

Introduced by

Senators Grindberg, Lyson, Nelson

Representatives DeKrey, Delmore, Thoreson

1 A BILL for an Act to amend and reenact sections 19-03.1-01 and 19-03.4-08 of the North  
2 Dakota Century Code, relating to definitions and the sale of scheduled listed chemical products;  
3 and to declare an emergency.

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

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

7 **19-03.1-01. Definitions.** As used in this chapter and in chapters 19-03.2 and 19-03.4,  
8 unless the context otherwise requires:

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

- 1           6. "Controlled substance" means a drug, substance, or immediate precursor in  
2           schedules I through V as set out in this chapter.
- 3           7. "Counterfeit substance" means a controlled substance which, or the container or  
4           labeling of which, without authorization, bears the trademark, trade name, or other  
5           identifying mark, imprint, number or device, or any likeness thereof, of a  
6           manufacturer, distributor, or dispenser other than the person who in fact  
7           manufactured, distributed, or dispensed the substance.
- 8           8. "Deliver" or "delivery" means the actual, constructive, or attempted transfer from  
9           one person to another of a controlled substance whether or not there is an agency  
10          relationship.
- 11          9. "Dispense" means to deliver a controlled substance to an ultimate user or research  
12          subject by or pursuant to the lawful order of a practitioner, including the  
13          prescribing, administering, packaging, labeling, or compounding necessary to  
14          prepare the substance for that delivery.
- 15          10. "Dispenser" means a practitioner who dispenses.
- 16          11. "Distribute" means to deliver other than by administering or dispensing a controlled  
17          substance.
- 18          12. "Distributor" means a person who distributes.
- 19          13. "Drug" means:
- 20           a. Substances recognized as drugs in the official United States pharmacopeia,  
21           national formulary, or the official homeopathic pharmacopeia of the United  
22           States, or any supplement to any of them;
- 23           b. Substances intended for use in the diagnosis, cure, mitigation, treatment, or  
24           prevention of disease in individuals or animals;
- 25           c. Substances, other than food, intended to affect the structure or any function  
26           of the body of individuals or animals; and
- 27           d. Substances intended for use as a component of any article specified in  
28           subdivision a, b, or c. The term does not include devices or their  
29           components, parts, or accessories.

- 1           14. "Hashish" means the resin extracted from any part of the plant cannabis with or  
2                   without its adhering plant parts, whether growing or not, and every compound,  
3                   manufacture, salt, derivative, mixture, or preparation of the resin.
- 4           15. "Immediate precursor" means a substance:
- 5                   a. That the board has found to be and by rule designates as being the principal  
6                   compound commonly used or produced primarily for use in the manufacture  
7                   of a controlled substance;
- 8                   b. That is an immediate chemical intermediary used or likely to be used in the  
9                   manufacture of the controlled substance; and
- 10                  c. The control of which is necessary to prevent, curtail, or limit the manufacture  
11                  of the controlled substance.
- 12           16. "Manufacture" means the production, preparation, propagation, compounding,  
13                   conversion, or processing of a controlled substance, either directly or indirectly by  
14                   extraction from substances of natural origin, or independently by means of  
15                   chemical synthesis, or by a combination of extraction and chemical synthesis and  
16                   includes any packaging or repackaging of the substance or labeling or relabeling of  
17                   its container. The term does not include the preparation or compounding of a  
18                   controlled substance by an individual for the individual's own use or the  
19                   preparation, compounding, packaging, or labeling of a controlled substance:
- 20                  a. By a practitioner as an incident to the practitioner's administering or  
21                  dispensing of a controlled substance in the course of the practitioner's  
22                  professional practice; or
- 23                  b. By a practitioner, or by the practitioner's authorized agent under the  
24                  practitioner's supervision, for the purpose of, or as an incident to, research,  
25                  teaching, or chemical analysis and not for sale.
- 26           17. "Marijuana" means all parts of the plant cannabis whether growing or not; the  
27                   seeds thereof; the resinous product of the combustion of the plant cannabis; and  
28                   every compound, manufacture, salt, derivative, mixture, or preparation of the plant  
29                   or its seeds. The term does not include the mature stalks of the plant, fiber  
30                   produced from the stalks, oil or cake made from the seeds of the plant, any other  
31                   compound, manufacture, salt, derivative, mixture, or preparation of mature stalks,

- 1 fiber, oil, or cake, or the sterilized seed of the plant which is incapable of  
2 germination.
- 3 18. ~~"Methamphetamine precursor drug" means a drug or product containing~~  
4 ~~ephedrine, pseudoephedrine, or any of their salts, optical isomers, or salts of~~  
5 ~~optical isomers.~~
- 6 49. "Narcotic drug" means any of the following, whether produced directly or indirectly  
7 by extraction from substances of vegetable origin, or independently by means of  
8 chemical synthesis, or by a combination of extraction and chemical synthesis:
- 9 a. Opium and opiate and any salt, compound, derivative, or preparation of  
10 opium or opiate.
- 11 b. Any salt, compound, isomer, derivative, or preparation thereof which is  
12 chemically equivalent or identical with any of the substances referred to in  
13 subdivision a, but not including the isoquinoline alkaloids of opium.
- 14 c. Opium poppy and poppy straw.
- 15 d. Coca leaves and any salt, compound, derivative, or preparation of coca  
16 leaves, any salt, compound, isomer, derivative, or preparation thereof which  
17 is chemically equivalent or identical with any of these substances, but not  
18 including decocainized coca leaves or extractions of coca leaves which do not  
19 contain cocaine or ecgonine.
- 20 ~~20.~~ 19. "Opiate" means any substance having an addiction-forming or addiction-sustaining  
21 liability similar to morphine or being capable of conversion into a drug having  
22 addiction-forming or addiction-sustaining liability. The term does not include,  
23 unless specifically designated as controlled under section 19-03.1-02, the  
24 dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts  
25 (dextromethorphan). The term includes its racemic and levorotatory forms.
- 26 ~~24.~~ 20. "Opium poppy" means the plant of the species *papaver somniferum* L., except its  
27 seeds.
- 28 ~~22.~~ 21. "Over-the-counter sale" means a retail sale of a drug or product other than a  
29 controlled, or imitation controlled, substance.



1 household or for administering to an animal owned by the individual or by a  
2 member of the individual's household.

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

5 **19-03.4-08. (~~Effective through July 31, 2007~~) Retail or over-the-counter sale of**  
6 **methamphetamine precursor drugs scheduled listed chemical products - Penalty.**

- 7 1. The retail sale of methamphetamine precursor drugs scheduled listed chemical  
8 products is limited to:
- 9 a. Sales in packages containing not more than a total of two grams of one or  
10 more methamphetamine precursor drugs scheduled listed chemical products,  
11 calculated in terms of ephedrine ~~HCl~~ and base, pseudoephedrine ~~HCl~~ base,  
12 and phenylpropanolamine base; and
- 13 b. Sales in blister packs, each blister containing not more than two dosage units,  
14 or when the use of blister packs is technically infeasible, sales in unit dose  
15 packets or pouches.
- 16 2. A person may not ~~deliver~~:
- 17 a. Deliver in a single over-the-counter sale more than two packages of a  
18 methamphetamine precursor drug scheduled listed chemical product or a  
19 combination of methamphetamine precursor drugs scheduled listed chemical  
20 products; or
- 21 b. Without regard to the number of over-the-counter sales, deliver more than a  
22 daily amount of three and six-tenths grams of scheduled listed chemical  
23 products, calculated in terms of ephedrine base, pseudoephedrine base, and  
24 phenylpropanolamine base, to a purchaser.
- 25 3. When offering scheduled listed chemical products for sale, the person shall place  
26 the products behind a counter or other barrier, or in a locked cabinet, where  
27 purchasers do not have direct access to the products before the sale is made.
- 28 ~~3- 4.~~ a. When offering a methamphetamine precursor drug scheduled listed chemical  
29 products for retail sale, a person shall require, obtain, and make a written  
30 record of the identification of the person purchasing the methamphetamine  
31 precursor drug scheduled listed chemical product, the identification being a

1 document issued by a government agency as described in subdivisions a and  
2 b of subsection 5 6, and shall ~~do at least one of the following~~:

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

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

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

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

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

1                   the release constitutes gross negligence or intentional, wanton, or willful  
2                   misconduct.

3       4. 5. A person may not deliver in an over-the-counter sale a ~~methamphetamine~~  
4       ~~precursor drug~~ scheduled listed chemical product to a person under the age of  
5       eighteen years.

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

- 11       a. Contains a description of the person or a photograph of the person, or both,  
12       and gives the person's date of birth; and  
13       b. Includes a passport, military identification card, or driver's license.

14       6. 7. It is an affirmative defense to a violation of subsection 4 5 if:

- 15       a. The person making the sale required and obtained proof of age from the  
16       purchaser;  
17       b. The purchaser falsely represented the purchaser's proof of age by use of a  
18       false, forged, or altered document;  
19       c. The appearance of the purchaser was such that an ordinary and prudent  
20       person would believe the purchaser to be at least eighteen years of age; and  
21       d. The sale was made in good faith and in reliance upon the appearance and  
22       representation of proof of age of the purchaser.

23       7. 8. This section does not apply to ~~pediatric products labeled pursuant to federal~~  
24       ~~regulation primarily intended for administration to children under twelve years of~~  
25       ~~age according to label instructions or to a product that the state board of~~  
26       pharmacy, upon application of a manufacturer, exempts from this section because  
27       the product has been formulated in such a way as to effectively prevent the  
28       conversion of the active ingredient into methamphetamine, or its salts or  
29       precursors.

30       9. A person may not:

- 1           a. Make a false statement or misrepresentation in the written list of sale that is  
2                     prepared and maintained as required by subsection 4; or  
3           b. Purchase more than nine grams of ephedrine base, pseudoephedrine base,  
4                     or phenylpropanolamine base in scheduled listed chemical products in a  
5                     thirty-day period.

6    8- 10. A person who willfully violates subsection 1 or 9 is guilty of a class A  
7                     misdemeanor. A person who willfully violates subsection 2, 3, ~~or 4,~~ or 5 is guilty of  
8                     an infraction.

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

- 14           a. Did not have prior knowledge of, participate in, or direct the employee or  
15                     agent to commit, the violation of this section; and  
16           b. ~~Documents~~ Certifies to the attorney general that the employee or agent, at  
17                     the time of initial employment and each calendar year thereafter, participated  
18                     in a training program approved by the attorney general providing the  
19                     employee or agent with information regarding the state and federal  
20                     regulations governing the sale, possession, and packaging of such ~~drugs~~  
21                     products.

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

24    40- 12. A political subdivision, including a home rule city or county, may not enact any  
25                    ordinance relating to the sale by a retail distributor of over-the-counter products  
26                    containing ephedrine, pseudoephedrine, or phenylpropanolamine. Any existing  
27                    ordinance is void.

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

30            4- ~~The retail sale of nonliquid methamphetamine precursor drugs is limited to:~~

Sixtieth  
Legislative Assembly

- 1           a. ~~Sales in packages containing not more than a total of three grams of one or~~  
2           ~~more methamphetamine precursor drugs, calculated in terms of ephedrine~~  
3           ~~HCl and pseudoephedrine HCl; and~~
- 4           b. ~~Sales in blister packs, each blister containing not more than two dosage units,~~  
5           ~~or when the use of blister packs is technically infeasible, sales in unit dose~~  
6           ~~packets or pouches.~~
- 7           2. ~~A person may not deliver in a single over the counter sale more than two~~  
8           ~~packages of a methamphetamine precursor drug or a combination of~~  
9           ~~methamphetamine precursor drugs.~~
- 10          3. ~~A person may not deliver in an over the counter sale a methamphetamine~~  
11          ~~precursor drug to a person under the age of eighteen years.~~
- 12          4. ~~It is a prima facie case of a violation of subsection 3 if the person making the sale~~  
13          ~~did not require and obtain proof of age from the purchaser, unless from the~~  
14          ~~purchaser's outward appearance the person would reasonably presume the~~  
15          ~~purchaser to be twenty five years of age or older. "Proof of age" means a~~  
16          ~~document issued by a governmental agency which:~~
  - 17           a. ~~Contains a description of the person or a photograph of the person, or both,~~  
18           ~~and gives the person's date of birth; and~~
  - 19           b. ~~Includes a passport, military identification card, or driver's license.~~
- 20          5. ~~It is an affirmative defense to a violation of subsection 3 if:~~
  - 21           a. ~~The person making the sale required and obtained proof of age from the~~  
22           ~~purchaser;~~
  - 23           b. ~~The purchaser falsely represented the purchaser's proof of age by use of a~~  
24           ~~false, forged, or altered document;~~
  - 25           c. ~~The appearance of the purchaser was such that an ordinary and prudent~~  
26           ~~person would believe the purchaser to be at least eighteen years of age; and~~
  - 27           d. ~~The sale was made in good faith and in reliance upon the appearance and~~  
28           ~~representation of proof of age of the purchaser.~~
- 29          6. ~~This section does not apply to pediatric products labeled pursuant to federal~~  
30          ~~regulation primarily intended for administration to children under twelve years of~~  
31          ~~age according to label instructions or to a product that the state board of~~

1            ~~pharmacy, upon application of a manufacturer, exempts from this section because~~  
2            ~~the product has been formulated in such a way as to effectively prevent the~~  
3            ~~conversion of the active ingredient into methamphetamine, or its salts or~~  
4            ~~precursors.~~

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

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

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

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

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

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

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