

FOODS, DRUGS, OILS, AND COMPOUNDS

CHAPTER 213

HOUSE BILL NO. 1096

(Industry, Business and Labor Committee)
(At the request of the State Board of Pharmacy)

PHARMACY PRACTICE

AN ACT to amend and reenact subdivision e of subsection 1 of section 19-02.1-14.1, subsection 4 of section 19-02.1-15, subdivision a of subsection 23 of section 19-03.1-01, subsection 6 of section 19-03.1-05, subsection 4 of section 19-03.1-09, subsections 4 and 6 of section 19-03.1-11, subsection 1 of section 19-03.1-22, and subsection 26 of section 43-15-01 of the North Dakota Century Code, relating to the practice of pharmacy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision e of subsection 1 of section 19-02.1-14.1 of the North Dakota Century Code is amended and reenacted as follows:

- e. "Prescription drug" means ~~any~~ a drug defined by section 503(b) of the federal act, and under which definition its label is required to bear the statement "Caution: Federal law prohibits dispensing without prescription-" or "Rx Only".

SECTION 2. AMENDMENT. Subsection 4 of section 19-02.1-15 of the North Dakota Century Code is amended and reenacted as follows:

4. A drug which is subject to subsection 1 must be deemed to be misbranded if at any time prior to dispensing its label fails to bear the statement "Caution: Federal Law Prohibits Dispensing Without Prescription", "Rx Only", or "Caution: State Law Prohibits Dispensing Without Prescription". A drug to which subsection 1 does not apply must be deemed to be misbranded if at any time prior to dispensing its label bears the caution statement quoted in the preceding sentence.

SECTION 3. AMENDMENT. Subdivision a of subsection 23 of section 19-03.1-01 of the North Dakota Century Code is amended and reenacted as follows:

- a. A physician, dentist, veterinarian, pharmacist, scientific investigator, or other person licensed, registered, or otherwise permitted by the jurisdiction in which the individual is practicing to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research ~~in this state~~.

SECTION 4. AMENDMENT. Subsection 6 of section 19-03.1-05 of the North Dakota Century Code is amended and reenacted as follows:

6. Depressants. Unless specifically excepted or unless listed in another schedule, any material compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
 - a. Flunitrazepam.
 - b. Gamma-hydroxybutyric acid.
 - c. Mecloqualone.
 - ~~e.~~ d. Methaqualone.

SECTION 5. AMENDMENT. Subsection 4 of section 19-03.1-09 of the North Dakota Century Code is amended and reenacted as follows:

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

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

SECTION 6. AMENDMENT. Subsections 4 and 6 of section 19-03.1-11 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

- 4. Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances, including their salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:
 - a. Alprazolam.
 - b. Barbital.
 - c. Bromazepam.
 - d. Butorphanol.
 - e. Camazepam.
 - f. Chloral betaine.
 - g. Chloral hydrate.
 - h. Chlordiazepoxide.

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

- kk. Oxazepam.
 - ll. Oxazolam.
 - mm. Paraldehyde.
 - nn. Petrichloral.
 - oo. Phenobarbital.
 - pp. Pinazepam.
 - qq. Prazepam.
 - rr. Quazepam.
 - ss. Sibutramine.
 - tt. Temazepam.
 - uu. Tetrazepam.
 - vv. Triazolam.
 - ww. Zaleplon.
 - xx. Zolpidem.
6. Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:
- a. Cathine.
 - b. Diethylpropion.
 - c. Fencamfamin.
 - d. Fenproporex.
 - e. Mazindol.
 - f. Mefenorex.
 - g. Modafinil.
 - h. Pemoline (including organometallic complexes and chelates thereof).
 - ~~h~~ i. Phentermine.
 - ~~h~~ j. Pipradrol.
 - ~~j~~ k. SPA ((-)-1-dimethylamino-1, 2-diphenylethane).

SECTION 7. AMENDMENT. Subsection 1 of section 19-03.1-22 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in schedule II may be dispensed without the written prescription of a practitioner. When the patient is a hospice patient or resides in a licensed long-term care facility and the prescription has been signed by the practitioner before faxing, the facsimile may serve as the original prescription without another signature.

¹¹² **SECTION 8. AMENDMENT.** Subsection 26 of section 43-15-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26. "Prescription drug or legend drug" means a drug which, under federal law is required, prior to being dispensed or delivered, to be labeled with ~~either~~ one of the following:
 - a. "Caution: Federal law prohibits dispensing without prescription"; ~~or~~
 - b. "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian"; or
 - c. "Rx only";

or a drug which is required by any applicable federal or North Dakota law or ~~regulation~~ rule to be dispensed on prescription only or is restricted to use by practitioners only.

Approved March 12, 2001
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¹¹² Section 43-15-01 was also amended by section 1 of Senate Bill No. 2350, chapter 375.

CHAPTER 214

SENATE BILL NO. 2444

(Senators G. Nelson, Lyson, C. Nelson)
(Representatives Carlisle, DeKrey, Mahoney)

DRUG LAW VIOLATIONS

AN ACT to create and enact section 19-03.1-22.1, a new subsection to section 19-03.1-37, and chapter 19-03.4 of the North Dakota Century Code, relating to volatile chemicals and drug paraphernalia; to amend and reenact section 12.1-32-09, subsection 1 of section 15.1-24-05, subsection 7 of section 19-03.1-23, section 19-03.1-23.2, subsection 6 of section 19-03.1-36, and subsection 4 of section 19-03.1-37 of the North Dakota Century Code, relating to drug offenses and enhanced sentencing; to repeal section 12.1-31-06 and chapter 12.1-31.1 of the North Dakota Century Code, relating to volatile chemicals and drug paraphernalia; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-32-09 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-09. Dangerous special offenders - Habitual offenders - Extended sentences - Procedure.

1. A court may sentence a convicted offender to an extended sentence as a dangerous special offender or a habitual offender in accordance with ~~the provisions of~~ this section upon a finding of any one or more of the following:
 - a. The convicted offender is a dangerous, mentally abnormal person. ~~The court may not make such a finding unless the presentence report, including a psychiatric examination, concludes that the offender's whose~~ conduct has been characterized by persistent aggressive behavior; and ~~that such the~~ behavior makes the offender a serious danger to other persons.
 - b. The convicted offender is a professional criminal. ~~The court may not make such a finding unless the offender is an adult and the presentence report shows that the offender who~~ has substantial income or resources derived from criminal activity.
 - c. The convicted offender is a habitual offender. The court may not make such a finding unless the offender is an adult and has previously been convicted in any state or states or by the United States of two felonies of class C or above committed at different times when the offender was an adult. For the purposes of this subdivision, a felony conviction in another state or under the laws of the United States ~~shall be~~ is considered a felony of class C or above if it is punishable by a maximum term of imprisonment of five years or more.

- d. The offender was convicted of an offense ~~which~~ that seriously endangered the life of another person and the offender had previously been convicted of a similar offense.
- e. The offender is especially dangerous because the offender used a firearm, dangerous weapon, or destructive device in the commission of the offense or during the flight therefrom.

A conviction shown on direct or collateral review or at the hearing to be invalid or for which the offender has been pardoned on the ground of innocence must be disregarded for purposes of subdivision c. In support of findings under subdivision b, it may be shown that the offender has had control of income or property not explained as derived from a source other than criminal activity. For purposes of subdivision b, a substantial source of income means a source of income which for any period of one year or more exceeds the minimum wage, determined on the basis of a forty-hour week and a fifty-week year, without reference to exceptions, under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, for an employee engaged in commerce or in the production of goods for commerce, and which for the same period exceeds fifty percent of the offender's declared adjusted gross income under chapter 57-38.

2. The extended sentence may be imposed in the following manner:
 - a. If the offense for which the offender is convicted is a class A felony, the court may impose a sentence up to a maximum of life imprisonment.
 - b. If the offense for which the offender is convicted is a class B felony, the court may impose a sentence up to a maximum of imprisonment for twenty years.
 - c. If the offense for which the offender is convicted is a class C felony, the court may impose a sentence up to a maximum of imprisonment for ten years.
3. Whenever an attorney charged with the prosecution of a defendant in a court of this state for an alleged felony committed when the defendant was over the age of eighteen years has reason to believe that the defendant is a dangerous special offender or a habitual offender, the attorney, at a reasonable time before trial or acceptance by the court of a plea of guilty, may sign and file with the court, and may amend, a notice specifying that the defendant is a dangerous special offender or a habitual offender who upon conviction for the felony is subject to the imposition of a sentence under subsection 2, and setting out with particularity the reasons why the attorney believes the defendant to be a dangerous special offender or a habitual offender. In no case may the fact that the prosecuting attorney is seeking sentencing of the defendant as a dangerous special offender or a habitual offender be disclosed to the jury before a verdict. If the court finds that the filing of the notice as a public record may prejudice fair consideration of a pending criminal matter, ~~it~~ the court may order the notice sealed and the notice ~~shall~~ is not ~~be~~ subject to subpoena or public inspection during the pendency of ~~such~~ the criminal matter, except on order of the court, but ~~shall be~~ is

subject to inspection by the defendant alleged to be a dangerous special offender or a habitual offender and the offender's counsel.

4. Upon any plea of guilty, or verdict or finding of guilt of the defendant of such felony, a hearing must be held, before sentence is imposed, ~~by the court sitting without a jury.~~ in accordance with this subsection as follows:
 - a. By a jury, or the court if a jury is waived by the defendant, if the notice alleges that the defendant is a dangerous special offender under subdivision a, b, d, or e of subsection 1. The jury, or the court if a jury is waived, must find that the defendant is a dangerous special offender under one or more of these subdivisions by proof beyond a reasonable doubt. However, in the case of a notice alleging only subdivision e of subsection 1, the trial jury, or the trial court if a jury is waived, may make a special finding of proof of this subdivision without an additional hearing subsequent to a verdict or finding of guilt.
 - b. By the court if the notice alleges that the defendant is a habitual offender under subdivision c of subsection 1. The court must find that the defendant is a habitual offender by a preponderance of the evidence.
5. Except in the most extraordinary cases, the court shall obtain a presentence report and may receive a diagnostic testing report under subsection 5 of section 12.1-32-02 before holding a hearing under this subsection. The court shall fix a time for the hearing and notice thereof must be given to the defendant and the prosecution at least five days prior thereto. The court shall permit the prosecution and counsel for the defendant, or the defendant if the defendant is not represented by counsel, to inspect the presentence report sufficiently ~~prior to~~ before the hearing as to afford a reasonable opportunity for verification. In extraordinary cases, the court may withhold material not relevant to a proper sentence, diagnostic opinion ~~which~~ that might seriously disrupt a program of rehabilitation, any source of information obtained on a promise of confidentiality, and material previously disclosed in open court. A court withholding all or part of a presentence report shall inform the parties of its action and place in the record the reasons therefor. The court may require parties inspecting all or part of a presentence report to give notice of any part thereof intended to be controverted. In connection with the hearing, the defendant is entitled to compulsory process and cross-examination of such witnesses as appear at the hearing. A duly authenticated copy of a former judgment or commitment is prima facie evidence of such former judgment or commitment. ~~If it appears by a preponderance of the information, including information submitted during the trial of such felony and the sentencing hearing and so much of the presentence report as the court relies upon the jury or the court finds, after hearing, one or more of the grounds set forth in subsection 1,~~ that the defendant is a dangerous special offender or a habitual offender, the court shall sentence the defendant to imprisonment for an appropriate term within the limits specified in subsection 2. The court shall place in the record its findings including an identification of the information relied upon in making such findings and its reasons for the sentence imposed.

SECTION 2. AMENDMENT. Subsection 1 of section 15.1-24-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A law enforcement agency shall notify a school principal in writing if the agency has probable cause to believe that a student enrolled in the school has violated section 5-01-08, ~~19-03.1-23~~, chapter 19-03.1, chapter 19-03.2, chapter 19-03.4, section 39-08-01, or section 39-08-18. The law enforcement agency shall provide the notice within two weeks of an incident.

SECTION 3. Section 19-03.1-22.1 of the North Dakota Century Code is created and enacted as follows:

19-03.1-22.1. Volatile chemicals - Inhalation of vapors prohibited - Definitions - Penalty. An individual is guilty of a class B misdemeanor if that individual intentionally inhales the vapors of a volatile chemical in a manner designed to affect the individual's central nervous system; to create or induce a condition of intoxication, hallucination, or elation; or to distort, disturb, or change the individual's eyesight, thinking processes, balance, or coordination. This section does not apply to inhalations specifically prescribed for medical, dental, or optometric treatment purposes or to controlled substances described in this chapter. For the purposes of this section, "volatile chemical" includes the following chemicals or their isomers:

1. Acetone.
2. Aliphatic hydrocarbons.
3. Amyl nitrite.
4. Butane.
5. Butyl nitrite.
6. Carbon tetrachloride.
7. Chlorinated hydrocarbons.
8. Chlorofluorocarbons.
9. Chloroform.
10. Cyclohexane.
11. Diethyl ether.
12. Ethyl acetate.
13. Fluorocarbon.
14. Glycol ether inter solvent.
15. Glycol ether solvent.
16. Hexane.

17. Ketone solvent.
18. Methanol.
19. Methyl cellosolve acetate.
20. Methyl ethyl ketone.
21. Methyl isobutyl ketone.
22. Nitrous oxide.
23. Petroleum distillate.
24. Toluene.
25. Trichloroethane.
26. Trichloroethylene.
27. Xylol or xylene.

¹¹³ **SECTION 4. AMENDMENT.** Subsection 7 of section 19-03.1-23 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

7. A person who violates this chapter or chapter 19-03.4 must undergo a drug addiction evaluation by an appropriate licensed addiction treatment program. The evaluation must indicate the prospects for rehabilitation and whether addiction treatment is required. The evaluation must be submitted to the court for consideration when imposing punishment for a felony violation of this chapter or chapter 19-03.4, and may be submitted before or after the imposing of punishment for a misdemeanor violation of this chapter or chapter 19-03.4.

¹¹⁴ **SECTION 5. AMENDMENT.** Section 19-03.1-23.2 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-23.2. Mandatory terms of imprisonment - Deferred or suspended sentence limited. Whenever a mandatory term of imprisonment is prescribed as a penalty for violation of this chapter, the court may not defer imposition of sentence, nor may the court suspend any part of a specified mandatory term, either at the time of or after the imposition of the sentence, unless the court first finds that the offense was the defendant's first violation of this chapter, chapter 19-03.2, or chapter 19-03.4 and that extenuating or mitigating circumstances exist which justify a suspension. The court shall announce the circumstances that justify a suspension in open court when sentence is imposed and recite these circumstances in the sentence or order suspending part of the sentence.

¹¹³ Section 19-03.1-23 was also amended by section 1 of House Bill No. 1364, chapter 215.

¹¹⁴ Section 19-03.1-23.2 was also amended by section 2 of House Bill No. 1364, chapter 215.

SECTION 6. AMENDMENT. Subsection 6 of section 19-03.1-36 of the North Dakota Century Code is amended and reenacted as follows:

6. Controlled substances as defined in this chapter and imitation controlled substances as defined in chapter 19-03.2 that are possessed, transferred, sold, or offered for sale in violation of this chapter and drug paraphernalia as defined in chapter ~~42.1-31.4~~ 19-03.4 are contraband and must be seized and summarily forfeited to the state. Controlled substances as defined in this chapter and imitation controlled substances as defined in chapter 19-03.2, which are seized or come into the possession of the state and drug paraphernalia as defined in chapter ~~42.1-31.4~~ 19-03.4, the owners of which are unknown, are contraband and must be summarily forfeited to the state.

SECTION 7. AMENDMENT. Subsection 4 of section 19-03.1-37 of the North Dakota Century Code is amended and reenacted as follows:

4. In all prosecutions under this chapter, chapter 19-03.2, or chapter ~~42.1-31.4~~ 19-03.4 involving the analysis of a substance or sample thereof, a certified copy of the analytical report signed by the state toxicologist, or the toxicologist's designee, or the director of the forensic sciences division of the state department of health, or the director's designee, must be accepted as prima facie evidence of the results of the analytical findings.

SECTION 8. A new subsection to section 19-03.1-37 of the North Dakota Century Code is created and enacted as follows:

In all cases of conspiracy to violate chapter 19-03.1, 19-03.2, or 19-03.4, the state is not required to prove or establish that a conspirator knew the other person to the agreement intended to deliver or possess with intent to deliver a controlled substance, an imitation controlled substance, or drug paraphernalia to a third person.

SECTION 9. Chapter 19-03.4 of the North Dakota Century Code is created and enacted as follows:

19-03.4-01. Definition - Drug paraphernalia. In this chapter, unless the context otherwise requires, "drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of chapter 19-03.1. The term includes:

1. Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived.
2. Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.

3. Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance.
4. Testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances.
5. Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances.
6. Diluents and adulterants, including quinine hydrochloride, mannitol, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances.
7. Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana.
8. Blenders, bowls, containers, spoons, grinders, and mixing devices used, intended for use, or designed for use in compounding, manufacturing, producing, processing, or preparing controlled substances.
9. Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances.
10. Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances or products or materials used or intended for use in manufacturing, producing, processing, or preparing controlled substances.
11. Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body.
12. Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body including:
 - a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls.
 - b. Water pipes.
 - c. Carburetion tubes and devices.
 - d. Smoking and carburetion masks.
 - e. Objects, sometimes commonly referred to as roach clips, used to hold burning material, for example, a marijuana cigarette, that has become too small or too short to be held in the hand.
 - f. Miniature cocaine spoons and cocaine vials.

- g. Chamber pipes.
 - h. Carburetor pipes.
 - i. Electric pipes.
 - j. Air-driven pipes.
 - k. Chillums.
 - l. Bongs.
 - m. Ice pipes or chillers.
13. Ingredients or components to be used or intended or designed to be used in manufacturing, producing, processing, preparing, testing, or analyzing, whether or not otherwise lawfully obtained, including anhydrous ammonia, nonprescription medications, or lawfully dispensed controlled substances.

19-03.4-02. Drug paraphernalia - Guidelines. In determining whether an object is drug paraphernalia, a court or other authority shall consider, in addition to all other logically relevant factors:

- 1. Statements by an owner or by anyone in control of the object concerning its use.
- 2. Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance.
- 3. The proximity of the object, in time and space, to a direct violation of chapter 19-03.1.
- 4. The proximity of the object to controlled substances.
- 5. The existence of any residue of controlled substances on the object.
- 6. Direct or circumstantial evidence of the intent of an owner, or of any person in control of the object, to deliver the object to another person whom the owner or person in control of the object knows, or should reasonably know, intends to use the object to facilitate a violation of chapter 19-03.1. The innocence of an owner, or of any person in control of the object, as to a direct violation of chapter 19-03.1 may not prevent a finding that the object is intended or designed for use as drug paraphernalia.
- 7. Instructions, oral or written, provided with the object concerning the object's use.
- 8. Descriptive materials accompanying the object which explain or depict the object's use.
- 9. National and local advertising concerning the object's use.
- 10. The manner in which the object is displayed for sale.

11. Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, for example, a licensed distributor or dealer of tobacco products.
12. Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise.
13. The existence and scope of legitimate uses for the object in the community.
14. Expert testimony concerning the object's use.
15. The actual or constructive possession by the owner or by a person in control of the object or the presence in a vehicle or structure where the object is located of written instructions, directions, or recipes to be used, or intended or designed to be used, in manufacturing, producing, processing, preparing, testing, or analyzing a controlled substance.

19-03.4-03. Unlawful possession of drug paraphernalia. A person may not use or possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of chapter 19-03.1. Any person violating this section is guilty of a class C felony if the drug paraphernalia is used, or possessed with intent to be used, to manufacture, compound, convert, produce, process, prepare, test, inject, ingest, inhale, or analyze a controlled substance, other than marijuana, classified in schedule I, II, or III of chapter 19-03.1. Otherwise, a violation of this section is a class A misdemeanor.

19-03.4-04. Unlawful manufacture or delivery of drug paraphernalia. A person may not deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, if that person knows or should reasonably know that the drug paraphernalia will be used to plant, propogate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of chapter 19-03.1. Any person violating this section is guilty of a class C felony if the drug paraphernalia will be used to manufacture, compound, convert, produce, process, prepare, test, inject, ingest, inhale, or analyze a controlled substance, other than marijuana, classified in schedule I, II, or III of chapter 19-03.1. Otherwise, a violation of this section is a class A misdemeanor.

19-03.4-05. Unlawful delivery of drug paraphernalia to a minor. A person eighteen years of age or over may not deliver drug paraphernalia, in violation of this chapter, to a person under eighteen years of age who is at least three years the deliverer's junior. Any person violating this section is guilty of a class C felony.

19-03.4-06. Unlawful advertisement of drug paraphernalia. A person may not place an advertisement in any newspaper, magazine, handbill, or other publication if that person knows or should reasonably know that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person violating this section is guilty of a class A misdemeanor.

SECTION 10. REPEAL. Section 12.1-31-06 and chapter 12.1-31.1 of the North Dakota Century Code are repealed.

SECTION 11. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 12, 2001

Filed April 12, 2001

CHAPTER 215

HOUSE BILL NO. 1364

(Representatives Wald, Boucher, Haas)
(Senators Lyson, Robinson, Wardner)

DRUG VIOLATION MANDATORY IMPRISONMENT

AN ACT to amend and reenact sections 19-03.1-23 and 19-03.1-23.2 of the North Dakota Century Code, relating to mandatory terms of imprisonment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹¹⁵ **SECTION 1. AMENDMENT.** Section 19-03.1-23 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-03.1-23. Prohibited acts A - Mandatory terms of imprisonment and fines - Unclassified offenses - Penalties.

1. Except as authorized by this chapter, it is unlawful for any person to willfully, as defined in section 12.1-02-02, manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. Any person who violates this subsection with respect to:
 - a. A controlled substance classified in schedule I or II which is a narcotic drug, or methamphetamine, is guilty of a class A felony and must be sentenced:
 - (1) ~~For a first offense, to imprisonment for at least a year and a day.~~
 - ~~(2)~~ For a second offense, to imprisonment for at least five years.
 - ~~(3)~~ (2) For a third or subsequent offense, to imprisonment for twenty years.
 - b. Any other controlled substance classified in schedule I, II, or III, is guilty of a class B felony, except that any person who delivers one hundred pounds [45.36 kilograms] or more of marijuana is guilty of a class A felony. Except for a person who manufactures, delivers, or possesses with the intent to manufacture or deliver marijuana, any person found guilty under this subdivision must be sentenced:
 - (1) ~~For a first offense, to imprisonment for at least eight months.~~

¹¹⁵ Section 19-03.1-23 was also amended by section 4 of Senate Bill No. 2444, chapter 214.

- ~~(2)~~ For a second offense, to imprisonment for at least three years.
 - ~~(3)~~ (2) For a third or subsequent offense, to imprisonment for ten years.
- c. A substance classified in schedule IV, is guilty of a class C felony and must be sentenced:
- (1) For a second offense, to imprisonment for at least six months.
 - (2) For a third offense, to imprisonment for at least one year.
 - (3) For a fourth or subsequent offense, to imprisonment for five years.
- d. A substance classified in schedule V, is guilty of a class A misdemeanor.
2. Except as authorized by this chapter, it is unlawful for any person to willfully, as defined in section 12.1-02-02, create, deliver, or possess with intent to deliver, a counterfeit substance, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. Any person who violates this subsection with respect to:
- a. A counterfeit substance classified in schedule I or II which is a narcotic drug, is guilty of a class A felony.
 - b. Any other counterfeit substance classified in schedule I, II, or III, is guilty of a class B felony.
 - c. A counterfeit substance classified in schedule IV, is guilty of a class C felony.
 - d. A counterfeit substance classified in schedule V, is guilty of a class A misdemeanor.
3. ~~For second or subsequent offenders,~~ in addition to any other penalty imposed under this section, a person who violates this chapter, except a person who manufactures, delivers, or possesses with the intent to manufacture or deliver marijuana, is subject to, and the court shall impose, the following penalties to run consecutively to any other sentence imposed:
- a. Any person, eighteen years of age or older, who violates this section by willfully manufacturing, delivering, or possessing with intent to manufacture or deliver a controlled substance in or on, or within one thousand feet [300.48 meters] of the real property comprising a public or private elementary or secondary school or a public vocational school is subject to a ~~four-year~~ an eight-year term of imprisonment. ~~For a second or subsequent offense, the sentencing term required to be imposed must be eight years.~~
 - b. If the defendant was at least twenty-one years of age at the time of the offense, and delivered a controlled substance to a person

under the age of eighteen, the defendant must be sentenced to imprisonment for at least ~~four~~ eight years. ~~For a second or subsequent offense, the defendant must be sentenced to imprisonment for at least eight years.~~ It is not a defense that the defendant did not know the age of a person protected under this subdivision.

4. A person at least eighteen years of age who solicits, induces, intimidates, employs, hires, or uses a person under eighteen years of age to aid or assist in the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance for the purpose of receiving consideration or payment for the manufacture or delivery of any controlled substance is guilty of a class B felony and must be sentenced:
 - a. ~~For the first offense, to imprisonment for at least four years.~~
 - b. For a second or subsequent offense, to imprisonment for at least five years.
- e. b. It is not a defense to a violation of this subsection that the defendant did not know the age of a person protected under this subsection.
5. A violation of this chapter or a law of another state or the federal government which is equivalent to an offense under this chapter committed while the offender was an adult and which resulted in a plea or finding of guilt must be considered a prior offense under subsections 1, 3, and 4. The prior offense must be alleged in the complaint, information, or indictment. The plea or finding of guilt for the prior offense must have occurred before the date of the commission of the offense or offenses charged in the complaint, information, or indictment.
6. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this chapter, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. Except as provided in this subsection, any person who violates this subsection is guilty of a class C felony. If the person is in or on, or within one thousand feet [300.48 meters] of the real property comprising a public or private elementary or secondary school or a public vocational school, the person is guilty of a class B felony. Any person who violates this subsection regarding possession of one-half ounce [14.175 grams] to one ounce [28.35 grams] of marijuana, is guilty of a class A misdemeanor. Any person, except a person operating a motor vehicle, who violates this subsection regarding possession of less than one-half ounce [14.175 grams] of marijuana is guilty of a class B misdemeanor. Any person who violates this subsection regarding possession of less than one-half ounce [14.175 grams] of marijuana while operating a motor vehicle is guilty of a class A misdemeanor.
7. A person who violates this chapter must undergo a drug addiction evaluation by an appropriate licensed addiction treatment program. The

evaluation must indicate the prospects for rehabilitation and whether addiction treatment is required. The evaluation must be submitted to the court for consideration when imposing punishment for a violation of this chapter.

8. Notwithstanding section 19-03.1-30, whenever a person pleads guilty or is found guilty of a first offense regarding possession of one ounce [28.35 grams] or less of marijuana and a judgment of guilt is entered, a court, upon motion, shall expunge that conviction from the record if the person is not subsequently convicted within two years of a further violation of this chapter and has not been convicted of any other criminal offense.

¹¹⁶ **SECTION 2. AMENDMENT.** Section 19-03.1-23.2 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-23.2. Mandatory terms of imprisonment - Deferred or suspended sentence limited. Whenever a mandatory term of imprisonment is prescribed as a penalty for violation of this chapter, the court may not defer imposition of sentence, nor may the court suspend any part of a specified mandatory term, either at the time of or after the imposition of the sentence, ~~unless the court first finds that the offense was the defendant's first violation of this chapter and that extenuating or mitigating circumstances exist which justify a suspension.~~ The court shall announce the circumstances that justify a suspension in open court when sentence is imposed and recite these circumstances in the sentence or order suspending part of the sentence.

Approved March 19, 2001
Filed March 19, 2001

¹¹⁶ Section 19-03.1-23.2 was also amended by section 5 of Senate Bill No. 2444, chapter 214.

CHAPTER 216

HOUSE BILL NO. 1367 (Representatives Keiser, Mahoney)

DRUG SENTENCING

AN ACT to amend and reenact section 19-03.1-23.1 of the North Dakota Century Code, relating to sentencing for drug offenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-03.1-23.1 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-23.1. Increased penalties for aggravating factors in drug offenses.

1. A person who violates section 19-03.1-23 is subject to the penalties provided in subsection 2 if:
 - a. The offense involved the manufacture or distribution of a controlled substance in or on, or within one thousand feet [300.48 meters] of, the real property comprising a public or private elementary or secondary school, public vocational school, or a public or private college or university;
 - b. The defendant was at least ~~eighteen~~ sixteen years of age at the time of the offense and the offense involved the delivery of a controlled substance to a minor; or
 - c. The offense involved:
 - (1) ~~One hundred~~ Fifty grams or more of a mixture or substance containing a detectable amount of heroin;
 - (2) ~~Five hundred~~ Fifty grams or more of a mixture or substance containing a detectable amount of:
 - (a) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;
 - (b) Cocaine, its salts, optical and geometric isomers, and salts of isomers;
 - (c) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or
 - (d) Any compound, mixture, or preparation that contains any quantity of any of the substance referred to in subparagraphs a through c;

- (3) Five grams or more of a mixture or substance described in paragraph 2 which contains cocaine base;
- (4) Ten grams or more of phencyclidine or one hundred grams or more of a mixture or substance containing a detectable amount of phencyclidine;
- (5) One gram, one hundred dosage units, or one-half liquid ounce or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide; ~~or~~
- (6) Forty grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidiny] propanamide or ten grams or more of a mixture or substance containing a detectable amount of any analog of N-phenyl-N-[1-(2-phenylethyl)-4-piperidiny] propanamide;
- (7) Fifty grams or more of a mixture or substance containing a detectable amount of methamphetamine;
- (8) Ten grams, one hundred dosage units, or one-half liquid ounce or more of a mixture of substance containing a detectable amount of 3,4-methylenedioxy-N-methylamphetamine, $C_{11}H_{15}NO_2$;
- (9) One hundred dosage units or one-half liquid ounce of a mixture or substance containing a detectable amount of gamma-hydroxybutyrate or gamma-butyrolactone or 1,4 butanediol or any substance that is an analog of gamma-hydroxybutyrate;
- (10) One hundred dosage units or one-half liquid ounce of a mixture or substance containing a detectable amount of flunitrazepam; or
- (11) Five hundred grams or more of marijuana.

2. The offense is:

- a. A class AA felony if the violation of section 19-03.1-23 is designated as a class A felony.
- b. A class A felony if the violation of section 19-03.1-23 is designated as a class B felony.
- c. A class B felony if the violation of section 19-03.1-23 is designated as a class C felony.
- d. A class C felony if the violation of section 19-03.1-23 is designated as a class A misdemeanor.

CHAPTER 217

SENATE BILL NO. 2445

(Senators G. Nelson, Lyson, C. Nelson)
(Representatives Carlisle, DeKrey, Mahoney)

CONTROLLED SUBSTANCE STATUS AND TRENDS REPORT

AN ACT to create and enact a new section to chapter 19-03.1 of the North Dakota Century Code, relating to a comprehensive status and trends report regarding unlawful controlled substance use and abuse treatment and enforcement efforts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 19-03.1 of the North Dakota Century Code is created and enacted as follows:

Comprehensive status and trends report. On or before July first of each even-numbered year, the attorney general, or designee of the attorney general, shall report the current status and trends of unlawful drug use and abuse and drug control and enforcement efforts in this state. This report must be made to an interim legislative committee and must include the following information:

1. The state department of health shall provide the results of the most recent survey of the state's young people regarding drug usage. This survey must include information regarding the accessibility of gateway and other illicit drugs, the prevalence of gateway and other illicit drugs in schools or on school property, and the types and frequency of gateway and other illicit drugs used by young people.
2. The state crime laboratory shall provide a report that includes the type of each controlled substance tested and the number of times tests were run for each controlled substance.
3. The department of human services shall provide a current status of the number of people who were treated in the state. The report must include information about the variety of drugs, legal and illegal, for which people were treated.
4. The department of corrections and rehabilitation shall provide the current status of the number of people incarcerated or on probation in the state correctional system for violation of title 19. This report must specify the average length of sentence including probation, average length of incarceration ordered by a court to be served, and average actual time incarcerated for drug offenders sentenced to the custody of the department. The report also must identify the number of people referred to treatment and treated as a condition of sentencing, probation, or parole.

5. The attorney general shall provide the current status of the number of arrests for violation of title 19 and the current enforcement efforts to combat unlawful drug trafficking and usage.

Approved March 22, 2001
Filed March 22, 2001

CHAPTER 218

SENATE BILL NO. 2111

(Agriculture Committee)

(At the request of the Agriculture Commissioner)

COMMERCIAL FEED ADULTERATION

AN ACT to amend and reenact section 19-13.1-07 of the North Dakota Century Code, relating to the adulteration of commercial feeds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-13.1-07 of the North Dakota Century Code is amended and reenacted as follows:

19-13.1-07. Adulteration. No person may distribute an adulterated feed. A commercial feed or customer-formula feed is adulterated:

1. a. If it bears any poisonous or deleterious substance that may render it injurious to health. If the substance is not an added substance, the commercial feed is not considered adulterated if the quantity of the substance in the commercial feed does not ordinarily render it injurious to health;
- b. If it bears or contains any added poisonous, added deleterious, or added nonnutritive substance that is unsafe within the meaning of section 406 of the Federal Food, Drug, and Cosmetic Act as amended [Pub. L. 75-717; 52 Stat. 1049; 21 U.S.C. 346] other than one which is a pesticide chemical in or on a raw agricultural commodity or a food additive;
- c. If it is, or it bears or contains, any food additive that is unsafe within the meaning of section 409 of the Federal Food, Drug, and Cosmetic Act as amended [Pub. L. 85-929; 72 Stat. ~~4788~~ 1785; 21 U.S.C. ~~3484~~ 348];
- d. If it is a raw agricultural commodity and it bears or contains a pesticide chemical that is unsafe within the meaning of section 408a of the Federal Food, Drug, and Cosmetic Act as amended [Pub. L. 85-791; 68 Stat. 511; 21 U.S.C. 346a]. Except that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under section 408 of the Federal Food, Drug, and Cosmetic Act as amended [Pub. L. 85-791; 68 Stat. 511; 21 U.S.C. 346a] and the raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of the pesticide chemical remaining in or on the processed feed may not be deemed unsafe if the residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of the residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity unless the feeding of such processed feed will result or is likely to result in a pesticide

- residue in the edible product of the animal, which is unsafe within the meaning of section 408a of the Federal Food, Drug, and Cosmetic Act as amended [Pub. L. 85-791; 68 Stat. 511; 21 U.S.C. 346a];
- e. If it is, or it bears or contains, any color additive that is unsafe within the meaning of section ~~706~~ 721 of the Federal Food, Drug, and Cosmetic Act as amended [~~Pub. L. 75-717; 52 Stat. 4058; 24 U.S.C. 376~~ Pub. L. 102-571; 106 Stat. 4498; 21 U.S.C. 379e]; or
 - f. If it is, or it bears or contains, any new animal drug which is unsafe within the meaning of section 512 of the Federal Food, Drug, and Cosmetic Act as amended [Pub. L. 90-399; 82 Stat. 343; 21 U.S.C. 360b];
2. If any valuable constituent has been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor;
 3. If its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling;
 4. If it contains added hulls, screenings, straw, cobs, or other high fiber material unless the name of each such material is stated on the label;
 5. If it contains viable weed seeds in amounts exceeding the limits which the commissioner shall establish by rule;
 6. If it contains a drug and the methods used in or the facilities or controls used for its manufacture, processing, or packaging do not conform to current good manufacturing practice rules adopted by the commissioner to assure that the drug meets the requirement of this chapter as to safety and has the identity and strength and meets the quality and purity characteristics that it purports or is represented to possess;
 7. If it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for feed;
 8. If it has been prepared, packed, or held under unsanitary conditions, whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;
 9. If it is, in whole or in part, the product of a diseased animal or of an animal that has died otherwise than by slaughter which is unsafe within the meaning of section 402 (a)(1) or (2) of the Federal Food, Drug, and Cosmetic Act, as amended [Pub. L. 75-717; 52 Stat. 1046; 21 U.S.C. 342];
 10. If its container is composed, in whole or in part, of any poisonous or deleterious substance that may render the contents injurious to health;
or

11. If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with the regulation or exemption in effect pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act, as amended [Pub. L. 85-929; 72 Stat. 1785; 21 U.S.C. 348].

Approved March 14, 2001

Filed March 15, 2001