

SENATE BILL NO. 2444

Introduced by

Senators G. Nelson, Lyson, C. Nelson

Representatives Carlisle, DeKrey, Mahoney

A BILL for 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 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; 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; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 2. 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.

SECTION 3. 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.

SECTION 4. 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.

SECTION 5. 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 ~~42.1-34.4~~ 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 ~~42.1-34.4~~ 19-03.4, the owners of which are unknown, are contraband and must be summarily forfeited to the state.

SECTION 6. 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 ~~12-1-31.4~~
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 7. 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 8. 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.

- 1 5. Scales and balances used, intended for use, or designed for use in weighing or
2 measuring controlled substances.
- 3 6. Diluents and adulterants, including quinine hydrochloride, mannitol, dextrose, and
4 lactose, used, intended for use, or designed for use in cutting controlled
5 substances.
- 6 7. Separation gins and sifters used, intended for use, or designed for use in removing
7 twigs and seeds from, or in otherwise cleaning or refining, marijuana.
- 8 8. Blenders, bowls, containers, spoons, grinders, and mixing devices used, intended
9 for use, or designed for use in compounding, manufacturing, producing,
10 processing, or preparing controlled substances.
- 11 9. Capsules, balloons, envelopes, and other containers used, intended for use, or
12 designed for use in packaging small quantities of controlled substances.
- 13 10. Containers and other objects used, intended for use, or designed for use in storing
14 or concealing controlled substances or products or materials used or intended for
15 use in manufacturing, producing, processing, or preparing controlled substances.
- 16 11. Hypodermic syringes, needles, and other objects used, intended for use, or
17 designed for use in parenterally injecting controlled substances into the human
18 body.
- 19 12. Objects used, intended for use, or designed for use in ingesting, inhaling, or
20 otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human
21 body including:
 - 22 a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without
23 screens, permanent screens, hashish heads, or punctured metal bowls.
 - 24 b. Water pipes.
 - 25 c. Carburetion tubes and devices.
 - 26 d. Smoking and carburetion masks.
 - 27 e. Objects, sometimes commonly referred to as roach clips, used to hold burning
28 material, for example, a marijuana cigarette, that has become too small or too
29 short to be held in the hand.
 - 30 f. Miniature cocaine spoons and cocaine vials.
 - 31 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, 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 will be used to manufacture, compound, convert, produce, process, prepare, test, inject, ingest, inhale, or analyze a controlled substance, other than marijuana, classified in

1 schedule I, II, or III of chapter 19-03.1. Otherwise, a violation of this section is a class A
2 misdemeanor.

3 **19-03.4-05. Unlawful delivery of drug paraphernalia to a minor.** A person eighteen
4 years of age or over may not deliver drug paraphernalia, in violation of this chapter, to a person
5 under eighteen years of age who is at least three years the deliverer's junior. Any person
6 violating this section is guilty of a class C felony.

7 **19-03.4-06. Unlawful advertisement of drug paraphernalia.** A person may not place
8 an advertisement in any newspaper, magazine, handbill, or other publication if that person
9 knows or should reasonably know that the purpose of the advertisement, in whole or in part, is
10 to promote the sale of objects designed or intended for use as drug paraphernalia. Any person
11 violating this section is guilty of a class A misdemeanor.

12 **SECTION 9. REPEAL.** Section 12.1-31-06 and chapter 12.1-31.1 of the North Dakota
13 Century Code are repealed.