

Sixty-third
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1133

Introduced by

Representatives Larson, Porter, Delmore

Senators Anderson, Berry, Nelson

1 | A BILL for an Act to create and enact a new section to chapter 19-03.1 of the North Dakota
2 Century Code, relating to controlled substance analogs; to amend and reenact subsection 7 of
3 section 12-44.1-21, subsection 5 of section 12-46-24, subsection 7 of section 12-47-21, section
4 19-03.1-01, subdivision b of subsection 1 of section 19-03.1-23, and subsection 7 of section
5 19-03.1-23 of the North Dakota Century Code, relating to controlled substance analogs; to
6 provide a penalty; and to declare an emergency.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 **SECTION 1. AMENDMENT.** Subsection 7 of section 12-44.1-21 of the North Dakota
9 Century Code is amended and reenacted as follows:

10 7. As used in this section, "controlled substance" is as defined in ~~subsection 6 of section~~
11 19-03.1-01 and includes counterfeit substances as defined in ~~subsection 7 of section~~
12 19-03.1-01. As used in this section, "willfully" is as defined in section 12.1-02-02. As
13 used in this section, "alcohol" and "alcoholic beverage" are as defined in section
14 5-01-01. As used in this section, "tobacco" means any form of tobacco, including
15 cigarettes, cigars, snuff, or tobacco in any form in which it may be used for smoking or
16 chewing. As used in this section, a wireless electronic communication device includes
17 a cellular telephone, personal digital assistant, pager, mobile broadband card, internet
18 router, digital camera, two-way radio, modem, or any other electronic device capable
19 of wireless transmission, reception, interception, or storage of oral communications,
20 text, e-mail, video or photograph images, data signals, or radio communications, and
21 also includes a component of a wireless electronic device, regardless whether the
22 component itself is able to transmit, store, or receive oral communications, text, e-mail,
23 video or photograph images, data signals, or radio communications. A wireless

1 electronic communications device does not include a medically prescribed device or
2 any other device approved by the department.

3 **SECTION 2. AMENDMENT.** Subsection 5 of section 12-46-24 of the North Dakota Century
4 Code is amended and reenacted as follows:

5 5. As used in this section, "controlled substance" is as defined in ~~subsection 6 of section~~
6 19-03.1-01 and includes counterfeit substances as defined in ~~subsection 7 of section~~
7 19-03.1-01.

8 **SECTION 3. AMENDMENT.** Subsection 7 of section 12-47-21 of the North Dakota Century
9 Code is amended and reenacted as follows:

10 7. As used in this section, "controlled substance" is as defined in ~~subsection 6 of section~~
11 19-03.1-01 and includes counterfeit substances as defined in ~~subsection 7 of section~~
12 19-03.1-01. As used in this section, "willfully" is as defined in section 12.1-02-02. As
13 used in this section, "alcohol" and "alcoholic beverage" are as defined in section
14 5-01-01. As used in this section, "tobacco" means any form of tobacco, including
15 cigarettes, cigars, snuff, or tobacco in any form in which it may be used for smoking or
16 chewing. As used in this section, a wireless electronic communications device includes
17 a cellular telephone, personal digital assistant, pager, mobile broadband card, internet
18 router, digital camera, two-way radio, modem, or any other electronic device capable
19 of wireless transmission, reception, interception, or storage of oral communications,
20 text, electronic mail, video or photograph images, data signals, or radio
21 communications, and also includes a component of a wireless electronic device,
22 regardless whether the component itself is able to transmit, store, or receive oral
23 communications, text, electronic mail, video or photograph images, data signals, or
24 radio communications. A wireless electronic communications device does not include
25 a medically prescribed device or any other device approved by the department.

26 **SECTION 4. AMENDMENT.** Section 19-03.1-01 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **19-03.1-01. Definitions.**

29 As used in this chapter and in chapters 19-03.2 and 19-03.4, unless the context otherwise
30 requires:

- 1 1. "Administer" means to apply a controlled substance, whether by injection, inhalation,
2 ingestion, or any other means, directly to the body of a patient or research subject by:
3 a. A practitioner or, in the practitioner's presence, by the practitioner's authorized
4 agent; or
5 b. The patient or research subject at the direction and in the presence of the
6 practitioner.
- 7 2. "Agent" means an authorized person who acts on behalf of or at the direction of a
8 manufacturer, distributor, or dispenser. It does not include a common or contract
9 carrier, public warehouseman, or employee of the carrier or warehouseman.
- 10 3. "Anabolic steroids" means any drug or hormonal substance, chemically and
11 pharmacologically related to testosterone, other than estrogens, progestins, and
12 corticosteroids.
- 13 4. "Board" means the state board of pharmacy.
- 14 5. "Bureau" means the drug enforcement administration in the United States department
15 of justice or its successor agency.
- 16 6. "Controlled substance" means a drug, substance, or immediate precursor in schedules
17 I through V as set out in this chapter.

18 ~~7. "Controlled substance analog":~~

19 ~~a. Means a substance:~~

20 ~~(1) With a chemical structure substantially similar to the chemical structure of a~~
21 ~~schedule I or II controlled substance; or~~

22 ~~(2) That is used:~~

23 ~~(a) To affect the individual's central nervous system;~~

24 ~~(b) To create or induce a condition of intoxication, hallucination, or elation;~~

25 ~~or~~

26 ~~(c) To distort, disturb, or change the individual's eyesight, thinking~~
27 ~~process, balance, or coordination in a substantially similar manner as~~
28 ~~a schedule I or II controlled substance.~~

29 ~~b. Does not include an alcoholic beverage.~~

30 7. "Controlled substance analog":

1 a. Means a substance the chemical structure of which is substantially similar to the
2 chemical structure of a controlled substance in schedule I or II and:

3 (1) Which has a stimulant, depressant, or hallucinogenic effect on the central
4 nervous system which is substantially similar to or greater than the
5 stimulant, depressant, or hallucinogenic effect on the central nervous
6 system of a controlled substance in schedule I or II; or

7 (2) With respect to a particular individual, which the individual represents or
8 intends to have a stimulant, depressant, or hallucinogenic effect on the
9 central nervous system substantially similar to or greater than the stimulant,
10 depressant, or hallucinogenic effect on the central nervous system of a
11 controlled substance in schedule I or II.

12 b. Does not include:

13 (1) A controlled substance;

14 (2) Any substance for which there is an approved new drug application;

15 (3) With respect to a particular individual, any substance, if an exemption is in
16 effect for investigational use, for that individual, under section 505 of the
17 federal Food, Drug and Cosmetic Act [21 U.S.C 355] to the extent conduct
18 with respect to the substance is pursuant to the exemption; or

19 (4) Any substance to the extent not intended for human consumption before
20 such an exemption takes effect with respect to that substance.

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

26 8-9. "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one
27 person to another of a controlled substance whether or not there is an agency
28 relationship.

29 9-10. "Dispense" means to deliver a controlled substance to an ultimate user or research
30 subject by or pursuant to the lawful order of a practitioner, including the prescribing,

1 administering, packaging, labeling, or compounding necessary to prepare the
2 substance for that delivery.

3 ~~40.11.~~ "Dispenser" means a practitioner who dispenses.

4 ~~41.12.~~ "Distribute" means to deliver other than by administering or dispensing a controlled
5 substance.

6 ~~42.13.~~ "Distributor" means a person who distributes.

7 ~~43.14.~~ "Drug" means:

- 8 a. Substances recognized as drugs in the official United States pharmacopeia
9 national formulary, or the official homeopathic pharmacopeia of the United States,
10 or any supplement to any of them;
- 11 b. Substances intended for use in the diagnosis, cure, mitigation, treatment, or
12 prevention of disease in individuals or animals;
- 13 c. Substances, other than food, intended to affect the structure or any function of
14 the body of individuals or animals; and
- 15 d. Substances intended for use as a component of any article specified in
16 subdivision a, b, or c. The term does not include devices or their components,
17 parts, or accessories.

18 ~~44.15.~~ "Hashish" means the resin extracted from any part of the plant cannabis with or
19 without its adhering plant parts, whether growing or not, and every compound,
20 manufacture, salt, derivative, mixture, or preparation of the resin.

21 ~~45.16.~~ "Immediate precursor" means a substance:

- 22 a. That the board has found to be and by rule designates as being the principal
23 compound commonly used or produced primarily for use in the manufacture of a
24 controlled substance;
- 25 b. That is an immediate chemical intermediary used or likely to be used in the
26 manufacture of the controlled substance; and
- 27 c. The control of which is necessary to prevent, curtail, or limit the manufacture of
28 the controlled substance.

29 ~~46.17.~~ "Manufacture" means the production, preparation, propagation, compounding,
30 conversion, or processing of a controlled substance, either directly or indirectly by
31 extraction from substances of natural origin, or independently by means of chemical

1 synthesis, or by a combination of extraction and chemical synthesis and includes any
2 packaging or repackaging of the substance or labeling or relabeling of its container.
3 The term does not include the preparation or compounding of a controlled substance
4 by an individual for the individual's own use or the preparation, compounding,
5 packaging, or labeling of a controlled substance:

- 6 a. By a practitioner as an incident to the practitioner's administering or dispensing of
7 a controlled substance in the course of the practitioner's professional practice; or
- 8 b. By a practitioner, or by the practitioner's authorized agent under the practitioner's
9 supervision, for the purpose of, or as an incident to, research, teaching, or
10 chemical analysis and not for sale.

11 ~~17-18.~~ "Marijuana" means all parts of the plant cannabis whether growing or not; the seeds
12 thereof; the resinous product of the combustion of the plant cannabis; and every
13 compound, manufacture, salt, derivative, mixture, or preparation of the plant or its
14 seeds. The term does not include the mature stalks of the plant, fiber produced from
15 the stalks, oil or cake made from the seeds of the plant, any other compound,
16 manufacture, salt, derivative, mixture, or preparation of mature stalks, fiber, oil, or
17 cake, or the sterilized seed of the plant which is incapable of germination.

18 ~~18-19.~~ "Narcotic drug" means any of the following, whether produced directly or indirectly by
19 extraction from substances of vegetable origin, or independently by means of chemical
20 synthesis, or by a combination of extraction and chemical synthesis:

- 21 a. Opium and opiate and any salt, compound, derivative, or preparation of opium or
22 opiate.
- 23 b. Any salt, compound, isomer, derivative, or preparation thereof which is
24 chemically equivalent or identical with any of the substances referred to in
25 subdivision a, but not including the isoquinoline alkaloids of opium.
- 26 c. Opium poppy and poppy straw.
- 27 d. Coca leaves and any salt, compound, derivative, or preparation of coca leaves,
28 any salt, compound, isomer, derivative, or preparation thereof which is chemically
29 equivalent or identical with any of these substances, but not including
30 decocainized coca leaves or extractions of coca leaves which do not contain
31 cocaine or ecgonine.

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- 1 ~~19-20.~~ "Opiate" means any substance having an addiction-forming or addiction-sustaining
2 liability similar to morphine or being capable of conversion into a drug having
3 addiction-forming or addiction-sustaining liability. The term does not include, unless
4 specifically designated as controlled under section 19-03.1-02, the dextrorotatory
5 isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). The term
6 includes its racemic and levorotatory forms.
- 7 ~~20-21.~~ "Opium poppy" means the plant of the species *papaver somniferum* L., except its
8 seeds.
- 9 ~~21-22.~~ "Over-the-counter sale" means a retail sale of a drug or product other than a
10 controlled, or imitation controlled, substance.
- 11 ~~22-23.~~ "Person" means individual, corporation, limited liability company, government or
12 governmental subdivision or agency, business trust, estate, trust, partnership or
13 association, or any other legal entity.
- 14 ~~23-24.~~ "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.
- 15 ~~24-25.~~ "Practitioner" means:
- 16 a. A physician, dentist, veterinarian, pharmacist, scientific investigator, or other
17 person licensed, registered, or otherwise permitted by the jurisdiction in which the
18 individual is practicing to distribute, dispense, conduct research with respect to,
19 or to administer a controlled substance in the course of professional practice or
20 research.
- 21 b. A pharmacy, hospital, or other institution licensed, registered, or otherwise
22 permitted to distribute, dispense, conduct research with respect to, or to
23 administer a controlled substance in the course of professional practice or
24 research in this state.
- 25 ~~25-26.~~ "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of
26 a controlled substance.
- 27 ~~26-27.~~ "Sale" includes barter, exchange, or gift, or offer therefor, and each such transaction
28 made by a person, whether as principal, proprietor, agent, servant, or employee.
- 29 ~~27-28.~~ "Scheduled listed chemical product" means a product that contains ephedrine,
30 pseudoephedrin, or phenylpropanolamine, or each of the salts, optical isomers, and
31 salts of optical isomers of each chemical, and that may be marketed or distributed in

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

3 ~~28-29.~~ "State" when applied to a part of the United States includes any state, district,
4 commonwealth, territory, insular possession thereof, and any area subject to the legal
5 authority of the United States.

6 ~~29-30.~~ "Ultimate user" means an individual who lawfully possesses a controlled substance for
7 the individual's own use or for the use of a member of the individual's household or for
8 administering to an animal owned by the individual or by a member of the individual's
9 household.

10 **SECTION 5. AMENDMENT.** Subdivision b of subsection 1 of section 19-03.1-23 of the
11 North Dakota Century Code is amended and reenacted as follows:

- 12 b. Any other controlled substance classified in schedule I, II, or III, or a controlled
13 substance analog is guilty of a class B felony. Except for a person who
14 manufactures, delivers, or possesses with the intent to manufacture or deliver
15 marijuana, any person found guilty under this subdivision must be sentenced:
16 (1) For a second offense, to imprisonment for at least three years.
17 (2) For a third or subsequent offense, to imprisonment for ten years.

18 **SECTION 6. AMENDMENT.** Subsection 7 of section 19-03.1-23 of the North Dakota
19 Century Code is amended and reenacted as follows:

- 20 7. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess a
21 controlled substance or a controlled substance analog unless the substance was
22 obtained directly from, or pursuant to, a valid prescription or order of a practitioner
23 while acting in the course of the practitioner's professional practice, or except as
24 otherwise authorized by this chapter, but any person who violates section 12-46-24 or
25 12-47-21 may not be prosecuted under this subsection. Except as otherwise provided
26 in this subsection, any person who violates this subsection is guilty of a class C felony.
27 If, at the time of the offense the person is in or on, or within one thousand feet [300.48
28 meters] of the real property comprising a public or private elementary or secondary
29 school or a public career and technical education school, the person is guilty of a
30 class B felony. Any person who violates this subsection regarding possession of
31 one-half ounce [14.175 grams] to one ounce [28.35 grams] of marijuana is guilty of a

1 class A misdemeanor. Any person, except a person operating a motor vehicle, who
2 violates this subsection regarding possession of less than one-half ounce
3 [14.175 grams] of marijuana is guilty of a class B misdemeanor. Any person who
4 violates this subsection regarding possession of less than one-half ounce
5 [14.175 grams] of marijuana while operating a motor vehicle is guilty of a class A
6 misdemeanor.

7 **SECTION 7.** A new section to chapter 19-03.1 of the North Dakota Century Code is created
8 and enacted as follows:

9 **Controlled substance analog use - Venue for violation - Penalty.**

- 10 1. The use of controlled substance analog includes the ingestion, inhalation, absorption,
11 or any other method of taking the controlled substance analog into the body. An
12 individual who intentionally uses a controlled substance analog is guilty of a class C
13 felony, unless the individual obtains the analog directly from a practitioner or pursuant
14 to a valid prescription or order of a practitioner.
- 15 2. The venue for a violation under this section exists in the jurisdiction in which the
16 substance was used or in which the substance was detected.

17 **SECTION 8. EMERGENCY.** This Act is declared to be an emergency measure.