Sixtieth Legislative Assembly of North Dakota
In Regular Session Commencing Wednesday, January 3, 2007

SENATE BILL NO. 2319
(Senators Grindberg, Lyson, Nelson)
(Representatives DeKrey, Delmore, Thoreson)

AN ACT to amend and reenact sections 19-03.1-01 and 19-03.4-08 of the North Dakota Century Code, relating to definitions and the sale of scheduled listed chemical products; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. "Administer" means to apply a controlled substance, whether by injection, inhalation, ingestion, or any other means, directly to the body of a patient or research subject by:

   a. A practitioner or, in the practitioner's presence, by the practitioner's authorized agent; or

   b. The patient or research subject at the direction and in the presence of the practitioner.

2. "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

3. "Anabolic steroids" means any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestins, and corticosteroids.

4. "Board" means the state board of pharmacy.

5. "Bureau" means the drug enforcement administration in the United States department of justice or its successor agency.

6. "Controlled substance" means a drug, substance, or immediate precursor in schedules I through V as set out in this chapter.

7. "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

8. "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance whether or not there is an agency relationship.

9. "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.

10. "Dispenser" means a practitioner who dispenses.

11. "Distribute" means to deliver other than by administering or dispensing a controlled substance.

12. "Distributor" means a person who distributes.

13. "Drug" means:

    a. Substances recognized as drugs in the official United States pharmacopeia, national formulary, or the official homeopathic pharmacopeia of the United States, or any supplement to any of them;

    b. Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in individuals or animals;

    c. Substances, other than food, intended to affect the structure or any function of the body of individuals or animals; and

    d. Substances intended for use as a component of any article specified in subdivision a, b, or c. The term does not include devices or their components, parts, or accessories.

14. "Hashish" means the resin extracted from any part of the plant cannabis with or without its adhering plant parts, whether growing or not, and every compound, manufacture, salt, derivative, mixture, or preparation of the resin.

15. "Immediate precursor" means a substance:

    a. That the board has found to be and by rule designates as being the principal compound commonly used or produced primarily for use in the manufacture of a controlled substance;

    b. That is an immediate chemical intermediary used or likely to be used in the manufacture of the controlled substance; and

    c. The control of which is necessary to prevent, curtail, or limit the manufacture of the controlled substance.

16. "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container. The term does not include the preparation or compounding of a controlled substance by an individual for the individual's own use or the preparation, compounding, packaging, or labeling of a controlled substance:

    a. By a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

    b. By a practitioner, or by the practitioner's authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

17. "Marijuana" means all parts of the plant cannabis whether growing or not; the seeds thereof; the resinous product of the combustion of the plant cannabis; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of mature stalks, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

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

~~19.~~ "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

a. Opium and opiate and any salt, compound, derivative, or preparation of opium or opiate.

b. Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subdivision a, but not including the isoquinoline alkaloids of opium.

c. Opium poppy and poppy straw.

d. Coca leaves and any salt, compound, derivative, or preparation of coca leaves, any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

~~20.~~ 19. "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. The term does not include, unless specifically designated as controlled under section 19-03.1-02, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). The term includes its racemic and levorotatory forms.

~~21.~~ 20. "Opium poppy" means the plant of the species papaver somniferum L., except its seeds.

~~22.~~ 21. "Over-the-counter sale" means a retail sale of a drug or product other than a controlled, or imitation controlled, substance.

~~23.~~ 22. "Person" means individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

~~24.~~ 23. "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

~~25.~~ 24. "Practitioner" means:

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

b. A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state.

~~26.~~ 25. "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.

~~27.~~ 26. "Sale" includes barter, exchange, or gift, or offer therefor, and each such transaction made by a person, whether as principal, proprietor, agent, servant, or employee.

27. "Scheduled listed chemical product" means a product that contains ephedrine, pseudoephedrin, or phenylpropanolamine, or each of the salts, optical isomers, and salts of optical isomers of each chemical, and that may be marketed or distributed in the United

States under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] as a nonprescription drug unless prescribed by a licensed physician.

28. "State" when applied to a part of the United States includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America.

29. "Ultimate user" means an individual who lawfully possesses a controlled substance for the individual's own use or for the use of a member of the individual's household or for administering to an animal owned by the individual or by a member of the individual's household.

SECTION 2. AMENDMENT. Section 19-03.4-08 of the North Dakota Century Code is amended and reenacted as follows:

19-03.4-08. ~~(Effective through July 31, 2007)~~ Retail or over-the-counter sale of ~~methamphetamine precursor drugs~~ scheduled listed chemical products - Penalty.

1. The retail sale of ~~methamphetamine precursor drugs~~ scheduled listed chemical products is limited to:

   a. Sales in packages containing not more than a total of two grams of one or more ~~methamphetamine precursor drugs~~ scheduled listed chemical products, calculated in terms of ephedrine ~~HCl and~~ base, pseudoephedrine ~~HCl~~ base, and phenylpropanolamine base; and

   b. Sales in blister packs, each blister containing not more than two dosage units, or when the use of blister packs is technically infeasible, sales in unit dose packets or pouches.

2. A person may not ~~deliver~~:

   a. Deliver in a single over-the-counter sale more than two packages of a ~~methamphetamine precursor drug~~ scheduled listed chemical product or a combination of ~~methamphetamine precursor drugs~~ scheduled listed chemical products; or

   b. Without regard to the number of over-the-counter sales, deliver more than a daily amount of three and six-tenths grams of scheduled listed chemical products, calculated in terms of ephedrine base, pseudoephedrine base, and phenylpropanolamine base, to a purchaser.

3. When offering scheduled listed chemical products for sale, the person shall place the products behind a counter or other barrier, or in a locked cabinet, where purchasers do not have direct access to the products before the sale is made.

~~3.~~ 4. a. When offering ~~a methamphetamine precursor drug~~ scheduled listed chemical products for retail sale, a person shall require, obtain, and make a written record of the identification of the person purchasing the ~~methamphetamine precursor drug~~ scheduled listed chemical product, the identification being a document issued by a government agency as described in subdivisions a and b of subsection ~~5~~ 6, and shall ~~do at least one of the following:~~

   ~~(1) Maintain continuous recorded video surveillance of the portion of the premises where the methamphetamine precursor drug is displayed for sale and place signs or placards giving notice to the public of the surveillance;~~

   ~~(2) Place the methamphetamine precursor drug behind a counter or other barrier accessible only to the person making the sale of the drug; or~~

~~(3) Display only one package of any brand or type of a methamphetamine precursor drug for purchase in an area accessible to the public~~ deliver the product directly into the custody of the purchaser.

b. The person shall maintain a written list of sales that identifies the product by name, the quantity sold, the names and addresses of the purchasers, the dates and times of the sales, and a notice to a purchaser that the making of false statements or misrepresentations may subject the purchaser to federal and state criminal penalties. The purchaser shall sign the written list of sales and enter his or her name, address, and the date and time of the sale. The person making the sale shall determine that the name entered by the purchaser corresponds with the name on the identification provided by the purchaser and that the date and time of the purchase is correct. The person making the sale shall enter the name of the product and the quantity sold on the list.

~~b.~~ c. The person shall maintain the record of identification required by this subsection for three years, after which the record must be destroyed. The person may not use or maintain the record for any private or commercial purpose or disclose the record to any person, except as required by law. The person shall disclose the record, upon request, to a law enforcement agency for a law enforcement purpose. A person who in good faith releases the information in the record of identification to federal, state, or local law enforcement authorities is immune from civil liability for such release unless the release constitutes gross negligence or intentional, wanton, or willful misconduct.

~~4.~~ 5. A person may not deliver in an over-the-counter sale a ~~methamphetamine precursor drug~~ scheduled listed chemical product to a person under the age of eighteen years.

~~5.~~ 6. It is a prima facie case of a violation of subsection ~~4~~ 5 if the person making the sale did not require and obtain proof of age from the purchaser~~, unless from the purchaser's outward appearance the person would reasonably presume the purchaser to be twenty-five years of age or older~~. "Proof of age" means a document issued by a governmental agency which:

a. Contains a description of the person or a photograph of the person, or both, and gives the person's date of birth; and

b. Includes a passport, military identification card, or driver's license.

~~6.~~ 7. It is an affirmative defense to a violation of subsection ~~4~~ 5 if:

a. The person making the sale required and obtained proof of age from the purchaser;

b. The purchaser falsely represented the purchaser's proof of age by use of a false, forged, or altered document;

c. The appearance of the purchaser was such that an ordinary and prudent person would believe the purchaser to be at least eighteen years of age; and

d. The sale was made in good faith and in reliance upon the appearance and representation of proof of age of the purchaser.

~~7.~~ 8. This section does not apply to ~~pediatric products labeled pursuant to federal regulation primarily intended for administration to children under twelve years of age according to label instructions or to~~ a product that the state board of pharmacy, upon application of a manufacturer, exempts from this section because the product has been formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine, or its salts or precursors.

9. A person may not:

a. Make a false statement or misrepresentation in the written list of sale that is prepared and maintained as required by subsection 4; or

b. Purchase more than nine grams of ephedrine base, pseudoephedrine base, or phenylpropanolamine base in scheduled listed chemical products in a thirty-day period.

~~8.~~ 10. A person who willfully violates subsection 1 or 9 is guilty of a class A misdemeanor. A person who willfully violates subsection 2, 3, ~~or~~ 4, or 5 is guilty of an infraction.

~~9.~~ 11. A person who is the owner, operator, or manager of the retail outlet or who is the supervisor of the employee or agent committing a violation of this section of the outlet where ~~methamphetamine precursor drugs~~ scheduled listed chemical products are available for sale is not subject to the penalties of this section if the person:

a. Did not have prior knowledge of, participate in, or direct the employee or agent to commit, the violation of this section; and

b. ~~Documents~~ Certifies to the attorney general that the employee or agent, at the time of initial employment and each calendar year thereafter, participated in a training program approved by the attorney general providing the employee or agent with information regarding the state and federal regulations governing the sale, possession, and packaging of such ~~drugs~~ products.

The approval of the training program by the attorney general is not subject to chapter 28-32.

~~10.~~ 12. A political subdivision, including a home rule city or county, may not enact any ordinance relating to the sale by a retail distributor of over-the-counter products containing ephedrine, pseudoephedrine, or phenylpropanolamine. Any existing ordinance is void.

~~**(Effective after July 31, 2007) Retail or over-the-counter sale of methamphetamine precursor drugs - Penalty.**~~

~~1. The retail sale of nonliquid methamphetamine precursor drugs is limited to:~~

~~a. Sales in packages containing not more than a total of three grams of one or more methamphetamine precursor drugs, calculated in terms of ephedrine HCl and pseudoephedrine HCl; and~~

~~b. Sales in blister packs, each blister containing not more than two dosage units, or when the use of blister packs is technically infeasible, sales in unit dose packets or pouches.~~

~~2. A person may not deliver in a single over-the-counter sale more than two packages of a methamphetamine precursor drug or a combination of methamphetamine precursor drugs.~~

~~3. A person may not deliver in an over-the-counter sale a methamphetamine precursor drug to a person under the age of eighteen years.~~

~~4. It is a prima facie case of a violation of subsection 3 if the person making the sale did not require and obtain proof of age from the purchaser, unless from the purchaser's outward appearance the person would reasonably presume the purchaser to be twenty-five years of age or older. "Proof of age" means a document issued by a governmental agency which:~~

~~a. Contains a description of the person or a photograph of the person, or both, and gives the person's date of birth; and~~

~~b. Includes a passport, military identification card, or driver's license.~~

~~5. It is an affirmative defense to a violation of subsection 3 if:~~

~~a. The person making the sale required and obtained proof of age from the purchaser;~~

~~b. The purchaser falsely represented the purchaser's proof of age by use of a false, forged, or altered document;~~

~~c. The appearance of the purchaser was such that an ordinary and prudent person would believe the purchaser to be at least eighteen years of age; and~~

~~d. The sale was made in good faith and in reliance upon the appearance and representation of proof of age of the purchaser.~~

~~6. This section does not apply to pediatric products labeled pursuant to federal regulation primarily intended for administration to children under twelve years of age according to label instructions or to a product that the state board of pharmacy, upon application of a manufacturer, exempts from this section because the product has been formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine, or its salts or precursors.~~

~~7. A person who willfully violates subsection 1 is guilty of a class A misdemeanor. A person who willfully violates subsection 2 or 3 is guilty of an infraction.~~

~~8. A person who is the owner, operator, or manager of the retail outlet or who is the supervisor of the employee or agent committing a violation of this section of the outlet where methamphetamine precursor drugs are available for sale is not subject to the penalties of this section if the person:~~

~~a. Did not have prior knowledge of, participate in, or direct the employee or agent to commit, the violation of this section; and~~

~~b. Documents that the employee or agent, at the time of initial employment and each calendar year thereafter, participated in a training program approved by the attorney general providing the employee or agent with information regarding the state and federal regulations governing the sale, possession, and packaging of such drugs.~~

~~The approval of the training program by the attorney general is not subject to chapter 28-32.~~

~~9. A political subdivision, including a home rule city or county, may not enact any ordinance relating to the sale by a retail distributor of over the counter products containing ephedrine, pseudoephedrine, or phenylpropanolamine. Any existing ordinance is void.~~

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

President of the Senate	Speaker of the House
Secretary of the Senate	Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixtieth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2319 and that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 47 Nays 0 Absent 0

President of the Senate	Secretary of the Senate

This certifies that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 90 Nays 0 Absent 4

Speaker of the House	Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2007.

Approved at _____ M. on _____, 2007.

Governor

Filed in this office this _____ day of _____, 2007,

at ___ o'clock _____ M.

Secretary of State