

No. 1, A.]

[Published August 10, 1951.

Corrected Copy.]

CHAPTER 516.

AN ACT to repeal and recreate 94.67 to 94.71; to create 20.60 (13), 93.06 (1) (f), (9), (10), and (11) and 93.07 (23) (e); and to amend 146.20 (1) (c) and (2) and 151.04 (2) and (3) of the statutes, relating to the distribution, sale or transportation of economic poisons; providing for registration and examination of such materials; imposing penalties; and making an appropriation.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 20.60 (13) of the statutes is created to read:

20.60 (13) REGISTRATION FEES FOR ECONOMIC POISONS. All moneys collected under section 94.68 shall be paid within one week of receipt into the general fund and are appropriated therefrom to the department of agriculture as a nonlapsible appropriation for the administration of sections 94.67 to 94.71.

SECTION 2. 93.06 (1) (f), (9), (10) and (11) of the statutes are created to read:

93.06 (1) (f) Information regarding products and situations which are the subject of laws under its supervision which may involve imminent danger to health or gross deception of the consumer.

(9) INVESTIGATIONS. Collect, report and illustrate the results of investigations.

(10) WARNING NOTICES. Dispose of minor violations of the laws under its supervision without prosecution by issuing written notice or warning whenever it appears that the public interest will be adequately protected.

(11) INTERAGENCY CO-OPERATION. Co-operate with, and enter into agreements with, any agency of this state, other states, or of the United States for the purpose of carrying out its functions, and securing uniformity of regulations.

SECTION 3. 93.07 (23) (c) of the statutes is created to read:

93.07 (23) (c) To record and publish in its biennial report a summary of its activity in enforcing the laws under its supervision, showing the charge, action taken, disposition, and also all warnings issued.

SECTION 4. 94.67 to 94.71 of the statutes are repealed and recreated to read:

94.67 ECONOMIC POISONS: DEFINITIONS. In sections 94.67 to 94.71: (1) "Economic poison" means:

(a) Any substance or mixture of substances labeled, designed or intended for use in preventing, destroying, repelling, or mitigating any insects, rodents, predatory animals, fungi, nematodes, weeds, and other forms of plant or animal life or viruses which the department declares a pest, and

(b) Any substance or mixture of substances labeled, designed or intended to change the structure, function or maturity of any plants.

(2) "Insecticide" means any substance or mixture of substances labeled, designed or intended for use in preventing, destroying, repelling, or mitigating insects in any state of development.

(3) "Fungicide" means any substance or mixture of substances labeled, designed, or intended for use in preventing, destroying, repelling, or mitigating any fungi.

(4) "Rodenticide" means any substance or mixture of substances labeled, designed, or intended for use in preventing, destroying, repelling, or mitigating rodents or any other vertebrate animal which the department declares a pest.

(5) "Herbicide" means any substance or mixture of substances labeled, designed, or intended for use in preventing, destroying, repelling, or mitigating any weed.

(6) "Nematocide" means any substance or mixture of substances labeled, designed, or intended for use in preventing, destroying, repelling, or mitigating any worms belonging to the class Nematoda, including roundworms, pinworms, trichinae and Guinea worms.

(7) "Insect" means a small invertebrate animal generally having the body more or less obviously segmented, for the most part belonging to the class Insecta, comprising 6-legged, usually winged forms, and includes beetles, bugs, bees, flies, moths and other allied classes of arthropods whose members are wingless and usually have more than 6 legs, including spiders, mites, ticks, centipedes, and wood lice.

(8) "Fungi" means any nonchlorophyll-bearing thallophytes (any nonchlorophyll-bearing plants of a lower order than mosses and liverworts) and includes rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other animals.

(9) "Weed" means any plant which grows where not wanted.

(10) The terms "ingredient statement" means either:

(a) A statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the economic poison; or

(b) A statement of the name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any there be, in the economic poison (except option (a) shall apply to all agricultural poisons and to all economic poisons which are highly toxic to man, determined as provided in 94.69 (2)); and, in addition to (a) or (b) in case the economic poison contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, each calculated as elemental arsenic.

(11) "Active ingredient" means any ingredient which will prevent, destroy, repel, or mitigate insects, fungi, nematodes, rodents, predatory animals, weeds, or other pests, or which will change the structure, function or maturity of plants.

(12) "Inert ingredient" means an ingredient which is not an active ingredient.

(13) "Registrant" means the person registering any economic poison pursuant to the provisions of section 94.68.

(14) "Label" means the written, printed, or graphic matter on, or attached to, the economic poison or the immediate container thereof, or the outside container or wrapper of the retail package.

(15) "Labeling" includes all labels as defined in subsection (14) and written, printed, or graphic matter accompanying the economic poison at any time, or such matter to which reference is made on the label or in literature accompanying the economic poison, except current official publications of any public agency authorized by law to conduct research in the field of economic poisons, and accurate, nonmisleading references thereto.

94.675 ECONOMIC POISONS: ADULTERATION. An economic poison is "adulterated":

(1) If the strength or purity falls below the standard or quality expressed on labeling or under which it is sold;

(2) If any substance has been substituted wholly or in part for the articles;

(3) If any valuable constituent of the article has been wholly or in part abstracted.

94.676 ECONOMIC POISONS: MISBRANDING. An economic poison is "misbranded":

(1) If its labeling bears any statement, design, or graphic representation relative thereto, or to its ingredients, which is false or misleading in any particular;

(2) If it is an imitation of or is offered for sale under the name of another economic poison;

(3) If the labeling bears any reference to registration under this act;

(4) If the labeling does not contain instructions for use which are necessary for effective results and which, if complied with, are adequate for the protection of the user and public;

(5) If the label does not contain a warning or caution statement which, if complied with, is adequate to prevent injury to man and vertebrate animals;

(6) If the label does not bear an ingredient statement on the immediate container, and also on the outside container or wrapper, (if there is one through which the ingredient statement on the immediate container cannot be clearly read);

(7) If any words, statement, or other information required by or under the authority of this act appear on the labeling, is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

94.68 ECONOMIC POISONS: REGISTRATION. (1) Every economic poison which is distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point

outside this state shall be registered annually in the office of the department; such registration expires on December 31 of each year, but in the discretion of the department, a change in the labeling or formulas of an economic poison may be made within the current period of registration, without requiring a re-registration of the product. Registration is not required for an economic poison shipped from one plant within this state to another plant within this state operated by the same person.

(2) The registrant shall file with the department a statement including:

(a) The name and address of the registrant which will appear on the label, as manufacturer, packer or dealer;

(b) The name of the economic poison;

(c) A complete copy of the labeling accompanying the economic poison and a statement of all claims made and to be made for it and a statement of directions for use; and

(d) If requested by the department, the complete formula and a full description of the tests made and the results thereof upon which the claims are based. In the case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the product was last registered.

(3) Each calendar year, the registrant shall pay a fee of \$10 for each economic poison registered. After any registrant has paid fees aggregating \$100 in any calendar year, no fee shall be required for the registration of additional brands.

(4) If it appears to the department that the proposed claims for the product are correct, and if the product and its labeling and other material required to be submitted comply with the requirements of sections 94.67 to 94.71, the department shall register the product.

(5) If it appears to the department that the proposed claims for the product are not correct, or if the product and its labeling and other material required to be submitted do not comply with the provisions of sections 94.67 to 94.71, the department shall refuse to register the product but shall notify the registrant of the reasons for refusal, so as to afford the registrant an opportunity to make the necessary corrections.

(6) The department may, for cause at any time, after written notice to the registrant, cancel the registration.

94.69 ECONOMIC POISONS: DEPARTMENTAL REGULATIONS. The department is authorized, after public hearing:

(1) To declare as a pest any form of plant or animal life or virus which is injurious to plants, men, animals or substances;

(2) To determine whether economic poisons are highly toxic to man;

(3) To determine standards of coloring or discoloring for economic poisons; and

(4) To make appropriate regulations for carrying out the provisions of sections 94.67 to 94.71 including provisions for the collection and examination of samples.

94.70 ECONOMIC POISONS: PROHIBITED ACTS. (1) No person shall distribute, sell, offer for sale or deliver for transportation or transport in intrastate commerce or between points within this state through any point outside this state any economic poison:

(a) Which has not been registered pursuant to the provisions of section 94.68;

(b) About which claims are made, or directions for use are given, which differ in substance from the representations made in connection with its registration;

(c) Which differs in composition from the composition represented in connection with its registration;

(d) Unless it is in registrant's unbroken immediate container, and there is affixed to such container and to the outside container or wrapper of the retail package, (if there is one through which the required information on the immediate container cannot be clearly read) a label stating: the name and address of the registrant, and his designation as manufacturer, packer or dealer; the name, brand or trade-mark of the economic poison; the minimum net weight or measure of the contents.

(e) Which contains any substance in quantities highly toxic to man, determined as provided in section 94.69, unless the label bears in addition to any other required matter; the skull and crossbones; the word "poison" prominently, in red, on a background of distinct contrasting color; and a statement of an antidote for the poison, which means the most practical immediate treatment in case of poisoning.

(f) Which the department by regulation, requires to be distinctly colored, unless it has been so colored; but the department may exempt any economic poison to the extent that such coloring for specific uses is not necessary for the protection of the public health or safety.

(g) Which is adulterated or misbranded.

(2) The prohibitions of subsection (1) shall not apply to:

(a) Any carrier while engaged in transporting an economic poison within this state, if such carrier permits the department on request to copy all records showing the transactions in and movement of the products.

(b) Public officials of this state and the federal government engaged in the performance of their official duties.

(c) The manufacturer or shipper of an economic poison which is to be used experimentally:

1. By or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of economic poisons; or

2. By others if the economic poison is not sold and if the container thereof is plainly and conspicuously marked "For experimental use only—Not to be sold", together with the manufacturer's name and address. If a written permit is obtained from the department, an economic poison may be sold for experimental purposes subject to such restrictions and conditions as are set forth in the permit.

(d) Articles consigned for shipment to another state or for export to a foreign country, if prepared or packed according to the specifications or directions of the purchaser.

(3) No person shall:

(a) Detach, alter, deface or destroy, in whole or in part, any label or labeling provided for in sections 94.67 to 94.71, or by regulations promulgated thereunder, or add any substance to, or take any substance from, an economic poison in a manner that may defeat the purpose of those sections.

(b) Use for his own advantage or reveal, other than to the department or proper officials or employes of the state or to the courts of this state in response to a subpoena, or to physicians, or in emergencies to pharmacists and other qualified persons, for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of section 94.68.

94.71 ECONOMIC POISONS: PENALTIES; ENFORCEMENT. (1) PENALTIES. Whoever violates sections 94.68 to 94.71 or regulations made pursuant thereto shall be fined not less than \$100 nor more than \$200 or imprisoned not more than 30 days, or both. For any subsequent offense the fine shall be not less than \$200 nor more than \$500, and the imprisonment not less than 30 days nor more than 90 days, or both. Any offense committed more than 5 years after a previous conviction shall be considered a first offense.

(2) SEIZURES. If the department has reasonable cause to believe that any economic poison is in violation of the provisions of sections 94.67 to 94.71, it may deliver to the owner or custodian thereof an order prohibiting the sale or movement of such economic poison until an analysis or examination has been completed. Such holding order shall not be effective for more than 14 days from the time of delivery thereof. The economic poison described in any such holding order shall not be sold or moved for any purpose without the approval of the department. If the department, after analysis or examination, determines that the economic poison described in such order is not in violation of any of the provisions of sections 94.67 to 94.71, it shall promptly notify by registered mail the owner or custodian thereof and such notice shall terminate the holding order. If the analysis or examination shows that the economic poison is in violation of the provisions of sections 94.67 and 94.71, the owner or custodian thereof shall be so notified by registered mail within the effective time of the holding order; upon receipt of such notice the owner or custodian may dispose of the economic poison only in a manner authorized by the department; the owner or custodian may within 10 days of receipt of such notice petition for a hearing as provided in section 93.18.

(3) ENFORCEMENT. Examination of economic poisons shall be made under the direction of the department for the purpose of determining whether they comply with the requirements of this act. The department or any person may refer the facts to the district attorney for the county in which the violation shall have occurred.

SECTION 5. 146.20 (1) (c) and (2) of the statutes are amended to read:

146.20 (1) (c) Before delivery * * * he shall record in a book kept for that purpose, the name of the article, the quantity, the purpose, the date, the name and address of the person for whom procured, and the name of the individual personally dispensing the same; and said book shall be preserved by the owner thereof for at least 3 years after the date of the last entry therein, and shall be open to inspection by authorized officers.

(2) This section does not apply to manufacturers and wholesalers selling at wholesale * * *, nor to economic poisons which comply with sections 94.67 to 94.71, but * * * containers other than for economic poisons shall be labeled with the name of the substance, the word "Poison," and the name and address of the manufacturer or wholesaler.

SECTION 6. 151.04 (2) and (3) of the statutes are amended to read:

151.04 (2) No person shall sell, give away, barter, compound or dispense drugs, medicines or poisons, * * * nor permit it, in a town, village or city with a population of 500 or more * * * unless he be a registered pharmacist, nor institute nor conduct a place therefor without a registered pharmacist in charge, except that a registered assistant pharmacist may do so under the personal supervision of a registered pharmacist, and may

have charge during the pharmacist's necessary absence, not to exceed 10 days. If the * * * population is less than 500, only a registered assistant pharmacist is required.

(3) This shall not interfere with the dispensing of drugs, medicines or other articles by physicians, nor with the sale of proprietary medicines in sealed packages, labeled to comply with the federal and state pure food and drug law, with directions for using, and the name and location of the manufacturer, nor with the sale of economic poisons for use in * * * industrial arts, * * * *nor with the sale of economic poisons which comply with sections 94.67 to 94.71*, nor with the sale of alum, ammonia, borax, bay rum, bicarbonate of soda, cream of tartar, concentrated lye, olive oil, sal ammoniac, sal soda, sulphur, copperas, epsom salts, glauber salts, castor oil, glycerine, senna leaves, indigo, blue vitriol, turpentine, wood alcohol and denatured alcohol.

SECTION 7. Sections 94.70 and 94.71 (1) and (2) shall take effect 6 months after publication of this act. All other provisions shall take effect immediately.

Approved July 5, 1951.
