

Fifty-eighth  
Legislative Assembly  
of North Dakota

## ENGROSSED HOUSE BILL NO. 1354

Introduced by

Representatives DeKrey, Delmore, Warnke

Senators Christenson, Fischer, Nething

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 the prohibition of retail over-the-counter sale of certain  
3 nonprescription drugs; to amend and reenact subsection 5 of section 19-03.1-23 of the North  
4 Dakota Century Code, relating to equivalent offenses; and to provide a penalty.

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

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

8 **Sale of nonprescription drug containing dextromethorphan or dimenhydrinate -**  
9 **Prohibition - Proof of age - Affirmative defense - Penalty.**

- 10 1. A person may not deliver in any over-the-counter sale a drug, material, compound,  
11 mixture, preparation, or substance containing any quantity of dextrorotatory isomer  
12 of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan), other than its  
13 racemic and levorotatory forms, or dimenhydrinate to a person under the age of  
14 eighteen years. A person willfully violating this section is guilty of an infraction.
- 15 2. It is a prima facie case of a violation of this section if the person making the sale  
16 did not require and obtain proof of age from the purchaser, unless from the  
17 purchaser's outward appearance the person making the sale would reasonably  
18 presume the purchaser to be twenty-five years of age or older. "Proof of age"  
19 means any document issued by a governmental agency which:
- 20 a. Contains a description of the person or a photograph of the person, or both,  
21 and gives the person's date of birth; and
- 22 b. Includes a passport, military identification card, or driver's license.
- 23 3. It is an affirmative defense to a violation of this section if:

- 1           a. The person making the sale required and obtained proof of age from the  
2           purchaser;  
3           b. The purchaser falsely represented the purchaser's proof of age by use of a  
4           false, forged, or altered document;  
5           c. The appearance of the purchaser was such that an ordinary and prudent  
6           person would believe the purchaser to be at least eighteen years of age; and  
7           d. The sale was made in good faith and in reliance upon the appearance and  
8           representation of proof of age of the purchaser.

9           **SECTION 2. AMENDMENT.** Subsection 5 of section 19-03.1-23 of the North Dakota  
10 Century Code is amended and reenacted as follows:

- 11           5. A violation of this chapter or a law of another state or the federal government  
12           which is equivalent to an offense under this chapter committed while the offender  
13           was an adult and which resulted in a plea or finding of guilt must be considered a  
14           prior offense under subsections 1, 3, and 4. The prior offense must be alleged in  
15           the complaint, information, or indictment. ~~The plea or finding of guilt for the prior~~  
16           ~~offense;~~ must be the result of a plea or finding of guilt for the unlawful manufacture,  
17           delivery, possession with intent to manufacture or deliver, or possession of a  
18           controlled substance or a conspiracy to commit those offenses; and must have  
19           occurred before the date of the commission of the offense or offenses charged in  
20           the complaint, information, or indictment.