease-and-desist order to prohibit the conduct from occurring or continuing.

Section 10 sets forth the powers of a receiver if the district court appoints one pursuant to Section 9.

Section 11 allows the Commissioner to recover reasonable attorney's fees, investigation expenses, costs and other expenses associated with an enforcement action. These costs would be recycled back into the Commissioner's general operating fund to assist with continued regulation of compliance with the chapter.

Section 12 allows a court to assess a civil penalty against a person for violation of the chapter. The penalty is set at \$5,000 per violation, and goes into the commissioner's general operating fund to assist with compliance actions.

These enforcement mechanisms have proven effective by the Office of Attorney General, although slight deviations have been made to recognize the differences in the regulated activity. Again, the Attorney General supports this bill and recommends a **DO PASS** on Senate bill 2096.

Thank you for your time and I would stand for any questions the committee may have.

COMMISSIONER
DOUG GOEHRING



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NORTH DAKOTA
DEPARTMENT OF AGRICULTURE
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Testimony on SB 2096
Dutch Bialke
General Counsel & Senior Policy Advisor
and
John Mortenson
Plant Protection Specialist
North Dakota Department of Agriculture

Senate Agriculture Committee
Friday, January 6 2023, 9:00 a.m.
Fort Union Room, State Capitol

Chairman Luick and members of the Senate Agriculture Committee, I am Dutch Bialke. I will testify this morning on behalf of the North Dakota Agriculture Commissioner, Doug Goehring.

Chairman Luick and members of the Committee, the Commissioner supports and recommends the passage of Senate Bill 2096. Senate Bill 2096 proposes various amendments to the Commissioner's Hemp Program, implemented in accordance with NDCC Chapter 4.1-18.1, to update the Chapter and bring the application of this agricultural hemp program into better alignment with its original intent.

I also respectfully introduce John Mortenson, Plant Protection Specialist, with the Plant Industries Division of the Agriculture Department. John is also available today to testify to the Committee about the Commissioner's Hemp Program, as well as John's recent observations while he has been performing his inspection duties across the State in relation to the Program.

Senate Bill 2096 was introduced to this Committee by the Commissioner; however, SB 2096 has been jointly developed and written within a multi-agency process. The Office of the Attorney General, the State Crime Lab, and the Department of Health have all collaborated with the Commissioner, and all these agencies solidly contributed to and all support this public health and safety regulatory bill.

In this regard, Charlene Rittenbach from the State Crime Lab is here today as well. She will testify and address any questions in general relation to the more technical and chemical aspects of the bill.

Additionally, Attorney Allyson Hicks, from the Office of the Attorney General, is here today to testify -- as to the administrative enforcement structure of the bill.

For a bit more background, the Commissioner has long recognized the substantial potential that hemp has for our State's farmers and its agriculture sector. The agricultural commodity hemp is effectively used to make a variety of commercial and industrial products, including rope, textiles, clothing, shoes, food, paper, bioplastics, insulation, and biofuel.

As this Committee is aware, the 2014 Farm Bill legalized the growing and cultivating of hemp for research purposes in compliance with North Dakota law (specifically NDCC Chapter 4.1-18.1), notwithstanding other federal law that would have otherwise criminalized such conduct.

Hemp is defined as cannabis (*Cannabis sativa L.*). Accordingly, hemp before and then after the 2014 Farm Bill was still classified as a controlled substance under federal law.

Subsequently, after the passage of the 2014 Farm Bill, the State's pilot agricultural hemp program under North Dakota's hemp laws, implemented by the Commissioner, became the gold standard for such

programs across the nation. The Commissioner's pilot program operated smoothly and effectively within both State and federal law.

In accordance with the federal Farm Bill and North Dakota law, this pilot program was limited to hemp growing and cultivation for purposes of agricultural or other academic research for the growth, cultivation, or marketing of industrial hemp.

Then, the 2018 Farm Bill removed hemp, and *derivatives* of cannabis with extremely low concentrations of the psychoactive compound delta-9-tetrahydrocannabinol (THC) (specifically, no more than 0.3 percent THC on a dry weight basis), from the definition of marijuana in the Controlled Substances Act (CSA). THC is the euphoria producing substance contained within marijuana.

Since then, however, the passage of the 2018 Farm Bill, and its *derivatives* language, has led among some to a misperception that all products made from or containing hemp, including those made with cannabidiol (CBD), are now legal to sell within interstate commerce and in North Dakota.

However, this overly-expansionist misperception does not coincide with either the construct or reasonable intent of NDCC Chapter 4.1-18.1, nor the 2018 Farm Bill. Neither construct was enacted to provide an avenue for the potential wide-scale unregulated production, sale, or distribution of hemp-derived psychotropic substances.

For a bit more background, as Ms Rittenbach from the State Crime Lab can very likely better explain, CBD does not necessarily get a person high, but, in certain dosages, it still may be psychoactive. It can potentially alter a person's consciousness. For example, the person may feel mellow, experience less pain, and be more at ease. In addition, some CBD products still do contain small amounts of THC.

Notwithstanding, many hemp-derived psychotropic substances are currently available in North Dakota, on the shelves, available for retail sale.

With this background just provided, at this time, with your permission Chairman Luick, I would request Mr. Mortenson, who works in the Plant Industries Division, to come forward and testify – to provide additional context to this Bill, and also testify to this Committee about his recent experiences and observations he has encountered as he has performed his hemp program inspection duties.

John Mortenson, Plant Protection Specialist

Chairman Luick and members of the Senate Agriculture Committee, I am John Mortenson, Plant Protection Specialist, with the Plant Industries Division of the Department. I will testify about the Commissioner's Hemp Program and also about what I have observed during some of my recent hemp program inspections across North Dakota.

First some more general background about the Commissioner's Hemp Program -- the Commissioner regulates hemp production and processing in the State through licensing and inspection of growing areas and processing facilities. The Commissioner operates under the parameters laid out in NDCC Chapter 4.1-18.1.

The Commissioner issues licenses to hemp growers and hemp processors who pass the background check and pay the appropriate fee. Hemp growers are subject to inspections during the growing season and are subject to regular THC testing prior to harvest. THC testing is done to ensure that growers are growing hemp and not marijuana.

During the testing process, Department inspectors look to verify that the fields are uniform. Inspectors pull samples of the crop and have them chemically analyzed. Any hemp field exceeding the 0.3% THC limit is subject to destruction. Any grower who has three violations in a five-year period is ineligible to receive a hemp license. These guardrails are put in place to maintain the integrity of the program and prevent the production of marijuana.

In North Dakota, most of the hemp acreage goes into grain production. These crops are grown at a field scale. Many of the hemp grain producers are full time farmers and have other cash crops in their rotation. Hemp grain fields are typically 40 acres or more.

These grain fields are harvested and processed into cold pressed oil or edible food products. Hemp grain products have a “generally recognized as safe” (GRAS) status with the FDA. Examples of these products include hemp cooking oil, hemp hearts, and hemp protein powder.

In contrast, most of our hemp licenses are issued to growers producing cannabinoid type hemp. This type of hemp is grown in a horticulture type system. These fields are typically under an acre and more resemble what you would see in a marijuana type grow. The cannabinoid products produced from these fields do not have an FDA generally recognized as safe status.

Being closely involved in the industry and working with growers and processors, I have witnessed cannabinoid products that do not align with the original intent of the Commissioner’s hemp program.

Some of the products being produced from hemp cannabinoids include: THCO, THCP, HHC and Delta-9. None of these products have an FDA generally recognized as safe status. That said, to my knowledge, none of these products are being produced by hemp producers in the State who are currently licensed by the Commissioner.

Instead, these products are being produced outside of North Dakota and shipped into the State to be sold in retail establishments. In Bismarck alone, I am aware that there are several businesses selling these products on the shelves where anyone over the age of 21 can walk in and purchase them without a medical marijuana medical card.

This is different from what was generally viewed as to why the Commissioner’s hemp program was instituted – to promote an

agricultural commodity that could be used for commercial and industrial products such as cordage, hemp textiles, recyclable and biodegradable bioplastics, and even building materials such as insulation or hempcrete, similar to traditional concrete.

The Commissioner introduced and proposed SB 2096, along with the Attorney General and the Department of Health, as a public health, safety, and welfare measure to bring the Commissioner's Hemp Program in better alignment with its original intent.

The Commissioner supports and respectfully recommends the passage of Senate Bill 2096.

Chairman Luick and committee members, thank you for your consideration of SB 2096. I will stand for any questions.

Senate Bill 2096

Senate Agriculture and Veteran's Affairs Committee
January 6, 2023

Testimony of Charlene Rittenbach, Forensic Scientist
Office of Attorney General Crime Laboratory Division

Mr. Chairman, members of the Agriculture & Veteran's Affairs Committee.

I am Charlene Rittenbach, Forensic Scientist with the North Dakota State Crime Laboratory. Following the federal legalization of hemp in 2018, an industry has rapidly emerged to manufacture and sell consumable products that contain cannabinoids derived from hemp. The relative lack of federal regulation or enforcement of these products presents several challenges with implications for public health and safety and the ability of consumers to make informed choices about the products they consume.

Some of the regulatory challenges for cannabinoid hemp are chemically derived cannabinoids, products with intoxicating amounts of tetrahydrocannabinol (THC), youth access and lack of age restrictions, lack of testing requirements, lack of packaging and labeling standards, and lack of enforcement of FDA regulations. I will expand on each of these challenges briefly and then indicate how this bill is proposing to address some of them.

Semi-Synthetic Derivatives: Semi-synthetic derivatives refer to certain types of substances that are produced by converting a cannabis extract into a different substance through chemical reactions. This kind of process is commonly used to convert CBD, which is extracted from hemp and alone is not intoxicating, into THC or other substances such as THC-O-acetate or hexahydrocannabinol (HHC). These

chemically derived cannabinoids have proliferated in the market for a variety of reasons, including due to a perceived legality, accessibility in the markets where cannabis remains illegal or difficult to access, and a lower cost compared to similar cannabis-derived products in part because they are not taxed, tested, or regulated like similar cannabis derived products.

Products with Intoxicating Amounts of THC: The ND definition of hemp limits hemp products to no more than 0.3% THC by weight, but 0.3% is not a non-intoxicating threshold, especially for edible products. Because the 0.3% is currently being applied towards other products than plant material, there are hemp-derived products that are currently being sold that contain far more than the allowable amounts of THC in most regulated adult-use cannabis markets but are legal under current policy because they stay under the limit of 0.3% THC by weight.

Youth Access and Lack of Age Restrictions: Federal legalization of hemp did not impose any age restrictions on the purchase of hemp products. Presumably, this was based on the assumption that hemp products would not be intoxicating. The reality is that many businesses are now manufacturing and selling intoxicating hemp-derived products containing significant doses of THC or intoxicating chemically derived cannabinoids.

Lack of Testing Requirements: State regulatory programs for cannabis also typically establish robust testing requirements for consumer products, including testing for potency, pesticides, solvents, heavy metals, and mycotoxins or microbiological contaminants. At the federal level, hemp testing requirements are only established at

the crop level to confirm that a crop is hemp rather than cannabis. There are no requirements or standards for finished product potency testing or for testing for other harmful contaminants.

Lack of Packaging and Labeling Standards: Most state regulatory programs for cannabis include robust requirements around the labeling of adult use and medical cannabis products. There are currently no federal standards requiring labels to disclose the THC content of hemp-derived products. As a result, products that may contain a significant amount of THC simply state that the product contains “less than 0.3% THC”. Consumers of these products are not able to make informed decisions about the amount of THC or other chemically derived cannabinoids they are consuming.

Lack of Enforcement of FDA Regulations: The FDA has stated that CBD and THC cannot be added to any food that is sold in interstate commerce and that CBD and THC cannot be marketed as dietary supplements even if they are derived from hemp. Hemp-derived products are not currently following appropriate FDA notification or approval processes. To date, the FDA has taken minimal enforcement action, issuing warning letters to a small number of manufacturers or sellers of hemp-derived products when there are health claims that put the product into the category of unapproved drugs.

These are the current regulatory challenges that cannabinoid hemp face. I will now turn your attention to the draft of Senate Bill 2096 and I will walk through the definitions and explain how the language utilized attempts to address some of these regulatory issues.

Section 1 proposes to change the definition of hemp to mean the plant and any part of the plant, including flowers and remove the wording “all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers” to indicate hemp is only the plant or any part of the plant. The 0.3% THC by weight requirement is still included in the definition (total THC concentration in an amount determined by the commissioner) and is only applied to the plant, any part of the plant, or flowers. Two other definitions, hemp extract and hemp commodity or product, were defined to mean everything else other than the plant or any part of the plant.

The definition of hemp commodity or product is further clarified to indicate what the term includes and what it does not include. For example, the term does not include a chemical compound extracted from hemp used to formulate, process or other make an inhalant, edible or combustible product or a product containing chemically derived cannabinoids. Hemp tinctures and hemp topicals fall under the hemp commodities and products definition and are themselves defined with maximum amounts of total THC permitted in milligrams.

Section 3 lists prohibited acts by the licensee of the hemp program in which the language that was added last session was modified.

Section 4 of the bill describes that retailers may only sell hemp and hemp commodities or products allowed under this chapter and they must undergo testing and report results of the total THC concentration amount. Selling hemp or hemp commodities or products that contain chemically derived cannabinoids is not allowed.

I will mention that one of the regulatory challenges of hemp derived products that is not currently in this proposed bill is an age restriction requirement, but the committee is welcome to discuss and recommend a desired policy on this. The current thought was since chemically derived cannabinoids are not allowed to be sold, and no inhalants, edibles or combustibles are allowed, the age requirement would mainly come into play with hemp tinctures and hemp topicals. Some businesses are currently requiring age requirements to purchase CBD products, but it is not mandated.

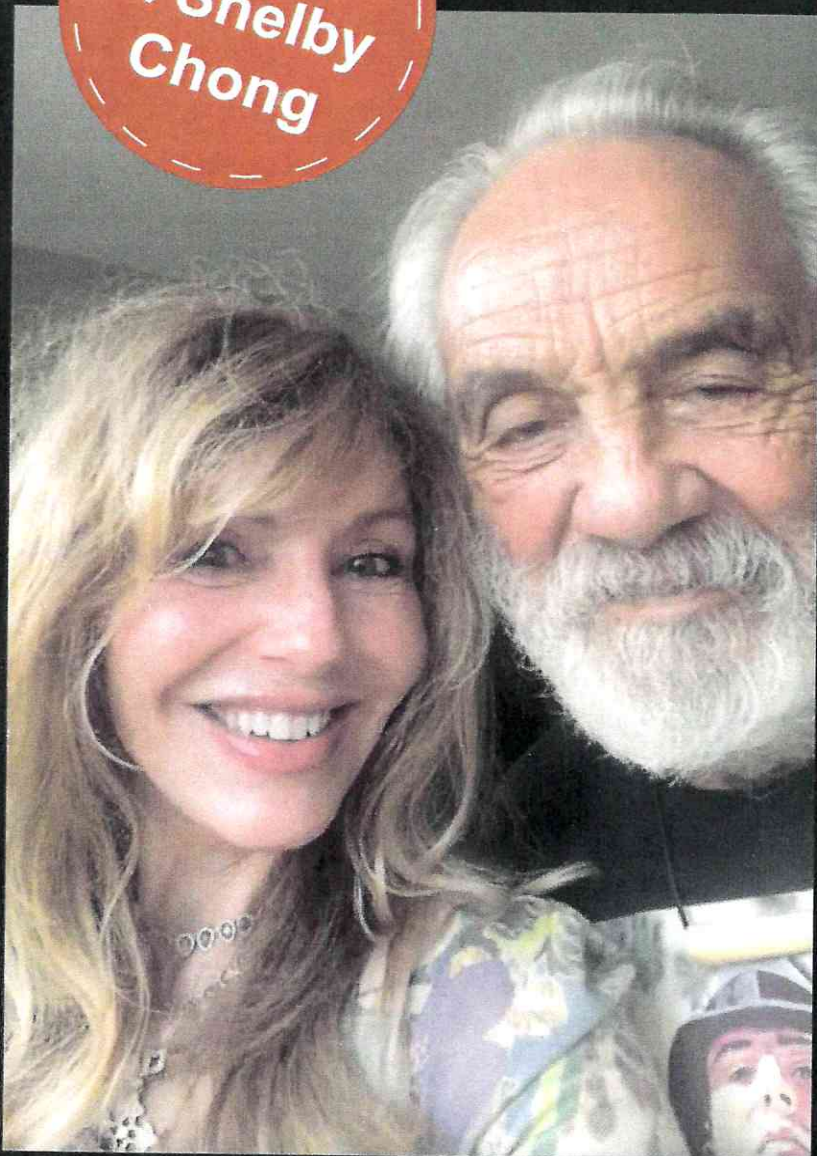
Thank you for your attention and I would be happy to stand to answer any questions.

***** ECRWSEDDM *****

RESIDENTIAL CUSTOMER

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PERMIT NO. 492

Tommy
& Shelby
Chong



[Redacted]
at
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CBD | HEMP | THC-O
HHC | LEGAL D9

[Redacted]
[Redacted]
[Redacted]
[Redacted], ND
[Redacted]

[Redacted] is an 18+ establishment with ID verification. All hemp and CBD products contain less than .3% Delta 9 THC per the 2018 Farm Bill.

Redeem this coupon for a **Free Sample*** &

50% OFF**

YOUR PURCHASE OF ANY HEMP, CBD, OR CANNABINOID PRODUCT

*Gummy, Preroll, or Salve.

**Limit 1 item, cannot be combined with any other coupon or reward.



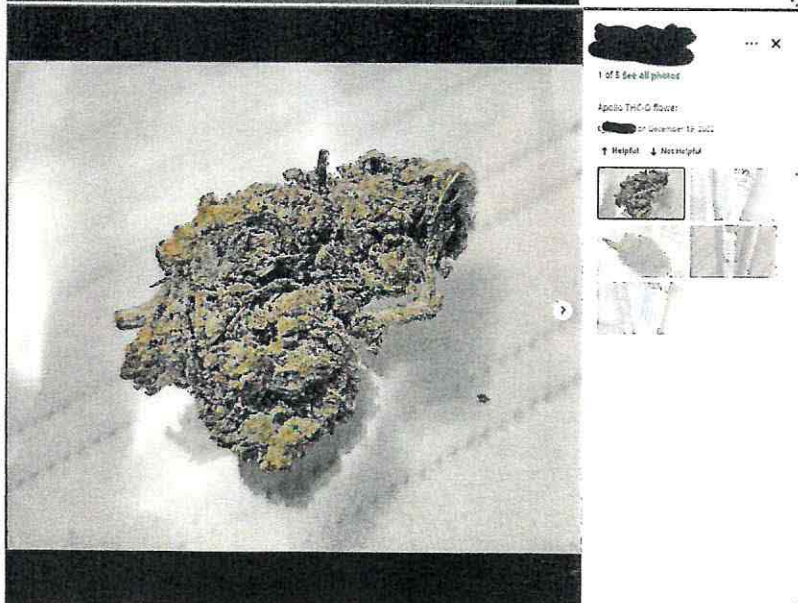
ND



12/19/2022

5 photos

Amazing selection of products. Only smoke shop in town with n2o as far as i know. They have a decent selection of legal hemp products as well; their THC-O flower is good quality. Largest selection of glass in town as well as far as i know.



Sunday Funday! Come in and pick out your favorite pre roll for this perfect day!



June 6, 2022 · 🌐

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Hello hemp friends! 😊 If you didn't know already we have HHC tinctures! We have these in 1,500 milligram's and 3,000 milligram's. 😊 Have a great week. stop by and make it better 😊 . We close at 9p.m. tonight!

#cbdbenefits #tincture #HHC

#cbd



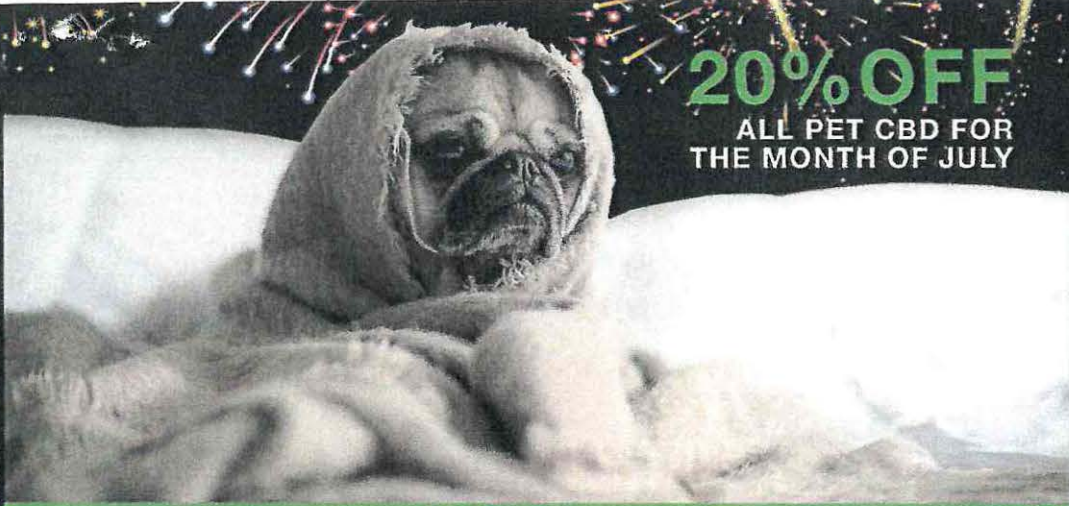
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30MG PER SERVING

300MG THC-C

10-30MG THC-C GUMMIES
300MG TOTAL THC PER BAG

20% OFF
ALL PET CBD FOR
THE MONTH OF JULY



IT'S ALMOST FIREWORKS SEASON

Our furry friends need all the help they can get. It's no secret that this is a stressful time for them, from hiding under beds to wandering off outside. Help ease their stress with CBD products curated just for them.

CBD | D8 | THC-O | HHC | LEGAL D9



is an 18+ establishment with ID verification. All hemp and CBD products contain less than 3% Delta 9 THC per the 2018 Farm Bill.

June 29, 2023

DB is not legal in North Dakota and thusly not available

3

Like Comment Share

Write a comment



To the Ag and Veterans Committee of the Senate.

In Opposition to SB2096:

In 2021 hemp farmers and producers including our members were shut out of our market with a bill that effectively banned the manufacture of hemp extracts. Now 2 years later the North Dakota Ag Department would like to make the sales of many hemp extract products illegal.

This bill claims that it will make North Dakota hemp policy more in line with their original vision of selling hemp fiber products and mass producing them. While we feel a Wild West Approach shouldn't be used, we fear that cutting out another market for hemp completely will have the opposite effect of making our hemp industry look even less friendly to potential investors while losing revenue to neighboring states in sales.

Presently, hemp farmers have two options of places/markets to sell raw hemp: 1. Extract or cannabinoid market, or 2. Fiber/building material market. Presently, the fiber/building material market is much less developed than the extract or cannabinoid market. This bill further eliminates the federally legal extract/cannabinoid market for hemp.

By further making the hemp extract/cannabinoid market illegal, the impact will be that investors will go elsewhere and farmers will not have the economic incentives that exist for farmers in neighboring states like Minnesota or Montana. We believe that this could be better done through a regulated market surrounding hemp extract/cannabinoids, rather than making the entire market illegal. It is our belief that with proper regulation and all markets available to hemp farmers in ND, we are more likely to foster a long term successful hemp industry. The result of actions like this law and the previous law in 2021 have absolutely had the impact of forcing hemp producers to move their businesses to neighboring states.

Please Vote No on this bill or consider supporting more regulation of the industry as an alternative. Eliminating potential markets for farmers is not the answer.



Your CBD Store®

Chairman Luick and Vice Chairman Myrdal, my name is Matthew Yde. I am the owner of two Your CBD Stores® with one in Fargo and one in Grand Forks, North Dakota. Your CBD Store® is a wholly-owned subsidiary of Sunflora®, Inc., which is the largest cannabinoid retailer in the United States and the exclusive home of best-in-class, premium quality, award-winning, cannabinoid-derived SUNMED™ products. Your CBD Stores® are independently owned and operated by local members of the community like me, and our products offer customers natural health and wellness alternatives. Thank you for the opportunity to testify today at this important hearing regarding Senate Bill 2096.

As a North Dakota small business owner, I have serious concerns about Senate Bill 2096. This proposed legislation effectively bans products with any amount of Delta-8 THC and places extremely burdensome limitations on other hemp derived products including extracts, topicals, and tinctures. If passed, this bill would result in severe economic hardship on both my stores in North Dakota rendering entire lines of popular hemp products illegal due to naturally occurring low levels of Delta-8 THC. Essentially, this bill will put me out of business.

I care about the health and safety of my communities, neighbors, and customers. I share your concern about the abundance of synthesized cannabinoids in the marketplace and children accessing products with moderate to high levels of Delta-8 THC. To address these problems, my stores require the following consumer protection measures:

1. 21+ age requirement on all Delta-8 THC products.
2. Third-party lab tests on all products with a QR code linking the results.

3. Use of childproof packaging.
4. Labels listing all ingredients.
5. Product packaging and marketing that does not target children in form or appearance.
6. Products are 100% naturally derived from industrial hemp and comply with corresponding federal and state regulations.

As a professional business owner in the hemp industry, I support North Dakota's mission to protect consumers and regulate synthesized cannabinoids while encouraging a legal, business-friendly environment for hemp derived health and wellness products. I welcome regulations to the hemp and CBD marketplace that protect consumers and target bad actors selling over-the-limit or synthetically produced THC products. Such regulations could include age restrictions, labeling, marketing, packaging, and testing of hemp products. I also support a "total THC" law that includes all forms of hemp-derived THC and capping total THC at the federal limit of 0.3% THC by dry weight.

These types of rules would permit health and wellness-oriented consumers to benefit from the positive aspects of hemp products while simultaneously barring the sale and distribution of illicit products intended to mimic and simulate marijuana. I believe enforcement officials will be able to easily enforce these regulations and would ease consumers' concerns about which products are safe for consumption. Such regulations, however, must be carefully worded to avoid unintended consequences and allow consumers to maintain safe access to quality CBD products such as those found at Your CBD Stores.

It is my hope that you will consider these suggestions for the viability of North Dakota businesses like mine as well as the health and wellness solutions for local residents. I hope that I can be a resource to you and other members of this committee as you continue to deliberate this bill and other hemp legislation in the future.

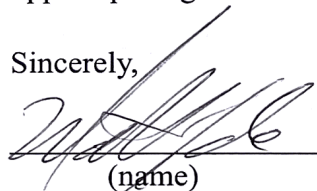
Thank you.

Opposition to North Dakota Senate Bill 2096

I, Matt Yde, urge the North Dakota Legislative Assembly to oppose North Dakota Senate Bill 2096 (SB 2096). This legislation would change the definition of hemp products and restrict my choice to purchase federally legal hemp and cannabidiol (CBD) products with less than 0.3% tetrahydrocannabinol (THC). Specifically, SB 2096 would make the sale of edible CBD products illegal and ban all Delta-8 THC products.

North Dakotans enjoy the freedom of choice, and SB 2096 would impose unnecessary restrictions on my freedom to purchase legal health and wellness hemp and CBD products. The legislation would also jeopardize the economic viability of local businesses and the North Dakotans they employ. I urge the North Dakota Legislative Assembly and Governor Burgum to oppose passage of SB 2096.

Sincerely,



(name)

Sioux Falls, SD

(city, state)

Testimony SB2096

Sam Wagner
Ag and Food Field Organizer
Dakota Resource Council
1720 Burnt Boat Dr. Ste 104
Bismarck ND 58503

Testimony in Opposition for SB2096

DRC has released earlier testimony on this bill in opposition in the Senate that you can find on the public record. So we will not try to rehash what we said in earlier written testimony.

However, over the last month we have talked to our members and stores that are selling these products and we all have shared concerns over what this would do to the cannabinoid business which is arguably the most developed industry in hemp right now. We would agree with most of the people in this room that a Wild West approach shouldn't be used when selling CBD or other hemp based cannabinoids. Cutting out another market for hemp completely and possibly damaging small businesses in North Dakota by taking a reactionary approach is not the best policy either. It's debatable what the public wants because while we agree they have soundly defeated recreational, the public was overwhelmingly favorable for medical marijuana in 2016 and many people use some form of hemp creams, sleep aides, or CBD medications for their pain management. These legitimate uses are great value-added agricultural products that can entice our local farmers to carve out a small acreage of their farm to diversify their portfolio by selling hemp to local manufacturers.

We believe that this could be better done through a well regulated market surrounding hemp extract/cannabinoids, but we have doubts that this bill will not have unintended consequences. We feel there was limited opposition to this initially because this bill was introduced extremely early in the session with so little notice that many businesses were caught off guard and didn't have a chance to respond.

It is our belief that with proper regulation and all markets available to hemp farmers and processors in ND, we are more likely to foster a long term successful hemp industry. We would urge the house ag committee to sit down with the local members of the industry and make this a study instead of passing laws that could have unintended consequences in our state for farmers and industry workers.

We Recommend a DO NOT PASS unless this bill is turned into a study.



Testimony SB 2096

Kevin Soiseth MS/MBA
VP Quality, Regulatory, R&D
Swanson Health Products
4075 40th Ave S
Fargo ND 58104

Testimony in Opposition to SB2096

Swanson Health Products, a 50+ year old ND founded business, compliant and in good standing with all relevant regulatory bodies, respectfully requests that a study be commissioned in support of permitting non-psychoactive CBD in order to better understand....

- The testimony and input of all parties involved in the CBD supply chain: compliant producers of hemp intended for CBD extraction, analytical testing labs providing support services to those producers, manufacturers & retailers of non-psychoactive products.
- The financial impact of the same related to those businesses if non-psychoactive CBD is outlawed in the state.
- How to prevent law abiding, well intentioned and responsible retailers of non-psychoactive CBD from being turned into criminals overnight.
- Those growers of hemp, desiring to cultivate a compliant hemp crop for CBD extraction purposes, which is by far the most profitable of hemp production, be allowed that continuing freedom.
- That those citizens currently obtaining symptomatic relief from CBD be allowed the freedom to continuing access to their therapy of choice.
- To ensure that ND businesses and farmers not be disadvantaged in the market in comparison to their neighbor states and/or the rest of the nation.

Swanson Health Products recommends a DO NOT PASS, unless this bill is turned into a study.



(800) 437-4148



swanson.com
customer@swansonvitamins.com



4075 40th Ave S
Fargo, ND 58104



STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL
www.attorneygeneral.nd.gov
(701) 328-2210

Drew H. Wrigley
ATTORNEY GENERAL

HOUSE AGRICULTURE COMMITTEE
FRIDAY, MARCH 3, 2023

TESTIMONY OF ALLYSON M. HICKS
OFFICE OF ATTORNEY GENERAL
SENATE BILL NO. 2096

Mr. Chairman, members of the Committee.

I am Allyson M. Hicks, Assistant Attorney General, and I appear on behalf of the Attorney General. The Attorney General stands in support of this bill and recommends a **DO PASS** for Senate Bill 2096. As indicated by Ms. Brunner, I will be reviewing the enforcement mechanism of this bill, which is comprised of sections 5 through 12 of the bill.

As a background, last session, the Legislature took the steps to address the problem created by Delta-8, specifically by indicating that all Delta-8 THC over .3% would be violative of the Controlled Substances Act, codified in part in North Dakota Century Code chapter 19-03.1. This meant that to enforce this portion of law, law enforcement would have to get involved, and seize the suspected prohibited product. The law enforcement agency would then have to have the product tested to prove that the amount of Delta-8 THC was in excess of .3%. Unfortunately, given all the challenges faced by law enforcement and the lack of access to expedient testing for these items, mostly this law went unenforced.

When these agencies, namely the Department of Health, the Department of Agriculture, and the Office of Attorney General, came together to discuss this emerging issue and how to address it, we thought it would be more readily enforceable if civil

enforcement mechanisms were in place to complement the criminal aspect currently present in the Controlled Substances Act.

For these civil enforcement mechanisms, we looked inward to the powers and abilities of my office's Consumer Protection division and how we are able to address unlawful sales and advertising practices. You will notice that these sections closely mirror language already given to the Attorney General's Office in Century Code chapter 51-15.

Subsections (4) and (5) of Section 4 of the bill relate to product labeling rules and the Food, Drug and Cosmetic Act. These products are not subject to FDA oversight for labeling because they are not considered to be products subject to FDA oversight, however, using these gives parameters for what the labeling expectations are for the hemp commodities and products intended for human consumption. Subsection 5 of section 4 is merely a restatement of federal law, however, this is an area that I repeatedly receive questions about as the general counsel for the Public Health Division of the North Dakota Department of Health and Human Services, so we felt that it was appropriate to refer to this law in the Century Code for ease of reference for the public.

Section 5 of the bill gives the Commissioner the powers to somewhat investigate the matter, including requiring forms, or attestations, regarding the creation, sale or distribution of the hemp commodity or product; allowing examination of the products; or, by order of a court, seizure of the product.

Section 6 allows the Commissioner to issue subpoenas and conduct hearings to investigate these matters.

Section 7 indicates what remedies the Commissioner may seek should a person refuse to comply with the Commissioner's requests under the chapter. It should be noted that to obtain these remedies the Commissioner would have to apply to district court; the Commissioner cannot do these things on his own accord.

Section 8 allows the Commissioner to accept an assurance of voluntary compliance as a resolution to the issue.

Section 9 is a broad section that refers to the remedies that the Commissioner may seek to address a violation of the chapter. This includes obtaining an injunction from district court, which prevents the conduct from continuing; appointment of a receivership, which is a neutral third party who takes control of the business to bring it into compliance with the law; and issuance of a cease-and-desist order to prohibit the conduct from occurring or continuing.

Section 10 sets forth the powers of a receiver if the district court appoints one pursuant to Section 9.

Section 11 allows the Commissioner to recover reasonable attorney's fees, investigation expenses, costs and other expenses associated with an enforcement action. These costs would be recycled back into the Commissioner's general operating fund to assist with continued regulation of compliance with the chapter.

Section 12 allows a court to assess a civil penalty against a person for violation of the chapter. The penalty is set at \$5,000 per violation, and goes into the commissioner's general operating fund to assist with compliance actions.

These enforcement mechanisms have proven effective by the Office of Attorney General, although slight deviations have been made to recognize the differences in the regulated activity. Again, the Attorney General supports this bill and recommends a **DO PASS** on Senate Bill 2096.

Thank you for your time and I would stand for any questions the committee may have.

COMMISSIONER
DOUG GOEHRING



ndda@nd.gov
www.nd.gov/ndda

NORTH DAKOTA
DEPARTMENT OF AGRICULTURE
STATE CAPITOL
600 E. BOULEVARD AVE. – DEPT. 602
BISMARCK, ND 58505-0020

Testimony of Samantha Brunner
Plant Industries Division Director
Senate Bill 2096
House Agriculture Committee
Room 327C
March 3, 2023

Chairman Thomas and members of the House Agriculture Committee, I am Samantha Brunner, Plant Industries Division Director with the North Dakota Department of Agriculture here representing Agriculture Commissioner, Doug Goehring. I am here today to testify in support of Senate Bill 2096.

Senate Bill 2096 proposes various amendments to the Hemp chapter, (NDCC Chapter 4.1-18.1), to update the Chapter and bring the application of this agricultural program into better alignment with its original intent.

Senate Bill 2096 was introduced to this Committee by the Commissioner; however, SB 2096 has been jointly developed and written within a multi-agency process. The Office of the Attorney General, the State Crime Lab, and the Department of Health worked in collaboration with the Commissioner to bring this regulatory bill that supports public health and safety.

With me here today, is Charlene Rittenbach, a forensic scientist from the State Crime Lab. She will testify and address any questions in general relation to the more technical and chemical aspects of the bill. In addition, Attorney Allyson Hicks, from the Office of the Attorney General, is here today to testify to the administrative enforcement structure of the bill.

I would like to provide a little background on hemp. Hemp and marijuana are both *Cannabis sativa L.* The difference between hemp and marijuana is the level of tetrahydrocannabinol or THC, which is the euphoria producing substance contained within marijuana.

The Commissioner has long recognized the substantial potential that hemp has for our State's farmers and its agriculture sector. The agricultural commodity hemp is effectively used to make a variety of commercial and industrial products, including rope, textiles, clothing, shoes, food, paper, bioplastics, insulation, and biofuel.

The 2014 Farm Bill legalized the growing and cultivating of hemp for research purposes in compliance with North Dakota law.

After the passage of the 2014 Farm Bill, the State's industrial hemp pilot program became the gold standard for such programs across the nation. The Commissioner's pilot program operated smoothly and effectively within both State and federal law.

This pilot program was limited to hemp for purposes of agricultural or other academic research for the growth, cultivation, or marketing of industrial hemp.

The Commissioner regulates hemp production and processing in the State through licensing and inspection of growing areas and processing facilities. The Commissioner operates under the parameters laid out in NDCC Chapter 4.1-18.1.

The Commissioner issues licenses to hemp growers and hemp processors who pass the background check and pay the licensing fee. Hemp growers are subject to inspections during the growing season and are subject to THC testing prior to harvest. THC testing is done to ensure that growers are growing hemp and not marijuana.

During the testing process, Department inspectors look to verify that the fields are uniform. Inspectors pull samples of the crop and have them chemically analyzed. Any hemp field exceeding the 0.3% THC limit is subject to destruction or remediation. Any grower who has three violations in a five-year period is ineligible to receive a hemp license. These guardrails are put in place to maintain the integrity of the program and prevent the production of marijuana.

In North Dakota, most of the hemp acreage goes into grain production. These crops are grown at a field scale. Many of the hemp grain producers are full time farmers and have other cash crops in their rotation. Hemp grain fields are typically 40 acres or more.

These grain fields are harvested and processed into cold pressed oil or edible food products. Hemp grain products have a "generally recognized as safe" (GRAS) status with the FDA. Examples of these products include hemp cooking oil, hemp hearts, and hemp protein powder.

In contrast, most of our hemp licenses are issued to growers producing cannabinoid type hemp. This type of hemp is grown in a horticulture type system. These fields are typically under an acre and more resemble what you would see in a marijuana type grow. The cannabinoid products produced from these fields do not have an FDA GRAS status. Examples of these products include tinctures, topicals, cured flower and edible products such as gummies and candy products.

Being closely involved in the industry and working with growers and processors, we have witnessed cannabinoid products that do not align with the original intent of the hemp program.

The 2018 Farm Bill removed hemp, and *derivatives* of hemp with no more than 0.3 percent THC on a dry weight basis, from the definition of marijuana in the Controlled Substances Act (CSA).

The passage of the 2018 Farm Bill, and its *derivatives* language, has led some to believe that all compounds extracted or synthesized from hemp are now legal to sell within interstate commerce and in North Dakota.

However, this does not coincide with either the intent of NDCC Chapter 4.1-18.1, nor the 2018 Farm Bill. Neither was enacted to provide an avenue for the potential wide-scale unregulated production, sale, or distribution of hemp-derived psychotropic substances.

In January of this year the U.S. Food and Drug Administration announced that they reviewed all the potential regulatory pathways for CBD products and determined that “a new regulatory pathway for CBD is needed that balances the individuals’ desire for access to CBD products with the regulatory oversight needed to manage risks.” They also are currently denying requests to do rulemaking that would allow the marketing of CBD products as dietary supplements. They intend to work with Congress to make the necessary changes.

Some of the products being produced from hemp cannabinoids include: THCO, THCP, HHC and Delta-9. These products are psychotropic and none of these products have an FDA generally recognized as safe status. That said, to my knowledge, none of these products are being produced by hemp processors in the State who are currently licensed by the Commissioner.

Instead, these products are being manufactured outside of North Dakota and shipped into the State to be sold in retail establishments. In Bismarck alone, I am aware that there are several businesses selling these products on the shelves where anyone over the age of 21 can walk in and purchase them without a medical marijuana card.

In the provided handout are examples from businesses in North Dakota. The first page is a mailer that we received a few months ago and the following pages are screenshots from business’s social media pages or yelp reviews left for businesses. We have redacted identifiable information to not single out any businesses in the State.

In February of this year the U.S. Drug Enforcement Agency released a letter in which they declared that Delta-9-THCO and Delta-8-THCO, which do not occur naturally in hemp plants, do not fall under the definition of hemp, that they are considered controlled substances. These two compounds are being synthetically manufactured from legally grown hemp.

The availability of psycotropic products is different from what was generally viewed as to why the Commissioner’s hemp program was instituted – to promote an agricultural commodity that could be used for commercial and industrial products such as food products, cordage, hemp textiles, recyclable and biodegradable bioplastics, and even

building materials such as insulation or hempcrete, similar to traditional concrete. Not to produce products that get people high.

The Commissioner introduced and proposed SB 2096, along with the Attorney General and the Department of Health, as a public health, safety, and welfare measure to bring the Commissioner's Hemp Program in better alignment with its original intent.

The Commissioner supports and respectfully recommends the passage of Senate Bill 2096.

Chairman Thomas and committee members, thank you for your consideration of SB 2096. I will stand for any questions.

FDA STATEMENT

FDA Concludes that Existing Regulatory Frameworks for Foods and Supplements are Not Appropriate for Cannabidiol, Will Work with Congress on a New Way Forward

For Immediate Release:

January 26, 2023

Statement From:

Janet Woodcock, M.D.

Principal Deputy Commissioner - Office of the Commissioner

Español (<https://www.fda.gov/news-events/press-announcements/la-fda-concluye-que-los-marcos-regulatorios-existent-para-alimentos-y-suplementos-no-son>)

Given the growing cannabidiol (CBD) products market, the U.S. Food and Drug Administration convened a high-level internal working group to explore potential regulatory pathways for CBD products. Today we are announcing that after careful review, the FDA has concluded that a new regulatory pathway for CBD is needed that balances individuals' desire for access to CBD products with the regulatory oversight needed to manage risks. The agency is prepared to work with Congress on this matter. Today, we are also denying three citizen petitions that had asked the agency to conduct rulemaking to allow the marketing of CBD products as dietary supplements.

The use of CBD raises various safety concerns, especially with long-term use. Studies have shown the potential for harm to the liver, interactions with certain medications and possible harm to the male reproductive system. CBD exposure is also concerning when it comes to certain vulnerable populations such as children and those who are pregnant.

A new regulatory pathway would benefit consumers by providing safeguards and oversight to manage and minimize risks related to CBD products. Some risk management tools could include clear labels, prevention of contaminants, CBD content limits, and measures, such as minimum purchase age, to mitigate the risk of ingestion by children. In addition, a new pathway could provide access and oversight for certain CBD-containing products for animals.

The FDA's existing foods and dietary supplement authorities provide only limited tools for managing many of the risks associated with CBD products. Under the law, any substance, including CBD, must meet specific safety standards to be lawfully marketed as a dietary supplement or food additive.

The working group, which I chair, has closely examined studies related to the CBD-based drug [Epidiolex](https://www.fda.gov/news-events/press-announcements/fda-approves-first-drug-comprised-active-ingredient-derived-marijuana-treat-rare-severe-forms) (<https://www.fda.gov/news-events/press-announcements/fda-approves-first-drug-comprised-active-ingredient-derived-marijuana-treat-rare-severe-forms>), published [scientific literature](https://www.fda.gov/media/152317/download) (<https://www.fda.gov/media/152317/download>), [information submitted to a public docket](https://www.regulations.gov/docket/FDA-2019-N-1482) (<https://www.regulations.gov/docket/FDA-2019-N-1482>), as well as studies both conducted and commissioned by the agency. Given the available evidence, it is not apparent how CBD products could meet safety standards for dietary supplements or food additives. For example, we have not found adequate evidence to determine how much CBD can be consumed, and for how long, before causing harm. Therefore, we do not intend to pursue rulemaking allowing the use of CBD in dietary supplements or conventional foods.

CBD also poses risks to animals, and people could be unknowingly exposed to CBD through meat, milk and eggs from animals fed CBD. Because it is not apparent how CBD products could meet the safety standard for substances in animal food, we also do not intend to pursue rulemaking allowing the use of CBD in animal food. A new regulatory pathway could provide access and oversight for certain CBD-containing products for animals.

The FDA will continue to take action against CBD and other cannabis-derived products to protect the public, in coordination with state regulatory partners, when appropriate. We will remain diligent in monitoring the marketplace, identifying products that pose risks and acting within our authorities. The FDA looks forward to working with Congress to develop a cross-agency strategy for the regulation of these products to protect the public's health and safety.

###

The FDA, an agency within the U.S. Department of Health and Human Services, protects the public health by assuring the safety, effectiveness, and security of human and veterinary drugs, vaccines and other biological products for human use, and medical devices. The agency also is responsible for the safety and security of our nation's food supply, cosmetics, dietary supplements, products that give off electronic radiation, and for regulating tobacco products.

Inquiries

Media:

✉ [Courtney Rhodes \(mailto:Courtney.Rhodes@fda.hhs.gov\)](mailto:Courtney.Rhodes@fda.hhs.gov)

☎ 202-281-5237

Consumer:

☎ 888-INFO-FDA

🔗 [More Press Announcements \(/news-events/newsroom/press-announcements\)](/news-events/newsroom/press-announcements)



U. S. Department of Justice
Drug Enforcement Administration
8701 Morrisette Drive
Springfield, Virginia 22152

www.dea.gov

February 13, 2023

Mr. Rod Kight
Kight Law Office PC
P.O. Box 526
Edneyville, North Carolina 28787

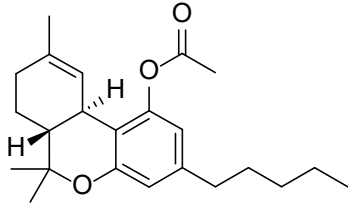
Dear Mr. Kight:

This is in response to your letter dated August 17, 2022 and subsequent email dated February 7, 2023, in which you request the control status under the Controlled Substances Act (CSA) of THC acetate ester (THCO). The only substances of which the Drug Enforcement Administration (DEA) is aware of the THC acetate ester are delta-9-THCO (delta-9-THC acetate ester) and delta-8-THCO (delta-8-THC acetate ester). The Drug Enforcement Administration (DEA) reviewed the CSA and its implementing regulations with regard to the control status of these substances.

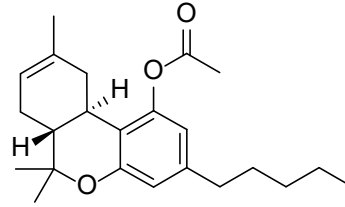
The CSA classifies tetrahydrocannabinols (THC) as controlled in schedule I. 21 U.S.C. § 812, Schedule I(c)(17); 21 CFR 1308.11(d)(31). Subject to limited exceptions, for the purposes of the CSA, the term “tetrahydrocannabinols” means those “naturally contained in a plant of the genus Cannabis (cannabis plant), as well as synthetic equivalents of the substances contained in the cannabis plant and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant.” 21 CFR § 1308.11(d)(31).

Delta-9-THCO and delta-8-THCO do not occur naturally in the cannabis plant and can only be obtained synthetically, and therefore do not fall under the definition of hemp. Delta-9-THCO and delta-8-THCO are tetrahydrocannabinols having similar chemical structures and pharmacological activities to those contained in the cannabis plant. Thus, delta-9-THCO and delta-8-THCO meet the definition of “tetrahydrocannabinols,” and they (and products containing delta-9-THCO and delta-8-THCO) are controlled in schedule I by 21 U.S.C. § 812(c) Schedule I, and 21 CFR § 1308.11(d). The Controlled Substances Code Number (CSCN) assigned to these substances are 7370, which is that of tetrahydrocannabinols, and the conversion factors (CF) are 1.00. Because delta-9-THCO and delta-8-THCO are controlled substances, they do not meet the definition of controlled substance analogues under 21 U.S.C. § 813.

The chemical structures shown below were used to make these determinations. If you have any further questions, please contact the Drug and Chemical Evaluation Section at DPE@dea.gov or (571) 362-3249.



delta-9-THCO (delta-9-THC acetate ester)
schedule I
CSCN 7370
CF 1.0



delta-8-THCO (delta-8-THC acetate ester)
schedule I
CSCN 7370
CF 1.0

Sincerely,

A handwritten signature in black ink, appearing to read 'Terrence L. Boos'.

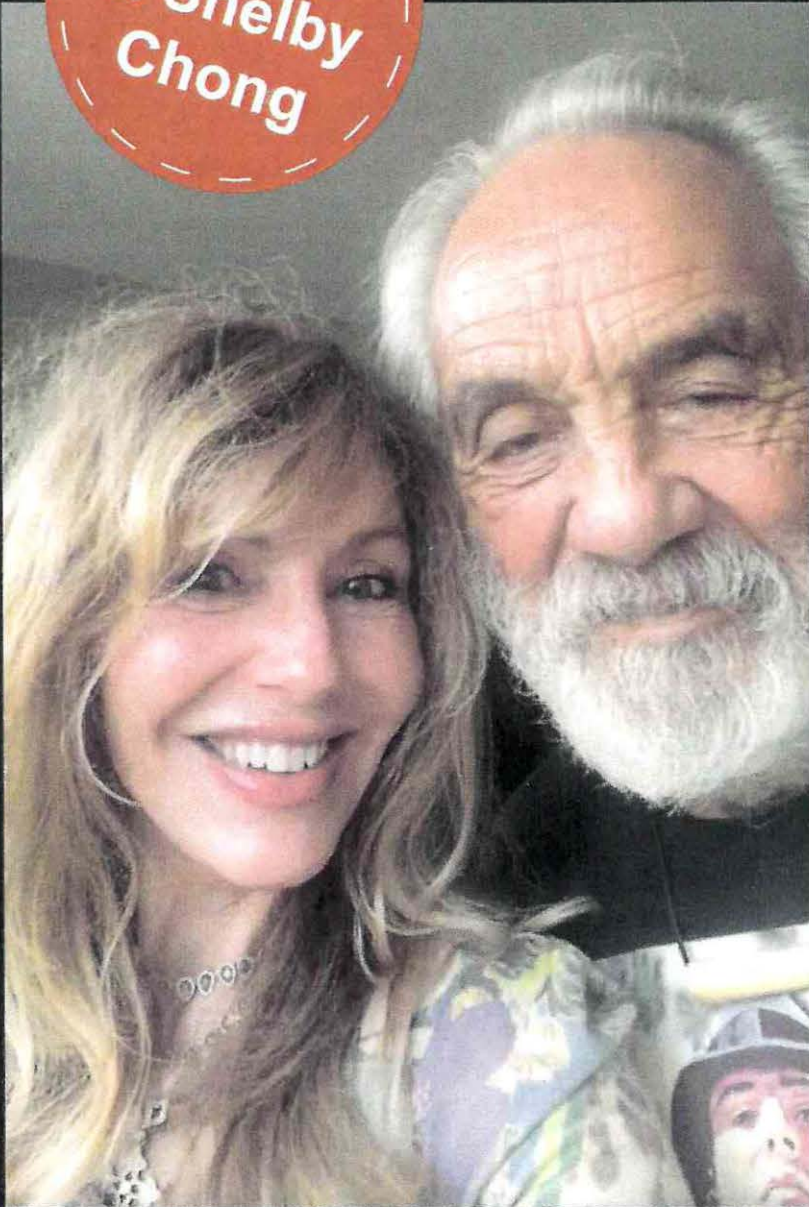
Terrence L. Boos, Ph.D., Chief
Drug & Chemical Evaluation Section
Diversion Control Division

Cc: Charlotte District Office

Tommy
& Shelby
Chong

***** ECRWSSEDDM *****
RESIDENTIAL CUSTOMER

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[Redacted]
at
[Redacted]

CBD | HEMP | THC-O
HHC | LEGAL D9

[Redacted]
[Redacted]
[Redacted]
[Redacted], ND
[Redacted]

[Redacted] is an 18+ establishment with ID verification. All hemp and CBD products contain less than .3% Delta 9 THC per the 2018 Farm Bill.

Redeem this coupon for a **Free Sample*** &

50% OFF**

YOUR PURCHASE OF ANY HEMP, CBD, OR CANNABINOID PRODUCT

*Gummy, Preroll, or Salve.

**Limit 1 item, cannot be combined with any other coupon or reward.



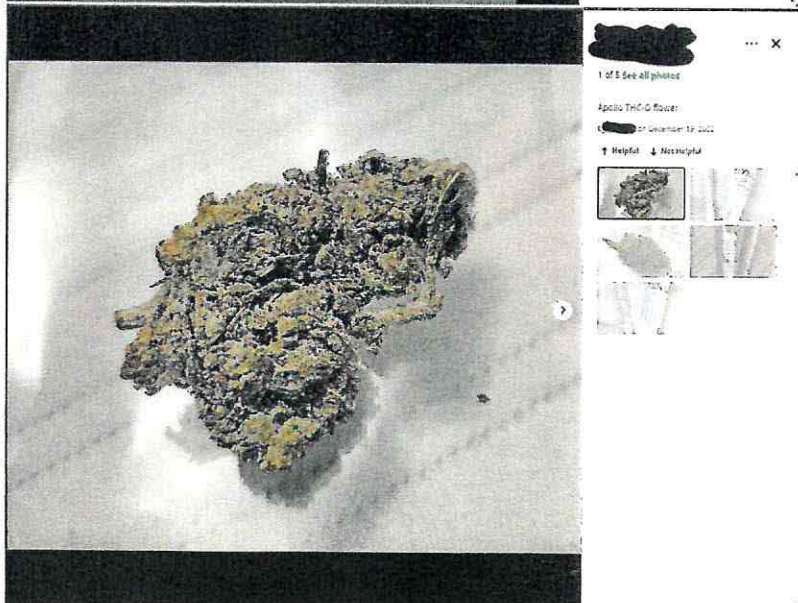
ND



12/19/2022

5 photos

Amazing selection of products. Only smoke shop in town with n2o as far as i know. They have a decent selection of legal hemp products as well; their THC-O flower is good quality. Largest selection of glass in town as well as far as i know.



Sunday Funday! Come in and pick out your favorite pre roll for this perfect day!



June 6, 2022 · 🌐

Hello hemp friends! 😊 If you didn't know already we have HHC tinctures! We have these in 1,500 milligram's and 3,000 milligram's. 😊 Have a great week, stop by and make it better 😊. We close at 9p.m. tonight!

#cbdbenefits #tincture #HHC

#cbd



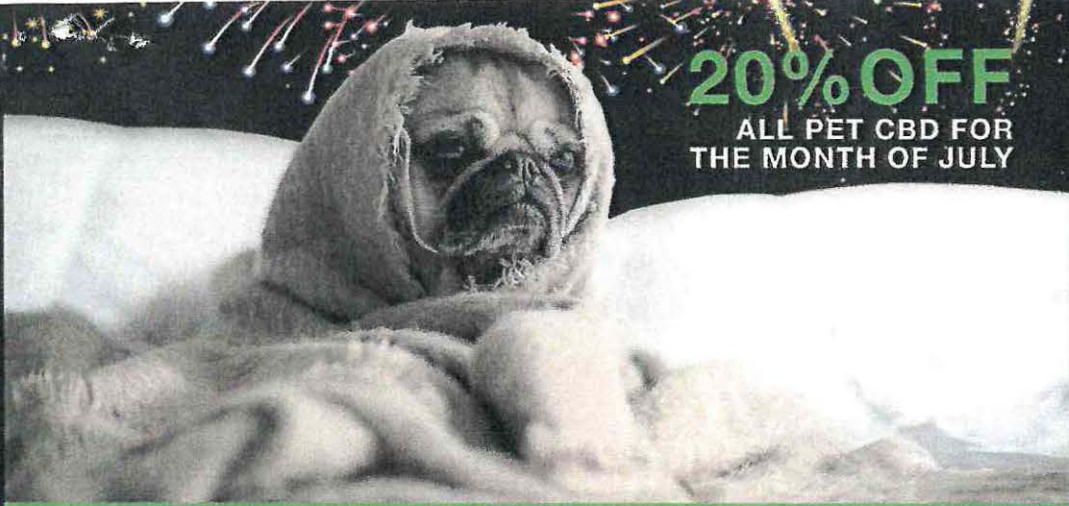
\$39.995

30MG PER SERVING

300MG THC-C

10-30MG THC-C GUMMIES
300MG TOTAL CBD PER BAG

20% OFF
ALL PET CBD FOR
THE MONTH OF JULY



IT'S ALMOST FIREWORKS SEASON

Our furry friends need all the help they can get. It's no secret that this is a stressful time for them, from hiding under beds to wandering off outside. Help ease their stress with CBD products curated just for them.

CBD | D8 | THC-O | HHC | LEGAL D9



is an 18+ establishment with ID verification. All hemp and CBD products contain less than 3% Delta 9 THC per the 2018 Farm Bill.

June 29, 2023

DB is not legal in North Dakota and thusly not available

3

Like Comment Share

Write a comment





Drew H. Wrigley
ATTORNEY GENERAL

STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL
www.attorneygeneral.nd.gov
(701) 328-2210

House Agriculture Committee
March 3, 2023

Testimony of Charlene Rittenbach, Forensic Scientist
Office of the Attorney General
Crime Laboratory Division
Senate Bill 2096

Chairman Thomas and members of the House Agriculture Committee.

I am Charlene Rittenbach, a Forensic Scientist with the North Dakota State Crime Laboratory. Following the federal legalization of hemp by the Agriculture Improvement Act of 2018, an industry has rapidly emerged to manufacture and sell consumable products that contain cannabinoids derived from hemp. The relative lack of federal regulation or enforcement of these products presents several challenges with implications for public health and safety and the ability of consumers to make informed choices about the products they consume.

Some of the regulatory challenges for cannabinoid hemp are chemically derived cannabinoids, products with intoxicating amounts of tetrahydrocannabinol (THC), youth access and lack of age restrictions, lack of testing requirements, lack of packaging and labeling standards, and lack of enforcement of FDA regulations. I will expand on each of these challenges briefly and then indicate how this bill is proposing to address some of them.

Semi-Synthetic Derivatives: Semi-synthetic derivatives or chemically derived cannabinoids refer to certain types of substances that are produced by converting a cannabis extract into a different substance through chemical reactions. This kind of process is commonly used to convert CBD, which is extracted from hemp and alone is not intoxicating, into THC or

other substances such as THC-O-acetate or hexahydrocannabinol (HHC). These chemically derived cannabinoids have escalated in the market for a variety of reasons, including due to a perceived legality, accessibility in the markets where cannabis remains illegal or difficult to access, and a lower cost compared to similar cannabis-derived products in part because they are not taxed, tested, or regulated like similar cannabis derived products.

Entirely separate from any concerns about dosage, toxicity, or intoxicating potential, there is a cause for concern related to impurities that can result from the manufacturing process by which a chemically derived cannabinoid is made. Without knowing the identity of the side-reaction products, which will vary depending on the specific synthetic route employed by the manufacturer, the potential toxicity of the side-reaction products also remains largely unknown.

Products with Intoxicating Amounts of THC: The ND definition of hemp limits hemp products to no more than 0.3% THC by weight, but 0.3% is not a non-intoxicating threshold, especially for edible products. Because the 0.3% is currently being applied towards other products than plant material, there are hemp-derived products that are currently being sold that contain far more than the allowable amounts of THC in most regulated adult-use cannabis markets but are legal under current policy because they stay under the limit of 0.3% THC by weight.

Youth Access and Lack of Age Restrictions: Federal legalization of hemp did not impose any age restrictions on the purchase of hemp products. Presumably, this was based on the assumption that hemp products would not be intoxicating. The reality is that many businesses are now manufacturing and selling intoxicating hemp-derived products containing significant doses of THC or intoxicating chemically derived cannabinoids.

Lack of Testing Requirements: State regulatory programs for cannabis also typically establish robust testing requirements for consumer products, including testing for potency,

pesticides, solvents, heavy metals, and mycotoxins or microbiological contaminants. At the federal level, hemp testing requirements are only established at the crop level to confirm that a crop is hemp rather than marijuana. There are no requirements or standards for finished product potency testing or for testing for other harmful contaminants.

Lack of Packaging and Labeling Standards: Most state regulatory programs for cannabis include robust requirements around the labeling of adult use and medical cannabis products. There are currently no federal standards requiring labels to disclose the THC content of hemp-derived products. As a result, products that may contain a significant amount of THC simply state that the product contains “less than 0.3% THC”. Consumers of these products are not able to make informed decisions about the amount of THC or other chemically derived cannabinoids they are consuming.

Lack of Enforcement of FDA Regulations: The FDA has stated that CBD and THC cannot be added to any food that is sold in interstate commerce and that CBD and THC cannot be marketed as dietary supplements even if they are derived from hemp. Hemp-derived products are not currently following appropriate FDA notification or approval processes. To date, the FDA has taken minimal enforcement action, issuing warning letters to a small number of manufacturers or sellers of hemp-derived products when there are health claims that put the product into the category of unapproved drugs.

These are the current regulatory challenges that cannabinoid hemp face. I will now turn your attention to the draft of Senate Bill 2096 and I will walk through the definitions and explain how the language utilized attempts to address some of these regulatory issues.

Section 1 proposes to change the definition of hemp to mean the plant and any part of the plant, including flowers and remove the wording “all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers” to indicate hemp is only the plant or any part of the

plant. The 0.3% THC by weight requirement is still included in the definition (total THC concentration in an amount determined by the commissioner) and is only applied to the plant, any part of the plant, or flowers. Two other definitions, hemp extract and hemp commodity or product, were defined to mean everything else other than the plant or any part of the plant.

The definition of hemp commodity or product is further clarified to indicate what the term includes and what it does not include. For example, the term does not include a chemical compound extracted from hemp used to formulate, process or other make an inhalant, edible or combustible product or a product containing chemically derived cannabinoids. Hemp tinctures and hemp topicals fall under the hemp commodities and products definition and are themselves defined with maximum amounts of total THC permitted in milligrams.

Section 3 lists prohibited acts by the licensee of the hemp program in which the language that was added and adopted last legislative session was modified.

Section 4 of the bill describes that retailers may only sell hemp and hemp commodities or products allowed under this chapter and they must undergo testing and report results of the total THC concentration amount. Selling hemp or hemp commodities or products that contain chemically derived cannabinoids is not allowed.

I will mention that one of the regulatory challenges of hemp derived products that is not currently in this proposed bill is an age restriction requirement, but the committee is welcome to discuss and recommend a desired policy on this. The current thought was since chemically derived cannabinoids are not allowed to be sold, and no inhalants, edibles or combustibles are allowed, the age requirement would mainly come into play with hemp tinctures and hemp topicals. Some businesses are currently requiring age requirements to purchase CBD products, but it is not mandated.

Thank you for your attention and I would be happy to stand to answer any questions.

23.8110.01001
Title.

Prepared by the Legislative Council staff for
Representative Beltz
March 24, 2023

PROPOSED AMENDMENTS TO SENATE BILL NO. 2096

Page 1, line 4, after the comma insert "section 4.1-59-09 of the North Dakota Century Code, as created by section 2 of House Bill No. 1393, as approved by the sixty-eighth legislative assembly, and"

Page 1, line 7, after "tetrahydrocannabinols" insert ", and bonding requirements for grain buyers"

Page 1, line 12, after "1." insert "\"Chemically derived cannabinoid\" means a chemical substance created by a chemical reaction that changes the molecular structure of any chemical substance derived from the plant cannabis. The term does not include cannabinoids produced by decarboxylation from a naturally occurring cannabinoid acid without the use of a chemical catalyst.

2."

Page 1, line 19, overstrike "2." and insert immediately thereafter "3."

Page 1, line 19, after "hemp" insert "or hemp extract"

Page 2, line 6, remove "and"

Page 2, line 7, after "(4)" insert "Cannabidiol, also known as CBD, products and cannabigerol, also known as CBG, products with a total tetrahydrocannabinol level not to exceed an amount determined by the commissioner; and

(5)"

Page 2, line 12, remove "Hemp extract:"

Page 2, line 13, remove "(3)"

Page 2, line 14, remove ", edible, or combustible"

Page 2, line 15, replace "(4)" with "(3)"

Page 2, line 15, after "containing" insert "delta-8 tetrahydrocannabinol, also known as delta-8 THC;

(4) A product containing"

Page 2, line 16, remove "Delta-8 tetrahydrocannabinol, also known as delta-8 THC:"

Page 2, line 17, remove "(b)"

Page 2, line 19, replace "(c)" with "(b)"

Page 2, line 20, replace "(d)" with "(c)"

Page 2, line 23, replace "3." with "4."

Page 2, line 26, replace "4." with "5."

Page 2, line 29, replace "5." with "6."

Page 3, line 3, replace "6." with "7."

Page 3, line 3, remove "consisting of a mixture created from a hemp extract"

Page 3, remove lines 4 and 5

Page 3, line 6, replace "permitted in a hemp tincture is fifty milligrams per container" with "that may not exceed thirty milliliters consisting of:

- a. At least twenty-five percent non-denatured alcohol, in addition to a hemp extract, and other ingredients intended for human consumption or ingestion; or
- b. Glycerin or plant-based oil and hemp extract, and is intended for human consumption or ingestion"

Page 3, line 7, replace "7." with "8."

Page 4, line 8, after "cannabinoids" insert "or delta-8 tetrahydrocannabinol"

Page 8, after line 20, insert:

"SECTION 13. AMENDMENT. Section 4.1-59-09 of the North Dakota Century Code, as created by section 2 of House Bill No. 1393, as approved by the sixty-eighth legislative assembly, is amended and reenacted as follows:

4.1-59-09. Bond filed by grain buyer.

1. Before a license is effective for a grain buyer under this chapter, the applicant for the license shall file a bond with the commissioner which must:
 - a. Be in a sum not less than one hundred thousand dollars.
 - b. Be continuous, unless the corporate surety by certified mail notifies the licensee and the commissioner the surety bond will be canceled ninety days after receipt of the notice of cancellation.
 - c. Run to this state for the benefit of all persons selling grain to or through the grain buyer.
 - d. Be conditioned:
 - (1) For the faithful performance of the licensee's duties as a grain buyer.
 - (2) For compliance with the provisions of law and the rules of the commissioner relating to the purchase of grain by the commissioner monthly.
 - e. Be for the specific purpose of:
 - (1) Protecting the sellers of grain.
 - (2) Covering the costs incurred by the commissioner in the administration of the licensee's insolvency.
 - f. Not accrue to the benefit of any person entering a credit-sale contract with a grain buyer.

2. The aggregate liability of the surety under a bond does not accumulate for each successive annual license renewal period during which the bond is in force but, for losses during any annual license renewal period, is limited in the aggregate to the bond amount stated or changed by appropriate endorsement or rider.
3. The commissioner shall set the amount of the bond and may require an increase in the amount of a bond as the commissioner deems necessary to accomplish the purposes of this section.
4. The amount of the bond for a grain buyer must be based on the dollar value of the grain purchased, solicited, or merchandised.
5. A grain buyer shall report purchases, solicitations, and merchandising agreements to the commissioner monthly.
6. The surety on the bond must be a corporate surety company, approved by the commissioner and authorized to do business within the state. The commissioner may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond when, in the commissioner's judgment, cash, a negotiable instrument, or a personal surety bond properly will protect the holders of outstanding receipts."

Renumber accordingly

SENATE BILL NO. 2096

Introduced by

Agriculture and Veterans Affairs Committee

(At the request of the Agriculture Commissioner)

1 A BILL for an Act to create and enact section 4.1-18.1-01.1 and nine new sections to chapter
2 4.1-18.1 of the North Dakota Century Code, relating to administrative rules, hemp commodities
3 or products, powers of the commissioner, and civil enforcement remedies; to amend and
4 reenact sections 4.1-18.1-01 and 4.1-18.1-04.3, section 4.1-59-09 of the North Dakota Century
5 Code, as created by section 2 of House Bill No. 1393, as approved by the sixty-eighth
6 legislative assembly, and subparagraph a of paragraph 2 of subdivision m of subsection 5 of
7 section 19-03.1-05 of the North Dakota Century Code, relating to definitions, prohibited acts by
8 licensees, schedule I controlled substances tetrahydrocannabinols, and bonding requirements
9 for grain buyers; and to provide a penalty.

10 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

11 **SECTION 1. AMENDMENT.** Section 4.1-18.1-01 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **4.1-18.1-01. Definitions.**

14 1. "Chemically derived cannabinoid" means a chemical substance created by a chemical
15 reaction that changes the molecular structure of any chemical substance derived from
16 the plant cannabis. The term does not include cannabinoids produced by
17 decarboxylation from a naturally occurring cannabinoid acid without the use of a
18 chemical catalyst.

19 2. "Hemp" means the plant cannabis sativa L. and any part of the plant, including the
20 seeds and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of
21 isomersflowers, whether growing or not, with a total tetrahydrocannabinol
22 concentration in an amount determined by the commissioner. The term does not
23 include any hemp extract, commodity or product using hemp ~~which exceeds the~~

1 ~~allowable amount of total tetrahydrocannabinol determined by the commissioner, or a~~
2 ~~hemp substance or product prohibited by this chapter.~~

3 2.3. "Hemp commodity or product" means a product made from hemp or hemp extract,
4 including cloth, cordage, fiber, food, fuel, paint, paper, particleboard, plastics, seeds,
5 seed meal, and seed oil for consumption, a hemp tincture, and a hemp topical.

6 a. The term includes:

7 (1) Hemp processed through retting or other processing such that it is a
8 suitable fiber for textiles, rope, paper, hempcrete, or other building or fiber
9 materials;

10 (2) Hemp seed processed such that it is incapable of germination and
11 processed such that is suitable for human consumption;

12 (3) Hemp seed pressed or otherwise processed into oil; ~~and~~

13 (4) Cannabidiol, also known as CBD, products and cannabigerol, also known
14 as CBG, products with a total tetrahydrocannabinol level not to exceed an
15 amount determined by the commissioner; and

16 (5) A hemp commodity or product approved in writing by the agriculture
17 commissioner.

18 b. The term does not include:

19 (1) Hemp that has been chopped, separated, or dried for purposes of transfer
20 or storage;

21 (2) Hemp extract;

22 ~~(3) A chemical compound extracted from hemp used to formulate, process, or~~
23 ~~otherwise make an inhalant, edible, or combustible;~~

24 (4)(3) A product containing delta-8 tetrahydrocannabinol, also known as delta-8
25 THC;

26 (4) A product containing chemically derived cannabinoids. Including:

27 (a) ~~Delta-8 tetrahydrocannabinol, also known as delta-8 THC;~~

28 ~~(b) Tetrahydrocannabinol acetate, also known as THC-O-Acetate and~~
29 ~~THC-O;~~

30 ~~(e)(b) Hexahydrocannabinol, also known as HHC; and~~

31 ~~(d)(c) Tetrahydrocannabiphorol, also known as THCP; or~~

1 **SECTION 3. AMENDMENT.** Section 4.1-18.1-04.3 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **4.1-18.1-04.3. Prohibited acts - Licensee.**

4 A licensee may not:

- 5 1. ~~Engage in the isomerization of cannabinoids to create isomers of~~
6 ~~tetrahydrocannabinol, including delta-8, delta-9, and delta-10~~
7 ~~tetrahydrocannabinol~~Chemically modify or convert a hemp extract, or engage in any
8 process that converts cannabidiol into delta-9, delta-8, delta-10-tetrahydrocannabinol,
9 or other tetrahydrocannabinol isomers, analogs, or derivatives; and
- 10 2. ~~Sell or distribute hemp or hemp commodities or products that contain chemically~~
11 ~~derived cannabinoids or were created using the isomerization of cannabinoids to~~
12 ~~create isomers of tetrahydrocannabinol, including delta-8, delta-9, and delta-10~~
13 ~~tetrahydrocannabinol~~by chemically modifying or converting a hemp extract.

14 **SECTION 4.** A new section to chapter 4.1-18.1 of the North Dakota Century Code is created
15 and enacted as follows:

16 **Hemp commodities or products- Allowable products- Retailers.**

- 17 1. A person may only sell hemp and hemp commodities or products allowed under this
18 chapter. All hemp and hemp commodities or products must undergo testing and report
19 in a certificate of analysis and in the product label the testing results of the total
20 tetrahydrocannabinol concentration amount. The certificate of analysis must be made
21 available to the commissioner upon request.
- 22 2. A person may not sell hemp, or hemp commodities or products that contain chemically
23 derived cannabinoids or delta-8 tetrahydrocannabinol.
- 24 3. All other cannabis- or hemp-derived products that are not allowable hemp
25 commodities or products under this chapter must be regulated in accordance with
26 chapter 19-24.1.
- 27 4. All hemp commodities or products sold pursuant to this section must comply with all
28 product labeling rules as mandated by the Food, Drug, and Cosmetic Act [21 U.S.C. 9
29 et seq.] and related administrative rules, both the Act and rules incorporated by
30 reference.

1 5. Under the Food, Drug, and Cosmetic Act [21 U.S.C. 9 et seq.], incorporated by
2 reference, non-food and drug administration approved hemp-derived products may not
3 be sold as dietary supplements, food or beverage products, or marketed with medical
4 claims.

5 **SECTION 5.** A new section to chapter 4.1-18.1 of the North Dakota Century Code is created
6 and enacted as follows:

7 **Powers of commissioner.**

8 If the commissioner reasonably suspects a person is about to engage in, has engaged in, or
9 is engaging in, a violation of this chapter, the commissioner may:

- 10 1. Require the person to file, on forms the commissioner prescribes, a statement or
11 report in writing, under oath or otherwise, of all the facts and circumstances
12 concerning the creation, sale, distribution, or advertisement of the hemp commodity or
13 product by the person, as well as other data;
14 2. Examine under oath the person in connection with the creation, sale, distribution, or
15 advertisement of any hemp commodity or product;
16 3. Examine any merchandise or sample, record, book, document, account, or paper
17 concerning the creation, sale, distribution, or advertisement of hemp commodity or
18 product by the person; and
19 4. Pursuant to an order of a district court, seize and retain any merchandise or sample,
20 record, book, document, account, paper, or other evidence as authorized by the order.

21 **SECTION 6.** A new section to chapter 4.1-18.1 of the North Dakota Century Code is created
22 and enacted as follows:

23 **Subpoena - Hearing.**

24 To regulate compliance with this chapter, the commissioner, in addition to other powers
25 conferred upon the commissioner by this chapter, may issue subpoenas to any person,
26 administer an oath or affirmation to any person, and conduct hearings in aid of any investigation
27 or inquiry.

28 **SECTION 7.** A new section to chapter 4.1-18.1 of the North Dakota Century Code is created
29 and enacted as follows:

1 **Failure to supply information or obey subpoena.**

2 If a person fails or refuses to file any statement or report requested by the commissioner, or
3 obey any subpoena issued by the commissioner, the commissioner may, after notice, apply to a
4 district court and request an order:

- 5 1. Granting injunctive relief, restraining the creation, sale, distribution, or advertisement
6 of any hemp commodity or product merchandise by a person;
- 7 2. Vacating, annulling, or suspending the charter of a for-profit or nonprofit corporation or
8 limited liability company created by or under the laws of this state or revoking or
9 suspending the certificate of authority to do business in this state of a foreign
10 corporation or limited liability company or revoking or suspending any other licenses,
11 permits, or certificates issued pursuant to law to a person which are used to violate
12 this chapter; and
- 13 3. Granting such other relief as may be required.

14 **SECTION 8.** A new section to chapter 4.1-18.1 of the North Dakota Century Code is created
15 and enacted as follows:

16 **Assurance of voluntary compliance.**

17 The commissioner may accept an assurance of voluntary compliance for an act or practice
18 the commissioner determines may be in violation of this chapter, from any person the
19 commissioner alleges is about to engage in, engaging in, or has engaged in the violation. The
20 assurance of voluntary compliance must be in writing and must be filed with and is subject to
21 the approval of the district court of the county in which the alleged violator resides or has as a
22 principal place of business, conducts business, or in Burleigh County.

23 **SECTION 9.** A new section to chapter 4.1-18.1 of the North Dakota Century Code is created
24 and enacted as follows:

25 **Remedies - Injunction - Other relief - Receiver - Cease and desist orders - Civil**
26 **penalties - Costs recoverable in adjudicative proceedings.**

- 27 1. If the commissioner reasonably suspects a person is about to engage in, has engaged
28 in, or is engaging in a practice in violation of this chapter, the commissioner may seek
29 and obtain in an action in a district court an injunction enjoining the person from
30 engaging in the violation, continuing the violation, or doing any act in furtherance of

- 1 the violation after proper notice to the person. The notice must state generally the
2 relief sought and be served at least ten days before the hearing of the action.
- 3 2. If the commissioner reasonably suspects a person is about to engage in, has engaged
4 in, or is engaging in a violation of this chapter, and the person is about to conceal
5 assets that may have been acquired in violating this chapter, conceal oneself, or leave
6 the state, the commissioner may apply to the district court, ex parte, for an order
7 appointing a receiver of the assets of the person.
- 8 3. Upon a showing made by affidavit or other evidence that shows reasonable grounds
9 the person is about to engage in, has engaged in, or is engaging in a violation of this
10 chapter and the person is about to conceal assets that may have been acquired in
11 violating this chapter, conceal oneself, or leave the state, the court shall order the
12 appointment of a receiver to receive the assets of the person. From the received
13 assets, the court may make an order or judgment necessary to restore to another
14 person who has suffered damages due to another person violating this chapter any
15 money or property.
- 16 4. If the commissioner reasonably suspects a person is about to engage in, has engaged
17 in, or is engaging in a violation of this chapter, or by an order of the commissioner
18 issued under this chapter, the commissioner, without notice and hearing, may issue a
19 cease and desist order.
- 20 a. In addition to any other remedy authorized by this chapter, the commissioner may
21 impose by order and collect a civil penalty against a person found in an
22 adjudicative proceeding to have violated a cease and desist order issued
23 pursuant to this section, in an amount not more than five thousand dollars for
24 each violation.
- 25 b. The person may request a hearing before the commissioner if a written request is
26 made within ten days after the receipt of the order. Unless otherwise specifically
27 provided, an adjudicative proceeding under this section must be conducted in
28 accordance with chapter 28-32.
- 29 c. If the commissioner prevails in an adjudicative proceeding pursuant to this
30 section, the commissioner may assess the nonprevailing person for all
31 adjudicative proceeding and hearing costs, including reasonable attorney's fees.

1 investigation expenses, costs, and other expenses of the investigation and
2 action.

3 **SECTION 10.** A new section to chapter 4.1-18.1 of the North Dakota Century Code is
4 created and enacted as follows:

5 **Powers of receiver.**

6 1. When a receiver is appointed by the court pursuant to this chapter, the receiver may
7 sue for, collect, receive, or take into possession all the goods and chattels, rights and
8 credits, moneys and effects, lands and tenements, books, records, documents,
9 papers, choses in action, bills, notes, and property of every description, derived by
10 means of a violation of this chapter, including property with which the property has
11 been commingled if it cannot be identified in kind because of the commingling, and
12 sell, convey, and assign the property and hold and dispose of the proceeds under the
13 direction of the court.

14 2. A person who has suffered damages due to another person violating this chapter and
15 submits proof to the satisfaction of the court that the person has in fact been damaged
16 may participate with general creditors in the distribution of the assets to the extent the
17 person has sustained losses. The court has jurisdiction of all questions arising in these
18 proceedings and may make orders and judgments as necessary.

19 **SECTION 11.** A new section to chapter 4.1-18.1 of the North Dakota Century Code is
20 created and enacted as follows:

21 **Costs recoverable.**

22 If the commissioner prevails in an action brought to district court under this chapter, the
23 court shall award the commissioner reasonable attorney's fees, investigation expenses, costs,
24 and other expenses associated with the action. All attorney's fees, investigation expenses,
25 costs, and other expenses received by the commissioner under this section must be deposited
26 into the commissioner's general operating fund for use in regulating compliance with this
27 chapter.

28 **SECTION 12.** A new section to chapter 4.1-18.1 of the North Dakota Century Code is
29 created and enacted as follows:

1 **Civil penalties.**

2 The court may assess for the benefit of the state a civil penalty of not more than five
3 thousand dollars for each violation of this chapter. The penalty provided in this section is in
4 addition to those remedies otherwise provided by this chapter. The penalty must be awarded to
5 the commissioner and deposited into the commissioner's general operating fund for use in
6 regulating compliance with this chapter.

7 **SECTION 13. AMENDMENT.** Section 4.1-59-09 of the North Dakota Century Code, as
8 created by section 2 of House Bill No. 1393, as approved by the sixty-eighth legislative
9 assembly, is amended and reenacted as follows:

10 **4.1-59-09. Bond filed by grain buyer.**

- 11 1. Before a license is effective for a grain buyer under this chapter, the applicant for the
12 license shall file a bond with the commissioner which must:
- 13 a. Be in a sum not less than one hundred thousand dollars.
 - 14 b. Be continuous, unless the corporate surety by certified mail notifies the licensee
15 and the commissioner the surety bond will be canceled ninety days after receipt
16 of the notice of cancellation.
 - 17 c. Run to this state for the benefit of all persons selling grain to or through the grain
18 buyer.
 - 19 d. Be conditioned:
 - 20 (1) For the faithful performance of the licensee's duties as a grain buyer.
 - 21 (2) For compliance with the provisions of law and the rules of the commissioner
22 relating to the purchase of grain by the commissioner monthly.
 - 23 e. Be for the specific purpose of:
 - 24 (1) Protecting the sellers of grain.
 - 25 (2) Covering the costs incurred by the commissioner in the administration of the
26 licensee's insolvency.
 - 27 f. Not accrue to the benefit of any person entering a credit-sale contract with a
28 grain buyer.
- 29 2. The aggregate liability of the surety under a bond does not accumulate for each
30 successive annual license renewal period during which the bond is in force but, for

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losses during any annual license renewal period, is limited in the aggregate to the bond amount stated or changed by appropriate endorsement or rider.

3. The commissioner shall set the amount of the bond and may require an increase in the amount of a bond as the commissioner deems necessary to accomplish the purposes of this section.

4. The amount of the bond for a grain buyer must be based on the dollar value of the grain purchased, solicited, or merchandised.

5. A grain buyer shall report purchases, solicitations, and merchandising agreements to the commissioner monthly.

6. The surety on the bond must be a corporate surety company, approved by the commissioner and authorized to do business within the state. The commissioner may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond when, in the commissioner's judgment, cash, a negotiable instrument, or a personal surety bond properly will protect the holders of outstanding receipts.

SECTION 14. AMENDMENT. Subparagraph a of paragraph 2 of subdivision m of subsection 5 of section 19-03.1-05 of the North Dakota Century Code is amended and reenacted as follows:

- (a) The allowable amount of total tetrahydrocannabinol found in hemp or an allowed hemp commodity or product as defined in chapter 4.1-18.1; or

PROPOSED AMENDMENTS TO SENATE BILL NO. 2096

Page 1, after line 11, insert:

“1. “Broad spectrum” means hemp extract or hemp commodity or product containing naturally occurring hemp-derived cannabinoids, terpenes, and other naturally occurring compounds, but where Tetrahydrocannabinol has been removed to non-detectable levels using a fit-for-purpose method, with a total tetrahydrocannabinol level not to exceed an amount determined by the commissioner.

2. “Chemically derived cannabinoid” means a chemical substance that is created by a chemical reaction that changes the molecular structure of any chemical substance derived from the plant Cannabis. This term does not include cannabinoids that are produced by decarboxylation from a naturally occurring cannabinoid acid without the use of a chemical catalyst.

3. “Full spectrum” means hemp extract or hemp commodity or product containing naturally occurring hemp-derived cannabinoids, terpenes, and other naturally occurring compounds, processed without intentional complete removal of any compound and without the addition of isolated cannabinoids, with a total tetrahydrocannabinol level not to exceed an amount determined by the commissioner.

Page 1, line 19, after “product made from hemp” insert “or a hemp extract,”

Page 2, line 6, remove “and”

Page 2, after line 6, insert:

“(4) Cannabidiol (CBD) products and cannabigerol (CBG) products, including broad spectrum, full spectrum, and isolate products, with a total tetrahydrocannabinol level not to exceed an amount determined by the commissioner; and”

Page 2, line 7, replace “4” with “5”

Page 2, line 12, remove “(2) Hemp extract;”

Page 2, line 14, remove “, edible, or combustible”

Page 2, line 15, after “containing” insert

“delta-8 tetrahydrocannabinol, also known as delta-8 THC;

(5) A product containing”

Page 2, line 16, remove “(a) Delta-8 tetrahydrocannabinol, also known as delta-8 THC;”

Page 2, after line 28, insert:

“8. “Isolate” means hemp extract or hemp commodity or product comprised of a single cannabinoid compound.”

Page 3, Line 3, remove:

“6. “Hemp tincture” means a solution consisting of a mixture created from a hemp extract and other ingredients. A container holding a hemp tincture may not exceed thirty milliliters. The maximum concentration or amount of total tetrahydrocannabinol permitted in a hemp tincture is fifty milligrams per container.

Page 3, Line 3, insert:

“6. Hemp tincture means a solution that may not exceed thirty milliliters consisting of
a. at least 25 percent non-denatured alcohol, in addition to a hemp extract, and other ingredients intended for human consumption or ingestion; or
b. glycerin or plant-based oil and hemp extract, and is intended for human consumption or ingestion.

Page 4, line 8, after “cannabinoids” insert “or delta-8 tetrahydrocannabinol”

Page 8, line 11, replace “commissioner’s” with “attorney general’s”

Page 8, lines 11 and 12, remove “for use in regulating compliance with this chapter”

Renumber accordingly