

**Sixty-third Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 8, 2013**

HOUSE BILL NO. 1227
(Representatives Kempenich, D. Johnson, Pollert, J. Kelsh)
(Senators Klein, Miller, Heckaman)

AN ACT to create and enact section 19-20.1-17.1 of the North Dakota Century Code, relating to the imposition of civil penalties; to amend and reenact sections 19-20.1-02, 19-20.1-03, 19-20.1-03.1, 19-20.1-03.4, 19-20.1-04, 19-20.1-06, 19-20.1-08, 19-20.1-10, 19-20.1-11, 19-20.1-12, 19-20.1-13, 19-20.1-14, 19-20.1-15, 19-20.1-16, 19-20.1-17, and 19-20.1-18 of the North Dakota Century Code, relating to fertilizers, fertilizer materials, micronutrients, specialty fertilizers, soil amendments, and plant amendments; to repeal sections 19-20.1-01, 19-20.1-03.3, 19-20.1-05.1, 19-20.1-07, and 19-20.2-11 of the North Dakota Century Code, relating to the agriculture commissioner, protected information, rulemaking, and storage and fees; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-20.1-02 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-02. Definitions of words and terms.

When used in this chapter:

1. "Brand" means a term, design, or trademark, used in connection with one or several grades of fertilizer, fertilizer material, micronutrients, specialty fertilizer, soil amendments, or plant amendments.
2. "Bulk" means in a nonpackaged form.
3. "Compost" means a material derived primarily or entirely from biological decomposition of vegetative organic matter or animal manure that does not have inorganic fertilizer added other than to promote decomposition.
4. "Deficiency" means that amount of plant nutrient or active ingredient found by analysis is less than the amount guaranteed resulting from a lack of nutrient or active ingredients or from lack of uniformity.
5. "Distributor" means any person who imports, consigns, manufactures, produces, compounds, mixes, or blends fertilizer, fertilizer materials, micronutrients, specialty fertilizers, soil amendments, or plant amendments, or who sells or offers for sale fertilizer, fertilizer materials, micronutrients, specialty fertilizers, soil amendments, or plant amendments in this state.
6. "End user" means a person who uses a fertilizer, fertilizer materials, micronutrients, specialty fertilizers, soil amendment, or plant amendment in a manner for which the product was intended.
7. "Fertilizer" means any substance containing one or more recognized plant nutrients which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes, and other products excluded by the commissioner by rule.
8. "Fertilizer material" means a fertilizer which:
 - a. Contains no more than one of the primary plant nutrients;

- b. Has approximately eighty-five percent of its primary plant nutrient content present in the form of a single chemical compound; or
 - c. Is derived from a plant or animal residue or byproduct or a natural material deposit which has been processed in such a way that its content of primary plant nutrients has not been materially changed except by purification or concentration.
9. ~~"Foliar fertilizer" means a fertilizer designed and ordinarily applied directly to growing plant foliage to stimulate further growth.~~
10. "Grade" means the percentages of total nitrogen, available phosphate, and soluble potassium or soluble potash stated in the same terms, order, and percentages as in the "guaranteed analysis". "Guaranteed analysis" means the minimum percentage of plant nutrients claimed.
11. ~~"Inert" means any ingredient not active.~~
- 12.10. "Investigational allowance" means an allowance for variations inherent in the taking, preparation, and analysis of an official sample of fertilizer, soil amendment, or plant amendment.
- 13.11. "Label" means all written, printed, or graphic matter upon or accompanying any fertilizer, fertilizer material, micronutrients, specialty fertilizer, soil amendment, or plant amendment and any printed material or media announcements used in promoting ~~the~~their sale thereof.
- 14.12. "Licensee" means any person licensed by the commissioner to distribute a fertilizer, fertilizer material, micronutrients, specialty fertilizer, soil amendment, or plant amendment.
- 15.13. "Manipulated" means fertilizers, fertilizer materials, micronutrients, specialty fertilizers, soil amendments, or plant amendments that are manufactured, blended, or mixed, or animal or vegetable manures that have been treated in any manner, including mechanical drying, grinding, pelleting, and other means, or by adding other chemicals or substances.
- 16.14. "Micronutrient" means a fertilizer that contains only essential chemical elements that are required at low levels for normal plant growth.
- 17.15. "Mobile mechanical unit" means any portable machine or apparatus used to blend, mix, or manufacture fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, or plant amendments.
- 18.16. "Official sample" means any sample of fertilizer, fertilizer material, micronutrients, specialty fertilizer, soil amendment, or plant amendment, taken by the commissioner and designated as "official" by the commissioner.
- 19.17. "Organic" in reference to fertilizer nutrients refers only to naturally occurring substances generally recognized as the hydrogen compounds of carbon and their derivatives or synthetic products of similar composition with a water insoluble nitrogen content of at least sixty percent of the guaranteed total nitrogen.
- 20.18. "Percent" or "percentage" means the percentage by weight.
- 21.19. "Plant amendment" means a substance applied to plants or seeds which is intended to improve germination, growth, yield, product quality, reproduction, flavor, or other desirable characteristics of plants except fertilizers, unless the fertilizer is represented to contain, as an active ingredient, a substance other than a primary plant nutrient or micronutrient, or is represented as promoting plant growth by supplying something other than a primary plant nutrient or micronutrient.

- ~~22-20.~~ "Plant nutrient" means a nutrient generally recognized as beneficial for plant growth, including nitrogen, phosphorus, potassium, calcium, magnesium, sulfur, boron, chlorine, cobalt, copper, iron, manganese, molybdenum, sodium, and zinc.
- ~~23-21.~~ "Primary plant nutrients" means nitrogen, phosphate, and potash.
- ~~24-22.~~ "Registrant" means the person who registers fertilizers, soil amendments, or plant amendments under the provisions of this chapter.
- ~~25-23.~~ "Sell" when applied to fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, or plant amendments includes:
- a. The act of selling or transferring ownership.
 - b. The offering ~~and exposing~~ for sale, exchange, or distribution.
 - c. Giving away.
 - d. Receiving, accepting, holding, or possessing for sale, exchange, or distribution.
- ~~26.~~ "Small package fertilizer" means ~~fertilizer sold exclusively in packages of twenty-five pounds [11.34 kilograms] or less.~~
- ~~27-24.~~ "Soil amendment" means any substance ~~which~~that is intended to improve the characteristics of the soil except fertilizers, unmanipulated animal manures, unmanipulated vegetable manures, and pesticides. The term includes fertilizer if the fertilizer is represented to contain, as an active ingredient, a substance other than a primary plant nutrient or micronutrient or is represented as promoting plant growth by supplying something other than a primary plant nutrient or micronutrient.
- ~~28-25.~~ "Specialty fertilizer" means a fertilizer distributed primarily for nonfarm use.
- ~~29-26.~~ "Ton" means a net weight of two thousand pounds avoirdupois [907.18 kilograms].

SECTION 2. AMENDMENT. Section 19-20.1-03 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-03. ~~Registration~~Product registration - Fees.

1. Each brand and grade of fertilizer, fertilizer material, foliar fertilizer, micronutrient, specialty fertilizer, soil amendment, or ~~and~~ plant amendment must be registered in the name of the person whose name appears upon the label before being offered for sale or distributed in this state.
2. The application for registration must be submitted to the commissioner on a form furnished by the commissioner and must be accompanied by a:
 - a. A current product label; and
 - b. A fee of fifty dollars. Upon approval by the commissioner, a certificate of registration must be furnished to the applicant. Registrations cover per product.
3. A registration is effective for a two-year period beginning July first and ending June thirtieth of every~~each~~ even-numbered year. ~~Distribution of fertilizer products without prior registration or~~
4. Any request for a registration renewal received after July thirty-first must be assessed a penalty of ~~twenty-five~~one hundred dollars per product. ~~A distributor is not required~~
5. a. This section does not require a distributor to register any brand of fertilizer, soil amendment, or plant amendment that ~~product listed in subsection 1 if that product is~~

already registered under this chapter by another person, providing the label complies with the issued registration. ~~Compost~~

b. ~~This section does not require the registration of compost that is transferred between parties without compensation is exempt from these requirements.~~

6. The agriculture commissioner shall forward all fees received under this section to the state treasurer for deposit in the environment and rangeland protection fund.

SECTION 3. AMENDMENT. Section 19-20.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-03.1. License required – Penalty Distributor's license - Fees.

1. A person may not distribute any fertilizer, ~~fertilizer material, micronutrient, specialty fertilizer,~~ soil amendment, or plant amendment in this state without first obtaining a distributor's license from the commissioner. ~~However, a distributor's license is not required for those distributors selling only specialty fertilizers.~~
2. A license ~~must be obtained~~ is required for each location or mobile mechanical unit used by a distributor in the state.
3. The application for the license must be submitted on a form furnished by the commissioner and must be accompanied by a fee of one hundred dollars.
4. A license ~~covers~~ is effective for a two-year period beginning July first and ending June thirtieth of ~~every~~ each even-numbered year.
5. License renewal applications received after July thirty-first ~~may~~ must be assessed a penalty fee of ~~twenty~~ of one hundred dollars per location. Licenses are
6. A license issued under this section:
 - a. ~~Is not transferable, and each license must;~~
 - b. Must be conspicuously posted at each location; and ~~must accompany~~
 - c. Must be carried in each mobile mechanical unit operating in the state.
7. The requirements of this section do not apply to persons that distribute only:
 - a. Specialty fertilizers; or
 - b. Seed inoculants.
8. The agriculture commissioner shall forward all fees received under this section to the state treasurer for deposit in the environment and rangeland protection fund.

SECTION 4. AMENDMENT. Section 19-20.1-03.4 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-03.4. Guaranteed analysis.

~~Until the commissioner prescribes the alternative form of guaranteed analysis in accordance with the provisions of this section, guaranteed~~

1. Guaranteed analysis must be claimed in the following order and forms follows:
 - 1-a. Total Nitrogen (N) _____ percent;

- b. Available Phosphate (P_2O_5) _____ percent; and
 - c. Soluble Potash (K_2O) _____ percent.
2. ~~For~~In the case of unacidulated mineral phosphatic materials and basic slag, bone, tankage, and other organic phosphatic materials, the total phosphate or degree of fineness, or both, may also be guaranteed.
3. ~~Guarantees~~Rules implemented under this chapter may allow or require guarantees for plant nutrients other than nitrogen, phosphorus, and potassium ~~may be permitted or required by rules adopted by the commissioner. The guarantees for any other nutrients~~
- a. Guarantees under this subsection must be expressed in the form of the element.
 - b. The commissioner may require that the sources of other nutrients, including oxides, salt, and chelates, may be required to be stated on the application for registration and may be included as a parenthetical statement on the label.
 - c. Other beneficial substances or compounds, determinable by laboratory methods, also may be guaranteed by~~with~~ permission of the commissioner ~~and with the advice of~~after consultation with the director of the ~~agricultural experiment station~~North Dakota state university extension service.
4. When any plant nutrients or other substances or compounds are guaranteed, they are subject to inspection and analysis in accord with the methods and rules prescribed by the commissioner.
- 4.5. a. The commissioner ~~may~~, by rule, may require potential basicity or acidity expressed in terms of calcium carbonate equivalent in multiples of one hundred pounds [45.36 kilograms] per ton [907.18 kilograms].
5. b. The guaranteed analysis of a soil amendment or plant amendment must be an accurate statement of composition, including the percentages of each ingredient. If the product is a microbiological product, the number of viable micro-organisms per milliliter for a liquid or the number of viable micro-organisms per gram for a dry product must also be listed.

SECTION 5. AMENDMENT. Section 19-20.1-04 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-04. ~~Labeling~~Label requirement.

4. Any fertilizer, ~~fertilizer material, micronutrient, specialty fertilizer,~~ soil amendment, or plant amendment distributed in this state ~~in containers must have placed on or affixed to the container a label setting forth in clearly legible and conspicuous form the information required by the commissioner~~must be labeled.

1. If the product is in a container, the label must be plainly printed in English and conspicuously placed on or attached to the container. The label must include:
 - a. The net weight;
 - b. The brand;
 - c. The grade, unless no primary nutrients are claimed;
 - d. The guaranteed analysis; and
 - e. The name and address of the registrant.

2. ~~If the product is distributed in bulk, a written or printed statement showing the net weight, brand and grade, guaranteed analysis, name and address of the distributor, and the sources from which the nitrogen, phosphorus, and potassium are derived~~document providing the same information required in subsection 1 must accompany the delivery and be supplied to the purchaser provided to the end user at the time of delivery.
3. A fertilizer formulated according to specifications that are furnished by a consumer prior to mixing must be labeled to show the net weight, the guaranteed analysis or number of pounds [kilograms] amount of each plant nutrient it contains in pounds [kilograms], and the name and address of the distributor.
4. The commissioner may require the labels of specialty fertilizer sold in packages of fifty pounds [22.68 kilograms] or more, or sold in bulk, to contain the prominent statement "Not intended for farm use"registrant.

SECTION 6. AMENDMENT. Section 19-20.1-06 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-06. Inspection fees and tonnage - Tonnage reports - Penalty.

1. a. ~~There~~An inspection fee in the amount of twenty cents per ton [907.18 kilograms] must be paid to the commissioner for on all fertilizers fertilizer, fertilizer material, micronutrients, specialty fertilizer, soil amendments, or and plant amendments distributed in this state an inspection fee at the rate of twenty cents per ton [907.18 kilograms]. The inspection fee may not be less than ten dollars. Sales to manufacturers
- b. This subsection does not apply to:
 - (1) Manufacturers, distributors, or exchanges of product between them are exempt from the inspection fee. Fees collected under this section must be forwarded to the state treasurer for deposit in the environment and rangeland protection fund.

Individual packages of, or

- (2) Individual fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, or plant amendments sold exclusively in packages of twenty-five pounds [11.34 kilograms] or less are exempt from the provisions of this section. If a person sells fertilizer, soil amendments, or plant amendments in packages of twenty-five pounds [11.34 kilograms] or less and in packages over twenty-five pounds [11.34 kilograms], that portion sold in packages over twenty-five pounds [11.34 kilograms] is subject to the same inspection fee of twenty cents per ton [907.18 kilograms], including the minimum ten dollar fee, as provided in this chapter.
2. a. ~~Every~~On or before January thirty-first, each licensed person who distributes a fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment to a nonlicensed person an end user in this state shall file with the commissioner, on forms furnished by the commissioner, an annual statement for the calendar year, setting forth:
 - (1) File with the commissioner a form stating the number of net tons [kilograms] of each fertilizer, soil amendment, or plant amendment sold listed product distributed in this state during the period. A licensed end user shall report all sales and purchases and pay the appropriate tonnage tax. The statement is due on or before January thirty-first of the following year. The person filing the statement shall pay the inspection fee at the rate stated in this section. If the tonnage statement is not filed and the payment of inspection fee is not made by January thirty-first, a collection fee amounting to ten percent, minimum ten dollars, of the amount must be

~~assessed against the licensee, and the amount of fees due constitute a debt and become the basis of a judgment against the licensee preceding calendar year; and~~

- (2) Submit to the commissioner the inspection fee required by this section.
- b. If a person fails to submit an inspection fee, at the time and in the manner required by this section, the commissioner may impose a penalty equal to ten percent of the amount due. The penalty must be equal to at least ten dollars.
3. a. On or before January thirty-first, each licensed person that distributes a fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment to a licensed entity in this state shall file with the commissioner a form stating the number of net tons [kilograms] of each listed product distributed in this state during the preceding calendar year.
b. If a person fails to file the form, at the time and in the manner required by this subsection, the commissioner may impose a late fee of thirty-five dollars.
4. Each distributor shall keep all records regarding purchases and sales for a period of three years. The records may be examined by the commissioner upon request.
5. The agriculture commissioner shall forward all fees received under this section to the state treasurer for deposit in the environment and rangeland protection fund.

SECTION 7. AMENDMENT. Section 19-20.1-08 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-08. Inspection, sampling, analysis.

1. ~~The commissioner shall~~In order to determine compliance with this chapter and rules implemented under this chapter, the commissioner may enter upon real property and access any structure and personal property, during regular business hours, to sample, inspect, make analyses of, and test fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, and plant amendments distributed within this state at any time and place and to such an extent as the commissioner may deem necessary to determine whether these products are in compliance with this chapter. ~~The commissioner is authorized to enter upon any public or private premises or carriers during regular business hours in order to have access to products subject to this chapter and the rules adopted under this chapter.~~
2. The methods of analysis and sampling must be those adopted by the commissioner from sources such as the ~~A.O.A.C. journal~~ Journal of the AOAC. In cases not covered by these methods, or if methods are available in which improved applicability has been demonstrated, the commissioner may adopt appropriate methods from other sources.
3. ~~In sampling a lot of fertilizer, a~~ A single package may constitute the an official sample. ~~The commissioner, in~~ In determining for administrative purposes whether any fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment is deficient, the commissioner must be guided solely by the commissioner's analysis of the official sample obtained and analyzed by the commissioner. The
4. ~~If the results of the commissioner's official analysis of any~~ indicate that a fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment that has been found to may be the subject of a penalty or other legal action ~~must be forwarded by, the commissioner shall forward the analysis to the registrant at least ten days before the report is submitted to the purchaser. If during that period no adequate evidence to the contrary is made available to the commissioner, the report becomes official. Official~~

5. ~~The commissioner shall retain any official samples found to be deficient must be retained by the commissioner for thirty days from issuance of the analytical report.~~
6. Upon request, the commissioner shall furnish to the registrant a portion of any sample found to be the subject ~~to of~~ a penalty or other legal action.

SECTION 8. AMENDMENT. Section 19-20.1-10 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-10. Misbranding.

1. ~~A person may not distribute a misbranded fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment. For purposes of this section, a fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment is misbranded if false:~~
 - a. ~~False or misleading statements concerning the product are disseminated in any manner or by any means, if it;~~
 - b. ~~The product carries a false or misleading statement on the label or labeling, if it;~~
 - c. ~~The product is distributed under the name of another product, if it;~~
 - d. ~~The product is not labeled as required by section 19-20.1-04 and in accordance with rules adopted this chapter or rules implemented under this chapter, and if it; or~~
 - e. ~~The product purports to be or is represented as a fertilizer, or is represented as containing a plant nutrient or fertilizer unless the plant nutrient or fertilizer conforms to the definition of identity, if any, prescribed by in rule of by the commissioner.~~
2. In adopting these rules, the commissioner shall give due regard to commonly accepted definitions and official fertilizer terms such as those issued by the association of American plant food control officials. ~~It is unlawful to distribute a misbranded fertilizer, soil amendment, or plant amendment.~~

SECTION 9. AMENDMENT. Section 19-20.1-11 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-11. Publications.

The commissioner may publish in the forms ~~the commissioner determines proper:~~

1. Information concerning the distribution of fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, and plant amendments; and
2. Results of analyses based on official samples of fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, and plant amendments distributed within the state as compared with the analyses guaranteed under sections 19-20.1-03 and 19-20.1-04.

SECTION 10. AMENDMENT. Section 19-20.1-12 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-12. Rules.

For the enforcement of this chapter, the commissioner ~~is authorized to may~~ adopt and enforce rules relating to investigational allowances, definitions, records, licensing, inspection, analysis, labeling, storage, and distribution of fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, and plant amendments as necessary to carry into effect the full intent and meaning of this chapter.

SECTION 11. AMENDMENT. Section 19-20.1-13 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-13. Deficiencies.

1. A product is deficient if one or more of its guaranteed primary plant nutrients or other guaranteed active ingredients falls below the investigational allowances and compensations as established by rule or if the overall index value of the fertilizer is shown below the level established by rule.
2. A deficiency in an official sample of mixed fertilizer resulting from nonuniformity is not distinguishable from a deficiency due to actual plant nutrient shortage and is properly subject to official action.
3. For the purpose of determining the commercial index value to be applied, the commissioner shall determine at least annually the values per unit of nitrogen, available phosphate, and soluble potash in fertilizers in this state.
4. If any fertilizer, fertilizer material, micronutrients, specialty fertilizer, soil amendment, or plant amendment in the possession of the consumer is found by the commissioner to be short in weight, the registrant of the product shall within thirty days after official notice from the commissioner pay to the consumer a penalty equal to four times the value of the actual shortage.

SECTION 12. AMENDMENT. Section 19-20.1-14 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-14. Cancellation of registrations.

1. The commissioner may cancel the registration of any brand of fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment ~~and, may cancel the license of any distributor or, may refuse to register any brand of fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment or, and may refuse to license any distributor as herein provided,~~ upon satisfactory evidence that the registrant, licensee, or distributor ~~has used fraudulent or deceptive practices in the evasions or attempted evasions of the provisions of this chapter or any rules adopted~~implemented under this chapter. ~~No~~
2. ~~The commissioner may not refuse a registration or revoke a license may be revoked or refused without first providing an opportunity for a hearing given by the commissioner.~~

SECTION 13. AMENDMENT. Section 19-20.1-15 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-15. Stop-sale orders.

~~The commissioner may issue and enforce a written or printed a "stop-sale, use, or removal" order to the owner or custodian of any lot of fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment and an order to hold at a designated place when, if the commissioner finds the fertilizer, soil amendment, or plant amendment that the product is being offered or exposed for sale in violation of this chapter or a rule adopted implemented under this chapter until the law or rule has been complied with and the fertilizer, soil amendment, or plant amendment is released in writing by the commissioner or the violation has been otherwise legally disposed by written authority. The commissioner shall release the fertilizer, soil amendment, or plant amendment so withdrawn when the requirements of this chapter and the rules adopted under this chapter have been complied with and all costs and expenses incurred in connection with the withdrawal have been paid. The order must remain in effect until the commissioner:~~

1. Determines that the violation has been corrected;
2. Has given written authorization for the disposal of the product; or
3. Has given written authorization for the product to be offered for sale.

SECTION 14. AMENDMENT. Section 19-20.1-16 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-16. Seizure, condemnation, and sale.

1. Any lot of fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment, not in compliance with this chapter and the rules ~~adopted~~underimplementing this chapter, is subject to seizure on complaint of the commissioner to the district court ~~in~~of the county in which the ~~fertilizer, soil amendment, or plant amendment~~product is located. ~~In the event~~
2. ~~If the court finds the fertilizer, soil amendment, or plant amendment~~product to be in violation of this chapter or a rule ~~adopted~~underimplementing this chapter and orders its condemnation, it must be disposed of in any manner consistent with the quality of the ~~fertilizer, soil amendment, or plant amendment~~product and the laws of the state. ~~In no instance may the~~
3. A court may not order disposition of the fertilizer, soil amendment, or plant amendment ~~be ordered by the court~~product without first giving the claimant an opportunity to apply to the court for its release of the fertilizer, soil amendment, or plant amendment or for permission to process or relabel the fertilizer, soil amendment, or plant amendment~~product~~ in order to bring it into compliance with this chapter and the rules ~~adopted~~underimplementing this chapter.

SECTION 15. AMENDMENT. Section 19-20.1-17 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-17. Violations - ~~Penalty~~Criminal penalty.

1. If it appears from the examination of any fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment that ~~any of the provisions of this chapter or the rules adopted~~underimplementing this chapter have been violated, the commissioner shall cause notice of the violations to be given to the registrant, licensee, manufacturer, distributor, or possessor from whom the sample was taken. Any person so notified must be given an opportunity to be heard ~~under rules adopted by the commissioner.~~ If it appears after the hearing, either in the presence or absence of the person so notified, that ~~any of the provisions of this chapter or rules adopted~~underimplementing this chapter have been violated, the commissioner may certify the facts to the proper prosecuting attorney.
2. Any person ~~convicted of violating~~that violates this chapter or the rules ~~adopted~~underimplementing this chapter or ~~who~~that impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the commissioner in the performance of the commissioner's duty ~~in connection with this chapter or the rules adopted under this chapter~~ is guilty of a class A misdemeanor.
3. In all prosecutions under this chapter involving the composition of a lot of fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, or plant amendments, a certified copy of the official analysis signed by the person performing the analysis or that person's assigned agent must be accepted as prima facie evidence of the composition.
- ~~3.4.~~ Nothing ~~in this chapter may be construed as requiring the~~The commissioner is not required to report for prosecution or ~~for the institution of~~institute seizure proceedings ~~as a result of~~ or for minor violations of the chapter ~~when~~if the commissioner believes that the public ~~interests~~interest will be best served by a suitable notice ~~of~~written warning in writing.

4. ~~It is the duty of each state's attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.~~
5. The commissioner may apply for and the court may grant a temporary or permanent injunction restraining any person from violating or continuing to violate this chapter or any rule ~~adopted~~ underimplementing this chapter, notwithstanding the existence of other remedies at law. An injunction under this section must be issued without bond.

SECTION 16. Section 19-20.1-17.1 of the North Dakota Century Code is created and enacted as follows:

19-20.1-17.1. Violations - Civil penalty.

Any person that violates this chapter or a rule implementing this chapter is subject to a civil penalty in an amount up to two thousand five hundred dollars per violation. The civil penalty may be imposed by a court or by the agriculture commissioner in an administrative hearing.

SECTION 17. AMENDMENT. Section 19-20.1-18 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-18. Exchanges between manufacturers.

Nothing in this chapter may be construed to restrict or avoid sales or exchanges of fertilizers, fertilizer materials, micronutrients, specialty fertilizers, soil amendments, or plant amendments to each other by importers, manufacturers, or manipulators who mix fertilizers, fertilizer materials, micronutrients, specialty fertilizers, soil amendments, or plant amendments for sale or as preventing the free and unrestricted shipments of fertilizer, fertilizer materials, micronutrients, specialty fertilizers, soil amendments, or plant amendments to manufacturers or manipulators who have registered their brands as required by this chapter.

SECTION 18. REPEAL. Sections 19-20.1-01, 19-20.1-03.3, 19-20.1-05.1, 19-20.1-07, and 19-20.2-11 of the North Dakota Century Code are repealed.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-third Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1227.

House Vote: Yeas 88 Nays 5 Absent 1

Senate Vote: Yeas 46 Nays 0 Absent 1

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2013.

Approved at _____ M. on _____, 2013.

Governor

Filed in this office this _____ day of _____, 2013,

at _____ o'clock _____ M.

Secretary of State