

# FOODS, DRUGS, OILS, AND COMPOUNDS

## CHAPTER 193

### HOUSE BILL NO. 1287

(Representatives Delmore, Boehning, Charging)

(Senators Bercier, Dever, Lyson)

## CONTROLLED SUBSTANCE INGESTION

AN ACT to create and enact a new section to chapter 19-03.1 of the North Dakota Century Code, relating to ingesting a controlled substance; and to provide a penalty.

### 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:

**Ingesting a controlled substance - Venue for violation - Penalty.** A person who intentionally ingests, inhales, or otherwise takes into the body a controlled substance, unless the substance was obtained directly from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, is guilty of a class A misdemeanor. The venue for a violation of this section exists in either the jurisdiction in which the controlled substance was ingested, inhaled, or otherwise taken into the body or the jurisdiction in which the controlled substance was detected in the body of the accused.

Approved March 14, 2005

Filed March 14, 2005

## CHAPTER 194

### SENATE BILL NO. 2401

(Senators O'Connell, Lyson, Syverson)  
(Representatives Galvin, Glassheim, Onstad)

## FIREARM PENALTY DURING CONTROLLED SUBSTANCE OFFENSE

AN ACT to amend and reenact section 19-03.1-23.1 of the North Dakota Century Code, relating to increased penalties for possessing a firearm during a controlled substance offense; and to provide a penalty.

### 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 career and technical education school, or a public or private college or university;
  - b. The defendant was at least 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) Fifty grams or more of a mixture or substance containing a detectable amount of heroin;
    - (2) 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;
- (6) Forty grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] 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-piperidinyl] 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; or
- d. The defendant had a firearm in the defendant's actual possession at the time of the offense.

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.

Approved March 25, 2005

Filed March 25, 2005

## CHAPTER 195

### HOUSE BILL NO. 1088

(Judiciary Committee)

(At the request of the Attorney General)

## STATE TOXICOLOGIST AND CRIME LABORATORY

AN ACT to amend and reenact subsections 4 and 5 of section 19-03.1-37, sections 20.1-13.1-01 and 20.1-13.1-03, subsection 2 of section 20.1-13.1-05, subsections 2 and 4 of section 20.1-13.1-08, subsections 3, 4, and 6 of section 20.1-13.1-10, sections 20.1-15-01 and 20.1-15-03, subsection 2 of section 20.1-15-05, subsections 2 and 4 of section 20.1-15-08, subsections 5, 6, and 8 of section 20.1-15-11, section 20.1-15-15, subsection 2 of section 28-32-01, subsection 2 of section 39-06.2-10.3, subsections 2 and 4 of section 39-06.2-10.6, sections 39-20-01 and 39-20-02, subsection 2 of section 39-20-03.1, subsections 2 and 4 of section 39-20-05, subsections 5, 6, and 8 of section 39-20-07, sections 39-20-13, 39-20-14, 39-24.1-01, and 39-24.1-03, and subsections 3, 4, and 6 of section 39-24.1-08 of the North Dakota Century Code, relating to the state toxicologist and the state crime laboratory.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsections 4 and 5 of section 19-03.1-37 of the North Dakota Century Code are amended and reenacted as follows:

4. In all prosecutions under this chapter, chapter 19-03.2, or chapter 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 state crime laboratory, or the director's designee, must be accepted as prima facie evidence of the results of the analytical findings.
5. Notwithstanding any statute or rule to the contrary, a defendant who has been found to be indigent by the court in the criminal proceeding at issue may subpoena the ~~state toxicologist or the~~ director or an employee of the state crime laboratory, ~~or any employee of either,~~ to testify at the preliminary hearing and trial of the issue at no cost to the defendant. If the ~~state toxicologist, the~~ director or an employee of the state crime laboratory, ~~or any employee of either,~~ is subpoenaed to testify by a defendant who is not indigent and the defendant does not call the witness to establish relevant evidence, the court shall order the defendant to pay costs to the witness as provided in section 31-01-16.

**SECTION 2. AMENDMENT.** Section 20.1-13.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-13.1-01. Implied consent to determine alcoholic and drug content of blood.** Any person who operates a motorboat or vessel in this state is deemed to have given consent, and shall consent, subject to this chapter, to a chemical test, or tests, of the blood, breath, saliva, or urine for the purpose of determining the alcoholic, other drug, or combination thereof, content of the blood. As used in this chapter, "operates" means to be in motion, en route, but not at anchor or aground;

"vessel" means any watercraft used or designed to be used for navigation on the water such as a boat operated by machinery, either permanently or temporarily affixed, a sailboat other than a sailboard, an inflatable manually propelled boat, a canoe, kayak, or rowboat, but does not include an inner tube, air mattress, or other water toy; "drug" means any drug or substance or combination of drugs or substances which renders a person incapable of safely operating a motorboat or vessel; and "chemical test" means any test or tests to determine the alcoholic, or other drug, or combination thereof, content of the blood, breath, saliva, or urine, approved by the director of the state toxicologist crime laboratory or the director's designee under this chapter. The chemical test must be administered at the direction of a game warden or a law enforcement officer only after placing the person, except persons mentioned in section 20.1-13.1-04, under arrest and informing that person that the person is or will be charged with the offense of operating a motorboat or vessel while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody of a minor under section 27-20-13 satisfies the requirement of an arrest. The game warden or law enforcement officer shall also inform the person charged that refusal of the person to submit to the chemical test determined appropriate will result in that person being prohibited from operating a motorboat or vessel for up to three years. The game warden or law enforcement officer shall determine the chemical test to be used. When a minor is taken into custody for violating section 20.1-13-07, the game warden or law enforcement officer shall diligently attempt to contact the minor's parent or legal guardian to explain the cause for the custody and the implied consent chemical testing requirements. Neither the game warden or law enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian may be permitted to interfere with the administration of chemical testing requirements under this chapter.

**SECTION 3. AMENDMENT.** Section 20.1-13.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-13.1-03. Persons qualified to administer chemical test and opportunity for additional test.** Only an individual medically qualified to draw blood, acting at the request of a game warden or a law enforcement officer, may withdraw blood for the purpose of determining the alcoholic, drug, or combination thereof, content of the blood. The director of the state toxicologist crime laboratory or the director's designee shall determine the qualifications or credentials for being medically qualified to draw blood and shall issue a list of approved designations, including medical doctor and registered nurse. This limitation does not apply to the taking of a breath, saliva, or urine specimen. The person tested may have an individual of that person's own choosing, who is medically qualified to draw blood, administer a chemical test in addition to any administered at the direction of a game warden or a law enforcement officer with all costs of the additional chemical test to be the responsibility of the person charged. The failure or inability to obtain an additional chemical test by a person does not preclude the admission of the chemical test taken at the direction of a game warden or a law enforcement officer. Upon the request of the person who is tested, a copy of the operational checklist and test record of a breath sample test or analytical report of a blood, urine, or saliva sample test taken at the direction of the game warden or law enforcement officer must be made available to that person by the department or law enforcement agency that administered the chemical test.

**SECTION 4. AMENDMENT.** Subsection 2 of section 20.1-13.1-05 of the North Dakota Century Code is amended and reenacted as follows:

2. If a chemical test administered under section 20.1-13.1-01 or 20.1-13.1-04 was by saliva or urine sample or by drawing blood as provided in section 20.1-13.1-03 and the person tested does not reside in an area in which the game warden or law enforcement officer has jurisdiction, the game warden or law enforcement officer shall, on receiving the analysis of the saliva, urine, or blood from the director of the state ~~toxicologist~~ crime laboratory or the director's designee and if the analysis shows that person had an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that person's reappearance within the game warden's or officer's jurisdiction or notify a game warden or law enforcement agency having jurisdiction where the person resides. On that notification, that game warden or law enforcement agency shall immediately issue a statement of intent to prohibit the person from operating a motorboat or vessel. The issuance of a statement of intent to prohibit the person from operating a motorboat or vessel serves as the director's official notification to the person of the director's intent to prohibit the person from operating a motorboat or vessel in this state.

<sup>114</sup> **SECTION 5. AMENDMENT.** Subsections 2 and 4 of section 20.1-13.1-08 of the North Dakota Century Code are amended and reenacted as follows:

2. If the issue to be determined by the hearing concerns the prohibition from operating a motorboat or vessel for operating a motorboat or vessel while having an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight, the hearing must be before a hearing officer assigned by the director and at a time and place designated by the director. The hearing must be recorded and its scope may cover only the issues of whether the arresting warden or officer had probable cause to believe the person had been operating a motorboat or vessel in violation of section 20.1-13-07; whether the person was placed under arrest; whether the person was tested in accordance with section 20.1-13.1-01 or 20.1-13.1-04 and, if applicable, section 20.1-13.1-03; and whether the chemical test results show the person had an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood, urine, or saliva sample from the director of the state ~~toxicologist~~ crime laboratory or the director's designee, or a certified copy of the checklist and test records from a certified breath test operator establish prima facie the alcohol, other drug, or a combination thereof concentration shown therein. Whether the person was informed that that person may be prohibited from operating a motorboat or vessel based on the results of the chemical test is not an issue.
4. At a hearing under this section, the regularly kept records of the director may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following

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<sup>114</sup> Section 20.1-13.1-08 was also amended by section 3 of Senate Bill No. 2141, chapter 228.

are deemed regularly kept records of the director: any copy of a certified copy of an analytical report of a blood, urine, or saliva sample received by the director from the director of the state toxicologist crime laboratory or the director's designee or a game warden or a law enforcement officer, a certified copy of the checklist and test records received by the director from a certified breath test operator, and any copy of a certified copy of a certificate of the director of the state toxicologist crime laboratory or the director's designee relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol, other drug, or a combination thereof concentration received by the director from the director of the state toxicologist crime laboratory or the director's designee, or the recorder, unless the board of county commissioners has designated a different official to maintain the certificate.

**SECTION 6. AMENDMENT.** Subsections 3, 4, and 6 of section 20.1-13.1-10 of the North Dakota Century Code are amended and reenacted as follows:

3. The results of the chemical test must be received in evidence when it is shown that the sample was properly obtained and the test was fairly administered, and if the test is shown to have been performed according to methods and with devices approved by the director of the state toxicologist crime laboratory or the director's designee, and by an individual possessing a certificate of qualification to administer the test issued by the director of the state toxicologist crime laboratory or the director's designee. The director of the state toxicologist crime laboratory or the director's designee is authorized to approve satisfactory devices and methods of chemical tests and determine the qualifications of individuals to conduct such tests, and shall issue a certificate to every qualified operator. An operator shall exhibit the certificate upon demand of the person requested to take the chemical test.
4. The director of the state toxicologist crime laboratory or the director's designee may appoint, train, certify, and supervise field inspectors of breath testing equipment and its operation, and the inspectors shall report the findings of any inspection to the director of the state toxicologist crime laboratory or the director's designee for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the persons qualified to administer them, the director of the state toxicologist crime laboratory or the director's designee shall prepare and file written record of the approval with the director and the recorder in each county, unless the board of county commissioners designates a different official, and shall include in the record:
  - a. An annual register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.
  - b. An annual register of currently qualified and certified operators of the devices, stating the date of certification and its expiration.
  - c. The operational checklist and forms prescribing the methods currently approved by the director of the state toxicologist crime

laboratory or the director's designee in using the devices during the administration of the tests.

The material filed under this section may be supplemented when the director of the state toxicologist crime laboratory or the director's designee determines it to be necessary, and any supplemental material has the same force and effect as the material that it supplements.

6. A certified copy of the analytical report of a blood, urine, or saliva test issued by the director of the state toxicologist crime laboratory or the director's designee must be accepted as prima facie evidence of the results of a chemical test performed under this chapter.

**SECTION 7. AMENDMENT.** Section 20.1-15-01 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-15-01. Implied consent to determine alcoholic and drug content of blood.** Any person who is afield with a gun or other firearm or a bow and arrow is deemed to have given consent, and shall consent, subject to this chapter, to a chemical test of the blood, breath, saliva, or urine for the purpose of determining the alcoholic, other drug, or combination thereof, content of the blood. As used in this chapter, "drug" means any drug or substance or combination of drugs or substances which renders a person incapable of safely hunting or being afield with a gun or other firearm or a bow and arrow, and "chemical test" means any test or tests to determine the alcoholic, or other drug, or combination thereof, content of the blood, breath, saliva, or urine, approved by the director of the state toxicologist crime laboratory or the director's designee under this chapter. The chemical test must be administered at the direction of a game warden or a law enforcement officer only after placing the person, except persons mentioned in section 20.1-15-04, under arrest and informing that person that the person is or will be charged with the offense of being afield with a gun or other firearm or a bow and arrow while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody of a minor under section 27-20-13 satisfies the requirement of an arrest. The game warden or law enforcement officer shall also inform the person charged that refusal of the person to submit to the chemical test determined appropriate will result in a revocation for up to four years of the person's hunting privileges. The game warden or law enforcement officer shall determine the chemical test to be used. When a minor is taken into custody for violating section 20.1-01-06, the game warden or law enforcement officer shall diligently attempt to contact the minor's parent or legal guardian to explain the cause for the custody and the implied consent chemical testing requirements. Neither the game warden or law enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian may be permitted to interfere with the administration of chemical testing requirements under this chapter.

**SECTION 8. AMENDMENT.** Section 20.1-15-03 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-15-03. Persons qualified to administer chemical test and opportunity for additional test.** Only an individual medically qualified to draw blood, acting at the request of a game warden or a law enforcement officer, may withdraw blood for the purpose of determining the alcoholic, drug, or combination thereof, content of the blood. The director of the state toxicologist crime laboratory or the director's designee shall determine the qualifications or credentials for being medically qualified to draw blood and shall issue a list of approved designations, including medical doctor and registered nurse. This limitation does not apply to the

taking of a breath, saliva, or urine specimen. The person tested may have an individual of that person's own choosing, who is medically qualified to draw blood, administer a chemical test in addition to any administered at the direction of a game warden or a law enforcement officer with all costs of the additional chemical test to be the responsibility of the person charged. The failure or inability to obtain an additional chemical test by a person does not preclude the admission of the chemical test taken at the direction of a game warden or a law enforcement officer. Upon the request of the person who is tested, a copy of the operational checklist and test record of a breath sample test or analytical report of a blood, urine, or saliva sample test taken at the direction of the game warden or law enforcement officer must be made available to that person by the department or law enforcement agency that administered the chemical test.

**SECTION 9. AMENDMENT.** Subsection 2 of section 20.1-15-05 of the North Dakota Century Code is amended and reenacted as follows:

2. If a chemical test administered under section 20.1-15-01 or 20.1-15-04 was by saliva or urine sample or by drawing blood as provided in section 20.1-15-03 and the person tested does not reside in an area in which the game warden or law enforcement officer has jurisdiction, the game warden or law enforcement officer shall, on receiving the analysis of the saliva, urine, or blood from the director of the state toxicologist crime laboratory or the director's designee and if the analysis shows that person had an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that person's reappearance within the game warden's or officer's jurisdiction or notify a game warden or law enforcement agency having jurisdiction where the person resides. On that notification, that game warden or law enforcement agency shall immediately issue a statement of intent to revoke, suspend, or deny hunting privileges and take possession of the person's hunting license if it is then available and, within twenty-four hours, forward the license to the game warden or law enforcement agency making the arrest or to the director. The issuance of a statement of intent to revoke, suspend, or deny hunting privileges and the taking of possession of the person's hunting license serves as the director's official notification to the person of the director's intent to revoke, suspend, or deny hunting privileges in this state.

**SECTION 10. AMENDMENT.** Subsections 2 and 4 of section 20.1-15-08 of the North Dakota Century Code are amended and reenacted as follows:

2. If the issue to be determined by the hearing concerns suspension of hunting privileges for being afield with a gun or other firearm or a bow and arrow while having an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight, the hearing must be before a hearing officer assigned by the director and at a time and place designated by the director. The hearing must be recorded and its scope may cover only the issues of whether the arresting warden or officer had reasonable grounds to believe the person had been afield with a gun or other firearm or bow and arrow in violation of section 20.1-01-06; whether the person was placed under arrest; whether the person was tested in accordance with section 20.1-15-01 or 20.1-15-04 and, if applicable, section 20.1-15-03; and whether the chemical test results show the person had an alcohol, other drug, or a combination thereof concentration of at least ten

one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood, urine, or saliva sample from the director of the state toxicologist crime laboratory or the director's designee, or a certified copy of the checklist and test records from a certified breath test operator establish prima facie the alcohol, other drug, or a combination thereof concentration shown therein. Whether the person was informed that the privilege to hunt might be suspended based on the results of the chemical test is not an issue.

4. At a hearing under this section, the regularly kept records of the director may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director: any copy of a certified copy of an analytical report of a blood, urine, or saliva sample received by the director from the director of the state toxicologist crime laboratory or the director's designee or a game warden or a law enforcement officer, a certified copy of the checklist and test records received by the director from a certified breath test operator, and any copy of a certified copy of a certificate of the director of the state toxicologist crime laboratory or the director's designee relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol, other drug, or a combination thereof concentration received by the director from the director of the state toxicologist crime laboratory or the director's designee, or the recorder, unless the board of county commissioners has designated a different official to maintain the certificate.

**SECTION 11. AMENDMENT.** Subsections 5, 6, and 8 of section 20.1-15-11 of the North Dakota Century Code are amended and reenacted are follows:

5. The results of the chemical test must be received in evidence when it is shown that the sample was properly obtained and the test was fairly administered, and if the test is shown to have been performed according to methods and with devices approved by the director of the state toxicologist crime laboratory or the director's designee, and by an individual possessing a certificate of qualification to administer the test issued by the director of the state toxicologist crime laboratory or the director's designee. The director of the state toxicologist crime laboratory or the director's designee is authorized to approve satisfactory devices and methods of chemical tests and determine the qualifications of individuals to conduct such tests, and shall issue a certificate to every qualified operator. An operator shall exhibit the certificate upon demand of the person requested to take the chemical test.
6. The director of the state toxicologist crime laboratory or the director's designee may appoint, train, certify, and supervise field inspectors of breath testing equipment and its operation, and the inspectors shall report the findings of any inspection to the director of the state toxicologist crime laboratory or the director's designee for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the persons qualified to administer them, the director of the state toxicologist crime laboratory or the director's designee shall prepare and file written record of the approval with the director and the recorder in each county, unless the board of county

commissioners designates a different official, and shall include in the record:

- a. An annual register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.
- b. An annual register of currently qualified and certified operators of the devices, stating the date of certification and its expiration.
- c. The operational checklist and forms prescribing the methods currently approved by the director of the state ~~toxicologist~~ crime laboratory or the director's designee in using the devices during the administration of the tests.

The material filed under this section may be supplemented when the director of the state ~~toxicologist~~ crime laboratory or the director's designee determines it to be necessary, and any supplemental material has the same force and effect as the material that it supplements.

8. A certified copy of the analytical report of a blood, urine, or saliva test issued by the director of the state ~~toxicologist~~ crime laboratory or the director's designee must be accepted as prima facie evidence of the results of a chemical test performed under this chapter.

**SECTION 12. AMENDMENT.** Section 20.1-15-15 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-15-15. Screening tests.** Any person who is afield with a gun or other firearm or a bow and arrow is deemed to have given consent to submit to an onsite screening test of the person's breath for the purpose of estimating the alcohol, other drug, or a combination thereof content of the person's blood upon the request of a game warden or a law enforcement officer who has reason to believe and has, through the officer's observations, formulated an opinion that the person's body contains alcohol, other drugs, or a combination thereof. A person may not be required to submit to a screening test of breath while at a hospital as a patient if the medical practitioner in immediate charge of the person's case is not first notified of the proposal to make the requirement or objects to the test on the ground that such would be prejudicial to the proper care or treatment of the patient. The screening test must be performed by a game warden or an enforcement officer certified as a chemical test operator by the director of the state ~~toxicologist~~ crime laboratory or the director's designee and according to methods and with devices approved by the director of the state ~~toxicologist~~ crime laboratory or the director's designee. The results of the screening test must be used only for determining whether a further test is to be given under the provisions of section 20.1-15-01. The officer shall inform the person that refusal of the person to submit to a screening test will result in a revocation for up to four years of that person's hunting privileges. If the person refuses to submit to the screening test, none may be given, but the refusal is sufficient cause to revoke the person's hunting privileges in the same manner as provided in section 20.1-15-06, and a hearing as provided in section 20.1-15-08 and a judicial review as provided in section 20.1-15-09 must be available. However, the director may not revoke a person's hunting privileges for refusing to submit to a screening test requested under this section if the person provides a sufficient breath, blood, or urine sample for a chemical test requested under section 20.1-15-01 for the same incident. This section does not supersede any provisions of sections 20.1-15-01 through 20.1-15-14, nor does any provision of sections 20.1-15-01

through 20.1-15-14 supersede this section except as provided herein. For the purposes of this section, "chemical test operator" means a person certified by the director of the state toxicologist crime laboratory or the director's designee as qualified to perform analysis for alcohol, other drugs, or a combination thereof in a person's blood, breath, saliva, or urine.

<sup>115</sup> **SECTION 13. AMENDMENT.** Subsection 2 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency must be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:
  - a. The office of management and budget except with respect to rules made under section 32-12.2-14, rules relating to conduct on the capitol grounds and in buildings located on the capitol grounds under section 54-21-18, rules relating to the classified service as authorized under section 54-44.3-07, and rules relating to state purchasing practices as required under section 54-44.4-04.
  - b. The adjutant general with respect to the division of emergency management.
  - c. The council on the arts.
  - d. The state auditor.
  - e. The department of commerce with respect to the division of economic development and finance.
  - f. The dairy promotion commission.
  - g. The education factfinding commission.
  - h. The educational technology council.
  - i. The board of equalization.
  - j. The board of higher education.
  - k. The Indian affairs commission.
  - l. The industrial commission with respect to the activities of the Bank of North Dakota, North Dakota housing finance agency, North

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<sup>115</sup> Section 28-32-01 was also amended by section 11 of House Bill No. 1016, chapter 16, section 14 of House Bill No. 1169, chapter 406, section 6 of Senate Bill No. 2027, chapter 538, and section 29 of Senate Bill No. 2074, chapter 89.

Dakota municipal bond bank, North Dakota mill and elevator association, and North Dakota farm finance agency.

- m. The department of corrections and rehabilitation except with respect to the activities of the division of adult services under chapter 54-23.4.
- n. The pardon advisory board.
- o. The parks and recreation department.
- p. The parole board.
- q. The state fair association.
- r. The attorney general with respect to activities of the state toxicologist and the state crime laboratory.
- s. The board of university and school lands except with respect to activities under chapter 47-30.1.
- t. The administrative committee on veterans' affairs except with respect to rules relating to the supervision and government of the veterans' home and the implementation of programs or services provided by the veterans' home.
- u. The industrial commission with respect to the lignite research fund except as required under section 57-61-01.5.
- v. The attorney general with respect to guidelines adopted under section 12.1-32-15 for the risk assessment of sexual offenders, the risk level review process, and public disclosure of information under section 12.1-32-15.

**SECTION 14. AMENDMENT.** Subsection 2 of section 39-06.2-10.3 of the North Dakota Century Code is amended and reenacted as follows:

- 2. If a test administered under section 39-06.2-10.2 was by a urine or blood sample and the person tested is not a resident of an area in which the law enforcement officer has jurisdiction, the law enforcement officer shall, on receiving the analysis of the sample by the director of the state toxicologist crime laboratory or the director's designee showing that person had an alcohol concentration of at least four one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that person's reappearance within the officer's jurisdiction or notify a law enforcement agency having jurisdiction where the person lives. On that notification, that law enforcement agency shall immediately take possession of the person's North Dakota commercial driver's license or permit and, within twenty-four hours, forward it and a copy of the temporary driver's permit to the halting officer. The law enforcement agency shall also, on taking possession of the person's commercial driver's license, issue to that person a temporary driver's permit according to section 39-06.2-10.8.

**SECTION 15. AMENDMENT.** Subsections 2 and 4 of section 39-06.2-10.6 of the North Dakota Century Code are amended and reenacted as follows:

2. If the issue to be determined by the hearing concerns license suspension for operating a commercial motor vehicle while having an alcohol concentration of at least four one-hundredths of one percent by weight, the hearing must be before a hearing officer assigned by the director and at a time and place designated by the director. The hearing must be recorded and its scope may cover only the issues of whether the arresting officer had reasonable grounds to believe the person had been driving or was in actual physical control of a commercial motor vehicle in violation of section 39-06.2-10.1, whether the person was lawfully detained, whether the person was tested in accordance with section 39-06.2-10.2, and whether the test results show the person had an alcohol concentration of at least four one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood or urine sample from the office of the director of the state toxicologist crime laboratory or the director's designee, or a certified copy of the checklist and test records from a certified breath test operator establish prima facie the alcohol concentration shown therein. Whether the person was warned that the privilege to drive might be suspended based on the results of the test is not an issue.
  
4. At a hearing under this section, the regularly kept records of the director may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director: any copy of a certified copy of an analytical report of a blood or urine sample received by the director from the office of the director of the state toxicologist crime laboratory or the director's designee or a law enforcement officer, a certified copy of the checklist and test records received by the director from a certified breath test operator, and any copy of a certified copy of a certificate of the office of the director of the state toxicologist crime laboratory or the director's designee relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol concentration received by the director from the office of the director of the state toxicologist crime laboratory or the director's designee, or the recorder, unless the board of county commissioners has designated a different official to maintain the certificate.

<sup>116</sup> **SECTION 16. AMENDMENT.** Section 39-20-01 of the North Dakota Century Code is amended and reenacted as follows:

**39-20-01. Implied consent to determine alcohol and drug content of blood.** Any person who operates a motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state is deemed to have given consent, and shall consent, subject to the provisions of this chapter, to a chemical test, or tests, of the blood, breath, saliva, or urine for the purpose of determining the alcohol, other drug, or combination thereof, content of the blood. As used in this chapter the word "drug" means any drug or substance or combination of drugs or substances which renders a person incapable of safely driving, and the words "chemical test" or "chemical analysis" mean any test to determine the alcohol, or other drug, or combination thereof, content of the blood,

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<sup>116</sup> Section 39-20-01 was also amended by section 5 of Senate Bill No. 2099, chapter 330.

breath, saliva, or urine, approved by the director of the state toxicologist crime laboratory or the director's designee under this chapter. The test or tests must be administered at the direction of a law enforcement officer only after placing the person, except persons mentioned in section 39-20-03, under arrest and informing that person that the person is or will be charged with the offense of driving or being in actual physical control of a vehicle upon the public highways while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody of a child under section 27-20-13 or a person under twenty-one years of age satisfies the requirement of an arrest. The law enforcement officer shall also inform the person charged that refusal of the person to submit to the test determined appropriate will result in a revocation for up to three years of the person's driving privileges. The law enforcement officer shall determine which of the tests is to be used. When a person under the age of eighteen years is taken into custody for violating section 39-08-01 or an equivalent ordinance, the law enforcement officer shall attempt to contact the person's parent or legal guardian to explain the cause for the custody. Neither the law enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian may be permitted to interfere with the administration of chemical testing requirements under this chapter. The law enforcement officer shall mail a notice to the parent or legal guardian of the minor within ten days after the test results are received or within ten days after the minor is taken into custody if the minor refuses to submit to testing. The notice must contain a statement of the test performed and the results of that test; or if the minor refuses to submit to the testing, a statement notifying of that fact. The attempt to contact or the contacting or notification of a parent or legal guardian is not a precondition to the admissibility of chemical test results or the finding of a consent to, or refusal of, chemical testing by the person in custody.

**SECTION 17. AMENDMENT.** Section 39-20-02 of the North Dakota Century Code is amended and reenacted as follows:

**39-20-02. Persons qualified to administer test and opportunity for additional test.** Only an individual medically qualified to draw blood, acting at the request of a law enforcement officer, may withdraw blood for the purpose of determining the alcohol, drug, or combination thereof, content therein. The director of the state toxicologist crime laboratory or the director's designee shall determine the qualifications or credentials for being medically qualified to draw blood, and shall issue a list of approved designations including medical doctor and registered nurse. This limitation does not apply to the taking of breath, saliva, or urine specimen. The person tested may have an individual of the person's choosing, who is medically qualified to draw blood, administer a chemical test or tests in addition to any administered at the direction of a law enforcement officer with all costs of an additional test or tests to be the sole responsibility of the person charged. The failure or inability to obtain an additional test by a person does not preclude the admission of the test or tests taken at the direction of a law enforcement officer. Upon the request of the person who is tested, a copy of the operational checklist and test record of a breath sample test or analytical report of a blood, urine, or saliva sample test taken at the direction of the law enforcement officer must be made available to that person by the law enforcement agency that administered the test or tests.

**SECTION 18. AMENDMENT.** Subsection 2 of section 39-20-03.1 of the North Dakota Century Code is amended and reenacted as follows:

2. If a test administered under section 39-20-01 or 39-20-03 was by saliva or urine sample or by drawing blood as provided in section 39-20-02 and the person tested is not a resident of an area in which the law enforcement officer has jurisdiction, the law enforcement officer shall, on

receiving the analysis of the saliva, urine, or blood from the director of the state toxicologist crime laboratory or the director's designee and if the analysis shows that person had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that person's reappearance within the officer's jurisdiction or notify a law enforcement agency having jurisdiction where the person lives. On that notification, that law enforcement agency shall immediately take possession of the person's North Dakota operator's license or permit if it is then available and, within twenty-four hours, forward the license and a copy of the temporary operator's permit to the law enforcement agency making the arrest or to the director. The law enforcement agency shall also, on taking possession of the person's operator's license, issue to that person a temporary operator's permit as provided in this section, and shall sign and date the permit as provided in subsection 1. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke, suspend, or deny driving privileges in this state.

**SECTION 19. AMENDMENT.** Subsections 2 and 4 of section 39-20-05 of the North Dakota Century Code are amended and reenacted as follows:

2. If the issue to be determined by the hearing concerns license suspension for operating a motor vehicle while having an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, the hearing must be before a hearing officer assigned by the director and at a time and place designated by the director. The hearing must be recorded and its scope may cover only the issues of whether the arresting officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to a person under twenty-one years of age, the person had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the person was placed under arrest, unless the person was under twenty-one years of age and the alcohol concentration was less than eight one-hundredths of one percent by weight, then arrest is not required and is not an issue under any provision of this chapter; whether the person was tested in accordance with section 39-20-01 or 39-20-03 and, if applicable, section 39-20-02; and whether the test results show the person had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood, urine, or saliva sample from the director of the state toxicologist crime laboratory or the director's designee or a certified copy of the checklist and test records from a certified breath test operator establish prima facie the alcohol concentration shown therein. Whether the person was informed that the privilege to drive might be suspended based on the results of the test is not an issue.

4. At a hearing under this section, the regularly kept records of the director may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director: any copy of a certified copy of an analytical report of a blood, urine, or saliva sample received by the director from the director of the state ~~toxicologist~~ crime laboratory or the director's designee or a law enforcement officer, a certified copy of the checklist and test records received by the director from a certified breath test operator, and any copy of a certified copy of a certificate of the director of the state ~~toxicologist~~ crime laboratory or the director's designee relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol concentration received by the director from the director of the state ~~toxicologist~~ crime laboratory, the director's designee, or the recorder, unless the board of county commissioners has designated a different official to maintain the certificate.

**SECTION 20. AMENDMENT.** Subsections 5, 6, and 8 of section 39-20-07 of the North Dakota Century Code are amended and reenacted as follows:

5. The results of the chemical analysis must be received in evidence when it is shown that the sample was properly obtained and the test was fairly administered, and if the test is shown to have been performed according to methods and with devices approved by the director of the state ~~toxicologist~~ crime laboratory or the director's designee, and by an individual possessing a certificate of qualification to administer the test issued by the director of the state ~~toxicologist~~ crime laboratory or the director's designee. The director of the state ~~toxicologist~~ crime laboratory or the director's designee is authorized to approve satisfactory devices and methods of chemical analysis and determine the qualifications of individuals to conduct such analysis, and shall issue a certificate to all qualified operators who exhibit the certificate upon demand of the person requested to take the chemical test.
6. The director of the state ~~toxicologist~~ crime laboratory or the director's designee may appoint, train, certify, and supervise field inspectors of breath testing equipment and its operation, and the inspectors shall report the findings of any inspection to the director of the state ~~toxicologist~~ crime laboratory or the director's designee for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the persons qualified to administer them, the director of the state ~~toxicologist~~ crime laboratory or the director's designee shall prepare and file written record of the approval with the director and the recorder in each county, unless the board of county commissioners designates a different official, and shall include in the record:
  - a. An annual register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.
  - b. An annual register of currently qualified and certified operators of the devices, stating the date of certification and its expiration.
  - c. The operational checklist and forms prescribing the methods currently approved by the director of the state ~~toxicologist~~ crime

laboratory or the director's designee in using the devices during the administration of the tests.

The material filed under this section may be supplemented when the director of the state toxicologist crime laboratory or the director's designee determines it to be necessary, and any supplemental material has the same force and effect as the material that it supplements.

8. A certified copy of the analytical report of a blood, urine, or saliva analysis referred to in subsection 5 and which is issued by the director of the state toxicologist crime laboratory or the director's designee must be accepted as prima facie evidence of the results of a chemical analysis performed under this chapter. The certified copy satisfies the directives of subsection 5.

**SECTION 21. AMENDMENT.** Section 39-20-13 of the North Dakota Century Code is amended and reenacted as follows:

**39-20-13. State toxicologist crime laboratory to examine specimens of fatalities in accidental deaths involving a motor vehicle - Record use.** In cases of death resulting from a motor vehicle accident or other unnatural death occurring in a motor vehicle, the county coroner shall require that specimens of blood, urine, and vitreous humor be withdrawn from the body of the decedent within twenty-four hours after the decedent's death by a coroner, coroner's physician, or other qualified person, prior to embalming. The specimens must be collected and preserved by methods and techniques established by the director of the state toxicologist crime laboratory or the director's designee. The specimens so drawn must be sent to the director of the state toxicologist crime laboratory or the director's designee for analysis for alcohol, carbon monoxide, and other drug content. The director of the state toxicologist crime laboratory or the director's designee shall keep a record of all such examinations to be used for statistical purposes. The records must be made available to the director for use by the national highway traffic safety administration in analyzing fatal accidents. The information in the possession of the director may be obtained from the director of the state toxicologist crime laboratory or the director's designee only as provided in this section. Except as provided, the results of the examinations referred to in this section must be used only for statistical purposes, except that the results must be released upon the issuance of a subpoena duces tecum by a court of competent jurisdiction in any civil or criminal action. The cumulative results of the examinations, without identifying the individuals involved, must be disseminated to interested state and local officials and made public by the director of the state toxicologist crime laboratory or the director's designee. Any person drawing the specimens and any person making any examination under the terms of this section are immune from all liability, civil or criminal, that might otherwise be incurred or imposed. ~~The individual drawing the specimens must be paid a fee of five dollars by the state toxicologist for each acceptable specimen submitted for analysis under the requirements of this section.~~

**SECTION 22. AMENDMENT.** Section 39-20-14 of the North Dakota Century Code is amended and reenacted as follows:

**39-20-14. Screening tests.** Any person who operates a motor vehicle upon the public highways of this state is deemed to have given consent to submit to an onsite screening test or tests of the person's breath for the purpose of estimating the alcohol content of the person's blood upon the request of a law enforcement officer who has reason to believe that the person committed a moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with the violation or the

accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol. A person may not be required to submit to a screening test or tests of breath while at a hospital as a patient if the medical practitioner in immediate charge of the person's case is not first notified of the proposal to make the requirement, or objects to the test or tests on the ground that such would be prejudicial to the proper care or treatment of the patient. The screening test or tests must be performed by an enforcement officer certified as a chemical test operator by the director of the state toxicologist crime laboratory or the director's designee and according to methods and with devices approved by the director of the state toxicologist crime laboratory or the director's designee. The results of such screening test must be used only for determining whether or not a further test shall be given under the provisions of section 39-20-01. The officer shall inform the person that refusal of the person to submit to a screening test will result in a revocation for up to three years of that person's driving privileges. If such person refuses to submit to such screening test or tests, none may be given, but such refusal is sufficient cause to revoke such person's license or permit to drive in the same manner as provided in section 39-20-04, and a hearing as provided in section 39-20-05 and a judicial review as provided in section 39-20-06 must be available. However, the director must not revoke a person's driving privileges for refusing to submit to a screening test requested under this section if the person provides a sufficient breath, blood, or urine sample for a chemical test requested under section 39-20-01 for the same incident. No provisions of this section may supersede any provisions of chapter 39-20, nor may any provision of chapter 39-20 be construed to supersede this section except as provided herein. For the purposes of this section, "chemical test operator" means a person certified by the director of the state toxicologist crime laboratory or the director's designee as qualified to perform analysis for alcohol in a person's blood, breath, saliva, or urine.

**SECTION 23. AMENDMENT.** Section 39-24.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**39-24.1-01. Implied consent to determine alcohol and drug content of blood.** A person who operates a snowmobile on any public land or private land with public access is deemed to have given consent, and shall consent, subject to this chapter, to a chemical test, or tests, of the blood, breath, saliva, or urine for the purpose of determining the alcohol, other drug, or combination thereof, content of the blood. As used in this chapter, the definitions in section 39-24-01 apply, and in addition, "chemical test" means any test or tests to determine the alcohol, or other drug, or combination thereof, content of the blood, breath, saliva, or urine, approved by the director of the state toxicologist crime laboratory or the director's designee under this chapter; and "drug" means any drug or substance or combination of drugs or substances which renders a person incapable of safely operating a snowmobile. The chemical test must be administered at the direction of a law enforcement officer only after placing the person, except persons mentioned in section 39-24.1-04, under arrest and informing that person that the person is or will be charged with the offense of operating a snowmobile while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody of a minor under section 27-20-13 satisfies the requirement of an arrest. The law enforcement officer shall also inform the person charged that refusal of the person to submit to the chemical test determined appropriate will result in that person being prohibited from operating a snowmobile for up to three years. The law enforcement officer shall determine the chemical test to be used. When a minor is taken into custody for violating subdivision c of subsection 5 of section 39-24-09, the law enforcement officer shall diligently attempt to contact the minor's parent or legal guardian to explain the cause for the custody and the implied consent chemical testing requirements. Neither the law enforcement officer's efforts to contact, nor any

consultation with, a parent or legal guardian may be permitted to interfere with the administration of chemical testing requirements under this chapter.

**SECTION 24. AMENDMENT.** Section 39-24.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**39-24.1-03. Persons qualified to administer chemical test and opportunity for additional test.** Only an individual medically qualified to draw blood, acting at the request of a law enforcement officer, may withdraw blood for the purpose of determining the alcohol, drug, or combination thereof, content of the blood. The director of the state ~~toxicologist~~ crime laboratory or the director's designee shall determine the qualifications or credentials for being medically qualified to draw blood, and shall issue a list of approved designations including medical doctor and registered nurse. This limitation does not apply to the taking of a breath, saliva, or urine specimen. The person tested may have an individual of that person's own choosing, who is medically qualified to draw blood, administer a chemical test in addition to any administered at the direction of a law enforcement officer with all costs of the additional chemical test to be the responsibility of the person charged. The failure or inability to obtain an additional chemical test by a person does not preclude the admission of the chemical test taken at the direction of a law enforcement officer. Upon the request of the person who is tested, a copy of the operational checklist and test record of a breath sample test or analytical report of a blood, urine, or saliva sample test taken at the direction of the law enforcement officer must be made available to that person by the law enforcement agency that administered the chemical test.

**SECTION 25. AMENDMENT.** Subsections 3, 4, and 6 of section 39-24.1-08 of the North Dakota Century Code are amended and reenacted as follows:

3. The results of the chemical test must be received in evidence when it is shown that the sample was properly obtained and the test was fairly administered, and if the test is shown to have been performed according to methods and with devices approved by the director of the state ~~toxicologist~~ crime laboratory or the director's designee, and by an individual possessing a certificate of qualification to administer the test issued by the director of the state ~~toxicologist~~ crime laboratory or the director's designee. The director of the state ~~toxicologist~~ crime laboratory or the director's designee is authorized to approve satisfactory devices and methods of chemical tests and determine the qualifications of individuals to conduct such tests, and shall issue a certificate to every qualified operator. An operator shall exhibit the certificate upon demand of the person requested to take the chemical test.
4. The director of the state ~~toxicologist~~ crime laboratory or the director's designee may appoint, train, certify, and supervise field inspectors of breath testing equipment and its operation, and the inspectors shall report the findings of any inspection to the director of the state ~~toxicologist~~ crime laboratory or the director's designee for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the persons qualified to administer them, the director of the state ~~toxicologist~~ crime laboratory or the director's designee shall prepare and file written record of the approval with the director and the recorder in each county, unless the board of county commissioners designates a different official, and shall include in the record:

- a. An annual register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.
- b. An annual register of currently qualified and certified operators of the devices, stating the date of certification and its expiration.
- c. The operational checklist and forms prescribing the methods currently approved by the director of the state ~~toxicologist~~ crime laboratory or the director's designee in using the devices during the administration of the tests.

The material filed under this subsection may be supplemented when the director of the state ~~toxicologist~~ crime laboratory or the director's designee determines it to be necessary, and any supplemental material has the same force and effect as the material that it supplements.

6. A certified copy of the analytical report of a blood, urine, or saliva test issued by the director of the state ~~toxicologist~~ crime laboratory or the director's designee must be accepted as prima facie evidence of the results of a chemical test performed under this chapter.

Approved March 4, 2005  
Filed March 4, 2005

## CHAPTER 196

### SENATE BILL NO. 2341

(Senators Lyson, Nelson, Robinson)  
(Representatives Carlisle, Delmore, Price)

## MANDATORY TREATMENT PILOT PROJECT

AN ACT to create and enact a new section to chapter 19-03.1 of the North Dakota Century Code, relating to drug abuse treatment for first-time felons; to amend and reenact subsections 7 and 8 of section 19-03.1-23 and section 62.1-02-01 of the North Dakota Century Code, relating to drug abuse treatment for first-time felons; to repeal section 19-03.1-30 of the North Dakota Century Code, relating to conditional discharge for possession as first offense; and to provide an appropriation.

### 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:

#### Mandatory drug abuse assessment and treatment - Presentence investigation - Certified drug abuse treatment programs.

1. When a person located in Walsh, Pembina, or Grand Forks Counties has pled guilty or has been found guilty of a felony violation of subsection 6 of section 19-03.1-23 and that person has not previously pled guilty or been found guilty of any offense involving the use, possession, manufacture, or delivery of a controlled substance or of any other felony offense of this or another state or the federal government, the court shall impose a period of probation of not less than eighteen months in conjunction with a suspended execution of a sentence of imprisonment, a sentence to probation, or an order deferring imposition of sentence.
2. Upon a plea or finding of guilt of a person subject to the provisions of subsection 1, the court shall order a presentence investigation to be conducted by the department. The presentence investigation shall include a drug and alcohol evaluation conducted by a licensed addiction counselor.
3. If the licensed addiction counselor recommends treatment, the court shall require the person to participate in an addiction program licensed by the department of human services as a condition of the probation. The court shall commit the person to treatment through a licensed addiction program until determined suitable for discharge by the court. The term of treatment shall not exceed eighteen months and may include an aftercare plan. During the commitment and while subject to probation, the person shall be supervised by the department.
4. If the person fails to participate in, or has a pattern of intentional conduct that demonstrates the person's refusal to comply with or participate in the treatment program, as established by judicial finding, the person shall be subject to revocation of the probation. Notwithstanding

subsection 2 of section 12.1-32-02, the amount of time participating in the treatment program under this section is not "time spent in custody" and will not be a credit against any sentence to term of imprisonment.

5. The cost for all drug abuse assessments and certified drug abuse treatment programs shall be initially paid by the department. The court shall order the person to reimburse the department for the assessment and treatment expenses in accordance with the procedures of section 12.1-32-08. The department shall handle the collection of costs from the offenders in the same manner as it collects court costs, fees, and supervision fees.
6. In this section:
  - a. "Department" means the department of corrections and rehabilitation; and
  - b. "Licensed addiction counselor" is a person licensed pursuant to section 43-45-05.1.
7. The provisions of this section shall be implemented as a pilot project in Pembina, Walsh, and Grand Forks Counties effective three months from the date of receipt of a federal grant for methamphetamine treatment being applied for by the department of human services. The department shall collaborate management of the pilot project with the department of human services to ensure services under the federal grant program for one-half of the offenders mandated by the court to submit to mandatory treatment, not to exceed twenty-three individuals. The department shall hire a program manager to manage the pilot project, collect statistics regarding the operation of the program, track participants in the program, and provide a report to the attorney general, the legislative council for distribution during the November 2006 legislative council meeting, and the sixtieth legislative assembly detailing the number of participants in the program, the cost of the program, relapse statistics, and other data concerning the effectiveness of the program.

**SECTION 2. AMENDMENT.** Subsections 7 and 8 of section 19-03.1-23 of the North Dakota Century Code are amended and reenacted as follows:

7. A Except as provided by section 1 of this Act, a person who violates this chapter or chapter 19-03.4 must undergo a drug addiction evaluation by an appropriate a licensed addiction treatment program counselor. 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.
8. Notwithstanding section 19-03.1-30, whenever When 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.

**SECTION 3. AMENDMENT.** Section 62.1-02-01 of the North Dakota Century Code is amended and reenacted as follows:

**62.1-02-01. Persons who are not to possess firearms - Penalty.**

1. A person who has been convicted anywhere for a felony involving violence or intimidation, as defined in chapters 12.1-16 through 12.1-25, is prohibited from owning a firearm or having one in possession or under control from the date of conviction and continuing for a period of ten years after the date of conviction or release from incarceration or probation, whichever is latest.
2. A person who has been convicted of any felony not provided for in subsection 1 or has been convicted of a class A misdemeanor involving violence or intimidation and that crime was committed while using or possessing a firearm or dangerous weapon, as defined in chapters 12.1-16 through 12.1-25, is prohibited from owning a firearm or having one in possession or under control from the date of conviction and continuing for a period of five years after the date of conviction or release from incarceration or probation, whichever is latest.
3. A person who is or has ever been diagnosed and confined or committed to a hospital or other institution in this state or elsewhere by a court of competent jurisdiction, other than a person who has had the petition that provided the basis for the diagnosis, confinement, or commitment dismissed under section 25-03.1-17, 25-03.1-18, or 25-03.1-19, or equivalent statutes of another jurisdiction, as a mentally ill person as defined in section 25-03.1-02, or as a mentally deficient person as defined in section 25-01-01, is prohibited from purchasing a firearm or having one in possession or under control. This limitation does not apply to a person who has not suffered from the disability for the previous three years.
4. A person under the age of eighteen years may not possess a handgun except that such a person, while under the direct supervision of an adult, may possess a handgun for the purposes of firearm safety training, target shooting, or hunting.

A person who violates subsection 1 or 2 is guilty of a class C felony, and a person who violates subsection 3 or 4 is guilty of a class A misdemeanor. For the purposes of this section, "conviction" means determination by a jury or court that a person committed one of the above-mentioned crimes even though the court suspended execution of sentence in accordance with subsection 3 of section 12.1-32-02 or deferred imposition of sentence in accordance with subsection 4 of section 12.1-32-02, placed the defendant on probation, ~~granted a conditional discharge in accordance with section 19-03.1-30,~~ the defendant's conviction has been reduced in accordance with subsection 9 of section 12.1-32-02 or section 12.1-32-07.1, or a determination under chapter 27-20 that the person committed a delinquent act equivalent to the offenses provided in subsection 1 or 2.

**SECTION 4. REPEAL.** Section 19-03.1-30 of the North Dakota Century Code is repealed.

**SECTION 5. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$515,855, or so much of the sum as may be necessary, to the department of

corrections and rehabilitation for the purpose of funding the mandatory treatment pilot project, for the biennium beginning July 1, 2005, and ending June 30, 2007.

**SECTION 6. APPROPRIATION.** There is appropriated from special funds derived from federal funds and other income, the amount of \$448,471, or so much of the sum as may be necessary, to the department of human services for the purpose of funding the mandatory treatment pilot project, for the biennium beginning July 1, 2005, and ending June 30, 2007.

Approved April 19, 2005

Filed April 20, 2005

## CHAPTER 197

### HOUSE BILL NO. 1290

(Representatives Klemin, Norland, Thorpe)  
(Senators Seymour, Trenbeath, Triplett)

### BAIL BONDS

AN ACT to create and enact a new section to chapter 19-03.1 of the North Dakota Century Code, relating to bail bonds.

#### 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:

**Bail - Additional conditions of release.** A court shall impose as a condition of release or bail that an individual who has been arrested upon a felony violation of this chapter or chapter 19-03.4 not use a controlled substance without a valid prescription from a licensed medical practitioner and that the individual submit to a medical examination or other reasonable random testing for the purpose of determining the person's use of a controlled substance. The court shall order the frequency of the random testing and the location at which random testing must occur. The court shall provide notice to the selected provider of the required examination or testing. The provider shall notify the court if the individual fails to appear for the examination or testing. The testing must be at the individual's own cost. Submission of an individual to a medical examination or other reasonable random testing as a condition for release is not required if the court makes a specific finding on the record that:

1. The individual has not been arrested for a felony offense relating to the use, possession, manufacture, or delivery of methamphetamine;
2. The individual will appear as required by the court and will comply with all conditions of release without submission to an examination or testing; and
3. Not imposing examination or testing as a condition of release will pose no danger to the individual or to the community.

Approved April 14, 2005  
Filed April 18, 2005

## CHAPTER 198

### SENATE BILL NO. 2166

(Senators J. Lee, Kilzer, Mathern)

(Representatives Delzer, Kreidt)

## PAIN TREATMENT AND CARE

AN ACT to amend and reenact subsection 2 of section 19-03.3-01 and sections 19-03.3-02, 19-03.3-03, 19-03.3-04, and 19-03.3-05 of the North Dakota Century Code, relating to treatment and care for pain.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 2 of section 19-03.3-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Intractable pain Pain" means a pain state in which the cause of the pain cannot be removed or otherwise treated and which in the generally accepted course of medical practice no relief or cure of the cause of the pain is possible or none has been found after reasonable efforts acute pain and chronic pain. Acute pain is the normal, predicted physiological response to a noxious chemical or thermal or mechanical stimulus and typically is associated with invasive procedures, trauma, or disease, and is generally time-limited. Chronic pain is a state that persists beyond the usual course of an acute disease or healing of an injury or that may or may not be associated with an acute or chronic pathologic process that causes continuous or intermittent pain over months or years.

**SECTION 2. AMENDMENT.** Section 19-03.3-02 of the North Dakota Century Code is amended and reenacted as follows:

**19-03.3-02. Prescription or administration of drugs by physician.** Notwithstanding any other provision of law, a physician may prescribe or administer controlled substances to a patient in the course of the physician's treatment of the patient for ~~intractable~~ pain. A physician shall keep records of purchases and disposals of controlled substances prescribed or administered under this section. The records must include the date of purchase, the date of sale or administration by the physician, the name and address of the patient, and the reason for the prescribing or the administering of the substances to the patient.

**SECTION 3. AMENDMENT.** Section 19-03.3-03 of the North Dakota Century Code is amended and reenacted as follows:

**19-03.3-03. Restriction by hospital or health care facility of prescribed drug use prohibited.** No hospital or health care facility may forbid or restrict the use of controlled substances when prescribed or administered by a physician having staff privileges at that hospital or health care facility for a patient diagnosed and treated by a physician for ~~intractable~~ pain.

**SECTION 4. AMENDMENT.** Section 19-03.3-04 of the North Dakota Century Code is amended and reenacted as follows:

**19-03.3-04. Disciplinary action for prescribing or administering drug treatment prohibited.** The board may not discipline a physician for prescribing or administering controlled substances in the course of treatment of a patient for ~~intractable~~ pain under this chapter.

**SECTION 5. AMENDMENT.** Section 19-03.3-05 of the North Dakota Century Code is amended and reenacted as follows:

**19-03.3-05. Application.** This chapter does not apply to a person being treated by a physician for chemical dependency because of the person's use of controlled substances not related to treatment for pain. This chapter does not authorize a physician to prescribe or administer ~~controlled substances to a person the physician knows is using controlled substances for nontherapeutic~~ any drug legally classified as a controlled substance or as an addictive or dangerous drug for other than medically accepted therapeutic purposes. A person to whom controlled substances are prescribed or administered for ~~intractable~~ pain is not exempt from section 39-08-01 or 39-20-04.1.

Approved March 14, 2005

Filed March 14, 2005

## CHAPTER 199

### HOUSE BILL NO. 1346

(Representatives Thoreson, Horter, Kingsbury)  
(Senators Flakoll, Klein, O'Connell)

## METHAMPHETAMINE PRECURSOR DRUG SALE

AN ACT to amend and reenact section 19-03.4-08 of the North Dakota Century Code, relating to retail sale of a methamphetamine precursor drug; to provide a penalty; to provide an effective date; to provide an expiration date; and to declare an emergency.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 19-03.4-08 of the North Dakota Century Code is amended and reenacted as follows:

**19-03.4-08. 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~~ two 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. When offering a methamphetamine precursor drug for retail sale, a person shall require, obtain, and make a written record of the identification of the person purchasing the methamphetamine precursor drug, the identification being a document issued by a government agency as described in subdivisions a and b of subsection 5, 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.
- b. 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.
4. 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. 5. It is a prima facie case of a violation of subsection 3 4 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- 6. It is an affirmative defense to a violation of subsection 3 4 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- 7. 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- 8. A person who willfully violates subsection 1 is guilty of a class A misdemeanor. A person who willfully violates subsection 2 or, 3, or 4 is guilty of an infraction.

- ~~8.~~ 9. 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.~~ 10. 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 2. EFFECTIVE DATE.** This Act becomes effective on June 1, 2005.

**SECTION 3. EXPIRATION DATE.** This Act is effective through July 31, 2007, and after that date is ineffective.

**SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 22, 2005  
Filed April 25, 2005

## CHAPTER 200

### SENATE BILL NO. 2346

(Senators Lindaas, Trenbeath, Urlacher)  
(Representatives Aarsvold, Herbel, Monson)

### MTBE IN GASOLINE RESTRICTED

AN ACT to create and enact a new section to chapter 19-10 of the North Dakota Century Code, relating to the sale of gasoline containing methyl tertiary butyl ether.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** A new section to chapter 19-10 of the North Dakota Century Code is created and enacted as follows:

**Retail sale of gasoline containing methyl tertiary butyl ether - Restriction.** A person may not sell, offer for sale, supply, or offer for supply gasoline that contains methyl tertiary butyl ether in quantities greater than five-tenths of one percent by volume. However, a person may ship gasoline containing methyl tertiary butyl ether within the state for disposition outside the state, including storage coincident to shipment.

Approved March 31, 2005

Filed March 31, 2005

## CHAPTER 201

### HOUSE BILL NO. 1093

(Agriculture Committee)

(At the request of the Agriculture Commissioner)

### PET FOOD AND FEED REGULATION

AN ACT to amend and reenact subsections 1 and 3 of section 19-13.1-03 and section 19-13.1-06 of the North Dakota Century Code, relating to the registration and licensing of pet food and commercial feed and inspection of commercial feed; and to provide a penalty.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsections 1 and 3 of section 19-13.1-03 of the North Dakota Century Code are amended and reenacted as follows:

1. Each pet food and specialty pet food must be registered before being distributed in this state. The application for registration must be submitted on forms furnished by the commissioner. The application must be accompanied by a label and any other printed matter describing each product and the registration fee of one hundred dollars per product. Upon approval by the commissioner, a certificate of registration must be furnished to the applicant. Registrations are not transferable. Registration covers a two-year period beginning January first and ending December thirty-first of every odd-numbered year. Registration renewals received after January thirty-first must be assessed a penalty fee of ten dollars per product. Products found marketed in this state without proper registration must be assessed the penalty fee of twenty-five dollars.
3. Each person who manufactures commercial feed or whose name appears on the label of a commercial feed, other than pet food or specialty pet food, shall obtain a feed manufacturer's license from the commissioner for each location. Each person who sells commercial feed at retail, other than pet food or specialty pet food, shall obtain a feed retailer's license from the commissioner. The license application must be on forms furnished by the commissioner and must be accompanied by a fee of one hundred dollars for feed manufacturers or fifty dollars for feed retailers. The license covers a two-year period beginning January first and ending December thirty-first of every odd-numbered year. If a manufacturer is also a retailer of feed, the retail license is waived. A feed retailer's license must be obtained for each location used by the retailer. Licenses are not transferable. License renewal applications received after January thirty-first may be assessed a penalty fee of ten dollars for retailers and twenty dollars for manufacturers. This subsection does not apply to any person who custom manufactures feed only for another person at that person's request and for that person's own use.

**SECTION 2. AMENDMENT.** Section 19-13.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**19-13.1-06. Inspection fees.** There must be paid to the commissioner for all commercial feeds and customer-formula feeds, except pet foods and specialty pet foods, distributed in this state an inspection fee at the rate of twenty cents per ton [907.18 kilograms] with a minimum of ten dollars. However, customer-formula feeds are exempted if the inspection fee is paid on the commercial feeds that they contain and distribution of commercial feeds to manufacturers is exempted if the commercial feeds so distributed are used solely in manufacture of feeds that are registered. Every person, except as hereinafter provided, who distributes commercial feed in this state shall:

1. File, not later than the thirty-first day of January of each year, an annual statement under oath setting forth the number of net tons [kilograms] of commercial feeds distributed in this state during the preceding year; and upon filing such statement shall pay the inspection fee. If the statement is not received by January thirty-first, a penalty of ten percent of the amount owed, with a minimum of ten dollars and a maximum of two hundred fifty dollars, may be assessed. The person whose name appears on the label as the manufacturer, guarantor, or distributor shall assume the liability for reporting and paying the inspection fee.
2. Keep such records as may be necessary or required by the commissioner to indicate accurately the tonnage of commercial feed distributed in this state and the commissioner has the right to examine such records to verify statements of tonnage.

Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided herein constitutes sufficient cause for the cancellation of all licenses on file for the distributor.

Approved March 7, 2005

Filed March 8, 2005

## CHAPTER 202

### SENATE BILL NO. 2371

(Senators Andrist, Flakoll, Klein, G. Lee)

## MINIMUM RISK PESTICIDES

AN ACT to create and enact a new section to chapter 19-18 of the North Dakota Century Code, relating to minimum-risk pesticides.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** A new section to chapter 19-18 of the North Dakota Century Code is created and enacted as follows:

#### **Minimum-risk pesticide - Certificate of exemption.**

1. Section 19-18-03 does not apply to any person who distributes, sells, or offers for sale within this state or delivers for transportation or transports in intrastate commerce or between points within this state through any point outside this state a minimum-risk pesticide exempt from registration under the Insecticide, Fungicide, and Rodenticide Act [Pub. L. 100-532; 102 Stat. 2654; 7 U.S.C. 136 et seq.], provided the person has obtained a certificate of exemption from the commissioner.
2. To obtain a certificate of exemption for a minimum-risk pesticide, a person shall file an application with the commissioner. The application must include:
  - a. The name and address of the product's manufacturer or distributor;
  - b. The name and brand name of the product;
  - c. A current label for the product; and
  - d. A fee equal in amount to the fee set under section 19-18-04 for the registration of a pesticide.
3. The commissioner shall remit any fees collected under this section to the state treasurer for deposit in the environment and rangeland protection fund.
4. Each exemption from registration covers a designated two-year period beginning January first of each even-numbered year and expiring December thirty-first of the following year.

Approved April 8, 2005

Filed April 12, 2005

## CHAPTER 203

### HOUSE BILL NO. 1241

(Representatives Koppelman, Iverson, Kasper, Thoreson)  
(Senators Christmann, Trenbeath)

### OBESITY CIVIL IMMUNITY

AN ACT to provide for limited liability for a food producer, processor, manufacturer, packer, distributor, carrier, holder, seller, marketer, trade association, or advertiser for a claim of injury resulting from weight gain, obesity, or any health condition related to weight gain.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

##### SECTION 1. Limited liability.

1. Except as provided in subsection 2, a producer, processor, manufacturer, packer, distributor, carrier, holder, seller, marketer, trade association, or advertiser of a food, as defined in section 201(f) of the Federal Food Drug and Cosmetic Act [21 U.S.C. 321(f)], or an association of one or more of those entities, may not be subject to civil liability arising under any state statute, rule, public policy, court or administrative decision, municipal ordinance, or other action having the effect of law, for any claim arising out of weight gain, obesity, a health condition associated with weight gain or obesity, or other generally known condition allegedly caused by or allegedly likely to result from long-term consumption of food.
2. Subsection 1 does not apply to the claim of obesity or weight gain that is based on:
  - a. A material violation of an adulteration or misbranding requirement prescribed by state or federal statute, rule, or ordinance and the claimed injury was proximately caused by the violation; or
  - b. Any other material violation of federal or state law applicable to the manufacturing, marketing, distribution, advertising, labeling, or sale of food, provided that the violation is knowing and willful, and the claimed injury was proximately caused by the violation.

##### SECTION 2. Pleading requirements.

1. In any action commenced under this Act, the complaint or petition must state with particularity the following:
  - a. The statute, rule, regulation, ordinance, or other law that was allegedly violated;
  - b. The facts that are alleged to constitute a material violation of the statute, rule, regulation, ordinance, or other law; and
  - c. The facts alleged to demonstrate that the violation proximately caused actual injury to the plaintiff.

2. The complaint or petition must also state with particularity facts sufficient to support a reasonable inference that the violation was with intent to deceive or injure consumers or with the actual knowledge that the violation was injurious to consumers.

**SECTION 3. Stay pending motion to dismiss.**

1. In any action commenced under this Act, all discovery and other proceedings must be stayed during the pendency of any motion to dismiss unless the court finds upon the motion of any party that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to a party.
2. During the pendency of any stay of discovery pursuant to this section, unless otherwise ordered by the court, any party to the action with actual notice of the allegations contained in the complaint shall treat all documents, data compilations, and tangible objects that are in the custody or control of the party and are relevant to the allegations, as if they were the subject of a continuing request for production from an opposing party under rule 34 of the North Dakota Rules of Civil Procedure.

**SECTION 4. APPLICATION.** This Act applies to all claims filed after the effective date of this Act, regardless of when the claim arose.

Approved March 31, 2005  
Filed March 31, 2005